

CHILD MARRIAGE IN INDIA- A STUDY

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Submitted by

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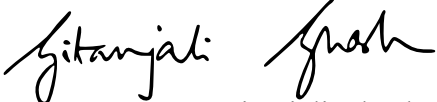
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CERTIFICATE

This is to certify that Anindita Talukdar has completed her dissertation is titled “**CHILD MARRIAGE IN INDIA: A STUDY**” under my supervision for the award of the degree of ONE YEAR LL.M DEGREE PROGRAMME of National Law University and Judicial Academy, Assam.

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DECLARATION

I, Anindita Talukdar, do hereby declare that the dissertation titled “**CHILD MARRIAGE IN INDIA: A STUDY**” submitted by me for the award of the degree of ONE YEAR LL.M DEGREE PROGRAMME of National Law University and Judicial Academy, Assam is a bonafide work and has not been submitted, either in part or full anywhere else for any purpose, academic or otherwise, to the best of my knowledge.

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Anindita Talukdar.

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LIST OF ABBREVIATIONS

1.	&	And
2.	A.I.R	All India Reporter
3.	Art.	Article
4.	Chap	Chapter
5.	CRC	Convention on the Rights of Child
6.	CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
7.	CIF	Childline India Foundation
8.	CMRA	Child Marriage Restraint Act, 1929
9.	CMPO	Child Marriage Prohibition Officer
10.	CWC	Child Welfare Commissioner
11.	IAWGCP	Inter-Agency Working Group on Children's Participation
12.	ICDS	Integrated Child Development Services
13.	ICPS	Integrated Child Protection Scheme
14.	ICRW	International Centre for Research on Women
15.	IPC	India Penal Code
16.	IWRAW	International Womens' Rights Action Watch Asia Pacific
17.	JJA	Juvenile Justice (Care and Protection of Children) Act, 2015
18.	MWCD	Ministry of Women and Child Development
19.	MHRD	Ministry of Human Resource Development
20.	NCPCR	National Commission for Protection of Child Rights
21.	NCW	National Commission for Women
22.	NFHS	National Family Health Survey
23.	NGO	Non-Government Organization
24.	NHRC	National Human Rights Commission
25.	NPA	National Plan of action

26.	NPAC	National Plan of Action for Children 2016
27.	OHCHR	United Nations Human Rights Office of the High Commissioner
28.	PCMA	Prohibition of Child Marriage Act, 2006
29.	POCSO	Protection of Children from Sexual Offences
30.	PWDVA	Protection of Women from Domestic Violence Act, 2005
31.	RAP	Regional Action Plan to End Child Marriage in South Asia (2015-18)
32.	SAARC	South Asian Association for Regional Cooperation
33.	SCW	State Commission for Women
34.	UN	United Nations
35.	UNCRC	United Nations Convention on the Rights of the Child
36.	UNDP	United Nations Development Programme
37.	UNESCO	United Nations Educational, Scientific & Cultural Organization
38.	UNPFA	United Nations Population Fund
39.	UNICEF	United Nations Children's Fund
40.	WHO	World Health Organization

TABLE OF STATUTES

Indian Statutes

- 1860 – The Indian Penal Code
- 1929- Child Marriage Restraint Act
- 1950- The Constitution of India
- 1955- Hindu Marriage Act
- 1973- Code of Criminal Procedure
- 1986- Immoral Traffic Prevention Act, 1986
- 2005- Protection of Women from Domestic Violence Act
- 2006- Prohibition of Child Marriage Act
- 2012- The Protection of children from sexual offences Act
- 2015- The Juvenile justice (Care and Protection of Children) Act
- 2016- Prohibition of Child Marriage (Karnataka Amendment) Act

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- 1948 -Universal Declaration of Human Rights
- 1959- Declaration of the rights of Child
- 1964-Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages
- 1966- International Conventions on Civil and Political Right
- 1966- International Covenant on Economic, Social and Cultural Rights
- 1966- International Covenant on Economic, social and Cultural Rights
- 1966- International Covenant on Civil and Political Rights
- 1989- The United Nations Convention on the Rights of the child

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CHAPTER-1

INTRODUCTION

“There can be no keener revelation of a society's soul than the way in which it treats its children.”

Nelson Mandela

1.1 Background

Marriage is a social institution that binds two individuals together in a permanent relationship. It is a way of forming a family. The majority of the time, it is a formal and legal union between two persons. Marriage is the most intimate ritual that an adult does in his or her life (wedding). India is a land with several diverse cultures. In India, there is a great diversity in terms of religion, culture, and traditions. As a result, individuals in India perform their marriages in accordance with their particular traditions.

Here, the *vivaah* (wedding) of two Hindu adults is likely the most full personal event he or she will ever experience. *Kanyadaan*, *Panigrahana*, and *Saptapadi* are three basics Hindu wedding rites that comprise the father giving his daughter away, freely holding hands near the fire to coming marriage, and taking seven steps in front of the fire, each with a set of mutual vows. After completing the seventh stage and taking *Saptapadi's* oaths, they two are legally married.

During the time of marriage, Sikhs in India perform the *Anand Karaj* rite, which was devised by Guru Amar Das, Sikhism's third head. The couple roaming through the holy book, the *Guru Granth Sahib* four of time.

Also, the Indian Muslims follow their ritual and personal laws during their *Nikah* which include *dower (Mahr)*, marriage contract etc.

Traditional Christian wedding practices are implemented throughout the Indian Christian marriages.

Marriage is valid when the couple follows all the legal procedure of marriage. In India, there is a burning problem that is child marriage. At this time, mainly 46 percent of girls marry below the age of 18. One of the most critical matters in Indian society is child marriage. While updated legislation mandating the age eighteen as the lawfull age for female marriage in India, a large chunk of the population is still under the age of 18. Every second person between the ages of 15 and 19 is married. A kid has been born to an adolescent female. According to the report.

In India, child marriage has been practised for decades, with children getting wedded off before completing physical and mental development. In India, the issue of child marriage persists. It rooted in a complicated system of religious and social customs Traditions, financial issues, and deeply embedded biases are all issues to consider. Regardless of its origins, child marriage is a serious crime Also. It is a Human rights violations have led to bodily and psychological harm and mental injuries that will last a lifetime Soon, sexual activity will commence and by marriage, as well as pregnancy and motherhood at a young age Furthermore, women who marry while they are younger are more likely to have children. Domestic violence is a problem that so many people face in their homes.

1.2 Statement of Problem

India is a country known for its culture and diversity. There are many social evils rampant in the Indian society and one such evil is child marriage. In some cultures child marriage has been seen as a part of their customs and beliefs. Child marriage has been one of the most major societal ills impacting the lives and futures of India's youths.

The effect of child marriage is different for females and a male child. The practise of early marriage has a greater impact on females than on males. Girls are not permitted to go to school which result in them a lack of literacy. Forced them to look after their home and are excepted to perform the gender specific role as seen in the society.

One in three child brides throughout the world are said to reside in India, according to a UNICEF survey. 2 to 3 million child brides in the nation wed before reaching fifteen. Child marriage is a terrible sin that leads to grave human rights violations. Every kid has the right to be protected from this practice, which has terrible

implications for both the child and society at large. The problem of child marriage has become so serious that it is now identified as one of the world's problems. "Target 5.3 of the sustainable development goals (SDGs) calls for the abolition of child marriage by the year 2030".¹

"Child marriage" result in ending of childhood. It violates the child right to health, education and protections. It does not only have an impact on the girl but also her family. The covid-19 pandemic has put a large number of Childs at the risk of being married. The pandemic let to losing of jobs which results into pushing people towards poverty. In situations like this the family thinks it's better to marry the daughter off and reduce the financial burdens on themselves.

There are many researches in this issue but in this study concern about the main factors and problems which lead "child marriage" and its major consequences, Also the study on the various laws and legislation against child marriage and its implementations. As a results, the study's title is "Child marriage in India-A study".

1.3 Literature Review

"Child marriage" is a challenging problem in India since it connected to ethnic and spiritual traditions as well as other socio-economic issues such as wedding gift(dowry) and child widowhood. The origins of the ritual, however, are unknown.

According to Saraswat (2006), in feudal communities where the '*Nagnika*' notion was common, "Child Marriages" do happen. Parents were told they would burn in hell if they did not marry off their daughters before they reached their adolescent puberty. Virginty before marriage is highly prized in Indian culture. Women and some males are affected by this. One of the simplest ways to do this in a society that values premarital virginty is to marry young girls when they are still children. Although previously this may have been the case in all societies, once modernity arrived, the governing elites increasingly abandoned this custom.²

¹UNICEF 'Ending child marriage: A profile of progress in India' <<https://data.unicef.org/resources/ending-child-marriage-a-profile-of-progress-in-india>> accessed 7 May 2022.

² Sangeeta Saraswat and Mahaveer Jain, *Child Labour in India* (Manak Publication Private Limited 2006).

Early weddings, i.e. marriage ceremony before the age of 18, are problematic because it is a interrupt girls' rights as persons, cut short their upbringing, and generally deprive them a voice in who they marry and when they marry. They are in violation of the 1989, “Convention on the Rights of the Child” (CRC).³

Early marriage is linked to a range of social, physical, and economical issues. . The co-relations between early marriage, poverty, and poor educational attainment are likely to have an influence, even if there isn't enough data to tell whether early marriage causes these negative impacts on its own. Married girls are also more likely to have regular intercourse with married men, it has been shown.

Marriage greatly increases the chances and pressures of childbearing specially in case of child marriage or forced, according to Miller and Lester (2003). In the case of first-time moms under the age of 16. In addition to the regular threats and obligations that come with becoming a parent, Those who are pregnant or are expecting a child are at an increased danger of maternal morbidity and mortality.⁴

“Child Marriage: A Legal Perspective” in this article, the author outlining significant legal initiatives implemented in India in the last decades to limit early marriages. Early marriage and pregnancy did not have total societal acceptance in the pre-independence era, which is not entirely factual. The emergence of diverse social groups At this time, legislation demonstrates policy reform initiatives. The most wonderful piece of legislation, the Child Marriage Restraint Act (CMRA), approved in 1997, was a step closer to people's desires that was established in 1929 with the goal of avoiding child marriages.

1.4 Aims

The researcher's goal in this dissertation is to conduct a brief analysis on “child marriage” in India and many factors and problems and consequences relating to child marriage in India. There has been many policies and programmes which aimed at mitigate the social evil of ‘child marriage’. The researcher aims at, analysis this policies and practices and make a detail study whether this policies and practices are

³ *ibid.*

⁴ B Suresh Lal, ‘Child Marriage in India: Factors and Problems’ [2015] 4(4) INTERNATIONAL JOURNAL OF SCIENCE AND RESEARCH 2993.

implemented or just on paper. Also the researcher inquiries about various laws against child marriage and how they are applied at domestic and international level.

1.5 Research Objectives

The main research objectives of this dissertation are as follows-

1. To study the various provisions which is relating to child marriage under ‘international’ and ‘regional’ instruments;
2. To analyse the legal regime governing child marriage in India;
3. To study various intervention of the government of India to curb child marriage and
4. To discuss the role of judiciary in India curbing the menace of child marriage.

1.6 Scope and Limitations

The study primarily focus upon the child marriage in India and it’s prevention. The study conceptualizes the difficulties of adolescent marriage from the context of India. The study analyses the various factors and their results or consequences of child marriage and analyses the numerous legitimate provisions relating to the prevention of child marriage. The study examines the various statutory measures which prohibit the child marriage in India. The study also focus upon the various international treaties, covenants in order to curb child marriage. This report can be used by government entities to bear in mind while developing legislations against child marriage and if government and any NGO want to find some data and knowledge related to child marriage in India then they can access this report.

The researcher used a doctrinal approach to research and relied on secondary data to complete this study. Due to time and budgetary constraints, the researcher was unable to travel to the field to gather data. Due to Covid-19 pandemic researcher limits her research in doctrinal form and based the research on secondary source more.

1.7 Research Questions

The researcher aims in answering the questions enumerated below-

- What are the main sources and causes of child marriage in India?

- What are the major consequences faced by the males and females who are the main victim of child marriage?
- What are the various legal measures taken by the Government of India in safeguarding, which is against and stopping child marriage?
- Has the Government of India been successful in implementing the laws and policies of child marriage implement properly the laws against early marriage?
- Are there any international instruments to prevention of such kind of violation of human rights like child marriage?
- Are there any provisions to curb child marriage in regional instrument?

1.8 Research Methodology

This dissertation uses a 'doctrinal' technique. By examining several precedents and current statute requirements, this dissertation examines a legal proposition also. Here, the case law study approach is also used, which aids the researcher in knowing how statutory provisions are put into effect and how the judiciary actively combats the problem of child marriage. The Supreme Court of India and High Court's historic judgments, as well as the current legislation governing child marriage and human rights, are taken into consideration while examining various elements. The problem of child marriage was covered by a number of research papers, books, and journals used by the researcher.

The researcher has adopted qualitative and explanatory research methods to define and explain the issue of "Child Marriage" in India. The researcher has analysed the history of child marriage and its present scenario in India. The researcher has analysed and explained the various reasons, causes and factors of child marriage in India in order to better understanding of the matter.

The researcher has adopted analytical research method to study the efforts of the various international organisations in upholding the rights of the child and eliminating the problem of child marriage. The researcher has studied the international commitments, treaties, conventions and covenants adopted and undertaken by India for the eradication of child marriage in the country and the manner in which they attempt to curb child marriage.

The researcher had use “Oxford Standard for Citation of Legal Authorities” citation style for this study.

1.9 Sources of Data

During the research, the researcher used primary as well as secondary source of data. The secondary sources includes international and regional human right instrument, legislations in place, Supreme Court and High Court judgements, reports, journals by both governmental and non-governmental organisations.

1.10 Chapterization:

Chapter- 1 Introduction:

Here, researcher gives an introduction on the topic covered in the study which includes statement of problem, detailed literature review, aim, objectives of the research, scope and limitation research question and research methodology.

Chapter- 2 Sociological Analysis on Child Marriage in India:

Here, researcher provides analysis of the sociological perspective on child marriage in India.

Chapter- 3 Child Marriages in India: National Legal Perspective:

Here, researcher has included various legislations on child marriages in India and the contributions made towards its preventions.

Chapter- 4 International Standards for the Protection of Women and Children in relation to Child Marriage:

Here, the researcher provides detail work on the international provisions on women and children in relations to their protection.

Chapter- 5 Regional Framework in Relation to Child Marriage:

Here, researcher has highlighted the regional instruments related to child marriage.

Chapter- 6 An Analysis of Laws, Judicial Precedents, and Recent Developments to Challenge the Issue of Child Marriage in India:

Here, researcher provides an analysis of various laws, judicial precedents and the recent developments to challenge the issue of child marriage.

Chapter- 7 Conclusion and Suggestions:

This chapter deals with conclusion and suggestions that the researcher has arrived at as a result of the present study.

CHAPTER-2

SOCIOLOGICAL ANALYSIS ON CHILD MARRIAGE IN INDIA

2.1 What is the meaning of Child Marriage?

The word “child marriage” is quite contradictory. ‘Marriage’ is a formal legal relationship between two adults where sexual relations are legitimized. It is obvious that people would expect such kind of relations only between two adults with their consent but there is questions that can a child become a party to a marriage contract where she/he is totally not able to realise the nature and significances of it. So, it is correct to use the term child marriage.

The term “Child Marriage”, is a marriage between two persons who is still not attain the age of eighteen. There are so many reasons for use of the term below the age of eighteen. One of them is to draw attention to the irony of the common practise of marrying young girls. Second, the practise is referred to as child marriage in India by lawmakers, social workers, and legal experts. Finally, the “CMRA 1929” treats a girl under the age of eighteen and a guy under the age of twenty-one as a child for the purposes of marriage. For the purposes of civil issues, the Indian “Majority Act of 1875” similarly, specifies the age of majority at eighteen years. Even India's constitution grants the right to vote to anybody beyond the age of eighteen. The same is true when entering a legally binding contract under the Indian Contract Act of 1872. As a result, Child Marriage is the correct phrase in the Indian context. A person under the age of eighteen is also defined as a ‘child’ by the “United Nations Convention on the Rights of the Child”.

In the international community, “child marriage” was sometimes referred to as early marriage or forced marriage. But although all forced marriages are not child marriages, . The use of force indicates that authority is being used against a person's will and without that person's free consent. The girl child's lack of physical and mental development makes it impossible for her to give a valid legal consent, and even if she were able to express her wishes, she would either be prevented from doing so or forced to act against them, so there is no question of consent in the case of a child marriage.

Adults, on the other hand, may be compelled to marry in a nation like India, where weddings are ‘planned’ by parents as a form of social control.⁵

‘Child Marriage’ compromises on several of a child's fundamental rights. It involves both girls and boys, but due of their low social position, females in many nations are married off at a far earlier age than boys and to much older men. ‘Child marriage’ has serious physical, psychological, intellectual, and emotional effects, especially for girls, since it prohibits them access to school and chances for personal growth. Girls are married off at an early age based on the belief that “virginity” is required in a bride. As a result, these young girls are sexually assaulted and compelled to have children before their bodies are completely grown. Daughter is thought to be less important than sons by their parents. They are seen as financial burdens since it is more expensive to raise a daughter when money may be better spent on males who would look for the parents in their later years.

A child's childhood is essentially over when they marry as children, especially if they are female. Children struggle of their youth as a result of this type of gender-based abuse. Additionally, child marriage interferes with their education and increases them susceptibility to abuse, bigotry, and violence.⁶

“Child marriage is a worldwide issue that is caused by poverty. Child marriage is a global issue that affects people of many cultures, faiths, and nationalities. Child brides can be found in any part of the globe. Poverty, particularly in rural regions, as well as poor regulations and enforcement, the notion that marriage will give protection, traditions or religious rules, and uneven gender standards, are all major factors that put a child especially a girl at danger of marriage”.

2.2 Beginning of Child Marriage in India:

“The Muslim Invasions”, which began, approximately “1,000 years ago”, are thought to be the genesis of child marriages. Invaders used to rape or kidnap unmarried Hindu

⁵ Jaya Sagade, *Child Marriage in India* (2nd edn, Oxford University Press 2005).

⁶ ‘Child marriage: The devastating end of childhood’ (Save the Children) <<https://www.savethechildren.org/us/charity-stories/child-marriage-a-violation-of-child-rights>> accessed 7 May 2022.

females, leading Hindu society to marry off its daughters at a young age, sometimes as early as infancy, to protect them.⁷

The political climate was volatile throughout the era of the Delhi Sultanate, which was controlled by 'Muslim Sultans under an absolute monarchy regime'. During this time, the Sultans promoted the practice of underage marriage and saw women as second-class citizens. Women, as is usual, were the victims of any conflict, fire, plunder, etc. These were the norm throughout the rule of the Delhi Sultans, and the worst victims were the women. Women in Hindu faith are suffering mostly in these dark days. Practises such as underage marriage and the choosing of ladies from a group of women. Wearing the *Ghungat*, the rest of society (veil). This Age also fostered rituals such as Sati and the practise of staring upon others. The delivery of a female infant was seen as a bad omen, even leading to death. "*Sarassenic feudal lords*" and princes of *Sarassenic* ancestry roamed all throughout India during the Middle Ages, posing a continual menace. At home, a young lady was a tragedy waiting to happen As a result, parents would look for ways to help their children by acquiring the tradition of child weddings with the "bride and groom". This culminated in the "groom" remaining in their cradles tendency. In this way, the threat to a growing girl's modesty is reduced.

"According to the *Dharmasutras*, a girl should marry when she has reached puberty. According to '*Manusmriti*', a father is considered to have harmed his daughter if he does not marry her before she reaches puberty, and if the girl is not married within three years after reaching puberty, she is free to seek a spouse on her own. The proper age for a girl to marry is eight, according to *Medhatithi's Bhashya*, the same may be extrapolated from '*Manusmriti*' as well. A male should marry before he reaches the age of sixteen, and the other hand a girl should marry before she reaches the age of twelve, according to the *Tolkappiyam*."⁸

The caste system may have also had a part in maintaining such a structure. Caste, which is based on birth and genetics, forbids members of the same caste from

⁷ Ayushi Mahajan '*Child Marriage and its impacts, consequences and effects on the girl child*', <<https://blog.ipleaders.in/child-marriage-impacts-consequences-effects-girl-child/>> accessed 10 May 2022.

⁸ *ibid*.

marrying. The hereditary caste system, in and of itself, might have aided in child-marriage practice is being nourished.

Since females are historically thought of as someone else's property from birth, it is common for poor parents to marry their daughters off as young as possible in an effort to better their daughter's future. Where there are little or no economic opportunities, this happens.

Many people think that the amount of dowry demanded is directly related to the age of the female. In India, the bride's family must pay the groom's family dowry, which is a demand and a requirement for marriage. It permeates all of the main traditions of India. Another significant reason in underage marriages is the existence of personal laws in different parts of India.⁹

2.3 Child marriage phenomenon in India:

Child marriage, whether it includes a girl or a boy, is a very serious societal issue and a serious violation of children's rights since it robs the child of their childhood and violates their fundamental rights to health, nutrition, education, and freedom from violence, abuse, and exploitation. However, the impact on women's lives is greater than it is on boys' lives. In the case of female children, one of the most fundamental human rights breaches occurs, which encourages a variety of other societal ills.¹⁰

Early marriage of children, especially girls, is popular in more than 40 nations, mostly in "Sub-Saharan Africa" and "South and Southeast Asia", including "India", "Pakistan", and "Bangladesh". A large number of these nations have signed several international treaties guaranteeing various rights for "children and women", including the requirement of an 18-year-old legal minimum age for marriage. Cameroon has even gone one step farther. The minimum age for girls to marry was set at 21 years old. Despite this, a greater emphasis percent By the age of 18, the majority of women had already married.

In India, there are said to be 24 million child brides. According to "The National Family Health Survey," India accounts for 40 percent of the 60 million child

⁹ Ayushi Mahajan (n 7).

¹⁰Save the Children, 'Child marriage: The Devastating end of Childhood' <<https://www.savethechildren.org/us/charity-stories/child-marriage-a-violation-of-child-rights>> accessed 22 May 2022.

marriages that take place globally. According to the “International Centre for Research on Women”, India has one of the fourteenth-highest rates of child marriage in the world. Due to cultural practises, societal conventions, economic concerns, and illogical beliefs, child marriage is a complicated subject in India. Because there are no child references accessible, It is difficult to identify the beginnings of marriage in ancient India. The procedure Child abuse is a problem in a few localities in the northern. The technique In a small number of communities in the northern states, child abuse is a concern. In comparison to the south, marriage is more prevalent in the north. Despite the fact that the history of the practise of child marriage is not properly recorded, There is evidence for the existence of ancient civilizations. The Scriptures forbade early marriage.¹¹

Despite the existence of strict guidelines and legislation prohibiting underage marriage, the practise of early marriage continues today for a variety of reasons. “*Akha Teej*”, “*Ganesh Chaturth*”, “*Pipal Punyo*”, and “*Phulera Duj*” are all considered auspicious holidays in most north Indian group. Furthermore, a married woman is thought to be better protected and less vulnerable. When compared to her unmarried peers, she is more vulnerable to sexual assault.¹²

Due to the above mentioned reasons, child marriage is regarded a grave violation of a “child's and human's rights”. It makes a lasting physical, psychological, and emotional scar on the youngster. In fact, this activity is in violation of United Nations accords on the Protection of children from sexual abuse and a minimum age for marriage Since 1948, there have been laws against exploitation. These include the following: The ‘Convention on the Elimination of All Forms of Discrimination’ is a treaty that aims to eliminate all forms of discrimination. “The Convention on the Elimination of Discrimination Against Women” (CEDAW) “Convention on rights of child” (CRC, 1989). Many rights are granted by the CRC, including freedom of expression (seeking and receiving information and ideas, Article 13), the right not to be separated from their parents against their will (Article 9), the right to education (Articles 28 and 29), and the right to rest and recreation (Articles 28 and 29). Article 31 of the Constitution guarantees the right to leisure, play, and recreational activities, as well as the right to

¹¹ ‘A Study on Child Marriage in India: Situational analysis in three states’ (National Institute of Public Cooperation and Child Development, 2008).

¹² *ibid.*

be safe from harm, exploitation and abuse of children and adolescents (Article 34). India is a signatory to this crucial agreement. Nonetheless, the situation of India's girl children, particularly in terms of early marriages, remains poor. The tradition has showed no sign of abating, and has only dropped somewhat. It's still there. The impacted areas are spread throughout rural India, majorly in the following states viz, Andhra Pradesh, Bihar, Madhya Pradesh, Rajasthan and Uttar Pradesh.¹³

The Indian marriage system differs depending on the location, caste, and community. In India's south-east, child marriage rates are lower, whereas in the north-west, they are higher.

In India, the trend of child marriage is seen rampant in the following states viz Bihar, Rajasthan, Jharkhand, Uttar Pradesh, West Bengal, Madhya Pradesh, Andhra Pradesh, and Karnataka. According to the survey conducted by “District-Level Household and Facility Survey (DLHS) under the Ministry of Health”, Bihar has been ranked the worst amongst all the states for child marriages in India. According to the survey a total of 70% women were married before they turned eighteen or in their early 20.¹⁴

2.4 Who is more vulnerable?

In male - dominated occupations, like India, girls are more likely to marry early if they are less educated, have fewer or no friends, , and are having negligible or no access to mass media like radio, Television and newspapers.

Among the problems include high nursing mortality, low life suspense, and high illiteracy, mainly women from rural area. Early marriage is associated with a higher fertility rate; hence, the earlier a woman marries, the greater the likelihood that she will have more children, placing additional burden on her health.¹⁵

Contrarily, young ladies are pressured to prove their fertility after marriage by having children right away, especially men. A young lady who is married to an older guy, has little education or none at all, has been raised to be submissive and subordinate, and is not very good at negotiating sexual activity.

¹³<<http://feministlawarchives.pldindia.org/wp-content/uploads/A-Study-on-Child-Marriage-in-India-three-states.pdf>> accessed 24 May 2022.

¹⁴ Mahajan (n 7).

¹⁵ *ibid.*

2.5 Causes responsible for child marriage:

From conception to death, women are subject to discrimination. Their education, family, financial position, employment, and workplace are all impacted by discrimination. The practise of child marriage is another illustration of the discrimination experienced by women. Several factors contribute to child marriages, that's are-

- **Poverty:** It is a significant problem for child marriage. In rural regions, many women and female children are denied access to essential resources when a household is financially suffering. Due to the family's poverty, female family members, especially young girls, suffer. Every chance is taken to get away from the responsibility of a female child. Therefore, in order to avoid the obligations that come with raising a female child, families often turn to child marriages as a natural solution. Early marriage is essentially a persistence tactic for many impoverished families since it reduces the number of people who need to be supported financially (via food, clothing, and education) by one. Families in Asia and Africa are also encouraged to marry off their daughters at a young age because to the role of financial considerations at the time of marriage. For instance, a female who marries as she approaches puberty receives a large bride price in many Sub-Saharan civilizations. In Bangladesh, India, Pakistan, and Nepal, parents believe that their financial burden of paying a dowry will be lessened if their daughter marries young. In underdeveloped countries and regions all around the world, forced child marriage is more common and mostly occurs in the poorest households. For instance, a female child from a low-income household is far more likely than a female child from a high-income family to be married while they are young.¹⁶
- **Reducing the expenditure on female education:** The growth of human resources is crucial to economic development and the efficient utilisation of physical capital depends on a productive human resource, often known as human capital. One of the most important factors of human capital is

¹⁶ Anju Malhotra, 'The causes, consequences and solutions to forced child marriage in the developing world' (International Center for Research on Women, July 15 2010) <<https://www.icrw.org/files/images/Causes-Consequences-and%20Solutions-to-Forced-Child-Marriage-Anju-Malhotra-7-15-2010>> accessed 28 May 2022.

education formation. A person's productive potential is determined by educational achievement levels. Levels of investment in Educational attainment and human potential are determined by education capital development and, as a result, economic growth development and growth Expenses incurred. Education determines a person's capability development. Typically, families make distinctions between males and female. Female children are considered a load, they do not have requirement to work and must take care the household tasks before and after marriage, but male children are well-thought-out future assets and economic groundwork of the household because they will work and earn money. Female children are given fewer or no significance as a result of these factors.¹⁷

Females receive less schooling in all emerging nations. Women have less prospects for advancement in their careers than males. A nation When it merely understands the importance of education, it spends more on it for the significance of human resource development. Individuals and families are in the same boat. In most cases, families make distinctions between boys and girls (Males and Females). Male children are treated differently than female children when it comes to educational investment. Where the family's future assets and economic basis are concerned.

Female offspring are regarded as a financial burden to their families. They have no economic foundation and are regarded as though they were someone else. As they are to be given to someone in marriage, they are an asset. Due in response to the disparities in disbursement on children's schooling, Female children are given less importance. Girls enrolled public schools, and boys are enrolled in private schools. Discrimination against women is common.¹⁸ The poverty of the household primarily affects female children.

- **Insecurity:** One of the key socioeconomic issues that leads to child marriage is a deficiency of social safety. Numerous individuals have faith in that a wedded female is considerably safer than an unmarried woman when it comes to societal violations. Unmarried women are perceived with bad motive, It makes them a target for crimes. Consequently, their parents rush to marry their

¹⁷ Mahajan (n 7).

¹⁸ *ibid.*

daughters as soon as she enters puberty, if not before, in order to shield them from crimes, assaults, and jeers targeted at single women.¹⁹

There has been instances, When families are living in an unsafe locality they assume that getting the girl married is the only way to keep her safe. Afghanistan, Burundi, Northern Uganda, and Somalia are all war-torn countries. For example: A girl may marry a warlord or another authoritative person who can assure the safety of her and her family. Armed organisations have abducted or recruited females in the Democratic Republic of Congo and elsewhere and turned them into the 'bush brides' of militants and leaders.²⁰

- **Avoiding Ancestral Property Participation:** In rural areas, it is typical for parents to assume that their sons are the sole beneficiaries of their ancestral property and that if their girls marry early, they will forfeit their share. If the girl marries early, they will not demand a share of her inheritance. As a result, the ability of girls to take part in family wealth is one of the reasons for child marriages. One factor that promotes child marriages is, in part, the ability of women to take part in family wealth.²¹
- **Economic and educational opportunities are limited:** A lack of education or having little education is strongly associated with getting married early. On the other side, going to school and learning more, protects females from being married off at a young age. In most countries, teaching women is not given the same emphasis as educating men. When a woman's primary duties are seen as being those of a wife, mother, and homemaker, education and professional preparation may be neglected. Spending scarce resources on educating males rather than daughters is often safer and more financially beneficial. As a result, early marriage is the only viable option left for girls, forcing families to think about it.
- **Religious and cultural traditions:** Parents are frequently under pressure to marry off their daughters as soon as possible to stop them from engaging in sexual activity before marriage; a woman who does so brings shame to her family and community. because a woman's marital status is typically what

¹⁹ Lal (n 4).

²⁰ Malhotra (n 16).

²¹ Lal (n 4).

determines her place. Parents worry that they won't be able to marry their daughters in any way if they don't marry them in accordance with social norms. For instance, marriage of young girls is a common practise in Afghanistan and numerous Middle Eastern countries to support the economy.²²

Forced child marriage is, at its foundation, a cultural practise. “According to a 2007 ICRW research”, no religious connection was linked to the activity. Rather, in a number of places across the world, a wide range of religions have been linked to a high rate of forced child marriage.²³

- **Families with a single parent:** Because some households have only one parent, they are compelled to decrease their financial burden by marrying their under-18-year-old girl child. It's just that it's justification.

2.6 The Consequences of Child Marriage:

The high prevalence of child marriages is assumed to be caused by a number of factors. Gender inequality, societal norms, girls' low position as viewed by society, poverty, inadequate education, concerns about the protection of female offspring, and sexuality. When child marriage occurs, women suffer more than men do.

“Child marriage” has terrible repercussions that often decide a person's life path. Young brides are more likely to die during childbirth, have their kid die before their first birthday, get AIDS, and become victims of domestic abuse. There are so many major consequences which are especially faced by girl child in early marriages. That's are discuss below-

- **Health Issues in Early Pregnancy:** Early pregnancy is commonly the outcome of child marriages, which can cause a number of health problems. She won't be able to handle how complicated her body and sexual behaviours are. She doesn't know enough about these subjects. Even the elder women can no longer appropriately lead her. Older women used to closely monitor the circumstances throughout pregnancy, childbirth, and the time after delivery. Before their bodies are fully developed, girls who marry and have children have a higher risk of dying or developing serious diseases or injuries during

²² Malhotra (n 16).

²³ *ibid.*

giving birth. According to UNICEF, “a girl under the age of 15 has a five-times greater chance of dying during pregnancy and delivery than a woman in her twenties. Additionally, there are dangers for new born. Compared to a child born to a woman over the age of 19, a child whose mother is under the age of 18 has a 60% chance of dying in the first year of life”.

Teenage females experience considerable health risks after childbirth, including obstetric fistula, a hazardous condition, in addition to death. A young mother's vagina, bladder, and/or rectum might swell after delivery.²⁴

➤ **Fall in the high Fertility Age:** When a girl marries at a young age, she is more likely to have more children and become pregnant unnecessarily. Women are obliged to have pregnancies and bear the kid because to a lack of access to contemporary medical services that would allow them to prevent or postpone pregnancy. It is a major critical consequences faced by the female who married early.²⁵

➤ **Increased HIV/AIDS exposure:** Additionally, child brides are far more likely to get HIV than people their own age. It can be challenging to negotiate appropriate sexual behaviours with older, more sexually experienced guys with whom they are regularly married, especially when under pressure to produce children. In 2004, a study conducted in Kenya and Zambia found that married girls between the ages of 15 and 19 had a 75% higher risk of contracting HIV than their unmarried, sexually active counterparts. 13 Similar data has been found in 29 different nations throughout the world.

Due to the natural immaturity of their sexual organs, young females used to experience significant physical agony during sexual intercourse. Perforation of the bladder or intestine owing to protracted labour. HIV AIDS, and other complications associated with childbearing at a young age are common.

Because her vagina is not properly walled with protective cells, a girl is biologically more susceptible to catching HIV than a man and her cervix is simply pierced Women in their twenties are several times more likely to develop HIV than young males. Heterosexual interaction spreads the illness. A peril Marriage might enhance a married girl's exposure to sexual harassment.

²⁴ Malhotra (n 16).

²⁵ Mahajan (n 17).

HIV infection is most common among the poorest and most vulnerable people. As a result, they married adolescent females who were weak in society are at a higher risk of infection than unmarried females. Who aren't having sexual relations.

- **Domestic and sexual violence are more prominent:** Young brides are more likely to be sexually, physically, and emotionally mistreated. According to an ICRW research in India, girls who married before the age of 18 reported twice as much physical abuse and three times as much sexual violence as girls who married later.
- **Childhood deprivation and the loss of a future:** Early marriage robs females of their youth more than anything else. Instead of playing with friends, fantasising about a job, or worrying about a school exam, they are thrown into the entire load of home responsibilities, parenting, and sexual encounters. Young married girls in many nations leave their parents' homes to live with their husbands' families, where they have no friends, little support, and no influence in their own lives or household problems. According to research, young married women are frequently alone and helpless. They're also routinely subjected to violence. With threats of divorce and abandonment.
- **Between the bride and the groom, there is a large age gap:** In most cases, there is a significant age gap between the bride and husband. The bride, not the bride groom, is the kid in the majority of child marriages. Bride has no freedom to voice her ideas on any aspect of family life while she is a kid, and she must blindly accept her husband's demands.²⁶

2.7 National Family Health Survey:

“The National Statistics on Child Marriage” have continued to be rather alarming until the recent past. India is home to one out of three child brides in the world.²⁷ One of the countries that has contributed most to the continued practise is India. The practise is so widespread that according to a recent estimate, India accounts for more than 30% of all child marriages worldwide. 43 percent of women between the ages of 20 and 24 who were married before turning 18 between 2005

²⁶ Lal (n 4).

²⁷ UNICEF, ‘Ending Child Marriage: Progress and Prospects’ (2014).

and 2013 were female. According to "UNICEF" data from 2016, 47% of Indian girls are married before becoming 18 years old. Between 1990 and 2005, child marriage in India decreased at a pace of 1% year. The decline in these marriages has been majorly in the girls married before the age of 15 years.²⁸ The NFHS data is also helps in understanding the prevalence of the issue. The NFHS data is considered to be a highly relied upon data.

NFHS Data chart

National and Survey(NFHS)	Family Health	NFHS-I (1992-93)	NFHS-II (1998-99)	NFHS-III (2005-06)	NFHS-IV (2015-16)	NFHS-V (2019-21)
Women age 20-24 married by age 18 (%)		54.2	50.0	47.4	26.8	23.3 ²⁹

The data above reflects a noticeable sharp decline in the figures of child marriage from NFHS-III to NFHS-IV. The NFHS-III took place a decade ago and in 2006 “the Prohibition of Child Marriage Act” was enacted. The Child Marriage law could be said to be a key contributor in the reduction of these figures. Other factors such as increase in education levels have also helped in fighting the menace to a great extent. The NFHS helps in giving an estimate into the prevalence rate child marriages whereas the Census helps in estimating the incidence. The NFHS provides data on various social issues such as health and nutrition, marriage and fertility etc. The data is representative and worth being relied upon for the fact that it gives a national as well as State wise statistics. The NFHS is usually conducted after 6 years; however, the NFHS-III of 2005-06 and NFHS-IV of 2015-16 were spaced over a decade. This has brought out data also which has shown stark differences. The data is however also open to discussion

²⁸ Centre for Budget and Policy Studies and UNICEF, ‘Reducing Child Marriage in India: A model to scale up results’ (2016) 10.

²⁹ ‘National Family Health Survey-4’ (Ministry of Health and Family Welfare, 2015-16) <<http://rchiips.org/nfhs/>> accessed 21 May 2022, <https://www.unicef.org/media/files/Child_Marriage_Report_7_17_LR..pdf> accessed June 5 2022.

²⁹ GIRLSNOTBRIDES, <<https://www.girlsnotbrides.org/child-marriage/india/>> accessed 24 June 2022.

for being too optimistic.³⁰ This is not on account of the accuracy in terms of data collection but because of certain inherent factors which may cause the data to get fudged. These inherent factors include either girls and women not disclosing their true age being tutored by elders to say that they got married at 18 years even if they got married before they attained the age of 18 years or girls and women unaware of their correct age because of either no birth registration or lack of evidence to prove their correct age and NFHS-V of 2019-21 were spaced over a decade. This NFHS has been to provide high-quality data on health and family welfare and emerging issues in this area. NFHS-5 data will be useful in setting benchmarks and examining the progress the health sector has made over time. While these factors would be discussed later in this study, it would be appropriate at this stage to state the figures as per NFHS data in comparison.³¹

³⁰ National Family Health Survey-5' (Ministry of Health and Family Welfare, 2019-2021) <<http://rchiips.org/nfhs/>> accessed 21 May 2022.

³¹ *ibid.*

CHAPTER-3

CHILD MARRIAGES IN INDIA: NATIONAL LEGAL PERSPECTIVE

Sadly, child marriage has flourished in India for decades and even centuries. As a result of the numerous initiatives that have had an influence, it was a long-standing custom in the country that has so far been mostly eradicated the influential variables that have contributed to the practice's persistence. CMRA of 1929, a British colonial legislation. This revolutionary law made it clear that child marriage was an issue, a violation of human rights, and required some form of control. The following changes in the manner that child marriage has been practised during the past roughly 90 years. In addition to the UN “Convention on the Rights of the Child” (CRC), the CEDAW, or Convention to abolish all kinds of “Discrimination against Women”, was worldwide initiatives taken in the 20th century to bring attention to problems connected to youngsters who had not previously been thought of as having rights. The foreign initiatives have also had a significant influence on the Indian situation. Local needs also arose as a result of international duties. Early in the twenty-first century, several legislation that favoured women and children were passed. When India passed the Prohibition of Child Marriage Act in 2006, there was a clear a step forward from the 1929 CMRA. The Act has seen some affects as well. There are more elements, such as education, that have contributed to decreasing numbers of child marriages in India. However, it is heart breaking to watch so many kids, particularly girls, fall prey to this practise in this century and age. Both a national and a worldwide imperative need to bring a cessation of this practise.³²

3.1 India’s History of Child Marriage:

In India, the practice first appeared during the middle Ages. There were other socio-cultural factors, including invasions, anxieties, and many others elements that nearly caused parents to occasionally marry their children. This anxiety and practise led to the tendency. The acceptance and adoption of child marriage as a societal norm.³³

³² Yashita Munjal, ‘Child Marriage in India - A Socio-Legal Analysis of Existing Law and Prevalent practices’ (2018) <<http://hdl.handle.net/10603/214261>> accessed 30 May 2022.

³³ Sudheer Birodkar, ‘Hindu Social Customs’ (Hindu Net) <http://www.hindunet.org/hindu_history/sudheer_history/practices1.html> accessed 9 June 2022.

It wasn't until the 19th century that someone spoke out for the first time against this practise. “Rukhmabai was the first female doctor” to practise medicine in India while she was an adult.³⁴ Sadly, she experienced the traumatic events that having herself been a child bride. Her mother forced her to marry, at the age of 11, Dadaji Bhikaji, a 19-year-old guy, was subjected to societal pressures in that period. Due to the norms at the time of her marriage, she did not go to her spouse right away and remain with him.³⁵ But she managed to keep up with her coursework tirelessly with her stepfather Dr. Sakharama Arjun's ongoing support and direction.³⁶ She quickly learned that her spouse Dadaji Bhikaji was a problematic character.³⁷ She had grown into a much more mature young lady by this point.³⁸ Many people were surprised by her decision to stay with her spouse instead of leaving. After 12 years of marriage, her husband filing a lawsuit for the restoration of marital rights. The case was already heard by Robert Hill Pinhey, a judge. Rukhmabai's position was that during the time of marriage She was too young to have approved of this marriage. She was young and had no input towards this marriage. There were no similar cases before this one, thus judicial precedents that the judge can refer to. Given Rukhmabai's position in this matter—that she was a kid at the time of the wedding—the decision firstly sided with her, holding that she couldn't be pressured. Nevertheless, that year The matter was tried again in 1886. At this period, society started to increase its voice. Hindus in one group criticised the decision as being in violation of their religion to Hindu traditions and ceremonies. There were others who agreed with the action. Rukhmabai was ordered to move in with her husband in Mach 1887 or face six months of imprisonment. She told the court that she would not go with her spouse in any situation and was prepared to face maximum imprisonment if need. Rukhmabai even wrote to Queen Victoria following many hearings. The Queen disagreed with the court's decision and sided with Rukhmabai. In July 1888, a final out-of-court settlement for the dispute was reached. Dadaji, Rukhmabai's husband, agreed to take a payment of 2000 rupees as payment for ending their marriage. In the words of Rukhmabai:

³⁴ *ibid.*

³⁵ Shivani Bahukhandi, ‘Rukhmabai: From Child Bride To India’s First Practising Female Doctor’ (Feminism in India.com, 22 August 2017) <<https://feminisminindia.com/2017/08/22/rukhmabai-essay/>> accessed 22 June 2022.

³⁶ *ibid.*

³⁷ *ibid.*

*“I am one of those unfortunate Hindu women whose hard lot is to suffer the unnameable miseries entailed by the custom of early marriage. This wicked practice of child marriage has destroyed the happiness of my life. It comes between me and the things which I prize above all others — study and mental cultivation. Without the least fault of mine, I am doomed to seclusion; every aspiration of mine to rise above my ignorant sisters is looked down upon with suspicion and is interpreted in the most uncharitable manner.”*³⁹

The passing of Phulmonee was another incident that was sorrowful and frightening enough at the time.⁴⁰ She was a child bride who was 11 years old and married a 35-year-old guy. The victim in this case, Phulmonee, passed away as a result of having sex with her spouse.⁴¹ Her vagina ruptured and as a result, she passed away. Her spouse had forced intercourse on her, causing haemorrhage. She bled till death. The Calcutta High Court did not accuse her husband of rape as Phulmonee was more than old enough to provide permission according to the law.⁴²

The passage of the Age of Consent Act, 1891⁴³, was sparked by these incidents as well as a number of widely read writings by some of the reformers of the time. Then a draught memo was also provided to the committee by female doctor to prevent child marriage, the government should ask for adequate laws.⁴⁴ This request is based on the suggestions made; by the ‘Adult Consent Age’, the Government enacted a bill that raised the legal age from 10 to 12 years of age, both unmarried and married people may agree to sexual relations.⁴⁵ This was a significant move at that time. In 1925, the ‘Joshi Committee’ looked more closely at the issue of child marriage in India. This came about as a result of strong pressure from reformers who wanted a particular law to be passed. The CMRA 1929 became law regarding child marriage.⁴⁶

³⁹ Extract from a letter written by Rukhmabai, a victim of child marriage, to The Times of India on June 26, 1885, and reproduced in the book Child Marriages in India by Jaya Sagade (Oxford University Press, 2005).

⁴⁰ Vaidyanathan Pushpagiri, ‘Rukhmabai - India's First Lady Doctor?’ (Sulekha 2011) <http://creative.sulekha.com/rukhmabai-india-s-first-lady-doctor_544716_blog> accessed on 28 May 2022.

⁴¹ *ibid.*

⁴² *ibid.*

⁴³ World Library, ‘Age of Consent Act, 1891’ <http://www.worldlibrary.org/articles/age_of_consent_act_1891> accessed 15 June 2022.

⁴⁴ R. Kalaivani, ‘Child Marriage Restraint Act (1929) – A Historical Review’ (January 2015) 4(1) INTERNATIONAL JOURNAL OF HUMANITIES AND SOCIAL SCIENCE INVENTION <[http://www.ijhssi.org/papers/v4\(1\)/Version-1/D04101014018.pdf](http://www.ijhssi.org/papers/v4(1)/Version-1/D04101014018.pdf)> accessed 15 June 2022.

⁴⁵ *ibid.*

⁴⁶ *ibid.*

Despite this, the CMRA 1929 did not succeed in achieving its intended goal, and child marriages persisted unabatedly. The period allowed for sufficient social acceptance of the practise. which was the cause of continuance. The next 70 to 80 years saw little change in the legislation, changing the status of these marriages in a meaningful way. The population of nonetheless, the country kept exploding, making it exceedingly difficult in the births not being registered in order to enforce the law. The passing of “The Prohibition of Child Marriage Act” was a significant development since it the alterations that were desired. . Child marriages were now made voidable at the option of the minor child. This meant the girls who were married as children could now move the court for annulling their child marriages. However, the social sanction for this practise has still not been eradicated. This is exactly why the practise continues to thrive and which is rooted largely in gender inequity.

Despite laws against child marriage being in effect for almost 90 years, the practise is nevertheless common throughout India. From complete lack of notice to acknowledgement of the issue to increased awareness, there has been a steady progression. The laws that have been in place in this area reflect this. The issue is not simply with how the laws are put into practise, but also with how they are written. As a result, it's crucial to ask questions and dig deeper to comprehend how laws are written and the legislative mind-sets that may be inferred from them.

3.2 Child Marriage Restraint Act, 1929:

The British Indian Government approved the Child Marriage Restraint Act, often known as the Sarda Act, which was championed by Rai Sahib Harbilas Sarda. On October 1st, 1929, the Governor General signed the Sarda Bill. This Act became operative on April 1st, 1930. The legislation's main goal was to stop child marriages. It came about as a consequence of a social movement, the first of its type, that was spearheaded by an organised women's organisation in India.

The Act's referenced kid age underwent modifications throughout time. In 1929, a girl or boy who had not reached the age of 14 or a boy who had not reached the age of 18 were considered to be "children." The age was then raised to 18 for females and 21 for boys as a result of further revisions.

Table 3. Lawful marriageable age under the CMRA 1929.

Year	Minimum Age for Marriage under the CMRA,1929	
	Boys	Girls
1929	18	14
1949	18	15
1978	21	18

When the legal age for marriage was fixed for both boys and girls, there was clearly a difference in the minimum marriageable age. It was clear that females had been put in a very precarious situation; their ages had slowly climbed, and just as they were on the verge of parity, the legal age for men was raised to 21. However, there is no explanation for why the same exists even now, and there have been no official attempts made by legislators to reform it and bring it into compliance with the ideas of equality. Additionally, the Committee on the Status of Women under “CEDAW” has chastised certain nations for providing varied ages.

“Some countries provide for different ages for marriage for men and women. As such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial, these provisions should be abolished. In other countries, the betrothal of girls or undertakings by family members on their behalf is permitted. Such measures contravene not only the Convention, but also a woman's right freely to choose her partner.”⁴⁷

These various minimum marriageable ages demean the struggles that women in particular go through. It goes against a girl's equally strong desire to continue her education beyond high school. The bride is always younger than the groom in Indian culture, which is also expressed in this. There are observable religious undercurrents that inspired the development of such discriminatory legislation.

The fact that the "CMRA 1929" did not impose particularly severe penalties was another flaw in the law. The seriousness of the problem was not given much

⁴⁷General Comment No.38, General Recommendation No. 21 (13th session, 1994).

consideration, and because it was a recognised cultural norm, there was reluctance to even changing it by taking decisive action. Although there were some minor improvements to penalties in 1949, they still lacked the firmness necessary to stop the practise from happening.

Another issue with CMRA was its inability to acknowledge the offence as a cognizable one.⁴⁸ This remained in effect notwithstanding changes that were made to the act's requirements regarding the age of the child and the consequences for violations. This illustrates the severity that was assigned to the offence. On the grounds that family was seen as a private and personal matter, it was maintained that the same. Additionally, the State should have little influence over marital problems. When the offence occurred, the seeming dread of being hounded by the police became cognizable.⁴⁹ Through the prism of widespread perception and current conditions, the claim that police harass the populace was also investigated. Even if it were thought to be true, it was still a matter that required careful examination to determine if police harassment should be prioritised over the rights violation of the youngster who faces the prospect of marriage. "According to B. Sivaramayya the police harassment was a lesser evil than the greater evil of child marriage". He relied on a report from a committee that the Gujarat government at the time had established in 1962. The report's purpose was to look at the high suicide rate among newlywed young women. Child marriage was one of the reasons cited in that report.⁵⁰ The Gujarat government passed a state amendment and made child marriage a punishable offence as a result of the aforementioned study. "The Committee on the Status of Women" (CSW) brought this alteration to the attention of the Central Government, and it was suggested that the Central Legislation also undergo a similar amendment. This led to the CMRA being amended in 1978, and all Following this, CMRA offences were described as being only cognizable for specific purposes. The restriction imposed stated that the offence was only cognizable within the scope of the inquiry. This indicated that the police had the authority to look into a complaint of a child marriage that was either going to occur or had already occurred. However, the police lacked the authority to

⁴⁸ Cognizable offences are those offences of which Police can act upon even without receipt of a formal complaint. The Police are allowed to carry out action against the accused on its own volition. The police also have the authority to arrest in the case of a cognizable offence and do not have to wait for an arrest warrant to be issued by the Magistrate.

⁴⁹ *ibid.*

⁵⁰ Government of Gujarat, Report of the Suicide Inquiry Committee (1964) 63.

both arrest and prevent the child marriage from taking place. Upon investigating the police was required to first obtain an arrest warrant from the Magistrate. The Magistrate also in turn was required to give notice to the accused along with an opportunity to be heard before issuing the said arrest warrant. This entire process was lengthy and not enough for the marriage to take place conveniently. As the law stands even today, upon the solemnization of the marriage, it stands as a perfectly valid marriage. Not only was "The CMRA 1929" unable to allow for the cognizance of an offence committed under it, but it also stipulated that cognizance of an offence could only be taken for a year from the date of the marriage. It was discovered that the statute itself decriminalised child marriage once a year had passed. This was also due to the fact that the Act's punishment was rather light-handed and out of proportion to the seriousness of the rights violation.

The CMRA, 1929 also suffered from the drawback of not providing for compulsory registration of marriages. Compulsory registration of marriage makes it possible for child marriages to reduce. Although registration of child marriage has itself been in a debatable zone, nevertheless, compulsory registration of marriages had itself laid in the shadows at the time that the CMRA was in force.

The judicial approach on the issue also remained quite varied when this Act was in force. Some of the High Courts played a more proactive role in giving judgments that would impede the occurrence of these marriages. These judgements were however later overturned and the prevalent thought process of recognising child marriages remained. For example- , in a case brought before the Patna High Court challenging the validity of a marriage wherein a widowed mother had given her 7-year-old daughter to a man who was over 24 years of age. The Court however upheld the validity of this marriage. Other High Courts like Allahabad High Court also opined similarly. The Madras and Orissa High Courts also upheld the validity of the child marriage.

3.3 Prohibition of Child Marriage Act, 2006:

The Government approved the "Prohibition of Child Marriage Act in 2006" to lessen the threat of child marriage and to correct the shortcomings in the "CMRA 1929". This Act was an improvement over the preceding "CMRA 1929", and was

unquestionably a step in the right direction in addressing this grave violation of children's rights.

3.3.1 Historical Background

There was an increasing demand for more rigorous and stringent legislation to be implemented with regard to child weddings as a result of the perceived inadequacy of the CMRA 1929. The Act's fines and sanctions were insufficient to stop the threat. “The National Commission for Women” urged that the government hire Child Marriage Prevention Officers right away in the 1995–1996 Annual Report.⁵¹ Additionally, this commission advised that the law's offence be made cognizable, that marriages performed in violation of the Act be nullified, and that the Act's penalties be strengthened. Based on its examination of the current CMRA, 1929, the National Human Rights Commission presented suggestions in its Annual Report for 2001-2002.⁵² Upon consultation with the State Governments and Union Territory Administrations with regards to the above mentioned reports, the Central Government decided to accept almost all the recommendations by repealing and re-enacting an improved law. This effort resulted in the Prohibition of Child Marriage Bill. The Bill passed both the Houses of Parliament received the Presidential Assent on 10th January, 2007. This gave birth to the present day Prohibition of Child Marriage Act, 2006.⁵³

3.3.2 Salient Features of the Act:

The Prohibition of Child Marriage Act, 2006 (also called PCMA) was in many ways a stark departure from the former CMRA, 1929. Some of the key features of this Act are:

- “Child marriage was expressly declared to be voidable at the option of the contracting party/parties who were a minor at the time of the marriage. The

⁵¹ Prohibition of Child Marriage Act, 2006 ‘Statement of Objects and Reasons’ <https://books.google.co.in/books?id=uHFLYimaEEgC&pg=PA1&lpg=PA1&dq=national+commission+for+women+annual+report+1995-96&source=bl&ots=SVbSbCZZu8&sig=OJM4akT58s4qvqk_wHRMKIT22HY&hl=en&sa=X&ved=0ahUKewi5vrCu34bXAhXCpY8KHUAAEQ6AEIQzAE#v=onepage&q=national%20commission%20for%20women%20annual%20report%201995-96&f=false> accessed 14 June 2022.

⁵² NHRC, ‘Annual Report 2001-2002’ <<http://nhrc.nic.in/documents/AR01-02ENG.pdf>> accessed 15 June 2022.

⁵³ The Prohibition of Child Marriage Act 2006.

CMRA held these marriages to be perfectly valid with no provision of annulling the same. The PCMA didn't go too far either, as it didn't declare them void, but it did bring in an option of annulling the marriage that took place between a minor or between minors at either of their options;

- It further provides for the maintenance and custody of the children born out of these marriages which was not the case in CMRA;
- In the case of annulment of the child marriage, the husband or, if he is a minor at the material time, then his guardians are to pay maintenance to the minor girl until the time she gets remarried;
- District Courts have been empowered under the Act to modify, add to or revoke any order relating to maintenance of the female petitioner and her residence as well as with regards to the maintenance and custody of the children etc.;
- Legitimacy of children born from these marriages have also been established i.e. even if the marriage itself undergoes the annulment process, the child born of the wedlock shall be legitimate;
- If a male above the age of majority i.e. 18 years engages in the practise by being a contracting party in a child marriage, shall be punished with rigorous imprisonment which may extend to 2 years or with fine up to Rs. 1 lakh or with both;
- Certain cases have been established wherein the child marriages are declared void. These include where the minor is taken or enticed out of the keeping of his/her lawful guardian, by force compelled, or by deceitful means to go from any place and in the case where the child is sold for the purpose of marriage or married for the purpose of being trafficked and engaged in immoral activities.”⁵⁴

3.4 Critical Analysis of the Prohibition of Child Marriage Act, 2006:

It has been determined that the “PCMA” is a step in the right direction in terms of replacing previous laws that wasn't doing enough to reduce the prevalence of these unions. “The PCMA” has a considerably more open-minded stance. It contains the

⁵⁴ The Prohibition of Child Marriage Act 2006 s 12.

components that, when used, can significantly reduce the prevalence of this practise.⁵⁵ The PCMA 2006 in its intent has been quite a departure from the old CMRA 1929. This is established that there is a strong recognition of the fact that child marriages are a grave human rights violation directed at children and that its incidence in India continued to be appalling. “According to the 2001 Census, there were approximately 1.5 million girls in India who were married before they turned 15 years old. Within these, about 20% of them were already mothers of at least one child. The data from National Family Health Survey-3 ⁵⁶ shows that 47.4% of women aged between 20-24 years were married before the age of attaining the legal age of getting married i.e. 18 years”. Another MWCD and UNICEF Report i.e. Rapid Survey on Children 2013-2014 reveals that 41.7% of total women married in India were married before they attained the legal age of getting married. The data from 2015-2016 NFHS-4 shows a stark reduction in the incidence of these marriages. This has reportedly come down to 26.8%.⁵⁷ These are the number of women age between 20-24 years who got married before reaching the legal age of marriage i.e. 18 years.

Even while there is sufficient evidence to show that there has been a decline, it is vital to remember that these weddings are still occurring. Increased awareness and educational levels are to blame for these declines. While these can be attributed, there is no doubting that because women and girls are more knowledgeable, they frequently withhold the truth about their marriage. They may not actually be that old, but they are occasionally taught to claim to be 18 or older. When the current empirical investigation was conducted, it was noted in the States of Telangana, Rajasthan, Uttar Pradesh, and Rajasthan. On several occasions, it was noted that girls shown to be reluctant to divulge their true ages on several instances, sometimes even becoming argumentative. As a result, accurate information is hidden and it is impossible to verify the individuals' actual ages. The way the legislation is being applied has several flaws.

3.4.1 Minimum Age for Marriage:

⁵⁵ This includes stricter punishment, injunctions, special provision for empowering District Magistrate to intervene on occasions such as Akshay Tritiya when mass marriages are held, maintenance and custody of children issues provided for etc.

⁵⁶ National Family Health Survey-III (2005-06) <<http://rchiips.org/NFHS/pdf/India.pdf> > accessed 15 June 2022.

⁵⁷ NFHS-4, ‘National Fact Sheet’ (2015-16) <<http://rchiips.org/NFHS/pdf/NFHS4/India.pdf>> accessed 15 June 2022.

It is one of the things that were carried forward from the previous CMRA 1929. In the year 1978 this Amendment was brought into the CMRA 1929 where the minimum age of marriage was increased to 18 years for girls from 15 years and that of boys was increased from 18 years to 21 years. The reason why the ages of boys and girls weren't maintained equal hasn't been explained. This displays a complete disregard for the needs of the females, as was stated previously in the Chapter. In contrast to how a female is supposed to study just till school, a boy is expected to continue his education past that point and earn a college degree. The females who were questioned for this study project said they wanted to go to college but felt compelled to get married. The girls of today are driven. Additionally, they want to continue their education, earn a job, and support the family financially. When asked about their aspirations, several mentioned becoming nurses, while two others expressed. In order to attain equality for both boys and girls, this cannot be completed until the minimum age for females to marry is raised to 21. The patriarchal undercurrent is so powerful that it ruins many girls' hopes and ambitions. Others who are introduced to school are virtually made to quit, while some are never introduced to it. Many females said in an interview that they would want to continue their studies if given the chance. Two of them were able to continue their education after getting married.

3.4.2 Lack of Minimum Punishments:

The PCMA 2006 has provided for stronger punishments compared to CMRA 1929. The penalties include up to two years in jail and fines that might reach one lakh rupees. Its uneven application is due to its failure to establish any minimum penalties. The majority of crimes go unreported, and those that are recorded and prosecuted in court frequently do not receive punishments as severe as those mandated by the Act. 2011 saw a total of 113 instances recorded under the Act, and 76 people were found guilty. In 2012, 169 cases were filed under the Act, and 40 people were found guilty. When we examine the incidence rate, the RSOC274 report from 2013–14 reveals that 41.7% of all married women in India were wed before the age of 18, Therefore, it is important to establish minimal penalties in order to place a strong restraint on the execution of these marriages. It is necessary to prescribe a minimum penalty under the Act in cases when the difference between the maximum punishment and the one that is typically imposed is particularly large.

3.4.3 Weak Implementation due to weak Reporting:

There is no denying how poorly the legislation is being implemented. This is also a result of the law's own extremely lax reporting process. The crime committed within the police's jurisdiction cannot be recognised *suo moto* by the police. Before beginning an investigation, the police must wait for a report to be received. The reporting of these marriages is extremely weak and upon its successful solemnisation it continues to be a valid marriage and police itself takes no action against the same. The socio-cultural environments around the areas in which these marriages take place do not encourage the people who are even aware of the marriage taking place to report. They fear serious repercussions and no protection. They also fear that their identity could get disclosed and that their life could come under threat.

In an interview, Rituparna who is a 15 years old and stays in Gonda District of Uttar Pradesh shared that how she and her family knew that there was a child marriage was being organised close to her home but they could not go and report the same since they feared repercussions. She also shared that the local police is also aware of these marriages taking place but does nothing to stop the same.

Therefore, there is a need to train the Police adequately as well as empowered under the Act to take *suo moto* cognizance of the offence committed under the Act.

3.4.4 Child Marriage is Voidable in Nature:

The PCMA, 2006 has made that child marriages voidable in nature. Though this is a stark departure from the status of these marriages under the CMRA, 1929, it is still questionable as to why these marriages must be voidable in nature and not void *ab-initio*. The odd scenario that emerges again in this case is that while solemnising a child marriage is unlawful, if done so successfully, the marriage is still legally binding unless one of the parties asks the court to cancel it. Child marriage resembles a forced union in certain ways. It involves a little girl. She is not able to provide her free permission in accordance with the Indian Contract Act of 1872's legal provisions. Muslims only enter into contractual marriages. Marriages in Hinduism are no longer solely sacramental. For three reasons, they were solely sacramental:

1. Permanent in nature i.e. once you marry you couldn't dissolve the same;

2. Eternal i.e. valid for not the current lifetime alone but for lifetimes ahead;
3. Ceremonial i.e. performance of religious ceremonies was essential.

Hindu marriages are no longer permanent in nature. They are open to dissolution and can take the assistance of the court in having their marriage dissolved under the “Hindu Marriage Act, 1955”. Under the HMA, 1955 there are also provisions of void and voidable marriages. These terminologies are traditionally used to define contracts and contractual relationships.

They are not, however, entirely contractual because no consideration is exchanged. Additionally, widows can now be remarried, therefore negating the second point. The third aspect of ceremonies—which is crucial for a Hindu marriage remains intact. As a result, Hindu weddings today resemble a ritual and a legal agreement. They are neither solely sacramental nor contractual in character. The Hindu Marriage Act also establishes the age of majority for boys and girls at 21 and 18 respectively.

In case of Christian marriages also, it is open to divorces and are governed by the “Indian Divorce (Amendment) Act, 2001. It can be seen when we look at the background of the former Act i.e. Indian Divorce Act 1869, we can see the clear transition from sacramental status to dissoluble contracts. Age of majority for both boys and girls for the purpose of marriage, under the “Indian Christian Marriage Act, 1872, is uniformly set at 21 years of age. It is clear from the above discussion that without delving in the aspect of minimum ages, marriages under these major Personal laws are either purely or partly contractual in nature. In the view of the Indian Contract Act, 1872 it is perfectly plausible to say that a minor is not competent to give a free and valid consent for getting married.

The other part of these marriages being voidable and not void is that girls are often staying in an atmosphere of complete domination over them. The societal pressures are very strong among girls. In most cases, they do not know the law and when we review it either in the rural set-up or the slum areas of bigger cities or the lower strata of society, these girls are not empowered to take vital decisions for their own lives.

The Parliament Standing Committee on the Prohibition of Child Marriage Bill had pointed that some of the researches and studies had shown that a girl child has to suffer irreparable losses due to biological factors and inability to sustain pressure of

marriage at an early age.⁵⁸ The Committee therefore shared the opinion and recommended that child marriages must be void *ab initio*.⁵⁹ They also pointed towards the major Conventions to reach this conclusion. “The Committee included the CEDAW and CRC. The convention document of the CEDAW clearly says that the marriage of a child will have no legal effect.⁶⁰ “The CRC also besides prescribing age of a child i.e. 18 years goes further to provide that the child must be protected from all forms of physical and mental violence as well as sexual exploitation and abuse of any form.”⁶¹ Since child marriages in many cases, lead to domestic violence it is undoubted that it is a form of child abuse as the girl involved as a contracting party to the marriage is a child. The consequences of these marriages are detrimental to the girl’s health. Due to early motherhood, she herself along with her offspring becomes vulnerable to various health issues. It is for these reasons too that these marriages warrant a *void ab initio* status.

3.4.5 Compulsory Registration of Marriage:

The PCMA is silent on the registration of marriages which itself is a big flaw. When it makes these marriages voidable in nature i.e. valid until moved for annulment, it has loose ends when it comes to securing the proof of the marriage per se. It makes women vulnerable to abandonment with husbands claiming that their marriage never took place.

While ratifying the CEDAW, 1979, the Indian government had entered with two declaratory statements and one reservation. Of the two declaratory statements the second one pertained to compulsory registration of marriages which is contained in Article 16(2) of the Convention. Article 16(2) of the Convention says:

“The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a

⁵⁸ Rajya Sabha, ‘Thirteenth Report on the Prevention of Child Marriage Bill, 2004’ (29 November 2005) Para 10.4 <<http://164.100.47.5/rs/book2/reports/personnel/13threport.htm>> accessed 15 June 2022.

⁵⁹ *ibid.*

⁶⁰ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13 (CEDAW).

⁶¹ Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 1577 UNTS 3 (CRC).

*minimum age for marriage and to make the registration of marriages in an official registry compulsory”.*⁶²

Marriage registration that is required by law in India is still in disarray. There have been efforts made to make registrations required at the state level. However, there is no single Central Act that handles the nationwide requirement for marriage registration.

Marriages were legally required to be registered in India in 2006 according to the Supreme Court of India's key ruling in the case of Seema vs. Ashwini Kumar. In the background, it was revealed that certain dishonest people frequently denied the existence of their marriage itself, and that it was very difficult to establish the same in the absence of any proof.

The Supreme Court said that List III of the Seventh Schedule in the Constitution of India, 1950, especially entries 5 and 30, “the registration of marriages would come within the ambit of the expression 'vital statistics'”. It further noted that “except four statutes applicable to States of Maharashtra, Gujarat, Karnataka, Himachal Pradesh and Andhra Pradesh registration of marriages is not compulsory in any of the other States”. “The court also noted that there were Rules made by State Governments for the registration of marriages”.

“The Supreme Court also quoted the National Commission for Women which stated in its Affidavit that there must be a law on compulsory registration of marriages”. The language contained within the affidavit was:

“That the Commission is of the opinion that non-registration of marriages affects the most and hence has since its inception supported the proposal for legislation on compulsory registration of marriages. Such a law would be of critical importance to various women related issues such as:

- *“prevention of child marriages and to ensure minimum age of marriage;*
- *prevention of marriages without the consent of the parties;*
- *Check illegal bigamy/polygamy;*
- *Enabling married women to claim their right to live in the matrimonial house, maintenance, etc.;*
- *Enabling widows to claim their inheritance rights and other benefits and privileges which they are entitled to after the death of their husband;*
- *Deterring men from deserting women after marriage;*

⁶² CEDAW art 16(2).

- *Deterring parents/guardians from selling daughters/young girls to any person including a foreigner, under the garb of marriage”.*

The Supreme Court observation that it would be in the interest of the society if marriages are made compulsorily registerable”. The Court held that:

“Accordingly, we are of the view that marriages of all persons who are citizens of India belonging to various religions should be made compulsorily registerable in their respective States, where the marriage is solemnized”.

The States were compelled to take action and adopt their own obligatory registration of marriage laws and procedures as a result of the Supreme Court's historic ruling. However, it is regrettable that the PCMA was not altered to make it consistent with the legal change.

The Law Commission's contribution to the effort to advance the same cannot be ignored. In its 205th Report on proposed changes to the Prohibition of Child Marriage Act, 2006, the 18th Law Commission of India suggested that the Central Government make marriage registration within a certain timeframe for all groups mandatory starting in 2008.

3.5 Prohibition of Child Marriage (Karnataka Amendment) Act, 2016:

There has been a recent State amendment to the “PCMA” which has been initiated by the state of Karnataka. It has elements which have been the need of the hour. The very forward looking as well as a revolutionary Act has been applauded for many reasons. These include:

- It makes the child marriages *void ab initio*.
- It provides for minimum punishment of one year of rigorous imprisonment for an offence committed under the Act.
- Every Police Officer shall take *suo moto* cognizance of the offence committed under this Act in his jurisdiction.

However, it is crucial to investigate and comprehend the effects of the many Act revisions that have been made. There are still some loose ends that haven't been properly tied, even though there will be substantial ways in which the Act will be able to bring the practise toward being eliminated. This Act won't be able to reach its full potential until those are safeguarded in a way that is harmonious.

3.5.1 Child Marriages are *Void ab initio*:

One of the key conditions of the parent Act has been satisfied by the change. It has long been demanded that these unions be declared null and invalid from the beginning. The following were some of the causes:

- Marriages under the PCMA were voidable, which meant that they could be declared void only upon the victims moving to court for the purpose of having them annulled. These marriages were held perfectly valid upon being solemnized successfully. The girls involved as contracting parties have always been the weaker counterpart in the arrangement as they aren't allowed to choose for themselves a life partner let alone even the thought of having their marriage annulled. The social pressures surrounding victims is very strong and therefore leads to very few marriages being annulled;
- The girls themselves lack the ability to take decisions in the absence of education as well as support from near and dear ones. The societal conditions and atmospheres are not conducive to their growth even if they opt to step out of their marriage;
- The time given under the PCMA to have the marriage annulled is minority and upto 2 years upon attaining majority. This time frame is too low. When looked practically, the girls while they are minors hardly have either a say or the maturity to take a decision about whether they want to have their marriage dissolved by way of annulment. The 2 years provision post attaining majority has been criticized for being not just unreasonable but also gender biased. The boys have the option to have their marriage annulled until they turn 23 years old;⁶³
- Many girls also couldn't also take the route for annulment as, by the time they attained majority they were mothers to at least one child. With no or little education backed with no source of individual income, the girls are forced to stay in the abusive environment and accept their fate. They know that they outside of their marriage they lack social and financial security and feel a greater sense of vulnerability.

⁶³ Prohibition of Child Marriage Act 2006 s 3(3).

Making these marriages *void ab initio* means an attempt to secure the futures of all these girls until they attain majority. It saves the girls from being sexually and mentally exploited in the shackles of a marriage which she never chose to be a part of. Giving no legal validity to such marriages is also a step towards India moving in the direction of fulfilling its international commitments under the CEDAW.

There can on the other hand be situations where some people misuse this law. India is a country owns a large part of population that hails from the rural areas. These people are relatively far less informed and aware of the change in laws and are still capable of getting their girls married despite a law that immediately nullifies it or reduces it not happening at all or non-existent. The girls who get trapped in these marriages henceforth in Karnataka may become vulnerable to face a few repercussions

- The husband can abandon her at any time saying that it was a child marriage and therefore *void ab initio*;
- The girl may be pregnant or having children and the husband may choose to abandon her on the pretext of child marriage as it is void ab initio;
- With the absence of registration of these marriages and with no proof of these marriages, the girls are vulnerable to the social stigmas and effects that she may be met with in the event that her husband decides not to stay with her.

3.5.2 Minimum Punishment:

The modification to the minimum punishment provision is a significant step in the right direction for discouraging those who continue the practise of underage marriage. One year in solitary confinement is a very effective punishment for ensuring that offenders realise the seriousness of their crimes. The practise is heavily influenced by cultural norms, and the PCMA hasn't had much of an impact on replacing such norms with the rule of law thus far. A glimmer of optimism in this regard is provided by the Karnataka PCMA's amendment, nevertheless. It has the power to dismantle this inflexible social norm through the application of the law, ensuring that no one who commits this crime escapes

punishment. In order to make the families that engage in this social evil terrifying, it is important to provide the community with a number of incidents and examples. The only way to lessen this sort of wicked activity in society is with a severe minimum penalty.

3.5.3 *Suo moto* cognizance by the Police:

The Karnataka PCMA has added a new section on *suo moto* cognizance by the Police which is a very important step towards ensuring the effective implementation of the Act. The police did not have unfettered power to interfere in these marriages unless they received a report from someone. This provision empowered the police to take *suo moto* cognizance of the offence. This will enhance the responsibility of the Police to ensure that no girl in their jurisdiction is victimised to this child marriage practise.

CHAPTER – 4

INTERNATIONAL STANDARDS FOR THE PROTECTION OF WOMEN AND CHILDREN IN RELATION TO CHILD MARRIAGE

In the patriarchal setup that most of the world exists in where there is an absence of equal negotiation of power, acceptance to violence and abuse perpetrated on women has for long been a recognized phenomenon. Efforts towards giving women access to equal rights as men has been a primary goal for many stakeholders whether at “the national or at the international level”. These efforts have been initiated over decades and are being with a passage of time redefined and remodelled to produce greater effectiveness and response from the society. It will be imperative to mention that these efforts have resulted into formation and enactment of stricter laws and policies to protect women in many nations. The backdrop of these newer improved laws is that of a throbbing need felt for greater protection of women within the international circuit.

Children likewise also fall within the vulnerable section of society. Their presence is a security for the nation’s future but their tender age and the power relations operating within society make them extremely susceptible to neglect as well as exploitation. Some of such practices that have percolated into society include- child marriage, child trafficking, commercial sexual exploitation of children, child labour etc.

The United Nations as one of the nodal body of nations has worked on a broad scale to receive consensus from member States to protect women and children in their local jurisdictions. The efforts have resulted in some very key Conventions being produced at an International level and being implemented locally. These Conventions being binding on ratifying States has led to greater sense of accountability for the purpose of implementation. Implementations by the State actors has to an extent helped in securing child protection by making child friendly laws and moreover the awareness of and access to these laws. Some of the very important Conventions which relate to women and children include the “Convention on Elimination of all forms of Discrimination against Women and Convention on the Rights of the Child”.

At an international level there are broadly two constituents that led to the greater emphasis on children and their vulnerability as one of the top agenda's in the 1990s. The first constituent was the lobbying for children's rights which culminated into the formation of the "Convention on the Rights of the Child in 1989". The second constituent was a campaign around child survival concerning itself with health and survival. This campaign resulted in holding of the "World Summit for Children in 1990". This Summit concerned itself with health and other issues relating to children. In September 1990, this Summit was organised with leaders from 71 states and 88 other senior officials in attendance, mostly at ministerial level, came together at the United Nations in New York. The outcome of this summit was the adoption of the Declaration on the Survival, Protection and Development of Children and a Plan of Action for implementing the Declaration in the 1990s. Point 2 of this Declaration notes that:

*"The children of the world are innocent, vulnerable and dependent. They are also curious, active and full of hope. Their time should be one of joy and peace, of playing, learning and growing. Their future should be shaped in harmony and co-operation. Their lives should mature, as they broaden their perspectives and gain new experiences."*⁶⁴

The Declaration reaffirmed the point that it is extremely crucial that future of children must not be compromised and that they must receive an equal, fair and just opportunity to grow and mature with time and receive maximum co-operation. This document further contains a number of targets for improving the standards of survival of children and opportunity for their positive growth and development. These included the reduction of maternal mortality, reduction of infant and under-five child mortality, the reduction of severe and moderate malnutrition among under-five children, universal access to safe drinking water, greater food supply and sanitary means of sewage disposal, universal access to basic education, the completion of primary education, the reduction of the adult illiteracy rate and the improved protection of disabled children as well as children in difficult circumstances. The Declaration also sought the partnership of children in addressing issues pertaining to them. The document in text concludes with these words:

⁶⁴World Declaration on the Survival, Protection and Development of Children part 2.

“There can be no task nobler than giving every child a better future”.⁶⁵

4.1 International Treaty Obligation:

At the international level there are important Conventions and Treaties that have been developed with time to make a constructive movement towards the protection of women and children. Most of them have been ratified by India except a few. It is important to therefore discuss these Conventions so that we can understand the various effects with respect to implementation as well as the implications with respect to non-compliance.

4.1.1 Convention on the Rights of Child:

The United Nations Convention on Rights of the Child⁶⁶ is an extremely important treaty that received ratification from 193 States making it the most ratified treaty. United States of America and Somalia are the two States whose ratification remains pending. This in itself portrays the role that this treaty plays in protecting the rights of the children. This document, even though in a very short time of its coming into existence, has been able to create a strong grip on child related policies and laws that has been implemented in national jurisdictions. It proved to be a shift in the outlook of the world community from viewing a child merely as an ‘object of rights’ prior to the CRC to now viewing a child as an active subject of rights.⁶⁷ The child could now be identified as someone who played an important role and could participate in the decision making process.⁶⁸

If we look historically, this Convention (CRC) was preceded by the “Universal Declaration of Human Rights” and the UDHR was also further preceded by the Declaration of the Rights of the Child, 1924. Therefore, the Declaration of the Rights of the Child was in fact the first document that was formed which pertained to children. It was originally authored by Eglantyne Jebb, founder of Save the Children.⁶⁹ This document was adopted later by the old League of Nations and though it was only a nonbinding resolution, it carried a significant moral force. It

⁶⁵ World Declaration on the Survival, Protection and Development of Children part 2.

⁶⁶ CRC art 16.

⁶⁷ Trevor Buck, Alisdair A. Gillespie et al, *International Child Law* (2nd edn, Routledge) 88-89.

⁶⁸ *ibid.*

⁶⁹ Children’s Rights Alliance, ‘Towards a UN Convention on the Rights of the Child’ <http://www.childrensrights.ie/sites/default/files/information_sheets/files/AllianceInfoHistory_UNCRC_0.pdf> accessed 2 June 2022.

was also known as the Declaration of Geneva. This declaration was reaffirmed by “the League of Nations” in 1934. Further on in 1959, the General Assembly unanimously adopted a new text of this Declaration containing 10 major principles. This document was a revised and extended version of the previous one. It included certain guiding principles for the best interest of the child besides being the first document to reinforce the civil and political rights of the children. This document again only had a persuasive authority owing to the unanimous adoption but did not have a legal binding. These aforementioned 10 major principles included:

1. “The right to equality, without distinction on account of race, religion or national origin;
2. The right to special protection for the child’s physical, mental and social development;
3. The right to a name and a nationality;
4. The right to adequate nutrition, housing and medical services;
5. The right to special education and treatment when a child is physically or mentally handicapped;
6. The right to understanding and love by parents and society;
7. The right to recreational activities and free education;
8. The right to be among the first to receive relief in all circumstances;
9. The right to protection against all forms of neglect, cruelty and exploitation”;
10. The right to be brought up in a spirit of understanding, tolerance, friendship among peoples, and universal brotherhood.”⁷⁰

In the intervening period of 1934 and 1959 the old League of Nations ceased its operations after being unable to prevent Second World War and the United Nations took birth. With this birth came the adoption of the “Universal Declaration of Human Rights” (UDHR).⁷¹ The UDHR which was adopted in 1948 also inherently contained and protected the rights of the child. This is because although it does not contain any specific language for protecting child rights but it mentions that “motherhood and childhood are entitled to special care and assistance. Also by

⁷⁰ Humanium, ‘Declaration of the Rights of the Child,1959’ <<http://www.humanium.org/en/childrens-rights-history/references-on-child-rights/declaration-rights-child/>> accessed 4 June 2022.

⁷¹ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

virtue of the fact that the rights mentioned extend to all human beings, it becomes therefore natural to assume that children are included in being beneficiaries and holders of these rights too.

After 1959, the year 1979 saw itself being designated as the International Year of the Child. This was in backdrop of the 20th anniversary of the 1959 Declaration of the Rights of the Child. It was during the preparatory processes leading to this year that Poland had proposed the formation of a new and binding Children's Rights Convention. It also submitted a draft of the same to the United Nations Commission on Human Rights in the year 1978. As a result a Working Group was set up to look into the same and explore the possibilities of creation of a Convention on the Rights of the Child.

On 20th November, 1989, the UN Convention on the Rights of the Child was formally adopted by the UN General Assembly. Upon its ratification by the required 20 States this Convention was brought into force on 2nd September 1990 as an international law document. This became the first legally binding document to avow for all children the complete array of human rights which include civil, cultural, economic, political and social rights. It has helped in changing perspectives in the way that children were seen in the international community as well as the way in which plans for their further development could be shaped by international organisations.

The Convention provides a set of standards that are universal in nature and are applicable for adherence by all member states. It reflects a fresh departure in the way that a child is looked upon. Their presence as human beings who are rights holders has been acknowledged and established within this Convention. Previously the needs of children were not taken as seriously. Within the Convention these needs have been recognised as legally binding rights that each and every child is entitled to. With these rights the Convention seeks to offer a vision of the child as an individual and a member of a family and a community. This individual is a subject of rights and responsibilities apposite to their age and stage of development.⁷²

⁷² UNICEF, 'Convention on the Rights of the Child' <https://www.unicef.org/crc/index_30229.html> accessed 8 June 2022.

The Convention has been successful in inspiring changes with respect to children within local jurisdictions of member states. These include making laws, policies and activating of other protection mechanisms for bringing about effective social change. Although not an exhaustive list but the following represent the efforts made by nations to implement the CRC:

- Integrating human rights principles into national legislation;
- Establishment of interdepartmental and multidisciplinary Bodies;
- Development of national agendas for children;
- Widening partnerships for children;
- Promoting ombudspersons for children or commissioners for children's rights;
- Assessing the impact of measures on children;
- Restructuring of budgetary allocations with respect to children”;
- Aims directed at development and survival of child;
- Non-discrimination principles to be implemented;
Voices of children’s to be heard.; and
- Developing sound justice systems for children.⁷³

These efforts have not been introduced by all member parties. These aforementioned only represent an overall picture.

4.1.1.1 India’s Position on UNCRC:

“India acceded to the Convention on the Rights of the Child in 1992. India also ratified the first two optional protocols to the CRC” which include:

- Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; and
- Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.

The third and most current optional protocol, the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure, has not yet been ratified by India. By using this optional approach, any member state can

⁷³ *ibid.*

directly notify the Committee of any rights violation that occurs there. The Committee seeks the support and cooperation of the member states in ensuring that the reports of violation are dealt with effectively within the local jurisdictions.

The first initial report submitted by India to the “Committee on the Rights of the Child” was in the year 1997. The purpose of the first report was to apprise the Committee of the situation of children in India. The report outlined the laws and policies pertaining to children being implemented in India. It also mentioned the steps that the government were taking towards the implementation of the UNCRC and the commitments contained therein. Some of these included:

- Ministries had begun to outline their roles in fulfilling the convention provisions;
- State governments had begun incorporating convention articles into their plans of action for children;
- The government partnering with notable NGOs to determine actions to be taken;
- India had begun gathering data for the country's first periodic report.⁷⁴

This initial report further went on to discuss the other specific areas in which the State was engaged. These included:

- Civil rights and freedoms;
- Family care and alternative care;
- Health and nutrition of children;
- Education;
- Leisure and cultural activities; and
- Special protection measures.

The Committee on the Rights of the Child” in its Concluding Observations⁷⁵ for India responded with a list of Recommendations. Some of these included:

⁷⁴ Committee on the Rights of the Child, CRC/C/28/Add.10 (7 July 1997) <<http://www.childlineindia.org.in/CP-CR-Downloads/UNCRC%20India%20Initial%20report.pdf>> accessed 9 June 2022.

⁷⁵ Committee on the Rights of the Child, CRC/C/15/Add.115 (23 February 2000) <<http://www.childlineindia.org.in/CP-CR-Downloads/UNComission%20reply%20to%20initial%20report.pdf>> accessed 10 June 2022.

- “To make efforts to bring country legislations in line with convention provisions and to plan and allocate sufficient resources towards ensuring the implementation of all legislations pertaining to children”;
- “Adopting a comprehensive national plan of action, based on a child rights approach, to implement the Convention; To develop a comprehensive system for collecting disaggregated data about the status of children”;
- “Establish a statutory, independent national commission for children;
- “Establish a national age limit that a person ceases to be a child”;
- “Address issues of discrimination against caste and tribal groups”;
- “Ensure the rights of the child who is in police custody”;
- “Ensure the rights of children with disabilities”;
- “Aim to eliminate child labour”.

After the first initial report India submitted its first comprehensive periodic report in 2001. Thereafter India had sent its second periodic report for which they received a reply in the year 2004. In its third and fourth combined periodic review report⁷⁶ (most recent) the concluding observations with regards to child marriage include:

- “Effective implementation of the Prohibition of Child Marriage Act, 2006” including clarifying that the Act supersedes the Personal Laws;
- To take all necessary measures to combat dowry, child marriage and *devadasi* which includes conducting awareness building campaigns and programmes with a view to accomplish changing attitudes as well as promotion of counselling and reproductive education to prevent and fight child marriages which are harmful to the health and well-being of girls.⁷⁷

4.1.2 Convention on Elimination of all Forms of Discrimination against Women:

“The Convention on the Elimination of All Forms of Discrimination against Women”⁷⁸ adopted by the “United General Assembly” is frequently referred to as

⁷⁶ Committee on the Rights of the Child, ‘Concluding observations on the consolidated third and fourth periodic reports of India’ <https://www.crin.org/sites/default/files/attachments/indiaco_66thsession.pdf> accessed 11 June 2022.

⁷⁷ *ibid.*

⁷⁸ UN Women, ‘Convention on the Elimination of All Forms of Discrimination against Women’ <<http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article16>> accessed 12 June 2022.

the “International Bill of Rights for women”. It is a treaty for protecting the human rights of women. The United Nations General Assembly adopted “the CEDAW Convention on 19th December 1979”. It came into force on 3rd September 1981. The Convention is scrutinized by the CEDAW Committee which has been formed under it and which works out of the United Nations in New York.

The CEDAW is a document that sets out to define what discrimination against women means. It attempts to explain what constitutes discrimination against women. The State parties to the Convention commit themselves to ending violence against women as well as recognise the need to enact, enforce and implement laws within their national jurisdictions that are in harmony with this Convention.

Before the CEDAW came into existence, a large part of the 20th century witnessed women’s perspectives, experiences and their rights were largely kept away or remained absent from the discourses on human rights. The international community neither discussed nor took into account the structural causes as well as systemic nature of women’s subordination and their oppression.⁷⁹ Their voices and experiences were unheard on account of the fact that the family was considered a private sphere which could not be discussed within the international human rights forum. This meant that the issues they faced were naturally kept out of the purview of “international human rights” debate as well as devoid of inclusion within the rights framework.⁸⁰ This absence led to the feminist movement towards securing women’s human rights. It was not until the late 1960s and 1970s that there was a movement in recognition of women’s rights in the international forum.

CEDAW is just like the UNCRC one of the most highly ratified international human rights conventions. It has the support of 188 States parties. India ratified the Convention on 9th July, 1993.

The Convention in its very first Article defines discrimination against women as “any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and

⁷⁹ Sagade (n 5) 120.

⁸⁰ *ibid.*

women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field”.⁸¹

The Convention is said to encourage a more substantive model of achieving equality.⁸² These include:

- “Equal opportunities to both men in women when it comes to access to resources and to have a strong legal and policy backbone to support as well as reinforce the same”.
- “Equality of outcomes when the access to those resources is given, towards achieving a real change for women. State parties to CEDAW bear a responsibility to show results based on the practical realisation of rights to bring about equality”.⁸³

Women in different countries still continue to face discrimination despite the presence of a legal framework. Their access to their legal rights is affected because of the denial of their rights to economic and social development.

Therefore, “CEDAW” attempts to bridge the divisions between civil and political and socio-economic rights. It further mandates that both legal and policy measures aimed at development must guarantee the rights of women.

Under the Convention was formed the Committee on the “Elimination of Discrimination against Women” (CEDAW) which is a body of independent experts that is assigned with the task of monitoring the implementation of the Convention on the Elimination of All Forms of Discrimination against Women in the member States. The States parties who have ratified the Convention are under an obligation to send periodic reports to this Committee on how the Convention is being implemented within their local jurisdictions. Thereafter, during the working sessions the Committee deliberates over each State party report and based on the same addresses the Committee’s concerns and recommendations to the State Party in the form of concluding observations. The Committee itself is comprised of 23 members who are experts on the subject of women’s rights.

⁸¹ CEDAW art 1.

⁸² ICRAW ‘CEDAW Principles’ <<https://www.iwraw-ap.org/cedaw/what-is-cedaw/cedaw-principles/>> accessed 15 June 2022.

⁸³ *ibid.*

The Optional Protocol to CEDAW⁸⁴ has an individual complain mechanism also set up under the same. Under this Optional Protocol, the Committee is mandated to:

- Receive communications/complaints from individuals or groups with regards to violation of rights that are guaranteed/protected under the Convention; and
- Initiate inquiries into the conditions of grave or systematic failure in protecting women's rights and/or violations thereof.⁸⁵

These procedures are however optional in nature and are available only where the State party has ratified and accepted them by ratifying the Optional Protocol. The Committee also articulates suggestions and general recommendations. These recommendations are for the States and concern articles or themes that are contained within the Convention.

4.1.2.1 India's Position on CEDAW:

India is a party to the Convention but has not ratified the Optional Protocol to the Convention. Further, India had ratified the CEDAW with two declarations and one reservation. Declarations and reservations made upon signature and confirmed upon ratification.

“Declarations:

1. “With regard to articles 5 (a) and 16 (1) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent”.
2. “With regard to article 16 (2) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that though in principle it fully supports the principle of

⁸⁴ OHCHR, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCEDAW.aspx>> accessed on 18 June 2022.

⁸⁵ OHCHR, ‘Committee on the Elimination of Discrimination against Women-Introduction’ <<http://www.ohchr.org/EN/HRBodies/CEDAW/Pages/Introduction.aspx>> accessed 19 June 2022.

compulsory registration of marriages, it is not practical in a vast country like India with its variety of customs, religions and level of literacy”.

Reservation:

With regard to article 29 of the Convention on the Elimination of All Forms of Discrimination against Women, the Government of the Republic of India declares that it does not consider itself bound by paragraph 1 of this article.⁸⁶

The Declarations and Reservations technically have the same effect since they speak of the particular elements of the treaty that the States party decide not to be bound to.

It becomes important to delve into understanding as well critically examining the effect of not accepting Article 5(a) as well as Article 16 (1) which provides:

“Article 5

States Parties shall take all appropriate measures:

- “To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;”⁸⁷

“Article 16

States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

- a) The same right to enter into marriage;
- b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;
- c) The same rights and responsibilities during marriage and at its dissolution;

⁸⁶ UN Women, ‘Declarations, Reservations and Objections to CEDAW’. <<http://www.un.org/womenwatch/daw/cedaw/reservations-country.htm>> accessed 23 June 2022.

⁸⁷ CEDAW art 5.

- d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;
- e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;
- f) The same rights and responsibilities with regard to guardianship, ward ship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;
- g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;
- h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.”⁸⁸

India in its “Article 14 of the Constitution” guarantees Equality and at the same time gave a Declaration to not accept Article 16(1) of the CEDAW which at its heart advocates for Equality. This makes the situation quite paradoxical. It has been argued by Feminists that India has excused herself of the obligation of ‘eliminating discrimination based on sex gender and religion in the field of Personal Laws’.⁸⁹ When we see this in context of child brides, we notice that this absence of equality is one of the primary causes for their victimisation. “The same right to enter marriage” as well as the freedom to choose one’s spouse is heavily compromised in this practise. Free and full consent which is an essential ingredient to enter into marriage is absent in these cases too. Girls married out young are not capacitated enough to give their full informed consent to the marriage.

“The comment by the Committee on the Elimination of Discrimination against Women” on Article 16 (1) (a) and (b) in “UN General Recommendation No. 21” (13th session, 1994) states:

“A woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being.

⁸⁸ CEDAW art 16.

⁸⁹ Sagade (n 5).

An examination of States parties' reports discloses that there are countries which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages. Other countries allow a woman's marriage to be arranged for payment or preferment and in others women's poverty forces them to marry foreign nationals for financial security. Subject to reasonable restrictions based for example on woman's youth or consanguinity with her partner, a woman's right to choose when, if, and whom she will marry must be protected and enforced at law.”⁹⁰

In addition to the same the Committee also in comment no. 38 on Article 16(2) in the same set of General Recommendations stated that some nations create a disparity in the minimum age of women and men for getting married. Noting that such provisions of law assume a difference in the intellectual and physical growth of men and women, they must be abolished.⁹¹

Similarly, the Committee has noted that gender stereotyping completely derails the process of achieving equality. Women stand at a very disadvantageous position and are on the pretext of inferiority to men unable to live a life of dignity and respect. It has also been observed that practices such as child marriage actually amount to slavery. The girls are tuned from the beginning to accept their husbands as their superiors whom they cannot dare to go against. This is also a case where the muted group theory comes into picture. This is on account of the fact that men have a dominant position and women because of being placed at an inferior position are unable to express themselves. This is also due to the fact that they're aware of the adverse ramifications that would entail if they were to speak clearly. Stereotyping leads to compartmentalising the gender roles so strictly that it becomes very difficult to break these water-tight compartments.

The most recent set of Concluding Observations received by India in 2014 by the Committee on the Elimination of Discrimination against Women in response to the combined third and fourth periodic report submitted also states that the Committee has observed that India has still maintained its Declarations and has not withdrawn them despite a Constitutional framework which guarantees equality and non-discrimination.

⁹⁰ UN Women, 'General recommendations made by the Committee on the Elimination of Discrimination against Women' <<http://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>> accessed 22 June 2022.

⁹¹ *ibid.*

With this observation, it is quite apparently clear that India is somewhere resistant in reforming its mindset when it comes to international obligations. This resistance can be hoped to be transformed in the future in the light of the fact that there have been progressive legislations that have been enacted in favour of women and children in the last decade or so. The Committee has also applauded the Indian Government's efforts in enacting these legislations. These include:

- The Criminal Law Amendment Act, 2013;
- The Sexual Harassment of Women in the Workplace (Prevention Prohibition and Redress) Act, 2013;
- The Protection of Children from Sexual Offences Act, 2012; and
- The Right of Children to Free and Compulsory Education Act, 2009.⁹²

Among the many other observations received from the Committee, the ones that pertain to child marriage include:

- “Void all child marriages and ensure that the Protection of Children from Sexual Offences Act, 2012 also applies to child brides”;
- “Implementation of the PCMA without exception”;
- “To effectively investigate, prosecute and punish forced and early marriage”;
- “Speedily enact legislation to require compulsory registration of all marriages”; and
- “Strengthen efforts to raise awareness about the prohibition of child marriages, and their harmful effects on girls’ health and education”.⁹³

4.1.2 Universal Declaration of Human Rights:

“The United Nations General Assembly in the year 1948, adopted the Universal Declaration of Human Rights (UDHR). The UDHR presses member States to promote, through inclusion in their local laws, a number of human, civil, economic and social rights asserting these rights are a part of the foundation of freedom, justice and peace in the world. The Declaration with its well-articulated Rights was the first international legal effort to limit the role and interference of States and

⁹² *ibid.*

⁹³ *ibid.*

additionally press upon them duties owed to their citizens following the twofold model of rights and duties”.

Though this document by itself does not speak on the issue of child marriage but some of its provisions implicitly include the language which itself leaves child marriage in a notorious space. The document speaks of human rights and as every child is a human, they naturally fall within the ambit of these spelt rights. On the aspect of marriage, the UDHR in its Article 16 provides that marriage is a right of “men and women who are of full age” and with no bar to nationality, religion and race they can marry and found a family. Another key requirement set out is “free and full consent” at the time of entering the marriage. When we review the practise of child marriage against the backdrop of the rights spelt out under the Universal Declaration of Human Rights, we’re met with a series of violations. Child marriages are essentially forced marriages. The parties involved, at least one of them if not both, is a minor. Being a minor, he/she is incapable of giving a full consent. It is usually the parents who are the key decision makers. There are more girls who become victim to this practise than boys on account of the gender stereotyping which makes girls confined to certain roles allocated to them. They are devoid of their childhood and opportunities of education and growth which could land them into careers where they could positively contribute to the society. The practise itself amounts to gender based violence. The girl child often after marriage is made to do all the household chores and is forced to get pregnant and give birth to children. Early pregnancy leads to another set of alarming issues. The chains of human rights violations that follow the marriage are appalling. The worst thing is that these violations have not a short term but life-long effects. This includes the effects on the girl’s health which tends to deteriorate much faster due to repeated pregnancies at an early age. The vicious cycle of sufferings becomes so strong that it is often hard to break out of it.

4.1.3 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages:

This Convention entered force in the year 1964. India is not a member State to this Convention. Nevertheless, it is important to mention this Convention in the light of the fact that it provides for:

- Free and full consent to marriage of the intending spouses;⁹⁴
- Member states to the Convention to legislatively define a minimum age of marriage; and
- Registration of all marriages.

The Convention makes a specific mention of complete elimination of traditional practices and customs including child marriage and betrothal of young girls before attaining puberty. It promotes full freedom when it comes to choosing one's spouse.

The Convention document had initially failed to impose a minimum age of marriage and had kept it open to the State parties to determine. Later by way of General Assembly Resolution adopted in the year 1965, it was stated that this minimum age must not in any case be less than fifteen years.⁹⁵

There is also no monitoring mechanism set up under this Convention which is why the application of the same with respect to eliminating child marriages has remained undeveloped.

4.1.4 International Covenant on Economic, Social and Cultural Rights:

“The International Covenant on Economic, Social and Cultural Rights⁹⁶ in its Article 10⁹⁷ restates the point that widest possible protection and assistance should be given to the family as a unit, especially during its formation as well as at the time when the family is responsible for the care and education of dependent children. The point on free consent is enshrined in the ICESCR just like the Marriage Convention and CEDAW. It also talks about special protection to mothers during before and after child birth. Need for adequate social security benefits for working mothers is provided for in the said Article. Most importantly it states that children and young persons should be protected from economic and social exploitation. Specific provision is made for prohibiting and punishing the practise of child labour”.

⁹⁴ UN Marriage Convention, Article 1 <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/MinimumAgeForMarriage.aspx>> accessed 29 June 2022.

⁹⁵ General Assembly Resolution 2018 (XX) of 1 November 1965.

⁹⁶ United Nations Human Rights Office of the High Commissioner, ‘International Covenant on Economic, Social and Cultural Rights’ <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CESCR.aspx>> accessed 29 June 2022.

⁹⁷ *ibid* art 10.

The practise of child marriage is an absolute violation of the Covenant as it contains neither the element of full age nor full consent. It provides for protection of children from economic and social exploitation and the practise of child marriage runs on a tangent that goes completely opposite”. There is economic exploitation when marriages are done in order to settle debts or when there is trafficking coupled with these marriages. This also overlaps the social exploitation angle very vividly. Girls who are married off young become the worst receivers. Early pregnancies cause tremendous difficulties and have severe effects on the health of both the child bride as well as her baby. This is further backed with regressive thinking of preference of a boy child over a girl child. This means that if the young girl delivers a girl child, she would be subjected to a series of forced pregnancies till at least one boy child is born.

4.1.5 International Covenant on Civil and Political Rights:

“The International Covenant on Civil and Political Rights⁹⁸ also reiterates and reasserts the commitment laid out in the UDHR and ICESCR. Article 23⁹⁹ of the ICCPR involves the idea that the family is a natural and essential social unit that receives protection from both society and the state. It further advocates for the equally valid, unrestricted right of men and women to start families. In the ICCPR, the word responsibility is added and applied to rights alone, equally to men and women, at the time of marriage, throughout the marriage, and at the time of the dissolution of the marriage. Additionally, it specifies that at the moment of dissolution, provisions must be made for any children's essential protection”.

In a patriarchal set-up within which the practise of child marriage operates, the existence of equal rights and responsibilities is a mere myth. Girls are devoid of every opportunity of growth and pushed into the institution of marriage without their consent. They are minor and are not capable of understanding the responsibilities that marriage brings with it. Therefore, it can be clearly derived that the practise is a gross violation of this Covenant and therefore warrants a complete abolition.

⁹⁸ United Nations Human Rights Office of the High Commissioner, ‘International Covenant on Civil and Political Rights’ <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>> accessed 29 June 2022.

⁹⁹ *ibid.*

4.2 South Asian Regional Commitments:

“India is a member of SAARC i.e. South Asian Association for Regional Cooperation. The eight member states of SAARC are dedicated and committed to “the economic, social and cultural development of South Asia. They have repeatedly pledged their commitment towards protecting children, including in the SAARC Convention on Regional Arrangements on the Promotion of Child Welfare in South Asia (Child Welfare Convention), the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (Trafficking Convention), and the Colombo Statement of Children of South Asia”. However, until now SAARC has not adopted a formal convention on eliminating child marriage and calling on states to enforce minimum age of marriage as 18 i.e. consistent with the UNCRC”.¹⁰⁰

Governments are only required to take action to enforce the minimum age of marriage set down in national laws, even if the SAARC Child Welfare Convention defines children as those who are under the age of 18. Although it reiterates the commitment of SAARC member nations to uphold the Convention on the Rights of the Child, it makes no mention of the need that the age of marriage be at least 18 years old. To enforce national regulations regarding the minimum marriage age, it does nonetheless call for the mandatory registration of births and weddings. Similar to this, the SAARC Trafficking Convention mandates that member governments prosecute traffickers who use child marriage to compel minors to become prostitutes. However, the Convention makes no mention of how to define child marriage or means to force children into prostitution.

“While SAARC has yet to define and condemn child marriage in a Convention, two regional bodies have begun to engage with the member states of SAARC to support developments of regional action plans that include steps to eliminate child marriage in South Asia. The first is SAIEVAC. India is also a governing board member of SAIEVAC which is one of the Apex bodies of SAARC and attempts to

¹⁰⁰ Centre for Reproductive Rights, ‘Child Marriage in South Asia: International and Constitutional Legal Standards and Jurisprudence for Promoting Accountability and Change’ (2013) Briefing Paper 32 33.

hold governments accountable for ending all forms of violence against girls, boys and women. Second is South Asia Coordinating Group on Action against Violence against Children (SACG) which is a network of UN agencies, NGOs, and other actors working together at the Regional level in South Asia to coordinates activities aimed at addressing violence against women and children. SACG collaborates closely with other global and regional forums and bodies working on ending violence against women and children such as SAARC, the Office of the UN Special Representative to the Secretary General on Violence against Children and the Working group on violence against children in South East Asia”.

SAIEVAC adopted a Regional Action Plan to End Child Marriage in South Asia (RAP) 2015-2018. India is a member to this RAP since it was adopted within the inter-governmental mechanism. It provides an opportunity to the government to re-affirm its commitment towards ending child marriage, including implementation of a National Plan of Action to End Child Marriage.

After the RAP was adopted, representatives of SAARC member States and key stakeholders adopted the Kathmandu Call for Action to End Child Marriage in South Asia (KCA). The KCA enumerates urgent actions, including denouncing child marriage as a human rights violation, harmonising national laws and policies on child marriage, implementation of the RAP and eliminating discriminatory provisions concerning marriage in all laws.¹⁰¹

4.3 Universal Periodic Review:

The Universal Periodic Review is a distinctive machinery of the Human Rights Council wherein the human rights situation of each of the member states is brought under review with an aim to improve the human rights situation on the ground in these countries. Under the UPR system, each of the 193 UN member states is brought under review every 5 years i.e. the human rights situation of these countries is brought under review. Each year 42 States are reviewed in three Working group sessions with each session dedicated to 14 States. The results of

¹⁰¹ Kathmandu Call for Action to End Child Marriage in South Asia, <[https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/SA%20End%20Child%20Marriage%20Brochure_20Nov14\(final\)-2%20\(1\).pdf](https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/SA%20End%20Child%20Marriage%20Brochure_20Nov14(final)-2%20(1).pdf)> accessed 29 June 2022.

these reviews reflect in the Final Report of the Working Group which lists out the recommendations that “the State under review will need to implement before the next review cycle. In the recent third cycle of the Universal Periodic Review, there were several recommendations received by India. Of these recommendations some were ‘Noted’ while others were ‘Accepted’. ‘Noted’ is used to replace ‘Not Accepted’ which existed till the first two UPR cycles.¹⁰²

¹⁰² UPR Info, ‘What is the UPR?’ <<https://www.upr-info.org/en/upr-process/what-is-it>> accessed 29 June 2022.

CHAPTER-5

REGIONAL FRAMEWORK IN RELATION TO CHILD MARRIAGE

Child marriage, defined by certain international organisations like UNICEF as children under the age of 18, is a traditional marriage or a causal connection entered into by a person before reaching a set age. Many wards enable previous marriage with parental consent or under special circumstances, including high school pregnancy, even though the age is established at 18. In certain places, the legal marriageable age is under 18, particularly for girls. In certain countries, social conventions prevail over legal requirements when the legal age for marriage is 18. Child marriage is wrong. Both boys and girls can be affected by child marriage, however it is more common among girls. Child marriage violates children's right by a few “UN organizations”, extensive sexuality instruction can forestall such a phenomenon.¹⁰³

Many times, just one spouse in a marriage is a child, usually the woman. Destitution, woman cost, settlement, social customs, laws that authorise child weddings, religious and societal issues, local traditions, worry about being unmarried, ignorance, and the perception that women are unable to labour for pay are among the causes of child marriages.¹⁰⁴

5.1 Effects of Child Marriage in Global Region:

“A UNFPA report stated that For the period 2000-2011, a little more than 33% (an expected 34 per cent) of women matured 20 to 24 years in creating locales were married or in association before their eighteenth birthday celebration. In 2010 this was identical to very nearly 67 million women. Around 12% of them were married or in association before age 15. “The commonness of child marriage changes considerably among nations. Around the world, girls from rustic regions are two times as liable to wed as children as those from urban areas”.¹⁰⁵

5.1.1 Africa:

¹⁰³ Child marriage, (UNICEF) < <https://www.unicef.org/protection/child-marriage> > accessed 16 June 2022.

¹⁰⁴ Child and forced marriage, (Forward) <<https://www.forwarduk.org.uk/violence-against-women-and-girls/child-forced-marriage>> accessed 30 June 2022.

“As per UNICEF, Africa has the most noteworthy frequency pace of child marriage, with more than 70% of girls wedding under the age of eighteen in every three countries. Girls in West and Central Africa have the most elevated hazard of weddings in childhood. Niger has probably the most elevated pace of early marriage in sub-Saharan Africa. Among Nigerian women between the ages of twenty and 24, 76% reported weddings before the age of eighteen and 28% reported weddings before the age of fifteen¹⁰⁶. This UNICEF report depends on information that is gotten from a little example overview somewhere in the range of 1995 and 2004, and the on-going rate is obscure given the absence of framework and at times, regional violence”.

“African nations have enacted marriageable age regulations to restrict marriage to a base age of 16 to 18, contingent upon locale. In Ethiopia, Chad and Niger, the legal marriage age is 15, however, neighbourhood customs and religious courts have the ability to permit marriages under 12 years old.¹⁴ Child marriages of girls in West Africa and Northeast Africa are far and wide. Moreover, neediness, religion, custom, and struggle make the pace of child marriage in Sub-Saharan Africa exceptionally high in certain districts”.¹⁰⁷

“In many ancestral systems, a man follows through on a lady of the hour cost to the girl's family to wed her (similar to the traditions of settlement and dower). In many parts of Africa, this payment, in real money, cows, or different resources, diminishes as a girl progresses in years. Indeed, even before a girl arrives at pubescence, it is normal for a wedded girl to pass on her folks to accompany her husband. Many marriages are connected with destitution, with guardians requiring the lady cost of a girl to take care of, dress, teach, and house the remainder of the family. In Mali, the female: male proportion of marriage before age 18 is 72:1; in Kenya, 21:1”¹⁰⁸.

“The different reports show that in many Sub-Saharan nations, there is a high frequency of marriage among girls more youthful than 15. Many governments have would in general neglect the particular issues coming about because of child marriage,

¹⁰⁶ UNICEF <<https://www.unicef.org/protection/child-marriage>> accessed 16 June 2022.

¹⁰⁷ Child marriage and education, (United Nations Girls Education Initiative) <https://www.ungei.org/files/Child_Marriage_Edu_Note.pdf> accessed 30 June 2022.

¹⁰⁸ UNGEI <https://www.ungei.org/files/Child_Marriage_Edu_Note.pdf> accessed 5 May 2022.

including obstetric fistulae, premature births, stillbirth, sexually transmitted diseases (including cervical cancer), and malaria”.¹⁰⁹.

“As of 2006, 15–20% of school dropouts in Nigeria were the result of child marriage. In 2013, Nigeria endeavoured to change Section 29, subsection 4 of its regulations and along these lines forbid child marriages. Christianity and Islam are each practised by generally 50% of its populace, and the nation goes on with personal regulations from its British frontier time regulations, where child marriages are taboo for its Christians and took into account its Muslims. Child marriage is a troublesome point in Nigeria and is broadly practised. In northern states, prevalently Muslim, more than half of the girls wed before the age of 15”.

“In 2016, during a gala finishing the Muslim sacred month of Ramadan, the Gambian President Yahya Jammeh reported that child and constrained marriages were restricted”.

“In 2015, Malawi passed a regulation restricting child marriage, which raises the base age for marriage to 18. This significant accomplishment came following long periods of exertion by the Girls Empowerment Network crusade, which at last prompted ancestral and conventional pioneers forbidding the social practice of child marriage”.

“In Morocco, child marriage is a common practice. Over 41,000 marriages every year involve child brides. Before 2003, child marriages didn't need a court or state's endorsement. In 2003, Morocco passed the family regulation (Moudawana) that raised the least period of marriage for girls from 14 to 18, with the exemption that underage girls might wed with the authorization of the government perceived official/court and girl's guardian. Over the 10 years going before 2008, demands for child marriages have been prevalently supported by Morocco's Ministry for Social Development, and have expanded (c. 29% of all marriages). Some child marriages in Morocco are a consequence of Article 475 of the Moroccan corrective code, a regulation that permits attackers to stay away from punishment, if they wed their underage victims. Article 475 was amended in January 2014 after much crusading, and attackers can legally never again abstain from condemning by wedding their victim”.

¹⁰⁹ Tremayne Soraya, ‘Modernity and early marriage in Iran: a view’ (2006) *JOURNAL OF MIDDLE EAST WOMEN’S STUDIES* 122.

“In South Africa, the law accommodates regarding the marriage practices of customary marriages, by which an individual may be married as youthful as 12 for females and 14 for males. Early marriage is referred to as “a boundary to proceeding with training for girls (and boys)”. This incorporates absuma (organized marriages set up between cousins upon entering the world in neighbourhood Islamic ethnic gathering), lady capturing and elopement settled on by the children”.

“In 2016, the Tanzanian High Court – in a case filed by the Msichana Initiative, a lobbying group that advocates for girls' right to education – ruled in favour of protecting girls from the damages of early marriage. It is currently illegal for anybody more youthful than 18 to wed in Tanzania”.

“In 2019, Mozambique's public get-togethers passed a regulation forbidding child marriage. This regulation came after public movements denouncing Mozambique's high pace of child marriage with half of girls wedding under the age of 18”.¹¹⁰

“A 2015 Human Rights Watch report stated that in Zimbabwe, 33% of women who matured somewhere in the range of 20 and 49 years of age had married prior to arriving at the age of 18. In January 2016, two women who had been married as children brought a legal dispute mentioning an adjustment of the legal time of marriage to the Constitutional Court, with the outcome that the court proclaimed that 18 is to be the base age for a legal marriage for all kinds of people (beforehand the legal age had been 16 for women and 18 for men). The law produced results right away and was hailed by various human rights, women's rights, and clinical and legal gatherings as a landmark administration for the country”.

“That's what the UN states albeit the quantity of child marriages has declined on an overall scale, the issue stays most serious in Africa, in spite of the fact that Ethiopia cut child marriage rates by a third”.

5.1.2 America:

“Child marriage is normal in Latin America and the Caribbean island countries. Around 29% of girls are married before age 18. The child marriage frequency rates shifts between the nations, with Dominican Republic, Honduras, Brazil, Guatemala,

¹¹⁰ Ini Ekott, ‘Senate Denies Child Marriage Wrongdoing, Says Law May Be Revisited’ (All Africa 23 July 2013) <<https://allafrica.com/stories/201307240287.html>> accessed 25 May 2022.

Nicaragua, Haiti and Ecuador reporting probably the most noteworthy rates in the Americas. Bolivia and Guyana have shown the keenest decrease in child marriage rates starting around 2012.¹¹¹ In Guatemala, early marriage is generally normal among the native Mayan people group. Brazil is ranked fourth on the planet as far as outright quantities of girls wedded or cohabitating by age fifteen. Neediness and absence of regulations mandating the least age for marriage have been referred to as reasons for child marriage in Latin America.¹¹² With an end goal to battle the broad conviction among poor, rustic, and native networks that child marriage is a course out of destitution, a few NGOs are working with networks in Latin America to shift standards and make places of refuge for juvenile girls”.

5.1.2.1 Canada:

“Since 2015, the base marriageable age all through Canada is 16. In Canada the time of a larger part is set by region/domain at 18 or 19, so minors under this age have extra limitations (for example parental and court assent). Under the Criminal Code, Art. 293. Marriage under the age of 16 years peruses: Every individual who celebrates, helps or participates in a marriage custom or function realizing that one of the people being married is under the age of 16 years is at fault for an indictable offence and obligated to imprisonment for a term not exceeding five years. The Civil Marriage Act also states: No person who is under the age of 16 years may contract marriage.”¹¹³

5.1.3 Asia:

“Child Marriages in India, in 1900, Rana Prathap Kumari age 12 wedded Krishnaraja Wadiyar IV age 16. After two years, he was perceived as the King of Mysore under British India. The greater part of all child marriages happens in the South Asian nations of India, Pakistan, Bangladesh, and Nepal. There was a decline in the paces of child marriage across South Asia from 1991 to 2007, however, the reduction was observed among youthful juvenile girls and not girls in their late teenagers. Some

¹¹¹ Juliette Myers and Rowan Harvey, ‘Breaking Vows: Early and Forced Marriage and Girls’ Education’ <<http://www.plan-uk.org/resources/documents/Breaking-Vows-Early-and-Forced-Marriage-and-Girls-E>> accessed 23 June 2022.

¹¹² ‘Understanding State Statutes on Minimum Marriage Age and Exceptions Tahirih Justice Center’ <www.tahirih.org/ACC> accessed 6 June 2022.

¹¹³ A. Raj et al, ‘Prevalence of child marriage and its effect on fertility and fertility-control outcomes of young women in India: a cross-sectional, observational study’ [2009] THE LANCET.

scholars¹¹⁴ accept this age-specific decrease was connected to girls progressively going to class until about age 15 and then, at that point, getting married”.

5.1.3.1 Western Asia:

“A 2013 report claims 53% of all married women in Afghanistan were married before age 18, and 21% of all were married before age 15. Afghanistan's official minimum age of marriage for girls is 15 with her father's permission. In all 34 provinces of Afghanistan, the customary practice of *ba'ad* is another reason for child marriages; this custom involves village elders, *jirga*, settling disputes between families or unpaid debts or ruling punishment for a crime by forcing the so-called liable family to give their 5-to 12-yearold girls as a wife. Some of the time a girl is constrained into child marriage for a crime her uncle or far-off family member is claimed to have perpetrated”.

“Over half of Yemeni girls are married before 18, some by the age eight. Yemen government's Sharia Legislative Committee has hindered endeavours to raise the marriage age to one or the other 15 or 18, on grounds that any regulation setting the least age for girls is un-Islamic. Yemeni Muslim activists contend that a few girls are prepared for marriage at age 9.^{68,69} According to HRW, in 1999 the base marriage age of 15 for women was nullified; the beginning of pubescence, deciphered by traditionalists to be at age nine, was set as a requirement for fulfilment of marriage. In practice Yemeni regulation permits girls of all ages to marry, however it restricts sex with them until the endless time they're ‘suitable for sexual Intercourse. As with Africa, the marriage frequency information for Yemen in the HRW report is from overviews somewhere in the range of 1990 and 2000. Current information is difficult to acquire, given regional violence. In April 2008, Nujood Ali, a 10-year-old girl, effectively got a separation subsequent to being assaulted under these circumstances. Her case incited calls to raise the legal age for marriage to 18. Later in 2008, the Supreme Council for Motherhood and Childhood proposed to characterize the base age for marriage as 18 years. The law was passed in April 2009, with the age decided in favour of 17. Be that as it may, the law was dropped the next day keeping manoeuvres by contradicting parliamentarians. Dealings to pass the regulation

¹¹⁴ United Nations High Commissioner for Refugees, ‘Refworld – Afghan Girls Suffer for Sins of Male Relatives’ <<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=49dc4b201c>> accessed 5 June 2022.

proceed. In the meantime, Yemenis propelled by Nujood's endeavours keep on pushing for change, with Nujood associated with no less than one convention. In September 2013, an 8-year-old girl passed on from inner draining and uterine break on her wedding night in the wake of the wedding a 40-year-elderly person. The boundless pervasiveness of child marriage in the Kingdom of Saudi Arabia has been documented by human rights groups. Saudi ministers have justified the marriage of girls as youthful as 9, with authorisation from the judiciary. There are no regulations set up characterizing a base time of assent in Saudi Arabia; however, drafts for potential regulations have been made starting around 2011. Individuals from the Saudi Shoura Council in 2019 endorsed new regulations for minor marriages that will see to prohibit offering 15-year-old children and power the requirement for court endorsement for those under 18. Chairman of the Human Rights Committee at the Shoura Council, Dr. Hadi Al-Yami, said that presented controls depended on top to bottom investigations introduced to the body. He brought up that the regulation, screened by the Islamic Affairs Committee at the Shoura Council, has raised the time of marriage to 18 and denied it for those under 15”.

“Research by the United Nations Population Fund demonstrates that 28.2% of marriages in Turkey - right around one of every three -include girls under 18. Child marriage was also observed to be predominant among Syrian and Palestinian Syrian outcasts in Lebanon, notwithstanding different types of sexual and orientation-based savagery. Marriage was viewed as a possible method for safeguarding family honour and shielding a girl from assault given how normal assault was during the contention. Occurrences of child marriages expanded in Syria and among Syrian displaced people throughout the contention. The extent of Syrian exile girls living in Jordan who were married increased from 13% in 2011 to 32% in 2014. Journalists Magnus Wennman and Carina Bergfeldt documented the practice, and some of its results”.

5.1.3.2 Southeast Asia:

In south Asian country also face this kind of gross human rights violations.

5.1.3.4 Bangladesh:

“Bangladesh has among of the highest global rates of child marriage. Two out of every three marriages involve a kid. According to data from 2005, in Bangladesh, 49

percent of women between the ages of 25 and 29 were already married by the time they were 15. According to a recent study, a girl in Bangladesh who isn't married would typically attend school for 0.22 more years for every year that passes.¹¹⁵ The later females were married, and it was nearly a given that they would use preventative healthcare. In comparison to females who married later, married girls in the district were shown to have less influence over family planning, greater rates of maternal mortality, and lesser status in their husband's family. One more investigation discovered that women who wedded at age 18 or more seasoned were less inclined to encounter IPV (cozy partner brutality) than those wedded before age 18. It also found that girls wedded before age 15 were at a significantly higher gamble for IPV”.

“Mia's Law was enacted in 2006 to shield child ladies from misuse following the torment and murder of Mia Armador, an 11-year-old who was killed by her oppressive 48-year-old husband. This regulation requires all marriages under 13 to require unique government consent”.

5.1.3.4 India:

“As per UNICEF’s State of the World's Children-2009 report, 47% of India's women who matured 20-24 were married before the legal age of 18, with 56% wedding before age 18 in country regions. The report also showed that 40% of the world's child marriages happen in India similarly, as with Africa, this UNICEF report depends on information that is gotten from a little example study in 1999. The latest available UNICEF report for India uses 2004–2005 household survey data, on a small sample, and other scholars report lower incidence rates for India. In the 2005, little example family review information proposes that 22% of girls at any point wedded matured 16-18, 20% of girls in India were married between 13-16, and 2.6% were married before age 13. As per 2011 cross-country statistics of India, the typical time of marriage for women in India is 21. The child marriage rates in India, as per a 2009 delegate overview, dropped to 7%. In its 2001 segment report, the Census of India stated no married girls over age 10, 1.4 million wedded girls out of 59.2 million girls in the age 10-14, and 11.3 million wedded girls out of 46.3 million girls in the age 15-19 (which includes 18–19 age group). For 2011, the Census of India reports child marriage rates dropping further to 3.7% of females matured under 18 being married”.

¹¹⁵ UNICEF <https://www.unicef.org/sowc09/docs/SOWC09_Table_9.pdf> accessed 22 June 2022.

“The Child Marriage Restraint Act of 1929 was enacted when Britain still controlled Colonial India. For Hindus, Buddhists, Christians, and the majority of India, it forbade the marriage of a man or girl younger than 21 or younger than 18. However, the 165 million Muslims who live in India are not affected by this legislation, which only affects the country's Hindu, Christian, Jain, Sikh, and other religious minorities. The Indian Muslim Personal Law (Shariat) Application Act of 1937, which codified Muslim personal rules, cemented this relationship between law and religion under British border administration. The age at which India's Muslim girls can legally wed, as per this Muslim Personal Law, is 9 and can be lower if her gatekeeper (wali) concludes she is physically full-grown. Over the most recent 25 years, All India Muslim Personal Law Board and other Muslim common associations have actively gone against all-inclusive regulations and enforcement action against child marriages; they have contended that Indian Muslim families have a religious right to wed a girl mature 15 or even 12. A few states of India guarantee extraordinarily high child marriage rates in their Muslim and ancestral networks. India, with a populace of over 1.2 billion, has the world's most noteworthy all-out number of child marriages. It is a significant social issue. Starting around 2016, the circumstance has been legally rectified by “The Prohibition of Child Marriage Act, 2006”.

“According to the Public Plan of Action for Children 2005 published by the Department of Women and Child Development of the Indian government, the goal is to eradicate child marriage completely by the year 2010. To prevent child weddings, The Prohibition of Child Marriage Act, 2006 was passed in 2006. According to this rule, males must be at least 21 years old and women must be at least 18 years old before they may be married”.¹¹⁶

“A few Muslim associations wanted to challenge the new regulation in the Supreme Court of India.¹²¹ In later years, various high courts in India – including the Gujarat High Court, the Karnataka High Court and the Madras High Court have ruled that the act prevails over any personal law (including Muslim personal law)”.

5.1.3.5 Pakistan:

¹¹⁶ UNICEF <https://www.unicef.org/sowc09/docs/SOWC09_Table_9.pdf> accessed 9 May 2022.

“Over 50% of all weddings in Pakistan involve girls under the age of 18, according to two surveys from 2013. According to a different UNICEF survey, in Pakistan, 70% of girls get married before turning 16. Similar to what was done for India and Africa, a small example evaluation from the 1990s served as the basis for UNICEF's material on Pakistan.

The exact number of child marriages in Pakistan under the age of 13 is obscure, however ascending as per the United Nations. Andrew Bushell claims the pace of marriage of 8-to 13-year-old girls surpassed half in northwest areas of Pakistan.

Another custom in Pakistan, called swara or vani, involves village elders solving family disputes by offering girls. The typical marriage time of Swara girls is somewhere in the range of 5 and 9. Similarly, the custom of watta satta has been cited as a cause of child marriages in Pakistan.¹¹⁷

According to Population Council, 67 percent of women in Pakistan experience pregnancy before the age of 19, and 69 percent of these women give birth to children. In Pakistan, 35 percent of women become mothers before turning 18 years old. Less than 4% of married females under the age of 19 had a say in choosing their spouse; more than 80% were wed to a nearby or distant relative. In Pakistan, child marriage and early parenthood are common”.

¹¹⁷ Population Council <<https://www.popcouncil.org/uploads/pdfs/ayp0102.pdf> > accessed 23 June 2022.

CHAPTER- 6

AN ANALYSIS OF LAWS, JUDICIAL PRECEDENTS, AND RECENT DEVELOPMENTS TO CHALLENGE THE ISSUE OF CHILD MARRIAGE IN INDIA

“The childhood of a person is precious. On the child attaining the age of majority, anything may be given to it like the job, house, husband/wife; but what cannot be got back is its precious childhood. What is therefore of paramount importance is that the child should fully enjoy his/her childhood before entering the wedlock. More often than not, it is the girl's happy childhood that would ensure a happy wifehood and happy motherhood. In whatever form it is, the child marriage is a gross violation of human rights of a girl or boy”.¹¹⁸

Child marriage is not alone a social evil but a heinous cause that adds to the misery of many women who become victims to it as young girls. It is a human rights violation and a clear disregard to the safe and happy childhood of many children. They're forced to live lives which they have seen the adults of the house live and at an age when they haven't even understood their own selves. It is also a form of gender based violence because girls are usually the ones that fall prey to it compared to boys. Law itself has undertaken a great journey with respect to this practise. From the Rukhmabai and Phulmonee cases to the enactment of the very first law against child marriage i.e. “The Child Marriage Restraint Act, 1929” leading to further development and amendments resulting in the subsequent enactment of The Prohibition of Child Marriage Act, 2006. The journey that has been travelled has seen the changes in attitudes, the transformation in legislative intent, the growth of understanding of peculiar issues faced by child brides and finally an acknowledgement of the same. The recent Independent Thought judgement¹¹⁹ among many others is a testament to this acknowledgment. This judgement is unique for many reasons, one of which is that it has been pronounced by the Supreme Court of India.

Despite the development in law with respect to child marriage, there is scope for much more work that needs to be done for bringing this practise to a complete end.

¹¹⁸ *Seema Begaum v State of Karnataka* ILR 2013 KARNATAKA 1659.

¹¹⁹ *Independent Thought v Union of India* 2017(12) SCALE 621.

There are gaps that still need attention. There are other laws pertaining to women and children that need to be discussed within the narrow context of child marriages. There is a definite need to harmonise laws that directly or indirectly relate to this practise for its complete elimination.

6.1 Child Marriage and Constitution of India:

The Constitution of India guarantees fundamental rights to all citizens of India. They are basic human rights that every citizen enjoys. These citizens include girls and women too. However, the practise of child marriage itself acts to violate the rights that are fundamental to girls and women. It amounts to gender discrimination, denial of dignity and liberty and the resultant chain of harm that is “met with including violence and reproductive health risks”. It violates the following rights that are enshrined within the Constitution:

- “Right to life and personal liberty”;
- “Non-discrimination and Equality”;
- “Free and Compulsory education between ages 6 to 14 years’; and
- “Freedom from Forced Labour and Exploitation”.

Right to Life and Personal liberty as enshrined in Article 21 of the Constitution is very broad and far reaching and the courts in India have from time to time attempted to bring more rights under its umbrella shelter. The ones that protect against child marriage and fall within the ambit of Article 21 include:

- “right of children to protection from abuse”;¹²⁰
- “right to freedom from torture and cruel, inhuman, and degrading treatment”;¹²¹
- “right to health,¹²² reproductive health, and survival of pregnancy and child birth”;¹²³
- “right to autonomy, dignity, and reproductive rights”;¹²⁴ and

¹²⁰ *Francis Coralie Mullin v The Administrator, Union Territory of Delhi* (1981) 2 SCR 516.

¹²¹ *ibid.*

¹²² *Paschim Bangal Khet Mazdoor Samity & Others v State of West Bengal & Ors.* (1996) 4 SCC 37.

¹²³ *Sandesh Bansal v Union of India & Others* W.P. 9061 of 2008, H.C. MP 2008.

¹²⁴ *Suchitra Srivastava & Anr. v Chandigarh Administration* (2009) 11 SCC 409.

- “right to privacy, which encompasses protection of the personal intimacies of the home, the family, marriage, motherhood, procreation and child rearing”.¹²⁵

When we see child marriage from the constitutional lens, a picture of blatant violations is visible. One can see that all these rights listed above are violated in the case of a child marriage. It is clear from facts, figures and all available data that girls are more often victims to this practise and therefore they are not treated equally to boys of their own age. The girls are devoid of their right to pursue education, live with dignity and integrity. Upon being married as a child, they lose the autonomy over their bodies as well as their reproductive health. They are the worst receivers because of a cycle of constant pregnancies for want of a male child to please the family. Right to health is heavily compromised on that account and there are “higher rates of infant mortality in women” who give birth on account of early pregnancies. Studies also show that child brides are more likely to experience domestic violence, torture, cruel as well as inhuman treatment because they are much more vulnerable than women who get married in adulthood.

In 2015, the Madras High Court in one of its judgements recognised that child marriage is inconsistent with girls’ interests as protected under the constitutional rights to life and equality and non-discrimination as well as the “Directive Principles of State Policy”.¹²⁶

In the recent report (2017) published jointly by the organisation Young Lives and National Commission for the Protection of Children, it is stated:

“Looking at the impact of early marriage from rights perspective, it can be said that the key concerns are denial of childhood and adolescence, curtailment of personal freedom, deprivation of opportunities to develop a full sense of selfhood and denial of psychosocial and emotional well-being, reproductive health and educational opportunity along with consequences described earlier.”

6.2 Child Marriage and Juvenile Justice (Care and Protection of Children) Act, 2015:

¹²⁵Justice K S Puttaswamy (Retd.) and Anr. v Union of India and Ors. (2012) 8 SCC 735; Gobind. v State of Madhya Pradesh & Anr. [(1975) 3 SCR 946]; Rajgopal v. State of Tamil Nadu AIR 1995 SC 264.

¹²⁶ M. Mohamed Abbas v The Chief Secretary, Government of Tamil Nadu and Ors MANU/TN/2377/2015.

The recent “Juvenile Justice Act 2015(JJA)” also has established mechanism under it that are procedural in nature and which aid in providing legal protection and remedies in the case of child marriage. For the purpose of care, protection, treatment, development and rehabilitation of children recognised as “children in need of care and protection” and to ensure their basic needs and protection, the Act mandates the State Governments to establish Child Welfare Committees (CWC).¹²⁷ These Committees are assigned the task of disposing cases that relate to above stated purposes.¹²⁸ The Juvenile Justice Act recognises children who are at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnization of such marriage as children in need of care and protection. The Act does not mention of married girls per se but does recognize the children at risk of abuse, neglect, or exploitation as children in need of care and protection.¹²⁹ Under the provisions of the Act, upon receiving information of a child in need of care and protection, the committee members of the Child Welfare Committee is mandated to hold an inquiry and may pass an order to send the child to a children’s home. The child may alternatively be sent to a fit facility, or a “fit person” and directions by the CWC may be given with regards to counselling, medical attention, legal aid, skills training, educational services, and other developmental activities.¹³⁰ This order is subject to taking into account the right of the child to be heard and participate in the proceedings. The provisions of the Act guaranteeing shelter to children in need of care and protection has been used and cited by many courts for the purpose of dealing with cases wherein married girls wanted to return to their parent’s home.¹³¹ As another option, they were sent to State children’s home. However, the government shelter homes are usually in a deplorable condition lacking basic facilities. Besides, at these shelter homes children are at risk of being exploited, which adds to the court’s reluctance to send girls to these homes. This leaves no option or lack of viable options except to stay within the confines of the marriage.

6.3 Child Marriage and Protection of Women from Domestic Violence Act, 2005 (PWDVA 2005)

¹²⁷ Juvenile Justice (Care and Protection of Children) Act 2015, s 28(4).

¹²⁸ *ibid.*

¹²⁹ *ibid* s 2(14).

¹³⁰ *ibid* ss 3 and 37.

¹³¹ *Court on its own Motion (Lajja Devi) v State* MANU/DE/3556/2012.

“A careful analysis of the law on domestic violence would reveal its inability to protect child brides. If we engage in a careful reading of the provisions of the PWDVA 2005 we would find that the law is inadequately laid out for these children. Delving into the definitions provided by the Protection of Women from Domestic Violence Act, 2005,¹³² it becomes particularly noteworthy to highlight sections 2(a) and 2(b). These two sections starkly bring out the legislative silence on the inclusion of child brides within the ambit of this legislation. Section 2(a) defines aggrieved person under the Act.¹³³ The definition is limited in its scope to the extent that it takes into account women and not married girls below the age of 18 years. It is important to reiterate that the PCMA 2006 does not make the concluded child marriages void but instead gives them the status of voidable. Therefore they are valid marriages in the eyes of the law unless either party moves to the court to get the same annulled. Section 2(b) defines child under the Act. It has been careful of including not just a child which is one’s own but also the other categories by which a child receives care and parentage. However, the definition does not include child brides. The girls are minor too when we see from the age of attainment of majority but they cannot be said to fall within the category of own children. Child brides are a separate cohort for they are neither women nor children as per the definition in the Act. Now reading the two definitions from the PCMA, 2005 along with the Prohibition of Child Marriage Act, 2006 it would not be incorrect to arrive at a finding that the former does not squarely cover child brides. It is bent towards advocating for women alone and not child brides”.

“A review of high court judgements further reveals that PWDVA has not been raised in cases relating to child marriage. Moreover, courts have failed to recognise child marriage itself as a form of domestic violence. This is despite the fact that there is enough evidence to show how various forms of violence are linked to child marriage. As a consequence, married girls seeking to avail of protections available under PWDVA in addition to the ones provided under the PCMA face a double burden of substantiating both their age at marriage as well as on going violence within such marriages. The absence of a judicial ruling on applicability of PWDVA to cases of

¹³² Protection of Women from Domestic Violence Act 2005.

¹³³ PWDVA 2005, s 2(a) ("aggrieved person" means any woman who is, or has been, in a domestic relationship with the respondent and who alleges to have been subjected to any act of domestic violence by the respondent).

child marriage means that the protection mechanisms created under the PWDVA are not available to victims of child marriage.¹³⁴ A clear inter-linkage between these two statutes i.e. PWDVA and PCMA is missing and needs to be established”.

6.4 Child Marriage and Personal Laws:

There is a huge lacuna in the PCMA with respect to non-inclusion of a notwithstanding provision with respect to personal laws. The absence of a pronounced primacy has for a long period created ambiguity in the implementation and applicability of the law. It does not talk about personal laws except the modification of punishments under the HMA 1955. The ambiguities have been with regards to minimum age of marriage, status of child marriage, right of married girls to dissolve such a marriage, and the remedies that are available to them. This ambiguity caused some cases to be decided placing the primacy of personal laws over the PCMA but the trend changed in the recent judgements of different high courts pronouncing in favour of the primacy of the PCMA. In 2013, the Karnataka High Court clarified the PCMA over the personal laws including Muslim girls. The court held:

“No Indian citizen on the ground of his belonging to a particular religion can claim immunity from the application of the P.C.M. Act. The Legislature has not left anything to implication or interpretation as far as the application of P.C.M. Act is concerned”.

On the ambiguity in various laws and the recognition of these marriages under different laws, the Delhi High Court in *Court on its own Motion (Lajja Devi) v. State* observed:

“Legislative endorsement and acceptance which confers validity to minor's marriage in other statutes definitely destroys the very purpose and object of the PCM Act-to restrain and to prevent the solemnization of Child Marriage. These provisions containing legal validity provide an assurance to the parents and guardians that the legal rights of the married minors are secured. The acceptance and acknowledgement of such legal rights itself and providing a validity of Child Marriage defeats the legislative intention to curb the social evil of Child Marriage”.

In the recent landmark judgement¹³⁵ of 2017 delivered by the Supreme Court of India, this ambiguity has been resolved wherein the court has held-

¹³⁴ CRR and SAIEVAC Regional Secretariat, *Ending Impunity for Child Marriage in India* (2nd edn 2009).

“It is obvious that while making amendments to various laws, some laws are forgotten and consequential amendments are not made in those laws. After the PCMA was enacted both the Hindu Marriage Act, 1955 and the Dissolution of Muslim Marriages and Divorce Act, 1939 also should have been suitably amended, but this has not been done. In my opinion, the PCMA is a secular Act applicable to all. It being a special Act dealing with children, the provisions of this Act will prevail over the provisions of both the Hindu Marriage Act and the Muslim Marriages and Divorce Act, in so far as children are concerned.”

This pronouncement by the Supreme Court of India is its very first and clarifies on this specific aspect which had remained in a grey area for over a decade.

6.5 Child Marriage and Human Trafficking:

“Child-bridal trafficking in India often operates under the trained radars of human rights organizations”, both within and outside the country. This is one form of trafficking that is very difficult to crack down. Marriage is considered one of the easiest modes employed by the traffickers to send young girls from one place to another. In the rural village set-up, there is a stigma attached to single women. If she doesn't get married, it is a cause of great concern as well as embarrassment to the family. Banking upon this helplessness and vulnerability, the traffickers approach the parents of these young girls to negotiate i.e. they bring a marriage proposal and offer a cash reward to them of say Rs. 3,000 or Rs.5000 or more in order to get them to agree for the same. They make it lucrative enough so that the parents do not reject the same. After the wedding the girl is sold and resold till she reaches her final destination. This form of trafficking is usually easier because it protects both the husband as well as the recruiter because they are able to escape the initial accusations of trafficking. It is not an unknown reality that a plethora of cases exist on cross border trafficking with marriage as a means. Traffickers give false promises of employment or arrange sham marriages in India or Gulf States and use the same as a means to subject women and girls to sex trafficking. Even within India, the reality is the same.

The new Anti-trafficking law is soon expected to be passed by the Parliament. It is “The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2018”. The proposed amended law on trafficking serves to provide a working structure to the recently included Section 370 and 370A by way of the Criminal Law (Amendment)

¹³⁵ *Independent Thought v Union of India* 2017(12)SCALE621.

Act, 2013. The proposed Bill also adds new offences with respect to aggravated forms of trafficking and makes the punishments severe. The PCMA expressly declares null and void those child marriages that are for the purpose of trafficking.¹³⁶

6.6 Child Marriage and Protection of children from sexual offences(POCSO), 2012

“The Protection of Children from Sexual Offences Act, 2012 (POCSO)” is a recent piece of legislation which addresses and protects children who are victimised to sexual abuse. It has been lauded for being comprehensive in nature as well as punitively harsh so that it deters offences against children.

Post the Criminal Law (Amendment) Act, 2013 the age of giving a valid consent for sexual intercourse was increased from 16 years to 18 years. An amendment to the IPC (Indian Penal Code) was effected in its Section 375. However, Exception 2 of this Section was kept intact. The exception states that sexual intercourse or sexual acts by a man with his own wife, the wife not being under 15 years of age, does not constitute rape.¹³⁷ Law created an unfair distinction between girls married and those unmarried between the ages of 15 years to 18 years with no explanation. This discrimination was based only on the premise of being married or not.

There was also an apparent inconsistency in the IPC on this point and POCSO. The POCSO is applicable to all children, who by definition, is anyone who is under the age of 18 years. The Act enforces the rights of all children to safety, security and protection from sexual abuse and exploitation. If we examine Section 5 of the POCSO, it states that whoever in a shared household with the child commits penetrative sexual assault is said to have committed aggravated penetrative sexual assault or rape. Upon a conjoint reading of the provisions under the IPC and POCSO, it is noticeable that POCSO will apply to cases where the victim is below 15 years of age and married. The husband will not be able to claim immunity. However, the 15-18 years age group girls had an undecided fate in the case that they were married. They would otherwise be guaranteed protection, however, with the IPC’s exception; law itself created a niche for them to be sexually exploited just because they were married as children and therefore had no recourse.

¹³⁶ PCMA, s 12.

¹³⁷ IPC, s 375 (Exception 2).

This inconsistency was recently resolved by the Supreme Court verdict (2017) in the Independent Thought judgement.¹³⁸ The Supreme Court read down the Exception 2 of Section 375 of the Indian Penal Code that created an artificial and unjustifiable distinction in the rights of the girl children between the ages of 15-18 years who were being raped within the confines of marriage. The court essentially recognised marital rape within prohibited child marriages.

The Supreme Court noted saying:

“Another aspect of the matter is that the POCSO was enacted by Parliament in the year 2012 and it came into force on 14th November, 2012. Certain amendments were made by Criminal Law Amendment Act of 2013, whereby Section 42 and Section 42A, which have been enumerated above, were added. It would be pertinent to note that these amendments in POCSO were brought by the same Amendment Act by which Section 375, Section 376 and other sections of IPC relating to crimes against women were amended. The definition of rape was enlarged and the punishment under Section 375 IPC was made much more severe. Section 42 of POCSO, as mentioned above, makes it clear that where an offence is punishable, both under POCSO and also under IPC, then the offender, if found guilty of such offence, is liable to be punished under that Act, which provides for more severe punishment. This is against the traditional concept of criminal jurisprudence that if two punishments are provided, then the benefit of the lower punishment should be given to the offender. The legislature knowingly introduced Section 42 of POCSO to protect the interests of the child. As the objects and reasons of the POCSO show, this Act was enacted as a special provision for protection of children, with a view to ensure that children of tender age are not abused during their childhood and youth. These children were to be protected from exploitation and given facilities to develop in a healthy manner. When a girl is married at the age of 15 years, it is not only her human right of choice, which is violated. She is also deprived of having an education; she is deprived of leading a youthful life. Early marriage and consummation of child marriage affects the health of the girl child. All these ill effects of early marriage have been recognised by the Government of India in its own documents, referred to hereinabove.”

Therefore, with this landmark judgement the Supreme Court has brought clarity on the long standing issue of recognising marital rape within prohibited child marriages. What is however still pending is the recognition that child marriage itself is a form of violence against children and therefore a warranted need for it to be declared *void ab initio*.

¹³⁸ *Independent Thought v Union of India* 2017(12)SCALE621.

6.7 Child Marriage and Custody of Married Girls:

The issue of custody of the married girls arises in cases of self-initiated child marriages. The parents are usually seen walking the court aisle to seek custody of their daughter being the lawful guardians. The courts have, on the basis of circumstances of each case, have held either of the following:

- that the custody of the girl belongs to her parents irrespective of her wishes as in the case of *Pratapa Ram v. State*, or¹³⁹
- have treated her wishes as paramount and therefore allowed her to continue staying with her husband as in the cases of *G. Saravanan v. The Commissioner of Police*, *Bholu Khan v. State of NCT of Delhi* and *Shri. Jitender Kumar Sharma v. State and Anr.*, or
- have allowed the couple to stay together but not allowed them to consummate their marriage as in the case of *Court On Its Own Motion (Lajja Devi) v. State*¹⁴⁰, or lastly
- handed over the custody of the girl to a government shelter home irrespective of the wishes of the married girl as in the case of *T. Sivakumar v. The Inspector of Police*.

“The guardianship and custody of married girls is regulated by the Guardianship and Wards Act (GAWA), applicable to Muslims, Christians and Parsis; and Hindu Minority and Guardianship Act (HMGA) which is applicable to Hindus. Both the legislations are understood to say that the husband is the wife’s guardian even if they are both minors, unless he is pronounced unfit by a court. Both these laws also contradict the PCMA in as much as the latter treats an adult man entering into marriage as a criminal”.

Courts have nevertheless considered additional factors in making this determination. In *Court On Its Own Motion (Lajja Devi) v. State* the decision of the court stated that with respect to girls over the age of 15 years, the court’s decision should depend on a variety of factors that include her level of maturity and her knowledge of understanding the consequences of her actions as well as the attitude of the families or parents. The court went on to say that it would be preferable to order the girl to stay

¹³⁹ RLW2013(1)Raj1.

with her parents unless there are “sound and good” reasons in which case the court may direct otherwise. The court further added that the husbands should not be permitted to consummate the marriage with the minor girls, for it goes against the object of the PCMA and says that children are neither physically nor psychologically ready to get married. Moreover, the court noted that if the girl got pregnant then it would become an impediment in her exercising the choice of annulling her marriage because of heavier socio-economic barriers. In the cases where the courts have refrained from handing the custody of the girl to the husband, the primary concern has been the consummation of marriage before the girl turns 18 years as well as her valid consent to the marriage. The issue of pregnancy and consequent socioeconomic barriers on voiding the marriage have also been considered. The cases in which the marriages have been declared void, the custody of the minor girl has wither been handed over to the parents or to the shelter homes.

The intersection of GAWA, Juvenile Justice Act and PCMA is worth noting at this point. Some courts have used Section 17 and 19 of the GAWA to say that the husband of the girl is her natural guardian, while some have treated the girl as Child in Need of Care and Protection (CNCP) under the Juvenile Justice Act, and yet others have refused to use the JJA where the girls have a fit guardian, irrespective of her wishes. Instances where the girl’s opinion is not considered can lead to situations where they may be returning to their parents place however, that could be an unsafe option over a shelter home.

Therefore there is a lacuna in the JJA in identifying married minor girls as CNCP as well as lack of consistent jurisprudence in applying the JJA to the cases of child marriage despite the risk of violence being inflicted upon these girls within marriages.

6.8 Prohibition of Child Marriage (Amendment) Bill, 2021:

On December 22, 2021, a parliamentary standing committee seeks the Prohibition of Child Marriage (Amendment) Bill, 2021, which aims to increase the legal age of marriage for women from 18 to 21. The Bill is predicated on the idea that increasing the marriage age will end the practise of underage marriage.

However, this assumption is not supported by any preceding data because child marriages continued to occur even after the legal age was raised to 18. This raises the question of whether legislation by itself can prevent child marriage.

The United Nations children's Fund defines child marriage as “the marriage of a girl or boy before the age of 18, and refers to both legal marriages and informal unions in which children under the age of 18 live with a partner as if they are married.”

It is a consequence of deep-rooted socio-cultural norms and entrenched gender inequalities, which end up disproportionately impacting girls. In a patriarchal society such as India, girls are often raised with the ultimate goal of marriage.

They are confined to the household and not educated or expected to enter the workforce. Thus, until they are married, they are seen as a financial burden by the families, and marrying them off early is not only consistent with tradition but also more economically feasible. The risk of an extramarital pregnancy – which can endanger marriage prospects and make the girl a financial liability for an indefinite period – also makes child marriage seem to be a solution instead of a problem for many Indian communities.¹⁴¹

Thus, even though they are illegal, child marriages have a wide societal sanction. This is evident from the recently released fifth round of the National Family Health Survey, according to which nearly one-fourth of women aged between 20 and 24 were reported to have been married before 18. The decrease is marginal from the last round of the survey conducted in 2015-'16, despite the fact that the existing child marriage law has been in place for over four decades. The proposed legislation to raise the legal marriage age for girls to 21 years can have several harmful consequences:

- **Possible misuse of the law:** “According to a survey by Partners for Law in Development, 65% of the cases under the existing child marriage law were in response to elopement (not necessarily involving marriage) and were filed by disapproving parents or families. These cases would be wrongfully filed to harass the couple, their age or legality of the marriage notwithstanding. Increasing the age to 21 will bring more consenting adults who choose to

¹⁴¹ < <https://frontline.thehindu.com/social-issues/gender/the-prohibition-of-child-marriage-amendment-bill-has-a-flawed-notion-of-gender-justice/article38054966.ece> > accessed 3 July 2022.

marry under the threat of such harassment, and could become a tool for people to oppose inter-religious and inter-caste marriages”.

- **Disempowerment of women:** “A 2008 Law Commission report on reforming family law recommended a uniform age of marriage for boys and girls at 18 years and not 21. The reason: if all citizens can vote, enter contracts, be guardians, tried as adults for crimes they commit at 18, why should not they be allowed to get married as well, regardless of their gender? The new law could curtail the freedom of choice of a greater number of women”.
- **Possible increase in sex-selective practices:** “The current socio-economic system makes people want to marry their daughters as soon as they can or choose not to have a daughter at all. Increasing the legal marriage age without changing patriarchal social norms can result in parents feeling even more “burdened” by what they view as an additional responsibility of the girl child, which in turn could lead to an increase in sex-selective practices”.

6.9 Judicial Trend- Contradictions to Consistency:

Marriage was considered to be a one-sided decision making process with little or no involvement of the woman’s interest. Rukhmabai became the first lady who at a tender age refuted to go and stay with her husband to whom she was married when she was 11 years old. To the Privy Council too, this was a very bold and unheard proposition where she spoke about the fact that she did not consent to the wedding. Although the case was settled out of court, it became a starting point for debate with many people supporting Rukhmabai too. This was followed by Phulmonee’s case wherein forced sexual intercourse with a little girl Phulmonee by her husband caused irreparable injuries and she bled to death. These cases backed by activism for rights of the children led to the enactment of the first law on child marriage i.e. The Child Marriage Restraint Act, 1929.

The Child Marriage Restraint Act, 1929 was also an empty letter. It did not contribute in any considerable way in the reduction of child marriages. There were very few convictions under the CMRA too. The courts were seemingly reluctant to find adults guilty under the Act. Under the CMRA, child marriage was upheld to be valid in many judgements like:

- Durga Bai vs. Kedarmal Sharma,
- Shankerappa v. Sushilaba,
- Smt. Lila Gupta v. Lakshmi Narain and others,
- Rabindra Prasad v. Sita Das,
- William Rebello v. Angelo Vaz
- Neetu Singh v. State and others, and
- Ravi Kumar v. The State and Anr.

The old CMRA further prohibited complaints after a year of marriage which made the prosecutions under the Act very difficult. Though the law itself was present but it failed to have an impact that it should have had. The Act also created a difference in age of girls and boys when defining age of majority for the purpose of marriage. The threshold for boys was always kept higher than girls. This inequality has been heavily debated to be rooted in gender stereotypes and which further perpetrates the occurrence of these marriages. Sadly this difference has continued to exist in defining majority for boys and girls.

The PCMA 2006 was a big sigh of relief. The Act was able to amend the shortfalls that existed in the former CMRA. The PCMA increased the penalties and punishments which was a welcome step. There were also certain categories introduced wherein the marriage was declared null and void. Child marriages by themselves have still continued to retain their nature and status of voidable under the law. The minor who is married has the right to have his/her marriage annulled till he/she attains majority and an additional period of 2 years post attaining majority. Besides these, there are other provisions too that were inserted in favour of the girl child, example, maintenance etc.

Despite these efforts, child marriages have continued to plague the Indian society. The reasons for the same have been multi-fold and multi-dimensional. The PCMA has also had its own set of failures. One of the most arguable points has been that it makes child marriage voidable and not void *ab initio*. It has also been criticized for not inserting a section on its primacy over the Personal laws. The law also does not provide for compulsory registration of marriages which can be a contributor for this practise to be eliminated. To cure the same, in *Seema vs. Ashwini Kumar* the Supreme Court noted:

“If the record of marriage is kept, to a large extent, the dispute concerning solemnization of marriages between two persons is avoided. As rightly contended by the National Commission, in most cases non registration of marriages affects the women to a great measure. If the marriage is registered it also provides evidence of the marriage having taken place and would provide a rebuttable presumption of the marriage having taken place. Though, the registration itself cannot be a proof of valid marriage per se, and would not be the determinative factor regarding validity of a marriage, yet it has a great evidentiary value in the matters of custody of children, right of children born from the wedlock of the two persons whose marriage is registered and the age of parties to the marriage. That being so, it would be in the interest of the society if marriages are made compulsorily registrable. Accordingly, we are of the view that marriages of all persons who are citizens of India belonging to various religions should be made compulsorily registrable in their respective States, where the marriage is solemnized.”

The court thereby gave a direction to the Central and State government to make rules and notify them for making registration of marriages compulsory. This however, even after a decade of the judgement, has not been implemented in full. The Central bill on Compulsory registration of marriages has not yet been passed. This Bill was introduced in order to amend the Registration of Births and Deaths Act, 1969 to provide for compulsory registration of marriages irrespective of the religious backgrounds that the parties to the marriage.

According to the Law Commission 270th Report:

“The Amendment Bill of 2012 was passed by Rajya Sabha on 13.08.2013. However, the said Bill could not be taken up for consideration in the Lok Sabha and lapsed on the dissolution of the Fifteenth Lok Sabha on the 21st February, 2014. While considering the Bill on a reference from the Rajya Sabha, the Standing Committee hoped that the Bill would act as a milestone to protect women in matters of maintenance and property rights in addition to putting an effective check on bigamous relationships.”

“The Legislative Department based on the earlier Bill thereupon prepared a fresh draft Bill on the Registration of Birth and Death (Amendment) Bill, 2015. This bill is due to be legislated upon”.

Under the CMRA, the marriages were often held perfectly valid. The judiciary took mixed views when implementing the PCMA. While one approach was to treat the marriage as void as in the cases of Pratapa Ram v. State and Annider Kaur v. State of Punjab and Others, the other approach was “valid though voidable” as held in the

cases of G. Saravanan v. The Commissioner of Police and Bholu Khan v. State of NCT of Delhi and Others. Another approach which is a more constrained view of “voidable but not valid” was taken in T. Sivakumar v. Inspector of Police wherein the Madras High Court held:

“The marriage contracted by a person with a female of less than 18 years is voidable and the same shall be subsisting until it is annulled by a competent Court under Section 3 of the Prohibition of Child Marriage Act. The said marriage is not a “valid marriage” strict sensu as per the classification but it is “not invalid”. The male contracting party shall not enjoin all the rights which would otherwise emanate from a valid marriage stricto sensu, instead he will enjoin only limited rights.”

During the last decade of the PCMA, many decisions of different courts were rooted in the recognition that child marriage is a gross human rights violation. The purpose of the enactment of the PCMA has been discussed in the judgement rendered by the Delhi High Court in Association for Social Justice & Research v. Union of India & others, the Court has discussed the arguments put forth by Sociologists on the issue in the following words:

“Sociologists even argue that for variety of reasons, child marriages are prevalent in many parts of this country and the reality is more complex than what it seems to be. The surprising thing is that almost all communities where this practice is prevalent are well aware of the fact that marrying child is illegal, nay, it is even punishable under the law. NGOs as well as the Government agencies have been working for decades to root out this evil. Yet, the reality is that the evil continues to survive. Again, sociologists attribute these phenomenon of child marriage to a variety of reasons. The foremost amongst these reasons are poverty, culture, tradition and values based on patriarchal norms. Other reasons are: low-level of education of girls, lower status given to the girls and considering them as financial burden and social customs and traditions. In many cases, the mixture of these causes results in the imprisonment of children in marriage without their consent. The present case is a telling example, which proves the sociologists correct”.

The purpose and rationale behind the PCMA 2006 is that there should not be a marriage of a child at a tender age as he/she is neither psychologically nor physically fit to get married. There could be various psychological and other implications of such marriage, particularly if the child happens to be a girl. In actuality, child marriage is a violation of human rights, compromising the development of girls and often resulting in early pregnancy and social isolation, with little education and poor vocational

training reinforcing the gendered nature of poverty. Young married girls are a unique, though often invisible, group. Required to perform heavy amounts of domestic work, under pressure to demonstrate fertility, and responsible for raising children while still children themselves, married girls and child mothers face constrained decision making and reduced life choices. Boys are also affected by child marriage but the issue impacts girls in far larger numbers and with more intensity. Where 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. Some of the ill-effects of child marriage can be summarized as under:

- “Girls who get married at an early age are often more susceptible to the health risks associated with early sexual initiation and childbearing, including HIV and obstetric fistula”.
- “Young girls who lack status, power and maturity are often subjected to domestic violence, sexual abuse and social isolation”.
- “Early marriage almost always deprives girls of their education or meaningful work, which contributes to persistent poverty”.
- “Child Marriage perpetuates an unrelenting cycle of gender inequality, sickness and poverty”.
- ‘Getting the girls married at an early age when they are not physically mature, leads to highest rates of maternal and child mortality’.

“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. Child marriage also has considerable implications for the social development of child brides, in terms of low levels of education, poor health and lack of agency and personal autonomy. The Forum on Marriage and the Rights of Women and Girls explains that- where these elements are linked with gender inequities and biases for the majority of young girls... their socialization which grooms them to be mothers and submissive wives, limits their development to only

reproductive roles. A lack of education also means that young brides often lack knowledge about sexual relations, their bodies and reproduction, exacerbated by the cultural silence surrounding these subjects. This denies the girl the ability to make informed decisions about sexual relations, planning a family, and her health, yet another example of their lives in which they have no control. Women who marry early are more likely to suffer abuse and violence, with inevitable psychological as well as physical consequences. Studies indicate that women who marry at young ages are more likely to believe that it is sometimes acceptable for a husband to beat his wife, and are therefore more likely to experience domestic violence themselves. Violent behaviour can take the form of physical harm, physical harm, and psychological attacks, threatening behaviour and forced sexual acts including rape. Abuse 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. Early marriage has also been linked to wife abandonment and increased levels of divorce or separation and child brides also face the risk of being widowed by their husbands who are often considerably older. In these instances, the wife is likely to suffer additional discrimination as in many cultures divorced, abandoned or widowed women suffer a loss of status, and may be ostracized by society and denied property rights”.

The PCMA has been enacted keeping in view the aforesaid considerations in mind.

The year 2017 saw some phenomenal changes taking place around the issue of child marriage. *The Independent Thought v. Union of India* judgement passed by the Supreme Court of India, which shall be discussed henceforth, is the first judgement by the highest court in deciding some of the key issues pertaining around the issue of child marriage. Some of the key ingredients of this judgement include the recognition of marital rape within prohibited child marriages as well as an establishment of primacy of the PCMA over all religion based personal laws. The court while commenting on the pro-child legislations that currently exist noted that:

“It is obvious from a brief survey of the various statutes referred to above that a child is a person below 18 years of age who is entitled to the protection of her human rights including the right to live with dignity; if she is unfortunately married while a child, she is protected from domestic violence, both physical and mental, as well as from physical and sexual abuse; if she is unfortunately married while a child,

her marriage is in violation of the law and therefore an offence and such a marriage is voidable at her instance and the person marrying her is committing a punishable offence; the husband of the girl child would be committing aggravated penetrative sexual assault when he has sexual intercourse with her and is thereby committing a punishable offence under the POCSO Act. The only jarring note in this scheme of the pro-child legislations is to be found in Exception 2 to Section 375 of the IPC which provides that sexual intercourse with a girl child between 15 and 18 years of age is not rape if the sexual intercourse is between the girl child and her husband. Therefore, the question of punishing the husband simply does not arise. A girl child placed in such circumstances is a child in need of care and protection and needs to be cared for, protected and appropriately rehabilitated or restored to society. All these 'child-friendly statutes' are essential for the well-being of the girl child (whether married or not) and are protected by Article 15(3) of the Constitution. These child-friendly statutes also link child marriages and sexual intercourse with a girl child and draw attention to the adverse consequences of both."

The court further emphasized on the need to protect the bodily integrity as well as reproductive choices of the girl child who is left to her miserable fate of an early marriage. The court took the support of various judgements including *State of Maharashtra v. Madhukar Narayan Mardikar*, *Suchitra Srivastava v. Chandigarh Administration*³⁷⁶ and *Devika Biswas v. Union of India* to throw light on the point of reproductive rights of women including special emphasis on the girl child who has little or practically no say in reproduction after a child marriage. The Supreme Court noted saying:

"The discussion on the bodily integrity of a girl child and the reproductive choices available to her is important only to highlight that she cannot be treated as a commodity having no say over her body or someone who has no right to deny sexual intercourse to her husband. The human rights of a girl child are very much alive and kicking whether she is married or not and deserve recognition and acceptance".

Recognising that sexual violence has a damaging impact not just on the body of a girl but also leaves deep psychological wounds on the mind of the victim, the court cited and put emphasis on the decision of *State of Karnataka v. Krishnappa* wherein it was held:

"Sexual violence apart from being a dehumanising act is an unlawful intrusion of the right to privacy and sanctity of a female. It is a serious blow to her supreme honour and offends her self-esteem and dignity - it degrades and humiliates the victim and where the victim is a helpless innocent child, it leaves behind a traumatic experience".

The Supreme Court went on to say in this regard that:

“If such is the traumatic impact that rape could and does have on an adult victim, we can only guess what impact it could have on a girl child – and yet it is not a criminal offence in the terms of Exception 2 to Section 375 of the IPC but is an offence under the POCSO Act only. An anomalous state of affairs exists on a combined reading of the IPC and the POCSO Act. An unmarried girl below 18 years of age could be a victim of rape under the IPC and a victim of penetrative sexual assault under the POCSO Act. Such a victim might have the solace (if we may say so) of prosecuting the rapist. A married girl between 15 and 18 years of age could be a victim of aggravated penetrative sexual assault under the POCSO Act, but she cannot be a victim of rape under the IPC if the rapist is her husband since the IPC does not recognize such penetrative sexual assault as rape. Therefore such a girl child has no recourse to law under the provisions of the IPC notwithstanding that the marital rape could degrade and humiliate her, destroy her entire psychology pushing her into a deep emotional crisis and dwarf and destroy her whole personality and degrade her very soul. However, such a victim could prosecute the rapist under the POCSO Act. We see no rationale for such an artificial distinction.”

Upon the Union’s argument that recognising marital rape within child marriages may lead to destroying the institution of marriage, the Supreme Court clarified in the most direct way saying:

“The view that marital rape of a girl child has the potential of destroying the institution of marriage cannot be accepted. Marriage is not institutional but personal – nothing can destroy the ‘institution’ of marriage except a statute that makes marriage illegal and punishable. A divorce may destroy a marriage but does it have the potential of destroying the institution of marriage? A judicial separation may dent a marital relationship but does it have the potential of destroying the ‘institution’ of marriage or even the marriage? Can it be said that no divorce should be permitted or that judicial separation should be prohibited? The answer is quite obvious.

Looked at from another perspective, the PCMA actually makes child marriages voidable and makes the parties to a child marriage (other than the girl child) punishable for an offence under the said Act. For someone who supports the institution of marriage, nothing could be more destructive of the institution of marriage than the PCMA which makes a child marriage voidable and punishable on the one hand and on the other, it otherwise collaterally legitimizes the pernicious practice of child marriages. It is doubtful if the Parliamentary Standing Committee intended such a situation along with its attendant adverse and detrimental impacts and so we leave it at that.”

The court while deciding the petition also mentioned that:

“Law cannot be hidebound and static. It has to evolve and change with the needs of the society. Recognising these factors, the Parliament increased the minimum age for marriage. The Parliament also increased the minimum age of consent but the inaction in raising the age in Exception 2 is by itself an arbitrary non-exercise of power. When the age was being raised in all other laws, the age under Exception 2 should also have been raised to bring it in line with the evolving laws especially the laws to protect women and the girl child aged below 18 years. Therefore, I have no hesitation in holding that the Exception 2, in so far as it relates to the girl child below eighteen years, is unreasonable, unjust, unfair and violative of the rights of the girl child. To that extent the same is arbitrary and liable to be set aside. There can be no dispute that a law can be set aside if it is discriminatory. Some elements of discrimination have already been dealt with while dealing with the issue of arbitrariness. However, there are certain other aspects which make Exception 2 to Section 375 IPC in so far as it deals with the girl child totally discriminatory. The law discriminates between a girl child aged less than 18 years, who may be educated and has sexual intercourse with her consent and a girl child who may be married even before the age of 15 years, but her marriage has been consummated after 15 years even against her consent. This is invidious discrimination which is writ large. The discrimination is between a consenting girl child, who is almost an adult and non-consenting child bride. To give an example, if a girl aged 15 years is married off by her parents without her consent and the marriage is consummated against her consent, then also this girl child cannot file a criminal case against her husband. The State is talking of the reality of the child marriages. What about the reality of the rights of the girl child? Can this helpless, underprivileged girl be deprived of her rights to say ‘yes’ or ‘no’ to marriage? Can she be deprived of her right to say ‘yes’ or ‘no’ to having sex with her husband, even if she has consented for the marriage? In my view, there is only one answer to this and the answer must be a resounding NO. While interpreting such a law the interpretation which must be preferred is the one which protects the human rights of the child, which protects the fundamental rights of the child, the one which ensures the good health of the child and not the one which tries to say that though the practice is “evil” but since it is going on for a long time, such “criminal” acts should be decriminalised.”

It can accordingly be seen that the Supreme Court has taken a very open-minded approach in deciding the case and therefore read down Exception 2 to Section 375 on the following mentioned grounds:

“Since this Court has not dealt with the wider issue of marital rape, Exception 2 to Section 375 IPC should be read down to bring it within the four corners of law and make it consistent with the Constitution of India.

- 1) *In view of the above discussion, there is an opinion that Exception 2 to Section 375 IPC in so far as it relates to a girl child below 18 years is liable to be struck down on the following grounds:–*

”it is arbitrary, capricious, whimsical and violative of the rights of the girl child and not fair, just and reasonable and, therefore, violative of Article 14, 15 and 21 of the Constitution of India”;

2) *“it is discriminatory and violative of Article 14 of the Constitution of India” and;*

3) *“it is inconsistent with the provisions of POCSO, which must prevail”. Therefore, Exception 2 to Section 375 IPC is read down as follows: **“Sexual intercourse or sexual acts by a man with his own wife, the wife not being 18 years, is not rape”***

It is, however, made clear that this judgment will have prospective effect.”

This judgement has therefore been a resolution to some of the legal lacunas that existed with respect to child marriages. The recognition of marital rape within child marriages must act as a deterrent to the further perpetuation of the practise. This recognition is a stepping stone towards the elimination of child marriages.

6.10 Highlighting Gaps:

The Independent Thought judgement has cured one of the key lacunas with respect to rape within child marriages. However, there are still lacunas in laws that need attention. While they have been discussed above, they are summed up as:

- The analysis of the Independent Thought judgement clearly establishes that sexual intercourse by a husband with his own wife, who is below 18 years of age is rape. POCSO also says that this shall amount to aggravated penetrative sexual assault. However, the prosecution can happen only once a complaint in this regard is made within one year. Our country’s socio-economic as well as political environments do not promote child brides to go and complain at all. This therefore means that a defined crime continues unabated every day on the child bride and there is absolutely nothing that the State can do about it until it is reported. This lacuna or problem itself is the backbone for the need of child marriages being declared *void ab initio*.
- The Supreme Court has established primacy of the PCMA over the various Personal laws. There is an urgent need to bring all the laws in harmony with the PCMA so that the implementation mechanisms for preventing child marriages are strengthened.
- There is a need to recognise child marriage as a form of domestic violence for the various ill-effects it has on the lives of minors who fall victim to the same.

- Child brides who are married must be included within the category of Child in Need of Care and Protection under the Juvenile Justice Act. There also need to be sound rules established with respect to the custody of married minor girl child.
- With recognition of rape within child marriage, there is a need to declare the same void *ab initio* by way of an amendment, like the Karnataka amendment to the PCMA.
- It is also imperative that the features of this judgement are communicated or reach the masses where the incidence of child marriage is high. Girls need to be made aware of their rights.

CHAPTER-7

CONCLUSION AND SUGGESTIONS

“There is a large percentage of females in the age group 15-19 years at risk for child marriage and motherhood, given India’s young age structure. It is therefore imperative from social, economic, health and development perspectives that child marriage and early childbirth receive greater research and policy priority. The present study has attempted to foster a better understanding of the issues on child marriage from a purely quantitative approach. However, as in any research, there are inherent limitations in the study and these limitations need to be weighed in the process of setting the agenda for future research on child marriage in India and many other countries.”

“The commitment of the Indian government to eliminate child marriage by 2030 follows Goal 5.3 of the United Nations Sustainable Development Goals. Along with the initiative at the national level, states are making the elimination of child marriage a higher priority. For example, Rajasthan launched a Strategy and Action Plan for the Prevention of Child Marriage in March 2017.”

An equal society can be envisioned only when children in India will be treated equally. There has to be a movement from a superficial sense of equality to that which is real and uncompromising. Every single child marriage poses a threat to this real equality and must therefore be prevented.

The girls vulnerable today (2018) i.e. those who are below the age of 18 years are all born in the 21st century i.e. born in the year 2000 or after. They deserve an India free of this social evil.

The trajectory of this study began with introducing the issue of child marriage for the purpose of correctly positioning the study within the legal as well as the rights framework. It moved into a discussion of the international legal framework and standards for the protection of women and children on the specific issue of child marriage. India has ratified some of the major human rights treaties including the CRC and CEDAW. India, being a part of one of the eight SAARC nations, also has regional commitments on ending child marriage. At the HLPF 2017, India did its Voluntary National Reporting on the progress of the SDGs. The third cycle of

the UPR was also conducted in 2017 and India received recommendations on child marriage from 10 countries. It was found from analysing all of the above that India needs to take stronger steps towards fulfilling its international obligations. Steps at National level need to be strengthened significantly in order to honour the international commitments so far made.

The development of law around child marriage is critical for its elimination. The current legislation i.e. The PCMA 2006, is definitely an improvement over the former and first legislation i.e. Child Marriage Restraint Act, 1929. However, the Act has various loopholes that need rectification. One of the biggest ones is making child marriages voidable and not *void ab initio*. The recent Karnataka Amendment to the PCMA has been commended for it makes these marriages *void ab initio*. The same model should be implemented within the parent legislation.

Child marriage was also analysed in its relation to other laws to highlight the gaps which include married girls are not covered explicitly in Juvenile Justice (Care and Protection of Children) Act, 2015 as children in need of care and protection (CNCP) and they are not included within the definition of aggrieved persons for the purpose of domestic violence under the PWDVA, 2005.

Suggestions:

Globally, a number of tactics have been successful in lowering the number of child marriages, the researcher comes to these suggestions-

1. The researcher supports the 2008 Law Commission's suggestion to set the marriage age at 18 instead of 21 for both boys and girls. People should be able to select their partners at age 18, the same age they can vote.
2. It is very obvious that allowing females to finish their education gives them the chance to become financially independent and delays marriage. The National Family Health Survey-4 shows that for women without any formal education, the median age of marriage is 17.2 years, whereas for those with at least 12 years of education, it is 22.7 years. Education gives individuals the agency to defend their sexual and reproductive rights in their choice of marriage, allowing them to fulfil their objectives and live a life of dignity. Must need to focus on girls education.

3. Economic and social empowerment of girls is very important. In order for teenage females to reach their full economic potential, it is crucial to invest in their capacity and skill development. People who are financially empowered frequently have more control over their houses and future. Girls may be able to refuse an early marriage and their families won't see them negatively. It's also important to pay more emphasis to providing girls and women with secure employment possibilities.
4. Registration of marriages is very important. Despite a Supreme Court decision requiring marriage registration, state administrations haven't done anything to carry out the rule. The governments must create a system to compel the mandatory registration of all births, deaths, and weddings (including legal, religious, and customary partnerships) in order to track marriages and the age of marriage. Action should also be taken against anyone who encourages or permits child marriages in rural regions.

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