

CHILD MARRIAGE: A SCOURGE ON INDIAN TRADITION

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Abstract

Child marriages in India are a significant issue, with a high prevalence among girls under the age of 18. Despite efforts to reduce child marriages, the practice remains widespread, especially in rural areas. The root causes of child marriages are often linked to traditions, customs, and patriarchal beliefs. Stronger enforcement of laws and educational and employment opportunities for girls are crucial in combating this problem. This research is divided into two sections: the first discusses policy-level initiatives, while the second focuses on legislative measures to prevent child marriages¹.

Key Words: Education – awareness – Age – nullity - prohibition

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Introduction

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The study is exclusively doctrinal and primarily focuses on the review of policies and prevailing legislations, particularly 'the Prohibition of Child Marriage Act, 2006'.

Marriage has been a prevalent institution in every civilization. The relationship is forged between individuals who pledge to provide mutual assistance in times of well-being and infirmity. This activity is necessary to guarantee the perpetuity of civilization, considering the mortality of human beings. Marriage is a legal means to authorise procreation, guaranteeing the perpetuation and persistence of a particular community's distinctiveness and averting its decline or eradication. However, this mutual obligation is comprehensible within a particular phase of life. A person below the age of fifteen cannot be fairly expected to understand this complex relationship and take on the duties of an independent married life. In contrast, it will exert a detrimental impact on the impressionable minds of children. The combination of pressure from the in-laws to have children and a lack of understanding about sex education presents a substantial risk to the well-being of the girl child who will get pregnant, especially at an earlier age. This can also be ascribed to the heightened child mortality rate in the country². As a result of the mother's unfavourable circumstances for raising another child at a young age, the infants either die in the mother's womb or shortly after birth³.

India is ranked 13th among countries with a high risk of child marriages, according to the International Center for Research in Women (ICRW). Approximately 47% of girls in India get married before they turn 18 years old⁴. According to the report “more than 40% of the world’s child marriages take place in India. Almost half of all girls here marry before the age of 18 years; 47% of women aged 20 to 24 were married before age 18”⁵. The report also says there is a reduction of 7% in child marriages in India from 1992-93 to 2005-2006. However, ‘in many states, the prevalence of child marriage remains around 60%, with the greatest rates observed in Bihar, Jharkhand, Rajasthan, and Andhra Pradesh’. Rural India experiences a higher prevalence of the condition compared to metropolitan areas, with rates of 56% and 29% respectively⁶. Children, even at a young age, are expected to assume the responsibilities of adulthood that even some thirty-year-olds are hesitant to undertake until they have achieved perfect stability in life⁷. Hence, it is imperative to promptly terminate this practice, for which India has enacted certain legislations that exist only in theory and not in actuality.

Many legislations regulate the solemnisation of marriages in India. The notable legislations are *the “Child Marriage Restraint Act, 1929 (hereinafter CMRA, 1929), the Prohibition of Child Marriages Act, 2006 (hereinafter CMA, 2006), The Protection of Children from Sexual Offences Act, 2012 (hereinafter POSCA, 2012), the Juvenile Justice Act, 2015”*, several personal laws etc.

² ‘Doskoc, P’. “Child Marriage Associated With Suboptimal Reproductive Health.” *International Perspectives on Sexual and Reproductive Health* 39, no. 2 (2013): 105–6. <http://www.jstor.org/stable/41959964>.

³ ‘Pramila, B. “CHILD MARRIAGE: SCENARIO IN INDIA.” *Proceedings of the Indian History Congress* 74 (2013): 998–1008’. Available on <http://www.jstor.org/stable/44158905>.

⁴ Available on https://www.icrw.org/related-content/?_issues=men-and-masculinities. Accessed on 18 January 2022.

⁵ Plan International “Report on Child Marriages in India”,(2022) ‘Available on https://planinternational.org/uploads/2022/01/child_marriage_in_india_low_res.pdf, Accessed on 23 January 2022’.

⁶Supra

⁷ ‘Roy, Raj Coomar. “Child Marriage in India.” *The North American Review* 147, no. 383 (1888): 415–23. Available on <http://www.jstor.org/stable/25101631>’.

Despite the implementation of multiple legislations, law commission studies, and research articles, the unfortunate situation of children has not been improved yet⁸. There exist isolated regions that go outside the practical reach of regulation due to the challenge of effectively monitoring these locations⁹.

The subject of Child Marriage was initially addressed in the Indian Penal Code, which dates back to the 1860s. The legislation includes a provision for penalizing husbands who engage in sexual intercourse with their wives who are below a specified age, however, the specific age is not explicitly stated. Subsequently, it was revised that the husband would face punishment for engaging in sexual intercourse with his wife who is under the age of 15, as this act would be classified as rape. This was the initial reform implemented to combat the abhorrent practice of child marriage.

Successively, a specific law was enacted, namely the '*Child Marriage Restraint Act, 1929*', also called as the *Sarda Act*, with the explicit aim of eradicating the custom of child marriages. Initially, the Act set the minimum age for girls to be eligible for marriage at 14 years. However, this requirement was subsequently revised and increased to 18 years. The decision is made with consideration for the girl's health concerning her ability to have a child at the young age of 14 or 15.

Key factors for Child Marriages in India

Numerous factors contribute to child marriages in India. Recently, the NGO '*Child Rights and You*' did empirical research identifying numerous factors that exacerbate child marriages in India¹⁰. Such reasons are mentioned hereunder

- a. Insufficient or restricted educational opportunities, especially for females, compel them to discontinue their studies and expose them to the danger of child marriage. The insufficient educational opportunities, stemming from accessibility, availability, and cost concerns, compel girls to abandon their schooling, rendering them susceptible to child marriage. Furthermore, females' education is devalued relative to boys' education¹¹.
- b. The practice of child marriage is more widespread among lower socioeconomic classes: The victim's socioeconomic level and imply that child marriage is more common among impoverished segments of society. In addition to being a tradition, poverty is a significant

⁸ "Will Child Marriages Ever End? Child Marriages Are Meant to 'Protect' Girls, They Ruin Their Lives Instead." *Economic and Political Weekly* 48, no. 44 (2013): 9–9. Available on <http://www.jstor.org/stable/23528793>.

⁹ Gupta, Pallavi. "Child Marriages and the Law: Contemporary Concerns." *Economic and Political Weekly* 47, no. 43 (2012): 49–55. <http://www.jstor.org/stable/41720300>.

¹⁰ Child Rights and You and others, "Child Marriage in India: A Research Study" (Child Rights and You 2021) <<https://www.cry.org>>

¹¹ UNICEF "Child Marriage South Asia An Evidence Review" (2019) Available at <http://digitalrepository.fccollege.edu.pk/handle/123456789/949> (Last visited on July 2023)

underlying factor contributing to child marriage, particularly among some socially marginalized communities.¹²

- c. The lack of awareness of the adverse effects of child marriage perpetuates the continuation of this practice. Child marriage is still considered a significant tradition by 59% of parents and parents-in-law. A mere 16% of parents and parents-in-law, along with 34% of child brides and grooms, recognize the adverse effects of child marriage¹³.
- d. Perceived notions of women's honor remain a critical determinant in child marriage. In addition to factors like insufficient educational and career opportunities, the apprehension over females eloping, engaging in romantic relationships, or premarital sexual activity has become a predominant motivation for parents to arrange marriages for their daughters upon reaching puberty, often between the ages of 15 and 17. Additionally, reduced dowry, preservation of women's 'honor', increased availability of grooms, and smoother adaptation for girls in new households are factors contributing to the preference for child marriage¹⁴.
- e. The application of legal requirements concerning child marriage is constrained by a deficiency of information or understanding of these regulations. More than fifty percent of respondents (parents/in-laws and child brides/grooms) were uninformed of the legal minimum age for marriage. Ninety-six percent of child brides were oblivious to the POCSO Act. A significant proportion of child brides (49%) were uninformed of the Dowry Prohibition Act of 1961, compared to child grooms (29%). Furthermore, the dowry system remained prevalent in their society despite being a penal offence¹⁵.

Various policies dealing with Child Marriage

The government has issued various policies and schemes to curb the child marriages in our society. Some of the policies are hereunder:

- a. **The Eleventh and Twelfth Five-Year Plans:** The Eleventh Five-Year Plan addressed child marriage by advocating for "compulsory registration of marriages and verification of age at the time of marriage." In contrast, the Twelfth Five Year Plan (2012–2017) emphasizes “enhancing the role of Panchayats in enforcing the registration of births, deaths, marriages, and migration” to combat trafficking and child marriage, while also empowering Panchayats to focus on eradicating violence against women and girls and

¹² NHRC, UNICEF, “Behavioural Determinants of Child Marriage and Adolescent Pregnancy in Nepal: A Qualitative Study” (2023) Available at <https://elibrary.nhrc.gov.np/handle/20.500.14356/2356> (Last visited on July 2023)

¹³ Supra at 11.

¹⁴ Supra at 12

¹⁵ Geeta Chopra RR, “Child Sexual Abuse in India and the Protection of Children from Sexual Offences (POCSO) Act 2012: A Research Review” (2019) 6 Journal of Social Sciences. “Available on <http://www.pubs.iscience.in/journal/index.php/ijss/article/view/892> (Last visited on July 2023). Also see Pronobesh Chakraborty "Implications of the PA and determinants of child sexual abuse in I insights at the state level, “Implications of the POCSO Act and Determinants of Child Sexual Abuse in India: Insights at the State Level” [2023] Humanities and Social Sciences Communications Available on “<https://www.nature.com/articles/s41599-022-01469-x>” (Last visited on July 2023)”.

achieving universal education. Both measures seek to enhance the implementation mechanisms of the ‘Prohibition of Child Marriage Act, 2006’¹⁶.

- b. **The National Policy for Empowerment of Women, 2001**, asserts that interventions such as the promotion of education, mandatory marriage registration, and initiatives like the *Balika Samridhi Yojna* (BSY) should contribute to postponing the age of marriage, with the objective of eradicating child marriages by 2010. This strategy also addressed the health, education, and social and economic welfare of women¹⁷.
- c. **‘National Youth Policy, 2003’** and the subsequent National Youth Policy, 2014: The policy seeks to underscore the diverse and multifaceted requirements of youth while also highlighting the 11 priority areas and multidimensional actions with targeted tactics to tackle challenges such as child marriage and child labour experienced by adolescents¹⁸.
- d. **National Plan of Action for Children (hereinafter NAPC), (2005 and 2016)**: This strategy, similar to the National Population Policy, seeks to attain complete registration of births, marriages, deaths, and pregnancies by 2010, eradicate child marriage by 2010, and ban the sale of children as well as all types of child trafficking, including for marriage purposes. The 2005 action plan included twelve important themes, one of which was the total abolition of child marriage, while the 2016 action plan intended to reduce the prevalence of child marriage, particularly among females. The NPAC, 2016 aimed to decrease the prevalence rate of underage marriages to 15% by 2021.
- e. **National Policy for Children, 2013-18**: The policy acknowledges that any anyone under the age of 18 is classified as a child, in accordance with the UNCRC. While complying with the constitutional mandate and the guiding principles of the UNCRC, it signifies a transition from a 'needs-based' to a 'rights-based approach.' It has identified four key areas: “survival, health and nutrition, education and development, and protection and participation”. The policy mandates the convergence of diverse stakeholders and coordination across numerous sectors and government levels, acknowledging that a child's needs are multifaceted and need collaboration across several sectors to foster collective action¹⁹.

¹⁶ GOI, “Mid Term Appraisal-Eleventh Five Year Plan2007-2012” (2012) Available on <https://theindiancompetitionlaw.wordpress.com/wp-content/uploads/2013/02/11th-five-year-plan-mid-term-appraisal.pdf> (Last visited on september2023).

¹⁷ G. Moharana "Policies and programmes for women empowerment, Policies and Programmes for Women Empowerment (ICARCIWA 2015) Available on <<https://www.icar-ciwa.org.in/gks/Downloads/Technical%20Bulletins/GenderMainstreaming-WatershedManagement.pdf#page=69> (Last visited on July 2023).

¹⁸ “Sivakumar P, Development Institutions in Knowledge Production and Dissemination: A Case Study in the Context of National Youth Policy (2009)” Available on <http://knowledge4all.com/admin/Temp/Files/8fba28ac-ca43-40a0-9164-00351267110c.pdf> (Last visited on July 2023).

¹⁹ V. Srinivasa Rao, ‘Language and Schooling of Adivasi Children in India: Issues Relating to Their Right to Education (Routledge India 2018) Available on <<https://www.taylorfrancis.com/chapters/edit/10.4324/9780429437076-15/language-schooling-advansi-children-india-srinivasa-rao>>(Last visited on August 2023).

- f. **“National Plan of Action to Prevent Child Marriage in India (2013)”**: This is a well-intentioned and well-crafted document. The objectives are as follows: to enforce ‘the Prohibition of Child Marriage Act (PCMA), 2006’, along with associated laws and policies that deter child marriage; to enhance access to quality education and vocational opportunities; to implement programs that facilitate community mobilization and outreach to alter social norms and attitudes; to cultivate the skills and capacities of adolescent girls and boys; to gather data and initiate research to guide programming and interventions; and to establish monitoring for adolescent girls and boys. Objectives have been enumerated under each of these aims. Each objective includes stated techniques, stakeholders, and indicators²⁰.

To implement these policies, the government has devised specific schemes aimed at effective intervention to promote community growth and to reduce or eliminate cultural practices that victimize children, particularly girls, rendering them susceptible to early marriage.

Meaning of Child under Municipal Law

There are multiple definitions of the child depending upon the requirement. The age at which a child can legally marry is different from the universal age of a child. The universal definition of child means child below the age of 18 years. However, this law does not apply to marriages governed by municipal law. It specifies distinct age requirements for males and females. The CMRA defines ‘child’ as, a boy is considered a child if he is under 21 years old, while a girl is considered a child if she is under 18 years old²¹. Being a child means that the girl is not eligible for marriage. Furthermore, a minor is legally defined as an individual who has not yet reached the age of 18, as stated in Section 2(1)(d). This definition remains unchanged even today in other statutes as well, including ‘*the Prohibition of Child Marriages Act of 2006, The Protection of Children from Sexual Offences Act of 2012, and the Special Marriage Act of 1954*’.

Conflict: Personal law versus Public laws

The Muslim personal law states that the marriageable age of a girl is the age of puberty. This law is in clear conflict with the ‘*Child Marriage Restraint Act, of 1929* (and especially with *the Prohibition of Child Marriages Act, 2006*’. The Supreme Court holds contrasting perspectives on this matter. It was determined that a special law cannot supersede personal law, therefore, Muslim personal law shall prevail over it. However, this perspective has been criticised from a different angle. It is imperative to prioritize the protection of life and freedom as guaranteed by Article 21 of the Indian Constitution. Despite a male being of legal age to marry under Muslim personal law, the ‘Prohibition of Child Marriage Act, 2006’ will be enforced uniformly, irrespective of the religion of the individuals involved.

²⁰ Marina P and others, “How Can Collective Action between Government Sectors to Prevent Child Marriage Be Operationalized? Evidence from a Post-Hoc Evaluation of an Intervention in Jamui ...” [2018] Reproductive Health Available on “<https://link.springer.com/article/10.1186/s12978-018-0552-1>” (Last visited on July 2023).

²¹ Section 2(1)(a) of CMA, 1929.

Consequently, any violation committed under the Act shall be subject to punishment. The Supreme Court's ruling in *Hardev Singh v. Harpreet Kaur*²², said that if a girl is of legal age to marry under the Act, the marriage would not be considered a penal act under the Act of 2006. Therefore, it is imperative to ensure that life and liberty are adequately safeguarded under the law. Nevertheless, if it is proven by proof that the petitioner is under the age of 18 in the current situation, then the directive in this order will not prevent the continuation of the legal processes as defined in Section 15. Hence, the disparity between personal laws and public criminal law has consistently been a focal point of the extensive discourse, and this has been repeatedly emphasized via numerous rulings. The High Court's previous rulings in the matter of '*Shoukta Hussain and others v. State of Punjab*'²³ have once again highlighted the unresolved legal question of whether the 2006 Act supersedes the personal laws that apply to Muslims.

The role of 'Prohibition of Child Marriage Act, 2006'

A more successful piece of legislation to address the problem of child marriage in the nation is the Prohibition of Child Marriage Act of 2006. Even yet, there are still certain flaws in this modern rule that may be fixed. The particular acts that are considered to be crimes are outlined in the BNS. The fact that the Act does not automatically declare child marriage illegal is another important problem that has come to light. The act just gives the parties the option to declare it invalid. There has been criticism claiming that young people who get married would have to go through psychological anguish. By the time the victim reaches maturity and files for divorce, the damage they have suffered has already happened.

In its 205th Report, released in February 2008, the Law Commission of India examined three distinct global laws pertaining to child marriage. The panel concluded that all of these nations considered child marriage to be invalid and illegal from the start and that any sexual activity conducted without permission constituted rape.

In addition, the State must take action to guarantee that child marriage offences are prosecuted. The National Crime Records Bureau states that in 2005, there were just 122 documented cases of child marriage. The National Family Health study, which was carried out in 2005, revealed that about 50% of females in the nation are married before they reach 18. This study is insignificant in relation to that survey²⁴.

Moreover, retroactively applying the Act is another improvement that may be considered. The benefit of not continuing to be a victim of child marriages may be lessened if the legislation is applied retrospectively and the statute of limitations is extended. In its 205th report, the Law Commission echoed this viewpoint. However, this poses a policy question of whether the state is prepared to risk social integrity by permitting possible family divorce. It is essential to investigate

²² Criminal Appeal NO. 1331 OF 2013, judgement 2019. Also see *Shabnam vs Mohd. Shafiq*, AIR 2004 RAJ 303.

²³ 2021 (1) Law Herald 562. Also see *Nargis v. State of Punjab*, CRWP-12067-2021, reported in https://www.livelaw.in/pdf_upload/crwp12067202122122021punjab-and-haryana-hc-406703.pdf.

²⁴ Michael L and M. Srinivasan "Child Marriage in India: A Critical Appraisal" Available on https://www.researchgate.net/profile/Michael-Valan/publication/342493487_Child_Marriage_in_India_A_Critical_Appraisal/links/5ef73328a6fdcc4ca433b091/Child-Marriage-in-India-A-Critical-Appraisal.pdf last visited on August 2023.

these social issues further. In the end, compared to the 1929 Act, the Prohibition of Child Marriages Act, 2006 has advanced considerably. Still, there remains a considerable way to go.

Agencies to prevent child marriage

The Act primarily establishes the criminal provisions for individuals who violate the provisions stated in the legislation. This applies to males who are adults under the age of twenty-one, as well as adult males over the age of twenty-one who enter into a child marriage. It also applies to anybody who participates in, facilitates, or oversees a child marriage. Simultaneously, it specifies that the Code of Criminal Procedure, 1973 will be applicable if the offences committed are recognizable under Section 7 of the Act, 1929.

Court of Judicial First Class Magistrate: According to the Act, the Magistrate has the authority to impose injunctions under Section 12. However, only a ‘Metropolitan Magistrate²⁵ or a Judicial Magistrate of the First Class’ can handle the investigation and trial of any offence under the Act. An injunction cannot be granted against any individual in certain situations unless the court has previously notified that individual and provided them with the chance to present their arguments against the issuance of the injunction. According to Section 10 of the Act, the Court has the authority to conduct initial investigations into the offence as soon as it receives the complaint. However, ‘no court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed’²⁶. This restriction legitimises the marriage if the cognizance is not taken within the said period of limitation, and this clause defeats the very purpose of this Act. This legislation was, however, not effective in preventing child marriages in India.

One of the notable features of this legislation is that marriage can be annulled at the discretion of the aggrieved party. Child marriages cannot be rendered null and void under the existing personal laws in India. Upon careful examination of section 12(c) of the Hindu Marriage Act, 1955, it becomes evident that the Act does not permit the annulment of child marriage based only on the child's own volition²⁷. The victim of child marriage is deprived of the ability to voice their opposition to the crime of child marriage under the current circumstances, particularly regarding the personal laws of the country. ‘The Prohibition of Child Marriage Act, 2006’ stipulates that a survivor of child marriage has the right to declare their marriage null and void. As per section 3(3) of the ‘Prohibition of Child Marriage Act, a victim of child marriage has the right to initiate legal proceedings and request a declaration that the marriage is invalid. However, this can only be done within 2 years of reaching adulthood.

Crucial role of Prohibition Officer: The Child Marriage Prohibition Officer is granted broad responsibilities and authority. ‘The Prohibition of Child Marriages Act, 2006 ‘has expanded the responsibilities and authority of the Child Marriage Prohibition Officer as outlined in sections 13 and 16. ‘The Child Marriage Restraint Act of 1929’ also designates an official specifically

²⁵ As per the new Bharatiya Nagarik Suraksha Sanhita, 2023, there is no metropolitan court now in India.

²⁶ Section 9 of CMRA, 1929

²⁷ ‘Susan Lee-Rife et. Al, *What Works to Prevent Child Marriage: A Review of the Evidence*, Studies in Family Planning, Vol. 43, No. 4 (Dec. 2012), pp. 287-303’

responsible for addressing the crime of Child Marriage. Nevertheless, the 2006 Act has expanded the authority and responsibilities of this commissioner. The officer is now required to promote awareness about the detrimental consequences of Child Marriage. Disseminating awareness about the crime of Child Marriage is regarded as a crucial responsibility of the officer. Compared to the 'Child Marriage Restraint Act of 1929', the officer's legal duty was limited to gathering evidence and preventing Child Marriages. There was no need to disseminate awareness regarding child marriage.

Sue moto cognizance: The issue of child marriages can be addressed through the use of suo moto cognizance. According to s13(3) of the 'Prohibition of Child Marriage Act, 2006', it is explicitly stated that a magistrate has the authority to independently recognize and address cases of child marriages. Consequently, a formal written complaint is unnecessary. A magistrate only requires credible information to exercise his discretion. Even a magistrate can take cognizance based on newspaper reports, credible and reasonable information and from his knowledge about such marriages²⁸.

It is possible to employ minimal force to prevent child marriages. The authorization to employ force in order to prevent a civil action demonstrates the significant value attributed to the civil act by the legal system. The institution of marriage not only grants societal approval to two individuals living together but also entails a range of additional personal obligations from both parties. These obligations are implemented to mitigate the societal ramifications in a society characterized by an unstable family structure. The legislature has now correlated this rationale with the reality that if child marriage is widespread, it will inevitably harm society. Child marriage victims can experience enduring psychological trauma, sexually transmitted diseases, and limited access to education. Force may be employed to halt the civil practice of child marriage, given that this illicit and unjust act carries enduring repercussions that profoundly impact the victim's life. The authority for this power is derived from section 13 (5) of the 'Prohibition of Child Marriage Act, 2006'.

In appropriate cases, the court can issue injunctions against such marriages. An injunction cannot be issued without first issuing a show cause notice. The authority to issue injunctions is a constitutional privilege conferred by Article 226 and Article 227, which is entrusted to the High Court. However, in the context of child marriages, the court is required to issue a show-cause notice before granting an injunction. Injunctions are designed to avert potential harm, particularly in situations that require urgent circumstances.

Nevertheless, when it pertains to marriages, the court must use caution. This is due to the fact that marriage not only entails legal ramifications for an individual but also encompasses the presence of societal stigmas. Consequently, an injunction must be issued with prudence, and only after implementing all feasible safeguards. To effectively address the interests of individuals and society in eradicating child marriage, it is recommended to authorize injunctions only after providing a show-cause notice. Nevertheless, the court can only disregard this rule in situations of

²⁸ Section 13(3) of CMA, 2006

emergencies²⁹. This provision is not unconditional. Child marriage is considered null and void from the beginning if an injunction has been issued. The Court has been authorized to issue injunctions³⁰. To enhance the efficacy of this regulation, the statute has additionally implemented a provision that deviates from the general norm regarding marriages. According to the normal marriage rule, a child marriage is considered valid. However, section 14 of the Prohibition of Child Marriage Act, 2006, provides an exception to this rule. It permits the court to give a divorce to a party involved in a child marriage.

As a cognizable and non-bailable offence: By considering the gravity of the offence, child marriage is declared as cognizable and non-bailable. Section 15 of the ‘Prohibition of Child Marriage Act, 2006’, categorizes the act of child marriage as both cognizable and non-bailable. As a result of this law, any police officer has the authority to immediately arrest anyone who is either facilitating or conducting child marriages. A warrant of arrest is not necessary, which is typical for minor offences. Furthermore, the provision that renders the offence non-bailable aligns with the standard practice that requires the perpetrator to remain in judicial custody until the trial concludes. This serves to illustrate the gravity of the offence.

Financial assistance to the victim : The entitlement to financial support until the act of remarriage. This is arguably one of the most significant elements in the new legislation. According to section 4(1) of the ‘Prohibition of Child Marriage Act, 2006’, the court has the authority to exercise its discretion in granting maintenance payments to the girl who is a victim of child marriage. This aligns with the main goal of the legislation, which is to avoid further victimization resulting from the offence committed against the underage girl. This provision is crucial as it provides a means of support to the female party who has been mistreated. The precise amount of maintenance is subject to the court's determination. When giving maintenance, it is important to consider several aspects. These variables include the child's needs, the child's lifestyle throughout the marriage, and the paying capacity of the other party. This provision was not there during the implementation of the ‘Child Marriage Restraint Act of 1929’. This provision places the obligation of child marriage on the male participant to the marriage. This is primarily due to the prevalence of child marriages where men reach the age of marriageability while the girl is still below the legal age.

Nullity of Marriage: The remarkable contribution of the new legislation is to declare the child marriage as null and void at the instance of the victim³¹. Under the old statute, if a child marriage were to occur, it would not render the marriage null and void. It would only punish the offenders of the offence but not undo the offence itself. The statute stipulates that a child marriage can be declared null and void with the request of one party within 2 years after attaining adulthood. The distinction is crucial as it enables a victim of child marriage to invalidate such a union. Without

²⁹ In the case of forced marriage, kidnapping etc the court can stay the proceedings on an urgent basis.

³⁰ Poornima P, “Forced Marriage in India: Legal Recourse and Other Remedies” (2016) Available at https://www.grefiglobal.org/_files/ugd/cf23a6_af0cea71d3f94f9db624add1dceac5ff.pdf#page=39 (Last visited on June 2023)

³¹ Section : 3 of Prevention of Child Marriage Act, 2006

this provision, the sole recourse for a victim of child marriage to obtain relief from the marriage would be to undergo the standard divorce procedures according to the personal laws.

Upon careful examination of section 12(c) of the Hindu Marriage Act, 1955, it becomes evident that the Act does not permit the annulment of child marriage based only on the child's own volition³². The victim of child marriage is deprived of the ability to voice their opposition to the crime of child marriage under the current circumstances, particularly regarding the personal laws of the country³³. However, The Prohibition of Child Marriage Act, 2006 stipulates that a survivor of child marriage has the right to declare their marriage null and void. As per section 3(3) of the Prohibition of Child Marriage Act, a victim of child marriage has the right to initiate legal proceedings and request a declaration that the marriage is invalid. However, this can only be done within 2 years of reaching adulthood.

Child Marriage and POCSO Act

'The Protection of Children from Sexual Offences Act, 2012' (hence referred to as 'the POCSO Act') is a significant legislative measure for the protection of children. The Preamble to the POCSO Act indicates that it was established in accordance with Article 15(3) of the Constitution. The Preamble acknowledges that the paramount interest of a child must be safeguarded, with a child defined in Section 2(d) as anyone under the age of 18 years. The Government of India is obligated to prioritize the best interests of the child, having ratified the 'Convention on the Rights of the Child (CRC)'. The POCSO Act delineates Penetrative Sexual Assault and Aggravated Penetrative Sexual Assault, criminalizing any sexual intercourse with individuals under 18 years of age. Section 3 of the 'Protection of Women from Domestic Violence Act, 2005' (hereinafter 'the DV Act') stipulates that if a husband inflicts harm, injury, or jeopardizes the health, safety, life, limb, or well-being, whether mental or physical, of his wife through physical or sexual abuse, he shall be subject to a protection order and required to compensate his wife. Section 3, Explanation I (ii) defines 'sexual abuse' as including any sexual activity that abuses, humiliates, degrades, or otherwise infringes upon a woman's dignity. Therefore, it is clear that Indian law has the requisite elements to guarantee the protection of children as stipulated by international treaties.

Conclusion

To prevent child marriage in India, it is important to address social determinants such as patriarchy, coercion, social customs, and norms. Child marriage impacts 'the lives of children by exposing them to higher rates of physical, sexual, and emotional violence and lower engagement rates with formal education compared to their unmarried peers. Married children, especially girls, need support for incidents of violence'. The challenges faced for effective implementation of the

³²Supra at 27

³³ Ranjit Malhotra "Family Law and Religion- Indian Experience" 2, 'India and International Law, 487 (2008) Available at https://brill.com/downloadpdf/book/edcoll/9789047430803/Bej.9789004161528.i-570_019.pdf' (Last visited on July 2023)

'Prohibition of Child Marriages Act of 2006' include shortcomings in the statutes, lack of capacity of stakeholders in the field, and shortage of resources to implement it. Social workers also struggle due to a lack of training and familiarity with its provisions and regulations. Recommendations to address these challenges include establishing a kinship care grant, amending the Act, and providing training for all role players involved in its implementation.

The Supreme Court in India plays a crucial role in preventing child marriages by enforcing laws and policies that aim to protect children from being married off at a young age³⁴. The court has the authority to intervene in cases of child marriage and take necessary actions to prevent such unions from happening. The subordinate court also plays a prominent role in regulating these marriages through proactive interventions and prompt remedies. The court must consistently prioritize the well-being of the child. Furthermore, it is imperative to guarantee that the child does not experience ongoing exploitation and abuse due to child marriage. This is demonstrated by the strict regulations that are imposed on the adult individuals involved in child marriage. Community policing also plays a role in preventing child marriages through programs like Neighbourhood Watch and Community-Based Intelligence, which increase citizen surveillance and flow of intelligence to police, improving crime prevention strategies. It is a legal requirement for every citizen of the nation to actively prevent child marriages³⁵.

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³⁵ 'Restraining Child Marriage, Economic and Political Weekly, Vol. 44, No. 15 (Apr. 11 - 17, 2009)'

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