



**CENTRE FOR ENVIRONMENTAL LAW,
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**NATIONAL LAW SCHOOL
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BENGALURU

**Evaluation of Functioning of Institutional Arrangements and
Rehabilitation of Women in Distress and its impact on Redressing
Violence against Women and Evaluation of
Implementation of Prohibition of Child Marriage Act 2006 in
Karnataka**

**LEGAL RECOMMENDATIONS FOR ERADICATING CHILD
MARRIAGE**

Submitted by

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OVERVIEW OF THE GLOBAL LEGAL FRAMEWORK ON CHILD MARRIAGE

Every year, approximately 12% of the children worldwide become victims of child marriage.¹

GLOBAL FRAMEWORK

Globally, 1 out of every 5 girls get married before they reach adulthood, thereby making up around 650 million women currently in the world.² Just like young girls, a staggering number of young boys have also become victims to this practise, owing to family's financial issues or lack of education. As of today, at least 150 million male children have been married off underage. However, the true figure could be far higher because barriers like masculinity, honour and shame prevent most male victims from coming forward. Such alarming figures, can be grounded on factors like deeply entrenched social norms, customs and beliefs, lack of education, financial instability and the like. However, it is not only the social factors that drive the incidents of child marriage, legal provisions also permit underage marriages in the form of exemptions. Therefore, this pervasive practise, should also be attributed to the national legislations permitting underage marriages as is evidenced by the recent data analysis drawn by the Pew Research Centre, which provides that at least 117 nations comprise laws permitting child marriage.³ Although most legislations mandate marriage parties to be of the age of majority, they are circumvented by judicial⁴ and parental permission.⁵

However, with a slew of legislations and organisations created and working specifically for the purpose of eradicating child marriages, the world has made some progress. This has further led the world to believe this social evil to be a thing of the past. However, this is untrue, because with every step forward that the world takes, the ever-increasing rate of child marriage drags it back by one step. As the COVID -19 pandemic struck the world in 2020, the world came to a halt causing devastating impacts on all facets of life including education, financial status, livelihood, and particularly the world economy. To compensate for the loss incurred during the pandemic and to relieve the purported 'financial pressure' borne in raising a girl child, families are more likely to marry off their children at a younger age, further amplifying the global rates. This can also be supported by the UNICEF report which projects that an additional 10 million girls will marry as children by 2030 due to COVID-19 restrictions, school closures, school closures, increased adolescent pregnancy, disruption to

¹UNICEF, *Child Marriage Around the World*, 2020 (Nov., 5, 2022) <https://www.unicef.org/stories/child-marriage-around-world>

²Quentin Wodon, Paula Tavares, Oliver Fiala, Alexis Le Nestour and Lisa Wise, *Ending Child Marriage: Child Marriage Laws and their Limitations*, World Bank (Nov 5, 2022), <https://documents1.worldbank.org/curated/en/334131513322505611/pdf/122074-BRI-2017-10-ending-child-marriage.pdf>

³Aleksandra Sandstrom and Angelina E. Theodorou, *Many countries allow child marriage*, (6 Nov, 2022), <https://www.pewresearch.org/fact-tank/2016/09/12/many-countries-allow-child-marriage/>

⁴In Australia and U.S.A, if a person is at least 18, their spouse can (with judicial approval) be as young as 16.

⁵In countries such as Iraq, Jamaica and Uruguay, children can marry with parental permission.

child marriage programming and economic instability.⁶ This has always been the case following any humanitarian crisis, whereby women and children from extremely vulnerable groups and marginalised sections are disproportionately impacted.

Globally, the numbers seem to reflect a declining trend owing to the progressive laws adopted with the changing world. The UNICEF Report on Child Marriage Around the World reveals a figure as high as 25 million child marriages to have been prevented in the last decade,⁷ as a result of which the global prevalence of child marriage has also shown a growing trends towards decline by 10% over the past 5 years as reported by the UNO.⁸ However, the report also issues a warning by stressing on the need of accelerating concerted action to further prevent an increase in the rates, taking into the consideration the pandemic's potential in undermining progress.

SOUTH ASIAN FRAMEWORK

Various reports project countries with highest child marriage prevalence rate to be concentrated in and around Southern parts of Asia.⁹ In fact, 45% of the South Asian women aged 20-24 years have been reported as being married before the age of 18 years.¹⁰ As of today, South Asia is composed of an estimated total of 285 million child brides.¹¹ South Asia is also home to almost half, that is about 42% of all child brides worldwide

From a perusal of the UNICEF Report on Child Marriage, it can be observed that child marriage among girls is most common in South Asia and sub-Saharan Africa, and the 10 countries with the highest rates are found in these two regions. While, Niger has the highest overall prevalence of child marriage in the world, Bangladesh has the highest rate of marriage involving girls under age of 15 and around 59% of women aged 20–24 in Bangladesh married under the age of 18.¹² The 2nd most populated country in the world, India alone accounts for one third of the global total.¹³ Within and between South Asian nations too, there are significant regional differences in the prevalence of child marriage. Bangladesh has the highest prevalence of child marriage (59%) in the region followed by Afghanistan and India with 46% each and Nepal with 41%. Due to the high prevalence of child marriage in these four nations, they are referred to as the 'hotspots' of the region.¹⁴

⁶ United Nations Children's Fund, *COVID-19: A threat to progress against child marriage*, UNICEF, New York, 2021., (Nov 19, 2022), <https://data.unicef.org/resources/covid-19-a-threat-to-progress-against-child-marriage>.

⁷ UNICEF, *Child Marriage Around the World*, 2020 (Nov., 5, 2022), <https://www.unicef.org/stories/child-marriage-around-world>.

⁸ Sustainable Development Goals, Goal 5: Achieve gender equality and empower all women and girls, (Nov 7, 2022), <https://www.un.org/sustainabledevelopment/gender-equality/>

⁹ <https://www.unicef.org/rosa/what-we-do/child-protection/child-marriage>

¹⁰ UNICEF, *Child Marriage*, <https://www.unicef.org/rosa/what-we-do/child-protection/child-marriage>

¹¹ UNFPA, *Child Marriage in Humanitarian Settings in South Asia* (Nov 10, 2022) <https://asiapacific.unfpa.org/en/publications/child-marriage-humanitarian-settings-south-asia>

¹² *Id.* at 11

¹³ UNICEF, *Child Marriage Around the World*, 2020 (Nov., 5, 2022), <https://www.unicef.org/stories/child-marriage-around-world>.

¹⁴ International Center for Research on Women Report, *Child Marriage in South Asia: Realities, Responses and the Way Forward*, (Nov 10, 2022) https://www.icrw.org/wp-content/uploads/2016/10/Child_marriage_paper-in-South-Asia.2013.pdf

Out of the 650 million child brides worldwide, Middle Eastern and North African Area, is home to 40 million, that is 6% of the total child brides are from this area. The MENA region, in the recent years has contributed 700,000 child brides each year.¹⁵

However, these rates do not necessarily foretell doom for the South Asian region as the UNICEF Report reveals positive figures as a ray of hope to South Asia by providing that the region has also witnessed the largest decline from 49% to 30% in the prevalence of child marriage during the past decade.

NATIONAL FRAMEWORK

Even prior to the pre-colonial era, child marriages prevailed on a large scale in India. Infant marriage has prevailed in India at least from the days of Manu. Although the reason why this still prevails can be ascribed to the wide social sanction that it has gained in the sub-continent.¹⁶ Even when the practice was largely prevalent amongst both boy and girl children, child brides always outnumbered child grooms. Towards the Medieval period, India witnessed girls as young as six or eight becoming child brides. The customary practice was such that as soon as a girl attained the age of puberty, she would become a marriage prospect for the men in the village. Additionally, her family's financial status and her lack of education pushed the girl into submitting to a forced marriage in order to uphold the honour of their clans. This practice reaffirmed gender stereotypes in multiple ways and one such was where young girls were married off before hitting puberty and would only be sent to them in laws after hitting puberty, signifying their ability to bear children. Such practices reduce women to a child-bearing machine and further increasing the risk of maternal mortality.

It was the 11-year-old Phulmonee's death that triggered debates on the need for recognising child rights. Since then, laws have been passed to tighten the restrictions on child marriage and the Sharda Act, later rechristened as the Child Marriage Restraint Act, 1929 was the first statute to address the problem of child marriage in India. The Child Marriage Restraint Act was enacted to restrain the solemnisation of child marriages. The object of the Act was to prevent child marriage, that is a marriage to which either of the contracting parties was under a specified age. Initially, the age limit for a male was eighteen years and for a female fourteen years. The age limit was subsequently raised from fourteen to fifteen years for girls by the Amending Act of 1949 and further to 18 years for girls and 21 years for boys vide an Amendment in 1978. Violating of the provisions of the Act and solemnisation of such marriages was made punishable. Though, this legislation was intended to be a positive step towards combating this perennial problem, it had its own drawbacks such as minimal fine, nominal punishment and the failure to abolish child marriage.

Presently, India is governed by the Prohibition of Child Marriage Act, 2006. The 2006 Act enacted to prohibit and not merely restrain child marriages has enhanced punishment for child marriages, invested greater power in authorities to stop child marriages and has introduced

¹⁵UNICEF, A Profile of Child Marriage in the Middle East and North Africa, 2019 (Nov 15, 2022) <https://data.unicef.org/resources/child-marriage-in-mena/>

¹⁶Raj Coomar Roy, *Child Marriage in India*, *The North American Review*, Oct., 1888, Vol. 147, No. 383 (Oct., 1888), <https://www.jstor.org/stable/25101631>

new provisions of void and voidable marriages. The Act continues to maintain that the marriage is voidable at the option of the party who was married as a child. The Act allows a person who was married off as a child or a married child to file a petition with the aid of a guardian or next friend along with officers appointed under the Act to annul the marriage. The pertinent condition being, that for an adult who was married off as a child, the petition should be filed before completing two years of attaining majority.¹⁷ However, despite these legal interdictions, the custom nevertheless persists and consequently, India today accounts for 1/3rd of the global total.¹⁸

OVERVIEW OF THE PROHIBITION OF CHILD MARRIAGE (KARNATAKA AMENDMENT) ACT, 2016

The Karnataka State Amendment to the Prohibition of Child Marriage Act, 2006 was triggered by a writ petition filed in the Karnataka High Court.¹⁹ Vide its order dated 10.11.2010, the Karnataka High Court directed the State Government to set up a Core Committee on the prevention of child marriages under the chairmanship of Hon'ble Justice Shivraj Patil, Former Judge of the Supreme Court of India. The Core Committee published its report on the Prevention of Child Marriages in the State of Karnataka on 30.06.2011 which *inter alia* noted that the health of the girl child gets irreversibly hampered due to the demands of early conception and the concurrent early inception of sexual activity. Commenting on the menace of marital rape which is significantly high in cases of child marriage and extant provisions of the Indian criminal law which exempts a husband from criminal liability for rape if the wife is 15 years of above, the Committee recommended that child marriages should have no legal recognition.²⁰ In pursuance of the recommendations advanced, the State of Karnataka passed the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 which Amendment declares a marriage solemnized between children as *void ab initio* or invalid in law. In addition to this, the amendment also enhances penalties for child marriage and inserts a crucial provision enabling concerned police officers to take notice of an offence *suo-moto*.²¹

Repercussions of Declaring Child Marriage as Void

Though the provision of declaring child marriage as *void ab initio* is lauded by the courts and adopted by various states, its consequences are overlooked. Before delving into the consequences, it is pertinent to understand that outrightly declaring child marriages as void won't put an end to the practise as long as the factors causing it prevail. This argument can be substantiated empirically by the findings of our study, which revealed that notwithstanding the amendment, child marriage rates in Karnataka did not witness a declining trend. In fact, the study conducted on child marriages in Karnataka reveals that since 2016, the numbers

¹⁷Section 3, Prohibition of Child Marriage Act, 2006

¹⁸UNFPA, *Child Marriage in Humanitarian Settings in South Asia* (Nov 10, 2022) <https://asiapacific.unfpa.org/en/publications/child-marriage-humanitarian-settings-south-asia>

¹⁹M-S Muthanna Devaya and Budeappa vs. Union of India, Writ Petition No. 11154/ 2006

²⁰Report on Prevention of Child Marriages in the State of Karnataka, (2011), available at <https://dwcd.karnataka.gov.in/storage/pdf-files/Core%20Committee%20Report%20-English.pdf>

²¹Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 Available at [https://dwcd.karnataka.gov.in/storage/pdf-files/PCM\(karnataka%20amendment\)%20Act,%202016.pdf](https://dwcd.karnataka.gov.in/storage/pdf-files/PCM(karnataka%20amendment)%20Act,%202016.pdf)

continue to be on the rise, that is, in the year 2016-2017, a total of 65 marriages occurred, 102 marriages in 2017-2018; 119 marriages in 2018-2019 and 156 marriages in 2019-2020. If this data is read together with the reason adduced by respondents from 12 districts in Karnataka²² for marrying off girls before attaining the age of adulthood, poverty and low income was cited by nearly 75.6% of the respondents. 84.4% of the same respondent cohort was aware that child marriages are illegal and 91.4% would not support child marriage. Annulment of the marriage and consequent imprisonment and enhanced penalty adopted by the state amendment would add to the woes of people who are already marginalized and reeling under poverty.

Data collected from these 12 districts further reveals that police complaint was lodged in 59.7% of cases where the victims of child marriage were provided with enough attention and care (98.1%). Barring 28.8% where the victims were accompanied to the police station by their families and relatives in 71.2% cases, there were child rights activists, sakhi staff, police, CMPOs accompanying the girls. Victim respondents have also reported about the different facilities that have been made available to them after the registration of complaint which included counselling support (92.1%), Medical Aid (31.6%), Recreational activities (41.4%), Education Support (40.8%) Vocational Training (38.2%). However, in 62.8% of the cases in which complaint was registered, objections were raised during the reporting of the offence. In addition to the help given by the state authorities, 76.1% of the study respondent (parents and victims) were aware of the childline helpline number 1098 and 89% of the respondents were provided immediate assistance. Hence, it is apparent that while the legal and the executive machinery of the state is advancing assistance to the victims, there are social and economic factors that operate beyond the ambit of law and contribute to the continuance of this crime.

Taking away the legal validity of a marriage can have grave consequences on the children as well as their families, depriving them of the legal rights and remedies that flow out of a valid marriage. The consequences of declaring child marriages as void can be efficiently explained with an instance of a widowed minor's marriage rendered void in the State of Karnataka. On declaring the marriage as void, the overreaching impacts unfurled before the life of the widowed minor when she was denied access to any of the matrimonial rights. She just becomes a *de facto* wife without any legal protection or entitlement to claim right to inherit or stay in her marital property. Therefore, this establishes that declaring marriages void does more harm than good to the women married off underage.²³

In this context, we must also take note of the fact that not all child marriages are forced. Due to numerous circumstances such as the apprehension of a forced marriage, abuse or seclusion in their natal homes, or discovery of their romantic relationships, the underage marriages are voluntarily undertaken by young children. Therefore, declaring such unions void, interferes with the couple's autonomy and ultimately pushes the girl child to the same home she chose

²² Bagalkot, Bangalore Rural, Belagavi, Kalaburgi, Koppal, Mandya, Mysore, Raichur, Ramanagara, Shimoga, Uttara kannada, Vijayapura

²³ Jagriti Chandra, *Should the age of marriage for women be raised to 21?* (Nov 10, 2022), <https://www.thehindu.com/opinion/op-ed/should-the-age-of-marriage-for-women-be-raised-to-21/article62107509.ece>

to elope from owing to her personal reasons.²⁴Therefore, this amendment is detrimental to child rights and has no deterrent effect in the frequency of child marriages.

LEGAL RECOMMENDATIONS

1. ADOPTING PROGRESSIVE LAWS

This social practise with the potential to thwart the nation's growth and development of children is noted to be a roadblock to national progress. The causes and consequences of child marriage are intrinsically linked, including the child's lack of autonomy and low levels of education, poor health status, poverty and overall low socioeconomic status. As a result of these, child's mental and physical health are devastated. Therefore, in the light of the issues generated by this widespread practise, it is essential to reform the outdated laws by reforming its legislations to being capable enough to put an end to this tradition that cripples the situation of children in India.

1.1 Absence of change in the rates of child marriage

From the Child Marriage Restraint Act, 1929 to the Prohibition of Child Marriage Act, 2006, India has witnessed female's legal age for marriage increase from 14 years to 18 years and that of a male, from 18 years to 21 years. Therefore, over the course of the years, a commonly proposed change made in these legislations has been with regard to increasing the legal age for marriage. Infact, even the 2021 Bill²⁵ recommends further increasing female's age to 21 years. However, despite this effort, up until the recent past, the child marriage rates have not plummeted as expected. Though the National Family Health Survey 2019-2020, shared that share of women aged 20-24 who married before turning 18 has declined from 27% to 23% in the last five years²⁶, this marginal decrease does not bring about a significant change to a girl child's plight.

Therefore, the rationale behind raising the age can be ignored as it has no prior evidence to substantiate this point. Therefore, it is key to note that incidents of child marriages are caused due to the presence of other underlying factors like customs, social norms, lack of education and the absence of fear of law influence underage marriage decisions. Infact, the present alarming figures clearly indicate that the raising of legal age in no way creates fear in the minds of those conducting underage marriages.

1.2 The gender inequality in fixing legal age for marriage

²⁴Saumya Singh and Kriti Jain, *Void or Voidable? On Child Marriages under the PCMA*, <https://lawschoolpolicyreview.com/2020/11/23/void-or-voidable-on-child-marriages-under-the-pcma/>

²⁵The Prohibition of Child Marriage (Amendment) Bill, 2021, http://164.100.47.193/Refinput/New_Reference_Notes/English/13062022_130250_10212057.pdf

²⁶ National Family Health Survey-5, 2019-2021, http://rchiips.org/nfhs/NFHS-5_FCTS/India.pdf.

Since the inception of child marriage laws, men and women have been ascribed different legal ages for marriage, whereby the male is given a higher age. This inequality itself has encouraged many child marriage incidents to be committed against girl children. This discrimination supports the stereotype that women must be younger to men in a marriage and has been taken to the detriment of women children, whereby young girls would get married to men, double or higher their age. Consequently, this makes women more susceptible to offences such as domestic violence, sexual exploitation and dowry related harassment. Girls married at very young ages are more likely to start bearing children at a very young, putting them at a greater risk of maternal mortality and debility from pregnancy complications.²⁷ District wise data on teenage pregnancy for girls aged between 15-18 years collected during the course of the Karnataka study from the RCH portal, found a steady increase in cases of child marriage across the state between 2017 – 2019 (2017 – 33232, 2018-39488, 2019-50142). The numbers saw a dip in 2020 (35598) and 2021 (20457) which could also be attributed to COVID-19 pandemic and the lockdown. The study data collected through the empirical research in Karnataka across 12 districts further revealed that out of 152 cases studied in which police complaint was filed, 141 victims (92.8%) were pregnant by the time the complaint was lodged. Though, this is seen as a financial escape among the parents of girl children, underage and forced marriages take a toll on women. According to National Family Health Survey-5 (NFHS-5) 2019-21, women in the age group of 20-24 years who were married before they turned 18, was 14.7% in urban areas and 27% in rural areas. Such inequality paves way for this practise to become a norm for adolescent girls. In fact, one study has reported that in contrast to 75% of girls becoming victims of child marriage, only 5% of boys become victims of the same. Therefore, it can be established that girls are disproportionately affected by this menace.

1.3 Statutory Contradictions in the legal age for marriage

Stipulating different minimum age for both boys and girls is not only discriminatory and based on patriarchal notions, but also contradicts other statutes in the country. Under the Prohibition of Child Marriage Act, 2006 the definition of child says, a male aged below 21 years and a female aged below 18 years.²⁸ However, this stands contradictory to the primary statutes like the Indian Majority Act, 1875²⁹ and Juvenile Justice Act, 2015³⁰, which maintain that one is a child below the age of 18, regardless of sex.

In the *Court on its own motion (Lajja Devi) v. State (NCT of Delhi)*³¹ a full bench of Delhi High Court identified the conflicting legislations that still do not pronounce clearly what is the legal minimum age to marry in India. Section 5(iii) of the Hindu Marriage Act, 1955 and section 2(a) of the Prohibition of Child Marriage Act, 2006 prescribes 18 as the minimum age for the bride and 21 as the minimum age for the groom. However, under section 11 and 12 of

²⁷International Center for Research on Women Report, *Child Marriage in South Asia: Realities, Responses and the Way Forward*, (Nov 10, 2022) https://www.icrw.org/wp-content/uploads/2016/10/Child_marriage_paper-in-South-Asia.2013.pdf

²⁸ S. 2(a), Prohibition of Child Marriage Act, 2006

²⁹ Section 3(1), Indian Majority Act, 1875

³⁰ S. 1(12), Juvenile Justice Act, 2015

³¹ 2013 CriLJ 3458.

the Hindu Marriage Act, marriages where one or more parties do not meet the legal minimum age requirement are neither void nor voidable and merely liable to pay fine. So does the Special Marriage Act. Muslim Law in India follows the rules of puberty. Section 3 of the Prohibition of Child Marriage Act deems a marriage where one or more parties is minor as voidable at the option of the minor.

Therefore, the administration of justice may be further hampered by such definitional inconsistencies. This is because such contradictions leave room for transgression. For instance, although the Hindu Marriage Act prescribes a legal age for a marriage union, it nonetheless considers matrimony voidable at the option of the minor, thereby inadvertently allowing child marriages.

1.4 Consequences of declaring a marriage void:

Declaring child marriages as void is highly detrimental to a child's right as they may be disowned by their families due to sham. This could further foster difficulties in obtaining maintenance or other rights that one would be entitled to in a valid marriage. Usually, underage marriages are mostly forced marriages, therefore, by rendering these unions void, it is usually the child who would have to bear the brunt of a void marriage. As against voidable marriages void marriages have not legal sanctity since they have no recognition in the eye of law. Consequently, the rights that a child could enjoy after exercising the option of annulling a voidable child marriage (which is deemed valid till annulled) would not be available to a child once the marriage is declared *void ab initio*. In such circumstances the remedies of maintenance, child custody, residence until the child remarries that could be available under a voidable marriage could be withheld under a void marriage. Therefore, this does not even come close to a solution as it does more harm than good.

This can be argued by taking support of the study conducted in Karnataka on Child Marriages, which shows that despite the State Amendment in 2016 declaring child marriages void, the number of marriages that occurred show an upward trend. In the year 2016-2017, a total of 65 marriages occurred, 102 marriages in 2017-2018; 119 marriages in 2018-2019 and 156 marriages in 2019-2020. Therefore, declaring marriages void, create no fear in the ones who conduct, but ultimately only impact the victims of this practise.

1.5 Consequences of increasing legal age

Merely increasing the legal age without any rationale behind the same disempowers women, because, when attaining the age of majority entails all the rights such as right to vote and own a driving license, why restrain a woman from marrying. This therefore, accords low value to a women's freedom of choice. Today, the empirical evidence reinforce that girls are disproportionately affected in contrast to boys. Furthermore, increasing the legal age for marriage to poor families would mean more burden to them owing to their financial status, as a result of which, female foeticide could once again be on the rise. Increasing women's legal age through amendments has demonstrably failed and it's time to find practical solution.

Furthermore, increasing age would not address any of the socio-economic constructs like dowry, marital rapes.³²

1.5 Recommendations

- Based on the study made, by us, it can be understood that with every passing year, the rates outdid those of the previous year. If at all any silver lining was seen, it was during the pandemic.
- Therefore, on this basis, it is recommended that equality in terms of legal age for marriage should be brought for the adults by settling for 18 years.
- The legal age for marriage as enshrined under the Prohibition of Child Marriage Act, 2006 is justified, as most legislations in India also entrust legal responsibilities to the youth upon attaining the age of majority. Furthermore, the Indian Constitution also provides every adult the right to vote. Therefore, universally, it is believed that an adult becomes physically, mentally and emotionally ready to face the challenges posed by life and so this must also be the age prescribed for marriage.

2. HARMONISING CHILD MARRIAGE RELATED LAWS

Serving as one of the primary objectives under the SADC Model Law on Child Marriage,³³ it aims at harmonising regional and national legislations related to child marriage. This is of utmost importance in a country like India with a plethora of legislation enacted for children and numerous personal laws governing their rights.

However, at present, since the personal laws are not in tandem with the PCM Act, several inconsistencies in terms of the legal age for marriage, repudiation and other incidental rights arising out of marriage can be observed.

The primary impediment to the effective implementation is the presence of conflicting personal laws tend to conflict with the legislations. Also, depending on religious affiliation, marriage procedures and practises vary.

2.1 Personal Laws contradictory to the Act

In India, people belonging to different religions are governed by their respective personal laws. However, these personal laws tend to contain provisions that conflict with the primary legislation on child marriage.

The Hindu Marriage Act indirectly validates child marriage by containing a provision that a marriage that occurs prior to attaining the age of 15 years can be repudiated before the age of 18 years. If the marriage is not annulled, then marriage is taken a valid, even if performed in infancy. Similarly, the Muslim Personal Laws are grounded on the puberty rule, which

³²Govindraj Ethiraj, *Law not Sufficient to Bring Social Change That Will End Child Marriage*, (Nov 17, 2022), <https://www.indiaspend.com/indiaspend-interviews/law-not-sufficient-to-bring-social-change-that-will-end-child-marriage-803628>

³³UNFPA, SADC, GirlsNotBrides, *A Guide to Using the SADC Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage* (15 Nov,2022), <https://esaro.unfpa.org/sites/default/files/pub-pdf/J7288E%20-%20SADC%20Model%20Law%20Toolkit%20final.pdf>

presumes 15 years to be a minimum age for marriage, thereby facilitating child marriage. The Indian Christian Marriage Act also permits the marriage of minors upon satisfaction of the preliminary notice requirement.

Solemnisation of child marriages have largely been prohibited when parties have approached courts prior to solemnization. However, courts have adopted different approaches regarding the validity of a child marriage already performed, based on the specific facts of the case, including factors such as girl's age, relevant personal law, and the consent by the girl.³⁴In *Javed v. State of Haryana*, the High Court had the occasion to determine the validity of a marriage of a 17-year-old girl and it opined during the proceedings that the permitted age of marriage under Muslim Law not only contravenes the PCMA but other laws as well. Therefore, the presence of such regressive provisions, tend to counteract the positive results achieved by the Prohibition of Child Marriage Act, 2006, since in India, most communities go by their personal laws.

2.2 Primacy of PCMA over personal laws

The question of the prevalence of central legislation over religion-based personal laws has been an age-old debate. However, this was addressed by the Gujarat High Court in *Yunusbhai Usmanbhai Shaikh v. State of Gujarat*,³⁵ by ruling that the PCMA, in case there is any conflict, will override the provisions of Muslim Personal law, Hindu Marriage Act, or any personal law, basing on the principle that a special enactment on a subject would prevail against general principles.³⁶Therefore, since it is a secular law, it does not make distinctions persons based on a person's religious affiliations.

For instance, in *Abdul Khader v. Pechiammal*³⁷, the Madras High Court while determining whether the Shariat Act would prevail over the central law, it held that “*the prime reason for bringing in the P.C.M. Act is the prohibition of the solemnization of the child marriage. When the prescribed marriageable age of the girl is 18 years, this Court cannot be called upon to issue the sought declaration that the provisions of the P.C.M. Act are not applicable for the petitioner, as she belongs to Muslim community. The courts have the power coupled with the duty to prevent and not to promote the child marriages. This Court cannot and would not pass an order by virtue of which little girls become child brides.*”

The Karnataka High Court was faced with a similar question in *Seema Begaum v. State of Karnataka*³⁸ where petitioner a 16 year old minor girl who had attained puberty sought the declaration of High Court that the Prohibition of Child Marriage Act, 2006 was not applicable to her. The petitioner took recourse to Section 2 of the Muslim Personal Law

³⁴ Centre for Law and Policy Research, Centre for Reproductive Rights, Ending Impunity for Child Marriage in India: Normative and Implementation Gaps, (15 Nov, 2022), <https://reproductiverights.org/sites/default/files/documents/Ending-Impunity-for-Child-Marriage-India-WebUpdate-0218.pdf>

³⁵(2015); See also *Lajja Devi v. State*

³⁶ *JK Cotton Spinning and Weaving Mills Co. Ltd. v. State of UP.*, 1961 AIR SC 1170

³⁷CRL.R.C.No.1441 of 2012, Madras H.C. (2015)

³⁸ WRIT PETITION NO.75889 OF 2013(GM-RES)

(Shariat) Application Act, 1937 in support of her claim. Rejecting the petition the High Court observed, the prime reason for bringing in the PCMA is the prohibition of the solemnization of the child marriage. When the prescribed marriageable age of the girl is 18 years, the Court cannot be called upon to issue the sought declaration that the provisions of the PCMA are not applicable to the petitioner, since she belongs to Muslim community. The courts have the power coupled with the duty to prevent and not to promote the child marriages. The High Court further observed that it would not pass an order by virtue of which little girls become child brides. The courts would prefer the construction, which advances the object rather than the one which attempts to find some way of circumventing it. It is the duty of the courts not to facilitate the circumvention of the parliamentary intent.

In *Independent Thought v. Union of India*³⁹ the Apex Court ruled that sexual intercourse by a man with his wife, who is below 18 years of age, is rape. The decision was in response to a public interest litigation filed by Independent Thought, a registered society working in the realm of child rights. The petitioner had filed the petition challenging Exception 2 to Section 375 of the Indian Penal Code which reads as “Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape” to draw attention to the plight suffered by girls who are married between the ages of 15 and 18 years. The Court ruled that viewed from any perspective, there seems to be no plausible reason for arbitrarily discriminating against a girl child who is married between 15 and 18 years of age. While the Court extensively discussed the provisions of the POCSO Act and Section 375 of the Indian Penal Code it also took note of the Prohibition of Child Marriage Act which is a protective legislation. The Court noted from the provisions of the Act it is apparent that the Parliament is not in favour of child marriages per se but is somewhat ambivalent about it. However, Parliament recognizes that although a child marriage is a criminal activity, the reality of life in India is that traditional child marriages do take place and it is a harmful practice. However, the Court found it strange that while the Act prohibited a child marriage and criminalized it, it did not declare it void. Further, the Court observed that it was highly deplorable that sexual intercourse within a child marriage is not rape under the IPC even though it is a punishable offence under POCSO Act. Therefore, the Court noted that there was a need to harmonize the provisions of various statutes and also harmonize different provisions of the IPC inter-se to offset the effect that different and irrational standards have been laid down for the treatment of the girl child by her husband. The government’s defense of child marriage being a part of Indian culture and tradition was rejected by the Court, especially in light of the growing awareness of the associated risks and harms. The Court stated that as “times and situations change, so must views, traditions, and conventions,” and affirmed that “constitutional morality” requires preventing the endangerment of girls. This judgement also goes a long way in protecting the reproductive rights and choice of girls who are denied the ability to refuse sexual relations within underage marriage along with the concomitant health risks from early pregnancies.⁴⁰In *Independent Thought*,⁴¹ the Apex court reaffirmed this stance

³⁹ W.P. (C) No. 382 of 2013, decided on 11 October, 2017.

⁴⁰Center for Reproductive Rights, *Independent Thought v. Union of India* <https://reproductiverights.org/wp-content/uploads/2020/12/Independent-Thought-Factsheet-0118.pdf>.

⁴¹W.P. (C) No. 382 of 2013, decided on 11 October, 2017.

while examining the application of special laws, by observing that statutes pertaining to children are special laws and must take precedence over personal laws, including general laws, like the Indian Penal Code, 1860.

2.3 Recommendations

As observed above, the primary legislation on child marriage is silent on the scope of personal laws. However, various judicial pronouncements stand by the view that the Central legislation must prevail over personal laws in the best interest of the child. Therefore, it is essential to include this provision to this effect. Therefore, while determining child marriage cases, the PCMA should be the guiding legislation.

3. COMPULSORY REGISTRATION OF MARRIAGES

3.1 National view on Registration

Just like any other marriage related procedure, the concept of registration also varies for different personal laws. In India, marriages performed as per their religious rites and traditions amount to a valid marriage. Under the Hindu Marriage Act, though Section 8 lays down the requirement of registration, it does not make it mandatory. The obligation to register Muslim marriages also varies from state to state. Therefore, registration is not usually a compulsory factor to be satisfied to render a marriage valid.

However, the non-requirement of registration provides a breeding ground for social evils like bigamy, denial of matrimonial rights and the worst of all, child marriages. Non-registration of marriage affects women in multiple ways. Usually, before the court of law, women fail to show the existence of marriage, thereby falling prey to bigamous relationships and deprivation of their marital rights.

Given the situation, the judgment in *Seema v. Ashwani Kumar and Ors.*,⁴² is important in as much as it directs all marriages to be compulsorily registered and noted that compulsory registration of marriage would be a step in the right direction for the prevention of child marriage still prevalent in many parts of the country. As per these directions, states Punjab, Delhi, Haryana, Meghalaya, Uttarakhand and Tamil Nadu have passed law or framed rules for compulsory registration of marriages.⁴³

In the light of the rising rates of child marriages in India, the Court on its own motion (*Lajja Devi v. State (NCT of Delhi)*),⁴⁴ observed that Compulsory registration would mandate the age of the girl and the boy getting married to be mentioned. Therefore, if implemented properly, it would discourage parents from marrying off their minor children since a written document of their ages would prove the illegality of such marriages. This would probably be able to tackle the sensitive issue of minor marriages upheld by personal laws.”

3.2 Recommendations

⁴² AIR 2006 SC 1158

⁴³ Law Commission of India, Report No. 270, <http://www.latestlaws.com/wp-content/uploads/2017/10/Law-Commission-Report-No.-270-Compulsory-Registration-of-Marriages.pdf>.

⁴⁴ 2013 CriLJ 3458.

- Registering marriage is a necessary reform and the biggest step towards preventing child marriages even before they occur. This way, the authorities can ensure that all the conditions of marriage are satisfied, most importantly the legal age for marriage. In a country that has mandated compulsory registration of births and deaths, registration of marriages must also be ensured regardless of the governing personal laws. Infact, using the same administrative mechanism adopted in the registration of births and deaths would not only simplify the process, but also cut off various social impacts arising out of child marriages.
- Enacting the Compulsory Registration of Marriages Bill, 2005, will be of much benefit solely for the reason that it contains as its objective the prevention of child marriage by ensuring the minimum for marriage. The procedure to be adopted for compulsory registration of marriages should be as follows:⁴⁵
 - i) Every marriage that's solemnized or contracted between Indian citizens or in cases where one is at least an Indian citizen, performed in the country under any law or custom governing such marriages, the marriage shall be compulsorily registered with the appropriate Registrar of Marriages.
 - ii) It should also be the duty of both parties in the marriage to take all necessary steps for registration of marriage.
- Similarly, Section 13 of the Bill mentions about Memorandum of Marriages wherein the parties to a marriage shall prepare and sign a Memorandum of Marriage and further present it in person, in duplicate to the Registrar within a period of 30 days from the date of marriage. The bill also lays down the penalty of Rs. 500 for non-compliance of this provision. This section shows that failure to register would attract a small penalty, however it would not render the marriage void. Therefore, in the light of the above cases and provisions, compulsory registration is a pragmatic solution to eradicate child marriage cases.

4. CREATING GREATER LINKAGE BETWEEN PCMA AND OTHER CHILD-RELATED LAWS (POCSO AND IPC)

4.1 Addressing discrepancy between the laws

In the context of child marriages, the discussion of the growing problem of sexual offences on children in India becomes inevitable. Child marriage as a social evil brings along with itself other inevitable dangers like excessive exposure to the sexual offences. However, adjudicating those matters involving sexual offences in child marriages becomes arduous due to conflicting and contradictory provisions of the Indian Penal Code, 1860, Prohibition of Child Marriage Act, 2006 and Protection of Children from Sexual Offences Act, 2012, thereby impeding the justice administering system.

⁴⁵ Section 12 of the Bill, available at <http://164.100.47.4/billtexts/lsbilltexts/asintroduced/379LS-1.pdf>.

The POCSO Act aims to protect children from sexual offences and it defines a “child” as any person below the age of 18 years.⁴⁶ This Act in no way discriminates between the sexual offences committed against a married or unmarried child. Although PCMA remains silent on sexual relations within child marriage, the provision for legitimising children born from those child marriages shows its acknowledgment of consummation of child marriages.⁴⁷ The IPC, however through its exception clause, providing that sexual intercourse or sexual acts by a man with his own wife, the wife not being under fifteen years of age, is not rape,⁴⁸ indicates the intent of the legislature while drafting the code to include child marriages under its purview. Therefore, this stands in direct conflict with the POCSO Act which criminalises all sexual offences committed against a child, regardless of their marital status. Furthermore, it substantially diverges from the object of the PCMA, which is to eradicate child marriage.

Due to a significant discrepancy between the POCSO and the IPC, the court in *Independent Thought v. Union of India*⁴⁹ made quite clear that Sec. 42A would take precedence. Therefore, Sec. 42A⁵⁰ clearly says that the provisions of the Act would be in addition to laws and that POCSO would have overriding effect.

4.2 PCMA used as a tool to counter elopements

Disapproving parents usually employ the provisions of PCMA as a tool to target marriages undergone without their consent. of those children who have eloped.⁵¹ Infact, it is also found that PCMA cases filed by the parents of girls, essentially to counter elopements were far greater than those by Child Marriage Prohibition Officers (CMPO) against forced marriages.

In addition to this, parents would also slap charges of sexual offences against the boys, despite the relationship being consensual. A study by the Centre for Child and the Law in Bengaluru’s National Law University of India found that of the 2,788 POCSO cases in the five States studied, Delhi topped the list with 23 per cent of them being romantic cases followed by Karnataka (21.8 per cent in just three districts), Andhra Pradesh (21.2 per cent), Maharashtra (20.5 per cent) and Assam (15.6 per cent).⁵²

Over the years, POCSO’s inability to address the role of consent in sexual offences against children have been misused by parents into trapping adolescent boys.

⁴⁶ Section 2(d), Protection of Children from Sexual Offences, 2012.

⁴⁷ Section 6, Prohibition of Child Marriage Act, 2006.

⁴⁸ Exception 2, Section 375, IPC, 1860

⁴⁹ 2017 10 SCC 800.

⁵⁰ 42A. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force and, in case of any inconsistency, the provisions of this Act shall have overriding effect on the provisions of any such law to the extent of the inconsistency."- The Criminal Law (Amendment) Act, 2013 No. 13 of 2013.

⁵¹ Swapna Majumdar, *Find a Better Alternative*, (Nov 19, 2022) <https://www.dailypioneer.com/2020/columnists/find-a-better-alternative.html>

⁵² Centre for Child and the Law, NLSIU, Bengaluru, *An Analysis of Mandatory Reporting under the POCSO Act and its Implications on the Rights of Children*, 2018 (Nov 19, 2022), <https://feministlawarchives.pldindia.org/wp-content/uploads/Mandatory-Reporting-Paper-CCL-NLSIU-1.pdf>

Recommendations

- De-criminalise consensual sex between adolescents.

The original intention of laws to criminalise consensual sex is to prevent adults from engaging sexual acts with children. However, in countries with conservative sexual mores, this is misused to break up marriages of children's choices, thereby pushing adolescent boys to prisons.⁵³ However, the courts have interpreted the POCSO so that consensual romantic relationships between young adults are not criminalised.

The Single Judge Bench of Justice Jasmeet Singh dealt with a matter in which an FIR was filed by the father contending that his daughter aged about 17 years got married to a man. The Bench in this context observed –

"In my opinion the intention of POCSO was to protect children below the age of 18 years from sexual exploitation. It was never meant to criminalize consensual romantic relationships between young adults."

Furthermore, the Madras High Court's verdict in *Vijayalakshmi and Anr v. State*, Justice N. Anand Venkatesh⁵⁴ quashed the case against a young boy in his 20s who had married a minor girl and the two had run away from their homes due to the pressure faced by the girl from her family. The court in this case also acknowledged and reiterated that the nature of the relationship between teenagers which could be the "result of mutual innocence and biological attraction" cannot be considered alien, and must not be criminalised. The court's intent clarified that there is a need to maintain the delicate balance between strict punishments under POCSO and protecting teenagers involved in consensual loving relationships and observed that

"What came to be a law to protect and render justice to victims and survivors of child abuse, can also become a tool in the hands of certain sections of the society to abuse the process of law."

Therefore, de-criminalising consensual sex would primarily prevent false allegations being levelled at young, innocent adolescents. Furthermore, since it is de-criminalised, parents would be in no position to marry off their children at a young age as a means to prevent sexual relations.

- For non-consensual sex/ rape, Section 42a of POCSO Act must apply.

FURTHER SUGGESTIONS

5. Sensitise not criminalise

A plethora of legislations exist to end this highly pernicious practise. Law is essential, but not sufficient for everything. When criminalising behaviour or imposing laws fails to produce the

⁵³UNICEF, *Child Marriage and the Law*, (Nov 19, 2022) <https://www.unicef.org/media/86311/file/Child-marriage-the-law-2020.pdf>

⁵⁴CrI.O.P.No.232 of 2021 and CrI.M.P.No.109 of 2021

desired consequences, sensitisation campaigns must take over. Moreover, criminalising child marriages result in unintended consequences to the child such as social stigma, retaliation, and mental distress.⁵⁵

Therefore, at the outset, stringent measures must not be adopted, instead the public must be sensitised. Since the incidents are on the higher side amongst the socially, economically and educationally backward classes, there is a greater need for requirement of sensitisation programmes in those areas. Concerted efforts must be taken by the Government, particularly the Department of Women and Child Development, in collaboration with other departments, Non-Governmental NGOs, CHILDLINE and self-help groups to undertake the measures identified below.

- Sensitisation programmes to be conducted separately for children and elders, whereby the children should be enlightened about the importance of education, awareness of sexual health, their freedom to make choices, along with the ill-effects of child marriage. Children must also be notified about the authorities they can approach as and when they are forced to marry as a child. Elders, on the other hand must be shown a reality of how child marriages could impact the society at large and the role they could play in eradicating it.
- To receive better results out of the sensitisation campaigns, they must be conducted by engaging with community leaders or some respectable person of the society that the community has faith in. This will ensure the involvement of older cohorts of the society along with the engagement of men and boys in the community.
- The programme must efficiently aim to discuss matters related to legal awareness about child marriage, teenage pregnancy, children's mental health, maternal mortality, dowry related harassment and the like. The use of media in the sensitization efforts should be encouraged. The portrayal of young girls in the media about self-sufficient beings with agency to make life choices could aid in breaking gender stereotypes.
- Effort should also be directed towards enhancing the awareness of young and adolescent boys about gender equality.

6. Investing in Educating and Empowering Children

Education is an essential tool to fix almost everything. A global partnership's report on child marriage and education highlights that girls who have no education are three times more likely to marry before 18 than girls who attend secondary school or higher.⁵⁶ In addition to this, the World Bank has reported that each year of secondary education may reduce the likelihood of marrying before the age of 18 by five percentage points or more in many countries. Girls who complete secondary education tend to be healthier, participate more in the formal labour market, earn more, marry later, have fewer children and provide better health care and education for the next generation. These factors combined can help lift

⁵⁵ UNICEF, *Child Marriage and the Law*, (Nov 19, 2022) <https://www.unicef.org/media/86311/file/Child-marriage-the-law-2020.pdf>

⁵⁶ Girls not Brides, *Child Marriage and Education*, (Nov 17, 2022) <https://www.girlsnotbrides.org/wp-content/uploads/2017/09/Child-Marriage-and-Education-Girls-Not-Brides-August-2017.pdf>

households, communities, and nations out of poverty.⁵⁷ One of the best ways to eradicate child marriage by keeping children at schools and encouraging them to continue with their education.

Several states have initiated schemes and programmes that encourage girl children to continue their education. One such example would be the Kanyashree Prakalpa of the West Bengal Government. The scheme seeks to improve the status and wellbeing of girls, specifically those from socio-economically disadvantaged families through Conditional Cash Transfers by incentivizing them to continue in education for a longer period of time, and complete secondary or higher secondary education, or equivalent in technical or vocational streams, thereby giving them a better footing in both the economic and social spheres. The scheme disincentivizes marriage till at least the age of 18, thereby reducing the risks of early pregnancies, associated risks of maternal and child mortality, and other debilitating health conditions, including those of malnutrition. To reinforce the positive impact of increased education and delayed marriages, the scheme also works to enhance the social power and self-esteem of girls through a targeted behaviour change communication strategy. The communication strategy not only builds awareness of the scheme, but includes adolescent-friendly approaches like events, competitions and Kanyashree clubs, and the endorsement of strong women figures as role models to promote social and psychological empowerment.⁵⁸

Efforts must also be directed at providing livelihood skill trainings to improve employability of adolescent girls to ensure that they are not viewed as dependents in the family but contribute to their own and their family's economic well-being.

7. Inter-governmental and institutional collaboration

Law does not operate in silos, and combating any social evil like child marriage requires concerted effort on the part of different departments, institutions and agencies both governmental and non-governmental. Several states have set up task forces and high level committees for monitoring and combating child marriage. Inspiration may be drawn from the state of Rajasthan which has set up High Level Committees and Task Forces at the State, District, Block and Gram Panchayat level to evolve state action plan for combating child marriage which is to be reviewed once in two months. These Committees work with the inter-ministerial collaboration between the senior officials of the Department of Women and Child Development, Health, Education, Home Affairs, Social Empowerment and Justice, Youth Affairs and Sports, Panchayati Raj and Rural Development, State legal service authorities, and development partners like UNICEF, NGOs PRI members and police. At the lowest rung the Gram Panchayat Action Group is headed the Sarpanch and has teachers, ASHA workers, ANM workers, AWW workers, Ward Members, Self Help Groups and Community members.⁵⁹

⁵⁷ World Bank, *Educating Girls Ending Child Marriage*, (Nov 17, 2022) <https://www.worldbank.org/en/news/immersive-story/2017/08/22/educating-girls-ending-child-marriage>.

⁵⁸ Kanyashree, About the Scheme https://www.wbkanyashree.gov.in/kp_4.0/kp_objectives.php

⁵⁹ State Strategy and Action Plan for Prevention of Child Marriage, Government of Rajasthan available at <https://www.girlsnotbrides.org/documents/1735/SSAP-Child-Marriage-1.pdf>

Multi-stakeholder partnerships within the community and with governmental and non-governmental agencies would aid the Department of Women and Child Development and the CMPOs of the state in meeting their goal of reducing the incidence of child marriages in the state