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# BRIDGING GAPS TO END CHILD MARRIAGE: LEGAL PERSPECTIVES FROM INDIA AND THE GLOBAL CONTEXT

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## ABSTRACT:

Childhood is considered as a very important period in a child's life. Childhood is the foundation that moulds the personality of any child. But some evil practices in society such as child marriage make the life of some children very miserable. Child marriage is a practice that existed for a very long time in India and other countries. Ending this problem is very challenging and very difficult task for any country as its roots are very much present strongly since time immemorial. In order to eradicate this problem, government has introduced so many laws, policies and programs even then the problem is continuing. Though there is stronger punishment and compulsory registration of marriages the problem is not completely eradicated from the society.

But, the law alone cannot be curbed to mitigate this problem. There should be change in the mindset of the people regarding this evil practice. Education and empowerment of women should be the priority of the nation so that women are aware of the negative consequences of the problem and the laws that are for the rescue of the people. Law itself has undertaken a long journey from the case of Rukhmabai and Phulmonee cases since ancient period to till The Prohibition of Child Marriage Act, 2006 at present. The journey has not been smooth since long time. In spite of the development of law with respect to child marriage, much attention is required to implement the laws strictly. Efforts are required from all the countries and organizations worldwide.

The present study focuses on the comparative study of child marriage at global and Indian level and the laws and policies to eradicate child marriage.

**Keywords:** Child Marriage, Eradication, Legislation, Policies

## Introduction

*“The childhood of a person is precious. On the child attaining the age of majority, anything may be given to it like the job, house, husband/wife; but what cannot be got back is its precious childhood. What is therefore of paramount importance is that the child should fully enjoy his/her childhood before entering the wedlock. More often than not, it is the girl’s happy childhood that would ensure a happy wifehood and happy motherhood. In whatever form it is, the child marriage is a gross violation of human rights of a girl or boy.”<sup>1</sup>*

Children more often belong to the vulnerable section of the society. Some of the practices worldwide such as child marriage, child trafficking, sexual exploitation of children, child labour and so on lead to deterioration of the personality development of the children. The United Nations, being the nodal institution of the world has received certain consensus from member states in order to protect the rights of women and children. The important conventions that related to women and children are Convention on Elimination of all forms of Discrimination against Women and Convention on the Rights of the Child.

At the international level, two important constituents were given great importance for the protection of children. The first one is the formation of the Convention on the Rights of the Child in 1989. The second was a campaign to focus on child survival. This campaign resulted in organizing a World Summit for Children in 1990. It was organized with leaders from 71 states and 88 senior officers at United Nations in New York. During this summit, Declaration on the Survival, Protection and Development of Children and a Plan of action was adopted. Point 2 of this Declaration notes that:

*“2. The children of the world are innocent, vulnerable and dependent. They are also curious, active and full of hope. Their time should be one of joy and peace, of playing, learning and growing. Their future should be shaped in harmony and co-operation. Their lives should mature, as they broaden their perspectives and gain new experiences.”<sup>2</sup>*

The Declaration made it clear that children should be given equal, fair and just opportunities to improve their personality. It also focuses on improving the survival of the children. This

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<sup>1</sup>Seema Begum vs. State of Karnataka [ILR 2013 KARNATAKA 1659]

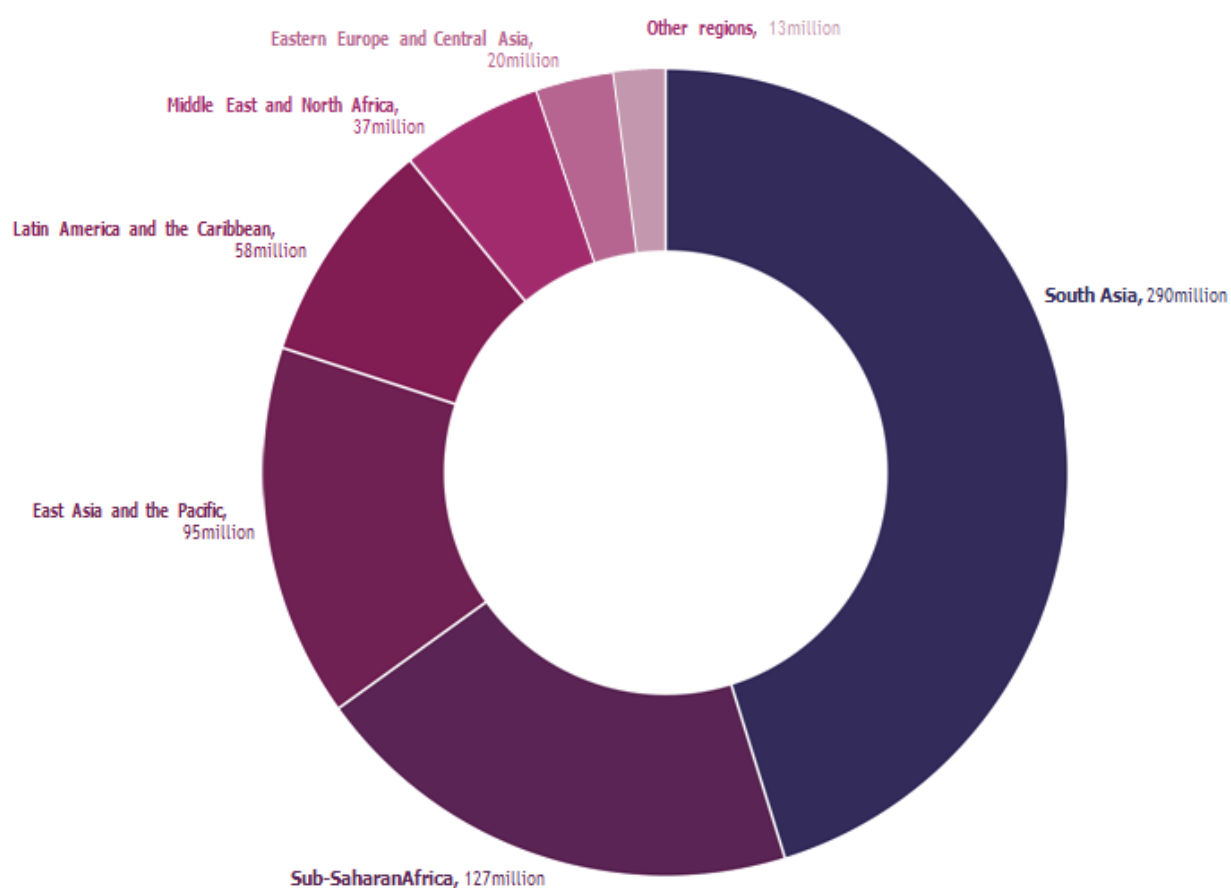
<sup>2</sup> World Declaration on the Survival, Protection and Development of Children(adopted 30<sup>th</sup> September 1990)<<https://www.unicef.org/wsc/declare.htm>>

included the following elements-

- Reducing maternal mortality
- Reducing infant and under-five child mortality
- Reducing malnutrition
- To provide safe drinking water
- Food supply
- Access to basic education
- Completion of primary education
- Reduction of adult illiteracy rate
- Protection of disabled children and so on.

### Global Comparison of Child Marriage

**Figure 1: Global Distribution of the number of girls and women first married or in union before age 18 by region**



Source: UNICEF Division of Data, Analytics, Planning and Monitoring May 2023

An estimated 640 million girls and women alive today were married in childhood. The above image shows that in South Asia there are majority cases of child marriage with 290 million there by contributing to 45 percent, next largest region is Sub-Saharan Africa with 127 million there by contributing to 20 percent, followed by East Asia and the Pacific with 95 million thereby contributing to 15 percent and Latin America and the Caribbean with 58 million thereby contribution to 9 percent, Middle East and North Africa with 37 million, Eastern Europe and Central Asia with 20 million and other regions with 13 million in the entire world.

### **1. South Asia**

This region leads the world in reducing the occurrence of child marriage. In the last decade itself, the possibility of marrying in childhood has dropped by 46 percent to 26 percent. Of all child marriages in the past 25 years, 78 percent were in South Asia. It is more in India when compared to Bangladesh, Maldives and Pakistan. This region is still the largest hub of practicing child marriage in the whole world.

### **2. Sub-Saharan Africa**

This region is experiencing the highest risk of child marriage in the world, with one in three majorities before they attain the age of 18 years. This is much concentrated in West and Central Africa, which is home to seven of the ten countries with the highest existence of child marriage in the world. Child marriage has been seen in Sub-Saharan Africa over the past 25 years, and even the cases are high among these regions.

### **3. Middle East and North Africa**

In this region one in six young women married before the age of eighteen years. Most countries in this region have witnessed a decline in child marriage over the last 25 years. But still there are more number of cases in Iraq. Still the advances that have occurred have been more equitable than in other regions, with Egypt leading in the reductions in child marriage among the poorest.

### **4. Latin America and the Caribbean**

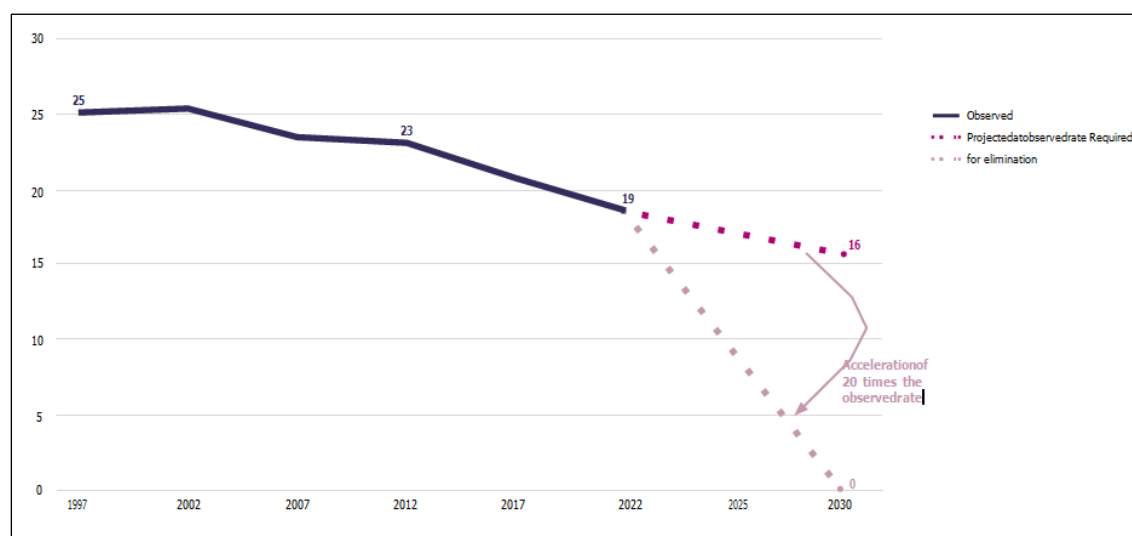
In this region not much progress has been observed in the last 25 years. By the year 2030, this region is expected to become second to Sub-Saharan Africa in terms of the occurrence of child marriages. Trends in this region show that the divide between rich and poor has

led to large number of child marriage cases among poor people.

## 5. Eastern Europe and Central Asia and East Asia and the Pacific

In this region the levels of child marriage remain low but stagnant, with girls from disadvantaged populations are still at risk.

**Figure 2: Observed and Projected percentage of women between 20-24 years who were married before 18 years of age**



In the above image it is indicated that the projected child marriage rates will be higher by 2030. According to UNICEF report of 2023, India alone accounts for one third of the women's child brides. This share is equal to the next ten countries combined which account for a further third. The remaining third are spread across the world's other 190 plus countries. The standard measure of prevalence is the percentage of women aged 20-24 years who were first married or in union before age 18. This is also an indicator which is used to monitor progress towards Sustainable Development Goals.<sup>3</sup>

At the current rate of progress over 9 million girls will still marry in the year 2030, with a growing share in Sub-Saharan Africa. Across the world there were 10 million child brides due to covid-19 which disrupted the daily life through school closures, income shocks, economic uncertainty and even mortality among parents. All these had higher risk-environment for girls. It is also estimated that an additional 10 million girls will become child brides by 2030 due to

<sup>3</sup><https://www.unicef.org> accessed on 10<sup>th</sup> June 2023

impact of pandemic situation.

Families living through conflict may feel a heightened sense of insecurity, fear of sexual violence and threats to family honor as well as financial hardship and infrastructure failures. All of these are considered as factors that are responsible for increase in child marriage. Extreme weather conditions can disrupt sources of income, food security and also costs for rebuilding and recovery. These climate impacts make parents to marry off their daughters at young age to get rid of financial burdens.

The distribution of the global population is shifting and by 2050 it is estimated that in Sub-Saharan Africa region alone can contribute for 41% increase in child marriage. Even at the same time low fertility rates in parts of the world such as Europe and China will lead to shrinking populations in coming years.<sup>4</sup>

## **6. Child Marriage in Afghanistan**

Child marriage is always present in this region. Girls are always looked as economic burden to their families. The figures of child marriage in this region are also very high. According to UNICEF report 57 percent of Afghan girls are married before they turn 16 and 60 to 80 percent of those girls were forced to get married early. Girls are always vulnerable to child marriage. Some of the major causes of child marriage in this region are-

- Illiteracy
- Lack of awareness in law
- Lack of access to schools
- Lack of awareness about the consequences of child marriage and so on.

Child marriage has adverse effects on physical health, social health, personality development, lack of access to education, health issues and so on.

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<sup>4</sup> Ibid

## **7. Child Marriage in Bangladesh**

Child marriage numbers in Bangladesh is highest in all the regions of Southern Asia. It is rated 146 out of 187 countries in the Human Development Index of the UNDP with a Gross National Income of US\$1,529 according to 2022 UNICEF report. The major factors of child marriage in this region are poverty, and economic burden of the family. In Bangladesh 66 percent of the girls are married before the age of 18 and 32 percent before the age of 15. In urban areas the rate of child marriage is 53 percent where as it is 70 percent in rural areas. UNICEF recently reported that largest number of cases can be found in western and southern parts of Bangladesh which borders India.

## **8. Child Marriage in Bhutan**

In this region girl children are always looked as burden and there is also a strong assumption that they do not contribute for the family in future. About 15.4 percent of girls aged between 15 to 19 are married. The child marriage cases are less in urban areas of Bhutan. It is high in Western and Central Bhutan.

## **9. Child Marriage in Iran**

In this region poverty, lack of education, lack of awareness about the legal provisions and the consequences of child marriage contribute for the higher growth of child marriage. In the places of Sistan and Baluchistan there are more number of early marriages. In cities the cases are recorded at 55 percent and in villages it is recorded at 45 percent.

## **10. Child Marriage in Nepal**

According to the report of International Centre for Research on Women report of 2023, more than 51 percent of women between the ages of 20 and 24 were married before they turned 18. 11 to 20 percent of girls aged 10-14 years are already married in this region. 79.6 percent of Muslim girls in Nepal, 69.7 percent girls who live in hilly regions, 55.7 percent of girls in rural areas are all married before the age of 15.

## **11. Child Marriage in Pakistan**

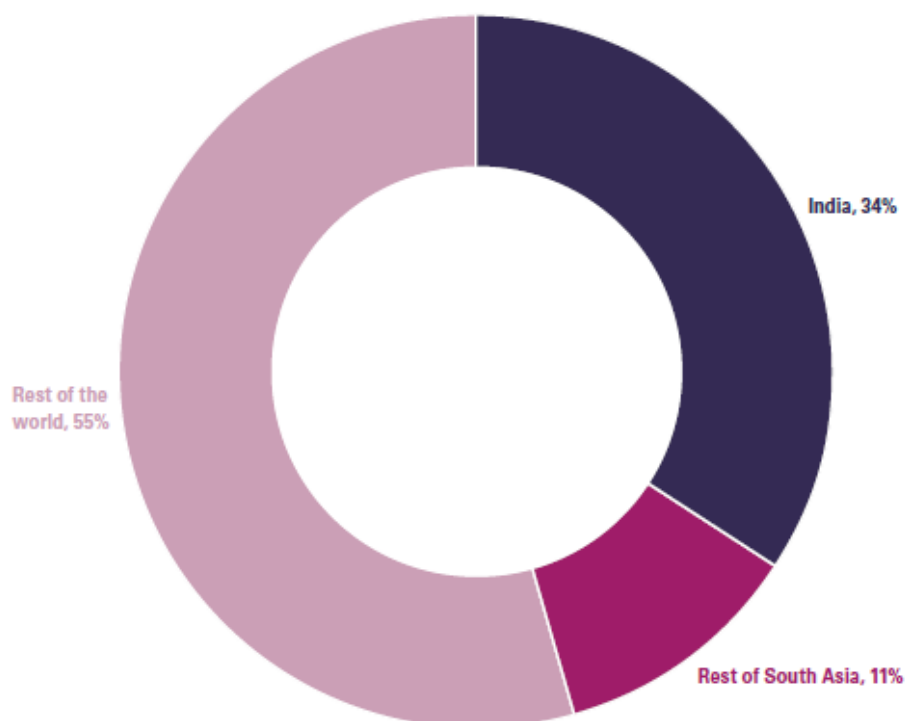
In this region, 30 percent of girls married are child brides. Some of the major causes of child

marriage in this region are poverty and patriarchal traditions. Some of the major consequences of child marriage in this region are-

- Sexual and physical abuse
- Health complications
- Maternal mortality
- Physiological and Social problems
- Illiteracy

When we look into the global comparison of child marriage across the different countries of the world, it can be noted that India is still the major hub of child marriages in the world which can be witnessed in the following image.

**Figure 3: Percentage of child marriage**



Source: UNICEF report 2023

Depending on the number of child marriages in India, UNICEF in its report entitled “Ending Child Marriage: A Profile Progress in India, 2023 has given the following key facts about India.

- ❖ Child marriage is becoming less common in India, but the country still accounts for one in three of the world’s child brides. Child brides include girls under 18 who are already married, as well as women of all ages who first married in childhood.
- ❖ Over half of the girls and women in India who married in childhood live in five states: Uttar Pradesh, Bihar, West Bengal, Maharashtra and Madhya Pradesh. Uttar Pradesh is home to the largest number.
- ❖ Nearly one in four young women in India (23 per cent) were married or in union before their 18th birthday
- ❖ The prevalence of child marriage varies across states and union territories in India. At least 40 per cent of young women were married before turning 18 in West Bengal, Bihar and Tripura, compared to 1 per cent in Lakshadweep.
- ❖ A girl’s risk of child marriage depends on certain background characteristics. Girls who live in rural areas or come from poorer households are at greater risk, and a higher proportion of child brides are found among those with little or no education.
- ❖ The majority of young women who married in childhood gave birth as adolescents
- ❖ Child brides face challenges in continuing their education. Fewer than 2 in 10 married girls remain in school.
- ❖ The practice of child marriage is less common today than in previous generations. Evidence shows accelerating progress over the last 15 years.
- ❖ India’s progress is strong compared to other countries in South Asia. Nonetheless, if child marriage is to be eliminated by 2030, additional efforts will be required.

After the discussion of global comparison of different countries with reference to child marriage, it is essential to look into the role of legislation, policies and programs at international, national and state level to eradicate this problem from the entire world.

## **International Treaty Obligations**

At the international level, there are some important conventions and Treaties that have been developed to protect women and children. Therefore it is important to discuss these conventions which are meant to safeguard the rights of the children.

### **1. Convention on the Rights of the Child**

This is a very important treaty as it got the ratifications from 193 States whose main objective is to protect the rights of the children. If we look historically this convention was preceded by the Universal Declaration of Human Rights and the UDHR was also further preceded by the Declaration of the Rights of the Child, 1924. It was originally authored by Eglantyne Jebb, founder of Save the Children.<sup>5</sup> It was also known as the Declaration of Geneva. In 1959, new text was adopted by the General Assembly and it contained the following principles:

- The right to equality, without distinction on account of race, religion or national origin;
- The right to special protection for the child's physical, mental and social development;
- The right to a name and a nationality
- The right to adequate nutrition, housing and medical services;
- The right to special education and treatment when a child is physically or mentally handicapped;
- The right to understanding and love by parents and society;
- The right to recreational activities and free education;
- The right to be among the first to receive relief in all circumstances;
- The right to protection against all forms of neglect, cruelty and exploitation;

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<sup>5</sup> Children's Rights Alliance, 'Towards a UN Convention on the Rights of the Child' UNCRC

- The right to be brought up in a spirit of understanding, tolerance, friendship among people and universal brotherhood.<sup>6</sup>

After the developments of 1959, the year 1979 was declared as the International Year of the Child. On 20<sup>th</sup> November 1989, the UN Convention on the Rights of the Child was formally adopted by the UN General Assembly. This tried to uplift the civil, cultural, economic, political and social rights. The Convention was successful in inspiring the changes in the lives of the children and the following efforts were made by the nations to implement Child Rights Committee (CRC):

- Integrating human rights principles into national legislation;
- Establishment of interdepartmental and multidisciplinary bodies;
- Development of national agendas for children;
- Widening partnerships for children;
- Promoting ombudspersons for children or commissioners for children's rights;
- Assessing the impact of measures on children;
- Restructuring of budgetary allocations with respect to children;
- Aims directed at child survival and development;
- Implementing the principle of non-discrimination;
- Listening to children's voices and making them into active participatory parties in matters involving them;
- Developing sound justice systems for children.<sup>7</sup>
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<sup>6</sup>Humanium, 'Declaration of the Rights of the Child, 1959'<http://www.humanium.org/en/childrens-rights-history/references-on-child-rights/declaration-rights-child/> accessed on 10<sup>th</sup> July 2023

<sup>7</sup> UNICEF, 'Convention on the Rights of the Child' [https://www.unicef.org/crc/index\\_30229.html](https://www.unicef.org/crc/index_30229.html) accessed on 16th July 2023

## 2. Committee on the Rights of the Child

This committee is created to look into the progress made by the state parties regarding the implementation of the CRC. This committee does not include any provisions to set up a court like forum as the model of the European Court of Human Rights which was established under European Convention on Human Rights. Some of the Human Rights treaties contain the petitioning procedures which are as follows-

- The Human Rights Committee under the International Covenant on Civil and Political Rights (ICCPR)
- The Committee on the Elimination of Racial Discrimination under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)
- The Committee Against Torture under the United Nations Convention Against Torture (UNCAT) and
- The Committee on the Elimination of Discrimination Against Women under the Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)<sup>8</sup>

## 3. India's Position on the United Nations Convention on the Rights of the Child (UNCRC)

India acceded<sup>9</sup> to the Convention on the Rights of the Child in 1992. It also ratified the first two optional protocols to the CRC which include:

- a. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict<sup>10</sup> and
- b. Optional Protocol to the Convention on the Rights of the Child on the sale of children,

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<sup>8</sup>MunjalYashita, "Child Marriage in India A Socio-Legal Analysis of Existing Laws and Prevalent Practices, Dr Ram ManoharLohiya National Law University

<sup>9</sup> "Accession" is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force.

<sup>10</sup> Ratified on 30<sup>th</sup> November 2005

child prostitution and child pornography.<sup>11</sup>

But India has not signed the third protocol of the Convention on the Rights of the Child on a communications procedure. The first report submitted by India to the committee was in the year 1997. The main objective of this report was to improve the situations of the children. This report also mentioned the steps undertaken by the government towards implementation of UNCRC. Some of these are:

- Ministries had begun to outline their roles in fulfilling the convention provisions;
- State governments had begun incorporating convention articles into their plans of action for children;
- The government partnering with notable NGOs to determine actions to be taken
- India had begun gathering data for the country's first periodic report.<sup>12</sup>

This report also included to discuss certain important areas such as –

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

After observing the reports of India, the Committee on the Rights of the Child suggested the following recommendations which are as follows-<sup>13</sup>

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<sup>11</sup> Ratified on 16<sup>th</sup> August 2005

<sup>12</sup> Childline, The 1997 Report <http://www.childlineindia.org.in/India-and-UNCRC.htm>

<sup>13</sup> Committee on the Rights of the Child, CRC/C/15/Add.115(23 February 2000)  
<<http://www.childlineindia.org.in/> accessed on 9th August 2023

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

In the third and fourth periodic review, the following concluding observations were made:

- Effective implementation of the prohibition of Child Marriage Act, 2006 including clarifying that the Act supersedes the Personal Laws;
- To take all necessary measures to combat dowry, child marriage and devadasi which includes conducting awareness building campaigns and programmes with a view to accomplish changing attitudes as well as promotion of counselling and reproductive education to prevent and fight child marriages which are harmful to the health and well-being of girls.<sup>14</sup>
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<sup>14</sup> Committee on the Rights of the Child, 'Concluding observations on the consolidated third and fourth periodic reports of India' <https://www.crin.org> accessed on 11<sup>th</sup> August 2023

#### **4. India's Position on CEDAW**

The CEDAW committee appreciated the efforts of Government of India in enacting the following legislations which include-

- The Criminal Law Amendment act, 2013
- The Sexual Harassment of Women in the Workplace ( Prevention, Prohibition and Redress) Act, 2013;
- The Protection of Children from Sexual Offences Act, 2012; and
- The Right of Children to Free and Compulsory Education Act, 2009.<sup>15</sup>

Among many observations made by the committee, the ones which are related to child marriage are as follows-

- Void all child marriages and ensure that the Protection of Children from Sexual Offences Act, 2012 also applied to child brides;
- Implementation of the PCMA without exception;
- To effectively investigate, prosecute and punish forced and early marriage;
- Speedily enact legislation to require compulsory registration of all marriages; and
- Strengthen efforts to raise awareness about the prohibition of child marriages, and their harmful effects on girls' health and conditions.<sup>16</sup>

#### **5. The Universal Declaration of Human rights (UDHR), 1948**

On December 10<sup>th</sup>, 1948 United Nations made declaration on human rights. It was a big milestone in the journey of granting international recognition to understand human rights. It

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<sup>15</sup> CEDAW, 'Concluding Observations' (2014)<[tbinternet.ohchr.org/Treaties/CEDAW/.../CEDAW\\_C\\_IND\\_CO\\_4-5\\_17678\\_E.doc](http://tbinternet.ohchr.org/Treaties/CEDAW/.../CEDAW_C_IND_CO_4-5_17678_E.doc)>

<sup>16</sup> CEDAW, 'Concluding Observations' (2014)<[tbinternet.ohchr.org/Treaties/CEDAW/.../CEDAW\\_C\\_IND\\_CO\\_4-5\\_17678\\_E.doc](http://tbinternet.ohchr.org/Treaties/CEDAW/.../CEDAW_C_IND_CO_4-5_17678_E.doc)>

also focuses on non-discrimination and to secure equal rights to all. Its contribution regarding eradication of child labour can be noted as follows-

Article 16 of the UDHR states that-

1. Men and women of full age, without any limitation due to race, nationality or religion have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.
2. Marriage shall be entered into only with the free and full consent of the intending spouses.
3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

It also focused on the fact that free and full consent of both parties is essential for the marriage. Both parties should also possess the mental capacity to understand the institution they are going to enter and also the changes that happens in the institution.

## **6. South Asian Regional Commitments-**

India is a member of South Asian Association for Regional Cooperation (SAARC). All the countries under SAARC focus on the economic, social and cultural development of South Asia. They also focus on protecting children, elimination of child marriage, child trafficking and so on.

While SAARC's Child Welfare Convention defines "children" as those who are below 18 years of age, it merely obligates governments to take steps to enforce the minimum age of marriage established in national laws.<sup>17</sup> It also focuses on compulsory registration of marriages and also to enforce national laws on minimum age of marriage.

## **7. Sustainable Development Goals**

The Sustainable Development Goals (SDGs) are 17 interlinked global goals. They are framed

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<sup>17</sup> Centre for Reproductive Rights, 'Child Marriage in South Asia: International and Constitutional Legal Standards and Jurisprudence for Promoting Accountability and Change' (2013) 32-33, Source:practicalaction.org

to achieve better and sustainable future. They are also part of the United Nations 2030 Agenda. These goals were agreed by 193 countries in September 2015. They also provide guidance to achieve these goals. They focus on the protection of people, children and aims at achieving the development of each individual there by focusing on progress of the nation.

**Figure 4: Sustainable Development Goals**



The above image shows the Sustainable Development Goals which are discussed as below-

**Table 1: List of Goals under Sustainable Development 2023**

| Goals  | List                       | Theme                                            |
|--------|----------------------------|--------------------------------------------------|
| Goal 1 | No Poverty                 | Progress, challenges in ending extreme poverty   |
| Goal 2 | Zero Hunger                | Beyond hunger: A healthy diet for a healthy life |
| Goal 3 | Good Health and well-being | The impact of COVID-19 on global health          |
| Goal 4 | Quality Education          | Rebuilding education systems after COVID-19      |

|         |                                         |                                                                         |
|---------|-----------------------------------------|-------------------------------------------------------------------------|
| Goal 5  | Gender Equality                         | Realizing gender equality-A greater challenge with climate change       |
| Goal 6  | Clean water and sanitation              | Strains on fresh water resources                                        |
| Goal 7  | Affordable and clean energy             | Access to universal and sustainable electricity; meeting the challenge  |
| Goal 8  | Decent work and economic growth         | Rebuilding economies after COVID 19-Will countries recover?             |
| Goal 9  | Industry, innovation and infrastructure | Sustainable transport for a liveable future                             |
| Goal 10 | Reduced inequalities                    | Progress and setbacks in reducing income inequalities                   |
| Goal 11 | Sustainable cities and communities      | No time to waste: A sustainability challenge for cities                 |
| Goal 12 | Responsible consumption and production  | Responsible use of natural resources: essential for sustainable growth  |
| Goal 13 | Climate action                          | From climate science to global action                                   |
| Goal 14 | Life below water                        | Ending overfishing: an urgent need to protect our oceans                |
| Goal 15 | Life on land                            | Deforestation: accelerating climate change and threatening biodiversity |
| Goal 16 | Peace, justice and strong institutions  | Violence across societies                                               |

|         |                            |                                                   |
|---------|----------------------------|---------------------------------------------------|
| Goal 17 | Partnerships for the goals | Development assistance as a catalyst for progress |
|---------|----------------------------|---------------------------------------------------|

Source: Sustainable Development Goals Fund ([datatopics.worldbank.org](https://datatopics.worldbank.org))

Sustainable Goal is a definite expression of the global community in recognising that child marriage is an issue of relevant importance. The goal reads are follows:

“Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation”<sup>18</sup>

According to the study conducted by Girls Not Brides organization, the achievement of the elimination of child marriage is linked for the achievement of eight other SDGs. <sup>19</sup> The goals that are interlinked to child marriage are as follows:

**Table 2: Inter-linkage of SDGs for eliminating child marriage**

| <b>Sustainable Development Goal</b> | <b>Linkage to child Marriage</b>                                                                                                          |
|-------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| Goal 1- No Poverty                  | Poverty is one of the major cause of child marriage. In other terms, child marriage itself is a cause for the continuation of the poverty |
| Goal 2- Zero Hunger                 | Most of the studies indicate that child brides and their children suffer from malnutrition                                                |
| Goal 3- Good Health and Well-being  | Child marriage has lot of negative consequences on the health of both mother and child. It often leads to maternal and infant mortality.  |

<sup>18</sup> Sustainable Development Knowledge Platform, ‘Progress of Goal 5 in 2017’<https://sustainabledevelopment.un.org/sdg5> accessed on 14<sup>th</sup> August 2023

<sup>19</sup> GIRLSNOTBRIDES, ‘How ending child marriage is critical to achieving the Sustainable Development Goals’ (May 2017)<https://www.girlsnotbries.org/> accessed on 14<sup>th</sup> August 2023

|                                                 |                                                                                                                                           |
|-------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|
| Goal 4- Quality Education                       | Education is hampered for both boys and girls at young age                                                                                |
| Goal 5- Gender Equality                         | Eradication of child marriage leads to empowerment of girls and also women which in brings the equality in society                        |
| Goal 8- Economic Growth                         | If the girls are married at very young age they cannot contribute for the economic growth of the country due to illiteracy                |
| Goal 10- Reduce Inequalities                    | Child marriage usually affects the rural population and in turn leads to continuation of poverty which leads to inequality in the society |
| Goal 16- Peace, Justice and Strong Institutions | Until the child marriages are eliminated it is not possible to end violence                                                               |

Source: Sustainable Development Goals Fund ([datatopics.worldbank.org](https://datatopics.worldbank.org))

After the adoption of SDGs, the National Institution for Transforming India (NITI Aayog) which is the prime policy think tank of the Government of India was declared as the nodal agency which was assigned with the responsibility of implementing SDGs.

The important eight goals targeted by UN General Assembly are discussed as follows:

### **Table 3 : List of Millennium Development Goals**

The following goals have been set up to focus on the progress and development of children who are the most vulnerable sections of the country especially in underdeveloped countries.

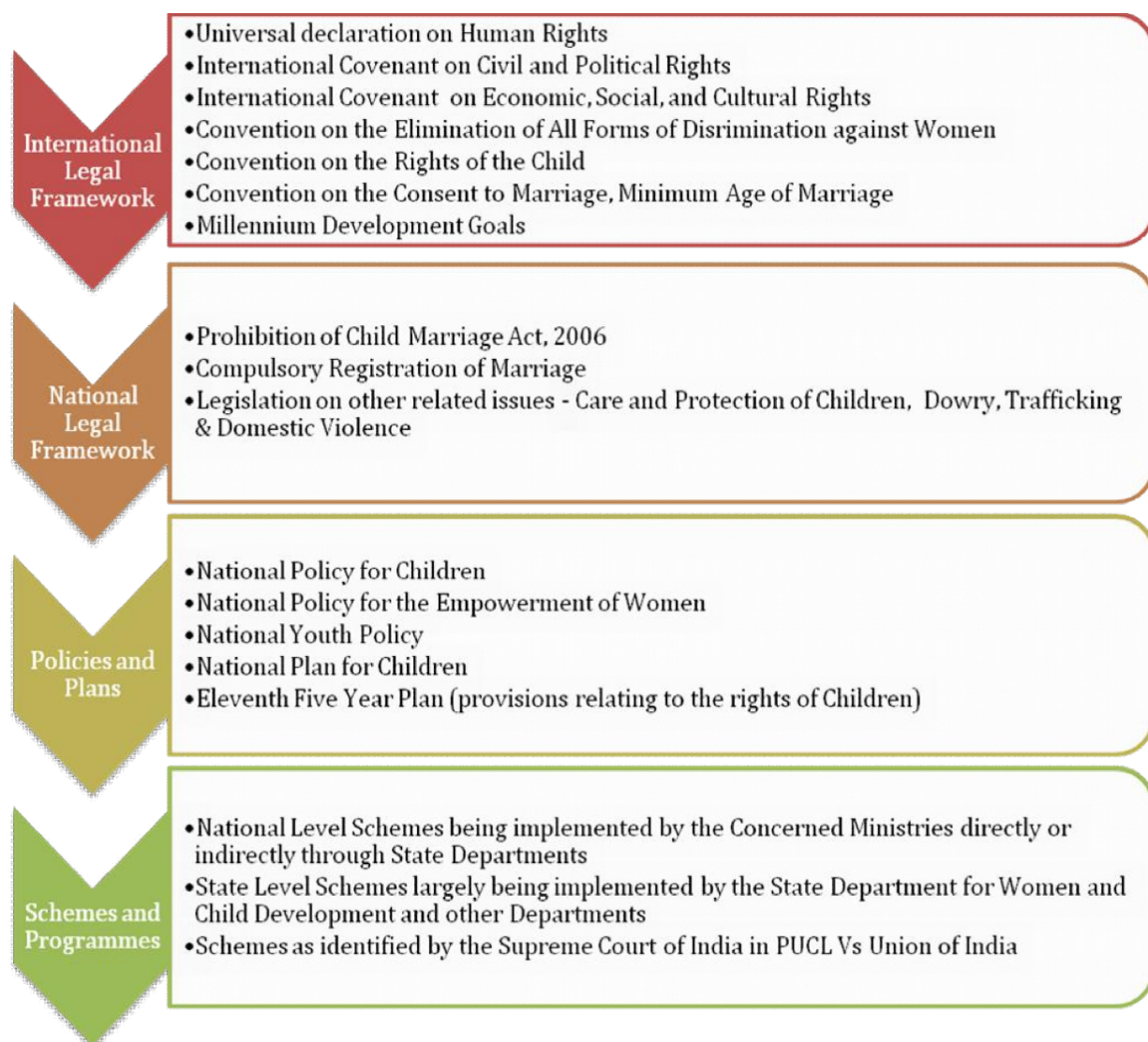
| GOALS  | THEMES                               |
|--------|--------------------------------------|
| Goal 1 | Eradicate extreme poverty and hunger |

|        |                                                 |
|--------|-------------------------------------------------|
| Goal 2 | Achieve universal primary education             |
| Goal 3 | Promote gender equality and empower women       |
| Goal 4 | Reduce Child Mortality                          |
| Goal 5 | Improve maternal health                         |
| Goal 6 | Combating HIV/AIDS, malaria, and other diseases |
| Goal 7 | Ensure environmental stability                  |
| Goal 8 | Develop a global partnership for development    |

Source: [www.un.org](http://www.un.org)

### **National Legal Framework**

After discussing the international legal framework in the eradication of child marriage it is very essential to understand the legal framework, policies, schemes and programs implemented by India to eradicate child marriage. Before understanding the laws, policies and programs it will be better to understand Child Marriage and Personal laws in the context of Indian religions. First let us understand the definitions of Child Marriage under Law.

**Figure 5: Legal Framework to eradicate child marriage**

Source: Core Committee Report, Government of Karnataka

The above image shows the legal frameworks which are formed at the international and national level and also various policies, programmes and schemes that are undertaken to eradicate the problem of child marriage.

### **Definitions of Child Marriage under Law**

Section 2(b) of the Act defines child marriage as follows

“Child marriage means a marriage in which both of the contracting parties is a child”.

The definition of child marriage is clearly related to the concept of child. A child has been defined in the Convention on the Rights of the Child, 1989 as a person below the age of 18 years.<sup>20</sup>

The Juvenile Justice (Care and Protection) Act, 2000 defines child as a person who has not completed the age of eighteen years.

In personal laws, except Muslim Law, termination of childhood depends on the gender of the child. Here the childhood ends at the age of 21 and 18 years for male and female respectively.

### **Child Marriage and Personal Laws**

India is basically a country with lot of diversities and it is for this reason that there are many laws pertaining to marriage according to different religions. Article 44 of the Indian Constitution says *“The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India”*<sup>21</sup>

In India according to religions there are different personal law with reference to marriage. All these personal laws are based on customs and traditions of each religion. Hindu religion is subject to certain codified laws whereas Muslim law is not yet codified as it is based on certain religious text of the religions.

In the case of *Meena and Anr, v. State and Anrit*<sup>22</sup> October 2012, it was noted that The Indian Majority Act, 1875 lays down eighteen years as the age of majority for a marriage but the non obstante clause( notwithstanding anything contrary) excludes marriage, divorce, dower and adoption of the Act with the result that the age of majority of an individual in these matters is governed by the personal law to which he is a subject.<sup>23</sup> This in turn indirectly gives consent to child marriage which is supported by personal law and customs of the particular religion.

The Child Marriage Restraint (Amendment) act, 1978 has now raised the marriage age as laid down under the Hindu Marriage Act, 1955 from 18 to 21 and from 15 to 18 years for boys and girls respectively. The amendment makes the provisions of the Hindu Marriage Act regarding

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<sup>20</sup> Article 1, Convention on the Rights of Child

<sup>21</sup> Constitution of India, Article 44

<sup>22</sup><https://indiankanoon.org> accessed on 16<sup>th</sup> October 2023

<sup>23</sup><https://indiankanoon.org> accessed on 22<sup>nd</sup> October 2023

marriage guardians, whose consent was required for the marriages of girls in the age group of 15-18 wholly redundant. All these provisions are dropped. At present no girl below the age of 18 years can lawfully marry under the Hindu Marriage Act.

Hindu law is a codified law based upon the customs of Hinduism, having the following statutes.

- a) The Hindu Marriage Act 1955
- b) The Hindu Succession Act 1956
- c) The Hindu Minority and Guardianship Act 1956
- d) The Hindu Adoption and Maintenance Act 1956
- e) The Hindu Disposition of Property Act 1916

The marriages among the Hindus are governed with the Hindu Marriage Act, 1955.

The insertion of option of puberty to Hindu Law through an amendment in 1976 indicates the silent acceptance of child marriages. Legislative endorsement and acceptance which confers validity to minor's marriage in other statutes brings down the objective of Child Marriage Restraint Act of 1929. The acceptance and acknowledgment of such legal rights itself and providing a validity of child marriage defeats the purpose of legislature to eradicate child marriage.

### **POCSO Act 2012-**

The Protection of Children from Sexual Offences (POCSO) Act, 2012 came into effect from 14<sup>th</sup> November 2012. This is a very important law to give interests of a particular child at each and every stage of judicial process by adopting child-friendly measures such as reporting, recording of evidences, investigation and also speedy trial of offences through special courts.

POCSO Act defines a child as any person below 18 years of age and defines different forms of sexual abuse including penetrative and non-penetrative assault as well as sexual harassment and pornography. It deems a sexual assault to be "aggravated" under certain circumstances such as when the abused child is mentally ill or when the abuse is committed by a person in a

position of trust or authority vis-à-vis the child, like a family member, police officer, teacher or doctor. People who traffic children for sexual purposes are also punishable under the Act.<sup>24</sup>

Madhya Pradesh, Maharashtra, Uttar Pradesh, Haryana and Delhi constitute 51 percent of the POCSO cases in the country but the rate of conviction in these states is between 30% and 64%. Of the 1,023 fast track courts to be set up, 612 are already functional but there is need to establish all the sanctioned courts quickly as 89% of child sexual abuse cases still await trial.<sup>25</sup>

### **The Child Marriage Restraint Act of 1929**

The Child Marriage Restraint Act, also called the Sarda Act, was a law to restrict the practice of child marriage. It was enacted on 1 April 1930, extended across the whole nation, with the exceptions of some princely states like Hyderabad and Jammu and Kashmir. This Act defined the age of marriage to be 18 for males and 14 for females. In 1949, after India's independence, the minimum age was increased to 15 for females, and in 1978, it was increased again for both females and males, to 18 and 21 years respectively. The punishment for a male between 18 and 21 years marrying a child became imprisonment of up to 15 days, a fine of 1,000 rupees, or both. The punishment for a male above 21 years of age became imprisonment of up to three months and a possible fine. The punishment for anyone who performed or directed a child marriage ceremony became imprisonment of up to three months and a possible fine, unless he could prove the marriage he performed was not a child marriage. The punishment for a parent or guardian of a child taking place in the marriage became imprisonment of up to three months or a possible fine. It was amended in 1940 and 1978 to continue rising the ages of male and female children.<sup>26</sup>

The ages prescribed by this Act is quite different between boys and girls. It also signifies the norms that state that girls should be younger than boys as it depicts the patriarchal nature of Indian society. Another aspect of this Act was that it did not prescribe heavy penalties. Though penalties underwent a bit changes in the year 1949, but they were not able to possess as much strength to deter the incidence of the practice.

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<sup>24</sup><https://www.indiacode.nic.in> accessed on 21<sup>st</sup> October 2023

<sup>25</sup><https://www.indiacode.nic.in> accessed on 19<sup>th</sup> October 2023

<sup>26</sup><https://wcd.nic.in> accessed on 6<sup>th</sup> October 2023

## **The Prohibition of Child Marriage Act, 2006**

In view of ineffectiveness of Child Marriage Restraint Act, 1929, there was a need to introduce the Act which could put stringent actions and laws to eradicate child marriage. As a result of this The Prohibition of Child Marriage Bill was introduced. The Bill was passed in both the Houses of Parliament on 10<sup>th</sup> January 2007. This gave rise to the present day Prohibition of Child Marriage Act, 2006.

According to this Act, any marriage in which either or both of the contracting parties is a child is considered as 'Child Marriage.' According to section 2 of the Act, a child is any male who has not completed the age of 21 years and any female who has not completed the age of 18 years of age. Under this Act, any person for performing, abetting, conducting or directing a child marriage would be punishable with rigorous imprisonment for a term which may extend to 2 years and a fine which may extend to 1 lakh rupees.<sup>27</sup>

## **Prohibition of Child Marriage (Karnataka Amendment) Act, 2016**

Certain amendments have been made to The Prohibition of Child Marriage Act by the State of Karnataka. Some of the important changes made by this Act are as follows-<sup>28</sup>

- It makes the child marriages void *ab initio*- It refers to make an attempt to secure the futures of all these girls until they attain majority. It also saves the girls from being sexually and mentally exploited in the chains of early marriage. Giving no legal validity to such marriages is also one of the major step by the Government of India to move in the direction of fulfilling the international commitments under the Convention on the Elimination of All forms of Discrimination Against Women (CEDAW).
- It provides for minimum punishment of one year of rigorous imprisonment for an offence committed under the Act
- Every Police Officer shall take suo moto cognizance of the offence committed under this Act in his jurisdiction.

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<sup>27</sup>[www.indiacode.in](http://www.indiacode.in) accessed on 17<sup>th</sup> October 2023

<sup>28</sup><https://www.indiacode.nic.in> accessed on 23<sup>rd</sup> September 2023

## **The Hindu Marriage Act 1955**

This Act was implemented by the Parliament of India in 1955 and the main objective of this Act was to regulate the lives of Hindus especially with reference to marriage. It lays down the most important aspect of the marriage as the foundation of any society. This act clearly states that marriage between two individuals should be formalized if the boy is more than 21 years of age and girl being at least 18 years old.

## **Child Marriage and Constitution of India**

In the Indian Constitution efforts have been made to protect the rights of women on par with men with respect to political, social, economic and religious matters. Gender Equality has been given top priority. But still there is a huge gap between the provisions of the constitution and the status of the women in the society.

## **The protections provided by the Constitution are as below**

Preamble of the Constitution- It promises justice, equality, and also to provide an equal status and equal opportunities for all.

## **Fundamental Rights**

Article 14- Equal status in front of law and its protection

Article 15.1- prohibiting any kind of discrimination either on basis of caste or gender or birth place

Article 16- Equal opportunities for employment in public places.

The Constitution of India guarantees fundamental rights to all citizens of India. The practice of child marriage acts against the rights of girls and women. It results in gender discrimination, denial of dignity and labour and so on. It violates the following rights which are given importance in the Constitution of India-

- a) Right to Life and Personal Liberty
- b) Non-discrimination and Equality

- c) Free and Compulsory Education between 6 to 14 years; and
- d) Freedom from Forced Labour and Exploitation

Right to Life and Personal Liberty are given importance in article 21 of the Indian Constitution. The rights which come under the purview of Article 21 in order to protect against child marriage are as follows-<sup>29</sup>

- Right of children to protection from abuse
- Right to freedom from torture and cruel, inhuman and degrading treatment
- Right to health, reproductive health, and survival of pregnancy and child birth
- Right to autonomy, dignity and reproductive rights; and
- Right to privacy, this encompasses protection of the personal intimacies of the home, the family, marriage, motherhood, procreation and child rearing.

Directive Principles of State Policy- There are specific principles which States have to follow-

Article 39A- It states that any State policy shall be directed to secure all of its citizens and their right to earn livelihood, without any gender discrimination.

Article 39D- Equal compensation for the same work, without any gender discrimination, shall be ensured by the State

It will be ensured by the State to provide equal facilities and opportunities for the healthy development of children with dignity and freedom.

In 2015, the Madras High Court on one of its judgements recognised that child marriage is inconsistent with girls' interests as protected under the constitutional rights to life and equality and non-discrimination as well as the Directive Principles of State Policy.<sup>30</sup>

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<sup>29</sup> Dr. B R Ambedkar; The Constitution of India, Buddham Publishers, Jiapur, 2019

<sup>30</sup> M. Mohammed abbas vs. The Chief Secretary, Government of Tamil Nadu and Ors. [MANU/TN/2377/2015]

In the report<sup>31</sup> (2017) published jointly by the organisation Young Lives and National Commission for the Protection of Children, it is stated:

“Looking at the impact of early marriage from rights perspective, it can be said that the key concerns are denial of childhood and adolescence, curtailment of personal freedom, deprivation of opportunities to develop a full sense of selfhood and denial of psychosocial and emotional well-being, reproductive health and educational opportunity along with consequences described earlier.”<sup>32</sup>

### **Child Marriage and Juvenile Justice (Care and protection of Children) Act, 2015**

For the purpose of care, protection, treatment, development and rehabilitation of children recognised as “children in need of care and protection” and to ensure their basic needs and protection, this Act makes it mandatory for the State Governments to establish Child Welfare Committees (CWC). These committees are supposed to do the task of above stated purposes. This Act also recognizes children who are at “imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnization of such marriage” as children in need of care and protection.<sup>33</sup> This Act also guarantees the children to provide shelter who are the victims of child marriage.

### **Conclusion**

It is indeed a known fact that most of the girls before turning into 18 years are being married across the planet. Child marriage has lot of adverse effects on the physical and mental well being of the children. As they are forced to marry early it will grab their childhood and they are also missed out of education which is essential for the personality development of the children.

Most of the girls enter into early pregnancy there by losing their physical and mental stability at a very young age. Absence of education and training in certain skills lead to restrictions of choices of women and it also makes them financially dependent. Though there are multiple legislations, policies, programs and various schemes across the world, they have been failure

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<sup>31</sup> Young Lives(n 9)

<sup>32</sup> *ibid*

<sup>33</sup> Juvenile Justice(Care and protection of Children) Act, 2015

in eliminating this problem from the society. Religion, customs, traditions also play a very important role in the existence of this problem.

It is very essential that marriages should be made compulsory and necessary action should be taken against this. Legal lacunas should be covered with the cooperation of international, national, state and other legal systems and also with the cooperation of various NGOs of the particular region along with the community. Effective communication strategies should be given importance to combat this evil. Child marriage is truly a global problem which cuts across different countries, cultures, religions, ethnicities and so on. In this regard, efforts should be doubled to eradicate this problem at the earliest.

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