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Child Marriage A Human Rights Violation: Need of Legal Reform & State Accountability

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ABSTRACT

The integrity and dignity of the child are protected through various legal frameworks followed by judicial intervention in assembling the rights of the children into various domain such as education, ban on child labor, protection against all forms of discrimination, etc. All Child-Centric Legislation (CCL) framed post-independence leaned towards the "Best Interest of Child". The rights of the children (girl child) get curtailed down due to traditional practices, social customs, rituals, patriarchy mindset of society and family, etc. result in an immature and forcible child marriage. The children (especially girl child) have been considered as economic burden to the family; thereby solemnize their marriage at an early age to keep adjacent with the traditional practice, compromising factor, cost-efficient, social stigmatization, etc. Traced to the ancient period, where the children irrespective of sexual discrimination, were adjudged with great value in concerning their schooling, well-being, health factors and so on. Hence, such form of ancient traditions has become a factual myth in terms of ground reality. The practices of old-age traditions keep on instigating the society and masses towards social stigmatization of girl child being a burden, rather focusing upon the implications of Special legislation, Judicial intervention, etc. towards empowerment of females by way of equal education, opportunity, legal protection and treatment, etc. This paper will subject to the statistical view of child marriage of India. It will also recover the prevailing situation in the area of child marriage and efficacy of

legislative action by Centre and State government to eradicate and prohibit the practice of child marriage. The paper also focuses upon the judicial intervention relating to consequences and several dimensions of child marriage.

KEYWORDS

Child-Centric Legislation, Child marriage, Social stigmatization, Empowerment of Women, Judicial Intervention

INTRODUCTION

The marriage is considered as a sacrament which ties the knot between heterogeneous couples and lives with each other. Whereas, in due course of time the marriage of homogenous couples were get legalized by the Honorable Supreme Court of India which endorsed variability in contracting parties to marriage¹. It is legislatively mandated that the contracting parties must have attained 18 years and 21 years for female and male respectively². Thereby, child marriage was penalized subject to any act violates the Act of 2006 through judicial intervention. The relevancy behind enforcing legislation in a democratic republic country indicates some notion of the society. In 1929³, the first legislation had been introduced to restrain child marriage in India which got later repealed in 2006⁴. The prevalent practice of child marriage was overlooked under the shadow of social acceptance and preservation of dominance culture. Marriage is a social practice which later recognized under legal roof through state intervention. It is noted that the child marriage is being still practiced as rituals mostly in India⁵. Child has been regarded as social evil practice which endangered the life of children (especially girl child) and been recognized under vulnerable groups. The Prohibition of Child Marriage Act 2006 (*hereinafter referred as Act of 2006*) introduced with the intention to prohibit child marriage, but somehow failed to reach its objective even after 17 years of enforcement.

The primacy behind solemnization of child marriage was due to various challenges like poverty, amount of dowry, etc. led to

¹ *Navtej Singh Johar & Ors. v. Union of India thr. Secretary Ministry of Law and Justice* AIR 2018 SC 4321

² The Prohibition of Child Marriage Act, 2006 (Act No. 6 of 2007), s. 2(a)

³ The Child Marriage Restraint Act, 1929

⁴ The Prohibition of Child Marriage Act (Act No. 6 of 2007)

⁵Prevalence of child marriages as a part of customs in India, *available at:* <https://timesofindia.indiatimes.com/readersblog/some-thoughts/prevalence-of-child-marriages-as-a-part-of-customs-in-india-37796/> (last visited on March 12, 2023)

financial hurdles of families. The female child was being inflicted with several challenges due to child marriage as compared to male child. The girl child were being considered as burden to their families and therefore adopt the tendency to commence marriage at their early age which not only deprived off their rights but also subjected several violence, torture, harassment, etc., by the in-laws. The defects in the existing legislation counted from the age discrimination of marriage being considered as legal which recently been corrected through introducing Amendment Bill of 2021⁶ and quoted the landmark judgment of Supreme Court in 2016⁷. The incidence of child marriage till date captured vide various reports through governmental action which clearly manifested towards large amount of child marriage being commenced in modern period which abruptly root out the rights of child (girl child) ensured under Constitution of India. The fallacy in the existing legislation and implementation procedure fails in strict prohibition of child marriage. The menace growth of child marriage gave a deteriorating indication and acts as barrier in the development of the nation. According to latest data of Census 2021, the average sex ratio is 943 female in every 1000 male leaving Kerala and Puducherry performing well in safeguarding the interests and rights of female⁸.

The child marriage impact the life of the girl child in various dimension such as health, cruel or torture, illiteracy, adjustment in in-laws family, victim of forcible sexual intercourse on multiple occasion, conceiving child at an immature stage, and many more. Hence the life of minor girl is compromised and unequal treatment at par with male child. The customary practices of child marriage is being recognize as crime globally which pledge towards abolishing child marriage world wide. But the existing legislation fails in abolishing the practice of child marriage rather intending to prohibit it. The discriminatory status of girl/women is an old practice which shadowed down the girl child under the roof of social evil practice.

RECENT TRENDS OF CHILD MARRIAGE IN INDIA

The girl child are the most deprived category subject to several derogatory practices results in increasing incidence of child marriage in India. It has been apprehended that most of the girl child were exposed to minor wedlock results in sending them in the families of in-laws after a considerable period⁹. India counters

⁶ The Prohibition of Child Marriage (Amendment) Bill, 2021

⁷ *Independent Thought v. Union of India & Anr.* (W.P. (C) 382/2013)

⁸ Sex Ratio of India 2021, available at: <https://censusofindia2021.com/sex-ratio-of-india-2021/> (last visited on March 12, 2023)

⁹ Child marriage in India, available at: <https://plan->

a roof of “*one in every 3 child brides in the world*”. The right of the minor girls was curtailed due to minor wedlock which snatches the right to destiny and thereby treated being the property of their groom¹⁰. The child marriage could lead to rise in various crime such as forcible carnal intimacy, domestic violence, deformity in reproductive health such HIV, forceful abortion, high minor mortality rate, etc. The practice of child marriage result in mass violation of educational rights to the minor girl results in less literacy rate of women as compared to men. The minor wedlock is a customary evil practice which was being maintained to maintain family reputation, prevail dominance over females, avoid high amount of dowry, social acceptance, and high price of brides, waive off economic burden, to avoid social stereotypes, gender inequality, and many more¹¹. The minor girls were put to “*force adulthood*”, intimate violence; maintain household chores, forced expectant, early infant bearing, etc.¹² results in mass violation of fundamental rights, childhood period, education, and many more. The consequences of minor wedlock results in forced expectancy which might risk the life of the unborn child and minor mother due to immature growth, less weight, inadequate food and nutrition, etc.¹³ The recent trends of child marriage encompass that the incidence of minor wedlock were curbing down in the State of Uttar Pradesh. It has been anticipated that vide several state and central schemes and policies overspread the awareness to abolish the practice of minor wedlock which results in drop of child marriage incidence, enhancing educational rate of minors up to secondary or higher secondary schooling¹⁴. It has been estimated that each year around 15 lakhs girl child were get married and thus contributes to large population of minor bride

international.org/publications/child-marriage-in-india/ (last visited on March 12, 2023)

¹⁰India home to one in every three child brides in world: UN, *available at*: <https://www.google.com/amp/s/www.thehindu.com/news/national/india-home-to-one-in-every-three-child-brides-in-world-un/article6237757.ece/amp/> (last visited on March 2, 2023)

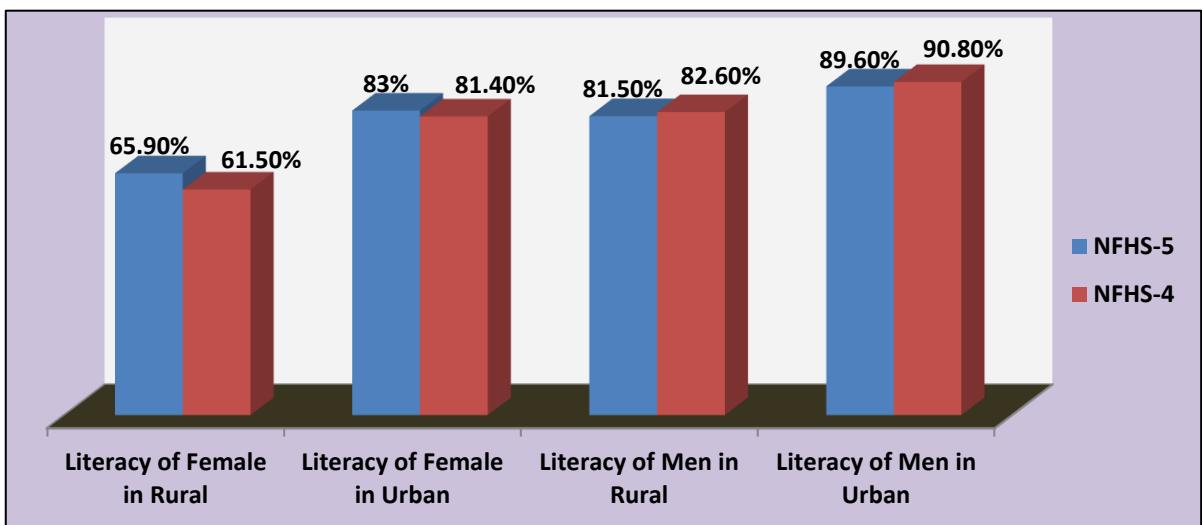
¹¹ Gender-based violence and child marriage, *available at*: <https://www.girlsnotbrides.org/learning-resources/child-marriage-and-health/gender-based-violence-and-child-marriage/> (last visited on March 7, 2023)

¹² *Ibid*

¹³ It is 2021 and Child Marriage is still a Social Issue in India, *available at*: https://childhelpfoundation.in/cii-blog/posts/It-is-2021-and-Child-Marriage-is-still-a-Social-Issue-in-India?gclid=Cj0KCQjw2cWgBhDYARIaLlggUhoOwg2b9CqWDoHxjRnOX7qE45D98AslsuPAz9jm4DvP26emGzdK71oaAo47EALw_wcB (last visited on March 2, 2023)

¹⁴ Child marriage evil is showing a significant declining trend in UP, *available at*: https://www.google.com/amp/s/m.timesofindia.com/city/lucknow/child-marriage-evil-is-showing-a-significant-declining-trend-in-up/amp_articleshow/91273587.cms (last visited on March 10, 2023)

in the world¹⁵. The rate of literacy has been directly impacted due to practice of minor wedlock across India. The data of literacy published by NFHS¹⁶ are being graphically reproduced herein under:



RATE OF LITERACY IN INDIA

The literacy rate of male and female in the above graph clearly reflects the huge gap exists between literacy of female in rural and urban areas. There is compatible difference between literacy of male in rural and urban areas. The practice of minor wedlock were consistently been considered as a hindrance in girls education. The sudden drop of literacy among female in rural areas sources from variant evil practice against girl like child marriage¹⁷. The minor girls been subjected to suffer more vulnerability then young boy in the evil practice of child marriage.

Recently in 2023 the Government of Assam, have taken a huge step to restrain the practice of child marriage and imposed strict actions against people, were involved in allowing and solemnizing child marriage. It has been declared that any person involved in solemnizing child marriage between parties of 14-18 years is penalized under Act of 2006¹⁸ and any minor involved is less than 14 years would trial under POCSO Act¹⁹. Hence state police would

¹⁵Child Marriage in India, *available at:* <https://www.studyiq.com/articles/child-marriage-in-india/#:~:text=Estimates%20by%20UNICEF%20suggests%20that,we're%20married%20before%20turning%2015> (last visited on March 11, 2023)

¹⁶ Government of India, “National Family Health Survey (Fifth and Fourth Series)” (Ministry of Health and Family Welfare, 2014-16 & 2019-21)

¹⁷ Anju Malhotra and Shatha Elnakib, *Evolution In The Evidence Base On Child Marriage 1-108* (UNFPA-UNICEF, 2019-2020)

¹⁸ *Supra Note 6*

¹⁹ The Protection of Children from Sexual Offences Act, 2012 (Act No. 32 of

act stringently towards any practice led to child marriage. It has been further assured through Campaign against Child Marriage (CACM) run by national human rights organization i.e. Independent Thought. The mentioned campaign did a study/survey in Assam and reiterates the fact of commencing child marriage through illegal and frivolous agreement with the support of advocacy. Thus, there were various activities been involved to reach the goal of violating rights. The prevalent rate of child marriage in Assam put forward to initiate the action based on NFHS-5 data.²⁰ The recent trends been captured upon claimed by the Chief Minister of Assam that there was no incidence of child marriage since one month²¹. In another parts it is stated about restraining incidence of child marriage and finally rescued the minor girl by child helpline from *Uttarkashi*²². Another incidence of rescuing the minor girl victim from child marriage by the ChildLine department, and victim was origin of Madhya Pradesh²³. One of child marriage captured at *Nandagol* village in *Paril tehsil* been reported and subsequently the people involved in child marriage were charged under Act of 2006 includes the guests.²⁴ The state of West Bengal diversified the concept of child marriage into a SHG (small health group) or a group of female around less than 18 years of age which tends to overspread the awareness through various photo or banner to transmit a thought of empowering the status of female in India subjected to their lookout and safeguards²⁵. Therefore, the scenario of child marriage in India were going parallel with the grey side, and trying

2012)

²⁰Assam to launch massive crackdown on child marriage from February 3, available at: <https://www.thehindu.com/news/national/other-states/assam-to-launch-massive-crackdown-on-child-marriage-from-february-3/article66466163.ece> (last visited on March 8, 2023)

²¹No child marriage in last one month in Assam: CM Himanta Sharma, available at: <https://timesofindia.indiatimes.com/india/no-child-marriage-in-last-one-month-in-assam-cm-himanta-biswasarma/articleshow/98311551.cms> (last visited on Mach 4, 2023)

²²Child marriage foiled in Uttarkashi, 16-year old girl rescued, available at: <https://timesofindia.indiatimes.com/city/dehradun/child-marriage-foiled-in-uttarkashi-16-year-old-girl-rescued/articleshow/98553841.cms> (last visited on March 1, 2023)

²³Cops stop child marriage in Palamu, available at: <https://timesofindia.indiatimes.com/city/ranchi/copstop-child-marriage-in-palamu/articleshow/98646037.cms> (last visited on March 15, 2023)

²⁴Ex-fiance reports minor's wedding; parents booked, available at: <https://timesofindia.indiatimes.com/city/aurangabad/ex-fianc-reports-minors-wedding-parents-booked/articleshow/98646721.cms> (last visited on March 2, 2023)

²⁵Posters, trackers to curb child marriage in West Bengal, available at: <https://timesofindia.indiatimes.com/city/kolkata/posters-trackers-to-curb-child-marriage/articleshow/98575111.cms> (last visited on March 1, 2023)

to fixed ray towards development of patriarchal mindsets lined up in protecting the better interest of children and to abolish the practice of child marriage.

LEGISLATIVE ACTION AND FALLACY

The Act of 1929²⁶ confers upon restraining the practice of child marriage in India during the British regime in undivided India. Whereby, due to various defects, it got amended on several occasions such as in 1949²⁷ and 1978²⁸. It was held that the age of marriage were primarily 14 years for girls and 18 years for boys and later only changed to 15 years for girls in 1949. Thereafter in 1978 the age of marriage got raised to 18 years for girls and 21 years for boys which have been later upheld in the repealed legislation. Finally, the previous piece of legislation got repealed by the Act of 2006 enumerating strict prohibition towards customary practice of child marriage. The difference in marital age of between female (18 years) and male (21 years) contracting parties remarked the patriarchal mindset of the society. Recently, a new Bill has been introduced by the Honorable Minister of Women and Child in order to waive out the age difference between marriage parties and thereby proposed to enhance the marital age of girl to 21 years led to equal treatment at par men²⁹. This Bill further proposes the extension of time period by three years to nullify any child marriage by any minor contracting parties within five years after attaining majority³⁰. The Act of 2006 enumerates the provision where the child marriage would be voidable at the option of the contacting parties which create a hindrance to carry forward the objectives of the intended legislation³¹. The Honorable High Court of Delhi recently adjudicated a matter which challenges Section 3 of the Act of 2006 and prays towards complete abolishment of child marriage practices³². The proviso clause of Section 11(1) of the Act of 2006 also states about the punishment for commencing child marriage, whereas no penalty would have been imposed upon any women involved in permitting child marriage. Thus, the preceding provision creating loopholes to permit or commence child marriage by any female and thereby imparts ambiguity in the existing legislation.

²⁶ *Supra Note 5*

²⁷ The Child Marriage Restraint (Amendment) Act, 1949

²⁸ The Child Marriage Restraint (Amendment) Act, 1978

²⁹ The Prohibition of Child Marriage (Amendment) Bill, 2021

³⁰ The Prohibition of Child Marriage (Amendment) Bill, 2021, available at: <https://prsinia.org/billtrack/the-prohibition-of-child-marriage-amendment-bill-2021> (last visited on March 9, 2023)

³¹ The Prohibition of Child Marriage Act, 2006, s. 3(1)

³² *Aisha Kumari v. State of NCT of Delhi & Ors* (W.P. (C) 10945/2020)

The establishment of the monitoring body in legislation is sine qua non for proper implementation of the laws and regulations within the country. The Act of 2006 conferred upon the establishment of a special officer i.e. Child Marriage Prohibition Officer (*hereinafter referred to as "CMPO"*) in a State in order to carry out the objective of the intended legislation.³³ The absence of monitoring bodies in the Act of 2006 results in creating loopholes and thereby remains a myth in putting a ban on child marriage. The CMPO are being accompanied with any person authorized by the Government in terms of assistance as deemed fit³⁴. The CMPO also confers with the same power as that of a police officer and to inspect, collect evidence, spread awareness, and to prevent the incidence of child marriage³⁵. The ground reality upheld that the power incurred upon CMPO is being exercised by the District Magistrate, rather appointing any special/ expert individual for the same. It has been further retaliated that the cases registered under the Act of 2006, has been trialed before the courts of Chief Judicial Magistrate (*hereinafter referred as CJM*) or Metropolitan Magistrate (*hereinafter referred to as MM*) in order to issue injunction against solemnization of child marriage³⁶. Even the magistrate court can take *suo motu* cognizance of any child marriage case based upon reliable or authentic information³⁷. Therefore these form of heinous crime against children is being trialed before courts with other cases as well which might plight out in upholding the rights of victims of child marriage.

The punishments been imposed upon the violators by Act of 2006 is quite lenient and failed to provide the effective form of punishment even after commission of such heinous crime against children. The quantum of punishment is quite less in comparison to grievousness of the offence which might inject retrospective effect towards the intention of the legislation. Due to absence of any special court, the cases of child marriage are trialed before the district courts which are of less effective in understanding the notion of the crime being committed against dignity of the child. Whereas apart from the Act of 2006, there is some trace in Criminal legislation which impacted towards the solemnization of child marriage in India. The Indian Penal Code (IPC) enshrined an exception in the provision of rape which is diversifying the concept of child marriage by allowing marital relationship between parties, where the age of female spouse is considered as 15 years or above.

³³ The Prohibition of Child Marriage Act, 2006, s. 16(1)

³⁴ The Prohibition of Child Marriage Act, 2006, s. 16(2)

³⁵ The Prohibition of Child Marriage Act, 2006, s. 16(4)

³⁶ The Prohibition of Child Marriage Act, 2006, s. 13(1)

³⁷ The Prohibition of Child Marriage Act, 2006, s. 13(3)

Hence any man cohabitating with his wife not under 15 years would not constitute the offence of rape. Thus it is contradicting the special legislation of 2006 and triggers the society to commence child marriage³⁸. It is further emancipated that no amendments have passed after the enforcement of the Act of 2006 and neither had it substituted 15 years with 18 years after the judgment of the Supreme Court in the case of *Independent Thought v. Union of India* (2016). Finally, the immense violation of child rights though minor wedlock has been traced in Juvenile Justice (Care and Protection of Child) Act 2015³⁹ (hereinafter referred to as JJ Act). The JJ Act categorized child into child in conflict with law⁴⁰ and child in need of care and protection⁴¹. Thus the definition clause of child in need of care and protection includes the category of depriving child by minor wedlock. Hence, the role of National Commission for Protection of Child Rights (NCPCR) and State Commission for Protection of Child Rights (SCPCR) were attached under JJ Act and thus relevant in discharging functions towards preventing the customary practice of child marriage. It is cordially attached that the role of DCPU (District Child Protection Unit), CWC (Child Welfare Committee), SJPU (Special Juvenile Police Unit), etc., under the JJ Act and thereby liable to reduce the social tenacity of committing child marriage.

The major step taken by the government of Karnataka in 2016 declaring all form of child marriages is *void-ab-initio* through amendment in the existing state PCMA legislation⁴². Such step was highly appreciated by the Honorable Supreme Court of India in landmark case of 2017⁴³. It has been further noticed that after the judgment of *Independent Thought* in 2017 results in introduction of PCM Amendment bill of Haryana in 2020 and followed the same path of declaring any form of child marriage as *void-ab-initio*⁴⁴. But the rapid increase of child marriage shows complete disrespect towards the special legislations and the perpetrators are digging out advantage for the loopholes present in existing legislations.

CONTRIBUTION OF JUDICIARY ERADICATING CHILD MARRIAGE

³⁸ The Indian Penal Code, 1860, s. 375 (Exception 2)

³⁹ The Juvenile Justice (Care and Protection of Children) Act, 2015, s. 2(14)(xii)

⁴⁰ The Juvenile Justice (Care and Protection of Children) Act, 2015, s. 2(13)

⁴¹ *Supra Note 41*

⁴² The Prohibition of Child Marriage (Karnataka Amendment) Act, 2016, s. 3(1A)

⁴³ *Supra Note 9*

⁴⁴ The Prohibition of Child Marriage (Haryana Amendment) Bill, 2020

The instance of child marriage first recognized before Judiciary during pre-independence in the case of *Phulmoni Dast*⁴⁵ before the Honorable High Court of Bombay. The victim in the former case was a victim of forcible cohabitation by her spouse which results in death of the victim. The Court apprehended the fact that during the incidence the victim was 11 years of old and the accused was 35 years of old, which had shaken the pillars of the Judiciary and thus leads to interference by the English. The concept of child marriage is completely relies upon age determining factor, and thus in 1940⁴⁶ an appeal was filed in case where the violators were charged under Act of 1929. It was held that the age of the groom was below 18 years but the families of the bride compelled and permitted to commence marriage which violates the Act of 1929. Thereafter the accused was held liable. During post-independence, in the case of *Emperor v. Shahu Mehrab*⁴⁷, the incidence of child marriage came into reflect where the victim was died due to forcible sexual intercourse by the husband. Hence the perpetrator was punished under relevant provisions.

The incidence of child marriage had taken a different shape in the year 1885, where a suit has been filed before the court of competent jurisdiction to restore the nuptial rights. The defendant undergone marriage with plaintiff when she was only 11 years and never had sexual intercourse with the plaintiff for a considerable period of 10 years. The defendant submitted that she objected to consummate her marriage commenced forcefully when she was teenager. Hence the Honorable Court stated that it would be cruel if the defendant was directed to live with the plaintiff which could results in forceful cohabitation⁴⁸. The Honorable Apex Court in 1991 stated that all female are subjected to “carnal solitude”. It has been further upheld that every female has a right to refuse for cohabitation in lieu of their rights, and any forcible acts towards carnal intimacy may amount to rape and punishable except the marital rape being still decriminalized⁴⁹. In the eve of rampant solemnization of child marriage, a PIL has been filed before the Honorable Supreme Court of India⁵⁰ in order to take measures for strict implementation of Act of 1929 and to punish the authorized person who failed to discharge its powers and functions. Thus, the Court issued an order to assign CMPO in the concerned state and held any act in violation of Act of 1929 would amount to severe punishment.

⁴⁵ *Queen Empress v. Hari Mohan Maiti*, 1881

⁴⁶ *Emperor v. Fulbhai Bhulabhai Joshi* (Cr. 78 of 1940)

⁴⁷ *Emperor v. Shahu Mehrab* (AIR 1917 Sind 42)

⁴⁸ *Dadaji Bhikhaji v. Rukhmabai* (1885) ILR 9 Bom 529

⁴⁹ *State of Maharashtra v. Madhukar Narayan* (AIR 1991 SC 207)

⁵⁰ *Smt. Sushila v. State of Rajasthan & Ors* (AIR 1995 Raj 90)

In the case of *Muthamma Devaya & Another v. Union of India*⁵¹, a writ petition was filed to dig out the reason behind commencing minor wedlock. It has been further adjudicated by the Honorable High Court of Karnataka by making a committee to submit a report upon the prevailing issue. The results of which summed up in one effective suggestion i.e. every child marriage must be declared as *void-ab-initio* which subsequently led to amendment of previous child legislation of the concerned state. Thereafter the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 came into force which inserted Section 1(A) reproduced herein under:

“Notwithstanding anything contained in sub-section (1) every child marriage solemnized on or after the date of coming into force of the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 shall be void-ab-initio.”

(Emphasis Supplied)

A petition has been filed before the Honorable High Court of Madras, where by the petitioner was the father of a minor girl who was being kidnapped and later on commenced minor wedlock by the later parties. The minor girl stated before the court that the marriage has been consensually commenced with the other contracting parties. Whereas, the solemnization of minor wedlock were considered illegal and strict violation of Act of 2006 and thereby the minor involved in the marriage were legally incompetent to be chargeable towards the “best interests” of minor⁵². Further in the Honorable High Court of Delhi remarked its views towards child marriage being detrimental towards human rights especially for the girl child who were being deprived, suppressed, etc., within the society. The status of the female child was compromised in lieu of curtailing their right to education, fundamental rights, protection, equality, life and personal liberty. The child marriage can lead to social isolation, early pregnancy, growth retardation, health disorder, and many more⁵³. The another dimension to child marriage case was introduced in another case where the High Court of Delhi stated the age determining factor of the female contracting parties and thereby direct to stay in Nirmal Chaya. Thus the Muslim girl were kept in Nirmal Chaya for 7 months and thereafter referred for counseling and thereafter allowed to stay with the Petitioner. Thus, in the preceding case, the marriage were being consummated with full consent of the contracting parties to marriage, and even after the Court allowed the perception of the marriage as validated after

⁵¹ Writ Petition No. 11154/2006

⁵² *T. Shivkumar v. Inspector of Police* (H.C.P. No. 907/2011)

⁵³ *Association for Human Rights v. Union of India and Others*

being kept under observation and counseled for a considerable period of time⁵⁴.

In the case of *Furqan v. State of Uttar Pradesh*⁵⁵, the Respondent alleged that his daughter aged 16 years was enticed away by the Appellant. The victim expressed that the wedlock commenced between them was completely in lieu of her consent and there was no element of fraud, coercion, etc., was present. Thereby the Court directs for the counseling of the contracting parties to such child marriage in Nirmal Chaya and upheld the prayer submitted by the victim i.e. by allowing the victim to live with in-laws family. Further, in the year 2015 it was held that the Act of 2006 were not in contradiction to the rights guaranteed under Article 25-28 of the Constitution of India⁵⁶. The landmark judgment of Honorable Supreme Court of India in the year 2017 remarks a historic movement towards protecting rights of child exposed to child marriage. In the preceding case the Exception 2 of Section 375 were challenged as it provides a loophole in prohibiting the social evil practice i.e. child marriage. The challenged provision states that any sexual intercourse by man with his wife not below 15 years would not constitute the offence of rape. The Honorable Apex Court delivers a harmonious decision by substituting “15 years” with “18 years” in Exception 2 of Section 375⁵⁷.

In the case of *C. Arumugam v. Mahalakshmi*⁵⁸, it was held by the High Court that any acts violates the Act of 2006 and any person found accused in permitting or insisting child marriage would be treat as a cognizable case. Whereas the accused was charged under Act of 2006 and POCSO would be trialed before the special courts and measures needs to be adopted for better interests of the victim during pending adjudication. It is further apprehended that the special legislation would prevail over all personal laws of all religion held in a case before the High Court of Gujarat⁵⁹. Again in the case of 2013, the High Court of Delhi while considering the provisions of Act of 2006 and referring to Rape laws in IPC held that the Act of 2006 would supersede all personal laws⁶⁰. The judiciary has been played a major role in protecting the rights of children been suppressed due to child marriage hence held that the Act of 2006 been regarded as “Special Act” and should prevail over all personal legislation. The ambiguity also exists in

⁵⁴ *Bholu Khan v. State of NCT of Delhi & Ors* [W.P. (CRL) 1442/2012]

⁵⁵ Criminal Appeal No. 8154 of 2008

⁵⁶ *M. Mohamed Abbas vs. The Chief Secretary, Government of Tamil Nadu* (Criminal Appeal No. 8154 of 2008)

⁵⁷ *Supra Note 9*

⁵⁸ Crl.R.C.No.1325 of 2017

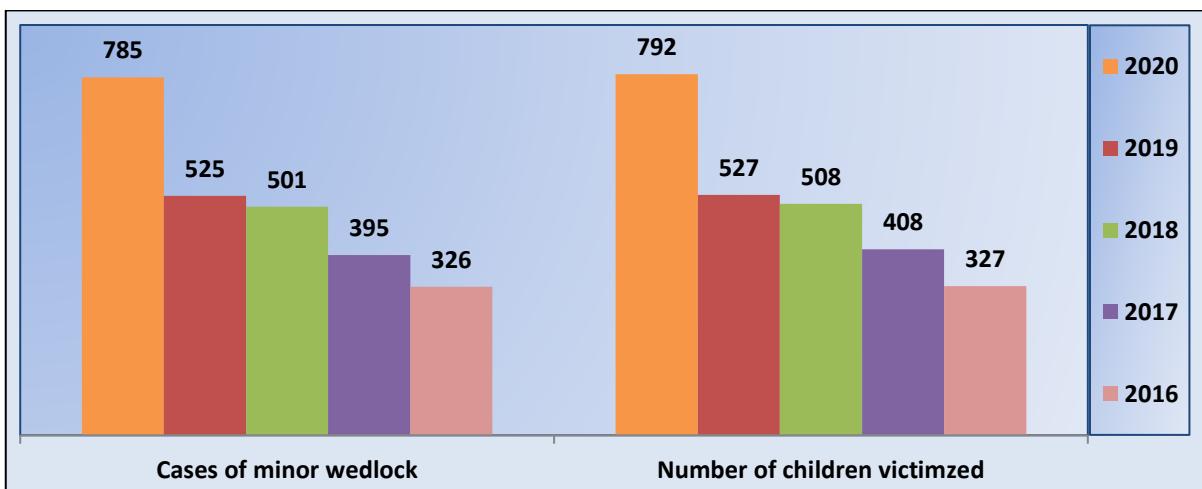
⁵⁹ *Yunusbhai Usmanbhai SHaikh v. State of Gujarat* (Criminal Misc. App. No. 8290 of 2015)

⁶⁰ *Laja v. State* [WP (Crl. No.) 382 of 2013]

validating the consensual child marriage after reasonable consideration of facts and circumstances towards the best interests of the child.

STATISTICAL REPRESENTATION OF CHILD MARRIAGE

The menace growth of child marriage has been traced in various reports of government. Thus, the incidence of child marriage has been captured under different indicators in reports to understand the grievousness and variability in commission of the crime. The representation of data was published by National Crime Records Bureau (NCRB)⁶¹ and National Family Health Survey (NFHS)⁶². It is apprehended that most of the incidence of child marriage were charged under Act of 2006 along with IPC, POCSO, etc., which has a yearly record through NCRB. Thus, the data of last five years under heads of PCMA been reproduced herein under:



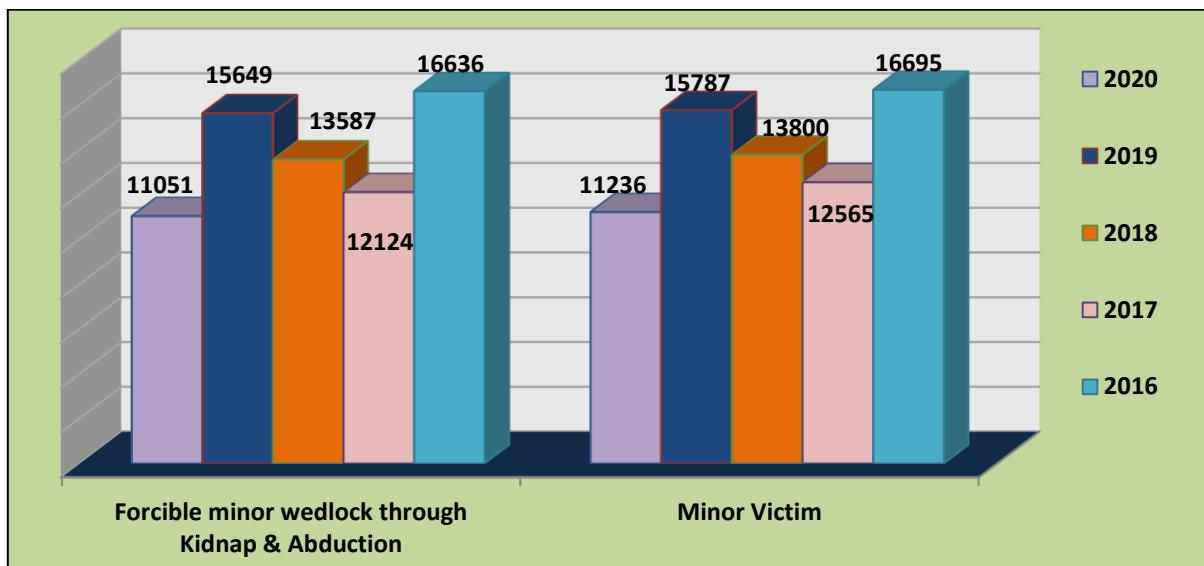
Cases of minor wedlock under heads Act of 2006

The child marriage were being practiced by means variant crime been defined under IPC such as kidnapping, abduction, etc. Hence the minor girl were being kidnapped and by various illegal means they were being sold or by deceitful way of contracting child marriage. Hence the vulnerable group of child affected through child marriage suffers from unbearable distress, torture, etc., in an undefined way. Therefore, the data of the preceding crime acts as a medium to commit minor wedlock were desperately practiced and published by the NCRB graphically

⁶¹ Crime Against Children, NCRB available at: https://ncrb.gov.in/en/crime-in-india-table-addtional-table-and-chapter-contents?field_date_value%5Bvalue%5D%5Byear%5D=2020&field_select_table_title_of_crime_value=6&items_per_page=50 (last visited on March 12, 2023)

⁶² *Supra Note 18*

reproduced herein under:

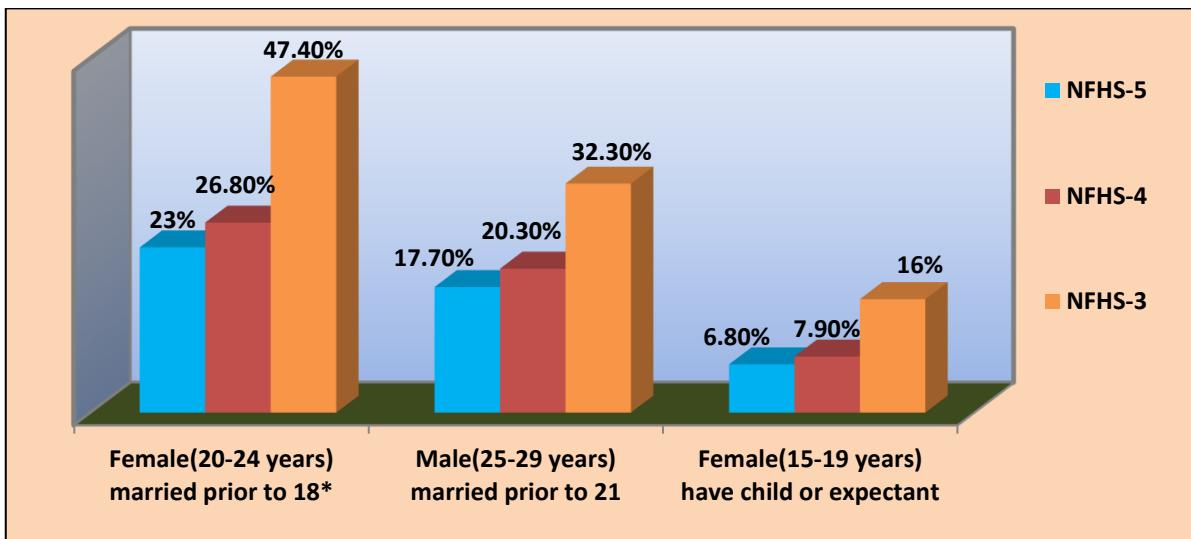


INCIDENCE OF MINOR WEDLOCK THROUGH KIDNAP & ABDUCTION

The data of the NFHS reflects the percentage of women and men who were exposed to social evil practice of child marriage in every five year. It has been apprehended that the both women and men were more subjected to child marriage practice which violate their rights on different occasions. The victim of child marriage is compromised by the consensual customary practices prevalent in rural areas in comparison to urban areas. Therefore such social practice lined up towards derogatory status of the child results in violation of their dignity and integrity been protected under child centric legislations and Construction of India.

The factor behind commencement of child marriage are financial distress, social customs, etc. which trace in mind-set of the patriarchal society whereby the minor girls were being considered as “*paraya dhan*”⁶³ and being subjected to early and force marriage in order to wipe out the financial hurdles of the family. Hence, the data of NFHS of last three phase to represent the percentage of men or women being victim of child marriage during their teenage period are reproduced herein under:

⁶³ Paraya Dhan- The Status of Women in India and Legislation, available at: <https://knowlaw.in/index.php/2020/12/22/the-status-of-women-in-india-and-legislation/#:~:text=Even%20today%20in%20many%20Indian,over%20to%20her%20in%20laws> (last visited on March 6, 2023)



***The data of NFHS-5 in first indicator lacking an error of 0.3%**

Percentage of male and female being victim of minor wedlock

It were further stated that the data being represented above points out several indicators to provide the data of child marriage in India. The data of minor wedlock being published by two governmental agencies (NCRB and NFHS) bears no similarity of data. Thus, the actual data of child marriage is a myth and many incidences were left unreported of the deprived class of society out of fear, lower caste, illiteracy, etc. Hence it is clearly manifested vide data representation of child marriage that even after 94 years of child marriage laws (1929), our country lacks behind in declaring a “child marriage free” country.

EPILOGUE- CONCLUSION & SUGGESTIONS

The child marriage was a result of various hurdles/ challenges summed up in continuity of maintaining old social customary practice results in violates the fundamental rights. It is further retaliated that the children were subjected to counter a direct relationship with the state under Part III of Constitution. Thus the state would be responsible to protect the integrity and dignity of children from any social evil practice, discrimination, inequality, etc. The child were considered to be the future of our developing nation and thus the state must accountable to ensure care and protection of the children exposed to child marriage in order eradicate the notion of customary belief of society results in creating vulnerability sphere for the children. The State is subjected to enforce special legislation for children under Article 15(3) in order to safeguard their better interest. The Act of 2006 is regarded as special legislation which tends to prohibit any

practices led to child marriage. The discrepancy in the existing legislation paves the way for unequal treatment of female minor at par with male minor. The absence of monitoring bodies left an unresolvable dispute in carrying forward the intention of the enforced legislation. The abnormal growth of child marriage could be a threat in the modern century and create a hindrance towards securing the position of vulnerable groups of society. Besides the legislative action, the Judiciary while considering the facts of the dispute of child marriage delivers judgement towards the better interests of children along with punishing the offender under relevant provisions of legislation such as IPC, POCSO, PCMA, etc. It is further apprehended that the incidence of child marriage is not only violating the rights of the concerned victim child rather it is one of the derogatory practice where the families of the victim child were consensually involved in upholding the traditional approach of crime against children. The prevailing scenario of child marriage could be avoided through strict measures been implemented from state and union government to hassle-free the ambiguities in legislation and act differently to deal with several practices ended with the results of commencing minor wedlock.

While considering the incidence of child marriage in India, the provisions of POCSO were attached in order to punish the perpetrators for committing carnal intercourse with the minor spouse. The tenacity of the minor wedlock were mostly traced in violating rights of the minor girls where they are being considered as burden prior to marriage and as compromised property post-marriage. In some cases, the judiciary fails to uphold a complete ban on child marriage rather allow both parties to such marriage to live with each other after a considerable direction been imposed upon the minor to live in various child institutions, children home's, etc.

The evil practice of child marriage in the society could be eradicated by incorporating the following suggestions laid down:

- i. The Act of 2006 must be amended in transforming its intention to complete abolishment of child marriage and thereby incorporating provisions alike any commencement of child marriage would be held *void-ab-initio*.
- ii. The step taken by the State of Karnataka in amending the state legislation and thereby held all forms of child marriage are treated as *void-ab-initio*⁶⁴. Thus, the State of Haryana also directing towards same path and have introduced a bill in the state legislative assembly incorporating provisions for declaring child marriage as void-ab-initio. Therefore all the

⁶⁴ *Supra Note 44*

other states must follow the same path to stand against the customary evil practice of child marriage.

- iii. The Judgment ruled in the case of Independent Thought must be incorporated in the IPC to curb down the ambiguity present in Exception 2 of Section 375 to penalize the practice of child marriage.
- iv. The introduction of the Bill of 2021 intended to incorporate equal age for marriage must get enforced to waive out the discrimination laid in the Act of 2006.
- v. The person authorized to be CMPO must bear an expertise to deal with the sensational matter of child marriage and to impart sufficient comfort for the better interest of the victim.
- vi. The absence of monitoring bodies in the existing legislation create a darker side which needs to be amended and must confer the establishment of special courts or any other authority to deal with the cases of child marriage.
- vii. The active role of NCPCR/ SCPCR would be highly appreciated in curbing down the growth of child marriage.
- viii. The ground reality of child marriage must be tackled by the CWC, DCPU, SJPU, etc., along with CMPO to rescue the minor victim and also to initiate legal proceeding against the perpetrators.
- ix. The Government at both levels must involve the active participation of NGO in disseminating awareness regarding child marriage especially in rural and semi-rural areas.
- x. There should be strict penal provisions in the Act of 2006 to punish the violators severely which would be a message for the others intended, trying to permit, and commencing child marriage.
- xi. The State must strictly intervene in different parts of rural India on various occasions where the child marriage being performed as customary rituals, for example Akshaya Tritiya, Aata-Sata, etc.
- xii. Any other good practices necessary to curb down the menace growth of child marriage in India.