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Reportable

IN THE SUPREME COURT OF INDIA  
CIVIL ORIGINAL JURISDICTION

Writ Petition (C) No. 1234 of 2017

Society for Enlightenment and Voluntary Action & Anr.

...Petitioners

Versus

Union of India & Ors.

...Respondents

Signature Not Verified  
  
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## **JUDGMENT**

**Dr Dhananjaya Y Chandrachud, CJI**

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*“Sir, I am one of those unfortunate Hindu women, whose hard lot it is to suffer the unnameable miseries entailed by the custom of early marriage. This wicked practice has destroyed the happiness of my life. It comes between me and that thing which I prize above all others—study and mental cultivation. Without the least fault of mine I am doomed to seclusion; every aspiration of mine to rise above my ignorant sisters is looked upon with suspicion, and is interpreted in the most uncharitable manner.”<sup>1</sup>*

~ Rukhmabai

## I. Background

1. The Petitioner has approached this court under Article 32 of the Constitution to raise an issue which has been debated in our nation for over one and a half centuries. The Petitioner is an NGO that has worked extensively against child marriage. The Petitioner’s primary grievance is that despite the enactment of the Prohibition of Child Marriage Act 2006<sup>2</sup>, the rate of child marriages in India is alarming. The Petitioner seeks to address the failure of authorities to prevent child marriages. The Petitioner has sought stronger enforcement mechanisms, awareness programs, the appointment of Child Marriage Prohibition Officers, and comprehensive support systems for child brides – including education, healthcare, and compensation, to ensure the protection and welfare of vulnerable minors. Accordingly, the Petitioner prays for the issuance of effective guidelines.

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<sup>1</sup> Extracted from a letter written by Rukhmabai to the Times of India on 26 June 1885.

<sup>2</sup> ‘PCMA’

2. Child marriage is a social evil, and its commission is a criminal offence. Despite the near-universal agreement on the ills of child marriage, its commission and prevalence have been sobering. Child marriage is the phenomenon of children being married before they attain the minimum legal age under the law. Globally, children continue – despite legal norms to the contrary – to be married before they reach the age of eighteen years. Patriarchy, gender inequality, poverty and lack of education and employment lead to child marriage.<sup>3</sup> The UN Convention on the Rights of the Child regards child marriage as a violation of human rights<sup>4</sup>. While both sexes are inflicted with the violence of child marriages, the prevalence of child marriage globally among boys is one-sixth that of girls.<sup>5</sup>
3. Elimination of child, early and forced marriages has been committed to by one hundred and ninety-three nations, including India under target 5.3<sup>6</sup> of the Sustainable Development Goals<sup>7</sup>. Section 2<sup>8</sup> of PCMA defines child marriage as a marriage to which either of the contracting parties is a child. Girls below the age of eighteen and boys below the age of twenty-one are deemed to be children under the PCMA.<sup>9</sup>

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<sup>3</sup> UNICEF (2023). Child Marriage. <https://www.unicef.org/protection/child-marriage>; Anita Raj (2010). When the mother is a child: the impact of child marriage on the health and human rights of girls. *Archives of Disease in Childhood*, 95(11), 931. BJM Journals.

<sup>4</sup> United Nations (1989). Convention on the Rights of the Child.

<sup>5</sup> UNICEF (2019). 115 Million Boys and Men Around the World Married as Children. <https://www.unicef.org/press-releases/115-million-boys-and-men-around-world-married-children-unicef>.

<sup>6</sup> United Nations (2015). Transforming our world: The 2030 Agenda for Sustainable Development.

<sup>7</sup> 'SDG'

<sup>8</sup> "2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "child" means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age;

(b) "child marriage" means a marriage to which either of the contracting parties is a child;

(c) "contracting party", in relation to a marriage, means either of the parties whose marriage is or is about to be thereby solemnised; ..."

<sup>9</sup> Section 2(a), PCMA.

## PART I

4. The 2019-2021 National Family Health Survey-5<sup>10</sup> pits child marriage at 23.3% of girls<sup>11</sup> under the age of eighteen and 17.7% of boys<sup>12</sup> under the age of twenty-one. The data is based on a survey of women aged 20-24 and men aged 25-29. This is a reduction from the 2015-2016 NFHS-4 which showed that 26.8% of girls and 20.3% of boys marry under the legal age of marriage. Child marriage has been on a steady decline in India. The prevalence of child marriages in India has halved since the enactment of the PCMA in 2006 from 47% to 27% in 2015-16 and 23.3% in 2019-2021.<sup>13</sup> The decline in child marriage in India is in line with the global trend. In the past decade, the proportion of girls married as children has dropped by 15%.<sup>14</sup> Despite these enormous strides globally and in India, no region in the world is on track to attain the SDG-5 target.<sup>15</sup> It is estimated that the progress in reducing child marriage would need to be twelve times faster than the rate observed in the past decade to achieve the SDG-5 target.<sup>16</sup>
5. The term child marriage is an oxymoron. A child implies a person whose capacity to make legal decisions is not fully developed. On the other hand, marriage is an institution with legal standing. The law seeks to govern the legitimacy of sexual activity and marriage is the institution in which it is legitimised. Marriage dictates the framework rules of permissible and

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<sup>10</sup> ‘NFHS-5’

<sup>11</sup> Data based on the survey of women ages 20-24, NFHS-5.

<sup>12</sup> Data based on the survey of men ages 25-29, NFHS-5.

<sup>13</sup> NFHS-3, NFHS-4, NFHS-5.

<sup>14</sup>UNICEF (2018). Child Marriage: Latest trends and future prospects. <https://data.unicef.org/resources/child-marriage-latest-trends-and-future-prospects/>.

<sup>15</sup> Ibid.

<sup>16</sup> Pintu Paul (2020). Child Marriage Among Girls in India: Prevalence, Trends and Socio-Economic Correlates. *Indian Journal of Human Development*, 14(2), 304. Sage Journals.

## PART II

impermissible social behaviours. However, a child is incapable of understanding the broad and serious obligations expected from members of a marital union. Child marriage often deprives children of intellectual, social and psychological development and carries life-threatening risks. It therefore comes as a great tragedy that the term child marriage is normalised to a point where this blatant paradox is lost on most people.

### **II. Procedural history and submissions**

6. This Court issued notice to the Union of India on 13 April 2018. On 13 April 2023, this Court further directed the Ministry of Women and Child Development to file a status report elucidating the following:

- (i) The data collected from various States bearing on the nature and extent of child marriages;
- (ii) Steps taken to implement the provisions of the PCMA; and
- (iii) The policies formulated by the Union government to effectuate the purpose.

The Court also directed the Union to consult the States on the appointment of Child Marriage Prohibition Officers<sup>17</sup> under Section 16<sup>18</sup> of the PCMA and

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<sup>17</sup> 'CMPO'

<sup>18</sup> "16. Child Marriage Prohibition Officers

- (1) The State Government shall, by notification in the Official Gazette, appoint for the whole State, or such part thereof as may be specified in that notification, an officer or officers to be known as the Child Marriage Prohibition Officer having jurisdiction over the area or areas specified in the notification.
- (2) The State Government may also request a respectable member of the locality with a record of social service or an officer of the Gram Panchayat or Municipality or an officer of the Government or any public sector undertaking or an office bearer of any non-governmental organisation to assist the Child Marriage Prohibition Officer and such member, officer or office bearer, as the case may be, shall be bound to act accordingly.

## PART II

submit a comprehensive affidavit on whether the officers appointed as CMPOs are given other multifarious duties.

7. The Ministry of Women and Child Development has submitted that it has successfully collected data from all States and Union Territories except Arunachal Pradesh, Goa, Manipur, Odisha, Sikkim, Jammu & Kashmir and Lakshadweep. The data placed on record by the Ministry reflects that many child marriages are prevented before their solemnization. The remaining cases are investigated and prosecuted under the law. We shall analyse the data submitted by the Ministry of Women and Child Development in the course of this judgment.
8. On 10 July 2024, this Court heard Ms Mugdha, learned counsel appearing on behalf of the Petitioner as well as Ms Aishwarya Bhati, learned Additional Solicitor General appearing on behalf of the Union of India. While reserving the judgment this Court granted liberty to the Petitioner and the Union to make their submissions in the form of a note including suggestions on ways for the effective enforcement of PCMA.

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- (3) It shall be the duty of the Child Marriage Prohibition Officer
    - (a) to prevent solemnisation of child marriages by taking such action as he may deem fit;
    - (b) to collect evidence for the effective prosecution of persons contravening the provisions of this Act;
    - (c) to advise either individual cases or counsel the residents of the locality generally not to indulge in promoting, helping, aiding or allowing the solemnisation of child marriages;
    - (d) to create awareness of the evil which results from child marriages;
    - (e) to sensitised the community on the issue of child marriages;
    - (f) to furnish such periodical returns and statistics as the State Government may direct; and
    - (g) to discharge such other functions and duties as may be assigned to him by the State Government.
  - (3) The State Government may, by notification in the Official Gazette, subject to such conditions and limitations, invest the Child Marriage Prohibition Officer with such powers of a police officer as may be specified in the notification and the Child Marriage Prohibition Officer shall exercise such powers subject to such conditions and limitations, as may be specified in the notification.
  - (4) The Child Marriage Prohibition Officer shall have the power to move the Court for an order under sections 4, 5 and 13 and along with the child under section 3."

9. The Petitioner has submitted that:

- (i) Data from NFHS-4 and NFHS-5 reflects that high rate of child marriages have been solemnised. The Petitioner submits that this can be gathered from the rate of adolescent pregnancies in multiple States;
- (ii) Under Section 16 of PCMA, CMPOs are empowered to prevent child marriages. However, findings from HAQ - Centre for Child Rights<sup>19</sup> show that CMPOs are often tasked with multiple responsibilities, limiting their capacity to focus on child marriage prevention. Many States designate officials holding other substantial roles, such as Child Development Project Officers<sup>20</sup> or District Welfare Officers as the CMPO. This leads to CMPOs prioritising their duties in the discharge of other roles – defeating the purpose of appointing CMPOs - as they would not have the time, monetary and human resources to carry out the responsibilities enumerated in the Act. For instance, Section 3(1) of the Mizoram Gazette mandates that the District Social Welfare Officer or, in their absence, the CDPO acts as the CMPO;
- (iii) Responses to various requests under the Right to Information Act 2005<sup>21</sup> by all States and UTs reveal significant disparities in the appointment and functionality of CMPOs. Of the 36 States and UTs, only 23 responded, and only 14 provided substantive data. Most of the responses indicated the

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<sup>19</sup> HAQ Centre for Child Rights (n.d.). Child Marriage in India: Achievements, Gaps and Challenges, Response to Questions for OHCHR Report on Preventing Child, Early and Forced Marriages for Twenty-sixth Session of the Human Rights Council.

<sup>20</sup> ‘CDPOs’

<sup>21</sup> ‘RTI’

transfer of the RTI to other departments without concrete answers.

Notably, only Haryana and Sikkim reported having exclusively appointed CMPOs. In contrast, other States and UTs assign these duties to already overburdened officers, such as District Magistrates or CDPOs, undermining the effectiveness of CMPOs;

- (iv) There is a discrepancy between data from the National Crime Records Bureau<sup>22</sup> and information obtained from various State departments in response to RTIs. For example, in Rajasthan, the Department of Women and Child Development reported 573 and 567 incidents of child marriage in 2015-16 and 2016-17, respectively, despite only 576 cases being formally recognized by authorities in 2016-17; and
- (v) Analysis of data further reveals not only a low number of child marriage cases reported to the police compared to NFHS-4 data but also an exceptionally low conviction rate.

10. Therefore, the Petitioner prays for directives to authorities at multiple levels to prevent and address child marriages, particularly during mass events, ensure accountability for officials who fail in this duty, and appointment of CMPOs with exclusive powers. They also seek collaboration with NGOs, inclusion of child marriage awareness in school curriculums, and comprehensive government support for affected child brides.

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<sup>22</sup> 'NCRB'

11.The Union of India has submitted that:

- (i) Child marriages persist due to societal perceptions and economic pressures. Girls are often seen as burdens, with early marriage viewed as an appropriate option. Additionally, investment in a girl's education is frequently regarded as wasteful, leading some families to end schooling early and consider marriage instead. Poverty and structural inequalities, including gender, caste, and class, further drive child marriages;
- (ii) The PCMA was introduced to criminalize the facilitation and solemnization of child marriage, aiming to deter this harmful practice. Additionally, the *Beti Bachao Beti Padhao*<sup>23</sup> program addresses gender-based issues by promoting girls' education and empowerment, thereby supporting delayed marriage and promoting a culture that values girls' rights and opportunities;
- (iii) Census data from 2001 and 2011 indicates a decrease in child marriage rates;
- (iv) Data from NFHS-4 shows a reduction in the percentage of women aged 15-19 who were mothers or pregnant, from 16% in 2005-06 to 7.9% in 2015-16. The National Commission for the Protection of Child Rights<sup>24</sup> has identified 70 high-risk districts across 13 states with the highest child

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<sup>23</sup> 'BBBP'

<sup>24</sup> 'NCPHR'

marriage rates, and 52 of these districts are covered under the BBBP scheme;

- (v) Programs like the *Mahila Shakti Kendra* aim to reach rural women and girls, enhancing awareness and equipping them with knowledge on gender equality. The program operates District Level Centres for Women across 640 districts to implement initiatives that improve women's status and address gender-based challenges; and
- (vi) States and Union Territories<sup>25</sup> have also taken various measures for the elimination of child marriages.

### **III. A vicious cycle: socio-economic determinants and effects of child marriage**

12. All child marriages are forced marriages. Many parents wish to marry their girl child early to guard against any aspersions on the girl's virtue of virginity and to mitigate the economic costs associated with raising a child, payment of dowry and conducting a wedding. The economic factors of child marriage are borne out by studies that reflect that child marriage in India predominantly occurs in less educated, rural and poor families.<sup>26</sup> Parents in such families are informed by a survivalist and patriarchal mindset that responds to social, cultural and religious norms and economic necessity.

13. Culturally embedded concepts of virginity and chastity are used to control the sexuality of women by men and the family. They are not just markers of control

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<sup>25</sup> 'UTs'

<sup>26</sup> Sanjay Kumar (2020). Trends, Differentials and Determinants of Child Marriage in India: Evidence from Large-scale Surveys. *Economic & Political Weekly*, 55(6), 57.

but are also made into identifiers of family and community honour. By placing an overemphasis on these constructed virtues, a false sense of protectionism is generated to safeguard girls against their ability of self-exploration and to form meaningful bonds on their own. Honour, purity, and decisional incapacity are presented as the domain of womanhood and its protection is laid in the institution of marriage. Parents marry their daughters early to meet the prescription of a society rooted in parochial norms of controlling a woman's sexuality. While patriarchy promises respect to its adherents, it only leads to the subordination of women who are deprived of any meaningful avenue to develop their agency and exercise their autonomy. The malleability of a girl child and her inability to form informed opinions are looked up to as desirable qualities. These qualities are understood to earn her favour in the eyes of her in-laws in serving them as they see fit.<sup>27</sup> In less educated, rural and poor setups, members of the community lack effective opportunities and life chances. Investing in the education and development of a girl is seen as unworthy and unrealistic. The lack of alternative means for education, employment and skill development for women also incentivises parents to give their daughters away in child marriage.

14. Parents also believe that their daughters would be saved from pregnancy out of wedlock and be guarded against unsolicited advances by men if she were to be married early. Many marry their daughters off but delay the consummation of marriage till the age of puberty. A *gauna* ceremony is performed to mark the growing up of the daughter and her departure from the parental home to the

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<sup>27</sup> See RC Roy (1888). Child Marriage in India. *The North America Review* 147(383) 415-423. University of Iowa.

### PART III

marital home upon getting menses. The delay in sending a child bride to her marital home is informed only by the bodily development of the girl and is unbothered by any other consideration, such as the mental and educational development of the person or indeed her own choice in the matter. The compounding of one evil to emerge out of patriarchy with another solution rooted in patriarchy has the effect of culturally stunting society and depriving children, girls in particular, of any avenue to exit from the cycle of generational oppression.

15. Notably, the very causes of child marriage ensure that members of the marital union and their families are stuck in the vicious cycle of social and economic oppression. Early marriage in girls, places a burden on them to discharge their *duty* of giving offspring to the family. Sexual activity within the marital union is unregulated and even encouraged. A child, forced to prove her fertility, is exposed to enormous health risks. Her body is mentally and physically unprepared for sexual engagement which is forced upon her. Girls in child marriage report early, frequent and unplanned pregnancies which are linked to increased risk of maternal and infant morbidity and mortality.

16. Adolescent mothers are also likely to experience fistula, pregnancy complications and death during childbirth.<sup>28</sup> Women married as children are likely to have their first child before the age of eighteen and are likely to have had at least three or more childbirths and a repeat childbirth in less than twenty-

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<sup>28</sup> Anita Raj, Nirajan Saggurti, Donta Balaiah, Jay G Silverman (2009). Prevalence of child marriage and its effect on fertility and fertility-control outcomes of young women in India: a cross-sectional, observational study. *Lancet* 373 1993-89.

four months.<sup>29</sup> Currently, between the ages of 15 and 19, 7% of women have begun childbearing; 5% of women have successfully delivered, while 2% of women are pregnant with their first child.<sup>30</sup> The rate of teenage pregnancy is higher in rural India at 8%.<sup>31</sup> States which have reported the highest levels of teenage pregnancies are Tripura (22%), West Bengal (16%), Andhra Pradesh (13%), Assam (12%), Bihar (11%) and Jharkhand (10%).<sup>32</sup>

17. These factors have a detrimental effect on maternal mortality and morbidity. Adolescent mothers are likely to develop lifelong health consequences from sexual encounters and childbearing. They are also more likely to be sterilized at an early age which is indicative of a lack of control over their choices.<sup>33</sup> Families after bearing the desired number of offspring, force women to undergo sterilization to control further reproduction in the family.<sup>34</sup> The high rate of sterilization found in women married as children would also lead to more unprotected sex which leads to a risk of contracting sexually transmitted diseases.

18. Lack of healthcare access in rural areas and for poor families may lead to further health complications and unsafe medical procedures including unsafe abortions.<sup>35</sup> Further, women married as children are deprived of educational and employment opportunities thereby effacing them from public life. Education

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<sup>29</sup> Ibid.

<sup>30</sup> NFHS-5, 116.

<sup>31</sup> Ibid.

<sup>32</sup> NFHS-5, 117.

<sup>33</sup> Anita Raj (2010). When the mother is a child: the impact of child marriage on the health and human rights of girls. *Archives of Disease in Childhood*, 95(11), 931. BJM Journals.

<sup>34</sup> Ibid.

<sup>35</sup> Ibid.

has an inversely proportional effect on child marriage. 87% of married adolescent girls did not attend school.<sup>36</sup> In India, women having twelve or more years of schooling tend to marry much later than other women. The median age at first marriage for women between the age of 25-49 increases from 17.1 years for women with no schooling to 22.8 years for women with twelve or more years of schooling.<sup>37</sup> This is in line with studies conducted at a global level which reflect that child marriages are 66% lower among girls who complete secondary education and 80% lower among those who pursue higher education.<sup>38</sup>

#### **IV. A national reckoning: child marriage in India**

##### **A. The age of consent**

19. The trajectory of child marriage in India is stubborn and persistent. It has travelled centuries, and its opposition seems to have only incremental successes each time. Still widely prevalent,<sup>39</sup> the first movement against child marriage in modern India began in the latter part of the nineteenth century. Social reformers were trying to build public opinion against child marriage. Two concerns primarily animated the call against child marriages by early reformers. The first was the high number of early widows.<sup>40</sup> Because the rate of mortality was low, many girls found themselves in widowhood in the early years of their lives. The second reason behind seeking child marriage reform was to protect

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<sup>36</sup> Government of India (2011). Census of India 2011.

<sup>37</sup> NFHS-5, 208.

<sup>38</sup> UNICEF (2019). Evidence Review: Child Marriage interventions and research from 2020 to 2022.

<sup>39</sup> NFHS-5.

<sup>40</sup> Tahir Mahmood (1980). Marriage Age in India and Abroad – A Comparative Aspect. *Journal of Indian Law Institute* 22, 39.

young wives against forcible sexual intercourse, often by their husbands who were significantly older.<sup>41</sup>

20. Reformers like Ishwar Chandra Vidyasagar had successfully advocated for widow remarriage which was hitherto believed to be impermissible under Hindu law. These efforts led to the enactment of the Hindu Widows' Remarriage Act 1856. However, the demands against child marriages were not immediately realised. Child marriage, an aversion to widow remarriage and the low mortality rate combined and morphed into a lethal destructive element in the Indian society.<sup>42</sup>

21. To address the devastation caused, in particular to women and girls, social reformers called for raising the minimum age of consent for women in penal rape statutes. The idea behind the demand for raising the age of consent was to avoid the bodily harm inflicted on girls by their often-elderly husbands. A person below the age of consent could not legally consent to any sexual activity thereby throwing any sexual conduct within the confines of statutory rape. Such laws already existed in the presidency towns of Calcutta, Madras and Bombay as early as 1828.<sup>43</sup> The laws in these presidency towns stipulated the age of consent for girls to be eight years and the offence of rape against a girl below the age of consent was punishable with death.<sup>44</sup> In 1847, when the Law Commission was drafting the Indian Penal Code it decided, for the first time, to

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<sup>41</sup> Jaya Sagade. Child Marriage in India: Socio-legal and human Rights Dimensions. *Oxford University Press*, 2<sup>nd</sup> ed. (2012) 37.

<sup>42</sup> Tahir Mahmood (1980). Marriage Age in India and Abroad – A Comparative Aspect. *Journal of Indian Law Institute* 22, 39.

<sup>43</sup> The Joshi Committee Report, 9.

<sup>44</sup> Ibid.

criminalise the consummation of marriage by a husband with his underage wife.

The initial version of the Indian Penal Code 1860<sup>45</sup> stipulated the age of consent to be ten years and criminalised marital rape by a husband against his wife under the age of consent.<sup>46</sup>

22. Raising the age of consent was seen as undue interference by the colonial legislature into the personal laws of Indians.<sup>47</sup> The movement gained a groundswell of support because of efforts by Behramji Malabari, a journalist from Bombay, who began publishing his 'notes' in his newspaper the 'Indian Spectator' in 1884.<sup>48</sup> He highlighted the consequences of 'infant marriages' and 'enforced widowhoods' by recounting anecdotal accounts of victims. His polemical style of reporting sought to appeal to the humanity of the readers.<sup>49</sup> Around the same time, two cases came to the fore and exposed the evils which come out of child marriage.

### i. Rukhmabai's case

23. In 1874, at the age of eleven, Rukhmabai was married off to Dadaji Bhikaji, a nineteen-year-old boy who was a cousin of her step-father. Owing to his reformist views, Rukhmabai's stepfather did not send her to live with Dadaji Bhikaji immediately upon attaining puberty. Under his guidance, Rukhmabai

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<sup>45</sup> 'IPC'

<sup>46</sup> Ss. 375, 376, IPC 1860 (initial version).

<sup>47</sup> Tahir Mahmood (1980). Marriage Age in India and Abroad – A Comparative Aspect. *Journal of Indian Law Institute* 22, 39.

<sup>48</sup> Infant Marriage and Enforced Widowhood in India, Being a Collection of Opinions For and Against, Recorded by Mr. Behramji M. Malabari from Representative Hindu Gentlemen and Official and Other Authorities, Bombay (1887); Charles H. Heimsath, Indian Nationalism and Hindu Social Reform, Princeton University Press (1964), 151.

<sup>49</sup> Charles H. Heimsath, Indian Nationalism and Hindu Social Reform, Princeton University Press (1964), 151; Geraldine Forbes, Women and Modernity: The Issue of Child Marriage in India, *Women's Studies International Quarterly*, 1979, Vol. 2, 407-419.

grew fond of studying and took plenty of advantage of the rich collection of books he had accumulated. As Rukhmabai grew into an intelligent and forward-thinking woman, Dadaji Bhikaji slipped into indolence. This led Rukhmabai to refuse to live with Dadaji.<sup>50</sup> In 1884, Dadaji instituted a suit for restitution of conjugal rights. At the time, a decree for restitution of conjugal rights was enforceable and its violation was punishable with imprisonment. Rukhmabai opposed the petition on the grounds of social, economic and personal incompatibility with Dadaji.<sup>51</sup> She also asserted that she had not ‘arrived at years of discretion’ at the time of her marriage and therefore she could not be bound by it.<sup>52</sup> Justice Pinhey of the Bombay High Court dismissed the petition and held that Rukhmabai was married before she could consent to such a marriage and cannot therefore be compelled to live with her husband eleven years later without having cohabited in all this time. He observed that:

“It is a misnomer to call this a suit for the restitution of conjugal rights. When a married couple, after cohabitation separate and live apart, either of them can bring a suit against the other for the restitution of conjugal rights according to the practice in England, and according to the later practice of the Courts in India. But the present suit is not of that character. The parties to the present suit went through the religious ceremony of marriage eleven years ago when the defendant was a child of eleven years of age. They have never cohabited. And now that the defendant is a woman of twenty-two, the plaintiff asks the Court to compel her to go to his house, that he may complete his contract with her by consummating the marriage. The defendant, being now of full age, objects to going to live with the

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<sup>50</sup> Sudhir Chandra. *Enslaved Daughters: Colonialism, Law and Women's Rights*. Oxford University Press, 2<sup>nd</sup> ed (2008), Ch. 1.

<sup>51</sup> Jaya Sagade. *Child Marriage in India: Socio-legal and human Rights Dimensions*. Oxford University Press, 2<sup>nd</sup> ed. (2012) 39.

<sup>52</sup> Sudhir Chandra. *Enslaved Daughters: Colonialism, Law and Women's Rights*. Oxford University Press, 2<sup>nd</sup> ed (2008), Ch. 1.

plaintiff, objects to allowing him to consummate the marriage, objects to ratifying and completing the contract entered into on her behalf by her guardians while she was yet of tender age. **It seems to me that it would be a barbarous, a cruel, a revolting thing to do to compel a young lady under those circumstances to go to a man whom she dislikes, in order that he may cohabit with her against her will;** and I am of opinion that neither the law nor the practice of our Courts either justified my malting such an order, or even justifies the plaintiff in maintaining the present suit."

(emphasis supplied)

24. The decision of Justice Pinhey was much ahead of its time. At a time when child marriage was the norm and the legal standard of consent was inapplicable to marital laws, Justice Pinhey's judgment was a bold declaration of the rights of Indian women to make their own life choices. Unfortunately, the success was short-lived. The judgement had caused an uproar in the public and Dadaji filed an appeal before the Division Bench of the Bombay High Court. The Division Bench set aside the judgment of Justice Pinhey and directed Rukhmabai to join Dadaji within a month at the pain of penalty to undergo six months' imprisonment. The court reasoned that incompatibility was no defence under Hindu law against a petition for restitution of conjugal rights. Firm as she was, Rukhmabai refused to join Dadaji and declared that she would subject herself to the maximum penalty admissible under the law, rather than to live with her husband. The sight of a Hindu woman being imprisoned shocked the public conscience. Dadaji entered a compromise and did not press for the execution of the decree for restitution of conjugal rights against an amount of Rs 2000/-.

Rukhmabai went on to study medicine in the UK and became one of India's earliest women doctors.

25. Rukhmabai's defiance was uncharacteristic for her time and threatened, not only child marriage but also the *indomitable* idea of a woman's inferiority. Her assertion of womanhood and agency in refusing to go with a wayward husband whom she was *given to* in marriage opened up new ways for women to imagine their autonomy. Writing to the editor of the Times of India on 26 June 1885, under the pseudo name 'A Hindu Lady', Rukhmabai eloquently drew the differential plains on which the experiences of boys and girls in a child marriage are placed. She wrote:

"The general apathy towards social improvements which characterizes our people has been telling upon the whole community, but tells most heavily upon the female sex. Hindu social customs do not entail on men half the difficulties which they entail upon women. Excepting the two principal difficulties resulting from infant marriage, they enjoy full mental and physical freedom. Religion or social custom does not, in any way, interfere with their liberty. Marriage does not interpose any insuperable obstacle in the course of their studies. They can marry not only a second wife, on the death of the first, but have the right of marrying any number of wives at one and the same time, or any time they please. If married early, they are not called upon to go to the house and to submit to the tender mercies of a mother-in-law; nor is any restraint put upon their actions because of their marriage. But the case with women is the very reverse of this. If the girl is married at the age of eight (as most of them are), her parents are at liberty to send her to school till she is ten years old; but, if they wish to continue her at school longer, they must obtain the express permission of the girl's mother-in-law. But even in these advanced times, and even in Bombay—the chief centre of civilization—how many mothers-in-law are there who send their daughters to school after they are ten years old!"<sup>53</sup>

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<sup>53</sup> Extracted from a letter written by Rukhmabai to the Times of India on 26 June 1885.

26. While Rukhmabai's case ultimately witnessed an out of court settlement and her freedom, another case around the same time jolted the conscience of the Indian society.

### **ii. Phulmoni Dasi's case**

27. In 1889, Phulmoni Dasi was married off at the age of eleven years to a thirty-five-year-old man. At age eleven years and three months, she was subjected to marital rape by her husband, Hari Maiti. She succumbed to haemorrhage from a rupture of the vagina caused by her husband.<sup>54</sup> The Court ruled that the law of rape was inapplicable because Phulmoni had reached her tenth birthday and was married to Hari. The coverage of the case as well as the trial cast a male medical gaze over the body of the deceased victim. Even after her death, she was subjected to scrutiny to determine her true age and growth. Questions of her immaturity and puberty were not sought as an ornate way to bring her husband to justice but were rather asked to defend him.

28. The gruesome case of Phulmoni galvanised support for Malabari's campaign to raise the age of consent. Phulmoni's case silenced the opposition among those who had opposed any legislative intervention as a colonial interference in the private sphere and practices.<sup>55</sup> The death of Phulmoni also cut through the lethargy of a colonial bureaucracy which was reluctant to intervene in

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<sup>54</sup> Jaya Sagade. Child Marriage in India: Socio-legal and human Rights Dimensions. *Oxford University Press*, 2<sup>nd</sup> ed. (2012) 37.

<sup>55</sup> Ratna Kapur & Brenda Cossman (1996). Subversive Sites: Feminist Engagements with Law in India. *Sage Publications* 49-50; Charles H. Heimsath (1964). Indian Nationalism and Hindu Social Reform. *Princeton University Press* 163-165.

matters of religion.<sup>56</sup> The law member of the Viceroy's Legislative Council, Andrew Scoble, prominently used Phulmani's case to advocate for raising the age of consent by enacting his Bill, namely, the Age of Consent Bill. The Bill was an amendment to the IPC and raised the age of consent from ten years to twelve years. The Age of Consent Act was passed in 1891. The marital rape exception had come to the defence of Hari. Raising the age of consent by two years meant that any sexual intercourse with a girl under the age of twelve would be statutory rape regardless of the marital status of the aggressor with the victim.

### **B. Regulating the age of marriage**

29. In 1921, the League of Nations held a conference on the trafficking of women and recommended raising the age of consent to twenty-one years for girls. In 1922, Bakshi Sohanlal unsuccessfully tried to raise the age of consent to 14 by introducing a Bill. Bills that sought to raise the age of consent were introduced and thrown out regularly for five years thereafter. Among these bills was an Age of Marriage Bill which was sought to be introduced by Ranglal Jajodia in 1924 in the Legislative Assembly.<sup>57</sup> The Bill prescribed a minimum age before which no marriage could take place. This was a shift from the approach taken by other reformers and legislators of not interfering with the age of marriage but to merely protect girls from forced sex by raising the age of consent in penal laws. While this Bill was never introduced, a similar Bill was introduced by Haribilas

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<sup>56</sup> Ishita Pande (2020). Sex, Law, and the Politics of Age Child Marriage in India, 1891–1937. *Cambridge University Press* 32.

<sup>57</sup> Joshi Committee Report, 15; Also see Tahir Mahmood (1980). Marriage Age in India and Abroad – A Comparative Aspect. *Journal of Indian Law Institute* 22, 41.

Sarda in 1927 after another failed attempt to raise the age of consent by Hari Singh Gour. The ‘Sarda Bill’ was circulated widely to attract opinions. The Select Committee altered various provisions, and the Government eventually appointed the Age of Consent Committee under the chairmanship of MV Joshi. The consideration of the Sarda Bill was postponed till the report of the Joshi Committee was received.<sup>58</sup>

30. The terms of reference of the Joshi Committee did not include the examination of the age of marriage. However, the committee found it impossible to delink the question of marriage age with the question of age of consent for cohabitation.<sup>59</sup> The committee heard over twelve hundred oral witnesses out of which one hundred and thirty four witnesses strongly opposed any law regulating the age of marriage. The committee submitted its report dated 20 June 1929. It recommended that the age of consent be raised to fifteen years under penal statutes as well as the enactment of a law which penalizes marriage below the age of fourteen years.<sup>60</sup> The committee was of the opinion that it would be easier to regulate the age of marriage by law than to regulate the consummation of marriage after it had already taken place. The committee reasoned that marriage was an act of public knowledge and many persons had a chance to notice the age of the couple. Its visibility would allow for its regulation. It was also thought that regulating marriages would avoid the

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<sup>58</sup> Joshi Committee Report, 8.

<sup>59</sup> Ibid, 8.

<sup>60</sup> Ibid, 196.

irritation that would follow from the strict regulatory interference of consummation within a marital union.<sup>61</sup>

31. After much debate, the Sarda Bill was enacted as the Child Marriage Restraint Act 1929 and received the assent of the Governor-General on 1 October 1929 and was to come into force on 1 April 1930 throughout British India. The Act applied to all religions. The Act continued to govern the law on the age of marriage till Parliament enacted the Prohibition of Child Marriage Act 2006.

### **C. The Child Marriage Restraint Act 1929**

32. The law in colonial times had cast a male gaze upon the women and girls of India. It did so by making women the object of the legislation but never its spectator. Women and their bodies were made a subject of legislation without any meaningful attempt to attract the perspectives of women, their experiences or their desires. The law did not concern itself with issues of autonomy, agency and individualised dignity of a woman. This had been manifested from the days of the reform movement on the age of consent laws. As Dr Jaya Sagade argues in her book *Child Marriage in India: Socio-legal and Human Rights Dimensions*, the law on consent was nailed purely to the physical capability of women and alien from their aspirations or choices. She states that:

“It is unfortunate that all opinions agreed on a definition of consent that was nailed to a purely physical capability, entirely dissociated from free issues like choice of partner, sexual, emotional, or mental compatibility or other social considerations such as the girl’s personal development. Consent was made into a biological category, a stage when

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<sup>61</sup> Ibid, 174, para 379.

the female body was ready to accept sexual penetration without serious harm. The only difference lay in when this stage was reached.”<sup>62</sup>

33. The Child Marriage Restraint Act 1929<sup>63</sup> was a first to cover all children – male and female – within its gamut. The age of consent laws was enacted through a clause in the penal rape statutes which only sought to legislate on girls. The CMRA on the other hand was applicable to both boys and girls.

34. Section 2(a) of the CMRA stipulated that a “child” means a person who, if male, is below the age of eighteen, and if female, is below the age of fourteen. Section 2(d) defined a “minor” to be any person below the age of eighteen. All marriages in which either of the parties was a ‘child’ under Section 2(a) was stipulated to be a “child marriage” under Section 2(b). The CMRA stipulated that child marriage is an offence punishable with simple imprisonment which may extend to one month or a fine of one thousand rupees or both. Grooms between the ages of eighteen and twenty-one were to be punished only with a fine and no imprisonment could be awarded to them. The CMRA originally did not allow for the punishment of a ‘child’ for the offence of child marriage. The Act only penalised child marriages which had already taken place. However, it did not stipulate any provision for the prevention of child marriage.

35. In 1938, the CMRA was amended to stipulate that a court may issue an injunction prohibiting a child marriage from taking place. However, before

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<sup>62</sup> Jaya Sagade. Child Marriage in India: Socio-legal and human Rights Dimensions. *Oxford University Press*, 2<sup>nd</sup> ed. (2012) 41.

<sup>63</sup> ‘CMRA’

## PART IV

issuing such an injunction, the court was required to give prior notice to the person sought to be injuncted as well as an opportunity to show cause against the issuance of the injunction.<sup>64</sup> The CMRA further underwent substantive amendments in 1949.

36. The amendment increased the age for a girl child to fifteen years and increased penalties for all categories of offenders. A chart of all the penalties under the CMRA and its amendments is produced below:

Offender	Penalty under the	
	Original CMRA	1949 Amendment
Groom between the ages of 18-21	Fine of upto Rs 1,000/-	Simple imprisonment upto 15 days or/and a fine upto Rs 1,000/-
Groom above the age of 21	Simple imprisonment upto 1 month or/and fine upto Rs 1,000/-	Simple imprisonment upto 3 months and fine
One who knowingly performs, conducts or directs child marriage	Simple imprisonment upto 1 month or/and fine upto Rs 1,000/-	Simple imprisonment upto 3 months and fine
One who, being in charge of a minor – promotes, permits or failed to prevent the child marriage	Simple imprisonment upto 1 month or/and fine upto Rs 1,000/-	Simple imprisonment upto 3 months and fine
One who knowingly violates an injunction against a child marriage	Imprisonment of either description upto three months or/and fine upto Rs 1,000/-	Imprisonment of either description upto three months or/and fine upto Rs 1,000/-

37. None of these offences were cognizable in nature. The offences under the CMRA were only made party cognizable through an amendment in 1978. Accordingly, the offences under the CMRA were to be treated as cognizable for (i) the purpose of investigation, and (ii) for the purpose of matters other than (a)

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<sup>64</sup> Section 12, CMRA.

Section 42 of CrPC and (b) the arrest of a person without a warrant or without an order of the Magistrate. By the same amendment, Parliament also raised the age of marriage to eighteen years for girls and twenty-one years for boys. This time too, legislative intervention was largely animated by a concern for population control rather than the autonomy or agency of children. The Statement of Objects and Reasons expressly stated the intent behind the amendment. It states as follows:

**“Prefatory Note-Statement of Objects and Reasons.** The Child Marriage Restraint Act, 1929, was enacted with a view to prevent child marriages, namely, a marriage to which either of the contracting parties is under a specified age. Originally, the age limit for a male was eighteen years and for a female fourteen years. The age limit was subsequently raised in the case of females from fourteen to fifteen by the Amending Act 41 of 1949. Violation of the provisions of the Act is made punishable.

**2. The question of increasing the minimum age of marriage for males and females has been considered in the present context when there is an urgent need to check the growth of population in the country. Such increase of the minimum age of marriage will result in lowering the total fertility rate on account of longer span of married life. It will also result in more responsible parenthood and in better health of the mother and child.** A Bill introduced for this purpose in the Lok Sabha on 25th August, 1976, lapsed with the dissolution of the Lok Sabha on 18th January, 1977. The matter has been examined in all its aspects again.

**3. The Bill seeks to amend the Child Marriage Restraint Act, 1929, to increase the minimum age of marriage from fifteen to sixteen for females and from eighteen to twenty-one for males and to make consequential amendments in the Hindu Marriage Act, 1955, and the Indian Christian Marriage Act,**

1872. It is also being provided that offences under the Child Marriage Restraint Act may be investigated upon by a police officer under the Code of Criminal Procedure as if it were a cognizable offence. The police officer shall, however, not have the power to arrest without a warrant or an order of a Magistrate."

(emphasis supplied)

38.The CMRA did not stipulate that child marriages would be void, voidable or invalid. It did not affect the validity of child marriages and did not prohibit the marriage of a girl to an old man. This remained unchanged till Parliament repealed the CMRA and enacted the Prohibition of Child Marriage Act 2006.

## **V. Contemporary legal framework**

### **A. The Prohibition of Child Marriage Act 2006**

39.The National Commission for Women<sup>65</sup> in its annual report for the year 1995-1996 proposed to amend the CMRA. It proposed that (i) the government should appoint Child Marriage Prevention Officers; (ii) punishments under CMRA be made more stringent; (iii) child marriages be declared void; (iv) a penal obligation be imposed on anyone attending a child marriage; and (v) all offences under the CMRA must be made cognizable without any qualification.<sup>66</sup> The NCW further recommended that systematic efforts to spread awareness about the evils of child marriage be carried out.<sup>67</sup>

40.In 2001-2002, the National Human Rights Commission<sup>68</sup> released its annual report which *inter alia* reviewed the CMRA. The NHRC proposed certain

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<sup>65</sup> 'NCW'

<sup>66</sup> Annual Report 1995-1996, National Commission for Women, 3.

<sup>67</sup> Annual Report 1995-1996, National Commission for Women, 3.

<sup>68</sup> 'NHRC'

amendments to the CMRA to (i) provide for higher penalties for violation of the CMRA; (ii) stipulate action against organisers or associations who organise child marriages at a mass scale; (iii) make child marriages voidable at the instance of the minor party within two years of the party attaining the age of majority; (iv) provide for the maintenance of a minor girl by her husband or guardian till she remarries; and (v) stipulate for the return of all dowry and gifts exchanged during the child marriage.<sup>69</sup> The report also stressed on the need to initiate social action by networking with NGOs in the areas where child marriages were prevalent in order to sensitize community leaders against such marriages.<sup>70</sup>

41. On the basis of the two reports, the Government of India consulted the States and the Union Territories. Accordingly, the Parliament decided to repeal the CMRA and enact the PCMA. The Statement of Objects and Reasons of the PCMA stated the salient features of the Act as follows:

“4. The salient features of the Bill are as follows:-

- (i) To make a provision to declare child marriage as voidable at the option of the contracting party to the marriage, who was a child.
- (ii) To provide a provision requiring the husband or, if he is a minor at the material time, his guardian to pay maintenance to the minor girl until her remarriage.
- (iii) To make a provision for the custody and maintenance of children born of child marriages
- (iv) To provide that notwithstanding a child marriage has been annulled by a decree of

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<sup>69</sup> Annual Report 2001-2002, National Human Rights Commission, 50-51, 336-348.

<sup>70</sup> Annual Report 2001-2002, National Human Rights Commission, 51.

nullity under the proposed section 3, every child born of such marriage, whether before or after the commencement of the proposed legislation, shall be legitimate for all purposes.

- (v) To empower the district court to add to, modify or revoke any order relating to maintenance of the female petitioner and her residence and custody or maintenance of children, etc.
- (vi) To make a provision for declaring the child marriage as void in certain circumstances.
- (vii) To empower the courts to issue injunctions prohibiting solemnisation of marriages in contravention of the provisions of the proposed legislation.
- (viii) To make the offences under the proposed legislation to be cognizable for the purposes of investigation and for other purposes.
- (ix) To provide for appointment of Child Marriage Prevention Officers by the State Government.
- (x) To empower the State Governments to make rules for effective administration of the legislation.

5. The Bill seeks to achieve the above objectives."

42. The PCMA retained the age of marriage as twenty-one for males and eighteen for females.<sup>71</sup> The Act provides for governing parties to a child marriage after its commission, punitive measures against offenders of the Act as well as provisions for the prevention of child marriage. We shall analyse the scheme of the PCMA in three parts. In **Part i**, we shall analyse the provisions that seek to protect women married as girls as well as children born in child marriages (Sections 3 to 8 of the PCMA). Having analysed the remedies of parties upon the commission of a child marriage, we shall analyse the provisions which

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<sup>71</sup> Section 2(a), PCMA.

penalise the commission of child marriages in **Part ii**. Lastly, in **Part iii** we shall analyse the provisions which are aimed at preventing child marriages.

**i. Recourse to the wedded: maintenance, residence and custody**

43. The PCMA prescribes that a petition under the Act may be filed before a district court having jurisdiction over the place where (i) the defendant resides; or (ii) the child resides; or (iii) the marriage was solemnized; or (iv) the parties last resided together; or (v) the petitioner is residing at the time of filing the petition.

Such a court shall have jurisdiction to deal and decree the following reliefs:

- (i) to annul the marriage and issue a decree of nullity under Section 3 of the PCMA;
- (ii) to provide for maintenance and residence to the female contracting party to a child marriage under Section 4; and
- (iii) for the custody and maintenance of children of a child marriage under Section 5.

44. The PCMA diverges from the CMRA in its approach towards the validity of child marriages as well as its enforcement. The PCMA prescribes that a child marriage is voidable at the instance of the contracting party who was a child at the time of the marriage.<sup>72</sup> Section 3 stipulates that a petition for annulling a child marriage by a decree of nullity may be filed before the district court. Such a person must exercise the right to file the petition within two years of attaining

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<sup>72</sup> Section 3, PCMA.

the age of majority.<sup>73</sup> In case the party is still a minor, the petition may be filed by their guardians or next friend along with the CMPO.<sup>74</sup> In addition to entitling the minor contracting party to a child marriage to a decree of nullity, it also requires the district court to direct both parties to the marriage to return all money, valuables, ornaments and other articles exchanged as gifts at the time of marriage.<sup>75</sup> In doing so, the district court must afford an opportunity to the parties against whom the order of returning gifts is made.<sup>76</sup>

45. The PCMA further empowers the district court to provide for the maintenance and residence of the female contracting party to the child marriage. The court may pass an interim or final order directing the grant of maintenance to the female contracting party by the male contracting party.<sup>77</sup> Where the male contracting party is a minor, the court may issue a direction to his parents or guardians to maintain the female contracting party.<sup>78</sup> The court may grant such a relief till the female contracting party remarries.<sup>79</sup> In computing the amount of maintenance, the court shall have regard to the needs of the child, the lifestyle enjoyed by the child during marriage and the means of income of the paying party.<sup>80</sup> Clause (4) of Section 4 empowers the district court to make a suitable order for the residence of the female contracting party to a child marriage who files an annulment petition.

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<sup>73</sup> Section 3(3), PCMA.

<sup>74</sup> Section 3(2), PCMA.

<sup>75</sup> Section 3(4), PCMA.

<sup>76</sup> Section 3(4), PCMA.

<sup>77</sup> Section 4(1), PCMA.

<sup>78</sup> Section 4(1), PCMA.

<sup>79</sup> Section 4(1), PCMA.

<sup>80</sup> Section 4(2), PCMA.

46. Section 5 of the PCMA provides for the custody and maintenance of children of child marriages. The PCMA is oriented on the universal principal of child law, which is that the welfare and beneficial interest of the child has to be paramount. The provision governs the custody of the child, the visitation rights of parents as well as the maintenance of a child born from a child marriage. The district court is empowered to make an order as to the custody of a child born from a child marriage<sup>81</sup> keeping in mind the welfare and best interest of the child.<sup>82</sup> The court may also pass an order granting the other party access to the child in a manner that serves its best interest.<sup>83</sup> The child or its parents or guardians may also be awarded maintenance by the court.<sup>84</sup> Therefore, the PCMA has sought to ensure the upkeep and protection of women and children in families which emerge from a child marriage.

47. One of the critiques against rendering child marriages void is that women and children would lose the protective shield of the law, which accrues to them under a valid marriage. The PCMA has repelled this criticism by specifically providing for the maintenance of women and children in a child marriage notwithstanding a decree of nullity being granted under Section 3 of the Act. The Act further protects a child born from a child marriage by declaring that such a child, begotten or conceived of a child marriage, shall be deemed legitimate for all purposes under the law.<sup>85</sup>

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<sup>81</sup> Section 5(1), PCMA.

<sup>82</sup> Section 5(2), PCMA.

<sup>83</sup> Section 5(3), PCMA.

<sup>84</sup> Section 5(4), PCMA.

<sup>85</sup> Section 6, PCMA.

48. The maintenance of women and children has been a feature of our family laws.

It recognises the inherent maldistribution of economic resources and life opportunities between men and women. It further recognises the innocence of the children who end up in broken families due to no fault of theirs. The status of these universally recognised vulnerable persons is further made tragic in a child marriage because all child marriages are forced marriages. Children are made to enter into matrimony before arriving at the age of intelligent consent and are often unaware of the responsibilities, duties and rights which accrue to members of the marital union in the eyes of the law as well as society. When the party to a child marriage ends up in a situation which is not of their making, the vulnerability of the child born from such marriage is heightened.

49. In **Union of India v. VR Tripathi**<sup>86</sup>, a two-Judge Bench of this Court speaking through one of us (DY Chandrachud, J) has opined that the legitimacy of a child is a matter of the dignity of the child. When the law recognises a child as legitimate, it aims to shield the child from the legal fallout of illegitimacy as well as the social stigma attached to illegitimate children. It is impermissible to treat children of void marriages, who are statutorily legitimate, as illegitimate. Section 6 of the PCMA therefore serves to afford dignity to children born to parents who had entered into a child marriage. A decree of nullity of marriage passed under Section 3 shall not affect the legitimacy of the child born from such a marriage.

50. Section 7 of the PCMA allows the district court to add to, modify or revoke any order which it passes on the maintenance, residency of the woman or the

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<sup>86</sup> (2019) 14 SCC 646.

custody and maintenance of the child born from a child marriage based on change in circumstances. Such a change in the order of the court may be made at any time, either during the pendency of the petition or after it has been disposed of.

51. These provisions seek to safeguard the interest of the vulnerable stakeholders involved in a child marriage, namely, a child bride and any child born from a child marriage. Parliament, having safeguarded these rights has further stipulated punishments for violation of the PCMA and solemnization of child marriages.

## **ii. Penalties for child marriage**

52. The PCMA prescribes punishment for three classes of persons, namely, (i) an adult groom in a child marriage,<sup>87</sup> (ii) persons involved in the solemnization of child marriage<sup>88</sup> and (iii) persons who promote or permit the solemnization of child marriage.<sup>89</sup> The maximum punishment prescribed for all three classes is rigorous imprisonment of two years and a fine of rupees one lakh. Unlike many social legislations, the PCMA does not prescribe a mandatory minimum punishment for committing an offence under the Act. The effect of this is that a judge would be at liberty to nominally punish the accused who are convicted under the Act. The non-prescription of a minimum mandatory sentence has led to ineffective enforcement of the PCMA.

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<sup>87</sup> Section 9, PCMA.

<sup>88</sup> Section 10, PCMA.

<sup>89</sup> Section 11, PCMA.

## PART V

53. Section 15 of the PCMA stipulates that all offences under the Act are cognizable and non-bailable. This is a deviation from CMRA which initially did not make the offence of child marriage cognizable. The effect of this was to make the prevention of child marriage entirely contingent on the private initiative of citizens to file a complaint before the magistrate and be examined under oath. The CMRA also initially required a security bond to be executed by the complainant to sustain their *bona fides*. This requirement made the enforcement of the Act illusory. The requirement of executing a mandatory security bond was eliminated by the Child Marriage Restraint (Second Amendment) Act 1938. The offences under the CMRA were further made partially cognizable through an amendment in 1978. Section 15 of PCMA is therefore a welcome step which aims to better enforce the Act.

54. Section 9 of the PCMA prescribes that a man above the age of eighteen, who enters into a marriage with a minor girl is liable to be punished with rigorous imprisonment which may extend to two years or with a fine which may extend to one lakh rupees or both. The court is accordingly empowered to penalise an accused under Section 9 with imprisonment or a fine or both. The court is at liberty to exercise its options of imposing punishment based on the gravity of the offence, the circumstance of the marriage and the socio-economic power of the male over his child bride. In many instances, the marriage between a child bride and aged groom occurs at the instance of the groom incentivising the family of the girl to marry her off. The provision deals with such situations but also recognises the relative lack of involvement of a man who may be a young adult and enters into matrimony with a minor. The option of imprisonment and

fine is a deviation from the other two penal provisions in the PCMA which mandate both, a fine and imprisonment, to be imposed on guilty convicts. The rationale of this option is to allow the judge a degree of latitude in assessing the culpability of the groom under Section 9 and impose a proportionate criminal sentence.

55. Despite the age of majority for a man to enter into a marriage being prescribed as twenty-one under Section 2(a) of the Act, his criminal liability for entering into a child marriage with a minor woman begins at eighteen. Therefore, two positions of law emerge from Section 9. First, a woman, regardless of her age is not liable for entering into a child marriage. Second, a man above the age of eighteen but under the age of twenty one is liable for marrying a girl who is under the age of eighteen. The legislative intent behind making a groom liable for entering child marriage is to recognise the relative control of the agency that a groom may have in relation to his marriage as opposed to a girl.

56. In **Hardev Singh v. Harpreet Kaur**<sup>90</sup> the appellant was under the age of twenty-one and had married a woman who was twenty-three years old. The High Court of Punjab and Haryana directed an FIR to be registered under Section 9 of the PCMA against the wife for entering into a marriage with a man who was a minor under the PCMA. A two-Judge bench of this Court set aside the judgment of the High Court and held that the PCMA does not prescribe any punishment for an adult woman who marries a male child. This Court held that the Act recognises women as a vulnerable class and seeks to punish adult men who

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<sup>90</sup> (2020) 19 SCC 504.

## PART V

marry child brides. The Court further rejected the literal interpretation of Section 9 which would make a man between the ages of eighteen and twenty one who marries an adult woman liable for child marriage. Therefore, no child as defined in Section 2(a) of the PCMA is liable under Section 9 for marrying an adult person.

57. Section 10 of PCMA stipulates that a person who performs, conducts, directs or abets any child marriage shall be punished with rigorous imprisonment which may extend to two years and shall be liable to a fine which may extend to one lakh rupees. The provision, unlike Section 9, does not allow the court to choose the option of imposing a fine or sentencing a term of imprisonment or both. A court adjudicating under Section 10 is mandated to impose a sentence of imprisonment as well as impose a fine.

58. The provision is expansive and would govern any accomplice to the commission of child marriage. This would include the priest who performs the marriage, any family member, relative or person at whose direction the marriage takes place or anyone who abets it. The provision stipulates a defence available to any accused under Section 10 which is that a person must demonstrate that he had reasonable belief that the marriage was not a child marriage. The inbuilt defence stipulated in the provision is to safeguard any person who may unwittingly become a part of the commission of the offence of child marriage.

59. Section 11 of the PCMA is a catchall provision against the promotion or permitting of child marriage by those in charge of a minor party to the marriage.

The provision reads as follows:

**“11. Punishment for promoting or permitting solemnisation of child marriages.—**

(1) Where a child contracts a child marriage, any person having charge of the child, whether as parent or guardian or any other person or in any other capacity, lawful or unlawful, including any member of an organisation or association of persons who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, including attending or participating in a child marriage, shall be punishable with rigorous imprisonment which may extend to two years and shall also be liable to fine which may extend up to one lakh rupees: Provided that no woman shall be punishable with imprisonment.

(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a minor child has contracted a marriage, the person having charge of such minor child has negligently failed to prevent the marriage from being solemnised.”

60. Section 11 stipulates that any person having charge of the child – who promotes or permits a child marriage or fails to prevent it – is liable to rigorous imprisonment which may extend to two years and a fine which may extend to one lakh rupees. Similar to the provision under Section 10 of the PCMA, Section 11 also prescribes a mandate to the sentencing court to impose a sentence of imprisonment as well as a fine. The provision uses the word ‘and’ between the two punishments and the judge does not have the liberty to pick a certain punishment to the exclusion of the other. The person liable under Section 11 may be the parents of the child or a guardian or any other person or

organisation. Further, the means by which a person may have the charge of the child is immaterial as the provision stipulates that the charge may be 'lawful or unlawful'. The section seeks to penalise any person or organisation involved in a child marriage. Its expansive scope allows for the prosecution of any person who may have unlawfully taken the custody of a child and thereafter promoted, permitted or failed to prevent the child marriage. Section 11 also deals with organisations, such as orphanages or schools or hostels, which may have the charge of a child and under whose watch the child is married off.

61. The intention of the provision is to place an obligation on any person who has the charge of a child to ensure that the offence of child marriage is not committed. The provision not only penalises the active participation of the person having charge of a child but also penalises the omission on the part of such a person to prevent child marriage. The provision recognises that children lack the ability to form intelligent consent and may not necessarily know the full ambit of the activity which they are about to commit. Further, children may lack the ability and grit to defend themselves and refuse to participate in the marriage against the pleasure of their custodians or parents.

62. Clause (2) of Section 11 raises a presumption. It stipulates that any person, who is in charge of a child who was married off, is presumed to have negligently failed to prevent the child marriage. The presumption is a rebuttable one and may be defended if the person proves that he could not have prevented the marriage or failed at preventing it, having tried to do so to the best of their ability. This principle is only applicable to an offence under Section 11.

63. Having stipulated penal provisions for the commission of child marriage in Sections 9, 10 and 11, the PCMA further stipulates that any child marriage which occurs as a result of another criminal act is void *ab initio*.<sup>91</sup> Section 12 stipulates three instances in which the marriage of a child is null and void. These instances are where a minor child –

- (i) is taken or enticed out of the keeping of the lawful guardian;<sup>92</sup> or
- (ii) compelled by force or by any deceitful means induced to go from any place;<sup>93</sup> or
- (iii) is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes.<sup>94</sup>

64. Section 12 provides that the marriage in these instances is *non est* in law and has no legal standing from its inception. The declaration of the provision is mandatory and removes the option from the hands of the party to consent to the marriage after its commission. Therefore, all marriages done by taking or enticing a child, compelling by force or deceit or selling are void. Section 12(c) further stipulates that where a child marriage occurs and after the marriage, the minor is sold or trafficked or used for immoral purposes is void. Therefore, even when the commission of marriage was not through force or deceit the marriage

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<sup>91</sup> Section 12, PCMA.

<sup>92</sup> Section 12(a), PCMA.

<sup>93</sup> Section 12(b), PCMA.

<sup>94</sup> Section 12(c), PCMA.

would be void from the inception based on the acts performed after the marriage takes place.

### **iii. Preventive measures under the PCMA**

65. The PCMA seeks to eliminate child marriages by deterrence and prevention. The Act designed the preventive measures in two ways, i.e., (i) by an injunction against the commission of child marriage, and (ii) by the appointment of CMPOs. We shall analyse the scheme of the PCMA in regard to both of these aspects below.

#### **Injunctions against child marriage**

66. Sections 13 and 14 of the PCMA deal with injunctions against child marriage.

Section 13 reads as follows:

**"13. Power of court to issue injunction prohibiting child marriages.—**

(1) Notwithstanding anything to the contrary contained in this Act, if, on an application of the Child Marriage Prohibition Officer or on receipt of information through a complaint or otherwise from any person, a Judicial Magistrate of the first class or a Metropolitan Magistrate is satisfied that a child marriage in contravention of this Act has been arranged or is about to be solemnised, such Magistrate shall issue an injunction against any person including a member of an organisation or an association of persons prohibiting such marriage.

(2) A complaint under sub-section (1) may be made by any person having personal knowledge or reason to believe, and a non-governmental organisation having reasonable information, relating to the likelihood of taking place of solemnisation of a child marriage or child marriages.

(3) The Court of the Judicial Magistrate of the first class or the Metropolitan Magistrate may also take *suo motu* cognizance on the basis of any reliable report or information.

(4) For the purposes of preventing solemnisation of mass child marriages on certain days such as *Akshaya Trutiya*, the District Magistrate shall be deemed to be the Child Marriage Prohibition Officer with all powers as are conferred on a Child Marriage Prohibition Officer by or under this Act.

(5) The District Magistrate shall also have additional powers to stop or prevent solemnisation of child marriages and for this purpose, he may take all appropriate measures and use the minimum force required.

(6) No injunction under sub-section (1) shall be issued against any person or member of any organisation or association of persons unless the Court has previously given notice to such person, members of the organisation or association of persons, as the case may be, and has offered him or them an opportunity to show cause against the issue of the injunction:

Provided that in the case of any urgency, the Court shall have the power to issue an interim injunction without giving any notice under this section.

(7) An injunction issued under sub-section (1) may be confirmed or vacated after giving notice and hearing the party against whom the injunction was issued.

(8) The Court may either on its own motion or on the application of any person aggrieved, rescind or alter an injunction issued under sub-section (1).

(9) Where an application is received under sub-section (1), the Court shall afford the applicant an early opportunity of appearing before it either in person or by an advocate and if the Court, after hearing the applicant rejects the application wholly or in part, it shall record in writing its reasons for so doing.

(10) Whoever knowing that an injunction has been issued under sub-section (1) against him disobeys such injunction shall be punishable with

imprisonment of either description for a term which may extend to two years or with fine which may extend to one lakh rupees or with both:

Provided that no woman shall be punishable with imprisonment."

67. A Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be, is empowered to issue an injunction order if they are satisfied that a child marriage has been arranged or is about to be solemnised.<sup>95</sup> The judge may issue such an order based on information that may be received as a complaint or otherwise. The person who complains to the judge must have personal knowledge or reason to believe that a child marriage is likely to occur.<sup>96</sup> In case the complainant is a non-governmental organisation, they must have reasonable information, relating to the likelihood of the taking place of or solemnisation of a child marriage or child marriages. The injunction order may be issued against any person or association of persons.<sup>97</sup> However, the court must issue notice to such person, members of the organisation or association of persons, as the case may be, and offer them an opportunity to show cause against the issuance of an injunction.<sup>98</sup> The court may eschew from this requirement only if it is expedient or urgent for the court to act, in which case an interim injunction may be issued.

68. A Judicial Magistrate of the first class or a Metropolitan Magistrate, as the case may be, is also empowered to take *suo moto* cognizance of the commission of a child marriage based on a reliable report or information.<sup>99</sup> The PCMA also

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<sup>95</sup> Section 13(1), PCMA.

<sup>96</sup> Section 13(2), PCMA.

<sup>97</sup> Section 13(1), PCMA.

<sup>98</sup> Section 13(6), PCMA.

<sup>99</sup> Section 13(3), PCMA.

gives the judge associated powers in addition to the power to issue an injunction. These include the power to (i) confirm or vacate the injunction;<sup>100</sup> (ii) rescind or alter an injunction;<sup>101</sup> and (iii) reject the application for injunction wholly or in part by a speaking order.<sup>102</sup> The punishment for disobeying an injunction issued under Section 13 of the PCMA is imprisonment which may extend to two years or a fine which may extend to one lakh rupees or both.<sup>103</sup> However, no woman can be sentenced to imprisonment for violating an injunction order under Section 13. Any marriage solemnized in violation of an injunction order passed under the PCMA is void *ab initio* as per Section 14 of the PCMA.

69. In addition to the power of the Judicial Magistrate of the first class or a Metropolitan Magistrate to issue injunctions, Section 13 also stipulates the role of the District Magistrate in the prevention of child marriages. Clause (4) of Section 13 stipulates that a District Magistrate is deemed to be a CPMO on certain days to prevent the solemnization of child marriages. The District Magistrate may exercise all the powers which accrue to the CMPO under the PCMA.<sup>104</sup> The intent of empowering the District Magistrate is in recognition of the fact that child marriages may take place in higher numbers on certain days. Since many communities in India believe that marriages may be beneficial if conducted on auspicious days, the authorities may preventively earmark these days for the application of Clauses (4) and (5) of Section 13 of the PCMA.

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<sup>100</sup> Section 13(7), PCMA.

<sup>101</sup> Section 13(8), PCMA.

<sup>102</sup> Section 13(9), PCMA.

<sup>103</sup> Section 13(10), PCMA.

<sup>104</sup> Section 13(4), PCMA.

Clause (5) of the PCMA stipulates that the District Magistrate shall have additional powers to stop or prevent the solemnisation of child marriages, for which he may take appropriate measures and use the minimum force required.

### **Child Marriage Prohibition Officers**

70. In addition to injunctions, the PCMA also prescribes the appointment of CMPOs for the prevention of child marriage. One of the primary critiques of the CMRA was that the law was dependent on the private initiative of public-spirited citizens to avoid child marriages. The offences under the CMRA were only partially cognizable and its enforcement was met with severe social penalty and the wrath of the two families whose wards were made to tie the knot. The PCMA sought to better enforce its provisions by stipulating the appointment of a CMPO. Section 2(d) of PCMA defines a CMPO as an officer appointed by the State Government under Section 16(1) of PCMA. Section 16 empowers the State Government to issue a notification in the official gazette appointing a CMPO for the specified jurisdiction. Under Clause (2) of Section 16 of PCMA, the State may also request a respectable member of the locality with a record in social service or an officer of the Gram Panchayat or Municipality or an officer of the Government or any public sector undertaking or a non-governmental organisation to render assistance to the CMPO. The CMPO is mandated to carry out the duties stipulated in Clause (3) of Section 16 of PCMA. These duties are as follows:

- (i) to prevent solemnisation of child marriages by taking such action as he may deem fit;

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- (ii) to collect evidence for the effective prosecution of persons contravening the provisions of the Act;
- (iii) to advise either individual cases or counsel the residents of the locality generally not to indulge in promoting, helping, aiding or allowing the solemnisation of child marriages;
- (iv) to create awareness of the evil which results from child marriages;
- (v) to sensitise the community on the issue of child marriages;
- (vi) to furnish such periodical returns and statistics as the State Government may direct; and
- (vii) to discharge such other functions and duties as may be assigned to him by the State Government.

71. The CMPO may move the court for an order of (i) maintenance and residence of the child bride under Section 4; (ii) custody of a child born from a child marriage under Section 5; and (iii) injunction against the solemnization of marriage or against the violation of an injunction under Section 13.<sup>105</sup> Additionally, the CMPO may move the court along with a child who has been married off for a decree of nullity under Section 3 of PCMA.<sup>106</sup>

72. The legislative intent behind the appointment of the CMPOs is to designate an officer to take tailored action against child marriage in each district. The

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<sup>105</sup> Section 16(5), PCMA.

<sup>106</sup> Section 16(5), PCMA.

prevention of child marriage ensures that communities can progress whereas the prosecutorial functions of the CMPO ensure effective deterrence.

73. The Petitioner has submitted that the practice widely prevalent is to appoint an officer with multifarious duties as the CMPO. The task of the CMPO is doled out as an additional task to officers who are already burdened with their primary duties. This leads to ineffectiveness and allows many child marriages to slip through the cracks.

74. The data provided by the Union in its additional affidavit sheds light on the prevalence of officers holding additional charges as CMPOs at the district level. In states like Haryana and Chhattisgarh, officials such as Sub-Divisional Magistrates<sup>107</sup> and District Social Welfare Officers are appointed as CMPOs but may also hold other responsibilities.

75. As argued by the Petitioner, the appointment of CMPOs who are inundated with other multifarious duties impedes the effectiveness of child marriage prevention measures. Officers with multiple duties might struggle to dedicate sufficient time and resources to their role as CMPOs, potentially hindering the effectiveness of child marriage prevention efforts. The appointment of CMPOs is not a mere statutory formality as part of an ornate virtue signalling. These officers are in charge of prosecution of child marriages, counselling of stakeholders and spreading awareness and sensitization in the community. An effective CMPO must make efforts to find their roots in the community, engage with communities and organisations in the area and carry out the painstaking, and sometimes

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<sup>107</sup> 'SDM'

thankless, task of reporting specific factors affecting child marriages in the district. We observe that the need for dedicated personnel with a focused mandate to tackle child marriage is crucial to ensure that resources are utilized effectively and that the objectives of the PCMA are met.

76. Additionally, the level at which CMPOs are designated—whether at the district, Block, or Gram Panchayat level—is also a critical concern. For instance, states like Karnataka have appointed 58,522 officers across thirty one districts, and Maharashtra has appointed 25,562 officers across thirty six districts, extending appointments down to the Gram Panchayat level. Andhra Pradesh has appointed 16,590 officers from the village or ward level up to the district level, including District Magistrates at the district level. However, Uttar Pradesh has designated only one CMPO per district, with 75 CMPOs for seventy-five districts. Although high numbers of appointments may suggest extensive coverage, this alone does not ensure effectiveness unless there are exclusive officers dedicated solely to CMPO duties, free from additional responsibilities. For example, at the Gram Panchayat level, Panchayat Secretaries, Village Revenue Officers, and Patwaris are often given CMPO duties in addition to their primary roles, which dilutes their ability to focus solely on child marriage prevention.

77. CMPOs often lack adequate training and are ill-equipped to engage sensitively with children. A study analysing child marriage cases filed nationwide between 2008 and 2017 revealed that CMPOs initiated only seven percent of these

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cases, highlighting a significant gap in proactive enforcement.<sup>108</sup> In some instances, CMPOs redirect complaints to other designated officers under different laws, such as protection officers under the Domestic Violence Act 2005<sup>109</sup> or the JJ Act<sup>110</sup>, who then refer the complaints back to the CMPOs. This back-and-forth highlights a need for improved clarity and streamlined coordination in handling child marriage cases effectively.

78. We accordingly hold that, given the significant obligations expected to be discharged by a dedicated CMPO, no officer with other responsibilities shall be appointed as the CMPO. States or UTs shall appoint **exclusive CMPOs** in each district in addition to any CMPOs already serving in a dual capacity, and they shall equip these officers with adequate resources for the effective discharge of their functions. If a State or UT concludes that instances of child marriage have decreased to the extent that appointing exclusive CMPOs is no longer necessary, it may file an application before this Court, seeking leave to appoint a CMPO who also holds other duties at the District level.

### B. The Protection of Children from Sexual Offences Act 2012

79. The Protection of Children from Sexual Offences Act 2012<sup>111</sup> was enacted by Parliament to safeguard the right of all children to safety, security and protection from sexual abuse and exploitation. It is a self-contained comprehensive legislation for the protection of children from sexual assault, sexual harassment

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<sup>108</sup> Social and Policy Research Foundation. 'Child and Early Marriage in India, Issue Brief (2021) referred in India Child Protection, Towards Justice: Ending Child Marriages (2024), 21.

<sup>109</sup> The Domestic Violence Act, 2005.

<sup>110</sup> The Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>111</sup> 'POCSO Act'

and pornography.<sup>112</sup> The POCSO Act operates in a manner which promotes the best interest and well-being of a child and ensures their healthy physical, emotional, intellectual and social development.<sup>113</sup>

80. The POCSO Act applies to all children regardless of their gender. Section 2(d) defines a child as being under the age of eighteen. The Act elevates the age of consent to eighteen years for all persons. The 2013 amendment to the IPC increased the age of consent under the rape provision from sixteen to eighteen. However, the marital rape exception to the rape provision in Section 375 IPC continued to protect men for having sex with their minor wives. In **Independent Thought** (supra) this court removed the inconsistency and struck down the exception to the penal provision on rape under Section 375 IPC in so far as it related to minors. Further, Subclause (vi) of clause (d) of Section 63 of Bharatiya Nyaya Sanhita 2023<sup>114</sup> prescribes the age of consent to be eighteen years. Section 63 BNS is *pari materia* to Section 375 IPC.

81. The principles of the POCSO Act are directly threatened by the commission of child marriage. The intent of the POCSO Act is to protect children from sexual advances. Child marriage on the other hand is an institution which puts minor girls directly in harm's way. Under the POCSO Act, a man is liable to punishment for having sex with his minor wife. Nevertheless, the existence of child marriage and its continued recognition in the law as a valid (and voidable) marriage threatens the dignity of children. The institution of child marriage, more

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<sup>112</sup> Statement of Objects and Reasons, POCSO.

<sup>113</sup> Ibid.

<sup>114</sup> 'BNS'

directly than any other institution, stipulates for the sexual abuse of child brides by design.

### **C. The Juvenile Justice (Care and Protection of Children) Act 2015**

82. The Juvenile Justice (Care and Protection of Children) Act<sup>115</sup> was first enacted in 2000 to provide for the protection of children. The legislation underwent amendments in 2006 and 2011. Thereafter, based on the recorded inadequacies of the legislation, Parliament enacted a new JJ Act in 2015. The JJ Act was enacted in furtherance of Article 15 and Articles 39(e) and (f),<sup>116</sup> 45<sup>117</sup> and 47<sup>118</sup> of the Constitution to ensure the proper care, protection, development, treatment and social re-integration of children in difficult circumstances. The JJ Act applied a child-friendly approach and is premised on the principle of the best interest of the child.

83. The JJ Act *inter alia* deals with children in need of care and protection.<sup>119</sup> Section 2(14) defines CNCP. Sub-clause (xii) of Section 2(14) of the JJ Act

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<sup>115</sup> ‘JJ Act’

<sup>116</sup> “**39. Certain principles of policy to be followed by the State.**— The State shall, in particular, direct its policy towards securing—

...  
(e) that the health and strength of workers, men and women, and the tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength;  
(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”

<sup>117</sup> “**45. Provision for early childhood care and education to children below the age of six years.**— The State shall endeavour to provide early childhood care and education for all children until they complete the age of six years.”

<sup>118</sup> “**47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.**— The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.”

<sup>119</sup> ‘CNCP’

prescribes that children at imminent risk of marriage are CNCP. The provision reads as follows:

**“2. Definitions.—**In this Act, unless the context otherwise requires,—

...  
(14) “child in need of care and protection” means a child—

...  
(xii) who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardians and any other persons are likely to be responsible for solemnisation of such marriage;”

84. The Act provides a comprehensive framework to deal with CNCP. Section 27<sup>120</sup> of the JJ Act establishes the Child Welfare Committee<sup>121</sup> to *inter alia* handle and resolve complaints in relation to children who are in need of care. The CWC's role is to ensure the children's basic needs are met and that they are protected, treated, developed, and rehabilitated.

85. Therefore, children who are married off are required to be produced before the CWC so that they may be rehabilitated and taken care of. The JJ Act further

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<sup>120</sup> **“27. Child Welfare Committee.—** (1) The State Government shall by notification in the Official Gazette constitute for every district, one or more Child Welfare Committees for exercising the powers and to discharge the duties conferred on such Committees in relation to children in need of care and protection under this Act and ensure that induction training and sensitisation of all members of the committee is provided within two months from the date of notification.

(2) The Committee shall consist of a Chairperson, and four other members as the State Government may think fit to appoint, of whom at least one shall be a woman and another, an expert on the matters concerning children.

(3) The District Child Protection Unit shall provide a Secretary and other staff that may be required for secretarial support to the Committee for its effective functioning.

...  
(8) The Committee shall submit a report to the District Magistrate in such form as may be prescribed and the District Magistrate shall conduct a quarterly review of the functioning of the Committee.

(9) The Committee shall function as a Bench and shall have the powers conferred by the Code of Criminal Procedure, 1973 (2 of 1974) on a Metropolitan Magistrate or, as the case may be, a Judicial Magistrate of First Class.

(10) The District Magistrate shall be the grievance redressal authority to entertain any grievance arising out of the functioning of the Committee and the affected child or anyone connected with the child, as the case may be, may file a complaint before the District Magistrate who shall take cognizance of the action of the Committee and, after giving the parties an opportunity of being heard, pass appropriate order.”

<sup>121</sup> ‘CWC’

provides for the constitution of the State Child Protection Society and District Child Protection Unit. Section 106 of the JJ Act stipulates that the State shall constitute a State Child Protection Society and a Child Protection Unit in each district. The mandate of the Society and Unit may be prescribed by the State. The constitution of these societies and units is to take up matters related to children for the implementation of the Act including *inter alia* notification of competent authorities in relation to the children and their rehabilitation and co-ordination with various official and non-official agencies concerned. The society and units therefore have the responsibility to identify needs and engage with stakeholders, official and non-official, for the implementation of the JJ Act. As a beneficial social legislation aimed at children, the society and units constituted under the JJ Act are required to proactively identify remedies and strategies for the rehabilitation and protection of victims of child marriages.

86. Section 107 of the JJ Act further provides for the Child Welfare Police Officers<sup>122</sup> and Special Juvenile Police Units<sup>123</sup>. It stipulates that at each police station, at least one police officer shall be appointed as the CWPO. The officer so designated shall not be below the rank of Assistant Sub-inspector. The appointment of CWPOs is required to be done bearing in mind the aptitude, appropriate training and orientation of the inspector. The officer so appointed is in charge of exclusively dealing with children, either as victims or perpetrators, and coordinate with the police and voluntary and non-governmental organisations.

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<sup>122</sup> ‘CWPO’

<sup>123</sup> ‘SJPU’

87. In each district, the State governments are mandated to constitute a SJPU for effective coordination of all police-related functions related to children. The SJPU shall be headed by an officer of the rank of Deputy Superintendent of Police or superior. The SJPU shall comprise all the CWPOs appointed in each police station throughout the district as well as two social workers who have worked on issues relating to child rights. At least one of such social workers who is made part of the unit shall be a woman.

88. The JJ Act recognises the inapplicability of standards which accrue to adults. It is intended to safeguard children and deal with those among them who are in conflict with the law. In the context of child marriage, the principles enunciated in the JJ Act as well as the framework established under it are vitally important. Children who are at risk of marriage at the hands of their family or relatives are expressly recognised as CNCP under the Act. The JJ Act further prescribes for their protection, rehabilitation and development. While victims of child marriage are protected under the JJ Act, it further strengthens the effort to eliminate child marriages by creating a trained and skilled force of police officers to deal with children. The SJPUUs are marked by their unique ability to inject humanity in law enforcement. The task of law enforcement officers, the police in particular, has traditionally been associated by the State's ability to compel compliance to its norms. The formation of SJPUUs reflects a refreshing outlook toward police work, one which is imperative in liberal democracies' treatment of vulnerable groups. Law with a touch of humanity and law enforcement with a boost of sensitivity and empathy are the cornerstone of the law on children. The JJ Act therefore

forms an important instrument in the contemporary legal framework concerning child marriages in India.

#### **D. The Commissions for Protection of Child Rights Act 2005**

89. The UN General Assembly adopted the Declaration on Survival, Protection and Development of Children in 1990. In 1989 the UN adopted the Convention on the Rights of the Child<sup>124</sup> which India ratified on 11 December 1992. To implement India's obligations under these international instruments, Parliament enacted the Commissions for Protection of Child Rights Act 2005.<sup>125</sup>

90. The CPCRA seeks to assure child rights in two ways. Firstly, it establishes National and State Commissions for the protection of Child Rights.<sup>126</sup> These bodies study, review, and oversee the implementation of child rights law in India. Secondly, the CPCRA establishes Children's Courts for providing speedy trial of offences against children or for violation of child rights.<sup>127</sup> Clause (b) of Section 2 of CPCRA defines child rights to include the rights stipulated in CRC.

91. The NCPCR under Section 13 and the State Commissions for the Protection of Child Rights under Section 24 of CPCRA are *inter alia* entrusted with performing the function of:

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<sup>124</sup> 'CRC'

<sup>125</sup> 'CPCRA'

<sup>126</sup> Sections 3 and 17, CPCRA.

<sup>127</sup> Section 25, CPCRA.

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- (i) examining and reviewing the safeguards provided by any law for the protection of child rights and recommending measures for their effective implementation;
- (ii) inquiring into violation of child rights and recommend initiation of proceedings in such cases; and
- (iii) inquiring into complaints and taking *suo motu* notice of matters relating to,-
  - (a) deprivation and violation of child rights; (b) non-implementation of laws providing for protection and development of children; (c) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children, or take up the issues arising out of such matters with appropriate authorities.

92. The NCPCR and SCPCR serve the roles of review, monitoring and oversight of the legal framework on child rights in India. While the CPCRA enables the two commissions to effectively discharge their functions with appropriate resources, the effective implementation of the law is contingent on pro-active initiatives of the NCPCR and SCPCRs and the timely appointment of members to the two commissions. The effective implementation of the PCMA also falls within the subject matter of the NCPCR and SCPCRs. Over time, the commissions have collected data and reviewed the progress of the implementation of the PCMA. The operative directions and guidelines that we shall issue in this judgment shall also stipulate the further and specific role that we envision for the NCPCR and SCPCRs to perform in the prevention and elimination of child marriages.

93.The MWCD and the NCPCR have been actively engaged in raising awareness about the negative consequences of child marriage and strengthening the enforcement of the PCMA. In recent years, the NCPCR has conducted multiple review meetings and collaborated with a broad spectrum of stakeholders, including District Magistrates, CMPOs, CDPOs, CWCs, and Anganwadi Workers.<sup>128</sup> These initiatives have aimed to create a coordinated approach to tackling child marriage at the grassroots level.

94.The NCPCR has also concentrated on identifying children at risk by compiling school-wise data on those who have dropped out or exhibit irregular attendance. In 2023-2024, the NCPCR identified 645,673 children across India who were either out of school or at risk of early marriage. The Commission directed district authorities to pinpoint vulnerable children from this list, prevent their marriages, and ensure proper rehabilitation for those affected. While these awareness campaigns and data-driven interventions have been vital, it is evident that awareness alone is not enough to prevent child marriages effectively. Enforcement of laws, community engagement, and support systems for vulnerable children are equally crucial.

#### **E. The Legal Services Authorities Act 1987**

95.The Legal Services Authorities Act 1987 was enacted to constitute legal services authorities at the National, State and District levels to provide free and competent legal services to the weaker sections of the society. The constitution

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<sup>128</sup> ‘AWWs’

of the authorities is aimed at ensuring that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

96. Section 12(c) of the Act stipulates that any child who has to file or defend a case is entitled to legal services.<sup>129</sup> The Legal Services Authorities are therefore under an obligation under the Act to assist minors who file cases under the PCMA to exercise their statutory rights. The National Legal Services Authority,<sup>130</sup> State Legal Services Authority,<sup>131</sup> District Legal Services Authorities,<sup>132</sup> Taluk Legal Services Committees, High Court Legal Services Committees, and Supreme Court Legal Services Committee have formulated various schemes to be followed while they deal with legal services to children.<sup>133</sup> We shall make further directions in this regard to legal services authorities in the operative portion of this judgment.

### F. Policies formulated by the Union Government

97. In addition to the legislative apparatus outlined above, the Union has submitted that the MWCD proposed a National Strategy on Child Marriage on 14 February 2013. This strategy emphasized linking with Integrated Child Protection Scheme<sup>134</sup> structures and statutory bodies to ensure early detection and swift referral of cases needing care and protection. One of its strategic directions was

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<sup>129</sup> Section 12(c), The Legal Services Authorities Act 1987,

<sup>130</sup> 'NALSA'

<sup>131</sup> 'SLSA'

<sup>132</sup> 'DLSA'

<sup>133</sup> See for example National Legal Services Authority (Child Friendly Legal Services to Children and their Protection) Scheme, 2024.

<sup>134</sup> 'ICPS'

to ensure that children already in child marriages should not face discrimination in accessing health, nutrition, education, and employment services.

98.The Union Government has also implemented several schemes aimed at empowering young girls and women, such as *Sukanya Samridhi Yojana*, *Pradhan Mantri Awas Yojana (Urban & Rural)*, *Pradhan Mantri Jan Dhan Yojana*, and *Pradhan Mantri Matru Vandana Yojana (PMMVY)*. These initiatives aim to promote social well-being and to create a supportive environment for young girls. Complementing these efforts are programs like *Samagra Shiksha*, the *National Overseas Scholarship Scheme*, *Babu Jagjivan Ram Chhatrawas Yojana*, and the *Swachh Vidyalaya Mission*, which focus on making schools girl-friendly, particularly for vulnerable sections of society. The Rajiv Gandhi Scheme for Empowerment of Adolescent Girls – SABLA, launched on November 19, 2010<sup>135</sup>, in 200 districts, focuses on empowering adolescent girls (aged 11-18) by improving nutrition, health, and vocational skills. SABLA provides nutrition at Rs 5 per day for 300 days, iron and folic acid supplementation, health check-ups, nutrition and health education, family welfare guidance, and vocational training for girls aged sixteen and above under the National Skill Development Programme. It also raises awareness about the importance of marrying at the appropriate age.

99.To enhance the employability of female workers, the Ministry offers training through a network of Women's Industrial Training Institutes, National Vocational Training Institutes, and Regional Vocational Training Institutes. Additionally, the

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<sup>135</sup> See Rajiv Gandhi Scheme for Empowerment of Adolescent Girls: Sabla, <https://www.india.gov.in/rajiv-gandhi-scheme-empowerment-adolescent-girls-sabla>.

Skill India Mission aims to ensure economic independence for women through skill development.

100. The Ministry implements the *Beti Bachao Beti Padhao* scheme<sup>136</sup>, which specifically aims to address issues of gender inequality by promoting the education and welfare of girls. It targets high-risk districts with low child sex ratios and focuses on changing societal attitudes toward girls through awareness campaigns, community engagement, and promoting girl-friendly educational infrastructure. Additionally, the Union has established CHILDLINE, a 24/7 emergency outreach service for children in crisis, which coordinates with police and child protection services to address various issues, including child marriage prevention.

101. Despite these efforts, there remains a gap in implementing specific, targeted measures focused solely on the prevention of child marriage. Existing schemes, while impactful, do not provide sufficient tools to tackle child marriage comprehensively. For instance, while training and educational programs are vital, there appears to be a lack of robust mechanisms to monitor the long-term outcomes of these initiatives, particularly in rural and underserved areas where child marriage rates are often high. Additionally, while financial support is essential in empowering women, it may not always effectively reach the most vulnerable communities. Therefore, we direct that a special scheme be introduced, **specifically** focusing on skill development, vocational training, and economic stability for women and girls who choose to leave child marriages.

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<sup>136</sup> See <https://www.myscheme.gov.in/schemes/bbbp>.

This scheme should include provisions for legal aid, psychological support, and financial assistance to help them transition to a life of self-reliance.

#### **G. States' efforts to curb child marriage**

102. Each State and UT in India has introduced training programs, awareness initiatives, and financial incentives as part of a comprehensive approach to enforcing the PCMA<sup>137</sup>. These efforts encompass preventive training, education, financial support, and community-based outreach to discourage child marriage and promote girls' education and empowerment. Relevant up-to-date data on the States' efforts to curb child marriage over the last three years has been placed before this Court. As and by way of illustration, we shall briefly provide an overview of the efforts made in regard to (i) training schemes, (ii) awareness programs, (iii) financial incentives and (iv) other incentives. We shall then analyse the impact of these schemes broadly.

##### **i. Training schemes**

103. Across India, States and UTs have conducted extensive training programs over the past three years to equip officials and communities with the knowledge needed to combat child marriage. States and UTs are conducting training programs to equip officials and communities with the knowledge needed to combat child marriage.

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<sup>137</sup> Additional Affidavit, Ministry of Women and Child Development (2023). The data highlights the steps undertaken by the States in the Past Three Years – 2020 -2023.

104. States like Telangana, Uttar Pradesh, Jharkhand, Gujarat, and Chhattisgarh have conducted training and awareness programs for field workers through DCPUs, providing critical information on the PCMA. Some states have partnered with DWCD&SS and UNICEF, with support from partner organizations, to conduct these training sessions. For instance, Karnataka has established Child Marriage Prohibition Cells<sup>138</sup> under its *Spoorthi Yojana*<sup>139</sup> to train staff in identifying and preventing child marriages. Additionally, Rs. 12.51 crores have been allocated for training Protection Officers and staff in Special Cells for women and children<sup>140</sup>. In Haryana, Protection-cum-Prohibition officers receive intensive training and sensitization from experts with support from NIPCCCD and HIPA. These initiatives indicate a structured approach, focusing not only on immediate prevention but also on long-term societal change by raising awareness and educating local populations about the harms of child marriage.

## **ii. Awareness programs**

105. Awareness initiatives play a vital role in changing societal perceptions about child marriage and promoting girls' education. In terms of the number of awareness sessions over the last year, most sessions have been reported by

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<sup>138</sup> These cells deal with the administrative Sanction of *Spoorthi Yojana*, Action Plan, Prohibition of Child Marriage Act Systematic Procedure, Coordination and Review Committee, Cell Establishment Details, Child Marriage Prohibition Officers Roles and responsibilities and additional CMPOs Orders, Revised Committee Order at Gram panchayat; See details of Government orders and guidelines for major schemes and programs of the Department (2024) <https://dwcd.karnataka.gov.in/info-4/Details+of+Government+orders+and+guidelines+for+major+schemes+and+programs+of+the+Department/en>.

<sup>139</sup> The Scheme was first introduced on a pilot basis, has been successful, and will now be extended to a few more districts. It aims to improve nutritional levels and empower 12- to-18-year adolescent girls in 5 districts covering 50000 adolescent girls from 11 Special Development Plan Taluks.

<sup>140</sup> The State cabinet approved the release of Rs 12.51 crore for 'Spoorthi scheme' in 2023.

Andhra Pradesh, Uttar Pradesh, Odisha and Tamil Nadu.<sup>141</sup> Andhra Pradesh conducted 37,446 sessions, reaching 857,012 participants; Uttar Pradesh conducted 35,377 sessions, reaching 1,248,394 participants; and Odisha conducted 33,276 sessions covering 30,755 blocks and villages.<sup>142</sup> Additionally, Tamil Nadu has actively engaged communities with widespread awareness programs tailored to local needs.<sup>143</sup>

106. States have deployed varied and unique measures in spreading awareness such as leveraging local media to economically empower girls,<sup>144</sup> distributing legal informational pamphlets in rural areas,<sup>145</sup> partnering with NGOs,<sup>146</sup> facilitating community meetings<sup>147</sup>, targeted awareness programs focusing on high school students and school dropouts<sup>148</sup>, and running educational YouTube channels.<sup>149</sup>

107. This grassroots, multisectoral collaboration is essential, as it leverages community-based networks to reach children most at risk, ensuring early intervention and protection against child marriage. It strengthens coordination

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<sup>141</sup> NCCPR, Comprehensive Report of Virtual Review Meetings on Child Marriage with Districts All Over India For 2023-2024 (2024).

<sup>142</sup> Ibid.

<sup>143</sup> Ibid.

<sup>144</sup> Delhi Ladli Scheme, 2008 has been operational since 01.01.2009 for controlling female foeticide, improving the sex ratio, and empowering girls educationally and financially.

<sup>145</sup> Haryana has engaged 1,855 stakeholders through targeted campaigns, distributing over 50,000 informational pamphlets in rural areas to explain the legal ramifications and adverse impacts of child marriage; Similarly, Tamil Nadu has created thirteen different types of posters, with 3,77,585 posters distributed across the state, and an allocation of Rs. 50 lakhs specifically for campaigns in ten economically disadvantaged districts.

<sup>146</sup> Odisha has partnered with NGOs to conduct 1,500 workshops in schools.

<sup>147</sup> Assam facilitated community meetings in 200 villages, highlighting the harmful effects of early marriage on health, education, and economic opportunities.

<sup>148</sup> Telangana has organized targeted awareness programs aimed at identifying vulnerable children, particularly with the support of Village Child Protection Committee members. These initiatives focus on high school students and school dropouts, working in coordination with ICPS, ICDS, ChildLine, *Sakhi* staff, Anganwadi teachers, ASHA workers, and local Sarpanchs.

<sup>149</sup> Tamil Nadu launched an educational YouTube channel and provided 3-6 months of vocational training to support victims of child marriage, equipping them with skills for a better future.

between state authorities, NGOs, and local stakeholders to enhance the impact of these awareness initiatives.

### **iii. Financial incentives**

108. Financial incentives play a significant role in these initiatives. In Telangana, the *Shaadi Mubarak* and *Kalyana Lakshmi* schemes offer cash transfers to eligible families; for instance, families receive a one-time grant of approximately Rs. 1 lakh upon the girl reaching adulthood<sup>150</sup>. Chhattisgarh offers a similar scheme, the *Noni Suraksha Yojana*, while Bihar's *Kanya Utthaan Yojana* provides financial support of Rs. 25,000 per girl to encourage education and delay marriages and *Mantri Vivah Yogana* aids families by covering marriage expenses for eligible girls. Madhya Pradesh's *Ladli Lakshmi Yojana* links financial support to educational milestones, offering up to Rs. 6,000 for completing certain grades.<sup>151</sup> In Andhra Pradesh, the *Jagananna Amma Vodi* program aims to improve the Gross Enrollment Rate (GER) and promote higher education for girls. Rajasthan's *Mukhyamantri Kanyadan Yojana* provides financial assistance to BPL families from SC, ST, and minority communities for the marriages of girls upon reaching 18 years.

109. These financial incentives serve as a powerful tool in reducing child marriage and enhancing girls' education by alleviating the financial expenses of

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<sup>150</sup> The Government of Telangana launched the 'Kalyana Lakshmi/Shaadi Mubarak scheme provided to unmarried girls who are above 18 years of age from SC, ST, BC and Minority families (with a combined income of both parents not exceeding Rs. 2,00,000 per annum) at the time of their marriage.

<sup>151</sup> This aims to discourage child marriage, eradicate female infanticide, rectify the falling birth rate of girls, improve the health and educational status, curtail inequality and uphold the status of the girl child in the society. In this scheme, there is a provision for a final payment of Rs. 1.00 lakh on completion of 21 years of age of the girl child, on appearing in class 12th examination birth and on early marriage Instructions were issued for Akshay Tritiya.

families. These States demonstrate promising results in increasing girls' enrolment in schools through targeted financial assistance programs. However, these schemes must be supported by robust monitoring and evaluation mechanisms to ensure that the funds are used effectively and that the intended outcomes are achieved.

#### **iv. Other initiatives**

110. In addition to training, awareness, and financial support, states have implemented various structural measures to reinforce the PCMA. For example, some States conduct regular meetings with school authorities to identify and reintegrate school dropouts, using education as a key tool to prevent child marriages. States like Assam collaborate with NGOs and CBOs to rehabilitate victims, provide compensation, and facilitate home visits through DCPU staff. Several states have also drafted action plans: Uttar Pradesh has District Action Plans for ending child marriage and adolescent empowerment, incorporating and adapting activities from the State Action Plan. Rajasthan introduced its State Action Plan in 2017<sup>152</sup>, anchoring multiple interventions and activities to address the root causes of child marriage. These plans include partnerships and monitorable indicators, ensuring that progress is tracked and evaluated for effectiveness and relevance.

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<sup>152</sup> Rajasthan Government (2017), 'State Strategy and Action Plan for Prevention of Child Marriage: Towards creating a child marriage free Rajasthan; The document articulates the principles, strategy, vision, objectives, actions, coordination mechanisms and resources that will ensure effective implementation of the actions/interventions to end child marriage in Rajasthan.

111. Additionally, some States like Karnataka have created online portals to monitor child marriage cases, enhancing transparency and accountability.<sup>153</sup> These structural initiatives, supported by partnerships with community organizations and digital monitoring tools, are crucial to a holistic approach that prevents child marriages and strengthens protection for vulnerable children.

#### **v. Impact analysis of State schemes**

112. The data reveals that a comprehensive, multifaceted approach involving training schemes, awareness programs, and financial incentives is essential for effectively combating child marriage. However, not all States have adopted this three-pronged strategy. States such as Andhra Pradesh, Telangana, and Bihar showcase strong alignment with this multifaceted approach. For instance, the financial incentive schemes in Telangana and Bihar effectively incentivize families to delay marriage. States like Haryana, Uttar Pradesh and Chhattisgarh focus on training and awareness. The absence of direct financial support could limit their schemes' impact on economically vulnerable communities. While these efforts contribute to raising awareness and promoting societal change, families facing financial hardships may still lean toward early marriage without economic support for educational or vocational opportunities. The absence of direct financial assistance may limit the reach and impact of otherwise well-designed training and awareness programs, as families in economically challenged communities may not feel the immediate benefits of delaying marriage without addressing financial constraints.

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<sup>153</sup> Karnataka's online portal 'Surakshini' keeps track of the child's status, and every department official involved has to log in regularly.

## PART V

113. The data on child marriages across various States and UTs shows a range of outcomes in both prevention and prosecution efforts over the last three years. Several states, such as Andhra Pradesh, Karnataka, and West Bengal, report a high number of cases, though many of these cases were prevented before the marriages could be solemnized. Karnataka documented 8,348 child marriage cases, preventing 7,306 of these, while Andhra Pradesh reported 3,413 cases, with 3,136 successfully prevented. This reflects a proactive approach to preventing child marriages in some states, where authorities intercept and prevent a significant portion of cases before, they are formalized.

114. Some States illustrate discrepancies between the number of child marriage cases reported, the number prevented, and the number of FIRs filed. Maharashtra reported 2043 cases prevented but registered 178 FIRs, suggesting limited legal follow-through. Similarly, Telangana reported 4440 cases of child marriage, of which only 149 FIRs were filed. Andhra Pradesh, despite having 3,416 cases registered, filed 10 FIRs. These gaps highlight potential obstacles in prosecution and a possible need for streamlined cooperation between child marriage prevention authorities and law enforcement agencies. Tamil Nadu presents a more comprehensive approach, where both prevention and FIR filing are high; with 8,966 reported cases, the state successfully prevented 6,436 marriages and filed 2,392 FIRs.

115. Interestingly, several States and UTs, such as Dadra and Nagar Haveli, Meghalaya, Mizoram, and Nagaland, reported no cases of child marriage over the last three years. While this might indicate minimal occurrences of child marriage in these areas, it could also suggest underreporting or a lack of

awareness of the issue among authorities and communities. Furthermore, States and UTs like Chhattisgarh, Chandigarh and Puducherry, which reported very low figures or none at all, raise questions about the consistency and accuracy of data reporting processes.

116. A more comprehensive look across all regions also includes variations in the effectiveness of interventions. In addition, the number of cases leading to FIRs is relatively low across most states compared to the number of marriages reported, highlighting potential gaps in legal action and prosecution efforts. Even in states with high intervention rates, the limited legal action suggests that additional support may be needed to ensure accountability and deterrence.

## **VI. Traversing frontiers: international human rights norms**

117. The development of child rights law is highly influenced by the evolving legal standards in international law. The comity of nations has arrived at a broad consensus rooted in the goal to realise universal human rights of children. Domestically and abroad, various jurisdictions have developed their legal standards under the influence of global advancements in international bodies. It is therefore instructive to look at the progress made and prevailing standards on child rights in the context of early and forced marriage in international law. We shall therefore trace the universal framework on child rights, various regional advancements and the rights-based framework against child marriage presently.

**A. Universal framework**

118. Early international conventions did not explicitly prohibit child marriage. With the evolution of international law, the community of nations inched closer to an agreeable standard against child marriage. We shall trace this evolution in international human rights norms presently. First, we shall briefly overview the Universal Declaration of Human Rights,<sup>154</sup> then we shall explore the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956<sup>155</sup> and the International Covenant on Civil and Political Rights 1966.<sup>156</sup> Lastly we shall look at the two seminal conventions on the issue of child marriage, namely, the Convention on the Elimination of All Forms of Discrimination against Women 1979<sup>157</sup> and the CRC 1989.

**i. Universal Declaration of Human Rights**

119. The UDHR adopted as General Assembly Resolution 217 A (III) in 1948,<sup>158</sup> set forth fundamental principles regarding the right to marry. Article 16(1) of the UDHR stipulates that 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.<sup>159</sup> They are entitled to equal rights as to marriage, during marriage, and at its dissolution. Article 16(2) further stipulates that marriage shall be entered into

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<sup>154</sup> ‘UDHR’

<sup>155</sup> The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956; India ratified it on 23 June 1960.

<sup>156</sup> ‘ICCPR’

<sup>157</sup> ‘CEDAW’.

<sup>158</sup> The Universal Declaration of Human Rights, G.A. Res. 217, U.N. Doc. A/810 (1948).

<sup>159</sup> Ibid, article 16(1); See also Maja Eriksson, ‘Article 16’ in The Universal Declaration of Human Rights: A Commentary, ed. Aide Eide et al. (Oxford: Scandinavian University Press, 1992), 243.

only with the free and full consent of the intending spouses.<sup>160</sup> Although it does not specify a minimum age for marriage, the UDHR establishes that marriage should be based on free and full consent, laying an early framework for safeguarding autonomy and protecting individuals from coerced or forced marriages.<sup>161</sup>

120. In the years following the UDHR, International Human Rights Law<sup>162</sup> began to recognize and address the specific vulnerabilities and abuses associated with child marriage. This shift was a response to growing evidence that child marriage disproportionately harms girls, undermining their education, health, and prospects for economic independence. Recognizing that such marriages are often non-consensual and perpetuate cycles of poverty and inequality, the international community began drafting conventions aimed at setting protective standards for marriageable age and conditions.

### ii. Recognition in political conventions

121. The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1956<sup>163</sup> expanded on these protections by directly addressing practices similar to slavery, including child marriage. Article 2 of the Convention mandates that State Parties prescribe, where appropriate, suitable minimum ages of marriage and encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority<sup>164</sup>. This

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<sup>160</sup> Ibid, article 16(2).

<sup>161</sup> Ibid.

<sup>162</sup> ‘IHRL’

<sup>163</sup> The Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, 1956.

<sup>164</sup> Ibid, Article 2.

provision reflects a recognition that child marriage can be exploitative and akin to slavery. In aligning marriage requirements with those designed to end slavery-like practices, the Convention highlights the UN's stance against child marriage as a form of coercion and exploitation.

122. These standards were developed as a matter of political rights guarantee in the ICCPR<sup>165</sup>. Article 23(2) establishes the right of men and women of marriageable age to marry and to found a family.<sup>166</sup> Article 23(3) prescribes that no marriage shall be entered into without the free and full consent of the intending spouses.<sup>167</sup> Finally, Article 23(4) requires that State Parties take measures to ensure equality in marriage, signalling the UN's increasing recognition of individual autonomy, choice, and consent in marriage.<sup>168</sup> This framework not only advocates for minimum marriageable age requirements but also emphasizes free and full consent. The framers of these documents aimed to prevent child marriage by specifically using the terms "men and women," rather than "males and females," to imply an age of maturity and decision-making capacity necessary for marriage.<sup>169</sup>

### **iii. Targeted focus: the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child.**

123. The progress of the international community led to the ground-breaking inclusion of child marriage as an expressly recognised illegality in the

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<sup>165</sup> UN General Assembly (1966). International Covenant on Civil and Political Rights, United Nations, Treaty Series, vol. 999, p. 171.

<sup>166</sup> ICCPR, Article 23 (2).

<sup>167</sup> ICCPR. Article 23(3).

<sup>168</sup> ICCPR. Article 23(4).

<sup>169</sup> See Maja Eriksson, 'Article 16' in *The Universal Declaration of Human Rights: A Commentary*, ed. Aide Eide et al. (Oxford: Scandinavian University Press, 1992), 243.

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CEDAW<sup>170</sup>. Article 16(2) explicitly invalidates child betrothals and marriages, calling for legislation to establish a minimum age for marriage and mandate official registration.<sup>171</sup> This is crucial to CEDAW's objective of safeguarding women's rights and autonomy, highlighting that child marriage undermines the agency, equality, and dignity of girls and women. By emphasizing that child marriages should have no legal effect, CEDAW directly addresses the systemic inequalities perpetuated through such practices.

124. The guarantee to women in CEDAW was further tailored as a matter of child rights in 1989 with the adoption of the CRC<sup>172</sup>. It was essential to establish a global framework dedicated to children because, despite previous human rights treaties, there remained gaps in protections for children who, due to their age and vulnerability, require special safeguards. The CRC acknowledges the unique needs of children for development,<sup>173</sup> care, and protection from abuse, exploitation, and neglect.<sup>174</sup> The international community recognized that children are often marginalized, and their rights overlooked, which made it critical to implement specific provisions tailored to them.

125. Article 1 of the CRC defines a child as a person below the age of eighteen unless, under the law applicable to the child, a majority is attained earlier.<sup>175</sup> In the context of child marriage, this provision sets a clear threshold for defining

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<sup>170</sup> UN General Assembly (1989). *Convention on the Elimination of All Forms of Discrimination Against Women*, United Nations, Treaty Series, vol. 1249, p. 13.

<sup>171</sup> CEDAW, Article 16 (2).

<sup>172</sup> UN General Assembly (1989). Convention on the Rights of the Child, United Nations, Treaty Series, vol. 1577, p. 3.

<sup>173</sup> CRC, Article 6(2); State Parties shall ensure to the maximum extent possible the survival and development of the child.

<sup>174</sup> CRC, Article 19 (1); Requires States to take all appropriate measures to protect the child from all forms of abuse, neglect, or maltreatment while in the care of parents.

<sup>175</sup> CRC, Article 1.

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who is considered a child, ensuring that international standards focus on the protection of minors from early and forced marriages. Article 19(1) of the CRC requires State Parties to take all necessary legislative, administrative, social, and educational measures to protect children from all forms of physical or mental violence, injury, abuse, neglect, or exploitation, including sexual abuse, whether committed by parents, guardians, or others responsible for the child's care.<sup>176</sup> This article recognizes that children, due to their vulnerability, require comprehensive protection across various domains of life, especially from forms of violence that may occur within the family or caregiving environment. This is particularly relevant in cases of child marriage, where minors may face abuse or exploitation under the guise of familial or cultural practices. Article 19(2) further emphasizes the need for protective measures, including the creation of social programs, support services for children and caregivers, and judicial mechanisms to address and prevent maltreatment.<sup>177</sup> This highlights the importance of establishing a robust framework for the identification, reporting, and follow-up of child abuse cases, offering practical measures for intervention and prevention.

### B. Regional framework

126. In addition to international conventions, three important regional conventions have addressed the issue of child marriage. Regional conventions reflect the targetter focus of a region to pivot their shared values and goals into

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<sup>176</sup> CRC, Article 19(1).

<sup>177</sup> CRC. Article 19(2)

obligatory and tangible outcomes. We shall elucidate the framework developed in the African Union, the European Union and the SAARC.

### **i. African Union**

127. The African Charter on the Rights and Welfare of the Child,<sup>178</sup> adopted in 1990,<sup>179</sup> builds upon international frameworks by requiring State Parties to enact legislation setting eighteen as the minimum age for marriage. Article 21 of the Charter specifically addresses “Protection against Harmful Social and Cultural Practices,” stating that all necessary measures should be taken to eliminate customs detrimental to children’s health, dignity, and development.<sup>180</sup> Under Article 21(2), child marriage and betrothal are prohibited, with a mandate that states enact laws setting a minimum marriageable age of eighteen and ensuring compulsory marriage registration.<sup>181</sup>

128. In **Association pour le Progrès et la Défense des Droits des Femmes Maliennes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) v. Republic of Mali**,<sup>182</sup> the African Court on Human and Peoples’ Rights addressed significant issues regarding child marriage. The applicants argued that Mali’s Family Code of 2011, which set the minimum marriage age for girls at sixteen (with exceptions allowing marriage as young as fifteen), violated key international agreements such as the African Charter

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<sup>178</sup> ARWRC.

<sup>179</sup> The African Charter on the Rights and Welfare of the Child (1990). OAU Doc. CAB/LEG/24.9/49, entered into force Nov. 29, 1999; See also IPAS, African Alliance for Women’s Reproductive Health Rights – A Handbook for Advocacy in the African Human Rights System (Chapel Hill: IPAS, 2006), 29.

<sup>180</sup> ARWRC, Article 21(1).

<sup>181</sup> ARWRC, Article 21(2).

<sup>182</sup> Association pour le progrès et la défense des droits des femmes Maliennes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) v. Republic of Mali, App. No. 046/2016, Judgment, African Court on Human and Peoples’ Rights [Afr. Ct. H.P.R.] (May 11, 2018).

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on Human and Peoples' Rights on the Rights of Women in Africa<sup>183</sup> and the ACRWC both of which require a minimum marriage age of eighteen to protect the rights of children. Furthermore, the applicants raised concerns that religious authorities in Mali often performed marriages without ensuring full and free consent from both parties, leading to forced marriages that particularly affected young girls.<sup>184</sup>

129. The court found that Mali's Family Code was incompatible with its obligations under multiple international instruments, including the Maputo Protocol, the ACRWC and CEDAW.<sup>185</sup> Specifically, the Family Code's provisions on minimum marriage age and the lack of mandatory consent were seen as violations of these treaties, which seek to eliminate harmful practices and ensure gender equality and child protection.<sup>186</sup> Consequently, the court ordered Mali to amend its Family Code to align it with these international standards by setting a minimum marriage age of eighteen, ensuring free consent to marriage, and providing equal inheritance rights for all children, including those born outside of marriage.

130. This ruling is significant because it highlights the enforceability of international human rights treaties at the regional level, compelling Mali to amend its laws to meet international obligations. By holding Mali accountable, the court reinforced the legally binding nature of the Maputo Protocol, ACRWC, and CEDAW, promoting the standardization of human rights protections across Africa. This decision also sets a precedent for other African nations,

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<sup>183</sup> 'Maputo Protocol'

<sup>184</sup> Ibid, para 59, 60, 62.

<sup>185</sup> Ibid, para 124.

<sup>186</sup> Ibid, para 125.

emphasizing the duty to harmonize domestic laws with international child protection standards.

### ii. European Union

131. In the European Union, the **European Convention on Human Rights**<sup>187</sup> is a key legal instrument that impacts issues of marriage and child protection.

<sup>188</sup>Specifically, **Article 12** of the ECHR grants men and women of marriageable age the right to marry<sup>189</sup>, while **Article 8** protects the right to respect for private and family life.<sup>190</sup> These articles do not directly set a minimum age for marriage but do highlight the importance of individual autonomy and respect for personal and family life, which are relevant to child marriage discussions. **Article 3**, which prohibits inhuman or degrading treatment, has also been interpreted to protect vulnerable individuals, including children, from practices that may be harmful or coercive, such as child marriage.<sup>191</sup>

132. Early marriage in the European Region is described as an abrupt and premature transition from childhood to adult life for the affected minors, who are predominantly girls<sup>192</sup>. At the EU level, the resolution of the European Parliament of 4 October 2017 on “Ending Child Marriage” references the considerable negative effects of child marriage on the rights of children, in particular those of girls affected by the practice.

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<sup>187</sup> “ECHR”

<sup>188</sup> The European Convention on Human Rights, 1950; See <https://www.echr.coe.int/european-convention-on-human-rights>

<sup>189</sup> ECHR, Article 12.

<sup>190</sup> ECHR, Article 8.

<sup>191</sup> Ibid, Article 3.

<sup>192</sup> Parliamentary Assembly of the Council of Europe, Forced Marriage in Europe (2018), Resolution 2233, para. 2; Recognised that Early marriage thereby typically leads to restricted opportunities for education and economic development of women, who are mostly affected.

133. A landmark case in the German Federal Constitutional Court<sup>193</sup> involved a Syrian couple who married in 2015 under Syrian law, with the wife being 14 at the time. Fleeing the Syrian conflict, they arrived in Germany, where the authorities took the young wife into care due to her minor status. Citing the Act to Prevent Child Marriages 2017, the German courts automatically invalidated the marriage under Article 13(3) no. 1 of the Introductory Act to the Civil Code (EGBGB), which prohibits the recognition of marriages if one spouse was under 16 at the time. The husband contested this, arguing that their marriage was valid under Syrian law and should be recognized in Germany.

134. The Federal Constitutional Court of Germany ruled that, although the state has a legitimate interest in protecting minors from child marriage, the automatic invalidation of marriages involving minors under 16 was unconstitutional.<sup>194</sup> The Court found that the law lacked provisions for dealing with the legal consequences of invalidation, and it failed to offer the possibility of validating the marriage once both parties reached adulthood. This automatic invalidation was seen as conflicting with **Article 6(1) of the German Basic Law**, which protects the right to marry and form a family<sup>195</sup>. It is a right that is based on the free will, equality and autonomy of the partners and involves special mutual obligations, with the official ceremony of marriage serving to substantiate the marriage through a formal act.<sup>196</sup>

135. The Court recognised that the invalidation of such marriages not only safeguards minors from the inherent risks associated with marital cohabitation

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<sup>193</sup> See BVerfG, Order of the First Senate of 1 February 2023 - 1 BvL 7/18 (Germany).

<sup>194</sup> Ibid, Para 44-45.

<sup>195</sup> Ibid, Para 107.

<sup>196</sup> Ibid, Para 114 -116.

but also enhances the legal options available to guardians. They can determine the living arrangements of married minors without considering their marital status, ensuring that decisions prioritize the child's best interests under IHRL<sup>197</sup>. Protecting minors from early marriage aligns with the state's duty to uphold life and physical integrity under Article 2(2) of the German Basic Law and addresses the need to eliminate disadvantages faced by women. As a result, the court ordered the legislature to amend the law by 30 June 2024, to address these gaps, thus providing legal clarity on the status of such marriages and offering a pathway for validation after reaching adulthood.<sup>198</sup> This case illustrates the complexities involved in addressing child marriage within Europe, particularly in the context of refugees and migration. While the German law aimed to protect minors, the Federal Constitutional Court emphasized the need for balance.

136. In India, the PCMA protects child brides and any child born from a child marriage by prescribing for their maintenance, residence and custody. Further, any child born from such a marriage is deemed legitimate. These provisions apply even when the marriage has been nullified at the instance of the minor contracting party. India therefore does not have the same legal gap that the Federal Constitutional Court observed in German law. Protections of maintenance, residence and custody under family law are a recognition of the responsibilities that society places on families after marriage. The philosophy is that a law must not merely penalise criminal action – in this case child marriage – but must also compensate and address the harm meted out to the victim.

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<sup>197</sup> Ibid.

<sup>198</sup> Ibid, Para 190-192.

**iii. SAARC**

137. Child marriage is a significant concern in South Asia, where approximately one in four young women are first married or in union before reaching the age of eighteen.<sup>199</sup> The prevalence of child marriage varies greatly across the region, with over 50% of girls married before eighteen in Bangladesh, compared to only 2% in the Maldives.<sup>200</sup> Furthermore, even within individual countries, disparities exist; for example, Afghanistan shows a tenfold difference in child marriage rates across its provinces.<sup>201</sup> Although child marriage is less common among boys, it still occurs, with nearly 1 in 10 young men in Nepal reporting childhood marriages.<sup>202</sup> Despite these challenges, South Asia is recognized for its progress in reducing child marriage rates, showcasing a potential pathway for other regions facing similar issues.

138. The SAARC Charter,<sup>203</sup> established in 1985, lays the foundation for regional cooperation among the eight South Asian countries—Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, and Sri Lanka. It emphasizes the need for collaboration in various sectors, including social development, which encompasses the protection of children's rights. The Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, adopted in

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<sup>199</sup> UNICEF (2023). A Profile of Child Marriage in South Asia; UN (2022). United Nations Department of Economic and Social Affairs, Population Division, World Population Prospects.

<sup>200</sup> Ibid.

<sup>201</sup> Ibid.

<sup>202</sup> Ibid.

<sup>203</sup> The Charter of the South Asian Association for Regional Cooperation; The objectives of the association are to: a) promote the welfare and quality of life of the peoples of South Asia; b) accelerate economic growth, social progress, and cultural development, ensuring individuals can live with dignity and realize their full potential; c) enhance collective self-reliance among South Asian countries; d) foster mutual trust, understanding, and appreciation of shared challenges; e) encourage collaboration and mutual assistance in economic, social, cultural, technical, and scientific areas; f) strengthen cooperation with other developing countries; g) collaborate in international forums on common interests; h) engage with international and regional organizations with similar goals

2002<sup>204</sup>, specifically addresses the alarming prevalence of child marriage in the region. This Convention recognizes child marriage as a violation of children's rights and advocates for legislation to set a minimum marriage age, promote awareness, and protect children from harmful practices.

139. The Convention reinforces the commitment of SAARC member states to create a protective environment for children by calling for effective measures to combat child marriage. This includes the establishment of monitoring systems, the promotion of education, and the mobilization of community resources to challenge cultural norms that perpetuate child marriage.

### **C. Rights based framework**

140. Child marriage is forced marriage and international law recognises it as such. Early marriage, or child marriage involves children under eighteen years. The majority of child marriages involve minor girls. The joint General Recommendation and Comment on harmful practices from the CRC and the CEDAW Committee states<sup>205</sup>:

**"A child marriage is considered to be a form of forced marriage, given that one and/or both parties have not expressed full, free, and informed consent.** As a matter of respecting the child's evolving capacities and autonomy in making decisions that affect her or his life, a marriage of a mature, capable child below 18 years of age may be allowed in exceptional circumstances, provided that the child is at least 16 years of age and that such decisions are made by a judge based on legitimate exceptional grounds defined by law and on the evidence of maturity, without deference to culture and tradition."

(emphasis supplied)

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<sup>204</sup> The Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia, 2002.

<sup>205</sup> Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women /General comment No. 18 of the Committee on the Rights of the Child on harmful practices", UN Doc CEDAW/C/GC/31-CRC/C/GC18 (2014), para 20.

141. The joint General Recommendation and Comment proposed a detailed regime of laws to address forced and early marriage, including raising awareness, addressing root causes, ensuring proper registration of births and marriages, protection orders, and ensuring access to remedies and reparations, including the use of criminal law.<sup>206</sup>

142. This issue has been dealt with in international case laws as well. In **Prosecutor v. Dominic Ongwen**,<sup>207</sup> the International Criminal Court's Appeals Chamber focused on a former commander of the Lord's Resistance Army who was charged with war crimes and crimes against humanity. The court had to adjudicate whether the legal characterization of 'forced marriage' could be classified as an 'other inhumane act' under Article 7(1) of the Rome Statute.<sup>208</sup> The Trial Chamber noted that forced marriage is similar in nature and gravity to the acts listed in Article 7(1).<sup>209</sup>

143. The violation of relational autonomy has been characterized in various ways under international law. Within the framework of international human rights law, forced marriage fundamentally denies individuals the right to freely and consensually enter into a conjugal union. This denial not only infringes upon personal liberty but also undermines the essential dignity and agency of individuals, particularly women, who are disproportionately affected by such practices. The Court noted:

"The first type of harm caused by forced marriage, the violation of relational autonomy, has been

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<sup>206</sup> Ibid.

<sup>207</sup> No. ICC-02/04-01/15 A A2 (Ongwen Trial Judgment).

<sup>208</sup> The Rome Statute, Article 7(1); "Other inhumane Act" is defined as (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health"

<sup>209</sup> *Ongwen Trial Judgment*, para. 2751.

described in various ways under international law. Under international human rights law, the crux of forced marriage is the denial of the right to freely and consensually enter into marriage. **In other words, the focus is on consent to marriage.** For example, the International Covenant on Civil and Political Rights ("ICCPR") states that "No marriage shall be entered into without the free and full consent of the intending spouses". Similarly, the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"). The same right freely to choose a spouse and to enter into marriage only with their free and full consent". International human rights law bodies have recognized that forced marriage, as defined under international human rights law, can take place both in peacetime and in armed conflict. International criminal law similarly recognizes the deprivation of relational autonomy through the imposition of a "conjugal union" on a victim. This union need not be marriage as recognized under domestic law, as it also includes relationships in which the victim is forcibly attached to a particular person outside of the context of domestic marriage law. These forced conjugal unions can take place during armed conflict or 'peacetime' mass atrocity, and under oppressive regimes, and can occur regardless of the victim's existing marriage status."

(emphasis supplied)

### i. Right to free choice and autonomy

144. The issue of forced marriage is intricately linked to child marriage, as both practices deny individuals, particularly minors, the fundamental right to make autonomous decisions regarding their lives. The imposition of forced marriage reflects the broader systemic issue of coerced relationships that deny the victims agency and autonomy. This lack of agency is heightened in the context of child marriage, where children are subjected to societal and familial pressures that undermine their ability to give informed consent. This mirrors the definition of forced marriage as articulated in international law, where relational

autonomy is violated, and the individual's right to freely choose a partner is disregarded. International law has evolved a rights-based framework to address myriad issues. Child marriage is an evil against which the international community has reflected its commitment through the recognition of rights. These rights are traced below.

145. This encompasses the right to free and informed consent and the right against gender-based violence.<sup>210</sup> These interconnected rights form the foundation for ensuring that marriage is a consensual partnership rather than a coercive arrangement, particularly when addressing the issue of child marriage.

### a. Right to free and informed consent

146. Various international instruments<sup>211</sup> emphasize the necessity for parties entering into marriage to provide *free and full consent*. CEDAW's General Recommendations on Marriage and family relations further elucidate that when men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they attain full maturity and capacity to act.<sup>212</sup> For women to exercise full, free, and informed consent as outlined in Article 16(1)(b) of CEDAW,<sup>213</sup> they must possess the cognitive capacity to comprehend the meaning and responsibilities associated with marriage. This entails having access to comprehensive information about their potential

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<sup>210</sup> 'GBV'

<sup>211</sup> See Article 16(2) of the Universal Declaration of Human Rights (UDHR) 1948, Article 10(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, Article 23(3) of the ICCPR, Article 1 of the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1962, Article 16(1)(b) of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1975, Article 17(3) of the American Convention on Human Rights 1969, and Article 33 of the Arab Charter on Human Rights 2004.

<sup>212</sup> UN Committee on the Elimination of Discrimination Against Women, CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations 1994, **para 16**.

<sup>213</sup> CEDAW, article 16(1)b states 'The same right freely to choose a spouse and to enter into marriage only with their free and full consent'.

spouse, understanding the institution of marriage, and recognizing their rights to choose if, when, and whom to marry.

147. This principle has been elucidated in different judgments, reinforcing the right to free and informed consent within the context of marriage. In **National Coalition for Gay and Lesbian Equality v. Minister of Justice**<sup>214</sup> the Constitutional Court of South Africa emphasized that autonomy encompasses more than mere freedom from state interference; it acknowledges the need for individuals to choose their partners freely. The court in that case held that:

“117. Autonomy must mean far more than the right to occupy an envelope of space in which a socially detached individual can act freely from interference by the state. What is crucial is the nature of the activity, not its site. While recognising the unique worth of each person, the Constitution does not presuppose that a holder of rights is as an isolated, lonely and abstract figure possessing a disembodied and socially disconnected self. It acknowledges that people live in their bodies, their communities, their cultures, their places and their times. It is not for the state to choose or to arrange the choice of partner, but for the partners to choose themselves”

148. Similarly in **Artavia Murillo ET AL v. Costa Rica**,<sup>215</sup> the Inter-American Court of Human Rights addressed the question of whether the State's prohibition on the practice of in vitro fertilisation (IVF) constituted an arbitrary interference with the right to private life. The court affirmed that the right to private life extends beyond privacy to include personal autonomy and the freedom to establish relationships. The Court held that:

“The scope of the protection of the right to private life has been interpreted in broad terms by the international human rights courts, when indicating that this goes beyond the right to privacy. The

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<sup>214</sup> 1999 (1) SA 6, CC (South Africa).

<sup>215</sup> Inter-Am. Ct. H.R. (Ser. C) No. 257 (American Court of Human Rights).

**protection of private life encompasses a series of factors associated with the dignity of the individual, including, for example, the ability to develop his or her own personality and aspirations, to determine his or her own identity and to define his or her own personal relationships.** The concept of private life encompasses aspects of physical and social identity, including the right to personal autonomy, personal development and the right to establish and develop relationships with other human beings and with the outside world. The effective exercise of the right to private life is decisive for the possibility of exercising personal autonomy on the future course of relevant events for a person's quality of life. Private life includes the way in which individual views himself and how he decides to project this view towards others, and is an essential condition for the free development of the personality.”

(emphasis supplied)

149. These judgments emphasize the critical role of free and informed consent in marriage, particularly regarding child marriage.

**b. Right against gender-based violence**

150. Further, the right against GBV is recognised. Article 34 of the CRC provides a right to protection from sexual exploitation and abuse, defining child marriage as a form of sexual exploitation.<sup>216</sup> Article 19 prohibits all forms of physical or mental violence, abuse, or exploitation, with many young brides suffering these consequences.<sup>217</sup> Child marriage frequently leads to violence against child wives, and although CEDAW does not specifically label child marriage as violence against women, it identifies forced marriage as a form of family violence in General Recommendations 19 on violence against women.<sup>218</sup> The

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<sup>216</sup> CRC, Article 34.

<sup>217</sup> CRC, Article 19.

<sup>218</sup> See CEDAW General Recommendation No. 19: Violence against Women, Adopted at the Eleventh Session of the Committee on the Elimination of Discrimination against Women (1992), Document A/47/38 [Para 11].

## PART VI

Committee interprets Articles 2(f), 5, and 10(c) together, recognizing that traditional attitudes regarding women's subordination perpetuate practices involving violence or coercion, such as forced marriage.<sup>219</sup>

151. The UN Declaration on the Elimination of Violence against Women, adopted by the General Assembly, defines violence as any act of GBV that results in, or is likely to result in, physical, sexual, or psychological harm or suffering to women.<sup>220</sup> The Declaration calls on States to exercise due diligence to prevent, investigate and punish acts of violence against women. Article 4 requires member states to condemn violence against women and not invoke custom, tradition, or religion to evade their obligations to eliminate such violence.<sup>221</sup>

152. The Istanbul Convention is the first international treaty to contain a definition of gender as a socially constructed category that defines “women” and “men” according to socially assigned roles, behaviours, activities, and attributes.<sup>222</sup> It firmly establishes the link between achieving gender equality and the eradication of violence against women. Based on this premise, it recognizes the structural nature of violence against women and that it is a manifestation of the historically unequal power relations between women and men. The Convention specifically asks State parties to ensure that culture, custom, religion, tradition or so-called ‘honour’ shall not be considered as justification for any acts of violence. Evidently, the human and fundamental right against GBV has found firm roots in the international sphere. This affords protection against child

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<sup>219</sup> Ibid, [Para 24].

<sup>220</sup> UN General Assembly, Declaration on the Elimination of Violence against Women, A/RES/48/104, UN General Assembly (20 December 1991).

<sup>221</sup> DEVAW, Article 4.

<sup>222</sup> Council of Europe (2014). The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

marriage, as it is a form of GBV that disproportionately affects girls and women. It subjects them to early and forced marriages perpetuating power imbalances and often leading to physical, emotional, and sexual abuse.

## **ii. Right to education**

153. The right to education is violated by the commission of child marriage under international law. These rights are manifested in the rights of children to – primary education, information, and sex education.

### **a. Right to primary education**

154. The CRC mandates that States ensure primary education is free and compulsory. Article 28 states that the child has the right to education,<sup>223</sup> while Article 29 emphasizes that education should develop the child's personality, talents, and abilities, as well as promote respect for human rights and fundamental freedoms.<sup>224</sup>

155. The CRC's Guidelines for Periodic Reports require States to outline specific measures taken to ensure compulsory primary education, including minimum age for enrolment and compulsory education.<sup>225</sup> The Committee further extends this obligation to include secondary education, reinforcing the need for comprehensive educational policies. The Concluding Comments of the CEDAW Committee has expressed ongoing concern regarding the impact of

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<sup>223</sup> CRC, Article 28.

<sup>224</sup> CRC, Article 29.

<sup>225</sup> Concluding observations of the UN Committee on the Rights of the Child (2002-2023) – extracts concerning inclusive education and disability, gender and ethnic background and related issues.

early and forced marriages on school dropout rates among girls and urged States to adopt all available measures to eliminate child marriage.<sup>226</sup>

156. Research from UNESCO highlights that, in many countries, marriage and schooling are seen as mutually exclusive.<sup>227</sup> In South Asia, particularly in Bangladesh, India, and Nepal, child brides are four times more likely to be out of school than their unmarried peers.<sup>228</sup> While the relationship between education and child marriage is clear, the mechanisms driving this connection are complex, suggesting that interventions must be multifaceted to address both issues simultaneously.

### b. Right to be informed

157. International obligations also emphasize the importance of awareness and education regarding the adverse effects of child marriage. Article 12 of the CRC asserts that children should be provided with information that aids their understanding of issues affecting them, including the potential consequences of early marriage.<sup>229</sup> The right to be informed empowers young individuals to make autonomous choices about their lives, fostering an environment conducive to resisting harmful practices such as child marriage. Education plays a critical role in this regard; when girls are aware of their rights and the detrimental effects of early marriage on their health, education, and economic prospects, they are better equipped to advocate for themselves and their peers.

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<sup>226</sup> See Concluding observations of the UN Committee on the Elimination of Discrimination Against Women (2002-2010) – extracts concerning inclusive education; Also see CEDAW Committee Concluding Observations, India (Jan 1990). UN Doc. A/55/38, Para 78.

<sup>227</sup> UNESCO (2021). Reimagining our futures together: a new social contract for education, International Commission on the Futures of Education; See also UNFPA (2012). Marrying Too Young: End Child Marriage, 76 p.

<sup>228</sup> Ibid.

<sup>229</sup> CRC, Article 12.

**c. Right to sex education**

158. Major United Nations conferences of the 1990s, such as the International Conference on Population and Development<sup>230</sup> held in Cairo in 1994, emphasized the importance of human rights, gender equality, sexual and reproductive health, and HIV/AIDS awareness.<sup>231</sup> The ICPD's Programme of Action affirmed that sexual health is a vital component of overall health, stating that all individuals should have access to information and services related to sexual and reproductive health.<sup>232</sup> In subsequent years, documents like the Yogyakarta Principles<sup>233</sup> and the Bali Global Youth Forum have built upon these foundations, addressing the rights of marginalized groups, including adolescents, to access comprehensive sexuality education. In 2012, the UN Commission on Population and Development reaffirmed these principles - calling states to provide evidence-based comprehensive education on human sexuality, sexual and reproductive health, human rights, and gender equality, enabling youth to engage with their sexuality positively and responsibly.<sup>234</sup>

159. In a landmark ruling, the European Court of Human Rights<sup>235</sup> upheld young people's right to sexuality education in schools. This case involved a refusal by a primary school to grant a request from a parent seeking to exempt her daughter, then seven years old, from sex education lessons. The EtCHR opined

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<sup>230</sup> “ICPD”

<sup>231</sup> UN Population Fund (1995). *Report of the International Conference on Population and Development, Cairo, 5-13 September 1994*, A/CONF.171/13/Rev.1; UN coordinated an International Conference on Population and Development (ICPD) in Cairo, Egypt. Its resulting Programme of Action is the steering document for the United Nations Population Fund (UNFPA).

<sup>232</sup> Ibid.

<sup>233</sup> International Commission of Jurists (2007). *Yogyakarta Principles: Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity*. International Commission of Jurists.

<sup>234</sup> See UNESCO (2018). *International technical guidance on sexuality education: an evidence-informed approach*.

<sup>235</sup> A.R. and L.R. v. Switzerland, application no. 22338/15 (EtCHR).

that this refusal violated the right to freedom of thought, conscience, and religion. It also violates Article 2 (the right to life) and Article 8 (the right to respect for private and family life). The Court recognized that one of the aims of sex education is to prevent sexual violence and exploitation, threats that compromise children's physical and mental health.<sup>236</sup> It also stressed that state education should prepare children for social realities, justifying the inclusion of sexual education for even very young children in primary education.

### **iii. Right to development of children**

160. A lack of education denies girls their right to personal development as guaranteed in the CRC which is crucial for them to prepare for adulthood and effectively contribute to the future well-being of their families and society. The CRC highlights the significance of personal development, emphasizing that every child has the inherent right to develop their personality, talents, and mental and physical abilities to their fullest potential.<sup>237</sup> The right to personal development is intricately linked to various aspects of a child's well-being, particularly health. The CRC interrelates with five other articles,<sup>238</sup> which collectively address eight specific dimensions of child development that require protection: physical development, mental development, moral development, social development, cultural development, spiritual development, development of the personality, and development of talent.

161. Under Article 29(1)(a) of the CRC, States Parties agree that the education of the child shall be directed toward the development of the child's personality,

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<sup>236</sup> Ibid.

<sup>237</sup> See OHCHR (2013). Realising the Right to Development: Essays in Commemoration of 25 Years of the United Nations Declaration on the Right to Development.

<sup>238</sup> CRC, Articles 18(1), 23(3), 27(1), 29(1)(a), and 32(1).

talents and mental and physical abilities to their fullest potential.<sup>239</sup> Article 29(1)(d) further emphasizes that education should be oriented toward the preparation of the child for a responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples.<sup>240</sup> Similarly, Article 13(1) of the International Covenant on Economic, Social and Cultural Rights<sup>241</sup> stipulates that education shall enable all persons to participate effectively in a free society.<sup>242</sup> Article 13(2) reinforces this by asserting that education should be directed to the full development of the human personality and the sense of its dignity."<sup>243</sup>

162. As Professor Nico Schrijver argues, the right to development functions as a cluster right, encompassing a range of interconnected rights.<sup>244</sup> These include the right to a decent standard of living, which encompasses the right to food, water, clothing, and housing; the right to work; the right to education; the right to life; and the right to freedom of expression and organization. Together, these rights form a comprehensive 'human right to development,' which is essential for empowering children, particularly girls, to realize their full potential and actively participate in their communities. As we shall explore below, these rights ought to influence our understanding of the law in dealing with child rights in India.

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<sup>239</sup> CRC, Article 29(1)(a)

<sup>240</sup> CRC, Article 29(1)(d).

<sup>241</sup> UN General Assembly (1966). *International Covenant on Economic, Social and Cultural Rights*, United Nations, Treaty Series, vol. 993, p. 3.

<sup>242</sup> ICESCR, Article 13(1).

<sup>243</sup> ICESCR, Article 13(2).

<sup>244</sup> Nico Schrijver, *Development without Destruction: The UN and Global Resource Management* (Bloomington, Indiana University Press, 2010), p. 221.

**VII. India's obligation**

163. Article 51 of the Indian Constitution emphasizes the importance of international law and treaty obligations, urging the Indian state to make concerted efforts to adhere to and respect international legal standards<sup>245</sup>. This provision establishes a foundation for integrating international human rights law into domestic legal frameworks, particularly concerning the protection of vulnerable populations such as children.

164. This Court has consistently affirmed India's obligation with regard to international conventions and norms when interpreting domestic laws.<sup>246</sup> In **Vishaka v. State of Rajasthan**,<sup>247</sup> this Court formulated basic principles and guidelines based on international instruments aimed at preventing sexual harassment at the workplace.<sup>248</sup> In **Vellore Citizens Welfare Forum v. Union of India**<sup>249</sup> this Court recognized aspects related to sustainable development as part of customary international law.

165. In **Apparel Export Promotion Council v. AK Chopra**<sup>250</sup> this Court had the occasion to opine on the judiciary's obligation to give due regard to international conventions, particularly when there is no inconsistency between these

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<sup>245</sup> The Constitution of India, Article 51; The article deals with Promotion of international peace and security - The State shall endeavour to--(a) promote international peace and security; (b) maintain just and honourable relations between nations;(c) foster respect for international law and treaty obligations in the dealings of organised peoples with one another; and (d) encourage settlement of international disputes by arbitration.

<sup>246</sup> See *Prem Shankar Shukla v. Delhi Admn.* (1980) 3 SCC 526; *Mackinnon Mackenzie and Co. Ltd. v. Audrey D' Costa* (1987) 2 SCC 469; *Sheela Barse v. Secy., Children's Aid Society* [(1987) 3 SCC 50, 51] SCC at p. 54; *Vishaka v. State of Rajasthan* (1997) 6 SCC 241; *People's Union for Civil Liberties v. Union of India* (1997) 3 SCC 433 and *D.K. Basu v. State of W.B.* (1997) 1 SCC 416, 438.

<sup>247</sup> (1997) AIR 3011.

<sup>248</sup> These guidelines were informed by several international instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Universal Declaration of Human Rights, and the International Labour Organization (ILO) Convention No. 111 on discrimination in employment.

<sup>249</sup>(1996) INSC 952; The Court incorporated principles like the "precautionary principle" and the "polluter pays principle" into domestic law.

<sup>250</sup> (1999) 1 SCC 759.

conventions and domestic laws, or when domestic law is silent on a particular issue.

“This Court has in numerous cases emphasized that while discussing constitutional requirements, court and counsel must never forget the core principle embodied in the international conventions and instruments and as far as possible, give effect to the principles contained in those international instruments. The courts are under an obligation to give due regard to international conventions and norms for construing domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law.”

166. In **M/s Entertainment Network (India) Ltd. v. M/s Super Cassette Industries Ltd.**<sup>251</sup> this Court expressed its willingness to adopt principle of international conventions to which India is not a signatory where they were compatible with Indian law. This approach was further exemplified in **Ravindra Kumar Dhariwal v. Union of India**<sup>252</sup> where this Court maintained that even when India is not a signatory to certain international treaties, the principles enshrined within them could still inform the interpretation of domestic legislation.

167. The overarching theme emerging from these judgments is that India has a dual obligation: to respect its commitments under international treaties and to interpret domestic laws in a manner consistent with international human rights standards. This is particularly relevant concerning child marriage, as India has ratified several international instruments that set the minimum age for marriage

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<sup>251</sup> This position has been reiterated by various other decisions of this Court. See, for instance, *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

<sup>252</sup> *Ravinder Kumar Dhariwal v Union of India* 2021 INSC 916.

at eighteen, including CEDAW<sup>253</sup> and the CRC<sup>254</sup>. Moreover, even if India is not a party to certain regional conventions that address child marriage directly, the principles of non-discrimination, the best interests of the child, and the right to free and informed consent should guide national legislation and policy in this area. These fundamental principles are embedded in various international human rights instruments and form the backbone of child protection efforts globally.

168. As Prof. Rangita De Silva-De Alwis argues in her report, *Child Marriage and the Law – Legislative Reform Initiative Paper Series*<sup>255</sup> child marriage must be treated as a human rights issue to highlight its seriousness and prompt state parties to amend their laws and policies accordingly.<sup>256</sup> She also emphasises that framing child marriage within international treaties compels States to be accountable for their inaction on this issue. If a treaty establishes a monitoring body or a mechanism to address complaints, any non-compliant state party may face public rulings against it.<sup>257</sup> We believe that such public scrutiny can pressure the state to implement effective measures that protect children from the harmful effects of early marriage.

### **VIII. Constitutional guarantees against child marriage**

169. The right to free choice and autonomy, education and development of the child with all their offshoots are firmly recognised in this Court's jurisprudence

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<sup>253</sup> India ratified the Convention on the Elimination of All Forms of Discrimination against Women on July 9, 1993.

<sup>254</sup> India ratified the Convention on the Rights of the Child in 1992.

<sup>255</sup> Rangita De Silva De-Alwis, *Child Marriage and the Law – Legislative Reform Initiative Paper Series* (New York: Division of Policy and Planning, UNICEF, 2007), para 28.

<sup>256</sup> Ibid, 6.

<sup>257</sup> Ibid; See also Douglas, 'The Significance of International Law', 89-90.

and the myriad legislations in India which we have traced above. The evolution and progress of child rights in the international arena have simultaneously been evolved and recognised in India.

170. The material deprivation of health, education, employment and life opportunities wreaked by child marriage is an affront to cherished constitutional principles of equality, liberty and free expression. Children who are thrown into forced marriages are deprived of their right to development of the child. Three quarters of a century after the commencement of the Constitution, child marriage remains a present and continuous threat to our society, social progress and individual liberty. The Constitution does not countenance such an affront. We shall trace the gamut of rights accruing against child marriage from the Constitution.

171. The right to life and liberty enshrined in Article 21 of the Constitution<sup>258</sup> is violated by the commission of child marriage. All children married as minors are denied their right to choice and autonomy, right to education, right to sexuality and the right to development of the child. Girls who are married as children are denied their right to health. First, we shall analyze the right to choice, autonomy and sexuality, then we shall explore the right to health. We shall thereafter trace the right to childhood which includes the right to education and development.

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<sup>258</sup> Article 21, The Constitution of India.

**A. Right to self-determination: choice, autonomy and sexuality of children**

172. Life's meaning for any person is animated by their dignity, the ability to make free choices, the autonomy to have them translated into reality and to plan the peaks and troughs of life in good health. The journey a person travels from birth to death is made meaningful and enjoyable by the realization of these rights which are guaranteed under Article 21.

173. Child marriage deprives children of their agency, autonomy and right to fully develop and enjoy their childhood. The right to free choice and autonomy in marriage encompasses three fundamental rights: the right to free and informed consent, the right against gender based violence, and the right to sexual autonomy. These interconnected rights form the foundation for ensuring that marriage is a consensual partnership rather than a coercive arrangement, particularly when addressing the issue of child marriage.

174. Girls who are married off early are not only denied their childhood but are also forced into social isolation on account of being cut off from their natal family, friends and other support systems. They are left to the mercies of their marital home and in-laws and denied their innocence which is native to a meaningful childhood experience. Boys who are married early are forced to take up more responsibilities and are pressured to play the role of a provider to the family, earlier in life. Patriarchy requires members of a marital union to play specific roles. It forces men to play the public role in a marriage and fend for the family by being responsible for its economic and occupational development. Both sexes are adversely affected by forced and early marriage.

175. In India, marriage has traditionally been a religious ceremony organised by the families of the bride and groom. The union is looked at as an integration of the two families and the object of facilitating an organically compatible relationship between the bride and the groom is inconsequential. The mandate to recreate a patriarchal family structure is tied to social norms and expectations. One of the primary manifestations of this is the control over sexuality. While social norms rooted in a patriarchal mindset seek to control the sexuality of all persons, its nexus with child marriage is undeniable.

176. Patriarchy offends the most basic rights of people by creating a hierarchy-based order of subjugation and static power distribution in society. When an institution of patriarchy operates, it never denies rights in a unidimensional way. The frontal assault of patriarchal institutions is in, all at once, denying any deviance and valuing some over others. In the instance of child marriage, the right to sexuality of a person is systematically dismantled. The assault starts with the sexualisation of the child at a tender age. As we have stated above, marriage is an institution with legal standing in which sexual conduct is legitimised and promoted by the State and society. Marrying in childhood has the effect of objectifying the child. The practice of child marriage imposes mature burdens on children who are not physically or mentally prepared to comprehend the significance of marriage. When women are forced into marriages to protect their '*chastity*' and '*virginity*' she is denied her right to sexuality, bodily autonomy and the freedom to make choices for herself as she sees fit.

177. The minor is then boxed with the expectation of compulsory heterosexuality.

The ability of a person to experience sexual desire organically and to navigate their choice in intimacy is effaced at the altar of tradition and social norm. At an age which must be instructed by the ability to make mistakes and learn from life experiences, children are stunted and forcibly fit into boxes. The multi-dimensional assault of child marriage is therefore not only oppressive to heterosexual girls and boys but also to all gender and sexual minorities. Choices in matters of sexuality are integral to human desire. Our Constitution recognises the right a person has over all aspects of their sexuality.<sup>259</sup> The control of the sexuality of a girl child from orthodox moral virtues restricts her ability to experience life in its fullest dimension. Sexuality is not only the orientation a person may have in matters of romance and intimacy but also the ability to navigate the desires of a person regardless of their choice of partner or the option not to have a partner. Men and women alike are victimised by compulsory heterosexuality. In child marriage, their limited agency within heteropatriarchy is also taken away in infancy.

178. Upon marriage, a girl is expected to bear children and prove her fertility.

Decisions of reproduction are withdrawn from the girl and placed in the hands of the family. The right to choice and autonomy of a woman who is married as a child is violated by the system of child marriage. When minor girls are forced to make conjugal relations, they experience post-traumatic stress and depression emanating from sexual abuse by an elder partner.<sup>260</sup> Child marriage

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<sup>259</sup> Navtej Singh Johar v. Union of India, (2018) 10 SCC 1; Joseph Shine v. Union of India, (2019) 3 SCC 39.

<sup>260</sup> NCPCR (2017). A Statistical Analysis of Child Marriage in India, Based on Census, 2011. *Young Lives and National Commission for Protection of Child Rights*.

leads to irreversible physical and psychological damage in girls. Her choice is eviscerated in matters of selection of partner, time of marriage, reproductive freedom and sexuality. Article 21 protects these rights.<sup>261</sup>

179. In **X v. Principal Secretary**,<sup>262</sup> a three-Judge Bench of this Court speaking through one of us (DY Chandrachud, CJ) held that the right to choice and autonomy includes the right to reproductive freedom. Elucidating on the contours of this right, the Court held as follows:

“101. The ambit of reproductive rights is not restricted to the right of women to have or not have children. It also includes the constellation of freedoms and entitlements that enable a woman to decide freely on all matters relating to her sexual and reproductive health. Reproductive rights include the right to access education and information about contraception and sexual health, the right to decide whether and what type of contraceptives to use, the right to choose whether and when to have children, the right to access safe and legal abortions, and the right to reproductive healthcare. Women must also have the autonomy to make decisions concerning these rights, free from coercion or violence.”

180. This Court has also articulated the right to self-determination in **National Legal Services Authority v. Union of India**.<sup>263</sup> Choice and autonomy are the vocabulary in which self-determination is exercised. This court held that the right to self-determination which is protected under Article 21 of the Constitution includes the right of a person to determine their gender. The meaningful realisation of this right assumes that the underlying conditions in the society are feasible for its free exercise. This Court in **NALSA** (supra) has held that the right to self-

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<sup>261</sup> Shafin Jahan v. Ashokan KM, (2018) 10 SCC 1; X v. Principal Secretary, (2023) 9 SCC 433.

<sup>262</sup> (2023) 9 SCC 433.

<sup>263</sup> (2014) 5 SCC 438.

determination is an integral part of personal autonomy and self-expression and falls within the realm of personal liberty guaranteed under Article 21 of the Constitution of India.

181. A nine-Judge Bench of this Court in **KS Puttaswamy (Privacy-9J) v. Union of India**,<sup>264</sup> held that the fundamental right to privacy connotes the right to spatial control, decisional autonomy, and information control. This Court held that privacy is an essential aspect of dignity and protects the ability to make choices for oneself. This Court has conclusively held that personal aspects of life, including family, marriage, procreation and sexual orientation are intrinsic to the dignity of an individual and enjoys protection under Article 21. From this emerges the ability of a person to retain autonomy of their body and mind.

182. The Court held that liberty enables the individual to have a choice of preferences on various facets of life including what and how one will eat, the way one will dress, the faith one will espouse and a myriad other matters on which autonomy and self-determination require a choice to be made within the privacy of the mind. In **Anuj Garg v. Hotel Association of India**,<sup>265</sup> a three-Judge Bench of this court held that the right to self-determination is an integral offshoot of gender justice discourse. Justice SB Sinha speaking for the Court held that the law and its enforcement strategies must reflect the right of women to freedom.

183. Despite the enactment of the PCMA, the abysmal number of prosecutions and the continued existence of the practice violates the essence of this Court's holding. These rights and values are equally iterated in international law to which India owes an obligation.

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<sup>264</sup> (2017) 10 SCC 1 at 298.

<sup>265</sup> (2008) 3 SCC 1.

**B. Right to health**

184. The right to reproductive freedom which we have traced above is part of the constellation of rights in which the right to the health of a person also finds its place. Article 21 of the Constitution guarantees the right to life and personal liberty. Neither of these elements could be completely fulfilled without the ability of individuals to lead a healthy life. Our Constitution recognises the right to health as an inalienable aspect of the right to life and personal liberty under Article 21.<sup>266</sup> Women who are married young are forced to bear children earlier in life. They are likely to have their first childbirth before the age of eighteen and are likely to conceive more than once within twenty-four months. The health penalty imposed on women in child marriages is writ large in the complications arising from adolescent pregnancies. Teenage pregnancy leads to health complications such as fistula, pregnancy complications and death during childbirth. Early childbirth also leads to the deterioration of maternal mortality and morbidity.

185. The maternal morbidity is associated with adolescent fertility – typical to child marriage. It is marked by common negative health outcomes such as anaemia, high blood pressure, toxæmia, delayed or obstructed labour, complications in pregnancy and weight loss during lactation.<sup>267</sup> The adverse health effects of early marriage and pregnancy have dented the nutritional status of adolescent girls in India. These ill health outcomes haunt the woman

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<sup>266</sup> Pt. Parmanand Katara v. Union of India, (1989) 4 SCC 286; Paschim Banga Khet Majoor Samiti v. State of West Bengal, (1996) 4 SCC 37.

<sup>267</sup> Jaya Sagade. Child Marriage in India: Socio-legal and human Rights Dimensions. *Oxford University Press*, 2<sup>nd</sup> ed. (2012) 17.

throughout her life cause severe impediments in navigating the daily trifles and occasions of life.

186. Studies have shown that women married as children are more likely to be sterilized earlier in life. The sterilization is associated with families getting the desired number of children earlier in the marital life of the couple. Sterilization of women in child marriage is indicative of loss of control of a woman over her own reproductive choices. This also leads to more unprotected sex which may expose women to risks of contracting sexually transmitted diseases like HIV.

187. In **Independent Thought v. Union of India**,<sup>268</sup> this Court struck down the marital exception to rape in Section 375 IPC as it relates to underage wives. The Court had the opportunity to delve into the effects of child marriage and its interposition with the right to health. Justice Deepak Gupta in his opinion has traced the right to health in the context of child marriage as follows:

“179. There can be no dispute that every citizen of this country has the right to get good healthcare. Every citizen can expect that the State shall make best endeavours for ensuring that the health of the citizen is not adversely affected. By now it is well settled by a catena of judgments of this Court that the “right to life” envisaged in Article 21 of the Constitution of India is not merely a right to live an animal existence. **This Court has repeatedly held that right to life means a right to live with human dignity. Life should be meaningful and worth living. Life has many shades. Good health is the raison d'être of a good life. Without good health there cannot be a good life.** In the case of a minor girl child good health would mean her right to develop as a healthy woman. This not only requires good physical health but also good mental health. The girl child must be encouraged to bloom into a healthy

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<sup>268</sup> (2017) 10 SCC 800.

**woman. The girl child must not be deprived of her right of choice. ....”**

(emphasis supplied)

188. Child marriage inflicts tangible and lifelong physical and mental injuries to its members. The right to health is made illusory by all accounts within such an institution. The effect of child marriage denies women their health which is vital to lead a dignified life.

### **C. Right to childhood: education and development**

189. Childhood represents the best of what human life has to offer. A good childhood is marked by limitless imagination and the ability to dream big. The audacity to envision futures filled with success, happiness, divergence and enjoyment occurs naturally to all – but is manifested most authentically in childhood. The right to childhood is the right to be able to develop the experiences of childhood into tangible life skills and intellectual pursuits. It is marked by the expectation of the child that they are not on their own but are entitled to the supportive network of their parents, siblings, family, friends and the entire society. As the saying goes – it takes a village to raise a child. The foremost method by which society commits to developing a child is by imparting education. Institutions of learning are centres for society to channel knowledge and experience and make them available to children. Education allows its recipients to benefit from the best of human advances and claim a degree of ownership in its fruits.

## PART VIII

190. Education allows a person to develop and articulate their thoughts and learn the language of global engagement. It is a call for greater emancipation of the mind. Education breathes life into intellect, dimension into perspective and openness in minds. It opens doors to employment opportunities and enables people to stand on their own feet in professional and personal pursuits of life. The detrimental effect of not being educated affects girls most starkly since they are already vulnerable to agents of oppression on account of their gender. Marriage for most women in patriarchal societies is an announcement of educational conclusion.

191. It is uncommon for women to continue education after marriage without the express approval and wish of the in-laws and husband. The imposition of a marital family on the education of women may be an experience common to all women. But when the woman is married as a child, her education is arrested in place during a pivotal period of brain development. The minority of a woman's age at the time of her marriage has a heightened impact on her education. The right to primary education is a fundamental right expressly enshrined under Article 21-A.

192. However, the right to education under Article 21 holds broader significance. The right to information about routine ways to make life meaningful and be educated on the adverse effects of child marriage falls under Article 21. Children are entitled to be aware of their rights and the ill effects that marriage unleashes on them. The entitlement of the child flows from the right to education. Education cannot be restricted to pedantic and bookish classroom learning. The State certainly has an obligation to provide free and compulsory

education to all between the ages of six and fourteen. The mandatory minimum prescribed by Article 21-A, however, cannot restrict the right of children to be informed of significant and life altering dangers.

193. In a litany of judgments, this Court has firmly grounded the right to education into our constitutional jurisprudence.<sup>269</sup> While dealing with a PIL against physically and mentally challenged children being kept in jails, this Court in **Sheela Barse II v. Union of India**<sup>270</sup> has recognised that it is the duty of the State to ensure the full development of a child's personality. The articulation of the right to development of a child puts a positive obligation on the State to create conditions feasible and resources necessary for the full development of children. In addition to the rights traceable to Part III of the Constitution, the development of child is also a part of the Directive Principles of State Policy.<sup>271</sup> Article 39 stipulates certain principles of policy to be followed by the State. Clause (f) of Article 39 reads as follows:

“(f) that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”

194. The duty of the State corresponds to the right to development of a child which is traceable to Articles 14, 19(1)(a), 21 and 15. The right comprehends the ability of a child to exercise free speech, express authenticity and live a life of liberty and dignity. It falls on the State to ensure that children are informed of

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<sup>269</sup> Unni Krishnan JP v. State of Andhra Pradesh, (1993) 1 SCC 645; Society For Unaided Private Schools Of Rajasthan v. Union Of India (2012) 6 SCC 1; Avinash Mehrotra v. Union Of India, 2009 INSC 498; Bachpan Bachao Andolan v. Union of India, (2011) 5 SCC 1; Maharishi Mahesh Yogi Vedic Vishwavidyalaya v. State of M.P., (2013) 15 SCC 677; Sampurna Behura v. Union of India, (2018) 4 SCC 433.

<sup>270</sup> (1983) AIR 378.

<sup>271</sup> 'DPSP'

ways in which their life is likely to interact with society and the cautions to bear in the journey they chart out in life so that they may enjoy and exercise their rights under Articles 14, 15, 19(1)(a) and 21.

195. Child marriage is one such threat. Sexual conduct within this relation, or for that matter outside marriage, is another aspect of education and information. Sex education becomes imperative for children to process experiences which they are to inevitably encounter. In **Just Rights for Children Alliance v. S Harish**,<sup>272</sup> one of us (J B Pardiwala, J) has lucidly reflected on the importance of sex education. The Court has opined that:

“238. In India, the misconceptions about sex education are widespread and contribute to its limited implementation and effectiveness. Many people, including parents and educators, hold conservative views that discussing sex is inappropriate, immoral, or embarrassing. This societal stigma creates a reluctance to talk openly about sexual health, leading to a significant knowledge gap among adolescents.

239. One prevalent misconception is that sex education encourages promiscuity and irresponsible behaviour among youth. Critics often argue that providing information about sexual health and contraception will lead to increased sexual activity among teenagers. However, research has shown that comprehensive sex education actually delays the onset of sexual activity and promotes safer practices among those who are sexually active. [*Padminin Iyer & Peter Aggleton, Seventy years of sex education - A Critical Review, 74(1) HEALTH EDUC. J. 3 (2015).*]

240. Another common belief is that sex education is a Western concept that does not align with traditional Indian values. This view has led to resistance from various state governments, resulting in bans on sex education in schools in some states. This type of opposition hinders the implementation of comprehensive and effective sexual health programs, leaving many adolescents without accurate

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<sup>272</sup> 2024 INSC 716.

information. This is what causes teenagers and young adults to turn to the internet, where they have access to unmonitored and unfiltered information, which is often misleading and can plant the seed for unhealthy sexual behaviours.

241. Additionally, there is a misconception that sex education only covers biological aspects of reproduction. Effective sex education encompasses a wide range of topics, including consent, healthy relationships, gender equality, and respect for diversity. Addressing these topics is crucial for reducing sexual violence and promoting gender equity.”

196. In the context of child marriage, we have demonstrated the heightened risk of health complications to arise out of adolescent sex and childbearing. While girls married as children have to bear the consequences of this, they are not the only party to the sexual relation which causes negative health outcomes. Boys married at young age equally feel pressures associated with sexual performance. Often, the only resource available to them is their peer group. The performance of sexual activity is an avenue for men to exhibit their masculinity. Because of their tender mind and patriarchal notions of masculinity and sexual dominance, they are likely to fall into egregious misinformation by their peers and commit violence on their child brides. The issue of approaching boys in child marriage with care, compassion and affection is unfortunately lost in some mainstream discourse on child marriage. While girls are undoubtedly affected by child marriage disproportionately, we ought to also account for the tender minds of men who are forced into marriages as children.

197. The right to childhood belongs to all sexes. Education- primary, sexual and life enhancing – is integral to the right to childhood. Realisation of this right is crucial in dealing with the evils of child marriage. Abuses of patriarchy are learnt

behaviours. What is learnt can be unlearned or better yet, disabused early on. Education in all aspects allows for the debunking of harmful life choices and conducts which children may adopt in the absence of better guidance.

**D. Reiterating the States' obligations towards combatting child marriage**

198. Under IHRL, the State has a concrete, enforceable obligation to prevent and eliminate child marriage by ensuring that laws, policies, and social services align with international standards such as those in the CRC and the CEDAW. The state must establish and enforce a legal framework that explicitly prohibits child marriage, accompanied by robust mechanisms for implementation and redress.

199. States also have an obligation to monitor and enforce compliance with these laws and to work closely with civil society organizations to implement effective interventions. The State's role is not limited to merely punishing offenders but extends to creating an enabling environment where children can exercise their rights freely. This includes the responsibility to not only to legislate against child marriage but also to address the underlying socio-economic factors—poverty, lack of education, and gender discrimination—that perpetuate this practice.

200. The Directive Principles of State Policy in Part IV of the Constitution lay down the fundamental principles in the governance of the country and press upon the State to apply them while making laws. Article 38(2) of the Constitution<sup>273</sup> requires the state to promote the welfare of people and eliminate inequalities in opportunities: It states that:

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<sup>273</sup> Article 38(2), the Constitution of India 1950.

**"38. State to secure a social order for the promotion of welfare of the people –**

...

(2) The State shall, in particular, strive to minimize the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."

201. This Article mandates the State to actively reduce inequalities and promote welfare, which is essential in addressing child marriage—a practice that disproportionately affects children from economically and socially disadvantaged backgrounds. By targeting inequalities in income, status, and opportunities, Article 38(2) supports creating conditions where vulnerable children have better access to education, healthcare, and social support. This, in turn, reduces the pressures that often lead to early marriage, such as economic dependency and limited future prospects, and enables children to pursue a life free from the constraints imposed by early marital commitments.

202. This Court has, in several landmark judgments, reinforced the State's positive obligation to protect children's rights. In **Sheela Barse II** (supra) this court dealt with abandoned or destitute children lodged in various jails across the country for 'safe custody.' The Court noted that the National Policy for the Welfare of Children contained the following preamble:

"The nation's children are a supremely important asset. Their nurture and solicitude are our responsibility. **Children's programmes should find a prominent part in our national plans for the development of human resources, so that our children grow up to become robust citizens, physically fit, mentally alert and morally healthy, endowed with the skill and motivations needed by society.** Equal opportunities for development of all children during the

period of growth should be our aim, for this would serve our large purpose of reducing inequality and ensuring social justice.”

(emphasis supplied)

203. This Court observed that if a child is a “national asset” as per the National Policy, the State bears the duty to nurture and ensure their full development, underscoring the expectation that children not be subjected to custodial detention. Here, the principles of care and protection are directly relevant to child marriage, as the practice obstructs the full and healthy development of minors by imposing on them responsibilities and roles they are neither physically nor emotionally prepared to undertake. Such an arrangement undermines their potential and violates their rights to education, health, and personal development, reinforcing cycles of poverty and inequality.

204. In this context, the principle of *parens patriae*—where the State assumes a protective role akin to that of a guardian—is particularly relevant. The State’s intervention in preventing child marriage aligns with its duty to act in the best interest of children, ensuring their safety, development, and freedom from practices that harm their physical, emotional, and educational prospects. This principle has been repeatedly upheld by the judiciary as essential in upholding child rights and creating a supportive environment that upholds their well-being and growth into empowered, healthy citizens.

205. Similarly, in **Society for Unaided Private Schools v. Union of India**<sup>274</sup> the Court addressed the constitutionality of Section 12 of the Right of Children to Free and Compulsory Education Act 2009. This provision, which mandates a

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<sup>274</sup> (2012) 6 SCC 1.

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25% reservation in schools for children from disadvantaged backgrounds, was challenged on the grounds that it violated Articles 19(1)(g) and 30 of those who had established schools in the private sector. The Court upheld the constitutionality of this provision, finding the following:

“222. The provisions referred to above and other provisions of international conventions indicate that the rights have been guaranteed to the children and those rights carry corresponding State obligations to respect, protect and fulfil the realisation of children's rights. **The obligation to protect implies the horizontal right which casts an obligation on the State to see that it is not violated by non-State actors. For non-State actors to respect children's rights casts a negative duty of non-violation to protect children's rights and a positive duty on them to prevent the violation of children's rights by others, and also to fulfill children's rights and take measures for progressive improvement.** In other words, in the spheres of non-State activity there shall be no violation of children's rights.”

...

224. The primary responsibility for children's rights, therefore, lies with the State and the State has to respect, protect and fulfil children's rights and has also got a duty to regulate the private institutions that care for children, to protect children from violence or abuse, to protect children from economic exploitation, hazardous work and to ensure human treatment of children. Non-State actors exercising the State functions like establishing and running private educational institutions are also expected to respect and protect the rights of the child, but they are, not expected to surrender their rights constitutionally guaranteed.”

(emphasis supplied)

206. These judgments affirm that the State must regulate private as well as non-State actors in ensuring children's welfare and that the State holds primary responsibility for protecting children's rights. Applied to child marriage, these principles reiterate that the State must enact and enforce laws that prohibit child

marriage while ensuring that social, educational, and economic protections are in place to prevent the practice.

## **IX. Way forward**

207. In light of the foregoing analyses, we seek to formulate specific guidelines for achieving the elimination of child marriage while bearing in mind the delicate socio-economic interplay. The Union submits that the PCMA focuses on two key pillars: (a) raising awareness and (b) prosecution. Despite progress in awareness campaigns, there is still a pressing need to enhance accountability mechanisms, ensure mandatory reporting, and rehabilitate minors affected by child marriages. Further attention is required to make the legal framework more effective by addressing loopholes and ensuring swift action against offenders, particularly in areas with high child marriage prevalence.

208. Addressing child marriage requires an intersectional approach that acknowledges the overlapping vulnerabilities experienced by children, especially girls from marginalized communities. Intersectionality involves considering factors like gender, caste, socioeconomic status, and geography, which often increase the risks of early marriage. Preventive strategies should therefore be tailored to the unique needs of various communities and focus on addressing the root causes of child marriage, such as poverty, gender inequality, lack of education, and entrenched cultural practices.

209. The PCMA as a social legislation will only succeed through the collective efforts of all stakeholders to address the issue within a broader social framework which emphasises the need for multi-sectoral coordination. This

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necessitates the enhancement of reporting mechanisms, expansion of public awareness campaigns, and investment in the training and capacity-building of law enforcement officers and related actors. It is also crucial to regularly monitor the implementation of the Act, conduct evaluations to identify gaps, and establish feedback mechanisms to continually refine and improve responses to child marriage. As we issue these directions, we emphasize the need for more comprehensive approaches and community-driven strategies to ensure the complete eradication of child marriages.

210. We frame the following guidelines for the effective and useful implementation of the PCMA. The orientation of these guidelines is to prioritise prevention before protection and protection before penalisation. We are cognizant of the impact that criminalisation has on families and communities. To ensure effective use of penal provisions in the PCMA, it is imperative that there is widespread awareness and education about child marriage and the legal consequences of its commission. We therefore direct that the following guidelines be interpreted to expand effective implementation of the preventive measures under PCMA analysed in **Part V(A)(iii)** of this judgment.

211. We must not be understood to discourage prosecution of those who commit illegal acts. However, the aim of the law enforcement machinery must not be solely focused on increasing prosecutions without making the best efforts to prevent and prohibit child marriage. The focus on penalisation reflects a harms-based approach which waits for a harm to occur before taking any steps. This approach has proven to be ineffective at bringing about social change. We therefore direct as follows:

**A. Legal Enforcement****1. Appointment and accountability of CMPO**

1.1. State Governments and Union Territories (UTs) **must appoint officers solely**

responsible for discharging the functions of **CMPO at the district level**. These officers should not be burdened with additional duties that could impede their focus on preventing child marriage;

1.2. If a CMPO believes that they lack the necessary resources to safely and comprehensively fulfil their functions, they must submit a request to the relevant State Ministry of Women and Child Development. The Ministry shall conduct an assessment and address the resource needs within three months of the date on which the request was made;

1.3. To enable personal accountability and ensure immediate preventive measures are taken against any planned solemnization of child marriages - **each State and UT is directed to upload quarterly reports from CMPOs on their official websites**. These reports should detail the steps taken to prevent child marriages and the outcomes of investigations;

1.4. The Ministry of Women and Child Development and Ministry of Home in each State/UT shall conduct **quarterly performance reviews of CMPOs** and law enforcement agencies to assess:

1.4.1. The effectiveness of child marriage prevention initiatives;

1.4.2. Response times and outcomes of reported cases;

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- 1.4.3. The level of cooperation and communication between CMPOs and local law enforcement agencies;
- 1.4.4. The engagement with communities and stakeholders in prevention efforts;
- 1.4.5. The status of CMPOs regarding deployment to additional duties, including the reasons for such assignments, to ensure that their primary focus on child marriage prevention is not compromised; and
- 1.4.6. Recommendations for improvements based on the assessments, including identifying areas requiring additional support or resources.

1.5. The Ministry of Women and Child Development is directed to execute mandatory training refreshers for CMPOs every six months. These refreshers will ensure that all personnel are updated on:

- 1.5.1. Legal changes relevant to child marriage prevention;
- 1.5.2. Best practices and effective strategies for combating child marriage;
- 1.5.3. Community engagement techniques to foster collaboration with local stakeholders;
- 1.5.4. Advocacy skills to effectively promote child rights and raise awareness about the negative impacts of child marriage;
- 1.5.5. Cultural sensitivity training to address the social factors contributing to child marriage, ensuring a nuanced understanding of local contexts and practices; and

1.5.6. Evaluation and reporting mechanisms to assess the effectiveness of their initiatives and adjust strategies accordingly.

## **2. District-Level Responsibility for Prevention of Child Marriages**

2.1.In addition to the mandate of the CMPO under Section 16(3)(a) – the Collectors and Superintendents of Police in each district across India shall also be responsible for **actively preventing** child marriages within their districts. They shall have the authority and responsibility to prosecute all individuals who facilitate or solemnize child marriages, including those who knowingly assist, promote, or bless such marriages, even if reported in public events or media;

2.2.The CMPO, the Collectors and Superintendents of Police in each district shall inform the State Government about any impediments they encounter in the discharge of their functions, including but not limited to, social boycotts; and

2.3.Specific emphasis must be placed on preventing mass marriages, often conducted in public, where the participation of government or law enforcement officials could inadvertently lend legitimacy to child marriage ceremonies. Any failure by district authorities to act in accordance with this mandate will warrant immediate administrative action and disciplinary proceedings against the responsible officials.

## **3. Establishment of a Specialized Police Unit**

3.1.Recognizing the sensitivity and unique aspects of child marriage cases, a specialized police unit is deemed essential. The State Ministries of Home Affairs shall consider the viability of integrating the Special Juvenile Police Unit

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into the child marriage prevention framework. The SJPU, already trained in handling juvenile and sensitive cases, shall be deployed to manage cases of child marriage;

3.2. The Ministry should evaluate the effectiveness of this integration and provide necessary resources and support to the SJPU for optimal performance in addressing child marriage issues;

3.3. The SJPU, supported by trained personnel and resources, will ensure that child marriage cases are handled with appropriate sensitivity and urgency. The unit shall work in coordination with CMPOs and district authorities to ensure swift preventive action and enforce legal accountability; and

3.4. The Ministry of Women and Child Development is directed to consider the viability and prescribe a format for the SJPUs to biannually report the following:

3.4.1. The outcomes of legal actions taken against perpetrators of child marriage, including any convictions or pending cases;

3.4.2. The number of awareness programs conducted and the community engagement efforts made to prevent child marriages;

3.4.3. The status of collaboration with local law enforcement and child protection agencies in addressing child marriage; and

3.4.4. Any challenges faced in the reporting period and recommendations for improving child marriage prevention efforts.

**4. Establishment of a Special Child Marriage Prohibition Unit**

4.1.The State Governments and UTs shall constitute a State Special Child Marriage Prohibition Unit and where there are more than one CMPOs in any district, a District level Special Child Marriage Prohibition Unit;

4.2.The Unit shall comprise of all the CMPOs of the State or the District, as the case may be, and shall include five social workers having experience of working against child marriage or on child rights. At least two of such social workers shall be women. All the CMPOs of the Unit shall be provided special training on dealing with child marriages;

4.3.The Units shall tailor courses and resources with the help of professionals dealing with the mental health concerns of the CMPOs. The Unit shall also provide forums for CMPOs to raise any difficulties or grievances they encounter in discharge of their functions, including but not limited to, any difficulty relating to social ostracization for preventing child marriages; and

4.4.The Unit shall act as a forum of sharing best practices, inviting trained professionals to dispense knowledge and collectivise and redress grievances.

**B. Judicial Measures****1. Empowering Magistrates to Take Suo Moto Action and Issue Preventive Injunctions**

1.1.All Magistrates vested with authority under Section 13 of the Prohibition of Child Marriage Act, 2006, are directed to take proactive measures, including

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issuing *suo motu* injunctions to prevent the solemnization of child marriages; and

1.2. Magistrates are encouraged to particularly focus on "auspicious days" known for mass weddings, when the occurrence of child marriages is notably high. Upon receiving credible information or even upon suspicion, Magistrates should use their judicial powers to halt such marriages and ensure child protection.

### **2. Exploration of Special Fast-Track Courts for Child Marriage Cases**

2.1. The Union Government, in coordination with State Governments, is directed to assess the feasibility of establishing special fast-track courts exclusively to handle cases under the PCMA. These courts will expedite case proceedings, thereby preventing prolonged delays that often lead to additional harm for the affected children; and

2.2. A status report on the establishment, resource allocation, and potential effectiveness of these fast-track courts shall be submitted to this Court within a year from now onwards.

### **3. Mandatory Action Against Neglectful Public Servants**

3.1. It is directed that strict disciplinary and legal action be taken against any public servant found to be in deliberate neglect of duty concerning child marriage cases within their jurisdiction. As stipulated under Section 199(C) of the Bharatiya Nagarik Suraksha Sanhita (BNS), 2023, public officials who fail to act in child marriage cases, particularly those with knowledge of

imminent marriages, shall be subject to stringent punishment. This direction is aimed at reinforcing accountability among public officials and ensuring that child marriage cases receive immediate and appropriate action at all administrative and enforcement levels.

### **C. Community Involvement**

#### **1. Annual Action Plans and Community-Centric Capacity Building**

1.1. Each State and UTs is directed to develop an Annual Action Plan to prevent child marriages, incorporating Key Performance Indicators (KPIs) that reflect local cultural and social contexts. This plan should include measurable goals tailored to address community-specific beliefs and practices related to child marriage; and

1.2. States and UTs shall incorporate regular orientation programs, seminars, and workshops in their annual schedules aimed at building the capacity of all stakeholders. These initiatives should target CMPOs, Gram Panchayat or Municipality office holders, government officials, school principals and teachers, representatives of non-governmental organizations, local representatives, and Para Legal Volunteers (PLVs), fostering a collaborative approach to child marriage prevention.

#### **2. Adoption of the Child Marriage Free Village Initiative**

2.1. Inspired by the "Open Defecation Free Village" model under the Swachh Bharat Mission, a "Child Marriage Free Village" initiative should be

launched, encouraging Panchayats and community leaders to play an active role in preventing and reporting child marriages; and

2.2. This initiative will mobilize local communities to collectively discourage child marriages, with the involvement of Panchayats in monitoring and promoting "*Child Marriage Free*" certifications for villages and Gram Panchayats. This designation should be publicly celebrated to reinforce a culture where the rights and well-being of children are paramount.

#### **D. Awareness Campaigns**

##### **1. Awareness Campaigns Led by CMPOs in Schools, Religious Institutions, and Panchayats**

1.1. CMPOs are directed to conduct regular, structured awareness campaigns across schools, religious institutions, and Panchayats. These campaigns must include impactful hoardings and slogans in local languages that highlight the legal penalties for child marriage, health risks associated with early and forced marriages, and their socio-economic consequences; and

1.2. Schools and local institutions must conduct monthly informational sessions, leveraging creative methods like plays, storytelling, and interactive sessions to engage young people on the topic of child marriage prevention, emphasizing gender equality, reproductive rights, and personal agency.

## **2. Comprehensive Sexuality and Rights Education**

2.1. All States and Union Territories are directed to integrate comprehensive sexuality education<sup>275</sup> into school curricula in line with the framework prescribed by the World Health Organisation<sup>276</sup> and leading thoughts in the field of CSE. This education must include clear information on the legal aspects of child marriage, gender equality, reproductive health rights, and the impacts of child marriage on physical and mental well-being; and

2.2. Educational content should be tailored for age-appropriateness and be culturally sensitive, with particular emphasis on empowering students with knowledge of their legal rights, the importance of delaying marriage, and understanding of sexual and reproductive health.

## **3. Educational Materials and Community Awareness Tools**

3.1. Schools in regions where child marriage prevails **must include** information on child marriage prevention within the curriculum, with a dedicated section in textbooks that outlines legal protections, health risks, and preventive measures. Visible posters or charts summarizing this information should be displayed prominently in schools, Gram Panchayats, and public institutions; and

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<sup>275</sup> ‘CSE’

<sup>276</sup> CSE is the imparting of accurate, age-appropriate information about sexuality and their sexual and reproductive health – which is critical for their health and survival; See World Health Organization, (2023), “What is Comprehensive Sexuality Education?”.

3.2. Schools must adhere to a reporting protocol whereby principals or teachers are required to report potential cases, such as sudden drop out of a girl child, to the appropriate authorities immediately.

#### **4. Targeted Community Awareness Campaigns**

4.1. Regular community-based campaigns are mandated, specifically targeting parents, respected members of the community (including but not limited to teachers, principals and local body leaders) and local influencers. CMPOs are instructed to work with these groups to challenge entrenched social norms, using community discussions, multimedia presentations, and testimonials from child marriage survivors to shift perceptions; and

4.2. Community-focused initiatives should also include public forums where the adverse effects of child marriage are openly discussed, alongside the benefits of educating young women.

#### **5. Empowerment Programs for Girls and Young Women**

5.1. All States and Union Territories are directed to implement mentorship and leadership programs that encourage young girls to become active participants in their communities. These programs should include workshops on leadership skills, public speaking, and advocacy training, enabling girls to become local ambassadors for change; and

5.2. Schools and local organizations should establish peer groups led by trained mentors, where girls can safely discuss personal issues of home, family and public ongoings which may potentially force a girl into child marriage.

**6. Helpline Awareness and Reporting Mechanisms**

6.1. Comprehensive awareness of helpline numbers such as Childline (1098) and Women Helpline (181) should be included in all educational materials and community campaigns. Schools, Panchayats, and local institutions are required to display these numbers prominently and ensure that children and adolescents are aware of how to seek help.

**E. Training/Capacity Building****1. Training for Community Health Workers and Educators**

1.1. All State and UTs will impart specialized training to Anganwadi Workers (AWW), Auxiliary Nurse-Midwives (ANM), and Accredited Social Health Activists (ASHA) to enhance their role in the prevention of child marriage through active community engagement. This training should cover:

1.1.1. Identification of at-risk children and families, effective communication strategies to engage communities, and understanding the legal framework surrounding child marriage;

1.1.2. Workshops on the socio-economic impacts of child marriage on girls and families, enabling them to effectively communicate these consequences to community members; and

1.1.3. Effective ways and strategies to deal with crisis-management and render immediate and long-term support to victims who may be in a crisis associated to child marriage. This may include persons such as a

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girl vulnerable to child marriage herself; a peer, sibling or other person who fears that another person may be at risk of child marriage; or girls who have witnessed early or forced marriages around them.

### **2. Training for Law Enforcement and Judicial Officers**

2.1. Police officers, particularly those in the Special Juvenile Police Units (SJPU), **must undergo training** focused on the legal aspects of the PCMA, child rights, and sensitivity towards cases involving minors. This training should include:

2.1.1. Protocols for handling child marriage cases, ensuring the protection of victims, and understanding the psychological impact of child marriage on children and those affected around them; and

2.1.2. Regular refresher courses on human rights and the ethical treatment of victims in accordance with the Juvenile Justice (Care and Protection of Children) Act.

### **3. Capacity Building for Teachers and School Administrators**

3.1. Teachers and school administrators will be trained to recognize signs of potential child marriage and engage with students regarding their rights and the importance of education.

### **4. Empowerment of Local Leaders and Community Influencers**

4.1. Training programs will be designed for local leaders, including members of Panchayati Raj Institutions and community influencers, focusing on their

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critical role in preventing child marriage. This training should cover strategies to challenge and change harmful social norms and practices that perpetuate child marriage within their communities.

### **5. Engagement with Non-Governmental Organizations (NGOs)**

5.1. Collaborations with NGOs that focus on women's rights and child protection will be established to train volunteers and staff on child marriage prevention. State authorities including the CMPO and SJPU must proactively identify and collaborate with NGOs on the practical and procedural difficulties in preventing, prohibiting and prosecuting child marriages.

### **6. Training for Health Care Providers**

6.1. Healthcare providers, including doctors and counsellors, will be trained to address the specific health risks associated with child marriage. This training will include:

6.1.1. Counselling techniques for young women and girls, focusing on reproductive health rights and the health consequences of early marriage; and

6.1.2. Awareness of available resources for girls at risk and the referral processes for victims seeking help.

**F. Educational and Social Support****1. Educational Incentives and Scholarships**

1.1. The Ministry of Women and Child Development is directed to consider the viability of implementing comprehensive educational incentive programs **specifically targeted at girls at risk** of child marriage. This includes:

- 1.1.1. Providing scholarships to girls for secondary and higher education to encourage families to prioritize education over early marriage;
- 1.1.2. Offering stipends or financial support for families with daughters who remain in school beyond the age of fifteen, as a tangible incentive for delaying marriage; and
- 1.1.3. Creating mentorship programs that connect at-risk girls with role models who have successfully pursued education and career opportunities.

**2. Social Welfare Programs**

2.1. The Ministry of Women and Child Development will also consider developing and implementing social welfare programs to assist families at risk of engaging in child marriage, including:

- 2.1.1. **Conditional cash transfer programs that provide financial support to families in exchange for commitments to keep their daughters in school and delay marriage until legal adulthood;**

2.1.2. Access to vocational training and skill development programs for families, enabling them to improve their economic status and lessen reliance on marrying off daughters for financial relief; and

2.1.3. Support services for families facing economic hardships, such as food assistance, healthcare services, and access to microfinance opportunities to promote sustainable livelihoods.

### **3. Convergence and Continuity of Services**

**3.1.** The Chief Secretaries of all States/UTs shall designate an appropriate authority who shall ensure the convergence of services across various government departments and agencies to create a cohesive support system for vulnerable and at-risk communities. This includes:

**3.1.1.** Regular inter-departmental meetings to coordinate efforts and resources among education, health, social welfare, and law enforcement sectors to address the multifaceted nature of child marriage; and

**3.1.2.** Establishing community-based resource centres that provide information and support related to education, legal rights, and social services to families at risk of child marriage.

**G. Monitoring and Accountability****1. Development of Standard Operating Procedures**

1.1. The National Legal Services Authority<sup>277</sup> is directed to formulate a Standard Operating Procedure<sup>278</sup> that provides comprehensive guidelines for legal-support services, and long-term rehabilitation plans related to the prevention, protection, and rehabilitation of victims of child marriage for lawyers and law-enforcement officers. NALSA is further directed to dispatch this SOP to all States and District Legal Services Authority where it may be used in assisting aggrieved victims;

1.2. The Ministry of Women and Child Development, in consultation with State Child Protection Societies<sup>279</sup> and local government bodies, shall draft SOPs focused on maintaining detailed registers. These registers will document:

1.2.1. The number of awareness programs and capacity-building initiatives conducted;

1.2.2. The number of child marriages prevented and reported; and

1.2.3. Follow-up actions taken in each case.

1.3. The SOPs must clearly define the duties and responsibilities of CPMOs, and other stakeholders involved in community protection efforts, such as police authorities, Sarpanchs, village Pradhans, school teachers, AWWs,

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<sup>277</sup> "NALSA"

<sup>278</sup> "SOP"

<sup>279</sup> "SCPS"

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and ASHA. Special emphasis shall be placed on these responsibilities during critical periods and other wedding seasons and

1.4. The National Commission for Protection of Child Rights is directed to expedite the process of drafting an SOP to establish accountability for the non-reporting of child marriages, provide rehabilitation for minor survivors, and initiate prosecution procedures.

### **2. Role of Panchayats and Local Leaders**

2.1. All Panchayats, Sarpanchs, and local leaders must:

2.1.1. Complete a training program on child marriage prevention and reporting within three months;

2.1.2. Report any suspected child marriages within 48 hours of awareness to relevant authorities; and

2.1.3. Actively participate in community awareness programs to educate families on the legal consequences of child marriage and promote alternative practices to early marriage.

### **3. Individual Care Plans for At-Risk Girls**

3.1. State authorities must develop and implement Individual Care Plans (ICP) for at-risk girl children, ensuring compliance with Section 10 of the JJ Act, which mandates individualized care and rehabilitation for children in need of care and protection. It shall include:

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- 3.1.1. Immediate access to educational resources tailored to the child's needs;
- 3.1.2. Regular psychological support sessions, including counselling and therapy, as necessary;
- 3.1.3. Establishment of peer support groups to help at-risk girls connect with one another and share experiences;
- 3.1.4. Monitoring by Child Welfare Officers/District Child Protection Unit (DCPU) should occur every month for the first year post-intervention to ensure successful reintegration into education and community life; and
- 3.1.5. Follow-up assessments should be conducted every three months to evaluate the effectiveness of the ICP, adjusting support services as needed to address any emerging challenges faced by the child.

## **H. Technology-Driven Initiatives for Reporting Child Marriage**

### **1. Creation of a Centralized Reporting Portal**

1.1. The Ministry of Home Affairs, in collaboration with the Ministry of Women and Child Development and the NALSA, shall establish a designated portal for online reporting of child marriages. This portal will include features for anonymous reporting, allowing victims and concerned citizens to easily lodge complaints and access support services; and

1.2. The portal will serve as a centralized platform for collecting and analyzing data on child marriage incidents, enabling targeted interventions. It will

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enhance accessibility, transparency, and accountability by ensuring that all reports are addressed promptly by enforcement agencies and CMPOs.

### **2. Leveraging Technology for Support Services**

2.1. Each State and UT shall make all endeavours to disseminate information against child marriage across all print, digital and social media – with a focus on regions where child marriages are likely to occur in high numbers. They shall also consider the viability of data analytics to identify high-risk areas and patterns of child marriage, enabling swift interventions.

### **3. Technology-Driven Monitoring of Attendance**

3.1. The Ministry for Women and Child Development, in coordination with the relevant State Ministries, shall consider the viability of a technology-driven monitoring system to track daily attendance for school-going girls up to the 12th grade, ensuring compliance with the privacy standards outlined in the Supreme Court judgment in **KS Puttaswamy (9J)** (supra).

## **I. Funding and Resources**

### **1. Dedicated Annual Budget Allocation**

1.1. The relevant ministries of the Union Government are directed to recommend the allocation of a dedicated yearly budget for each State specifically aimed at preventing child marriage and supporting affected individuals. This budget should encompass:

1.1.1. Community awareness programs;

- 1.1.2. Educational initiatives targeting at-risk populations;
- 1.1.3. Training programs for frontline workers, including CMPOs and local law enforcement;
- 1.1.4. Rehabilitation services for victims, including counselling and vocational training; and
- 1.1.5. Provisions for regular monitoring, home visits, and follow-up support for victims to ensure their reintegration into society.

## **2. Juvenile Justice Fund Institutionalization**

2.1. The State Governments are directed to institutionalize the Juvenile Justice Fund established under Section 105 of the JJ Act. This fund will provide financial assistance in the form of scholarships and stipends specifically for girls at imminent risk of child marriage or whose marriages have been annulled, promoting their educational and social empowerment.

## **3. Compensation for Girls Opting Out of Marriage**

3.1. The Ministry of Women and Child Development is requested to consider the viability of providing compensation to girls who opt out of marriage upon reaching the age of majority under the NALSA Victim Compensation Scheme or respective State Victim Compensation Schemes. This compensation should be equivalent to that provided to rape victims, ensuring adequate support for those who have escaped child marriage.

**4. Identification and Support for At-Risk Children**

4.1. Superintendents of Police and Collectors are directed to identify instances of child marriage and monitor children at risk of dropping out of school due to socio-economic challenges or threats of early marriage. This initiative should ensure:

4.1.1. Comprehensive access to education and health services for at-risk children; and

4.1.2. Provision of stipends and fellowships to support their continued education and mitigate the factors contributing to child marriage.

**X. Suggestions**

212. In the course of this judgment, we have traced the full breadth of the law against child marriage. The PCMA is the central legislation governing the issue on the subject. In light of the Constitutional guarantees accruing to children, we observe certain gaps in the PCMA. Absent a Constitutional challenge or a case being argued, we resist from making declarations and restrict ourselves to making suggestions for the scrutiny of the Union. The legal question on these issues, however, is kept open if it were to come before a Constitutional court in an appropriate proceeding.

213. The issue of the interface of personal laws with the prohibition of child marriage under the PCMA has been a subject of some confusion. The Union in its note of submission filed after the judgment was reserved in the case has stated that this Court may direct that the PCMA prevails over personal law. The note states as follows:

“9. As a way forward, Ministry of Women & Child Development has following inputs to provide for kind consideration of the Hon’ble Court –

- i. There are conflicting pronouncements by various High Courts about the precedence of the Prohibition of Child Marriage Act (PCMA), 2006 over the personal laws. Hence, Hon’ble Court may consider issuing directions pronouncing that the PCMA will prevail over the personal laws governing marriage.

...”

214. Details of the conflicting opinions were not furnished in the submissions by either party to these proceedings. The PCMA states nothing on the validity of the marriage as we have noted above. The Prohibition of Child Marriage (Amending) Bill 2021 was introduced in Parliament on 21 December 2021. The Bill was referred for examination to the Department Related Standing Committee on Education, Women, Children, Youth and Sports. The Bill sought to amend the PCMA to expressly state the overriding effect of the statute over various personal laws. The issue, therefore, is pending consideration before Parliament.

215. Lastly, we note that while the PCMA seeks to prohibit child marriages, it does not stipulate on betrothals. Marriages fixed in the minority of a child also have the effect of violating their rights to free choice, autonomy, agency and childhood. It takes away from them their choice of partner and life paths before they mature

and form the ability to assert their agency. International law such as CEDAW stipulates against betrothals of minors. Parliament may consider outlawing child betrothals which may be used to evade penalty under the PCMA. While a betrothed child may be protected as a child in need of care and protection under the JJ Act, the practice also requires targeted remedies for its elimination.

## **XI. Conclusion**

216. A copy of this Judgment will be transmitted to the Secretaries of all concerned Ministries, the Government of India which includes the Ministry of Home Affairs, Ministry of Women and Child Development, Ministry of Panchayati Raj, Ministry of Education, Ministry of Information and Broadcasting, Ministry of Rural Development, statutory authorities, institutions, and organizations under the control of the respective ministries.

217. The Ministry of Women and Child Development is directed to circulate this judgment to the Chief Secretaries/Administrators of all the States and Union Territories, as well as NALSA, and NCPCR for strict compliance with the directions. This shall be done within a period of four weeks from the date of delivery of this judgment.

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218. The writ petition is disposed of.

219. Pending application(s), if any, stand disposed of.

.....**CJI**  
**[Dr Dhananjaya Y Chandrachud]**

.....**J**  
**[J B Pardiwala]**

.....**J**  
**[Manoj Misra]**

**New Delhi;**  
**October 18, 2024**