CHAPTER IX
Conclusion

Child marriage is an institution deep-rooted in the socio-cultural history of India. Despite the law prohibiting child marriage, it has continued to persist as it is widely accepted and condoned by customary and religious practices.

The age old myth that women are weak and need special protection may be a compelling factor to conduct the marriage of girls at the early stage. The parents believe that, by marrying off their daughters at an early age, they are protected under the firm male custody and shielded from dangers of pre-marital sex and illegitimate pregnancies. Also, the impression that the girls are a 'burden and liability', forces the parents to arrange the marriage at a very young age.

The social prestige attached to early marriage acted as an additional impetus for the growth of the system of child marriage. Even educated parents favour child marriage under the guise of protecting the girls and they have no hesitation in facing prosecution or accepting any punishment.

Child marriage affects very much the total welfare of the child concerned. The loss of childhood, denial of education, forced sexual
relations and the profound consequences on health have to be viewed very seriously. Pregnancy related deaths, infant mortality, weak progeny and susceptibility to sexually transmitted diseases are the serious after effects of child marriage. Fistula, cervical cancer and other gynaec complications also occur in almost all cases. Unable to cope with the new role of a wife and mother, the teenage girl becomes a threat to safe motherhood which ultimately affects the proper upbringing of the progeny. Child marriage definitely increases the length of the female reproductive span which in turn automatically results in a corresponding increase in population.

The study reveals that child widowhood is a major social evil associated with the practice of child marriage. Widowhood in India is a pathetic situation in which the widow is practically excluded from the family functions resulting in her social isolation. She is regarded as a person physically alive but socially dead. Most of the child widows are resorted to cheap labours, begging and even prostitution for their survival.

Child marriage opens up the worst possibilities for marital rape. It is a pity to note that in such cases, the husband is exempted from criminal liability for rape if she is aged fifteen years or above. Use of force or violence in sexual intercourse is a naked violation of the human rights of a child-wife and the principles of gender equality.
Extra-marital relations are common among those who are subjected to child marriages. The recent trend in Rajasthan seems to be that girls after attaining maturity show the courage to desert their husbands and live with other persons of their choice. It is apparent from the analysis that the visible impact of child marriage is unassessable because of its enormity. Though most of the impact are not easily visible, it is absolutely clear that millions of children and young people, particularly girls, are victims of this heinous custom.

An overview reveals that marriage during the teenage is common in many of the developing countries. It is a very common phenomenon in India. Though the mean age at marriage in the State of Kerala is high, existence of child marriage is found in the rural parts in most of the districts of Kerala. The Rapid House Hold Survey, a Survey conducted by CDC, Thiruvananthapuram, The Base Line Study conducted in Malappuram and the empirical study conducted by the researcher centered on different hospitals have proved the existence of the child marriage in various districts of Kerala. The statistical analysis establishes that the northern districts, particularly, Malappuram is found to have the highest incidence of child marriage. The other northern districts Kannur, Kasargod and Kozhikode also are not free from this evil.
The Base line Study and the Parturition register at the Manjeri Hospital establish the fact that more than fifty percent girls in Malappuram marry before they reach 18 years. The high female mean age at marriage in Kerala disguises the low age at marriage in the northern districts of Kerala. The data from Ernakulam and Kottayam show the absence of child marriages where as the data from Idukki and Kozhikode show the existence of child marriage in the rural parts of these districts.

The history of the working of Child Marriage Restraint Act for the last seventy three years reflects the casual and half hearted approach of the Government in implementing the Act. The study revealed many instances which expose the true picture of the callous attitude of the authority towards enforcing the Act. Though they are fully aware of the performance of child marriage and sometimes even have advance knowledge of it, nothing is done to prevent it. As the authorities have turned a blind eye to the problem, people violate the law without any fear. The continuance of child marriages in various parts of India without any fear of being punished is nothing but a mockery of the present legal system.

The absence of uniformity in defining the word ‘child’ in the Act and other legislations create a lot of problem for its effective implementation. The difficulty in ascertaining the age of the boy or girl is another major
impediment. Moreover, the definition of child marriage and the offences under the Act are vague. Criminal liability is linked only to bridegroom, parents, guardians, priests and persons who contract or direct the marriages. The vague expressions used in the sections dealing with the criminal liability create confusion in deciding the cases and it helps the abettors to escape scot-free from the web of law.

The limited cognizable nature of the Act also creates hurdles in the proper enforcement. The police is the key instrument to execute arrests, investigation and prosecution. The Act does not empower the police to arrest a person without warrant or without the order of the Magistrate.

The empirical study by the researcher points out that people are reluctant to complain against child marriages due to religious, socio-economic and educational reasons. The fear of courting religious displeasure and the feeling of unnecessary interference with the family matters of others are the significant reasons for not complaining against child marriage. It establishes that the outlook of the society towards child marriage has not yet changed even in this century.

A close scrutiny of the provisions of the Act reveals that it is silent about the validity aspect of child marriage. It only penalizes the solemnization of child marriage. It is disheartening to note the silent
approval of child marriage in other legislations like the Indian Penal Code and the Indian Majority Act, the Hindu Minority and Guardianship Act, the Dowry Prohibition Act and the Criminal Procedure Code. Legislative endorsement which confer validity to child marriage in other statutes, definitely tarnishes the very purpose and object of Child Marriage Restraint Act. It gives an assurance to the parents and guardians that the legal rights of the married minors are safeguarded.

The penal penalty as envisaged in the Act is rather disappointing. The maximum punishment for such a grave offence is simple imprisonment which may extend to three months and a fine of Rupees one thousand only. The punishment clearly indicates how lightly the government takes this offence.

Analysis of the sentencing policy under the Act indicates that the judges are lenient towards the offender due to the hidden and silent acceptance of the evil by the society. The judges are either not fully aware of the significance of the sentence prescribed under the Act, or are reluctant to impose punishments provided in the legislation. Social response and judicial creativity are totally absent in the decisions relating to child marriage. It is distressing to note that they ignore or even neglect the far reaching impact of this social evil on future generation.
The mechanism laid down in section 12 to prevent child marriage is proved to be an utter failure. Moreover, the procedure of issuing injunction to restrain child marriage is very complicated and time consuming. It is also to be noted that in the preparatory stage of marriage, injunction cannot be issued. Judicial and police officers also have admitted that they had no occasion to invoke section 12 till date. The fact that not even a single instance relating to section 12 could be traced in the courts of Kerala during the period of seventy three years, illustrates the lackadaisical attitude of the society.

The study leads to the inference that child marriage is a clear violation of the basic human rights of the child. It is totally against the 'best interests' of the child enshrined in the Convention on the Rights of the child, 1989. It curtails each and every right to survival and development of the child.

Right to education, the basic fundamental right of the child is denied by child marriage. It further violates the participation rights of the child as the parents often exercise their parental authority in marriage without giving an opportunity to select the partner. Moreover, the reproductive rights of the child are completely violated in child marriage. Thus in every
sense child marriage violates the human rights of the child, particularly the
girl child, at a stage when she needs extreme care and protection.

The study reflects the extent of exploitation of the child in child marriage. Ameena’s case and Arabic marriages exemplify the extent of exploitation of the child by parents for their monitory gains. Marrying off minors to rich and old persons, and receiving huge sums of money is a practice still prevalent in India. Sometimes they are even forced into flesh trade by criminal gangs, under the pretext of marriages.

The study discloses the fact that in India no effective step is taken for compulsory registration of marriage. Though it was recommended by Joshi Committee in 1929 even today it remains only in writing. There is no basis in the argument that it is not practicable in a country with varied customs and innumerable religions. Judicial officers and academicians emphasize the need for compulsory registration of marriages in preventing this menace. The International law also demands every member state to take steps to introduce compulsory registration of marriage.

The empirical study reflects that though the majority of the people are aware of the existence of a legislation prescribing minimum age at marriage, they are not fully aware of the consequences of its violation.
The foregoing discussion makes it clear that the Child Marriage Restraint Act is totally ineffective. The first and the foremost step should be to remove the vagueness in the definition ‘child marriage’. At present there is no distinction in the definition between an infant marriage (below 10) and adolescent marriage (10-18). The definition should be in such a manner that in the case of infant marriages the parents or guardian must be held absolutely liable.

Offences under the Act should be defined properly with clarity so that the offender cannot escape. The principles of liability, should be made clear without any ambiguity. Preparation, negotiation, abetment and attempt should be made punishable. Provisions to punish the marriage brokers, associates and those who are attending the child marriage with the knowledge that it is a child marriage should be incorporated. Stringent punishment should be provided for performing infant marriages. Amendment to preventive machinery under section 12 should be incorporated to minimise the delay in issuing injunctions. The limitation period of one year should be done away with. A time bound procedure for making the enquiry should be incorporated in order to circumvent inordinate delays. It should also be noted, that stringent punishment for
giving false information, can prevent the misuse of the provision by the people and the police.

Offences under the Act should be made cognizable so that police can arrest the accused without warrant. The Committee on Status of Women in 1974 and the National Commission for Women recently made a strong recommendation for making the offence cognizable but the Government turned a deaf ear. The data collected from the judicial officers, advocates and academicians also stress the urgency for such a measure.

The study reveals that the jurists and academicians are of the view that the punishment should be made deterrent so as to restrain people from committing the crime. It should be in tune with the changed social circumstances and in proportion to the gravity of the offence. The negligible number of cases and the meagre punishment awarded by the judges indicate that the penal policy under the Act is quite inadequate. For an offence under social legislation the contemporary trend is to provide a mandatory minimum punishment. The late Professor Sivaramayya who delved deep into this subject recommended the amendment of the Child Marriage Restraint Act so as to impose a mandatory minimum punishment. The data from the empirical study also emphasize this.
The exemption of women from punishment under section 6 should be abolished. A thorough revision of the sentencing policy is the need of the hour. It should be deterrent as well as reformative and educative. The enhancement of punishment will be a welcome measure, but it will be a failure without proper implementation schemes and machinery. Experience with the dowry cases shows that the enhancement of punishment had no effect in preventing the social evil of dowry because of the defective and inefficient implementation of the law. Marriage in violation of age rule is an offence also under the Hindu Marriage Act. It prescribes punishment for bride and bridegroom below the age of 18 years for the performance of marriage. However it is in conflict with the concept of juvenile justice where no punishment is awarded to the juvenile. Thus the sentencing policy in regard to bride or bridegroom below 18 years has to be reviewed in accordance with the principles of juvenile justice system.

As the Act indirectly confers validity to child marriage, it should be amended so as to incorporate provisions making the child marriage void ab initio. The judicial officers and academicians interviewed by the researcher have strongly recommended the same. The Committee on Status of Women, envisaged this goal in 1974 itself. But even after 30 years this
remains a future goal. It emphasizes the need for the creation of strong enforcement machinery as suggested by National Commission for Women.

Enforcement of the Act should proceed on bifurcated branches namely (a) administrative and legal (b) educative and preventive. The first branch should be controlled by the official agencies where as the second one is to be entrusted with voluntary agencies. Both the branches should be properly co-ordinated.

The official branch must consist of an enforcement machinery with child marriage prevention officers and social workers. Its mode of working should be incorporated in the Act itself. They should be given adequate infrastructure to prevent child marriage.

As recommended by the report of the Seminar on child marriage 1990, the Act should be amended to incorporate the formation of a special cell to deal with the problem of child marriage in the Ministry of Women and Child Development. It should be headed by a high officer of the rank of the senior most secretary designated as the ‘Director, Child Marriage Prevention’ and he should have police powers, strong research wing and other infrastructures. He should co-ordinate the functioning of the Child Marriage Prevention Officers in all states. All states should have a special cell under the control of Child Marriage Prevention Officers. Special focus
should be given to the states where child marriage is prevalent. Every state has to give accurate data relating to child marriage to the Director. There should be co-ordination between Child Marriage Prevention Officer, Child Development Project Officer of Integrated Child Development Services Scheme, voluntary agencies, social workers and lawyers to prevent child marriage under the guidance of the special cell in each State.

Training institutions like National Institute of Public Co-operation and Child Development, National Institute of Rural Development, National Academy of Administration and National Police Academy should give training to functionaries under the Act. Medical and paramedical staff should be sufficiently educated on the provisions of the Act so as to take prompt action in matters connected with child marriage. The administrative machinery intended to abolish child marriage should be given proper training to take quick action in matters related to child marriage. Law makers, judicial officers, advocates and police officers should be given appropriate training for handling these cases. There should be a provision for an independent body to check the functioning and for the enforcement of the Act every year, and a report should be given to the Director of Prevention of Child Marriage by each State and follow-up should be made.
An enhancement of the age of marriage to 25 and 21 years for men and women respectively will definitely check the growth of population. Demographers also recommended the same. The age of consent should be made at par with the age of marriage so as to remove the glaring contradiction in the provisions of Indian Penal Code relating to rape.

Compulsory registration of marriage will be an effective check in preventing child marriage. It will provide correct statistics relating to all aspects of marriage which will offer a reliable proof for marriage and help in the effective implementation of the Act. Amendments should be made in Child Marriage Restraint Act and personal laws in order to incorporate the compulsory registration of marriage irrespective of religious practices. The provisions for registration should be supported by a uniform Central Legislation. The process of registration may start right from the lower level – the village. The secretary of the Grama Panchayat may be given the responsibilities of registering marriages. It may be performed by President of the local body at the block level. At the district level the sub divisional magistrate may be entrusted with the duty of registering marriages along with other details. Registration should be done only on production of valid birth certificates of the parties to the marriage. As births and deaths can be
registered and a proper record can be kept, there will be no difficulty in registering the marriages also.

It has been recommended that the Child Marriage Restraint Act should be retitled as the Child Marriage Prohibition Act since the aim of the Act is to prohibit child marriage. Though it seems to be a good suggestion, it would be appropriate to retitle it as The Child Marriage Abolition Act, because our ultimate motto should be to abolish or eliminate child marriages for ever.

Careful and systematic planning is of much importance for the prevention and abolition of child marriage. The prime importance should be given to mould a future generation fully aware of the adverse impact of child marriage. Educational institutions can also play an important role in generating awareness. Every citizen should have knowledge about the harmful effects of the deep rooted custom and the key role of legislation in preventing it so that he can play an effective role in eradicating it. To achieve this aim the most helpful way is the introduction of the subject in our educational system.

By giving education, providing schemes for economic self reliance and changing the attitude of the society, the Government can make a change in the status of the girl child. Empowerment of the girl child can be
achieved by imparting education to them. Education acts as a catalyst in their resistance against superstition, ignorance and false beliefs, and plays a key role in social change. The constitutional obligation to give free and compulsory education should be strictly adhered to. National Education policy should be implemented. Dropouts, particularly of the girl students, should be identified and they should be given opportunities to continue their studies. Financial assistance or cash incentive if necessary, should also be provided to the girl children for their studies. Schools should be provided with sufficient infrastructure and facilities. In the absence of facilities for formal education, non-formal education centres can be set up for functional education suitable to the regional requirements. Skill oriented education should also be given. Education has to be taken to the doors of masses in rural areas, especially remote regions, to build up a society based on gender equality and social justice.

The most important task is to create consciousness, thus making every citizen aware of his own share of responsibility in the eradication of the evil. In order to impart awareness, steps should be taken to communicate the facts to common man. He must be made to realize that the issue of child marriage is not only a concern to him but also to the nation. If he can
realize this, no doubt, he can make his individual contribution to the abolition of this evil.

The adverse effects of child marriage, and statutory provisions and the importance of legally prescribed age at marriage, can be popularised through media like the television, radio and newspapers, especially in the areas where child marriage is more prevalent. Street plays and folk dances connected with the subject can also be performed in public places to attract people. Cinema is another effective means to generate awareness and to eliminate child marriage. In this context, the work of the Ministry of Human Resources, Department of Women and Child Development deserve a word of appreciation.

Training programmes and upgradation of skills for economic independence of the girl child have to be planned and implemented properly. Young girls are to be trained to develop their professional skills for getting employment of their aptitude. Vocation oriented education and training in professional skills will certainly help the young girls to become financially self reliant. Adequate infrastructure has to be created to implement the programme of education of girl children. The infrastructures of Integrated Child Development Service (ICDS) can be skillfully used for imparting non-formal education and skills. ICDS has special programme
for adolescent girls - to improve nutritional and health status of the adolescent girls, to provide them with required literacy, to train and equip them to develop skills, aptitudes and capabilities for earning income, through government sponsored and other programmes and to promote awareness of health, hygiene, nutrition, family welfare, home management and child care. If it is implemented properly, it will serve as a preventive measure for child marriages. The Anganwadi worker, the grass root functionary under the ICDS can do a lot in spreading awareness against the impact of child marriages. She can generate awareness in the community during her routine home visits. She may report the matter to the Supervisor or Child Development Project Officer at the block level, who in turn, can prevent child marriage by complying with the provisions of legislation. She can also generate awareness through “Women’s Integrated Learning for Life” (WILL), a scheme for offering non-formal educational course to Anganwadi workers. The Mahila Samridhi Yojana (MSJ) and the Indira Mahila Yojana (IMY) are the other projects which aim at promoting self reliance and economic independence among rural women through ICDS. These projects can effectively be used for the prevention of the practice of child marriage through education and eradication of poverty.
'Kudumbasree' project of the Government of Kerala can also be used for this purpose. Study classes should be given to members so as to enable them to spread awareness against child marriage. At the same time, attempts should be made to persuade the caste groups, panchayath and local organizations to realize the evil effects of child marriage. Community workers at grass root level should make earnest efforts to identify the groups, areas and classes among whom child marriage is widely spread.

Global Girls Education Programme of UNICEF operating over sixty three countries is one which aims at improving the status of women. Meena Communication Initiative in South Asia and Sara Adolescent Girls Communication Initiative in South Africa are some of the organizations engaged in creating awareness programmes connected with the improvement of status of the girl child. Many countries with the help of UNICEF have implemented schemes and policies to raise the age at marriage.

Voluntary organizations, social action groups and Government authorities can organize discussions and debates in all public forums on all aspects of child marriage and the possible preventive measures which can be adopted within the limits of law and even outside. These groups can bring change in the value concepts and attitude of the society.
It is imperative to break the prevailing myth that women and girl children are always dependent upon some one. Schemes, policies and programmes envisaged by government to improve the status of girl children should be implemented properly. "The Decade of Girl Child" (1990-2000) contained many programmes - to increase awareness about the value of the girl child and create a positive environment to allow girls to develop into productive and confident young women. The government should formulate the steps to implement the proposals and follow-up action should be taken to find out how far the objectives have been achieved. The National Plan of Action for the girl child for 1991-2000, which recognizes the right of the girl child to equal opportunity, to be free from hunger, illiteracy, ignorance and exploitation, has to be implemented at any cost. Special efforts are to be made to encourage the girls to take up vocational and technical education by extending special incentives and include them in various employment oriented and income generating schemes.

Legal literacy or para-legal training will be of great importance in creating awareness of the rights of the girl child. It can be imparted through awareness programmes, training cum orientation modules, literature dissemination, sensitization workshops and multi media campaigns involving films, plays, songs, posters and issue based
discussions. Para-legal training should be provided to various grass root functionaries like village health workers, Anganwadi workers, school teachers, police and forest staff, members of panchayat and non governmental organizations. It should be worked as a truly mass based programme like the successful “Total Literacy Campaign” which has made the State fully literate. Stringent laws, combined with determined will to enforce it, empowerment of girl child and change in the attitude of the society, can do wonders in eliminating this social evil.

Children are unaware of their rights. Moreover they are incapable of exercising their rights for want of resources. In these circumstances social action litigation can play an important role in upholding the rights of the child. In fact judicial activism and the social action litigation paved the way for creating an awareness of the rights of the child as contemplated by the Convention on the Rights of the Child, 1989.

The rights of the child who has already been married, before attaining the legally prescribed age, is an area which requires serious attention. The parents and guardians who are responsible for the marriage are under an obligation to keep them separate until they attain the prescribed age. Appropriate provision should be added to deal with defaults. Rehabilitation centres for the married minor girls have to be started with the objective of
providing education and awareness about the consequence of the social
crime of child marriage.

The States of Karnataka and Haryana have introduced an incentive
programme for low income group families. A small sum of Rs.2500 is set
apart towards the savings of a girl at her birth. At the age of 18 when the
girl is married she is eligible to collect Rs.25000. This scheme may work
as an effective check to child marriages. The other states can also adopt
steps to provide this type of incentives at the birth of the girl child. This
may help to change the concept that the girl is a liability or a burden. As a
counter-plan for reducing the individual marriage expenses, group
marriages of girls and boys from different families can be arranged to avoid
financial expenses. The government can arrange these marriages through
the social action groups.

Child marriage is a domain of many years of neglect which is suicidal
and inexcusable. The main reason for this neglect is paucity of perception
of the problem. Before Independence our social reformers had a social
perception which compelled the British Government to enact a legislation
prohibiting child marriage. After the enactment of the legislation the
perception was lost. Experience after Independence shows that the social
metamorphosis in India becomes a myth without fulfilling our dreams.
Materialistic changes do occur giving a new fillip to progress. New factories, railway lines, roads and the capacity to make nuclear bombs and a lot of other new projects may provide a new face of development to the nation. But this alone cannot make India well equipped for the 21st century. At the base of these physical changes there must be a conscience of the nation actively working for better human conditions. That national conscience becomes more and more weak and it shows a tendency to somnolence. It is unfortunate that nobody tries to awaken the sleeping conscience of the nation.

The intensity and gravity of the problem are unassessable and the people are not prepared to do anything against it. In Mahabharat, Duryodhanan says “I know what is right. But I am not inclined to do the right. I know what is wrong. But I cannot rid myself of doing the wrong things.” Modern man is confronted with a similar situation. Everybody knows what is the right and what is the wrong, but nobody is prepared to do the right thing. It is essential to mobilize the social and political will against the age old menace of child marriage and inform the people and the government about the perceptions and priorities. It is the duty of every Indian citizen to point out that the abolition of child marriage cannot be
ignored and it must be given priority, for, any further delay will be fatal to society.

It is a difficult and challenging task for the nation, to create an atmosphere where the girls enjoy equal privilege with boys. The most important duty of the nation is to provide such an environment where all children have equal rights irrespective of sex and to consider the best interest of the child. The neglect of this duty has far reaching consequences which is detrimental to the future of the nation. The girl child in the present century should not be considered as a liability, to be given away in marriage before puberty. She must enjoy her right to childhood, to education, to work and to live with dignity.

No doubt, child marriage has to be abolished as it adversely affects not only the present generation but also the generations to come. As far as the Child Marriage Restraint Act, 1929 is concerned, the study finds that, it has failed substantially and procedurally in fulfilling the ends envisaged by it. Such a statute, which is highly inadequate to meet the very purpose of eradication of the menace, has either to be modified or altered to be in line with the suggestions embodied earlier. Besides, collateral measures recommended in the discussions have to be whole heartedly implemented. Then, and then alone shall we have a child friendly society in India.