INTRODUCTION

Children are considered to be the most precious legacy of a nation. They are to be nurtured, loved and protected. They deserve care, understanding and above all the best that man can offer. They have an inborn right to justice, freedom and opportunity for development irrespective of their nationality, caste, creed and sex. Justice Subba Rao, the former Chief Justice of India emphasized this in the following words.

“Social justice must begin with children. Unless the tender plant is properly tended and nourished it has little chance of growing into strong and useful tree. So the first priority in the scale of social justice must be given to the welfare of the children”.

Children are ‘a supremely important national asset’. But this appears to be a myth rather than a reality. Since ancient times, children seem to have been exploited in many ways within the family and society. Child marriage, the age old menace, is one of the worst forms of such exploitation.

Child Marriage

Child Marriage is the marriage of children. Sometimes, the marriage of a boy with a girl is celebrated; sometimes an elder contracts a marriage

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with a minor girl. Both these are child marriages. Legally it is defined as ‘a marriage to which either of the contracting parties is a child.’ It is a socially established practice that has been carried on from generation to generation, of course with the blessings of the religion, in particular.

Child marriage is a universal phenomenon. According to the report of the UNICEF, it can be found in every nook and corner of the world. But it is most common in Sub-Saharan Africa and South Asia. Democratic Republic of Congo, Niger, Uganda, Male and Cameroon are the countries in Sub-Saharan area where this menace is quite prevalent. In South Asia, it is widely spread in Bangladesh, Afghanistan, Nepal, Pakistan and India.

In India, child marriage is widely practiced particularly in rural areas. Newspapers have recently reported solemnization of thousands of marriages in Rajasthan during the festival of Akha Teej without any interference from the authorities. It is indeed surprising to note that the marriage of nine

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2 Section 2(b) of the Child Marriage Restraint Act, 1929.
3 Akha Teej is the third day of the month Vaishakh in the Hindu Calendar and is considered to be the most auspicious occasion for holding marriages. In such marriages there is no need to find out muhurut as the whole day is auspicious for marriage. See http://www.mantraonnet.com/akshav-tritvya.html, 11-03-2003.
minor daughters of one Manu Singh was celebrated simultaneously in Gujarat.\(^5\) The most distressing fact is that even educated people deliberately break the law with full awareness of its consequences.\(^6\) Reports from Bihar, Uttar Pradesh, Madhya Pradesh, Andhra Pradesh, Assam, Tamil Nadu and Maharashtra point out the gravity of the problem of child marriage in India.

The State of Kerala having a higher age at marriage is also not free from this menace.\(^7\) In spite of Kerala's high level of education and progressive social environment, an alarmingly large number of teenage girls are married off every year. The Arabic marriages of the northern districts of Kerala,\(^8\) especially Malappuram, is a striking example which illustrates the economic exploitation of daughters by parents.

Generally this social evil is common among the lower strata of the society. The causes of child marriage are manifold. Traditional, religious and social acceptance of child marriage is a predominant reason for its prevalence. Moreover, many societies believe that women are weak and

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7 Marriages even before the adolescence became a common phenomenon in Kerala. See “Marriage at 13, Mother at 14”, *Mathrubhumi* 3 March 2003, p.1.

needs protection and this may be a factor which forces the parents to perform the marriage of their daughters at a young age. Poverty or economic struggle is yet another major factor. The social prestige attached to child marriage serve as an additional impetus for its growth. Lack of education and low status of women also play a significant role in the persistence of child marriage.

It appears that in India, religious, social and economic factors are more responsible for the growth of this baneful custom. In the past it had its origin in the foremost need, to protect unmarried girls from the foreign invaders and hence early marriage was preferred. Later on this became a social custom. The people in the villages of Rajasthan and Bihar often justified this evil saying that they are bound to follow the traditional custom.

The Hindu community gave undue importance to virginity and chastity of woman. Their urge to protect the purity of women resulted in early marriages.

Dowry is another contributing factor for the growth of the evil custom in India. Fear of payment of dowry in the case of a girl married after puberty further compounded the problem. The amount of dowry normally goes up for the grown up girl child. Hence parents prefer early marriage for girls.
Girl children are the worst affected by child marriage. Generally ‘a
girl child’ is subjected to more abuses than a male child. The girl child is
counted as ‘another’s property’, ‘a guest in parents’ house’ or ‘a thing
which has to be given away’. The patriarchal society views girl children as
a burden, a curse and a liability. She is an unwanted and unwelcome thing
for Indian parents. She is often abused and misused. It is distressing to
note that she is not safe even in her mother’s womb. Sometimes she may
be killed in the womb of the mother after the amniocentesis test. A study of
8000 cases on abortion in a hospital in Bombay showed that 7999 were of
female foetus. Even if the female foetus survives and is born alive she has
to face many obstacles for her survival. She is still under the threat of
murder at the infant stage. Female infanticide was banned in 1870, but even
today this practice is prevalent all over the country. Salem District of Tamil
Nadu gives us a shocking picture of the wide practice of female infanticide.
This is probably on account of a superstition existing among a set of people
in Salem District that the sacrifice of a female child would result in the birth
of a male child. If at all the attempts to kill her fail, she is yet to be the victim
of exploitation to the maximum extent by her parents and the family. She is
put to hard labour even at a young age. She is destined to assist in the daily

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Justice Response in India”, 1999 Cri.L.J. 4 (Jour).
chores of life. It is noted that a girl child shares 30 percent of the burden of household activities and 20 percent of the agricultural work. According to the statistics of the United Nations she works more than 9 hours a day. Nobody in the house realizes the quantity of work done by the tiny tots. And the girl children are still treated as a curse or a burden. They constitute the mute segment of the society, often referred to as economic liability.

As she grows, she has to face sexual abuse or exploitation. Instances of sexual exploitation even from father, other members of the family and close relatives are widely reported. On account of the low status given to women, the young girls are subjected to rape, incest and molestation. The reported cases on rape victims reveal that twenty five percent of them are young girls under 16 years of age. Statistics and sociological studies show that child prostitution also is on the increase. According to the International Labour Organization (1994) the number of child prostitutes in India is 4 lakhs. Some of them are lured by jobs, marriage, food and shelter and are taken to the cities to end up ultimately either in prostitution or as cheap bonded labour. Sometimes they commit suicide after harassing experiences of the exploitation. ‘Cook at 6, Wife at 8, Mother at 13 – Widow with four or five children at mid twenties and sometimes a Sati thereafter.’ This is the

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10 For details see Dr. Durga Pada Das, “Some Highlights on Prevention of Trafficking in Children and Protection of Child-Right in India”, 2002 Cri.L.J. 348-351 (Jour).
fate of an ordinary girl in the rural parts of India. This practice violates each and every human right such as right to life, survival, development and reproduction.

Societies the world over instinctively, give the impression that marriage is the most secure union for the girls. In a society like that in India, wherein the girls feel insecure every minute after birth, this instinct is more. It is therefore not surprising that the parents are anxious to give their girls to a family where they feel she would be secure. However today this remains a pious hope only. The crime statistics reveal that dowry death, offences connected with marriage and domestic violence are on the increase.

The wide ranging impact of child marriage compels a detailed probe into the matter. Child marriage may result in the denial of childhood and education which in turn affect the overall development of the children. The girls suffer more the negative consequences of child marriage. Health implications are greater. The detrimental effect of child marriage on the health of the child wife and progeny is a significant issue which has profound effect on the future of human race. Infant mortality, maternal mortality and prolonged gynaec problems may be the consequences of child marriage.

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11 Geetha was just nine years when she was married to Rajkumar, who was a man of 29 year. She was forced to have sex with him as a result of which she became pregnant and he asked her to get it aborted. After sending her back, he went through a second marriage. Ayswarya Venugopal, “Married at 9, Thrown out at 13, Abused in between”, The New Indian Express 22 August 2000, p.10.
The teenage girls are easily susceptible to sexually transmitted diseases like AIDS\textsuperscript{12} (Acquired Immuno Deficiency Syndrome) and this is another problem confronting the nation. The impact of health problem on the two generations may be a threat to the concept of safe motherhood which may in turn affect the future generation.

Child marriage may cause adverse impact on family and society. It may result in domestic violence, marital breakdown, extra marital relations, abandonment of spouses, divorce, infanticide and foeticide. Closely associated with it is the problem of child widowhood.

Every legal system requires that the party should have sufficient age to be capable of physical union as well as to understand the nature and responsibilities attached to marriage. Consent also is an essential requirement for the validity of marriage. The UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration, 1962 also demands state parties to take steps to fix the minimum age for marriage in each country. It also emphasizes the necessity for free and voluntary consent for marriage. In pursuance of this convention, many states make new legislations or modify the existing legislation dealing with marriage.

\textsuperscript{12} It is the medical diagnosis for a combination of diseases which result when the body's defence system starts failing. It is caused by a virus called HIV. See Christopher Haslett (et-al), Davidson's Principles and Practices of Medicine (1999), pp.87, 88.
The success of marital life depends upon the competency of the spouses in handling the highly sensitive issues associated with it. Mutual understanding is a *sine qua non* for happy married life. For this, both the parties should be mature enough to understand and adjust with each other. Usually in child marriages, both parties are not capable of understanding the significance of marriage and sometimes their marital life becomes full of strain and stress. It may affect their life and also the future generation.

A married woman is expected to transform into the multiple role of a good wife, a perfect daughter-in-law, a diligent house-keeper and a responsible mother. This transition can cause psychological and emotional stress even in an adult woman. Sometimes she fails to cope with the changed situations and it may develop into fears and complexes lasting over her whole life, which may ultimately lead to strained marital relations. If such is the case of an adult in marriage, how can a girl child lacking maturity and skill to handle personal, family, economic and social affairs fulfil the duties imposed on her as a wife?

The requirement of consent is totally neglected in child marriage. The parents deliberately violate the basic rights of children without giving them the right to choose their partners. How can an infant of two or three months old give consent? Even the consent of a ten year old child cannot be
treated as a valid consent. Thus child marriage definitely violates the rights of children.

Both International and national law focused their attention on the rights of the child only in the first part of the 19th century. Prior to this, children were treated as the property of the family without having any right. With the Declaration of the Rights of the Child 1924 by League of Nations, the global community recognized the status of the child as a person. Again the Declaration of the Rights of the Child, 1959 provided special protection to children. It paved the way to the concept of ‘best interest of the child.’ This core concept was expanded in the Convention on the Rights of the Child, 1989. This Convention also recognizes provision rights, protection rights and participation rights of the child. They together constitute the key rights of the child. The Constitution of India also contains an obligation to protect the rights of the child. The welfare of the child or ‘best interest of the child’ is the major concern embodied in the provisions of the Constitution. How far these rights of the children are protected is a pertinent question in the context of child marriage.

History seems to disclose that adult marriage was the rule in India from the beginning of the Vedic period. However, gradually child marriage
came into practice and became the rule during the Shrauta and later periods. It flourished during the Medieval period and continued to exist in the British period. 18th century witnessed many cruel social evils in India. Child marriage appeared to be an evil 'much more grave' than other social evils. The efforts of the social reformers culminated in the enactment of Child Marriage Restraint Act, 1929. In spite of its laudable objectives, its provisions came to be observed in breaches rather than its compliance. It is a pity to note that even after seventy three years of the working of the Act, child marriage continued to exist 'a living reality' in India. The mode of implementation of the Act during these years creates a doubt about the real intention of the legislature or the Government at the time of enactment. The debates in the Legislative Assembly proved that they were not fully aware of the multidimensional issues involved in this problem. The original bill introduced by Harbilas Sarda in the Legislative Assembly was to invalidate child marriages. However the Act emerged out only after three years; and that too, in a different form. It only penalizes the solemnization of child marriage. It appears that the legislature enacted the law without understanding the far reaching consequences of this social evil. Despite strong protest of the orthodox people from both Hindu and Muslim community, the Act was passed. The Bill introduced in 1927 came into force only in 1930.
The solemnization of child marriage is an offence under the Act. Yet the marriage remains valid. It is true that the performance of child marriage is unlawful and thus punishable. However it does not affect the validity of the marriage. It is an anomaly or a strange phenomenon that the marriage is illegal and punishable but still valid. Doesn’t it create a legal controversy? Is it just and reasonable? Should it be invalidated? If so what is the legal status of children born of that marriage?

What all obstacles are there in the enforcement of the Act is an important question to be discussed in detail. Though the Act passed in October 1929 the enforcement was extended by the Government for six months – April 1st. This lapse of six months was utilized by religious people and they performed the marriage of the unborn child even in the womb. This was the fate of the Act in the beginning stage. It appears that the situation remains the same even today. This is evidenced when the Minister of Women and Child Welfare in Maharashtra recently attended and blessed the marriage of a 13 year old girl, without any prickle of conscience.13 The Minister, with whom the protection and the welfare of children are entrusted, blessed a child marriage. The response of the governmental authorities in the post independence period is also disappointing. They

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shut their eyes towards this ‘grave and corroding evil’. The continued breach of law resulting in child marriage on a large scale generated a wide variety of problems in different spheres of society.

The definition of child marriage itself is vague. Is there any loophole in the definition of child marriage and the offences under the Act? Offences under the Act are cognizable for the purpose of investigation, but the police officers cannot arrest any one without a warrant. Does the limited non-cognizable nature and limitation period affect the proper implementation of the Act? How can we find out the ways for proper enforcement of the Act? Whether the liability should be made absolute and the offence should be made cognizable, non-bailable and non-compoundable are the key areas which need immediate attention.

It is found that people usually protect a violation rather than report it to the police. What is the actual reason behind it? Is it due to the influence of religious and cultural values or the fact that no one wants to take the risk of earning the enmity by intervening in other people’s internal affairs? Who will complain or put the criminal law into motion is a significant issue. The jurisdiction under the Act is conferred on the Metropolitan Magistrate or the Judicial Magistrate of the first class. Does it create any procedural difficulty in implementing the Act? Is it desirable to shift the jurisdiction over to a higher Court?
Usually in criminal law punishment must be a deterrent with an object to prevent commission of the offence by like minded people. In this context whether the punishment under the Act is sufficiently a deterrent so as to prevent further commission of the offence needs to be analysed. The punishment for this grave crime seems to be mild and lenient. What are the changes to be made in the Act to give it sharp teeth? Besides, whether the sentencing policy is capable of preventing this age old menace is another area to be discussed.

The Act penalizes an adult male for marrying a minor girl. The legislation is silent about a female marrying a minor boy. Will it annihilate the core principle of equality provided in the Constitution of India? It is also interesting to see that women are exempted from imprisonment as a punishment for promoting solemnization of marriage or negligent failure to prevent child marriage. Is it not against the principle of equality enshrined in the Constitution of India? How far the preventive measures under section 12 is effective? What are the measures to be taken to prevent this evil at an earlier stage? Is it necessary to penalize accomplices even at the preparatory stage of marriage? Is it worthwhile to appoint Child Marriage Prevention Officers as in Gujarat? These are some of the pertinent questions for which answers are to be found.
In India there is no provision for compulsory registration of marriages. In the absence of registration, data relating to age at marriage is not available. An accurate marriage register may act as a measure to prevent child marriages. Besides, it gives a proper data about marriages performed in the State. International covenants also demand compulsory registration of marriages. Is it essential to register marriages? If so, what are the procedures?

The Indian Penal Code does not penalize marital rape if the wife is above 15. It implies that the marriage of a girl above 15 is tolerated by law. If a Hindu or a Muslim girl is married below the age of 15 she can exercise the option of puberty by repudiating the marriage before she attains 18 years of age. If she does not exercise this right, marriage becomes automatically legal. Here also the marriage under the minimum age even below 15 years is tolerated or compromised by law. In these circumstances it is found that the law acquiesces in the marriage below 18 years of age. The provision in the Hindu law making the husband the guardian of a minor wife is another situation where law compromises with minor marriage. Why is it so?

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14 See the Hindu Minority and Guardianship Act 1956, section 6(c). It says that the natural guardian of Hindu minor married girl is her husband.
Though the act is applicable to all citizens in India irrespective of caste, the Muslim Personal Law Board objects the applicability of the Act to them saying that they are to be governed by the *Shariat Law*. The attitude of the Muslim Personal Law Board is highly criticized even by some Muslims.

Various studies have analysed child marriage only in terms of demographic trends, fertility and educational attainment. A study from the human right perspective is practically absent; a study in terms of the impact on wives, husbands, families or the wider society is neglected. Special studies are needed to examine the effectiveness of legislation in controlling child marriage. The need of the hour is to examine child marriage as a human right violation of the child. Whether child marriage is in consonance with the rights of the child as provided in the Convention on the Rights of the Child, 1989 is a relevant question. Is it necessary to amend the Child Marriage Restraint Act in tune with the provisions of the Convention on the Rights of the Child?

How does child marriage affect the "best interest of the child" enshrined in the Convention on the Rights of the Child? Whether child marriage violates the rights to provision, participation and protection provided in the Convention on the Rights of the Child, 1989 is another significant
area to be discussed in detail. Is child marriage a naked violation of Article 24(4) of the Convention on the Rights of the Child which requires the States to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children. The prevalence of child marriage still in this century compels us to probe the matter in depth.

   Certain classes of people still cling to the age old tradition. They are least bothered about the law. Prevention of child marriage demands re-orientation of the traditional view of the parents. The indifferent attitude of the parent is the real hurdle in tackling this evil. Has the International Decade of the girl child (1990-2000) made any change to overcome this unfortunate situation?

   International bodies like the UNICEF and many voluntary organizations have been doing yeomen service to the cause of children, especially in improving the status of women and children. Many countries with the help of the UNICEF have formulated programmes to prevent child marriages and other practices which lower the status of women and children. The UNICEF in this connection rightly observed, “it is high time to end the silent despair of millions of children, especially girls, who are being shuttered away in lives often full of misery and pain”. Hence it calls for a global campaign to prevent this wide spread evil.
The fact that despite the legal control, the age old menace of child marriage still persists in India and the multi dimensional impact of child marriage compels us to delve deep into the subject. It is true that much research is not conducted on this key subject. The demographic implications and devastating effect on safe motherhood have far reaching consequences on the progress and even the existence of the nation. However the recent trend in analysing the issue of child marriage as a violation of human rights of the child is certainly a welcome approach further providing new horizons of research in the subject matter under discussion.