CONCLUSION AND SUGGESTIONS

“There can be no keener revelation of a society's soul than the way in which it treats its children.”

Nelson Mandela

An equal society can be envisioned only when children in India will be treated equally. There has to be a movement from a superficial sense of equality to that which is real and uncompromising. Every single child marriage poses a threat to this real equality and must therefore be prevented.

The girls vulnerable today (2018) i.e. those who are below the age of 18 years are all born in the 21st century i.e. born in the year 2000 or after. They deserve an India free of this social evil.

The trajectory of this study began with introducing the issue of child marriage for the purpose of correctly positioning the study within the legal as well as the rights framework. It moved into a discussion of the international legal framework and standards for the protection of women and children on the specific issue of child marriage. India has ratified some of the major human rights treaties including the CRC and CEDAW. India, being a part of one of the eight SAARC nations, also has regional commitments on ending child marriage. At the HLPF 2017, India did its Voluntary National Reporting on the progress of the SDGs. The third cycle of the UPR was also conducted in 2017 and India received recommendations on child marriage from 10 countries. It was found from analysing all of the above that India needs to take stronger steps towards fulfilling its international obligations. Steps at National level need to be
strengthened significantly in order to honour the international commitments so far made.

A discussion into statistics brought out the reality of the persistence of the practise. With analysis of Census 2011 and NFHS-4 data, it is definitely true that the occurrence of this practise has significantly refused. Nevertheless, the reduced figures continue to remain sharp enough to warrant stricter legal and community based actions. The Central and State governments have a number of policies, plans and schemes in place to address this issue. However, some of them do not reach the beneficiaries at all on account of absence of awareness. It has also been heavily criticised that some schemes remain only on paper and are never put into the implementation channels. India still lacks a comprehensive national policy on the specific theme of ending child marriage. The ones that exist are still at Draft stage. The National Plan of Action for Children 2016 was adopted on 24th January, 2017. It commits to appoint a National Co-ordination and Action Group (NCAG) composed of Senior Central Government officials from all sectors concerned with children. The Committee has been entrusted with the role of guiding the Central and State Governments, coordination, monitoring and implementation. In the last nearly one year of this Plan being adopted, this NCAG has not been set-up which plays a central role in the implementation of this National Plan of Action for Children.

An empirical study was conducted in 4 States of Telangana, Uttar Pradesh, Bihar and Rajasthan to understand from the lives of many girls, the causes and impacts of child marriage. What could be found from the various personal encounters with victims was that regressive societal norms pushed them into these marriages. Poverty was certainly one of the issues but insecurity of parents, vulnerability, control over sexuality of girls and lack of education were some of the key factors that contributed in the girls getting
married. On the impacts that these marriages had on them, most young women shared that they developed some or the other form of health issue on account of early and repeated pregnancies. Many cases of infant mortality were also shared. Experiences of violence and forced sexual intercourse were shared with tears. The impacts, both physical and mental, that were noticed on the lives of these girls were immense. Some of the district officials were also interviewed and they shared what they saw on the ground. Some of the key findings from the empirical study are hereinafter shared.

The development of law around child marriage is critical for its elimination. The current legislation i.e. The Prohibition of Child Marriage Act, 2006 is definitely an improvement over the former and first legislation i.e. Child Marriage Restraint Act, 1929. However, the Act has various loopholes that need rectification. One of the biggest ones is making child marriages voidable and not void *ab initio*. The recent Karnataka Amendment to the PCMA has been commended for it makes these marriages void *ab initio*. The same model should be implemented within the parent legislation.

Child marriage was also analysed in its relation to other laws to highlight the gaps which include married girls are not covered explicitly in Juvenile Justice (Care and Protection of Children) Act, 2015 as children in need of care and protection (CNCP) and they are not included within the definition of aggrieved persons for the purpose of domestic violence under the PWDVA, 2005.

With legislative action, an analysis of the judicial trend on child marriage also revealed a great deal of positive movement. Greater emphasis was placed on the most recent judgement (2017) of Supreme Court of India on the issue of recognising rape within child marriages with respect to age of sexual consent. In this judgement Supreme Court has read down Exception

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387 *Independent Thought v. Union of India*
2 of Section 375 of the IPC by increasing the age under the same from 15 to 18 years. The SC has cured the artificial distinction the law created in recognising rape for girls below the age of 18 years based upon their marital status. However, the prosecution can happen only once a complaint in this regard is made within one year. Our country’s socio-economic as well as political environments do not promote child brides to go and complain at all. This therefore means that a defined crime continues unabated every day on the child bride and there is absolutely nothing that the State can do about it until it is reported. The Supreme Court also for the first time pronounced the primacy of the PCMA over all the Personal laws and observed that personal laws should be brought in harmony with the PCMA. The SC also recommended that the Karnataka amendment be implemented into the main legislation.

7.1 Key Findings from Empirical Study

The successful conclusion of the empirical study brought to surface mixed realities. Some of the key findings include:

1. The level of seriousness attached to this rights violation is not substantial. The law enforcement agencies lack a sense of motivation to act upon this issue. This is clearly evident from the number of cases that are formally registered under the Act in a year. The clear mismatch of the number of marriages and the number of reported cases\textsuperscript{388} is a stark reality one is faced with.

2. The District Child Protection Officer and other officers’ in-charge of protecting the interests of children are not well verse with the provisions under the Prohibition of Child Marriage Act, 2006.\textsuperscript{389} They are only

\begin{footnotesize}
\textsuperscript{388} NCRB Data on child marriage
\textsuperscript{389} Sangareddy district, Telangana
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aware that minimum age of marriage is 18 years. They are however not aware of the punishments under the Act. Also they are not usually well verse with the right of annulment under the Act that the minor owns upon getting married as a child. What the district administration in cases of stopping child marriages would do is that they would take letters containing an undertaking from the father of the girl that he would not marry his daughter and from the girl too that she won’t marry before attaining the age of 18 years. This is an alternative to send the girl to the rescue home. However, no legal action is taken against them in cases where they would take the girl away to some far off village or some other district and get her married. The legal probation officer of the district failed to know and reveal the number of cases pending in court for prosecution under the PCMA. The fact is that mostly these cases never reach the courtroom and are settled out of court. This is because formal FIRs are never lodged against these cases and therefore the national statistics on reported cases remain so low.

3. About 90% of women were not aware their right of getting their child marriage annulled by way of court intervention. Their knowledge was noticeably limited to the age at which marriage must take place as per law.

4. The health consequences of child marriage are serious for the girl child who has to face early motherhood. Many young women reported about facing lower levels of Haemoglobin, few cases of sooner Hysterectomy (surgery for removal of uterus), lower energy levels, lower immunity, constant aches and pains in the body etc.

5. It was noticeable that girls who got married young and especially those who were going to school before their marriage, had dreams of becoming nurses or doctors or police officers one day. They genuinely wished to
become someone notable one day. Their circumstances plunged them to a fate they never chose and never wanted.

6. Girls and young women who were facing violence within their marriages shared that they faced a sense of disempowerment. Even if they chose to step out of the marriage one day, they were aware that they would be faced with a reality of no acceptance even by their own parents. The community would also inevitably not accept them and humiliate them. They are not economically empowered and to find work with a simultaneous responsibility of taking care of their children is something impossible for them. Even if she manages to find work, the amount she would earn is far from taking care of her basic needs. They have been therefore conditioned to compromise and adjust.

7. There were many cases noticed where the women understood themselves divorced without court interference. Their marriage was never nullified by the court or panchayat, but because their husbands had refused to live with them, they thought that their marriage had come to an end. This is due to the absence of compulsory registration of marriages. A woman is devoid of all her rights to maintenance and a formal decree of divorce. Where the practise is of obtaining divorce from the Panchayat, it is again questionable, as to what extent the woman’s interest are kept in mind. She is forced to agree to what is decided for her. The validity of Panchayat granted divorce is an area that requires further study.

8. Reintegration of victims of divorce or widowhood or abandonment is a very critical area which law fails to address. They are one of the most vulnerable sections of women too. Those who are located especially in far flung areas find it almost impossible to live a respectful life. The girls who belonged to either of these categories were searching for opportunities but there weren’t any within their accessibility. What is imperative is to bring opportunities for their growth closer to them.
7.2 State-wise Observations and Findings

Although there were few findings that remained common in each of the 4 States from which data was collected, but some key observations and finding from each of them varied. Therefore, there is a need to look into the State wise findings too.

1. Uttar Pradesh:

- One of the key things noticed was that the basic infrastructure was not in place. The roads to some of the districts are still not properly constructed. The roads inside the village are also not well made which is why girls usually found it hard to go to school. The village people reported that there has been an improvement in the roads only in the preceding one or two months.
- The girls of the village were eve-teased when they went to school and therefore their parents dissuaded them from pursuing education. With the aid of NGO\textsuperscript{390} assistance, they were encouraged to go to school in groups and return in groups rather than going alone.
- The school faced an acute lack of teachers and therefore quality of education has been hugely compromised looking at the number of children coming to school. Because learning avenues are limited therefore girls and women find it hard to acquire vocational skills through which they can make a living.
- The place where the interviews were conducted is located at a considerably large distance from where the main district administration sits. There are a total of 16 blocks and 1808 villages within Gonda district

\textsuperscript{390} As reported by the officials of Pandit Govind Ballabh Pant Institute of Studies in Rural Development
alone. Looking at the expanse of the district it is very difficult to give concentrated attention even to one block within it. There are often cases of neglect and corruption that have been experienced by the village community

- Some of the child grooms also came forward and shared their stories. While predominantly the girls are the worst receivers of this practise, the boys had their own struggles to share. One of them shared about how he found it difficult to take care of a family at such a young age. He wanted to pursue higher education but his family forced him to get married when he was just 18 years old. He shared that his dreams have been shattered because he is now forced to work in the fields because he is meant to earn and provide for his family.

- The village people shared about how they knew that child marriages were happening but the local administration itself was a supporter of the same and did nothing to stop those marriages.

2. Telangana:

- A chance to speak to the district administration of Sangareddy district i.e. the Child Welfare Officer and the District Child Protection Officer revealed much about the status of child marriages. They revealed that in tribal areas the practise is far more prevalent and the district administration themselves find it a great challenge to transform mindsets. They have been doing programs regularly to talk about the ills of child marriage. They have also organised programs with inter-faith leaders to talk about the issue of child marriage and sensitise them on the same.

- Interviews in Sangareddy were conducted in a rescue home for children. This rescue home was a home to 50 girls. The rescue home was in an unsatisfactory condition. Government definitely must invest resources into rescue homes so that they are child friendly and are conducive to the
healthy development of children. Growing up girls, especially adolescents have special needs and the home was not hygienically sound to prevent diseases. There was also an infant care section for girls who were abandoned as infants. What could clearly be noticed was that a healthy and protective environment was not being given to those infants.

- In Warangal district, the two blocks in which the interviews were conducted, currently there were only 25-30 cases of recent child marriages. This figure was achieved on account of the active involvement of the NGO Tharuni that has been working consistently with the local administration. Under their project Empowerment of Girls through enhancement of skills of betterment of their Lives, they have undertaken the following activities:
  - Formation of Girl Child Clubs called 'Balika Sanghas' in the villages to create a forum for learning and sharing;
  - Training the Girls in Family Life Education - which includes training in Reproductive health, Hygiene, Nutrition, Life Skills, etc.;
  - Soft Skills Training for Girls - Communicative English, Basic Computer Knowledge, Career Mentoring, Employability Skills;
  - Vocational Training - Tailoring, Beautician, Mobile Repair, Cycle Repair, etc;
  - Scholarships for Schools/College Fees Payment, Purchase of books, Preparation of Competitive exams;
  - Village Development activities by Balika Sanghas - knowing their village - Survey of amenities, Follow up with concerned officials to improve the facilities, Clean & Green program;
  - Cycle to School - Gifting of Cycles to Girls for travelling to School/college;
Establishment of Resource Center with Library, Sport, material & Computers for Girls

- The village infrastructure was better in Telangana as compared to Uttar Pradesh. One of the positive steps taken by the Telangana government was the further bifurcation of districts in order to make them smaller in size so that the administration would be much better. The model proved to be successful and must be replicated in places where the district sizes are big.

- Interviews were conducted with a few girls who had become young widows at the age of 23 years. They shared about how they are not accepted by the community and lack the necessary support to either, make a career for themselves by pursuing higher education or re-marriage. One of the girls had never been to school ever and now with no husband by her side, 3 children to raise, no skill, no money and being permanently sent to her maternal place to stay, she sees a future that is extremely bleak. Working in the fields is her only option which helps her earn a meagre under Rs.100 daily wage.

3. Bihar:

- In Bihar the research was carried out in urban slums unlike in Telangana and Uttar Pradesh. It was noticeable that despite being in the urban set-up there was a considerable prevalence of child marriage among the urban slums.

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391 NGO, ‘Nidan’ (United Way Hyderabad) <http://www.unitedwayhyderabad.org/home/ten_k_ngo_details/50> accessed 27 November 2017; also see Mamatha, ‘Combating Child Marriage’ <https://docs.google.com/file/d/0B_CrasE8A9TyWFZNSkZGb3NTbEU/edit> accessed 27 November 2017
• Illiteracy, lack of proper education played one of the key roles in promoting the practise. Security concerns for the girl child were another factor.

• While media is a promoter of education and free choices, it creates a hesitative spot for the backward communities who are stubborn and not conditioned to accepting the fact that a girl can choose her own groom.

• Some young women from the Muslim community were also interviewed and their conditions were deplorable. One of them had delivered a child and the infant was born with very low weight at birth. Doctors suspected that the child may not survive for too long. The mother was also found in very serious health condition.

• The women in slums have largely benefited from the alcohol ban in the State. It has led to lesser instances of domestic violence being inflicted upon them. They have hopes that their husbands would start working one day and earn a living besides them who have to earn, feed and take care of everything at the same time.

4. Rajasthan:

• The women mostly shared that they had never been to school and were brought up in an environment in their villages where education was never favoured. They had all migrated to the urban side after marriage.

• Most women shared that they had not seen their husbands before the wedding day. They were conditioned in this way by the family that only the father is required to meet the boy before the wedding.

• Preference of a boy child is still prevalent in this State and which victimises women to sooner and repeated pregnancies till they deliver a boy or their health is damaged to a point where they can no long bear children.
• The cultural practise of child marriage is ingrained deeply in this State which is why it is one of the leading States on this prevalence of this practise.

7.3 Recommendations and Suggestions

While India ranks the highest on child marriage based on the population, it is also one of the key global players and it is time that its actions set benchmarks for progress. Based on the findings that emerged from the study, the following recommendations are offered:

7.3.1 International and Regional Commitments

1 - The recent third optional protocol to the Convention on the Rights of the Child is yet to be ratified by India. It is called *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*. This optional protocol creates an individual communication mechanism of any rights violation in any of the member states to the Committee on the Rights of the Child directly. The Committee seeks the support and cooperation of the member states in ensuring that the reports of violation are dealt with effectively within the local jurisdictions. India must ratify this optional protocol to reaffirm its international commitment towards protection of children.

2 - The CEDAW Committee in its recent (2014) Concluding Observations, in response to the third and fourth combined periodic review report of India, observed that India has still maintained its Declarations with respect to Article 5(c) and 16(1) and (2) of the Convention. It has not withdrawn them despite a Constitutional framework which guarantees equality and non-discrimination. India has reached a stage where these declarations can be withdrawn and therefore India should withdraw them at the earliest occasion.
3 - The SDGs offer a great opportunity for India to increase its development efforts and show great progress through the Voluntary National Reporting mechanism. Annual involvement at the High Level Political Forum of the United Nations serves as a great platform to expedite efforts towards meeting international commitments under the SDGs.

4 - The Regional commitments and mechanisms established under SAARC must also be utilised in showing greater progress. A separate Convention on ending child marriage must be adopted at the SAARC level since South Asia is the hub of these marriages.

5 - Greater efforts must be made by India towards meeting the commitments under the SAIEVAC RAP (2015-18) and KCA. The National Strategy Document on Prevention of Child Marriage, 2013 and the National Plan of Action to Prevent Child Marriage in India are still at draft stage. They must get finalised and implemented.

6 - In the third cycle of UPR (2017) 10 countries have provided recommendations to India with respect to scaling efforts towards eliminating the practise. India must take these recommendations very seriously and work effectively in a way that by the fourth cycle India is able to achieve its national commitments on ending child marriage.

7.3.2 National Commitments

1 - The national laws and personal laws on the issue of child marriage must be harmonised in accordance with international human rights standards.

2 - Married girls under the age of must be brought explicitly under the definition of “aggrieved person” in the Protection of Women from Domestic Violence Act, 2005 and “child in need of care and protection” in the Juvenile Justice (Care and Protection of Children) Act, 2015.

3 - Steps must be taken to amend the national legislation i.e. PCMA, 2006 to make child marriages void ab initio as well as prescribe minimum
punishments under the Act on the lines of the recent Karnataka amendment to the PCMA;

4 - Capacity building programs must be organised for government officials at all levels who are responsible for the implementation of the law to educate them about the law against child marriage including various rights that a girl has under it.

5 - Proper training manuals with modules must be designed for the implementers for tackling the issue in remote places in the local language. Where tribal areas exist, training modules must be made available in languages used in the tribal areas.\textsuperscript{392}

6 - The Supreme Court in \textit{Seema v. Ashwini} has already mandated compulsory registration of marriages and asked all State governments to enact legislations or rules at State level for enforcing the same. Although a decade has passed since the judgement, the implementation of the same is not uniform across all States. This must be looked into by each State government to ensure every marriage is registered. A heavy penalty or a penalty of a nature that discourages non-registration must be imposed so that marriages are formally registered. One officer at Panchayat level can be assigned for registration of marriages.

7 - Improvement in infrastructure such as roads, sanitation etc. are a must to ensure that girls drop out less from schools. A safe environment is also a necessity so that there is motivation to study. There must be a regular check on Absenteeism in schools to keep a constant check on the drop-out rate.

8 - The Right of Children to Free and Compulsory Education Act, 2009 must be strictly enforced. The age of compulsory education must be increased to 18 years so that girls are encouraged to pursue education.

\textsuperscript{392} An issue highlighted by NGO Officials from Bihar and Jharkhand at the NHRC Regional Conference on child marriage at Bhubaneshwar, Odisha held on 4-5 January, 2018
9 - The list of CMPOs must be provided on the internet at all times and must be updated regularly. The girls are seldom of the CMPO close to them who would either save them from getting married or helping them in having their marriage annulled. For this reason, schools and anganwadi centres must be used to share information such as these.

10 - The CMPOs who are appointed under the Act are in charge of other duties as well and are often overburdened with so many responsibilities that preventing child marriages does not surface on their priority list.\(^ {393}\)

11 - The police and other implementation agencies must be sensitised on strengthening vigilance about child marriages happening within their jurisdiction and promote the formal registration of FIRs so that those guilty of promoting and holding a child marriage do not go scot free.

12 - The VLCPCs\(^ {394}\) must be formed uniformly in each and every village and they must be strengthened with the support of the BLCPCs\(^ {395}\).

13 - The District Collector should be asked to submit a Regular report on implementation of the PCMA to the State authorities.

14 - NHRC should direct the State Governments to prepare and submit an Annual Report on the status of child marriages within the State.

15 - The different schemes of the government to facilitate in ending child marriage and delaying the age of marriage must reach the beneficiaries on the ground. Towards the same efforts must be scaled at the Gram Panchayat level and dissemination of information should happen through the Anganwadi workers.

16 - The different schemes must not focus alone on enrolment but on retention of girls in schools. Efforts towards training teachers must be made so that learning outcomes are good.\(^ {396}\)

\(^{393}\) Centre for Budget and Policy Studies and UNICEF, ‘Reducing Child Marriage in India: A model to scale up results’ (2016) p 57

\(^{394}\) Village Level Child Protection Committee

\(^{395}\) Block Level Child Protection Committee
17 -There are also few States where more than one Conditional Cash Transfer Schemes are in place and the beneficiaries are allowed to enrol in only one of them. This causes confusion. Therefore, the eligibility criterions must be simplified.\textsuperscript{397}

18 -There must also be a strict implementation and monitoring mechanism put into place to ensure that the money under the CCT is used by the girl only and not used for any other purpose.\textsuperscript{398}

19 -There must also be strict vigilance of the bicycle distribution schemes so that only girls use the bicycles.\textsuperscript{399}

20 -The recent Three Year Action Agenda of the Niti Ayog (2017-2018 — 2019-2020) expresses a focus on the education for children coming from backward strata of society as well as the empowerment of women through leadership programmes, skill development and vocational training. It proper implementation at the ground level would help in providing meaningful opportunities for growth for women and children.

21 -The National Policy for Children, 2013 is due for an official review in 2018 and that gives an opportunity for increased focus on the issue of child marriage.

22 -In 2017, Rajasthan State adopted the ‘State Strategy and Action Plan for Prevention of Child Marriage’\textsuperscript{400} to create a Rajasthan that is child marriage free. A similar state strategy and action plan must be implemented in every other State.

\textsuperscript{396} As suggested by the NGO officials at the NHRC Regional Conference on Child Marriage held at Bhubaneshwar on 4-5th January, 2018
\textsuperscript{397} Centre for Budget and Policy Studies and UNICEF, ‘Reducing Child Marriage in India: A model to scale up results’ (2016)
\textsuperscript{398} ibid
\textsuperscript{399} ibid
23 - The National Strategy Document on Prevention of Child Marriage, 2013 and the National Plan of Action to Prevent Child Marriage in India are still at draft stage. They must get finalised and implemented.

24 - Specific allocation of funds at Central and State level must be allocated for prevention of child marriages.

25 - Specific allocation of funds for conducting research activities on child marriage must also be allocated by the Central and State Governments.

The problem of child marriage warrants attention and concerted action. Occurrence of every single child marriage raises a question on the ideals of freedom and equality that are enshrined in the Constitution of India. It is important therefore to take all necessary steps and modify existing set-ups to see what can be practically implemented on the ground so that an India free of child marriages can be created.