“I am one of those unfortunate Hindu women whose hard lot is to suffer the unnamable miseries entailed by the custom of early marriage. This wicked practice of child marriage has destroyed the happiness of my life. It comes between me and the things 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 down upon with suspicion and is interpreted in the most uncharitable manner.”

This expression of Rukhmabai in 1885 is one that echoes in the hearts of many young girls even today. Child marriage at its very heart is a series of human rights violation in continuum. The practise claims the lives of many young girls each year.

1.1 A Statistical Glance

UNICEF recently reported that globally there are more than 720 million women alive today who were married before they turned 18 years old. Of these 720 million, about 250 million girls were married before they turned 15 years old. They also reported that about 15 million girls are married every year before their 18th birthday. Among the women aged 15 to 24 years,
about 48 percent of them were married before the age of 18 years. There is however, a huge difference across regions of the world. In the countries forming part of the developing world, one in four girls are married before they turn 18 years and one in nine girls are married before they turn 15 years old. According to UNFPA,

“If nothing is done to change this trend, an estimated 70 million girls will be married as children over the next five years. This is tens of thousands of girls every single day.”

In South Asia alone, around 46% of young women were married before the age of 18.

In a 2013 press release of the UNICEF it was stated

“The 10 countries with the highest rates of child marriage are: Niger, 75 per cent; Chad and Central African Republic, 68 per cent; Bangladesh, 66 per cent; Guinea, 63 per cent; Mozambique, 56 per cent; Mali, 55 per cent; Burkina Faso and South Sudan, 52 per cent; and Malawi, 50 per cent.

In terms of absolute numbers, because of the size of its population, India has the most child marriages.”

The latest National Family Health Survey (NFHS-4) data of 2015-16 reveals a sharp drop in the figures of child marriage. The drop is from 47.4% as per

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3ibid
5ibid
the NFHS-3 to 26.8% in NFHS-4. As per the 2011 Census (the last census conducted), 33.8 million child marriages were reported for girls aged less than 18 and boys below 21 years.

A recent report by ActionAid\textsuperscript{10} reveals some startling figures which are worth noting. Based on their analysis of the Census 2011 data, the numbers of child marriages that are taking place are:

\begin{table}[h]
\centering
\begin{tabular}{|c|c|c|c|c|}
\hline
\textbf{YEARLY} & \textbf{MONTHLY} & \textbf{PER DAY} & \textbf{HOURLY} & \textbf{PER MINUTE} \\
\hline
12,97,005 & 108,084 & 3,603 & 150 & 2.5 \\
\hline
\end{tabular}
\caption{Occurrence of Child Marriage}
\end{table}

Information Source: Eliminating Child Marriage in India- Progress and Prospects by ActionAid\textsuperscript{11}

These figures compel us to undertake a study of this kind to understand that even after nearly a century of laws being in place for prohibition of child marriage, why does the practise still thrive. With the support of plethora of data, facts and figures, we will try to understand this issue in depth from both a rights perspective as well as a legal perspective.

\begin{itemize}
\item \textsuperscript{7} Women aged between 20-24 years married before the age of 18 years
\item \textsuperscript{8} National Family Health Survey-4, ‘India Fact Sheet’<http://rchiips.org/NFHS/pdf/NFHS4/India.pdf> accessed 9 September 2017
\item \textsuperscript{11} ibid
\end{itemize}
1.2 Child Marriage: A Broad Overview

Child Marriage disables the future of many girls. It has an adverse impact on their health, safety and overall development. The lives of child brides are filled with unimaginable difficulties as they’re pushed to play roles for which neither their bodies nor their minds are developed. Let us first understand the definitions that would help us correctly place the issue in the human rights context.

1.2.1 Definition of Child

As per Article 1 of the United Nations Convention on the Rights of the Child, 'a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier'.

This definition allows flexibility for individual member states to determine the age at which an individual will be called a child within their own local laws.

India has varied definitions of child under its various statutes. Census for example considers child as a person below the age of 14 years.

The definition of child under the Child Labour (Prohibition and Regulation) Act, 1986 is a person who has not completed fourteen years of age. The Factories Act, 1948 and Plantation Labour Act 1951, on the other hand state that a child is one that has not completed fifteen years of age and an adolescent is one who has completed fifteen years of age but has not

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14 ibid
completed eighteen years of age.\textsuperscript{15} The Motor Transport Workers Act 1961, and The Beedi And Cigar Workers (Conditions Of Employment) Act 1966, both define a child as a person who has not completed fourteen years of age.\textsuperscript{16} The Merchant Shipping Act 1958 and Apprentices Act 1961 don't define a child, but in provisions of the act state that a child below fourteen is not permitted to work in occupations of the act.\textsuperscript{17} The Mines Act, 1952 is the sole labour Act that defines adult as a person who has completed eighteen years of age; hence a child is a person who has not completed eighteen years of age.\textsuperscript{18}

Under the Indian Majority Act, 1875 a person attains majority once he or she is of eighteen years of age. Article 21 (a) of the Indian Constitution states that, all children between the ages of six to fourteen should be provided with free and compulsory education.\textsuperscript{19} Article 45 states that the State should provide early childhood care and education to all children below the age of six.\textsuperscript{20} Lastly, Article 51(k) states that the parents/guardians of the children between the ages of six and fourteen should provide them with opportunities for education.\textsuperscript{21} Therefore, it is noticeable as to the extent to which the definition of child under various statutes varies.

For the purpose of this study, we are looking at the definition of child under the Prohibition of Child Marriage Act, 2006 which defines that a male
attains majority upon completion of 21 years of age and a female attains majority upon completion of 18 years of age.\textsuperscript{22}

\textbf{1.2.2 Child Marriage: A Social Evil}

As per the definition under the Prohibition of child marriage Act, a child marriage is a marriage to which either of the contracting parties is a child.\textsuperscript{23}

Child marriage in essence is a gross human rights violation. It has strong roots in patriarchy and gender inequality. These marriages adversely impact the development of girls who at a tender age are thrown into handling a complete household and early pregnancy while in reality, they should be in schools and receiving education like every other child. Although this type of marriage affects both girls and boys, however, it is widely recognised that the girl stands in a much more disadvantaged position.\textsuperscript{24}

The United Nations Convention on the Rights of the Child does not directly define child marriage but through the definition contained in it of a child, read with other Conventions such as the Universal Declaration of Human Rights, Convention on Elimination of All Forms of Discriminations against Women (CEDAW) and other recent Human Rights Council Resolutions, one can safely arrive at the conclusion that child marriage is a marriage where either the boy or the girl has not attained 18 years of age.\textsuperscript{25}

\begin{itemize}
\item \textsuperscript{22} The Prohibition of Child Marriage Act 2006, s 2(a)
\item \textsuperscript{23} ibid, s 2(b)
\item \textsuperscript{24} UNICEF, ‘Child Marriage’ <http://www.unicef.org/protection/57929_58008.html> accessed 07 April 2017
\end{itemize}
Child marriage is among the most frequently addressed issues by both the CRC\textsuperscript{26} and CEDAW\textsuperscript{27} Committees in their dialogue with State parties and in Concluding Observations. Both the CRC and CEDAW Committees have emphasized the complementary and mutually reinforcing features of the two Conventions. The call for equality for women and girls applies to all ages, including the girl child. While the CRC does not specifically prohibit child marriage, reading the CRC in light of the CEDAW provides an urgent rationale to abolish early marriage. Recently UNICEF and UNFPA also launched the ‘UNFPA-UNICEF Global Programme to Accelerate Action to End Child Marriage’ which is a multiple countries initiative to accelerate efforts to end child marriage.\textsuperscript{28}

1.2.3 Development of Law around Child Marriage in India

The law in India around child marriage developed in the 20\textsuperscript{th} century when for the first time the Child Marriage Restraint Act, 1929 was enacted after much push from reformers\textsuperscript{29} of the time who had sought the enactment of a specific legislation on child marriage. This law however was ineffective in letter and failed miserably in achieving its objective. The practise continued unabated for nearly 70-80 years post the enactment. This is because of the widespread sanction it received from the masses. Child marriage as an institution received its strength from the fact that women remained absent from the law making process. Their distinct and sensitive

\begin{itemize}
  \item Convention on the Rights of the Child.
  \item Convention on the Elimination of Discrimination against Women.
  \item These include Behramji Malabari, Rukhmabai, Pandita Ramabai and Anandi Gopal Joshi.
\end{itemize}
needs were never looked into as their participation itself in the law making process was not considered important. This feminist critique of law can be applied to the various levels of law making as well as in the legal analysis of child marriage.\textsuperscript{30}

The new and current legislation of the Prohibition of Child Marriage Act, 2006 brought in a sigh of relief. Changes that were sought for under the CMRA were brought in with this enactment. As per the CMRA, child marriages were neither void nor voidable. In the PCMA, they have been made voidable\textsuperscript{31} at the option of the party who was a child at the time of the marriage.\textsuperscript{32} This means that now girls or boys who were married as children could approach the court to have their marriage annulled\textsuperscript{33}. The Act also increased the punishment to rigorous imprisonment which may extend to two years or fine which may extend to one lakh rupees or both.

Despite the existence of a stronger law on child marriage, the practise has continued at an alarming rate. This is also because there are still loopholes within the law. The legal contradictions on age of marriage, under-reporting of cases, the voidable nature of child marriages and the low rates of annulments of child marriages in India are some of the major problems when we talk about the law and its implementation. It also leads us to question about whether child brides are aware of their rights under the law and

\textsuperscript{30} Denise Reaume, ‘What is distinctive about feminist analysis of law?: A Conceptual Analysis of Women’s Exclusion from Law’ (1996) 2 Legal Theory 265; also Jaya Sagade, \textit{Child Marriage in India: Socio-legal and Human Rights Dimension} (2\textsuperscript{nd} edn., Oxford University Press)

\textsuperscript{31} Voidable Marriage: Contract with legal force and effects when made that can later be annulled by court by a recession process

\textsuperscript{32} The Prohibition of Child Marriage Act, s 3

\textsuperscript{33} Annulment: When a marriage is terminated and treated legally as though it never occurred.
whether they would be provided the requisite safeguards in the event that they stand up to have their marriage annulled.

The Criminal Amendment Act, 2013 was a huge step with regards to strengthening laws with regards to Rape and increasing the age of consent from 16 years to 18 years. However, Exception 2 to Section 375, IPC continued to remain present in its earlier form. This Exception inadvertently legalised forced sexual intercourse within marriage and especially when a girl is between 15 years to 18 years it fell within the purview of child marriage. On one side child marriage itself is an offence but on the other hand violence against them received protection under the parasol of marriage.

### 1.2.4 Causes and Impacts of Child Marriage

Besides lapses in law which are discussed in the following chapters, there are other socio-economic factors that contribute heavily towards the prevalence of this practise. Briefly, these include poverty, lower levels of education, patriarchal norms, insecurity and a strong cultural hold. It is also said to be a toxic result of gender inequality. Parents of impoverished families believe that getting their daughter married early is a way to secure their future. The ease of giving a smaller amount of dowry is another reason why parents engage in such a practise more that willingly. In times of humanitarian crises, marriage of a girl child is again considered a way of securing her against sexual violence while it actually increases in such times.\(^{34}\) Sometimes these marriages even become a means for trafficking of

\(^{34}\) UNFPA (n 4)
children for sexual exploitation. Child marriage has been even argued by some as a form of human trafficking.\textsuperscript{35}

The impacts that a child marriage has on the victims are far worse than the causes that lead up to their occurrence.

\textit{Figure 1.1 Causes and Impacts of Child Marriage}

\begin{itemize}
\item \textbf{CAUSES}\smallskip
  \begin{itemize}
  \item Poverty
  \item Insecurity
  \item Lower levels of Education
  \item Patriarchal Norms, Cultural Practices etc.
  \end{itemize}
\item \textbf{CHILD MARRIAGE}\smallskip
\item \textbf{IMPACTS}\smallskip
  \begin{itemize}
  \item Right to safe and secure childhood lost
  \item Right to education lost
  \item Right to health lost
  \item Right to autonomy lost
  \item Domestic Violence and Abuse
  \item Opportunity to grow healthily lost
  \item Right to well being lost
  \end{itemize}
\end{itemize}

These impacts that are listed above are of an irreparable nature. This marriage causes a huge dent in the lives and aspirations of many girls and deprives them of their basic human rights.

In the words of Babatunde Osotimehin, M.D, Executive Director, UNFPA:

“Child marriage is an appalling violation of human rights and robs girls of their education, health and long-term prospects.” \(^{36}\)

According to Anthony Lake, Executive Director of UNICEF:

“Child marriage is not only wrong, it is dangerous. It exposes a young girl to profound health risks from early pregnancy and difficult childbirth and it exposes her baby to complications of premature birth.” \(^{37}\)

According to the UN, the leading causes for death of girls aged between 15-19 years in developing countries are pregnancy and childbirth.\(^{38}\) As per their statistics, of the 16 million adolescent girls who give birth to children every year, about 90 per cent of them are married.\(^{39}\) About 50,000 of them die all in low and middle income countries as per UNICEF.\(^{40}\) Stillbirths and newborn deaths are higher by 50% among mother under the age of 20 than the mothers who got pregnant while they were in their 20s. Therefore, the health impacts of child marriage can be fatal too.

\(^{36}\) UNICEF (n 6)  
\(^{37}\) ibid  
\(^{38}\) ibid  
\(^{39}\) ibid  
\(^{40}\) ibid
The causes and impacts of child marriage in India have been dealt with greater detail in the chapters to follow.

1.3 Aims and Objective of the Study

The census of 2011 brings to light that 41.3% of girls at the age of 19 years in 2011 were already married.\(^{41}\) In fact some were even divorced, separated or widowed.\(^{42}\) The National Family Heath Survey (NFHS-4) reveals a definite decrease in incidence of child marriage from 47.4% in 2005-06 (NFHS-3) to 26.8% in 2015-2016. The NCRB Data reveals gross under-reporting of cases:

<table>
<thead>
<tr>
<th>Total No. of Cases of Child Marriage Registered under the PCMA, 2006</th>
<th>Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>222</td>
<td>2013</td>
</tr>
<tr>
<td>280</td>
<td>2014</td>
</tr>
<tr>
<td>293</td>
<td>2015</td>
</tr>
</tbody>
</table>

*Information Source: NCRB*

The purpose of this study is to delve into the socio-legal aspects of child marriages and reasons behind its prevalence despite the existence of a legislation that is prohibitive in nature towards the specific issue of child


\(^{42}\) ibid
marriage. The study further aims to highlight gaps and propose meaningful recommendations that would aid in bringing an end to this practise.

1.4 Hypothesis

The problem of child marriage exists on account of the fact that the law against child marriage is not well developed. The implementation of the current law is very weak. The practise thrives on account of regressive socio-cultural norms deeply entrenched in patriarchy and severely impacts the lives of many girls who become a victim to the same.

1.5 Research Questions

1. Whether the Prohibition of Child Marriage Act, 2006 would have primacy over the Personal laws and what must be the grounds and considerations for the said primacy?

2. Why should the sexual intercourse between a man and his wife, the wife not being below 15 years of age, be brought under the definition of Rape if the age of consent is increased to 18 years as per the Criminal Law (Amendment) Act, 2013?

3. Which laws in India provides protection to child brides against domestic abuse and violence?

4. Why should a marriage below the legal age of majority i.e. 18 years for girls and 21 years for boys be voidable and not void?

5. What are the reasons for a strong prevalence of these child marriages despite the existence of strengthened laws?
1.6 Methodology

The study is a combination and result of doctrinal and empirical research. Investigation into the various arguments brought through by child rights activists, government bodies, legislative actions, recent court cases, law commission reports, UN Reports, reports by various child rights organisations and best practices has helped in shaping this study. A detailed study of the treaties concluded with respect of the issue of Child Marriage or which have a strong relationship with the same, for example Convention on Elimination of all forms of Discrimination against Women (CEDAW), Convention on Rights of the Child (CRC) etc. has facilitated in meticulously framing arguments with respect to India’s international legal obligations.

The study also includes testimonies of victims of child marriages. Their individual accounts have helped in giving concrete character to the various issues involved in these marriages. Child marriage is not an issue that deserves only textual inter-linkage. An investigation into the lives of girls who became a victim of the same was felt imperative to structure and position this study in a meaningful way. The empirical study was therefore undertaken with the support of NGOs who are working on the ground and helping transform lives. The data was collected from districts of 4 States. These States are Uttar Pradesh, Rajasthan, Bihar and Telangana (undivided Andhra Pradesh). These States were chosen on the basis of high incidence. Qualitative and quantitative data collected through a cross-sectional research helped in crystallizing the issues.
1.6.1 Sampling

The sample sizes picked up in each State of the 4 States were representative, though small in size. The reason why small sample sizes were taken was that data was needed to support the legal fall-outs. The individual stories that were collected helped in finding out the larger gaps in interventions on child marriage. The girls and women were able to describe with clarity their situation as well as the problems they’ve had to face on account of these marriages.

The sampling method that was employed was non-random and purposive. The selection was based on age of the respondent as well as the specific aspects of being a child bride. The sample also is a rural and urban combination. In Telangana and Uttar Pradesh, data collected was from the rural parts while in Uttar Pradesh and Bihar, data collected was from urban slums.

1.6.2 Tools and Techniques

Data was collected by way of semi-structured interviews. An interview schedule (available in Appendix) containing 51 questions was prepared. Some of these questions were close-ended while others were open-ended. It included questions relating to their personal details, health, education, family life, violence within the household and awareness of the Prohibition of Child Marriage Act, 2006. Statistical tools, charts and graphs have been employed in calculating and presenting the data.
1.7 Limitations

There were certain limitations that the study was met with:

— Due to lack of resources it was difficult to cover each of the entire States that were selected for the purpose of empirical study and hence collection of large amounts of data was not possible.

— There is inconsistency in the sample sizes for reasons that some of the places from where data was collected were far to reach and therefore optimum time could not be spent there for reasons of locality as well as safety.

— Some of the Respondents did not open up about their lives despite support from local village members.

— The environments within which the interviews were done were sometimes sensitive and therefore there is scope for incorrect responses.

— Most girls interviewed had been trained by their families that they must mention their age at which they got married to be 18 years. The locals were able to help share that the girls were in fact not 18 years old at the time of marriage.

— There were questions asked about violence faced by them in any form and some respondents did not share their actual stories for fear of action being taken or their husband’s coming to know of the same.
1.8 Overview of the Study

The study has been discussed in 7 chapters each of which briefly contain the following:

The first chapter i.e. ‘Introduction’ introduces the basic concept of child marriages while briefly touching upon the causes and impacts of the same. It also states the aim of the study, lists the research questions that the study endeavours to answer, the details of methodology employed in carrying out the study as well as the techniques used in arriving at the various findings.

The second chapter i.e. ‘International Legal Framework and Standards for the Protection of Women and Children around the issue of Child Marriage’ discusses the various treaties that relate to the issue of women and child with specific reference to child marriage. It also discusses India’s international obligations under the different treaties. The chapter also delves into the Sustainable Development Goals with specific mention of the SDG 5.3 and India’s recent Voluntary National Reporting at the High Level Political Forum (HLPF) 2017. The chapter also highlights the Universal Periodic Review that took place in 2017 and the recommendations India received with respect to child marriage.

The third chapter i.e. ‘Child Marriages in India: National Perspective’ begins with the history of child marriages in India followed by the statistics that stand today to show the prevalence of child marriages. The top 10 districts that are highest on rates of prevalence of this practise have been stated. To what extent the practise is prevalent in different communities has also been stated. The different Central and State schemes against child
marriage have also been discussed to understand the efforts being made by the governments towards minimising this issue.

The fourth chapter is titled ‘Investigating Impacts and Causes of Child Marriage from an Empirical Lens’. An empirical study was done to understand the plight that child brides face. This chapter shares an account of the States that were visited, the responses that were received, the causes and impacts of child marriage as well as the various limitations that the study was met with. Key findings from the empirical study have been stated in detail too to arrive at the various gaps for the purpose of meaningful recommendations.

The fifth chapter i.e. ‘The Prohibition of Child Marriage Act, 2006: A Critical Analysis’ discusses the journey to the enactment of the Prohibition of Child Marriage Act, 2006 followed by the critical analysis of the Act. There are known shortfalls within the current legislation on child marriage. These have been stated with great precision. The recent Karnataka amendment to the PCMA has also been examined within this chapter.

The sixth chapter is titled ‘Contradictions to Consistency: A Review of Laws, Judicial Precedents and Recent Developments to address the issue of Child Marriage’. Within the last century a lot has developed around the issue of child marriage. From the very first case on child marriage to the enactment of the first legislation followed by the enactment of the current legislation on to the 2017 Supreme Court Judgement, there has been a journey from contradictions to consistency. However, much work still remains. This chapter discusses this journey and brings out those aspects that still lie unaddressed. Additionally, this chapter discusses the issue of child marriage
with respect to other child friendly legislations and brings out the necessary

gaps that need to be filled so that all legislations are in harmony and
consistent on the issue of child marriage.

Finally the last chapter is titled ‘Conclusion and Recommendations’. Though
the final but the most critical to this study, this chapter lays out all the
findings from the research and states meaningful recommendations that
would help in contributing effectively towards ending the practise of child
marriage in India.

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