CHAPTER - 2

INTERNATIONAL LEGAL FRAMEWORK AND STANDARDS FOR THE PROTECTION OF WOMEN AND CHILDREN AROUND THE ISSUE OF CHILD MARRIAGE

In the patriarchal setup that most of the world exists in where there is an absence of equal negotiation of power, acceptance to violence and abuse perpetrated on women has for long been a recognized phenomenon. Efforts towards giving women access to equal rights as men has been a primary goal for many stakeholders whether at the national or at the international level. These efforts have been initiated over decades and are being with a passage of time redefined and remodelled to produce greater effectiveness and response from the society. It will be imperative to mention that these efforts have resulted into formation and enactment of stricter laws and policies to protect women in many nations. The backdrop of these newer improved laws is that of a throbbing need felt for greater protection of women within the international circuit.

Children likewise also fall within the vulnerable section of society. Their presence is a security for the nation’s future but their tender age and the power relations operating within society make them extremely susceptible to neglect as well as exploitation. Some of such practices that have percolated into society include child marriage, child trafficking, commercial sexual exploitation of children, child labour etc.
The United Nations as one of the nodal body of nations has worked on a broad scale to receive consensus from member States to protect women and children in their local jurisdictions. The efforts have resulted in some very key Conventions being produced at an International level and being implemented locally. These Conventions being binding on ratifying States has lead to greater sense of accountability for the purpose of implementation. Implementations by the State actors has to an extent helped in securing child protection by making child friendly laws and moreover the awareness of and access to these laws. Some of the very important Conventions which relate to women and children include the Convention on Elimination of all forms of Discrimination against Women and Convention on the Rights of the Child.

At an international level there are broadly two constituents that led to the greater emphasis on children and their vulnerability as one of the top agenda’s in the 1990s. The first constituent was the lobbying for children’s rights which culminated into the formation of the Convention on the Rights of the Child in 1989. The second constituent was a campaign around child survival concerning itself with health and survival. This campaign resulted in holding of the World Summit for Children in 1990. This Summit concerned itself with health and other issues relating to children. In September 1990, this Summit was organised with leaders from 71 states and 88 other senior officials in attendance, mostly at ministerial level, came together at the United Nations in New York. The outcome of this summit was the adoption of the Declaration on the Survival, Protection and Development of Children and a Plan of Action for implementing the Declaration in the 1990s. Point 2 of this Declaration notes that:
“2. The children of the world are innocent, vulnerable and dependent. They are also curious, active and full of hope. Their time should be one of joy and peace, of playing, learning and growing. Their future should be shaped in harmony and co-operation. Their lives should mature, as they broaden their perspectives and gain new experiences.”

The Declaration reaffirmed the point that it is extremely crucial that the future of children must not be compromised and that they must receive an equal, fair and just opportunity to grow and mature with time and receive maximum co-operation. This document further contains a number of targets for improving the standards of survival of children and opportunity for their positive growth and development. These included the reduction of maternal mortality, reduction of infant and under-five child mortality, the reduction of severe and moderate malnutrition among under-five children, universal access to safe drinking water, greater food supply and sanitary means of sewage disposal, universal access to basic education, the completion of primary education, the reduction of the adult illiteracy rate and the improved protection of disabled children as well as children in difficult circumstances. The Declaration also sought the partnership of children in addressing issues pertaining to them. The document in text concludes with these words:

“There can be no task nobler than giving every child a better future.”

2.1 International Treaty Obligations

At the international level there are important Conventions and Treaties that have been developed with time to make a constructive movement towards the protection of women and children. Most of them have been

44 ibid
ratified by India except a few. It is important to therefore discuss these Conventions so that we can understand the various effects with respect to implementation as well as the implications with respect to non-compliance.

2.1.1 Convention on the Rights of the Child

The United Nations Convention on Rights of the Child\textsuperscript{45} is an extremely important treaty that received ratification from 193 States making it the most ratified treaty. United States of America and Somalia are the two States whose ratification remains pending. This in itself portrays the role that this treaty plays in protecting the rights of the children. This document, even though in a very short time of its coming into existence, has been able to create a strong grip on child related policies and laws that has been implemented in national jurisdictions. It proved to be a shift in the outlook of the world community from viewing a child merely as an ‘object of rights’ prior to the CRC to now viewing a child as an active ‘subject of rights’.\textsuperscript{46} The child could now be identified as someone who played an important role and could participate in the decision making process.\textsuperscript{47}

If we look historically, this Convention (CRC) was preceded by the Universal Declaration of Human Rights and the UDHR was also further preceded by the Declaration of the Rights of the Child, 1924. Therefore, the Declaration of the Rights of the Child was in fact the first document that was formed which pertained to children. It was originally authored by


\textsuperscript{46} Trevor Buck, Alisdair A. Gillespie et al, \textit{International Child Law} (2nd edn, Routledge ) 88-89

\textsuperscript{47} ibid
Eglantyne Jebb, founder of Save the Children.\textsuperscript{48} This document was adopted later by the old League of Nations and though it was only a non-binding resolution, it carried a significant moral force.\textsuperscript{49} It was also known as the Declaration of Geneva.\textsuperscript{50} This declaration was reaffirmed by the League of Nations in 1934. Further on in 1959, the General Assembly unanimously adopted a new text of this Declaration containing 10 major principles. This document was a revised and extended version of the previous one. It included certain guiding principles for the best interest of the child besides being the first document to reinforce the civil and political rights of the children. This document again only had a persuasive authority owing to the unanimous adoption but did not have a legal binding. These aforementioned 10 major principles included:

1. The right to equality, without distinction on account of race, religion or national origin;
2. The right to special protection for the child’s physical, mental and social development;
3. The right to a name and a nationality;
4. The right to adequate nutrition, housing and medical services;
5. The right to special education and treatment when a child is physically or mentally handicapped;
6. The right to understanding and love by parents and society;
7. The right to recreational activities and free education;
8. The right to be among the first to receive relief in all circumstances;
9. The right to protection against all forms of neglect, cruelty and exploitation;

\textsuperscript{49} Buck (n 46)
\textsuperscript{50} Children’s Rights Alliance (n 48)
10. The right to be brought up in a spirit of understanding, tolerance, friendship among peoples, and universal brotherhood.⁵¹

In the intervening period of 1934 and 1959 the old League of Nations ceased its operations after being unable to prevent Second World War and the United Nations took birth. With this birth came the adoption of the Universal Declaration of Human Rights (UDHR)⁵². The UDHR which was adopted in 1948 also inherently contained and protected the rights of the child. This is because although it does not contain any specific language for protecting child rights but it mentions that “motherhood and childhood are entitled to special care and assistance”. Also by virtue of the fact that the rights mentioned extend to all human beings, it becomes therefore natural to assume that children are included in being beneficiaries and holders of these rights too.

After 1959, the year 1979 saw itself being designated as the International Year of the Child. This was in backdrop of the 20th anniversary of the 1959 Declaration of the Rights of the Child. It was during the preparatory processes leading to this year that Poland had proposed the formation of a new and binding Children’s Rights Convention. It also submitted a draft of the same to the United Nations Commission on Human Rights in the year 1978. As a result a Working Group was set up to look into the same and explore the possibilities of creation of a Convention on the Rights of the Child.

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⁵² Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) (UDHR)
On 20th November, 1989, the UN Convention on the Rights of the Child was formally adopted by the UN General Assembly. Upon its ratification by the required 20 States this Convention was brought into force on 2nd September 1990 as an international law document. This became the first legally binding document to avow for all children the complete array of human rights which include civil, cultural, economic, political and social rights. It has helped in changing perspectives in the way that children were seen in the international community as well as the way in which plans for their further development could be shaped by international organisations.

The Convention provides a set of standards that are universal in nature and are applicable for adherence by all member states. It reflects a fresh departure in the way that a child is looked upon. Their presence as human beings who are rights holders has been acknowledged and established within this Convention. Previously the needs of children were not taken as seriously. Within the Convention these needs have been recognised as legally binding rights that each and every child is entitled to. With these rights the Convention seeks to offer a vision of the child as an individual and a member of a family and a community. This individual is a subject of rights and responsibilities apposite to their age and stage of development.53

The Convention has been successful in inspiring changes with respect to children within local jurisdictions of member states. These include making laws, policies and activating of other protection mechanisms for bringing about effective social change. Although not an

exhaustive list but the following represent the efforts made by nations to implement the CRC:

- Integrating human rights principles into national legislation;
- Establishment of interdepartmental and multidisciplinary bodies;
- Development of national agendas for children;
- Widening partnerships for children;
- Promoting ombudspersons for children or commissioners for children's rights;
- Assessing the impact of measures on children;
- Restructuring of budgetary allocations with respect to children;
- Aims directed at child survival and development;
- Implementing the principle of non-discrimination;
- Listening to children's voices and making them into active participatory parties in matters involving them; and
- Developing sound justice systems for children.  

These efforts have not been introduced by all member parties. These aforementioned only represent an overall picture.

2.1.1.1 Committee on the Rights of the Child

The Committee on the Rights of the Child is the key body created by and/or under the Convention for the Rights of the Child for the purpose of monitoring the progress made by the state parties with regard to the implementation of the CRC. The CRC does not include within its provisions the setting up of a court-like forum on the lines of the model of the European Court of Human Rights established under the European

\[54\] ibid
Convention on Human Rights. The sole sanction lies in the reporting procedures set out in the Convention which require the states to report on the advancements made within local jurisdictions with respect to implementing the CRC. Four out of the eight Human Rights treaties contain the petitioning procedures. These include:

- The Human Rights Committee under the ICCPR (International Covenant on Civil and Political Rights);
- The Committee on the Elimination of Racial Discrimination under the ICERD (International Convention on the Elimination of All Forms of Racial Discrimination);
- The Committee Against Torture under the UNCAT (United Nations Convention Against Torture); and
- The Committee on the Elimination of Discrimination Against Women under the CEDAW (Convention on the Elimination of all Forms of Discrimination Against Women)

Under the CRC until recently, there was no individual complaint or petition remedy although the Committee from time to time recommended children or their representatives to refer to the other treaty bodies for redressal of their complaints in appropriate cases. On 14<sup>th</sup> April, 2014 the third optional protocol of the CRC came into force. It is called the Optional Protocol to the Convention on the Rights of the Child on a communications procedure. It is not given the name of a complaint mechanism as under other treaties but an individual communication mechanism that allows close cooperation with member states for the purpose of inquiry and investigation. This however, is a gap under the

55 It was adopted on 19 December 2011
CRC which has been filled. Not many countries have so far ratified this optional protocol. There are presently 51 signatories to it and 37 parties to it.

To understand the reporting procedure that has been established under the UNCRC we can refer to the following diagram:

*Figure 2.1: The Reporting process of the Committee on the Rights of the Child*

The diagram above shows that the States party sends its report to the Committee on the Rights of the Child at the Secretariat of the Committee at the OHCHR in Geneva. The Committee then examines the report at the next available session. Thereafter written information is sought from other sources including NGOs and inter-governmental organisations. This is followed by the Committee organising a Pre-sessional working group for the initial review of the State report. It is a private session that is composed of the Committee members. NGOs and
Inter-governmental organisations may be invited to this initial review. Thereafter the working group prepares a ‘list of issues’ which is submitted to the state parties. Governments are requested to respond to questions raised in writing before the Plenary Session. At the plenary session, which is held in public, the Committee examines the report in the attendance of the government representatives, who are invited to respond to the questions and comments made by the Committee members. The process reaches its final stage when the Committee members then prepare the Concluding Observations which summarize the main points of discussion and highlight the issues that require further action by the states party.

2.1.1.2 India’s Position on UNCRC

India acceded\(^{57}\) to the Convention on the Rights of the Child in 1992. India also ratified the first 2 optional protocols to the CRC which include:

a. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict\(^{58}\); and
b. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography.\(^{59}\)

India, however, has not so far signed the third and recent optional protocol i.e. 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 directly. The Committee seeks the

\(^{57}\) "Accession" is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force.

\(^{58}\) Ratified on 30 November 2005

\(^{59}\) Ratified on 16 August 2005
support and cooperation of the member states in ensuring that the reports
of violation are dealt with effectively within the local jurisdictions.

The first initial report\textsuperscript{60} submitted by India to the Committee on the
Rights of the Child was in the year 1997. The purpose of the first report
was to apprise the Committee of the situation of children in India. The
report outlined the laws and policies pertaining to children being
implemented in India. It also mentioned the steps that the government
were taking towards the implementation of the UNCRC and the
commitments contained therein. Some of these included:

- Ministries had begun to outline their roles in fulfilling the
  convention provisions;
- State governments had begun incorporating convention articles into
  their plans of action for children;
- The government partnering with notable NGOs to determine
  actions to be taken;
- India had begun gathering data for the country's first periodic
  report.\textsuperscript{61}

This initial report further went on to discuss the other specific areas
in which the State was engaged. These included:

- Civil rights and freedoms;
- Family care and alternative care;
- Health and nutrition of children;
- Education;

\textsuperscript{60} Committee on the Rights of the Child, CRC/C/28/Add.10 (7 July 1997)
accessed 30 July 2017

accessed 30 July 2017
➢ Leisure and cultural activities; and
➢ Special protection measures.

The Committee on the Rights of the Child in its Concluding Observations for India responded with a list of Recommendations. Some of these included:

- To make efforts to bring country legislations in line with convention provisions and to plan and allocate sufficient resources towards ensuring the implementation of all legislations pertaining to children;
- Adopting a comprehensive national plan of action, based on a child rights approach, to implement the Convention; To develop a comprehensive system for collecting disaggregated data about the status of children;
- Establish a statutory, independent national commission for children;
- Establish a national age limit that a person ceases to be a child;
- Address issues of discrimination against caste and tribal groups;
- Ensure the rights of the child who is in police custody;
- Ensure the rights of children with disabilities;
- Aim to eliminate child labour.\(^63\)

After the first initial report India submitted its first comprehensive periodic report in 2001. Thereafter India had sent its second periodic report for which they received a reply in the year 2004. In its third and fourth combined periodic review report (most recent) the concluding observations with regards to child marriage include:


\(^63\)Childline (n14)

\(^64\)Committee on the Rights of the Child, ‘Concluding observations on the consolidated third and fourth periodic reports of India’ <https://www.crin.org/sites/default/files/attachments/india_co_66thsession.pdf> accessed 30 July 2017
• Effective implementation of the Prohibition of Child Marriage Act, 2006 including clarifying that the Act supersedes the Personal Laws;
• To take all necessary measures to combat dowry, child marriage and devadasi which includes conducting awareness building campaigns and programmes with a view to accomplish changing attitudes as well as promotion of counselling and reproductive education to prevent and fight child marriages which are harmful to the health and well-being of girls.\footnote{ibid}

\subsection*{2.1.2 Convention on Elimination of all Forms of Discrimination against Women}

The Convention on the Elimination of All Forms of Discrimination against Women\footnote{UN Women, ‘Convention on the Elimination of All Forms of Discrimination against Women’ <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article16> accessed on 17 August 2017} adopted by the United General Assembly is frequently referred to as the International Bill of Rights for women. It is a treaty for protecting the human rights of women. The United Nations General Assembly adopted the CEDAW Convention on 19\textsuperscript{th} December 1979. It came into force on 3\textsuperscript{rd} September 1981. The Convention is scrutinized by the CEDAW Committee which has been formed under it and which works out of the United Nations in New York.

The CEDAW is a document that sets out to define what discrimination against women means. It attempts to explain what constitutes discrimination against women. The State parties to the Convention commit themselves to ending violence against women as well as recognise the need to enact, enforce and implement laws within their national jurisdictions that are in harmony with this Convention.
Before the CEDAW came into existence, a large part of the 20th century witnessed women’s perspectives, experiences and their rights were largely kept away or remained absent from the discourses on human rights. The international community neither discussed nor took into account the structural causes as well as systemic nature of women’s subordination and their oppression.67 Their voices and experiences were unheard on account of the fact that the family was considered a private sphere which could not be discussed within the international human rights forum. This meant that the issues they faced were naturally kept out of the purview of international human rights debate as well as devoid of inclusion within the rights framework.68 This absence led to the feminist movement towards securing women’s human rights. It was not until the late 1960s and 1970s that there was a movement in recognition of women’s rights in the international forum.

CEDAW is just like the UNCRC one of the most highly ratified international human rights conventions. It has the support of 188 States parties. India ratified the Convention on 9th July, 1993.

The Convention in its very first Article defines discrimination against women as "...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field."69

68 ibid
69 CEDAW, Article 1
The Convention is said to encourage a more substantive model of achieving equality.\textsuperscript{70} These include:

\begin{itemize}
\item Equal opportunities to both men in women when it comes to access to resources and to have a strong legal and policy backbone to support as well as reinforce the same.
\item Equality of outcomes when the access to those resources is given, towards achieving a real change for women. State parties to CEDAW bear a responsibility to show results based on the practical realisation of rights to bring about equality.\textsuperscript{71}
\end{itemize}

The concept of substantive equality is rooted in the fact that a seemingly gender-neutral policy may not always take into account women’s experiences.\textsuperscript{72} It could in fact lead to discrimination still as it won’t account for:

\begin{itemize}
\item Biological differences in men and women, for example, women bear children, men do not;
\item The gender roles that are created by society and assigned to them. These roles are also rooted in a set of norms and assumptions based on the needs as well as the capabilities of the sexes. This in turn has a strong influence on both policy-making as well as its implementation.
\end{itemize}

These two factors lead to women being positioned in a more disadvantageous position.

Women in different countries still continue to face discrimination despite the presence of a legal framework. Their access to their legal rights is affected because of the denial of their rights to economic and social development.

\textsuperscript{70} ICRAW ‘CEDAW Principles’<https://www.iwraw-ap.org/cedaw/what-is-cedaw/cedaw-principles/> accessed 30 July 2017
\textsuperscript{71} ibid
\textsuperscript{72} ibid
Therefore, CEDAW attempts to bridge the divisions between civil and political and socio-economic rights. It further mandates that both legal and policy measures aimed at development must guarantee the rights of women.

Under the Convention was formed the Committee on the Elimination of Discrimination against Women (CEDAW) which is a body of independent experts that is assigned with the task of monitoring the implementation of the Convention on the Elimination of All Forms of Discrimination against Women in the member States. The States parties who have ratified the Convention are under an obligation to send periodic reports to this Committee on how the Convention is being implemented within their local jurisdictions. Thereafter, during the working sessions the Committee deliberates over each State party report and based on the same addresses the Committee’s concerns and recommendations to the State Party in the form of concluding observations. The Committee itself is comprised of 23 members who are experts on the subject of women’s rights.

The Optional Protocol to CEDAW\textsuperscript{73} has an individual complain mechanism also set up under the same. Under this Optional Protocol, the Committee is mandated to:

- Receive communications/complaints from individuals or groups with regards to violation of rights that are guaranteed/protected under the Convention; and
- Initiate inquiries into the conditions of grave or systematic failure in protecting women’s rights and/or violations thereof.\textsuperscript{74}

\textsuperscript{73} OHCHR, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women <http://www.ohchr.org/EN/ProfessionalInterest/Pages/OPCEDAW.aspx> accessed 15 August 2017
These procedures are however optional in nature and are available only where the State party has ratified and accepted them by ratifying the Optional Protocol. The Committee also articulates suggestions and general recommendations. These recommendations are for the States and concern articles or themes that are contained within the Convention.

2.1.2.1 India’s Position on CEDAW

India is a party to the Convention but has not ratified the Optional Protocol to the Convention. Further, India had ratified the CEDAW with two declarations and one reservation. The same are as follows:

“Declarations and reservations made upon signature and confirmed upon ratification:

Declarations:

"i) With regard to articles 5 (a) and 16 (1) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent.

"ii) With regard to article 16 (2) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that though in principle it fully supports the principle of compulsory registration of marriages, it is not practical in a vast country like India with its variety of customs, religions and level of literacy."

Reservation:
"With regard to article 29 of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it does not consider itself bound by paragraph 1 of this article.""\(^{75}\)

The Declarations and Reservations technically have the same effect since they speak of the particular elements of the treaty that the States party decide not to be bound to.

It becomes important to delve into understanding as well critically examining the effect of not accepting Article 5(a) as well as Article 16 (1) which provides:

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“Article 5
States Parties shall take all appropriate measures:
(a) To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;”\(^{76}\)
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“Article 16
1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:
(a) The same right to enter into marriage;
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\(^{76}\) CEDAW, Article 5
(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;

(c) The same rights and responsibilities during marriage and at its dissolution;

(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;

(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;

(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;

(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;

(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.”

India in its Article 14 of the Constitution guarantees Equality and at the same time gave a Declaration to not accept Article 16(1) of the CEDAW which at its heart advocates for Equality. This makes the situation quite paradoxical. It has been argued by Feminists that India has excused herself of the obligation of eliminating discrimination based on sex, gender and religion in the field of

77 CEDAW, Article 16
When we see this in context of child brides, we notice that this absence of equality is one of the primary causes for their victimisation. The same right to enter marriage as well as the freedom to choose one’s spouse is heavily compromised in this practise. Free and full consent which is an essential ingredient to enter into marriage is absent in these cases too. Girls married out young are not capacitated enough to give their full informed consent to the marriage.

The comment by the Committee on the Elimination of Discrimination against Women on Article 16 (1) (a) and (b) in UN General Recommendation No. 21 (13th session, 1994) states:

“16. A woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being. An examination of States parties' reports discloses that there are countries which, on the basis of custom, religious beliefs or the ethnic origins of particular groups of people, permit forced marriages or remarriages. Other countries allow a woman's marriage to be arranged for payment or preferment and in others women's poverty forces them to marry foreign nationals for financial security. Subject to reasonable restrictions based for example on woman's youth or consanguinity with her partner, a woman's right to choose when, if, and whom she will marry must be protected and enforced at law.”

In addition to the same the Committee also in comment no. 38 on Article 16(2) in the same set of General Recommendations stated that some nations create a disparity in the minimum age of women and men for getting married.

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Noting that such provisions of law assume a difference in the intellectual and physical growth of men and women, they must be abolished.\textsuperscript{80}

Similarly, the Committee has noted that gender stereotyping completely derails the process of achieving equality. Women stand at a very disadvantageous position and are on the pretext of inferiority to men unable to live a life of dignity and respect. It has also been observed that practices such as child marriage actually amount to slavery. The girls are tuned from the beginning to accept their husbands as their superiors whom they cannot dare to go against. This is also a case where the muted group theory\textsuperscript{81} comes into picture. This is on account of the fact that men have a dominant position and women because of being placed at an inferior position are unable to express themselves. This is also due to the fact that they’re aware of the adverse ramifications that would entail if they were to speak clearly. Stereotyping leads to compartmentalising the gender roles so strictly that it becomes very difficult to break these water-tight compartments.

The most recent set of Concluding Observations received by India in 2014 by the Committee on the Elimination of Discrimination against Women in response to the combined third and fourth periodic report submitted also states that the Committee has observed that India has still maintained its Declarations and has not withdrawn them despite a Constitutional framework which guarantees equality and non-discrimination. In the words of the Committee:

\begin{quote}
"The Committee notes with concern that the State party has maintained its declarations to articles 5 (a) and 16 (1) and (2) of the Convention,
\end{quote}

\textsuperscript{80} ibid [Comment No. 38: Some countries provide for different ages for marriage for men and women. As such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial, these provisions should be abolished.]

\textsuperscript{81} Muted Group Theory <http://oregonstate.edu/instruct/theory/mutedgrp.html> accessed 20 August 2017
and reiterates its view that this is incompatible with the State party’s constitutional guarantees of equality and non-discrimination. It is further concerned with the persistence of patriarchal attitudes and deeply-rooted stereotypes, entrenched in the social, cultural, economic and political institutions and structures of Indian society and in the media, that discriminate. It is also concerned about the persistence of harmful traditional practices in the State party, such as child marriage, the dowry system, so-called “honour” killings, sex-selective abortion, Sati, Devadasi, and women accused of witchcraft. The Committee is particularly concerned that the State party has not taken sufficient sustained and systematic action to modify or eliminate stereotypes and harmful practices."

With this observation, it is quite apparently clear that India is somewhere resistant in reforming its mindset when it comes to international obligations. This resistance can be hoped to be transformed in the future in the light of the fact that there have been progressive legislations that have been enacted in favour of women and children in the last decade or so. The Committee has also applauded the Indian Government’s efforts in enacting these legislations. These include:

- The Criminal Law Amendment Act, 2013;
- The Sexual Harassment of Women in the Workplace (Prevention, Prohibition and Redress) Act, 2013;
- The Protection of Children from Sexual Offences Act, 2012; and
- The Right of Children to Free and Compulsory Education Act, 2009.\(^{83}\)

Among the many other observations received from the Committee, the ones that pertain to child marriage include:

\(^{82}\)CEDAW, ‘Concluding Observations’ (2014) <tbinternet.ohchr.org/Treaties/CEDAW/.../CEDAW_C_IND_CO_4-5_17678_E.doc> accessed 15 August 2017

\(^{83}\)ibid
— Void all child marriages and ensure that the Protection of Children from Sexual Offences Act, 2012 also applies to child brides;
— Implementation of the PCMA without exception;
— To effectively investigate, prosecute and punish forced and early marriage;
— Speedily enact legislation to require compulsory registration of all marriages; and
— Strengthen efforts to raise awareness about the prohibition of child marriages, and their harmful effects on girls’ health and education.\textsuperscript{84}

\subsection{2.1.3 Universal Declaration of Human Rights}

The United Nations General Assembly in the year 1948 adopted the Universal Declaration of Human Rights (UDHR). The UDHR presses member States to promote, through inclusion in their local laws, a number of human, civil, economic and social rights asserting these rights are a part of the "foundation of freedom, justice and peace in the world." The Declaration with its well-articulated Rights was the first international legal effort to limit the role and interference of States and additionally press upon them duties owed to their citizens following the twofold model of rights and duties.

Though this document by itself does not speak on the issue of child marriage but some of its provisions implicitly include the language which itself leaves child marriage in a notorious space. The document speaks of human rights and as every child is a human, they naturally fall within the ambit of these spelt rights. On the aspect of marriage, the UDHR in its Article 16 provides that marriage is a right of men and women who are of “full age” and with no bar to nationality, religion and race they can marry and found a

\textsuperscript{84} ibid
family. Another key requirement set out is “free and full consent” at the time of entering the marriage. When we review the practise of child marriage against the backdrop of the rights spelt out under the Universal Declaration of Human Rights, we’re met with a series of violations. Child marriages are essentially forced marriages. The parties involved, at least one of them if not both, is a minor. Being a minor, he/she is incapable of giving a full consent. It is usually the parents who are the key decision makers. There are more girls who become victim to this practise than boys on account of the gender stereotyping which makes girls confined to certain roles allocated to them. They are devoid of their childhood and opportunities of education and growth which could land them into careers where they could positively contribute to the society. The practise itself amounts to a gender based violence. The girl child often after marriage is made to do all the household chores and is forced to get pregnant and give birth to children. Early pregnancy leads to another set of alarming issues. The chain of human rights violations that follow the marriage are appalling. The worst thing is that these violations have not a short term but life-long effects. This includes the effects on the girl’s health which tends to deteriorate much faster due to repeated pregnancies at an early age. The vicious cycle of sufferings becomes so strong that it is often hard to break out of it.

2.1.4 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery

This Convention entered into force in the year 1957. India ratified this Convention on 23rd June 1960. This Convention is extremely important in the light of the fact that it specifically raises the issue of child marriage within the

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sphere of slavery and clearly establishes it as an abuse or human rights violation. Article 1 of the Convention describes the institutions and practices that are similar to slavery. The clause (c) sub clause (i) of this Article prohibits:

“any institution or practice whereby: a woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind.”

This provision makes it aptly clear that it explicitly prohibits forced marriages including child marriages. Where a minor girl is neither capable of giving consent, nor given the right to refuse to enter into marriage, it reduces the said marriage as an act of subjecting the girl to become a slave. She becomes a slave of this marriage and every person who is involved within the same. This includes her husband, her in-laws, the society around her and most of all her doomed fate which does not any longer allow her to grow naturally and develop as an adult who is capable of adding progressively to society.

The following Article of this Convention speaks with reference to the above discussed Article 1(c)(i) and substantiates on the point of child marriages. Article 2 states:

“With a view to bringing to an end the institutions and practices mentioned in article 1 (c) of this Convention, the States Parties undertake to prescribe, where appropriate, suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages.”

87ibid Article 2
Article 1 also mandates States parties to take all practical and necessary legislative steps in order to achieve the complete abandonment or abolition of the practices stated within it.88

2.1.5 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages

This Convention entered force in the year 1964. India is not a member State to this Convention. Nevertheless, it is important to mention this Convention in the light of the fact that it provides for:

- Free and full consent to marriage of the intending spouses89;
- Member states to the Convention to legislatively define a minimum age of marriage90; and
- Registration of all marriages91.

The Convention makes a specific mention of complete elimination of traditional practices and customs including child marriage and betrothal of young girls before attaining puberty. It promotes full freedom when it comes to choosing one’s spouse.

The Convention document had initially failed to prescribe a minimum age of marriage and had kept it open to the State parties to determine. Later by way of General Assembly Resolution adopted in the year 1965, it was stated that this minimum age must not in any case be less than fifteen years.92

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88 (Each of the States Parties to this Convention shall take all practicable and necessary legislative and other measures to bring about progressively and as soon as possible the complete abolition or abandonment of the following institutions and practices, where they still exist and whether or not they are covered by the definition of slavery contained in article 1 of the Slavery Convention signed at Geneva on 25 September 1926)
89 UN Marriage Convention, Article 1 <http://www.ohchr.org/EN/ProfessionalInterest/Pages/MinimumAgeForMarriage.aspx> accessed 15 August 2017
90 ibid Article 2
91 ibid Article 3
92 General Assembly Resolution 2018 (XX) of 1 November 1965.
There is also no monitoring mechanism set up under this Convention which is why the application of the same with respect to eliminating child marriages has remained undeveloped.

2.1.6 International Covenant on Economic, Social and Cultural Rights

The International Covenant on Economic, Social and Cultural Rights in its Article 10 restates the point that widest possible protection and assistance should be given to the family as a unit, especially during its formation as well as at the time when the family is responsible for the care and education of dependent children. The point on free consent is enshrined in the ICESCR just like the Marriage Convention and CEDAW. It also talks about special protection to mothers during before and after child birth. Need for adequate social security benefits for working mothers is provided for in the said Article. Most importantly it states that children and young persons should be protected from economic and social exploitation. Specific provision is made for prohibiting and punishing the practise of child labour.

The practise of child marriage is an absolute violation of the Covenant as it contains neither the element of full age nor full consent. It provides for protection of children from economic and social exploitation and the practise of

94 ibid Article 10 (The States Parties to the present Covenant recognize that:
1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.
2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.
3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of child labour should be prohibited and punishable by law.)
child marriage runs on a tangent that goes completely opposite. There is economic exploitation when marriages are done in order to settle debts or when there is trafficking coupled with these marriages. This also overlaps the social exploitation angle very vividly. Girls who are married off young become the worst receivers. Early pregnancies cause tremendous difficulties and have severe effects on the health of both the child bride as well as her baby. This is further backed with regressive thinking of preference of a boy child over a girl child. This means that if the young girl delivers a girl child, she would be subjected to a series of forced pregnancies till at least one boy child is born.

2.1.7 International Covenant on Civil and Political Rights

The International Covenant on Civil and Political Rights\(^55\) also reiterates and reasserts the commitment laid out in the UDHR and ICESCR. Article 23\(^66\) of the ICCPR contains the recognition of family being a natural and fundamental group unit of society that affords protection by the society as well as the State. It further presses for the equal right of both men and women with full and free consent to found a family. The ICCPR adds and applies the word responsibility to rights alone, equally to men and women, at the time of marriage, during the marriage as well as at the time of its dissolution. It also further states that at the time of dissolution, provision shall be made for the necessary protection of any children.

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\(^66\) ibid Article 23 (1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.)
In a patriarchal set-up within which the practise of child marriage operates, the existence of equal rights and responsibilities is a mere myth. Girls are devoid of every opportunity of growth and pushed into the institution of marriage without their consent. They are minor and are not capable of understanding the responsibilities that marriage brings with it. Therefore, it can be clearly derived that the practise is a gross violation of this Covenant and therefore warrants a complete abolition.

2.2 South Asian Regional Commitments

India is a member of SAARC i.e. South Asian Association for Regional Cooperation. The eight member states of SAARC are dedicated and committed to the economic, social and cultural development of South Asia. They have repeatedly pledged their commitment towards protecting children, including in the SAARC Convention on Regional Arrangements on the Promotion of Child Welfare in South Asia (Child Welfare Convention), the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution (Trafficking Convention), and the Colombo Statement of Children of South Asia. However, until now SAARC has not adopted a formal convention on eliminating child marriage and calling on states to enforce minimum age of marriage as 18 i.e. consistent with the UNCRC.

While SAARC’s Child Welfare Convention defines “children” as those who are below 18 years of age, it merely obligates governments to take steps to


enforce the minimum age of marriage established in national laws.\textsuperscript{100} Despite the fact that it reaffirms SAARC member states’ commitment to uphold the Convention on Rights of the Child, it fails to state anywhere that 18 years must be the minimum age of marriage.\textsuperscript{101} It however calls for compulsory registration of births and marriages as means to enforce national laws on minimum age of marriage. Similarly, SAARC’s Trafficking Convention requires that member states punish under criminal law traffickers who utilise child marriage as means to force children into prostitution.\textsuperscript{102} However, the Convention is silent on defining child marriage as well as prohibiting the practise.

While SAARC has yet to define and condemn child marriage in a Convention, two regional bodies have begun to engage with the member states of SAARC to support developments of regional action plans that include steps to eliminate child marriage in South Asia. The first is SAIEVAC. India is also a governing board member of SAIEVAC\textsuperscript{103} which is one of the Apex bodies of SAARC and attempts to hold governments accountable for ending all forms of violence against girls, boys and women.\textsuperscript{104} Second is South Asia Coordinating Group on Action against Violence against Children (SACG) which is a network of UN agencies, NGOs, and other actors working together at the Regional level in South Asia to coordinates activities aimed at addressing violence against women and children. SACG collaborates closely with other global and regional forums and bodies working on ending violence against women and children such as SAARC, the Office of the UN Special Representative to the Secretary General on Violence against Children and the Working group on violence against children in South East Asia.

\textsuperscript{100} ibid
\textsuperscript{101} ibid
\textsuperscript{102} Trafficking Convention, Article 1 (6)
\textsuperscript{103} South Asia Initiative to End Violence Against Children
\textsuperscript{104} There are 6 Apex bodies of SAARC
SAIEVAC adopted a Regional Action Plan to End Child Marriage in South Asia\textsuperscript{105} (RAP) 2015-2018. India is a member to this RAP since it was adopted within the inter-governmental mechanism. It provides an opportunity to the government to re-affirm its commitment towards ending child marriage, including implementation of a National Plan of Action to End Child Marriage.

After the RAP was adopted, representatives of SAARC member States and key stakeholders adopted the Kathmandu Call for Action to End Child Marriage in South Asia\textsuperscript{106} (KCA). The KCA enumerates urgent actions, including denouncing child marriage as a human rights violation, harmonising national laws and policies on child marriage, implementation of the RAP and eliminating discriminatory provisions concerning marriage in all laws.\textsuperscript{107}

2.3 Sustainable Development Goals

Sustainable Development Goals that have been coined by the United Nations is a strong initiative towards creating a more sustainable world. The Millennium Development Goals focussed more on Development of the developing countries with the aid and support of the developed countries. The MDGs were criticised for reasons of weak construction, implementation and accomplishment. The Sustainable Development Goals are a much more improvised version of the MDGs. The highlight of the same is the addition of the word ‘Sustainable’. Sustainability is considered the need of the hour. For the world and human societies to progress and develop positively, the growth must be sustainable. The MDGs were limited to a set of 8 goals while the SDGs are a comprehensive set of 17 goals. As noted by Loewe, the MDGs focussed more


\textsuperscript{107}ibid
on improving the living conditions of the poorest people, the SDGs are a movement towards shaping development in a sustainable way. The table below enumerates the MDGs and SDGs to examine movement in the last decade and a half:

Table 2.1: List of Goals under the MDGs and SDGs

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Goal 1</td>
<td>Eradicate extreme poverty and hunger</td>
<td>End poverty in all its forms everywhere</td>
</tr>
<tr>
<td>Goal 2</td>
<td>Achieve universal primary education</td>
<td>End hunger, achieve food security and improved nutrition, and promote sustainable agriculture</td>
</tr>
<tr>
<td>Goal 3</td>
<td><strong>Promote gender equality and empower women</strong></td>
<td>Ensure healthy lives and promote well-being for all at all ages</td>
</tr>
<tr>
<td>Goal 4</td>
<td>Reduce child mortality</td>
<td>Ensure inclusive and equitable quality education and promote life-long learning opportunities for all</td>
</tr>
<tr>
<td>Goal 5</td>
<td>Improve maternal health</td>
<td>Achieve gender equality and empower all women and girls</td>
</tr>
<tr>
<td>Goal 6</td>
<td>Combating HIV/AIDS, malaria, and other diseases</td>
<td>Ensure availability and sustainable management of water and sanitation for all</td>
</tr>
<tr>
<td>Goal 7</td>
<td>Ensure environmental sustainability</td>
<td>Ensure access to affordable, reliable, sustainable, and modern energy for all</td>
</tr>
<tr>
<td>Goal 8</td>
<td>Develop a global partnership for development</td>
<td>Promote sustained, inclusive and sustainable economic growth, full and productive</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Goal</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Goal 9</td>
<td>Employment, and decent work for all</td>
</tr>
<tr>
<td>Goal 10</td>
<td>Build resilient infrastructure, promote inclusive and sustainable industrialization, and foster innovation</td>
</tr>
<tr>
<td>Goal 11</td>
<td>Reduce inequality within and among countries</td>
</tr>
<tr>
<td>Goal 12</td>
<td>Make cities and human settlements inclusive, safe, resilient and sustainable</td>
</tr>
<tr>
<td>Goal 13</td>
<td>Ensure sustainable consumption and production patterns</td>
</tr>
<tr>
<td>Goal 14</td>
<td>Take urgent action to combat climate change and its impacts</td>
</tr>
<tr>
<td>Goal 15</td>
<td>Conserve and sustainably use the oceans, seas, and marine resources for sustainable development</td>
</tr>
<tr>
<td>Goal 16</td>
<td>Promote peaceful and inclusive societies for sustainable development, provide access to justice for all, and build effective, accountable and inclusive institutions at all levels</td>
</tr>
</tbody>
</table>
Goal 17

| Goal 17 | Strengthen the means of implementation and revitalize the global partnership for sustainable development |

**Information Source:** Sustainable Development Goals Fund Website (http://www.sdgfund.org/mdgs-sdgs)

The SDGs tend to cure and compensate the shortcoming of the MDGs in certain ways. SDGs are much more wide-ranging. Also, they’re of an all-inclusive nature. Sustainable Development Goals are of this nature also because of the fact that they were developed after taking the views of many stakeholders including NGOs and public.\(^\text{109}\) Because they were derived from the people, they’re a People’s Agenda.\(^\text{110}\)

### 2.3.1 Sustainable Development Goal 5.3

Sustainable Goal 5.3 is a definite expression of the global community in recognising that child marriage is an issue of relevant importance. The goal reads are follows:

> “Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation”\(^\text{111}\)

The indicator set out in the SDG 5.3 to check the progress is “Proportion of women aged 20-24 years who were married or in a union before age 15 and before age 18”\(^\text{112}\)

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\(^\text{110}\) ibid

As per a study done by Girls Not Brides, the achievement of the elimination of child marriage is linked and is critically important for the achievement of 8 other SDGs.\textsuperscript{113} Elimination of child marriage is therefore extremely crucial for the achievement of the SDGs. The goals that are interlinked to Goal 5.3 and specifically child marriage include:

\textit{Table 2.2: Inter-linkage of SDGs for eliminating child marriage}

<table>
<thead>
<tr>
<th>SUSTAINABLE DEVELOPMENT GOAL</th>
<th>LINKAGE TO CHILD MARRIAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td>\textbf{Goal 1- No Poverty}</td>
<td>Poverty is one of the main reasons why child marriages take place. Conversely, child marriage itself is a cause for the perpetuation of poverty.</td>
</tr>
<tr>
<td>\textbf{Goal 2- Zero Hunger}</td>
<td>Many studies attest to the fact that child brides and their children are more likely to experience malnutrition.</td>
</tr>
<tr>
<td>\textbf{Goal 3- Good Health and Well being}</td>
<td>Child marriage becomes a cause for major health consequences on both mother (child bride) and child. Early motherhood in many cases leads to maternal and infant mortality and morbidity.</td>
</tr>
<tr>
<td>\textbf{Goal 4- Quality Education}</td>
<td>Child marriage is a definite barrier to girls’ education</td>
</tr>
<tr>
<td>\textbf{Goal 5- Gender Equality}</td>
<td>Ending of child marriage will lead to the empowerment of girls and women and promote equality in society</td>
</tr>
<tr>
<td>\textbf{Goal 8- Economic Growth}</td>
<td>Women who marry as children are less likely to participate in the workforce which in turn hinders the economic growth of a country.</td>
</tr>
<tr>
<td>\textbf{Goal 10- Reduce Inequalities}</td>
<td>Child marriage adversely affects the rural and disadvantageously placed population which then turns into a vicious cycle of perpetuating poverty and resultant inequalities</td>
</tr>
<tr>
<td>\textbf{Goal 16- Peace, justice and strong institutions}</td>
<td>We will not be able to end violence against children until child marriages are eliminated</td>
</tr>
</tbody>
</table>

\textsuperscript{112} ibid
It can therefore be noticed that child marriage is not alone a consequence of various factors but also a contributor in many ways. The elimination of it is therefore indispensable.

Upon the adoption of the SDGs, the National Institution for Transforming India (NITI Aayog) which is the premier policy think tank of the Government of India was made the nodal agency assigned with the responsibility of overseeing the implementation of the SDGs.

The 2030 SDG Agenda encourages the member states to become a part of the voluntary review mechanism so that the States can periodically share their progresses, experiences, successes and challenges. This report is presented at the High Level Political Forum of the United Nations. India for its part did not become a part of the first Voluntary National Review reporting held in 2016. At the United Nations High Level Political Forum held in 2017, India submitted and presented its Voluntary National Review Report on Implementation of the Sustainable Development Goals. In the same, India has shared its commitment to the achievement of the Sustainable Development Goals. In the words of the Prime Minister Narendra Modi:

“Much of India’s development agenda is mirrored in the Sustainable Development Goals. Our national plans are ambitious and purposeful; Sustainable development of one-sixth of humanity will be of great consequence to the world and our beautiful planet.”

In the report, it has been mentioned that though a lot is left to be done, India has nevertheless made progress in the last decade. To cite figures that have been quoted, the report mentions:

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— 68.4% women were literate in 2015-16 in comparison to 55.1% in 2005-06\textsuperscript{115}

— 53% women were independently using a bank or savings account in the year 2015-16 — a major improvement from 15.1% in year 2005-06\textsuperscript{116}

It further mentions that a number of programs have been put into place for the promotion of gender equality. The Beti Bachao Beti Padhao initiative has been given a lot of emphasis on for being a comprehensive bundle of interventions aimed at promoting education and protection of the girl child.\textsuperscript{117} It further talks about the Maternity benefit Programme that protects women against wage loss in the first six months after birth of the child. For greater participation of women in the workforce, several programmes are being implemented.\textsuperscript{118}

In an effort to empower girls and women, the following initiatives have been listed out in the report under the Sustainable Development Goal 5:

— Mukhyamantri Balika Cycle Yojana: A scheme launched in the state of Bihar with an aim to reduce the drop-out rate from schools. A cycle was provided to every girl in the state who was entering either Class 9 or 10. The implementation of this scheme helped in reducing the drop-out rate among girls going to school.

— Under the Beti Bachao Beti Padhao initiative, in order to address the declining child sex ratio in 100 gender-critical districts across all States and union territories, the Government launched (i) mass communication campaign to tie the interventions at national, state and district levels with the community based action; and (ii) promote multi-sectoral convergence

\textsuperscript{115} ibid
\textsuperscript{116} ibid
\textsuperscript{117} ibid
\textsuperscript{118} ibid
and interventions by converging the initiatives of the Ministry of Health and Family Welfare and the Ministry of Human Resource Development.

- **Pradhan Mantri Ujjwala Yojana**: This scheme was launched in an attempt to provide clean cooking fuel to women in the form of LPG (Liquefied Petroleum Gas) connections.

- **Through the flagship sanitation programme of the government** the issue of providing appropriate infrastructure for sanitation and menstrual hygiene management in schools is being addressed. This was one of the key reasons contributing to the drop-out rate of school-going girls.

- **“Selfie with Daughters”** — an initiative that began in a small village in Haryana where the village leader encouraged the residents to click pictures with their daughters. This campaign received a lot of nationwide recognition as well as international acclaim. It also led to the formation of the world’s first ever online museum with parents across the world sharing pictures with their daughters to express their pride.

- **Various initiatives to improve the participation of women in the labour force:**

  - **“Mahila E-HAAT** is a bilingual direct online marketing platform leveraging technology for supporting women entrepreneurs and Self-Help Groups for showcasing their products and services. It was adjudged as one of the top 100 projects in India during 2016

  - **Stand Up India** was launched in 2016 for providing bank loans to woman borrowers for setting up a Greenfield enterprise.

  - **Mahila Shakti Kendra** is an initiative that supports establishment of Women Empowerment Centres at the village-level. The Centres aim to converge action in several areas including skill development,
employment, digital literacy, health and nutrition to provide a comprehensive package of services.

**Women Transforming India** is an online contest launched by NITI Aayog, in partnership with United Nations, India and MyGov for crowdsourcing stories of women who are making a difference in their respective fields. The best stories are awarded."\(^{119}\)

It is clear from the facts stated above that India has a definite intention to empower girls and women. However, there is an absence of mention in the report of any definite means being adopted specifically towards ending the practise of child marriage. India has always taken a slightly conservative stand on the issue of child marriage because of multiple reasons. The time now nevertheless warrants the need for a stronger and definite stand being taken on the specific issue for its accomplishment would impact various others issues like the ones discussed above.

### 2.4 Universal Periodic Review

The Universal Periodic Review is a distinctive machinery of the Human Rights Council wherein the human rights situation of each of the member states is brought under review with an aim to improve the human rights situation on the ground in these countries. Under the UPR system, each of the 193 UN member states is brought under review every 5 years i.e. the human rights situation of these countries is brought under review. Each year 42 States are reviewed in three Working group sessions with each session dedicated to 14 States. The results of these reviews reflect in the Final Report of the Working

\(^{119}\) ibid
Group which lists out the recommendations that the State under review will need to implement before the next review cycle.\textsuperscript{120}

The UPR process goes through 3 stages which form a full cycle:

\textit{Figure 2.2: UPR Process}

In the recent third cycle of the Universal Periodic Review, there were several recommendations received by India. Of these recommendations some were ‘Noted’ while others were ‘Accepted’. ‘Noted’ is used to replace ‘Not Accepted’ which existed till the first two UPR cycles.

The table below shows the comparison of number of recommendations that were received by the Indian government at the second and third UPR as

\textsuperscript{120} UPR Info, ‘What is the UPR?’ <https://www.upr-info.org/en/upr-process/what-is-it> accessed 15 September 2017
well as the number of recommendations that were ‘Accepted’ by India. These relate to issues pertaining to children including child labour, human trafficking of children, right to education, violence against children, birth registration etc. A total number of 73 recommendations were received by India in UPR-3.

Table 2.3: Issue specific comparison on the recommendations received by India in UPR 2 and UPR3

<table>
<thead>
<tr>
<th>ISSUES</th>
<th>NO. OF RECOMMENDATIONS</th>
<th>STATUS UPR2</th>
<th>STATUS UPR3</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>UPR 2</td>
<td>UPR 3</td>
<td>ACCEPTED</td>
</tr>
<tr>
<td>Child Labour</td>
<td>15</td>
<td>10</td>
<td>5</td>
</tr>
<tr>
<td>Child Marriage</td>
<td>1</td>
<td>10</td>
<td>1</td>
</tr>
<tr>
<td>(Sexual) Violence Against Children</td>
<td>5</td>
<td>11</td>
<td>4</td>
</tr>
<tr>
<td>Child Health</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Juvenile Justice</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Human (Child) Trafficking</td>
<td>6</td>
<td>8</td>
<td>3</td>
</tr>
<tr>
<td>Corporal Punishment</td>
<td>1</td>
<td>3</td>
<td>(accepted in revised form)</td>
</tr>
<tr>
<td>Birth Registration</td>
<td>2</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Food Security/Malnutrition</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Children with Disabilities</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Right to Education/Child Education</td>
<td>14</td>
<td>11</td>
<td>9</td>
</tr>
<tr>
<td>Capacity Building/ Training</td>
<td>3</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Statelessness of Children</td>
<td>2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>UNCRC Communication</td>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>5</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>Total Number of Recommendations</td>
<td>50</td>
<td>73</td>
<td>26</td>
</tr>
</tbody>
</table>

It is noticeable that with respect to child marriage in UPR 2 there was only one recommendation while in the UPR 3 there are 10 recommendations. Of these 10 recommendations, 2 have been ‘Noted’ while 8 have been ‘Accepted’. This is a noted departure from UPR 2. What can also be noticed is

the fact that there is a lot of global attention and emphasis on the ending of child marriage. Ten countries specifically gave one recommendation only with respect to the same. These ten nations that gave recommendations on the said issue are listed in the following table along with their recommendation.

**Table 2.4: Recommendations given to India at the UPR 3 on the issue of Child Marriage**

<table>
<thead>
<tr>
<th>S.No.</th>
<th>COUNTRY RECOMMENDING</th>
<th>RECOMMENDATION</th>
<th>ACCEPTED/NOTED</th>
</tr>
</thead>
<tbody>
<tr>
<td>161.60</td>
<td>PERU</td>
<td>Continue efforts to eradicate child and forced marriage</td>
<td>ACCEPTED</td>
</tr>
<tr>
<td>161.196</td>
<td>CANADA</td>
<td>End harmful practices such as child, early and forced marriage.</td>
<td>NOTED</td>
</tr>
<tr>
<td>161.197</td>
<td>CZECHIA</td>
<td>Improve the enforcement of the legal provisions prohibiting harmful and discriminatory practices against women and girls, in particular child marriages, dowry-related murders and honour killings, and ensure that all women without discrimination have access to public Services.</td>
<td>ACCEPTED</td>
</tr>
<tr>
<td>161.218</td>
<td>ISRAEL</td>
<td>Step up its efforts to eradicate child marriage and so-called “honour crimes”</td>
<td>ACCEPTED</td>
</tr>
<tr>
<td>161.219</td>
<td>SIERRA LEONE</td>
<td>Step up efforts to combat and eliminate child, early and forced marriages</td>
<td>ACCEPTED</td>
</tr>
<tr>
<td>161.220</td>
<td>HONDURAS</td>
<td>Adopt legislative measures and policies to prevent early or forced marriages.</td>
<td>ACCEPTED</td>
</tr>
<tr>
<td>161.221</td>
<td>GABON</td>
<td>Continue and intensify the</td>
<td>ACCEPTED</td>
</tr>
</tbody>
</table>

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122 ibid
<table>
<thead>
<tr>
<th>Recommendation</th>
<th>Country</th>
<th>Actions Taken</th>
</tr>
</thead>
<tbody>
<tr>
<td>161.195</td>
<td>ARGENTINA</td>
<td>Take urgent measures to put an end to harmful traditional practices such as the so-called “honour killings”, selective abortion on the basis of the foetus’ sex, the Sati, Devadasi, early and enforced marriage, bringing the perpetrators before justice, and guaranteeing assistance for victims</td>
</tr>
<tr>
<td>161.217</td>
<td>ICELAND</td>
<td>Ensure that legislation defining the minimum legal age of marriage at 18 is enforced at all levels, everywhere in the country</td>
</tr>
<tr>
<td>161.231</td>
<td>CHILE</td>
<td>Continue strengthening institutions to protect children and adolescents girls and boys, with a view to eradicating the practice of child marriage</td>
</tr>
</tbody>
</table>

These recommendations focus primarily on eradicating the evil of child marriage as well as related crimes like honour killing. What is the difference between the 8 Accepted and 2 Noted Recommendations then? It is the use of words end *vis-a-vis* eradicate/prohibit. The above table shows that the Indian government is comfortable making efforts towards eradicating or prohibiting child marriage but not putting a definite end to it.

### 2.5 Conclusion

From the above discussion, it is aptly clear that there is a need felt and warranted that India takes stronger steps towards fulfilling its international
obligations. Steps at National level need to be strengthened significantly. India is one of the key global players and it is time that its actions set benchmarks for progress.

The SDGs offer a great opportunity for India to increase its development efforts and show great progresses through the Voluntary National Reporting mechanism. Many more innovative schemes must be brought into force on the specific issue of ending child marriage. 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.

India has so far been able to give its assurance to the world community of its intention to honour all its international obligations and commitments, however, what is now going to be under scanner is the changes that will take place on the ground in India that manifest these intentions.

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