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**ESSENTIAL CONDITIONS OF MARRIAGE UNDER HMA, 1955 WITH
SPECIAL REFERENCE TO CHILD MARRIAGE**- Akanksha¹**ABSTRACT**

Child marriage is inhumane. It violates the right to healthy development of both sexes, but it hurts girls more. Child marriage and gender violence perpetuate inequality. Early cohabitation leads to precocious sexual relations, precocious pregnancies, malnutrition, infant and maternal mortality, denial of educational and employment opportunities, and more. Laws that criminalize child marriage and legalize it create legislative confusion. The doctrine of factum valet, which validates child marriage by emphasizing Hindu religious scriptures and personal law, is heavily relied on by the courts. This paper examines Hindu marriage and legal matrimony. It starts with Indian Hindu marriage basics. Legal marriage must follow the Hindu Marriage Act of 1955, which varies by religion. This study examines Hindu Marriage Act of 1955 marriage requirements. The paper focuses on Hindu Marriage Act of 1955 sections 5, 7 and section 17. The paper discusses child marriage, its legality in India, the lack of case registration, and its reality in India.

Key Words: Child marriage, Hindu Law, Factum Valet

INTRODUCTION

Many young women worldwide marry before turning 18. Child marriages in India are still shocking after 75 years of independence. Indian policymakers, law enforcement, and academics rarely address girl child marriage. This is true even though child marriage is a gross human rights violation and a form of family sexual violence. Child marriage violates UN instruments and India's directive principles. Child

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marriage endangers the human rights of both sexes, but girl children suffer greater inequality, discrimination, and disparities. Child marriage prevents girls from maturing physically, mentally, emotionally, and psychologically by causing early pregnancy, malnutrition, and maternal mortality. Child marriage denies girls reproductive rights and severely limits their educational and employment opportunities, affecting their development. Early pregnancy survival puts the foetus and mother at risk of foetal malformations. Early pregnancy harms the mother and her child. Child marriages fuel the population boom.

HISTORICAL BACKGROUND OF CHILD MARRIAGE IN INDIA

From 200 BC to 700 AD, when the earliest history of India is known, young women and men enjoyed a more open view of love. They were free to choose a partner and have romantic relationships with each other without worrying about scandal. But starting in the Middle Ages, as states and governments grew, the Indian political system grew and changed slowly. It changed the way people lived and thought from something simple to something more complicated. This made the idea of freedom much more limited. Women lost their rights and had to follow the rules and act in a certain way. They now had to follow the rules of their family and protect the honour of their clan. Young women were thought to be careless and irrational in love, so their parents married them off early to keep them from getting into trouble. Even so, the age at which a girl was to be married varied, and girls younger than 12 were rarely married in ancient times. During the Middle Ages, however, girls were getting married at younger ages, and it became more common for girls as young as six or eight to be married in Indian society. Getting the two families to agree on the marriage was the most important part of the talks. People back then thought that if two people had known each other since they were kids; they would get along better and love each other more. So, parents choose their children's spouses at a very young age, even though the daughter stayed with her parents until she hit puberty.ⁱ²

CHILD MARRIAGE

When the law talks about a child, it usually means a minor, or a person younger than the age of majority. The United Nations Convention on the Rights of the Child says that a child is "any person under 18 years of age, unless the law that applies to the child says that the person can become an adult earlier." There are many social issues that affect children, such as bullying, poverty, broken families, child labor, hunger, and children who don't have a place to live. Child marriage is one of these problems. Child

²Vivek Yadav, Puman Bhagat & B Final Year, *I AW RELATING TO CHILD MARRIAGE IN INDIA*, 703 IJRAR-INTERNATIONAL JOURNALS OF RESEARCH AND ANALYTICAL

marriage is when a girl or boy gets married before they turn 18. It can be a formal marriage or an unofficial union in which a child under 18 lives with a partner as if they were married. Child marriage is a violation of a child's rights and hurts the child's health, education, mental and emotional development, and physical growth. South Asia has the world's most shockingly high rates of child marriage. Almost half (45%) of all 20–24-year-old women said they were married before they turned 18. As of today, almost 17% of girls are married before they turn 15.ⁱⁱ

ESSENTIALS OF VALID MARRIAGE UNDER HINDU MARRIAGE ACT, 1955

In 1955, Hindu marriage laws were codified and enacted. The Hindu marriage Act of 1955 was passed by the parliament. It has laws about Hindu marriage, restitution of conjugal rights, judicial separation, divorce, annulment of marriage, maintenance, and guardianship. Sections 5 and 7 of the Hindu Marriage Act of 1955 cover the most important parts of a valid Hindu marriage. Under Hindu law, a marriage must meet the following requirements:

1. **The parties to the marriage should not be mentally ill, have a mental disorder, or be insane:**

A Hindu marriage requires the consent of a person who is able to give valid consent, according to section 5(ii) (a) of the Act³ⁱⁱⁱ. If neither party to the marriage is able to give valid consent due to mental incapacity, the marriage is voidable at the option of the other party. A marriage is voidable at the option of the other party under section 5(ii) (b) of the Act if one of the parties, despite being capable of giving valid consent, has been suffering from a mental disorder of such a kind or to such an extent that they are unfit for marriage and procreation. The Act states in Section 5(ii)(c) that if one party suffers from recurrent episodes of insanity, the other party may choose to dissolve the marriage. The Marriage Laws (Amendment) Act, 1999^{4iv} amended this section of the Hindu Marriage Act, 1955, and the word "epilepsy" was removed. As a result, if one of the parties to a marriage suffers from recurrent epileptic seizures, the marriage is valid and the party does not have the option to dissolve the union.

In the case of *Alka Sharma v. Chandra Sharma (AIR 1991 MP 205⁵)*, the wife was cold, nervous, and frigid on the first night of the marriage. She refused to take part in the sexual act.

³Section 5 in The Hindu Marriage Act, 1955, INDIANKANOON.ORG (2020), <https://indiankanoon.org/doc/635068/> (last visited Feb 12, 2023).

⁴Discussion On the Marriage Laws (Amendment) Bill, 1999. (Bill ... on 20 December,

⁵Smt. Alka Sharma vs Abhinesh Chandra Sharma on 4 February,

She was unresponsive to her family members' needs and unable to explain why she had urinated on the veranda in front of the entire family. As a result, the husband filed a petition to dissolve the marriage. The marriage was declared null and void by the court.

2. The marriage's parties have reached the age of majority:

The groom must be at least 21 years old and the bride must be at least 18 years old at the time of the marriage, according to section 5(iii) of the Act^{6vi}. If a marriage is performed in violation of these requirements, the marriage is neither null nor void. Furthermore, under Section 18 of this Act, anyone who performs such a marriage faces up to two years in prison, a fine of one lakh rupees, or both.

The court ruled in *P. Venkataramana v. State (AIR 1977 AP 437)*^{vii} that a marriage performed in violation of section 5 (iii) is not void. However, contravention is punishable under Section 18 of the Hindu Marriage Act of 1955.

3. The parties should not be in any prohibited relationships:

According to section 5(iv) of the Act^{8viii}, the parties are not in a prohibited relationship unless the usage and customs applicable to each of them allow for marriage between them. The degree of a prohibited relationship is defined in section 3(g)^{9ix} of the Hindu Marriage Act, 1955 as follows:

- If one is a lineal descendant of the other;
- If one was the wife or husband of a lineal descendant of the other; or
- If one was the wife of the brother, or of the father's or mother's or grandfather's or grandmother's brother, or of the grandfather's or grandmother's brother of the other; or
- If both parties to the marriage are governed by a valid custom or usage, the marriage is valid.

The practiced custom or usage must be certain, reasonable, and not in conflict with public policy. In India, there are a number of traditions that recognizes marriages within the context of prohibited relationships. In Kerala, for example, siblings frequently marry each other's children.

⁶Section 5 in The Hindu Marriage Act, 1955, INDIANKANOON.ORG (2020), <https://indiankanoon.org/doc/635068/> (last visited Feb 12, 2023).

⁷Pinninti Venkataramana And Anr. vs State on 9 August, 1976, INDIANKANOON.ORG (2023), <https://indiankanoon.org/doc/131121/> (last visited Feb 13, 2023).

⁸Section 5 in The Hindu Marriage Act, 1955, INDIANKANOON.ORG (2020), <https://indiankanoon.org/doc/635068/> (last visited Feb 12, 2023).

⁹Section 3(g) in The Hindu Marriage Act, 1955, INDIANKANOON.ORG (2014), <https://indiankanoon.org/doc/1003029/> (last visited Feb 13, 2023).

The court ruled in the 1956 case *Balu Swami Reddiar v. Balakrishna*^{10x} that a well-known custom among the Reddiar of Madras allows one to marry his daughter's daughter, which is unreasonable and against public policy. A marriage solemnised between two parties that falls within the degree of prohibited relationship is null and void, and the parties to such marriage are liable to be punished with simple imprisonment for one month or a fine of one thousand rupees, or both.

4. The parties to the marriage must not be related as Sapindas:

According to Section 5(v) of the Act^{11xi}, a marriage between two Sapindas is null and void. In other words, the husband and wife's genetic material should not be shared. A Sapinda relationship is defined as any relationship that extends to the third generation (inclusive) in the line of ascent through the mother and the fifth generation (inclusive) in the line of ascent through the father, with the line being traced upwards in each case from the person concerned, who is to be counted as the first generation, under section 3 (f) I of the Hindu Marriage Act of 1955^{12. xii}. Marriages between Sapindas are illegal, but they may be legal if a valid custom or usage governing each of them allows for such unions. A marriage solemnised between two parties related to Sapindas is null and void, according to Section 18 of the Act, and the parties to such a marriage face one month of simple imprisonment or a fine of one thousand rupees, or both.

5. The marriage should be solemnised in accordance with customary rites and ceremonies:

According to Section 7 of the Hindu Marriage Act^{13xiii}, a Hindu marriage is valid if it is solemnised in accordance with the traditional rites and ceremonies of either party. The marriage is completed if such rites and ceremonies include saptapadi and binding as the seventh step.

In the case of *Bibba v. Ramkall (AIR 1982 AII 248)*^{14, xiv}, the court determined that just because the parties perform certain ceremonies in order to be recognised as married does not make them legal rituals. The ceremonies may differ depending on each individual's traditions. For example,

¹⁰Balusami Reddiar, Minor By ... vs Balakrishna Reddiar, Minor And ... on 23 April, 1956, INDIANKANOON.ORG (2018), <https://indiankanoon.org/doc/454111/> (last visited Feb 12, 2023).

¹¹Section 5 in The Hindu Marriage Act, 1955, INDIANKANOON.ORG (2020), <https://indiankanoon.org/doc/635068/> (last visited Feb 12, 2023).

¹²Section 3(f) in The Hindu Marriage Act, 1955, INDIANKANOON.ORG (2016), <https://indiankanoon.org/doc/1248900/> (last visited Feb 12, 2023).

¹³Section 7 in The Hindu Marriage Act, 1955, INDIANKANOON.ORG (2020), <https://indiankanoon.org/doc/358783/> (last visited Feb 14, 2023).

¹⁴Section 5 in The Hindu Marriage Act, 1955, INDIANKANOON.ORG (2020), <https://indiankanoon.org/doc/635068/> (last visited Feb 12, 2023).

among Kerala's Nair caste, the groom's presentation of a piece of cloth to the bride (pudavakodukal) is an important ceremonial practise.

LEGAL STATUS OF CHILD MARRIAGE UNDER HINDU LAW

Section 5(iii)^{15xv} states that the bridegroom must be at least 21 years old and the bride must be at least 18 years old at the time of the marriage. The age was modified in 1978. Historically, the bride was 15 years old and the groom was 18 years old. In the vast majority of legal systems, the age of marriage and the age of majority vary. Girls could typically marry between 13 and 16 years of age; if they were under the age of majority, their guardian's permission or consent was required. Increasing the minimum age of marriage to prevent child marriage was once widely supported. To achieve the first objective, on 12 December 1962, the United Nations adopted the convention on consent to marriage, minimum age for marriage, and marriage registration. Despite the existence of convention, the bride's age had no bearing on the validity of the marriage. The Hindu Marriage Act of 1955 stipulates that the bride must be at least 15 years old. If she is under 18 (a minor), her guardian must consent to the marriage. According to a 1978 amendment to the Hindu Marriage Act, the minimum age for a bride is now 18. There is no guardianship issue in marriage, so Section 6 has been omitted. The Child Marriage Restraint (Amendment) Act of 1978^{16xvi} raised these ages to 18 for the bride and 21 for the groom; however, the 59th report of the law commission determined that "the common understanding that violation of this condition does not affect the validity of the marriage" should not be disturbed. The policy is intended to discourage child marriage, but the union will not be invalidated if it occurs. Consequently, marriages solemnised in violation of age are neither null nor void, but are punishable under section 18 of the Hindu Marriage Act and the Child Marriage Restraint Act, 1929 (19 of 1929)^{17xvii}, both of which discourage child marriage. The provision of section 3 of the Prohibition of Child Marriage Act, 2006^{18xviii} will take precedence over the provisions of the Hindu Marriage Act, allowing child marriages to be annulled at the discretion of the child party. Rarely considered is the fact that the Hindu Marriage Act of 1955 is a

¹⁵Section 5 in The Hindu Marriage Act, 1955, INDIANKANOON.ORG (2020), <https://indiankanoon.org/doc/635068/> (last visited Feb 12, 2023).

¹⁶CHILD MARRIAGE RESTRAINT (AMENDMENT) ACT, 1978 [REPEALED], INDIANLEGISLATION.IN (2023), <http://www.indianlegislation.in/BA/BaActToc.aspx?actid=15586> (last visited Feb 13, 2023).

¹⁷Direct Benefit Transfer | Ministry of Women & Child Development, WCD.NIC.IN (2014), <https://wcd.nic.in/child-marriage-restraint-act-1929-19-1929> (last visited Feb 13, 2023)

¹⁸Prohibition of Child Marriage Act, 2006, INDIACODE.NIC.IN (2023), https://www.indiacode.nic.in/handle/123456789/2055?sam_handle=123456789/1362 (last visited Feb 13, 2023).

personal law that gives greater weight to personal law. Due to the fact that the factum valet doctrine sanctioned the marriage formed in violation of age restrictions. Some of the seven requirements for marriage are mandatory, while others are optional. If any of these conditions are violated, the factum valet doctrine allows the violation. This indicates that parental consent was granted for a child's marriage despite legal consequences. This section has been the subject of considerable criticism, but it has not been made more stringent. Following a marriage performed in violation of the legal minimum age requirement, the husband, as the minor bride's natural guardian, may be granted custody of the minor bride. In each of these scenarios, the parties to the marriage are left with few options. The 1976 amendment stipulates that a girl may file for divorce regardless of whether the marriage was consummated if she was married before the age of 15 and rejected the marriage before the age of 18.

FINDINGS

There have been nine-fold increases in registered cases of Child Marriage between 2011 and 2021.

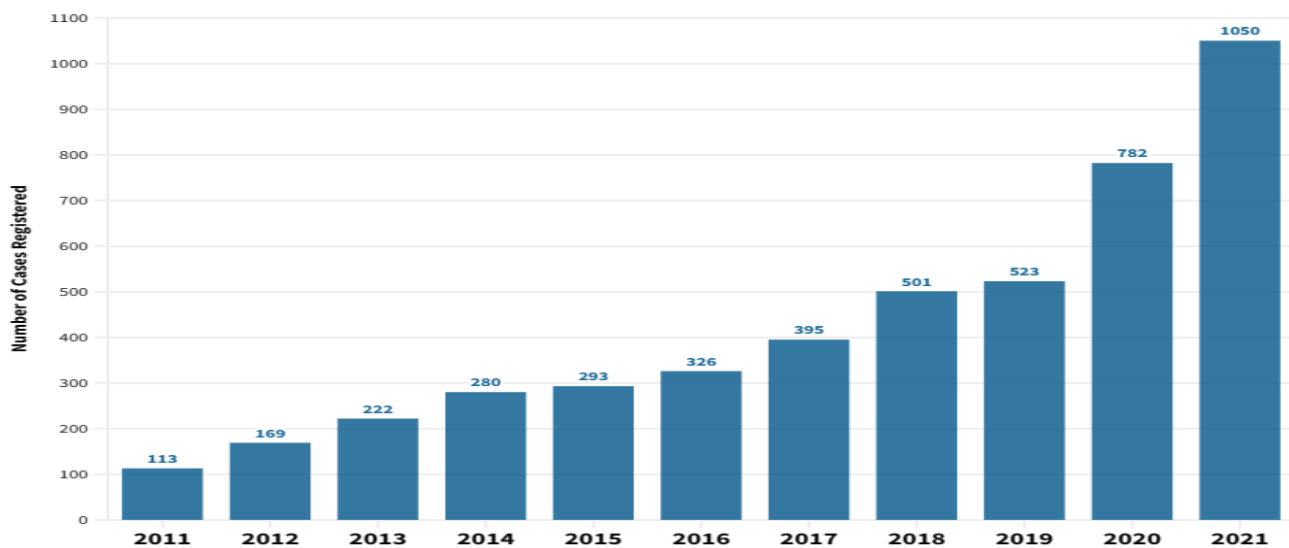
The number of cases registered under the Prevention of Child Marriage Act exceeded one thousand for the first time in 2021, according to the NCRB's CII report for 2021.^{19xix} The number of cases reported in 2021 was 1050, an increase of 34% from the previous year. In other words, in 2020, an average of two cases of child marriage was reported, whereas in 2021, this number increased to approximately three cases per day. The number of cases increased by nearly 50 percent in 2020 and more than doubled in 2021 compared to 2019. The number of cases registered under the PCM Act has increased gradually since 2011. Between 2011 and 2021, the number of reported cases multiplied by more than nine. Between 2011 and 2021, a total of 4,654 cases were recorded, with 39% of those cases occurring in 2020 and 2021 alone. The increase may be a result of improved case reporting, an increase in the incidence of cases, or both.

Between 2011 and 2021, Karnataka reported one in every five cases. With 849 cases, Karnataka accounted for more than 19% of all cases registered between 2011 and 2021, the most of any state or territory. Tamil Nadu (649) and West Bengal (619) registered the second- and third-most cases, respectively, while Assam registered 596 cases. Between 2011 and 2021, these four states accounted for more than 59 percent of all reported cases. Maharashtra, Telangana, and Haryana each reported over 200 cases. Between 2011 and 2021, these seven states contributed 75% of all cases registered under the PCM

¹⁹राष्ट्रीयअपराधरिकॉर्डब्यूरो, NCRB.GOV.IN, https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%201.pdf.

Act. Each of the states of Andhra Pradesh, Odisha, Gujarat, Kerala, and Bihar reported over 100 cases. Between 2011 and 2021, the twelve states accounted for more than ninety percent of all cases. Since 2011, the five south Indian states accounted for 45 percent of all cases registered under the Act. Among the northeastern states, Arunachal Pradesh, Mizoram, Nagaland, and Sikkim registered no cases, while Meghalaya, Manipur, and Tripura registered 1, 2, and 12 cases, respectively. In the northeastern states, 97.5% of all cases were registered in Assam alone.^{20xx}

Cases registered under Prevention of Child Marriages Act
(2011 to 2021)



Source: [Crime in India, NCRB](#)

FACTLY

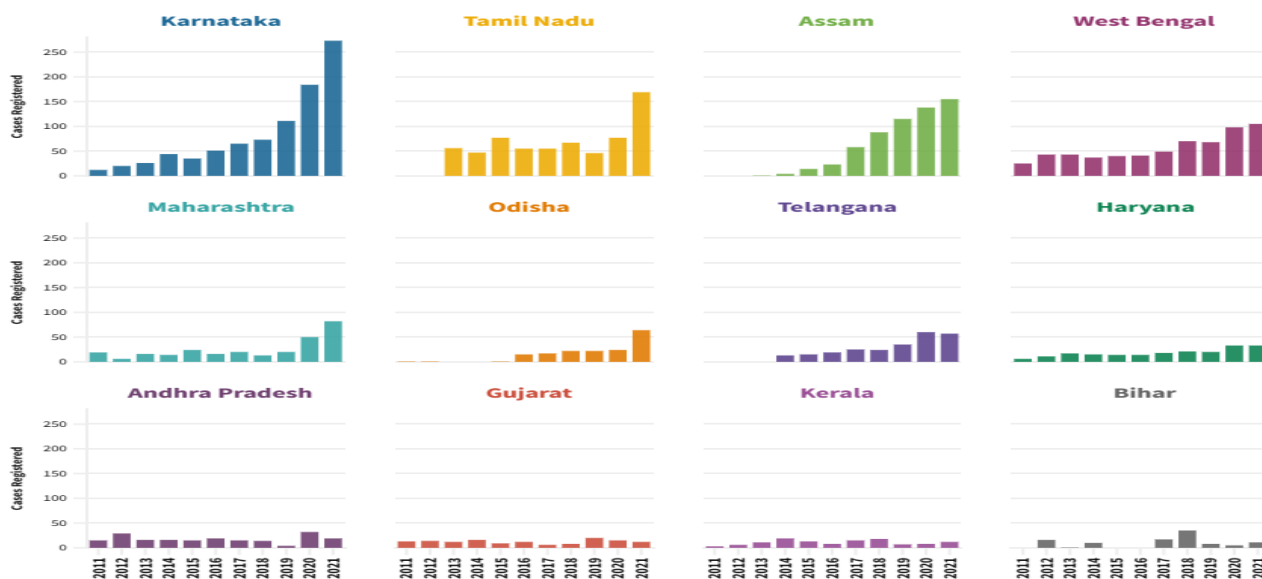
In 2021, there were 2.7 times as many cases registered in Odisha as in 2020. During the same time period, the number of cases registered in Tamil Nadu increased by 2.2 times. In 2020 and 2021, Maharashtra and Haryana also experienced an increase in cases compared to the previous years. Since 2011, more than fifty percent of the cases registered in the states of Odisha and Karnataka have been registered only in 2020 and 2021. In the three Indian states of Assam, Maharashtra, and Telangana, the years 2020 and 2021 accounted for more than 47 percent of all cases reported since 2011. During these eleven years, these two years accounted for over 30% of the cases registered in Tamil Nadu, West Bengal, Haryana, and Punjab.

²⁰ *Ibid*

Due to the pandemic, the fifth National Family Health Survey or NFHS-5 was conducted in two phases between 2019 and 2021.^{21xxi} The national questionnaire survey covered nearly 6.37 million households, including over 7.24 million women and 1.02 million men across 707 districts, 28 states, and 8 union territories. The report provides data on the percentage of 20- to 24-year-old women who were married before the age of 18 and the percentage of 25- to 29-year-old men who were married before the age of 21. According to the survey, 23.3% of women were married before the age of 18, a decrease from the 26.8% reported in the NFHS-4. The same was 17.7% among males, down from 20.3% in NFHS-4. According to the PCM Act of 2006, more than one in five surveyed women were married before the age of 18, which is illegal. The situation is worse in rural areas, where 27 percent of women and 21 percent of men are married before the age of 18, compared to 14.7% and 11.1% in urban areas.

Despite high rates of crimes against children, reporting still poor under Prevention of Child Marriage Act

Statewise trend in registration of Child Marriage cases (2011 to 2021)



Source: Crime in India, NCRB



States such as Bihar, Chhattisgarh, Jharkhand, and Madhya Pradesh did not report any unusual trends in the number of registered cases of child marriage in 2020 or 2021. This is in contrast to the general upward trend of registered cases of child marriage in many states in 2020 and 2021. In the year 2020, Uttar Pradesh recorded the highest number of cases in over a decade; however, that number was cut in

²¹National Family Health Survey or NFHS-5 https://main.mohfw.gov.in/sites/default/files/NFHS-5_Phase-II_0.pdf

half the following year, to just six (6). The 2021 NCRB Report indicates that a number of these states have a relatively high incidence of crimes committed against children. The rate of crimes committed against children in India was 33.6 in 2021, while the state of Chhattisgarh reported 61.6 and the state of Madhya Pradesh reported 66.7.^{22xxii}

The cases for which a FIR has been submitted are the only ones that are covered by the data provided in the NCRB report. As a result, there may be a significant number of additional incidents that have not been reported to the authorities. In point of fact, this assertion is supported by the findings of the National Family Health Survey.

CONCLUSION

Even though different laws were enacted at various times to prevent the evil of child marriage, it persisted in society. In order to provide social protection for young girls who were married at a young age, legislators may have believed that child marriage is not null and void. As in *V. Mallikarjunaiah v. H.C. Gowramma*^{23xxiii}, the court explained why child marriages are legal and why they are specifically excluded from sections 11 and 12. The judge remarked, "Considering the social strata in which such marriages were likely to occur, the legislature was concerned that this provision would not leave a large number of girls and young women virtually unmarried and destitute. This section was specifically excluded from sections 11 and 12 of the Hindu marriage act because the only security a girl or woman in such a situation is entitled to is within the confines of the marriage. If the marriage is easily annulled or not recognized by the law, it would have disastrous social repercussions." There are various perspectives in society. Current civilized society and social reformers are generally aware of the significance of a woman's health and social standing in a society. Section 5 (iii) of the Hindu Marriage Act has been liberalized, allowing for the continuation of child marriages despite the existence of laws prohibiting them. Therefore, we must repeal the law that recognizes child marriages, impose severe penalties on the guardian who performs the ceremony, and declare child marriages to be illegal. To end the evil practice of child marriage in India, any law with a new dimension will initially affect only a small segment of the population, but this will be overcome by the society.

²²राष्ट्रीय अपराध रिपोर्टिंग ब्यूरो, NCRB.GOV.IN, https://ncrb.gov.in/sites/default/files/CII-2021/CII_2021Volume%201.pdf.

²³V. Mallikarjunaiah vs H.C. Goowramma on 30 July,

1996, INDIANKANOON.ORG (2023), <https://indiankanoon.org/doc/1189024/> (last visited Feb 15, 2023).

