LEGAL EFFORTS TO CURB CHILD MARRIAGE IN INDIA, USA AND AUSTRALIA: A COMPARATIVE ANALYSIS

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Abstract: Child marriage is prevalent in many developing and developed nations despite multiple efforts by the respective governments. Its existence can be attributed either to the loopholes in the enacted legislations, or the society giving primacy to their cultural practices and orthodox beliefs. This article attempts to give a detailed version of child marriage in India by exploring its historical aspects, the impact of legislations and their conflict with the personal laws. It further discusses the laws enacted in the United States of America and Australia to curb child marriage and makes a comparative study regarding their efficiency.

Keywords: Prohibition of Child Marriage Act 2006, child marriage, child abuse, early marriage, sustainable development goal, women empowerment.

1. Introduction

Child marriage happens in different parts of the world in various forms and for different reasons; however, the primary reasons for the existence of the practice of child marriage are "poverty" and "cultural or social" burden (Avalos et al., 2015, p. 646). Child marriage is a widespread form of sexual exploitation, mainly of girls. The practice of child marriage is undesirable as it pushes children into a situation that is bereft of education, health safety and freedom of choice (Ghosh, 2011, p. 199). It is highly prevalent in India[1] and is also spread in various parts of South Asia, Europe and Australia (Burris, 2014, p. 152).

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[1] United Nations Children's Fund (2019) *Ending Child Marriage: A profile of child marriage in India*. Available at: https://www.unicef.org/india/media/1176/file/Ending-Child-Marriage.pdf (Accessed : 20 November 2021), p. 4.

In India, the practice is most common in some northern and central regions, especially in states such as Madhya Pradesh, Uttar Pradesh, Haryana, Jharkhand, Rajasthan and Bihar (Ghosh, 2011, p. 203). In Australia, there are massive instances of forced child marriages (Simmons & Burn, 2013, p. 973). Similarly in the USA, where every state prescribes its laws on child marriage, there are numerous instances where children are married off at a tender age of fewer than 11 years (Baxter, 2018, p. 40).

The authors have made a comparative study of child marriage laws in India with those of the USA and Australia. The prime reason behind choosing the USA and Australia is that both these nations are strong democracies like India, with independent judiciary. However, with varying social structures in comparison to India. Thus, the article is an attempt to discuss a new perspective based on the comparative study. Though the article has also discussed the socio-demographic and cultural environment in India, yet the comparative study is only limited to the existing child marriage laws.

Part 1 of the article focuses on the reasons given by various traditional communities advocating the practice of child marriage in India and the ill effects of child marriage on a child's life. Part 2 of the article discusses the various legislations enacted by the government before and after independence to curb the practice of child marriage in India and whether these laws have been successful in putting a check over this practice. Part 3 of the article examines the conflicts between the secular child marriage prevention laws and family laws of various communities in India, and how the courts have tried to resolve the conflicts through various landmark judgments. Part 4 of the article discusses the domestic laws relating to child marriage in Australia and the USA and assesses their efficiency in comparison to Indian laws.

2. The Practice of Child Marriage in India and Problems Associated with it

2.1. Why Child Marriage is practiced?

A private letter written to an American friend by Raj Coomar Roy discussing the reasons for child marriage in India, which was later converted in the form of an article discussed that the practice of child marriage is common in India but the children (in this case a boy and a girl) are not allowed to stay together unless the girl attains puberty or when her second marriage takes place (Roy, 1888, p. 417). The author deduced that both the children who are married at a young age could stay together only when the girl attained puberty and not before. The author then went on to discuss the reasons for child marriage during that period. He observed that those who prescribed child marriages intended to protect both boys and girls from sinking into "vice" and "immorality" (Roy, 1888, p. 419). He further elaborated the practice and stated that it had been successful because, at an age when the young boys and girls are exposed to attraction, the boy had his wife and the girl had her husband which prevented them from engaging in "vice" and "sin" (Roy, 1888, p. 419). Restricting female sexuality and illegal sexual activities outside the established framework of marriage was considered to be the primary objective of child marriage (Francavilla, 2011, p. 534).

Domenico Francavilla in his article states that child marriage was a practical way to ensure the smooth passage of a young bride into the family of the bridegroom before she could question it. Francavilla further observes that some authors have also suggested that child marriage spread in India during the Muslim period for the purpose of making unions between Hindus as early as possible. Thus, he claims that roots of the practice of child marriage and its social character are contested (Francavilla, 2011, p. 534).

2.2. Ills of child marriage

The practice of child marriage is a possible threat to India's aim of accomplishing Sustainable Development Goal (SDG) 5 by 2030,[2] which aims to achieve women empowerment and gender equality. Child marriage violates the rights of children and denies them the freedom to develop and obtain education and have a life of liberty and pride. It bereaves young girls of their potential and obstructs their social and individual development. Due to premature subjection to sexual acts and pregnancy, girls who are married at a very early age become prone to sexual and reproductive illness.[3] Young pregnant girls, during childbirth, face complications and death. Girls with a poor background who get married in their childhood rarely get access to health care facilities.[4] Researches also show a high rate of sickness and death among babies of mothers who are under 18 years of age.[5] Child marriage is similar to child abuse and for many young girls, it means the commencement of regular and unsafe sexual acts that can have grave repercussions on the health of young girls, such as infant mortality, maternal mortality, anemia and can cause diseases like HIV/ AIDS.[6]

Child marriage also affects boys but the practice impacts a sizeable number of girls and that too with added vigor.[7] Women remain victims of sexual abuse in marriage and young brides are more prone to such abuse.[8] To earn extra income, many young girls who flee from their child marriages end up becoming sex workers or take recourse to sexual activities.[9] In a marriage where the husband is much elder to the young bride, there is a very high likelihood of such young brides getting widowed at very primary age. This can result in them facing discrimination including loss of status and denial of property rights due to lack of education and other skills which are of utmost importance to take care of oneself.[10]

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2. Jejeebhoy, SJ (2019) *Ending Child Marriage in India, Drivers and Strategies*. New Delhi: UNICEF, p. 1.
3. *Law Commission of India Report* 2008, Proposal To Amend The Prohibition of Child Marriage Act, 2006 and Other Allied Laws (Report No. 205), pp. 18-19.
4. *Id.* at p. 19.
5. *Id.* at p. 20.
6. *Id.* at p. 10.
7. *Id.* at p. 17.
8. *Id.* at p. 21.
9. *Id.* at p. 20.
10. *Id.* at p. 22.

3. Legal Initiatives Taken to Curb the Practice of Child Marriage in India

A set of laws in the field of family laws is the legal order in India which has sustained itself in the post-independence era. The British made such laws separate for the five communities, namely Hindu (includes Sikhs, Jains and Buddhists), Parsi, Muslim, Christian and Jews. Distinct laws for each community and the attempt to ascertain application of the law on the grounds of community members were introduced in the Indian legal system during the British regime. Family law in India does not vary from one state to another; the application of laws is not ascertained as per the residency of an individual in India but following the religion, one follows (Erdman, 1981, p. 48).

3.1. Pre-Independence

To understand the influence of the British colonial government on the practice of child marriage, it must be taken into consideration that the British government did not interfere in the family laws of those it ruled. In respect to family matters, the British decided to apply Hindu laws to Hindus and Muslim laws to Muslims. Though criminal and other laws were codified and made uniform, the British government applied family laws on an individual basis by embracing a plural system of family laws (Francavilla, 2011, p. 535).

Venkatacharyula v. Rangacharyula is a famous late 19th-century case related to the practice of child marriage in India. In this case, a girl was married without her father's consent after the girl's mother dishonestly told the priest that her father had given consent for the marriage. The court held that Hindu marriage is a religious ceremony and if the marriage rite is duly solemnized, the marriage would be valid irrespective of the fact whether the person married is minor or of unsound mind.[11] It can be observed from the judgment that the court gave priority to the sacred nature of Hindu marriage, where marriage was free from "consent" and thereby validated the practice of child marriage. The court relied on the customary Hindu law that arose from conventional Hinduism (Francavilla, 2011, p. 536).

In the 1880s, a campaign was launched to increase the age of consent from 10 years to 12 years for the crime of rape under section 375 of the Indian Penal Code. It led to the formation of two committees to study the problem of child marriage. The reports submitted by these committees resulted in the passing of the Child Marriage Restraint Act 1929 (CMRA 1929) (Ghosh, 2011, p. 201). It proposed the marriage to be invalid if at the time of marriage, the age of the boy or girl was below the prescribed age as per law, nevertheless this provision was eventually done away with. CMRA 1929 initially fixed the marital age at 14 years for girls and 18 years for boys but in 1949, the age for girls was raised to 15 years. Eventually, in 1978, the marital age for girls and boys was fixed at 18 and 21 years respectively (Vandana, 2017, p. 180). The act only imposed penalties in the form

[11] 1891 ILR Madras 316.

of imprisonment and/ or fine on the bridegroom, his parents, and those performing such marriage. The motive of the act was to dissuade people from performing child marriage and it did not stress on the status of such marriages and the rights of those married (Ghosh, 2011, p. 201). However, the personal laws were safe because though the British tried to interfere in the custom of child marriage by 'restraining' the practice of child marriage, they did not challenge the legitimacy of child marriages (Francavilla, 2011, p. 538).

In *Munshi Ram v Emperor,*[12] the court while discussing the scope of the CMRA 1929 observed that the act focuses on and deals with the restriction "performance of the marriage." It is not concerned either with the validity or the invalidity of the marriage. The issue of validity or invalidity of the marriage is outside the purview of CMRA 1929. In *Moti v Ben,*[13] the court held that though marriage would have violated CMRA 1929, the act does not declare such marriage to be an invalid marriage. The Act only inflicts some punishment on persons who perform child marriages. It can be seen that the intention of the Act was only to restrict the practice of child marriage and not to invalidate the marriage itself.

3.2. Post-Independence

Before independence, the British Government enacted the CMRA 1929 to curb child marriage. However, the Prohibition of Child Marriage Act 2006 (PCMA 2006) repealed the CMRA 1929. PCMA 2006 stated for the very first time that child marriages are void or voidable in a certain category of cases, for example when child marriage is associated with the abduction of a child. It also for the first time makes child marriages voidable at the option of contracting parties. The Act further states that a petition for nullifying a child marriage by a decree of nullity can only be filed by the contracting parties who were minors at the time of marriage in a district court. If at the time of filing the petition the child is minor then it can be filed on his behalf by his guardian or next friend, and such a petition can be filed only within two years of the child attaining the majority. It also provides for the return of the gifts and other valuables received by both parties during the time of marriage.[14]

It is also noteworthy that an amendment was passed by the Karnataka State Government in 2017, which declared all child marriages in the state to be void *ab initio*[15] (void from the beginning).[16] It also enhanced the punishments for child marriage and also added a provision stating that a police officer could take *suo motu* (on its own motion) cognizance under the act. Hence, Karnataka became the first state in India to declare the child marriage void.[17]

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12. AIR 1936 All 11.
13. AIR1936 All 852.
14. Prohibition of Child Marriage Act, 2006, s. 3(4).
15. Prohibition of Child Marriage (Karnataka Amendment) Act, 2016.
16. Black, HC 1968, *Black's Law Dictionary*, 4th edn rev, West Publishing Co., p. 8.
17. 'Child Marriage and Karnataka Amendments: Re-Engaging with the Debate on Voidability', *Centre for Law and Policy Research*, 31 July 2017, viewed 20 November 2021 <https://clpr.org.in/blog/child-marriage-and-karnataka-amendments-re-engaging-with-the-debate-on-voidability/>.

Interestingly, PCMA 2006 is a territorial law and is applicable, though restricted, to all Indians in a significant facet of personal law. It covers every Indian despite affecting the family laws. Against this backdrop, it would not be wrong to suggest that within the system of personal laws, uniformization of laws is taking place. The Act departs from the previous rule of retaining the principle of distinct personal laws that were applicable based on the membership in a particular community and the principle of restricted interference in the family affairs (Francavilla, 2011, p. 541-542).

3.3. Efficacy of the laws enacted

Even after the PCMA 2006, there may remain a conflict between recognized Hindu law rule that makes child marriage void or voidable and an unrecognized rule of Hindu law that considers them valid, if not mandatory. From the perspective of private law, there was no condition regarding the marriageable age under the codified Hindu law before 2006 because even the underage marriages were valid and different community rules could be followed. However, post 2006, child marriages are void or voidable, depending on the situation. The legislators have given a custom essential role to play in contemporary Indian marriage laws by acknowledging the customs of religious communities from time to time (Erdman, 1981, p. 48). Resulting in, customary practices taking primacy over legal precedent provided that the customary practice does not clash with the prevailing formal laws (Erdman, 1981, p. 48).

The state pushed reforms to work differently depending on the social practice the state wants to regulate. The state-made legal rules are more important to some people than others in an environment where various rules are observed. We can understand this phenomenon better by remembering the fact that despite the widespread practice of child marriage in India, it is not spread in the majority of states in India (Francavilla, 2011, p. 543). In cases where formal written rule clashes with an unwritten rule, then it is normally observed that those observing unwritten rule would carry on doing so until it clashes with the formal law. Emulation of the prevailing customs plays an important part in this process. For an official rule to gain dominance, it requires time as it has to get over a set of "rules" and "beliefs" that are acquired through primary and instant means (Francavilla, 2011, p. 544).

4. Inconsistencies in the Existing Laws

Laws enacted to curb child marriage in India have been observed to be inefficient. The measures taken by the legislature seem to be considerate and aim to deter the practice of child marriage instead of taking measures to categorically proscribe them (Kumar & Venkataraman, 2015, p. 270). The PCMA 2006 does not make child marriage invalid unless those married object to it within a prescribed period (Ghosh, 2011, p. 202). This is contrary to the view taken in the Thirteenth Report on Prevention of Child Marriage Bill, 2004 presented to the Rajya Sabha[18] on 29 November 2005. The report suggested that owing to the irreversible loss a girl child endures due to "biological factors and inability to

[18] Upper House of the Indian Parliament.

sustain pressure" of early marriage, a child marriage solemnized after the commencement of the act must be declared to be "void ab initio."[19]

4.1. The marriageable age in India

Section 5(iii) of the Hindu Marriage Act 1955 prescribes 21 years as the age for marriage for a bridegroom and the bride 18 years. The Indian Christian Marriage Act 1872 states that a marriage of Indian Christian may be certified when the man planning to get married is not below the age of 21 years and the woman should not be below the age of 18 years.[20] The Parsi Marriage and Divorce Act 1936 provides that a Parsi marriage shall not be valid if the Parsi male has not completed the age of 21 years and Parsi female age of 18 years.[21] However, as per the Muslim personal law, as soon as a Muslim girl attains her puberty or accomplishes the age of 15 years, whichever is earlier, she is eligible to get married without the consent of her parents.[22]

Recently, on 16th December, 2021, the Union Cabinet gave a nod for increasing the legal minimum marital age for women from 18 to 21 years. Pursuant to this, a bill was introduced in Lok Sabha.[23] However, due to resistance from the opposition, the bill was sent to a parliamentary panel for further evaluation. The bill proposed amending the marriageable age for women under PCMA 2006, giving overriding effect over personal laws. If this bill becomes a law in the near future, it will curb majority of the ill-effects of child marriage to a great extent.

4.2. PCMA 2006 and the Hindu Marriage Act 1955

Section 2(a) of PCMA 2006 defines a "child" as a person who in the case of a male, has not attained the age of twenty-one years, and in the case of a female, has not attained the age of eighteen years. As per section 2(b), a marriage is said to be a "child marriage" where each of the two contracting parties is a child. "Minor" has been defined in section 2(f) as a person who has not completed his majority under the provisions of the Majority Act, 1875 (9 of 1875). Section 3 makes every child marriage voidable at the option of the contracting party who was a child at the time of the performance of the marriage.

As per section 12, the marriage of a minor is considered to be null and void if a minor "(a) is taken or enticed out of the keeping of the lawful guardian; or (b) by force compelled, or by any deceitful means induced to go from any place; or (c) is sold for marriage; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes." Section 9 to 11

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19. *Parliamentary Standing Committee Report* 2004, Prevention of Child Marriage Bill (Report No. 13), para 10.4.
20. Indian Christian Act, 1872, s. 60(1).
21. Parsi Marriage and Divorce Act, 1936, s. 3(c).
22. *Yusuf Ibrahim Mohammed Lokhat v. State of Gujarat,* 2014 SCC OnLine Guj 14452, para 5.
23. Prohibition of Child Marriage (Amendment) Bill 2021.

set out the punishment with rigorous imprisonment up to two years or with a fine up to rupees one lakh for the offense of marrying a child, solemnizing a child marriage, and for promoting or allowing solemnization of child marriages. Also, Hindu Marriage Act 1955 criminalizes child marriage. As per section 18 of the act, a marriage where the bridegroom is less than twenty-one years of age and bride is below eighteen years of age is punishable with rigorous imprisonment up to two years or with a fine up to rupees one lakh or with both.

PCMA 2006 and Hindu Marriage Act 1955, both prescribe the same age for marriage (Chitkara, 2015, p. 60) of male and female, hence, PCMA didn't have much effect on the Hindu Laws. Child marriage is valid as per Hindu Laws, while under PCMA, it has been made voidable[24] at the option of the 'child'[25] spouse[26] and void[27] in certain circumstances. It was held by Madras High Court in *T. Sivakumar v Inspector of Police, Thiruvallur Town Police Station, Thiruvallur District*[28] that to the extent of the inconsistency, PCMA, 2006 being a secular law would have overriding effect over Hindu Marriage Act, 1955 and was later opined by the Supreme Court in *Independent Thought v Union of India*.[29] But, as the marital age in PCMA, 2006 is similar to HMA, 1955, there remains a limited ground of inconsistency and usually, the secular law prevails.

4.3. Muslim personal laws and PCMA

In *Abdul Khader v K. Pechiammal Child Marriage Prohibition Officer*[30], the court dismissed a criminal revision filed claiming a right to practice marriage of a Muslim girl on her attaining puberty on the ground that it had legislative approval under the Sharia Act 1937. The court held that such practice was contrary to the aims of PCMA 2006, which was directed towards curbing the practice of child marriages in India.[31] In *M. Mohamed Abbas v The Chief Secretary, Government of Tamil Nadu*,[32] a writ petition was filed to restraint the respondents from intervening, by citing the provisions of PCMA 2006, with a marriage performed under the Muslim Personal law. The court while dismissing the writ petition held that provisions of PCMA 2006 are not contrary to religious freedom granted under Articles 25 and 29 of the Constitution of India 1950. The Act aims to ensure education and empowerment of girls and also status at par with that of men in the society.[33]

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24. Prohibition of Child Marriage Act, 2006, s 3.
25. Prohibition of Child Marriage Act 2006, s 2(a).
26. *Jitender Kumar Sharma v. State,* (2010) 95 AIC 428, para. 19.
27. Prohibition of Child Marriage Act 2006, s 12.
28. (2011) 5 CTC 689, para. 18.
29. (2017) 10 SCC 800, para. 128.
30. 2015 SCC OnLine Mad 5212.
31. *Abdul Khader v. K. Pechiammal Child Marriage Prohibition Officer,* 2015 SCC OnLine Mad 5212, para. 11.
32. (2015) 4 CTC 132.
33. *M. Mohamed Abbas v. The Chief Secretary, Government of Tamil Nadu,* (2015) 4 CTC 132, para. 23.

In *Md. Idris v State of Bihar*,[34] the High Court of Patna after discussing in detail the Mohammedan law held "… under Mahomedan Law a girl, who has reached the age of puberty, i.e., in a normal course at the age of 15 years, can marry without the consent of her guardian."[35] In *Mrs. Tahra Begum v State of Delhi & Ors*.,[36] relying on *Md. Idris v State of Bihar,*[37] Delhi High Court observed that under Muslim personal law, a Muslim girl can marry without the permission of her parents once she has attained puberty. Also, she can live with her husband even if she is under the age of eighteen years.[38] Such marriage shall not be void but the girl would have the choice to regard such marriage voidable once she reaches the age of majority (18 years).[39]

Thus, as seen in certain cases, courts disregarded PCMA 2006, as seen in the *Tahra Begum* case, and upheld the marriage of a Muslim girl who was under 18 years of age by giving preference to the personal laws. At this juncture, a reference may be made to the *State of Bombay v Narasu Appa Mali*[40] case where a Division Bench comprising of Chief Justice MC Chagla and Justice Gajendragadkar, while commenting on the constitutional validity of Bombay Prevention of Hindu Bigamous Marriages Act (25 of 1946), held:

> "*[A] sharp distinction must be drawn between religious faith and belief and religious practices. What the State protects is religious faith and belief. If religious practices run counter to public order, morality or health or a policy of social welfare upon which the State has embarked, then the religious practices must give way before the good of the people of the State as a whole."*

In *Seema Begaum v State of Karnataka*,[41] the High Court of Karnataka disagreed with the view taken by the Delhi High Court in *Tahra Begum's* case and held that PCMA, 2006 applies to all Indian citizens, irrespective of their religion, and Muslims cannot claim immunity from the same on the ground of belonging to a particular religion.[42] Later, in 2017, in the judgment of *Independent Thought v Union of India*, it was opined by a judge that to the extent of the inconsistency, PCMA 2006 will have an overriding effect over Muslim personal laws.[43] Hence, looking at the abstracts from various judgments above it can be inferred that there remains an inconsistency regarding marriageable age for Muslims and whether PCMA would prevail over personal laws.

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34. 1980 Crl L.J. 764
35. Id, at para. 4.
36. 2012 SCC OnLine Del 2714.
37. 1980 Crl. L.J. 764.
38. 2012 SCC OnLine Del 2714 [4].
39. Id, at para. 5.
40. AIR 1952 Bom 84.
41. (2015) 1 KCCR 281.
42. *Seema Begaum v. State of Karnataka*, (2015) 1 KCCR 281, para. 35.
43. *Independent Thought v. Union of India*, (2017) 10 SCC 800, para. 128.

4.4. Consent given by a minor wife to her husband for sexual intercourse

In the *Court on its own Motion (Lajja Devi) v State,*[44] it was held that an offense of rape under section 375 of Indian Penal Code 1860 is made out when there has been consummation with a wife below the age of 15 years. There are no exceptions to it and it must be followed stringently and thoroughly. Consent in such instances is irrelevant and whether the girl is married or not also does not make any difference. The court finally held that even the personal laws applicable to the parties are also irrelevant.[45]

PCMA 2006 requires the minimum age for marriage for girls to be 18 years and boys to be 21 years. But earlier there was an inconsistency with the provision of the Indian Penal Code1860. The offense of rape defined under section 375 of Indian Penal Code 1860 had an exception, which stated that sexual intercourse or sexual activity by a man with his wife who was not below the age of 15 years did not amount to rape. Thus, it permitted sexual intercourse with the wife between the age of 15 and 18 years. This was in distinction with other laws, which imposed a minimum age for marriage to be 18 years for girls and 21 years for boys. Hence, it could be seen that though criminal law made it a punishable offense to have sexual intercourse with a wife below 15 years of age, the marriage was still considered valid under PCMA 2006.[46]

To remove this inconsistency, the Parliament of India, in 2012 enacted the Protection of Children against Sexual Offences (POCSO) Act (Tiwari, 2018, p. 4) which made sexual offense with any child under the age of 18 years[47] a punishable offense.[48] This rule had no exception (Chaudhary, 2017, p. 163) and therefore, it was in contradiction with exception 2 of section 375 of the Indian Penal Code 1860, which permitted sexual intercourse with a wife between 15 and 18 years of age.

To avoid any ambiguity, Parliament brought an amendment in POCSO Act in 2013 which stated that it shall have an overriding effect over any other law to the extent of the inconsistency.[49] This made it unambiguous that sexual intercourse with a wife between the age of 15 and 18 years would be punishable under this act and consent, in such cases would be immaterial. In 2017, it was made further clear by the Hon'ble Supreme Court, in *Independent Thought v Union of India,*[50] that POCSO Act 2012 will prevail over Indian Penal Code 1860, and exception 2 of section 375 of the Indian Penal Code1860 was liable

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44. 2012 SCC OnLine Del 3937.
45. *Court on its own Motion (Lajja Devi) v. State,* 2012 SCC OnLine Del 3937, para. 50.
46. *Law Commission of India* 2008, Proposal To Amend The Prohibition of Child Marriage Act, 2006 and Other Allied Laws (Report No. 205), p. 25.
47. Protection of Children from Sexual Offences Act, 2012, s 2(d).
48. Saria, V, 'The Ungovernable and Dangerous: Children, Sexuality and Anthropology', in Meyers, T, *The Ways We Stretch Toward One Another: Thoughts on Anthropology through the Work of Pamela*, Langaa Research and Publishing, Cameroon, p. 83.
49. Protection of Children from Sexual Offences Act 2012, s 42-A.
50. (2017) 10 SCC 800.

to be struck down as being unconstitutional[51] and it shall be read as "*Exception 2 – Sexual intercourse or sexual acts by a man with his own wife, the wife not being 18 years, is not rape*."[52] Hence, the Indian judiciary has made the law crystal clear by stating that sexual intercourse by a man with his wife, who is below 18 years of age, would amount to rape irrespective of her consent. The overriding effect of the POCSO act 2012 over IPC 1860 would save the girl child from irreversible damage she may suffer due to premature sexual acts or early pregnancy. This would now help in protecting women from exploitation where the consent of a girl below 18 years is taken coercively.

4.5. Registration of Marriages

The Supreme Court in *Seema v Ashwani Kumar*[53] observed that registration of marriages of all citizens belonging to different religions should be made obligatory in the states where such marriages are performed.[54] The Law Commission of India in its report suggested that existing laws directed towards curbing the practice of child marriage in India can be effectively implemented by registration of marriage.[55] The report also clarified that the purpose of recommending registration of marriages is not to obliterate the personal laws of various communities in India but to embrace the existing personal laws relating to solemnization of marriage subject to the condition that such marriages should be registered under the Compulsory Registrations of Births, Deaths and Marriages Registration Act or other laws existing in the state.[56] The Law Commission considered compulsory registration of marriages as an essential "reform" and suggested amendment of the Registration of Births and Deaths Act 1969 to incorporate in its purview the provisions for compulsory registration of marriage so that the prevailing administrative system can conduct registration of marriages.[57] Thus, it is suggested that if registration of marriages is made mandatory in India by the government, it shall effectively help in curbing the practice of child marriage.

5. Domestic Laws on Child Marriage in the USA and Australia

Child marriage is a real and pertinacious problem throughout the world. It is pertinent to mention that the problem is not confined to India alone but is spread across the world. Though the practice is highly prevalent in developing countries (Burris, 2014, p. 152), but is not limited to only developing countries (Warner, 2004, p. 245).

To curb this evil practice, various countries have made stringent legislations, however, the practice continues in several countries, either due to prevailing customary

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51. *Independent Thought v. UOI*, (2017) 10 SCC 800, para. 197.
52. Ibid.
53. (2006) 2 SCC 578.
54. *Seema v. Ashwani Kumar,* (2006) 2 SCC 578, at para. 17.
55. *Law Commission of India* 2017, Compulsory Registration of Marriages (Report No. 270), para. 1.18.
56. *Id.,* at para. 1.19.
57. *Id.* at para. 8.11.

practices or due to loopholes in the domestic legislation. Like India, the United States of America (USA) and Australia have also formulated certain legislations to restrict this immoral practice. There are wide differences between the laws of these three countries, however, in some aspects, they stand on a similar footing. This part of the paper would deal with the domestic legislation enacted to curb the practice in the USA and Australia. It further does a comparative estimate of the nature of their legislations with those of India.

5.1. Domestic Child Marriage Laws of USA

5.1.1. Marital age and its exceptions

To curb the practice of child marriage, there is no federal law in the USA. Hence, marital age is not consistent across the nation[58] and every state has its laws (Burris, 2014, p. 166). In the USA, in two states – Alaska[59] and North California,[60] the minimum age for marriage is as low as 14 years. Only two states –Delaware and New Jersey have put a bar on the marriageable age until 18 years for both boys and girls, with no exceptions.[61] Some states prescribe a minimum marital age of fewer than 18 years, however, in almost half of the states, there is no minimum marital age prescribed.[62] The majority of the states allow children to marry under the age of 18 years either by parental consent or judicial consent or both.[63]

Though the majority of the marriages fall within the ambit of domestic legislation, there are still many marriages performed illegally (Burris, 2014, p. 165) for which strict punishments such as imprisonment are prescribed (Burris, 2014, p. 166). Even in those states which do not prescribe a minimum age for marriage, judicial approval is generally granted as per the conditions stipulated in Uniform Marriage and Divorce Act 1973 (Genet, 2019, pp. 3013-14).

The Uniform Marriage and Divorce Act 1973 is a model code that fixes the age for marital capacity at 18 years but authorizes the marriage of a sixteen or seventeen-year-old child subject to consent by either parents/guardians or by judicial approval.[64] The act further approves the marriage of a child below the age of 16 years subject to the

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58. Tahirih Justice Center (2017) *Falling Through the Cracks: How Laws Allow Child Marriages to Happen in Today's America*. Available at: http://www.tahirih.org/wp-content/uploads/2017/08/TahirihChildMarriageReport-1.pdf (Accessed: 22 November 2021), p. 12.
59. Hamilton, MA (2020) *2020 Report on Child Marriage in the United States*. Philadelphia: CHILD USA, p. 15.
60. Id., at p. 23.
61. Selby, D (2018) 'New Jersey is the Second State in US to end Child Marriage', *Global Citizen*, 23 June, viewed 23 November 2021 <https://www.globalcitizen.org/en/content/child-marriage-ban-new-jersey/>.
62. Tahirih Justice Center (2017) *Falling Through the Cracks: How Laws Allow Child Marriages to Happen in Today's America*. Available at: http://www.tahirih.org/wp-content/uploads/2017/08/TahirihChildMarriageReport-1.pdf (Accessed: 22 November 2021), p. 2.
63. Hamilton, MA (2020) *2020 Report on Child Marriage in the United States*. Philadelphia: CHILD USA, p. 14.
64. Uniform Marriage and Divorce Act, 1973, s. 203.

consent of both parents/guardians and judicial approval.[65] Satisfactory proof of age must be put forward by the person applying for a marriage license.[66] The act also requires that the courts while approving must look into the maturity of the child and the best interest of the child.[67] Though parental consent requirements have been held constitutional by the courts,[68] there is still certain ambiguity regarding the number of parents required to consent or the circumstances where sole approval could be provided by non-custodial parents (Genet, 2019, p. 3017). The Supreme Court of Nevada in a judge upheld the validity of a statute permitting the marriage of a 15-year old child with the consent of a single parent and judicial approval, rejecting the claim of the non-consenting parent.[69]

5.1.2. Status of underage marriages

Many states do not prescribe a minimum age but in those states that prescribe a minimum age, there are conflicting views regarding the status of such marriages. In some states like Iowa[70] and West Virginia,[71] underage marriages are voidable, while in states like New Hampshire,[72] such marriages are considered to be null and void. However, the USA provides legal remedies to all the victims of illegal child marriage within its borders, such as asylum and temporary visas to immigrant victims, regardless of the citizenship of these victims (Mark, 2012, p. 416).

5.1.3. Registration of marriages

The USA strictly makes the requirement of birth certificates and marriage certificates mandatory and therefore, can identify child marriage much easily, except for the marriages conducted secretly by some radical religious denominations (Burris, 2014, p. 168).

5.1.4. Cultural conflicts

Due to different age requirements by each state and due to the presence of some religious sects, which do not follow the principles laid down by the domestic legislation, there exists a cultural conflict (Burris, 2014, p. 166). The reasoning followed by these radical groups advocating child marriage is the likelihood of younger brides to produce more offspring and that they could be effortlessly trained to suit the demands of their husbands (Burris, 2014, p. 167). The USA deals with such groups by strictly sticking to domestic legislation (Burris, 2014, p. 167).

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65. Uniform Marriage and Divorce Act, 1973, s. 203.
66. Uniform Marriage and Divorce Act. 1973, s. 202(b).
67. Uniform Marriage and Divorce Act. 1973, s. 205.
68. *Moe v. Dinkins,* 669 F 2d 67 (2d Cir. 1982).
69. *Kirkpatrick v. Eighth Judicial District Court*, 64 P.3d 1056 (Nev. 2003).
70. Hamilton, MA (2020) *2020 Report on Child Marriage in the United States*. Philadelphia: CHILD USA, p. 18.
71. Id., at p. 26.
72. Id., at p. 22.

5.2. Domestic Laws of Australia

5.2.1. Marital age and its exceptions

In Australia, as per the Marriage Act 1961, marriage is defined as a union of a man and a woman to the exclusion of all others, entered into for life at one's own accord.[73] It is implicit from this definition that minors are regarded as incapable of giving voluntary consent for marriage.[74] As per the Marriage Act 1961, marital age in Australia is specified as 18 years for females as well as males,[75] and marrying a person, who is not of marriageable age is an offense punishable with an imprisonment of 5 years.[76] However, there is an exception applicable to children of 16 or 17 years of age wishing to get married to someone who is above 18 years of age.[77] In such a case, prior permission from a judge or magistrate and both the parents or guardians is mandatory.[78] But there are only a few instances where such permissions are granted by the judge or magistrate due to his wide discretionary powers.[79] The judge or magistrate plays a very important role in the whole process, as he minutely examines the reasons for the application of the marriage and whether the child is willingly applying for the same or if he/she is forced by his parents or guardians, and on being satisfied, grants the permission only in exceptional circumstances.[80] The wide discretionary powers of a judge or magistrate are not limited to his satisfaction of an exceptional circumstance to grant permission for marriages below the age of 18 years, but it also extends to granting consent to a child, who wilfully wishes to marry, but his/her parents or guardians refuse to grant consent for the marriage.[81] Hence, it can be safely concluded that neither a person who has not attained the age of 16 years nor two people who are less than 18 years of age can marry under any circumstances under the act.

The domestic laws in Australia are very strict with regards to the marriageable age of the parties and consent of the parties, and if in any case, any of the parties is not of marriageable age or the consent of the parties was not free to consent, the marriage is deemed to be void under the Marriage Act.[82] In Australia, if the consent of one of the parties,

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[73] Marriage Act, 1961, s. 5(1).
[74] Jelenic, T & Keeley, M (2013) *End Child Marriage: Report on the Forced Marriage of Children in Australia*. Available at: https://yla.org.au/wp-content/uploads/2019/01/End-Child-Marriage-NCYLC-Research-Report.pdf (Accessed: 24 November 2021), p. 12.
[75] Marriage Act, 1961, s. 11.
[76] Marriage Act, 1961, s. 95(1).
[77] Jelenic, T & Keeley, M (2013) *End Child Marriage: Report on the Forced Marriage of Children in Australia*. Available at: https://yla.org.au/wp-content/uploads/2019/01/End-Child-Marriage-NCYLC-Research-Report.pdf (Accessed: 24 November 2021), p. 12.
[78] Marriage Act, 1961, s. 12.
[79] Jelenic, T & Keeley, M (2013) *End Child Marriage: Report on the Forced Marriage of Children in Australia*. Available at: https://yla.org.au/wp-content/uploads/2019/01/End-Child-Marriage-NCYLC-Research-Report.pdf (Accessed: 24 November 2021), p. 12.
[80] Ibid.
[81] Marriage Act, 1961, s. 16.
[82] Marriage Act, 1961, s. 23B.

i.e., the victim, was sought by coercion, threat, or deception or if any of the parties was incapable of understanding the nature and consequences of the marriage, in such a case, the marriage is deemed to be a 'forced marriage'[83] and is punishable under the Criminal Code Act 1955 with an imprisonment of 7 years. If the victim is subjected to slavery or slavery-like conditions,[84] it comes under aggravated offense and is punishable with an imprisonment of 9 years.[85] In these cases, the person who abets the forced marriage and the person who is a party to the forced marriage (other than the victim) are equally punished.[86]

If the marriage of a person aged less than 16 years is performed, it is presumed that the marriage is a forced marriage, until the contrary is proved.[87] The reason for the same might be to provide for the most stringent punishment for such offense, because if the marriage is found to be a forced one, then the punishment would be more severe, i.e., 7 years or 9 years, as per the gravity of the offense, as opposed to a punishment of 5 years,[88] in a circumstance where the marriage is found to be punishable on the sole ground that the parties were not of marriageable age. Hence, Australia follows this general deterrence to convince others to not engage in such immoral acts. The provision of forced marriage was introduced by the Australian Government in the Criminal Code in 2013 by the passing of Crimes Legislation Amendment (Slavery, Slavery-like Conditions and People Trafficking) Bill 2012 by the Australian Parliament (Simmons & Burn, 2013, p. 988). But apart from such harsh legislative measures, some non – legislative measures like education strategies or community consultation could also be undertaken to prevent incidents of forced marriage (Simmons & Burn, 2013, p. 994).

5.2.2. Registration of marriages

Under the Marriage Act 1961, though there is a provision for registration of marriages,[89] non-compliance with this provision does not result in any punishment or penalty. Hence, in simple words, it is not mandatory. But there are certain benefits attached to registered marriages that are inaccessible to those couples whose marriage is unregistered. Registered marriages are recognized nationwide and these are mandatory for income tax benefits or migration.[90]

5.2.3. Cultural conflicts

As per the personal laws of Australian Muslims and Aboriginal societies, the marriage might involve the parties to be under the age of 18 years and maybe polygamous

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83. Criminal Code Act, 1995, s. 270.7A.
84. Criminal Code Act, 1995, s. 270.8.
85. Criminal Code Act, 1995, s. 270.7B.
86. Criminal Code Act, 1995, s. 270.7B.
87. Criminal Code Act, 1995, s. 270.7A(4).
88. Marriage Act, 1961, s. 95.
89. Marriage Act, 1961, s. 50.
90. Legal Services Commission of South Australia, *Marriage.* Available at: https://lawhandbook.sa.gov.au/ch21s03.php (Accessed: 21 November 2021).

or for a short-term as well (Quinlan, 2016, pp. 104-105). But Australia strictly follows the Marriage Act 1961 and does not allow for underage,[91] polygamous[92] or short-term marriages (Quinlan, 2016, p. 106).

5.2.4. Status of marriage

Under the Marriage Act in Australia, the marriage is strictly considered to be void, if any of the parties is not of marriageable age.[93] It's evident from the words of the statute that this rule is to be strictly applied without any exceptions.

A brief summary of child marriage laws of the three nations:

Criterion	India	USA	Australia
Minimum Marital age and its exceptions	18 for women and 21 for men, with no exceptions	Varies for each state and no prescribed minimum age in almost half of the states. Exceptions of judicial and parental consent are prevalent in almost every state.	18 for both females and males, but exceptions for children aged 16 or 17 years
Registration of marriages	Not mandatory	Mandatory	Not mandatory
Cultural conflicts	Personal laws are given primacy at some instances	Strict enforcement of legislations	Strict enforcement of legislations
Status of child marriage	Either void or voidable	Either void or voidable in states that prescribe a minimum age	Void

6. Comparative Analysis of Laws of India, USA and Australia and Suggestions

6.1. Marital Age and its Exceptions

The basic leg of comparison of the laws of these countries could be none other than the marital age, where all the three countries differ variably. In this regard, Indian and Australian legislations are more stringent than those existing in different states of the USA, in one or the other aspect. Indian legislations are stringent since under PCMA 2006, there is no exception to the prescribed marital age of 18 and 21 years for females and males respectively,[94] while Australian legislation are stringent because though

[91] Marriage Act, 1961, s. 95.
[92] Marriage Act, 1961, s. 94.
[93] Marriage Act, 1961, s. 23B(1)(e).
[94] Prohibition of Child Marriage Act, 2006, s. 2(a).

there is an exception to the marital age of 18 years,[95] if any of the required conditions under such exception is not fulfilled, the marriage would be deemed to be void[96] and not voidable as in the case of India.[97] The law in a majority of the states in the USA is very lenient as almost half of the states don't prescribe a minimum age for marriage.[98] Hence, the USA could take a cue from India in this regard by fixing the marital age and may also apply it stringently as in Australia, by declaring any violation of this rule to be a void marriage. Alike India and Australia, it is suggested that different states in the USA should try to fix at least a minimum age for marriage to 18 years unanimously so that there are no conflicts among different states concerning the minimum age for marriage.

6.2. Registration of Marriages

There are a large number of unreported cases of child marriage in India and Australia. In India, apart from other problems such as low conviction rate and corruption among public officials (Davids, 2007, p. 319), there is a very crucial factor behind this huge number of unreported cases, i.e., no strict enforcement measures for the production of birth certificates and marriage registrations (Burris, 2014, p. 168). Though the Supreme Court of India in *Seema v Ashwani Kumar*[99] has directed the Government to formulate provisions for compulsory registration of marriages of all the citizens of India, the Government took a blind eye to it, and to date, no legislation or guidelines have been framed in this regard. In September 2021, the Rajasthan Government passed a bill[100] in the legislative assembly on compulsory registration of marriages to accelerate the process of annulling child marriage but was later withdrawn.[101] Similarly, in Australia, though there are several incentives provided only to couples with registered marriages but registration is not compulsory. While in the USA, the production of such documents is mandatory, which makes it much easier for the officials to identify instances of child marriage, except those secretly conducted by religious denominations. Hence, this is a factor where both India and Australia may take a cue from the USA, as it could be a very dominant factor to control this evil practice. The law on births and marriage registrations must be enforced adequately and if required, in a stringent manner, otherwise it would be meaningless.

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95. Marriage Act, 1961, s. 12.
96. Marriage Act, 1961, s. 23B(1)(e).
97. Prohibition of Child Marriage Act, 2006, s. 3.
98. Tahirih Justice Center (2017) *Falling Through the Cracks: How Laws Allow Child Marriages to Happen in Today's America*. Available at: http://www.tahirih.org/wp-content/uploads/2017/08/TahirihChildMarriageReport-1.pdf (Accessed: 22 November 2021), p. 2.
99. (2006) 2 SCC 578.
100. Rajasthan Compulsory Registration of Marriages (Amendment) Bill, 2021.
101. Ravi, N (2021) 'How justified was the outrage against the Rajasthan Compulsory Registration of Marriages (Amendment) Bill?', *Leaflet*, 27 October, viewed 26 November 2021 <https://www.theleaflet.in/how-justified-was-the-outrage-against-the-rajasthan-compulsory-registration-of-marriages-amendment-bill/#:~:text=The%20Rajasthan%20government%20had%20argued,to%20annulling%20the%20child%20marriage>.

6.3. Cultural Conflicts

Being home to multicultural societies, cultural conflicts are experienced in the enforcement of domestic laws by India (Mathew, 2016, p. 142), the USA (Piatt, 2006, pp. 756-757), and Australia (Quinlan, 2016, p. 101), as the personal or family laws of these groups or societies, are contradictory to the legislation imposed by the government. USA and Australia did not show any leniency in this regard and strictly applied their legislations to these groups as well. But in India, even after the enactment of PCMA 2006, there were certain instances, where it was held by courts that personal laws would be given primacy over PCMA and that child marriages were held valid. But it has also been made clear by various High Courts and also opined in a Supreme Court judgment that PCMA, 2006 being a secular law would have primacy over the personal laws.[102] Therefore, all three countries have taken a commendable initiative by strictly sticking to their legislations.

6.4. Status of Marriage

Underage marriages are recognized differently in the three countries. In India, child marriage is void or voidable, depending on the situation,[103] while in Australia, if the parties are not of marriageable age, the marriage is strictly considered to be void.[104] But in the USA, there are different provisions for different states, i.e., in some states it is void, while in some, it is avoidable.

It is recommended here that like India and Australia, the USA should sign the Convention on the Rights of Child 1989 (CRC), which suggests the minimum age of marriage of both males and females to be 18 years. Further, different states in the USA can take a cue from the states of Delaware and New Jersey that have raised the marital age to 18 years without any exceptions. These measures would surely help to curb the practice of child marriage in the USA.

In the case of India, it is suggested that the Government may consult some Ministries as well as child welfare organizations working towards curbing the practice of child marriage in India. This will help in assessing whether it will be beneficial or not to make such practice completely void at the pan India level, as has been done by the state of Karnataka. The leniency granted in India which makes the marriage voidable is being misused and might not be so effective as compared to the law when the marriages would be strictly void.

It is further suggested that as the Indian Government enacted The Muslim Women (Protection of Rights on Marriage) Act 2019 to proscribe the practice of "instantaneous

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[102] *Independent Thought v. Union of India*, (2017) 10 SCC 800, para. 128; *T. Sivakumar v. Inspector of Police, Thiruvallur Town Police Station, Thiruvallur District,* (2011) 5 CTC 689, para. 18.; *Seema Begaum v State of Karnataka,* (2015) 1 KCCR 281.

[103] Prohibition of Child Marriage Act, 2006, s. 3& 6.

[104] Marriage Act, 1961, s .23B(1)(e).

and irrevocable divorce pronounced by a Muslim husband", it should enact another legislation increasing the minimum marriageable age for Muslims girls from puberty or 15 years to 18 years. This would help in resolving the conflict between PCMA 2006 and Muslim personal laws, which would further help to avoid conflicts as seen in *Md. Idris* and *Tahra Begum* cases.

6.5. Changing Trends

In a press release in March 2018, UNICEF stated that there was a global decline in the pervasiveness of child marriage as various countries observed a noteworthy decrease in the practice of child marriage. There was a 15 percent decline in the last decade in the percentage of women who were married as a child. The number reduced from one in four to around one in five.[105]

In the past 10 years, South Asia has observed a maximum downfall in child marriage across the world. Due to major progress made by India, the risk of a girl getting married before 18 years of age has decreased as there has been a percentage drop by more than one-third, i.e., from 50% to about 30%. The reasons for the drop include the rising rate of a girl child's education, bold investments made by the government for adolescent girls, conveying a strong message across the community about the offense of child marriage and the damage it causes.[106] As per UNICEF, the progress of goals outlined in Sustainable Development Goals (SDGs) must be speeded up to end the practice of child marriage by 2030.[107]

Indian legislation *prima facie* seems to be more stringent than those of the USA or Australia, as it prescribes a minimum age without any exceptions. However, India is still home to the highest number of child brides in the world (Burris, 2014, p. 153). As per a UNICEF report dated 2019, 1 out of every 3 child brides in the world resides in India.[108] But, India has, to a great extent been successful in reducing the incidents of child marriage. As per National Family Health Survey, the number of girls aged 20-24 years who were married before the age of 18 years has reduced from 47.4% in 2005-06[109] to 26.8% in

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105. Press Release 2018, 25 million child marriages prevented in last decade due to accelerated progress, according to new UNICEF estimates , 2 March 2018, viewed 15 November 2021 <https://www.unicef.org/eca/press-releases/25-million-child-marriages-prevented>.

106. Press Release 2018, 25 million child marriages prevented in last decade due to accelerated progress, according to new UNICEF estimates , 2 March 2018, viewed 15 November 2021 <https://www.unicef.org/eca/press-releases/25-million-child-marriages-prevented>.

107. Ibid.

108. United Nations Children's Fund (2019) *Ending Child Marriage: A profile of child marriage in India*. Available at: https://www.unicef.org/india/media/1176/file/Ending-Child-Marriage.pdf (Accessed: 20 November 2021), p. 4.

109. Ministry of Health and Family Welfare (2007) *National Family Health Survey (NFHS-3) 2005-06: India: Volume* 1. Mumbai: International Institute of Population Sciences, p. 163.

2015-16[110] to 23.3% in 2019-21.[111] There is an increase in the reporting of cases of child marriage, as is evident from the report of the National Crime Records Bureau which states that the number of cases registered during 2012, 2013, and 2014 was 169, 222, and 280, and the number of cases registered in 2016 rose to 326.[112] The figure further rose to 501 and 523 in 2018 and 2019 respectively, and 785 in 2020.[113] India aims to eliminate child marriage by 2030.[114]

Despite multiple schemes and legislations introduced by the government to eradicate child marriage, it still continues to exist in the society. Household poverty and persistence of patriarchial gender norms are key drivers of child marriage.[115] Prohibitive costs of dowry and weddings, control on girls' sexuality, and fears for girls' safety are also major factors attributable to existence of this practice in the society.[116] The Covid-19 pandemic saw an increase in the instances of child marriage, owing to the restrictions placed on the number of guests attending the wedding, which further reduced the marriage expenses.[117]

Child marriage is also a major issue in the USA. As per a report, at least 207,459 minors were married in the USA between 2000 and 2015.[118] As per the individual data collected by states, it has been inferred that the majority of child marriages consisted of girls marrying adult men.[119] In around 500 cases, minors were allowed to marry adults aged forties, fifties, or sixties (Genet, 2019, pp. 3001-02). In one of the states, Idaho, between 2000 and 2014, 84 out of every 10000 marriages was child marriage.[120] Like India, the cases of child marriages have overall dropped in the USA as well, but this immoral practice persists, especially among the rural, low-income populations (Genet, 2019, p. 3002).

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110. Ministry of Health and Family Welfare (2017) *National Family Health Survey (NFHS-4) 2015-16: India*. Mumbai: International Institute of Population Sciences, p. 165.
111. Ministry of Health and Family Welfare (2021) *National Family Health Survey (NFHS-5) 2019-21: India Fact Sheet*. Mumbai: International Institute for Population Sciences, p. 3.
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113. Ministry of Home Affairs (2021) *Crime in India 2020 Statistics Volume I*. New Delhi: National Crime Records Bureau, p. 6.
114. 'Transforming Our World: The 2030 Agenda for Sustainable Development' (United Nations 2015) para 5.3.
115. Jejeebhoy, SJ (2019) *Ending Child Marriage in India, Drivers and Strategies*. New Delhi: UNICEF, p. 5.
116. Jejeebhoy, SJ (2019) *Ending Child Marriage in India, Drivers and Strategies*. New Delhi: UNICEF, p. 18.
117. Nandy, A (2021) 'Taken out of School and Married: Meet India's Covid-19 Child Brides', *Quint*, 12 June, viewed 24 November 2021 <https://www.thequint.com/news/india/rise-in-child-marriages-covid19-coronavirus-lockdown-pandemic-brides-rural-india-data#read-more#read-more#read-more>.
118. Tsui, A, Nolan, D & Amico, C (2017) 'Child Marriage in America by the Numbers' *PBS Frontline*, 6 July, viewed 25 November 2021 <http://apps.frontline.org/child-marriage-by-the-numbers/>.
119. Tahirih Justice Center (2017) *Falling Through the Cracks: How Laws Allow Child Marriages to Happen in Today's America*. Available at: http://www.tahirih.org/wp-content/uploads/2017/08/TahirihChildMarriageReport-1.pdf (Accessed: 22 November 2021), p. 3.
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The instances of child marriage and forced marriage in Australia are under-researched and misunderstood and there are no reliable statistics about this issue (Simmons & Burn, 2013, p. 976). As per a 2014 report by Plan International, though a very tiny number of cases are reported, it is suggested by community groups that the actual number of cases is much higher.[121] As per the report dated 2013 by Dr. Eman Sharobeen, the manager of the Immigrant Women's Health Field in Fairfield, New South Wales, there were no less than 60 child brides confined to South-West Sydney alone.[122] The National Children's and Youth Law Centre, within 2011-13 had identified approximately 250 cases of child marriage.[123]

Hence, it can be inferred from these statistics that this problem is not alien to any of these countries. The practice is highly prevalent, but all the countries can get over this issue to a huge extent in their ways. India has developed several schemes and has relied on PCMA 2006 strictly. Similarly, during the past two years, many states have increased their minimum age for marriage, while Australia has criminalized forced marriage. All these steps, if enforced efficiently, will lead to the eradication of child marriages in these countries.

The Covid-19 pandemic is likely to have a huge impact on child marriage globally. In a press release in March 2021, UNICEF stated that 10 million additional girls are at the risk of child marriage, due to the effects of the pandemic.[124] The report further stated that school closures, economic stress, service disruptions, pregnancy, and parental deaths could be the major reasons for the increase in instances of child marriage. United Nations Population Fund has projected that Covid-19 pandemic would result in 13 million additional child marriages across the globe during the 2020-2030 decade.[125] Thus, the pandemic has created further challenges to the progress made over decades in reduction of child marriage at global level.

7. Conclusion

Child marriage is prevalent in India, Australia, and the USA. It affects the lives of both boys and girls, but the impact is much higher on a girl child, who faces several irreparable losses such as early pregnancy and sexual and reproductive illness, and several other diseases. Various communities advocate that this practice is a part of their culture and is followed since

121. Evenhuis, M & Jennifer, B (2014) *Just Married Just a Child: Child Marriage in the Indo-Pacific Region*. Australia: Plan International, p. 28.
122. Ibid.
123. Ibid.
124. 'COVID-19: A threat to progess against child marriage', UNICEF, March 2021, viewed 26 November 2021 <https://data.unicef.org/resources/covid-19-a-threat-to-progress-against-child-marriage/#:~:text=The%20risk%20of%20child%20marriage,closures%20and%20interruptions%20in%20services.&text=Thus%2C%20school%20closures%20such%20as,is%20no%20longer%20an%20option>.
125. United Nations Population Fund (2020) *Impact of the Covid-19 Pandemic on Family Planning and Ending Gender Based Violence, Female Genital Mutilation and Child Marriage.* Available at: https://www.unfpa.org/sites/default/files/resource-pdf/COVID-19_impact_brief_for_UNFPA_24_April_2020_1.pdf (Accessed: 25 November 2021), p. 2.

the ancient past. Even today, despite stringent legislation being framed to stop such marriages, such marriages are performed by these communities. From the days of British colonial rule in India till the present day, separate laws have been formulated for the marriages of the five major religious communities based on their cultures. But regarding child marriage, there were two major legislations framed, i.e., the CMRA 1929 and the PCMA 2006. According to the current legislation in force, i.e., the PCMA 2006, which is a secular law, any child marriage is void or voidable, depending upon the circumstances. Further, through the enactment of the POCSO Act 2012, sexual intercourse with a girl below the age of 18 years is now considered rape, and the rule does not have an exception in the favour of the husband.[126] The Indian government has also introduced several schemes from time to time to improve the living standards of children and to curb the practice of child marriage.

Apart from India, USA and Australia have also made several laws to put a check on the practice of child marriage. In Australia, forced marriage is heavily punished and underage marriages or the marriages where the consent of one of the parties was not free, are strictly struck down to be void under the Marriage Act 1961. Though the marital age in Australia is prescribed as 18 years and there is an exception for children of 16 and 17 years, but if any condition required under this exception is not fulfilled, the marriage is strictly deemed to be void.

The USA, on the other hand, does not have a Federal law, hence every state prescribes its laws. Therefore, every state has a different age prescribed and a different status of such a marriage. Though some states prescribe a minimum age while others do not. Underage marriages are permitted only by permission from the court and parental consent and the strict enforcement of mandatory birth and marriage registration makes it easier for the authorities to identify the instances of child marriage. During the past two years, the USA has made commendable progress, as some states have now prescribed a marital age, while many states, which already had a prescribed marital age have raised the minimum age. There are certain religious communities in all three countries, which continue to practice child marriage. However, all three countries deal with such cases strictly by complying with the enacted legislation.

Thus, it can be seen that both socio-legal factors are contributing towards a decline in the practice of child marriage. The suggestions given above shall further help in removing discrepancies in different laws and speed up the further decline in the practice of child marriage so that the SDGs can be achieved.

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