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Combating Child Marriages in India: Harmonise Human Rights Concerns with Cultural Considerations

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ABSTRACT

Child Marriages have serious detrimental effects on the health, education, development and personality of young girls which in turn results in violation of their human rights

This paper identifies human rights provisions expressed in the Convention on the Elimination of All Forms of Discrimination against Women, 1979 (UN Women's Convention) and examines India's compliance with the Convention's provisions to tackle child marriages in the country. The paper contests the universal vision of human rights and argues for a more realistic appraisal of the 'cultural' limitations of international human rights law so as to effectively tackle a complex problem like child marriages in India. The article contends that a failure to accommodate cultural considerations would considerably hurt the application of human rights law to tackle child marriages in India at the field or grassroots level. Searching for practical and feasible remedies to combat and eliminate child marriages in the country, this paper proposes a strategy that occupies the middle ground between two dichotomous poles of 'universal human rights' and 'cultural distinctiveness'.

I. INTRODUCTION

The Child Marriage in India is an intertwining of social, economic, cultural, legal and gender related factors. Consequently, it is a complex and multidimensional problem. Such early marriages have serious detrimental effects on the health, education, development and personality of young girls which in turn results in violation of their human rights. Macro level data² does show the prevalence of child marriages on a pervasive scale in the country.

Undoubtedly, child marriage denies human rights to such young girls as marriage at a tender age and causes multiple harm to them. Jaya Sagade argues that child marriage³ "Takes away

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² Census 2011 reveals that the child marriage prevalence rate for girls was 17.2 percent while the NFHS-4 (2015-16) showed that it was 26.8 percent.

³ Sagade Jaya, 'Child Marriage in India: Socio -Legal and Human Rights Dimensions', (2nd edn, Oxford India Paperbacks 2012), Ch Legal Discourse on Age of Marriage, pp 125.

their autonomy in respect of the choice of a life partner and the right to decide the timing of the marriage, exposes them to violence and abuse which may result in emotional and psychological problems and sometimes even in desertion and divorce, creates problems for their reproductive health in terms of maternal mortality and morbidity, does not give them the opportunity to decide freely and responsibly the number and spacing of their children, reaffirms stereotypes of women in child-bearing roles and takes away their right to education....”.

(A) Structure of the Paper

The paper **first** examines the reasons behind using a human rights approach to challenge child marriages in general and in India in particular.

It **then** traces the evolution of global human rights law *vis a vis* women’s rights and the rights of the girl child.

Subsequently, with a view to understand how international human rights law can be used to combat child marriages, the paper examines the provisions and work of the Women’s Convention 1979 as the Convention is regarded as the ‘central and most comprehensive document’⁴ among all the UN Declarations and Conventions for the advancement of human rights of women.

It **next** mulls over the efficacy with which provisions of the Women’s Convention have been employed to tackle child marriages in India.

After this the paper discusses the limitations of universal application of international human rights law given the existence of diverse cultures.

In the **next section**, the paper examines the role of cultural traditions and practices in determining child marriages in India.

Next, the paper offers relevant recommendations to effectively prevent and prohibit child marriages given the overall cultural context in India.

Finally, the paper makes some concluding observations.

II. RATIONALE BEHIND A HUMAN RIGHTS APPROACH TO COMBAT CHILD MARRIAGES

One of the perspectives to challenge and prevent child marriages in India is by using the concept of human rights established in international human rights treaties. The evolution of Human Rights law and discourse over the last 70 years or so and more so in the recent decades

⁴ [https://www.ohchr.org/EN/Professional Interest/Pages/CEDAW.aspx](https://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx), last visited August,2021.

has developed a national and international environment that is more amenable and conducive to protect and promote Human Rights and has a deterrent effect on those who perpetrate Human Rights injustices. As Rebecca Cook⁵ puts it “The language and the concept of human rights have been developed through the struggle of individuals and groups. Many individuals find human rights empowering because they provide means by which individuals can legitimately assert their interests.”

Dinah Shelton argues⁶ “Human Rights law establishes a minimal order of forbearance or moral baseline to allow personal development through the pursuance of individual goals.”

Jaya Sagade⁷ argues “The human rights approach offers a more complete analysis to the issue of child marriage than the demographic, population and health approaches as they focus more on the social impact of child marriage than on the life of a girl child. It (a human rights approach) requires child marriage to be seen as part of discrimination against girls. It also requires that family concerns regarded as private matters be understood as public matters. It insists that child marriage must be seen as part of a larger social agenda of any society that is committed to recognizing the full potential of all its members without any discrimination”.

Child marriages do violate the various rights set out in major international human rights instruments or conventions namely, the right to equality on grounds of sex and age, right to marry and found a family, right to life and survival, right to liberty and security, right to health, right to information, right to education and right to be free from slavery; that are recognized by major global Conventions such as the International Covenant on Civil and Political Rights 1966(ICCPR), the International Covenant on Economic, Social and Cultural Rights 1966(ICESCR), the Convention on the Elimination of All Forms of Discrimination against Women 1979, the Convention on the Rights of the Child 1989, the Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1962 and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery 1956. Hence, human rights law can be utilized to combat the disabilities of young girls who are married off as children.

III. EVOLUTION OF INTERNATIONAL HUMAN RIGHTS LAW FOR WOMEN AND GIRLS

The commitment of the United Nations to human rights was first reflected in the Universal

⁵ Cook Rebecca and others, ‘Advancing Safe Motherhood Through Human Rights’, (World Health Organisation, 2001), pp4.

⁶ Shelton Dinah, ‘Remedies in Furthermore International Human Rights Law’, (Oxford University Press 1999), pp 39.

⁷ Sagade Jaya, ‘Child Marriage in India: Socio –Legal and Human Rights Dimensions’, (2nd edn, Oxford India Paperbacks 2012)pp xxxv.

Declaration of Human Rights(UDHR) which was adopted by the UN General Assembly in 1948. The UDHR reaffirmed faith in fundamental human rights and in the dignity and worth of the human being. With UDHR, the individual person became the subject of international law. Various international human rights treaties that have addressed the issue of human rights of women and young girls are based on the UDHR.

In the evolution of human rights law the idea of equality between men and women was central to human rights since 1948 when the UDHR proclaimed in Article 2 “ Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, *sex*, language, religion, political or other opinion, national or social origin, property, birth or other status.” Clearly right to equal protection for men and women is guaranteed by this aforesaid provision.

Another relevant article Art 16(1) states “Men and Women of full age, without any limitation due to race, nationality or religion, have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and its dissolution.” Article 16(2) states “Marriage shall be entered into only with the free and full consent of the intending spouses”

While the UDHR itself is not a legally enforceable instrument but it has acquired legal status through a number of international treaties. It is worthwhile to mention here that the Commission on Human Rights, a body established under the UN Charter, was to draft the International Bill of Human Rights to create specific human rights standards that corresponded with the general principles laid down in the UDHR. While the original idea was to draft a single convention on human rights, eventually two separate covenants were developed; the International Covenant on Civil and Political Rights(ICCPR)and the International Covenant on Economic, Social and Cultural Rights(ICESCR). The UN General Assembly adopted both these conventions in 1966 and they came into force from 1976.

The key global human rights conventions concerning the young girls human rights are the Convention on the Elimination of All Forms of Discrimination against Women, 1979(Women’s Convention)⁸ and the Convention on the Rights of the Child, 1989(Children’s Convention)⁹.Both the aforesaid Conventions reflect the basics of the UDHR and reassert UDHR’s two legally binding covenants, namely, the International Covenant on Civil and Political Rights(ICCPR)¹⁰ and the International Covenant on Economic, Social and Cultural

⁸ Convention on the Elimination of All Forms of Discrimination against Women, G.A. Res 34/180, UN GAOR, 34th session, No 46 at 193, UN Doc.A/39/45(1979).

⁹ Convention on the Rights of the Child, G.A. Res. 44/25(XLIV), UN GAOR, 44th session, Supp. No. 49 at 167, UN Doc. A/44/49(1989).

¹⁰ International Covenant on Civil and Political Rights, G.A. Res. 2200A(XXI), UN Doc.A/6316(1966).

Rights(ICESCR)¹¹.

It may also be mentioned here that two other international treaties that have a strong bearing on human rights of women and young girls are the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery, 1956(Slavery Convention)¹² and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of marriages, 1962(Marriage Convention)¹³.

IV. WOMEN'S CONVENTION AND ADVANCEMENT OF HUMAN RIGHTS OF WOMEN

While some of the early UN initiatives did take note of the unequal and unfavourable position of Women and a plethora of Conventions concerning women were promulgated such as the *Convention on the Suppression of Traffic in Persons and the Exploitation of Others(1949)*, *Convention(No 100) concerning Equal Remuneration for Men and Women Workers for Work of Equal Value(1951)*, *Convention on the Political Rights of Women(1952)*, *the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery(1956)*, *Convention on the Nationality of Married Women(1957)*, *Convention (No 111)concerning Discrimination in Respect of Employment and Occupation(1958)*, *Convention against Discrimination in Education(1960)*, *Convention on Consent to Marriage, Minimum Age of Marriage, and Registration of Marriages(1962)*, *Convention on the Elimination of All Forms of Racial Discrimination(1965)*, many critics and researchers argue that women's issues were accorded little importance during the first two-three decades of the UN¹⁴.As Jaya Sagade¹⁵ states "Until the Women's Convention was adopted by the UN General assembly, women's experiences and perspectives were largely, but not entirely, absent from the international human rights discourse. The international community and the traditional human rights lawyers did not take the structural causes and systemic nature of women's subordination and oppression into account. Women's experiences and their sufferings and disadvantages were neglected mainly because the private sphere of familial relationship was considered to be out of the purview of the human rights debate. Consequently, women's problems and concerns were not central to the rights framework. It was not until the late 1960s and 1970s that progress

¹¹ International Covenant on Economic, Social and Cultural Rights, G.A. Res 2200A(XXI).

¹² Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, G.A Res. 608(XXI)(1956).

¹³ Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, G.A. Res. 1763 A (XVII)(1956).

¹⁴ Hillka Pietila and Jeanne Vickers, 'Making Women matter: The Role of the United Nations',(London:Zed Books 1990), pp 115.

¹⁵ Sagade Jaya, 'Child Marriage in India: Socio –Legal and Human Rights Dimensions',(2nd edn, Oxford India Paperbacks 2012) pp120.

was made in international fora towards the meaningful articulation of women's human rights.” However, in 1967 the Declaration on the Elimination of Discrimination against Women was adopted unanimously by the UN General Assembly which advanced the setting of standards for women rights significantly and also served as a basis for creating a legally binding convention for women's human rights. As a first step, the UN General Assembly declared the year 1975 as International Women's Year. The UN Commission on the Status of Women (CSW) initiated the drafting of the Convention. Finally the Convention on the Elimination of All Forms of Discrimination Against Women – CEDAW (also known as Women's Convention) was adopted by the General Assembly in 1979 and came into force from 1981. The Convention established an international bill of rights for women, and state parties agreed as a matter of international law to guarantee the enjoyment of those rights. The Women's Convention established the Committee on the 'Elimination of Discrimination Against Women' which monitors government implementation of standards through the reporting mechanism for state parties to the Convention¹⁶. The Optional Protocol (by which CEDAW is able to address individual complaints too) came into force on 22 December, 2000¹⁷.

A. Bunting¹⁸ points to the comprehensive scope or coverage of the Women's Convention when she writes “ The Women's Convention, adopted in 1979 by the General assembly, both incorporates rights articulated in earlier instruments and in some cases goes beyond these instruments. It specifically enunciates rights concerning discrimination in the areas of politics, economics, education, health care, finance, law and *family (emphasis mine)*, thereby encompassing both civil and political and economic, social and cultural rights.”

Article 1 of the Women's Convention 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.” Clearly Art 1 emphasizes that discrimination violates principle of equality, human rights and fundamental freedoms.

Art 2 (a), 2(b), 2(c), 2(d), 2(e), 2(f) and 2(g) lays down obligation upon state parties to 'Eliminate Discrimination Against Women'. For instance, Art 2(a) states “to embody the principle of the

¹⁶ Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 1979, Article 1.

¹⁷ The UN General Assembly Resolution A/54/4 on 6 Oct, 1999.

¹⁸ Bunting Annie, 'Particularity of Rights, Diversity of Contexts: Women, International Human Rights and the Case of Early Marriage', (Ph.D. thesis Toronto 1999), pp 50.

equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle.” Thus, the aforesaid provision makes it incumbent upon state parties to take steps to ensure the ‘practical realization’ of the principle of ‘equality’. In a similarly strong provision, Art 2(f) calls upon countries to ‘take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women.’ This aforementioned article strengthens the resolve to eliminate all forms of discrimination against women as practices such as child marriages in India persist on the basis of legally tolerated customs and practices.

Art 3 of the Women’s Convention endorses substantive equality when it seeks to remove social, economic, political and cultural inequalities through positive measures ‘including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with men.’

Art 5(a) of the Women’s Convention states “State parties shall take all appropriate measures to modify 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 inferiority or superiority of either of the sexes or on stereotyped roles for men and women.” By virtue of this Article 5(a), the Women’s Convention enters the domain of private relations between ‘men and women’ and recommends that law must redress the disadvantaged position of women in all areas of their life as they face pervasive and systemic discrimination.

Art 16 (1)(a) to (1)(h) and Art 16(2) is particularly noteworthy and important in the context of family relations and marriage. It states that “State Parties shall take 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:

16(1)(b) ‘the same right freely to choose a spouse and to enter into marriage only with their free and full consent;

16(1)(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;

16(1)(g) the same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation.

Art 16(2) is forthright and has a direct link with the issue of child marriage. It states “ the

betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.

Thus, Art 16(1) and 16(2) provides specific guarantees of women's equality in marriage and family related issues where gender based discrimination has been especially detrimental.

In a nutshell, the upshot of the above discussion of the provisions of the Women's Convention clearly conveys the strong potential of using a human rights law approach to remedy the injustices suffered by young girls as a result of child marriages and thereby effectively end child marriages in India.

V. INDIA'S COMPLIANCE WITH HUMAN RIGHTS LAW LAID DOWN BY THE WOMEN'S CONVENTION:

At the very outset it may be stated that India has ratified the Women's Convention and has by implication accepted the legal duty to abide by it. Hence it has an obligation under international law to respect and protect human rights of women and young girls who are victims of child marriages.

However, it must be made clear here that standards laid down in the Women's Convention or any other international human rights instrument do not automatically become a part of Indian domestic law as the Indian Parliament is required to enact legislation to give effect to the rights laid down in such international conventions. This is implicit from Art 51(c) and Article 253 of the Indian Constitution.

Art 51(c) states¹⁹ "The State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized peoples with one another". While Art 253²⁰ gives Parliament the power to make any law for 'implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body'.

It may be underscored that the Indian Parliament has enacted the Prohibition of Child Marriages Act in 2006 that bars solemnization of child marriages and makes it both voidable and void under certain conditions. Besides, the punishment prescribed under this Act is much more stringent than that was provided under the earlier Child Marriage Restraint Act 1929.

However, cultural factors including religion severely inhibit the Indian state's ability to carry

¹⁹ The Constitution of India.

²⁰ The Constitution of India.

out provisions of international human rights instruments such as the Women's Convention *in toto*.

For instance, India has filed a declaration to Article 5 and Article 16 of the Women's Convention which reads "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." Clearly, the Declaration shies away from eliminating the discrimination based on sex, gender and religion in personal laws.

Such a reticent approach is also seen in the Indian Government's declaration to Art 16(2) of the Women's Convention. It states '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.'

In essence, the Indian Government's view and position is that strict or total compliance with international human rights law and instruments so as to tackle child marriages is difficult in India.

VI. CULTURAL CONSTRAINTS OF INTERNATIONAL HUMAN RIGHTS LAW IN COMBATING CHILD MARRIAGES

While it is true that Human Rights law is empowering but to use it as a 'stand alone' to bring about change in such a multidimensional and complex problem like child marriage will be impractical and difficult anywhere in the world including India. Before endorsing a total and blanket application of international human rights law to tackle child marriages, a critical question that needs to be asked and addressed is; What are the cultural circumstances under which the child marriages take place in any society?

At this juncture, it is worthwhile to examine how scholars and researchers have viewed the possibility of 'universal' application of human rights to different 'cultures'.

Even when the pioneering Universal Declaration of Human Rights(UDHR) was in the making, the American Anthropological Association had attacked the 'universality' of the then proposed Declaration by stating "*The problem is thus to formulate a statement of human rights that will do more than just phrase respect for the individual as an individual. It must also take into full*

*account the individual as a member of a social group of which he is a part, whose sanctioned modes of life shape his behavior, and with whose fate his own is inextricably bound.....How can the proposed Declaration be applicable to all human beings and not be a statement of rights conceived only in terms of the values prevalent in the countries of Western Europe and America?.....It must embrace and recognize the validity of many different ways of life”.*²¹

In fact, the stark contrast between ‘universality’ of human rights” and distinctiveness of ‘cultures’ is brought out well in the Introduction to the book²² wherein it is stated “The discourse of human rights is animated by a fundamental tension between, on the one hand, the desire to establish universal rights and, on the other, the awareness of cultural differences, which seems to negate the possibility of finding common ground on which to base such rights. Hence, the most serious and still ongoing debate about human rights invites us to choose between universalism and cultural relativism.”

Further, it is proposed here that human rights standards and norms would not operate in a vacuum; they will be filled with the cultural context in which they are applied. As Sally Engle Merry writes “As various societies mobilize Western law in their demands for human rights, they reinterpret and transform Western law in accordance with their own legal conceptions and with the resources provided by the global human rights system. They talk rights, reparations, and claims- the language of law- but construct a new law with the fragments of the old”²³.

Or as Richard Wilson argues²⁴ “Just because an Asian or African human rights organization uses the language of human rights against its government, it should not be assumed that human rights are being invoked in an orthodox and positivist legal manner. This assumption ignores the degree to which human rights doctrine gets reworked and transformed in different contexts, whether that context is ‘non-western’ or not.”

VII. OVERWHELMING ROLE OF CULTURE IN DETERMINING CHILD MARRIAGES IN INDIA

It is argued here that while International Human Rights instruments like the Women’s Convention can be employed to combat child marriage but not without a proper understanding

²¹ American Anthropological Association, “Statement on Human Rights”(1947) 49(4) American Anthropologist 539.

²². ‘Culture and Rights Anthropological Perspectives’, Edited by Jane K Cowan and others (Cambridge University Press 2001), pp4.

²³ Sally Engle Merry, ‘Legal Pluralism and Transnational Culture: The Ka Ho’Okolokolonui Kanaka Maoli Tribunal, Hawaii, 1993’ in Richard A Wilson (ed), ‘Human Rights, Culture and Context: Anthropological Perspectives’,(London and Chicago: Pluto Press 1997).

²⁴ *Ibid.*

of the country's cultural context. A failure to take into cognizance cultural factors would considerably hinder the implementation of the human rights law in the field and its hasty application may set back the possibility of utilizing the human rights discourse and law to end child marriages in the country in future.

Before embarking upon a review of the Indian situation let us first examine the definition of 'Culture'.

Edward Burnett Tylor, regarded as the father of Cultural Anthropology, defines culture as "that complex whole which includes knowledge, belief, art, morals, law, custom and any other capabilities and habits acquired by man as a member of society"²⁵. It follows that in the context of child marriages cultural traditions and practices, community and caste pressures and festivals etc can be taken as 'proxy' for cultural norms.

An analysis of the cultural situation in India suggests the following -

One, in many states cultural traditions play a significant role in determining timing of marriage of young girls. For example, in the *Natratradition* prevalent in districts of Rajgarh and Shajapur in Madhya Pradesh, girls are married off at a very young age of 11 or 12 years. If the girl is not able to adjust in her husband's family, she returns back to her maternal home and parents remarry her for a monetary consideration to some other man. The *Natras* closely linked to child marriage, for unless a girl is committed to early marriage, she cannot indulge in *Natra*. It has turned into a symbol of status and machoness²⁶.

Or child marriages take the form of *Aata - Sata* where one brother and sister being married to another set of brother and sister which is popular in Gujarat and Rajasthan.

Or marriages within the extended family in Andhra Pradesh which is called the *Mathamma* system encourages child marriages.

Child marriages also take several other forms like *Thal Pratha*, *Vachan Pratha*, *Paalna Pratha* etc.

Two, in many North Indian communities festivals also serve as an occasion to solemnize child marriages. For example, *Akshaya Tritiya*, *Mahashivratri*, *Ganesh Chaturthi*, *PhuleraDujetcare* regarded as auspicious for solemnizing child marriages.

Three, there are many communities and castes where there is a pressure to marry off girls early.

²⁵ Tylor Edward, 'Primitive Culture: Research into the Development of Mythology, Philosophy, Religion, Art, and Custum', Vol. 1(London: John Murray1871), pp1.

²⁶ Chandrashekhar Rajeshwar, 'Childhood in Rajgarh: Too Young for Wedlock, Too Old for the Cradle', (9October 5, 1996), 31, Economic and Political Weekly, pp 2721.

For example, the Sondhiyas, Tanwars, Dangis, Kanjar, Bhils, Pal, Meenas, Gujjars, Sapera, Sansi, Vishwakarmas, Kuchwahas and in many cases even among the Rajputs or Thakurs.

Four, there is empirical evidence too that shows the importance of cultural factors in determining timing of marriage of very young girls. Two field studies substantiate the role of culture in the occurrence of child marriages.

The first one is *A Study on Child Marriage in India: Situational Analysis in 3 States (2008)* which was a joint study of the National Institute of Public Cooperation and Child Development (NIPCCD) and the Centre for Social Research(CSR), Delhi wherein two districts each in the states of Uttar Pradesh (Varanasi and Meerut), Madhya Pradesh(Bhopal and Shajapur) and Rajasthan (Jaipur and Tonk) were chosen and an empirical study was conducted in these districts. A key finding of the study was “Individually, fewer people agreed with child marriages but admitted that their castes and communities practice it. This explains to a great extent why the practice continues and how the collective consciousness subsumes the individual consciousness.”

The second study is *Child Marriages in India: A Study of Situation, Causes and Enforcement of Prohibition of Child Marriage Act 2006”(2011)* which was sponsored by the Planning Commission of India and conducted by the Pt. G B Pant Institute of Studies in Rural Development, Lucknow in 10 states, namely UP, Rajasthan, Bihar, Maharashtra, MP, Chattisgarh, Jharkhand, West Bengal, Gujarat and Odisha. One of its principal findings were “ Existing cultures and traditions is one of the key challenges that India faces in curbing the practice of Child Marriages”.

VIII. RECOMMENDATIONS

a) There is a need to shift parameters of the Human Rights discourse and make it more sensitive to cultural diversity. For this an effective and constructive dialogue is needed between Human Rights advocates and culture spokespersons; both within the country and across countries.

This need for a dynamic interface of rights discourse and culture ideologues is emphasized by Abdullahi Ahmed An-Naim²⁷ when he argues for the indispensability of both an internal cultural discourse and a cross –cultural dialogue as a *sine qua non* for the emergence of a genuinely universal doctrine. Such an intellectual endeavor, he believes, might bring about a reformulation of some Western notions of rights through the incorporation of experiences and values of non-western societies. More importantly, An-Naim asserts that a cultural dialogue

²⁷ Abdullahi Ahmed An-Naim, ‘Towards a Cross Cultural Approach to Defining International Standards of Human Rights’ in *Human Rights in Cross Cultural Perspectives: A Quest for Consensus*, (ed. 1992), pp 19.

among Western and Non-Western philosophies and an internal dialogue are crucial to ascertain equivalents to Western notions in order to facilitate reinterpretations of aspects of non-Western philosophies along western lines.

b) There is a greater need for ethnographic²⁸ studies so as to have a better understanding of the issue of child marriages in the Indian context.

As Annie Bunting states²⁹ “ Much of the debate about the universal applicability of human rights standards has been conducted by international lawyers, scholars, policy makers and government delegates- in other words without much input from anthropology.” Likewise, Sally Engle Merry writes that anthropologists “historically resisted engagement with human rights movement because they feel the concept of human rights is an artefact of Western cultural traditions raised to the status of global normativity”³⁰. There is a greater need for human rights scholarship to be grounded in case studies from the local context as that would help human rights scholars and researchers to understand how local communities are interpreting and reshaping the human rights norms so as to suit local conditions.

d) Elected local government representatives particularly the women leaders can be instrumental in advocating and spreading awareness about human rights of women and young girls in the country.

e) There is a need to incentivize people and parents about the health and educational needs of the girl child.

f) There is a need to replicate programmes like the *Lado (beloved child) Abhiyan* in different states of the country. In December 2012, Lado campaign was conceived by the Directorate of Women Empowerment, Woman And Child Department, Madhya Pradesh Government and it was launched in February 2013 with a view to eradicate child marriages in the state. An innovative program that involves community participation along with the state agencies, the Lado Abhiyan seeks to sensitize young people and their parents about the ill effects of child marriages of girls.

g) Finally, there is a need for civil society organizations to remain active and alert in combating child marriages in the country.

²⁸ Ethnography is a branch of anthropology and the systematic study of individual cultures at en.wikipedia.org/wiki/Ethnography.

²⁹ Bunting Annie, ‘Particularity of rights, Diversity of Contexts: Women, International Human Rights and the Case of Early Marriage’, (Ph.D. thesis Toronto 1999), pp 77-78.

³⁰ Merry Engle Sally, ‘Legal Pluralism and Transnational Culture: The Ka Ho’Okolokolonui Kanaka Maoli Tribunal, Hawaii, 1993’, in Richard A Wilson (ed), ‘Human Rights, Culture and Context: Anthropological Perspectives’, (London and Chicago: Pluto Press, 1997).

IX. CONCLUDING OBSERVATIONS

To conclude, it is appropriate that an optimum blend of the human rights and cultural considerations be used while fighting child marriages in India. In other words, a middle ground is needed wherein circumstances are contextualized in strategizing against child marriages. The acceptance of ‘human rights ‘arguments would be much more among the people if it is invoked and linked to cultural context. As Mahmood Monshipouri³¹ **states-** “One of the most daunting questions facing the international human rights community is how a commitment to the full range of human rights is possible given unequal economic circumstances and priorities. Such a commitment – if and when it exists – remains unrealistic at best. Global standards of human rights must be enforced.

³¹ Monshipouri Mahmood, (2001) ‘Promoting Universal Human Rights: Dilemmas of Integrating Developing Countries’, Yale Human Rights and Development Law Journal, Vol 4 Issue 1, p25.