

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

I.A. NO. /2017

IN

WRIT PETITION (CIVIL) NO. 382/2013

**IN THE MATTER OF:**

INDEPENDENT THOUGHT

..... Petitioner

VERSUS

UNION OF INDIA

.....Respondents

**AND**

**IN THE MATTER OF:**

THE CHILD RIGHTS TRUST

.....Applicant

**APPLICATION FOR INTERVENTION**

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ADVOCATE FOR THE APPLICANT: ANINDITA PUJARI

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THE CHILD RIGHTS TRUST

.....Applicant

4606, 6th Floor, High Point IV,

Palace Road, Bangalore 560001

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**APPLICATION FOR INTERVENTION**

TO,

THE HON'BLE CHIEF JUSTICE OF INDIA

AND HIS LORDSHIP'S COMPANION  
JUSTICES OF THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE APPLICATION OF  
THE APPLICANT ABOVE NAMED

**MOST RESPECTFULLY SHOWETH:-**

1. The present writ petition has been filed by the Petitioner under Article 32 of the Constitution challenging the Constitutional validity of Exception 2 to Section 375 of the Indian Penal Code to the extent that it prescribes the minimum age of consent for sexual intercourse as not less than 15 years in case of a married girl, contrary to the age of consent as 18 years provided for under Section 375 *Sixthly* of the Code.
2. The present petition was listed for hearing before this Hon'ble Court and on 10.08.2017 this Hon'ble Court expressed the need for recent data on the health of girls who are married between the ages of 15 to 18 years and also sought information on the number of Child Marriage Prohibition Officers appointed under the Prohibition of Child Marriage Act, 2006 ("PCMA").
3. In this regard, the Applicant seeks the permission of this Hon'ble Court to intervene in the matter as it can provide the necessary data and studies that this Hon'ble Court has sought for, so as to assist the Hon'ble Court. The Applicant Trust works extensively on the

prevention of child marriage in Karnataka and is competent to assist this Hon'ble Court with the issue at hand, particularly with regard to the data sought on the adverse consequences of child marriage. Therefore, the Applicant seeks leave of this Hon'ble Court to implead as an Intervenor in the present writ petition.

4. The Applicant, Child Rights Trust is a non-governmental, non-profit organization established in the year 2002 with aim to secure "Every Right for Every Child". The Applicant Trust endeavors to protect and promote the rights inherent to a child and to:

- a. Achieve and to consolidate the rightful position of children in general to the benefits and services to which they are entitled as children, and to a healthy and safe environment which is their due as human beings;
- b. Protect, maintain and develop children's inherent right to peaceful existence and quality of life to which they are entitled;
- c. Sensitize civil society and the authorities on child rights;
- d. Carry out statistical research and research in social sciences relevant to children and their families;
- e. Secure the effective use of the legal process to remedy children's grievances.
- f. Advance the rights of the child in the community.

(A copy of the Applicant's Trust deed is annexed herein and is marked as **ANNEXURE – A/1**)

(A copy of the Letter of Authorization is annexed herein and is marked as **ANNEXURE – A/2**)

5. The Applicant Trust has done extensive work in the area of prevention of child marriage in Karnataka. Its work includes spreading awareness on the issue by conducting sessions on the situation with regard to child marriages as well as analyzing the roles of the Child Marriage Prohibition Officers as well as wide range of workshops and training programmes child rights and emerging child protection issues designed for officials of various government departments, NGOs, teachers, lawyers, colleges and students of social work, police, railway police, children and parents. The Applicant's activities include the working towards child-friendly gram panchayats, contributions to the Citizens' CRC review voluntary working group and through drafts of sections of the report; support to sister organisations in the state and in other South Indian States on CRC and MDG reviews and acting as the Nodal organisation for Childline, Bangalore. The Applicant has also with other organizations formed a network called the "Karnataka Task Force Against Child Marriage" to fight against child marriage. As part of this network, the Applicant has taken up a campaign against child marriages, coupled with sensitizing workshops with government officials, police, NGOs and general public.

6. It is submitted that the practice of child marriage is a nationwide concern, as it amounts to gross violations of human rights, resulting in the loss of autonomy of the girl child in particular, depriving her of the right to equality, the right to life and dignity as well as right to health as guaranteed under Articles 14 and 21 of the Constitution.

7. According to the United Nations Children's Fund (UNICEF), as of June 2016, India has the highest number of child brides with 47% girls being married before they attain the age of 18. As per the report of the United Nations Children's Fund (UNICEF) "***Improving Children's Lives, Transforming the Future – 25 Years of Child Rights in South Asia***" India ranks second highest in terms of the rates of Child Marriages in South Asia with 75% of the girls married before the age of 18 belonging to the poorer section of society and a total of 48% of the women married before the age of 18 belonging to the rural areas.

(A copy of the report "***UNICEF, The State of the World's Children 2016, UNICEF (New York, June 2016)***) is annexed hereto and marked **ANNEXURE A/3**)

(A copy of the Report "*United Nations Children's Fund, Improving Children's Lives, Transforming the Future, 25 Years of Child Rights in South Asia*", (UNICEF September 2014) is annexed hereto and marked **ANNEXURE A/4**)

8. It is submitted that as per the National Family Health Survey 2015-2016 (NFHS-4):

(i) A total of 17.5% women from the urban areas and 31.5 % women from the rural areas between the ages of 20-24 were married before the age of 18.

(ii) 5% of women from urban areas and 9.2% women from the rural areas in the age group of 15-19 years were already mothers or pregnant at the time of the survey.



(iii) Married women between the ages of 15-49 years' experience spousal violence, the figures being 23.6% in the urban areas and 31.4% in the rural areas.

(A copy of the National Family Health Survey -4 (2015-2016) is annexed hereto and marked **ANNEXURE A/5**)

9. It is submitted that the National Commission for Protection of Child Rights ("NCPCR") in collaboration with Young Lives has published a ***Statistical Analysis of Child Marriages in India*** in June 2017 as per the data recorded in the Census 2011. As per the analysis, the National Family Health Survey 2015-2016, recorded that 26.8% of women in the age group of 20-24 were married before the age of 18. The analysis records the causes of child marriages in India and identifies 70 Districts across 13 States with highest incidences of child marriages. Pertinently, on the question of sexual health of girls married before puberty, the analysis records that forced sexual encounters at the hands of older husbands have long-lasting adverse impacts on the psychological and emotional well-being of the girl and often result in post-traumatic stress disorder with young girls being at a greater risk of suffering marital rape. Furthermore, sexual relations and the resultant teenage pregnancies compromise the reproductive health of the girl child exposing them to a higher risk of contracting sexually transmitted diseases and complications owing to lack of biological maturity leading to increased maternal mortality rates of girls between the ages of 15-19. The analysis further records that girls who are married before the age of 18 are more likely to be victims of domestic violence by their partners.

(A copy of the report “*Young Lives and the NCPCR, A Statistical Analysis of Child Marriage Based on Census 2011*” (June 2017, New Delhi) is annexed hereto and marked **ANNEXURE A/6**)

10. It is submitted that as per a recent comparative study conducted across 34 countries titled “***Child Marriage and Intimate Partner Violence***” published in the International Journal of Epidemiology, the following global findings are given:

- (i) Globally 29% of the women married before attaining the age of 18 experience physical and/or sexual violence at the hands of their partners.
- (ii) Owing to spousal age gaps, social isolation and lack of female autonomy, there is an increase in risk factors for domestic violence in cases of child brides.

(A copy of the survey report: *Rachel Kidman; Child marriage and intimate partner violence: a comparative study of 34 countries, International Journal of Epidemiology, Volume 46, Issue 2, 1 April 2017, Pages 662–675* is annexed hereto and marked **ANNEXURE A/7**)

11. The Report by the World Health Organisation (“WHO”) on “**Early Marriages, Adolescent and Young Pregnancies**” states that pregnancy is the leading cause of death for girls 15-19 in developing countries.

(A copy of the WHO Report on “Early Marriages, Adolescent and Young Pregnancies” dated 16<sup>th</sup> March 2012 is annexed herein and is marked as **ANNEXURE – A/8**)

12. It is submitted that as per a clinical article titled **“Association between adolescent marriage and marital violence among young-adult women in India”** published in the International Journal of Gynecology and Obstetrics on 26<sup>th</sup> March, 2010, adolescent females between the ages of 15-17 years are more likely to be victims of intimate partner violence

(A Copy of the Article **Raj, Anita et al. “Association between Adolescent Marriage and Marital Violence among Young Adult Women in India.” International Journal of Gynaecology and Obstetrics 110.1 (2010): 35–39. PMC. Web. 25 Aug. 2017.** is annexed hereto and marked **ANNEXURE – A/9**)

13. Thus, it is clear from evidence that child marriages have far reaching consequences for the physical, emotional, psychological and intellectual development and well-being of both girls and boys. Child marriage triggers a continuum of harms that impact girls’ wellbeing, rendering girls vulnerable to sexual, reproductive, and domestic violence, and disempowering married girls socially and financially. Child marriages result in adverse implications on the physical, mental and sexual health of the girl child owing to early onset of sexual activity and the complications from teenage pregnancies and abortions. Further, the practice results in intimate partner violence and sexual exploitation against child brides. It was in this background that the Prohibition of Child Marriage Act, 2006 (PCMA), was enacted in 2006 to combat the widespread practice of child marriage.

14. Under Section 2(a) of the PCMA, a child is defined to mean a person who has not attained the age of 21 in case of males, and 18 in case of females. It is further submitted that as per Section 3 of the PCMA, every child marriage shall be voidable at the option of the contracting party who was a child at the time of the marriage. In this regard, the State of Karnataka has recently passed the State of Karnataka, the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 was passed on 26<sup>th</sup> April, 2017. The State Amendment declares a marriage solemnized between children as void *ab initio* or invalid in law

(A copy of the Karnataka amendment dated 26<sup>th</sup> April, 2017 is annexed herein and is marked as **ANNEXURE – A/10**)

15. However, this amendment would be applicable only in Karnataka. Nationally, under Section 3 of the PCMA, child marriages even after solemnization would only be voidable at the option of the parties and not void. The Exception 2 to Section 375 of the IPC permits sexual relations between a man and a wife in case where the latter has attained the age of 15. The said exception therefore creates an anomaly for a voidable marriage, which may be consummated before the child at whose option it is voidable has attained the age of majority.

16. Under the present legal regime in India, girls have no protection within marriage despite the PCMA and the very real link between child marriage and sexual violence. The current provision of Section

375 of the IPC allows the forced marriage of a girl without her consent to expose her to ongoing forced sex throughout her entire life. Therefore, it is submitted that Exception 2 to Section 375 of the IPC is liable to be struck down to the extent that it permits sexual intercourse between a man and a girl child between the ages of 15-18 and is thus violative of the constitutional obligations to protect the right of children and the rights to dignity and the right to health under Article 21 of the Constitution.

17. It is submitted that the Government of India has adopted a new National Policy for Children on 26<sup>th</sup> April 2013 recognizing every person below the age of 18 as a child with universal, inalienable and indivisible human rights including the right to health. The Policy further recognizes that every child has a right to a dignified life free from exploitation. The practice of child marriage, it is submitted violates the right of the child, the girl child in particular. Based on the aforesaid policy, the National Plan of Action for Children (NPAC) has been adopted by the Government of India, Ministry of Women & Child Development. The NPAC identifies child marriage and the resultant health risks particularly in cases of girls as a key area of concern.

(A Copy of the National Policy for Children, 2013 is annexed hereto and marked **ANNEXURE - A/11**)

(A Copy of the National Plan of Action for Children adopted by the Government of India is annexed hereto and marked **ANNEXURE - A/12**)

18. It is further submitted that there have been extensive efforts in the State of Karnataka to eliminate the practice so as to curb the social, cultural and economic issues that result from child marriages, these being increased rates of poverty, illiteracy, malnutrition, mortality and more, and also prevent deteriorating health conditions of women who have been married at young ages.
  
19. It is submitted that with regard to the State of Karnataka, as per the data pertaining to the year 2016-2017, obtained under the Right to Information Act, a total of 702 complaints were received by the Child Marriage Prohibition Officers in various districts. However the response received from the State government states that 746 child marriages were prevented from being solemnized. It also states that 58 child marriages were in fact conducted and only 22 complaints were filed with the police. If there were 58 child marriages actually conducted, it is surprising that only 22 complaints were registered with the police and there is no explanation given as to why the Child Marriage Prohibition Officers did not file complaints and take steps for prosecution in the remaining cases. It is often the case that once married, even by force, minor girls are under extreme social and family pressure and cannot file complaints. In such cases however, the authorities have to ensure that complaints are filed and action is taken under the PCMA. Thus, implementation of the PCMA is a serious issue and the authorities are not preventing child marriages effectively.

(A copy of the RTI replies on the statistics for prosecutions in cases of child marriages in the State of Karnataka is annexed hereto and marked **ANNEXURE - A/13)**

20. It is further submitted that pursuant to the filing of W.P.(C) No. 11154/2006 titled ***Ms. Muthamma Devaya vs. Union of India***, in the High Court of Karnataka, in terms of order dated 10.11.2010, a Core Committee on the prevention of child marriages was set up by the Government of the State of Karnataka vide order dated 22.11.2010 under the chairmanship of Hon'ble Justice Shivraj Patil, Former Judge of the Supreme Court of India. The Core Committee published its report on the Prevention of Child Marriages in the State of Karnataka on 30.06.2011. In the said report, the Committee noted that early onset of sexual activity and the pressure to conceive can have irreparable and adverse consequences on the health of the girl child. Pertinently, the Core Committee report noted that marital rape being one of the extreme forms of institutionalized violence against married women, the incidence of forced sexual intercourse at the hands of the husband is significantly high in child marriages. The committee noted that *it is a silent form of oppression and violation of the rights of the girl child and only becomes worse with the husband being exempt of any criminal liability for rape if the wife is 15 years of above.*

(A copy of the report of the Justice Shivraj Patil Committee *on the Prevention of Child Marriages in the State of Karnataka* dated 30.06.2011 has been annexed hereto and is marked **ANNEXURE A/14)**

I. **International Framework on the Abolition of Child Marriage  
and criminalization of Marital Rape:**

21. It is submitted that there are international treaties and declarations supporting the elimination of child marriage.

(i) UDHR: Article 16 of the Universal Declaration of Human Rights, 1948 ("UDHR") grants men and women of full age the right to marry and found a family with equal rights to marriage and its dissolution. It further provides that marriage shall be entered into only with free and full consent of the intending spouses.

(ii) CEDAW: The Convention on Elimination of All forms of Discrimination Against Women (CEDAW) under Article 16 states that "*States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women: The same right to enter into marriage; The same right freely to choose a spouse and to enter into marriage only with their free and full consent;*" The CEDAW Committee in its review of India's Periodic Report dated 2<sup>nd</sup> July 2014, drew attention to the harmful effects of the practice on the health and education of girls, and strongly reiterated its earlier recommendation for removal of the marital rape exception and defining it as an offence under the law.

(A copy of the CEDAW Review of India, July 2014 is annexed hereto and marked **ANNEXURE - A/15**)



(iii) CRC: The Convention on the Rights of the Child, 1989 under Article 19 guarantees to every child the right to protection from all forms of physical or mental violence, injury or abuse, maltreatment or exploitation including sexual abuse, while in the care of parents, guardian, or any other person. Further Article 34 of the Convention provides the right to protection from all forms of sexual exploitation and sexual abuse. The CRC Committee in its review of India (2014) has also urged the Government to “*Ensure that all forms of sexual abuse under 18 years of age, including marital rape, are fully criminalized*”. The Committee expressed its concern at the lack of access to sexual and reproductive information and services, by adolescent girls and the consequent high rates of teenage pregnancies in the country. It is submitted that continued impunity to child marriage and non-applicability of section 375 Exception to girls in the age group of 15-18 years further exacerbates these barriers.

(A copy of the CRC Review for India dated 2014 is annexed hereto and marked **ANNEXURE- A/16**)

(iv) SDG: It is submitted that Target 5.3 of the Gender Equality Goal of Sustainable Development Goals (“SDG”) enjoins upon all States to ***eliminate all harmful practices, such as child, early and forced marriage and female genital mutilations***. It is submitted that the Government of India being a signatory to the aforesaid conventions, is accountable under international law to protect girls from child marriage and ensure accessible and equitable legal remedies

to girls for reproductive and maternal health harms caused by child marriage. The Special Rapporteur on Violence against Women, causes and consequences on her visit to India In April-May, 2013 recorded that *“with regard to early and/or forced marriages, the high prevalence of such marriages continues to endanger the lives of girls, whether in respect of domestic violence, marital rape or early pregnancies. It also deprives them of numerous human rights, including the right to education and the enjoyment of their childhood.”*

(A Copy of the Report of the UN General Assembly on the findings of the Special Rapporteur for violence against women on her visit to India from 22<sup>nd</sup> April to 1<sup>st</sup> May 2013 is annexed hereto and marked **ANNEXURE – A/17**)

- (v) UN: The United Nations 2017 General Assembly Resolution No 71/175 **“Child, Early and Forced Marriage”** adopted on 19<sup>th</sup> December, 2016 noted that early marriage significantly increases the risk of early, frequent and unintended pregnancy, maternal and newborn mortality and morbidity, obstetric fistula and sexually transmitted infections, including HIV/AIDS, as well as increases vulnerability to all forms of violence, and asked States to *“enact, enforce and uphold laws and policies aimed at preventing and ending child, early and forced marriage and protecting those at risk, to ensure that marriage is entered into only with the informed, free and full consent of the intending spouses and to amend relevant laws and policies to remove any provision that enables*

perpetrators of rape, sexual abuse or abduction to escape prosecution and punishment by marrying their victims”.

(A copy of the *General Assembly Resolution 71/175 Child, early and forced Marriage dated 23<sup>rd</sup> January, 2017* is annexed hereto and marked **ANNEXURE - A/18**)

- (vi) In August 2014, the South Asia Initiative to End Violence against Children, an intergovernmental apex body of the South Asian Association for Regional Cooperation, adopted the Regional Action Plan to End Child Marriage in South Asia (2015-2018). The Regional Action Plan, which includes seven expected outcomes, recognizes child marriage as a regional human rights concern and declares putting an end to the practice a regional priority. India is a member state to the Regional Action plan and in November 2014, adopted the Kathmandu Call for Action to end child Marriage in South Asia. The plan specifically addresses the issue of marital rape calling for legal reform recognizing marital rape as punishable offence without prescribing a minimum age limit of a lower standard of punishment for commission of the offence.

(A copy of the *Regional Action Plan to End Child Marriage 2014* is annexed hereto and marked **ANNEXURE A/19**)

(A copy of the *Kathmandu Call for Action to End Child Marriage, November 2014*, is annexed hereto and marked **ANNEXURE A/20**)

22. Hence, under all the above conventions and treaties that India has signed and ratified, it is under an obligation to address the violation of rights of girls due to child marriage and take steps to set aside the criminal exception for marital rape under the Exception in Section 375 of the IPC at the very least for married wives aged between 15 to 18 years.

## II. Judicial Approach on the issue of Child Marriage

23. It is submitted that several High Courts have declared child marriage to be a gross violation of human rights and an unconstitutional practice, recognizing the link between child marriage and increased health risks and concerns in teenage girls and have also called for the rape provisions of the Indian Penal Code to be brought in conformity with the PCMA so as to ensure that provisions providing an exception to marital rape of minor married girls do not condone child marriage.

24. It is submitted that a division bench of the High Court of Delhi in ***Association for Social Justice & Research vs. Union of India***, 2010 SCC OnLine (Del) 1964 on the question of child marriages observed as under:-

*"9. The purpose and rationale behind the Prohibition of Child Marriage Act, 2006 is that there should not be a marriage of a child at a tender age as he/she is neither psychologically nor physically fit to get married. There could be various psychological and other implications of such marriage, particularly if the child happens to be a girl. **In actuality, child marriage is a violation of human rights, compromising the development of girls and often resulting in early pregnancy and social isolation, with little education and poor vocational training reinforcing***

**the gendered nature of poverty. Young married girls are a unique, though often invisible, group. Required to perform heavy amounts of domestic work, under pressure to demonstrate fertility, and responsible for raising children while still children themselves, married girls and child mothers face constrained decision making and reduced life choices. Boys are also affected by child marriage but the issue impacts girls in far larger numbers and with more intensity. Where a girl lives with a man and takes on the role of caregiver for him, the assumption is often that she has become an adult woman, even if she has not yet reached the age of 18. Some of the ill-effects of child marriage can be summarized as under:**

- (i) Girls who get married at an early age are often more susceptible to the health risks associated with early sexual initiation and childbearing, including HIV and obstetric fistula.
- (ii) Young girls who lack status, power and maturity are often subjected to domestic violence, sexual abuse and social isolation.
- (iii) Early marriage almost always deprives girls of their education or meaningful work, which contributes to persistent poverty.
- (iv) Child Marriage perpetuates an unrelenting cycle of gender inequality, sickness and poverty.
- (v) Getting the girls married at an early age when they are not physically mature, leads to highest rates of maternal and child mortality.

Young mothers face higher risks during pregnancies including complications such as heavy bleeding, fistula, infection, anaemia, and eclampsia which contribute to higher mortality rates of both mother and child. At a young age a girl has not developed fully and her body may strain under the effort of child birth, which can result in obstructed labour and obstetric fistula. Obstetric fistula can also be caused by the early sexual relations associated with child marriage, which take place sometimes even before menarche. Child marriage also has considerable implications for the social development of child brides, in terms of low levels of education, poor health and lack of agency and personal autonomy. The Forum on Marriage and the Rights of Women and Girls explains that 'where these elements are linked with gender inequities and biases for the majority of young girls their socialization which grooms them to be mothers and submissive wives, limits their development to only reproductive roles. A lack of education also means that young brides often lack knowledge about sexual relations, their bodies and reproduction, exacerbated by the cultural silence surrounding these subjects. This denies the girl the ability to make informed decisions about sexual relations, planning a family, and her health, yet another example of their lives in which they have no control. **Women who marry early are more likely to suffer abuse and violence, with inevitable psychological as well as physical consequences. Studies indicate that women who marry at young ages are more likely to believe that it is sometimes acceptable for a husband to beat his wife, and**

*are therefore more likely to experience domestic violence themselves. Violent behaviour can take the form of physical harm, psychological attacks, threatening behaviour and forced sexual acts including rape. Abuse is sometimes perpetrated by the husband's family as well as the husband himself, and girls that enter families as a bride often become domestic slaves for the in-laws. Early marriage has also been linked to wife abandonment and increased levels of divorce or separation and child brides also face the risk of being widowed by their husbands who are often considerably older. In these instances, the wife is likely to suffer additional discrimination as in many cultures divorced, abandoned or widowed women suffer a loss of status, and may be ostracized by society and denied property rights."*

**(emphasis supplied)**

25. It is further submitted that in ***T. Sivakumar v. Inspector of Police, Thiruvallur Town Police Station, Thiruvallur District***, 2011 SCC OnLine Mad 1722, the Madras High Court in harmoniously interpreting the provisions of the Hindu Marriage Act and the Prohibition of Child Marriage Act, 2006 held:

*"18. A close reading of the above objects and reasons of the Prohibition of Child Marriage Act, would keep things beyond any pale of doubt that the Prohibition of Child Marriage Act is a special enactment for the purpose of effectively preventing the evil practice of solemnisation of child marriages and also to enhance the health of the child and the status of women, whereas, the Hindu Marriage Act is a general law regulating the Hindu marriages...*

*XXX*

*33. Almost it is widely accepted world over that child marriage is a human rights violation. Consummation at the young age affects the health of the girl as well as the children born out of the said child marriages. It is because of these reasons, more stringent law by way of the Prohibition of Child Marriage Act was put in place..."*

26. It is submitted that a Full Bench of the Hon'ble Delhi High Court in ***Lajja Devi vs. State*** (2013) 1 CTC 129 (Del) (FB) took note of the social evil of child marriage being reflective of the chauvinistic attributes of Indian society, observing that practice has the

potentialities of dangers to the life and health of the female child and plays havoc in their lives, leading to early deaths of minor mothers. The Court further recorded that in making the child marriage voidable and not declaring them void leads to an anomalous situation where on the one hand child marriage is treated as offence which is punishable under law and on the other hand, it still treats this marriage as valid, i.e., voidable till it is declared as void. The Hon'ble Delhi High Court in **Lajja Devi** (supra) also took note of the anomaly created by the exemption from prosecution for rape under the IPC in case of husband and wife, the latter having attained the age of 15 observing that the provision is not in consonance with the Prohibition of Child Marriage Act, 2006 and must be accordingly amended to remove inconsistencies in the law on the question of age of consent.

The Court observed as under:

***"32...It is rather shocking to note the specific relaxation is given to a husband who rapes his wife, when she happens to be between 15-16 years. This provision in the Indian Penal Code, 1860 is a specific illustration of legislative endorsement and sanction to child marriages. Thus by keeping a lower age of consent for marital intercourse, it seems that the legislature has legitimized the concept of child marriage...."***

**(emphasis supplied)**

27. It is further submitted that the Karnataka High Court (Dharwad Bench) in its decision dated 26<sup>th</sup> February 2013 in W.P.(C) No. 75889/2013 titled **Seema Begaum vs. State of Karnataka & Ors.** has recorded as under:

"36. The childhood of a person is precious. On the child attaining the age of majority, anything may be given to it like the job, house, husband/wife; but what cannot be got back is its precious childhood. What is therefore of paramount importance is that the child should fully enjoy his/her childhood before entering the wedlock. More often than not, it is the girl's happy

childhood that would ensure a happy wifehood and happy motherhood. In whatever form it is, the child marriage is a gross violation of human rights of a girl or boy.”

28. It is submitted that a Division Bench of the Madras High Court in ***M. Mohammed Abbas vs. Chief Secretary, Govt. of Tamil Nadu, Chennai & Ors.***, (2015) SCC OnLine Mad 13853 was posed with the question of the validity and the legal bar of marriage being performed for any Muslim girl below the age of 18 years, in view of Prohibition of Child Marriage Act, 2006 and observed as under:

“18. The object of the Prohibition of Child Marriage Act, 2006, as stated in the Act is to enhance the health of children and the status of women in the society, hence, marriage should not be performed below the age of 18 years for a girl child. Considering the maturity of mind required for the bride and the bridegroom in understanding their marital life, their health factor and also their right to have proper education and empowerment, the age limit has been fixed for a girl as 18 years.... While deciding the age factor of a girl and boy, who are bride and bridegroom in a marriage, the Court cannot ignore the laudable object of the Act, which considers mainly the welfare of the bride and bridegroom.

**19.** *Therefore, performing marriage of a girl below 18 years would not be a religious right as contemplated under Articles 25 and 26 of the Constitution of India. The Court has to consider, whether performing marriage of a girl below 18 years would be for the welfare of the girl or bride in the marriage... While interpreting the Fundamental Rights, Courts are considering Directive Principles of State Policy and various International Conventions, to which India is a party. International Conventions, relating to women and children emphasis for gender equality and gender justice and accordingly, education and empowerment of women are mandatory, in any civilized society. In order to implement the mandate of Articles 14 and 15 and also ‘CEDAW’, providing opportunity to all the girl children for proper education, irrespective of any religion is a pre-requisite, otherwise they will be the losers in the society. Even the Court can take a judicial notice that all educated people, having higher strata in the society used to perform marriage for their daughter, only after attaining the age of below 18 years. Only uneducated poor people living in remote rural areas and tribal areas, are indulging in child marriages, detrimental to the welfare of the girl child.”*



29. Hence, in light of all the above studies, the decisions and observations of the various High Courts, and international treaty obligations, it is clear that for the protection of the right to life, health and dignity of women and young girls guaranteed under Article 21 of the constitution, it is crucial that the exception to marital rape of minor wives aged between 15 to 18 years under section 375 be held to be unconstitutional. This would ensure that the Indian Penal Code is in consonance with the PCMA and would ensure that child marriage is not legalized. Such a finding would also be in consonance with the right to privacy which has been held to be part of an integral aspect of the right to live with dignity under Article 21 of the constitution as held by a 9 Judge Constitutional Bench of this Hon'ble Court in the decision dated 24<sup>th</sup> August 2017 in W.P.(C) No. 494/2012 titled ***Justice K S Puttaswamy (Retd.), & Anr. Vs Union of India & Ors.*** and other connected matters.

30. Hence, in order to bring all these materials on record and and to assist this Hon;ble Court, it is prayed that the Applicant is granted leave to intervene in the present writ petition. It is submitted that no harm, loss or injury would be cause to the parties to the instant writ appeal if the Applicant is permitted to come on record and place all relevant facts and materials which are necessary for the proper adjudication of the issues raised in the present writ petition.

### **PRAYER**

It is therefore, most respectfully prayed that this Hon'ble Court may be pleased to:

- a. Allow the application for impleadment and allow the Applicant to be arrayed as Intervenor to W.P.(C) No. 382/2013
- b. Pass any such further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the instant case.

**AND FOR THIS ACT OF KINDNESS THE APPLICANT AS IN DUTY BOUND SHALL FOREVER PRAY.**

DRAWN AND FILED BY

(ANINDITA PUJARI)

Advocate for the Applicant

NEW DELHI:

FILED ON: