

# CHILD MARRIAGES IN INDIA: A TRAVESTY OF JUSTICE

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## Abstract:

Child Marriage is a practice silent and widespread practice in India where the child under 18 years of age gets married. It is very prevalent and burning problem of our society. There are laws in India which provides that minimum age of marriage is 18 years for females and 21 years for males but still a substantial proportion of adolescent girls get married before attaining 18 years of age. This practice is rooted in complex matrix of tradition, economic factors, social practice and prejudices. The practice causes a gross violation of basic human rights of the victims and leaves mental, physical and emotional scars for whole life. This contemporary practice is rooted in the societal norms and serves to social inequalities and power structure. Child marriage reinforces the pre-existing inequalities between male and female and between various economic classes, castes and religion.

**Keywords:** Child Marriage, Social Practice, Human Rights, Social Inequality.

## INTRODUCTION

Child marriage refers to the marriage of a child younger than 18 years old<sup>1</sup>, in accordance to Article 1 of the Convention on the Right of the Child. In simple terms, child marriage is the marriage of a person aged before majority. As a derivative interpretation of several international documents, it is a violation of human rights<sup>2</sup>. While child marriage affects both sexes, girls are disproportionately affected as they are the majority of the victims. Child marriage and child betrothal are oftentimes practicing that are related to customary and religious beliefs, along with a lot of relevant economic considerations. They occur globally, in many parts of Africa and Asia and to some extent in the Americas. Globally, 36 per cent of women aged 20–24 was married or in union before they reached 18 years of age<sup>3</sup>. An estimated 14 million adolescents between 15 and 19 give birth each year. Girls in this age group are twice as likely to die during pregnancy or childbirth as women in their twenties<sup>4</sup>.

Most often an arranged marriage, children, especially girls, are married off early – sometimes just after puberty, and sometimes even before – so as to bring the family some monetary earning. In many communities, a young girl brings in a lot of dowry – it doesn't matter that these girls may be too young to

<sup>1</sup> Article 1, Convention on the Rights of the Child

<sup>2</sup> UNICEF, Child Marriage Information Sheet, May 2006

<sup>3</sup> United Nations Children's Fund, The State of the World's Children 2006, UNICEF, New York, p. 131

<sup>4</sup> United nations Population Fund, State of World Population 2005: The promise of equality: Gender equity, reproductive health and the Millennium Development Goals, UNFPA, New York, 2005, p. 50.

marry, it doesn't matter that the man she is married off to, is easily double, triple or even four times her age. These communities place significant emphasis on the fact that a woman is not allowed, or is deemed incapable of being educated or working. There is also a belief that women must reproduce early enough because they have a shorter reproductive life period in relative comparison with men<sup>5</sup>.

In 2006, India passed the Prohibition of Child Marriage Act (PCMA) to combat the widespread practice of child marriage. The PCMA prohibits the solemnization of child marriage below the age of 18 for girls and 21 for boys<sup>6</sup>, and allows child marriages that have already been conducted to be voluntarily voidable by the child who was party to the marriage within two years of their attaining the age of marriageability<sup>7</sup>.

The PCMA was intended to be a positive step forward from India's prior legislation on child marriage, the 1929 Child Marriage Restraint Act, which had failed to curtail child marriages and to provide any remedies for married girls.<sup>8</sup> However, despite the PCMA and other legal and policy commitments to end the practice, India continues to account for the highest number of child marriages in the world.<sup>9</sup>

One-third of the world's child brides live in India.<sup>10</sup> While child marriage is a reality for both boys and girls, empirical evidence reinforces its disproportionate prevalence and impact on the latter.<sup>11</sup> Recent government studies have found the incidence of child marriage to be 26.8-30 percent nationally, with this figure reaching as high as 40 percent in some states.<sup>12</sup> Analysis of the government's District Level Health Survey has also shown that the marriage rate of girls aged 15-17 has been slow to decline.<sup>13</sup> Further, a closer look at the National Family Health Survey 2015-16 data shows serious socio-economic disparities in the incidence of child marriage—for example, the percentage of girls marrying below 18 years is as high as 44 percent in the lowest wealth quintiles.<sup>14</sup> The incidence is also much higher than the national average in rural areas (31.5 percent) as compared to urban areas (17.5 percent).<sup>15</sup> The incidence of child marriage also varies by other factors, including caste,<sup>16</sup> religion,<sup>17</sup> and education.<sup>18</sup>

<sup>5</sup> Middle East Issues, Child Marriage: Causes and Consequences, <http://middleeast.about.com/od/humanrightsdemocracy/a/child-brides.htm>

<sup>6</sup> S.2(a), Prohibition of Child Marriage Act, 2006

<sup>7</sup> Section 3, Prohibition of Child Marriage Act, 2006

<sup>8</sup> Jaya Sagade, Child Marriage in India: Socio-legal and Human Rights Dimensions 47 (2nd ed. 2012) [hereinafter Child Marriage in India: Socio-legal and Human Rights Dimensions] (Jaya Sagade argues that the protectionist approach and the object of population control that formed the basis for formulating and amending the Child Marriage Restraint Act, 1929 as opposed to gender equality considerations, set it up for ineffective implementation)

<sup>9</sup> Press Release, World Health Organization (WHO), Child Marriages: 39,000 every day (Mar. 2013), available at [http://www.who.int/mediacentre/news/releases/2013/child\\_marriage\\_20130307/en/](http://www.who.int/mediacentre/news/releases/2013/child_marriage_20130307/en/)

<sup>10</sup> UNICEF, Ending Child Marriage, Progress and Prospects 2 (2014).

<sup>11</sup> Government of India, Office of the Registrar General & Census Commissioner, Population Enumeration Data (2011) [hereinafter Population Enumeration Data] (for boys, this percentage was as low as 4.64%).

<sup>12</sup> Government of India, Ministry of Health and Family Welfare, National Family Health Survey 4-5 (2015-2016)

<sup>13</sup> International Center for Research on Women and UNICEF, District Level Study on Child Marriage in India 21 (2015), available at <https://www.icrw.org/wp-content/uploads/2016/10/District-level-study-on-Child-Marriage-in-India.pdf>

<sup>14</sup> *Supra note 12*

<sup>15</sup> National Commission for Protection of Child Rights & Young India, A Statistical Analysis of Child Marriage in India: Based on Census 2011 (2017), available at <http://ncpcr.gov.in/showfile.php?lang=1&level=1&sublinkid=1214&lid=1463>

<sup>16</sup> *Supra note 13*

<sup>17</sup> Pt. G.B. Pant Institute of Studies in Rural Development, Child Marriage in India: A Study of Situation, Causes & Enforcement of Prohibition of Child Marriage Act, Planning Commission of India 98 (2014), available at [http://planningcommission.gov.in/reports\\_genrep/Report\\_Child\\_Marriage\\_in\\_India.pdf](http://planningcommission.gov.in/reports_genrep/Report_Child_Marriage_in_India.pdf)

<sup>18</sup> Government of India, Ministry of Health and Family Welfare, Rapid Survey on Children National Fact Sheet (2005-2006), available at <http://rchiips.org/nfhs/factsheet.shtml>

## **The Prevalence and Impact of Child Marriage in India**

Child marriage in India continues to thrive by and large in the rural areas more than elsewhere in the country. The factors that encourage its subsistence are usually a combination of poverty, the lack of education, continued perpetration of patriarchal relations that encourage and facilitate gender inequalities, and cultural perspectives that encourage the phenomenon to thrive.<sup>19</sup>

Economically, child marriages work as mechanisms that are quick income earners. A girl child is seen as a leeway to a large dowry, to be given to her family upon her marriage. Girls in many communities are not seen as assets in the family they are born into, but rather, as liabilities – especially since they are seen as more mouths to feed and no hands to work. From the economic perspective, child marriages are preferred by families that are poor, in a bid to reduce costs on the family, and to enable its economic strength by making money available for food, health and even education of the sons born to the family.<sup>20</sup>

From this standpoint, therefore, it is not wrong to conclude that girls are deemed chattels or property in the hands of their families as they are all set to be married off at the earliest.<sup>21</sup> The younger a bride, the higher her “value”, as the chastity of a young bride remains preserved.<sup>22</sup> In their pursuit to marry off the girls, education remains compromised – consequently culminating in the harsh reality that Indian girls without education are six times more likely to be married off early than those that have about ten years or more of education.<sup>23</sup> There is also the prevailing threat that holds girls back from fighting the yoke of child marriage – honour killings. Girls that are married against their will are not allowed to fight back – for that would induce their families to kill them to preserve the “honour” of their family names and reputations. Another major factor that contributes to the prevalence of child marriage is the declining sex-ratio. While many clinics have and do retain and ensure that the ban imposed on sex-selection and prenatal sex determination remains steadfast,<sup>24</sup> the law is not enforced enough to combat unsafe abortions of the female foetus, and to deal with the abandonment of the girl child after birth. Owing to this, in rural parts of northern India,

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<sup>19</sup> UNICEF, Child Marriage in India – An analysis of available data (2012), at 9, <http://www.unicef.in/documents/childmarriage.pdf>; see also Word Vision UK, Research Report “Untying the Knot, Exploring early marriage in fragile states” (2013), at 35, [http://www.worldvision.org/resources.nsf/main/press-reports/\\$file/Untying-the-Knot\\_report.pdf](http://www.worldvision.org/resources.nsf/main/press-reports/$file/Untying-the-Knot_report.pdf).

<sup>20</sup> UNICEF, Child Marriage in India – An analysis of available data (2012), at 14, <http://www.unicef.in/documents/childmarriage.pdf>; see also R Gokul, Child marriage cases on the rise in Trichy, The Times of India (June 5, 2013), [http://articles.timesofindia.indiatimes.com/2013-06-05/madurai/39763061\\_1\\_child-marriage-trichy-district-girl-children](http://articles.timesofindia.indiatimes.com/2013-06-05/madurai/39763061_1_child-marriage-trichy-district-girl-children).

<sup>21</sup> Arushi Singh, Ending child marriage in India, The Guardian (March 3, 2011), <http://www.theguardian.com/global-development/poverty-matters/2011/mar/03/ending-child-marriage-india-health>.

<sup>22</sup> International Center for Research on Women, Asia Child Marriage Initiative: Summary of Research in Bangladesh, India and Nepal (2013), at 17, <http://www.icrw.org/files/publications/PLAN%20ASIA%20Child%20Marriage-3%20Country%20Study.pdf>.

<sup>23</sup> UNICEF, Child Marriage in India – An analysis of available data (2012), at 15, <http://www.unicef.in/documents/childmarriage.pdf>.

<sup>24</sup> Pre-Conception and Pre-Natal Diagnostic Techniques Act (1994), (India).

particularly in Rajasthan, the declining sex-ratio has allowed the festering of a practice known as Atta Satta where a daughter is exchanged for a daughter-in-law, irrespective of her age.<sup>25</sup>

Undoubtedly, child marriage continues to thrive in India. In 2015-2016, as many as 42.9% of the surveyed segment of married women in the age group 20-24 years were married before eighteen.<sup>18</sup> An astounding number of 23 million women in the age group of 20-24 were married before they attained their eighteenth birthdays. With that astounding percentage, India contributes as many as 40% of world's child brides.

## **Law and policy targeting Child Marriage in India**

The Prohibition of Child Marriage Act was passed in 2006 following the high number of child marriages and disappointment of the already existing Child Marriage Restraint Act of 1929 to provide an adequate solution to this social menace. The core provisions of the Prohibition of Child Marriage Act, 2006 are as follows:

- ✓ The legal age for marriage in India is eighteen for girls and twenty-one for boys,<sup>26</sup> on the lines of what was mentioned in the Child Marriage Restraint Act of 1929.<sup>27</sup>
- ✓ By Section 16, full-time "Child Marriage Prohibition Officers" are appointed in every state and are supposed to police instances of child marriage.<sup>28</sup> These officers are vested with the authority to prevent child marriages, make documented reports of violations, charge offenders that can also include the child's parents and even remove children from dangerous and potentially dangerous situations.<sup>29</sup>
- ✓ Child marriages are not considered illegal but merely voidable. The grounds for the declaration as void are laid down in the act itself.<sup>30</sup> This is done at the option of the child that has been married off – allowing her to declare her marriage void at anytime up to two years after reaching adulthood.<sup>31</sup>
- ✓ The only exception where a child marriage can be declared as void even before the child reaches the age of 18, is when the child has been abducted, kidnapped, trafficked or been compelled to marry under force, deceit, coercion or misrepresentation.<sup>32</sup>
- ✓ The legislation also penalizes the arrangement, performance or participation in child marriages. By Section 9, any man who is aged above eighteen who contracts for a child marriage is punishable by imprisonment of up to two years, or may be charged with a fine of up to one lakh rupees, or both.<sup>33</sup>

<sup>25</sup> International Center for Research on Women, Asia Child Marriage Initiative: Summary of Research in Bangladesh, India and Nepal (2013), at 21, <http://www.icrw.org/files/publications/PLAN%20ASIA%20Child%20Marriage-3%20Country%20Study.pdf>

<sup>26</sup> Prohibition of Child Marriage Act (2006), Section 2(a) (India)

<sup>27</sup> Child Marriage Restraint Act (1929), Section 2(a) (India).

<sup>28</sup> Prohibition of Child Marriage Act (2006), Section 16(1) (India)

<sup>29</sup> US Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2012: India (2012), <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dlid=204399>.

<sup>30</sup> Prohibition of Child Marriage Act (2006), Section 3 (India).

<sup>31</sup> Prohibition of Child Marriage Act (2006), Section 3(3) (India)

<sup>32</sup> Prohibition of Child Marriage Act (2006), Section 12 (India)

<sup>33</sup> Prohibition of Child Marriage Act (2006), Section 9 (India)

- ✓ By Section 10, these penalties are extended to anyone who performs, conducts, directs or abets a child marriage unless he can prove that he had reason to believe that the marriage was no child marriage.<sup>34</sup>
- ✓ If the child herself contracts for a child marriage, under Section 11, any parent or guardian who actively supports the marriage or negligently fails to prevent it is punishable by way of imprisonment and or a fine.<sup>35</sup> The same provision has a clause, namely section 11(2), which speaks of a rebuttable presumption that the child's parent or guardian negligently failed to prevent the marriage.<sup>36</sup>

Considering that the law is by itself rather segmented in the approach to child marriage and its various forms, and the fact that there have been many, many instances of child marriage but only a few have been reported, overall, it would be fair to conclude that the law hasn't been as successful as is ideal. The few cases that have been reported have been criminal prosecutions – most of which involve the adult spouse and or the family of the minor involved. In many instances where such cases are brought to fore, judges have ordered the minor or both spouses as the case may require, to seek counselling while they deliberate on the custody rights based on the best interests of the minor. As much as the legislation is centric to the interests of the minor, there are very few instances where the minors themselves in their capacity as the victims of child marriage, have successfully approached the court and filed for a declaration testifying to the effect that their marriage is void under the Prohibition of Child Marriages Act. Per se, under the law, there are no legal exceptions to the prohibition on child marriages, nor for the rule imposing a minimum age for marriage.

### **Why does Child Marriage still prevail in India?**

While the legal instruments outright declare child marriage to be unacceptable, ground reality is largely different. The institution of child marriage is rankled by contradictions – when consensual sex with girls below a minimum age constitutes statutory rape, the same act with a similar aged girl goes unsanctioned by the protective mantle of “marriage”.<sup>37</sup> Child marriage is clearly in violation of the rights of the girl child, who, by law, is entitled to be free from all forms of discrimination, degrading treatment, slavery and exploitation. The weft of legal provisions that emanate from international human rights law, constitutional guarantees of gender equality and gender friendly law offer these rights, but sadly, implementation is lacking.

#### **Avoiding expenditure on female education:**

Human resources development plays an important role in economic development, effective use of physical capital depends upon efficient human resource or human capital. Education is one of the key determinants of human capital formation. Productive capacity of a person depends upon levels of education attainment. Investment levels on education determine educational attainment and human capital development and

<sup>34</sup> Prohibition of Child Marriage Act (2006), Section 10 (India)

<sup>35</sup> Prohibition of Child Marriage Act (2006), Section 11 (India)

<sup>36</sup> Prohibition of Child Marriage Act (2006), Section 11 (2) (India)

<sup>37</sup> UNICEF, Background paper for UNICEF Report on State of the World's Children, 2007

thereby promote economic growth and development. Expenditure incurred on a person's education determines his or her capacity building. In all developing countries female receive less education, career development opportunities than men. A country spends more on education when only it recognizes the importance of developing human resources. Same is applicable to individuals and families. Generally, families discriminate between boys and girls (Males and Females) in investment on education, male children are treated as future assets and economic base of the family whereas female children are treated as burden on the family economic base and they are treated as someone's else asset as they are to be given to someone in marriage. Due to this discrimination in spending on children education, female children are given less or no priority. An observation of the enrolment of children in AP shows how discrimination against girls is practiced. About more than 90% of Govt. schools in AP enrolled with a greater number of girls than boys and in the private school's boy are enrolled more than girls. People think how to avoid spending on girl's education and find marriage as easy solution.

### **Minimizing Marriage Expenditure:**

Generally, husband is attributed higher status than wife in the family. Naturally he is expected to have more capabilities than his wife. If it is translated to educational status, husband is supposed to have more educational qualification than that of wife. It is the experience of many, more often, to find bridegroom to match the bride in terms of educational qualification and if found bridegrooms with higher qualification demand more dowry and other things. If girl is educated groom should be more educated than bride and more dowries are required. So, more the girl is educated more is the marriage expenditure. This is one side of the picture on the other side, due to prevailing defective education system, educated people are alienating socially and culturally, losing integrity and blindly following/adopting extravagant life style and marriage ceremonies of educated people turned expensive luxurious in the name of fashion and modern culture. More often educated girls are too due to demonstration effect, dictating marriage celebrations according to their wills and fancies and making them expensive and luxurious. Thus, educating girls is increasing marriage expenditure. So, people think it is easier or lessees' burden to get marriage of girl done soon after attaining puberty or even before, at younger age of 13 or 14 or below that, than to educate her.

### **Avoiding share in Ancestral Property:**

Right of female to share ancestral property is also one of the factors responsible for encouraging child marriages to some extent. If marriage of girl is done at early age, she as a child would not demand for her share. For benefiting male heirs' female heirs are denied property rights in practice, in spite of statutory provisions, by resorting to early child marriage.

### **Poverty of Family:**

Women and female children are often denied equal access to common resources when a family is in poverty. Female members, mainly female children are victimized by poverty of the family. A poor family naturally jeopardizes female children. Every chance is used for avoiding burden of female. So poor families naturally resort to child marriage to avoid all sorts of burden of female child. Sometimes it can also be perceived that

poor families selling girls and the child marriage is a hidden form of selling girl. Marring child to gods as a tradition is also originates from family poverty.

### **Social Insecurity:**

Social security is also one of the social factors responsible for child marriage system. It is general perception that a married woman is safer against offenses than an unmarried woman. People (men) view married women differently than unmarried girls. Unmarried girls are viewed with malafide intentions. It is the malafide intentions that lead to crimes against unmarried girls/females. To be secure from offences, assaults, teasing against unmarried girls, parents are in a hasty to give away girl in marriage soon after she attains puberty or earlier.

### **Early Pregnancy-Health complications:**

Child marriage naturally leads to early pregnancy resulting into many health complications. Without proper knowledge about physiological condition, she cannot cope with changes in her body during pregnancy. Elderly women are too not in a position to guide her properly. In the olden days elderly women used to monitor the situation perfectly during pregnancy, during delivery and post delivery times. But now-a-days elderly women neither have knowledge as did women in olden days nor have positive attitude to approach proper medical people. This type of situations sometimes leads to depend on local quakes in emergency.

### **Impact on sexual health of women and girls:**

Young girls can face considerable physical pain associated with sexual intercourse as a result of the physiological immaturity of their sexual organs. Complications due to pregnancy at a young age frequently include obstetric fistula (perforation of the bladder or bowel, due to prolonged labour).

### **Vulnerability to HIV infection:**

A girl is physiologically more prone to contracting HIV than a male, as her vagina is not well lined with protective cells and her cervix may be penetrated easily. Young women are several times more likely than young men to contract the disease through heterosexual contact. Also, deeply entrenched socio-economic inequalities further compound their risk. Marriage can increase married girls' exposure to the virus, especially as older husbands may engage in unprotected sexual relations with other partners. The risk of HIV infection is higher among the poorest and most powerless in society, and, as such, married adolescent girls will be more at risk of infection than unmarried girls who are not having sexual intercourse. Married adolescent girls' inability to negotiate safer sex and other social pressures represent a critical channel of vulnerability.

## **Conclusion and Suggestion**

Child Marriages are considered as one of the social menaces that cannot be curbed easily without the support of the society. There have been demands to make child marriages void ab initio under the Prohibition of Child Marriages Act since a long time, but Indian society is complicated and complex and making child marriages void will only jeopardize the rights of women who are the victims of child marriage. Many a times the parents of the girl child forcibly marries their daughters to some elder man so that that person can give some money to the girl's family and from that money their financial condition can turn better.

Also from the above discussion, it can be concluded that in early marriages, the girl child's reproductive and sexual health is affected the most. The child brides suffer from high rates of obstetric complications, pregnancy induced hypertension, higher mortality rates, premature delivery, high incidence of miscarriages and stillbirths. The risks of early marriage are not just limited to the girl child alone, but also to the child that is born out of that marriage as a result of an early pregnancy. The infant mortality rates are also high along with incidences of premature delivery and low birth weight of the new-born child.

The outcomes from this study suggest the following recommendations to address this problem:

- *Ensure Free and Compulsory Education for secondary and higher secondary classes.* Lack of education and child marriage form a vicious cycle, each influencing and leading to the occurrence of the other.
- *Ensure Strict Implementation of the Prohibition of Child Marriage Act, 2006.* Legal age of marriage for girls and boys as per the law is 18 years and 21 years respectively, but data clearly shows that many girls and boys are still getting married before the legal age of marriage. Census 2011 data indicates that there are 9 million girls married under 18 years in India, and 4.21 married adolescent boys under 19 years in India. NCRB 2019 data indicates that only around 500 cases of child marriages are reported each year. Child Marriage is required to be treated as a criminal offence. The Prohibition of Child Marriage Act, 2006 includes provisions related to prevention of child marriage. There is a pressing need to ensure effective implementation of this Law by building capacities of functionaries, equip them with adequate financial and human resources to carry out duties and increase awareness and foster culturally-influenced behaviour change among communities to reduce the acceptance of child marriage and a strong political will to stop child marriages in the country.
- *Ensure Investments in Health to improve health and nutrition outcomes for children and adolescents.* Child Marriage is linked to significant detrimental health outcomes. Child marriage and under-nutrition together form a vicious intergenerational cycle, leading to propagation of disadvantages in health, development and opportunities. We see that child marriage is linked to occurrences of increased Neonatal Mortality, Infant Mortality and Maternal Mortality. Adolescent anaemia is also a significant issue and a public health challenge which is directly linked to child marriage. The

National Nutrition Strategy focuses on preventing and reducing under nutrition across the life cycle with clearly laid down strategies specific to adolescent health and nutrition addressing aspects like under nutrition, anaemia, micro-nutrient deficiencies etc. Thus, implementation of these interventions will be able to address this issue in a holistic manner

- *Reducing vulnerabilities of families and ensuring social protection.* The very fact that families continue to resort to child marriage as a coping mechanism in times of vulnerability indicates the need for adequate social security measures, especially in the backdrop of the COVID-19 pandemic which has heightened the existing vulnerabilities considerably. Economic instability has a direct impact on livelihoods, which increases vulnerabilities of poor families who are typically employed in the informal sector with limited access to benefits and social security measures.
- *Ensure availability for accurate, periodic and comprehensive data on child marriage.* The Indian Census and the National family Health Survey (NFHS) do not provide data on marital status of children under 10 years of age. Nutritional status of children under 15 years is not available in NFHS rounds, which is a significant gap. Census rounds do not give data on fertility of married boys; likewise, the NFHS rounds give very limited data on boys' marital status indicators. It is imperative that the coming Census rounds address these gaps. The next round, Census 2021 will be conducted soon, and comprehensive data that reflects the impact of the pandemic on all the development and socio-economic indicators, including child marriage, should be collected for effective action. There is an urgent need to develop a comprehensive data bank with all relevant indicators that will equip policy makers/ CSOs/ other stakeholders to tackle child marriage, its determinants and other development challenges timely and effectually. Such data should be made available periodically for every state and district for action. Simultaneously CSO, including NGOs should keep on generating micro level studies and should share it with policy makers and influencers so that grass root voices can be meaningfully registered and considered.