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CHILD MARRIAGE IN INDIA – A CRITICAL STUDY

AUTHORED BY - ANKITA PATEL

“If you make the children erode then the world will explode.”¹

The word child is the most innocent and valuable word in the world; yet this innocence is ruined by the society and ultimately devastating the child’s most essential part of life i.e. childhood as well as adolescence. This study is wholly based on the issue of child marriage; the evilness which prevalent upon the children in current era as well.

Everybody knows marriage is the sacred ceremony amongst the two individual but when we heard of a child, married to another child or an old man it will shook our souls. For know the depth child marriage lets discuss what exactly it is?

Child marriage is a union in which one or both spouses are under 21 years of age. Previously under Indian law the child marriage should constitute when the boy is below 21 years and the girl is below 18 years of age but through the Prohibition Of Child Marriage Amendment Bill, 2021 the minimum age for women increases to 21 and this bill came into effect after two years of implementation i.e. 2023. So from 2023 onwards the legal age of marriage of a boy and girl would be considered as equal.²

Through deep analyzation this can be commented that child marriages specifically took place in the rural areas or where the illiteracy among the people is high. If such alliance of children constitute than it will generate dangerous consequences to education as well as health of child mainly to girls such as early age pregnancy. It will not only affect the physical health but also create a mental torture to both the gender, especially when they become mature or they entered into their adulthood. The child marriage not solely destroys the period of adolescence but it will shatter the future of a child.

Child marriages have existed in India from the times of Delhi sultanate when the monarchy system was frequent and continues at very wide range before Independence from British rule. However after independence, nations took many measures to remove such evil rituals through

¹ Best Slogan, <https://www.bestslogans.com/list-ideas-taglines/slogan-on-child-marriage/>

² Anamika Pathak , Over one third of Indian women married in childhood: UN Report, Deccan Herald, <https://www.deccanherald.com/india/over-one-third-of-indian-women-married-in-chilhood-un-report-3088305>

legislations. Still, it is sad to assert that today also in some part of our country this practice is prevalent.

Child marriage is deemed as one of the critical and controversial issues of Indian society. In India girls and boys are equally victim of such social issue but the early marriages mostly affect the girl child because they have to deal with untimely gestation period which they are not mentally prepared for. Child marriages constitute a gross violation of human rights, leaving physical, psychological and emotional scars for life.

The prevalence of this issue is more prominently seen in Northern India particularly in the state of Rajasthan, Uttar Pradesh, Bihar, Madhya Pradesh, Chhattisgarh and Gujarat. It is found that child marriage has been practice mostly in rural areas rather than in other parts of India³. The main reason behind it as follows:

1. **Poverty:** One of the central grounds of child marriage is poverty. Lack of access to resources such as education, employment, health issues may lead to such circumstances which create poverty and highly impact on child marriage. In many situation girls are considered as economic or financial burden; a status that often leads families to marry their daughter or sister for economic benefits.
2. **Patriarchy and Gender inequality:** No doubt in India many people even now have a prospective that girl is born for doing the household chores and the men and boys can only do the field work. This phenomena leads to the early marriage of children hence they don't even get the opportunity of proper study.
3. **Illiteracy:** The most effectuate factor is illiteracy. People are still relying on the old customs as well as superstitions. They follow the rule of their antecedents and think of that if their children couldn't get marry after attaining puberty then they have to bear the curse of god.
4. There are countless factors which lead to increase in such affairs and ultimately children are devoid from their rights such as Right to equality, Special Laws and Safeguard of the children rights enshrined in Article 14 &15. Right to survival, Right to protection, Right to development all are inherent rights given to each and every citizen including children under Article 21 of the Constitution of India which says, "No person shall be

³ Palak Poddar, Prevalence of child marriages as a part of customs in India, The Times of India Readers Blog, <https://timesofindia.indiatimes.com/readersblog/some-thoughts/prevalence-of-child-marriages-as-a-part-of-customs-in-india-37796/>

deprived his life or personal liberty except according to the procedure established by law.”⁴ The Constitution of India has many more laws enshrined in for the betterment of children under Article 16, 17, 21A, 23 & 24 and provides the duty to the state to direct its policy toward securing the rights of children under article 39. Yet we are lacking somewhere behind.

Of course there is no advantage of such immoral custom it will only leads to death of child innocence. The age in which almost every child is developing and learning new things but there are few who struggles for their rights.

LATEST SURVEY ON CHILD MARRIAGE

According to the National Family Health Survey-5 (2019-21), the problem is much bigger in rural India where the percentage was 27%, whereas in urban areas underage marriage accounted for 14.7% of marriages.⁵

The data shows that 6.8% females aged between 15-19 years were already mothers or pregnant at the time of the survey. The rural- urban difference was prominent, with 3.8% women falling in this category in urban areas and 7.9% in rural areas. NFHS-5 reflects an overall marginal decline from 7.5% from 2015-16. Man aged between 25-29 years who were married before the legal age of 21 years was 21.1% in rural areas and 11.3% in urban India. Overall, such men accounted for 17.7% in 2019-21 as compares to 20.3% in 2015-16.⁶

A critical survey of UNICEF in 2023 indicates that at least one in a three child bride lives in India.⁷

How far one can say this that they are living in a modern era where evil rituals are constantly followed by few people. Through the above survey, it should be drawn that there is quite decline in underage marriages yet the percentage is more. The present concerned is over that how

⁴ India Const. art 21.

⁵ Ambika Pandit, Child marriage down but still remain area of concern , Times of India , <https://timesofindia.indiatimes.com/india/child-marriages-down-but-still-remain-area-of-concern/articleshow/87899928.cms>

⁶ Ambika Pandit, Child marriage down but still remain area of concern ,Times of India, <https://timesofindia.indiatimes.com/india/child-marriages-down-but-still-remain-area-of-concern/articleshow/87899928.cms>.

⁷ Anamika Pathak, Over one third of Indian women married in childhood: UN Report, Deccan Herald, <https://www.deccanherald.com/india/over-one-third-of-indian-women-married-in-childhood-un-report-3088305>

people are so fiercely forcing the child to marry; naturally a child under 10 years of age couldn't have the ability to think of themselves over what the marriage actually is. For that purpose we need such harsh law against those individual who is involved in doing activities like this, so that they would be deterred to carry out such wrong in future.

Roles of Government And Judiciary to Eradicate this social issue-:

Our legislature took great effort to draw many laws over child marriage which is of gross importance to reduce such malign custom. Let's discuss such legislation and precedent for better understanding how our government and judiciary together worked on it and still giving span of time to abolishing it completely.

Legislations through the years are as follows:

1. CHILD MARRIAGE RESTRAINT ACT, 1929 (CMRA):⁸

- The first and the foremost Act which was made for reduction in child marriage was came from British era. In 1929, Rai Sahib Hariblas Sarada introduced a Bill in parliament seeking the declaration of child marriage invalid for Hindus. However, when it became the Act, it will apply over every citizen of India i.e. Secular in nature.
- The Act placed the age bar boys and girls 18 and 14 respectively and this was raised upto 18 years for girls and 21 for boys in 1978.
- This Act played an important role in penalising the adult male of age 18-21 and also the guardian on the part of their negligence for doing such crime.
- The punishment for the crime was extending upto 3 months of simple imprisonment and a fine but the major drawback arise that the Act did not comment on the validity or voidability of such marriages.

2. THE PROHIBITION OF CHILD MARRIAGE ACT, 2006 (PCMA):⁹

This Act was passed to override the effect of CMRA, 1929 because of its inadequacy and ineffectiveness. The NCW and HRC put consistent efforts to bring the Act like PCMA which was progressive and much refined version of previous Act.

⁸ Chetna Soni, A critique of child marriage law: A Legal Lacuna?, Acadmike , <https://www.lawctopus.com/acadmike/critique-of-child-marriage-law-legal-lacuna/>

⁹ Chetna Soni, A critique of child marriage law: A Legal Lacuna?, Acadmike, <https://www.lawctopus.com/acadmike/critique-of-child-marriage-law-legal-lacuna/>

- As per **Section 3 of PCMA**, a child marriage is voidable at the option of either contracting party i.e. 'children' during the marriage. If the child was minor at the time of filing petition according to Majority Act, 1875 then they do so only through their guardians. Hence, if a child is not attained the age of majority his/her marriage voidability would be entirely depends on their guardian. The limitation period for the petitioner is set at 2 years post the attainment of his/her majority.
- **Section 9 of the Act** talks about the punishment for a male adult marrying a minor girl child was increased from simple imprisonment of 3 months to rigorous imprisonment of 2 years along with Rs. 1 lakh as fine.
- **Section 12 of the Act** makes the marriage null and void of the minor child who is kidnapped, abducted or trafficked.
- **Section 13 and 14** informs about issue of an injunction without necessarily sending a prior notice, with the District Judge conferred with the powers of a Child Marriage Prohibition officer to prevent mass marriages on date of Akshaya Tritiya. Any marriage solemnised in contradiction of an injunction order to be void ab initio.
- **Section 15** made prospective rule for all the offences of child marriage under the Act have been made non-bailable and cognizable.
- **Section 16** grants a significant power to Child Marriage Prohibition Officer to stop a child marriage, where he may take any action deemed fit to prevent the child marriage.
- The PCMA, 2006 set a benchmark to prohibit a child marriage as in comparison to CMRA, 1929 as because it reduces countless loopholes contained under the Act of 1929.

3. **BHARATIYA NYAYA SANHITA,2023 (BNS) and INDIAN PENAL CODE,1860 (IPC):¹⁰**

In this year the **Indian Penal Code, 1860** is substituted with **Bharatiya Nyaya Sanhita, 2023** with effect from **1st July 2024**. So from this particular date onwards all the provisions existed in IPC will be dealt by the new set of law collectively known as BNS. Child marriage is not specifically mentioned in the BNS and IPC but provides somewhat idea related to this issues which are as follows:

¹⁰ Centre for Reproductive Rights, Ending Impunity for Child Marriage in India, page cited 16, <https://reproductiverights.org/sites/default/files/documents/Ending-Impunity-for-Child-Marriage-India-WebUpdate-0218.pdf>

- **Section 87 of BNS and Section 366 of IPC** talks on forced marriage established by the kidnapping or abduction of a woman to compel her to marriage.
- **Section 83 of BNS and Section 496 of IPC** establishes that going through a marriage ceremony with fraudulent intent is a punishable offence.
- **Section 143 of BNS and Section 370 of IPC** which was amended in 2013 to address human trafficking for the purpose of sexual exploitation, slavery and servitude.
- The comparative study of both the old and the new one specifies and establish that these provisions covering the wider scope i.e. available for all citizens including the children.

4. PREVENTION OF CHILDREN FROM SEXUAL OFFENCES ACT, 2012 (POCSO):

This Act establishes to protect the children from sexual assault, sexual harassment and pornography. But somehow conflict arise between IPC and POCSO Act in issue of child marriage.

The POCSO Act has a multiple sections against non consensual sexual activity against a girl under the age of 18 years, and it does not draw distinction between married or unmarried girl. But **Section 5 & 6 of POCSO Act** which states that if a husband of a girl child commits penetrative sexual assault on his wife then he will be punished for rigorous imprisonment of 10 years which may extend upto imprisonment for lifetime and fine is in contradictory with **exception 2 to Section 375 of IPC** stated that “sexual intercourse by a man with his own wife not being under 15 years of age is not rape.”¹¹

To resolve above dispute the Supreme Court in **Independent thought v. Union of India**¹², In the landmark judgement; The Supreme court of India ruled that sexual intercourse or sexual act by a man with his minor wife would amount to rape for the purpose of section 375 of Indian Penal Code, 1860. Further the court has read down exception 2 to Section 375 and ruled that Exception will not be applicable in cases where the wife is between the ages of 15-18.

5. Personal Laws and Child Marriage in India

These laws highlights the issues like the minimum legal age of marriage, punishment for child marriage etc. according to the personal laws of the individuals.

¹¹ Chetna Soni, A critique of child marriage law: A Legal Lacuna?, Acadmike, <https://www.lawctopus.com/acadmike/critique-of-child-marriage-law-legal-lacuna/>

¹² Independent thought v. Union of India, (2017) 10 SCC 800.

HINDU MARRIAGE ACT, 1955 (HMA):¹³

There are no such express provisions to prohibit Child marriages in HMA. But early marriages would be inherent under some provisions which is as follows:

- Under **Section 5 (iii) of HMA** requires that bridegroom should have completed 21 years of age, and the bride should be of 18 years at the time of marriage.
- **Section 18 (a) of HMA** assigns penal consequences to the contracting parties, in a child marriage, which in this case would be children, for 2 years rigorous imprisonment along with a fine.

MUSLIM PERSONAL LAWS:¹⁴

It is not codified in India, but derived from multiple sources such as the **Quran, Hadis, Ijmas and Qiyas**. According to these sources the age of marriage as interpreted as follows:

- The valid age of marriage is said to begin post the onset of puberty, or 15 years of age whichever comes earlier.
- Any marriage under 7 years is considered as void ab initio.
- If someone who has not attained puberty can be married with the consent of guardian

Section 2 (viii) of the Dissolution of Muslim Marriages Act, 1939 read with **Section 275 of Mulla's Principle of Mohamedan Law** provided a girl child the option of puberty where if she is given marriage by her father or other guardian before attaining age of 15 years, then in such case, she should seek dissolution of the marriage provided that she repudiates the marriage before attains the age of 18 years, and also that it should occur prior to the consummation of the marriage.

Hence we see from above two personal laws which is highly demanded in India is in contradiction with each other in marital status.

JUDICIAL INTERPRETATION

Since from earlier times the various high court uphold the child marriage as valid because of various personal laws. Except few decisions one can find judgment in against of child marriage.

¹³ Hindu Marriage Act, 1955, No.25, Act of Parliament, 1955(India).

¹⁴ Chetna Soni, A critique of child marriage law: A Legal Lacuna?, Acadmike, <https://www.lawctopus.com/acadmike/critique-of-child-marriage-law-legal-lacuna/>

In **Lajja v. State**¹⁵; the Delhi High court held that the PCMA prevails over the personal laws of the country. Therefore, if any personal laws include any customs or traditions that could be harmful to a section of society, secular laws such as PCMA are available to counter it.

In **Amrinder Kaur v. State of Punjab and Haryana**¹⁶; the court refused the couple to be granted protection from the girl's family who threatening them. It held that the bride who was 16 at the time of marriage was enticed out of lawful guardianship and therefore, the PCMA rendering the marriage void.

The question of age of discretion i.e “will a girl is capable enough for deciding herself” came up in 2011 in front of Madras High Court in **T. Sivakumar v. Inspector of Police, Thiruvallur Town Police Station & others**¹⁷; the Court held that the marriage is not valid in a strict sense, and not invalid. However with respect to the age of discretion the court believed that the age may be determined as per facts and in the present case, where the girl can be said to be capable of making decision, then it cannot compel the girl to live with her parents and may entrust her in the custody of a person subject to her volition.

In **Mrs. Tahra Begum v. State of Delhi & ors**¹⁸; the court upheld that the ‘option of puberty’ or khiyar-ul-bulugh must apply in consonance with PCMA. In this case, the minor girl expressed her choice to reside with her parents and the court upheld the agency and choice, over her age and minority status.

In **Hardev Singh v. Harpreet Kaur & ors**¹⁹; the Supreme Court has held that a male between 18 to 21 years though is a child and his marriage with a female adult will be treated as a child marriage, he cannot be subjected to punishment for contracting child marriage.

Apart from the odd judgement, the courts have largely held child marriages to be valid under Indian Law and not attempted to present anything binding to prevent this social evil from continuing.

¹⁵ Court on its Own Motion (Lajja Devi) v. State, 2012 Cri LJ 3458.

¹⁶ Amrinder Kaur v. State of Punjab and Haryana, LQ 2014 HC 2832.

¹⁷ T. Sivakumar v. Inspector of Police, Thiruvallur Town Police Station & others, LNIND 2011 Mad 4101.

¹⁸ Mrs. Tahra Begum v. State of Delhi & Ors, LNIND 2012 Del 1139.

¹⁹ Hardev Singh v. Harpreet Kaur & Ors, AIR 2020 SC 932.

Conclusion:

The practice of child marriage has historical roots in India and it remains prevalent today in some states of our country. One of the main reason of child marriage arise from the part of illiterate parents who do not think of the future of their child and end up ruining precious part of their life

At the same time our laws having very broad escape clause regarding child marriages, even so it doesn't prohibit it but only provide the validity or invalidity of child marriage. The punishments meted out under PCMA do not serve the purpose of deterring child marriage which leads in continuing of such rituals in today's era.

If we talk about judicial pronouncement than we clearly saw that judiciary also deals with ambiguity when the marriages were held according to the individual personal laws.

From the survey of NFHS-5 (2019-21) it will be conclude that there is slight drop in child marriages but it cannot be curbed or prevented.

Though above-stated research denotes us an idea about legislations as well as judicial pronouncement against early marriages yet our country has been lacking behind to abolish such issue.

Recommendations:

The child marriage is undoubtedly a major issue in developing country like India. Following are the suggestions to deal with such crucial phenomenon:

- a) There is plethora of laws concerning child marriage which create conflicts in dealing with such matter which can be avoided by introducing Uniform Civil Code (UCC) so there will be no interference by personal law of individual.
- b) Harsh or rigorous punishment should be implemented, thus perpetrator of such crime is feared before committing it.
- c) State government and NGOs can play a major role in educating people in the rural area. It does not matter how many laws had or have been made against child marriage; it will not work unless 'we the people' take the initiative to suppress it as mere legislations won't help if there is no support and backing from the society. Hence, as an educated

person it will be our duty to be more precautionous and become vigilant over this matter.

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