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CHILD MARRIAGE IN INDIA: LEGAL PROHIBITION AND GROUND REALITY

▪ SARTHAK DAS & SHOUVIK ROY

ABSTRACT

Despite a thorough legal structure that forbids the practice, child marriage is still one of the most pervasive social problems in India. The topic of whether marriages are legitimate and voidable, as well as how they relate to statutory law, personal law, and constitutional safeguards, is a crucial aspect of family law. The Prohibition of Child Marriage Act, 2006 (PCMA), the Hindu Marriage Act 1955 (HMA), and pertinent court interpretations are the main topics of this research paper through legal analysis of child marriage under Indian law. The study emphasizes how the law, although progressive in theory frequently has practical limits because of the difficulties in enforcing the law and the lack of clarity surrounding the legal status of child marriages. The study examines the judiciary's changing role in defending the rights of minors and resolving conflicting statutory provisions through an examination of significant rulings like *Independent Thought v. Union of India* and *Lajja Devi v. State* (2013), and *Court on its Own Motion v. State of Haryana* (2019). This study explores how Indian jurisprudence strikes a compromise between the ideals of public morality, individual autonomy, and state interference in family problems by following legislative developments from the Child Marriage Restraint Act, 1929 to the PCMA, 2006. It concludes that although child marriage is morally and legally forbidden, its persistence highlights the disconnect between formal law and social reality. Therefore, by placing Child marriage in the context of a persistent legal issue that calls for constant judicial attention and legislative clarity, this research advances knowledge of family law.

Keyword-:

National Plan Of Action for Children, Ministry of Women And Child Development Child

marriage, family law, the Hindu Marriage Act, the Prohibition of Child Marriage Act, judicial interpretation, legal prohibition, constitutional rights, gender justice, social reform, Indian judiciary, human rights, early marriage, and statutory framework. (2016)

INTRODUCTION:-

In Indian civilization, marriage has long been seen as a sacred and essential social institution. It serves not only as a union between two people but also as a partnership that upholds social norms, family lineage, and communal ideals. It has a religious, moral, and legal significance. However, the institution is in conflict with the rule of law and the values of justice when marriage takes place between people who aren't legally able to do so, especially when either of them are children. Therefore, within the framework of family law, child marriage represents a complicated junction of persona law, statutory restriction, and social practice that requires ongoing judicial and legislative attention.

In India, however, child marriage is not just a historical oddity but a persistent social reality that threatens the fairness, liberty, and dignity guaranteed by the constitution. The practice continues, particularly in rural economically disadvantaged areas, despite decades of reformer legislation and court rulings. The problem transcends religious and cultural barriers, reflecting deeply ingrained patriarchal customs and socioeconomic pressures, rather than being limited to a single community or area. Legally speaking, it poses complex issues about the enforcement, legitimacy, and voidability of weddings involving children as well as the extent of criminal culpability for those who perform or encourage such unions.

The Child Marriage Restriction Act, 1929, sometimes referred to as the Sarda Act, was the first legislative attempt to control this practice during the colonial era. The law, which was proposed by Harbilas Sarda, aimed to establish minimum marriageable ages of 14 for girls and 18 for boys. It was a cautious but progressive attempt to bring old customs into line with new ideas about child welfare. However, the Act was essentially ineffectual due to its few punitive provisions and lack of procedures for nullifying such marriages. The Prohibition of Child

Marriage Act, 2006 (PCMA), which abolished and replaced the previous law, was enacted in response to the constitutional guarantee of equality and protection of children's rights following independence.

An important development in Indian family law is The Prohibition of Child Marriage Act, 2006¹. In addition to raising the minimum age of marriage to 18 for girls and 21 for males, it also included measures giving judges the authority to declare some marriages void or voidable and to grant injunctions against upcoming child weddings. The Act's Sections 9 through 12 offer victims with remedies and make it illegal to participate in, promote, or solemnize child marriages. In order to guarantee preventive and corrective actions at the district level, the Act also established the position of Child Marriage Prohibition officers (CMPOs). Despite these legal protections, practical and procedural obstacles have restricted the Act's usefulness. The law's dependence on the minor to start the annulment process.

A number of fundamental rights are violated by child marriage from a constitutional standpoint. Article 14 right to equality, Article 15 ban on discrimination, and Article 21 right to life and personal liberty which has been broadly construed to encompass the right to live with dignity all are violated. Furthermore, children up to the age of 14 are guaranteed free and compulsory education under Article 21A, a right that is inherently incompatible with early marriage. Article 39(f) of the Directive Principles of State Policy further requires the state to guarantee that children grow up in a free and dignified environment, while Article 51A(e) calls on citizens to abstain from actions that diminish women's dignity. Therefore, child marriage is established by the constitutional and legal framework as a violation of both public morals and individual rights.

The cohabitation of customary practices and personal laws exacerbates the issue. The same minimum age criteria are outlined in Section 5 (iii) of The Hindu Marriage Act, 1955² however, weddings consummated in violation of this provision are only penalized under

¹ The Prohibition of Child Marriage Act, No.6 of 2007, INDIA CODE (2007)

² Hindu Marriage Act, No.25 of 1955, §5(iii), INDIA CODE (1955)

Section 18 rather than being null and void. The Hindu Marriage Act and The Prohibition of Child marriage Act are inconsistent, which has caused interpretation difficulties and uncertainty over the legal standing of these unions. Marriage is seen as a civil transaction rather than a sacrament in some cultures ruled by personal rules, especially under uncodified Muslim law, and eligibility for marriage has historically been determined by puberty rather than statutory age. As a result, one of the main judicial issues in handling child marriage under Family Law has been the harmonization of secular personal law principles.

In order to reconcile these competing legal and moral requirements, the judiciary has been crucial. The interpretation of legislative and constitutional laws to shield adolescents from sexual and marital exploitation has been broadened by landmark rulings like *Independent Thought V. Union Of India (2017)*³. The Indian Penal Code's Section 375, which allowed for sexual relations with a wife under the age of eighteen, was overturned by the Supreme Court in the case, bringing the legislation into compliance with the Prohibition of child Marriage Act. In a same vein, the Delhi High Court Stressed in *Lajja Devi v. State (2013)*⁴ involving minors cannot be justified on religious grounds and that the PCMA supersedes all personal laws. These court rulings highlight how courts have a revolutionary role in assuring that family law develops in line with child welfare and constitutional morality.

RESEARCH QUESTIONS:

1. Which major statutes in Indian law forbid and punish child marriage and how have they changed throughout time?
2. Why have Indian courts interpreted and applied the Hindu Marriage Act of 1955's relevant clauses as well as the prohibition of Child Marriage Act of 2006?
3. What are the main cultural and socioeconomic causes of child marriages continues prevalence despite legal prohibitions?
4. What effects do international rights norms and India's international obligations have on the country's child marriage laws?

³ *Independent Trought v. Union of India*, AIR 2017 SC 4904 (India)

⁴ *Lajja Devi v. State*, 2013 SCC OnLineDeL 855(India)

5. What policy changes and reforms are required to close the gap between the law and reality on the ground?

RESEARCH OBJECTIVE :

- I. To investigate the history and historical development of Indian legal frameworks intended to outlaw child marriage.
- II. To examine how the Supreme Court and High Court have interpreted the legislation pertaining to child marriage.
- III. To determine and assess the cultural, societal, and economic factors that support child marriage.
- IV. To evaluate how well the institutional and legal frameworks currently in place work to prevent child marriages.
- V. To make practical suggestions for improving awareness, bolstering enforcement, and accomplishing social reform.

BODY

I. HISTORICAL AND SOCIO-LEGAL BACKGROUND

In India, child marriage has a long history and is ingrained in patriarchal social institutions, religion, and customs. In the past, particularly under Hindu law, marriage was seen as a sacred duty (sanskara) rather than just a civil transaction. Early marriage for females was encouraged by ancient Hindu texts like the Manusmrit and Dharmashastra, which linked it to chastity, purity, and family prestige. Early weddings were further established during the Middle Ages as a way to safeguard females and maintain caste lines due to periodic invasions, social unrest, and the practice of child betrothals

Child Marriage was first officially acknowledged as a social issue during the colonial era. The child marriage restraint Act, 1929⁵ also known as the Sarda act was passed as a result of campaigns against the practice led by reformers like Raja Ram Mohan Roy and Harbilas Sarda. Although this law set minimum marriageable ages at 14 for girls and 18 for boys, its

⁵ Child Marriage Restraint Act, No.19 of 1929 (repealed), INDIA CODE (1929)

application was constrained because it neither outlawed child marriages nor offered sufficient enforcement measures. As a reflection of colonial authorities cautious approach to interfering with personal laws, it mainly imposed moderate penalties on individuals who solemnized or assisted such marriages.

The Indian Constitution's authors envisioned a society founded on justice, equality, and liberty following independence. Child protection laws are based on the moral precepts included in article 14,15,and21,which ensure equality before the law non- discrimination, and the right to life with dignity. Furthermore, the State is required by Article 39(f) of the Directive Principles to guarantee that children are raised in a setting of freedom and dignity, and citizens are required by Article 51A(e) to abstain from actions that diminish the dignity of women.

II. STATUTORY FRAMEWORK: LEGAL PROHIBITIONS AGAINST CHILD MARRIAGE

The Prohibition of Child Marriage Act,2006(PCMA) is the main piece of legislation that governs child Marriage in India . It is reinforced by clauses in the Hindu Marriage Act,1955(HMA), the Indian Penal code,1860(IPC)⁶, and The Special Marriage Act, 1954⁷ These laws work together to provide a comprehensive legal system that protects victims, punishes criminals, and prohibits the solemnization of underage Marriage.

The most important in this area is The Prohibition of Child Marriage Act, 2006, which superseded the antiquated Child Marriage Restraint Act,1929. A male under the age of 21and a girl under age of 18 are considered children under Section2(a). Any marriage involving a child is voidable at the request of the contracting party who was a minor at the time of the marriage , according to section 3However, Section 12goes on to say that if a marriage involves trafficking, compulsion, kidnapping, or dishonesty, it is void ab initio or null from

⁶ Indian Penal Code, No.45 of 1860, § 375, INDIA CODE (1860)

⁷ Special Marriage Act, No.43 of 1954, § 4(c), INDIA CODE (1954)

the start.

Preventive and punitive measures are also included in the PCMA Sections 9 through 11 make it illegal to enter into, encourage, or approve child weddings; adult males, priests, and guardians who do so face jail time and fines. While Section 16 calls for the employment of Child Marriage Prohibition Officers (CMPOs) to monitor, prevent and report such incidents, Section 13 gives courts the authority to grant injunctions to prohibit upcoming child weddings.

Section 5(iii) of The Hindu Marriage Act, 1955 established the same minimum marriageable ages as the PCMA. However, breaking this requirement only results in punishment under Section 18: it does not nullify the marriage. As a result, there is uncertainty about a Hindu child marriage's status under Family Law as it is still lawful unless it is revoked under the PCMA. In order to resolve this contradiction, courts have ruled that the PCMA supersedes the HMA in cases of dispute because it is a later and unique law. In *Lajja Devi v. State* (2013), the Delhi High Court upheld the PCMA's supremacy over personal laws by confirming that it applies consistently to all religions.

The legal foundation is further reinforced by The Indian Penal Code 1860. The Supreme Court cut down Exception 2 to Section 375 (rape) following the historic case of *Independent Thought v. Union of India* (2017), ruling that having sex with a wife under the age of eighteen constitutes rape, even in marriage. This brought criminal law and the ban on child marriage into harmony.

Although India has a broad and modern legal system, there are still issues with enforcement and harmonizing secular and personal laws. The PCMA, which represents India's constitutional commitment to gender equity, equality, and child safety under Family Law, is the cornerstone of this legal framework.

III. JUDICIAL INTERPRETATIONS AND LANDMARK CASES

judicial interpretation has played a crucial role in shaping the legal understanding of Child Marriage in India. Courts have consistently emphasized that laws prohibiting child marriage must be interpreted in light of constitutional protections such as equality, dignity, and personal liberty. Over time, the judiciary has clarified ambiguities in statutory provisions, resolved conflicts between personal laws and the Prohibition of Child Marriage Act, 2006 (PCMA), and expanded the protective scope of Child marriage laws.

Independent Trought v. Union of India (2017) is among the most significant rulings. The Indian Penal Code's Exception 2 to section 375, which previously permitted a man to have sex with his wife even if she was older than 15 but younger than 18, was overturned by Supreme Court in this case, In Line with the PCMA and the Protection of Children from Sexual Offenses Act,2012, the Court ruled that having sex with a wife under the age of eighteen constitutes rape . The idea that Marriage cannot be used as a justification for exploitation of children was upheld by the ruling.

Lajja Devi v. State (2013), where the Delhi Hight Court considered the discrepancy between the PCMA and the Hindu Marriage act, 1955, is another important case. The Court noted that the PCMA, as a unique and later instrument, must take precedence over secular law in cases of dispute. It also made clear that the PCMA's protective goal must be taken into consideration while evaluating child marriages, even if they are legal under personal laws. This decision made it clear that the PCMA is applicable to everyone, regardless of religion.

The Punjab and Haryana High Court considered cases involving fugitive minor couples in *Court on Its Own Motion v. State of Haryana* 2019 . The Court ruled that a minor's consent has no legal significance and cannot support a marriage. In order to prevent children from being duped or exploited under the preteens of marriage or elopement, it instructed authorities to regard such occurrences as offenses under the PCMA.

In a similar way, the Gujarat High Court reaffirmed that neither personal laws nor customs protect child marriage in *Yunusbhai Usmanbhai Shaikh v. State of Gujarat* (2015)⁸. The State's fundamental duty to step in whenever a minor's rights are in danger was highlighted by the Court.

By exposing child marriage as a breach of fundamental rights, the judiciary has taken a victim-centric and rights-based approach through these cases. Courts have continuously strengthened protections for underage spouses, harmonized contradictory legislation, and reaffirmed that the PCMA must be interpreted generously in order to further its goal of preventing exploitation. Therefore, judicial interpretation serves as a crucial pillar in ensuring that Indian Family Law's statutory ban on child marriage is a meaningful safety rather than just a symbol.

IV. SOCIO-ECONOMIC AND CULTURAL REALITIES SUSTAINING CHILD MARRIAGE

Even though there is a robust legal structure that forbids child marriage, the practice still exists in some regions of India. The long standing socioeconomic and cultural underpinnings of child marriage are shown in this persistence. The reality on the ground demonstrates that societal norms, economic forces, and traditional beliefs considerably impede the application of the legislation, which attempts to control marriages through age restrictions, penalties and protection mechanisms.

Poverty is one of the main cause of child marriage. Children especially girls, are frequently seen a financial burdens in households with lower incomes, especially in rural areas. Early marriage is seen as a means of lowering household costs, protecting a girl's future, and guaranteeing financial security through partnerships. In order to avoid the rising dowry costs

⁸ *Yunusbhai Usmanbhai Shaikh v. State of Gujarat*, 2015 SCC OnLine Guj 7567 (India)

associated with older brides, families experiencing financial difficulties may also think about getting married young.

Gender disparity is another important element. A girl's chastity and obedience are disproportionately valued in Indian society particularly in traditional settings. Parents are encouraged to set up early weddings because they think girls are safer and more "honourable" in marriage. The idea that a girl's main responsibility is to become a bride and mother is reinforced by patriarchal traditions which make education and independence seem secondary.

The issue is also greatly exacerbated by educational obstacles. Higher rates of early marriages are directly correlated with low literacy levels, particularly among girls. After puberty, school dropout rates increase because of family pressure, infrastructure deficiencies, and safety concerns. Without access to education, girls are more susceptible to decisions made by their families because they are unaware of their rights, legal protections, or the dangers of early marriage.

Child marriage is also sustained by cultural and religious traditions. Families are frequently encouraged to marry young by customs including caste customs, community-based mass marriages, and ceremonies associated with auspicious dates. Such customs continue to have an impact in rural and semi-urban areas where community norms supersede statutory law, even though they have no legal standing in contemporary India.

Furthermore, The Prohibition of Child Marriage Act of 2006 is not effectively implemented due to insufficient state intervention and weak enforcement measures. Many incidents remain unreported despite the existence of Child Marriage Prohibition Officers (CMPOs) because of ignorance, mistrust of the legal system, or fear of societal retribution. Officials are reluctant to get in in a number of areas because of political pressure or cultural sensitivity. The practice of child marriage is kept mostly secret and uncontested due to social acceptance and normality. Early marriage is frequently preferred by society more than legal repercussions. Instead of

seeing the law as a safeguard, families can view it as a remote enforcement instrument.

V. ROLE OF GOVERNMENT, JUDICIARY, AND CIVIL SOCIETY

The executive, the judiciary, and civil society must work together to enforce India's legal prohibition on Child marriage. The Prohibition of Child Marriage Act, 2006 and other statutory frameworks offer the required legal tools, but effective enforcement requires institutional commitment and social cooperation. Each of these players contributes in a different but related way to solving the issue.

ROLE OF GOVERNMENT

Creating laws, carrying out policies, and keeping an eye on compliance are all major responsibilities of the Indian government. A number of national programs have been implemented by the Ministry of Women & Child development to discourage early marriage and motivated girl's education. By increasing girl's access to education and financial independence, program like Beti Bachao Beti Padhao, Kanyashree Prakalpa, Sukanya Samriddhi Yojana, and Balika Samriddhi Yojana seek to elevate girls' status within households and postpone marriage.

Child Marriage Prohibition Officers are appointed by the government under the PCMA and are tasked with identifying vulnerable areas, preventing child weddings, rescuing kids, and helping victims obtain legal remedies. However, the efficacy of these initiatives is sometimes diminished by poor execution, a lack of qualified personnel, and a lack of cooperation with local authorities.

ROLE OF JUDICIARY

The judiciary is crucial in interpreting laws, resolving disputes between secular and personal statutes, and extending the protections afforded by child marriage laws. Courts have repeatedly stressed that whenever personal laws and practices conflict with the child's

welfare, the PCMA takes precedence *Lajja Devi v. State* (2013) and *independent Thought v. Union of India* (2017) are two examples of rulings that demonstrate the judiciary's dedication to preserving the fundamental values of equality, decency, and child protection. By instructing authorities to stop upcoming marriages, safeguard underage spouses, and guarantee rehabilitation, judicial involvement also improves enforcement. High Courts regularly use their constitutional authority under Articles 226 and 227 to oversee implementation and address petitions against administrative inaction, forced marriages, and runaway youngsters.

ROLE OF CIVIL SOCIETY AND NGOS

In order to close the gap between the law and social reality, civil society groups are essential. NGOs like Child Rights and You save the children, Bachpan Bacho Andolan, and UNICEF India work at the local level to support victims, encourage girl's education, and increase Public knowledge of legal ramifications of child marriage. To urge families to postpone marriage, they organize child protection committees, perform community outreach initiatives offer legal aid, and collaborate with educational institutions. Additionally, by frequently reporting cases, keeping an eye on high risk groups, and pushing for more robust PCMA implementation civil society plays a critical role as a conduit between vulnerable populations and state authorities. NGOs' Public Interest Litigations (PILs) have made a substantial contribution to law reform and judicial activism in this field.

VI.COMPARATIVE PERSPECTIVE: INTERNATIONAL LAWS AND INDIA'S COMMITMENTS

International law imposes significant responsibility on states to prevent and eradicate child marriage, which is universally acknowledged as a violation of human rights. India has pledged to implement legislative, administrative, and social steps to end child marriage as a

member of the international community and a signatory to important human rights accords. Comprehending global norms aids in placing India's own legislation in perspective and emphasizes the necessity of ongoing reform and efficient execution

International Human Rights Framework

Global standards for marriage are established by the 1948 Universal Declaration of Human Rights which emphasizes that a marriage can only be consummated with the free and informed agreement of both parties. Child marriage is a fundamental violation of this concept because minors are unable to offer informed consent.

India is a signatory to the 1989 Convention on the Rights of the Child , which requires states to shield children from any detrimental customs, including early marriage. Article 24 demands that customs harmful to children's health be abolished whereas Article 19 mandates that states protect children from exploitation and abuse. In a similar vein, nations are required by the 1979 Convention on the Elimination of All Forms of Discrimination Against Women to provide equality for women in marriage and family relationships. CEDAW's General Recommendation No. 21 calls on nations to establish a minimum marriage age of 18 and expressly acknowledges child marriage as discriminatory. India's legal changes, especially the strengthening of the Prohibition of Child marriage Act, 2006 and the harmonization of domestic legislation with child rights concepts, have been impacted by these international norms.

Comparative Global Practices

Numerous nations with comparable sociocultural circumstances have passed strict laws against child marriage that are backed by administrative procedures. For instance:

- a. Bangladesh passed the Child Marriage Restriction Act, 2017, which imposed harsher fines and formed local monitoring committees, despite having the

highest number of child marriage in south Asia.

- b. Nepal adopted extensive community outreach and mandatory marriage registration to enhance enforcement following the adoption of a constitutional commitment to end child marriage.
- c. Ethiopia has reduced the rates of early marriage by integrating child marriage prevention into its school-based programs and local governance institutions. These nations emphasize the value of community-based approaches, stringent enforcement, and local monitoring areas in which India still faces difficulties.

India's International Commitments And Domestic Translation

India's commitment is further reinforced by its involvement in international forums like the UN Sustainable Development Goals (SDGs). By 2030, SDG 5.3 aims to end child, early, and forced marriage. India has made an effort to align itself with these global objectives through national policies, awareness programs, and changes to child protection laws. On paper, Indian regulations comply with international norms, yet there is still a big gap between the law and reality on the ground. Progress is hampered by sociocultural opposition, lax enforcement, and low awareness.

CONCLUSION

Child marriage in India represents one of the most deeply entrenched socio-legal challenges the nation continues to struggle with, despite having a comprehensive statutory framework designed to eliminate it. The legal system has certainly evolved- from the early Child Marriage Restraint Act, 1929 to the more progressive and stringent Prohibition of Child Marriage Act, 2006-reflecting a strong commitment to safeguarding the rights and welfare of Minors. However, the persistent occurrence of Child marriage points to a significant gap between legislative intent and actual societal practice, revealing the complex interplay of tradition, poverty, gender inequality, and social norms that continue to undermine the enforcement of the law.

Legally speaking, the PCMA is the most significant tool for outlawing and punishing child marriage. Certain marriages are declared voidable by its terms, while others- particularly those involving coercion and trafficking-are deemed void ab initio. A consistent age requirement that complies with international human rights norms is reinforced by complementary laws such as the Hindu Marriage Act 1955, the Indian Penal Code 1860, and The Special Marriage Act 1954. The legal system has been further reinforced by judicial interpretation. The PCMA's overarching nature has been made clear by landmark rulings like *Lajja Devi v. State* (2013), which have also highlighted the Constitutional values of equality, dignity, and individual liberty. Ever in the face of challenges based on cultural or personal legislation these court rulings guarantee that the judiciary will continue to be a watchful guardian of children's rights

The reality on the ground is that implementation is still inadequate despite this strong legal and judicial framework. The deeply ingrained socioeconomic basis of child marriage is a significant contributing element to this disparity. Early marriage is seen as a safeguard or a financial need by many families, particularly those in poverty. The practice is still justified by gender conventions patriarchal attitudes, safety concerns, and family honour beliefs Enforcement is also very difficult due to poor literacy rates, ignorance of legal rights, and opposition to government action. Despite the PCMA's district-level appointment of Child Marriage Prohibition Officers (CMPOs), many of them are still overworked underfunded, or inadequately trained, which limits their efficacy

The problem is not just with enforcement; it also involves conceptual problems with the law structure. The fact that child marriages are classified as voidable rather than immediately void, with the exception of certain situations, raises serious concerns. This puts the onus of starting the annulment legal process on the child, who is frequently a young female with little agency. In many rural or patriarchal environments, where kids lack the autonomy, finances, or support to contact the courts, such an expectation is unreal Confusion is often exacerbated by the discrepancy between persona laws and the PCMA, especially in groups that adhere to

traditional customs or religious interpretations of marriage. Social acceptance of this legal reality is still low, notwithstanding judges' repeated rulings that the PCMA supersedes personal laws.

Given these difficulties, it is clear that the law cannot end child marriage on its own. Legal prohibition must work in concert with more comprehensive social transformation. community involvement education, and economic empowerment. Effective monitoring and intervention require better collaboration between government agencies, child protection organizations, local panchayats, and civil society organizations. Awareness campaigns that inform families about the long-term drawbacks of early marriage, health hazards and legal ramifications must be implemented at the local level. Early detection of children at risk can be facilitated by community health workers, schools, and Anganwadi centres.

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