

Child Marriage: A Social Evil in Indian Society

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Abstract - In India Caste system, Sati system, Devadasi System and Child marriage are main social evils. All are the main drawbacks of our society. In India, child marriage has been practiced since ancient times where young children and teenagers are married off much before their physical and mental maturity. There are many reasons why some parents consent to child marriage and some of the reasons could be economic necessity, male protection for their daughters, child bearing, or oppressive traditional values and norms. In this paper I am discussing definition of child marriage, reasons for child marriage, affects of Child marriages on Children, Rules and regulation which regulates the child marriage systems and impact of Child marriage in India.

Index Terms - Child marriage, prohibition of Child marriage act, traditional aspects etc.

INTRODUCTION

Indian is a rich in Culture, tradition and habits. Birth, marriage and death are the standard trio of key events in most people's lives. Among these marriage – is only a matter of choice. The right to exercise that choice was recognized as a principle of law even in Roman times and has long been established in international human rights instruments. Yet many girls, and a smaller number of boys, enter marriage without any chance of exercising their right to choose. Some are forced into marriage at a very early age. Others are simply too young to make an informed decision about their marriage partner or about the implications of marriage itself. They may have given what passes for 'consent' in the eyes of custom or the law, but in reality, consent to their binding union has been made by others on their behalf. The assumption is that once a girl is married, she has become a woman – even if she is only 12. Equally, where a boy is made to marry, he is now a man and must put away childish things. While the age of marriage is generally on the rise, early marriage – marriage of children and adolescents below the age of 18 is still widely practiced.

While early marriage takes many different forms and has various causes, one issue is paramount. Whether it happens to a girl or a boy, early marriage is a violation of human rights. The right to free and full consent to a marriage is recognized in the 1948 Universal Declaration of Human Rights (UDHR) and in many subsequent human rights instruments – consent that cannot be 'free and full' when at least one partner is very immature. For both girls and boys, early marriage has profound physical, intellectual, psychological and emotional impacts, cutting off educational opportunity and chances of personal growth. For girls, in addition, it will almost certainly mean premature pregnancy and childbearing, and is likely to lead to a lifetime of domestic and sexual subservience over which they have no control.

DEFINITION

The Prohibition of Child Marriage Act of 2006 defines "child marriage" means "a marriage, or a marriage about to be solemnized, to which either of the contracting parties is a child; and child for purposes of marriage is defined based on gender of the person - if a male, it is 21 years of age, and if a female, 18 years of age."

REASONS FOR CHILD MARRIAGE

The reasons for child marriage is as follows

Traditional Aspects

Child marriage can also be influenced by norms and beliefs. In some societies, marriage is nothing more than a phase of womanhood. Once menstruation starts, a girl is seen as a grown woman, so the logical next steps for her are marriage and motherhood. Younger girls may also be perceived as more amenable — more easily shaped into an obedient wife. In some places, child marriage is political. Unions are arranged to build or strengthen ties between tribes or communities. Elsewhere, it's about preserving a family's honor — avoiding the shame of having an unmarried daughter

or one who becomes pregnant out of wedlock. In many cultures, girls who have lost their virginity are considered “ruined” or “unsuitable” for marriage. Parents may arrange a union for their daughter while she is young to ensure she remains a virgin and to maximize her child-bearing years.

Poverty

Within many impoverished contexts, girls and women aren't seen as potential wage earners. Rather, they are considered financial burdens to their families and consequently, less valuable than boys. For parents with several children or families living in extreme poverty, child marriage is simply a way to help alleviate the desperate economic conditions they find themselves in. It's one less mouth to feed and one less education to fund. In communities where a dowry is paid by the girl's family, a marriage at a younger age can mean a lower expense. In other communities with a bride price — the amount paid by the groom to the parents of a bride — younger girls often get a higher price. They presumably have more time to dedicate to their new family and bear more children.

Girls are sometimes married to help offset debts, settle conflicts, or as a substitute for actual money. Worse still, families may have no choice but to arrange a younger daughter's marriage along with her sister's if a cheaper “package deal” can be secured. Overall, there are so many ways in which child marriage creates economic incentives for young girls to be married off early — whether for financial security or gain. Sadly, the practice also tends to trap these girls and their children into a lifetime of economic disadvantage.

Religion

Some time Religion is influence the parents to marry their children as early as possible to escape from their religious duties. Now days if any girl love any out caste person then also parents are going to perform their marriage even though child is minor.

Affects of Child marriage on Children.

Affect on Health both Physical and mental Forced child marriages have devastating consequences on the health and development of girls. As children themselves, they are not physically and emotionally prepared to become mothers. Teen moms and their babies are both at a higher risk of dying in childbirth.

In fact, complications in pregnancy and childbirth are the leading cause of death globally among adolescent girls ages 15 to 19. Young girls also don't yet have a full grasp of their sexual and reproductive health and rights. Many end up married to an older boy or man and find it difficult to voice their needs, particularly around issues like contraception and family planning. They are also more likely to experience domestic violence or exploitation even within the context of a marriage.

Psychological Effects

The Vitem of Child marriage may face following Psychological problems

1. Depression
2. Anxiety
3. Bipolar disorder
4. Addicted to drugs, alcohol and smoking
5. Pressure
6. Emotional blackmail.
7. Too many responsibilities
8. Violence and abuse
9. Young brides reduced opportunities to develop psychological and social skill necessary to make strategic decisions and life choice.

Decrease in female education

Child marriage statistics show that girls who aren't in school face a greater risk of becoming child brides: Girls who have no education are three times more likely to marry before 18 than girls who attend secondary school or higher. When girls have access to education, they develop the knowledge and confidence to make important life decisions for them — including if, when, and who to marry. Child marriage can also significantly impact a girl's ability to continue with her education. Many girls are forced to drop out in order to focus on domestic responsibilities or to raise children of her own. Parents and community leaders may not see the value in continuing to educate a girl, seeing it as unnecessary for her primary roles in life as a wife and mother.

ATTEMPTS MADE BY INTERNATIONAL COMMUNITY TO PROHIBIT CHILD MARRIAGE

Child Marriage is not a problem of a single country; it is a problem of whole world. So in international

community made so many efforts to eradicate the Child marriage. Child marriage refers to the marriage of a child younger than 18 years old, 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. 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 practices 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 were married or in union before they reached 18 years of age. 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. Child marriage in India is not a new phenomenon. The practice as it prevails now, though, continues to thrive in economically disadvantaged communities, especially those that are coloured by customary and cultural practices and perspectives that encourage the early marriage of a girl child. This project will offer a complete break-up of information on Child Marriage in India, its prevalence and impact, and the legal provisions that concern the issue.

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.

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. 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. The younger a bride, the higher her “value”, as the chastity of a young bride remains preserved. 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. 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.

Child Marriage and International Human Rights Instruments

A number of human rights instruments lay down norms to be applied to marriage, covering issues of age, consent, equality within marriage, and the personal and property rights of women. The key instruments and articles are as follows (paraphrased for clarity in some cases):

Article 16 of the 1948 Universal Declaration of Human Rights (UDHR) states: (1) Men and women of full age ... have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. (2) Marriage shall be entered into only with the free and full consent of the intending parties. Similar provisions are included in the 1966 International Covenant on Economic, Social and Cultural Rights and the 1966 International Covenant on Civil and Political Rights.

Article 1 of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery includes in the institutions and practices similar to slavery: Article 1(c) Any institution or practice whereby:

(i) A woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family ...

Articles 1, 2, and 3 of the 1964 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages state:

(1) No marriage shall be legally entered into without the full and free consent of both parties, such consent

to be expressed by them in person ... as prescribed by law.

(2) States Parties to the present Convention shall ... specify a minimum age for marriage ("not less than 15 years" according to the nonbinding recommendation accompanying this Convention). No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interests of the intending spouses ...

(3) All marriages shall be registered ... by the competent authority. Article 16.1 of the 1979 Convention on the Elimination of All Forms of Discrimination against Women prescribes equally for men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; ... Article 16.2 states: The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage.

Article XXI of the 1990 African Charter on the Rights and Welfare of the Child states: Child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be eighteen years.

Child Marriage and the Convention on the Rights of the Child (CRC)

The CRC has been ratified by all countries with the exception of the United States and Somalia. Virtually every provision of the CRC is of some relevance to the issue of early marriage. Among the most pertinent, however, are the following :

Article 1: A child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Article 2: Freedom from discrimination on any grounds, including sex, religion, ethnic or social origin, birth or other status.

Article 3: In all actions concerning children ... the best interests of the child shall be a primary consideration.

Article 6: Maximum support for survival and development.

Article 12: The right to express his or her views freely in all matters affecting the child, in accordance with age and maturity.

Article 19: 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.

Article 24: The right to health and to access to health services; and to be protected from harmful traditional practices.

Articles 28 and 29: The right to education on the basis of equal opportunity.

Article 34: The right to protection from all forms of sexual exploitation and sexual abuse.

Article 35: The right to protection from abduction, sale or trafficking.

Article 36: The right to protection from all forms of exploitation prejudicial to any aspect of the child's welfare.

CHILD MARRIAGE ACT, 2006- A New Dimension

As a result of the lack of effectiveness of Child Marriage Restraint Act, 1929, a new legislation to replace it was enacted in the form of Prohibition of Child Marriage Act, 2006. The Act envisages preventing child marriages with enhanced punishments of rigorous imprisonment for two years and/or fine of INR 1 lakh. It defines a child to mean a male below 21 years and female below 18 years. A minor is defined as a person who has not attained the age of majority as per the Majority Act. There are provisions for maintenance of the girl child. The husband is liable to pay the maintenance in case he is a major. In case the husband is a minor, his parents would be liable to pay the maintenance. The legal status of a child marriage is voidable at the option of the parties. However, if the consent is obtained by fraud, deceit or if the child is enticed away from his lawful guardians and if the sole purpose is to use the child for trafficking or other immoral purposes, the marriage would be void. The Act also provides for the appointment of a Child Marriage Prohibition officer whose duties are to prevent child marriages and spread awareness regarding the same.

Child marriage prohibition in personal laws and secular law

Prohibition of Child Marriage Act, 2006

Under PCMA, the marriageable age for a female is 18 years and for a male, it is 21 years. A decree of nullity can be obtained by a girl who has entered into a child

marriage within 2 years of attaining the age of 18 years.

Hindu Marriage Act, 1956

Under the Hindu Marriage Act, only the parties to a child marriage are punishable even if they did not consent to the union. There are no provisions for punishing the parents or people who solemnised the marriage. A girl can get the marriage annulled only if she was married off before attaining the age of 15 and she challenges the marriage before turning 18. There is no express provision to prohibit child marriage per se.

Muslim Personal Law

Muslim law is not codified in India. Therefore, its provisions are based on the interpretation of Quran by scholars. Under the Muslim law, there is no bar to child marriage. A guardian has a right to get a child married. However, the couple has 'option of puberty' known as khayar-ul-bulugh where they can repudiate the marriage after attaining puberty. However, they must do so before turning 18 and only if the marriage has not been consummated. The age of marriage under Muslim law is the age of puberty which is 15 years. However, marriage before the age of 7 even if contracted by a lawful guardian, is void ab initio.

Indian Christian Marriage Act (ICMA)

ICMA provides that a preliminary notice is to be issued 14 days prior to the marriage if the marriage is to be contracted between minors. After the expiration of the said period, the parties can go on with the marriage without the consent of their guardians.

Other personal laws

Parsi Marriage and Divorce Act (PMDA), a child marriage is invalid. However, the Act is silent regarding age where the provisions for an invalid marriage are listed. Jewish law in India is uncoded. Under it, the marriageable age is the age of puberty which is fixed at 12 years.

Judicial Trends

The judicial pronouncements have time and again highlighted the superseding effect of secular law over the personal law. However, there are inconsistencies between the judgements of various high courts. The Delhi High Court in *Lajja v State* held that the PCMA

prevails over personal laws. The same was reiterated by Karnataka High Court in *Seema Beghum v State* in 2013. However, in 2014, in the case of *Yusuf Ibrahim Mohammad Lokhat v State of Gujarat* observed that "According to the personal Law of Muslims, the girl no sooner she attains the puberty or completes the 15 years, whichever is earlier, is competent to get married without the consent of her parents". This clearly gives the idea that according to the learned judges, the personal laws should be taken as a primary source to decide the cases of underage marriage. In 2015, the Madras High Court declared that PCMA applies to every community and is not against Muslim law. There are no judgments by Supreme Court to settle this point. Thus, the state of ambiguity and irregularity is not resolved yet.

Best Practices in the Indian milieu

At the national level, there have been policies that target child marriages through incentives for the families involved. Under the National Population Policy 2000 and the National Youth Policy 2003, there were strategies to address the vulnerability of girls in the context of child marriages. Some of these ideas included the provision of non-formal education and vocational training, development of livelihood skills and education and awareness of sexual and reproductive health issues. These strategies have been repeated and expanded in subsequent policies. In Rajasthan, the Mamta-Health Institute for Mother and Child started the Action Approach for the Reduction of Early Marriage and Early Pregnancy, as an initiative to involve young people towards the creation of awareness on reproductive health information. This was done through the process of community mobilization and key stakeholders.

On the legal front, the Human Rights Law Network began advocacy and awareness towards sensitizing the masses to the prohibition on child marriage with an emphasis on legal literacy. Their efforts effectively culminated in the passage of the Prevention of Child Marriages Act, 2006.

In addition to the Prohibition of Child Marriage Act, the International Centre for Research on Women initiated a program called *Apni Beti, Apni Dhan* (Our Daughter, Our Wealth) in 1994, to study the reason and consequence of child marriage, this was the first of a kind Conditional Cash Transfer programs aimed at delaying child marriages. The program provides Rs.

500 to the mother upon the birth of a girl child to cover her post-delivery needs. The government also invests in a Rs. 2, 500 long term bond in the girl's name which can be cashed for Rs. 25, 000 upon the age of majority; this is provided by the government only if the girl is unmarried. It was first implemented in the state of Haryana by the Government of India. Based on an evaluation of the outcome of the program in Haryana, the International Centre for Research on Women aims to spread the program all over India and the rest of the world. Taking a leaf out of the above project, the government later launched the Balika Samridhi Yojna, implementing a Cash-Transfer scheme for every instance where a girl's marriage was delayed to after attaining majority, whereby a sum of money was payable to unmarried 18-year-old. The International Centre for Research on Women (ICRW) launched the Development Initiative for Supporting Healthy Adolescents (DISHA) from 2004 until 2007. The program sought to create access to reproductive health information and education on life skills, providing youth-friendly reproductive health services, livelihoods training for the youth and community mobilization towards fighting child marriage.

The Institute of Health Management-Pachod (IHMP) and the ICRW implemented a Life Skills Programme in Maharashtra from 1997 until 2005, specifically targeting adolescent girls, to make them economically stronger, thereby delaying their marriage to after they attain majority. The Tata Steel Rural Development Society (TSRDS) implemented a Regional Initiative for Safe Sexual Health by Today's Adolescence in Jharkhand, from 2004 until 2007, focusing on behavioral change communication, incrementing capacity building, and promoting awareness of sexual and reproductive health. The program was particularly successful in delaying the marriage of girls to after majority.

CONCLUSION

In India, marriage is sacrament, so it is given so much importance. In the name sacrament some social evils also practiced. Generally, marriage requires the participation of both men and women, a concern with the rights and empowerment of vulnerable girls has focused the field more narrowly on them than is strategic. Marriage especially calls attention to the limitations of this focus on one sex. Marriage transactions are resolved in a market, a market where

individuals and families of brides and grooms find and negotiate linkages with grooms and brides. A broader perspective that takes the full range of players in the marriage market into account is likely to be more advantageous.

Two key themes that require more systematic focus in work with men and boys are

- 1) The cultural construction of sexuality, since it helps to shape preferences for young, malleable wives and significant spousal age gaps; and
- 2) The structural drivers of the age gap between spouses, including young men's difficulties in transitioning to adult roles that include paid employment. One of the reasons for the age gap is that men cannot get married until they have work, and older men are more likely to have achieved stable employment.

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