

# Stolen Childhoods and Silent Laws: A Socio-Legal Inquiry into the Persistence of Child Marriage in India

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**Abstract-** Child marriage continues to pose a serious socio-legal and human rights challenge in India, despite the existence of comprehensive statutory protections. Deeply embedded in historical traditions, patriarchal social structures, gender inequality, and economic deprivation, the practice disproportionately affects girls and deprives them of education, health, autonomy, and dignity. This study critically examines the socio-legal landscape of child marriage in India by analysing the interaction between legal frameworks and prevailing social realities. Employing a doctrinal and qualitative socio-legal research methodology, the paper reviews constitutional provisions, key legislations such as the Prohibition of Child Marriage Act, 2006, judicial interpretations, and international human rights instruments including CEDAW and the Convention on the Rights of the Child, supplemented by secondary data from governmental and international reports. The findings reveal that although legal reforms have contributed to a gradual decline in child marriage rates, enforcement gaps, social acceptance, poverty, lack of education, and entrenched gender norms continue to undermine legal effectiveness. The persistence of child marriage highlights a significant disconnect between law in theory and law in practice. The study concludes that child marriage in India is not merely a legal infraction but a multidimensional socio-economic and human rights issue requiring holistic intervention. It emphasizes that legal prohibition alone is insufficient and must be complemented by gender-sensitive education, economic empowerment, community engagement, and institutional accountability. The paper advocates for an integrated, rights-based policy approach that aligns legal enforcement with social transformation to ensure the effective eradication of child marriage in India.

**Keywords:** Child Marriage; Socio-Legal Analysis; Gender Inequality; Human Rights; Legal Enforcement; India

## I. INTRODUCTION

A long-lasting social and cultural problem, child marriage denies millions of Indian youngsters their proper childhoods and hinders their chances of leading healthy, happy lives. Child marriage, which is defined as the union of one or both couples under the age of 18, is a phenomenon that continues to exist in a variety of cultures and areas, despite legal bans and socioeconomic barriers. An overview of the socio-legal environment surrounding child marriages in India is given in this introduction, which also traces the issue's historical roots, emphasizes how widespread it is, and emphasizes how urgent it is to address it.

Child marriage has historically been a part of Indian society and has its roots in long-standing customs, cultural norms, and family obligations. It has been carried out for many centuries, frequently to strengthen social ties, maintain the integrity of castes, or lessen financial burdens. Though there may have been precedent for the practice in the past, it persists now because of deeply rooted injustices, patriarchal standards, and socioeconomic divides that continue to marginalize vulnerable groups, especially girls.

In India, child marriage is still a major issue despite great advancements in many areas of development. Millions of youngsters, mostly girls, are married off before they are old enough to give their consent. The magnitude of the problem is shown by statistical data, with India having the highest number of child brides worldwide. Regional differences exacerbate the issue even more, with certain states having higher rates of child marriage than others for a variety of sociocultural and economic reasons.

The socio-cultural background of child marriage in India is intricate and multidimensional, influenced by

a wide range of interconnected elements such as gender conventions, traditional beliefs, family dynamics, and socioeconomic circumstances. The practice of assigning females to inferior roles within families and communities and limiting their access to education, autonomy, and opportunity for self-realization is generally driven by patriarchal systems and deeply rooted gender inequities.

In India, child marriage is officially forbidden by a number of laws, such as the Prohibition of Child Marriage Act (PCMA), which was passed in 2006 and aims to safeguard the rights of minors by prohibiting the solemnization of child weddings. But there are still obstacles in the way of these laws' successful application, including a lack of knowledge, shoddy enforcement strategies, and cultural acceptance.

Comprehensive initiatives to address the underlying reasons of child marriage, advance gender equality, empower girls, and encourage community involvement are desperately needed in light of these difficulties. Stakeholders can more effectively identify targeted interventions and cooperative strategies to protect children's rights and well-being and make sure that every child has the chance to experience a fulfilling childhood free from the constraints of early marriage by understanding the socio-legal landscape surrounding child marriages in India.

## II. HISTORICAL BACKGROUND

Following 1000 B.C., the status of women in India experienced a significant decline. By approximately 200 A.D., Yajnavalkya advocated for the marriage of young women prior to their reaching maturity. Traditionally, guardians bore responsibility for terminating pregnancies. The era of the Law of Manu witnessed a decrease in female education, prevalence of prepubescent marriages, and establishment of institutional and practical norms that enforced male superiority over women.

According to Helen Ralston, "ancient India operated on a basic culture with its own self-sufficient economy,

allowing unrestricted marriage ages. Practices like child marriage perpetuated the subordination of women."<sup>1</sup>

According to Manusmriti, <sup>2</sup>"failing to marry one's daughter before she reaches adolescence is considered mistreatment, resulting in the father forfeiting his rights over her. If the daughter remains unmarried three years after reaching maturity, she may seek a spouse herself." Medhatithi's Bhashya suggests that the optimal age for a girl to marry is eight, a viewpoint consistent with Manusmriti.

The Tolkappiyam suggests that boys should be married before reaching sixteen and girls before reaching twelve. However, the Greek historian Megasthenes observed the early puberty of girls in South India. Edgar Thurston also notes that in South India, young girls participated in a candlelight ritual known as Vilakiddu Kaliyanam between the ages of seven and nine, or possibly later, but always before marriage. Allan Dahlaquist asserts that this ritual likely served as a pre-marital adolescent ceremony, which could explain Megasthenes' observations.<sup>3</sup>

Sociologists assert that the practice of child marriages in India can be traced back over a thousand years to the period of Muslim invasions, particularly initiated by groups like the Gujjars. According to tradition, stories suggest that unmarried Hindu girls were targeted by invaders or abducted as commodities, prompting Hindu communities to marry off their daughters almost immediately after birth to safeguard them.

Certain viewpoints suggest that prior to the 19th century, child marriages were prevalent globally. During the Delhi Sultanate, characterized by a harsh political climate under Muslim rulership, practices such as child marriage were introduced, further deteriorating the position of women. Additionally, Muslim communities also practiced child marriages during this period.

In cases where a child marries an adult, it's often because the child's parents are impoverished and see the marriage as a means to improve their daughter's

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<sup>1</sup> Laxman Singh, A socio-legal study of child marriage in India, Volume 5; Issue 1; January 2020; Page No. 16-20.

<sup>2</sup> Laxman Singh, A socio-legal study of child marriage in India, Volume 5; Issue 1; January 2020; Page No. 16-20.

<sup>3</sup> B. Suresh Lal, Child Marriage in India: Factors and Problems, Index Copernicus Value (2013): 6.14.

future prospects, particularly in regions with limited economic opportunities. In India, the practice of dowry involves the transfer of wealth from the bride's family to the groom's, often as a prerequisite set by the groom's family for the marriage to proceed. Dowry practices are prevalent across all religions in India, and the amount of dowry exchanged has been linked to the age of the bride. Nagi proposed in 1993 that the tradition of dowry induces stress and pressure to avoid delayed marriages, thereby encouraging early unions. Some argue that early marriages in India stem from economic hardship, with young girls marrying to escape severe poverty and alleviate the financial burden on their families. Additionally, <sup>4</sup>“the presence of personal laws for Muslims in certain Indian regions contributes to the prevalence of child marriages. For instance, in the Malappuram district of Kerala, 3400 females aged 13 to 18 were married in 2012, with 2800 (82%) being Muslims. Efforts to curb this practice through legal enforcement have faced scrutiny from the Indian Union Muslim League and other Islamic groups, contending that setting a minimum marriage age infringes upon the religious rights of Muslim girls.”

### III. IMPACTS OF CHILD MARRIAGE

Several financial factors play a significant role in the prevalence of child marriage. These include stringent social norms, patriarchal traditions, poverty, and limited educational opportunities. Child marriage is also viewed as a consequence of gender inequality. For impoverished families, early marriage is often seen as a means to secure their daughter's future, with the prospect of offering a smaller dowry serving as additional motivation. During times of humanitarian crises, marrying off a young girl is perceived as a way to protect her from sexual abuse, despite often increasing her vulnerability to such exploitation. Some argue that child marriage amounts to a form of human trafficking, as in certain cases, these unions may facilitate the trafficking of children for sexual exploitation.

The detrimental impacts of child marriage on its victims far exceed the reasons that lead to its

occurrence. These consequences are profound and enduring, depriving girls of their basic human rights and fundamentally altering their life prospects.

### FACTORS LEADING TO CHILD MARRIAGE IN INDIA

Despite the Prohibition of Child Marriage Act, 2006, child marriage remains prevalent in India, mainly due to the following factors:

#### 1. Economic hardship:

Poverty is a significant driver of child marriage in India. Families living in poverty often perceive their daughters as financial burdens and believe that marrying them off at a young age will alleviate their financial struggles. UNICEF data indicates that 27% of girls in India are married before the age of 18, with a higher prevalence observed in low-income households.

#### 2. Cultural norms and societal beliefs:

In numerous regions of India, entrenched cultural norms dictate that girls should marry at a young age. These norms perpetuate the notion that females are burdens and their primary role is to marry and start families. Some cultures view early marriage as a means to safeguard a girl's purity and shield her from the perceived risks of premarital relationships. According to research by Girls Not Brides, child marriage is deeply entrenched in Indian cultural practices.

#### 3. Limited access to education:

Especially for girls, is another contributing factor to child marriage in India. Girls who lack education are often seen as less valuable and are more likely to be married off at a young age. India has the highest percentage of unschooled child brides globally, according to a study by UNESCO. Dropping out of school early increases the likelihood of early marriage for girls.

#### 4. Gender inequality:

Plays a significant role in perpetuating child marriage in India. Girls are often married off young to ensure their safety and protection, as they are perceived as inferior to boys. There is a widespread belief in many

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<sup>4</sup> B. Suresh Lal, Child Marriage in India: Factors and Problems, Index Copernicus Value (2013): 6.14.

communities that marrying girls off young will shield them from sexual assault or harassment.

5. Lack of knowledge:

Another factor in the prevalence of child marriage is the lack of knowledge among families and communities about the detrimental impacts of the practice. The long-term effects of child marriage, including an increased risk of maternal death, marital violence, and poverty, are often unknown to families.

#### IV. IMPACTS OF CHILD MARRIAGE IN INDIA

The Indian economy is significantly impacted by child marriage, both in the short and long terms. The following are a few ways that child marriage impacts the economy:

1. Decreased productivity:

Girls who marry as children frequently leave school and the workforce too soon. As a result, production declines on a national and individual basis. In terms of missed earnings and productivity, child marriage was estimated to have cost the economy \$63 billion in 2017, according to a World Bank analysis.

2. Health costs:

Child marriage frequently leads to early pregnancy and childbirth, which can have detrimental effects on the mother's and the child's health. More healthcare expenses result from this, which are frequently covered by the government.

3. Impact on education:

Child marriage often results in girls discontinuing their education prematurely, leading to lower academic attainment and diminished future earnings potential. Postponing child marriage could enable girls to complete their education and increase their earning capacity. According to a study by the International Center for Research on Women (ICRW), delaying child marriage could potentially boost India's GDP by 1.7%.

4. Cycle of poverty:

Girls who marry at a young age are more likely to become mothers early and face increased economic instability, perpetuating the cycle of poverty. This perpetuation occurs due to decreased investments in

health and education, further entrenching individuals and families in poverty.

#### V. CHILD MARRIAGE AS A SOCIAL EVIL

As defined by the Prohibition of Child Marriage Act,<sup>5</sup> "a marriage involving two underage partners is classified as a child marriage." Widely regarded as a serious breach of human rights, child marriage stems from gender inequality and the dominance of patriarchal norms in society. Young girls compelled to undertake household responsibilities and early pregnancies instead of attending school, like their peers, experience adverse developmental effects from such unions. While both boys and girls are impacted, it is widely acknowledged that girls bear a significantly greater burden in these marriages.

Despite the definitions provided by conventions such as the Universal Declaration of Human Rights and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the UN Convention on the Rights of the Child specifies that child marriage occurs when one or both individuals involved in the marriage are below the age of 18.

The Committee on the Rights of the Child (CRC) and the Committee on the Elimination of Discrimination against Women (CEDAW) frequently address the issue of child marriage in their interactions with member states and in their concluding remarks. They stress the importance of gender equality for women and girls, including those who are minors, and emphasize the complementary nature of both conventions. While the CRC does not explicitly prohibit child marriage, there is a compelling argument for its abolition when viewed in conjunction with CEDAW.

Recently, UNICEF and UNFPA collaborated to launch the 'UNFPA-UNICEF Global Program to Accelerate Action to End Child Marriage,' a joint initiative across multiple countries aimed at accelerating efforts to combat and ultimately eliminate child marriage.

#### VI. CONSEQUENCES OF CHILD MARRIAGE

a. Early maternal mortality:

Adolescent brides often lack adequate knowledge about reproductive health, heightening the risk of

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<sup>5</sup> The Prohibition of Child Marriage Act, 2006 (India).

maternal fatalities related to pregnancy. For girls married between 15 and 19 years old, these fatalities are the primary cause of death, with a twofold higher likelihood of mortality during childbirth compared to females aged 20 to 24. The risk of maternal death is quintupled for those under 15 years old.

b. Infant well-being:

Infants born to mothers under 18 face a 60% increased chance of mortality within their first year compared to those born to older mothers. They are also more prone to low birth weight, poor health, and delayed physical and cognitive development.

c. Fertility consequences:

A study conducted in India between 2005 and 2006 by Macro International and the International Institute for Population Sciences revealed concerning fertility trends associated with child marriages. The research documented unfavourable reproductive outcomes, a high fertility rate, and low usage of contraceptives among young married women. Many reported early and recurrent pregnancies, as well as unwanted pregnancies and terminations, with a significant proportion foregoing contraceptive use prior to their first childbirth.

d. Violence:

Research conducted by the International Center for Research on Women in India revealed that young girls married before the age of 18 are at increased risk of domestic violence within their marriages compared to older women. These young brides are more likely to experience sexual assault and are twice as likely to face physical abuse.

## VII. LAWS AGAINST CHILD MARRIAGE

a. The Child Marriage Restraint Act of 1929

The 1929 Child Marriage Restraint Act, also known as the Sarda Act, aimed to regulate the prevalence of child marriage. Enacted on April 1st, 1930, it was applicable to all Indian citizens, covering the entire nation except for certain princely states such as Hyderabad and Jammu & Kashmir. Its primary objective was to prevent premature deaths and safeguard young children from the burdens of early married life. As per the provisions of this Act, a male child was defined as someone under the age of 21

(originally 18), a female child as someone under the age of 18 (originally 14), and a minor as any individual aged 18 years or younger.

If a male between the ages of 18 and 21 marries a child, they could face up to 15 days in jail, a 1,000 rupee fine, or both. A male over 21 who violated the law might face up to a quarter of a year in prison as well as a fine. Anyone found guilty of performing or organizing a child marriage service faces up to a quarter of a year in prison as well as a possible fine, unless they can prove the marriage, they performed was not a child marriage. A parent or guardian of a kid entering a marriage could face up to a quarter of a year in prison as punishment.

To raise the ages of male and female children, amendments were made to the Child Marriage Restraint Act in 1940 and 1978.

b. The Prohibition of Child Marriage Act, 2006:

The Government of India introduced the Prohibition of Child Marriage Act (PCMA) of 2006 in response to a Supreme Court plea (Writ Petition (C) 212/2003) from the Forum for Fact-finding Documentation and Advocacy. It was designed to address and correct the deficiencies of the preceding Child Marriage Restriction Act, and it went into force on November 1, 2007. The name change was intended to emphasize the prevention of child marriage as opposed to its simple restraint. The prior Act drew criticism for its intricacy and lack of focus on the role of authorities as possible mediators to stop these weddings.

The PCMA made major modifications to provide better protection for youngsters, but it did not alter the ages of adult males and females. Now, within two years of becoming adults, minors who were forced into child marriages can choose to dissolve their unions; in some cases, this can happen even before the minor's become adults. All property, funds, and gifts given or received during the marriage must be returned in situations of annulment, and the girl must be given a place to live until she marries or reaches adulthood. Children born out of wedlock are regarded as legitimate, and custody decisions for parents must be made by the courts taking the best interests of the children into consideration.

Any adult male who marries a juvenile or helps arrange or lead a child marriage ceremony faces a maximum sentence of two years in jail or a fine.

## VIII. MEASURES NEEDED TO PREVENT CHILD MARRIAGES

### 1. Education:

Preventing child marriages requires a strong educational foundation. Girls who get good educations have lower chances of getting married off when they're young. For this reason, it is crucial to support and guarantee females' access to education.

### 2. Campaigns to Increase Awareness:

It is imperative to bring attention to the negative impacts that child marriages have on the health, education, and general well-being of girls. Child marriages can be successfully discouraged by community-wide information efforts that involve parents, religious leaders, and other relevant parties.

### Economic Empowerment:

Families who are impoverished frequently force their girls into early marriages. Giving families access to the economy can ease their financial burdens and lower the rate of child marriages.

### 3. Legal Enforcement:

Child weddings are forbidden in India by the Prohibition of Child Marriage Act, 2006. Strict adherence to the law is required, though, and those who arrange or encourage these weddings ought to be held accountable.

### 4. Support Networks for Girls:

In order to withstand peer and familial pressure, girls who are at danger of underage marriage should have access to support networks. This could involve different types of help, such as shelter houses and counselling programs.

### 5. Strengthening Child Protection services:

In order to stop forced marriages, child protection services must be improved. This can be accomplished by creating community-level child protection committees, providing training programs for child protection personnel, and making sure that child protection laws are implemented correctly.

## IX. CONCLUSION

The Child Marriage Restraint Act, 1929, which was passed during the British colonial era, was the first notable step in the sluggish legislative advance against child marriages. This law established the recognition of child marriage as a societal issue, despite its limitations in effectiveness. But prejudices ingrained

in the law still exist today, emphasizing the necessity of gender-neutral laws to protect children's rights.

The Prohibition of Child Marriage Act (PCMA) of 2006 brought about provisions like the voidability of child marriages and stiffer penalties, marking a favourable turn in legislative thinking. Over the previous ten years, there has been a fall in child marriage rates, which may or may not have been caused by the PCMA alone. Significant roles were also played by elements like education, better living conditions, awareness campaigns, and grassroots initiatives.

Notwithstanding advancements, problems still need to be addressed, which calls for changes to the law to remove any remaining barriers to the abolition of child marriage. A model for such enhancements is the PCMA's Karnataka Amendment.

Girls born in the twenty-first century should live in an India free from the terrible practice of child marriage. Continual efforts are needed to guarantee their empowerment and safety.

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