CHILD MARRIAGE: AN OVERVIEW

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ABSTRACT

Child marriage is the violation of the rights of the child, it is the most prevalent form of sexual abuse which is prevailing in the society having negative impact on physical growth, health, educational opportunities. Poor families likely to marriage their girl child at very young age as they think that this will likely to bring benefit to the girl both economically and socially. This practice is common in rural areas as the economic condition of women is worse in rural areas and due to the illiteracy, they think that this will relieve them from economic responsibilities. There are countless factors which are responsible for this practice, the most common are poverty.

This article attempts to show the situation of girls in the society as the girl child who got married at early age is more likely to face the risk in pregnancy, and also the risk of getting sexually transmitted diseases. It also shows the mentality of people regarding children especially girl child and their seriousness towards the laws. This article also shows the judicial approach towards the Child marriage. This article also suggests some measures which can be adopted to wipe out the Child marriage from society.

Key words: Child marriage, Sexual abuse, poverty, Health problems

INTRODUCTION

According to Michelle Bachelet, M.D., Executive Director of UN Women. “No girl should be robbed of her childhood, her education and health, and her aspirations. Yet today millions of girls are denied their rights each year when they are married as child brides”1.

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Marriage is the most sacrosanct social institution of life. It is a personal matter of the people as the individual chooses his partner to spend his whole life, any interference of the state in their personal life will not be acceptable and nor welcomed by the society, but if such customs or practice violates any right of the individual or offends good social order, it becomes an obligation upon state to eradicate such practice from the society. One of such practice is Child marriage.

“Child marriage is defined as a marriage of a girl and a boy before the age of 18 years and bring up both formal marriage and informal unions in which children under the age of 18 live with a partner as if married”². There are various laws prescribing punishments against child marriage and almost all the people know about these laws, but still it is being practiced in some part of our society.

It is a violation of human rights and has destructive impact on the growth of child whether it is physically, mentally or emotionally. The practice of Child marriage has been prevailing across the country but it is much higher in rural areas than in urban areas. Due to child marriage both partners are affected but girls are more appallingly affected as the teen age for them is more critical and nascent as compared to boys. Girls of poor families, scheduled castes and scheduled tribes are forced to marry at younger age. According to, The Prohibition of Child Marriage Act, 2006 “it is illegal to solemnize a marriage of girl below age of 18 years and a boy of age 21 years in India”.³ There are various other laws related to Child marriage. Despite having so many laws against child marriage, still many minor girls are forced into marriage which cause emotional stress to them and also leads to long lasting negative impact on their health. The practice of Child marriage can be traced from medieval times. The problem of Child marriage is so deeply rooted in our society that it was considered as religious traditions and social practice. Regardless of its roots in the Indian society, Child marriage is a violation of human rights. Child marriage not only violates the right of the child but their unpreparedness against such violation unfortified for further exploitation.

The communities in India are still governed by their own personal laws. If any custom is prevailing in a particular community and if such custom has ill consequences, they will not accept it, as in the case of child marriage. The practice of Child marriage is mostly prevailing

² https://www.unicef.org/rosa/what-we-do/child-protection/child-marriage (visited on feb.05,2020
in Rajasthan and in some communities of Uttar Pradesh West Bengal, Bihar etc. In 1993, a survey was conducted by national government over 5000 women in Rajasthan which showed that 56 percent of girls were forced to marry before they were 15 and out of these 3 percent were married before they were 5 and another 14 percent before they were 10⁴.

Child here generally means to minor or a person who is younger than the age of majority. As defined under united nations convention on the rights of child, “child is a human being under the age of 18 years until and unless stated in any child applicable law”⁵.

HISTORICAL OVERVIEW OF CHILD MARRIAGE

In the earliest known history of India, there was no prevalence of child marriage at that time. Young women and men had the freedom to choose a partner without any fear of scandal. The most popular form of marriage was Swayamwar. The practice of child marriage originated and strengthened its roots in the medieval age when the states and the government developed. The already established rules and practices were being interrupted by the new rulers who brought their own rules and laws. The status of women got worse. Child marriage was mostly seen as a monetary benefit means there were certain benefits and presumptions in return of child. Girls were considered as financial burden over the family which have to be transferred to the marital family after marriage. Parents also solemnize the marriage of their child in early age, as they fear that their child, due to his/her tender age may fall in irrational love which may ruin his/her life and ultimately cause mental stress.

Till 1860’s children got married below the age of eight or nine. At that time, it was believed that if a girl and a boy know each other from childhood and have understanding and affections. Parents decided to marry their children at that very young age even though the girl stay with her parents until she attained the age of puberty. Various social reforms movement were organized by the Brahmo Samaj and Arya Samaj against child marriage to eradicate such practice from the society.

In the end of 1860’s Provisions regarding child marriage were made by Indian penal code which got success up to some extent. A memorandum was sent to viceroy regarding the

⁵ The Prohibition of Child Marriage Act, 2006 (Act 6 of 2007)
prohibition of Child marriage of girls who have not attained the age of 15. The resulting bill compromised at 12 years\(^6\). Later this the age of 14 was revised by Indian penal code to 15 years under section 375.\(^7\) Before the prescribed age, the consumption of marriage shall be considered as criminal offence and will be punished as a rape offence.

**CAUSES OF CHILD MARRIAGE**

All the children have a right to care, to develop and to grow to his/her full potential irrespective of the circumstances. Child marriage denies such fundamental rights by not providing well nourishment, proper education and taking off their freedom by misusing and abusing them.

They consider child marriage as a GAME having fun, as they are not in the position to visualize the impact of child marriage at such young age and also, they are not in the position of give consent regarding marriage.

So, the question arises, why a social issue like child marriage still exist in India?

Although there are countless reasons for child marriage but the main reasons of Child marriage are as follows –

1. **Poverty:** Child marriage is nothing other than a product to meet the economic needs. Families who cannot afford to feed their or educate their children consider marriage as their best option. Marriage brings dowry to the bride’s family in exchange of the girl. It is considered that, younger the girl child, higher the dowry.

2. **Social ties:** Parents of girl child also establish relation and social tribes between tribes or clans by marrying their daughter to a good family and also improve their social status.

3. **Protection:** In many cases, parents considers child marriage as a legitimate way to protect their girls in unsafe environments. They believe that marrying their daughters at the very young age will protect their daughters from rape, premarital sexual activity, sexually transmitted diseases (human immunodeficiency virus (HIV) and AIDS).\(^8\)

4. In most cases, Child marriage is the performed because of the social norms, cultural beliefs. As indicated by a Human Rights Watch report, “20 percent of girls from the

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\(^6\) Supra note 4

\(^7\) The Indian Penal code 1860, (Act 45 of 1860)

\(^8\) [https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2672998/](https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2672998/) (visited on feb.05, 2020)
poorest families are twice as likely to get married before the age of 18 years, as compared with the girls of rich families”.

5. **Poor implementation of law:** poor use and weak implementation of law is considered as very effective reason, due to which such practice is still prevailing in India. Though, the amendments have been done in laws regarding child marriage but still the law suffers a gap. In fact, it is clearly visible that law is only used to harass the offenders and to extract ransoms from them.

6. **Patriarchal system:** Child marriages have its roots from the complex set of imbalances of power between male and female which can be clearly reflected in the society. In the patriarchal society, the women have less freedom to move around and are not permitted to make decision regarding their life. The limit to freedom of the girl in exercising their personal choice also contributes to child marriage. It shows very funny and interesting nature of the society that the father and other male member of the society choose the spouse and make all the decision regarding the time of the marriage.

**STATUTORY PROVISION RELATING TO CHILD MARRIAGE**

The laws regarding child marriage in India are as follows:

1. **The Child Marriage Restraint Act, 1929:** - To eliminate the evil practice of child marriage which is prevailing in the society, the Child marriage Restraint Act, 1929 was enacted. This Act prohibits any person to perform, conduct or direct any practice related to child marriage. Such act shall be punishable with imprisonment up to one month or fine up to one thousand rupees or with both. Under this act, the minimum age of marriage was 15 years for girls and 18 years in case of boys. The age was raised from 15 to 18 and 18 to 21 for girls and boys respectively after 1978 amendment. The Child Marriage Restraint Act does not make child marriage illegal or void, it only imposes penalties over the person who are responsible for promoting this evil practice in the society.

2. **Prohibition of Child Marriage Act, 2006:** – The Indian Parliament passed Prohibition of Child Marriage Act to replace the previous Act which was known as Child Marriage

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10 The Child Marriage Restraint Act, 1929 (Act 19 of 1929)
11 *Ibid*
Restraint Act. The Prohibition of Child Marriage Act Criminalize any act perform by any person related and connected to Child marriage whether it is related to performing or conducting or abetting any Child marriage and also provide punishment with an imprisonment which may extend to two years and also with fine which may extend to 1 lakh, under this, the legal age of male and female to marry is 21 years and 18 years respectively 12.

3. **Muslim Personal law:** - Since Muslim laws are not codified in India therefore, the provisions of these laws are totally bed on the interpretation of Quran. Under these laws, there is no provisions regarding the prohibition of child marriage. There is simply a general provision that a person cannot marry if he/she hasn’t attained the puberty. But a guardian can get his/her child married. Regardless of the fact that they are married, the couple can repudiate the marriage after attaining puberty only if the marriage has not been culminated. However, the marriage before a particular age is claimed illegal regardless of the fact that there is a consent of lawful guardian.

4. **Other Personal Laws:** - Under Parsi Marriage and Divorce Act, 1936, there were no provisions regarding the age. But after the 1998 amendment, the minimum age for marriage for male was recognized as 21 and for female it was recognized as 18 years. 13 The marriage below such age is null and void. Under the Jews laws, the minimum eligible age for marriage is 12 years.

**ROLE OF THE JUDICIARY**

The Indian judiciary plays remarkable role in the protection of fundamental rights of the children whether they are citizens or non-citizens but unless the society doesn’t step ahead to eradicate the menace of Child marriage, judiciary will not be able to bring the change alone.

As the Hon’ble Supreme Court in the case of *Sushila Gothala v. State of Rajasthan and others*, 14 held that “unless the society took step against eradicating evil practice of child marriage, the legislation cannot stop the Child marriage from being practice”.

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13 Parsi Marriage and Divorce Act, 1936 (Act 3 of 1936)

14 AIR 1995 Rajasthan 90
The Orissa high court in *Biru Pakhya Das v. Kunja Bihari*,\(^{15}\) held that “even though the Child marriage is against the provision of the Child marriage Restraint Act, the legal status of the marriage will not be affected, even if the act impose penalty.” Same view has been expressed in *William Rebello v. Jose Agnelo Vas*\(^6\) by Bombay High Court.

In *Gajara Narain Bhura v. Kanti Kemberbari Panwat*\(^7\) The Gujrat High court held that “the Child marriage Restraint Act 1929 does not make a child marriage void even if it is punishable under this act”.

### CURRENT STATUS OF CHILD MARRIAGE

From many years, the Indian government along with the other prominent organizations have been making tremendous efforts to eliminate the evil practice of the child marriage through law. Despite having laws against child marriage along with the efforts of the government, still child marriage is being practiced in various parts of our country. Principal reason, as mentioned above, which are considered as prominent factor for promoting child marriage are education, economic crisis etc. For instance, it is reported that in Hyderabad every year, old Arab men come to find young girls for themselves in order to make them their wives. An estimate of 35 marriage between Arab and Hyderabad girls take place every year. An around 3000 Hyderabadi Muslim girls were sold to old Saudis every year\(^8\).

In 1927, the Child Marriage Restraint Act was passed which set the minimum age of marriage but it fails to prevent the Child marriage from being solemnized. In 2006, Prohibition of Child Marriage Act was passed which increased the legal age of marriage and also increased the punishment for promoting any child marriage. Child marriage is currently illegal in India, but the practice of Child marriage is still prevailing in some parts of India especially in rural areas.

In urban areas the number of Child marriage has declined by 51 percent since 2000 but in rural areas, even today Child marriage is still prevailing having a figure of 14.1 percent as compared to urban areas where the number is 6.9 percent.\(^9\) Form the numbers, the progress can be seen.

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\(^{15}\) AIR 1962 Ori 104.
\(^{16}\) AIR 1996 Bom 204.
\(^{17}\) AIR 1997 Guj 185.
but we still have to focus on the rural areas where the child marriage is still considered as their culture.

CONCLUSION

Although the Indian parliament had enacted a law against the evil practice of child marriage but it can be clearly interpreted that people have no fear regarding laws because it is still prevailing in our society especially in rural areas. Child marriage has physical and emotional consequences on both boys and girls.

The government should redesign the laws and policies related to protecting children from being emotionally, mentally and physically being tortured. The government should also ensure that the girls who are already married are safe. The government should amend the prevailing laws against the child marriage and should increase the intensity of the punishment so that people have fear regarding laws and the status of the girl is raised.

“More initiatives such as APNI BETI APNA DHAN, BETI BACHAO BETI PADH AO should be launched so that family should get aware of the dismaying repercussions of child marriage.”

Under these schemes an amount is paid to the parent on the 18th birthday of the girl if she is celibate at the age of 18 by the government20.

Merely Framing a law or imposing punishment doesn’t eradicate the problem. It can only be done by way of the social awareness if the people of the society oppose such practice and the government also contribute by organizing programs to make people aware about the consequences of the child marriage.

The present laws regarding Child marriage only makes child marriage voidable, there is need of strict legislation which completely prohibit any form of Child marriage and should make Child marriage ab initio void and severe punishment should be imposed on the people who promote such Child marriage and also on the people who are involved in such evil practice.

After examining the above mention conditions, this researcher suggests that the children should be taken care of and should be refrained from these gloomy practices rather than pushing them

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20 Supra note1
in the same. There should be an increase in the level of education in rural areas so that people should be aware of pros and cons of child marriage and should resist it.