



PROHIBITION OF CHILD MARRIAGE: A MYTH

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Abstract:

The Prohibition of Child Marriage Act, 2006 was enacted with the aim to outlaw the solemnization of marriage of the children below the age of 18 years for women and 21 years for men and the incidents thereof. This Act was passed on 10th January 2007 and came into force on the 1st November 2007. The Child Marriage Restraint Act of 1929 was repealed by the current Act in question. The Act lays down various provisions for the prohibition of the child marriage, protecting and providing relief to the victims and penalizing the offenders.

This research paper focuses on the scope of The Prohibition of Child Marriage Act, 2006 and the several provisions thereof. The paper will constitute the shortcomings of the Act relating to its aims, objectives and the provisions. The aim of the research is to throw light on the Child Marriages and the current position that exists in India. The paper would commence with the introduction to the topic and then move on to the history of child marriage, its causes, consequences and thereafter on to the development of the Act in India, critical analysis of the provisions of the Act, problems in the implementation of the Act and certain suggestions for the same through research on Indian Scenario, scholarly articles and case laws.

Introduction:

Child marriages have existed since the ancient times; it was considered to be a common practice at that time. This tradition had gained importance in India under the reign of the Delhi Sultans, in the medieval times. Since then, this practice was followed by a large number of masses, just like a custom. The British for the first time paid heed to this matter and considering the consequences and causes of this practice they passed a legislation named the Child Marriage Restraint Act, 1929. This Act was later repealed by the current Act named The Prohibition of Child Marriage Act, 2006.

The Act of 2006¹, though talks about prohibiting the marriage between children, but in the true sense this Act does not completely forbid the selfsame. It makes the marriage only voidable at the option of the one party that is aggrieved and not void per se, which refutes the aim of the Act entirely. The issue is still a massive problem in most of the developing countries, India being one of them. This practice is one of the most serious social maladies that affects the lives and future of the youth and the nation as a whole. Thus, it is important to study the matter and the laws that are related to it. This can help give a broader view of the topic and can further assist in eliminating such a social evil from the society.

Historical Background

As per the Hindu Vedas, child marriage is restricted and discouraged. It had made the mention of the age limit for marrying as 25

¹ The Prohibition of Child Marriage Act, 2006, No.6, Acts of Parliament, 2006 (India)



years for a male and 18 years for female,² but still it was a very common practice in the ancient times. This practice was commonly seen amongst the poor but later it started spreading to the rich society also. This concept of child marriage was brought to India in the medieval period by the Delhi Sultans as they were of the view that the girls should be married off before they reach their age of puberty to protect the sanctity of the girl. It was also noticed that the marriage was fixed by the parents when the child were not even born but existed in their mother's womb. The people of that era were of the mindset that child marriages have positive impact on the children, family and the society as a whole. They considered it safe for their children, as it preserved the purity of the girl child and it gave the parents an opportunity to decide the partner for their children. Therefore, the girls were married as soon as they had started with their menses. Another reason for the existence of this concept was that the life expectancy in the earlier time was considered to be less than 50's and therefore child marriage was adopted to increase the population and to continue with the family succession.

Current Situation in India

In the 21st century when the entire world is changing and developing into a new one with each passing second, there are unfortunately some social evils that form a darker side of the coin. Around 27% child marriages have taken place in the year 2016

although the legal age of the child is 18 years.³ Child marriages are prevalent in the rural areas at around 48% and in urban areas it is 29%.⁴ The states like Jharkhand, Uttar Pradesh, Orissa, Madhya Pradesh and West Bengal have the highest rate of child marriages.⁵ India is proud to reach the moon and boasts about it but it has forgotten the fact that a country can only progress when the children, the youth of the country are not forced into marriage at an early age and are allowed to work and discover themselves, so that the country can also progress and reach growth along with development.

Causes of Child Marriage

India has been a victim of child marriage for a long period of time now. It is one of the worst forms of violation of human rights. It clutches the childhood of the child, places the future into darkness, forces a person to be what he is not and takes away the right to learn and play. The various analyses by researchers show that the rate at which child marriage is decreasing in India every year is very slow and negligible. Despite the various legal, social and political influences this traditional practice still continues in rural as well as the urban areas. To eliminate the marriages among the children it is first necessary to understand the reasons of the same. Several factors that encourage this practice are given below.

Customs and Traditions

There are certain social and traditional norms in India that are till date preserved by

² Aparna Marion, *History of Child Marriage in India*, (Jan.25,2018,5:00 PM), <https://terredasie.com/english/english-articles/history-of-child-marriage-in-india>

³ *Child Marriage*, (Jan.25, 2018, 7:30 PM), <http://unicef.in/Whatwedo/30/Child-Marriage>

⁴ *Ibid.* at 3

⁵ *Ibid.* at 3



the people, and they consider child marriage as one of those norms. The people follow it as they recognize this concept as a custom since it was prevalent in India for a long period of time and was followed by their ancestors.

Protecting the purity

The people are of the view that the child if married earlier will protect the honor of the family as the child will be pure when they get married at an early age. By this word pure, it can be implied that the child would not have lost its sexuality.

Poverty

The mindset of the people also plays a very important role in the practice of child marriages. It is also affected by demography and income, therefore, the practice of child marriage is seen more in the rural areas than in urban areas. This is due to the lack of education and awareness in the rural areas. They are not aware of the consequences that the child has to undergo and also they are far away from the legal provisions of law.

To secure debts

Sometimes the children are married because of the sum of money that they receive which helps them to secure their debts. This is against the human rights as it implies the selling of the child for money.

Lack of education

The lack of access to information causes an increase in the child marriage. The studies by the young lives clearly state the fact that the child marries at a later stage if he is

educated.⁶ A global analysis of data by ICRW also found that girls education is the most important factor associated with child marriage.⁷

Insecurity

Due to the growing rate of women harassment and rape cases the parents find it convenient to marry their daughter early before she even walk into adulthood, so that she is secured with her husband.

Inadequate laws

There is a prohibition on the child marriage and there are various provisions prevailing that support the idea of discouraging such an evil but the problem occurs in the implementation of the law. There are several laws that protect the rights of the children from getting married at an early stage but they are not enforced because of the lack of awareness among the people and because of the existence of weak implementation of laws in India. Poor implementation of the law and lack of will and action on the part of the administration are important reasons for the continuation of child marriage.⁸

⁶ Singh, A. & Espinova, P., *Teenage Marriage, Fertility, and Well being: Panel Evidence from India*, Working paper 151 Oxford: Young Lives, (Jan.26, 2018, 10:00 AM), http://www.younglives.org.uk/files/YLWP151_Teenage%20Marriage%20Fertility%20and%20Well-being.pdf

⁷ Jain, S., & Kurz, K. (2007), *New insights on preventing Child Marriage: A Global Analysis of Factors and Programs*, Washington D.C: International Centre for Research and Development on Women, (Jan.26, 2018, 10:13 AM), <https://www.ponline.org/node/188316>

⁸ Government of India, Law Commission, *Proposal to Amend the Prohibition of Child Marriage Act, 2006 and other Allied Laws*, Report 205, February



Above laid are some of the reasons that encourage the practice in the society. Studies have shown that the child marriage affects both the sexes but the impact on the women are more as compared to men.

Consequences of Child Marriage

Child marriage snatches the childhood and it is fraught with negative consequences. It renders social and economic growth in danger. It is not only the violation of the human rights but it is also considered as an obstacle in the development of the young people. Following is the list of the consequences:

Maternal and Infant Health Risks

The women who give birth to a child even when her body is not fully developed for performing the act of delivering the child, in such cases there are increased chances of maternal or infant deaths. This also causes more problems to the mothers as the process leads to obstetric fistula. This means that while giving birth, the bladder, rectum or vagina tears.

Exposure to HIV/AIDS

In certain cases where the women are married to an elder person she is more exposed to such diseases. This is because the sexual behaviors of the man cannot be negotiated to be safe. It is assumed that the older man would have been more exposed to sexual acts and therefore, it can also infect the women with a lifelong disease. It results in various pregnancies and abortions.⁹ Girls

who get married at an early age are often more susceptible to the health risks associated with early sexual initiation and childbearing, including HIV and obstetric fistula.¹⁰

Domestic and Sexual Violence

The girl child, who is married at an early age, is found to be in most of the cases, to be sexually and physically abused. An ICRW study in India shows that girls who married before age 18 reported experiencing physical violence twice as often, and sexual violence three times as often as girls who married at a later age.¹¹ Domestic violence is more common among women who had been married as children. India has the highest rate of domestic violence among women married by 18 with a rate of 67 per cent.¹²

Deprivation of Childhood and Future

More than anything else, the child marriage destroys the future of the children. It robs their childhood and innocence. It forces them to leave their studies and focus on the marriage. It bars them from the concept of self-discovery of one's own identity. This practice puts an end to the future of the child and more specifically for the women. A study by the Population Council aptly

<http://childlineindia.org.in/pdf/Child-Marriage-handbook.pdf>

¹⁰ Association for Social Justice & Research vs. Union of India & others, (1995) 3 SCC 42 (India)

¹¹ Anju Malhotra, *The Causes, Consequences and Solutions to Forced Child Marriage in the Developing World*, (Jan.26, 2018, 5:02 PM), <https://www.icrw.org/files/images/Causes-Consequences-and%20Solutions-to-Forced-Child-Marriage-Anju-Malhotra-7-15-2010.pdf>

¹² UN Children's Fund (UNICEF), *Early Marriage: A Harmful Traditional Practice*, UNICEF: Florence (2005), p.22

2008, (Jan.26, 2018, 10:45 AM), <http://www.lawcommissionofindia.nic.in/reports/report205.pdf>

⁹ Krishna Tirath, *Prohibition of Child Marriage Act 2006*, (Jan.26, 2018, 3:00 PM),



captures the plight of one such young girl in Rajasthan. The girl who till recently was frolicking around in her parents village, is suddenly catapulted to a new position through early marriage, where she has to play the role of a deaf and mute wife in a long veil, and be seen only as working with her two hands.¹³

Psychosocial disadvantage

The loss of carefree childhood, burden of household chores, pressure of earning income, forced sexual relations along with physical torture leads to the psychosocial consequences. Married at the age of 12, Parashuram aged 31, confided that after the wedding, everyone around you reminds you of your responsibilities and one gets tormented by the responsibility of having a wife and family.¹⁴ At 12, Parashuram was neither ready for sexual activity nor prepared to be a father or for the responsibility of supporting a family. In his early 30's, he admitted that he couldn't do what was expected of him as a married man, instead he felt trapped, between boyhood and fatherhood.¹⁵

Human Trafficking

Child marriage is closely linked with the concept of human trafficking especially when it is solemnized through force, coercion or abuse and as a means of

subjecting wives to conditions of slavery in the form of sexual servitude or domestic labour.¹⁶ Marriage is also often used as the first step to trafficking for commercial sexual exploitation, forced labour or any other purpose.¹⁷

Generally the women are affected more as compared to the men due to the child marriage. This is however negated by the Nirantar study that explains that the pressures of gender weigh heavily on the grooms as well.¹⁸ While they tend to resort to drugs or alcohol to overcome their anxieties about family and sex, they turn to coercion or violence to control their wives and to assert themselves, which is a masculine role attributed to them by societal norms.¹⁹

The Act of 2006²⁰:

Annihilating child marriage in the Indian society is a strenuous task since it is followed as a custom. Its presence is seen mostly in the rural areas and amongst those who are not aware of the consequences of child marriage. This issue was first dealt by Har Bilas Sarada; he was an academician, judge and politician. He became famous for enacting the Child Marriage Restraint Act, 1929 and therefore, the Act was also famously known as the Sarada Act. The Act was a part of the social reform movement

¹³ Santhya, K.G. & Jejeebhoy S. (2003) , *Sexual and reproductive health needs of married adolescent girls*, Economic and Political Weekly 2003; 38(41): pp., 4370-77

¹⁴ *How One Child Groom is Fighting Child Marriage Today*, (Jan.26, 2018, 6:00 PM), <http://www.care.org/impact/stories/how-one-child-groom-fighting-child-marriage-today>

¹⁵ *Ibid.* at 9

¹⁶ Aptel, C (2016) Child Slaves and Child Brides, *Journal of International Criminal Justice*, 14 (2) pp 305,25

¹⁷ *Ibid* at 8

¹⁸ *Ibid* at 16

¹⁹ Nirantar trust, *Early and Child Marriage in India*, (Jan.26, 2018, 8:56 PM), http://www.nirantar.net/public/site/files/EM_Report_30-4-15.pdf

²⁰ *Ibid* at 1



and it focused on the prohibition of the child marriages below the age of 18 years for men and 15 years for women respectively²¹. It was the first secular law curbing the child marriage in India.²² However, the Act lacked implementation by the British authorities, mainly due to the loss of support by the Indian prince who were not in favour of the Act. Various amendments were made in this Act from time to time to increase the age limit but it remained just a piece of paper for years. Due to the ineffectiveness of the 1929 Act²³, it was repealed by the new Act framed by the legislation in 2006, named as The Prohibition of Child Marriage Act, 2006²⁴. The Act came into force on 1st November 2007. The present Act aims at prohibiting the child marriages. For the efficacy of the Act, it duly envisages rigorous punishment for the contravention of the provisions of the Act.

Applicability of the Act

The Act is applicable to the territory of India except the state of Jammu and Kashmir²⁵, irrespective of the caste, creed, religion etc. The Renoncants of the Union territory of Pondicherry are also not covered under the application of the Act as the Civil French laws are applicable on the citizens of Pondicherry.

Objectives of the Act

²¹ Asha Bajpai, *Child Rights in India*, Oxford University Press, New Delhi 2003, p.220

²²Rajnandini Mahajan, *Laws On Child Marriage In India*, (Jan.28, 2018, 6:00 PM), https://blog.ipleaders.in/laws-child-marriage-india/#_ftn1

²³ The Child Marriage Restraint Act, 1929, No.19, Acts of Parliament, 1929 (India)

²⁴ *Ibid* at 1

²⁵ Section 1, *Supra* note 1

Child marriage has been a concern in India due to its root in traditional, cultural and religious practices. It is associated with various problems and consequences as discussed earlier and thus to decrease such instances the Act came into being. The main objective of the Act is to prohibit the solemnization of marriage between children, that is, the male below the age of 21 years and the female below the age of 18 years.²⁶ It is a welfare legislation that aims to enhance the health of children and the status of women in the society.²⁷

Provisions of the Act

The premise of the law stands on the pillar that there should be no marriage between the minor. On this premise, the provisions of the Act can be divided into 3 P's that are as follows:

- A. Prevention
- B. Protection
- C. Prosecution

Prevention:

The law seeks to prevent child marriage, and in this regard they have set up various authorities to deal with such cases. It prevents child marriage by making it a non-bailable and cognizable offence.²⁸ The child marriage prohibition officers are appointed to prevent such an act and register the matter as soon as possible.²⁹ They also have the duty to create awareness and sensitization towards such issue.³⁰ The court also plays an

²⁶ Section 2(a), *Supra* note 1

²⁷ M.Mohamed Abbas vs. The Chef Secretary, (2015) 6 MLJ 49 (India)

²⁸ Section 15, *Supra* note 1

²⁹ Section 16, *Supra* note 1

³⁰ Section 13(4), *Supra* note 1



active role and has been given the power to pass an injunction order for prohibiting such kind of act.³¹ Thus, the Act tries to curb the practice and create consciousness among the people.

Protection:

The Act has laid down provisions for protecting the children from such evil practices of the society. Section 3³² lays down that the child can apply for a decree of annulment in the court of law for getting rid of the force marriage by the parents. The child prohibition officer has been entrusted with the responsibility to provide legal aid and care and protection to the victims of the child marriage.³³ If any child is borne out of such marriage then it would be considered legitimate child³⁴, this provision is formed so as to protect the interest of the child. The Act also provides for the rehabilitation of the children who are victims of such practice.

Prosecution:

The law envisages provisions relating to the prosecuting of offenders. Section 10³⁵ lays down that if any person performs or tries to abet another to solemnize child marriage would be punishable with imprisonment which may extend to two years and fine which may extend to one lakh rupees. Also, Section 9³⁶ states that if an adult male marries a minor female then he would held liable as mentioned in Section 10.

³¹ Section 13, *Supra note 1*

³² Section 3, *Supra note 1*

³³ *Ibid* at 29

³⁴ Section 6, *Supra note 1*

³⁵ Section 10, *Supra note 1*

³⁶ Section 9, *Supra note 1*

Critical Analysis of the Act:

Child marriage is a violation of human rights and the abuse of childhood. It has various deleterious impacts on the child. It truncates the childhood and innocence of the child. It further curtails the freedom of developing into a self-recognized and fully fledged person. It denies the opportunity of freedom of life and shoves the child into a marriage for which he is not mentally prepared.

The current legislation is the furtherance of the previous Act. The main aim and object behind the enactment of this law was to discourage marriages between under aged persons. The Act lays down provisions for preventing child marriage, it appoints various authorities for the protection of the victims and it incorporates punishment for the offenders, all the provisions that prevent child marriage are welcome. However, the coin always has two sides and so does this Act.

One of the main criticisms of the Act is that, it specifically does not declare the child marriage to be void but only voidable by the option of one party same as the previous Act. It made a specific provision for void marriages under certain circumstances but did not render all child marriages void, it introduced the concept of a voidable child marriage.³⁷ It is riveting that the legislature has accepted the peril of child marriage and also that it is in violation of human rights, but at the same time, except in certain circumstances contemplating under Section

³⁷ Dr. Basant, Hindu law, (2008), Central Law Publication Allahabad, p. 51.

³⁸ *Lajja Devi v. State*, AIR 1955 All 671 (India)



12 of the Act, the marriage is treated as voidable.³⁹ Also, the male can annul the marriage till the age of 23 years but the female can do so only till the age of 20 years (2 years after attaining majority, the marriage can be annulled by any party to the marriage). It is held to be discriminatory in nature, as it gives the male more time than the female. This refutes the purpose of the whole Act for which it came into being. The Act lays specific emphasis on preventing the child marriage and not prohibiting it in totality. The uncontrolled child marriages that are being performed in India, even after the passing of the legislation, clearly shows that it has no effect on the society and the people. According to UNICEF, 40% of the world's child marriages take place in India.⁴⁰

The current Act impliedly gives consent for child marriages and so do the other Acts in force. The Hindu marriage Act, 1955 lays down that the marriage can be solemnized between adults that is, bridegroom should have attained the age of 21 years and the bride of 18 years. But at the same time, the 1955 Act does not make the marriage void in contravention of the age, it only makes it punishable. The Dowry Prohibition Act, 1961 also contains provisions which give implied validity to minor's marriages.⁴¹ The words 'when the woman was minor' used in Section 6(1) (c) reflects the implied legislative acceptance of the child marriage.⁴² Code of Criminal

Procedure also lays down that the children have the right to claim maintenance from their parents if they are minor irrespective of the fact that they are married or unmarried.⁴³ Thus, it will not be wrong to say that it has failed drastically in its application.

Conclusion and Recommendations:

Child marriage is a menace that cannot be cured without the buttress of the society. It is therefore, extremely important for the government to publicize the contents of the present Act and create awareness about the ills of child marriage.⁴⁴ The awareness can be spread through media, campaigns, dance, and street play or in any other appropriate form. Education must be imparted amongst the children by the teachers in the school itself relating to the harmful consequences of child marriage and thus, encouraging them to marry at a later stage. For this, Article 21A of the Indian Constitution must be promoted. The studies show that the more the child is educated the later they tend to marry. Commissions set up at State and Central level must look into such matters and report them as soon they possess the knowledge of any such act. The Acts mentioned above should all be amended in a way that it does not transgress the essence of the law and at the same time it does not promote child marriage impliedly. Also, child marriages must be made void in order to protect the interest of the child. To completely eradicate such practice from India, it is important to fabricate the child rights with the core issue of child marriage.

³⁹ *Ibid* at 38

⁴⁰ *Indian teenager annuls her child 'marriage'*, (Feb. 2, 2018, 7:10 PM), <http://www.bbc.com/news/world-asia-india-17838022>

⁴¹ *Yunusbhai Usmanbhai Shaikh Vs State of Gujarat*, 2016 CriLJ 717 (India)

⁴² *Ibid* at 41

⁴³ Section 125, The Code of Criminal Procedure, 1973, No.2, 1973 (India)

⁴⁴ *Ibid* at 8