



CHILD MARRIAGE: A VIOLATION OF RIGHTS

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ABSTRACT

Child marriage is considered to be a violation of human rights because of its negative repercussions on the parties getting married and especially the girl child involved. Marriage at a young age fetters her activities and ambitions. A girl is subjected to non-consensual physical intercourse which can have negative impacts on her physically, mentally and emotionally. To top it, sexual intercourse at young age also leads to a number of complications in pregnancy. Such young brides are even deprived of proper medical or health services which also have led to higher infant mortality rates. Marriage at a young age also shatters the desire of a girl to seek education and vests on her young husband the responsibilities to support their family. By way of this paper we will discuss the major cause and repercussions of child marriage on young children. We'll also list the rights infringed and analyse legislations related to the mal practice. Through this paper we will aim to highlight the various rights the young children are entitled to but do not get as a result of marriage.

INTRODUCTION

Preponderance of child marriage in India and other African as well as other Middle East Countries like Nigeria, Yemen, Chad and Kenya has been able to draw attention of various International Human Rights

organizations because of its negative impact on a child's rights. Over 60 million women worldwide have been made victim of child marriage.¹ Being recognized as a human rights violation, this practice has somewhat decreased globally over the past few years. Despite the global decline, it remains ubiquitous in South Asia. Prevalence data from the prior decade indicate that approximately 30-70% of married young women in South Asian nations (i.e., Bangladesh, Nepal, India and Pakistan) are married prior to age 18 years.² This practice hampers the growth of a part of the younger generation, lowering the national development. It results in increase in poor maternal and infant health, lack of education, sexual exploitation, unemployment and other issues. As of now, United Nations (UN) prioritizes issue of maternal health, infant mortality and women empowerment. They are included in the UN Millennium Development Goals. It is essential to remove child marriage to reduce the maternal health issues and infant health, especially within South Asia where these rates are high. Apart from medical issues, child marriage is a blatant violation of basic rights of a child. UN has tried to incorporate the illegality of this practice through conventions, some of which India has adopted through legislation. But, the implementation and effectiveness of the legislation remains a concern.

¹UNICEF, 'Progress for Children. Protecting against abuse, exploitation and violence. Child Marriage.' 2007.

² International Council for Research on Women, 'New Insights on Preventing Child Marriage: A Global Analysis of Factors and Programs' Apr2007.



1. MAJOR REASONS

This rigidness and loyalty towards the practice can be owed to certain factors which broadly include the inherent patriarchal system, poor economic conditions, and illiteracy. They are just few of the many reasons of the continuation of this practice.

Also, 'Child Marriage in Nepal Research Report'³, a testimony by a girl Rita stated her eloping with her lover at age 14 and giving birth at 15. In light of this, the aforementioned report mentioned that a girl child is deprived of any sort of love and affection right from infancy, and when someone, even a stranger, displays any sort of love and affection towards her, she is easily attracted and attached to the said person.

As per the societal norms, marriage is considered to be compulsory; the parents prefer to do away with this responsibility early on to avoid complications later. The said complications are - sexual desire and illicit sexual intercourse; chances of elopement; having a love affair with someone, especially if he is from a different caste; fear of exorbitant dowry later. All of the complications are associated with the presumption that girls are to protect the honor of the family.

In an interview of the residents of a village in Bangladesh, they talked about the fear of use of sorcery to call evil spirits for preventing a girl's marriage. A resident Salma says, 'I do not want to marry off my

³ 'Child Marriage in Nepal Research Report' (Plan Nepal and Save the Children and World Vision International Nepal, 2012) p 33

daughter at an early age. I want to give her an education. But I may have to marry her off young for fear that somebody might use sorcery to prevent my daughter's marriage.'⁴As per Demographic and Health Surveys which have provided the country-level data for child marriages, the said practice is most ubiquitous in world's poorest nations.⁵ Through this data, it can be inferred that child marriage is directly correlated to poor economic conditions or poverty. It has been found that a girl belonging to the poorest household in Senegal is four times more likely to get married before the legal age.⁶ In Nigeria, 80% of the poorest girls marry before the age of 15, compared to 22% of the richest girls. Poverty leads to child marriage simply because the parents feel they are lacking in resources to provide for alternatives for their child.⁷ Another reason is the need to secure the economic future of the girl; the parents realize their lack of ability to provide for decent education so marriage is the only viable option.

2. REPERCUSSIONS OF CHILD MARRIAGE

Child marriage can be inferred as violation of basic human rights as it has adverse effects on a girl child's health, emotions and

⁴ Farah DeebaChowdhary, 'Socio-Cultural Context of Child Marriage in a Bangladeshi Village' [2004] 13 International Journal of Social Welfare 248

⁵ 'New Insights on Preventing Child Marriage A Global Analysis of Factors and Programs' (International Centre for Research on Women, 2012) p 6

⁶ ibid p 9

⁷ Mathur, S and M. Greene and A. Malhotra, *Too Young to Wed: The Lives, Rights and Health of Young Married Girls* (International Center for Research on Women, 2003) Washington, D.C



mental state. A girl child is affected much more through such marriages as compared to a male child. A girl getting married below the age of 18 to a man much older to her is often subjected to sexual abuse and domestic violence. In this paper, I will be elucidating on the various physical and mental issues a girl faces when she gets married at a tender age.

2.1. **HEALTH ISSUES:**

2.1.1. **MATERNITY HEALTH AND INFANT MORTALITY RATE-**

The moment a girl is married off, she faces tremendous pressure from her in-laws to bear them a child. Hence the most important issue among young brides which needs to be addressed is pregnancy at a tender age when their bodies are not ready to take the strain and pregnancy with fewer intervals. Hence early marriage is associated with early child bearing and this early child bearing leads to increased infant mortality rate. As per the WHO report of 29 countries, it was found that girls getting pregnant in the age of 16 or less were exposed to greater risks of caesarean delivery, eclampsia where the mother can get cardiac arrest or cerebral damage during delivery and various kinds of infections⁸. A prominent infection among such young mothers is obstetric Fistula where the woman faces involuntary urine and feces leakage.

Since they have little or no knowledge of maternal health, these young mothers are forced to give birth in unhygienic

⁸MacQuarrie K. *Marriage and Fertility Dynamics: The Influence of Marriage Age on the Timing of First Birth and Birth-Spacing*. Rockville, MD: ICF International (2016). Report No.: 56

conditions. These lead to delivery complications, low infant birth weight, increased maternal and infant mortality rate and also malnutrition among the new born kids. It is extremely important that an adolescent gets proper food and nourishment during his/her growing years. But this is not the case of adolescent brides who are on the contrary deprived of proper care and nourishment and it has been observed that every other girl getting married and bearing child at such tender age suffered from anemia and low BMI.⁹ Moreover through a comparative study between pregnant and non-pregnant girls of the same age group in Bangladesh, it has been observed that pregnancy and lactation restricts the linear growth of the girl, leads to weight loss and reduction of essential fats as well as nutrients from the body.¹⁰

2.1.2. **RISK OF SEXUALLY TRANSMITTED DISEASES-**

Early pregnancy among adolescent brides is a result of forced sexual intercourse by their spouses and lack of usage of contraceptives.¹¹ To add on to the sufferings, indulgence in sexual activity at a very young age, exposes the girl child to Sexually Transmitted Diseases like HIV/AIDS. Needless to say that adolescent bride are often subjected to violence and

⁹Raj A, Boehmer U. Girl Child Marriage and Its Association with National Rates of HIV, maternal health, and Infant Mortality across 97

countries. *Violence Women* (2013) 19(4):536–51.
¹⁰. IIPS. *NFHS-4 Key Findings (2015-16)*. Mumbai, India: IIPS and Ministry of Health and Family Welfare, Government of India (2016).

¹¹ Hobcraft J. Fertility patterns and child survival: a comparative analysis. *Popul Bull UN* (1992) 33:1–31.



sexual abuse by their partners which adversely affects their health giving rise to chronic pain, internal injury and other reproductive health issues. In fact it was only a couple of months back that sexual intercourse with a minor wife was criminalized. Earlier our IPC had an exception in section 375 which explicitly stated that sexual intercourse with a minor wife of not less than 15 years would not make the spouse liable. It is often reported that such young brides when get pregnant, they are deprived of basic medical facilities and their delivery takes place under unhygienic conditions which sometimes also results in the death of the mother. Thus it can be inferred that early marriage and pregnancy leads to maternal and infant mortality. In a lot of cases, it has also been observed that such adolescent brides are treated as slaves who are there only to serve the groom and his family.

Taking a stand on the rights of such women, we can argue that child marriage is the violation of basic human rights. Following to the amount of cruelty these young brides are subjected to. Unavailability of basic medical facilities leads to violation of fundamental rights as enshrined in Constitution of India.

2.2. *EMOTIONAL, MENTAL BURDEN AND EDUCATION:*

These young brides face traumatizing experiences at such a tender age which later may lead to serious mental issues including isolation and depression. They are compelled to sacrifice their own happiness and desires for the sake of their husbands and in-laws. Their painful experiences cause mental agony. These young brides or

grooms are not mental strong or mature enough to understand the responsibilities and duties that comes along with a bond like marriage. The girls are usually made to do the household chores and bear a child, they are not ready for it. The boys are forced to take up the responsibility of a family, he has to take care of his wife and, in some cases, also children. 80% boys who married before the age of 18 admitted that their responsibilities and workload increased.¹² Too much responsibility especially at a tender age subjects the child to an increased level of stress which also hampers their education. 67% males dropped out of school after marriage to support his new family.¹³ This shows that child marriage hampers with the right education of both the male and female child. The boy who sets out to earn without completing his education is forced to do menial jobs and may be exploited.

2.3. *RIGHT TO SEXUAL CHOICE AND CONSENT:*

Young girls are married off at a very young age when they do not have the capacity to question the customs or give consent for the marriage. They are forced to spend the rest of their lives with a man with whom they would not want had their consent been taken into account. It has been seen that girls who marry young are more likely to marry a much older man.¹⁴ In a relationship where the wife is a minor and the husband is a much older man, the wife has no say in the

¹²'Child Marriage in Nepal Research Report' (Plan Nepal and Save the Children and World Vision International Nepal, 2012) p 35

¹³ibid p 35

¹⁴ Robert Jensen and Rebecca Thornton, 'Early Marriage in the Developing World' [2003] 11 Taylor & Francis 13-15



marital matters. These older men and even their family members are easily able to dominate the young child who is not physically or mentally mature to protest; neither does she realize the basic rights that she has. This dominance may force her to have sexual intercourse with her husband even when she does not consent to it. Despite the presence of marital rape laws to protect the sexual interest of wives under 18, she is less likely to utilize her right to refuse consent owing to the lack of awareness which she suffers from due to the isolation she faces.

2.4. **DOMESTIC VIOLENCE AND RIGHT TO FREE CHOICES:**

In a survey where a group of women were asked if they feel beating is justified, 62% of girls married before 15 and 59% married under 18 in India felt it is okay for the husbands to beat their wives if she is unfaithful, her family doesn't give him money, she shows disrespect, she goes out without informing him, for neglecting house and children and also in case she does not cook properly. The same was asserted by 67% of girls married under 15 in Benin and 66% under 18.¹⁵ In the same survey, 70% of Indian girl who were married before 15 admitted to having to seek permission for even talking to outsiders.

The child is dominated and exploited to such an extent that according to her mental state it's justified for her husband to beat her in case the food cooked by her is unsatisfactory. This state of the mind of young children is nauseating. They are living in a situation where they are deprived

of their basic right to live with dignity and they do not even realize the violation. Even though legislations are enacted, they children do not have the knowledge of it. They are oblivious to the fact that they have the right to lead a better life and they can achieve it if they realize and make use of their rights.

3. **HOW DOES IT VIOLATE THE RIGHTS?**

The above-mentioned adverse effects of child marriage violate the basic rights a child is entitled to by virtue of being a citizen of India and simply a human being. It not only is in contravention to the Constitution of India but also International Conventions that India is a signatory of.

Child marriage is contrary to the Article 16(2) of the Universal Declaration of Human Rights¹⁶ The article provides for the full consent of the parties to be received which usually is not the case in child marriages. The parties or at least one of the parties is either not matured enough to understand the impact marriage has on the life of an individual, or they are not even consulted about it.

In a case Francis Coralie v. Union Territory of Delhi¹⁷, the judges gave their interpretation of Article 21¹⁸. In their interpretation they said "the right to live is inclusive of right to live with human dignity and it goes with the major needs of life that are proper nutrition, clothing and shelter over the head and facilities for reading writing and expressing oneself in diverse

¹⁵ ibid 15

¹⁶ Universal Declaration of Human Rights, s 16(2)

¹⁷ 1981 AIR 746

¹⁸ Constitution of India Act 1950, s21



forms, mixing up with fellow human beings. It includes the right to basic necessities also the right to carry on functions and activities as constitute the bare minimum expression of human self.” The children in such a relationship do not live a life of dignity, they are subjected to violence and lack proper nutrition and healthcare. As already stated above¹⁹, these young girls, who are already not mature enough to give birth, are not given adequate pre and post natal care. This gives rise to complications and even leads to medical issues. Along with being a violation of Article 21, it also violates Article 24 of UN Convention on the Rights of the Child²⁰ which is the right of a child to good health care.

The Article 19 of UNCRC²¹ states that children have a right to be protected from all forms of violence. With reference to above²² it can be seen that, contrary to the said article, the child brides are subjected to violence and domestic abuse.

The Article 34 of UNCRC²³ is for protecting children against sexual exploitation. Previously²⁴ we have talked about the negligible say of the wife when it comes to sexual intercourse. In a scenario when the girl is a young minor married to a man considerably older and more experienced than she is, the man is easily able to exert dominance on her.

The Article 21A of the Constitution of India²⁵ and Article 28 of UNCRC²⁶ are about the right of a child to get education. The child bride and groom both have to give on education after their marriage. It has been seen that most of them drop out of school as education and family life is hard to manage. This has already been discussed above.²⁷

Child marriage is in contravention with multiple clauses of Article 5 of International Convention on the Elimination of All Forms of Racial Discrimination.²⁸ The clauses give the right to choice of spouse, education and medical care. Similarly, it is in contravention with the Article 16 of the International Convention on the Elimination of All Forms of Discrimination against Women.²⁹ It talks about entering into a marriage with free and full consent and right to choose a spouse. Also 12(2) states that “the betrothal and the marriage of a child have no legal effect” it also calls for necessary registration of marriage and legislation to specify minimum age for marriage.

4. PROHIBITION OF CHILD MARRIAGE ACT 2006

This act was devised in order to put a check on child marriages taking place in various parts of the country and also prohibit their solemnization. This Act is meant to be enforced in all parts of India except for Jammu and Kashmir. The Act consists of the

¹⁹ See (n 2) 8

²⁰ UN Convention on the Rights of a Child 1990, s 24

²¹ UNCRC 1990, s 19

²² See (n 3) 10

²³ UNCRC 1990, s 34

²⁴ See (n 2) 10

²⁵ Constitution of India Act 1950, s 21A

²⁶ UNCRC 1990, s 28

²⁷ See (n 4) 9

²⁸ International Convention on the Elimination of All Forms of Racial Discrimination 1965, s 5

²⁹ International Convention on the Elimination of All Forms of Discrimination Against Women, s 16



definition of a child as to which persons can fall under the ambit of this term. It clearly defines child as any male who has not attained the age of twenty one and any female who has not attained the age of eighteen. The Act further mentions that in order for a marriage to be a child marriage it should be solemnized between parties who fall within the ambit of the definition of child i.e below 18 years in case of female and below 21 years in case of child. This provision also mentions about a Child Marriage Prohibiting Officer who is made responsible to curb solemnization of child marriage.

. The clause 3 of the Act is the most important of this Act as it states that any marriage performed before or after the commencement of this Act³⁰ shall be held voidable only at the option of the party who was a child during solemnization of marriage. The Act then also lays down certain criteria which are essential in order to nullify the marriage solemnized between children which are:

- i) The petition for nullifying the marriage should be filed in a District Court only by one of the parties to the marriage.
- ii) If the petitioner is a minor when he is willing to file a petition, he can do the same through his guardian or also with the assistance of the Child Marriage Prohibition Act Officer.
- iii) The child who is willing to file a petition should file it within two years after attaining the age of majority.

The Act further lays down an unbiased provision which states that after nullity of

marriage, the parties to marriage as well as their guardians should return to each other all the valuables including money, ornaments or other gifts which were involved during marriage.

Now the question remains that though an Act to curb Child Marriage has been proposed which proposes all the criteria to nullify child marriage, why is it still prevalent in various parts of the country.

The answer lies in the section 3 of the very Act which clearly states that marriage solemnized between parties who were minors at the time of marriage will be voidable only at the option of the party. Thus it can be deduced that child marriage remains valid unless a petition is filed from one of the parties of the marriage. This can be said to be a flaw in the Act. In order to deter the evil practice of child marriage, it is important that stringent laws be devised which declared such marriages void ab initio that is from the very beginning. Moreover a girl child forcefully tied in such marriage is reluctant in filing a petition to get rid of such marriages because of the fact that the society ostracizes and looks down upon such women.

Now, moving on to the other provisions of the Act, Section 9 talks of punishment for males who have attained the age of majority and engage in a marriage with a minor girl. This provision³¹ was laid down to put a check on marriages of young girls to much older men who are in a position to dominate them physically and mentally. The punishment includes rigorous imprisonment

³⁰Prohibition of Child Marriage Act 2006, s3

³¹ Prohibition of Child Marriage Act 2006, s9



which may extend up to 2 years or fine which may go upto a lakh of rupees.

The Act also makes people who assist, perform or abet the solemnization of child marriages liable with punishment of rigorous imprisonment upto 2 years or fine that may go upto a lakh rupees unless the person is able to prove his innocence that he solemnized in good faith believing the parties to be majors.

Though child marriage is voidable as per this act, there are certain criteria which declare such marriages void like.³²

- i) If the child is kept out of the lawful guardianship of the guardian and then married off.
- ii) If the child is tricked or deluded into a marriage, or is compelled to marry; and
- iii) If the child is made to marry for the purpose of trafficking or selling or other immoral purposes.

Though Government has devised policies to curb social evils like child marriage, we see that it has not been well implemented on the land because of stubborn mindset of people and also lousy services on the part of the Government. The Government need to come up with a more stringent law which shall leave no scope for continuation of such marriages.

5. CONCLUSION

This project has helped us get an insight into the major problems faced by both the parties especially girls who are involved in Child Marriage. It was also important to realize and analyse the reasons which still favoured marriages at such young ages. The reasons

include socio economic factors where the girl treated as a burden and the family in order to get rid of the responsibilities of the girl marries her off. Child marriages usually turn out to be disastrous for a girl child because she is exposed to sexual intercourse at a tender age when her body is not mature enough to handle the complications which may arise from the same. Needless to say that when young girls get married, they are pressurized to bear kids which can have adverse effects on her health conditions giving rise to various delivery complications and undesired infections.

Child marriage is declared as a violation of basic human rights which includes the child's right to consent and also fundamental rights which include the child's right to good health with all the necessary health care and the child's right to education. Further we have analysed the Government initiatives to curb child marriage and whether it has been a fruitful exercise. In the later parts we have also taken into account the various International Conventions that India is signatory of and the different clauses under such conventions which declare child marriage illegal because of violation of basic human rights.

³²Prohibition of Child Marriage Act 2006, s12