



CHILD MARRIAGES, ROBBING THE FUTURE

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ABSTRACT

“Marriage can wait, education cannot.”

- Khaled Hosseini, A Thousand Splendid Suns

Conditions for a valid Hindu marriage is defined under section 5 of the Hindu Marriage Act, 1955 where according to clause (iii) the age of bridegroom should be not less than twenty one while bride shall be not less than 18 years, however, even after prescribing the age limit, there are cases where child marriages are still prevalent. Before Hindu Marriage Act, 1955 was enacted there were old laws governing the country that from ancient India where child marriages were permitted for instance Manu Smriti as well as other Dharma sutra writers promoted pre-puberty marriages of girls. Therefore, from ancient India this practise was prevailing which took away the freedom of girls due to their household responsibilities whereas it created burden on the boy as well to run the house for the family. This made children deprived of the most important thing for them i.e. education. The paper is divided into various chapters through which issue of child marriage is addressed. Firstly, the author has introduced about child marriages, secondly, the author has culled out judicial response to it, thirdly the author has done comparative analysis between Bangladesh,

United States & India, fourthly, the author has done critical analysis on the Prohibition of Child Marriage Act, 2006, fifthly the author then tries to bring out legislations which indirectly legitimizes child marriages, then at last the author has given some recommendations and conclusion. The main aim of this paper is to explore the issue of child marriages & provide solutions for it so that future of our youth maybe saved from being destroyed.

Keywords: Child Marriage, Gender bias, Comparative analysis, Judicial response.

INTRODUCTION

Child marriage is a form of evil which destroys the future of children because it hampers their chance for continuing their education which for a child is important for his growth & development. Further, the consequences of child marriages are that it gives rise to the problems of teen widows, mental health problems, isolation and abandonment.¹ According to UNICEF, “Child Marriage is defined as a marriage of a girl or boy before the age of 18 and refers to both formal marriages and informal unions in which children under the age of 18 live with a partner as if married.”² Further, according to the same report of UNICEF, India has the largest number of brides in the world i.e. one third of global total while Bangladesh has the highest rate of child marriages in Asia (fourth highest rate in the world).³ Child marriage was present in the ancient India as well. Manu, the first law giver in Manu Smriti wrote, “To a distinguished, handsome suitor

¹ Dr. P. Chand Basha, *Child marriage: causes, consequences, & intervention programmes*, 2, IJHSR, 19-24 (2016).

² UNICEF, *Child Marriage*, Plan International (2017), available at UNICEF South Asia

<https://www.unicef.org/rosa/what-we-do/child-protection/child-marriage>.

³ *Id*



(of) equal (caste) should (a father) give his daughter in accordance with the prescribed rule, though she have not attained (the proper age)⁴ Thus, it can be said that Manu was in favour of pre-puberty marriage of girls. Even other Dharma sastra writers were in support of early marriage of girls. For example, Gautama advocated for pre-puberty marriage of a girl, and if a person fails to abide by this rule, he commits a sin. He writes, “A girl should be given in marriage before puberty.”⁵ Poverty, lack of resources is one of the reasons that many families indulge into child trafficking for large sums of money in return to run the remaining family out of the money, and other reasons have to do with lack of education, inadequate laws and gender discrimination which means neglecting the freedom of girls to make choice.⁶

Pre-Independence Era

According to the Government of India, Census Report, 1921, half a million young widows were a dominant majority who were under 15 years of age. It was found that girls married below the age of 15 were 4,947,266 and girls who were widows below the age of 15 were 232,147.⁷ Therefore, to handle the situation of child marriage, the Sharda Act, 1929 was enacted by the British India on the first day of April 1930 which disallowed the marriage of a girl below 14 years of age with a man above 50 years of age, and marriage of a girl below eight with any man, and

punishment was up to six months imprisonment or fine or both.

Post-Independence Era

In 1978, the Sharda Act of 1929 was amended into what became to be known as the Child Marriage Restraint (Amendment) Act in which child means a male below the age of 21 years and female below the age of 18 years.⁸ Though the Act was there, the practise of child marriage was not stopped. In 1975, Andhra Pradesh High Court was the first in *Panchireddi v. Gadela Ganapatly*,⁹ to declare child marriage as void-ab-initio. The Court concluded that if the view of earlier Courts were accepted then, “it will once again throw open the flood-gate of child marriages.”¹⁰ Since the objective of the Child Marriage Restraint Act, 1978 was not reached, the Government enacted The Prohibition of the Child Marriage Act, 2006 which deals with the age requirement of the child and the punishments for child marriage. However, there have been cases of child marriage still prevalent in India in recent years, the Act has not made the marriage void but voidable at the option of the other party which indirectly legitimizes the child marriage because of which the practise is not stopped which was the main objective of the Government.

Another important problem which is created because of child marriages is that of domestic violence. According to the National Health &

⁴ 25, The Laws of Manu, MANU IX, Shloka 88 (George Buhler trans, Sacred Books of East 1886).

⁵ Oxford World Classic, Dharmasutras, The Law Codes of Ancient India, 111 (Patrick Olivelle trans, 1999).

⁶ Pierre Tristam, *Facts, Causes and Consequences*, ThoughtCo. (Aug. 8, 2019), <https://www.thoughtco.com/child-marriage-facts-causes-consequences-2353030>.

⁷ Tahir, Mahmood, *Marriage-Age in India & Abroad – A Comparative Conspectus*, 22, Indian Law Institute, 38-80.

⁸ *Ibid*.

⁹ *Panchireddi v. Gadela Ganapatly*, AIR 1975 A.P. 193.

¹⁰ *Ibid* at 8, pg. 7.



Family Research Survey of 2015-2016, it is discovered that the number of women who have experienced physical violence since the age of 15¹¹ may be due to the reason that child marriages are still prevalent in India which makes it possible for the girl child getting abused which is significant from the data that there are 20,778 women compared to 2,736 women who have experienced physical violence at the age of 15 that to being married which shows the same that child marriages are not abolished by the government. This leads to the patriarchy theory that men are dominating in society and family because they have maximum control. It is shocking that this is going on because statistically according to Agarwal, more of miscarriages, maternal deaths and other health related problems develop for young mothers which is dangerous.¹²

JUDICIAL RESPONSE

1. Jitender Kumar Sharma v. State Another¹³

In the present case, the respondent i.e. Jitender Kumar Sharma, under 18 years of age, had eloped with Poonam Sharma, 16 years. The problem before the Delhi High Court was that both were minors and parents of minor girl didn't approve the marriage and invoked Section 5 of the Hindu Marriage Act, 1955 to argue that since both are underage, the marriage shall be void and invalid. However, the Court took the view finally that the marriage of a minor child would still be valid unless it is a void marriage under the applicable personal and Court observed that marriage in contravention of Clause (iii) of

Section 5 of HMA, 1955 is neither void nor voidable although it may be punishable under Section 18 of the said Act which was reinforced in the case of Ravi Kumar v. The State¹⁴ and in the case of Manish Singh v. State Government of NCT.¹⁵ Further the Court added that Section 13(2)(iv) shows that marriage of a minor girl below the age of 15 is regarded as valid and can only be dissolved on her petition which was rendered before the enactment of the Prohibition of Child Marriage Act, 2006 which deals with void and voidable marriages. Therefore, the Court held that the marriage of a minor child would still be valid unless it is a void marriage under the applicable personal law, So, a Hindu Marriage which is not void marriage under the Hindu Marriage Act would continue to be such provided the provisions of the section 12 of the Prohibition of Child Marriage Act, 2006 are not attracted. The Court observed that the Act made a specific provision for void marriages under circumstances but didn't render all child marriages void. The Court ratioed that the two minors shall be allowed to live together in Jitender's home provided that Jitender's father, brother, and sister have assured this court that they will provide full support to this young couple. The Court further observed that "Child marriage is a compendious one. It includes not only those marriages where parents force their children and particularly their daughters to get married at very young ages but also those marriages which are contracted by minor or minors themselves without the consent of their parents. Are both these kinds of marriages to be treated alike? In the former

¹¹ National Health & Family Survey Report 2015-2016.

¹² Agarwal Bina, Gender Challenges, Oxford University Press (2016).

¹³ Jitender Kumar Sharma v. State Another, 2010 SCC OnLine Del 2705.

¹⁴ Ravi Kumar v. The State, 124(2005)DCT 1 (DB).

¹⁵ Manish Singh v. State Government of NCT, AIR 2006 Del 37.



kind, the parents' consent but not the minor who is forced into matrimony whereas in the latter kind of marriage the minor of his or her own accord enters into matrimony, either by running away from home or by keeping the alliance secret. The former kind is clearly a scourge as it shuts out the development of children and is an affront to their individualities, personalities, dignity, and most of all, life and liberty." The court said that the Government must take measures to educate the youth that getting married early places a huge burden on their development. At the same time when such marriages occur, they require a different treatment.

2. *Lajja Devi v. State*¹⁶
 The Court in its own motion observed the situation of child marriages in India. Here, the Court held that the object of the Prohibition of Child Marriage Act (PCM Act), 2006 was to curb the menace of child marriages but it is still prevalent in this country and mostly common in rural areas. Court realized that child marriages are in violation of human rights of the children. Further the Court discussed on the issue that if the husband is also a minor how can he be guardian of the minor girl, thereby, analysing Section 3(2) of the said Act does cause some confusion and is ambiguous. A husband under the Hindu Majority Act & Guardianship Act, 1956 is the guardian of the minor wife and obviously the husband cannot and will not act as a guardian and move a petition on behalf of his minor wife. The Court also observed that it is "distressing to note that the Indian Penal Code, 1860, acquiesces child marriages." The exception to Section 375 specifically lays down that

sexual intercourse of man with his own wife, the wife not being 15 years of age is not rape, thus allowing the possibility of marital rape when age of wife is above 15 years. The Court observed, "It is rather shocking to note the specific relaxation is given to a husband who rapes his wife, when she happens to be between 15-16 years. This provision in the Penal Code, 1860, is a specific illustration of legislative endorsement and sanction to child marriages. Thus, by keeping a lower age of consent for marital intercourse, it seems that the legislature has legitimized the concept of child marriage. The Indian Majority Act, 1875 lays down eighteen years as the age of majority but the non obstante clause (notwithstanding anything contrary) excludes marriage, divorce, dower and adoption from the operation of the Act with the result that the age of majority of an individual in these matters is governed by the personal law to which he is a subject. This saving clause silently approves of the child marriage which is in accordance with the personal law and customs of the religion. It is to be specifically noted that the other legislations like the Penal Code, 1860 and Indian Majority Act are pre independence legislations whereas the Hindu Minority and Guardianship Act is one enacted in the post independent era. Another post independent social welfare legislation, the Dowry Prohibition Act, 1961 also contains provisions which give implied validity to minor's marriages."

3. *Independent thought v. Union of India*¹⁷

The hon'ble Court held that exception 2 of section 375 of Indian Penal Code, is violative

¹⁶ *Lajja Devi v. State*, 2012 SCC OnLine Del 3937.

¹⁷ *Independent thought v. Union of India*, (2017) 10 SCC 800.



of Articles 14, 15 & 21 of the Constitution of India, 1950 and contrary to the constitutional morality and inconsistent with the provisions of the POSCO Act. The Court also observed that Child marriages has the effect of detrimental effect on boys who would need to shoulder the responsibility of a wife and in most cases, have to also discontinue their education the assumption that girls need more attention than boys is now being challenged. According to Section 9 of the PCM Act, regardless of the age of the child, he shall be punished if he marries a girl child. The Court also held that census data demonstrated an apprising of female deaths in the age group of 15-19 years. This high mortality rate could be attributed to the deaths of the teenage mothers.

4. Makemalla Sailoo v. Superintendent of Police & Ors¹⁸

In the present case the question before the Court regarding the child marriage was whether a minor girl claiming to have married can be allowed to join her husband or she can be forced to go with her parents or she be put in the State home for Child Care Centre till she attains majority. The Court also took on to consider whether the marriage as claimed by the alleged detinue and 3rd respondent is a valid marriage or not. This case was prior to the Prohibition of Child Marriage Act, 2006 was enacted, and therefore, the Court took the view of the Child Restraint Act, of 1929 which was later repealed by the 2006 Act. However, even in this case the Court held the marriage as valid one and not void or illegal giving same justifications that not following conditions of

Section 5 of HMA, 1955 does not make the Child marriage invalid. The Court also dealt with the view of the legitimacy of children born out of such marriages to be legitimate and in later act this was made to be done so that children born out of such marriage get the rights by deserve as they are innocent.

5. Meena & Anr. v. State & Anr¹⁹

In this case the before the Delhi High Court on the issue of child marriage observed that, “Thus, even after the passing of the new Act i.e. the Prohibition of Child Marriage Act 2006, certain loopholes still remain, the legislations are weak as they do not actually prohibit child marriage. It can be said that though the practice of child marriage has been discouraged by the legislations but it has not been completely banned.”

6. State v. Raja Ram Yadav²⁰

In the Sessions Court it was held that, “Legislative endorsement and acceptance which confers validity minor's marriage in other statutes definitely destroys the very purpose and object of the PCM Act-to restrain and to prevent the solemnization of Child Marriage. These provisions containing legal validity provide an assurance to the parents and guardians that the legal rights of the married minors are secured. The acceptance and acknowledgement of such legal rights itself and providing a validity of Child Marriage defeats the legislative intention to curb the social evil of Child Marriage... As held above, PCM Act, 2006 does not render such a marriage as void but only declares it as voidable, though it leads

¹⁸ Makemalla Sailoo v. Superintendent of Police & Ors, 2006 (2) ALD 290.

¹⁹ Meena & Anr. v. State & Anr, 2012 SCC OnLine Del 5463.

²⁰ State v. Raja Ram Yadav, Sessions case no. 50 of 2013.



to an anomalous situation where on the one hand child marriage is treated as offence which is punishable under law and on the other hand, it still treats this marriage as valid, i.e., voidable till it is declared as void. We would also hasten to add that there is no challenge to the validity of the provisions and therefore, declaration by the legislature of such a marriage as voidable even when it is treated as violation of human rights and also punishable as criminal offence as proper or not, cannot be gone into in these proceedings. The remedy lies with the legislature which should take adequate steps by not only incorporating changes under the PCM Act, 2006 but also corresponding amendments in various other laws noted above. In this behalf, we would like to point out that the Law Commission has made certain recommendations to improve the laws related to child marriage.”

7. In Association of Social Justice & Research v. Union of India²¹

In this case the petitioner has filed case for one girl of 11-12 years named Chandini whose parents have sold her for consideration to one Yashpal who is of 40 years of age. It was declared by the girl herself that she was of 17 years of age & had consented to such marriage without her parent’s pressure. After medical examination it was found that she was 16 to 18 years of age. The facts are as such that due to low income of the father to maintain other children, he thought to do marriage of Chandini. The Delhi High Court in this particular observed that, “Sociologists even argue that for variety of reasons, child marriages are prevalent in many parts of this

country and the reality is more complex than what it seems to be. The surprising thing is that almost all communities where this practice is prevalent are well aware of the fact that marrying child is illegal, nay, it is even punishable under the law. NGOs as well as the Government agencies have been working for decades to root out this evil. Yet, the reality is that the evil continues to survive. Again, sociologists attribute this phenomenon of child marriage to a variety of reasons. The foremost amongst these reasons are poverty, culture, tradition and values based on patriarchal norms. Other reasons are: low-level of education of girls, lower status given to the girls and considering them as financial burden and social customs and traditions. In many cases, the mixture of these causes results in the imprisonment of children in marriage without their consent.” The Court held that till Chandini attains majority she shall stay with Yashpal but their marriage should not consummate which must be ensured by Yashpal and parents of both parties and if the minor wife has objection to marriage, she shall file petition under Section 3 of the PCM, 2006. However, it is pertinent to note that even when the Court realises that such marriage does hamper the minor wife, the Court still let the marriage survive which is illegal and the purpose of PCM, 2006 is not taken into account i.e. to end child marriages.

COMPARATIVE ANALYSIS BETWEEN BANGLADESH, UNITED STATES AND INDIA.

Under the Child Marriage Restraint Act (1929), the legal marriage age in Bangladesh is 18 years for girls & 21 years for boys.

²¹ In Association of Social Justice & Research v. Union of India, 2010 SCC OnLine Del 1964.



Penalties for violating the rule is imprisonment for a month and a fine up to 1,00 taka.²² To eradicate the evil practise of Child Marriage, the government has made it compulsory to present a birth certificate at the time of marriage, and in February 2017, the government adopted the Child Marriage Restraint Act despite widespread concerns over a special provision allowing child marriage in ‘special cases,’ and this cases fear in the people that indirectly it allows statutory rape and encourage child marriage instead of the opposite expected effect. Under the leadership of the Ministry of Women and Children Affairs, A National Action Plan to Eliminate Child Marriage by 2015-2021 has also begun.²³ Further till now i.e. 2019, the Bangladesh Government has come up with the Child Marriage Restraint Act, Rule of Child Marriage Restraint Act, National Action Plan to end child Marriage approved & launched by Government in August 2018, and Adolescent Health Strategy.²⁴ In case of India, in the case of Lajja Devi²⁵, the Court viewed, “... registration of marriages has still not been made compulsory. Compulsory registration mandates that the age of the girl and the boy getting married have to be mentioned. If implemented properly, it would discourage parents from marrying off their minor children since a written document of their ages would prove the illegality of such marriages. This would probably be able to

tackle the sensitive issue of minor marriages upheld by the personal laws.”²⁶

In the United States, Delaware, New Jersey, and Pennsylvania are the three states to outlaw marriage for anyone under the age of 18 years with no exceptions. Earlier, the current laws in Pennsylvania allowed 15 years olds to marry with parental and Court approvals. Minors aged 16 & 17 could marry just with the consent from their parents or legal guardians but now, the Pennsylvania Senate Bill, 1219 introduced in 2018 would remove all exceptions for minors and stipulate that marriage licences may only be issued to people of 18 years or older.²⁷ With such measures taken by the United States, it is evident that in order to eradicate the evil practice given Indian Government must take effort to amend the Hindu Marriage Act or PCM Act to declare all marriages below 18 years are void. In India, too many a times Indian Judiciary has recommended to the Government to take steps in making the child marriage as void so that the country has better growth for the youth then dealing with young age marriage problems.

PROVISIONS OF THE PROHIBITION OF THE CHILD MARRIAGE ACT, 2006 – A Critical Analysis

The Prohibition of the Child Marriage Act, 2006 penalises only an adult male for marrying a minor girl. If the adult groom is over 21 years of age, he was liable to be

²² Plan International, *Asia Child Marriage Initiative* (2013), <https://www.icrw.org/wp-content/uploads/2016/10/PLAN-ASIA-Child-Marriage-3-Country-Study.pdf>

²³ International Centre for Research on Women and Plan Asia Regional Office, *Asia Child Marriage Initiative: Summary of Research in Bangladesh, India, and Nepal*, (2016).

²⁴ Unicef, Global Programme to Accelerate Action to End Child Marriages, Phase II Deign Workshop

Report, <https://www.unicef.org/sites/default/files/2019-06/GP-2019-Phase-II-Workshop-Report.pdf>.

²⁵ Lajja Devi v. State, 2013 CriLJ 3458.

²⁶ LAW COMMISSION OF INDIA, REPORT NO. 270 COMPULSORY REGISTRATION OF MARRIAGES, JULY 2017.

²⁷ Sarah Forguson, *What you need to know about child Marriage in the U.S.*, Forbes, October 29, 2018.



punished with up to 3 months with fine and in case, he was between 18 and 21 years of age, punishment of maximum of 15 days or a fine up to Rs. 1,000 or both can be imposed to him. No, similar provision exists for a female adult who married a minor boy, possibly because of such incidents being rare. This brings forward the gender stereotype filled in the society that crime of child marriage is only directed against a female or in other words, that only a female can be a victim of child marriage and not a male. This conflict can be well explained with the interpretations of the sections 2, 3, & 9 of the PCM Act, 2006. Section 2(a)²⁸ of the Act defines, “Child” to be a male who has not completed the age of twenty-one years and female that of eighteen years of age. Section 2(b)²⁹ defines child marriage which says that it is a marriage to which either of the contracting party is a child. Secondly, the Bill doesn’t take into account the situation where both the parties can be minors and may be married. This issue was dealt in the case of *Jitender Kumar Sharma v. State & Another*³⁰ where the Court validated the marriage because section 12³¹ of the said Act could not be attracted as both the parties had run away

to be married. Hence, in this case there was no use of either force or enticement or even illegal trafficking of the minor girl. Thirdly, it can be also observed that according to section 9³², a male is an adult who is above 18 years of age but section 2 (a) of the Act in defines the child as a male child who has not completed the age of 21 years, therefore, these two provisions are contradicting with each other so much so that these sections are presuming that a male is the criminal in every case irrespective of the fact and circumstances of each case, therefore, treating the male as an ‘adult’, and not as a ‘child’ as female minor is being treated. Adding on, section 20 of the Act has made amendment in the Hindu Marriage Act, 1955 regarding section 18 clause (a) which says that if clause (iii) of section 5 of HMA, 1955 is contravened there shall lie punishment, however, even after this judicial response has not made the child marriages as void but kept interpreting it as voidable due to other sections in the PCM Act, 2006 which indirectly legitimizes it. Therefore, fourthly, the reason child marriages are still continuing in the country irrespective of the present Act is due to section 3³³ which indirectly

²⁸ 2. Definitions. —In this Act, unless the context otherwise requires, — (a) “child” means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.

²⁹ (b) “child marriage” means a marriage to which either of the contracting parties is a child.

³⁰ *Jitender Kumar Sharma v. State & Another*, 2010 SCC OnLine Del 2705.

³¹ 12. Marriage of a minor child to be void in certain circumstances.—Where a child, being a minor— (a) is taken or enticed out of the keeping of the lawful guardian; or (b) by force compelled, or by any deceitful means induced to go from any place; or (c) is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for

immoral purposes, such marriage shall be null and void.

³² Punishment for male adult marrying a child. — Whoever, being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both.

³³ Child marriages to be voidable at the option of contracting party being a child.—(1) Every child marriage, whether solemnised before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage: Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of the



promotes child marriages. This destroys the very purpose for which the Act i.e. to prohibit child marriages in India. According to section 3 requires that after two years of the attainment of majority, the contracting party who was a minor child at the time of the marriage may file a petition in the Court for a decree of nullity. It is pertinent to note that while section 9 treats the male child as a major for giving punishment for marrying a minor girl, section 4 recognizes that even a male contracting party could be minor and, therefore, lawmakers made sure in such a case the female victim is able to get sufficient maintenance when granting a decree under section 3 of the PCM Act, 2006. Also, Section 9 punishes only a male adult marrying a minor girl and also the age requirement of such male is above 18 years which is different from the age as prescribed in Section 2 (b) of the child defining child marriages which highlights the unfair and unequal treat of a male from a female. The Section 9 realizes that a male can be of 18 years and above who shall be a major. Therefore, it is evident from this section that the provision has treated the male child unfairly and only provided all the help and benefit to the minor girl presuming female to be the only victim at all costs.

marriage. (2) If at the time of filing a petition, the petitioner is a minor, the petition may be filed through his or her guardian or next friend along with the Child Marriage Prohibition Officer. (3) The petition under this section may be filed at any time but before the child filing the petition completes two years of attaining majority. (4) While granting a decree of nullity under this section, the district court shall make an order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents or guardian, as the case may be, the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables, ornaments, other gifts and money: Provided

Therefore, it is clearly evident that from a constitutional perspective section 2, 3 & 9 violate Article 14³⁴, & 15(1)³⁵ of the constitution of India, 1950. Recently, in the case of Hardev Singh v. Harpreet Kaur³⁶, the hon'ble Supreme Court has addressed this gender bias in section 9 which contradicts with other sections of the Act. In this case the victim of child marriage was a minor male child who was merely of 17 years of age. He had married an adult female. The hon'ble court held, "The 2006 Act does not make any provision for punishing a female adult who marries a male child. Hence, a literal interpretation of the above provisions of the 2006 Act would mean that if a male aged between the years of eighteen and twenty-one contracts marriage with a female above eighteen years of age, the female adult would not be punished, but it is the male who would be punished for contracting a child marriage, though he himself is a child. We are of the view that such an interpretation goes against the object of the Act as borne out in its legislative history. Undoubtedly, the Act is meant to eradicate the deplorable practice of child marriage which continues to be prevalent in many parts of our society. The Statement of Objects and Reasons declares that prohibition of child marriage is a major

that no order under this section shall be passed unless the concerned parties have been given notices to appear before the district court and show cause why such order should not be passed.

³⁴ 14. Equality before law The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

³⁵ (1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.

³⁶ Hardev Singh v. Harpreet Kaur, 2019 SCC OnLine SC 1514.



step towards enhancing the health of both male and female children, as well as enhancing the status of women in particular. Notably, therefore, a significant motivation behind the introduction of this legislation was to curb the disproportionate adverse impact of this practice on child brides in particular.”

CHILD MARRIAGE ACCEPTED IN VARIOUS LEGISLATIONS IN INDIA

The provisions of the POSCO Act, 2012 defines a child as below 18 years of age and provide better protection to the girl children and makes no discrimination among them on the basis of their marital status. Thus, age of consent is 16, age for marriage is 18, however, if married consent for sexual intercourse is deemed at 15. Under the Age of Consent Act, 1891, the age of consent for sexual intercourse for all girls, married or unmarried was raised from ten to twelve years in all jurisdictions and its violation was subject to criminal prosecution as rape. Husband of a minor girl is treated as her guardian according to the Hindu Minority and Guardianship Act, 1956 but the section doesn't explain the consequences when her husband also happens to be a minor himself. The Dowry Prohibition Act, 1961, does recognise the happening of child marriages despite the prohibition of child marriage act, 2006. The Act provides that if dowry is received when the bride is a minor then such a dowry shall be held in trust by her guardian until the minor married girl attains the age of 18. The Code of Criminal Procedure, 1970 makes it mandatory for the father of the minor wife to provide maintenance to her in case her husband lacks sufficient resources. The Juvenile Justice (Amendment) Act,

2015, section 2(14) (xii) stipulates that a child who is at minimum risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnisation of such marriage as a child in need of care and protection. The Majority Act, 1875 makes it clear that it doesn't apply in case of marriages, etc.³⁷

The various provisions in different legislations in the country provide an assurance to the parents and guardians that the legal rights of the minors are secured, therefore, acknowledging such legal rights itself and leaving the validity of child marriage intact defeats the legislative desire to curb the social evil of child marriage in India.

RECENT DEVELOPMENTS

Karnataka is the first Indian State to declare all future child marriages void. The Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 passed in April 2017 declared all marriages between minors' void.³⁸ The Supreme Court while decriminalising marital rape, praised the Karnataka Legislature for taking cognizance of an important issue and reconciling the conflict between contesting and contradictory laws. The Act now states that every child marriage whether solemnised before or after the commencement of the Act, shall be voidable by the contracting party who was a child at the time of marriage which makes the Karnataka the first the only state to do this. The Court said, “Therefore, any marriage of a child, i.e. a female aged below 18 years and a male below 21 years is void ab

³⁷ LAW COMMISSION OF INDIA, REPORT NO. 270 COMPULSORY REGISTRATION OF MARRIAGES, JULY 2017.

³⁸ Arpita Raj, *Karnataka was the first one to make child marriages void*, Times Of India, October 17, 2017.



initio in the state of Karnataka. This is how the law should have been throughout the country. Where the marriage is void, there cannot be a husband or a wife and I have no doubt that protection of Exception 2 to Section 375 of IPC cannot be availed of by those persons who claim to be “husband” of “child brides” pursuant to a marriage which is illegal and void,” observed Justice Lokur. The Court also recommended that all the State Legislatures adopt the route taken by Karnataka.³⁹ The court wished them to declare child marriages void to ensure that sexual intercourse between a girl child and her husband is a punishable offence under The Protection of Children from Sexual Offences Act (POSCO Act), 2012 and the IPC, 1860.

UNICEF defines child marriages as marriage before the age of 18, and considers the act of child marriage as a violation of human rights. Even though the Prohibition of Child Marriage Act, 2006 makes age limit for a girl to be married to be 18 or above and boys to be 21 or above, the law has not been followed in the country. According to the report of UNICEF, 47% of the girls in India are married before their 18th birthday making India global leader in child brides. Last year i.e. 2018, the Government of India has taken initiative to make the child marriages as void ab initio.⁴⁰

CONCLUSION & RECOMMENDATIONS

Child marriage is a major controversial issue around the whole world, India being one of the countries which has the largest number of child marriages. Since the ancient era, girls were taken to be weak and dependent on

males and were accordingly married off at pre-puberty age as provided by the writers of the Dharma Shastras, and even after so long the child marriages is going on in the current India. An effort was accordingly made by the different Governments to handle the issue by enacting Sharda Act, 1929 which was further amended in post-independence era into Child Restraint Act, 1978 which now is Prohibition of the Child Marriage Act, 2006. In both 1978 and 2006 Acts, the child marriage is made voidable and not void because of which it allows the child marriage with providing a safeguard of divorce if the minor child being married wants to attain it after two years of turning into majority. Therefore, for some amount of time the marriage of a minor girl and a minor boy is valid until the minor girl later decides to invalidate it, hence, child marriage is not abolished which was sole aim of the Government while enacting the Prohibition of the Child Marriage Act, 2006. Further the many legislations have indirectly recognized the child marriages, therefore, making an impact in the minds of the citizens that child marriage is valid and protection to minor child is provided through various provisions of different Acts for example, Dowry Prohibition Act, 1961, Code of Criminal Procedure, 1970. The various provisions in different legislations in the country provide an assurance to the parents and guardians that the legal rights of the minors are secured, therefore, acknowledging such legal rights itself and leaving the validity of child marriage intact defeats the legislative desire to curb the social evil of child marriage in India.

Therefore, to curb the child marriage in India the legislature must make the child marriage

³⁹ *Ibid.*

⁴⁰ Sanya Singra, *Age of marriage for men could soon be reduced to 18*, The Print, October 30, 2019.



as void-ab-initio like the Karnataka Government has done in the State Act being the first state to do so. India is full of traditional values and customs, just by making the child marriage as void-ab-initio will not stop the evil practise, therefore, it is recommended that the Centre makes registration of marriages compulsory in India like done in Bangladesh which will then make sure that the ages of both the parties to a marriage is checked and by doing this child marriage can be stopped practically as well. Third suggestion would be to spread awareness of harm of child marriages through social media, newspaper, etc, and to promote education for the children, majorly for the girl child who are frequent victims of early pregnancy and health problems due to child marriages. Fourthly, the Hindu Marriage Act, 1955 should also be amended to ensure that the provisions in the said acts are the same and not contradicting the Prohibition of Child Marriage Act, 2006. Therefore, Indian Government must take steps to make child marriages void-ab-initio to wholly stop the practise legally, and must make the registration of marriage compulsory to achieve the goal.

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