

CHILD MARRIAGE: THE ISSUE STILL PREVALENT IN INDIA

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ABSTRACT

This article analyses the problem of child marriage which has been prevalent throughout history and still persists in today's society. The study also discusses the reasons behind the continuance of this practice. The study states the recent Supreme Court direction asking about the status of the steps initiated and policy formulated for effectuating the purpose of the Prohibition of the Child Marriage Act of 2006. The study also provides a brief about the history of child marriage and the first initiative against child marriage. The study also mentions the current provisions in our Indian Constitution that manage the issue of child marriages in India. The article also mentions the amendment bill on the prohibition of child marriage that is still pending before the standing committee. The write-up also mentions also discusses the child marriage provisions in various personal laws and how sometimes they lead to serious legal complications. The article also mentions how this practice still remains a part of our social practice along with mentioning the ill effects of child marriage on children and society. The article, at last, provides a way forward in this regard and what steps are important to ensure the child's health, well-being, and development.

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INTRODUCTION

"I must set my foot to the best of my ability upon this devilish custom of child marriage."

-Swami Vivekananda

The concern around the issue of child marriage and the well-being of girls is appropriate but does the current justice system help? Why still there are significant numbers of child marriages still prevalent in India? How much is this have to do with access to education?¹ This issue of child marriage has been prevalent throughout history and still persists in today's society due to various reasons like lack of education, poverty, insecurity, patriarchy gender inequality, and

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¹ Zubeda Hamid, 'Why does child marriage continue to be an issue in India? | In Focus podcast', (The Hindu, 21 February 2023) <[Why does child marriage continue to be an issue in India? | In Focus podcast - The Hindu](#)> accessed on 20 April 2023

inadequate implementation of the law.² Child marriage affects both girls and boys but, it affects girls disproportionately thus, violating their rights and putting them at high risk of violence, abuse, and exploitation.³

Recently, a Supreme Court Bench comprising CJI DY Chandrachud, Justice PS Narasimha, and Justice PB Pardiwala while hearing a plea filed by the Society for Enlightenment and Voluntary Action, directed the Ministry of Women and Child Development to file a status report elucidating the steps taken by the union government to implement the provisions of the Prohibition of Child Marriage Act⁴ and policy formulated to effectuate the purpose of the Act as the counsel for petitioner informed the court that the issue of Child Marriage still continued to persist. The bench also directed to specify the data collected from various states about the nature and extent of child marriages. It was also submitted that the bill regarding raising the age of women to get married to 21 years was still pending before the Standing Committee.⁵ The Supreme Court also asked the center to ensure the appointment of child marriage prohibition officers in every district and that they are not provided with miscellaneous duties.⁶

HISTORY OF CHILD MARRIAGES IN INDIA

Some people trace this practice of child marriage to foreign invasions that began around 1000 years ago. These foreign invaders are believed to have taken these young girls with them as war booty thus, compelling the local communities to marry off their daughters at an early age. These marriages began to be regarded as a viable option by the families to protect them from sexual exploitation and preserve their chastity.⁷

According to Jaya Sagade, who has done wide research on marriages in India, until the sixth and seventh centuries marriages took place after the couple reached a mature age and the girl's will was always asked before the marriage. The reversal appears to take place when the

² 'Child marriage is a bane in India: A glance at several shocking facts', (India Today, 23 July 2023) < [Child marriage is a bane in India: A glance at several shocking facts - India Today](#) > accessed on 21 April 2023

³ ibid

⁴ The Prohibition of Child Marriage Act, 2006

⁵ Padmakshi Sharma, 'Supreme Court Directs Ministry Of Women And Child Development To File Status Report Showing Steps Taken To Implement Prohibition Of Child Marriage Act', (Live Law, 14 April 2023) < <https://www.livelaw.in/top-stories/supreme-court-prohibition-of-child-marriage-act-ministry-of-women-and-child-development-226306> > accessed on 20 April 2023

⁶ Press Trust of India, 'SC asks Centre to ensure appointment of child marriage prohibition officers in all districts', (PTI, 13 April 2023) < [Press Trust of India: SC asks Centre to ensure appointment of child marriage prohibition officers in all districts \(ptinews.com\)](#) > accessed on 20 April 2023

⁷ Asha Krishnakumar T.K. Rajalakshmi, 'Child BRIDES OF INDIA', (Frontline, 15 July 2005) < <https://frontline.thehindu.com/cover-story/article30205519.ece> > accessed on 21 April 2023

patriarchal social structure arose. It seemed to have given approval to the child marriage practice. Also, going by the fact that the ancient customs and scriptures suggest an early marriage of girls before puberty and immediately after their first menstruation preferably. In addition to this, according to some sociologists, the ancient erotic text the Kama Sutra also indirectly talked of this practice by warning that to avoid a girl who has fully arrived at puberty as a wife. The reasons cited for the continuance of this practice were that tradition, poverty, and societal pressure.⁸

In India, the history of initiatives against child marriage date back to the year 1929 when the Child Marriage Restraint Act⁹, also known as the Sharda Act came into force. This act prohibited the marriage of boys below the age of 18 years and girls below the age of 15 years. This act was later amended in the year 1978 to increase the minimum age of marriage to 21 years for boys and 18 years for girls to make it more effective. Despite making these provisions on the minimum age for marriage, implementation of the law has always remained a challenge.¹⁰

CURRENT PROVISIONS FOR CHILD MARRIAGE IN INDIA

There are various provisions in our Indian Constitution currently to manage the issue of child marriage in India as with the passage of time many pitfalls in the earlier legislation of 1929 came to the fore. This act was replaced by the Prohibition of Child Marriage Act, 2006 inter-alia to increase the punishment of the offenders¹¹. The government enacted this act in order to curb child marriages and take strict actions against those associated with it. Section 16¹² of this act authorizes the state government to appoint officers known as the 'Child Marriage Prohibition Officers (CMPO) and also specifies the functions to be discharged by the CMPOs. The functions include preventing the solemnization of child marriages by taking action as may deem fit, collecting evidence for the effective prosecution of persons contravening this act, creating awareness, and sensitizing the community on the issue of child marriage.¹³ Under

⁸ ibid

⁹ The Child Marriage Restraint Act, 1929

¹⁰ 'Child Marriage in India: Achievements, Gaps and Challenges', (OHCHR)

<<https://www.ohchr.org/sites/default/files/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/HAOCentreeForChildRights1.pdf>> accessed on 21 April 2023

¹¹ 'The prohibition of Child Marriage Act, 2006: A good law yet ineffective', (DNA, 13 October 2023)

<<https://www.dnaindia.com/india/report-the-prohibition-of-child-marriage-act-2006-a-good-law-yet-ineffective-2992397>> accessed on 21 April 2023

¹² The Prohibition of Child Marriage Act, 2006, s 16

¹³ 'POLICY INITIATIVE TO CHECK CHILD MARRIAGES', (Press Information Bureau, 17 March 2023)

<[Press Information Bureau \(pib.gov.in\)](https://www.pib.gov.in)> accessed on 21 April 2023

Section 3(3)¹⁴ of the act both the boy and the girl have the right to opt out of marriage until two years after attaining majority (i.e. 20 and 23 years for girl and boy respectively).¹⁵

In the landmark case of *Independent Thought v. Union of India*,¹⁶ the Supreme Court held that sexual intercourse by a man with his wife who is less than 18 years of age amounts to rape under IPC¹⁷. This judgment was a big step to rid the country of child marriage. The groom also gets booked under the provisions of both IPC for rape and/or POCSO¹⁸ for child sexual abuse and the provisions of the Juvenile Justice Act¹⁹ (in the case of minors).²⁰

On 20 December 2021, the Prohibition of Child Marriage (Amendment) Bill²¹ was introduced in the Lok Sabha. The bill proposed to raise the age of marriage from 18 to 21 years for girls and argued that there is “*an urgent need to tackle this societal issue and bring in reforms*” as the “*highly pernicious practice of child marriage*” continues despite the act of 2006. In addition, the bill stated that the law would have an overriding effect on the contrary provisions contained under personal laws. Also, India has signed the Convention on the “*Elimination of all Forms of Discrimination against Women*” which mentions uniformity in marriageable age for men and women and the elimination of child marriage. Thus, this bill coming into force would bring conformity with the international obligation.²² The bill is currently pending before the parliamentary standing committee.

CHILD MARRIAGE AND PERSONAL LAWS

Some of the personal laws hinder the execution of the Protection of Child Marriage Act of 2006 thus, leading to significant legal complications. As soon as children attain puberty, around the age of 15 they are allowed to get married under Muslim personal law, directly contravening the PCMA however, the courts have put forward contradictory views regarding this. The Punjab and Haryana High Court in *Mohd. Samim v. State of Haryana*²³ held that such practices

¹⁴ The Prohibition of Child Marriage Act, 2006, s 3(3)

¹⁵ Vageshwari Deswal, ‘Legal status of child marriages in India’, (The Times of India, 25 January 2023) <<https://timesofindia.indiatimes.com/blogs/legally-speaking/legal-status-of-child-marriages-in-india/>> accessed on 21 April 2023

¹⁶ *Independent Thought v. Union of India* (2017) 10 SCC 800

¹⁷ The Indian Penal Code, 1860

¹⁸ Protection of Women from Domestic Violence Act, 2005

¹⁹ Juvenile Justice (Care and Protection of Children) Act, 2015

²⁰ Malvika Rajkumar, ‘To Root Out Child Marriage, Existing Laws Need Tightening’, (The Wire, 11 September 2019) <<https://thewire.in/rights/child-marriage-laws-india>> accessed on 21 April 2023

²¹ The Prohibition of Child Marriage (Amendment) Bill, 2021

²² Vageshwari Deswal (n 1)

²³ *Mohd. Samim v. State of Haryana* 2019(1) RCR (Criminal) 685

are not illegal and do not fall under the purview of the PCMA however, the Gujarat High Court held that Muslim Laws do not prevail over PCMA and marriages below the age of 18 are illegal and punishable under PCMA.²⁴

Hindu Marriage Act²⁵ proposes the minimum age as 18 and 21 years for girls and boys respectively. Section 13(2)²⁶ of this Act also makes the option of repudiation available wherein the girl can, after attaining the age of 15 years and before attaining the age of 18 years, exercise this option.²⁷ In *Neetu Singh v. The State*²⁸, the Delhi High Court held that marriages of minors are neither void²⁹ nor voidable³⁰, but are punishable. Section 6(c)³¹ of the Hindu Minority and Guardianship Act, 1956 says minor of a minor husband to be her husband this means, if anyone kidnaps and then marries a minor girl, he could in defense of charges of kidnapping contest claim over the guardianship of the minor. However, this anomaly was fixed by Section 12³² of the Prohibition of Child Marriage Act, 2006 which mentions these marriages as null and void thus, impliedly repealing this section of the guardianship law.³³ The persistence of child marriage even after these provisions put forward a serious point of concern for society.

CONSEQUENCES OF CHILD MARRIAGE

According to a study conducted by National Family Health Survey(NFHS-5)³⁴ in 2021, “*approximately 23.3% of women between the age group of 20 to 24 years old were found to be married before they turned 18 years, mostly held in rural and remote villages of India*”. This study highlights the dark reality that child marriage still remains a part of our social practice despite the laws prohibiting it.³⁵

²⁴ Malvika Rajkumar(n 1)

²⁵ The Hindu Marriage Act, 1955, s 5(iii)

²⁶ The Hindu Marriage Act, 1955, s 13(2)

²⁷ Vageshwari Deswal(n 2)

²⁸ *Neetu Singh v. The State* 1999 (49) DRJ 70

²⁹ The Indian Contract Act, 1872, s 2(g)

³⁰ The Indian Contract Act, 1872, s 2(i)

³¹ The Hindu Minority and Guardianship Act, 1956, s 6(c)

³² The Prohibition of Child Marriage Act, 2006, s 12

³³ Vageshwari Deswal(n 3)

³⁴ National Family Health Survey-5, Ministry of Health and Family

Welfare<https://main.mohfw.gov.in/sites/default/files/NFHS-5_Phase-II_0.pdf> accessed on 22 April 2023

³⁵ ‘The prohibition of Child Marriage Act, 2006: A good law yet ineffective’, (DNA, 13 October 2023)

<<https://www.dnaindia.com/india/report-the-prohibition-of-child-marriage-act-2006-a-good-law-yet-ineffective-2992397>> accessed on 21 April 2023

The consequences that child marriages have on the child are adverse, especially for girls. It violates their fundamental right to freedom and life and also affects their reproductive health. In these situations both maternal and infant mortality rate is high. This serious problem of child marriage is unfavorable and prevents and hinders society to safeguard its children.³⁶ Child marriage along with being forbidden by law also robs girls of a life of independence and prospects. It hinders the girls from fulfilling their goals and ambitions thus, affecting their mental, physical, and emotional well-being and their ability to lead an independent life.³⁷

WAY FORWARD

“There can be no keener revelation of a society’s soul than the way it treats its children”

-Nelson Mandela

This child marriage practice is evil for our society that is rooted deep in the social norms and triggered by factors like poverty, lack of awareness, insecurity, etc. This practice not only hampers the development of the future of our nation but also has an adverse effect on the overall growth and development of the country as this practice acts as an obstacle for children by hindering their health and well-being. Although there are many provisions against this provision in India currently, the most important thing that needs to be ensured is the active execution of the laws. The marriage age for girls should be raised to 21 years in order to ensure gender equality. The data regarding the current child marriages and the reasons behind them should be collected and legal action should be taken accordingly. It is the need of the hour to ensure that the provisions of the laws are implemented properly and all the people are made aware of the disadvantages of child marriages. This practice is a bane for our society because it violates child rights and deprives them of a life full of opportunities, Major steps by our justice system are needed along with the strict implementation of the provisions against child marriage by the competent authorities. Society should be made aware of the importance of education, health, gender equality, and overall well-being for a child to live a dignified life that is hindered by this evil practice.

“Let’s come together to end this practice of child marriage!”

³⁶ Malvika Rajkumar(n 2)

³⁷ Poonam Muttreja, ‘Invest in changing social norms to end child marriages’, (Livemint, 15 February 2023)<
<https://www.livemint.com/opinion/columns/invest-in-changing-social-norms-to-end-child-marriages/amp-11676482320517.html> > accessed on 21 April 2023