

Child Marriage Act, 2006

Abstract

Child marriage violates International human rights laws and standards, including Article 16(2) of the Universal Declaration of Human Rights, which requires the “free and full consent” of spouses to marriage. It also violates Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which requires women and girls to have the “right freely to choose a spouse” and to “enter into marriage only with their free and full consent.” India is signatory to both CEDAW and Convention on the Rights of the Child (CRC) which directs that children have a right to freely express their views on matters that affect them. As a part of its commitment to such international conventions, India has ratified and enacted various laws to protect the right of children in the country. The Child Marriage Prohibition Act enacted in the year 2006 repealing the Child Marriage Restraint Act of 1929 is a specimen of its commitment towards protecting the rights of children in the country. The Act of 2006 declares child marriages as void and voidable in the eyes of law at the same time makes provision for the victims of child marriage by appointment of Child Marriage Protection officers. Even after the enactment of this Act, child marriages are still continuing in the country. This paper is a study into the provisions and principles of the Act, current trend of child marriage in the country and functioning of the Child Marriage Prohibition Act, 2006 in countering them. Findings of the critical examination into the provisions of the Act are reflected in the paper focusing on the drawbacks suffered by the present statute thereby suggesting points for reformation.

Controversy of Child Marriage in India:

UNICEF estimates that as of today one of three child brides is from India. Child marriage has been a practice prevalent in India even in the recent past. The practice of Child Marriage emerged as a custom dominating almost whole the country since time immemorial. The tradition was to marry off a girl after she hits puberty. Records and documents suggest that Girls and Women having negligible roles in the society in the recent century and their primary roles being confined to raising a family, marrying them as soon as possible was the aim of their guardian. As this tradition grew rampantly, so did the fatal consequences of it. As a result Child Marriage was outlawed in the year 1929, in the British period with the passing of the Child Marriage Restraint Act, 1929, but this Act was only good on papers. In spite of



the regulation of the minimum age of marriage the Act faced various controversies like opposition and protest from Muslim Community reserving child marriage under their personal law. An amendment was made to the Act in the year 1978 which rose the legal age of marriage from 15 to 18 years in girls and from 18 to 21 in boys. Despite the Act being implemented since almost a century, Child Marriage still was an active social issue. In order to curb the shortcomings of the Child Marriage Restrain Act, The Parliament of India enacted another reformed Act, addressing the shortcomings of the Act of 1929. Thus “Prohibition of Child Marriage Act” came into effect in the year 2006 repealing the Child Marriage Restrain Act of 1929. Unfortunately, the implementation of this fresh Act also faced various controversies and violations. It was ineffectual to be exhaustive to the whole of India. Absence of a uniform civil code allows differential treatment of children resulting in discrimination. Muslim community demanding to be governed by their personal law relating to marriage was a major opposition until decisions of various courts made an overriding effect of the Act on personal law. But again the Act has many more loopholes which is the reason why child marriage hasn't been extinct to this date.

A brief situation analysis of incidence of child marriage in India:

India being one of the countries of the South East Asian Region (SEAR) league ranks fourth amongst the eight countries in terms of child marriage prevalence. Of the country's 223 million child brides, 102 million were married before even turning 15 and 121 million girls who were above 15 but below or at 18 were married which approximates to one in four young women in India being married or in union before their 18th birthday. NFHS-4 records that 2.6% of women and 0.4% of men were married before attaining the legal age for marriage. Indian states with a high proportion of girls getting married below age 18 are Uttar Pradesh (36 million), Bihar (22 million), West Bengal (22 million), Maharashtra (20 million) and Madhya Pradesh (16 million). Lakshadweep records the lowest child marriage rate and second lowest being Kerala and Punjab. Child marriage of boys below 21 years of age still occurs in the country but the number has significantly declined. In the present day only one in 25 men were married before the age of 18, but one in five was married before the legal age of 21. **(UNICEF Publication on Child Marriage in India)** The PCMA, 2006 being implemented equally across the whole country but the level of child marriage varies from state to state which suggest that its implementation is faced with severe lacunae in some states owing to a number of factors.

Factors motivating Child Marriage:

There are various numbers of factors owing to why child marriage still sustains in today's date. As women since the dawn of civilisation have been assigned the role of a homemaker, it is still believed that marrying them off at an early age in their best interest. The continuation of such mindset of the society in today's era where women and their educational, reproductive and sexual right is a matter of extreme importance, there are certain class of people who are adamant about women's role being limited to the household. The tradition of an adolescent daughter being



married off has somehow modified as an anchor of family's reputation. As a result there is immense social pressure on other families to marry their daughters as early as possible.

Another significant reason is the insecurity for safety of young girls. It is a general perception that a married woman is safer against offenses than an unmarried woman. People view married women differently than unmarried girls. Unmarried girls are viewed with mala fide intentions making them vulnerable to crimes like assaults, teasing against unmarried girls, parents are in a hurry to give away girl in marriage soon after she attains puberty.

Substandard infrastructure of schools and lack of female friendly lavatory is also a major concern amongst girls and their parents. It is one of the top reasons why girls are kept out of school. Girls are accustomed to fear and shame on the subject of menstruation and they tend to avoid schools after they hit puberty either on their own will or on the command of their parents. Once a girl drops out of school, her parents try to get her married as soon as possible.

Poor families with limited resources often have a hard time educating or marrying girls at the right time. The fear of dowry makes them settle for any marriage prospects for their daughter irrespective of her age and maturity. A poor family naturally jeopardizes female children. So poor families resort to child marriage to avoid all sorts of burden of female child.

Hostile Consequences of Child Marriage:

The effects and consequences of child marriage are profound. A child given into marriage has to face versatile consequences on his/her mental and physical health. These consequences are not just personal suffering but are grave violation of a number of health, education and child rights. Child marriage is a violation of child rights, and has a negative impact on physical growth, health, mental and emotional development, and education opportunities. Child Rights are a subset of Human Rights and a child has the authority to exercise his rights. A child being a minor is competent to exercise his right and is not debatable or overpowered by his/her guardian's decision which violates of his/her rights. The following points are some of the major consequences of child marriage.

- 1) Threat to Health and Reproductive Right** – The marriage of a girl in childhood severely infringes upon her reproductive rights and profusely damages her reproductive health. Having poor or no knowledge about her sexual health, contraceptives she is exposed to HIV/AIDS and other sexually transmitted diseases. The child bride is exposed to serious consequences of child marriage like marital rape, undesirable pregnancies and early maternity. The majority of young women who married during childhood gave birth before they completed adolescence. Such forced motherhood is another burden on a young girl. Child brides have many children to care for at a young age, and also go on to have larger families compared to women who marry later. 60% of girls who married before the attaining 15 years of age gave birth to their first child before attaining 18 years and 19% of girls gave birth after attaining 18 but before 20. 23% of girls Married



at or after age 15 but before age 18 gave birth to their first child before or at 18 and 52% of girls gave birth after 18 but before 20. **(UNICEF Publication on Child Marriage in India)** The child marriage deprives the girl not only of her reproductive decision making but also nullifies her right to have the capacity to exercise control over her body. In India, one out of every three adult women is underweight and therefore at risk of delivering babies with low birth weight”. **(SOWC) 2007.** Such young mothers are often malnourished and the physical strain of bearing pregnancy and childbirth results in maternal and infant mortality. In addition to high death rate there are other complications such as postpartum haemorrhage, sepsis and obstructed labour.

- 2) Threat to Educational Right** – Free and compulsory education having been made mandatory up to 14 years of age, child marriage is a serious in achieving such motto. Evidently there is widespread gender inequality and discrimination towards girls, as they have to drop out of school when they are forced into matrimony or in many cases they must drop out of school to perform household duties or informal, unskilled jobs. Early marriage and child bearing impede the girl’s educational and employment opportunities drastically. Lack of education, makes them settle for a low-paid job ultimately having limited decision-making power at home. A girl with 10 years of education has a six times lower chance of being pushed into marriage before she is 18. **(UNICEF)**
- 3) Vulnerability to violence** – As the girl is of tender age while getting married, she is often dominated and suppressed by her spouse and in-laws. Marital Rape is one of the most tragic events a young girl has to undergo. As they are naive and have fewer skills and less negotiating power, they are often suppressed and dominated by their spouse in every aspect. Nearly 13 per cent of married girls between 15-19 years of age experience sexual violence by their husbands compared with 10 per cent of women experiencing such violence between the age group of 30-39. **(UNICEF Records)** Other crimes that occur behind the veil of child marriage are domestic violence, sexual violence and child labour.

Implementation of the Act and Major challenges:

The present Act has been implemented since 2006. Although it has shown some improvement in curbing child marriage, there is still a long way to go. Child Marriage Officers are appointed in every district to look upon and prevent incidences of child marriage. Various success stories have come up in the prevention agenda but protection and prosecution has been hardly attempted. One of the significant reasons for this is the loophole in the Act is that it does not render such a marriage as void but only declares it as voidable. It also leads to an anomalous situation where on the one hand child marriage is treated an offence which is punishable under law and on the other hand, it still treats the marriage as valid, i.e., voidable till it is declared as void. As the law is formulated, only marriages resulting from use of force/threat/fraud/kidnapping or violation of an injunction order of a court to prevent such a marriage from taking place are null and void. But in other circumstances after a child marriage takes place, the minor, obviously a child doesn’t have the courage to stand against her parents, spouse and in-laws. When such a girl



isn't able to come forward, her marriage remains voidable and becomes a valid marriage within two years of her attaining majority. Had there been a stricter rule which nullifies such marriage, the Child Marriage Prohibition Officers could have performed their roles better but in the present scenario, the entire motive of the law is frustrated where the quantum lies on the girl who herself is helpless.

The theory of the Act contradicts the Protection of Children from Sexual Offences Act, 2012 that defines any sexual act with a child below 18 years of age as an offence. In such a case, it is likely that minor children have no choice but to enter a sexual union once married, and sex with a child willing or unwilling becomes legal.

Annual Report of the **MWCD 2014-15** states that so far, 34 states and Union Territories have framed rules under the Act of 2006, 32 States have appointed Child Marriage Prohibition Officer. This suggests that under the Act the states having been directed to make Rules and appoint Child Marriage Prohibition Officer, some states till yet haven't formulated the Rules. In some states the Child Marriage Prohibition Officers hold other charges also and thus have several other responsibilities to fulfil. In Haryana, Department of Women & Child Development Haryana has appointed full time Protection cum Child Marriage Prohibition Officer (PPO) on contract basis for each District to meet the requirement of the Protection of Women from Domestic Violence Act 2005 (PWDV) and Prohibition of Child Marriage Act 2006 (PCMA) this explains why incidence of child marriage varies from state to state.

Suggestion for Reformation:

Elimination of child marriage is clear need of the hour. It is also crucial for the achievement of SDG Goal number 3 which aspires for good health and wellbeing and Goal number 5 that targets for gender equality by 2030. The outcomes from this study suggest the following strategies to address this problem:

- 1) Compulsory Registration of Marriages** – First and foremost step to curb the menace of child marriage would be making registration of marriage compulsory. As of today Registration of Marriage is not compulsory, although the Supreme Court has way back in 2006 asked the Government to make it compulsory. Even the Hindu Marriage Act recognises customary or ritualistic marriages as legitimate. Like birth and death certificate, if all marriages are registered it will ensure that only those marriage is allowed to be registered which does not suffer from any legal defect. Different states have taken their own measures in this regard. Some states, however, have already passed laws to make marriage registration mandatory. Himachal Pradesh became the first state to introduce such a law in 2004. However, it is noticed that all state specific marriage registration laws talk about registration of every marriage, which will by default include child marriage. This reinforces the practice of child marriage because on being registered. But it must be ensured that the registrar of marriages do not register a child marriage and are provided the means to ascertain the age of the couple before the marriage is finally registered.
- 2) Consent of parties to marriage essential** – Ensuring full and free consent of both the parties is crucial in the matter of child marriage. Marriage laws of all



religious communities in India talk about the consent of parties to the marriage. Under the Hindu Marriage Act, 1955, the parties to the marriage must have the capacity to consent and a marriage where consent is obtained through force is voidable and can be annulled by a decree of nullity. The Prohibition of Child Marriage Act, 2006, which is the national law against child marriage, does not allow the question of consent in case of minors and treats child marriage as a punishable offence. But it creates confusion by declaring some marriages void and some others voidable. When a girl is not coming forward for the annulment of her marriage, such marriage simultaneously matures as a valid marriage after she is major, in such a case presumption as to her full and free consent is not viable. If the law does not attribute consent to a child, it must render all child marriages void, as all child marriages then become marriages that have taken place either through some form of coercion or use of fraud, trafficking and such other illegal means, or by influencing the mind of the child.

3) Steps for prevention of Child Marriage –

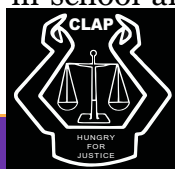
- **Empowering girls** – The first and foremost step which is essential in preventing child marriage from taking place is by achieving gender equality and empowering girls. Young girls who are the victims of child marriage often grow up in households where their feelings and desires are suppressed, as a result they seldom protest against their parents and are easily married off in minority. Such girls are vulnerable to sexual and verbal abuse after marriage. A shift in the societal dimension focussing on empowering girls is absolutely necessary. Girls must be educated, given equal opportunity like boys in matters of employment.
- **Educating parents** – Some parents from traditional communities believe that child marriage is a way of protecting their daughter and safeguarding her from harassment and sexual violence when she reaches puberty. Such parents will benefit from being educated on the very serious harmful effects of forced early childhood marriage like including pregnancy at such a young age which can lead to many complications as a girl's body will not be ready for childbirth.
- **Educating and training Religious Head and priests of the community** – By and large, marriages are performed in India on the advice and direction of the religious head. Engaging and sensitizing priests of all religions who perform marriages is a key to changing the attitude of a community on childhood marriage

4) **Steps for prohibition of Child Marriage** – According to the provisions of the Act, Child Marriage Prohibition Officer is appointed in order to prohibit a child marriage from taking place. Despite of the assignment of such officers child marriages still occur. Such marriages acquire the status of being voidable. It is on the girl child given in the marriage who has to file for annulment. If the girl doesn't come forward for annulment such marriage subsists. The role of Child Marriage Prohibition Officer in prohibition of the child marriage is for a transitory time and can only be exercised before or at the wedding. Thus,



spreading awareness in the community, schools, public places about right to education of girls, right not to be married before they turn 18 is a step that can prohibit marriage from taking places. Disseminating information in the community, especially amongst girls about the role of Child Marriage Prohibition Officers will encourage girls to protest against child marriages. An aware and informed community will act better against the illegal act of child marriage by protesting against it or by informing the authorities.

- 5) **Steps for prosecution in case of Child Marriage** – Though the Act has made provisions for prosecution against the accused, the prosecution rate in the recent years are negligible. Prosecution and punishment of offenders being the last resort must be dealt with strictness. No bail should be granted to the offenders which will also include the respective families and the person performing the ceremony. The fear of prosecution will also help in keeping child marriages at bay.
- 6) **Declare all marriages void** – The present Act suffers from severe lacuna that has been a matter of controversy in the recent years. The provision of terming the illegal child marriage as voidable, which has a fair chance of turning into a valid marriage, is in contravention of the rights of child. It is our recommendation that the law must be enhanced by declaring all child marriages as void ab initio. In this regard, the state of Karnataka took the bold step based on the recommendations given by the Justice Shivraj Patil Committee, made an amendment to Section-3 of Prohibition of Child Marriage, Act, 2006 through Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 which says that any marriage of a child, i.e. a female aged below eighteen years and male below twenty one years is void ab initio. This step must be taken into consideration and amend the Central Act accordingly in order to curb child marriage in the country.
- 7) **Educating girls** – Efforts to make girls stay in school are also an initiative which has yield substantial benefits. Educated girls marry later, have fewer children, are more likely to immunize their children and are better able to support them. Educated girls are aware of their human rights, most importantly their sexual and reproductive health rights. They acquire knowledge about their sexual health, their right over their own body, reproductive and contraceptive choices. Such girls are less likely to be dominated by their husbands and they can make decisions concerning their own body and life. Girls having access to both primary and secondary education will improve their chances of access to employment and a means of supporting themselves. Apart for educating them, creating a safe, hygienic surrounding for girls in as well as out of school is absolutely necessary. Building community toilets, more number of toilets in schools is essential.
- 8) **Access to sanitary napkins** – As it is observed that girls drop out of school after puberty and are gradually married off by their parents, one step that will ensure to keep them in school is facilitating sanitary napkins in the schools. Girls and their families that feels conscious and reluctant to send their girls to school once they start menstruating will definitely change their opinion if the girls can have access to sanitary napkins in school and thus feel safe and secure to attain schools.



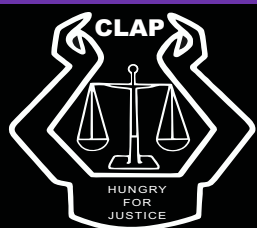
- 9) Public Health Facility** – Public Health facilities such as training and education about sexual and reproductive health must be imparted to adolescent girls and boys both in schools, community and health centres. It is important that they learn about the outcomes of sexual activities at young age from pregnancy and its ill effects on the body to chances of Sexually Transmitted Diseases. This will make girls conscious about their health and they would strongly protest against early marriage.
- 10) Strengthening Community Network** – Last but not the least, the present law criminalizes those who conduct child marriages, usually parents or close relatives, without taking into account the underlying reasons for child marriage which are poverty, poor educational, a family's insecurity regarding daughters once they reach puberty, and harassment resulting from dowry demands. Rather than criminalising them, strengthen and establish community networks and partnerships involving girls clubs, teachers, elders, parents, local government officials, women and youth groups, community and religious leaders, etc., that jointly work towards ending early marriage.

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- 3) Demanding Enforcement of Laws and
- 4) People's Participation in Implementation of Law and holding Institutions Accountable.

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