

## I<sup>A</sup>W RELATING TO CHILD MARRIAGE IN INDIA

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**ABSTRACT:** *Child Marriage is considered to be a violation of human rights, according to UNICEF, it represents perhaps the most prevalent form of sexual abuse and exploitation of girls. In many parts of the world especially underdeveloped countries parents give consent to child marriages hoping that it would benefit the girl both economically and socially. This practice is especially common in rural areas and amongst economically backward families, the daughter is married off at a young age to relieve the family from her economic responsibilities. Many factors are responsible for this practice; the most common ones are poverty, protection of girls, family honor and the provision of stability during unstable social periods, lack of opportunities for girls, lack of awareness about adverse health consequences another big problem is the lack of awareness of law and also inadequate implementation of the existing laws. Prevention of Child Marriages is imperative not merely from the child and human rights perspective but also in the interest of meeting several national goals and Millennium Development Goals. The word 'Child Marriage' is itself contradictory in itself as one would wonder how marriage and child could go together. But it is a sad reality that even to this day Child Marriages are being solemnized much to the chagrin of laws restraining such marriages. The legislature has come up with the Prohibition of Child Marriage Act, 2006, which had replaced the Child Marriage Restraint Act 1929. It becomes much more imperative to revisit the various laws passed by the legislature in the past and contextualizing it with respect to the new act intended to prohibit the practice of child marriage*

**Key Words:** *Child, Marriage, Health Problems, Poverty, Domestic Violence*

### INTRODUCTION

The legal definition of a **Child** generally refers to a minor, otherwise known as a person younger than the age of majority. The United Nations Convention on the Rights of the Child characterizes child as "a human being under the age of 18 years unless under the law applicable to the child, majority is attained earlier"<sup>1</sup>.

There are numerous social issues that influence children, such as childhood education, bullying, poverty, broken families, child labor, hunger and child homelessness. One such social issue is Child Marriage. **Child Marriage** is defined as a marriage of a girl or boy before the age of 18 and alludes to both formal marriages and informal unions in which children under the age of 18 live with an accomplice as though wedded. Child marriage is a violation of child rights, and negatively impacts on physical development, health, mental and emotional development, and education opportunities. South Asia has the most astounding rates of child marriage in the world. Almost half (45%) of all women aged 20-24 years reported being married before the age of 18. Almost 17% of the girls are married before the age of 15, as of today<sup>2</sup>.

### PROHIBITION OF CHILD MARRIAGE –

UNICEF is taking many steps to resolve the situation of Child Marriage. It considers five entry points to accelerate the changes for the **Prohibition of Child Marriage** at Global level:

- 1 To increase agency and resources for adolescents – especially girls – at risk of and effected by child marriage.
- 2 To enhance lawful and advancement approach systems for an empowering environment that protects the privileges of adolescent girls and boys.
- 3 To increment the generation and use of a robust evidence base for support, programming, learning and tracking progress.
- 4 To upgrade frameworks and administrations that react to the requirements of teenagers at the risk of or affected by child marriage.

<sup>1</sup>Under section 2 of the Prohibition of Child Marriage Act, 2006

<sup>2</sup><https://data.unicef.org/topic/child-protection/child-marriage/>

- 5 To increment social activity, acknowledgment, and visibility around putting resources into and supporting young ladies, and shifting social expectations relating to girls, including by engaging boys and men.

The Government of India is also taking steps at national level to prevent child marriage and protect children:

1. The Prohibition of Child Marriage Act, 2006 makes it illegal for girls to marry under 18 years and for boys less than 21 years. Child marriage can be made voidable by the child but within two years of turning into a grown-up.
2. Child marriage is a punishable offence with a fine up to INR 100,000<sup>3</sup>, or up to two years of imprisonment, or both. It is a non-cognizable and non-bailable offence.
3. Dowry was precluded in 1961 by the Dowry Prohibition Act, with a fine of up to INR 15,000, or the share sum, whichever is higher, and detainment for between half year and five years.
4. Other laws that may provide protection to a child bride include the Juvenile Justice (Care and Protection of Children) Act, 2000, the Domestic Violence Act, 2005, and the Protection of Children from Sexual Offences Act, 2012.

### **HISTORY OF CHILD MARRIAGES IN INDIA –**

Records of Child Marriage in India go back to pre-colonial times as the idea was present in early religious writings. When India was colonized, the act of child marriage was inspected more vigorously. Periodically, colonizers utilized it to name the Indians as “barbarians”, however they did not intervene or endeavor to end the practice out of fear of resistance from the Indians. Child marriage was commonly seen as a monetary exchange, meaning it was frequently mandated with certain principles and presumptions. Girls were often viewed as “financial weights” that were transferred to the marital family post marriage. Bride prices and dowries were large inspirations for early marriage which were prioritized above the prosperity of the marrying child. Decisions around a girl’s marriage were regularly based on a family’s desire to minimize costs, especially for poor families. Therefore, women in the highest wealth quartile in India marry over 4 years later than those in the lowest quartile. This gap has broadened over time.

### **REASONS OF CHILD MARRIAGE –**

Child marriage denies children their fundamental rights to great well-being, nourishment, education, and freedom from brutality, misuse and abuse. All children have a right to care and insurance; to develop and grow to his/her full potential, paying little heed to their social and monetary circumstance. Child marriage is a blatant infringement of all these rights. Though, there are many reasons, why a social issue like Child Marriage exists. But the main Reasons of Child Marriage is as follows –

1. In most cases, child marriage is the result of social norms, cultural beliefs, and poverty. As indicated by a Human Rights Watch report, “global data shows that girls from the poorest 20 percent of families are twice as likely to get married before 18 years of age, as girls whose families are among the richest 20 percent<sup>4</sup>.”
2. Some families who cannot afford to feed or educate their children may view marriage as the next best option.
3. Unfortunately, because of the cultural emphasis on virginity, child marriage is seen as a legitimate way to protect girls in unsafe environments.

### **IMPACTS OF CHILD MARRIAGE –**

Child Marriage can have various social or psychological impacts on the teenagers. The earlier the marriage is, the larger the expected impact will be. Impacts are also larger in regions where education attainment is higher. The most common **Impacts of Child Marriage** are –

1. When children marry early, they often drop out of school, have more children over their lifetime, are at greater risk of HIV infection and intimate partner violence, and face serious health complications. Young girls even face death from early pregnancy and childbearing sometimes.
2. Child marriage hampers efforts to eradicate poverty<sup>5</sup> and achieve sustainable global development.
3. Early married children faces higher risk of psychological disorders as these teenagers will be denied the right to freely express their views and the right to be defended against devastating traditional practices that in turn will increase the risk of lifetime and recurrent psychiatric disorders.

<sup>3</sup> Section 9 of the Prohibition of Child Marriage Act, 2006.

<sup>4</sup><http://unicef.in/Whatwedo/30/Child-Marriage>.

4. This kind of physical emotional and social torture prompts greater psychological traumas such as immobility, loss of self-confidence and even among girls that were receiving education early marriage obstruct their training, bringing severe depression and having complex from other girls having good educational background and vocation openings which they lost.

Child marriages often happen in rural areas where illiteracy and poverty are broad. Many factors effectuate child marriages such as obliviousness, social traditions and conventions, low dimension of training and considering women as a financial burden. Child marriages have their own repercussions, for example, medical issues to women because of early age pregnancies. In regard of this, the British government enacted the **Child Marriage Restraint Act, 1929** which was the first secular law towards curbing the menace of child marriage. Be that as it may, it didn't make the marriage void without anyone else's input. It only endorsed disciplines for an adult male who wedded a minor and the guardians who advanced such marriages.

### LAWS ON CHILD MARRIAGE –

The Laws on Child Marriage in India are as follows –

1. **Prohibition of Child Marriage Act, 2006** - Under PCMA, the marriageable age for a female is 18 years and for a male, it is 21 years. A decree of nullity can be obtained by a girl who has entered a child marriage within 2 years of attaining the age of 18 years.
2. **Hindu Marriage Act, 1956** - Under the Hindu Marriage Act, only the parties to a child marriage are punishable even if they did not consent to the union. There are no provisions for punishing the parents or people who solemnized the marriage. A girl can get the marriage annulled just if she was offered before achieving the age of 15 and she challenges the marriage before turning 18. There is no express provision to forbid child marriage.
3. **Muslim Personal Law** - Muslim law is not codified in India. Therefore, its provisions are based on the interpretation of Quran by researchers. Under the Muslim law, there is no barrier to child marriage. A guardian can get a child married if they want. However, the couple has 'option of puberty' known as *khayar-ul-bulugh* where they can repudiate the marriage after attaining puberty. However, they must do that before turning 18 and only if the marriage has not been culminated. The age of marriage under Muslim law is 15 years. However, marriage before the age of 7, regardless of consent by a lawful guardian, is claimed illegal.
4. **Indian Christian Marriage Act (ICMA)** - ICMA provides that a preliminary notice is to be issued 14 days prior to the marriage if the marriage is to be contracted between minors. After the lapse of the said period, the parties can go on with the marriage without the assent of their guardian.
5. **Other personal laws** - Under Parsi Marriage and Divorce Act (PMDA), a child marriage is invalid. However, the Act is silent with respect to age where the provisions for an invalid marriage are recorded. Jewish law in India is uncodified. Under it, the eligible age for marriage is 12 years.

### ORGANIZATIONS WORKING AGAINST CHILD MARRIAGE –

Though the practice of child marriage is rooted in tradition and culture, but there is always hope for change. There are many organizations which address ending the practice of child marriages and changing conditions which otherwise remain fertile for the practice of child marriages to continue. Some of the Organizations working to Stop Child Marriage, with their level of operation (national or global)

### ROLE OF THE JUDICIARY IN CHILD MARRIAGES –

Child marriage is rooted in gender inequality and in the low esteem agreed to girls, and is exacerbated by poverty, weakness and struggle. It denies girls their rights and undermines various improvement priorities. Closure of child marriage will require long-term, sustainable activity across different sectors. A vigorous lawful and strategy system for preventing child marriage and supporting wedded girls should be the foundation of government endeavors to address the practice. Magistrates/Judges (judicial officers) are uniquely positioned to shape, advance and implement such a framework, within their countries and beyond. They can lead the development of robust jurisprudence, fostering a culture of zero-tolerance. They can guarantee the voices of citizens are heard, including those of the girl child, in ensuring access to justice especially by the girl child, creating a conducive court-room environment for the voice of the girl child and consistently enforcing the law to end child marriage. They can

also highlight the range of services or social protection measures available to victims. Yet, judicial officers are often overlooked as essential stakeholders and drivers of change.

While it goes without say that the role of the judiciary in ensuring that the laws are applied is pivotal in the eradication of child, early, forced marriages, and the judiciary also has the unique position of ensuring that victims are accorded proper follow up services such as counseling and relocation from harm to prevent re-occurrence. Enacting laws forbidding child, early or forced marriage, though the important first step towards eradication, must be accompanied by proper training of the judiciary and any other parties responsible for the implementation of the law.

A starting point is therefore established to ensure that all judicial officers are properly orientated on all the laws and copies are made available to them. In instances that judicial officers find child, early and forced marriages to be unlawful, they are unable to prescribe measures that go beyond the criminal liability of the perpetrator. There thus needs to train them on the relevant and available social measures and services needed to ensure that the victim will not be repeatedly victimized. In dealing with criminal offences such as defilement, such needs and measures are often overlooked as once the perpetrator is convicted and sentenced, the process ends there. Capacity building of the judiciary is therefore necessary to ensure that these issues are not overlooked and that there is consistency in the way such cases are handled nation-wide.

### **CURRENT STATUS OF CHILD MARRIAGE IN INDIA –**

For over 140 years, the Indian government and more prominent society has been attempting to eliminate the act of child marriage through law .In 1927, Rai Sahib Harbilas Sarda presented the Child Marriage Restraint Bill, which set the base age of marriage at 14 for girls and 18 for boys. In 2006, the Prohibition of Child Marriage Act came into picture. This act increased punishments for directing a child marriage ceremony, made a child marriage voidable by a married party for up to two years after the participant reached the age of maturity, and enabled courts to intervene in instances of child marriage.

A widely publicized rape case in Delhi in 2012 played a crucial role in influencing the Indian government to increase the age of sexual consent to match the age of marriage, 18 years.

Child marriage is currently illegal in India. The legal age of marriage is 18 years for girls and 21 years for men. Still, India has the most astounding number of child brides in the world. 47% of the young girls in India are wedded before their 18th birthday.

### **CONCLUSIONS ON CHILD MARRIAGE –**

The practice of child marriage has historical roots in India and many other countries, and it remains prevalent today, even though these countries are far more different than they look. The key similarities that have allowed this dangerous abuse of young girls to continue are that, all country's cultures' struggle with poverty and place too much emphasis on the purity of women while patriarchal views are heavily ingrained into both societies. Poverty in these countries causes society to view the marriage of young girls as an economic transition rather than a violation of human rights. Financial wants frequently motivate marriage, regardless of the child's best interest. Country's cultures' immense accentuation on women's purity leads to young girls being wedded off to limit their sexuality and ability to replicate.

Patriarchal views, which are incredibly prevalent in India, lead men to believe that they are superior to women. As a result, women are frequently hushed, and the wants and prosperity of young girls are viewed as not important. Women and young girls are often treated as objects belonging to men who should dream of nothing more than to please men, even if it results in early marriage and child bearing. While some consequences of child marriage are more extreme in each country, girls who marry young are vulnerable to the same dire and sometimes fatal consequences in India.

### **SUGGESTIONS TO PREVENT CHILD MARRIAGES –**

The government is taking some measures to eradicate Child Marriage by implementing laws and taking other steps. But, Child Marriage can also be ended without the involvement of government. The country citizens can take the following steps on personal level to stop child marriages –

1. Educate and Empower, children and their parents about the impact of Child Marriages.
2. Mobilize religious leaders and community elders. Religious elders and community leaders – nearly always men – are the decision makers in communities where early or child marriage is prevalent. Engaging and educating these influential men is critical to changing the demeanor of a community on child marriage.
3. Support adolescent girls who are already married.

4. Support Legislation against child marriage.
5. Provide relevant economic, mental and emotional support. Similarly as with the more extensive human rights issue of Violence against Women, child marriage is still a forbidden subject; discussing about it will help to teach societies across the globe about the hurtful impacts of child marriage.
6. Sponsor a Girl Child. Sponsoring a child in a developing country has been a longstanding way for donors around the world to support underprivileged and vulnerable communities to break the cycle of violence, poverty, and illiteracy.
7. Support artists, photographers, and journalists who raise awareness about child marriage.
8. Support anti-child marriage charities and organizations.