



PROHIBITION OF CHILD MARRIAGE IN INDIA

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ABSTRACT

This research deals with the concept of child marriage in India and the laws related to the prohibition of child marriage of India. Generally, child marriages are prevalent all over the world but the highest number of child marriages occur in India. Basically, child marriage means when a girl is married below the age of 18 and a boy is married below the age of 21. This is because the legal age for marriage under the Prohibition of Child Marriage Act, 2006 is 18 for women and 21 for men. Child marriages generally occur due to poverty and lack of education.

Key words:

Child, poverty, marriage, prohibition

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INTRODUCTION

The child marriages are very commonly seen in India. In India, a lot of girls were married before the age of eighteen. Most of these girls were whom in poor socio-economic conditions. It is considered to be a child marriage when a girl is married below the age of 18 years. The United Nations (UN) Women has proposed that child marriage be defined as a forced marriage because they believe children under age 18 are incapable of giving a legally valid consent. It is to be noted that India has the highest number of child marriages in the world. It is estimated that 47% of girls in India are married before their 18 years of age. The rate of child marriages vary between states and are as high as 69% in Bihar and 65% in Rajasthan.

In India many girls are seen as an economic burden. So their parents think that marriage transfers the responsibility to her new husband after marriage. Poverty and marriage expenses such as dowry is a major factor that leads a family to marry off their daughter at a young age. Factors like controlling girls and their sexuality is also an influential factor in the practice of child marriage. Another factor is that the pressure towards early marriage aims to minimise the dishonour associated with improper female sexual conduct, often leading to marriages arranged around the time of puberty.

Legal Age For Marriage

The Prohibition of Child Marriage Act, 2006 says that the legal age for marriage is 18 for women, 21 for men. The

Prohibition of Child Marriage Act, 2006 establishes punishments for those who do not prevent child marriages, and it also creates Child Marriage Prohibition Officers. These officers have the right to prevent the child marriages, but this could be done only if the families report the act.

The Ministry of Women and Child Development drafted a National Action Plan in 2013, which was to prevent the child marriages. India is one of the member of the South Asian Initiative to End Violence Against Children, which adopted a regional action plan to end child marriage. This regional action plan was to be implemented between 2015 - 2018.¹

Objectives

1. To know about the scenario of child marriage in India.
2. To study the laws related to prohibition of child marriage in India.

Hypothesis

The rate of child marriages in India has decreased in the recent years, but it cannot be completely eradicated with the current legislations without any support from the society.

Limitations

1. The study is limited to use of primary sources.
2. The research was limited to the Prohibition of child marriage in India.

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¹ <http://www.girlsnotbrides.org/child-marriage/india/>

METHODOLOGY

This doctrinal research is based on secondary data which is collected from books, journals and websites.

Chapterization

Chapter I deals with the concept of child marriage in India.

Chapter II deals with the laws related to prohibition of child marriage in India.

Chapter I

Child Marriage In India

Child marriage is a social evil which is still widespread in India. In India, about half of the women were married before the age of eighteen. Child marriage violates the rights of the children and has a negative impact on their physical growth, health, mental and emotional development, and education opportunities. Child marriage also have an impact on the society because child marriage reinforces a cycle of poverty and perpetuates gender discrimination.

Child marriage is more prevalent in rural areas (48 per cent) than in urban areas (29 per cent). There are some variations in child marriage across the different groups, particularly excluded communities, castes and tribes.

In general, rates of child marriage are highest in the central and western parts of India and lower in the eastern and southern parts of the country. In certain states, such as in Bihar and Rajasthan, approximately 60 per cent of females (aged 20-24) marry as children.

Some of the states that where child marriage is higher than national average are: Jharkhand, Uttar Pradesh, West Bengal, Madhya Pradesh, Andhra Pradesh, Karnataka, Chhattisgarh and Tripura. In other states, prevalence child marriage is not seen much.

The girls who are married before their eighteen years of age are most likely;

- Girls who have completed their schooling, or have a low-paid job and limited decision-making power at home. Girls who are not educated or less educated have a high risk of being pushed into marriage before they attain the age of 18.
- Girls who face violence and abuse because they have fewer skills and less negotiating power. Nearly 13 per cent of married girls between 15-19 years of age experience sexual violence by their husbands when compared to other women experiencing such violence between the age group of 30-39.
- Girls who become pregnant as adolescents. A lot of girls begin childbearing between the ages of 15-19 years. Due to this, many girls are subjected to early pregnancy which increases the risk of delivery complications and maternal and child mortality.

Child marriages affect both girls and boys, but the girls are the ones who are affected more in numbers and with greater intensity. Child marriages are prevalent all around the country, but the rate of child marriages is far higher in rural areas than in urban areas. Girls who are from poor families or poor economic background, scheduled castes and tribes, and

girls with lower education levels are more likely to be married at a younger age.

Although child marriage is declining over the recent years, the rate of decline is slow. The United Nations Children's Fund (UNICEF) has been working tirelessly to prevent child marriage across the states where it works. Partnerships with government and civil society are a crucial part of these efforts, but much more can be done.²

Chapter II

Laws Relating To Prohibition of Child Marriage In India

Prohibition of Child Marriage Act, 2006

According to the Prohibition of Child Marriage Act, 2006, the legal age for marriage is 18 years for a female, and 21 years for a male. A decree of nullity can be obtained by a girl who has entered into a child marriage, but within 2 years of attaining the age of 18. A new legislation was enacted to replace the Child Marriage Restraint Act, 1929, which was enacted in the form of Prohibition of Child Marriage Act, 2006. This Act prevents child marriages with enhanced punishments of rigorous imprisonment for two years and/or fine of rupees 1 lakh. According to the Prohibition of Child Marriage Act, 2006, a child as a male below the age of 21 years and female below the age of 18 years. According to the act, a minor as a person who has not attained the age of majority as per the Majority Act. The act also provides measures for the maintenance of the girl child. In such cases, the husband is liable to pay the maintenance in case he is a major. In case the husband is a minor, his parents would be liable to pay the maintenance. The legal status of a child marriage is voidable at the will or option of the parties. But, if the consent is obtained illegally through fraud, deceit or if the child is enticed away from his/her lawful guardians, and if the main purpose is to use the child for trafficking or other immoral purposes, the marriage would automatically be void. The Act also have the power to appoint a Child Marriage Prohibition officer whose duty is to prevent child marriages and spread awareness regarding the same.

Hindu Marriage Act, 1956

According to the Hindu Marriage Act, 1956, only the parties to a child marriage are punishable even if they did not consent to the such marriage. In this act, there are no provisions for punishing the parents or people who solemnised the marriage. A girl has the right to get the marriage annulled only if she was married off before attaining the age of 15 and she challenges the marriage before turning 18, but there is no express provision to prohibit child marriage per se.³

Government strategy and action:

The national Ministry of Women and Child Development has developed a national strategy and is currently drafting a plan of action on child marriage to guide all the states in the implementation of those strategies to prevent the problem. Some key components of the strategy and draft action plan are: law enforcement, quality education and other opportunities, changing mindsets and social norms, empowering adolescents, producing and sharing knowledge and data, and monitoring.

² <http://unicef.in/Whatwedo/30/Child-Marriage>

³ <https://blog.ipleaders.in/laws-child-marriage-india/>

Prohibition of Child Marriage in India

The Government of India is also implementing national programmes aimed at protecting and promoting the development of children, while states are supporting these initiatives through state-level schemes. The government is also preparing a legal framework to prevent child marriages and protect children.

- The Prohibition of Child Marriage Act, 2006 makes it illegal for girls to marry under 18 years and for boys under 21 years. Child marriage is voidable at the option of the parties but within two years of becoming an adult.
- The act has made Child marriage a punishable offence with a fine up to rupees 1 lakh, or up to two years of imprisonment, or both. The act has made child marriage as a non-cognizable and non-bailable offence.
- Dowry was prohibited in 1961 by the Dowry Prohibition Act, with a fine up to rupees fifteen thousand or the dowry amount, whichever is higher, and imprisonment for between six months and five years.
- Some other laws that provide protection to the children 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, 2012.⁴

Findings

Some of the contributing factors to child marriage are,

- Lack of education, limited education opportunities, lack of awareness, lack of infrastructure and safety of girls significantly contribute to keeping girls out of school and therefore tend to favour child marriage.
- Girls are often seen as an economic liability. Women's work is confined to the household and is not valued. Also there is a factor like dowry. Despite the fact that dowry has been prohibited for five decades according to the Dowry Prohibition Act, 1961, it is still common for parents of girls in India to provide gifts to the groom and his family either in the form of cash or any other kind.

- Another reason is that, though there is widespread awareness of the Prohibition of Child Marriage Act, 2006 many people believe that the customs and traditions are stronger than the law and do not take measures to report cases. On the other hand, there is limited capacity among officials and lack of willingness to go against community decisions, since officials are themselves part of the community.
- The Enforcement of law to prohibit child marriage is relatively weak. Limited knowledge on how to apply laws and little understanding of the consequences of the laws, as well as limited trust in institutions enforcing them, undermines the implementation of the Prohibition of Child Marriage Act, 2006.
- The girls and their families who might benefit from social protection programmes are not always aware of them.

Suggestions

1. The government may provide economic support and financial incentives to girls and their families.
2. Encourage supportive laws and policies which are for the welfare of women.
3. Empower girls with information, skills and support networks.
4. Provide proper education to girls and their families through various programs etc.
5. Enhance girls' access to high quality education.
6. Support anti-child marriage trusts and organisations.
7. Spread awareness among the people about child marriage.

CONCLUSION

A social issue like Child Marriage cannot be curbed without support from the society. A lot of work is being done to make child marriage void ab initio under the Prohibition of Child Marriages Act, 2006, but Indian society is very complicated and complex that the government believes that making child marriages void will only jeopardise the rights of women who are victims of child marriage. The legislations and laws alone cannot serve the purpose of prohibiting child marriages unless and until there is a mere support and backing from the society. The Uniform Civil Code would also help in preventing child marriage to some extent.

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