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An Analysis of Child Marriage Laws and its Application in the Society

SHUSMITA KUMARI¹

ABSTRACT

The paper elucidates on child marriage a social evil practice which needs transformation. Author expresses the concerns and challenges which different state as well as country as a whole have been witnessing, with the view to transform such social practice in the country. Further it explains about the situation in Rajasthan as well as the state of Karnataka on its new legislation on child marriage. With the help of different statistic and with the help of several surveys the author has summed up the condition of child marriages in India with special reference to the states where the numbers have increased.

The author makes an effort to make a concluding report on the law and social transformation on child marriage. Moreover, the author attempts to examine the cause and have suggested guidelines which can cure such menace. New development on child marriage of not only girls but boys have also been the victim of child marriage. With this view the researcher attempts to make a generalization on the topic of child marriage and attempts to understand the present situation of child marriage how to overcome such customs which are continuing since years.

Keywords: Social Transformation, Child marriage.

I. INTRODUCTION

India is one of the several countries which have diverse culture, language, caste etc. With such diversity different culture professes different kind of rituals and practices. In ancient times sati system and child marriages were highly professed in India. Britishers in the early era prohibited sati and child marriage system in India. Child marriages are still prevalent in India and is highly practiced in some area especially rural sector. India has law against child marriage since 1929 amended in 1949 and then in 1978 and now we have prohibition of child marriage act 2006 and yet India has been a leading nation where child marriage is still prevalent on a large scale.²

The recent bill passed by Rajasthan Government on child marriage that is compulsory Registration of marriage (Amendment) bill, 2021 speaks about registering child marriage too.

¹ Author is an Assistant Professor at SNBP Law College, Pune, India.

² Restraining Child Marriage, Economic and political weekly, Apr. 11 - 17, 2009, Vol. 44, No. 15 (Apr. 11 - 17, 2009), p. 7, Accessed on 05-11-2021

This step by the Rajasthan government is in itself contradicting to the principal legislation that is the child marriage prohibition act 2006.

According to the recent report of National family health survey – 4 there is an increase in child marriage ratio of woman by 47.4% in the age group of 20-24 which were married before the age of 18 years while 32.3% of male were married at the age of 25-29 years before attaining the legal age of 21 years.³ Above statistic shows the sorrowful state of child marriage in India which is happening in such a large scale. The child marriage prohibition act 2006 works to prohibit such practices and has also appointed child marriage prohibition officer to curtail such marriages and prevent people from coming into such marriages also spread awareness among the people. Globally, around 700 million women get married before the age of 18 years and 156 million men also get married before the legal age so the affair of child marriage is not only subjected to our country. Young girls and boys who get married before the legal age has to face mental and other physical problems. Most of the women are not allowed to study and they get married at such tender age when the priority should be to work on yourself and grow as a whole. While the prevalence of girl getting married has declined from 47% to 27% in 2015-16 NFHS data.

Child marriage have several consequences because before the legal age young girls and boys are considered to have lack of maturity, they cannot make their own life decisions properly moreover they can also risk their sexual life and health. With the advancement in the country and giving opportunities to women the practices of child marriage should end because such social transformation is widely important. Society won't change with the change in laws society will have to accept the conflicting laws then only a change can be brought. For ex sati practices did end when the whole society understood that it is a harmful practice. The same way people need to be aware that child marriage can do wrong to young boys and girls in several ways.

II. STATUS OF CHILD MARRIAGES IN DIFFERENT STATE

Child marriage before the age of 18 is a risk factor for both boys and girls. The legal age to marry is 18 for woman and 21 for male. Even after knowing the complication which the girl will be facing there is a wide spread practice of child marriage in the country. Child marriage began after 600 AD under the influence of the writing of dharma sutra and smritis. The patriarchal society led to the spurred of child marriages in India. Under the influence of religious writings child marriage spread in the society in no time.

³ A Statistical Analysis of Child Marriage in India, Ncpcr.gov.in, Accessed on 05-11-2021

(A) Wealth and child marriage

In India we generally see poverty as a factor why young girls get married so early. The family thinks that the young girl is like a burden to the family and will not contribute in the family so they don't want to invest in the girl child. Generally young girls are treated as property in some places and culture. Now let us analyse the NFHS data (2015-16) which indicates if wealth and poverty in the family is the factor why young girls are told to marry before completing the legal age.

<u>Wealth Index</u>	<u>Age 15-19</u>
Bottom Tercile	16.6
Middle Tercile	12.7
Top Tercile	5.4

If we understand the data present above, we can see that bottom tercile division of girl tend to marry earlier than the middle and top tercile. According to the researcher wealth and poverty is the biggest reason why young girls are set to tie the knot. Such young girls are not even given the chance to study secondary and higher education and they are set for household work. The old age customary practice of putting the young girls at that position where she has to choose between education and tying the knot is perhaps the most saddening truth, we all have witnessed in our family or in our relatives once in India. Now let us analyse the data how education of these young girls has been hampered because of child marriage.

Women's Education	Age(15-19)
No Education	30.8
Primary Education	21.9
Secondary Education	10.2
Higher Education	2.4 ⁴

The chart exemplifies that some percentage of woman does not even have a bare minimum education and are wedded early. On the other hand, there are young girls who have to tie the knot while doing their primary education itself and almost 21.9% of the young girls are educated

⁴ Ibid at 3

till primary classes. If we understand the scenario of secondary education 10.2% of the young girls are married and have secondary level of education. Only 2% young girls are married and have higher education. If we compare all the level of education young girls with no education counts for 30% and it's the highest.

According to the NFHS-4 data on the census of 2011 child marriage between young girls and boys have decreased from the data shown in NFHS-3 but still it has not decreased on the individual level. 12 states with more no. of child marriage than the national average 11.9% are being reported in India let us analyse which are these 12 states which have been reporting more no. of child marriages-

S.NO	STATES	AGE (15-19)
1	West Bengal	25.6%
2	Tripura	21.6%
3	Bihar	19.7%
4	Jharkhand	17.8%
5	Dadra and Nagar Haveli	17.5%
6	Assam	16.7%
7	Andhra Pradesh	16.6%
8	Rajasthan	16.2%
9	Gujrat	13.1%
10	Telangana	12.9%
11	Maharashtra	12.1%
12	Arunachal Pradesh	12.1% ⁵

These are the states having where young girls are getting married at such tender age. Who will be blamed about the scenario is it the old- age custom or the old- age patriarchy system? How to combat this devastating state of affair we all have zero clue about the same. This practice has decreased from the very inception but it has recently risen after the whole pandemic situation

⁵ Ncpcr. Gov. in, Accessed on 10-11-2021

which led to surge in child marriages in India.

III. RAJASTHAN COMPULSORY REGISTRATION OF MARRIAGES (AMENDMENT) ACT, 2021

This new amendment in the Rajasthan Compulsory Registration of Marriage Act 2021 about registration of even child marriages under the act has shaken the whole world. One side we have an act of prohibiting it and another side we are making it compulsory to register such marriages this is basically legalizing the marriage in a way.

The boy who is less than 21 years of age and girl who is less than 18 years of age their parents need to register such child marriage in place of them. It is required by the government to register such marriage by the parents if both boy and girl have not attained the age of majority. The couple will have to register it by themselves and it is mandatory.⁶

The government said that the bill was brought after the supreme court directive which says that marriage should be registered. However Supreme court have never been in the favour to legalise child marriage howsoever.

(A) Voidable and not void (Karnataka vs other states)

The provision where it states that the marriage will be voidable if they marry before the legal age should be amended and it should be made void. One of this option might help in decreasing the child marriage in India. The state of Karnataka has amended the provision of prohibition of child marriage act 2006 for the citizens of Karnataka where instead of making the child marriage voidable the Karnataka state has done a wonderful job to amend it and make child marriage void. The step taken by the government of Karnataka will help considerably to curtail child marriages in Karnataka.⁷ The time has come that the provision of section 3 of prohibition of child marriage should be amended and made void instead of voidable

Favouring amendment in law to declare child marriage illegal a bench of justices Madan B Lokur and Deepak Gupta said that other state must follow Karnataka's ideologies where child marriages have been made void ab inito. If the law which is prevailing regarding child marriage applied to the whole country it will be easy to apply the provision of section 375 exception 2 who claim to be husband of child brides.

Amendment of section 9 Of Karnataka Prohibition of child marriage act states that in section 9 of the principal Act, for the words "be punishable with rigorous imprisonment which may

⁶ Rajasthan Compulsory Registration of Marriages (Amendment) Act, 2021, Accessed on 09-11-2021.

⁷ Prohibition of Child Marriage Act , 2006, Accessed on 09-11-2021

extend to two years”, the words “be punishable with rigorous imprisonment of not less one year which may extend up to two years” has been substituted.⁸

Societies non-acceptance of child marriage laws because it is still deep- rooted in the culture and norms of the people. After stating the reason as to why young minds are told and forced to marry at this age the researcher is of the view that law alone cannot combat the situation of child marriages in India because it is deeply in rooted in the patriarchal society. It’s been more than one decade but still we have not come up with the solution to curtail such evil practices.

It takes a lot of years to make the society understand that this practice is not good for the people for ex- sati practices it was prevalent some decade ago which considerably got abolished with time due to awareness and the society acceptance that such practices are considered evil. Another example is the divorced woman marrying again it was considered as taboo but eventually society accepted that it is fine to re-marry again this is just some norm and culture which is deeply in rooted in the society and needs to go away with change of time.

IV. NON- ACCEPTANCE OF CHILD MARRIAGE LAWS BY THE SOCIETY

Prohibition of child marriage act 2006 were enacted to curtail the young girls and boys to marry before the legal age. This curtailment is at the best interest of the young girls and young boys especially young girls. Marrying at a very tender age affects the development, growth and education of such child and it is crucial that a child should be given ample amount of education to lead their life easily and gracefully. Societies non-acceptance of prohibition of child marriage has led to an enormous increase in young girls and boys getting married. It is understood that even after having the law and punishment against the same the society still perform child marriage in India.

Section 3 of the child marriage act makes child marriage voidable at the option of both the girl and boy. A decree of nullity can be obtained by such person by filing petition before the district court for annulment of marriage within 2 years after attaining majority. The person who has not achieved the legal age can annul the marriage before the lapse of 2 year.

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 5

(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

⁸ Ibid at 7

marriage shall be null and void.

Section 16 under prohibition of child marriage act explains that there shall be a child marriage prohibition officer which will assist in creating awareness about the evil consequences of child marriage people can report to such officer if they notice any child marriage happening in their area. It will also prevent the person from contravening the provisions of child marriage act. Section 15 of the respective act also explains that if any person contravenes the provision of child marriage act, he/she shall be punished and the punishment is a cognizable and non-bailable offence.⁹

What are the reasons for child marriage in India?

1. SEXISM

India's influence to control the girl and woman's sexuality holds a great influence towards child marriage. It is considered that if a girl is not married at a certain age the girl will dishonour herself. At a certain age the girl needs to marry so that she can avoid the chances of dishonouring her family. If we analyse the other part of the story men are given preference to do his job, complete his education. That is how girls are more prone to child marriages.

2. A girl is seen as a financial burden-

The girl child is seen as a financial burden to the whole family and because of this reason the family tend to marry the girl child. It is deep in rooted in the society itself that male is the bread earner of the family while woman are the ones who will maintain the house. Often due to poverty daughters at a very tender age are forced to get married so that they are not burdened for dowry or any such financial burden.

3. Lockdown

The recent reason which has emerged after the pandemic is completing shutting down the school, colleges, and other markets etc. The girls are supposed to stay at home during the lockdown which increased sexual violation in the home and force marriages because the family could not sustain her.

4. Sexual Exploitation-

We live in a country where rape survivors are not treated as a human. If a child is raped by any male member in the society who is elder than the girl who have been raped generally the rapist try to settle the matter by marrying the girl and giving the money to the poor family of that girl.

⁹ The Prohibition of child marriage act, 2006

This is the state of affair we are living in where rape survivor does not have the right to defend herself and instead, she is told to marry the rapist.

5. Low level of Education-

Lack of education is the root cause of all the evil practices in India. Government gave free and fare education at primary level however to combat the increase in child marriages in different states government need to give free education at secondary level too. So that girls and boys who have not attained the majority are engaged in studying and growing in the country.

According to the National Family Health survey – 4 (2015-16) girls below the age of legal marriage i.e. between 15 to 18 get married. The data shows that at the age of 15 years 2.7 % of the girl child were married then at the age of 16 almost 16% of the girl were married. The age of 17 to 18 also showed a rise in the percentage of child getting married. At the age of 17 almost 11% of the girl child were married and at the age of 18 almost 19.8% were married.¹⁰

(A) Child marriages among boys

Child marriages are widely accepted in girls and there is an increase in child marriage amongst girls more than boys. According to the survey of NFHS (15-16) it was acknowledged that Rajasthan, Maharashtra and Uttar Pradesh account more no. of child marriages amongst boys in India. In Rajasthan 9 out of 20 districts were there which had more no. of child marriage. d. Six districts in Madhya Pradesh with high incidence of child marriage among boys (10-11 per cent). while Uttar Pradesh has two districts Shravasti and Lalitpur, with 11 per cent of the male children married and Haryana one district i.e., Mewat (10 percent).¹¹

How child marriage is a violation of rights of children?

- Increase health issues of the young brides- young brides are more prone to sexual violation. They are more affected to forced pregnancy, abortion, HIV etc. Young girls are exploited at different level.
- Economic outcomes- Girls and boys who drop out of school to get marry early often faces problem in economy throughout its life.

(B) Covid and surge in child marriages in India

Due to ongoing pandemic, we have seen that it has impacted every sector in a very grave sense. Covid 19 has led to surge in child marriages in India. More no. of individual in India depends

¹⁰ INDIA CHILD MARRIAGE AND TEENAGE PREGNANCY Based on NFHS-4 (2015-16), NCPCR, Accessed on 06-11-2021

¹¹ Ncpcr.gov.in, Accessed on 10-11-2021.

on daily wages as their source of Income and because of the loss of income in the household the people tend to marry off their children specially the girl child which is generally seen as a liability among the citizens of India. The goal of eradicating child marriage has been included in the international community since the inclusion of sustainable development goals 5: Achieve gender equality and empower all women and girls.

The COVID-19 pandemic is raising the risk of child marriage through five main pathways:

1) interrupted education, 2) economic shocks, 3) disruptions to programmes and services, 4) pregnancy and 5) death of a parent. While these five factors are likely to affect child marriage in all settings, additional contextual factors may also play a role. Such factors include the overall prevalence of child marriage; the amount and direction of marriage payments; gender and social norms; the availability of social protection and poverty alleviation programmes; and the presence of ongoing conflicts, forced migration and displacement.¹²

Telangana Government declared that there is a 27% rise in child marriage due to the ongoing pandemic. Almost 977 cases of child marriages were reported during the pandemic this spike in cases has been averted because the lockdown has put a toll on people's life. The lockdown created a problem for the young girls as many economically weaker groups sent their child for mid-day meals and as the schools were also closed, they were not even provided mid-day meals that was again one factor why there were rise in child marriage. "As a result of the pandemic, up to 10 million more girls are at risk of becoming child brides by 2030." Unicef claimed that.

Gabrielle Szabo, senior gender policy adviser at Save the Children UK and author of the report, told *The Lancet* that due to the lockdown the 25 years of progress by child marriage has been fuelled by school closure and economic distress. India have been one amongst the few more countries such as Bangladesh, Nepal, Ethiopia, Nigeria where child marriage has increased due to the lockdown.¹³

The accurate statistic of child marriage after covid 19 in India has not been declared till now. According to Unicef there have been rise in child marriages after covid 19 Unicef have predicted that due to the shutting down of schools and other activities there is a steeping rise in the child marriage.

V. CONCLUSION AND RECOMMENDATION

As per NFHS 2015-16 there is a considerable decrease in child marriage it has gotten down to

¹² United Nations Children's Fund, COVID-19: A threat to progress against child marriage, UNICEF, New York, 2021, Accessed on 10-11-2021.

¹³[https://doi.org/10.1016/S0140-6736\(20\)32112-7](https://doi.org/10.1016/S0140-6736(20)32112-7) Accessed on 10-11-2021.

11.9%. Substantial decrease in child marriage has been reported since 2005-06.

- Amongst all the states 12 states reported an increase in the child marriage. “These are West Bengal (25.6%), Tripura (21.6%), Bihar (19.7%), Jharkhand (17.8%), Dadra and Nagar Haveli (17.5%), Assam (16.7%), Andhra Pradesh (16.6%), Rajasthan (16.2%), Gujarat (13.1%), Telangana (12.9%), Maharashtra (12.1%) and Arunachal Pradesh (12.1%).”
- Child marriage are mostly reported in rural areas rather than urban areas.
- If we see the wealth Index mostly the people from the low-income group are the ones who marry off their daughter very early because they consider them as liability.
- Higher the education there were less child marriages, it was witnessed that secondary and Higher education had less child marriages.

India is a diverse country where people belong from different culture, sector and places they all have different faith about various things. Child marriage is just like one of the customs in some of the region and it is highly impossible to eradicate child marriage in India where patriarchy and customs are deeply in rooted in the society. With awareness and government programmes and policies there is a possibility that child marriages can be reduced but for completely eradicating child marriage we need strict laws and with strict laws we need strict execution of the same.

There is a conflict between the law and the society as a whole the conflict is such that it is not easy to make the society understand that child marriages are evil. Despite knowing that there is a huge complication with regard to child marriage such as early sexual exploitation, early pregnancy which will lead to health problem, sexual violation, lack of education and lack of health crisis. Woman have been victim of such child marriages where parents of such girl child believe that keeping a girl in the house is a liability for them. Covid 19 and lockdown have also increased the child marriages in India. Due to the long lockdown and shutting down of schools have led to more number child marriages cases because now mid-day meals are also not provided due to lockdown and because the young girls are staying in the house itself, they are more prone towards sexual violence and other sexual exploitation.

(A) Suggestion

- Promoting Education- This is one of the most important things and have the power to solve all the problem in the country. It is very significant to have education which help people realise that child marriage is an evil practice and by education individuals can

achieve their goals in life. Also, promoting more female teacher to help the girls understand the importance of education and its growth.

- Promote Gender equity- Many programmes by the government and policy can be made that will promote gender equality. It is crucial to organize such programme in rural areas so that more girls get to know about their right. Some of the NGO, Organisation, Institution can organise such programme to help achieve gender justice.
- Awareness Generation- This goes without saying every institution, organisation, NGO, family members, teacher, professor etc should spread this awareness about the evil practices of child marriage and how it is very important to eradicate the same.
- A Child marriage below a certain age should be made void for ex. 16 years if the age it should be made void and not voidable. It is very important to have this stringent law in the country. Karnataka being the 1st state where if a young couple who have not attained the age of majority comes in a wed lock their marriage is made void. A marriage above the age of 16 years will be held voidable.
- Registration of marriage to be made compulsory – Registration of marriage to be made compulsory so that there is a record.
- The age of marriage for both boys and girls should be 18 years as there is no scientific reason why this should be different.

Consequently the present Section 2(a) of the PCMA should be deleted and replaced by the following Section 2(a): - “(a) ‘child’ means a person who has not completed 18 years of age.”

- Other acts like the Hindu Marriage Act should also be amended to ensure that the provisions in the said acts are the same as and do not contradict the Prohibition of Child Marriage Act, 2006.

We have witnessed that sati marriage have gone down considerably. There will be days when child marriages will also abolish sooner or later. Some efforts are made by the government through its programme and policies such as- Deepshika, Main kuch bhi kar sakti hoon, Girls not brides, Breakthrough, CREA, Mamta health institute for mother and child these are some of the programmes run by the government to help eradicate child marriages in India.
