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Child Marriage in India: A Dark Aspect of our Society

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ABSTRACT

In this article the authors' wants to put some light on a social malpractice called Child marriage. Child Marriage is not a new concept. It has been prevalent in Ancient India since the Vedic Period. It is that social evil that has been deeply rooted in our history. A girl of merely 8 or 9 years was made to marry a man who is way older than her age. Apart from it also the parents of both boy and girl arrange their future marriage. Child Marriage is that practice that symbolizes and reflects gender inequality as since ancient period girls were considered as the inferior gender and a burden upon their parents. So in majority of the times the practice of child marriage is much more among girl child than the boys.

During the Vedic Period till the British framed laws for abolishing child marriage people were deeply rooted with the social stigma and belief that girls are the weaker section of the society. Moreover lack of education, poverty, insecurity made the scenario worst. They were also completely ignorant about its devastating consequences. When the British analyzed the condition they enacted the first Act to put a restriction on this unethical practice. Child marriage is that stigma that has mostly affected the girls. It has hampered not only their mental health but also their physical health and overall wellbeing. Although various laws and penal provisions have been adopted post independence but still this practice of child marriage is prevalent in remote areas. Child Marriage is not a national but a global problem that needs to be taken care of more strictly and for that the International Conventions and organizations have to play its part.

Keywords: *Child Marriage, gender inequality, unethical practice, physical and emotional impact, International Conventions.*

I. INTRODUCTION

The meaning of Child marriage is marriage between two Children or of opposite sexes or mostly the grooms are adult and brides are children. Indian history witnesses lots of child marriages which were practiced in whole of India. After passing so many times and modernization and globalization puts some impact on the peoples mind and people were became more concern and aware about their rights and they came to know about the consequences of child marriage.

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Various International treaties, conventions, domestic laws, rules, regulations, penal provisions were made to stop child marriage practice in India and most of the countries around the world. Child marriages have been prevalent in India and other developing countries for centuries now. The major reasons for such a long-lasting prevalence of the taboo include cultural aspects, religious aspects and lack of education. Child marriages are a major concern for the development of the country, as the consequences have been proven to be devastating for children, especially females. Thus, as a policy to prohibit the solemnization of child marriages in the country, the Child Marriage Restraint Act, 1929 was enacted and later replaced by the Prohibition of Child Marriage Act, 2006. The Act of 2006 criminalizes the support of child marriages in India and provides for rigorous imprisonment for a term that may extend to two years, along with a fine in several cases, which may extend to rupees one lakh. Child marriage has incalculable emotional impacts in addition to its negative implications for health. The girl experiences a crisis of identity due to early marriage and coerced sex. Due to the tendency of child grooms to enter into several marriages, there is an early load of duties, a higher danger of violence and abuse within the family, and a risk of being abandoned by the family. Girls who marry young in India are subject to severe and occasionally deadly consequences, while some of the effects are more extreme. With the introduction of the Prohibition of Child Marriage (Amendment) Bill, 2021, various new norms have been created that will definitely help in ensuring uniformity and gender equality among all. With the proper implementation of education facilities, people will get to know about the impact of early marriage on a child.

II. HISTORICAL BACKGROUND OF CHILD MARRIAGE IN INDIA

During Ancient times India was a country which was embedded with various superstitious myths and socially evil practices and Child marriage was also an outcome of such practices that reflected the orthodox mindset of the society.

In Ancient India child marriage was prevalent during the Vedic period. Girls who had not attained even puberty are married off to older men just to secure their daughters and reduce their burden as girls were no less than burden at that time. During the Medieval Period the situation got worsened. There was a tremendous increase in the number of Child Marriage. Earlier girls of 8 to 10 years were married off but in medieval times it decreased to 7 to 8 years.

(A) British Rule- During the British rule, the officials tried to outcast the practice of child marriage in India but couldn't succeed due to the beliefs and religious sentiments of the people of the land. After several efforts **The Child Marriage Restraint Act 1929** was

introduced where the age for marriage of girls was raised up to 12 years but it hardly had any effect.

(B) Post Independence era- After Independence the Government introduced the **Child Marriage Restriction Act 1976**. It was through this Act that the legal age for marriage of girls was stated as 18 years. Despite such an Act it couldn't gain absolute success curbing out the practice. The reasons could be many such as poverty, lack of education, cultural norms etc.

(C) Present scenario- In the current situation though the legal age for marriage of girls is 18 years but still the practice of child marriage is prevalent in mostly rural and tribal areas. Socio-economic factors and lack of efficient policies can be an obstacle in complete eradication of child marriage.

Thus strict and better policies and its implementation are necessary especially in remote areas to curb out the issue of child marriage completely and in all forms.

III. INDIA'S CHILD MARRIAGE STATISTICS

It is estimated that there are around 24 million child brides in India. The National Family Health Survey estimates that 40% of the 60 million child marriages worldwide occur in India. India has the fourteenth-highest rate of child marriage in the world, according to the International Center for Research on Women.

Different marriage traditions and customs exist throughout regions, castes, and tribes. The northwest of the country has greater rates of child marriage than the southeast.

The states with the highest rates of child marriage include Bihar, Rajasthan, Jharkhand, Uttar Pradesh, West Bengal, Madhya Pradesh, Andhra Pradesh, and Karnataka (50 per cent or more).

(A) State-wise pattern of Child Marriage

- West Bengal has the greatest number of child marriages among the states (42 per cent), with Bihar and Tripura closely behind (40 per cent each).
- Surprisingly, the decline in child marriage has been minimal at best in these states with high frequency.
- On the other end of the spectrum are Goa, Himachal Pradesh, and Kerala (6 per cent to 7 per cent).

(B) Reasons for child marriage in India

The reasons for child marriages in India are discussed below.

- **Patriarchal ideals:** The primary cause of early marriage is the fervent desire to maintain a girl's virginity in order to retain the family's honor. A girl's prized possessions are her virginity and chastity. Because of the excessive value placed on virginity, society has developed a variety of strategies and protective measures to shield females from potential sexual abuse, including early marriage and isolating them from social activity.
- **Regressive customs and religious norms:** Governments are frequently unable to implement current laws or address inconsistencies between the national law on marriage age and ingrained customs and religious norms. The official acceptance of cultural, sociological, and customary norms that influence and direct the institution of marriage and family life is the reason for this. Girls are married off before they reach puberty in certain Indian villages where child marriage is common due to the stigma that the culture attaches to marriage after puberty.
- **Marriage's rising cost:** Many families are forced to marry their girls off young in order to save money due to the escalating costs of wedding ceremonies and associated dowry costs.
- **Poverty:** Poor families struggle to provide for everyone in the household, thus they would prefer to "send off" their daughter as soon as possible to another family.
- **Caste disparities:** Encouraged by the landed castes, the downtrodden classes and castes imitate this feudal social custom because it gives them access to low-cost family labour. Therefore, maintaining this system serves the interests of the dominant classes.
- **Lack of education:** Inadequate educational possibilities for females, particularly in rural regions, increase a girl child's vulnerability to being married off at a young age. A lack of education also diminishes the ability of girls to reject marriage and pursue alternate objectives.
- **The Prohibition of Child Marriage Act** contains a loophole that permits child marriages to continue when the girl reaches the age of 18, even if it does not make them unlawful. In many instances, authorities don't take action against people responsible for marrying off youngsters since there is a window of opportunity for the girl's agreement.

(C) Consequences of child marriage

The consequences of child marriage are discussed below.

- Studies show a direct correlation between the prevalence of child marriage and poor health indicators, frequently as a result of early childbearing, which raises maternal

mortality and morbidity rates.

- Children born to relatively young moms have significant mortality rates. Health issues are likely to arise in the youngsters that survive.
- Additionally, young girls who are married as children run the danger of getting HIV and other STDs.
- Domestic violence and abuse can cause post-traumatic stress disorder and depression, which have an impact on mental health.
- Women's work options, financial security, and capacity to contribute to society are all limited by child marriage, which is also closely linked to lower educational attainment among girls.
- Young, illiterate mothers are also less likely to have children who will pursue higher education, which feeds the cycle of poor literacy and scarce job possibilities.
- Young married women frequently lack status and influence inside their marriages and households, which increases their risk of experiencing domestic abuse, sexual abuse, and social isolation.
- Fertility rates are directly impacted by lower marriage age. The reproductive rate increases as the age of marriage decreases.
- Child marriage breaches the rights of children, including their right to an education, their right to be safe from physical and emotional harm, their right to leisure time, and their right to be with their parents.

IV. INTERNATIONAL AND REGIONAL INSTRUMENTS AND CONVENTIONS ON CHILD MARRIAGE

Child Marriage is that evil that has been prevalent not only in a particular area but has been practiced across nations all over the world. So a number of International Conventions and treaties are being adopted with one motive "to stop child marriage". Some of the most noteworthy instruments are –

1. African Charter on the Rights and Welfare of the Child adopted in the year 1990. The main object of this instrument is to protect the child against all social and cultural practices that creates a hindrance in their normal growth and well being. Moreover it also prohibited child marriage and betrothal of girls and also boys. It stressed on the fact that specific legislation are

to be enacted that sets out the minimum age for marriage to be 18years and make registration of marriage as a compulsory procedure in official registry.

2. Convention on the Rights of the Child adopted in the year1989. This Convention lays down that proper legislative, educational and administrative actions are to be taken for the benefit of the child. The goal is to protect the child from all forms of violence including physical, emotional, sexual or mental.

3. Universal Declaration of Human Rights, General Assembly Resolution 217A(III)1948. Articles of this Resolution stresses on the fact that both men and women who are of full age are entitled to get married as according to their will and free consent. It also states that both the parties have equal rights regarding marriage and dissolution of the marriage.

4. African (Banjul) Charter on Human and People's Rights 1981: This Charter strongly stands against discrimination towards women and also advocates for equal rights and adequate protection for both women and child as stated in various conventions and declarations.

5. Protocol to the African Charter on Human and People's Rights on the rights of Women in Africa, 2003. This instrument is also similar to the mentioned conventions and declarations. It also states that both men and women must have equal rights and are to be regarded as equal partners in a marriage. Moreover it states that appropriate national laws must be enacted and channelized in such a way that no marriage takes place without the consent of both the parties and also the minimum age for marriage of women must be that of18years.

Thus these are only a few out of many .There are many other Conventions and instruments for protection of child marriage such as SADC Protocol on gender and development 2008,Vienna Declaration and Programme of Action 1993, Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery (Slavery Convention1956), Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1964, The Convention on the Elimination of All Forms of Discrimination against Women(CEDAW)1979. These Conventions aims at prohibition of all forms of violence against women and child which very well includes the crime of child marriage too.

Thus, it is to be also stated that UNICEF has defined child marriage where children under 18years of age are living as partner or marriage partner. In many countries and regions child marriage is practiced as a custom since time immemorial as a central and core part of their society. This practice has always caused a negative impact in the overall mental health of the child. Apart from mental it also poses a threat to their physical health. It has been observed that,

child marriage occurs mostly in place with high level of poverty as because marrying off their girl child reduces the economic burden of the household. In our country also patriarchy, class and caste greatly influences the norms around the women and girls. It was clearly evident that child marriage has emerged as a major issue as it leads to violation of basic human right of the child such as health, nutrition, education, freedom from abuse, exploitation that hampers the child and his right to a healthy childhood. Considering such a picture various Conventions such as United Nations Convention on Rights of Child (UNCRC) has laid down certain civil, political, social, health and cultural rights of children. These Conventions aims to achieve one goal to protect the basic human rights of child from being exploited.

V. LAWS AND POLICIES TARGETING CHILD MARRIAGE IN INDIA

The Prohibition of Child Marriage Act was passed in 2006 following the high number of child marriages and disappointment of the already existing Child Marriage Restraint Act of 1929 to provide an adequate solution to this social menace.

The core provisions of the Prohibition of Child Marriage Act, 2006 are as follows:

- The legal age for marriage in India is eighteen for girls and twenty-one for boys, on the lines of what was mentioned in the Child Marriage Restraint Act of 1929.
- By Section 16, full-time “Child Marriage Prohibition Officers” are appointed in every state and are supposed to police instances of child marriage. These officers are vested with the authority to prevent child marriages, make documented reports of violations, charge offenders that can also include the child’s parents and even remove children from dangerous and potentially dangerous situations.
- Child marriages are not considered illegal but merely voidable. The grounds for the declaration as void are laid down in the act itself. This is done at the option of the child that has been married off – allowing her to declare her marriage void at any time up to two years after reaching adulthood.
- The only exception where a child marriage can be declared as void even before the child reaches the age of 18, is when the child has been abducted, kidnapped, trafficked or been compelled to marry under force, deceit, coercion or misrepresentation.
- The legislation also penalizes the arrangement, performance or participation in child marriages. By Section 9, any man who is aged above eighteen who contracts for a child marriage is punishable by imprisonment of up to two years, or may be charged with a fine of up to one lakh rupees, or both.

- By Section 10, these penalties are extended to anyone who performs, conducts, directs or abets a child marriage unless he can prove that he had reason to believe that the marriage was no child marriage.
- If the child herself contracts for a child marriage, under Section 11, any parent or guardian who actively supports the marriage or negligently fails to prevent it is punishable by way of imprisonment and or a fine. The same provision has a clause, namely section 11(2), which speaks of a rebuttable presumption that the child's parent or guardian negligently failed to prevent the marriage.

VI. CASE LAWS

1. Independent Thought v. Union of India (2017)

In the landmark judgment, the Hon'ble Supreme Court analyzed the provisions of the Prohibition of Child Marriage Act, 2006, along with Section 375 of the Indian Penal Code, 1860, and criticized the inconsistencies of the law. Exception II of Section 375 of the Indian Penal Code states that sexual intercourse between a man and his wife, wherein the wife is not below 15 years of age, shall not constitute as rape. On the other hand, the provisions of the Prohibition of Child Marriage Act, 2006 provide that marriages wherein the girl is below 18 years of age shall be voidable and persons supporting such marriages shall be liable for criminal offences. These laws, when read together, create a group of female children between the ages of 15 to 18 years, whose marriage shall be voidable, yet the husbands shall not be liable for the heinous offence of rape.

The Court held that the exception to Section 375 of the Indian Penal Code should be read down as follows; "*Sexual intercourse or sexual acts by a man with his own wife, the wife not being below 18 years, is not rape*".

2. Lajja Devi v. State (2012)

In this case, Mrs. Lajja Devi addressed a letter to the Hon'ble Chief Justice of the Delhi High Court, informing him about the abduction of her daughter, Ms. Meera, who was a minor. The High Court treated the letter as a writ petition and commenced the proceedings of the case. It was found by the Court that Meera was not abducted; rather she eluded her parents to marry one Charan Singh. Meera made a statement under Section 164 of the Criminal Procedure Code, 1973 that she eloped with her own will and married Charan as she was being forced to marry someone else by her parents.

The issue before the Delhi High Court was whether the marriage of Charan and Meera, provided

that Meera was a minor at the time of the marriage, would be void under the Hindu Marriage Act, 1955. The Court analyzed the provisions of the Prohibition of Child Marriage Act and held that the Act would override the personal laws, and the child marriage contracted by a minor girl, shall be voidable. The Court also held that since the provisions of the Prohibition of Child Marriage Act, 2006 provide that a child marriage shall be voidable; it cannot be held void in any case.

VII. CONCLUSION

Children are notably the most vulnerable group of a society and thus the risk of getting exploited is also very high, Child Marriage is one such barbaric practice of child abuse and exploitation. Although various Conventions and bodies are adopting various means and methods to get it eliminated from its roots .But unless each and every individual realize the repercussions of this heinous crime and take effective steps things will hardly change .Thus it is more of the society and individuals who has the power to put an end to this practice of “Child Marriage”

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