

SHIELDING THE LITTLE GIRL: FROM CHILD MARRIAGE ACT TO PROHIBITION OF CHILD MARRIAGE ACT

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ABSTRACT

Once stated by Gavin Weston, author of Harmattan, portraying his concerns for child marriages happening all around, “*Most people simply don’t know the extent of the problem. An estimated 25,000 child marriages occur every day. That’s mind-boggling, so much so that to many people it becomes abstract and unreal*”. Adding to his words, child marriage is a grave evil incident in this society shoving the child towards the inexorable eternal bondage of marriage which adversely impact the child’s mental and physical state along with ceasing all the freedom from that child’s life. It affects the girl child unreasonably. We will go through its definition, reasons for its occurrence, and its current frequency. We will mainly focus on the protection provided by the Child Marriage Act, 1929, and later by the Prohibition of Child Marriage Act, 2006, along with some important cases related to it.

Keywords – Child Marriage, Child Marriage Laws, CMA 2006.

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INTRODUCTION

Our society has fed many social evil practices like gender inequality, dowry, female foeticide, domestic violence, and many more. Various legislations, schemes, orders have been enacted to overcome them. But we still see them continuing. Women in our society, irrespective of their caste or religion, have always suffered a lot and are still continuing to suffer. Their hurdles begin even when they are in their mother's womb quite unaware of the fact that it's not sure if she would be able to see the world even today despite the presence of laws preventing all these mishaps. And if she is born into this world, she is welcomed by the bed of thorns of the harsh circumstances that await her.

One of those social evil practices is child marriage. Very evident from the term itself, it is the marriage of one child to another or with an adult. A child who is meant to enjoy his or her childhood, get a primary education at least and build a prosperous career sometimes become the prey of these social evils curtailing all their happiness and dreams that they could pursue. They get burdened with the duties of the household which is absolutely out of their comprehension. The worst affected out of it is the female child who is often made to marry an adult. It destroys their mental and physical health in return. They could never enjoy their childhood or even any stage of their life as they are no more a 'girl' but a 'wife', a 'daughter-in-law' and a 'mother' too at the later stage of their lives. They have to realize all the expectations of their families and society. It is their 'duty'. Their childhood passes by learning the customs and the manner they have to behave in front of their in-laws and the society as a 'married woman' and their youth in upbringing their children and doing the household chores. They are made to live the life pre-decided for them which is decided for them even before they were born to this world wiping out all their colors from their lives. It is relevant from the situation that 'She' needs a shield for her life and her childhood. We would learn the protection provided by the Child Marriage Restraint Act, 1929, and the Prohibition of Child Marriage Act, 2006 against it.

CHILD MARRIAGES IN INDIA

Child marriage is understood as a marriage of a young child who is below 18 years of age with an adult or another minor. It usually refers to the marriage of a minor girl. A minor girl is made to marry at that age when she would hardly have any idea of the responsibilities

veiled in there. She loses her childhood, her opportunity to pursue education, her mental and physical health curtailing every happiness that a child of her age would get.

UNICEF¹ defines it as the marriage of a minor girl or boy, i.e., they are under the age of 18 years and further explaining that the marriage could be a formal or informal one but they live like the couples who are married. It affects the girls unreasonably. These children become a target of exploitation and abuse in the future. The girls getting pregnant during their adolescence have been recorded to have a high risk to the child and to themselves too. Hence, their physique deteriorates and is endangered. They lack the childhood that their peers can follow being engaged in the household chores and the responsibilities born out of the marriage. They eventually leave their dreams to pursue happiness and harmony for the family. UNICEF¹ enumerates the '*increased risks of maternal and child mortality, low levels of education, and exposure to violence, isolation, and confinement*' for girls involved in the marriage.

“According to the UNICEF² census of 2012, Bihar’s northern State has the highest incidence of child marriage at 68% whereas Himachal Pradesh has the lowest incidence at around 9%. Rajasthan, Madhya Pradesh, Uttar Pradesh, Bihar, Jharkhand, and West Bengal – these six States have the highest incidence of child marriage ranging from 51.9% to 68.2. The Census of 2011 states that more than 23 million girls are continuing to be child brides contributing to 40% of the world’s brides in the age group of 20-24 years. In rural areas, the occurrence of child marriage is more than that of urban areas. According to DLHS (2007-2008)³ data, around 48% of currently married women in the age group 20-24 years got married before age 18 in rural areas compared to 29% in rural areas.”

The Census of 2011⁴ highlights-

- The number of girls getting married before age of 10 years extends up to 78.5 lakhs.
- Around 10.3 crores or 33% of the married women comprised of those girls who got married before they were 18 years old.

¹ UNICEF, Child Marriage (Programme), UNICEF ROSA/2017/Bronstein

² UNICEF, Child Marriage in India - An analysis of available data (2012)

³ District Level Household and Facility Survey (2007-08).

⁴ Incidence of Child Marriage: New Findings from the 2011 Census of India; Child Marriage: The Worst Form of Slavery, Human Rights Law Network/2017.

- Although there is a decrease in the occurrence of child marriage, i.e., 43.5% in 2001 and now 30.2% which is still considered to be high.
- Lack of education has a direct link or we can say that they are directly proportional as the data shows that about 38.1% of illiterate girls got married before turning 18 while 23.3% of literate girls were married before they turned 18.
- Rajasthan leads the country in child marriages with 10.29 lakh (or 2.88%) of 3.57 crore children married before the age of 10 followed by Andhra Pradesh with 2.70%, Karnataka with 2.70%, Maharashtra with 2.57%, Uttar Pradesh with 2.10%, and Gujarat with 2.09%.

The numbers themselves are terrifying.

They have taken into account the relation between education and child marriage. It was found that it is six times more likely that a woman with no education gets into child marriage. Education provides the skill and knowledge to the girls to understand the fact that it is not wise to get into marriage at such an early stage. They become able to make wise choices in their lives for their betterment. They can understand the fact that marriage involves responsibilities for which they are not prepared, neither mentally nor physically. Again, our society had impeded education to girls from the past. It feels that the primary job for a woman is to be at home and maintain it. Education is meant for the males who are supposed to go out into the world to earn a livelihood to support his family. This impediment of education impedes the chances for women to work outside too.

Childbearing is also covered by UNICEF. Understandably, the tender physiques of these girls cannot bear the stress of pregnancy. “They are not mature enough to comprehend the responsibilities adhered to a raise a child. The percentage of teenage mothers varies from 19.1% in rural areas to 8.7% in urban areas. At least two girls aged 15-19 years in rural areas for every young girl in urban areas have begun childbearing. Women of less than 20 years of age are reported to have more newborn mortality rate than others.”

Gender inequality⁵ and the patriarchal system stir up these kinds of social evils. Women have been always treated as a subject to men. They are given hardly any chance to make any choice in their lives. To whom they are allowed to talk, what they are allowed to wear, what

⁵ ICRW, The Economic Impacts of Child Marriage: Key Findings.

to say and whatnot, all are pre-decided for them. India has a history of the patriarchal system. The decision-making capacity only resides with the men here. Women are disgraced for losing their chastity or getting pregnant out of wedlock as that is believed to bring dishonor to their families. To safeguard the sexuality and attain their primary responsibility of managing their homes, they are married off early. To add on the same, there are some social norms formed to which people of the society adheres to represent themselves as a responsible part of the society. They aim to control even the sexuality of girls and women. After menstruation, a girl becomes a woman and is capable to bear a child and maintain their homes as wives. At some places, they are operated on for female genital mutilation or cutting for accelerating the chances to achieve womanhood quickly. To cut out the family expenses of poverty-stricken families, they let their children get married. Their condition is being aided by the patriarchal system of the society. They feel no need to educate their girl child. The younger they get married, the lesser would be the amount of dowry, which with no surprise, still prevails in our society sometimes on monetary terms and sometimes in kind, by which we can interpret that *'child marriage⁶ is the interplay of economic and social forces of the society'*. Child marriage provides a deterrence of their girl from generalized violence or sexual violence or abuse or human trafficking. In short, it is believed that to protect girls from any adversaries of society, child marriages are done.

Girls getting married early are more likely to face more domestic violence than others. According to the International Council of Research on Women (ICRW)⁷, women with low education and married adolescents are 18 or 50% more likely to face sexual or physical violence from their partners. Being married so early, they get pregnant and it risks their health, mentally and physically. There are complications in their pregnancy too because of their tender age. It sometimes leads to the premature death of the unborn child or infant increasing the infant mortality rate not only it increases the mortality rate of the child but of the mother too. The Maternal Mortality Ratio for India⁸ (2001-03) is 301 per 100,000 live births. The birth of this newborn out of this marriage brings financial pressure to the family. They are driven more towards poverty. This, in return, contributes to lowering the economic condition of the country. Childbirth, moreover, contributes to the population growth of the

⁶ UNICEF, End child marriage.

⁷ ICRW, The Economic Impacts of Child Marriage: Key Findings.

⁸ UNICEF, Child Marriage in India - An analysis of available data (2012).

country. Younger girls get infected with sexually transmitted diseases like HIV/AIDS quickly than others. The school dropouts in the rural areas are more seen to get married early and get pregnant. They lose their education, economic opportunities, and health on the virtue of frequent sexual encounters at an early age and pregnancy. Lack of education makes them incapable of decision making overpowering their male partners and others to decide for them. They are also seen to pass through post-traumatic disorders and depressions. Besides these, they are also reported to be married for illegal purposes of trafficking and selling them. We see, that an early marriage in any way is not beneficial to the girls pushing them towards the unseen pains and hurdles of life.

CHILD MARRIAGE RESTRAINT ACT, 1929

The Child Marriage Act, 1929, came into being to curb the evil of child marriage out of society. It aims to scrape out the possibilities of jeopardizing the life and health of the girl child being entangled in marriage much before she is meant to be. It aspires to restrain the solemnization of marriages of children. The burden of immature motherhood affects the physical and mental health of the female child. This act is also known as Sharda Act after Rai Har Bilas Sharda, an elected member from Ajmer-Merwara in Rajasthan, who was the sponsor of the act. It was passed on 28th September of 1929 in the Imperial Legislative Council of India and applied to all over British India then. It was introduced by Rai Har Bilas Sharda in 1927 in the Legislative Assembly to raise the age for marriage for girls to 14 years. It gained the support of the All India Women's Conference, Women's Indian Association, and National Council of Women consenting its objective despite knowing that it was going to be opposed by the Muslim Ulemas through the Joshi Committee. It became law with the approval of Lord Irwin. It underwent amendments in 1949 and 1978. In 1978, the eligible age for males and females were made 21 and 18 years respectively.

This act came into force on 1st April 1930, as mentioned under section 1 of the act. It extended over the whole of India except Jammu and Kashmir then and applies to all citizens of India beyond the boundaries of India.

Section 2 provides the definitions. Males of below 21 years and females of below 18 years are considered to be 'Child' but any person under the age of 18 years is 'Minor'. The marriage in which one party is a child is being defined as 'Child Marriage'.

Punishments are covered under section-3, 4, 5, and 6 of the act. Male above 18 but below 21 years of age will be punished with simple imprisonment which may extend up to 15 days or a fine of Rs. 1000/- or both and for males above 21 years of age, simple imprisonment may extend up to 3 months with a fine, whoever contracts a child marriage. Anyone directing or conducting the child marriage is punishable with simple imprisonment which may extend up to 3 months with a fine. Any parent or guardian of the child, lawful or unlawful, permitting the marriage will be punished with simple imprisonment which may extend up to 3 months with a fine and he would be believed to have negligently failed to prevent such marriage. It also says that no woman can be punished with imprisonment for the solemnization of the marriage.

Section- 7 describes that the offenses under this act are cognizable offenses and so the Code of Criminal Procedure shall apply to it for investigation and other purposes except for the purposes mentioned in section- 42 of that Code, which mentions the situation when one is arrested as he refused to give the correct name, and place of residence and arrest without a warrant or order of the Magistrate. The Metropolitan Magistrate or a Judicial Magistrate of the first class are only empowered to try any offenses under this act and the time is limited to one year to try such offenses from the date of its occurrence. [Section-8, 9]

Injunctions can be issued, under section-12, against the person mentioned in section- 3,4,5,6, i.e., male above 18 but less than 21 years of age, a male of 21 years of age, persons involved in the solemnization of the marriage, and parents or guardians of the child permitting such marriage, for the child marriage about to solemnize but not against the person who was unless given notice by the Court and had presented his reasons not to issue an injunction. The Court may any time alter the decision of such injunction at his will or according to any application provided to it and not dismissed after hearing. Any person disobeying the injunction issued shall be punished with imprisonment may extend up to 3 months or a fine of Rs. 1000/- or both but no woman should be punished with imprisonment.

Few states have their individual amendments made into it making another section for allotting Child Marriage Prevention Officers like as in Gujarat. It stated how they are allotted, their powers and duties, and their protection.

THE PROHIBITION OF CHILD MARRIAGE ACT, 2006

After the repeal of Article 370, the Prohibition of Child Marriage Act, 2006 applies to the entire country of India, including Jammu and Kashmir, but it does not apply to the Renoncants of the Union territory of Pondicherry. The Child Marriage Act of 1929 was repealed by this act. This act, like the Child Marriage Act of 1939, is primarily concerned with the prevention of child marriages. It also punishes those involved in the commission of such marriages with harsher penalties than those imposed in the previous act, increasing the effect on society and reducing the likelihood of such marriages occurring. It contains provisions that make marriages voidable, provide for the care of the female child, and give custody to the begotten child of such a marriage. As a result, this act has expanded its authority to include a variety of interconnected situations, filling in the gaps left by previous legislation.

The act's meanings are identical to those used in the Child Marriage Act of 1929. By notification in the Official Gazette, it also adds the definitions of 'contracting parties,' referring to those whose marriage is being solemnized or has been solemnized, 'Child Marriage Prohibition Officer,' who is appointed under section 16(l) of the act, 'district court,' referring to Family Court where it exists, City Civil Court, Principal City Civil Court, or any Court empowered by the State.

Section 3 is a notable addition to the Child Marriage Act of 1929, allowing the child in the marriage to declare the marriage invalid, whether it was solemnized before or after the act's enactment. In other words, it renders the marriage voidable at the child's request at any time if the person who was a child in the marriage applies for it with his or her parent or guardian or a spouse, accompanied by the Child Marriage Prohibition Officer, but before achieving two years of attaining his or her majority. It also maintains the status quo by returning all money, ornaments, valuables, or other gifts obtained from the other party on the occasion of the marriage, or a sum equal to their value.

Section 4 provides for the maintenance of the female in the marriage while passing a decree under section 3 to the male, if major, or to his parents or guardians, until she gets remarried again, in a lump sum or monthly amount to be determined according to the girl's needs and

lifestyle during her marriage, as well as the income of the paying party, and also make a suitable residence.

Section 6 recognizes as valid the child born of a child marriage solemnized before or after the commencement of the act, and before the declaration of annulment of the marriage rendered under section 3. Section 5 empowers the District Court to make decisions about the custody into a child born of a child marriage, with the health and best interests of the child taking precedence in making those decisions, as well as directing the manner in which it can be accomplished. Under section 7, the District Court has the authority to make any amendments to the decree before or after the final decree.

The penalties that have been imposed under this act have changed. Adult males who enter into a marriage with a minor face a sentence of up to two years in jail, a fine of up to one lakh rupees, or both. Parents or guardians of a child contracting a marriage for the girl child or any other person involved in it may be sentenced to rigorous imprisonment for up to two years and a fine of one lakh, given that no woman is sentenced to imprisonment [sections 9 through 11].

The act also declares a marriage null and void if a girl is enticed to flee her lawful guardian's custody, or compelled to travel to another place, or sold for marriage or forced to marry after being sold, trafficked, or used for immoral purposes under section 12. This is a clause that not only protects female children from marriage, but also illustrates situations in which a girl is forced to marry against her parents' knowledge and is made to suffer. The words 'trafficking,' 'sold,' and 'immoral motives' reveal the horrors that occur in our culture, which are hidden by solemnizing the marriages of these vulnerable female children.

Injunctions can be obtained under section 13 of the act, which allows a Judicial Magistrate of the First Class or a Metropolitan Magistrate, after receiving an application from a Child Marriage Prohibition Officer or a complaint or application from any other person, to issue an injunction against any person, including an association or an organization, to prevent a marriage from taking place. A first-class Judicial Magistrate or a Metropolitan Magistrate may make a suo moto decision in this case. Any individual with personal knowledge of the marriage or any non-governmental agency with information may file a complaint. On special days like Akshaya Tritiya, the District Magistrate is also empowered to be the Child Marriage

Prohibition Officer, with all powers bestowed on a Child Marriage Prohibition Officer by or under this Act to prevent the solemnization of child marriage. Section 14 declares invalid marriages formed in violation of an injunction order issued under section 13.

Section 15 makes the offences cognizable and non-bailable. Offences were first made cognizable in the Child Marriage Act of 1929, but now they are often made non-bailable, making the offences reflect their seriousness.

The appointment and duties of the Child Marriage Prohibition Officers are stated in section 16 of this act. They are appointed by the State government via a notification in the Official Gazette and have jurisdiction over a specific region or areas. To fill the position, a member of the locality with a record of social service or an officer of the Gram Panchayat or Municipality or Government or any public sector undertaking or an office-bearer of any non-governmental organization may be requested. His responsibilities include preventing any child marriage by taking appropriate action, gathering evidence against those participating in the child marriage association, raising awareness, sanitizing society against this evil, providing statistical reports to the state government, and performing his other duties as Child Marriage Prohibition Officers. They are protected from deception by Section 18 against something done in good faith. According to section 21 of the Indian Penal Code, they are considered public servants.

SOME LANDMARK CASE LAWS

LAJJA DEVI V STATE AND ORS, 2013⁹

It is a remarkable case in which the Madras High Court bench remarked that the Prohibition of Child Marriage Act, 2006 suppress all other personal laws. It is considered to be '*Secular in Nature*'. It also pointed out that the marriage is voidable at the option of the child as mentioned in the Prohibition of Child Marriage Act, 2006. But not void. It needs the adjudication of the Court to make the marriage void.

⁹ Court on Its Motion (Lajja Devi vs Sate), 2013 Cri LJ 3453

T. SIVAKUMAR VS THE INSPECTOR OF POLICE, 2011¹⁰

In this case, the Madras High Court made it clear that to get the decree of void marriage the child party to the child marriage must apply to the Court praying for the same under the Prohibition of Child Marriage Act, 2006 and such petition must be made before that child completes two years after attaining his/her majority. If such a petition is not made, the marriage will get the status of a valid marriage.

HARDEV SINGH VS HARPREET KAUR & ORS¹¹

The Apex Court has held that in a marriage contract, between a male of above 18 but below 21 years and a female adult, the male cannot be punished under section- 9 of the Prohibition of Child Marriage Act, 2006 although the marriage will be treated as child marriage. Section- 9 of the Prohibition of Child Marriage Act, 2006, is enforced to safeguard the minor young girls from the negative consequences of child marriage. Again, the female adult also cannot be punished as no such provision is being covered in the said act. But they can get their marriage annulled under section- 3 of the act.

KARNATAKA AMENDMENT OF PROHIBITION OF CHILD MARRIAGE ACT, 2006

During the landmark case of *Independent Thought V. Union of India*¹² where criminalized sexual relations between a man and his minor wife, the apex court lauded the government of Karnataka for amending the Prohibition of Child Marriage Act, 2006 making all child marriages void. This step was fulfilled by the government making such alterations in 2017.

CONCLUSION

It is well known that child marriage is still prevalent in India and many other countries. It is a serious social evil restraining a girl child from experiencing her childhood. Trammeling her with early marriage responsibilities as a wife, a daughter-in-law, and as a mother. It takes place when they are hardly aware even of the meaning of 'marriage'. They get confined in the circle of marriage and duties. Enactments are made to curb this menace. But still, it is

¹⁰ T. Sivakumar V. the Inspector of Police on 3 October, AIR 2012 Madras 62.

¹¹ Hardev Singh V. Harpreet Kaur & Ors AIR 2020 SC 37.

¹² *Independent Thought V. Union of India*, (2017) 10 SCC 800.

occurring every day. Even during this Covid times, studies have predicted more child marriages due to the arising poverty which is directly related to the occurrence of child marriage. According to *Global Girlhood Report 2020*¹³, at least half a million girls are at the risk of being victims of child marriage. Some child marriages are reported while others remain unreported. Those who are unreported are bound to live their miserable lives. The data provided by various studies show that there is a decrease in its occurrence but it still holds a prominent position in the world indicating that how much more prevention methods are needed to be applied to impede it and undo it completely. Laws are made and enacted to prevent so but they are not enough. Along with these laws, we and our society must make reforms to combat these happenings. Let's stand together for shielding the little girls, protecting their lives, and painting their childhood with bright colours to let them live a fearless and independent life.



¹³ The Global Girlhood Report 2020: How COVID-19 is putting progress in peril.