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Prohibition of Child Marriage (Amendment) Act 2006

Parnika Agarwal^a

^aSymbiosis Law School, Noida, India

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This article is about what child marriage is and why it so deep-rooted and what is are its sources of origins. Further, we will read about the need for an Act to regulate child marriages and then 1929 Act, later 2006 Act in detail is discussed. Then it talks about the latest amendment to the 2006 Act and what changes it has brought as a whole. Later, the presence of various personal laws has been highlighted and their provisions regarding the age of marriage and supporting judgments. Furthermore, this article ends with the opinion of the author and a wholesome conclusion.

Keywords: *child marriage, age of marriage, personal laws.*

INTRODUCTION

Childhood is seen as a magical time in one's life. Anyone in their childhood is too naïve to comprehend society's violence and harshness. A person's destiny can only be sculpted during childhood, yet due to many negative actions in society, the futures of beautiful and pure children are sacrificed and ruined. One of these horrible practices is the practice of child marriage. The United Nations Children's Fund (UNICEF), a United Nations institution, considers child marriage to be a violation of human rights. In Indian culture, child marriage is a common occurrence. For millennia, it has been common throughout India. Poverty, a lack of

education, and instability, among other factors, are the most prominent causes of child marriage. Child marriage, on the other hand, has a number of ramifications. These include societal and psychological implications such as denial of the right to education, early parenthood, and an impediment to both boys' and girls' physical and mental development. Girls have been shown to be more negatively affected by child marriages than boys. Girls are expected to adjust to large life changes at a young age. Domestic violence and marital rape are common crimes that girls are vulnerable to. The Child Marriage Restraint Act, 1929¹, was enacted by the British in order to eliminate the culture of child marriage in India and to avert the painful repercussions of child marriage. The Act was repealed in 2006, and the Prohibition of Child Marriage Act² was enacted in its place. The purpose of this article is to examine the many facets of India's ban on underage marriages. A marriage that is solemnized before the stipulated legal age as set forth in various laws governing marriage contracts is referred to as child marriage. Child marriages in India, on the other hand, can be solemnized according to individual personal laws, hence there is no common regulation governing the solemnization of child marriages.

EVOLUTION OF THE ACT

The marriage of children is deeply rooted in Indian society. The marriage of children was widespread in India, even before the colonization of the state. However, in 1929, a child marriage restriction law was enacted also known as Sharda Act to eradicate child marriage in India. The legal age limit was 14 for girls and 18 for boys. The law consisted of various loopholes. First, the age limit was very low for both boys and girls. Children could not expect to develop a mature mind and achieve physical health for marriage. The result of the marriage was still going on. Moreover, the punishment under the law was very light. Therefore, even after multiple changes, it failed to meet its aims due to its weak and inadequate implementation. Then, in 1978 after independence, the law was changed to raise the age limit. The age limit has been raised to 18 for girls and 21 for boys. The law has not yet proven to be effective in curbing the marriage of children in India. One of the greats. The reason was

¹ Child Marriage Restraint Act, 1929

² Prohibition of Child Marriage Act, 2006

punishment under the law. Prohibition of Child Marriage Act, 2006 was to bring about reforms under the law. As defined in Article 2³ of the Prohibition of Child Marriage Act 2006, child marriage is a marriage in which a woman is under the age of 18 and a man is under the age of 21. Section 3⁴ of the law states that the marriage of a child can be challenged by elections. Both parties and applications can be held at any time but before two years have passed. According to the majority of the district court. Marriage in 2006 is invalid, considering that the situation of child marriage is determined under Article 12 of the Child Marriage Prohibition Act⁵. Article 12 of the law states that the afterlife is an invalid situation for minors.

- Being taken out or seduced from the custody of a legal guardian.
- Escape from everywhere, forced or triggered by fraudulent means.
- Is sold for the purpose of marriage and forced to undergo a form of marriage; or if a juvenile is married and then sold, trafficked, or used for immoral reasons, the marriage is null and void.

The Prohibition of Child Marriage Act of 2006, Sections 4 and 5⁶, provide for the female kid's support and the legality of the child born of child marriage. Section 4 of the petition specifies that the district court may impose maintenance, residency, and custody of the child in favor of the female spouse until her remarriage, and Section 5⁷ states that the child born of such marriage is considered genuine. Factors that promote child marriages include poverty, gender inequality, illiteracy, dowry demand, considering daughters an economic burden, social customs, traditions, cultures, etc. Poverty and Illiteracy are the major factors promoting child marriages. Unlike the previous Act, it included all of the precise sections of the offenses as well as their penalties. Anyone who performs, aids, conducts or directs child marriage would be punished by harsh imprisonment for a term of up to two years and a fine of up to one lakh rupees under this Act. Anyone who promotes or facilitates child marriage would face a harsh punishment of up to two years in prison and a fine of up to one lakh rupees. Any adult male

³ Prohibition of Child Marriage Act, 2006, s 2

⁴ Prohibition of Child Marriage Act, 2006, s 3

⁵ Child Marriage Prohibition Act, 2007, s 12

⁶ Prohibition of Child Marriage Act, 2006, s 4-5

⁷ Prohibition of Child Marriage Act, 2006, s 5

who enters into child marriage is also subject to harsh imprisonment for a period of up to two years and a fine of up to one lakh rupees.

PROHIBITION OF CHILD MARRIAGE ACT, 2021

On December 20, 2021, the Prohibition of Child Marriage (Amendment) Bill⁸ was introduced in the Lok Sabha concerning raising the legal age of marriage for women in India from 18 to 21 years, reversing a 43-year-old tradition. This bill was referred to the Parliamentary Standing Committee on Education, Women, Children, Youth, and Sports. In June 2020, the Modi administration formed a 10-member committee led by MP Jaya Jaitley to investigate the situation and determine the need and best course of action for raising the age of women's marriage. Parameters such as infant mortality rate, maternal mortality rate, total special birth rate, the sex ratio at birth, and child sex ratio relate to the age of the couple and the mother, and the relationship between the age of the couple and the motherhood and health and medical well-being. Evaluate how relevant it is. Pregnant mother and child nutrition. Gender inequality, lower social standards, financial instability, lack of quality education, and lack of employment opportunities all contribute to the prevalence of early and forced marriage.

The following are some changes that are made through this bill:

- Section 2⁹- under which child now refers to any male or female who has not attained the age of 21 years notwithstanding any such law or customary practice opposed to this amendment.
- Substitution of the words 2 years with 5 years in Section 3(3)¹⁰- child filing a petition for the annulment of child marriage. A child may file such a petition only before completing five years of attaining majority.
- Insertion of section 14A¹¹ in the Act states that these new amendments will have an overriding effect in context to the existing laws or customs that may contradict the

⁸ Prohibition of Child Marriage (Amendment) Bill, 2021

⁹ Prohibition of Child Marriage (Amendment) Bill, 2021, s 2

¹⁰ Prohibition of Child Marriage (Amendment) Bill, 2021, s 3(3)

¹¹ Prohibition of Child Marriage (Amendment) Bill, 2021, s 14A

amendments. The other personal laws such as Hindu Marriage Act¹², Hindu Minority and Guardianship Act¹³ and the Foreign Marriage Act¹⁴, Indian Christian Marriage Act¹⁵, Parsi Marriage and Divorce Act¹⁶, Muslim Personal Law (Shariat), Application Act¹⁷, and the Special Marriage Act¹⁸ shall be amended accordingly to be consistent with these new provisions. Thus, legislation will be implemented two years after the President's approval.'

PROVISIONS IN VARIOUS PERSONAL LAWS

Hindu Marriage Act, 1956

Under Hindu Marriage Law, only the parties to a child's marriage are punished, even if they do not agree to the relationship. There is no provision to prosecute parents or those who have completed their marriage. A girl can only invalidate a marriage if she is married before the age of 15 and challenged the marriage before the age of 18. There is no explicit prohibition on youth marriage. Under the Hindu Marriage Act of 1955, child marriage is neither void nor voidable. It is legitimate because of the legislature's silence in Sections 11¹⁹ and 12²⁰ and stated regulation in the form of Section 13 (2) (iv)²¹. The legislature's silence in Sections 5²², 11, and 12 of the Hindu Marriage Act makes child marriage legal as well as an express provision in Section 18 of the Hindu Marriage Act, as demonstrated in the case of *Manisha Singh vs the State of NCT*²³. The High Court of Delhi held in *Neetu Singh v the State & Ors.*²⁴ that a minor's marriage is neither void nor voidable but is criminal.

¹² Hindu Marriage Act, 1955

¹³ Hindu Minority and Guardianship Act, 1956

¹⁴ Foreign Marriage Act, 1892

¹⁵ Indian Christian Marriage Act, 1872

¹⁶ Parsi Marriage and Divorce Act, 1936

¹⁷ Muslim Personal Law (Shariat), Application Act, 1937

¹⁸ Special Marriage Act, 1954

¹⁹ Hindu Marriage Act, 1955, s 11

²⁰ Hindu Marriage Act, 1955, s 12

²¹ Hindu Marriage Act, 1955, 13(2) (4)

²² Hindu Marriage Act, 1955, s 5

²³ *Manish Singh v State Govt of Nct and Ors.* AIR 2006 Delhi 37

²⁴ *Neetu Singh v The State & Ors.* (1999) IAD Delhi 37

In *Lila Gupta v Lakshmi Narayan*²⁵, the Supreme Court held that while Section 5 (iii) of the Hindu Marriage Act mandates a minimum age for marriage, failure to meet this requirement does not render the marriage unlawful. In this decision, the court stated that it would be dangerous for marriage laws to treat a marriage that fails to meet a certain criterion as void even if the law does not clearly allow for it. This case involved a widow's entitlement to inherit her deceased husband's property, as opposed to her brother-in-law and nephew's allegations that her marriage was invalid. In *V. Mallikarjunaiach v H.C. Gowramma*²⁶, the Karnataka High Court used the same approach. In this case, the husband had asked the trial court to declare his marriage null and void since he was under the age of 21 at the time of the wedding. The statute, according to the court, aims to deter minor boys and girls from marrying, but not to the point of making the marriage void or voidable.

Muslim Personal Law

In India, Islamic law is not codified. As a result, the regulation is based on the interpretation of the Quran by the scholar. The marriage of children is not prohibited under Islamic law. A child's parents have the legal ability to marry him or her. Couples who enter puberty have an "adolescent choice" known as Khayarulbululugh, which allows them to leave their marriage. However, you should only do so if your marriage has not yet been completed by the time you reach the age of 18. Marriage, according to Islamic law, occurs when a person reaches the age of 15 in adolescence. Even if the legal guardian signs the contract, a marriage between children under the age of seven is void from the start.

To know the consequences of marrying a minor in MPL, you need to note the following:

- 'The marriage of two Muslims who have reached adolescent age, that is, major is valid.
- The marriage of two Muslims who have not reached puberty i.e. minor is invalid.
- Marriage of two Muslims who have NOT attained the age of puberty i.e. minor but the marriage is with the consent of guardians is VALID.

²⁵ *Lila Gupta v Laxmi Narain & Ors.* (1978) AIR 1351

²⁶ *V. Mallikarjunaiah v H.C. Goowramma I* (1997) DMC 10

- Marriage of two Muslims who have NOT attained the age of puberty i.e. Minor but the marriage is solemnized with the consent of the guardians, then the minor (both parties) on attaining puberty, may repudiate the marriage with the consent of a guardian, provided marriage is not consummated (Option of Puberty).
- Marriage of two Muslims who have NOT attained the age of puberty i.e. Minor but solemnized with the consent of guardians then the female spouse can divorce the male spouse under Section 2 (vii) of Dissolution of Muslim Marriage Act, 1939²⁷, provided marriage is not consummated (Right of divorce).’

The majority as in the case of a female is acquired at the age of nine, according to the Privy Council in *Nawab Sadiq Ali Khan v Jaya Kishori*²⁸. In *Md. Idris v State of Bihar and Ors.*,²⁹ the Patna High Court declared that a girl's puberty age is 15 years old, according to Mulla's interpretation of Muslim law in Mulla's Text on Principles of Muslim Law. In *Seema Begum v Karnataka State*³⁰, a Muslim girl, who was 16 at the time of the petition, sought a declaration that she is not subject to the requirements of the Prohibition of Child Marriage Act, 2006, and that, in her situation, Muslim personal law has enabled her to marry at the age of 15. In her case, the petition was denied, and no such statement was given. As a result, the Karnataka High Court ruled that a Muslim girl is not free to marry on her own before reaching the age of majority or the required age of marriage, which is 18 years of age, as defined by Section 2 (a)³¹ of the Prohibition of Child Marriage Act 2006, that despite the Delhi High Court ruling that a Muslim girl can marry before the age of 18, the statutory law (Prohibition of Child Marriage Act, 2006) will prevail over the uncodified personal law (Muslim personal law), that the Prohibition of Child Marriage Act, 2006 is applicable to all Indian citizens uniformly regardless of religion, and that the Prohibition of Child Marriage Act, 2006 is applicable to all Indian citizens uniformly regardless of religion.

²⁷ Dissolution of Muslim Marriage Act, 1939, s 2(7)

²⁸ *Nawab Sadiq Ali Khan v Jai Kishori* (1928) 30 BOMLR 1346

²⁹ *Md. Idris v State of Bihar And Ors.* (1980) CriLJ 764

³⁰ *Mis. Seema Begaum D/O Khasimsab v State of Karnataka* (2013)

³¹ Prohibition of Child Marriage Act, 2006, s 2(a)

Indian Christian Marriage Act (ICMA): The ICMA requires that a preliminary notification be published 14 days prior to the wedding if the marriage is to be contracted between minors. Following the expiration of the time limit, the parties are free to marry without the consent of their guardians.

Other Personal Laws: Child marriage is illegal under the Parsi Marriage and Divorce Act (PMDA). However, while the provisions for an invalid marriage are specified, the Act is silent on age. In India, there is no codified Jewish law. The age of marriage is set at 12 years which is the general age of puberty.

JUDICIAL TRENDS

The superiority impact of secular laws over personal laws has been time and again careworn via way of means of courtroom docket rulings. There are, however, contradictions in the decisions of several high courts. In *Lajja v State*³², the Delhi High Court ruled that the PCMA takes precedence over personal laws. The Karnataka High Court reiterated this in *Seema Beghum v State*³³ in 2013. However, in the case of *Yusuf Ibrahim Mohammad Lokhat v State of Gujarat*³⁴, it was stated that "according to the personal Law of Muslims, the girl is competent to get married without the approval of her parents no sooner she attains puberty or completes the 15 years, whichever is earlier." This clearly shows that, according to the judges who have learned, the laws of man should be used as the primary basis for determining the situation of a minor marriage. The Madras Supreme Court ruled in 2015 that PCMA applies to all communities and is consistent with Islamic law. There is no Supreme Court decision to deal with this issue. As a result, the state of uncertainty and irregularity has not yet been resolved.

ANALYSIS

This amendment to the 2006 Act has been on point, dealing with the surfacing problems faced by females due to early legal marriage age. Article 14-18 that deals with the Right to Equality have been addressed upfront, giving justice to its provisions. The right to equality is a

³² *Lajja Devi v State W.P.* (2008)

³³ *Seema Beghum v State* (2013)

³⁴ *Yusuf Ibrahim Mohammad Lokhat v State of Gujarat* (2014)

fundamental component of the Indian Constitution, and it plays a significant role in establishing social and economic justice in our society, where the advancement of positive values is seen as critical to the country's prosperity. Its emphasis on individuals' inherent team spirit through equal opportunity and compassion for all. The right to equality is the foundation for all other benefits and privileges. It provides all of the components necessary for the development of each individual's character inside the country. As a result, courts that are ostensibly the Constitution's defenders ensure that the right to equality is broadly construed so that it can comprehend the goals set forth in the Constitution by its framers. Here, I'd also like to take up the discussion of the New Rajasthan Marriage Registration Bill. The law's initial clause required the bride and groom to register their marriage within 30 days if they were under the age of 21. For both men and women, the age criterion was the same. Their parents were supposed to register them. The modified version stated that "if the bride is under 18 and the bridegroom is under 21," the parents must register the marriage within 30 days after the ceremony. Though, the government pulled it back after finding itself in various controversies. The fact here is, apart from the existing Law as by the Government of India, there are various existing personal laws also that provides provisions in the same issues as well as various State Acts also regulating it. As, marriage, divorce, etc. is a subject of the concurrent list, therefore, there is the existence of various laws coinciding and inter-relating each other thereby creating various loopholes and scope of interpretation.

CONCLUSION

The marriage of children is a problem that cannot be solved without the help of society. Despite the fact that the Child Marriage Prohibition Law requires that all child marriages be annulled from the beginning, Indian society is complex, and prohibiting child weddings is a victim of child marriages. It simply jeopardizes women's rights. The judiciary will not be able to achieve its objectives without the assistance and cooperation of society. Unified civil law will help to prevent children from marrying to some extent. In the country, children's marriage behaviors are like termites. It consumes the country from the inside out. The biggest causes of the problem of child marriage are illiteracy and poverty. This habit has the greatest impact on

females. For a fee, they are sold to adult men. The poor family members regard them as a burden. They are forced to drop out of school and are subjected to spousal violence, early pregnancy, and mental and physical torment. The major problem of child marriage necessitates the adoption of more serious and stringent legislation in the country. Various laws relating to the protection of children's rights have been enacted, and they are slowly being implemented across the country, which is a watershed moment. The only way to do this is by effective execution and public understanding of these legal rules and penalties.