

## **CHILD MARRIAGES IN INDIA: REASONS, CONSEQUENCES AND ITS LEGALITY**

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### **INTRODUCTION**

Child marriage, the centuries-long practice has been haunting the advocates of human rights for decades now. From being a malpractice of child rights to having a negative impact on physical growth, health, mental and emotional development, and educational opportunities of the victims of the practice, the children, it has always been a matter of concern. It affects the victims, especially the little girls who are constrained to marry at a very young age and sometimes to a man of relatively very old age and are bagged with innumerable responsibilities of the household and their sexual harassment starts at a very young age. It does not only affect the victims but society as a whole, since the cycle of destitution, sexual orientation separation, hunger, and illiteracy reinforces. It also affects the maternal and infant mortality rate. The pattern is rife in rural areas than urban areas as the lacking advent of modernization.

There are numerous reasons for child marriage in India and various obstructions to its end. impoverishment, weak coercion of laws, patriarchal social norms intended to ensure family honour are substantial assignees that increase the risk of a girl being married off while still a child. Also, girls from the pitiful family are more likely to marry as children, since marriage becomes a root to bring down the size of the family. The cost of marriage plays a big role in families sliding further into poverty, and these high prices bestow to girls being constrained to marry when different functions are occurring in the family.

The need of the hour is to strategize a legal and social framework to put an end to this practice and make the lives of the children a better and progressive one.

The question here is to understand what are the reasons that lead to parents marrying off their children at a young, non-marriageable age? What are the consequences faced by the victims? What role has the law and the administration played in curbing the practice?

The legal questions also arise that, what is the validity of a marriage between the two parties who are not of marriageable age under the current laws? What is its validity in personal laws? And what are the rights of the parties to such a marriage? Several other questions including these will be discussed further.

## REASONS LEADING TO CHILD MARRIAGES

The phenomenon of child marriage can be affected to a variety of reasons. The chief amongst these reasons is pauperization and tradition, culture, and values based on maternal norms. These ordinary do not take into account that in subsistence, child marriage is a violation of human rights, imperilling the advancement of girls and often resulting in early gestation and social avulsion, with little education and pitiful vocational training reinforcing the gendered nature of pauperization.

Law commission of India, in its 205<sup>th</sup> report,<sup>i</sup> has given the following reasons as to why child marriages take place in India:

1. The marriage of a minor girl oft takes place because of the pauperization and obligation of her family.  
becomes an additional cause, which weighs even more heavily on indigent families. The general demand for younger brides also creates encouragement for these families to marry the girl as early as possible to avoid high dowry defrayment for older girls.
2. In a parental set up, the girl is believed to be *parki thepan* (someone's property) and an onus.  
convictions lead parents to marry the girl child. In doing as such, they mitigate themselves of the 'burden' of looking after the child. The girls are conscious to be an

obligation as they are not seen as individuals who can contribute gainfully to the family. The parental mindset is so that the girl has no say in decision making. In addition to that texts like *Manu Smirti* which state that the father or the brother, who has not married his daughter or the sister who has attained puberty will go to hell are sometimes quoted to justify child marriage. Child marriages are also an easy way out for parents who want their daughters to obey and accept their choice of a husband for them.

3. There is a belief that child marriage is a protection for the girls against inadmissible masculine attention or incontinence. In a society that puts a high annuity on the parental values of virginity and chastity of girls, girls are married off as soon as possible.

UNICEF India in its report on Child Marriage<sup>ii</sup> stated the following reasons for Child Marriage in India:

1. Limited education occasion, the quality of education is low, insufficient configuration, deficiency of transport and therefore concerns about girls' safety while traveling to school apparent come across to keep girls out of school and therefore tend to service child marriage.
2. Although there is a broad experience of the (PCMA) Prohibition of Child Marriage Act 2006 and the depravity of child marriage, aside people feel that the norms and traditions are stronger than the law and the institutions and rarely report cases. On top of this, there is limited aptitude among officials and deficiency of geniality to go against collective decisions, since officials are themselves part of the collective decisions.
3. Girls are much seen as a liability with a limited economic role. Women's work is confined to the household and is not admired. In addition, there is the problem of dowry. Despite the fact that dowry has been prescribing for five decades (Dowry Prohibition Act, 1961), it is still natural for parents of a child in India to give and take gifts from spouses and /or his family either in cash or kind. The dowry amount multiplies with the age and the education level of the girl. Hence, the "incentive" of the system of dowry maintains child marriage.

4. Law administering to prohibit child marriage is sort of weak. Limited accurate knowledge on how to apply laws and understanding of the consequences of the laws, as well as limited trust in institutions enforcing them, undermines the accoutrement of the (PCMA) Prohibition of Child Marriage Act 2006.
5. The families and girls who might benefit from social conservation programs are not constantly aware of them and these plans are frequently constrained to offering cash transfers without the attending messages to address the multi-dimensional nature of child marriage. The aftermath of this is that cash transfers tend to maintain dowry since parents use the annuity for that purpose as soon as the girl turns 18 years of age.

Additionally, securing the girl monetarily and socially for the future has been put forth as a reason for early marriage.<sup>iii</sup>

The association of marriage in societies or communities can be used to serve or bolster economic and social ties between different people and even communities. Also, a young girl maybe a proposal to a family in order to improve the economically and social standing of the girl's family.<sup>iv</sup>

Other reasons that have been listed for the high regularity of child marriages in India are lack of education and knowledge, inadequacies in the law, and the absence of will and activity on part of the organization.<sup>v</sup>

Young married girls are incomparable, though the continually imperceptible, group. Required to perform substantial measures of domestic, under pressure to manifest fertility, and liable for raising children while still children themselves, married girls and child mothers face coerced decision making and decrease life choices. Boys are also stirred by child marriage but the issue impacts girls in far bigger numbers and with greater. Where a girl lives with a man and takes on the role of caretaker for him, the arrogation is continual that she has become an adult woman, regardless of whether she has not yet arrived at the age of 18

## CONSEQUENCES AND EFFECTS ON THE VICTIMS OF CHILD MARRIAGE

Child marriage is a serious violation of the rights of the child depriving her of opportunities and facilities to develop in a healthy manner to obtain education and to lead a life of freedom and dignity. It deprives the young girl of capabilities, opportunities and decision-making powers and stands in the way of her social and personal development.

Young brides face and reproductive ill health and the risk of sexual because of their exposure to early pregnancy and sexual activity.

Intricate and homicide are common during childbirth for young pregnant girls. Girls who come from destitute backgrounds and who are often married at an early age have little or no access to health care services. Risks associated with young pregnancy and childbearing include “an increased risk of premature labour, complications during delivery, low birth-weight, a higher possibility that the new-conceived won't endure.”<sup>vi</sup>

Young mothers under age 15 are five times more likely to die than women in their twenties due to complications including haemorrhage, pyaemia, toxæmia/ eclampsia and impediment labour.<sup>vii</sup>

feminine mortality amongst immature girls is estimated to be two to five times higher than adult women.<sup>viii</sup>

Feminine mortality amongst girls age 15-19 years is about three times higher.<sup>ix</sup>

women also grieve from a high risk of feminine morbidity. It has been found that for “every woman who dies in childbirth, thirty more suffer injuries, infections and disabilities, which usually go untreated and some of which are lifelong”.<sup>x</sup>

Research further indicates that the babies of mothers below the age of 18 tend to have higher rates of child mortality and morbidity .“New-born children of mother matured more youthful than 18 years have a 60 percent more prominent possibility of kicking the bucket in the principal year of life than those mothers matured 19 years or more established [2007 UNICEF].”<sup>xi</sup>

Babies are born premature or underweight or young mothers simply lack parenting skills and decision-making powers.<sup>xii</sup>

Secondly, young girls face the danger of contamination with explicitly transmitted diseases including HIV. Young brides who flee from early relationships may end up as sex workers or eventually resort to utilize sex function as a way of earning additional income.

Young brides also run the risk of catching diseases from their corresponding spouses, as older husbands often absorb in sexual relations with other women outside the marriage. Young married girls do not have bargaining power in the marriage and therefore cannot negotiate safe sex and are deemed accessible. It has also been found that young girls are physiologically progressively inclined to contracting HIV / AIDS, as her vagina isn't all around fixed with defensive cells and her cervix might be all the more effectively disintegrated and also analysis of the HIV pest shows that “the pervasiveness of HIV disease is most noteworthy in woman matured 15–24 and tops in men between five to ten years after the fact.”<sup>xiii</sup>

Women experience abusive behaviour at home from their companions and their family members for an variety of reasons. These reasons incorporate share and the spouse not carrying on as per standards set by the husband and his family which are often paternal in nature.

Since an age hole among men and their spouses by and large exists and regularly men are a lot more established, the power elements between them can be incredibly inconsistent. The young lady turns out to be socially confined and doesn't have any basic leadership powers and reliably faces provocation from her husband and in-law

Also, because young brides enter the marriage at an early age, they don't create individual and social abilities that will empower them to fight for themselves. They become absolutely subject to their companions and are not liable to leave a fierce marriage.

Women additionally experience sexual violence in marriage and young girls are especially helpless. In an examination did in Calcutta in 1997 where a large portion of the Women met were married at or below the age of 15, with the most youngest being married at 7 years of age, findings uncovered that this age group had “one of the highest rates of vulnerability to sexual violence in marriage, second only to those whose dowry had not been paid.”<sup>xiv</sup>

The women meeting said they had sex before feminine cycle had begun, that sex was early and excruciating, "many still kept on being constrained into sexual movement by their spouses."<sup>xv</sup>

Additionally, the young girls "had made their spouses mindful of their reluctance to engage in sexual relations or of torment during sex, however in 80 percent of these cases the assaults proceeded."

As husbands are regularly a lot more seasoned than their brides, girl brides are probably going to be bereaved at an early age. A child bride who is widowed can suffer discrimination including loss of status and they are regularly denied property rights, and different rights. child widows have practically zero instruction or other skills to have the option to deal with themselves. At a 1994 Conference in Bangalore, India, members recounted being married at five and six years of age, bereft a couple of years after the fact, and rejected by their in-laws and their very own families. These widows are, essentially, left without any assets and no place to go.<sup>xvi</sup>

Young girls who are married early ordinarily quit going to school. Giving a education to a girl is seen by both the girl's and boy's families pointless for turning into a decent spouse or a mother, if not an obstacle. The individuals who have a decision are eventually forced to drop out of school since they are compelled to accept the accountability of doing local errands and beginning a family and so forth. Early marriage is regularly connected to low degrees of tutoring for girls. Besides, by not going to class, brides are denied the chance to make companionships with peers or gain basic fundamental abilities.

It has been said that "informed women are bound to have a state in basic leadership with respect to the size of their families and the separating of their children. They are additionally liable to be increasingly educated and learned about contraception and the medicinal services needs of their children."<sup>xvii</sup>

Since married girls leave their homes and regularly towns, towns, urban areas and so forth they "will in general lose the dear kinships they had shaped in their parental homes, and frequently become tranquil and stifled. This implies even where women have created social networks, they can't get to them."<sup>xviii</sup>

The loss of adolescence, the constrained sexual relations, and the forswearing of opportunity and self-awareness specialist on early marriage have significant psychosocial and enthusiastic

results. Researchers on child marriage in Rajasthan and Madhya Pradesh state that young married girls suffered more than boys due to the previously mentioned outcomes of child marriage.<sup>xix</sup>

## THE LEGALITY OF CHILD MARRIAGE IN SEVERAL PERSONAL LAWS

- Hindu Marriage Act

The section 5(iii) of the HMA prescribes the age of 18 years for girls and 21 years of age for boys for marriage, but there is no minimum age required to call a marriage invalid. The marriage solemnised below the prescribed age is not considered *void ab initio* and requires a decree of divorce.<sup>xx</sup>

However, girls married before the age of 15 can repudiate her marriage after 15 and before she turns 18.<sup>xxi</sup> For girls married after 15, marriages are not voidable unless the consent of her guardian was obtained by force or by fraud.<sup>xxii</sup>

Age of consent of the bride and groom, though not required but they should not be incapable of giving consent due to “unsoundness of mind,” or suffering from “mental disorder” or “insanity.”<sup>xxiii</sup>

Therefore, child marriage under HMA is legal or valid.

- Muslim Personal Law

Under Muslim personal laws there is no minimum legal age to call a marriage invalid, however, girls married before puberty, which has been assumed as 15, has the “option of puberty,” which means that she can repudiate her marriage after she has attained the age of 15 and before she turns 18, if the marriage has yet not been consummated.

The consent of marriage is essential if the girl has attained the age of 15, but the consent can be given by the parents or guardian if she is below 15 which she can repudiate by the “option of puberty.”<sup>xxiv</sup>



Dissolution of a marriage in contravention of the minimum legal age must be confirmed by a court.<sup>xxv</sup>

- Indian Christian Marriage Act

The act requires that a preliminary notice for all the marriages involving girls below the age of 18 and boys below the age of 21 be published at least 14 days prior to the marriage. Minors are not permitted to marry before the primer notification time frame has terminated, except if there is an assent from parent or guardian. After this notification period, a marriage including minors can go ahead without assent from parent or guardian.<sup>xxvi</sup> No assent is required for the marriage of anybody over the age of 21.<sup>xxvii</sup>

If the person, at the time of marriage, is a minor, he can't request separate, since, being a minor at the time of marriage isn't perceived as ground for disintegration of marriage under the Indian Divorce (Amendment) Act, 2001.<sup>xxviii</sup>

Therefore, marriage of minors is considered valid under Indian

- Christian Marriage Act.
- Parsi Marriage and Divorce Act.

The base legitimate age for a substantial marriage under the Parsi Marriage and Divorce act is 18,<sup>xxix</sup> be that as it may, in the arrangement on the grounds under which a marriage can be announced void, age is excluded.<sup>xxx</sup>

The act is also silent on the issue of consent.

To dissolve a marriage in contravention of the negligible legitimate age a decree of nullity of marriage, divorce or dissolution of marriage.<sup>xxxi</sup>

The failure on the part of the act to clearly state the void ability of the child marriage from the start and its should be negated makes equivocality about girls' entitlement to leave such relationships.<sup>xxxii</sup>

- Jewish Personal Laws

Under Jewish personal laws, which are codified, the minimum age of marriage is presumed to be 12 years.<sup>xxxiii</sup>

Even though the marriage before that age is strictly prohibited, the marriage after the age of puberty is considered legal and valid.<sup>xxxiv</sup>

- Special Marriage Act

Under the Special Marriage Act, the minimum legal age for valid marriage is 18 years for girls and 21 years for boys.<sup>xxxv</sup> However, the act doesn't mention age for consent.<sup>xxxvi</sup>

The act provides that, any marriage solemnized under this Act will be invalid and void, and may, on an appeal introduced by either party thereto against the other party, be so proclaimed by a declaration of nullity if any of the conditions determined in statements (a), (b), (c) and (d) of area 4 has not been fulfilled.<sup>xxxvii</sup> Hence, the act declares child marriages as void from its outset.

## **THE PROHIBITION OF CHILD MARRIAGE ACT, 2006**

The Prohibition of Child Marriage Act was instituted on 10th January 2007, to accommodate the forbiddance of solemnisation of child marriages and for issues associated therewith or accidental thereto.<sup>xxxviii</sup>

The act states that each marriage, regardless of whether solemnized previously or after the beginning of this demonstration, will be voidable at the alternative of the contracting party who was a child at the time of the marriage.<sup>xxxix</sup> The petition of nullity can be filed by a party to the contract of marriage at any time but before the child completes two years of attaining majority.<sup>xl</sup> The party can file a petition only when they are major, however, the petition may be filed through his or her guardian or next friend along with the Child Marriage Prohibition Officer, if the party is a minor.<sup>xli</sup>

The act also provides that that while giving a decree under section 3, the court may make a between interim or final order directing the male contracting gathering to the child marriage, and in the event that the male contracting gathering to such marriage is a minor, his parent or guardian to pay maintenance to the female contracting party to the marriage until her remarriage.<sup>xlii</sup> Further, the act also provides for the custody of the child,<sup>xliii</sup>The district court may also make a suitable request for giving support to the child by involved with the marriage

or their guardians or parents the district court may also make an appropriate order for providing maintenance to the child by a party to the marriage or their parents or guardians.<sup>xliv</sup>

The Act further also provides for punishment for male adult marrying a child,<sup>xlv</sup> punishment for solemnising child marriage,<sup>xlvi</sup> and punishment for promoting or permitting solemnisation of child marriages.<sup>xlvii</sup>

Now the question which may arise is, what is the legality of children born out of child marriages? The act provides the answer for the same.

The act states that, however that a child marriage has been cancelled by a decree of court under section 3, every child begotten or envisaged of such marriage before the decree is made, whether born before or after the commencement of this Act, shall be deemed to be a legitimized child for all purposes.<sup>xlviii</sup>

The act also provides that, marriage of a minor child be void under certain circumstances, which states that, Where, a child, being a minor

- (a) is removed or tempted from the keeping of the lawful guardian; or
- (b) by force coerced, or by any fraudulent means induced to go from any place; or
- (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 dealt or utilized for corrupt purposes, such marriage will be invalid and void.<sup>xlix</sup>

The Child Marriage Prohibition Act, 2006 has replaced the Child Marriage Restraint Act, 1929. It was enacted to provide the children, whose marriages have taken place without their consent and wish to free themselves from the obligations of such marriages, with the right to declare their such marriages void by a decree. However, it also provides that maintenance must be provided to the child, and best interest of the children must be taken care of. Further, it also provides for the legitimacy of children born out of such marriages.

## CONCLUSION

Child Marriages have been practiced in India for a very long time, and has become a part of the custom of people living in several states, for example, Rajasthan. There is a social and mental block amongst people, mostly in rural areas, that they need to marry off their girl child at a very young age to protect them from the society. Certain religious practices include marrying off their children at the age of puberty. Certain other social factors include poverty, illiteracy, etc.

Such marriages are a grave violation of fundamental rights of child, rights of women as they lead to physical, mental and psychological complications in the victims.

Such marriages also violate the right of education to the child, as opportunity to get an education is not provided to the girl child.

As per the legality of the such marriages in India, such marriages are valid under personal laws but such marriages are void under Special Marriages from the outset of itself.

## ENDNOTES

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<sup>i</sup> 205<sup>th</sup> Law Commission of India Report titled, “Proposal to Amend the Prohibition of Child Marriage Act, 2006 and other Allied Laws”

<sup>ii</sup> <https://unicef.in/Whatwedo/30/Child-Marriage>.

<sup>iii</sup> Chatterjee, Jyotsna, Child Marriage, paper presented at India Social Forum, November 2006, New Delhi

<sup>iv</sup> (ICRW) International Centre for Research on Women Policy Advisory on Child Marriage

<sup>v</sup> Supra note 3

<sup>vi</sup> Black, Maggie, Early Marriage, Child Spouses, UNICEF, Innocenti Research Centre, Digest no.7 (2001), p.10

<sup>vii</sup> Mensch, Barbara S., Judith Bruce and Margaret S. Greene, The Uncharted Passage: Girls’ Adolescence in the Developing World, The Population Council (1998), New York

<sup>viii</sup> Sethuraman, Kavita and Nata Duvvury, The Nexus of Gender Discrimination with Malnutrition: An Introduction, Economic and Political Weekly, Vol XLII No44 November 3-9, 2007, p.49

<sup>ix</sup> Barua, A., Heman Apte, Pradeep Kumar, Care and Support of Unmarried Adolescent Girls in Rajasthan, Economic and Political Weekly, Vol XLII No44 November 3-9, 2007, p.54

<sup>x</sup> Black, Maggie, supra note 6, p.11

<sup>xi</sup> Barua, A., supra note 9, p.54

<sup>xii</sup> Oto-Oyorley, Nana and Sonita Pobi, Early Marriage and Poverty: Exploring links for policy and programme development, The Forum on Marriage and the Rights of Women and Girls, London, 2003, p.19

<sup>xiii</sup> Barua, A., supra note 9, p.26

<sup>xiv</sup> Somerset, Carron, Early Marriage: Whose Right to Choose? Forum on Marriage and the Rights of Women and Children, London (2000), p.21

<sup>xv</sup> Oto-Oyorley, Nana, supra note 12, p.21

<sup>xvi</sup> Black, Maggie, supra note 6, p.9

<sup>xvii</sup> Oto-Oyorley, Nana, supra note 12, p.13

<sup>xviii</sup> Ibid, p. 21

- xix Black, Maggie, *supra* note 6, p.9
- xx S.5, The Hindu Marriage Act, No. 25, 1955.
- xxi S.13(2)(iv), The Hindu Marriage Act, No. 25, 1955.
- xxii *Id.*, S.12(1)(c).
- xxiii S.5(ii)(b) & (c), The Hindu Marriage Act, No. 25, 1955
- xxiv Jaya Sagade, *Child Marriage in India: Socio-Legal and Human Rights Dimensions* 79-80 (2005); Sir Din shah Fardunji Mulla, *Principles of Mahomedan Law*, 52 & 115 (1907).
- xxv Jaya Sagade, *Child Marriage in India: Socio-Legal and Human Rights Dimensions* 52 & 115 (2005); Sir Din shah Fardunji Mulla, *Principles of Mahomedan Law*, 52 & 115 (1907); S. 2, *Dissolution of Muslim Marriages Act* No. 8 of 1939
- xxvi *Id.*, S.33 & S.60(1).
- xxvii *Id.*, S.19.
- xxviii S. 5, The Indian Divorce (Amendment) Bill, Act. No. 51, 2011
- xxix S.3(1), The Parsi Marriage and Divorce Act, No. 3, 1936.
- xxx *Id.*, S.30-S.32
- xxxi Jaya Sagade, *Child Marriage in India: Socio-legal and Human Rights Dimensions* 47 (2nd ed. 2012)
- xxxii S.30-S.34, The Parsi Marriage and Divorce Act, No. 3, 1936.
- xxxiii *Supra* note 34
- xxxiv *Ibid*
- xxxv S. 4(c), Special Marriage Act, 1956
- xxxvi *Id.* S. 4(b)
- xxxvii *Id.* S.24(1)(i)
- xxxviii prohibition of Child Marriage Act, 2006
- xxxix *Id.* S.3(1)
- xl *Id.* S.3(3)
- xli *Id.* S.3(4)
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- xliv *Id.* S.5(4)
- xlv *Id.* S.9
- xlvi *Id.* S.10
- xlvii *Id.* S.11
- xlviii *Id.* S.6
- xlix *Id.* S.12