

## CHILD MARRIAGE\*

### INTRODUCTION

In the earliest known history of India, no one was forced to marry a person other than their choice; they had freedom to choose any partner they want with whom they wish to spend their life after without any fear of their family and the society. But from the middle age, after the intervention of the government and the political system, which modified the Indian society deliberately. And during the medieval period, it was noticed that there were many girls who got married in as young as six or eight. It was then believed that if two persons know each other from very small age or from childhood and were having compatibility, parents decided to get them married at a very young age although girl stayed, until she attained the age of puberty, with her parents at their house.

I, for this reason, in my article, seek to discuss laws on child marriage, prevention and elimination of child marriage, and detailed study of reasons on why child marriage is still there, the consequences and impact of child marriage and last but not the least, of course, the suggestions and recommendations for improvement in the implementation of laws and steps to make it more strict to eliminate once and for all, the problem of child marriage in India.

### Introduction

Child marriage is still widespread in India; which is a home to a third of the world's child rights. Child marriage is a violation of child rights, and has a bad impact on physical growth, health and education opportunities. It also affects the society as a whole since child marriage reinforce cycles of poverty and perpetuates general discrimination, illiteracy as well as high impact on Maternal Mortality Rates (MMR). Both girls and boys are affected by the child marriage but girls are affected on a huge level.

Child marriage can be seen across the country but it more seen rural areas than in urban areas, where girls belonging to poor families, scheduled castes and ethnic groups and girls with a lower education level are likely to marry at a younger age.

### Definition of child Marriage

Child Marriage in India is a marriage where either the woman is below 18 years of age or the man is below 21 years of age.

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However, during the British colonial times, the legal minimum age for girls was 15 years of age and 18 years of age for boys for marriage, but after the independence and adoption of Indian constitution, the minimum legal age for marriage, since 1978, has been 18 for women and 21 for men. (Child marriage in India, Wikipedia, [https://en.wikipedia.org/wiki/child\\_marriage\\_in\\_india](https://en.wikipedia.org/wiki/child_marriage_in_india) (last visited Sep 2, 2016). )

The definition of child marriage was last updated by India with its Prohibition of Child Marriage Act, 2006 which defined child marriage as marriage to be solemnized to which either of the contracting party is a child.

UNICEF defines child marriage as a formal marriage or informal union before 18 years of age; in addition to that they propose that child marriage may be defined as forced marriage.

### **Why child marriage still in existence?**

Though many strict laws and provisions have been made by the government, but as it said as long as the mentality of the people living in the society is the same, then no matter how many laws and provisions are being made, it will be useless.

There are many reasons which can explain about why child marriages are still prevailing in modern India – the mindset of people who believe that daughter is considered as a liability on the parents because ultimately they have to leave their house and o-habit with her husband in his house, without any returns. Dowry is still prevailing in rural areas and parents there believe that if they get their daughters married at a younger age then they would be saved from giving huge amount of dowry and if their daughters do not get married at a younger age then it would be difficult to find a groom for them by paying small amount of dowry.

Customs is also a reason why child marriage is still practiced in India.

### **Consequences or impact of child marriage**

Childhood is all about playing and learning as much as you can and enjoying your childhood. But it is extremely mournful to know that at this age children are being forced to get married and the childhood is lost and opportunity to learn and play is no more.

We must not say that impact of child marriage has a huge impact alone on girl child. Even it has a big impact on male child too. Marriage at an early age of either male child or a girl child has a very bad impact on both.

Once they are married, the boy has to take the responsibility of himself and his wife and because of this; he would look for work and job to support his family at a very minor age, at an age where he is not mentally and physically ready to take such responsibility. Moreover he does not know the meaning of responsibility. This might lead to depression and pressure of earning and surviving, which forces those helpless males to indulge themselves into getting employed in hazardous activities which is dangerous to their health. On the other hand, the girl child is forced to leave her parents place and go to her groom's place and o-habit at a place with people whom she might not know and share same bed with a person who might be totally stranger to her. She is forced to take u roles and responsibilities for which she is not mentally and physically ready. The male and the girl child are forced to have sexual intercourse to conceive a baby, and as a result of this the girl child has to take up the huge responsibilities

like that of mother and daughter in law and that of a wife which are next to impossible for a girl child to handle at such a minor age.

According to the 2001 census, around 30,000 girls below 15 years of age gave birth to at least one child. Girls who get married at very early age have high risk of suffering from health problems, like HIV/AID's, compilations during childbirth, increase in risk of Sexually Transmitted Diseases (STD's) and other bad consequences which will affect their health to a very great extent.

- **Maternal Mortality Rate (MMR)** - The maternal mortality ratio (MMR) is the ratio of the number of maternal deaths during a given time period per 100,000 live births during the same time-period. It is sad to know that Maternal Mortality Rate is still prevailing today in India. As per reports, more than 100,000 women are dying every year from causes relating to pregnancy and childbirth, and on an average every woman is dying every seven minutes in the country because of many compilations related to pregnancy and childbirth. The Maternal Mortality Ratio in India (2001-03) is 301 per 100,000 live births, according to a report.
- **Compilations during childbirth** – Girls getting married at a minor age cannot have even .1% chance of knowing about pregnancy and childbirth and problems or compilations related to it. Childbirth places a major threat to their life and health.
- **Infant Mortality rate (IMR)** – Child marriage not only effects the life of a girl child, but it also has a big impact on the health of the child born due to early pregnancy as mother's young age and lack of proper nutrition leads to improper growth of the baby.
- **Increase in STD's and HIV/AID's cases** – In child marriage, there are chances of girls getting married to a partners who is much older to them. In such marriages, as girls have less knowledge about sexual intercourse, sexual behavior and practices, this could increase their risk of reproductive and sexually transmitted infections. They lack knowledge about use and usefulness of contraceptives which makes them vulnerable to infections like HIV/AIDS and other diseases.
- **Domestic violence, sexual abuse and social isolation** – Study by UNICEF reveals that India has one of the highest levels of domestic violence whereby 67% of women, who marry at an age less than 18 years faces domestic violence. It also revealed that India has highest levels of domestic violence cases when it comes to comparison with other countries like Zambia, South Africa etc. Girl child who marry at a younger age are likely to be beaten, sexually abused and threatened, and this leads to social isolation among them because many families do not allow Married Girl Child (MGC) to go outside and socialize and make friends outside her family.
- **Illiteracy and poverty** – Child marriage steals away the opportunity among girls to go school and receive education. They are not able to enjoy their right to education. Girl child are forced to work in houses because of which they are not able to pursue education and even if they wish to, they are being threatened. Families have a mindset that if the girls go to school or are educated, they will know their rights and might protest against families which would make them come under the fist of law. Many parents believe that investing money over girl's education and their personal development would be of no worth because ultimately they will get married and will leave the house of her parents and would go away to the husband's house where she will spent rest of remaining life.

## **Establishment of mechanism to deal with the problem**

Various laws and provisions have been implemented to deal with this major social problem but as long as the mentality of the society is not changed; successful implementation of such laws appears dimly like a dream.

There are two main laws which have been enacted by the government in India.

- The Child Marriage (Restraint) Act, 1929
- Prohibition of Child Marriage Act, 2006.

According to The Child Marriage (Restraint) Act, 1929 any person who performs, conducts or directs a child marriage commits an offence under the law. The offender can include the parents, relatives or even the pundit who performs the marriage. The offender can be punished up to 3 months imprisonment and fine, and the magistrate, on being informed can stop the marriage. A close relative or a friend of the minor can get a report lodged at the police station to inform them about the child marriage taking place in their area.

Under Prohibition of Child Marriage Act, 2006, any male over 18 years of age who enters into a marriage with a minor or anyone who directs or conducts a child marriage ceremony can be punished with up to two years of imprisonment or a fine.

Under The Prevention of Child Marriage Act, 2004, the punishment for the same is comparatively broader and the offense under this act is cognizable and non-bailable.

1. Punishment for male adult: If an adult male who is above 18 years of age contracts child marriage, he shall be punishable with rigorous imprisonment for 2 years or with fine which may extend to one lakh rupees or both.
2. Punishment for solemnizing marriage: If a person performs, conducts, directs or abets any child marriage, he shall be punishable with rigorous imprisonment for 2 years or with fine which may extend to one lakh rupees or both.
3. Punishment for promoting / permitting solemnization of marriage: Any person having charge of the child whether parent or guardian or any other person including member of organization or association of persons who does any act to promote the passing or permit child marriage or negligently fails to prevent it from being solemnized, including attending or participating such marriage, shall be punishable with rigorous imprisonment for 2 years or with fine which may extend to one lakh rupees or both.  
(Child marriage in India, Wikipedia, [https://en.wikipedia.org/wiki/child\\_marriage\\_in\\_india](https://en.wikipedia.org/wiki/child_marriage_in_india) (last visited Sep 2, 2016). )

## **Compulsory Registration of Marriages Act, 2006 and state initiatives**

It has come under observation that in some parts of India especially in backward and rural areas, even in urban areas, marriage take place without getting it registered. Thus in such situation, these laws and provisions anno tome in to the picture because when there is no proof that a particular marriage has taken place, it shall be considered void and null, and these laws and provisions cannot be implemented in such kind of marriages, and it lead to increase in child marriages. So the government to deal with this issue decided to make an Act as "Compulsory Registration of Marriages Act, 2006" which made it compulsory for all marriages to be registered in India. It states that every Indian citizen needs to register his or her marriage within ten days of their marriage, irrespective of religion but here also we could see that states government are not too serious about this issue as states governments in Madhya Pradesh, Uttar Pradesh, Haryana, and Bihar, where child marriages are so pervasive, have not taken any initiative to make registration of marriages compulsory. Although the central

government has made it mandatory for every state in India to make registration of marriage compulsory in their states with a belief that the government of that particular state know better of the situation or conditions or social structure prevailing in that state. While some states like Himachal Pradesh has made registration of marriage compulsory by enacting The Himachal Pradesh Marriage Registration Act, 1996 which came into force in 2004 was enacted with a purpose to make registration of all the marriages taking place within the state compulsory. Karnataka has Marriages (Registration and Miscellaneous Provisions) Act, 1976, was enacted with a purpose to make registration of all the marriages taking place within the state compulsory. Rajasthan has a Rajasthan Compulsory Registration of Marriages Bill, 2002 where government of Rajasthan has made compulsory to register marriages of couples with the authorities in order for their marriage to be considered as legal. Maharashtra has enacted the Maharashtra Regulation of Marriage Bureaus and Registration of Marriages Act, 1998. The legislative assembly of Tripura passed a Tripura Recording of Marriage Bill, 2003. In Goa's marriage laws, only those marriages will be considered valid which are registered there.

### **Government policies and programmes and Role of NGO's**

To fight with this social issue, the government has initiated many policies and programs. The government has organized various campaigns to promote awareness of age of marriage, registration of marriage, investment schemes like BALIKA SAMRIDHI YOJANA.

The need for stronger steps has been felt now and then. The government introduced the 'Prevention of child marriage bill' in the Rajya Sabha in 2004 which was then sent to the parliamentary standing committee.

Few other government policies are –

- National Health Policy 2002
- National Education Policy 1986
- National Youth Policy 2003
- Population Policy 1999
- National Policy for Women Empowerment

The government started with Investment scheme "Balika Samriddhi Yojana" with a motive to change the attitude, mentality and thinking of the society and the community towards the girl child, to encourage them to let their daughters go and receive education.

Another scheme "Kishori Shakti Yojana" was started to improve the life condition of adolescent girls, and Girl Child Protection Scheme 2005 was introduced to eliminate prejudice against the girl child through direct investment.

With the aim to promote girl education, UG (University Grant omission) introduced a Post Graduate Indira Gandhi Scholarship for a single girl child to compensate all the costs and investments of girl education at all levels, especially in such families who believe that investing money over girl's education is of no worth.

Government programs like Reproductive Child Health Program, Integrated Population Development Program, Women Development Program, Adolescent Girls Scheme, Nehru Yuvak Kendra Sangathan, National Service Schemes, etc have been started to eliminate the same.

India's first conditional cash transfer program dedicated to delay the young marriages across the nation was "Apni Beti Apna Dhan" which translates to "My daughter, My wealth". It was first implemented in the year 1994 in the state of Haryana. According to this program, on the birth of first, second and third child , the parents would be provided with 500 rupees within first 15

days along with that government invested Rs. 25000 as long term bonds in daughter's name, payable to her parents after her 18<sup>th</sup> birthday if she is unmarried.

The national ministry of women and child development came up with a strategy and currently drafting a plan of action on child marriage to guide all states. The key components of the draft includes law enforcement, quality education and other opportunities, changing mindsets and social norms, empowering adolescence girls between the age of 18-21 years.

## CEDAW

The Convention on the Elimination of All Forms of Discrimination Against Women known as CEDAW, an international bill to eliminate all kinds of discrimination against women.

Article 16 of this bill states all women and men have the right to choose their spouse. This convention also stated that all the marriages taking place in the countries has to be registered India became a party to this convention. India became a party to this convention on 30 July 1980, with a declaration that since the country's size and population is increasing day by day, it is partly impossible to have a registration to all marriages taking place.

### Judiciary providing justice: Case laws –

A report published by DNA India on 28<sup>th</sup> April 2016 stated that over 670 cases of child marriage were registered in India in consecutive 3 years from 2012 to 2014, as per the data of National Crime Records Bureau,

A number of cases are taking place in every state in India despite of strict laws and regulations.

On May 6, 2011, HRLN (Human Rights Law Network) through Bachpan Bachao Andolan, relieved information that a minor girl of age 13 years in the district of Ghaziabad, in Uttar Pradesh, was getting married to a man who was of 26 years old. The moment HRLN came to know about this, they took a step. The senior programme officer, Afsar Ahmed Khan, informed Ashadeep foundation having a child line office in Ghaziabad about this child marriage taking place, and then a dedicated team of HRLN, Ashadeep Foundation reached the wedding place to stop the marriage and with the help of polio and child Welfare committee, this child marriage was successfully stopped and the girl was then sent to Shelter Home of Ashadeep Foundation. (HRLN Administrator, Human Rights Law Network HRLN INTERVENTION IN CHILD MARRIAGE CASE OF GHAZIABAD, UP, <http://www.hrln.org/hrln/child-rights/reports/664-hrln-intervention-in-child-marriage-case-of-ghaziabad-up.html> (last visited Sep 5, 2016). )

In another case, Muzaffar Ali Sajjad and Ors vs State Of Andhra Pradesh on 9 November, 2001 in Andhra Pradesh High court, the issue came out was since Muslim law is a personal law and it is being governed by Shariat Law, so the provisions and sections of The Child Marriage Restraint Act is applicable to Muslims or not. Whether Muslims have any exemptions from this said Act? Single bench of Justice RM Bapat held that The Child Marriage Restraint Act extends to whole of India, except the state of Jammu and Kashmir, and it applied to all citizens of India, which brought them into a conclusion that Muslims are not exempted from the Child Marriage Restraint Act. (Muzaffar Ali Sajjad And Ors. vs State Of Andhra Pradesh on 9 November, 2001, Muzaffar Ali Sajjad And Ors. vs State Of Andhra Pradesh on 9 November, 2001, <https://indiankanoon.org/doc/877770/> (last visited Sep 5, 2016). )

Another case came up with the same issue as to whether provisions of Prohibition of Child Marriage Act, 2006, will prevail over personal laws or not? The single-bench of justice J B Pardiwala held that Child Marriage Act is a 'Special Act' as it covers all the citizens residing in India, except the state of Jammu and Kashmir, and it will override the provisions of Muslim

Personal Law, Hindu Marriage Act or any personal law since the religion of the contracting party does not matter. (Express News Service, Prohibition of Child Marriage Act to prevail over personal laws: HC The Indian Express (2015), <http://indianexpress.com/article/cities/ahmedabad/prohibition-of-child-marriage-act-to-prevail-over-personal-laws-hc/> (last visited Sep 5,)

## **Opening the last Pindara: Recommendations and suggestions for improvement**

Last but not the least, of course, comes in this article, suggestions and recommendations to expel, to thrust out of doors this social problem from the society.

- Creating Awareness – In order to eradicate the problem of child marriage, the mentality of the society is needed to be changed. The parents, relatives, the police, NGO's should be made understood about the negative impacts of child marriage on the society and especially on the health of male and female girl child.
- Checking and removing loopholes in the law – Undoubtedly, there will be few loopholes in any law which is made. Government must find out the loopholes in the Acts dealing with child marriage and must take proper steps to remove the same to implement the law properly which would further help in eliminating child marriage.
- Rigorous punishments – Although the punishment under “Prohibition of Child Marriage Act“ is two years or with fine which may extend to one lakh rupees or with both, people are not aware about the same. This may be because of lack of awareness or lack of proper enforcement. So to deal with this problem, more strict, stringent and rigorous laws are required to be made.
- Appointment of proper authorities and officers - The state government should appoint proper authorities and officers to deal with this problem in their respective states. Whether they are doing their work properly or not must also be taken care off. The officers must be provided with training to be more attentive and take more strict actions to punish the criminals wherever necessary.
- Registration of marriage – As discussed earlier, every marriage taking place in India are not registered which creates a problem when implementing the law. Many families do not register marriages; in fact many of them are not even aware about it. The process and registration related to the registration of marriage must be simple and clear so that people especially in the rural areas where child marriage is increasing day by day, know about the negative impacts of child marriage and the punishment for conducting child marriage.
- Encouraging girls to study – Education boosts self-esteem and increases self-confidence and promoting girls education can play a major part in eliminating child marriage in India. We can say that if the girls are not educated and if they are not aware about their rights and if they are not able to differentiate between what is right and what is wrong, they cannot do anything to stop any wrong thing taking place upon them. On

the other hand, if they are educated, they can go against their families and stop themselves from getting married.

- Frequent surveys and reports – The government should do surveys and ask for the reports about the implementation of the laws and provisions which have been enacted to stop the child marriage and they must take proper steps wherever necessary to make the laws more strict.
- Changing the thinking of the society – It is in urgency to change the mindset and thinking of the people in the society where girls are considered as a burden among them and where boys are given more preference and priority over girls.
- Sponsoring a girl child – Sponsoring a girl child can help in breaking the cycle of poverty, violence and illiteracy. Education plays a big part in prevention of child marriage. If any girl child spends most of her time in school than at home, there are less chances of her getting married. Sponsoring a girl child would help her in getting education for herself would further help in avoiding her marriage at a minor age. (The Pixel Project's "16 For 16" Campaign, The Pixel Projects 16 For 16 Campaign, <http://16days.thepixelproject.net/16-ways-of-preventing-and-intervening-in-child-marriages/> (last visited Sep 5, 2016). )
- Role of media – Media can play a very important part in creating awareness about the child marriage among the people and the society and about the bad and negative impacts of the child marriage on the children and the society. With the help of camera, they can cover and broadcast child marriages taking place in villages and urban areas so that it reaches to as many people as possible and to NGO's, police authority, district magistrates, state government and Child Marriage Prevention Officers (CMPOs). A very popular mainstream show “Balika Vadhu” was being telecasted which initially dealt with the issue of child marriage. Through this show, many people began to know about this social issue and they became aware about the bad consequences.

**“Let the smiles of your beautiful young girl not die in the hardships of life.”**

**“Educate your girl Child like you do for your son. They are not brides. They are your own daughters.”**

