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THE REALITY OF CHILD MARRIAGE IN INDIA

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ABSTRACT

The concept of child marriage is not new to the Indian society, being more aligned to customs and traditions it keeps the considerations for biology totally at bay. The upliftment of Indian masses in terms of education, lifestyle, social values, etc has not been a deterrence in this arena, besides this the statistics indicate an unfortunate deviation.

The peaking number of child marriage cases in India despite the existence of Child Marriage Restraint Act, necessitated it to implement a new and effective legislation to hinder the evil practise by introducing intense change in the way of dealing with the cause.

The Prohibition of Child Marriage Act was enacted in 2006 by the Indian Parliament with the objective of curbing the instances of child marriage in India but the achievement of this act in terms of fulfilling its aim has always been a topic for debate.

Keywords: *Child marriage, Prohibition of Child Marriage Act, gender equality, customs, childhood, human rights violation, UNICEF.*

INTRODUCTION

“This wicked practice of child marriage has destroyed the happiness of my life. It comes between me and the things which I prize above all others – study and mental cultivation”.¹

This expression of Rakhmabai in 1885 is inscribed in the hearts of women and reflects even today. Child marriage, a deeply embedded societal norm, exemplifies severe gender inequality and prejudice, natively an interplay between social and economic reasons it is an alarming global concern and at its core is a string of human rights violation in continuum.

The tradition of child marriage had been practiced in India from time immemorial and is righteously viewed as bringing prosperity to the family, protecting, and securing the lives of children, moreover it is viewed as an instrument for evading social stigma, ensuring safety of the girl child and also an object to maintain the sexual purity. It is celebrated and labelled as sacred and divine. The practice precipitated misery upon the couple hailing intensely in the long run especially upon the females who were subjected to rough forceful coitus at a tender age.

Child marriage destroys the childhood of the child tampering with their right to health, education, privacy, protection and much more. It affects both the genders in the apt fabricated

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stereotypical way, for a boy it is an economic obligation and for the girl it is a household obligation in the normal course of events, though there are indicators of decline in the child marriage cases but the bulk of population engaged in such practises is a matter of grave concern demanding serious fortified actions.

HYPOTHESIS

The research asserts that the deficiency in the halt and efficiency in the alarming rate of the child marriage is an outcome of the loopholes in the existent laws to curb the same. It is a product of regressive social norms existing in the conservative society and is deeply etched in the patriarchal mindset of people. The way of implementation of the laws provides yet another scope for flouting it.

DEFINATION OF A CHILD

According to Article 1 of the United Nations Convention on the Rights of the Child, “a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier”.²

Owing to the diversity of statutes, India has multiple meanings of a child.

Under the Indian Majority Act, “Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before”.³

For this research we are considering the definition of a child as defined under the Prohibition of Child Marriage Act, 2006⁴, which considers a male below the age of 21 years and a female below the age of 18 years as a child.

DEFINATION OF A CHILD MARRIAGE

According to the universal norms of the United Nations International Children’s Emergency Fund a child marriage is one which is formally or informally solemnised between parties both or either of which are below the age of 18 years.⁵

The Prohibition of Child Marriage Act, 2006 insisted on minimum permissible age for marriage for boys as 21 and for girls as 18 and any marriage solemnised in contravention to this age requirement would be coined as ‘child marriage’⁶ not necessarily both of them must be below the intended age but even if a single party were below this age that would suffice the condition of child marriage.

THE HORRENDOUS STATISTICS

The development of Indians in terms of education, lifestyle, social values, etc has not been a deterrence in this arena, besides this the statistics indicate an unfortunate deviation.

² Convention on the Rights of the Child [G.A. Resolution 44/25 of 20 November 1989].

³ Indian Majority Act, 1875, section 3(1).

⁴ Prohibition of Child Marriage Act, 2006, section 2(a).

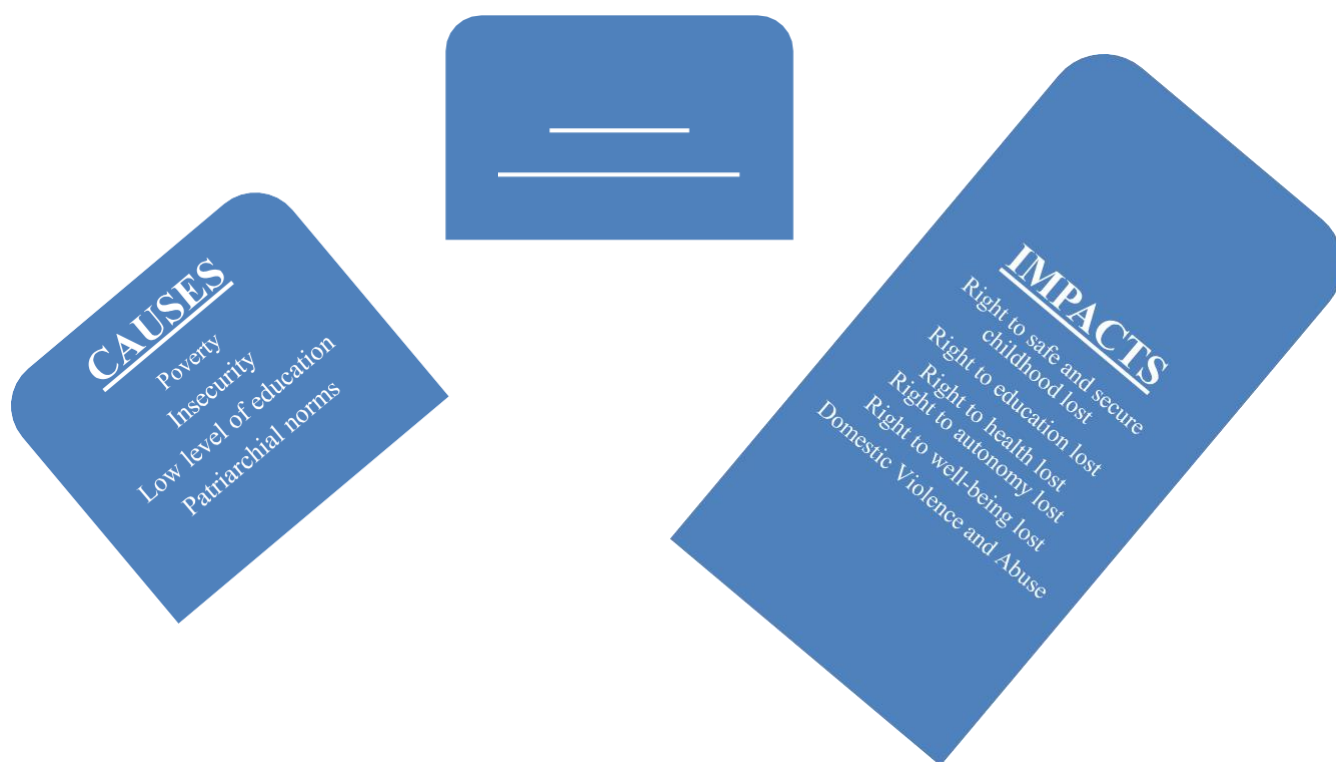
⁵ <https://data.unicef.org/topic/child-protection/child-marriage/>.

⁶ Prohibition of child marriage act, 2006, section 2(b).

Ostensibly making an appearance of decline this widespread practice is nowhere close to elimination. The UNICEF's estimate claim that every year around 1.5 million girls under the age of 18 years get married which makes India the home to maximum number of child brides.

According to NFHS⁷ 5⁸, the situation is much worse in rural India, which accounts for 27% of child marriages, while in urban India, underage marriage accounted for 14.7% of marriages. According to the data, 6.8 percent of females aged 15 to 19 were either pregnant or had already reproduced at the time of the study, a small decrease was though recorded from 7.9 percent between 2015 and 2016 in the rural geography. West Bengal, Bihar and Tripura account for 40% of the child marriages. The positive achievements in this field are too little and too late to be celebrated. Ostensibly making an appearance of decline this widespread practice is nowhere close to elimination.

ROOTS AND REPERCUSSIONS



The root of this practise lies in the ideals established by the patriarchal society. In India, the general notation where a daughter is counted as a liability and son as an asset marrying off the girl is even equated synonymous to fulfilment of responsibility. The word responsibility, though small it may appear on paper overweighs education, desire, needs, aspiration, health and uncountable many factors relating to girl in pragmatic reality.

⁷ National Family Health Survey report published by ministry of Ministry of Health and Family Welfare.

⁸ https://india.unfpa.org/sites/default/files/pub-pdf/analytical_series_1_-_child_marriage_in_india_-_insights_from_nfhs-5_final_0.pdf.

Further there is a strong emphasis on the virginity of brides before marriage and therefore it acts as an instrument for hormonal control satisfying the social standard.

Poverty is undoubtedly the most trumping cause leading to child marriage and many a times the younger siblings are married along with the elder on to save funds.

The practise of dowery is yet another social wickedness enhancing child marriage, in the practical reality a well-educated and competent man desires for more dowery and to evade excessive dowery and execute the responsibility parents often marry young girls to incompetent partners. Marriage is formidably presumed to provide stability and safety to women and fearing of the mounting crime against females' parents find it safe to marry them and do away with their duty. Irony of the affairs being that rather than focusing on making her independent the conservative society ensures to takes every step possible to make her dependent on the other gender humbly citing it to be necessary for her own advantage.

The repercussions of child marriage adversely affect both the genders and impacts various spheres of their, social, cultural, educational life summing up which would mean interference with their normal lives. Few outlines of the destruction that are a consequence of this practise are enlisted below.

Right to safe and secure childhood lost: it destroys the childhood compelling them to act as an adult in the normal course of events undertaking responsibility and standard gender roles.

Right to education lost: Barely do educated people support child marriage and those who do are majorly the ones having patriarchal mindset who believe in confining the girl child to the boundaries of household chores, and for the boy's marriage offers distraction affecting their education.

Right to health lost: there is a high probability of coitus at an immature age subjecting them to ill effects on body such as early pregnancy and exposing them to range of sexually transmitted diseases.

Right to autonomy lost: privacy, independence, overall development are done for by this evil.

Domestic Violence and Abuse: it is the most common outcome of this practise that hardly requires an elaboration, forceful sexual intercourse at tender age, physical, mental, and economic abuse are the basic characteristics of it.

CATEGORIZATION OF CHILD MARRIAGE

The Indian legal stance about child marriages is quite clear about the term which classifies child marriages into void, voidable and valid but the Indian social perspective categorizes it into two branches. A couple of lines from the verdict in the case of *Jitender Kumar Sharma v. State*⁹, can be quoted for a better understanding of the same.

“we would like to point out that the expression “child marriage” is a compendious one. It includes not only those marriages where parents force their children and particularly their daughters to get married at very young ages but also those marriages which are contracted by

⁹ *Jitender Kumar Sharma v. State*, 2010 SCC OnLine Del 2705, Para 25.

the minor or minors themselves without the consent of their parents. Are both these kinds of marriages to be treated alike? In the former kind, the parents consent but not the minor who is forced into matrimony whereas in the latter kind of marriage the minor of his or her own accord enters into matrimony, either by running away from home or by keeping the alliance secret...”

The first type is where the parents are the driving force behind the marriage and the children are either not mature enough to understand the repercussions of the ceremony or sometimes despite understanding they are not able to evade it, sometimes due of lack of courage to go against it due to social vulnerabilities or they may be against it but their verbal protests are subdued by their own family members and they are pushed into marriages.

The second type is where the children themselves opt for marriage, with or without the consent of the parent. The former kind is clearly a scourge as it shuts out the development of children and is an affront to their individualities, personalities, dignity and, most of all, life and liberty.

EVOLUTION OF LAWS ACROSS CHILD MARRIAGE IN INDIA

In the late 19th century, there was emerging opposition from the victim of this practice to call off this concept as it was contrary to the basic human rights. Till the issue of child marriage gained any attention, neither was there any minimum age of marriage nor any point of distinction between “age of marriage” and “age of consent”. The former refers to the age when the marriage was solemnised according to rights and rituals and the latter mirrors the age at the time of actual consummation of marriage. The effort bore fruit when “Age of Consent Act” was sanctioned in 1860 stipulating minimum age of consent to be 10 years however no minimum age of marriage was introduced. The minimum age concept was followed by the society and rendered it’s motive futile. *The Phulmoni dasi rape case*¹⁰ of 1889 which involved the issue of child marriage and martial rape. This spoke volumes about glaring inequality of age in martial relationship.

*The case of Rakhmabai in 1885*¹¹ which was instrumental in the drafting of “Age of Consent Act 1891” stipulating minimum age of consent to be 12 years however no minimum age of marriage was introduced. The erstwhile state of Mysore enacted a law¹² in 1894 under which marriage of a girl below 18 to a man more than twice her age was punishable. Yet, again the age of consent was increased to 13 in 1925.

These incidents casted a spotlight on the issue of child marriage victims, and for the first time, the Child Marriage Restriction Act (CMRA), 1929, was enacted after intense push by reformers of that time who wanted the passage of special legislation on child marriage. This law emphasized on the age of marriage to be 14 for girls and 15 for boys, in 1949 the age for girls was set at 15 and for boys at 18 then finally in 1978 by a major amendment the age for girls and boys was altered to 18 and 21 respectively. Though appeared shimmering when it

¹⁰ https://en.wikipedia.org/wiki/Phulmoni_Dasi_rape_case.

¹¹ <https://blog.forumias.com/rakhmabai-case-of-1884/>.

¹² Mysore Infant Marriage Prevention Act, 1894.

was enacted it shattered to achieve the cause of its application failing horribly to achieve its goal. The practise persisted unabated for almost 70-80 years after the statute was passed and owing to the vacancy of women in the legislative process, the system of child marriage grew stronger. Their distinct and sensitive needs were never recognised, as their participation in the legislative process was regarded irrelevant. This feminist legal criticism can be advanced to all levels of law formation as well as the legal study of child marriage.

The Hindu Marriage Act, 1955 introduced a passive optimistic change by making it a condition for a valid marriage¹³ that “the bridegroom should have completed 21 years of age and the bride must have completed 18 years of age.” The utter futility of the clause was that its obliteration invited no legal penalizing but was inculcated for social decorative purpose.

The uncodified Muslim personal law in India notoriously being a step ahead did away with the requirement of any certain age but rather links the age of marriage to the age of puberty. One can legitimately get married after being hit by puberty, this is a vague consideration as there is not standard age of puberty but in the general terminology it is taken as 15. As an escapism to child marriage, it entails ‘khyar ul bulugh’ or the ‘option of puberty’ which is to either ratify or revoke the child marriage after attaining the age of 18 provided the marriage was not consummated and can be exercised by both the genders.

It was only the Special Marriage Act, 1954, which rendered a child marriage void¹⁴ altogether. The conflicting stand of the government while silently approving child marriage under personal but declaring it void under special marriage law was an indication that culture, tradition, and patriarchal stereotype overweighed science, ethics and social security in the union legislature. India being a religious country most of the marriages are solemnized under personal laws and the special laws are majorly seen as option of the last resort and even at times an object to culminate marriages without parental permission, it involves a whole degree of social stigma attached to it and declaring marriage void under this law was a vanquishment in the guise of victory.

A sigh of relief was heard when the Prohibition of Child Marriage Act, 2006 was passed. With this legislation, changes sought under the CMRA were adopted. According to the CMRA, child wed locks were neither void nor voidable. They have been declared voidable¹⁵ in the PCMA at the discretion of the party who was a child at the time of marriage. It is declared void under certain circumstances¹⁶.

This implied that girls and boys who married as children were vested with the right to petition in the court to get their marriage dissolved. The Act also raised the penalty to up to two years of rigorous incarceration or a fine of up to one lakh rupees, or both¹⁷. The new act did not aim at doing away with child marriage but rather categorized it and opened avenues for new debates.

¹³ The Hindu Marriage Act, 1955, section 5 (iii).

¹⁴ Special Marriage Act, 1954, section 24 (i).

¹⁵ Prohibition of child marriage act, 2006, section 3.

¹⁶ Prohibition of child marriage act, 2006, section 12.

¹⁷ Prohibition of child marriage act, 2006, section 9.

A CRITIQUE OF PROHIBITION OF CHILD MARRIAGE ACT, 2006

The Prohibition of child marriage act, 2006 grandly promulgated with great pomp and show claiming to eradicate the evil concept subtly supplements its predecessors and is a sneaking validation of this idea makes me to argue on the following questions.

- Why does Prohibition of Child Marriage Act, 2006 render child marriage voidable and not void in the normal course of events?
- Why is Prohibition of Child Marriage Act, 2006 gender biased at certain loci?
- How does the Prohibition of Child Marriage Act, 2006 get along with personal laws?

Under section 3(i) of PCMA, 2006 a child marriage is rendered voidable at the will of the party who was a child at the time of marriage.

The plea for the same can be registered with the competent court any time before the party who was a child completes two years of attaining majority.

Section 3(ii) If the petitioner is a minor, at the time of filing of the petition, it may be filed through his or her guardian or next friend along with the Child Marriage Prohibition Officer.

The paradox of the entire act lies in its very fundamental, in the benevolent facade of criticizing the evil practice of child marriage explicitly it does not altogether render it void but rather voidable in the normal course of events. Clearly, it can be commented that the act is elementarily inefficient, aiming at curbing the social evil without explicitly acknowledging it to be a social evil is just a glittery delusion to evade reality, presenting itself as a social legislation it fails to accost the issue socially. It is insensitive to the real situation and gives no considerations to the plight it inflicts owing to its inefficiency. In a leading case¹⁸ the court observed that¹⁹:

“In other words, a voidable marriage is not invalid. But, at the same time, it cannot be construed *stricto sensu* that it is a valid marriage as per the classification referred to above. In our considered opinion, so far as the victim of the voidable marriage at whose option the marriage can be annulled is concerned, all rights emanating from a valid marriage will ensure in favour of her / him. But, so far as the other spouse is concerned, the said marriage shall confer only limited rights upon him/her.....”

The irony of the situation lies in the introduction of the concept of child marriage by this act, by this it deems to accept the peril of the social evil and admits that it not evil enough to be scrapped altogether. In a 2017 Supreme Court Judgement (*Independent Thought vs Union of India*) a bench of justices M.B. Lokur and Deepak Gupta called it “strange” for the PCMA not to declare child marriage void, while prohibiting and criminalising it. The court observed²⁰:

¹⁸ *T.Sivakumar vs The Inspector Of Police*, AIR 2012 Mad 62 FB.

¹⁹ *T.Sivakumar vs The Inspector Of Police*, , AIR 2012 Mad 62 FB, Para 24.

²⁰ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

“The legislature even made the child marriage a punishable offence by incorporating provision for prosecution and imprisonment of certain persons. At the same time, except in certain circumstances contemplating under Section 12 of the Act, the marriage is treated as voidable. The interplay of this Act with other enactments compounds this anomaly...”

A very popular argument advanced to bolster the concept of voidability is that criminalizing and making it entirely illicit under ordinary circumstances will threaten many marriages and will complicate matrimonial relationships, further a social evil like this will eradicate by itself over a period. Drawing a corollary to the same situation, bigamy was also practised in India but with changing times and developing laws it was discarded from the Hindu men rights, also the concept of Triple Talaq was abolished recently in the *Shayara Bano* case²¹, these instances indicate that to curb a social wrong it must be terminated rather than introducing an option for termination according to personal choice because something which is hazardous should not be allowed to percolate.

The act blatantly fails to consider the fact that child marriage is more prevalent amongst the lower socio-economic strata of the Indian population, where the most minute reason becomes justification to solemnize a child marriage disregarding any considerations for health, education, etc. Most of the time the parents convince their children emotionally to get married which end up devastating their lives, now had this been illegal or simply void, fearing the insecure future of the couple especially the girl child the cases would have had reduced immensely. Besides, girls being married off at such an early age mostly lack courage and education to speak up for themselves and many of the times aren't even acquainted with the fact of having a legal recourse.

The most erroneous and challenging dilemma created by voidability is categorization of child marriages, the former and the more prevailing one where parents force their children to marry prior to the requisite age, it is criticized at every echelon by the vocalist society but the latter category when children themselves opt for marriage without consent of parents it is at times labelled as the right to love which is wrong because child marriage as a concept is not just a moral wrong but it is a social, physical, educational and vocational wrong whose definition remains unchanged by fitting it into different stencils. In the case of *Amninder Kaur v State of Punjab*²² the court declared the marriage as void concluding that the girl who was a minor at the time of marriage was enticed and observed²³

“This Court is flooded with the petitions filed by runaway couples in which the girls, who have just attained the majority, are filing petitions seeking protection for life and liberty allegedly threatened by their parents, who could be seen wailing helplessly and haplessly chasing their daughters in the corridors of this Court, who out of infatuation, are marrying young boys who could hardly provide them any future....”

²¹ *Shayara Bano v. Union of India*, (2017) 9 SCC 1.

²² *Amninder Kaur v State of Punjab*, MANU/PH/1115/2009.

²³ *Amninder Kaur v State of Punjab*, MANU/PH/1115/2009, Para 1.

The judicial stand however has been fluctuating while dealing with elopement cases according to the circumstances and merits of the case, all this is just an outcome of the term voidability because the court is bound to be reasonable and prudent and not read the law literally but pragmatically, for instance in the case of *Kawalijeet Kaur v State of Punjab*²⁴ the court was of the observed:

“It is the bounden duty of the State as per the Constitutional obligations casted upon it to protect the life and liberty of every citizen. Right to human life is to be treated on much higher pedestal, regardless of a citizen being minor or a major. The mere fact that petitioner No.2 is not of marriageable age in the present case would not deprive the petitioners of their fundamental right as envisaged in Constitution of India, being citizens of India....”

In yet another judgement²⁵ the court reiterated the need to reconsider and modify the existing laws on child marriages otherwise this so-called practice of social security and surety will ripen into social segregation. The court remarked²⁶:

“The sooner the legislature examines these issues and comes out with a comprehensive and realistic solution, the better, or else courts will be flooded with habeas corpus petitions and judges would be left to deal with broken hearts, weeping daughters, devastated parents and petrified young husbands running for their lives chased by serious criminal cases, when their “sin” is that they fell in love....”

The judiciary has always been critical of the way in which PCMA aims at tackling child marriage and has expressed disenchantment at times. In a leading judgement²⁷ court made a sceptical remark about the intention of the government with respect to child marriage:

“It is quite clear from the above that Parliament is not in favour of child marriages per se but is somewhat ambivalent about it. However, Parliament recognizes that although a child marriage is a criminal activity, the reality of life in India is that traditional child marriages do take place and as the studies (referred to above) reveal, it is a harmful practice. Strangely, while prohibiting a child marriage and criminalizing it, a child marriage has not been declared void and what is worse, sexual intercourse within a child marriage is not rape under the IPC even though it is a punishable offence under the Protection of Children from Sexual Offences Act, 2012. Protection of Children from Sexual Offences Act, 2012 (POCSO)....”

The concept of voidability gives child marriages a subjective tone rather than an objective one, the legislature by this concept seems to accept the violation of human rights and fails miserably to remedy from this disaster which the inefficiency of the state showers upon people. There is an urgent need to reconsider and amend the provisions of this act to buttress the motives of it.

²⁴ *Kawalijeet Kaur v State of Punjab*, AIR 1919 P&H 148.

²⁵ *Jitender Kumar Sharma v. State*, 2010 SCC OnLine Del 2705.

²⁶ *Jitender Kumar Sharma v. State*, 2010 SCC OnLine Del 2705, Para 26.

²⁷ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

The second segment of this critical analysis focuses on some provisions of the act which explicitly and vocally advocate the stereotypical mindset which is again a product of patriarchal norms and beliefs. The first and the foremost gender differentiation of the act lies in its very foundation as it prescribes a higher marriage age for boys but lower for girls which clearly reflects discrimination, and reason for the same lies in the social bifurcation of gender roles, where men being the economical unit require more time to complete education and mature to maintain a family and women being associated to the household chores mature early which barely does synchronise with the prevailing circumstances as of now. In the case of *Hardev Singh vs Harpreet Kaur*²⁸ the Supreme Court pitched:

“although both men and women are deemed to have attained majority at eighteen years of age under other laws, a differential metric has been adopted for the purposes of defining child marriage. A higher age is prescribed for men, based on the prevailing societal notions that the age of eighteen years is insufficient for a boy to attain the desired level of education and economic independence, and that an age gap ought to be maintained between the groom and the bride.....”

A comprehensive examination of the bare act revealed some more gender-bigoted elements. For example, Section 9 of the legislation specifies a penalty for a male adult marrying a child.— Anyone, who is a male adult over the age of eighteen, enters into a child marriage is penalised by rigorous imprisonment for up to two years or a fine of up to one lakh rupees, or both., again Section 11 of the act which talks about the punishment for promoting or permitting solemnisation of child marriages entirely discounts women from any kind of imprisonment. Although, there is a strong reasoning behind such provisions as delineated in a Supreme Court case inferring²⁹:

“Thus, it can be inferred that the intention behind punishing only male adults contracting child marriages is to protect minor young girls from the negative consequences thereof by creating a deterrent effect for prospective grooms who, by virtue of being above eighteen years of age are deemed to have the capacity to opt out of such marriages....”

Though there may be strong moral justification behind the same which is pragmatically true but with the world changing apace this doesn't seem to fit in anymore and beside judicial scrutiny it requires a legislative amendment. In the above judgement the apex court pronounced a verdict stating that the act does not punish a male between the age range of eighteen to twenty-one for marrying an adult female, this torched light upon the subtle incompetency and necessity of the act, the court observed³⁰:

“The 2006 Act does not make any provision for punishing a female adult who marries a male child. Hence, a literal interpretation of the above provisions of the 2006 Act would mean that if a male aged between the years of eighteen and twenty-one contracts marriage with a female above eighteen years of age, the female adult would not be punished, but it is the male who would be punished for contracting a child marriage, though he himself is a child....”

²⁸ *Hardev Singh v. Harpreet Kaur*, (2020) 19 SCC 504, Para 7.6.

²⁹ *Hardev Singh v. Harpreet Kaur*, (2020) 19 SCC 504, Para 7.8.

³⁰ *Hardev Singh v. Harpreet Kaur*, (2020) 19 SCC 504, Para 7.2.

The working of the Prohibition of Child Marriage Act, 2006 along with the personal laws has been quite clear and in most of the cases the former being a special social legislation prevails over personal laws and has an overriding effect. In the case of *Abdul Khader vs K.Pechiammal* court observed³¹

“It is manifestly clear that this Act is secular in nature which has crossed all barriers of personal laws. Thus, irrespective of the personal laws, under this Act, child marriages are prohibited....”

The Delhi High Court ruled in a 2012 decision, *Mrs. Tahra Begum V. State of Delhi & Ors.*³², that the 'choice of puberty' or khiyar-ul-bulugh must apply in accordance with the PCMA. In this case, the minor girl was desirous of living with her husband instead of her parents. The court affirmed her agency and choice, despite her age and minority status.

The Delhi High Court in *Jitender Kumar Sharma V. State*³³ and Another, held that the PCMA is in fact a secular law and has an overriding effect over personal laws. Further, with respect to the application of section 12, the court read Sections 6 and 14 of the Hindu Minority and Guardianship Act and presented a tolerant view where it held that the girl is capable enough for deciding for herself and hence, cannot be forced into living with her parents or in a Nari Niketan.

The judiciary has been crystal clear with respect to the implementation of PCMA, 2006 when personal laws are involved and the above judgements make it all the way more evident that PCMA, 2006 finds an edge to the personal law and has superseding powers. The stand of the judiciary can be said to be very wise considering the religious atmosphere prevalent in the Indian society. Most of the child marriage are performed under personal laws and to curb the same having a special legislation that proceeds above them was a necessity.

The people need to understand that not all practices prevalent in society were meant for the upliftment of the people. With time some of them were needed to be changed. Child Marriage is one such practice that should be stopped at any cost. It might register protest, and many may think that their religion is tampered with but resentment can never overweigh the plight it could render on the young generation and there is a shimmering hope that with the passage child marriage will cease and the mindset of people advocating for this evil would change too.

³¹ *Abdul Khader vs K.Pechiammal*, MANU/TN/0934/2015.

³² *Tahra Begum v. State of Delhi*, 2012 SCC OnLine Del 2714.

³³ *Jitender Kumar Sharma v. State*, 2010 SCC OnLine Del 2705.

PREVENTIVE MEASURES

There have been a sequence of efforts and attempts to curb the occurrence of child marriage but to end a social evil we need to empower the basic building block of the society that is an individual, innumerable legislation and social drives would be a sheer wastage if the mindset of the society does not change, it is not the laws which bring the change but the people who bring an optimistic change, a legislation is a mere reflection of the society it comes from, the demerits symbolise the limitations of outlook because it is the people who make law and an inverse is unfeasible. Individual actions to prevent child marriages entails:

- Inform the appropriate authorities about any child marriages that occur in your vicinity.
- Educate your friends, family, and community about the dangers of child marriage.
- Take a vow to never participate in any event that encourages child marriage.

The crucial government measures aiming at prevention of this social upheaval encompasses the following³⁴.

- The Ministry of Women and Child Development runs the 'Beti Bachao Beti Padhao (BBBP)' scheme, which educates women and society at large on gender equality and the negative consequences of child marriage.
- The Government of India, in collaboration with police and others has launched CHILDLINE with the short code 1098, a 24X7 telephone emergency outreach service for children in crisis that responds with appropriate interventions to calls for any form of assistance that a child requires, including child marriage prevention.
- To deal with the issue of child marriages, The National Commission for the Protection of Child Rights (NCPCR) runs a variety of programmes in collaboration with relevant parties such as Child Welfare Committees (CWC), police, the Women and Child Development Department, and civil society organisations.

The United Nations Children's Fund (UNICEF)³⁵ is partnering with India to prevent child marriages and assist the victims. They encourage social change through empowering teenagers and enhancing aid for victims of abuse in their rehabilitation. In 2016, UNICEF and the United Nations Population Fund (UNFPA) launched the Global Plan to End Child Marriage. Since 2016, the campaign has reached nearly 14 million adolescent females with life-skills training, comprehensive sexuality education, and school attendance support. UNICEF³⁶ assisted the 'Beti Bachao Beti Padhao (BBBP)' initiative in expanding its coverage from 16 to 80 districts, allowing 5.4 million girls and 2.4 million boys to receive access to information, gender-responsive services, and life skill programmes.

These policies will only be effective if there is tendency for social change at the unitary level because a single unit can bring a massive change.

³⁴<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1796829#:~:text=The%20Government%20has%20enacted%20the,connected%20therewith%20or%20incidental%20thereto.>

³⁵ [https://data.unicef.org/topic/child-protection/child-marriage/.](https://data.unicef.org/topic/child-protection/child-marriage/)

³⁶ <https://www.unicef.org/protection/child-marriage.>

CONCLUSION

“There can be no keener revelation of a society's soul than the way in which it treats its children.”

Nelson Mandela

An egalitarian society can be envisioned only when children in India are treated equally. There must be a transition from a superficial feeling of equality to one that is genuine and unwavering. Every single child marriage is a threat to true equality and must thus be avoided.

The trajectory of this study began with the introduction of the topic of child marriage to precisely position the study within the legal and rights framework. It moved into a discussion of the statistics in India and the laws floating around it. It comprises apt discussion about the causes and effects of this social evil and an analysis of the drawbacks of the central legislation to prevent the same. It winds up at the preventive measures and polices.

Child marriage is a social evil that can harm a female child's life and health wreaking havoc in her life, as they are unable to endure the stresses and strains of marriage, and it leads to the premature death of such minor mothers. It also showcases the Indian society's misogynistic attitude. This menace is depicted in the following lines from a song sung during marriages in Rajasthan³⁷:

"Choti si umariya main parnanaya o babosa, kain main tharoo kario kusoor"

"Oh father why had you given me off in the marriage at such a tender age, for what sin did I commit."

“These lines itself symbolize the mixed pain of leaving the father’s house and at the same time the anguish as to why was she being married off at such a tender age. Such situation is unprecedented and the inner pain unimaginable. The word „Child Marriage“ is itself contradictory in itself as one would wonder how marriage and child could go together.”

The severity associated with this violation of human rights is trivial. The law enforcement agencies are unmotivated to take action on this issue. This is visible from the number of cases formally recorded under the Act each year. The obvious disparity between the number of unions and the number of recorded cases³⁸ is the brutal reality. An article³⁹ published in a newspaper revealed that a study conducted by Kailash Satyarthi Children’s Foundation concluded that the conviction rate in child marriage cases in India is “extremely poor” at 10%, at least 96% such cases were pending trial across the country by the end of 2021. This is alarming because with the growing population the inequality shoots which reinforced with such negligent controllable factors would result in rising cases of child wedlock’s, with no fright of accountability it will prosper more.

³⁷ Court *On its own Motion (Lajja Devi) v State & Ors*, 2012 SCC OnLine Del 3937.

³⁸ NCRB Data on child marriage.

³⁹ <https://www.hindustantimes.com/cities/chandigarh-news/96-child-marriage-cases-pending-trial-across-india-by-2021-rights-body-101664912525692.html>.

The more daunting fact is the extent to which this evil has its root despite people being acquainted with the fact that it is legally wrong and even punishable. In a case the court observed⁴⁰

“Sociologists even argue that for variety of reasons, child marriages are prevalent in many parts of this country and the reality is more complex than what it seems to be. The surprising thing is that almost all communities where this practice is prevalent are well aware of the fact that marrying child is illegal, nay, it is even punishable under the law. NGOs as well as the Government agencies have been working for decades to root out this evil. Yet, the reality is that the evil continues to survive....”

The social and biological hazards of child marriage are paramount which demand stringent and coinciding laws to deal with it the drawbacks must be considered in the light of changing social circumstances and suitable alterations must be introduced for the desired effectiveness. In a leading case the Supreme Court remarked⁴¹

“The social cost of a child marriage (and therefore of sexual intercourse with a girl child) is itself quite enormous and in the long run might not even be worth it. This is in addition to the economic cost to the country which would be obliged to take care of infants who might be malnourished and sickly; the young mother of the infant might also require medical assistance in most cases. All these costs eventually add up and apparently only for supporting a pernicious practice....”

I have analysed and studied this topic deeply and I humbly pour few suggestions of mine to evade and end this global social wrong.

- The loopholes in the PCMA, 2006 must be immediately discussed and fixed.
- In *Seema v. Ashwani Kumar*⁴², the Supreme Court imposed mandatory marriage registration and directed all state governments to implement laws or guidelines at the state level to enforce it. Although the judgement has been in effect for a decade, its execution is not uniform throughout the states. Each state government must investigate this to verify that every marriage is registered. To ensure that marriages are formally recorded, a severe penalty or a penalty that discourages non-registration must be applied. Marriage registration might be allocated to one officer at the Panchayat level.
- The Children's Right to Free and Compulsory Education Act of 2009 must be properly enforced. The obligatory education age should be raised to 18 years old in order to encourage girls to seek education.
- The government's numerous programmes to reduce child marriage and postpone the age of marriage must reach the recipients on the ground. The same initiatives must be migrated to the Gram level. Information should be disseminated at the panchayat level and through Anganwadi personnel.

⁴⁰ Court *On its own Motion (Lajja Devi) v State & Ors*, 2012 SCC OnLine Del 3937.

⁴¹ *Independent Thought v. Union of India*, (2017) 10 SCC 800.

⁴² *Seema v. Ashwani Kumar*, (2008) 1 SCC 180.

- The police and other enforcement authorities must be taught value of enhancing vigilance over the incidence of child marriages within their jurisdiction and pushing for the official registration of FIRs so that those responsible for promoting and holding a child marriage do not go free.
- The National Human Rights Commission should instruct state governments to maintain and submit an annual report on the state's status of child marriages.
- The Central Government must properly allocate funds to states to facilitate programmes to discourage child marriages. In exchange for it, a record of the utilization must be delivered.

The issue of child marriage requires attention and coordinated action. Every single child marriage draws a dispute into the freedom and equality values enshrined in the Constitution of India. It is therefore vital that we make all required efforts and change current structures to explore what can be practically achieved on the ground to build an India free of child marriages.