

CHILD MARRIAGES IN INDIA: A SILENT HEALTH AND HUMAN RIGHTS ISSUE*-Parisha Singh****Abstract:**

Child marriage is a social menace that cannot be cured without the buttress of the society. It is therefore, of an extreme importance for the government to publicize the contents of the present legislations and policies to create awareness about the ill effects of such marriages. Early marriages have a devastating physical, emotional and psychological consequences. It heralds an abrupt end of childhood as the child bride is forced to perform adult duties and is also forced to conceive her first child immediately after getting married. Education of girl child is the worst casualty of child marriages. Illiteracy makes her a liability for the husband as well as the laws that makes it very difficult for her to survive if the husband dies due to any reasons. Therefore, failure on the part of the state to address the prevention of child marriages of young girls is an indication of social injustice. It is a result of exclusion of social justice that women experience. Child marriage tends to take away their autonomy in respect of the choice of life partner and the right to decide the timing of the marriage.

In this essay I have intended to explore various legislation currently being enforced in India for the prevention and prohibition of the Child marriage. I have also made an attempt to focus on the consequences of such marriages on the mind of the girl and the physical and emotional trauma that she undergoes through. Early marriages also tend to take away the basic human rights of a girl and subject her to mockery. I have dealt with the recent bill against trafficking that is a masterpiece of legislation and also the landmark judgment of *Independent Thought vs Union Of India*. Finally, I have suggested some measures that can be beneficial while enforcing and implementing laws for a girl child in India.

I. INTRODUCTION

The term child marriage must be understood in its proper perspective as the two words are quite contradictory. Marriage is a formalized relationship with legal standing between an individual man and woman, in which sexual relations are legitimized. How can a child be a party to marriage when she is unable to understand the nature and consequences of it? The child marriage is a marriage below the age of eighteen years. It is used here for a number of reasons, firstly, to emphasize the paradox in the prevailing practice of marrying young girls. Second, in Indian legislations, social workers, law professionals refer to it as child

marriage. Third, the girl below the age of eighteen years is treated as a child for the purpose of marriage according to CMRA.¹

The practice of child marriage has been historically prevalent in several societies across the world. It is sad that even the dizzying growth rate could not make a dent in the favor of the girl child and child marriage. It robs the girl child of her childhood and shatters all her dreams and aspiration of a happy and a carefree life. It deprives her of her most basic human rights and is a blatant violation of all international conventions related to welfare and protection of child that India has signed and rectified. The 1964 convention on consent to marriage, minimum age for marriage and registration of marriage states, “no marriage can be legally entered into without the full and free consent of both the parties, this consent has to be expressed by them in person”. India has signed such conventions but none of these rights can be availed of by girl child in India in the real sense because of poverty, ignorance, gender inequality and discrimination. A large number of girls are married when they are still children. Girls who refused to such marriage are often subjected to humiliation and punished for their recalcitrance. In several backward communities specially those residing in villages these punishments often result in extreme form like honor killing.²

II. HISTORICAL PERSPECTIVES:

Ancient India was very progressive and socially enlightened. Girls had the liberty of choosing their life partners, it was way more ahead than the modern societies. Medieval India fell from high perch and choose to follow pernicious customs of child marriages which gradually strengthened its root. Detestable and irresponsible behavior increased the insecurity of girls' status in the society. It forced the parents to see girl child as a liability. A logical culmination of this calamity, became the established practice.

Other reasons for continuation of child marriage were notions about family honor, friendship, caste hierarchy and enmity. It became the most tried and tested way of keeping the property and wealth within the family. It was also used to cement friendship. Other factors responsible for such marriages included family's insecurities, community pressure against keeping young daughters unmarried and the religious sanctions for such marriages. Thus child marriages became deeply ingrained in the tradition of India. It has been maintained for generations. Illiterate parents are convinced that the health hazards, an inevitable

* *Parisha Singh is a 5th year student at Gujarat National Law University.*

¹ Jaya Sagde, *Child Marriages in India*, 43(5thed., 2012).

² Shobha Saxena, *Child Marriage in South Asia*, 67(7thed., 2008).

concomitant or early marriages are justified for cultural or economic reasons. Parents agree to marry their daughter in order to escape social stigma, embarrassment and exclusion from the society

III. EARLY MARRIAGES OF GIRLS, AN INDIA WIDE PROBLEM:

People of different castes, communities, culture live here in perfect harmony. Children below 18 years comprise 42 percent of population in the country. The constitution of India provides for equal rights and privileges for all the females too. It authorizes the state to make special provision for their protection and development. A large number of law have been enacted from time to time for empowering women and raising their status. The government has amended several laws that affected women adversely, including law related to dowry, rape, cruelty, marriage, maintenance, domestic violence, prostitution and obscenity. Various welfare and development schemes have been introduced, to improve there living conditions and increase their access to control and remove social, legal constraints and enable them to make use of rights and opportunities available for them. Yet many outdated customs and rituals are still followed they undue the gains of the pragmatic programs.

Child marriage, discrimination against the child and patriarchal mindset are the most pervasive social practice that still persists resulting in inequitable distribution of the fruits of progress and development. The prevalence is not consistent across the country. Across the board, state-level statistics makes the sharp difference between rural and urban areas. Over the last decade, there have been several key governmental and non governmental initiatives and programs to address the issue off child marriage in India. International center for research on women(ICRW) conducted a systematic survey in 2008 to identify programmatic intervention and policy strategy that has documented and measured a shift in age of marriage as well as knowledge and attitude towards child marriages.

IV. CHALLENGES FACED :

In the 21st century when the entire world is changing and developing into a new one with each passing second, there are unfortunately some social evils that form a darker side of the coin. The states like Jharkhand, Uttar Pradesh, Orissa, Madhya Pradesh and West Bengal have the highest rate of child marriages. India is proud to reach the moon and boasts about it but it has forgotten the fact that a country can only progress when the children, the youth of the country are not forced into marriage at an early age and are allowed to work and discover themselves, so that the country can also progress and reach growth along with development. Challenges such as traditional mindsets, outdated customs and illiteracy are the main

challenges that hinder efforts to eliminate early marriage. The discrimination against the girl child results in high MMR, IMR, female feticide, infanticide, and reproductive health problems. It is difficult to stop parents clandestinely marrying the girl child, selling them or forcing them to enter into fraudulent marriage when they are dying of hunger due to penury. Instances of mothers selling their girls abound from stage ravaged by earthquake, flood and destruction caused by natural calamities or man made blunders.

V. CONSEQUENCES OF CHILD MARRIAGES

Early marriages have a devastating physical, emotional and psychological consequences. It heralds and abrupt end of childhood as the child bride is forced to perform adult duties and is also forced to conceive her first child immediately after getting married. This invariably deprives the girl of her human rights, blocks her chains of perusing educational pursuits and exploring professional opportunities for a more fulfilling life. Sometimes it often leads to several diseases such as aids and are transmitted form mother to child as young girls are not exposed to use of preventive methods while consummating. Recent statistics about the growing number of women afflicted by HIV/AIDS around the world including India throw light on different dimension of disease Education of girl child is the worst casualty of child marriages as even those girls who are in school are pulled out the moment their marriage is settled or a suitable match is found. The traditional mind set of their parents who find it as waste to invest in girls education has resulted in attitude of girls loosing their status inn the society. Illiteracy makes her as a liability for the husband as well as the in laws that makes it very difficult for her to survive if the husband dies due to any reasons. This results in perpetuation of intergenerational poverty and increase in the number of malnourished children due to penury.³

VI. HOW DOES A CHILD MARRIAGE AFFECTS THE INTERNATIONAL HUMAN RIGHTS?

Human rights are the rights of individuals in society. To call them human implies that all human beings have them equally, regardless of sex, age, social class and economic position, religion, culture or other parameters. Implied in one's human dignity, human rights are inalienable and imprescriptible. Human rights are rights, not just aspirations and are not dependent on privileges. As rights, they imply they are claims as of rights

³ Robert Baldick , Centuries of Childhood,76(7thed., 2010).

and entitlement. Thus they are instruments through which particularly powerless individuals and groups can claim human dignity.

Marriage is a state sanctioned institution. Therefore, failure on the part of the state to address the prevention of child marriages of young girls is an indication of social injustice. It is a result of exclusion of social justice that women experience. Child marriage tends to take away their autonomy in respect of the choice of life partner and the right to decide the timing of the marriage. It may expose them to violence and abuse which may result in emotional and physical problems and sometimes even desertion and divorce. It creates a problem for their reproductive health in terms of maternal morality and morbidity. It does not give them the opportunity to decide freely and responsibly the numbers and species of their children. It denies them the opportunity to be economically independent and undermines their self-confidence. It hampers their decision-making powers and affects overall well-being. Harms from the child marriage can be classified into two broad categories:

- i. Harms caused by existence of institution of child marriage itself and
- ii. Harms resulting to individuals as a consequence of actual child marriage

Each kind of harm takes one or the other human rights of young girls. These human rights can be analyzed in a variety of ways. Human rights originating in the various human rights instruments including women's and children's conventions are clustered around these categories of harm.

RIGHT TO EQUALITY: The prohibition to discrimination is one of the most fundamental principle of human rights. As stated in the UN Charter, one of the four overarching purposes of the UN is to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to sex, race, language and religion. The Universal Declaration and the two human rights convention ICCPR and ICESCR, require government to prohibit discrimination on any kind in the exercise of protected rights, such as on ground of religion, caste and race. Right of women to equality with men has received attention since the advent of United Nations. ⁴In its first paragraph the UN Charter reaffirms 'faith in a number of fundamental principles, including equal right of men and women'. Article 3 of both the convention obliges state parties 'to undertake and ensure equal rights of men and women to the enjoyment of all the rights set forth in each covenant.'

⁴ Jyotsna Tiwari, Child Abuse and Human Rights, 87(4th ed., 2009).

RIGHT TO EDUCATION AND DEVELOPMENT: Right to education is articulated in article 26 of UNDHR. It declares that everyone has a right to education. It shall be free at least at elementary and fundamental levels. Also, it shall be directed to the fullest development of the human personality and to strengthen of respect for human rights. This fundamental right to free and compulsory education is retrieved in art.13 and 14 of ICESCR. Art. 10 of women's convention is elaborate and spells out the responsibilities of state parties to eliminate discrimination against women in order to ensure them equal rights with men in the field of education. It takes cognizance of the fact that there is a high rate of female student dropout from school and requires state parties to reduce it. Art. 28 of the children's convention requires state parties to recognize the right of the child of education on the basis of equal opportunity and requires to make 'primary education compulsory and available for free for all'. State parties are bound to impart education in such a way that it would contribute to holistic development of child's personality and talent to their fullest potential. The right to education is the foremost right for adolescents, particularly for girls, as they are not admitted to schools or are forced to drop out due to reasons based on gender bias. When schooling is neglected or made not available, right to education and to all other opportunities that education opens are violated.

VII. LEGISLATIVE CHECKS: PUNITIVE LEGISLATIONS

THE PROHIBITION OF CHILD MARRIAGES ACT 2006

India's first law against early marriages, the Sharda act was enacted in 1929 setting a minimum age for marriage of both boys and girls. Then law strengthened to multiple revisions with the latest version enacted in 2006. The Prohibition of Child Marriages Act 2006, prohibits a marriage where either or both individuals are minors. The law sets legal age for marriage as 18 years for girls and 21 years for boys. It enforces punitive measures for all those who performs, permit or promote child marriages. These measures include rigorous imprisonment for up to two years or a fine up to 100,000 rupees.⁵ It also provides for nullification of child marriage, if either of the married individuals files the petition requesting the same. It gives the separated female the right of maintenance and residence from her husband in laws, until she is remarried. Any children born from a child marriage are deemed legitimate. In case of separation, either party can claim custody, which will be allocated as considered best for the children. Finally, the law provides for recruitment of a special officer. The child marriage prohibition officer (CMPO), to undertake enforcement of the law.

⁵ Julie Bedward, Child Support in Act, 65(2nd ed., 2006).

While the current act is much stronger than its predecessors, not many cases have been filed under this act so far. Limited awareness and weak implementation undermine the potential effectiveness of law. Stakeholders in Bihar and Rajasthan noted that though most community members were aware of the existence of the law, knowledge of penalties and punishment was minimal. This only leads to underage marriages being conducted, but covertly. Very few people interviewed during the study were aware of who could be convicted under the law and the associated penalties. Despite the fact that the current provisions of the act are stronger, its weak enforcement shows how ineffective it is in communities where the practice needs to be most discouraged.⁶

Higher official only tends to focus on the issues for which targets needs to be achieved. Another critical impediment is that in the absence of any sensitization, the various development and the heat. The workers share the same views and attitude of the communities to which they belong and do not have much sympathy for enforcing this law. According to government official in Patna, ground level implementers, such as *agamwadi* workers lack conviction in the law and responsibility it entrusts in them. Often these workers are scared to challenge social norms within their own communities and support from agencies like the police is almost negligible. High level of corruption allow underage marriages to take place in the presence of police officials, which invalidates the purpose of such law. Clearly, all agencies have not been sensitized to the serious consequences of violation of this law, which, in turn undermines its enforcements.

PREVENTION OF CHILDREN FROM SEXUAL OFFENCES 2012

Prevention of children from sexual offences is a legislation that provides for stringent provision that are not ambiguous and to address the heinous crime such as sexual abuses and sexual offences against children. It was introduced by the ministry of women and child development in 2012 to prevent or address such issues. It defines child as anybody who is less than eighteen year of age and is *prima facie* intended to regards the best interests and well-being of the child importance at every stage. It tends to ensure the healthy physical, emotional, intellectual and social development of the child.

The act defines different forms of sexual abuse which include penetrative and non-penetrative assault and also sexual harassment and pornography, and deems a sexual assault to be “aggravated” under any circumstances, when the child who is abused is mentally ill or when the abuse is committed by a person in a position of trust or authority vis-à-vis the child, like a close family member, police officer, teacher, or doctor. The act envisages for the establishment of special courts for the purpose trial of offences under the

⁶ J.D.Patel, Violence Against Children, , 54(4thed., 2007).

act, while keeping the best interest of the child as of paramount importance at every stage of the judicial process. The act also incorporates child friendly procedures such as the reporting, recording of evidence, investigation and trial of offences. However, it also recognizes that the intent to commit an offence, even when unsuccessful for whatever reason, needs to be penalized. Even just the attempt to commit an offence under the act has been made liable for punishment. The act proposes the punishment for abetment of the offence, which is the same as for the commission of the offence.⁷ Under the said act it mandatory to report commission of an offence and also the recording of complaint and failure to do so would make a person liable for punishment which may extend to six month imprisonment and fine. Thus to prevent misuse of the law, prohibitory punishment has been provided for making false complaint or proving false information with malicious intent. If false complaint is made against a child, punishment is higher for such as one year (section 22).⁸ To maintain the dignity of the child media has been barred from disclosing the identity of the child without the permission of the special court. And the punishment prescribed for breaching this provision by media may be from six months to one year (section 23).

Act also provides for speedy trials, like an evidence of the child to be recorded within a period of 30 days. Also, it is directed to the special court to complete the trial within a period of one year, as far as possible (section 35).⁹ The act imposes duties on the central and state governments to spread awareness through media by various sources including the television, radio and the print media at regular intervals to make the general public, children as well as their parents and guardians aware of the provisions and whereabouts of this act. The POCSO act 2012 is only applicable to child survivors and adult offenders. In such cases when two children have sexual relations with each other, or when a child perpetrates a sexual offence on an adult, the juvenile justice (care and protection of children) act, 2000, will apply.

THE JUVENILE JUSTICE (CARE AND PROTECTION) ACT 2000

The juvenile justice (care and protection) act 2000 deals with “children in need of care and protection where the trafficked children are coming under it. It has elaborate provisions for care, protection, treatment, education, vocational training, development of children rescued from those procuring, inducing and person for the sake of prostitution is carried on. Besides the police, any person authorized by government may bring the child before the juvenile welfare committee for placement with a fit person or a fir institution, or failing which, in a juvenile home. Voluntary institution also functions as protective homes under the

⁷ Sunanda Goenka, *Immoral Trafficking of Women and Children*, 76(2nd ed., 2011).

⁸ S. 23, *Prevention Of Children From Sexual Offences*, 2012

⁹ S. 35, *Prevention Of Children From Sexual Offences*, 2012

respective laws. These institutions mostly function on the basis of certain minimum standards of care and reformatory treatment.

The focus of the act is to provide proper care, protection and treatment of the child's development needs and adopts a child friendly attitude. The adjudication and disposition of the matters is in the best interest of the children and for their ultimate rehabilitation through various institutions established under this act. S.29 empowers the state government to constitute committees for such areas as they may deem fit and it also outlines the power of committees and the procedure to be followed. Under s.39, the state government's primary objective of the children's home and shelter is the restoration and protection of childhood. The law is in the form of a code and incorporates into itself not only punitive and rehabilitative provisions, but also spells out the detailed provisions to be followed.

TRAFFICKING OF PERSONS (PREVENTION, PROTECTION AND REHABILITATION) BILL, 2018

The bill intends to identify various forms of trafficking such as trafficking for bonded labor and begging. Under the various aggravated forms of trafficking, also talks about offences such as intimidation, inducement, promise of payment of money, deception and coercion. The bill also mentions trafficking after imposing the influence of any drug or alcohol for the purpose of marriage or just mere under the pretext of marriage. It also provides for punishment for promoting or facilitating trafficking of persons which range between rigorous imprisonment of minimum 10 years to life and imposition of fine for not less than Rs. 1 lakh. Its objective is to protect the confidentiality of the victims. It also provides for speedy justice by a time bound trial and repatriation of the victims that shall take place within the period of one year from taking into cognizance. It also protects the rescued victims and thus makes provisions for their rehabilitation too. The victims are also entitled to interim relief immediately within 30 days for addressing their physical, mental trauma etc. And a relief is further appropriated within 60 days from the date of filing of any such charge sheet. It also mandates creation of the rehabilitation fund for the purpose of any such physical, psychological and social well-being of the victim including their education, skill development, health care/psychological support, legal aid, safe accommodation and any other such kind of aid. The bill has designated courts in each district for the speedy trial of the cases. It also provides for various institutional mechanisms at different levels such as district, state and central level for the prevention, protection, investigation and rehabilitation work related to trafficking.

Human trafficking by far is considered the third largest organized crime, globally and the number is multiplying itself every year. Trafficking of child and women is a matter of serious concern prevalent

currently in India. According to a report published by the us department of state, India tends to be the source, destination and transit country for human trafficking who are then made to engage in activities such as forced labor and sex trafficking. Various factors that aid to such trafficking include poverty, uneven employment, gender discrimination, and harmful traditional and cultural practices. Proper policy lack of implementation to end this grave condition, are some of the causes of human trafficking in India. The recent anti-human trafficking amendment bill 2018 is a welcoming step to combat trafficking as it tends to address the problem with a point of view of prevention, rescue and rehabilitation of the victim. With this law enforced, India will be a pioneer in the south Asian region which has a comprehensive legal framework for preventing trafficking, rescuing and rehabilitating the victims and thereby also curtail trafficking, which is one of the most pervasive yet invisible crimes. It is to be noted that till now country has no law that deals with this crime which is inhumane in nature and violates the fundamental human rights in such a comprehensive manner. The immoral traffic prevention act also narrowly deals with trafficking done for commercial sexual exploitation. But this bill seeks to expand the definition of trafficking to make it more effective. The premise for such a legislation can be traced in the article 23 of Indian constitution which intends to prohibits traffic in human beings, beggar and other different forms of forced labor.

The bill has been considered as one of the 'best piece of laws on trafficking in the world,' by the union women and child development minister Maneka Gandhi. Some of its advantages includes, addressing the loopholes in the current anti-trafficking laws as the current laws that do not address the issue of running of illegal brothels across main cities in India. It will empower and shall be the ammunition to the law enforcement agencies to take action against violators. It will not only address one pressing issue of sex trade that has not been covered under the immoral traffic prevention but also provide for stringent punishment of 7 to 10 years for selling of a person

VIII. CONCLUSION

Child marriage is a social menace that cannot be cured without the buttress of the society. It is therefore, of an extreme important for the government to publicize the contents of the present legislations and policies to create awareness about the ill effects of such marriages. It can be done through different media, campaigns, dance, and street plays or in any other appropriate form which shall be informative in nature.¹⁰ Education shall be imparted amongst the children by the teachers in the school itself and exposure shall be given to the harmful consequences of child marriage and thus encouraging them to marry at a later stage/. Various commissions set up both at state and central level which tend to look into such matters and are

¹⁰ A.K Shiva Kumar, India's Children Essay On Social Policy, 98(4thed, 2015).

responsible to report them as soon they possess the knowledge of any such act. The acts which have been mentioned above should all be amended in every such way that it does not transgress the essence of the law embedded in the society and at the same time it does not promote child marriage impliedly. Also, child marriages must be rendered void in order to protect the interest of the child. Thus to completely eradicate such practice from India, it is important to fabricate the child rights, starting with the core issue such as that of a child marriage. Children, owing to their developing mind are immensely vulnerable to the environment they are in. It is of utmost importance for the family and society that such environment is made suitable for their growth and development. No nation can flourish in itself if children of such nation suffer through any kind of exploitation. Therefore, India with the help of various international, national and state mechanisms continues to strive to secure the rights of the children as has been discussed above.

In view of new challenges presented by globalization there is a need for reframing policies for access to quality employment and promote social awareness for gender issues and women right for realization of goals of women's equality. New laws shall be enacted to empower women and get rid of outdated customary practices. 'the continuing primary to secondary education's an effective strategy for avoiding early marriages. Incentives should be given t parents to to encourage them to send their daughters, which've dropped out of school to be trained through non formal education. The emphasis should be on promoting gender equality to empower women otherwise none of the millennium development goals will be achieved. The centrality of a women's human rights approach to development must be emphasized. Special efforts have to be taken to streamline justice delivery mechanism to ensure that girls particularly form economical and socially disadvantaged families are not exploited.