

The Child Marriage: A Curse in India

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"Society nowadays does not follow the texts recommending child - marriage nor will do so in future. Even now don't you see?" - Swami Vivekananda

Introduction

A marriage is a reason for celebrations in India. India has seen massive development in various sectors over the past few years, but still, some social evils continue to come in the way of holistic development of the country. The issue of child marriage has always been an alarming one.

But, the sad news is that the evil of child marriage is still present in India in a number of villages and districts. Even though the government has taken strict actions against it and child marriage has been declared as a big crime, but still it is prevalent till today.²

The child marriage in India remains rooted in a complex of religious traditions, social practices, economic factors and deeply rooted prejudices. It is an incontrovertible fact that a large number of child marriages are performed in violation of the existing provisions of the law, particularly on 'Akha Teej' or 'Akshaya Tritiya'. It is true that there is a large body of social opinion and customary practice that sanctions early marriage. It is a religious tradition in many places in India and therefore difficult to change.³

Child marriages have a history in India. It existed from times of the Delhi Sultanate when the monarchy system was prevalent. Indians also used child marriages as a weapon to protect girls from rapes and abduction by foreign rulers. Another social reason to initiate child marriages was that the elders wanted to see the faces of their grandchildren. Main Alas! We are now free from the reign of the foreign rulers but could not make our nation free from the trap of this curse. The sweet little minds, who do not even know the names of their partners and have no idea about all the responsibilities; are made to remember chores.⁴

² <http://www.preservearticles.com/2013020233295/essay-on-child-marriage-in-india-700-words.html>

³ Piyush Jain, Short Essay on Child Marriage; <http://www.shareyouressays.com/essays/short-essay-on-child-marriage/85776>

⁴ Child marriage is a bane in India: A glance at several shocking facts; India today.in, New Delhi(23 July 2018); <https://www.indiatoday.in/education-today/gk-current-affairs/story/child-marriage-india-1293581-2018-07-23>

Child marriage is usually said to be a social phenomena which is practiced in India for centuries, when children married off before their physical and mental maturity. Child marriage as a concept can be defined as the formal or an informal union between two individuals before attaining the legal age of marriage.

First form is where a young girl (below the age of fifteen) is married to an adult man and second form is when the parents of the two children (the girl and boy) arrange a future marriage i.e. they (the boy and girl) do not meet each other until they reach the marriageable age, when their wedding ceremony is performed. Child marriage means that two children are forced to marry each other with the consent of the two families. The children are forced into the institution of marriage without knowing the real meaning of marriage and its significance.⁵

Indian law specifies the legal age for marriage i.e. 21 for males and 18 for females as per the Prohibition of Child Marriage Act (PCMA) of 2006, but the law is often violated in the rural society and backward areas of the country. The PCMA specifies punishments for those encourage child marriages and Child Marriage Prohibition Officers work to address this crime.⁶

But, this legal age is often violated. However, India needs the support from the society in order to change perceptions and change the lives of the minor girls hailing from backward areas of the country.

Facts and figures about child marriages in India

Approximately, India is having over 24 million child brides. According to the National Family Health Survey, 40% of the world's 60 million child marriages take place only in India. According to the report of International Center for Research on Women, India has the 14th highest rate of child marriage in the world.⁷ Countries with the highest observed rates of child marriages below the age of 18 include Niger, Chad, Mali, Bangladesh, Guinea etc -- with a rate above 60 per cent.

Marriage systems and practices vary by region, caste and tribe. Rates of child marriage are higher in the North-West and lower in the South-East of the country. The states with the highest rates of child marriage (50% and above) are Bihar, Rajasthan, Jharkhand, Uttar Pradesh, West Bengal, Madhya Pradesh, Andhra Pradesh and Karnataka. But even in low prevalence states there may be pockets of with high rates of child marriage. According to a recent district-level household and facility survey (DLHS), conducted for the Health

⁵ Essay on child marriage; <https://www.iaspaper.net/child-marriage-essay/>

⁶ Child Marriage in India: Facts & Figures; <https://www.savethechildren.in/resource-centre/articles/child-marriage-in-india-facts-figures>

⁷ Child marriage is a bane in India: A glance at several shocking facts; India today.in, New Delhi(23 July 2018);<https://www.indiatoday.in/education-today/gk-current-affairs/story/child-marriage-india-1293581-2018-07-23>

Ministry, the worst state for child marriage is Bihar, where nearly 70% of women in their early twenties reported having been married by the age of 18; the best is Himachal Pradesh at 9%.

According to DLHS data, around 48% of married women in the 20-24 year age group got married before 18 in rural areas, compared with 29% in urban areas. Over the past fifteen years, child marriages are reduced by just 11 percent – less than one percent per year. The Annual Healthy Survey carried out in 2011, shows a more rapid decline in nine surveyed states.⁸

According to UNICEF's 'State of the World's Children – 2009' Report, 47% of India's women were married before the legal age of 18, with 56% child marriages occurring in rural areas. The report also revealed another shocking fact: 40% of the world's child marriages occur in India.⁹

According to UNICEF's recent reports: There is a decline in the practice of child marriage around the world. During the past decade, the proportion of young women who were married as children decreased by 15 per cent -- from 1 in 4 (25 per cent) to approximately 1 in 5 (21 per cent). Still, approximately 650 million girls and women alive today were married before their 18th birthday. While the global reduction in child marriage is to be celebrated, no region is on track to meet the Sustainable Development Goal target of eliminating this harmful practice by 2030.¹⁰

Reasons for early / child marriages

A popular Indian saying is: "Bringing up a daughter is like watering a plant in another's courtyard."

Main reasons for child marriages are gender inequality, Social customs and traditions, perceived low status of girls and considering them as financial burden, poverty, lack of education and control over sexuality.

Effects of child marriage

Once they get married, the girl child is forced to leave her home and go to her in-laws place, and there, she is forced to take up roles for which she isn't mentally prepared for. Children at this age are so immature to take such big decisions in life. Responsibilities of mother and a daughter-in-law are too heavy responsibilities for a minor girl child. The childhood is lost and the freedom to play and learn is also taken from them in this process. It is not doubtful that a child marriage is a violation of human rights. The dire consequences that follow child marriage, particularly for girls are – bonded labour, enslavement, commercial sexual exploitation

⁸ Child Marriage; <http://vikaspedia.in/social-welfare/social-awareness/child-marriage>

⁹ Darshan Kadu; Speech on the Child Marriage in India; <http://www.shareyouressays.com/knowledge/speech-on-the-child-marriage-in-india/117270>

¹⁰ Child marriage is a bane in India: A glance at several shocking facts; India today.in, New Delhi(23 July 2018);<https://www.indiatoday.in/education-today/gk-current-affairs/story/child-marriage-india-1293581-2018-07-23>

and violence which leave psychological and emotional scars for life. Girls who get married at an early age are often more susceptible to the health risks as premature pregnancy and sexually transmitted infections like HIV, AIDS and obstetric fistula. Due to Early marriage girls always deprive of their education or meaningful work, which contributes to persistent poverty. When girls get married at an early age when they are not physically mature, sexual activity starts soon after marriage, causes pregnancy and childbirth at an early age can lead to maternal as well as infant mortality.

The babies born to girls under 16 are more likely to die during their first year of life. UNICEF describes child marriage as a “gross violation of all categories of child rights.” It is a social evil that has degraded the status of girl child in our society.¹¹

Impact upon the life and future of the girl child:-

1. Related to dowry

Dowry was prohibited (Dowry Prohibition Act, 1961) and is still commonly practiced in India in both kinds either cash or otherwise. Parents have to their daughters married early because dowry amounts increase with a girl's age and education

2. Distribution

Girls are more affected by child marriage rather than boys. While Child marriage is seen across the breadth of the country, but it is much higher in rural areas than in urban areas. Girls from poorer homes, scheduled castes and tribes, and with lower education are the causes to get married at a younger age.

3. Due to poverty

More than half girls from poorer families are forced into child marriage. Marriage is seen as a tool to secure their future. It also reduces the expenses of family, because they may consider their son's education and career as a viable investment.

4. National spread

Child marriage is generally higher in central and western India rather than the eastern and southern India. In states like Bihar and Rajasthan, about 60% of girls forced to marry as children. Jharkhand, Uttar Pradesh, West Bengal, Madhya Pradesh, Andhra Pradesh, Karnataka, Chhattisgarh and Tripura also have a high cases of child marriage.

¹¹ Piyush Jain; Short Essay on Child Marriage; <http://www.shareyouressays.com/essays/short-essay-on-child-marriage/85776>

5. India: global leader in child marriage

India is called as a home to the highest number of child brides in the world, with over 47% of girls in India married before attaining marriageable age. States like Bihar and Rajasthan, 69% and 65% respectively, of young girls are forced into marriage.

6. Matter of 'dishonour'

Social norms are also having great influence which leads to preference for child marriage. Early marriages may avoid chances of 'dishonour', which is usually called as any 'immoral' female sexual conduct, in the India's inherent patriarchal norms.

7. Child marriage's impact on education

If the Girls are likely to be married off at a younger age than boys then, there is more risk of losing any chance at education. Girl child education is considered as frivolous because they are raised as future homemakers. This could create a vicious cycle for younger girls of next generation.

8. More than 12 million children married under the age of 10
According to 2016 report, India had nearly 12 million Indian children married before their age would be 10 among them, ten million 5.4 million (44%) were illiterate, and 80% of them are female.

9. Pregnancy and early death

Due to lack of education, girl brides tend to become pregnant, and become mother at early age, because they are not having choice and awareness of the health effects of teenage maternity. A pregnant girl, who is below 15 years, is five times more likely to die during childbirth.

10. Related to STDs

Young married girls are infected to HIV/AIDS and other sexually transmitted diseases, because of lack of awareness of sexual health. Moreover, almost 13 % of girls between 15-19 years of age are victims of sexual violence by their husbands.¹²

¹² https://www.savethechildren.in/resource-centre/articles/10-shocking-facts-and-figures-about-child-marriage-in-india?gclid=EA1aIQobChMIw8jAn-D53QIVzDUrCh2qdgNWEAAYASAAEgJQI_D_BwE

Law to prevent child marriages in India:

Our Constitution provides provisions for prohibition of child marriage through various laws and enactments. Efforts were made, by the Brahmo Samaj led by Raja Ram Mohan Roy and the Arya Samaj led by Swami Dayananda Saraswati to bring about social reform against the evil of child- marriage. However, this was not enough, and a best solution was thought to be a piece of prohibitory legislation.

Accordingly, the first law “The Child Marriage Restraint Act” of 1929 was passed to restrain the solemnization of child marriages. It came into force from the 1st day of April, 1930. It was extended to the whole of India except State of Jammu and Kashmir. It applies also to all citizens of India within and beyond India. The object of this Act is to eliminate the special evil which is dangerous to the life and health of a female child, who are not able to withstand with the stress and strains of married life and to avoid early deaths of minor girls.¹³

This act provided the ages of an adult male (the age of boy must be twenty-one or above twenty-one years) and female (the age of girl must be eighteen or above eighteen years) at the time of marriage.

"Child" means a person who, if a male, is under twenty one years of age, and if a female, is under eighteen years of age; "child marriage" means a marriage to which either the contracting parties is a not adult; "contracting party" to a marriage means either of the parties whose marriage is or is about to be thereby solemnised; "minor" means a person of either sex who is under eighteen years of age.

Moreover, such marriages are neither declared to be void, invalid, and voidable by the act nor the penal provisions apply to a child. Section 3 of Act the provides that, whoever, being a male above eighteen years of age and below twenty one, contracts a child marriage shall be punished with simple imprisonment, which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both.

Whoever, being male above twenty one years of age contracts a child marriage shall be punished with simple imprisonment which may extend to three months and shall also be liable to fine.

In the Indian society, a male adult can be imputed greater sense of foresee ability of the consequences of child marriage and therefore punishment prescribed by the law is not effective, especially in this era of social justice.

¹³ Darshan Kadu; Speech on the Child Marriage in India; <http://www.shareyouressays.com/knowledge/speech-on-the-child-marriage-in-india/117270>

Section 5 provides that, whoever performs conducts or directs any child marriage shall be punished with simple imprisonment which may extend to three months and shall also be liable to fine, unless he proves that he had reasons to believe that the marriage was not a child marriage.

Consummation of "Gauna" is not said to be a part of marriage ceremony. The marriage is complete before the consummation of gauna, therefore a person may be convicted under this Act, although consummation has not taken place.

Section 6 provides that, where a minor contracts a child marriage any person who is having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, shall be punished with simple imprisonment which may extend to three months and shall also be liable to fine. It is provided that no woman shall be punishable with imprisonment. It is presumed under this section, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnised. Minors are not capable of entering into any valid contract and under the Hindu law, marriage is not said to be a contract. So the words "where a minor contracts a child marriage" used in section ought not to be interpreted literally as per its dictionary meaning but must be understood as meaning "where a child marriage takes place" or "where a minor enters into a child marriage".

The child bride or the child bridegrooms are mere passive actors in child marriage rather the parents, guardians or the custodians of such children are active participants. Active culpability of these persons has not been minded by this act and therefore, the Act has not yielded the desired results.

The imposition of fine only is not effective which is required in most of these cases. It is also noteworthy that, if the provisions of the Act are violated, it does not make the marriage invalid, void or voidable as the validity of the marriage is a subject which is not in the scope of the Act. A marriage contracted under the Hindu Law by a minor male is valid even though the marriage was not performed by the natural or lawful guardian on his behalf. In Hindu society, Marriage is a sacrament and not a contract. The minority of an individual can put limitation on a minor to enter in contractual obligations, but it cannot be a restriction for performing a necessary "Sanskara" called marriage. A minor's marriage, which is performed without the consent of the guardian become valid on the application of the doctrine of factum valet.

Section 7 provides that for the purpose of investigation, the offences under this act are treated as cognizable offence defined under the Code of Criminal Procedure, 1973. Metropolitan Magistrate or a Judicial Magistrate of the First Class can take cognizance of, or try any offence under this Act.

Limitation - No Court is empowered to take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed. This also affects the efficacy of the law.

Injunction – according to Section 12, the Magistrate can issue injunction for prohibiting marriage in contravention of this Act. An injunction can be issued by magistrate for prohibiting such marriage against any of the persons mentioned in Section 3, 4, 5 and 6 of this Act.

Although, the Act was amended in 1949 and 1978, but still its provisions were not deterrent in nature. There were many demands to make the law more effective and the punishments there under should be more stringent so that it would eradicate – or at least lessen – the practice of child marriages in the country.

Finally in 2006, it was thought to pass a fresh piece of legislation and the Prohibition of Child Marriage Act was passed. It repeals the earlier Act of 1929, and applies to the whole of India, except the State of Jammu and Kashmir. This Act also applies to all citizens of India who are outside India, except the Renoncants of Pondicherry, to whom the Act does not apply.¹⁴

This law allows anyone who was a child at the time of getting married to legally undo the child marriage. It also provides for maintenance for the girl in a child marriage. According to new law, children born out of child marriages would be legitimate, and also makes provisions for their custody and maintenance.

It would be a crime under this law, if an adult male marry with a girl child; or, any one perform or help for performing a child marriage in any kind; or, if as a parent or guardian allow, encourage or fail to stop a child marriage; and if as a parent or guardian attend or take part in a child marriage. Application can be filed to District Court to stop the child marriage then an order could be passed by the judge for directing the people who are involved not take part in the child marriage. The Child Marriage Prohibition Officer is also appointed for help with annulling a child marriage.

Jayna Kothari, executive director, Centre for Law & Policy Research, who, as the counsel for Bengaluru based Child Rights Trust argued for making child marriage void ab initio in Karnataka said that the proposed amendment is long overdue.

“Child marriage is rampant here because the law is completely toothless. It says that child marriage can be nullified by the minor contracting party but it’s impractical to expect a minor to come forward and complain. The minor’s family also hardly comes forward to get the marriage annulled. The marriage becomes a kind of fait accompli (done deal),” Kothari explained.¹⁵

¹⁴ Child Marriage; <http://vikaspedia.in/social-welfare/social-awareness/child-marriage>

¹⁵ Moushumi Das Gupta; From ‘voidable’, child marriage to turn illegal; <https://www.hindustantimes.com/india-news/from-voidable-child-marriage-to-turn-illegal/story-UrZ5S1hOvE9c5fq2O7CnZL.html>

How to increase social awareness about child marriage

All the children must be aware of their human rights and they must be taught to refuse and speak against it, if such an incident is happening or is about to happen. A proactive role would also be played by media for generating awareness towards this heinous crime. It is also essential for other institutions like non-government organizations to make certain moves in addition to the measures taken by the government like- They can approach to such villages and educate the parents about the ill- effects of evil named child marriage; Short films, live plays can be shown which could show the pathetic future of the kids who are forced for such marriage; schools should also be set up in such villages so that sooner or later, people get their children admitted in such schools; information should be given to them about the punishment provided by the law in an exaggerated way so that they get immensely scared even before thinking about such a crime. Though it is a difficult task to make them understand but who knows that at what point of time which activity or step would change their minds. It is also suggested on the part of the government to take strict actions as possible as to abolish this institution completely. Though path is tough but victory can only be achieved if strict actions are taken. India is a developing nation and it is impossible to become developed nation with such brides and grooms who have not yet attained adulthood. Therefore, this hassle should abolish completely from its roots for the betterment of the whole nation. Yes, it is true that the percentage of child marriage has reduced over the years but this pace is slow. Let's join hands to eradicate this rampant to make our India a better world to live in.¹⁶

¹⁶Essay on child marriage; <http://www.preservearticles.com/2013020233295/essay-on-child-marriage-in-india-700-words.html>