



CHALLENGES TO PROHIBITION OF CHILD MARRIAGE (AMENDMENT) BILL, 2021

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ABSTRACT :The Prohibition of Child Marriage Act 2006 is the current legislation which deals with prohibition of child marriage in India. Recently a bill was proposed to amend this act and to increase the legal marriageable age of females to 21 years from 18 years in the amendment. Section 14A is also inserted in the amendment to override all the existing laws that will contradict with the amendment. But there are many challenges which would be faced by the government for the enactment of this amendment. Child marriage is mostly the result of gender inequality which affects the girls disproportionately. Gender inequality is a major challenge for the enactment of the amendment of 2021. Multiple laws for marriage creates a confusion and difficulty in implementing a uniform child marriage prohibition law in India. India has the world's highest population of people adding to the terrible loop of illiteracy in the country. Illiteracy is major challenge as illiterate people are unable to understand outcomes of early marriage. It is noted that the area which have more poverty rate has more cases of child marriage. This is because poor people do not have enough resources to educate their children and provide them food Despite the Prohibition of Child Marriage Act's theoretical promise of support for girls who annul their child marriages; women and girls encounter numerous practical obstacles in receiving these payments. This creates a hindrance in passing of the further amendment or any law related to the prohibition of child marriage.

Index Terms :Child Marriage, Prohibition of Child Marriage Act, Gender Inequality, Poverty, Illiteracy

1. INTRODUCTION

The Prohibition of Child Marriage (Amendment) Bill was proposed by Smt. Smriti Irani, who is minister of women and child development, on 21 December 2020 in the Lok Sabha. This bill proposes the amendment of Prohibition of Child Marriage Act 2006. It seeks to Increase the women's legal age of marriage to 21 years which is previously 18years in the Prohibition of Child Marriage Act 2006.

The following amendments are proposed in the bill:

- i. Despite any legislation or customary practise to the contrary, child now is any male or female who has not completed 21 years of age under the Child Marriage Act (Section2).
- ii. The child marriage can be annulled by the child by filing petition two years after attaining majority under section 3(3), which was 5 years in Prohibition Of Child Marriage Act 2006
- iii. Section 14A has been inserted to override existing customs or laws contradicting the amendments
- iv. Also all the personal marriage laws like the Hindu Minority and Guardianship Act, The Hindu Marriage Act, the Foreign Marriage Act, the Special Marriage Act, the Muslim Personal Law (Shariat) Application Act and , the Indian Christian Marriage Act to be amended according to the provisions in the amendment

- v. The legislation is to be implemented 2 years after the consent of the President

2. CHALLENGES TO THE AMENDMENT

Enacting the Prohibition of the Child Marriage (Amendment) Bill is not an easy task. There are numerous challenges which would be faced by the government to bring this amendment to the practice. The challenges to the enactment of the amendment are discussed below:

2.1 Gender Inequality:

In everyday reality, the terms "gender" and "sex" are typically used interchangeably, however in social science, they're often distinguished. The term "sex" refers to disparities among women and men primarily based totally on feminine or masculine characteristics. Gender refers back to the cultural factors of female and male roles. In different words, the anticipated actions, personality, and other social characteristics of ladies and men create the foundation of feminine and masculine characters. Sensuality and the varied reproductive roles of males and females are more likely to be regarded as "natural" explanations for societal gender inequalities.

Child marriage is the result of established gender inequality which affect the girls disproportionately. Child marriage is six times more in girls than the boys over the world. Girls' childhoods are taken away and their health and lives are jeopardised, when they are married in their childhood. Girls who are married before they are 18years old are much more likely to be victims of domestic violence and school drop outs. They have worse health and economic consequences than their friends who are not married. It put a country's capacity to offer decent education and health services to individuals and children under more hardship. It is a fact that India is a male dominated society. Though there are various laws for equality of the female but males are considered superior to females in the Indian society. So it is always considered that female partner for marriage should always be of less age than that of the male and considered as responsibility of the male partner. It is also considered that if female partner is younger than the male partner than there are very good chances of a long term marriage and less conflicts. Also if a male is older than female than the male has an upper hand over the female and thus he can have dominance over her , on the other hand if female is older or of same age of the male than there are more chances of conflict in the marriage and also male loses his dominance over the female. Thus gender inequality is a major challenge for the enactment of the amendment of 2021.

2.2 Personal Laws:

India is a secular country. Thus there are many religions in India and each religion has its different concept of marriage. According to Hindu religion marriage is regarded as sacramental, mutual cooperation, self sacrifice and a sacred responsibility. On the other hand marriage is regarded as civil contract under the Muslim law .Hindu Marriage Act, 1955 governs the marriage of Hindus in India .Hindu Marriage Act, 1955 also governs the marriages of person belonging to Sikh, Jain and Buddhist religion. The law that governs marriage of a Christian couple is Indian Christian Marriage Act, 1872. Parsi Marriage and Divorce Act, 1936 governs marriages of couple from Parsi religion. On the other hand the law for governing Muslim marriage is uncodified in India. There is also difference between the ages of marriage under different laws of different religions. So basically in India there are separate marriage laws and acts for different castes and religions in India .Multiple laws for marriage creates a confusion and difficulty in implementing a uniform child marriage prohibition law in India .Thus personal marriage laws creates a major challenge for government for the implementation of Prohibition of Child Marriage (Amendment) Bill,2021.

2.3 Cultural Traditions

In majority of child marriages, a cultural practise, or what is thought being a cultural practise, is to blame for the continuous incidence of child marriages. This is not to say that cultural factors do not influence the attitude that drives the incidence of child marriages in the absence of laws or riches. Cultural beliefs and social behaviours are among the variables that promote the practise to thrive in these instances. Marriage is deeply rooted in custom and culture in India. Dominant moral and honour concepts are major elements in supporting child marriage.

Many such households place a high value on "family honour" and urgency to "defend it." The virginity of female is frequently valued - it is thought in many such communities that if a female is not a virgin until she gets married, it brings disgrace and shame upon the family. There is also the reality that young females are encouraged to marry older men due to cultural customs that govern the lifetime of the older spouse, often due to the assumption that an older husband would be capable of acting as a guardian against immoral and inappropriate behaviour. Unmarried women are frequently viewed as a liability to family honour and integrity. This motivates families to do whatever they can to protect themselves from shame by marrying

their daughters as near to adolescence as possible. It is a habit that simply serves to increase a woman's reliance on males for her entire life. There are also those parts of society that are coloured by culturally motivated notion that more the children a woman carries, the more prosperous the family. This forces them to compel their daughters into marrying young so that their reproductive potential is not limited.

Thus, it can be seen that cultural traditions play a very crucial role in Indian community. Traditions has an very deep impact on the minds of people .It drives people towards blind beliefs and faith ,ultimately , creating a challenge for the implementation the amendment of the Prohibition of Child Marriage act in India.

2.4 Illiteracy:

Illiteracy in India is an outcome of the country's tangled web arising due to economic and social inequalities. Illiteracy in country is driven by socioeconomic inequities, gender based discrimination, caste racialization, and technical hurdles. India does have world's largest population, but it only adds to the country's terrible loop of illiteracy... Literacy is defined as having the capacity to write and read by the child aged seven years. According to the 2011 Census of India, average literacy rate is 74.04 percent. India's highest literacy rate i.e. 93.91 percent is of Kerala, while the lowest literacy rate i.e. 63.82 percent is of Bihar. By the data from the National Statistical Office (NSO), average literacy rate in India in year 2021 was 77.70 percent. In 2021, female literacy was 70.30 percent while male literacy was 84.70 percent in India. There only a slight increase in literacy rate in last years in our country. According to a 2017 report issued by National Commission for the Protection of Child Rights, 39.4 percent of 15-18 year old girls in India drop out of school and college. Apart from poor girl literacy rates and very low female secondary school enrolment rates, women's participation rate in labour force in the country is also extremely low. According to statistics from the National Sample Survey Organisation (NSSO Periodic)'s Labour Force Survey, Indian female labour force participation rate in 2017-2018 was 23.3 percent. Only thirteen countries in the world have worse female labour force engagement rates than India. Thus, illiteracy is there in India which not only prevents enactment of this amendment only but also the enactment of the various other legislations passed by the parliament in India. This is due to the following reasons:

- i. Illiterate people failed to understand the consequences of early marriage of the child
- ii. Illiterate people fail to understand the impact on the mental health of the child due to early marriage.
- iii. Illiterate people fail to understand the importance of the education in the life of the child and considers girl as only a child bearing machines to the husband
- iv. Illiterate people are not fully aware of ,most of the legislations for the protection of the children so they unknowingly indulges their children in child labour and also do early marriage of their girl child in order to reduce her education expense and use that money for dowry , which is illegal in India as per the law.

2.5 Poverty

In India, 66.67 percent of the people are living below the poverty line, with 68.8% of the people are living below \$2 per day. 33.33 percent of the people in India lives on below \$1.25 per day, this fits them into category of exceptionally poor. Thus the result is that India is one of the world's poorest countries, where weakest parts of Indian society, who are women and children, bear the burden of the repercussions. With 120 crores of population, India becoming the world's second largest nation in terms of population with China at number one. India's GDP is \$1,644 billion US dollars, making it world's seventh largest country and the incredibly multicultural country which has experienced up to 10 percent growth rate for several years and is one of the world's strongest economies. But, the India's population who has gained any profit from this tremendous economic growth is very small in proportion, while most of Indian population is living in severe poverty. It is noted that the area which have more poverty rate has more cases of child marriage then they are having low poverty rate this is because poor people do not have enough resources to educate their children and provide them food. They prefer to educate boy over girl child with their resources and as a result the girl children are not much very aware of their rights. Also it is the hope of the parents that their girl child will have better livelihood after getting married, so poor people marry their children young in order to save their resources and also according to them the younger the girl is married less the dowry they have to give . Thus it is considered that if the girl is of old age more dowry is demanded so to prevent themselves from resource collapse poor people marries their girls at very young age i.e. less than 18years. So if the age is increased to 21years as mentioned in the bill, the poor would not cooperate for enactment of this amendment at any cost. So poverty in India is a major challenge to the bill.

2.6 Lack of programmes and schemes

There are no special programmes or strategies aimed at dealing with the problem of child marriage. One important element is that most of programmes are geared on the development of girls and only indirectly address the issue of child marriage. The issue has mostly been addressed as element of the government's initiatives on women's reproductive health and adolescent female empowerment. While women's health is a major concern, particularly for young girls who marry at a young age, it is crucial to remember that women's health was never a priority in patriarchal societies. As a result, campaigns and other efforts focusing on the problem of child marriage out from perspective of reproductive health have failed to elicit an emotional response from the general public. Incorporating child marriage into school curricula and encouraging girls' education as a means of reducing such behaviours has not yielded the anticipated results. On the contrary, a lack of proper safety for girls who flee their families for education or work is being used as a reason to marry them young. Conditional cash transfer systems never reach people who need help the most since they need some form of identification or evidence of residency, among other requirements, that the poor of the nation are unable to meet.

Children who are forced into child marriage and the consequent women's reproductive rights violations have the right to seek redress under international humanitarian law and Indian constitutional law. Married girls, on the other hand, are frequently unable to obtain treatments because of the scarcity of physiological, financial and social freedom, and scarcity of formal assistance in providing opportunities for married girls' recovery. Women who are married frequently lack the power to seek remedies available to have their marriages declared null and void. The lack of access to legal representation exacerbates these consequences. Despite the Prohibition of Child Marriage Act's theoretical promise of support for girls who annul their child marriages, women and girls encounter numerous practical obstacles in receiving these payments. In addition to the general hurdles women have in accessing the legal system as a result of their relative lack of autonomy and education, the Prohibition of Child Marriage Act lacks clear advice on how to compute maintenance. Instead, the Prohibition of Child Marriage Act simply stipulates that maintenance must be based on the child's requirements and lifestyle, as well as the paying party's sources of income. Furthermore, maintenance is only payable in the case where the marriage is voidable but not in the case where marriage is marriages void ab initio.

Thus, due to the lack of schemes by the government for prohibition of child marriage and failure of the available schemes people are less motivated towards the prohibition of child marriage or to report any child marriage. This creates a hindrance in passing of the further amendment or any law related to prohibition of child marriage.

2.7 Failure of Prohibition of Child marriage Act 2006

Since 1978, the age for girls to marry has been at least 18 years. Despite the presence of the Prevention of Child Marriage Act (PCMA), 1978 and 2006, India is continuously having the largest absolute number of young brides in the world. Even though that one in every four Indian girl is still married before attaining the age of 18, just 501 cases were filed under this Act in 2018. The legislation is clearly not being used effectively to prevent or decrease the number of child marriages. The PCMA is largely utilised by families of girls to prohibit self-arranged weddings at the grassroots level. Here, young people who marry on their own volition are criminalised just for exercising their right to do so. Due to society's profound support of such social norms, the PCMA is not often invoked to stop incidents of forced or coerced early marriages.

When the present legislation is ineffective, relying solely on age and harsh actions will not help. Raising the marriage age to 21 increases the risks and harm to young people - the same individuals it is supposed to safeguard. Thus, failure of the present and previous legislations passed is another reason that the future legislations cannot be implemented easily in a practical way.

3. CRITICS TO THE BILL

According to the critiques of the bill, this bill will not empower women or reduce child marriages but only creates confusion among the people due to other legislations which are implemented in India. The critiques opposed the bill due to following reasons:

- i. The Bill raises the minimum marriageable age of females from 18 years to 21 years, putting it in line with that of males. According to the Majority Act of 1875, the age of obtaining majority is 18 years. This distinction may have implications for the rights and duties of people aged 18 to 21.

- ii. In 2018, the Supreme Court decided that consensual sex between consenting adults is a basic right under Articles 14, 15, 19, and 21 of the Constitution. If this Bill is enacted, it will be lawful to have sexual intercourse but prohibited to marry for people aged of 18 and 21.
- iii. According to experts, 70 percent of early weddings occur in poor communities like as SCs and STs, and the law will only force these marriages undercover rather than prohibit them. Rural women would be impacted more than metropolitan women.
- iv. Another difficulty that arises is that the law would criminalise huge number of marriages which will be solemnized after the law will come into force. While 23percent of brides are under the age of 18, brides under the age of 21 account for significantly more marriages. The median age of marriage for women aged climbed to 19 years in 2015-16, up from 17 years during 2005-06, but stayed below 21 years.
- v. Another criticism to the plan is that it affects the girls from particularly traditional and patriarchal households .These girls escape from the clutches of their families by marrying someone of their choosing beyond the age of 18. Due to the proposed legislative change, these girls would be affected as they have to wait three more years, meanwhile in this time the families and the larger society could try to control and scare such girls.
- vi. The critiques also argue on the point that this amendment will limit the personal laws. Thus, it is in the direct violation of the Article 25 of the constitution which provides freedom of free conscience and practice and spread any religion.

4. CONCLUSION

It can be concluded from the above research that this amendment has very positive points like gender equality, uniformity in marriage laws but the enactment of the amended act i.e. Prohibition Of Child Marriage (Amendment) Act, 2021 is not an easy task .It requires special diligence and care due to different personal laws for marriage in India, various cultures having different rituals and different views about the marriage. Also governing of the marriage cannot be suddenly made uniform for all religions in India and also there no schemes or incentives which can make this amendment a success rather than a failure like the other previous legislations.

Following are some suggestions for proper and successful implementation of the Prohibition of Child Marriage (Amendment) Bill, 2021:

- i. Providing incentives for reporting and stopping child marriages
- ii. Preparing a proper plan for implementing uniform law for all religions without compromising their religious beliefs
- iii. Creating awareness among the people about the ill effects of the child marriage like early pregnancy, failure to understand concept of family and social values, not understanding concept of family planning, failure to manage economy of the house etc.
- iv. By eradicating poverty and increasing literacy rate in India
- v. Girls from low-income households are mostly coerced getting into child marriages. Thus providing them with financial assistance, particularly for schooling, could immediately affect the age of getting married among women.
- vi. Implementing special programmes and schemes to prohibit child marriage

References

1. "10 Facts on Illiteracy in India That You Must Know | Oxfam India." *Oxfam India | NGO Working For Child Education, Inequality, Women Empowerment*
2. Bhatt, Jitendra. "Gender Justice: Human Rights Perspective Triumph or Turmoil; Victor or Vanquished?" *SCC*, 2006
3. "Child Marriage in India: Achievements, Gaps and Challenges" *OCHCR*
4. "Child Marriage | UNICEF." *UNICEF*
5. "Ending Impunity for Child Marriage in India: NORMATIVE AND IMPLEMENTATION GAPS" *Scribbr*
6. Gangopadhyay, Jagriti. "Does an Increase in the Legal Age of Marriage for Women Guarantee Equality for Women in India?" *JILS*, 2021
7. Ghosh, Ashmita. "5 Reasons Changing The Minimum Legal Age Of Marriage Is A Bad Move." *Oxfam India | NGO Working For Child Education, Inequality, Women Empowerment*
8. "Marriage Laws in India : An Analysis of Legal Solemnization of Marriages - IPleaders." *IPleaders*

9. “Minimum legal age of marriage for women being raised to 21 years: pros and cons “ *TheLeaflet*
10. “Poverty in India: Facts and Figures on the Daily Struggle for Survival.” *SOS Children’s Villages Canada / A Loving Home for Every Child*
11. “PROHIBITION OF CHILD MARRIAGE (AMENDMENT) BILL, 2021.” *Best IAS Coaching in India / Best UPSC CSE Coaching in India*
12. Ramya, Padmanabhan, et al. “Child Marriages in India :An Insight into Law and Policy.” *OHCHR*, 2013
13. “The Prohibition Of Child Marriage Amendment Bill, 2021: A Critical Analysis.” *Legal Service India - Law, Lawyers and Legal Resources*
14. “The Prohibition of Child Marriage (Amendment) Bill, 2021.” *People’s Archive of Rural India*
15. “The Prohibition of Child Marriage (Amendment) Bill, 2021.” *PRS Legislative Research*

