



PERTAINING LAWS FOR CHILD MARRIAGE IN INDIA

Papaiah C^{1*} & Dr. Patwardhan Rathod^{2*}

^{1*}Ph.D Research scholar, Department of Studies in Social Work, Shivagangotri Davangere University Davangere Karnataka, India.

^{2*} Assistant professor Department of Studies in Social Work, Shivagangotri Davangere University Davangere Karnataka, India

Introduction

A marriage which is solemnized in contravention with prescribed age of marriage, by the General Laws. International Covenants such as The Convention on Elimination of all forms of Discrimination Against Women (CEDAW) and Convention on the Rights of Children (CRC) have prescribed the minimum age for marriage. In India, The Child Marriage (Restraint) Act, 1929 and now the Prohibition of Child Marriage Act, 2006 has prescribed the age of marriage which is 18 for girls and 21 for boys. In India, Child Marriage can be solemnized as per the respective personal laws and as such for the purpose of “solemnization” of child marriage, there is no single law.

What are the issues pertaining to child marriage?

- Health-related issues: A Study conducted by UNICEF on Early marriage & Child Spouses in 2001 concluded that the risk of premature labor that is the Maternal mortality amongst girls aged between 15-19 years is about three times higher, babies born to a mother under the age of 18 tend to have higher rates of child mortality and the young babies lack parenting skills and decision-making powers.
- Human Rights issues: There are human rights issues as it is the case of child abuse. It is the fit case of child abuse (LCI 205 Report on Child Marriage, 2008) as child marriage denies the basic human rights to the spouses especially the girl child such as Health, Education and Well-being. A study of UNICEF, UN Children’s Report on Early Marriages: A harmful traditional practice, 2005 has also shown that the highest rate of domestic violence among women married by 18, is higher as compared to the ordinary marriages.

Delhi High court in Association for Social Justice & Research Union of India & others, has held that child marriage is a grave form of human rights violator. Human Rights such right to education, right to development, right to health, right to employment, right to a dignified life, right to participation and well-being and personality development are being deprived to the girl child.

The girl child is the most vulnerable person in child marriage due to childbirth, rearing, bearing, domestic violence and lack of parenting skills. She is also denied of the basic education, especially in India, where the son is always preferred over the girl child.

General Law on Child Marriage

The law has failed to curb the prohibition of child marriages that are taking place across the religions, specifically Hindus in most of the cases. Many NGOs are fighting to eradicate the same and a movement is going on regarding the same. Even public interest litigations filed could not bring about any substantial difference. There is a need for sensitization in society regarding child marriage. Many attempts have been made to regulate child marriage even before the Independence of India and the commencement of the Indian constitution. Below mentioned are the general laws aimed at to regulate child marriage, though there has been no complete abolition of the same.

The Child Marriage (Restraint) Act, 1929

This was the first of its kind legislation regulating the “child marriage” by prescribing the required age of marriage for both the parties to the marriage across India. This act aims to restrain the child marriage.

In the case of Sushila Gothala vs. State of Rajasthan the court stated that the minimum required age for marriage is 18 years for girls and 21 years for boys.

The Prohibition of Child Marriage Act, 2006

The Prohibition of Child Marriage Act, 2006, is aimed to

1. Punish the ones involved in the performance of child marriage, and
2. To provide a legal opportunity to both the spouses of child marriage to repudiate the marriage, by way of a decree of nullity. (Voidable & Void)

The present law is gender neutral in providing the right to both the boy and the girl child of forced marriage. The Prohibition of Child Marriage Act, 2006, may be viewed as:

1. General and secular legislation (which is applicable to all the citizens of India).
2. Penal legislation.
3. Social and progressive legislation.
4. Matrimonial legislation, only to regulate “child marriage”, having a uniform application (Status of child marriage).

The matrimonial angle of The Prohibition of Child Marriage Act, 2006:

“Child Marriage” in all the situations is not something which has been declared as invalid. But, the legal validity of any marriage in India, is decided on the touchstones of family law. But there are some provisions of this Act which may be taken into consideration so far as the legal validity of child marriage is concerned. The Prohibition of Child Marriage Act, 2006 has incorporated some ancillary rules relating to the “maintenance” and “the legitimacy of the child” of such child marriage.

The status of child marriage according to Section 3 of The Prohibition of Child Marriage Act, 2006 is voidable Marriage. Section 3 of the Act states that the child marriage is voidable at the option of both the party and the petition may be filed at any time but before completion of two years of attaining majority, before the District Court.

Whereas, the status of child marriage as per Section 12 of The Prohibition of Child Marriage Act, 2006 is void Marriage. Section 12 of the Act states that child marriage is void in the following circumstances when the minor:

1. Is taken or enticed out of the keeping of the lawful guardian; or
2. by force compelled, or by any deceitful means induced to go from any place; or
3. is sold for the purpose of marriage; and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes, such marriage shall be null and void.

Section 4 and Section 5 of the Prohibition of Child Marriage Act, 2006 provides maintenance to the girl child and legitimacy of the child so born of child marriage. Section 4 states that the district court may make maintenance, residence, and custody of the child order during such petition in favor of the female spouse until her remarriage and Section 5 states that the child born of such marriage is deemed legitimate.

The Indian Penal Code- Child Marriage and offence of Rape

The primary consequences of child marriage are a physical relationship between the husband and a girl and the procreation of children. These consequences are to be seen in the light of Section 376 of the Indian Penal Code, 1860 wherein in certain cases sexual intercourse with a woman with or without consent is an offense of rape. Section 376, Exception 2 states that "Sexual intercourse or sexual act by a man with his own wife, the wife not being under the age of 15 years, is not rape."

Certain situations and the offense of rape are as follows:

1. Above 18 + Consent = No Rape
2. Above 18 + No Consent = Rape
3. Below 18 + With or without consent = Rape
4. Above 15 + Girl being Wife + With or without consent = No Rape
5. Below 15 + Girl being wife + With or without consent: Rape

Keeping in view the above scenario, it appears that the Indian Penal Code has:

1. Saved the institution of marriage, and
2. Endorsed, indirectly, the fact of child marriages taking place in the society and as per personal laws (because sexual intercourse with a wife who is between 15-18 years of age, does not constitute rape).

Law Commission of India, 205 Report on Child Marriage, 2008

The Law Commission of India Report in 2005 recommends the following things:

- The child marriage below 18 for both girls and boys should be prohibited.
- The marriage below the age of 16 be made void and while those between 16 and 18 be made voidable.
- The provision relating to maintenance and custody should apply to both void and voidable marriages.
- Registration of marriage be made compulsory.

Personal Law and Child Marriage: Validity and Consequences

Child Marriage in Hindu Marriage Act, 1955

Child Marriage under the Hindu Marriage Act, 1955 is neither void nor voidable. The silence on the part of the legislature in Section 11 & 12 and express rule in the form of provision of Section 13 (2) (iv), renders it as valid. As a result of silence on the part of the legislature in Section 5, 11 & 12 and express provision under Section 18 of Hindu Marriage Act, child marriage is valid as seen in the case of Manisha Singh vs. State of NCT

In Neetu Singh VS the State & Ors. the High Court of Delhi held that the marriage of minor is neither void nor voidable, but is punishable.

Under the Hindu Marriage Act, none of the parties have the option to repudiate the child marriage by way of a decree of nullity. The High Court of Rajasthan in Sushila Gothlal vs. State of Rajasthan directed that State should take necessary steps

to stop the menace of child marriage by punishing all involved in such marriages. As a result of which, the Chief Minister of Rajasthan had made a special appeal to all its people in the State to prevent these child marriages.

Nevertheless, a female child has been given right to repudiate the marriage under Section 13 (2) (4), by way of divorce. In Roop Narayan Verma vs. Union of India, the High Court upheld the constitutional validity of Section 13 (2) (4) of the Hindu Marriage Act by terming it as the exercise of power by the legislature under Article 15 (3) of the Indian Constitution.

In the wake of silence on the part of the legislature under Section 11 and 12 of the Hindu Marriage Act, 1955 and express provisions in the same, the status of child marriage in Hindu Marriage Act, 1955 appears to be uncertain. There is a possibility of two arguments in this context:

1. That the child marriage in Hindu Marriage Act, 1955 is not valid in view of Section 5, or
2. That the child marriage in HMA is neither void nor voidable but renders valid.

It would be further proper to refer to some judicial pronouncements, in order to know the judicial position:

References

1. "Ending Child Marriage: A profile of progress in India". UNICEF DATA. 28 February 2019. Retrieved 20 March 2022.
2. ^a Jump up to: ^b Table C-2 Marital Status by Age and Sex Subtable C0402, India Total Females Married by Age Group, 2001 Census of India, Government of India (2009)
3. ^a Jump up to: ^b ^c ^d ^e ^f K. Sinha Nearly 50% fall in brides married below 18 The Times of India (February 10, 2012)
4. ^a Jump up to: R Gopakumar, Child marriages high in Kerala Deccan Herald (June 19, 2013)
5. ^a Jump up to: ^b ^c ^d ^e ^f Hilary Amster, Child marriage in India Archived 14 July 2014 at the Wayback Machine University of San Francisco (2009)
6. ^a Jump up to: ^b Graner, Elvira (2020), "Governing Child Marriage in India: The Protracted Reform Process", in Samita Sen, Anindita Ghosh (ed.), Love, Labour and Law: Early and Child Marriage in India, SAGE Publishing, p. 63, ISBN 978-93-81345-60-3, In 1929, the Indian Legislative Assembly passed the Child Marriage Restraint Act. While the Act initially set the marriage age at 14 for girls, two amendments in 1949 and 1978, first increased the age to 15 and later onto 18.
7. ^a Jump up to: ^b ^c ^d M.G. Radhakrishnan and J. Binduraj, In a league of their own India Today (July 5, 2013)