

IMPACT OF COVID-19 ON CHILD MARRIAGES IN INDIA

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Abstract

The paper traces the position of women and girl children since the golden age of mankind and how the girl child came to be associated with liability which is to be shunned off at the earliest, of which the direct consequence was Child Marriage. Child Marriage has adverse impacts on the child and therefore the growth and development of the country can be jeopardized, thus the law makers of the British era used legal tools to combat child marriage and minimize the risks associated with it. But since the laws were proving to be inadequate, various sets of laws were again drafted in independent India. Along with this, the government runs various policies to educate and organize the war against child marriage. But with the advent of COVID-19 the legal setup and all progress in the sector came to a standstill. The paper explores the best practices of the State of Karnataka and the integration of modern day technology to solve the rising problem of Child Marriages in India.

Key Words: Child Marriage, Child Marriage Restraint Act, PCMA 2006, Pandemic and Child Marriage, Digitization in Law Enforcement, Technology

Introduction

The historical records of India portray that women had the choice to marry any person without fear or fervor. Marriage, generally, has been described as an indissoluble union of a man and a woman for fulfilling physical, spiritual and social needs. Chapter 9, verse 89 of Manusmriti lays

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down that a woman may marry as per her sweet will without incurring an ounce of guilt.² But as India faced the onslaught of the invaders, the ideals of freedom and liberty changed drastically and women were among the first to face the impact. The changed ideas of liberty and equality demanded that women be safeguarded at all times and be under the constant supervision of the father, the husband and the son during her lifetime. Thus, with this narrative being formed, the identity of a woman came to be associated with liability. This result of this new association with liability and 'evolved' complex structure of the society was child marriage.

Initially, the reason behind promoting early marriage was that marriage if entered into at a tender age eases the adjustment of both the parties to the marriage and adds more meaning to the life. But, as has been pointed above that child marriages were being promoted so as to evade the liability associated with the girl child, the very purpose of early marriage stands dissolved. There have been surveys which show the leading cause of child marriage to be poverty, insecurity, financial instability, patriarchy and gender inequality, control over sexuality, safety concerns for the girl child and this establishes that women are being viewed as persons who are to be safeguarded so that social and cultural norms can be preserved.³

It is noteworthy to mention here that the Manusmriti 9: 88 lays great emphasis on the fact that the girl should have reached the age of puberty but at the same time it also lays down that if a worthy groom is available then the marriage of the girl should not be delayed even if she is underage.⁴ Thus, with the India society undergoing sea change the ancient legal texts were

² MANUSMRITI: THE LAWS OF MANU, (G Buhler tran.,),
<https://vedpuran.files.wordpress.com/2013/04/manusmriti.pdf>.

³ G B PANT INSTITUTE OF STUDIES IN RURAL DEVELOPMENT, *Child Marriage in India: A Study of Situation, Causes & Enforcement of Prohibition of Child Marriage Act 117*,
http://niti.gov.in/planningcommission.gov.in/docs/reports/genrep/Report_Child_Marriage_in_India.pdf.

⁴ MANUSMRITI: THE LAWS OF MANU, *supra* note 1.

interpreted to suit the demands and child marriages were made the norm to escape the responsibility and liability of sound upbringing.

Impact on Child

The impact of child marriage is not restricted to individuals rather it extends to the country and affects health of the country and its education sectors. Not only this, child marriages are associated with health risks which affect the ability to participate in the economy thereby hampering the growth of the country. Coming to the individuals, both boys and girls are affected by child marriage but the issues associated with child marriage are skewed against girls. It is the girl child who has to do the household chores and attend to the needs of the members of the family. Thus, it is assumed that the child is now a mature person and understands everything pertaining to the married life.⁵

The practice of child marriage impacts the lives of children in a negative way because- a) it denies them the childhood, b) it curtails their freedom and subjects the girl child to physical and physiological harm and c) threatens the life and the very existence of the girl child by raising endangering the reproductive health.⁶ Childhood is synonymous with happiness and generally construed as a time of playing, imbibing social traits, exploring, further, it is associated as a carefree period in one's life. Childhood in which most part of life's learning's take place is destroyed by child marriage since the child is to adopt servitude and manage the spouse. Child marriage curtails the freedom of the child since the child is forced to give up on the qualities attributable to childhood and act like an adult. Child marriage raises risk of early pregnancy and

⁵ G B PANT INSTITUTE OF STUDIES IN RURAL DEVELOPMENT, *supra* note 2 at 172.

⁶ *Id.* at 226.

risks associated with it. Considering these conditions law makers of independent India sought to eradicate the menace of child marriage by enacting laws.

Laws to combat child marriage

Child Marriage is not only a social wrong but the problems posed by it constitute a human rights issue.⁷ To address the issue, the term ‘child marriage’ must be understood. According the Convention on the Rights of Child, 1989 “a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”⁸ Marriage, as per Malinowski means a contract for the production and maintenance of children. The United National International Children’s Emergency Fund defines Child Marriage as a “marriage of a girl or boy before the age of 18 and refers to both formal marriages and informal unions in which children under the age of 18 live with a partner as if married.”⁹

To address this issue, the law makers of independent India made a law known as The Child Marriage Restraint Act, 1929. This legislation fixed the age of marriage for girls at 14 years and boys at 18 years which was later amended to 18 for girls and 21 for boys.¹⁰ The Act lays down punishments for marriage of a male adult both-below and above the age of 21- with a child and the quantum of punishment ranges from fifteen days to three months with or without the imposition of fine.¹¹ Further, the act also provides punishment for solemnizing a child marriage. The quantum of punishment is simple imprisonment which may extend to three months with or without fine. As a preventive measure, the act also provided for granting injunction-prohibiting

⁷ *Id.* at 1.

⁸ UNITED NATION GENERAL ASSEMBLY, *Convention on the Rights of the Child*, 44/25 1 (1989).

⁹ United Nation Children Fund, *Child Marriage*, <https://www.unicef.org/protection/child-marriage>.

¹⁰ THE CHILD MARRIAGE RESTRAINT ACT, 1929, , 19/1929 2 (a), <https://wcd.nic.in/child-marriage-restraint-act-1929-19-1929>.

¹¹ *Id.* at 3, 4, 5.

marriage in contravention of its provisions.¹² But despite the provisions, the act was a complete failure and the problem lay in its implementation.

In the year 2006, the Prohibition of Child Marriage Act was legislated to bridge the gap between the aspirations of the society. According to the provisions of the Act, a Child means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age¹³ and child marriage means a marriage to which either of the contracting parties is a child.¹⁴ The Act prima facie aims to prohibit the solemnization of child marriages and is armed with enabling provisions to prohibit child marriage, protect and provide relief to victim and enhance punishment for those who abet, promote or solemnize such marriage. Further, the legal instrument also provides for the appointment of a child marriage prohibition officer.¹⁵

The Act of 2006, lays down that child marriage is to be voidable at the option of the contracting party being a child.¹⁶ The Act has provisions for maintenance and residence of female party contracting to the child marriage.¹⁷ The Act also provides for the custody and maintenance of children arising out of child marriages.¹⁸ Further, the Act grants the status of legitimacy to the children born out of child marriages.¹⁹ There are some penal provisions as well for the marriage of an adult male with a child, and for the promotion and/or solemnization of child marriages. The quantum of punishment ranges from rigorous imprisonment and a fine of upto rupees one lakh.²⁰

¹² *Id.* at 12.

¹³ PREVENTION OF CHILD MARRIAGE ACT, , 6/2007 2(a), <https://legislative.gov.in/sites/default/files/A2007-06.pdf>.

¹⁴ *Id.* at 2(b).

¹⁵ *Id.* at 16.

¹⁶ *Id.* at 3.

¹⁷ *Id.* at 4.

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 6.

²⁰ *Id.* at 9, 10, 11.

Apart from the above laws, there are personal laws of communities which aim to prohibit child marriages too. For instance the Hindu Marriage Act, 1956 (HMA) prescribes the minimum legal age to enter into marriage as 21 and 18 for girls and boys respectively.²¹ Similarly, the Parsi Marriage and Divorce Act, 1936 (PMD), sets similar bar on age.²² There are provisions for repudiation of marriage entered into while the party is below the minimum legal age to enter into marriage. Under Muslim Law this is known as the option of puberty wherein the girl can call off the marriage if she has been married before attaining puberty when she turns 18. Similar provisions are available under the HMA.²³

The personal laws also incorporate the possibility of setting aside a child marriage. Under HMA, a decree of divorce is required to set aside a marriage which has been entered into in contravention of the provisions of minimum legal age. Similar procedure is to be adopted for getting a Muslim marriage annulled. Further, punishment is imposed on persons who procured or solemnized such a marriage and such person is punishable as per the PCMA, 2006. But no such law is there to punish a marriage entered into under Muslim personal law. Though, the Indian Christian Marriage Act, provides for penalties when marriages are performed without the consent of the parents or guardians.²⁴

But what happens when persons from two different communities or religious backgrounds wish to marry is there any safeguard to prevent child marriages? It is for this purpose that the Special Marriage Act, 1954 was made. The Act allows for inter-religious marriages and also lays down requirements of age. As per the Act, the bridegroom must be 21 years of above and the bride

²¹ THE HINDU MARRIAGE ACT, , 25/1955 3(iii) (1955), https://highcourthd.gov.in/hclsc/subpages/pdf_files/4.pdf.

²² PARSI MARRIAGE AND DIVORCE ACT, , 3/1936 3 (1936), https://www.indiacode.nic.in/bitstream/123456789/2476/1/a1936____3.pdf.

²³ THE HINDU MARRIAGE ACT, *supra* note 20 at 13(2)(iv).

²⁴ INDIAN CHRISTIAN MARRIAGE ACT, , 15/1872 70 (1872), <https://legislative.gov.in/sites/default/files/A1872-15.pdf>.

must be 18 years or above at the time of marriage.²⁵ Thus, in cases of inter-religion marriages too there is a safeguard to prevent child marriages. But even after so many laws India faces the problem of child marriage. The problem is so grave that Supreme Court of India recognized that child marriage is discriminatory and constitutes a violation of women's and girls' constitutional rights: it limits equal benefit of the law, and denies girls a life of dignity and liberty. The apex court also stated that child Marriage also violates the constitutional fundamental rights which guarantee every Indian citizen to life and personal liberty, non-discrimination and equality, free education between ages six to 14 years, and freedom from forced labor.²⁶ The Supreme Court also encouraged the Government of India and state governments to develop stronger initiatives for ensuring the effective implementation of the PCMA, 2006 and recommended the approach of the High Court of Karnataka as a possible method of addressing the legislative gaps.

The Karnataka Practice

The Prohibition of Child Marriage (Karnataka) State Rules, 2014 were formulated to replace the 2008 Rules and implemented several of the Justice Patil Committee's recommendations. Following are few recommendations which were adopted the by the State of Karnataka:-

- Justice Patil committee recommended the integration of the provisions of the Juvenile Justice Act, 2015 with the PCMA Act- The JJ Act, 2015 lays down a detailed procedure when a child is in need of care and protection. There are provisions for producing and referring the child to child welfare committees which are to take care of the child and make the child self-sufficient. By integrating these principles the State has addressed the problem as to what is to be done after a child marriage has been prevented. The

²⁵ SPECIAL MARRIAGE ACT, , 43/1954 4(c) (1954), https://legislative.gov.in/sites/default/files/A1954-43_1.pdf.

²⁶ Independent Thought v Union of India, , 10 SCC 800 (2017).

Committee realized that as soon as the authorities left, the child marriage was solemnized and the legal instruments were having no effect whatsoever. Thus, by integration of the JJ Act and the PCMA this problem was addressed.

- Guaranteeing the confidentiality of the child and the organization which reports the child marriage- By adopting this, the identities are kept secret and the work of NGO's and other bodies at the ground level can work in secret.
- Various departments of the State Government are to provide assistance to the Child Marriage Prohibition Officer (CMPO) - The PCMA mandates for a CMPO but it was observed that the CMPO was lacking powers to enforce and implement the provisions of the PCMA. Thus, the committee recommended that law enforcement departments should extend their resources and capabilities to the CPMO such that the provisions of the Act can be implemented.
- Registration of Mass Marriages- It was observed that in many instances of mass marriages children are passed off as adults and married. Thus, to fill this gap, the committee recommended the compulsory and detailed registration of mass marriages procedures so as to ensure that all participants of the mass marriage are adults.
- Laying down of detailed norms of age proof- The Committee recommended that detailed rules pertaining to the age of participants at the time of marriage laid down so that age at the time of marriage can be recorded with more accuracy and child marriages can be prevented.

The recommendations of the Patil Committee were acknowledged and the PCMA for the State of Karnataka was amended. A Monitoring and Accountability Cell was also established to work at the state and the district level with greater emphasis on the sub-district levels because that is the

area where child marriages are practiced mostly. To make the new Act more effective, an independent rapporteur is to be appointed who shall facilitate and coordinate the implementation of the committee. With this being said, the state rules of Karnataka pertaining to child marriage have also been amended and child marriages have been declared as *void ab initio*. This is a deviation from the established law and ensured a zero tolerance for child marriages and attempts to change the socio-cultural dogmas associated with the virtues of child marriage.²⁷ The amended act increases the quantum of punishment and makes provisions for rigorous imprisonment of upto two years. Most importantly, the new Act empowers the police to take *suo moto* cognizance of an offence thereby strengthening the efforts towards zero toleration of child marriages.²⁸

Advent of COVID-19 and the subsequent collapse of the system

With the above discussion, it would appear as if the problem of child marriage has been dealt with and India has been made a safer place for children. But, unfortunately that is not the case. With the advent of COVID and the imposition of nation-wide lockdowns there was an explosive spurt in the number of child marriages. In September 2020, a question was raised in the Rajya Sabha which inquired about the increase in the number of child marriages in the lockdown and what measures were being undertaken by the Government to ensure that child marriages were being prevented?²⁹ But the Minister of Women and Child Development (MW&CD) vehemently denied any increase in the number of child marriages. In a subsequent question raised in the Rajya Sabha by Karti Chidambaram the MW&CD reported just 111 complaints pertaining to

²⁷ CENTRE FOR REPRODUCTIVE RIGHTS, *Ending Impunity for Child Marriage in India: Normative and Implementation Gaps* 51, <https://reproductiverights.org/sites/default/files/documents/Ending-Impunity-for-Child-Marriage-India-WebUpdate-0218.pdf>.

²⁸ *Id.* at 51.

²⁹ Amar Patnaik, *Rajya Sabha Unstarred Question No.635* (2020), <https://pqars.nic.in/annex/252/AU635.pdf>.

child marriages.³⁰ Subsequently an RTI Application was filed with the Union Ministry of Women and Child Development raising questions as to number of reports, complaint, information received by the Ministry of Women and Child Development. But this RTI also proved to be a dead end and no information was provided to the applicant. But on appeal, the RTI was forwarded to the Child-line foundation which reported an increase in the number of child marriages. However, the official numbers reported are just the tip of the iceberg.³¹

Law unequipped to deal with the situation

The outbreak of corona virus posed a massive challenge for all the legal systems of the world and India too faced the same dilemma. The provisions of Disaster Management Act, 2005, the Epidemic Disease Act, 1897 and the Code of Criminal Procedure, 1973 were applied in combination to battle the challenging situation painted by the corona outbreak and the need of a corona-specific legislation was felt. With the imposition of lockdown and the closing down of infrastructure enforcement of law was bound to take a hit. Thus, the law enforcement mechanism in the case of child marriages, which was already in shambles, broke down and fear or sanction of law which was the driving force behind the reducing number of child marriage ceased to exist. This resulted in a rapid increase in the number of child marriages. With this being said there is an urgent need to reform and update the legal framework so that it matches the demands of the digital age.

Solution and Way Forward

³⁰ Karti Chidambaram, *Lok sabha Un-Starred Question No. 2116* (2020), <http://164.100.24.220/loksabhaquestions/annex/174/AU2116.pdf>.

³¹ Biswajit Banerjee, *Child marriages surge during and after the lockdown, official figure tip of the iceberg*, NATIONAL HERALD, <https://www.nationalheraldindia.com/india/child-marriages-surge-during-and-after-the-lockdown-official-figure-tip-of-the-iceberg>.

The pandemic brought stillness with itself and all life came to a stand-still. But still, there were two sectors which stayed afloat and showed a positive trend. These were the agriculture sector and the telecom sector. Digitization of resources and work from home contributed to the upward trend of the telecom sector. Students attended their classes from their home; internet penetration reached an all-time high. Thus, if the menace of child marriage is to be tackled, the law enforcement should also be digitized. This being said, the complete mechanism of filing a child marriage complaint must be shifted online. Shifting the complaint mechanism online will not only enable the creation of data base for the law enforcement agencies but also enable the complainant to track the complaint thereby increasing the transparency and trust in the system.

Secondly, the amended rules of Karnataka must serve as a role model for all the states and every state must attempt to amend the PCMA act and incorporate the Karnataka's practice. Thus, every state must ensure the setting up of a monitoring cell at the sub-district, district and the state level to ensure the adequate implementation of the Act.

Thirdly, though the State High Courts have frequently highlight the superseding effect of PCMA over personal laws in the absence of a Supreme Court judgment there remains a confusion regarding it. For instance, the Delhi High Court in *Lajja v State*³² held that "the PCMA prevails over personal laws." But in *Yusuf Ibrahim Mohammad Lokhat v State of Gujarat* the Gujrat High Court observed that "according to the personal Law of Muslims, the girl no sooner she attains the puberty or completes the 15 years, whichever is earlier, is competent to get married

³² *Lajja Devi v State*, , 2008 338 (2008),
<https://delhidistrictcourts.nic.in/Jul08/Court%20on%20its%20own%20motion%20Vs.%20State.pdf>.

without the consent of her parents.”³³ Thus, this inconsistency must be removed to avoid confusion.

Fourthly, the burden to annul the marriage rests on the child who has been married. In case the child is still minor, the burden rests on the ‘best friend’ of the child. Owing to the societal and cultural norms, it becomes very impractical for the child to approach the ‘best friend’ and persuade him/her to institute a complaint against the marriage. This can be dealt with if the mode of institution of complaint is made online. Since, internet penetration is at an all-time high and majority of the children, if not all, have smart phones online institution of complaint would be convenient and add to the safety and security of the child.

Fifthly, there is no provision to hold the CPMO accountability. Again, if the complaint filing is done by electronic means, it will ensure that the officers who are supposed to take action actually take action. Online complaint institution will serve two benefits, first, it shall enable the law enforcement authorities to prepare a database and compile the number of complaints received and complaints resolved. Secondly, the complainant shall be empowered to track the complaints. This shall inspire more trust into the system.

Sixthly, registration of marriages though cumbersome, in a country like India should be made compulsory.³⁴ Registration of marriages would aid in weeding out and annulling marriages entered into in breach of minimum age requirements. However, for this to happen, communication needs to be established between the registrar and the CPMO.

³³ Yusuf Ibrahim Mohammad Lokhat v State of Gujarat, , 2014 (2014).

³⁴ BALBIR CHAUHAN, *Law Commission Of India: Compulsory Registration of Marriages* 34 (2017), <https://lawcommissionofindia.nic.in/reports/Report270.pdf>.

Seventhly, the need of the hour is to recognize the victims of child marriage as children in need of care and protection. It is required because once a complaint is filed by the child or the next best friend of the child, the chances of abuse by the family members increase if the child stays with the family. Therefore for the well-being of the child, the established mechanism of JJ Act must be utilized and the victim of child marriage must be recognized as a child in need of care and protection.

Concluding Remarks

Child Marriage is a social evil which affects the children of the country. Children are the future of the country and since child marriage affects children it has adverse impacts on the future of the country. Child marriage creates a vicious cycle where generation after generation is pushed into poverty and abuse. It takes conscious effort to take out a considerable population from the clutches of social evil but such effort must be seen as an investment which shall give high returns in the future. All three organs of the government are consciously working to attain these ends. The executive is implementing many policies with the aim to educate and make the population aware of the risks involved with child marriage. The legislature is updating and re-updating laws and introducing new provisions to combat child marriage. The judiciary is laying down new jurisprudence pertaining to child marriage. But all these efforts will not bear fruit unless the law walks together with the society. The society of the digital age demands quick, effective and efficient dispensation of justice. This requires not only hard work but smart work. Thus the need of the hour is to increase the co-ordination between the authorities, update and digitize the existing mechanism and utilize and integrate the existing mechanism with the digitized mechanism.

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