

INDIAN JOURNAL OF LEGAL REVIEW



VOLUME 3 AND ISSUE 2 OF 2023

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Free and Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 3 and Issue 2 of 2022 (Access Full Issue on – <https://ijlr.iledu.in/volume-3-and-issue-2-of-2023/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



ILE Publication House is the
**India's Largest
Scholarly Publisher**

© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ijlr.iledu.in/terms-and-condition/>

AN OVERVIEW ON CHILD MARRIAGES IN INDIA

Author– KHUSBU DEDAVAT, STUDENT AT THAKUR RAMNARYAN COLLEGE OF LAW, UNIVERSITY OF MUMBAI

Best Citation – KHUSBU DEDAVAT, AN OVERVIEW ON CHILD MARRIAGES IN INDIA, *Indian Journal of Legal Review (IJLR)*, 3 (2) of 2023, Pg. 150-155, APIS – 3920 – 0001 & ISSN – 2583-2344.

ABSTRACT

Marriage is one of the important things but child marriage is not a legitimate thing to do as it violates a child's right to marry her or him at an early stage and takes away his childhood and also committing a crime of sexual offences as mentioned in the POCSO Act, 2012. In this research, we will see how in India child marriage is involved and who take action towards this child marriage. A major reform was made by the Child Marriage Restraint Act, 1872 and subsequently, the Child Marriage Restraint Act, 1929 and the final legislation of the Prohibition of Child Marriage Act, 2006 which is made since lastly with the increasing legal provisions to restrain child marriage. We will see in this article with all over in the world wide the child marriage is supported to be banned by many organizations by supporting and making law in many conferences which will be seen in this article. And also the recent 2022 issues on child marriage and how the law is applied and implemented in India by providing stringent fines on it.

KEYWORDS – Child Marriage, Prohibition, High Court Judgement, Child and Minor

INTRODUCTION

The child marriage is a prevailing issue in India. It has been seen a lot in comparison to other countries and due to that will have a compromise research on the topic child marriage and its root cause and history behind the child marriage increasing growth and what are the constitutional and legal framework made to stop child marriage in India and what are the take of other countries to prohibit child marriage. Let us understand what is marriage? And what is child marriage? A marriage is a cause for great celebration anywhere in the world. In India, this is unfortunately true even of child marriages. There is no doubt that a child marriage is a violation of human rights and can result in bonded labours, enslavement, commercial sexual exploitation and violence against its victims. Child brides frequently face major health risks, including as early pregnancy

and STDs like HIV and AIDS, because they cannot refuse sex or insist on using condoms.

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 pastoral areas. The report also revealed another shocking fact of 40 of the world's child marriages do in India.

Child marriage is a burning problem around the world including India. General meaning of child marriage is a marriage of a child younger than 18 years old. In India, nearly 50% of the women below 15 years to below 19 years have been married before their legal age (eighteen years). And thus child marriage was practising since ancient times and its root was very deep in Indian society. Six decades since independence the time in related to child marriage is unchanged. Large number of teenage girls is

destroyed by this evil practice of child marriage.³⁶³

In India, child marriage has long been a tradition. Having kids getting married off before they're emotionally and developmentally ready. In India, the issue of child marriage is still anchored in a complicated web of religious tradition, social customs, economic considerations, and deeply ingrained prejudices. Whatever its causes, child marriage is a grave violation of human rights that leaves long-lasting physical, psychological, and emotional wounds. Soon after marriage, sexual activity begins, and early pregnancy and childbirth can result in both mother and newborn death. Additionally, younger brides are more likely to face domestic abuse at home.³⁶⁴

The Brahma Samaj under Raja Ram Mohan Roy and the Arya Samaj under Swami Dayananda Saraswati both made efforts to promote social reform against the practice of underage marriage. However, this was insufficient, and it was decided that the best course of action would be to enact prohibitory laws. The National Family Health Survey (NFHS)-III estimates that 47% of women in India, aged 20-24, were married before the age of 18. This figure stood at 53% in rural area and 30% in urban areas. According to the District Level Household Survey 2007-08, there are eight states in India where more than 50 % of the women between 20 and 24 years have been married before the legal age, during the last decade or so alone. Over 50 percent of ladies marry youngish than 18, which leads to a typical reproductive pattern of too early, too frequent, and too numerous marriages, according to National Population Policy, "performing in a high IMR." (National Commission on Population 2000)

Since India has ratified various international conventions and treaties that obligate amendments in the legal framework in order to

guarantee the rights of children and prevent child marriages. Only with the free and informed permission of the intended spouses may a marriage be entered into, according to the 1948 Universal Declaration of Human Rights.³⁶⁵ This research analyses the foundation for policy and law surrounding child marriage with the goal of highlighting its flaws and issues.

C. BACKGROUND OF CHILD MARRIAGE IN INDIA

Child espousal, which frequently involves civil cohabitation and a court's blessing of the engagement, includes the practice of child marriage. The following factors contribute to child marriages: poverty, bridegroom cost, dowries, cultural traditions, societal and religious pressures, indigenous practices, fear of the kid remaining unmarried until they reach adulthood, ignorance, and the belief that women are unable to work for oligarchs.³⁶⁶

Child marriage was an ancient social custom. 5 to 10 year old little youngsters were being married. In the Vedic period, women could remain unmarried and continue their study of the Vedas, etc She Could study till she was married at the age of 16 or more. She also enjoyed the right of thread Ceremony. Later on, in the Post-Vedic period, certain factors which led to lowering the age of marriage and encouraged child marriage, were as follows:

- Stoppage of Thread Ceremony and consequently (stoppage of education of girls) and substitution of that ceremony by marriage ceremony at the age of eight to twelve.
- Stress on keeping the chastity and purity of girls intact by getting them married before the age of puberty.
- Desire of the husband to beget children, as early as possible, after marriage.
- Emphasis on maintaining each caste's endogamic and exogamic customs as the case

³⁶³ B. Suresh Lal , Child Marriage in India : Factors and Problems, International Journal of Science and Research , Index Copernicus Value (2013) : 6.14, Impact Factor (2013): 4,438 .

³⁶⁴ csrIndia.org , <https://www.csrindia.org/child-marriage-in-india/> , March 24, 2023.

³⁶⁵ Pallavi Gupta ,Child Marriages and the Law: Contemporary Concerns. Vol.47, No. 43 (October 27, 2012), Economic and political Weekly .

³⁶⁶ Wikipedia , https://en.m.wikipedia.org/wiki/Child_marriage#:~:text=Child%20marriage%20is%20part%20of,the%20child%20remaining%20unmarried%20into, March 24, 2023.

may be and keenness for refraining from breaking their customs.

- Desire of the wards and foster parents of orphaned young girls to get them married till their chastity was intact.
- Once the child marriage got started by higher castes, it was adopted by people of lower class. It further fit degenerated into infant marriage.

In order to eradicate the evils of the child marriage, the measures to abolish Child Marriage were taken by various social reformers. The efforts made by and the dedicated role played by social reformer like Raja Ram Mohan Roy, Ishwarchandra vidyasagar and the leader of the Brahmo Samaj, Arya Samaj and Prathana Samaj namely, Keshav Chandra Sen, Swami Dayanand Saraswati, Justice M.G. Ranade and other condemned and criticized the custom of child marriage.

Their movement resulted in enactment restraining child marriage such as –

- The Child Marriage Restraint Act, 1872, fixing the age of marriage as 14 years.
- The Child Marriage Restraint Act, 1929, initiated by Harbilas Sarda (known as 'Sarda Act') fixed marriageable age for girls as 14, and for boys as 18 years, respectively.³⁶⁷

D. DIFFERENCE BETWEEN THE TERM CHILD AND MINOR

Child – A 'child' means a boy who has not completed twenty-one years of age and a girl who has not completed eighteen years of age. (Prohibition of Child Marriage Act, 2006)

Minor – A 'minor' is defined as a person that is boy or girl who has not attained the age of majority under the Majority Act, 1875, namely, eighteen years of age.

IX. LEGAL REFORMS , LEGAL STATUS AND EFFECT OF CHILD MARRIAGE IN INDIA

In India to enjoin the child marriage there has been made some indigenous and legal vittles to enjoin child marriage one of the act is made Child Marriage Restraint Act, 1929 and after repeal and correction, latterly The Prohibition of Child Marriage Act, 2006 and also POCSO that's Protection of Children From Sexual Offence Act, 2012 is made to enjoin child marriage and cover children from sexual offences. This Act has been repealed by the Prohibition of Child Marriage Act, 2006. This Act entered assent of the President of India on 10th January, 2007. This Act has bought significant changes in the area of child marriages. The Act of 1929 has frequently been blamed as a toothless barracuda, as a canine that barks but doesn't mouthfuls. The Act of 2007 would have far reaching ramifications. It being a temporal act, a- piece of invariant civil law would be applicable on all communities of India. This Act defines a child in case of males as being a person who has not completed the age of 21 times and in case of ladies as being a person who has not completed the age of 18 times. Another significant change brought by the Act is that it makes a child marriage voidable and in some cases void. This is a drastic change in the sense that the old Act didn't affect the validity of marriage, an underage marriage being an impeccably valid marriage. A child marriage under the new Act is a marriage where either party or both are children as defined by the Act and it's voidable at the option of the party who's the child.³⁶⁸

Accordingly, the Child Marriage Restraint Act, 1929, was passed to restrain the solemnisation of child marriages. Although the Act was amended in 1949 and once again in 1978, its provision were far from being deterrent. Moreover, the Act did not declare such marriages to be void or invalid or even voidable. There were growing demands to make the law

³⁶⁷ Prof. Prakash K. Mokal , Family Law – II , page no 43 , Published By Vidhi Prakash Publication Pvt. Ltd (2022).

³⁶⁸ Twenty-Fourth Edition 2019, DR. PARAS DIWAN, Modern Hindu Law, page no 249 - ALLAHABAD LAW AGENCY.(2019)

more effective and to make the punishments thereunder more stringent so as to eradicate – or at least lessen – the socially despicable practice of child marriages in the country. In the end, it was determined appropriate to enact new legislation on the matter, and the Prohibition of Child Marriage Act was passed in 2006. Except for the State of Jammu and Kashmir, this Act covers all of India and repeals the preceding Act of 1929. All Indian nationals living abroad must likewise abide by it. The only exception that is made in favour of the renoncants of Pondicherry, to whom the Act does not apply.

The salient features of the Prohibition of Child Marriage Act, 2006 may be summed up are as follows:

C. Effects of Child Marriages

- Under Section 3 of the Act, all child marriages are declared to be voidable at the option of the contracting party who was a child at the time of the marriage. Such a marriage can be annulled by a decree of nullity passed by a District Court.

- Even if a marriage has been annulled by a nullity decree, the children of such a marriage are deemed to be legitimate for all purposes. (Sec 6)

- However, a child marriage is null and void (under Sec. 12 of the Act) if the child –

- Is taken or enticed out of the keeping of its lawful Guardian; or
- Is by force, compelled to go from any place; or
- Is, by any deceitful means, induced to go from any place; or

- Is sold for the purpose of marriage and is made to go through a form of marriage; or

- Is sold or trafficked or used for immoral purposes after marriage.

D. Injunction prohibiting a child marriage:

- If a Judicial Magistrate of the First Class or a Metropolitan Magistrate is satisfied that a child marriage in contravention of the Act has been arranged or is about to be solemnized, the Magistrate may issue an injunction against any person.

- A child marriage solemnized in contravention of an injunction order issued under Section 13 of the Act is void ab initio. (section 14)

C. Punishments:

- For a male adult over eighteen years of age contracting a child marriage – Rigorous Imprisonment upto 2 years or fine upto 1 Lakh or Both.

- For performing, directing, conducting or abetting a child marriage – unless proves that he had reason to believe that such a marriage was not a child marriage – Rigorous Imprisonment upto 2 years and Fine upto Rs 1 Lakh .

- For promoting or permitting the solemnization of a child marriage, whether as parent or guardian or any other person – Rigorous Imprisonment upto 2 years and Fine upto Rs 1 Lakh.

- For wilful disobedience of an injunction restraining a child marriage – simple or rigorous imprisonment upto 2 years or Fine upto Rs 1 Lakh.

Thus, all offences under the Act are cognizable and non – bailable.

It is specifically provided that no woman can be punished with imprisonment for any offence committed by her under the Act.

D. Child Marriage Prohibition Officers

Under Section 16 of the Act, the State Government must appoint officers known as Child Marriage Prohibition Officers, to discharge the Duties as Mentioned in the Act some of them are stated below

- To prevent solemnization of child marriage by taking such action as they deem fit;

- To create awareness of the evils which result from child marriages?³⁶⁹

X. SETTLED LAW POSITION CASES OF HIGH COURT

³⁶⁹ The Prohibition Of Child Marriage Act ,2006.

According to Andhra Pradesh High Court has held that under Hindu law, marriage of minor girl below 18 times in neither void nor voidable. Though data and circumstances of this case were different, i.e., the girl wanted to stay with the hubby but parents wanted to bring her back. But while rendering the judgment the Hon'ble High Court seems to have overlooked section 3 of Prohibition of Child Marriage Act, 2006, which makes similar marriage voidable at the case of the minor partner.

Bhagwati alias Reena v. Anil Choubey is an intriguing case in the sense that hubby filed for protestation of marriage as null and void as first, the woman was below the age of 18 at the time of marriage and secondly, marriage was contracted under compulsion and trouble to life. The court held that only a minor partner has a right to seek dissolution and hubby who was a major can not seek dissolution.

XI. CAUSES IN INCREASING OF CHILD MARRIAGE IN INDIA

- Avoiding expenditure on womanish education
- Minimizing marriage expenditure
- Avoiding share in ancestral property
- Poverty of family
- Social Insecurity- Social security is also one of the social factors responsible for child marriage system. It's general perception that a wedded woman is safer against offenses than an unattached woman. People (men) view wedded women else than unattached girls. Unattached girls are viewed with malafied intentions. It's the malafied intentions that lead to crimes against unattached girl's ladies. To be secure from offences, assaults, teasing against unattached girls, parents are in a hasty to give away girl in marriage soon after she attains puberty or earlier.
- Single parent family - some of families are single parent, it impel them to reduce the burden by performing marriage to their below 18 times girl child.

It's only reason. Thus this is some of the introductory causes the child marriage is adding in India.

XII. RECENT ISSUES ON CHILD MARRIAGE IN INDIA

Case name – Aleem Pasha v. State and anr. (2022) Karnataka

1. Marriage With Minor Muslim Girl Contravenes 'Prohibition Of Child Marriage Act': Karnataka High Court

Case brief – Essentially, the accused in the instant case was booked for the offences punishable under Sections 9 and 10 of the Prohibition of Child Marriage Act, 2006 and Sections 4 and 6 of the POCSO Act on the ground that he had married and impregnated a minor Muslim girl.

The case came to light when on June 16, 2022, the victim, the wife of the accused, approached the Primary Health Centre for a medical checkup and on examination, it was found that she was pregnant. Further, it is also revealed that she was aged about only 17 years. Therefore, the Sub-Inspect of Police of K.R. Puram Police Station lodged a complaint against the petitioner.

Seeking bail, his counsel argued before the High Court that under Mohammedan Law, puberty is the consideration for marriage and normal puberty age is treated as 15 years hence, in the instant case, since the girl had attained puberty, there was no commission of offence under Section 9 and 10 of the Child Marriage Restraint Act.

However, the Court categorically rejected this argument by stressing that POCSO Act is a Special Act and it overrides personal law and as per the same, the age for involving in sexual activities is 18 years.

However, taking into account the fact that the victim was aged about 17 years and was capable of understanding things, the Court went on to observe that there was no evidence to show that she raised any objections to her marriage and therefore, it was prima-facie evident that she was also a consenting party

though she was under the influence of her parents.

“ Admittedly, the petitioner is the husband of the victim and looking to these facts and circumstances, there is no serious dispute regarding the marriage as the petitioner himself has produced the relevant documents before the Trial,” the Court further added is it granted bail to accused on his executing a personal bond for a sum of 1 Lakh.

XIII. CONCLUSION

Eliminating child marriage is a logical place to start. To bring awareness of prohibition on child marriage and to secure child age lives it is very crucial to eliminate this old tradition of child marriage and to bring gender equality and secure equal education to boy and girl and to promote healthy state of affairs in the country and hence it is very important to implement such laws by administration to prohibit child marriage and provide thereby fine on offence, if any commit of child marriage. There by this research article you must have understood that what is child marriage and it caused and consequences in the growth factor leading to child marriage and it remedy in the law with recent Cases, therefore child marriage is a crime in India which is cognizable and non-bailable and thus legal awareness is needed in today world to prohibit child marriage in rural areas as well and to protect children from sexual offences.

XIV. REFERENCE

7. Scholar.google.com,https://scholar.google.com/scholar?q=related:PYvVajl0aBcJ:scholar.google.com/&hl=en&as_sdt=0,5#d=gs_qabs&t=1677488805676&u=%23p%3DwR87UHh4du0J, (Last visited April 15,2023)
8. Scholar.google.com,https://scholar.google.com/scholar?q=related:PYvVajl0aBcJ:scholar.google.com/&hl=en&as_sdt=0,5#d=gs_qabs&t=1677490734598&u=%23p%3D_npZWDWG2P0J, (Last visited on April 15,2023)
9. Research Gate,<https://www.researchgate.net/publication/278022723>, (Last visited on 15 April , 2023)

10. JStor, <https://www.jstor.org/stable/41720300>, (Last visited on 16 April, 2023)
11. Wikipedia,https://en.m.wikipedia.org/wiki/Child_marriage#:~:text=Child%20marriage%20is%20part%20of,the%20child%20remaining%20unmarried%20into, (Last visited on 17 April , 2023)
12. Livelaw.in,<https://www.livelaw.in/top-stories/minor-muslim-girls-marriage-invalid-pocso-act-overrides-personal-law-karnataka-high-court-212765>, (Last visited on 18 April,2023)

XV. BIBLIOGRAPHY

2. 24th EDITION , Dr. Paras Diwan , Modern Hindu Law, page no 110 ,ALLAHABAD LAW AGENCY , 2019