

Position of Law on Prohibition of Child Marriage in India

By: Saransh Agarwal

Introduction

Child marriage refers to the practice in which children are married away at a very young age. Usually a girl below the age of 18 or a boy below 21, is married to an adult man/boy or a girl respectively. Child marriage affects both mental and physical well-being. Although, it is both boy and a girl who suffer due to child marriage but it is often seen that girls are among the most vulnerable one.

Child marriage in its very form is the violation of the human rights. Rather, is not solely a gross violation of human rights as per the United Nations Convention on the Elimination of All Forms of Discriminations against Women, but also underweights progress towards developmental goals.

Child marriage is both a symptom of and a contributor to gender inequality. Child marriage is both a symptom of and a contributor to gender inequality. Studies demonstrate the clear linkages between the incidence of child marriage and poor health indicators, often due to early child bearing that contributes to high levels of maternal mortality and morbidity.

Child marriage often results in or leads to lower educational attainment for girls, economic independence, limiting their employment opportunities and productive capacity to society. Child marriage is still one of the widely ignored violation of the health and development rights of girls and young women.

The reasons being that Governments are often either unable to enforce existing laws or bridge the gap between national laws on marriage age and entrenched customary and religious laws. This is because the family is often thought to be a family affair in which the intervention by the government should be minimal.

Trend of Child Marriage in India

Child marriages in India is not a novelty. India is one of the few countries that have custom of child marriage. Despite having many laws on child marriages, we are not able to get rid of child marriages, and the loser in the end is inevitably the girl child given the socio-economic conditions.

Among the various reasons cited behind the practice include: tradition, family and societal pressure, feudal set-up, and poverty. Based on the pseudo belief that 'virginity' is essential in a bride, girls are married off at a very young age, beginning just after birth. As a result, these girls are traumatized by sex and are forced to bear children much before their bodies and minds are fully mature. Many parents are under the misbelief that keeping their daughters unmarried after puberty is a big responsibility of protecting them. Parents often cite poverty as the reason. As for the boy's family, it gets an "unpaid servant" to do the household chores, often coupled along with dowry.

The reasons for child marriage today go beyond custom and poverty. The oppressed classes and castes, with the encouragement of the landed castes, emulate this feudal social practice as it ensures for them a source of cheap family labour. He believes that it is in the interest of the dominant classes to keep this system going.

Child marriage with all its aftereffects and problems is no more than a social evil. Indian society has had its torchbearers who enlightened the masses and told them about the social evil of child marriages. Various laws and regulations have also been passed to protect the innocent children and their childhood from being destroyed.

Legislations

Prohibition of Child Marriage Act, 2006

Ineffectiveness of Child Marriage Restraint Act, 1929, prompted the government to make a new legislation to replace it. So, in the year 2006 Government of India enacted a new legislation in the form of Prohibition of Child Marriage Act, 2006(or PCMA).

The Act seeks to prevent child marriages with enhanced punishments of rigorous imprisonment for two years and/or fine of INR 1 lakh. It also defines a child to mean a male below 21 years and female below 18 years. There are provisions for maintenance of the girl child.

The husband is liable to pay the maintenance in case he is a major. In case the husband is a minor, his parents would be liable to pay the maintenance. The legal status of a child marriage is voidable at the option of the parties. However, if the consent is obtained by fraud, deceit or if the child is enticed away from his lawful guardians and if the sole purpose is to use the child for trafficking or other immoral purposes, the marriage would be void.

In order to protect the interest of the girl a decree of nullity can be obtained by a girl who has entered into a child marriage within 2 years of attaining the age of 18 years. The Act also provides for the appointment of a Child Marriage Prohibition officer whose duties are to prevent child marriages and spread awareness regarding the same.

Hindu Marriage Act, 1956

Under the Hindu Marriage Act, only the parties to a child marriage are punishable even if they did not consent to the union. There are no provisions for punishing the parents or people who solemnised the marriage. A girl can get the marriage annulled only if she was married off before attaining the age of 15 and she challenges the marriage before turning 18. There is no express provision to prohibit child marriage per se.

Indian Christian Marriage Act (ICMA)

ICMA provides that a preliminary notice is to be issued 14 days prior to the marriage if the marriage is to be contracted between minors. After the expiration of the said period, the parties can go on with the marriage without the consent of their guardians.

Landmark Judgments

The judicial pronouncements have time and again highlighted the superseding effect of secular law over the personal law in the guise of fundamental rights or moral principles. However, there are inconsistencies between the judgements of various high courts.

Lajja v State (W.P. (Crl.) No.338/2008)

The Delhi High court held that the PCMA prevails over personal laws.

Seema Beghum v State (WRIT PETITION NO.75889 OF 2013(GM-RES))

The Karnataka High Court in 2013 reiterated the judgement of Delhi High court in the case of Lajja v State and held that the PCMA prevails over personal laws.

Yusuf Ibrahim Mohammad Lokhat v State of Gujarat

The High court of Gujarat 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 without the consent of her parents”. This clearly gives the idea that according to the learned judges, the personal laws should be taken as a primary source to decide the cases of underage marriage.

Conclusion

Child Marriage is an evil that cannot be eliminated without support from the society. There have been demands to make child marriage void ab initio under the Prohibition of Child Marriages Act, but Indian society is complicated and complex and making child marriages void will only further jeopardise the rights of women who are victims of child marriage. Mere legislation will not serve the purpose unless there is support and backing from the society. Since, it is a social evil community support and commitment coupled along with the stricter implementation of laws will lead to the elimination of social evil of child marriage from the society.