



# CHILD MARRIAGE IN INDIA: A CURSE IN DISGUISE

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## ABSTRACT

Marriage is considered a sacred bond in India, where it is believed that two individuals are united not only in this life but also in their future lives. India, with its diverse culture and rich history, has been grappling with the issue of child marriages for decades. Children seem to have been exploited in a lot of ways within the family and the society since ancient times and one of the worst forms of such exploitation is Child marriage. The prevalence of child marriage in India is closely linked to deeply entrenched cultural norms and gender-based discrimination, perpetuated by poverty, illiteracy, and lack of access to healthcare and education. Efforts to combat child marriage in India have been ongoing for decades, but progress has been slow. To combat this practice, the Indian government has taken several steps, including the implementation of the Prohibition of Child Marriage Act, 2006. Despite legislative measures, social attitudes, and economic incentives, the practice of child marriage persists with dire consequences for both physical and mental health, and education of a child especially girl child. The government must strictly enforce the Prohibition of Child Marriage Act, 2006 and raise awareness among communities to change their mindset. Children should be given access to education and healthcare, and parents must be educated about the importance of delaying marriage. Only through collective efforts can we put an end to this harmful practice and empower young children to reach their full potential.

**KEYWORDS:** Minor, Child Marriage, Institution, Violate, Discrimination, India,

## INTRODUCTION

Marriage has been described as being united as husband or wife to a person of the opposite sex in a lawful, consensual, and contractual relationship recognised and sanctioned by the law and only dissolvable by the law. As an institution, Marriage has a rich history in Indian society.<sup>1</sup> Currently, the legal age of marriage for women in India is 18, while for men it is 21 years. Yet, Child Marriage is a common practice in India. Children are married in some Indian Societies as part of a social practice called Child Marriage. In most

<sup>1</sup> Child Marriage in India: A Study of Its Differential Patterns in Rajasthan, p. 6

child marriages, it is the bride and not the bridegroom, who is a child. Another form of child marriage is where the parents of the would-be bride and groom plan a future wedding. In this type of marriage, neither the girl nor the boy meets before they reach a marriageable age. Child marriage contributes to gender inequality. Girls are disproportionately affected as they are the majority of the victims, even though child marriage affects both the genders.<sup>2</sup> Child marriage not only violates the rights of a child, like, The right to education, The right to be protected from physical and mental violence, injury or abuse, including sexual abuse, rape and sexual exploitation, right to the enjoyment of the highest attainable standard of health, The right to rest and leisure, and to participate freely in cultural life, The right not to be separated from parents against the child's will, The right to protection against all forms of exploitation affecting any aspect of the child's welfare and The right to eventual employment.<sup>3</sup> But it also has a detrimental effect on a child's physical development, health, mental and emotional development, and educational opportunities. It also impacts society because child marriage reinforces a cycle of poverty, gender inequality, illiteracy, malnutrition, and high infant and maternal mortality rates. *The Child Marriage Restraint Act (CMRA) of 1929*, also known as the Sharda Act, was the first law of its kind in India, restricting "child marriage" by recommending the appropriate age of marriage for the parties to the marriage. This Act banned child marriages for girls under the age of 15 and boys under the age of 18. However, there were several shortcomings in the 1929 Act. For Instance, The Sharda Act only aimed to restrict the solemnization of child marriages in the country, not to restrict or prohibit them.<sup>4</sup> It failed to identify the authorities responsible for preventing child marriages.<sup>5</sup> The procedures established under this Act to prevent the solemnization of child marriages were extensive and inefficient.<sup>6</sup> The Sarda Act was inefficient and failed to achieve the goals it intended to achieve; however, it was the first act in India to establish a minimum age for marriage.<sup>7</sup> As a result, it raised awareness about the issue. The 1929 Act is now regarded as an essential step forward in India's social reform movement. Post-Independence The Child Marriage Restraint Act, 1929 was amended in 1978, increasing the legal marriage age for girls from 15 to 18 years and boys from 18 to 21 years.<sup>8</sup> The Indian parliament passed *The Prohibition of Child Marriage Act* in 2006 to replace *The Child Marriage Restraints Act, 1929 (Sarda Act)*. This Act was passed to address the shortcomings of the Sarda Act. Under the 2006 Act, a marriage between two parties in which one of them is a minor, i.e. below the age of 18 in the case of girls and below the age of 21 in the case of boys, is considered voidable. It can be annulled within two years of attaining majority by the party who was a minor at the time of the marriage.<sup>9</sup> The 2006 Act has extended a great deal of authority over administrative machinery to discourage child

<sup>2</sup> Child Marriages in India, *An insight into Law and Policy December 2013*, Final Report of the Red Elephant Foundation, p. 4.

<sup>3</sup> Dr P Chand Basha, Child marriage: Causes, consequences and intervention programmes, *International Journal of Humanities and Social Science Research* Volume 2; Issue 11; November 2016; Page No. 19-24, p.21

<sup>4</sup> Handbook on The Prohibition of Child Marriage Act, 2006, UNICEF, Ministry of Women and Child Development, p.8

<sup>5</sup> Ibid.

<sup>6</sup> Ibid.

<sup>7</sup> <http://racolblegal.com/an-analysis-of-child-marriage-restraint-act-and-the-ideology-and-history-behind-its-formation/>

<sup>8</sup> <https://www.indiafilings.com/learn/prohibition-of-child-marriage-act/>

<sup>9</sup> <https://www.scoobserver.in/court-case/exception-to-rape-within-child-marriages>

marriages.<sup>10</sup> In an effort to address the issue of Child Marriage, India has taken numerous steps. However, despite these efforts, child marriage continues to be a widespread practice in many parts of India.

## MEANING OF A CHILD

The concept of age in India is defined differently for different age groups, creating ambiguity.

- a. The Juvenile Justice (Care and Protection of Children) Act, 2015:** Section 2 (12) of the Act defines a “Child” as any individual who has not completed the age of eighteen years.<sup>11</sup> This definition is in line with the United Nations Convention on the Rights of the Child, which defines a child as any person under the age of 18, unless the age of majority is attained earlier under a particular country's laws.
- b. The Prohibition of Child Marriage Act 2006:** Section 2 (a) of the Act defines a "Child" as an individual who is under twenty-one years of age if a male, and under eighteen years of age if a female.<sup>12</sup>

## WHEN IS A MARRIAGE CONSIDERED AS A CHILD MARRIAGE?

In simple words, a marriage is considered a child marriage where one or both the parties to the marriage are below the age of eighteen years. As per Section 2 (b) of *The Prohibition of Child Marriage Act, 2006*, "Child Marriage" is a marriage in which one of the parties to the marriage is a child.<sup>13</sup>

## FACTORS RESPONSIBLE FOR CHILD MARRIAGE IN INDIA

There are numerous factors that are responsible for child marriage in India.

- i. Custom and Tradition:** In areas where child marriage is common, there is heavy social pressure on families to face rejection or family guilt. Local perceptions of the appropriate age of marriage are linked to economic considerations such as dowry, bride price, and so on.<sup>14</sup>
- ii. Gender Discrimination:** Child marriage is a product of societies that devalue and discriminate against women and girls. According to a UNICEF report on “Child Marriage and the Law,” “discrimination often manifests itself in the form of domestic abuse, marital rape, and food scarcity, as well as a lack of access to education, healthcare, and general impediments to mobility.”<sup>15</sup>
- iii. Security:** In many situations, parents turn to child marriage to secure a better future for their daughters. Situations of vulnerability caused by violence, harassment, and other crimes against girls and extreme poverty can lead to parents resorting to child marriage as a defence mechanism or survival tactic.<sup>16</sup>
- iv. Poverty:** Child marriage is sometimes seen as a means of economic survival in poor communities. Poor families sell their children through marriage to pay off their debts or to make money to break free from the cycle of poverty.<sup>17</sup> Every opportunity is taken to escape the responsibility of a girl child. So poverty

<sup>10</sup> See Supra note 3, p.23

<sup>11</sup> Section 2 (12) of the Juvenile Justice (Care and Protection of Children) Act, 2015.

<sup>12</sup> Section 2 (a) of The Prohibition of Child Marriage Act, 2006.

<sup>13</sup> Section 2 (b) of The Prohibition of Child Marriage Act, 2006.

<sup>14</sup> See Supra note 3, p.21

<sup>15</sup> Ibid.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

is one of the reasons why families inevitably turn to child marriages to escape all of the responsibilities that come with having a female child.

- v. **Dowry System:** Customs such as dowry place a financial burden on the family because parents must provide large sums of money, jewellery, or land for their daughter to marry. As a result, the preference narrows to the one who takes the least amount of dowry rather than a decent deserving person. Often, men who have lost their wives, are split or separated or divorced or are very old take less dowry, and a girl who is a minor is forced to marry and live with a mature and more senior man.<sup>18</sup>

## IMPACT OF CHILD MARRIAGE

Child marriage has a wide range of Impact, which are mentioned below.

- i. **Physiological & Psychological Impact:** The majority of young brides lack the knowledge of and access to contraception and reproductive health care. They are subjected to early and frequent sexual encounters and numerous pregnancies and childbirth before they are physically and mentally mature.<sup>19</sup> Many experts are of the view that early pregnancy is unsafe for girls. Reaching puberty is not an adequate indicator of physical development to justify the consummation of marriage and Cohabitation before reaching appropriate physical maturity will result in the underdevelopment of a girl child's reproductive organs and expose her to infections and diseases.<sup>20</sup> Premature childbirth can also lead to several health issues for mothers, including vaginal tears, fistula, and general health deterioration. Girls who have fistula are often abandoned by their spouses.<sup>21</sup> Furthermore, some incidents result in nervous system shock, the effects of which are felt throughout life.

Child wives experience significant psychological consequences due to the loss of adolescence, forced sexual intercourse, denial of freedom, and personal growth. The suffering of a young girl burdened by different responsibilities, commitments, harassment, and pressures is inexplicable. Young brides are subject to segregation, loneliness, and a lack of social interaction. Loss of childhood, forced sexual relations, and denial of freedom & personal growth can cause depression, low self-esteem, and even lead to suicide. Aside from this, the discontinuation of education due to marriage adds to the mental stress of child wives.

- ii. **Educational Impact:** Child brides are often pulled out of school and refused further schooling. Their children are also more likely to be illiterate. Providing education to a girl is seen as needless by both the girl's and boy's families, if not an obstacle to being a successful wife or mother. Those who seem to have a choice are inevitably forced to drop out of school because they are forced to take on the responsibility

<sup>18</sup> Ibid.

<sup>19</sup> See supra note 3, p.22

<sup>20</sup> Salini. S.S., Child Marriage and Law in India A Critical Study, April 2003, p.61

<sup>21</sup> See Supra note 3, p.22

of doing household chores, starting a family, and so on.<sup>22</sup> Furthermore, by not going to school, young brides miss out on opportunities to form bonds with peers or learn essential life skills.

- iii. **Domestic violence:** Domestic violence is more common among child brides. They face domestic abuse from their husband and their family members for many reasons. These factors include dowry and the wife's refusal to comply with expectations imposed by the husband and his family, who are often patriarchal. The Abuse may be in the form of physical violence (slapping, hitting, beating, strangulation, burning, threatening with a knife or weapon), psychological violence (humiliation, yelling, and intimidation), and sexual violence (non-consensual or forced sex).<sup>23</sup> They seek solace in suicide as a last resort after being entangled in a vicious cycle of domestic abuse and harsh treatment. Desperate for freedom from abuse and cruelty, some of them escape their husband's home, oblivious to the fatal consequences of their actions.
- iv. **Child Widowhood:** Female brides are more likely to be widowed at a young age since husbands are often much older than their brides. A widowed child bride can face discrimination, including loss of status, and is often denied property rights and other rights.<sup>24</sup>
- v. **Poverty:** Child marriage is seen as a means to break the cycle of poverty; however, it promotes poverty across generations, with numerous effects, including fundamental human rights violations reflected in poor maternal and child health, education denial, gender-based abuse, limited economic involvement, social exclusion, and other dire effects.<sup>25</sup> Child brides who come from low-income families are more likely to remain poor and pass on their poverty to future generations in the form of poor health, education, and economic participation.
- vi. **Trafficking of Girls:** Child marriage also results in the trafficking of children for various purposes, including prostitution, labour, and exploitation. Young girls are forced into marriage to sell them to other states.<sup>26</sup>

## JUDICIAL PRONOUNCEMENTS

### ▪ *Independent Thought V. Union Of India*<sup>27</sup>

The Criminal Law Amendment Act, 2013, amended **Section 375** of the Indian Penal Code, 1860 to increase the age of consent to sexual intercourse to 18. This placed the legislation in line with all other laws that define a child as a minor under the age of 18 namely Juvenile Justice (Care and Protection of Children) Act, 2015 and Prohibition of Child Marriage Act, 2006. **Exception 2 to Section 375**, which provides an exception to the rape offence in cases of involuntary sexual intercourse by a man with his own wife whether

<sup>22</sup> The Law Commission Of India (Report No. 205), Proposal To Amend The Prohibition Of Child Marriage Act, 2006 And Other Allied Laws, February 2008, p.22

<sup>23</sup> Dr Srinivas Goli, Eliminating Child Marriage In India Progress And Prospects, p.26

<sup>24</sup> See Supra note 22, p.22

<sup>25</sup> See Supra note 23, p.24

<sup>26</sup> A Study on Child Marriage in India: Situational Analysis in Three States, National Institute Of Public Cooperation And Child Development, p.7

<sup>27</sup> W.P. (Civil) No. 382 of 2013, decided on October 11, 2017 (Madan B. Lokur and Deepak Gupta JJ).

she is 15 years of age or older, has not been amended. As a result, non-consensual intercourse between a husband and a minor wife between the ages of 15 and 18 was allowed.<sup>28</sup>

When determining whether a husband commits rape if he has sexual intercourse with his wife who is between the age of 15 and 18, the Division Bench observed that the rape exemption in IPC provided an unnecessary and artificial differentiation between a married girl child and an unmarried girl child. The Hon'ble Supreme Court also observed that the age of marriage and the age of consent have both been raised by the parliament from time to time and currently, a girl child under the age of 18 is not allowed to marry or give consent. When the age has been increased in all other rules, Exception 2 by holding the age of consent for a wife at 15 years becomes unfair, unreasonable, discriminatory, and violates the rights of the girl child. As a result, it is arbitrary and should be set aside.<sup>29</sup>

The division bench of Justices Madan B. Lokur and Deepak Gupta of the Hon'ble Supreme Court, held that Exception 2 to Section 375 of the Indian Penal Code will now be "meaningfully" read as, "*Sexual intercourse by a man with his wife, the wife not being under the age of 18 years, is not rape.*"

This exception to marital rape was declared unconstitutional because it violated Article 14<sup>30</sup> and 21<sup>31</sup> of the Indian Constitution. This ruling has been praised and is a step forward towards the elimination of child marriage.

## RECENT SCENARIO OF CHILD MARRIAGE IN INDIA

On December 21, *The Prohibition of Child Marriage (Amendment) Bill, 2021*, was introduced in the Parliament. The 2021 Bill seeks to amend The Prohibition of Child Marriage Act, 2006, by raising the marriageable age of girls from 18 to 21 years. The 2021 Bill also seeks to bring amendments in laws relating to the age of marriage i.e. 'the Indian Christian Marriage Act, 1872'; 'the Parsi Marriage and Divorce Act, 1936'; 'the Muslim Personal Law (Shariat) Application Act, 1937'; 'the Special Marriage Act, 1954'; 'the Hindu Marriage Act, 1955'; and 'the Foreign Marriage Act, 1969'. The Prohibition of Child Marriage Act, 2006, defines a "Child" as an individual who is under twenty-one years of age if a male, and under eighteen years of age if a female. But, the Amendment Bill of 2021 has introduced a new definition of a "child", it provides that any male or female who has not completed the age of 21 years will be referred to as a "child". As per The Prohibition of Child Marriage Act, 2006, a person who gets married before reaching the minimum required age can claim an annulment, but it is necessary for this the claim must be filed within 2 years after the reaching the age of majority, i.e., at the age of 20. However, after the introduction of the Amendment Bill of 2021, the minimum age at which the petition for annulment can be filed has been increased from 2 years to 5 years, i.e., 23 years. This is one of the most noteworthy changes that the

<sup>28</sup> <https://www.scobserver.in/court-case/exception-to-rape-within-child-marriages>

<sup>29</sup> <https://www.latestlaws.com/case-analysis/sc-case-analysis-on-marital-rape-independent-thought-v-union-of-india-and-another-by-akanksha-yadav/>

<sup>30</sup> Article 14 of the Constitution of India, guarantees Equality before Law, The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.

<sup>31</sup> Article 21 of the Constitution of India, guarantees Protection of Life and Personal Liberty. No person shall be deprived of his life or personal liberty except according to procedure established by law.

Amendment Bill of 2021 has introduced. The Prohibition of Child Marriage (Amendment) Bill, 2021 has failed to address any change that makes Child Marriages *void ab initio* in India.

Currently, The Prohibition of Child Marriage (Amendment) Bill, 2021, has been referred for examination to a Parliamentary Standing Committee. The Committee has also approached the general public for their views and suggestions regarding the Amendment Bill of 2021. However, the Amendment Bill of 2021 is awaiting approval by the Parliament.

## CONCLUSION

Child marriage is a grave violation of child and human rights. It leaves behind a deep physical, psychological and emotional scar on a child. Preventing child marriage requires more than just rules, beliefs, and customs; it also requires education, health care, and empowerment. It is as much about gender equality and women's involvement in decision-making as it is about equal employment and life skills opportunities. One of the reason behind the prevalence of the practice is the conservative mindset of people and deep-rooted family beliefs that regard a girl as a liability and a burden who should be married off and sent to her husband's house as soon as possible.

On one hand, there is a lot of social pressure from society to marry off children, particularly girls, at an early age. While on the other hand, there is an economic pressure that force people to marry their children at an early age. The practise of child marriage is encouraged by low socio-economic status and large families because it allows parents to send their girl children off at a young age. As mentioned previously, poverty and plays a significant role in this practise. . The bride's parents, who would bear the majority of the wedding expenses, normally tend to marry all of their daughters on the same day to prevent repeated expenses. Marriage of the boy, on the other hand, brings in an additional hand to assist in household and economic activities.

Despite the provisions of strong policies and Acts against child marriage, the practice still prevails in India. The single most critical aspect perpetuating child marriage is a lack of educational facilities for girl children. Girls must have equal access to at least high school education. High schools must take the opportunity to postpone a girl child's marriages by offering professional social assistance and counselling to girls and their parents. Girls who are under pressure from their families to marry typically confide in their peers and teachers. High schools must take advantage of this chance to reach out to students and their guardians. Child marriage prevention laws if strictly enforced would have a deterrent effect on both parents and families. Strict enforcement of dowry, sexual assault, violence against women, child exploitation, and other laws should also be ensured in order to instil a sense of protection among women, which is one of the most significant reasons why parents are compelled to marry off their daughters at an early age. The negative consequences of child marriage, statutory provisions as well as the relevance of legally prescribed age for marriage can be publicized through media such as television, radio, and newspapers, particularly in areas where child marriage is prominent. Cinema is another excellent tool for raising awareness and preventing child marriage.

Child marriages continue as a result of inadequate enforcement of existing regulations. Despite the fact that some people are aware of the legislation, they continue to pursue child marriage. Child marriage must be prohibited since it harms not only the present generation but also future generations. Only by fully implementing the measures mentioned above will we be able to create a child-friendly society in India.

