

Child Marriage in India: Its Status, Legal Ramifications, and Prevention Efforts

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Child marriage is a pervasive global issue that transcends geographical, cultural, and societal boundaries, affecting all segments of the population. This practice infringes upon a child's fundamental rights, denying them access to essential healthcare, proper nutrition, and education. Child marriage essentially constitutes an early forced union, as it occurs without the free and full consent of the parties involved, primarily due to their underage status. International agencies have underscored the importance of parties entering marriage freely and with full consent.

Nature of the Issue

Child marriage affects both genders, but its impact is disproportionately severe on girls, who constitute the majority of victims. Girls, especially those from economically disadvantaged backgrounds with limited access to education, bear the brunt of this practice. Rural areas in India are particularly vulnerable to child marriage, exacerbating its harmful effects. Child marriage represents a clear violation of children's rights and exerts a detrimental influence on various aspects of their lives, including educational opportunities, physical growth, health, and mental and emotional development. Furthermore, it acts as a significant impediment to empowerment. The right to enjoy the highest attainable standard of health is a fundamental human right applicable to all, regardless of race or religion, and child marriage blatantly contravenes this standard.

Child marriage constitutes a severe violation of human rights and stands in defiance of international norms and standards. These principles are evident in various international human rights instruments. For instance, the Universal Declaration of Human Rights (UDHR), in Article 16(2), stipulates that "marriage shall be entered into only with the free and full consent of the intending spouses." Additionally, child marriage runs afoul of specific provisions within the Convention on the Rights of the Child (CRC), which India has been a

party to since 1992. The CRC, in Article 9(1), expressly forbids the separation of children from their parents against their will. Moreover, Article 24(3) of the CRC mandates that States take effective measures to eradicate traditional practices detrimental to children's health. Furthermore, child marriage also violates specific provisions of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which India has been a party to since 1993. Article 16(2) of the CEDAW declares that the engagement and marriage of a child shall hold no legal validity. Additionally, Article 16(1)(b) of the CEDAW grants women and girls the right to freely select a spouse and to enter into marriage only with their free and full consent. Child marriage has far-reaching implications, affecting almost every aspect of achieving the Millennium Development Goals¹.

Child marriage represents a grave concern in India, which harbors the largest number of child brides globally. This practice is pervasive across the country but is more prevalent in rural areas due to high levels of illiteracy and poverty. The rates of child marriage vary, with higher occurrences in the northern and western regions of India and lower rates in the southern and eastern parts. . As per the findings of the National Family Health Survey 2019-21 (NFHS-5), 23% of females aged 20 to 24 years entered into marriage before reaching the age of 18². Determining the exact prevalence of child marriages is challenging because many of these marriages remain unregistered. This challenge is compounded by the significant number of unregistered births, particularly in impoverished rural areas, making it difficult to ascertain the ages of brides and bridegrooms at the time of marriage.

Underlying Causes of Child Marriage

The issue of child marriage is deeply rooted in a complex web of social, economic, and cultural factors. Several underlying reasons contribute to this phenomenon, including poverty, low levels of education, weak law enforcement, limited educational opportunities, parental insecurity, and a lack of awareness regarding the consequences of early marriage and relevant laws. In many societies, there is a disparity in the value placed on girls compared to boys, with girls often viewed as liabilities with limited economic potential. Women's roles are frequently confined to the household, a contribution that is undervalued. Consequently, marrying off a daughter at a young age is sometimes seen as a means for parents or guardians

¹ UNICEF India on child marriage, < <https://unicef.in/Whatwedo/30/Child-Marriage>>

² National Family Health Survey 2019-21 (NFHS-5), Ministry of Health and Family Welfare

to reduce their financial burdens, ensuring they have one less person to provide for in terms of food, clothing, and education. Furthermore, marriage is perceived as a way to secure a girl's future, both socially and economically.

Consequences of Child Marriage

Child marriage has far-reaching consequences, perpetuating gender inequality, poverty, and ill health. It disrupts girls' education, limiting their opportunities for economic improvement and diminishing their decision-making power within their households. Additionally, child marriage places significant family and societal responsibilities on young shoulders, even though it provides a social license, albeit not a legal one, for engaging in sexual activity, a fact acknowledged by the Supreme Court of India in 2017. Moreover, child marriage often leads to early and frequent pregnancies, resulting in higher rates of maternal and infant mortality.

Child Marriage Legislation in India

Child marriage was addressed through legislation during British rule in India, with the enactment of the Child Marriage Restraint Act of 1929 (CMRA), often referred to as the Sharda Act. This law governed child marriages in India for nearly 80 years until it was superseded by the Prohibition of Child Marriage Act of 2006 (PCMA). The CMRA applied to the entire country except for the state of Jammu and Kashmir and was applicable to all Indian citizens, regardless of their religion. Initially, the CMRA set the minimum marriage age at 15 for girls and 18 for boys. However, in 1978, an amendment raised the minimum age to 18 for girls and 21 for boys.

The CMRA was considered to be having many shortcomings and miserably failed to achieve its object of restraining the solemnisation of child marriages. The punishment was considerably light prescribing a maximum simple imprisonment of 15 days to the bridegroom above 18 but below 21¹, and a maximum of 3 months simple imprisonment for a bridegroom above 21². The fine that can be imposed is 1,000 rupees in the first case and in the second case; the maximum fine was not fixed. The punishment for those responsible for the marriage

¹ Section 3 of the Child Marriage Restraint Act, 1929

² Section 4 of the Child Marriage Restraint Act, 1929

was a maximum three months simple imprisonment or/ and fine¹. However, a woman responsible for the solemnisation of child marriage could not be subjected to imprisonment. There was a provision enabling the court to issue an injunction prohibiting marriage in contravention of this Act²

Recognizing the shortcomings of the Child Marriage Restraint Act of 1929, the government introduced a more comprehensive legal framework known as the Prohibition of Child Marriage Act of 2006 (PCMA), which currently governs this issue. The PCMA applies to all Indian citizens, regardless of their region or religion, aiming to provide a more inclusive and robust approach to combatting child marriage.

The Prohibition of Child Marriage Act (PCMA), which came into effect on November 1, 2007, criminalizes child marriage, rendering it illegal and subject to penalties. Under the PCMA, a child is defined as a female under the age of 18 and a male under the age of 21. Thus, if either or both parties entering a marriage fall within this age range, the union is considered a child marriage. However, the PCMA acknowledges a child marriage as valid but voidable, giving the minor involved the option to annul the marriage. This recognition of voidability carries the same legal consequences as a valid marriage, including conjugal rights. The PCMA allows the child, who was underage at the time of marriage, to seek annulment through a competent court, but this must be done within 2 years of reaching adulthood³. Consequently, a female victim can annul the marriage before turning 20, while a male victim has until the age of 23 to do so. If a competent court nullifies the marriage, it declares the union null and void, as if it had never existed.

The States and Union Territories are obligated to formulate rules for implementation of the PCMA. Additionally, the 2006 Act requires States and Union Territories to designate Child Marriage Prohibition Officers (CMPOs) responsible for overseeing the implementation of the Act's provisions.

The PMCA aims to deter child marriages by imposing stringent penalties⁴ on both the bridegroom and individuals responsible for organizing or attending such marriage knowing them to be child marriage. The law stipulates that a bridegroom aged eighteen or above is subject to rigorous imprisonment for a maximum of two years and/or a fine of up to one lakh

¹ Sections 5&6 of the Child Marriage Restraint Act,1929

² Section 12 of the Child Marriage Restraint Act,1929

³ Section 3 of the Prohibition of Child Marriage Act, 2006

⁴ Section 9 of the Prohibition of Child Marriage Act, 2006

rupees. Importantly, the bride, regardless of her age, is exempt from punishment. However, in certain cases, the bridegroom may himself be underage, falling between the ages of eighteen and twenty-one, rendering him both a perpetrator and a victim who can potentially annul the marriage. It is worth noting that the Supreme Court in *Hardev Singh vs Harpreet Kaur*¹ has held that a male aged between 18 and 21 years, who contracts into a marriage with a female adult, cannot be punished under Section 9 of Prohibition of Child Marriage Act, 2006.

Regarding the punishment of individuals responsible for child marriages, the Act distinguishes between those officiating the ceremony and those who support or allow its solemnization. Those who officiate, whether by performing, conducting, directing, or abetting any child marriage, face the penalty of rigorous imprisonment for up to two years and/or a fine of up to one lakh rupees, unless they can prove that they had valid reasons to believe the marriage was not a child marriage². Whereas, promoting or permitting solemnisation though punishable with the same quantum of punishment as provided for solemnisation, the differentiating point is, a woman can be subjected to imprisonment for solemnising but a woman cannot be subjected to imprisonment for promoting or permitting solemnisation though can be fined up to one lakh rupees³. Interestingly, those attending or participating also are covered in the category of promoting or permitting solemnisation.

Moreover, organisations or association of persons who does any act to promote the child marriage or permits it to be solemnised are covered in the category of promoting or permitting solemnisation. The scope for avoiding liability under PMCA by such parent or guardian becomes difficult because of the presumption that the person having charge of such minor child has negligently failed to prevent the marriage from being solemnised. Such a presumption is a rebuttable presumption of law⁴. Moreover, the offences punishable under this Act are cognizable and non-bailable and thus considered as serious offences⁵.

The PMCA allows the separated female after declaring the marriage null, the right to maintenance and residence from her husband if he is above eighteen or from in-laws if the husband is a minor until she is remarried⁶. The order continues to operate till her remarriage. The children born out of an annulled child marriage are considered legitimate

¹ *Hardev Singh vs Harpreet Kaur* decided on 7 November, 2019

² Section 10 of the Prohibition of Child Marriage Act, 2006

³ Section 11 of the Prohibition of Child Marriage Act, 2006

⁴ Section 11 of the Prohibition of Child Marriage Act, 2006

⁵ Section 15 of the Prohibition of Child Marriage Act, 2006

⁶ Section 4 of the Prohibition of Child Marriage Act, 2006

and the courts while giving parental custody should keep the children's welfare and best interest of the child as the paramount consideration¹. The Act requires the return of valuables, ornaments, money and gifts given by each party to the other after annulment of marriage².

The PCMA makes a provision for issuing an injunction by a Judicial Magistrate of the first class or a Metropolitan Magistrate preventing the solemnising of a child marriage. Such an injunction can also be issued against an organization or association involved in performing a child marriage³. A child marriage in contravention of such an injunction is void *ab initio*⁴.

Though the child marriage is voidable and continues to exist till it is annulled by a competent court, it is void *ab initio*, if the consent is obtained by fraud, deceit or if the child is enticed away from his lawful guardian or if the sole purpose is to use the child for trafficking or other immoral purposes⁵.

The District Magistrates are empowered to stop or prevent solemnisation of child marriages and for this purpose can take all appropriate measures including using force⁶. For the purposes of preventing solemnisation of mass child marriages on certain days such as *Akshaya Trutiya*, the District Magistrate shall be deemed to be the Child Marriage Prohibition Officer with all powers as are conferred on a Child Marriage Prohibition Officer⁷.

The Karnataka Amendment Declaring Child Marriages Null and Void

In a landmark legal development, the High Court of Karnataka, through its judgment in the case of *Ms. Muthamma Devaya vs. Union of India* (2010), directed the State Government to establish a committee dedicated to preventing child marriages. Responding to this directive, the Karnataka State Government formed a committee in 2010, headed by Dr. Shivaraj V Patil, a former Supreme Court Judge. This committee diligently assessed the prevalence of child marriages in the State of Karnataka and submitted its comprehensive report in June 2011. One of the pivotal recommendations in this report was that child marriages should be deemed *void ab initio* rather than merely voidable. Building upon this recommendation, in

¹ Section 5 of the Prohibition of Child Marriage Act, 2006

² Section 3(4) of the Prohibition of Child Marriage Act, 2006

³ Section 13(1) of the Prohibition of Child Marriage Act, 2006

⁴ Section 14 of the Prohibition of Child Marriage Act, 2006

⁵ Section 12 of the Prohibition of Child Marriage Act, 2006

⁶ Section 13(5) of the Prohibition of Child Marriage Act, 2006

⁷ Section 13(4) of the Prohibition of Child Marriage Act, 2006

2016, the Karnataka government took a bold step by enacting the Prohibition of Child Marriage Act (Karnataka Amendment) of 2016, officially declaring child marriages as null and void from their inception. The commendable changes in the Karnataka Amendment are prescribing minimum punishment of one year and obligating the concerned Police Officer to take cognizance of an offence committed in his jurisdiction *suo motto*¹. The Supreme Court in *Independent Thought v. Union of India (2017)*² appreciated PCMA Karnataka amendment and cited it as a model law.

Apex Court’s declaration that sex with an under-age wife is rape:

In the case of *Independent Thought v Union of India* in 2017, the Supreme Court made a significant pronouncement, asserting that "Sexual intercourse or sexual acts by a man with his own wife, where the wife is not yet 18 years old, constitutes rape." This landmark decision redefined the legal landscape by deeming sexual activity with a minor wife, even with consent, as rape.

Section 375 of the Indian Penal Code defines rape and addresses the age of consent, which is set at 18. Exception 2 to Section 375 previously allowed husbands to engage in non-consensual sexual intercourse with their wives aged between 15 and 18 years. However, the Supreme Court ruled that this exception, particularly in cases involving girls under 18, was arbitrary, capricious, whimsical, and in violation of the rights of underage girls. Consequently, the Court deemed this exception unconstitutional under Articles 14, 15, and 21 of the Indian Constitution.

The Supreme Court emphasized that a girl can only legally consent to sexual activity after she reaches the age of 18, which is also the legal age for marriage. In cases where a girl is married before turning 18, those responsible for arranging or facilitating such child marriages are committing a criminal offense, subject to punishment under the Prohibition of Child Marriage Act, 2006.

This judgment effectively narrows the scope of the 'marital rape exemption' in India, underscoring that 18 years is the age of maturity not only for sexual relations and marriage but also for matters involving contract law, property law, and voting rights. It is worth noting

¹ Section 15A of the Prohibition of Child Marriage Act, 2006(Karnataka Amendment)

² *Independent thought v. Union of India*, 2017 SCC online SC 1222

that women seldom exercise the option of seeking a nullification decree from the court to invalidate their marriage after it has been consummated.

Prohibition of Child Marriage (Amendment) Bill, 2021

In December 2021, the Lok Sabha introduced the Prohibition of Child Marriage (Amendment) Bill, commonly known as the Bill, with the aim of amending the Prohibition of Child Marriage Act, 2006 (PCMA, 2006). The Bill proposes raising the permissible marriage age for females to 21 years, aligning it with the age set for males. It also seeks to eliminate any room for social and religious practices that promote child marriage, effectively superseding any conflicting provisions in India's personal laws. The Bill was referred to the Standing Committee on Education, Women, Children, Youth, and Sports on December 21, 2021.

As mentioned earlier, the NFHS-5 Report from 2021 indicates that approximately 23.3% of women between the ages of 20 and 24 were married before turning 18. This data raises a pertinent question: can increasing the minimum marriage age for women effectively reduce the prevalence of child marriage in the country?

Addressing Child Marriage: A Comprehensive Approach

Addressing child marriage requires a multifaceted approach that targets various facets of the issue. These measures should be aimed at challenging patriarchal norms, increasing awareness of the harmful consequences of child marriage through media campaigns, educating families about sexual and reproductive health, improving access to safe and quality education, empowering adolescent girls with life skills, mobilizing religious and community leaders to support change, and making marriage registration mandatory for all. Effective implementation and enforcement of existing laws are crucial.

Despite child marriage legislation being in place for nearly 90 years and the experience gained from 16 years of the Prohibition of Child Marriage Act (PCMA), which significantly increased penalties, the prevalence of child marriages persists. An analysis of the PCMA suggests that the law is not inherently inadequate but could benefit from enhancements, such as making the betrothal of child marriage a cognizable and non-bailable offense. The primary issue lies in the weak enforcement of the law and a lack of trust in the institutions responsible for enforcement.

It is widely recognized that the role of Child Marriage Prohibition Officers has been ineffective. However, the recent Supreme Court judgment criminalizing sex with a minor wife and classifying it as rape has strengthened the position of those involved in eradicating child marriage. To address this issue, these officers and other relevant authorities should be held accountable for their actions or inaction.

Furthermore, the Union Government should take its "*Beti Padhao, Beti Bachao*" (Educate Daughters, Save Daughters) initiative seriously in the context of child marriages and compel state governments to prioritize this critical problem. Only through a concerted effort involving legal reforms, enforcement, education, and societal awareness can the deeply rooted issue of child marriage be effectively addressed.

