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CHILD MARRIAGE – PREVENTION AND PROHIBITION

Vejaisri S

ABSTRACT

“CHILDHOOD IS NOT MOTHERHOOD” according to law, marriage either for the women before the age of 18 years or the men before the age of 21 is termed to be a child marriage. Though child marriage is considered as an illegal and evil it is still in practice in some parts of our country. This article deals with the reason behind the continuation of such practice and why the law came into force to abolish such practice. The author will also come out various solutions to exploit child marriage.

INTRODUCTION

The thought that marriage is essential for girls is one major reason for the child marriage. Child marriage is the most prevalent form of sexual abuse and exploitation especially on girls. Such practice is more prevalent in countries like India, Africa, Latin America and some other developing countries. Rural parents prefer to marry their daughters at the early age to avoid complications at the later stage. In developing countries like India, protecting girls from exploitation is a major concern. It is therefore crucial to develop the strict laws and good policy to tackle child marriage even more effectively. Child marriage is objectionable for several reasons. This practice condemns children to the existence devoid of education, health, safety and freedom of choice. Early marriage not only ensures that girls accept their domestic and conjugal roles during their childhood but it also put them into the position where they were unable to exercise their choice about their own sexual and reproductive health. Therefore, there is every need to argue the rights of the adolescent girls by preventing the child marriage and promoting the importance of girl child in the society.

HISTORY AND EVOLUTION

In early known history of India, from the year 200BC -700AD, the men and women had given freedom to choose their partners and to enter into the relationship. Later from middle age, as the states and the government developed, the political system elaborated and gradually changed the Indian society by changing the lifestyles and opinions of people from simple to more complex in which women lost their rights and had to obey and respect the rules and the code behaviour. Since the young women are considered to be irresponsible and irrational in love, parents married them early before these girls caught into scandal. Though, age at which the girl was to be married differed and it had been rare for girls who are younger than 12 to be married in antiquity. Nevertheless, girl brides became younger towards the medieval period, and it became increasingly common for girls as young as six or eight to be married as Indian society. The prime concern of negotiating the wedding was to seek out the compatibility between the two families. It was believed during those times that if two persons know one another right from childhood it enhanced understanding and affection. Hence, parents selected the marriages of their children at a really early age although the daughter stayed together with her parents until she attained the age of puberty.

REASON BEHIND CHILD MARRIAGE

Though the child marriage is illegal in India, in some parts it is still in practice. Each year globally 12 million girls are getting married below the age of 18 which means 23 young girls every minute and one girl every three seconds which is every high. The reason for such practice could also be lack of education, poverty, gender inequality, insecurity and tradition.

POVERTY-

Because of the economic conditions of the parents these young girls are prey to the marriage. More than half of the girls from the poorest families in developing world are married as children. The economic condition of these families are very poor, the family and at times the girls themselves feel that getting married is the better way to secure their future. when these girls gets married the family feels less burden in case of feed, education and clothe where one number will be less. In some cases, marriage is the way to pay off the debts, manage disputes and settle economic, social alliances. If the child is young and uneducated it is easy for the parents to look after the groom where they don't ask for dowry which will also ease their burden.

GENDER INEQUALITY-

In many communities where child marriage is practised, the reason is the girls are not valued as much as boys – they think the girl child has their burden and it is an easy way cope up with the economic hardship in the family by transferring it to an husbands family. A family closely monitors the daughter's sexuality and virginity to protect the family honour. If the girl becomes pregnant before marriage or if the girl is in relationship, it is considered to be a dishonour to that family and in case if such things happens in some communities then family will be isolated from the village or the honour killing will takes place and so to avoid such things the family keenly monitors their daughter or they prefer early marriage if they found something fishy with their daughter.

TRADITION-

Child marriage is the traditional practice in many areas just because such thing is in practice for many generations. In some countries, if the girls start to menstruate then she is considered to be a woman in the eye of the community and getting her married is the next stage of life and giving her the status of wife and mother. Harmful traditional practice can be linked with one

another. For instance, in southern Ethiopia child marriage usually follows the female genital mutilation which is considered to be a rite of passage to be womanhood.¹

INSECURITY-

Many parents marry their daughters young as they must monitor the safety and security of their daughter in the areas where there is high risk of sexual harassment, physical and sexual assault. The parents feel it is impossible for them to monitor their daughter's safety in working areas as well so they think it is better to get her married at the young age to give her the life security.

CONSEQUENCES OF THE CHILD MARRIAGE

The Indian society is mostly infested with the customs, old rites, with some same old belief, cultures etc. In a country like India where ignorance and poverty are the dominating factors, the parents of these young girls think that child marriage is the one way to secure themselves and their daughter's future. The causes and consequences of the child marriage is intrinsically linked, like lack of education, health, poverty, economy, over all it is a low socio economic status. The recent government studies shows that more than 65 percent girls get married below the age of 18 years in India. The child marriage causes the high risk of maternal mortality where every seven minutes one woman dies due pregnancy issues. When the young girls are married they are easily exposed to sexual abuse by their husbands. These girls are sexually exploited where these girls are forcefully entered into the sex which causes numerous problems with both physically and mentally in the minor girl as they are not physically and sexually matured. Girls at the age of 10-14 years are five times more likely to cause death in pregnancy or in child birth than the woman at the age of 20-24. It is a huge responsibility for a girl to become a wife and mother as they are not prepared to face these roles which demand high maturity and the responsibility.

Women who marry early are more likely to face serious psychological as well as physical consequences. Studies indicate that girls who marry at young ages are more likely to believe that it's sometimes acceptable for a husband to beat his wife, and are, therefore, more likely to experience domestic violence themselves. Abuse is usually perpetrated by the husband's family also because the husband himself, and girls who enter families as a bride often become domestic slaves for the in-laws and live under a constant threat and pressure. Early marriage

¹ Evidence from Ethiopia, policy brief 21, July 2014.

has also been linked to wife abandonment and increased levels of divorce or separation. Child brides also face the danger of being widowed by their husbands who are often much older to them or they need an unexpected death. In these instances the young bride is probably going to suffer additional discrimination as in Indian culture the young widows were liable for the death of their husband and suffer a loss of status and should be ostracized by society and denied property rights.

STEPS TO CURB CHILD MARRIAGE

Repeated studies have shown that education plays a crucial role to eliminate child marriage. Research by UNICEF shows that the more education a woman receives, the less likely she is to be married as a toddler. Improving access to education and eliminating gender gaps in education are, therefore, important strategies for ending the practice of such thing. Hence, it is urgent to bring some positive and concrete changes, to multiply the efforts to improve the social conditions, to impart education and to put an end to this age-old tradition that cripples the nation. Radical actions should be taken to reform the old-fashioned mentality of the people that hold close to such irrational customs. The Indians who practice child marriage in remote villages or towns must be helped, guided, educated and informed about all the health and psychological problems which follow any child marriage.

The Indian government has voted a replacement bill, people marrying children and the other people involved in these practices, people abetting or attending a child marriage would confront to two years in prison and a fine of 100,000 rupees. The new bill has the supply to appoint “child marriage prohibition officers” in each of India’s states. They will keep an eye fixed practice and can collect evidence to prosecute such cases. Further, courts are empowered to rule a child marriage null and void even after few years of practice. In addition, the husbands are going to be forced to offer compensation and residence to his former wife. Unfortunately, in spite of the legal announcements made by the Supreme Court, there are still many number of cases which hardly enters the register log.

LEGISLATIONS

PROHIBITION OF CHILD MARRIAGE RESTRAINT ACT, 2006

This act came to an effect because of the ineffectiveness of the child marriage restraint act 1929. This act seeks to prevent child marriage which enhanced whoever being the male adult above 18 years of age shall be punishable with rigorous imprisonment for two years and fine which may extend to one lakh rupees.² The husband is liable to pay the maintenance to the girl in case he is a major. If the husband himself is a minor, then his parents would be liable to pay the maintenance. Then the legal status of this child marriage will be 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 or parents and if the sole purpose of this child marriage is trafficking the child or for any other immoral purposes then this marriage is considered to be void.³

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 State government shall appoint the probation officer according to the act whose duty is to prevent child marriages and to spread awareness about the same to the public.⁴

HINDU MARRIAGE ACT, 1956

Under the Hindu Marriage Act, only the parties involved in the child marriage are punishable even if there is no consent involved. There are no provisions for punishing the parents or people who solemnized the marriage. This act doesn't contain any provision to prohibit child marriage.

INDIAN CHRISTIAN MARRIAGE ACT (ICMA)

ICMA states that there must be issuing of preliminary notice 14 days prior to the marriage if the marriage is to be held between two minors and also states that there is no need of getting consent from any legal guardians after the expiration of the mentioned period.

² The prohibition of child marriage act, 2006, section 9 (India).

³ The prohibition of child marriage act, 2006, Section 12 (India).

⁴ The prohibition of child marriage act, 2006, Section 16 (India).

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 judgments of various high courts.

LAJJA DEVI V STATE⁵

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

SEEMA BEGUM V STATE OF KARNATAKA

The Karnataka High Court in 2013 reiterated the judgment 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*”. From this it is very clear that according to the well learned judges, personal laws should be the primary sources when it comes to under age marriages.

CONCLUSION

As poverty is one of the major cause for the child marriage and more than half of the people in India are under the below poverty level and they don't have enough money to afford decent lifestyle like proper food or a shelter which are all the basic needs and so it is the duty of our Indian government to take a proper long term measures to develop these areas and to impose the importance of education to uplift their living standards. The government should take all possible measures like health facilities, sanitary facilities etc. to uplift their standards which in turn reduces the child marriage as that is the reason for the parents to make their daughter get married at the very young age as these old man (girl's husband) pay considerable sum of money to their parents to achieve these young girls. Only when the joint effort is made, the country

⁵ Lajja Devi v. state, (2013) CriLJ 3458.

will rise and prosper which in turn the worthless customs like child marriage will cease to exist and the educated girls will make a better nation and a happy life.