

NATIONAL EFFORTS TO PREVENT CHILD MARRIAGE: AN OVERVIEW OF LEGISLATIONS, POLICIES AND PROGRAMMES IN INDIA

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Abstract: The marriage of minors becomes a crucial question in a discourse on women's rights within marriage since girls far outnumber boys in respect of child marriages. This is due to the fact that both customary practices and legal dictates sanction that brides should be younger than the bridegrooms. The Government of India has put in place several national legislations, policies and programmes to prevent the practice of child marriages. India has articulated its commitment to eliminating child marriage through numerous policies, laws and programmes; yet, more than one in four young women aged 20-24 was married in childhood (below age 18), and lack of voice in marriage-related decision-making abounds. The persistence of child marriage remains a potential deterrent to India's likelihood of achieving Sustainable Development Goal 5 by 2030. A key challenge underlying the gap between policy and programme commitments and the realities of child marriage in India is our limited understanding of effective programme strategies that delay marriage and offer girls a greater role in marriage-related decision-making. This paper examines the national initiatives to prevent child, early and forced marriage through numerous legislations, policies and programmes

Keywords: Child Marriage, Laws, Policies, Programmes. National Efforts, Prevention

1. Introduction:

Child marriage—marrying before the legal age at 18 years for girls and 21 years for boys—is still widespread in India. A multiple set of factors contributes to the persistence of the phenomenon: gender norms and expectations, traditional practices around marriage, safety concerns and family honour, poverty, limited education and livelihood opportunities and weak implementation of the law. Patriarchal values, in particular, play a significant role in child marriage. Girls are considered as a 'property' moving from the father's to the groom's household and their role as housewives is the only future conceived for girls by their family. Child marriage affects both boys and girls but impacts girls with higher incidence and more intensity (UNICEF, 2012). It has important consequences on the development and full growth of the girl as it is associated with increased risks of maternal and child mortality, low levels of education, and exposure to violence, isolation and

confinement; it also puts them in a position where they are unable to exercise a choice about their own sexual and reproductive health (Ghosh, 2011). India has endorsed and adopted various human rights treaties, such as the Universal Declaration of Human Rights (UDHR), Convention on the Elimination of Discrimination against Women (CEDAW) and Convention on the Rights of the Child (CRC). These international instruments have outlawed the practice of child marriage. The Government of India has also put in place several national legislations, policies and programmes to prevent the practice of child marriages. However, child marriages are widely prevalent in our country despite the promulgation of various laws, largely due to well-entrenched social dogma. There is tremendous hostility among different sections of society towards any opposition to this practice, and unwillingness to address this issue (Gupta, 2012).

2. Legislations on Child Marriage in India

In the pre-Independence period, the debate on the age of consent was closely related to the campaign for legislation on child marriages. This continued into the 20th century, with the Child Marriage Restraint Act, 1929 (CMRA) also known as the Sarda Act. The aim of the Act was to restrain solemnization of child marriages. The Act raised the minimum age of marriage for girls to 14 years and for boys to 18 years. The Act was amended in 1949, raising the minimum age of marriage for girls to 15 years; and again, in 1978, to raise the minimum age for girls to 18, and that of boys to 21 years. The CMRA was a result of sustained pressure by social reform groups and individuals. However, the objectives did not cross the boundaries of sexual consideration. They merely focused on the appropriate age for a husband to have sexual relations with his wife. There was no reference to the negative effects on the development of a girl child or her free consent (Sagade, 2005). The Child Marriage Act, 2006, replaced the CMRA. The purpose of the Child Marriage Act, 2006, is not simply to restrain but prohibit child marriages. It lays down the minimum age for marriage as 21 for males and 18 for females. The anomaly of two different ages at marriage for women and men was raised before the Parliamentary Standing Committee, while some members opposed this; the government commented that "for the purpose of marriage, two different ages have been accepted socially as well as culturally in the country" (Gupta, 2012).

Section 3 of the Child Marriage Act, 2006, provides that a child marriage will be rendered voidable only if the children or their guardians file legal proceedings. It is unlikely that any such case will be filed given the societal norms that surround it. Under Section 3(3), a petition for annulment of the marriage by the contracting party who was a child at the time of marriage may be filed any time, before (the child filing the petition completes) two years of attaining majority,

which allows a male of 23 years and female of 20 years to file a petition (Agnes, 2011). But it is unlikely that these child brides or their families will choose to nullify their marriages, as by the time they decide to go to court their marriages would have been consummated. The Act, under Section 12, lays down that child marriages will be void only in three cases - one, when the girl is "enticed out of the keeping of the lawful guardian"; second, in cases of compulsion or deceitful means; and, third, for the purpose of trafficking. These correspond to the provisions under various matrimonial laws where the lack of valid consent is grounds for annulment of marriage. This section validates other forms of customary and traditional child marriages which remain voidable and valid till invalidated by the contracting party. Section 14 of the Act states that child marriages performed in contravention of injunction orders issued, under Section 13, whether interim or final, will be void. These injunctions can be issued by a magistrate based on a complaint or even suo motu cognizance of a report regarding child marriage being arranged (Agnes, 2011). It obligates the district magistrate to prevent solemnization of mass marriages, while acting as a child marriage prohibition officer. The Act legitimizes children born out of child marriages and ensures protection in the form of maintenance and custody, both for the minor girl and her child. Registration of marriages is not addressed in the Child Marriage Act, 2006, but the Andhra Pradesh Compulsory Registration of Marriages Act, 2002, is strongly taken up in the state rules. The child marriage prohibition officer has to ensure "scrupulous adherence" to the Andhra Pradesh Compulsory Registration of Marriages Act, 2002, as per the Andhra Pradesh Prohibition of Child Marriage Rules, 2012. Moreover, the Law Commission also recommends that "registration of marriage be made compulsory".

The Right of Children to Free and Compulsory Education Act (2009) was introduced to ensure entitlement to free and compulsory education to all children within

the age group of 6-14 years. The Juvenile Justice Act (Care and Protection of Children) 2015, Section 14(XII), notes that a child who is at imminent risk of marriage before attaining the age of marriage and whose parents, family members, guardian and any other persons are likely to be responsible for solemnization of such marriage is vulnerable and needs care and protection.

2.1. Validity of Child Marriage under Criminal and Matrimonial Legislations

For a critical understanding of child marriages in India, a thorough examination of the gaps and commonalities in criminal and matrimonial legislations is essential. Therefore, a reading of the Child Marriage Act, 2006, needs to take into account the implications of the various personal laws and the secular law on marriages. While the Hindu Marriage Act does stipulate conditions for a valid marriage under Sections (iii) of the Hindu Marriage Act, 1955(hereafter referred to as "HMA"), the male should have completed 21 years of age and the female 18 years to fulfil the conditions of a Hindu marriage. However, marriage in contravention of the above-mentioned condition is not void and Section 18(a) of the HMA provided simple imprisonment up to 15 days or with fine which may extend to Rs 1,000 or with both. The Parliamentary Standing Committee report highlighted the mismatch: two different punishments under the two different laws were being offered for the same offence. Therefore, Section 18(a) of the HMA has been amended, keeping in mind the provisions under the Child Marriage Act, 2006, enhancing the punishment to rigorous imprisonment of two years or with fine which may extend to Rs 1,00,000, or with both(U.P.D.Kesari, 2004).

The provisions of the Child Marriage Act, 2006, are further diluted due to personal laws on marriage. For instance, the Muslim law on marriages lays down the age of puberty as the age of marriage. However, as per Section 2 (vii) of the Dissolution of Muslim Marriages Act, a Muslim woman can dissolve her

marriage if it was performed before she attained 15 years of age, but she has to repudiate her marriage before attaining the age of 18 years, provided the marriage has not been consummated(Fyzee, 2008).

In both Muslim and Christian marriage laws, consent of the guardian is essential for a minor's marriage. Section 3 of the Christian Marriage Act, 1872, defines a minor as a person who has not completed 21 years. As per Section 19 of the Act, consent of father, or guardian, or mother is mandatory for marriage of minors, therefore the Act does not invalidate minor marriages. On the other hand, the Special Marriages Act, 1954, is the only Act where child marriages are void; Section 4(c) states that the male must have completed 21 years of age and the female 18 years for a valid marriage(Agnes, Law and Gender Inequality: The Politics of Women's Rights in India, 2001).

Now let us look at the provisions of the Indian Penal Code (IPC) and the resulting implications on child marriages. The criminal law in India aims to provide certain protection to women. However, a reading of the provisions reveals a lack of explicit disapproval of child marriages. Section 375 states, a man is said to commit 'rape' who, except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the six following descriptions: Against her will; without her consent; and with or without her consent, when she is under sixteen years of age. Whereas the exception to Section 375 of the IPC states that "sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape"(Misra, 2010). Section 376 (1) states, Whoever, except in the cases provided for by subsection (2), commits rape shall be punished with imprisonment of either description for a term... which may be for life or for a term which may extend to ten years and shall also be liable to fine unless the woman raped is his own wife and is not under twelve years of age, in which cases, he shall be punished with imprisonment of either description for a term which may extend to two years or with

fine or with both. Sections 375 and 376 read together reveal that the IPC has set out different ages for child rape, and the rape of married and unmarried women. One can infer that child rape falls under Sections 375 and 376 of the IPC (Misra, 2010). A child is defined as a person below 18 years of age and the reading of Section 375 clearly illustrates that sexual intercourse with a girl below 16 years of age "with or without her consent" is child rape. However, the exception to the rape provision states that engaging in sexual intercourse with a wife, if she is over 15 years of age, does not amount to rape. The exception does not talk about any aspect of "consent" or "will" of the girl. This exception applies to cases of child rape as well, although the same has not been defined explicitly under the IPC (Law Commission of India, 2000).

3. Efforts to Prevent Child Marriage - Policies and Programmes

There have been various plans, policies and strategies that have been initiated and set into place by the Government of India towards combating practices and cultural norms that promote child marriage. It is with an aim to change the mindsets as well as the social norms surrounding this issue in order to delay the age of marriage as well as pregnancies of young girls. Some of these policies aim or state directly the issue of child marriage while some of them are indirect contributors to the same. The policies, plans and strategies henceforth stated are the ones that were put into place by the Government from the beginning of the 21st century: The policy and programme scenario related to child marriage has expanded considerably in India over the course of this century. For example, several national policies, including the National Population Policy 2001, National Policy for Children, 2013, the National Youth Policy 2014, National Plan of Action for Children, 2016, the National Policy for the Empowerment of Women, and most relevant, the Prohibition of Child Marriage Act

(PCMA), 2006 – have advocated special programmatic attention to helping young women delay marriage and to enforcing existing laws against child marriage (Jejeebhoy, 2019).

In addition, several national flagship programmes, including the Beti Bachao Beti Padhao (BBBP) scheme, the Scheme for Adolescent Girls (SAG) (previously known as SABLA), the Rashtriya Kishor Swasthya Karyakram (RKSK) (adolescent health) programme, Kishori Shakti Yojana (Adolescent Girls Scheme), various national- and state level conditional cash transfer (CCT) programmes for girls, as well as numerous civil society initiatives have been implemented to prevent child marriage (Jejeebhoy, 2019).

In the area of education, the government has rolled out various initiatives to enhance access and quality of primary and secondary education. Sarva Shiksha Abhiyan and Rashtriya Madhyamik Shiksha Abhiyan have increased the access for girls to primary and secondary education. Residential schools like KGBVs and the Sarada Girls Hostels have enhanced access for children of vulnerable groups. Forums like Meena Manch (Platform for Girls in the schools) and Adhyapika Manch (Platform for teachers) have been constituted at schools for girls and teachers to come together, enhance their own skills and knowledge.

To promote the health of the adolescents, the Rashtriya Kishor Swasthya Karyakram launched under the National Health Mission envisages to address both nutritional and reproductive health as well as mental needs, by providing adolescent health services through identified clinics and by developing peer educator network forums in identified high priority districts as per the health indicators. Schemes like Weekly Iron and Folic Acid Supplementation Programme (WIFS) and Menstrual Hygiene Scheme (MHS) address the nutritional and reproductive health aspects of adolescents. Apart from these, programmes like the Maternal and Child Health and Nutrition (MCHN) Days, Janani Suraksha Yojana and

community distribution of non-clinical contraceptives provide an opportunity for young married adolescent girls to avail maternal and child health services. Moreover, India is committed to achieving Sustainable Development Goal (SDG) that calls for the elimination of child and forced marriage by 2030.

4. Conclusion

India is regrettably still a victim to the practise of child marriage on account of which lives of many children especially girls comes under risk. The challenges posed are too many. There are many programmes in place for the protection of girls from child marriage but their implementation is inconsistent. The programmes do not necessarily reach the beneficiaries always. India still lacks a comprehensive national policy on the specific theme of ending child marriage. The ones that exist are still at Draft stage. The National Plan of Action for Children 2016 was adopted on 24th January, 2017. It commits to appoint a National Co-ordination and Action Group 212 (NCAG) composed of Senior Central Government officials from all sectors concerned with children. The Committee has been entrusted with the role of guiding the Central and State Governments, coordination, monitoring and implementation. In the last nearly one year of this Plan being adopted, this NCAG has not been set-up which plays a central role in the implementation of this National Plan of Action for Children. In order to ensure that policies, plan and strategies that are created to end child marriage are implemented, an effective inter-sectoral convergence plan within the Government functionaries as well as Government and Nongovernmental functionaries needs to be soundly established. As long as conflicts of interests guide the way, this reality of child marriage will

continue unabated. The Government needs to put greater emphasis on the issue of child marriage but having sufficient funds allocated specifically for this area. Those funds need to be invested into creating an environment of effective convergence. The times today demand that Government functionaries need to be skilled in the art of working together with all its other departments. Once this convergence is made a reality then the practise of child marriage can be effectively brought to an end.

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