

Child Marriage and Sexual Abuse of a Girl Child after Marriage” – A Glimpse With Indian Law

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Abstract – In India child marriages still take place in various regions usually in rural and semi-urban areas. Some states made the child marriage below the age of 18 is a crime and the marriage will be declared null and void and it is also a punishable act. But in some states due to improper vigilance and manifestation of the social norms still persist. And this article is written with the objective to study the sexual abuse of a married woman who is under the age of 18. This article will cover the various state norms and the court ruling which depicts the real status of women getting married and suffering in the relationships are still minor and not yet attained age maturity.

Keywords: Child Marriage, POSCO, Child Marriage Prohibition Act.

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PROLOGUE

Children are the supremely important national assets, require special attention and protection against all sorts of ill-treatment and exploitation, among these the most prominent is child marriage which is found most in India as India has the highest child population in the world followed by China. The problem persists in most of the regions usually the rural and semi-urban areas. Moreover, it is social responsibility of the state to work towards this direction vigorously and in a well-defined manner.

According to different legislations including Constitution of India as well as various national policies, conventions, recommendations and declarations, etc. in the international level have their best to protect the children in every respect^[1]. The attainment of social justice is one of the most prominent objectives of the constitution of India. There are number of constitutional provisions which speak about children and their welfare. For instance, Article 15(3) of the constitution empowers the state to make special provisions for children.

To attain the intended goal, the Government of India has consented on the Eleventh of December, 1992 to the Convention on the Rights of the Child, embraced by General Assembly of the United Nations, which has recommended a certain set of guidelines to be trailed by all state parties to make sure about the well-being of child.

In India, since a recent couple of decades profusely impeccable enactments has been made towards insurance of youngsters by Indian Parliament for instance; Protection of Children from Sexual Offense Act 2012, Juvenile Justice (Care and Protection of Children) Act, 2015, The Prohibition of Child Marriage Act 2006 and copious modifications have been constructed with respect to security of youth in distinctive laws and in spite of all these efforts, sexual wrongdoing against children are still in place and even booming with time at raucous level.

According to the NCRB data year 2016 shows that 3% incidents of rape has gone up by the end of year 2015 saw the registration of 34,651 cases of rape, this has been increased to 38,947 in year 2016. Conversely, overall crimes against women has been increased from 3,29,243 in year 2015 to 3,38,954 in year 2016. The crimes such as cruelty by husband and his relatives has been recorded 32.6% and the remaining assault on women with the intention of anger of modesty was 25%. The kidnapping and abducting was recorded as 19% and rape was 11.5%.

The highest number of rapes have been reported from Madhya Pradesh (4882), Uttar Pradesh (4816) and Maharashtra (4189). Uttar Pradesh reported 14.5% (49,262 out of 3,38,954 cases) of the total cases of crimes against women, followed by West Bengal (9.6% or 32,513 cases) during 2016.^[2]

This data manifest that there are huge number of sexual crimes in India against married woman as child brides are the main and various laws related to its context, mainly, Constitution of India that enshrines several provisions granting equality and protection to the women beginning with preamble to fundamental rights, fundamental duties as well as directive principles; Article 14 highlights equality before law to women, whereas Article 51(A)(e) ensures the dignity of women, Article 39(a) and (d) provides equality towards employment whether it's a men or a women i.e. equal pay for equal work along with this certain maternity facilities are also provided to women during employment like Article 42 and to provide opportunities to women several provisions provide reservation to them at all magnitudes for instances; Article 243 D (3) and (4), 243 T (3) and (4), and in addition to there are abundant of provision that can't be pinned down, despite of all these efforts the issue still persists.

Child marriages and its validity in India

Despite having a law against child marriages for the last 90 years, child marriage is an acrid reality in our country. As it is evident from various studies the statistics revealed that among the total marriage there are 27% child marriages in India. These child marriages include mainly minor girls and children belongs to the underprivileged and financially weaker section of the society. Legitimately, a marriage where either the young lady is underneath 18 years old, or the kid is beneath 21 years old is called a child marriage.

As per Prohibition of Child Marriage Act, 2006 meaning of Child is

- (a) "child" signifies an individual who, if a male, has not completed twenty-one years of age, and if a female, has not attained eighteen years of age;
- (b) "child marriage" signifies a union with which both of the contracting parties is a child

The former law namely Child Marriage Restraint Act, 1929 had several arrays for curbing the solemnization, apart from avoidance or restriction of youngster relationships. The contemporary law viz. Prohibition of Child Marriage Act, 2006 has a threefold objective for example anticipation of kid relationships, protection of children included and indictment of guilty parties. As per the law the child marriage is a cognizable and non-bailable offence.

An order can be disposed by the court to preclude its solemnization and just in case if the child marriage is solemnized after the directive, then such marriage will be pronounced as invalid and void. This law additionally endorses discipline for performing, leading and abetting child marriage and contemplate them as serious criminal offence. Hindu law has

prescribed the base age as 18 years for girls and 21 for boys respectively, While the Muslim law endorses the base age upon accomplishing pubescence.

This presents that the status of a couple upon the gatherings to the marriage and the relationships are not void however simply voidable. In this way such relationships would keep on being completely legitimate till the time both of the gatherings decide to get it dissolved. There is an alternative of denial accessible to minor spouses under Section 13(2)(iv) of Hindu Marriage Act and Section 2(vii) of the Dissolution of Muslim Marriages Act, 1939 wherein she can, in the wake of achieving the age of 15 years and before accomplishing the age of 18 years, practice the choice to repudiate the marriage.

Under Section 3(3) the Prohibition of Child Marriage Act, 2006 both the boy and the girl reserve the option to opt out of marriage until two years subsequent after attaining the age 18 and 21 respectively i.e. up to the age of 20 years for a girl and 23 years for the boy^[3].

According to section 3 of Prohibition of Child Marriage Act 2006 (1) Every child marriage, regardless of whether solemnized previously or after the beginning of this Act, will be voidable at the alternative of the contracting party who was a child at the time of the marriage: Provided that a request for canceling a child marriage by an announcement of nullity might be documented in the district court just by a contracting party (boy or girl) to the marriage who was a child at the time of the marriage.

If at the time of filing a case, the petitioner is a minor, the case might be documented through their friends or guardian along with the Child Marriage Prohibition Officer 4 Act no 6 of 2007.

There is a difference between the meaning of void and voidable that should be comprehended. Void marriage implies a marriage which is invalid and void and thus has no lawful acknowledgment. In any case, a voidable marriage is one that remains legitimate unless one challenges its validity in the court and get it struck down under an relevant Indian law.

Sexual crime against married women and allied laws in India

Child marriage is a type of co morbidity which additionally leads to several heinous offences and the accustomed one is rape and sexual harassment. Early marriages result in multiple child births and often are the reason for maternal mortality, infant mortality and reproductive health challenges. The application of the rule of law to prevent child marriages has been somewhat limited. Therefore, the Criminal Law (Amendment)

Act 2013 signifies the age for assent as 18 under sec 375.^[4]

Conjugal assault is the most enormously recognized and hostile type of masochism in Indian culture, it is holed up behind the iron window ornament of marriage. Social practices and legitimate codes in India commonly authorize the refusal of ladies sexual organization and substantial trustworthiness, which lie at the core of ladies human rights. Rape and sexual harassment is a heinous crime. As of now in India we don't have law against marital rape and withal it is not even taken as a crime in the court of law. Regardless of whether it does, the issue of punishment stays lost in a haze of legitimate vulnerability.

Notwithstanding, Exception 2 to Section 375, which makes an exemption to the offense of assault in instances of constrained sex by a man with his own better half in the event that she is of 15 years old or above, has not been yet amended. This brought about a typical circumstance where constrained sex by a spouse with a minor wife between the ages of 15 and 18 is allowed. Autonomous Thought and Child Rights Trust contended that the arrangement among wedded and unmarried minor young ladies in rebuffing sexual savagery has no reasonable nexus to the destinations of the Section.

This manifests an antithesis to the commitments of the State i.e. to secure the privilege of the child under Article 21 and by the same token under International Conventions. The case of Independent Thought vs. Union of India^[5] involved a registered society working for child rights. It filed a public interest petition under Article 32 regarding the rights of girls married between the ages of 15 and 18 years. Section 375 of the IPC states the age of consent for sexual intercourse as 18 years. Therefore, a person having sexual intercourse with a minor girl below 18 would be legally guilty of rape.

According to exception 2 of section 375 of Indian Penal Code 1860 sexual intercourse by a man with his own wife not considered any offence of rape or marital rape if wife not being under fifteen years of age. This provision is contradictory to Sections 5 and 6 of the Protection of Children from Sexual Offences Act, 2012 (POCSO), where the child means any person below the age of 18 years and penetrative sexual assault and aggravated penetrative sexual assault is an offence committed against child. In Protection of Children from Sexual Offences Act, 2012 there is no any exception for husband if married women is under the age of 18

The Court in Independent Thought vs. Union of India observed that Exception 2 to Section 375 is arbitrary and volatile of child rights along with Articles 14, 15 and 21 of the Constitution. The Court held that it should be read as: "Sexual intercourse or sexual acts

by a man with his own wife, the wife not being under 18 years of age, is not rape."

In the case of Bodhisattwa Gautam vs. Subhra Chakraborty (1996) 1SCC 490, a criminal complaint based on a consensual affair and a questionable finding of "rape" due to failure to marry, Justice Ahmad nevertheless expanded on rape well.

Rape is a crime against the whole society and this will leave a long-lasting impact on a girl and on her psychology. It destroys the entire peace of mind as well as the confidence of a woman which pushes her into deep emotional crises. On 26th April, 2017, the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 was passed, declaring child marriages as void ab initio or invalid in law^[6].

The move comes over a year after the Supreme Court condemned sexual relations between a man and his minor spouse. As needs be, any conjugal connection between a man and a young lady between the age of 15 and 18 years will be void and it will consider any such sex as an offense which is characterized as assault under POCSO (assurance of kids from sexual offenses) Act, 2012. Under Section 375 of the Indian Penal Code (IPC), sex between a man and his better half of 15 to 18 years old doesn't add up to assault yet, while under Section 6 of the POCSO Act, the offense adds up to rape.

The Supreme Court discretion clarifies that sexual assent must be given by a grown-up lady of 18 years. At the end of the day, agree to sex in underage marriage can't be accepted by the spouse nor can guardians give such assent in the interest of the underage minor. The subject of sexual assent is right that must lie with the individual lady.^[7]

Child Marriage exists in India because of much reason like poverty, illiteracy, unaware about children's education and laws relating to their rights. When in India one side there is a complete atmosphere of women empowerment is creating by many social institutes on other side women still facing many issues of social evils and domestic violence. With this issue of child marriage and contradiction of laws regarding sexual intercourse there is no existence of consent of women in marriage.

CONCLUSION

Child marriage in India has been drilled for quite a long time, in which children are married off before their physical and mental development. Therefore, child marriage needs to be stopped in India. It is still in practice in certain communities particularly in rural areas. The issue of child marriage in India remains established in an unpredictable framework

of strict customs, social practices, monetary elements and profoundly established prejudices.

In almost all the countries except the few, the minimum age of marriage is fixed according to the laws as in India: The age of the boy 21 years and the age of the girl is kept 18 years. In India, marriage of children is voidable not void and this leads to serious disruption. In most of the cases both child spouse lives with each other and consent of married woman under the age of 18 possess no importance. Meanwhile, on the other hand in rape cases the consent of woman has played a very important role, as specified in Indian Penal Code 1860 and Protection of Children from sexual offence. This conflict of law is almost clarified by the Supreme Court in Independent Thought vs Union of India verdict. As it is a need of the hour to stop child marriage in India as every woman has right of dignity and her consent is a chief prerequisite, whether it is about marriage or sexual relationship with her husband. In Joseph Shine vs. Union of India^[8]. The Supreme Court held that section 497 is destructive of women's dignity and self-respect as it treats woman as a chattel of husband and it further stated that equality is the governing principal of a system hence, a husband is not a master of the wife. Thus, from the recent judgment it can be concluded that a wife is an individual being having a right to live with dignity and not merely upon the will of her husband.

This revolution cannot be adopted just by providing means to women, as we know government had already made numerous provisions for that, so, the issue is the lack of awareness and self-confidence among women, now it's time to boost up their confidence and make them realize their own power, importance and dignity. That's why, a woman can herself attain this and for this it is necessary to make her understand her own significance.

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