



Child Marriage: An incurable Disease

* Lata I. Mulchandani

* Asst. Prof., Junagadh Kelevni Mandal Sanchalit Commerce & BBA College, Junagadh (Gujarat)

ABSTRACT

Of all the evils in India the child marriage is a very old & harmful tradition in India It still exists in our country in spite of great efforts by our social workers and religious leaders. The evil is yet to be rooted out. It has been observed that 57% of the girls in India are married before the age of 18. Raja Ram Mohan Roy was a great socialist who opposed this tradition & after that many other Indian socialists strongly supported him. But the problem is still there and demands lot of work yet to be done. In 1929 Shree Harbilas Sarda drafted the Child Marriage restraint act called "the Sarda Act". But this act did not check the evil & a legislation called prohibition of child marriage act were introduced. This became the law which strongly prohibits child marriages in India. After that few more commissions discussed & suggested some effective things to stop child marriages in our country. But something strong is yet to be done to stop it completely.

Keywords : child marriage, Disease, evil, Act, Minor.

Introduction

· Child marriage : a childhood destroyed

According to the law a marriage has 2 individuals a male & a female; the male must be of 21 years of age & the female of 18 years. The immature marriages cause many problems, physically as well as social & sometimes bringing fatal results. The child pregnancy is a question of life & death. Many girls & untimely mothers have to face some problems which they are unable to do. The babies born premature & underweight have malnutrition & a life ends untimely. The development of an untimely married girl stops her education her social life and her health are totally at a risk. They are victims of domestic violence. Sexual abuse an many times the end of life.

· Child marriage – The Indian scenario

The Origin Of The Child Marriage

Our ancient Vedas do not allow child marriages. Moreover the consent of both the individuals was necessary. The evil of child marriage is attributed to the ancient rules the kings and queens who forced two families to agree for the child marriage. The foreign rules and invaders with orthodox ideas took away with them the girls and the ladies and exploited them. Some times the parents were forced to hand over the daughters married hurriedly instead of handing over them to foreigners of course now a days such circumstances do not prevail but still child marriages exist and sometimes bucked by some families and societies. Sometimes poverty also press people to do so, and social pressures too compel to do such things. But this evil is being driven out gradually.

· The Legal Scenario

Raja Ram Mohan Ray was the 1st Indian social reformer who brought a great awakening in 1929. It had some political effect and an Act was brought prohibiting child marriages. Again some more legislations were introduced to curb this evil. At last in 2006 the legislation of the prohibition of child marriage Act 2006 exists. The Act says

- The male contracting party has to pay the maintenance and living accommodation to the bridal party.
- The children born out the marriage would be legitimate and the custody of the child shall be decided in the best interest and welfare of the child.
- The act that every child marriage shall be void able at the option of the contracting parties. If any position, it should be field by a guardian in the case of a minor. It should be filed within 2 years of completion of majority.

- If the rule is more than 18 marrying a minor shall lead to imprisonment and a cash fine.
- Anybody who performs or supports a child marriage will also be punished strongly.
- No woman shall be subjected to any punishment if she is involved.
- The marriage shall be void in case of trafficking, forced, compelling or cheating,
- An authorized government officer or gram panchayat or municipal office bearer may assist responsible.
- It is the duty of the child marriage prohibition officer to prevent such marriages, collect proofs for the guilty persons, create awareness and avoid the child marriages.
- An offence proved under this act shall be recognizable and non-bail able.

Child marriage act appears still far from perfection. The survey of 'The Hindustan Times' shows that 57% of the girls in India are married off before the age of 18 years. Such marriages are risky and problem creating in the long run. In India Rajasthan is the worst affected area for child marriages. According to UNICEF 82% of the girls get married before the age of 18 years and become mothers by the age of 19. This shows that the law is inefficient to prevent this evil.

· Defects Of The Law

It's a matter of great sorrow that the law made to end this evil is not sufficient to control it. The marriage once per founded is binding both the parties. The society confirms and contented it. But if fails to eradicate the evil. The Hindu marriage is also defective the law does not clarify between a child marriage age non marriage. This shows that the centrality parties to a child marriage her same right like an ordinary marriage. This means that the crime is done and no less than a rape on the minor bride with all rocks to gather.

Marriage in India are regarded as a relation of eternity. Breaking the matrimonial alliance is not approved. The defaulters are greeted with hostile attitude. In study of UNICEF in 2001 only 89 prosecution was made. According to the national crime bureau the 122 cases were reported under the child marriage restraint act 93 cases in 2004. Then clearly shows that how the laws are incomplete to restraint the child marriage in our country.

It is well known fact that marriage in India are a social affair

with a good celebration ,it is altered by many guest ,relatives and invitees .after the marriage it in socially approved and accepted the legislator have neglected the responsibility of the attending people .there must be a law to punish the attending people.

It is responsibility of the parents of both male and female to void such marriage .the existing law let goes female from imprisonment by paying some fine.

Hence the whole object is useless .the punishments them effective .the responsible government officials should also be punished.

· **Judicial Approach**

The judicial approach is one of the main factors responsible for the child marriages. The response is remarkably bad to the condition of children. The pronouncements of the Supreme Court and the High Courts have been neglected .and the child marriages were upheld.

It is due to this that we still struggle to remove the evil of child marriages from our society and every year thousands of children are disappointed in getting proper justice.

Proposal to Amends the prohibition of child marriage Act and allied laws (205th report of Law Commission)

Constitution of the commission

The Supreme Court of India in right petition (Criminal) No.81 to 2006 had requested the law commission to assist it with certain issue pertaining to child marriage. For this the law commission instituted a committee under J.A.R. Laxmanan to discuss and analyze the law related to child marriages. The committee submitted its report under the title "Proposal to amend the prohibition of child marriage Act, 2006 and the other allied law", on the 8th Feb. 2008.

The report also points out the violations of human rights by a child marriage. The commission has proposed some changes in the present laws to deal with this issue .we have to wait for the implementation.

· **Findings**

Apart from the issues referred to the commission by the Supreme Court suggesting some changes as under:-

1. Section 5 & 11 of the Hindu marriage act do not authorize the court to declare a marriage void on the ground that either of the parties is underage.
2. The exception to section 3,7 &5 of the Indian penal code exempt a husband from the charge of rape who is underage.
3. The existing law stipulates different age of marriage for girls and boys.

4. The uniform definition of a child should be fixed both for women and men.

In countries like Australia, New Zealand, U.K. The legal age for marriage is fixed. But can be waived with the consent of both the parties.

· **Conclusions and suggestions**

The father of our nation Mahatma Gandhi, Swami Vivekananda and the others who started was against this social evil will be grieved at the site of hundreds of child marriage taking place every year. It is a matter of lament and defects are still there in our laws.

For this it is humbly submitted that the following points should be considered to make the law more powerful. · the recommendations submitted by the law commission, advising child marriages below a certain age to be made invalid, must be enforced as soon as possible. If the validity conferred by the law is taken away, it should lead to a sharp decline to such marriages.

The age of marriage for both girls and boys should be fixed at 18 years. Contrary to what has been suggested by the law commission, a marriage by a person above 16 and below 18 years of age should also be void. As has been observed, in most countries the age of marriage is 18 years. As explained above 16 is too early an age to be married at. Even if such a marriage is made void able then the bride may not be able to use the option to opt out of the marriage as has happened in the past.

The exception of marital rape should be omitted from section 375 of the Indian penal code.

1. A provision should be introduced in the law related to child marriage, whereby those attending the performance of a child marriage should be punished with either fine or an apt sentence. As this provides child marriages with social sanction.
2. In contrast to what has been provided in the law the residence and maintenance of the child bride should be imposed as a liability on the parents of the groom as well as the parents of the bride.
3. The punishments provided in the law should be enhanced so that it may effectively deter those intending to contract a child marriage.
4. Females should also be punished like their male counterparts. Today women share an equal responsibility in arranging and accepting a child marriage. Hence to shield them would be unreasonable and illogical.
5. Finally the registration of marriages should be made compulsory.

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