



MEASURES TAKEN BY THE GOVERNMENT FOR THE PROHIBITION OF CHILD MARRIAGE IN INDIA

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“The child marriage robbed off the brightest period of their girlhood and youth; from a period of infancy, the girls were forced into the period of producing infants and the physical strain in some cases of young mothers brought even mental disorders.”

Dr. Mrs. Muthulakshmi Reddi

1. Introduction

Marriage is regarded as one of the most important parts of life from the historical times. It is a time of happiness and celebration in the whole world. Marriage is not limited to the boundaries of state and country, which means it is a moment of celebration and a custom followed by the whole world but early marriage is not at all give you any reason for celebration. Early marriage or child marriage can be defined as the marriage of a person below 18 years or marriage of children who have not yet developed as adolescents. In various societies, countries and tribes it is banned and a punishable offense but still many are practicing it either in a hidden way or by ignoring the rules. History seems to disclose that adult marriage was the rule in India from the beginning of the Vedic period. However, gradually child marriage came into practice and become the rule during the smritis and later period. Century witnessed many cruel social evils in India. Child marriage appeared to be an evil 'much more grave' than other social evils. Efforts to prohibit child marriage through legislation began in India in the latter half of the nineteenth century¹. It became one of the most burning topics of public debate during the early decades of the twentieth century.

Raja Ram Mohan Roy was the first one to raise his voice against the evil systems of sati, polygamy, child marriage, widow remarriage and oppression of women. He was the founder of the Brahma Samaj which dealt with the social reformation in India. As for child marriage, it was Keshab Chandra Sen who persuaded the British Govt to pass the Special Marriage Act in 1872. It made the marriageable age of a boy to be 18 years and for a girl 14 years, child marriage and polygamy were made illegal, allowed widow-remarriages



and marriage between people of different castes and religions. It also allowed divorce. The efforts of K. C. Sen against early marriages facilitated the enactment of Civil marriage Act of 1872. Recognising the ill effects of early marriage, a number of laws have been enacted during the pre and post- independence periods regarding the marriage age for boys and girls among Hindus and Christians. The Muslims in India, however, continue to practise their classical law². It was during the latter half of the 19th century that the Civil Marriage Act, 1872, was enacted which laid down the age of marriage as 14 years for those seeking to register under this Act.

A number of Acts has been passed in India to check the custom of child marriage, yet these Acts have failed to achieve the desired results. The first Act in this connection was passed in the year 1860. According to this Act, the minimum marriageable age of a girl was fixed 10 years, but it failed to produce any effect. Another Act was passed in the year 1891, according to which the minimum marriageable age of girl was fixed 13 years. From 1891 to 1925, the age of consent for girls in marital and extra-marital cases was the same viz., 12 years³. The amendment of the law in 1925 for the first time introduced a distinction between marital and extra-marital cases and fixed the age of consent in the former at 13 and in the latter at 14 years. In the course of its enquiry the committee tried to investigate how far this amended law was known to appreciate by the public and what its effects were. In the years 1921 Harvilas Sharda presented a bill which was passed with the name of Sharda Act or Child Marriage Restraint Act. According to this Acts, the minimum marriageable age of boys and girls was fixed 18 years and 15 years respectively.⁴

1.1 The Sarda Bill

In February 1927, Rai Saheb Harbilas Sarda introduced a bill to restrain the solemnisation of child marriages. The bill was popularly known as the ‘Sarda Bill’. It was applicable only to Hindus, and other religious communities were not within the purview of the Bill. The Bill declared child marriage invalid. It was circulated throughout the nation to gauge public opinion. A large number of people opposed the provision of the Bill that declared child marriage to be invalid. The Bill was then referred to a select Committee. The Select Committee submitted in report in 1928, and made it applicable to all irrespective of their religion, and not only to Hindus⁵. It recommended that the validity of a minor’s marriage be kept out of the proposed Act and should exclusively lay down the penalties for such marriage.

Along with the Sarda Bill, there was another bill pending for rising further the age of consent under Section 375 of the Indian Penal Code. In June 1928, the Government of India appointed the Age of Consent Committee to examine the issue under the chairmanship of Mr M.V. Joshi. The terms of reference did not directly include the question of the appropriate age at marriage. But the Committee found it impossible to delink that question from the age of consent for marital and non-marital sexual intercourse. The Committee collected evidence extensively by interviewing people throughout the country. There were mixed responses. One of the objections raised to the Bill was that the delaying of marriages would lead to immoral sexual practices. Another



objection was that the law should not touch upon the matters of domestic nature and reform should be left to be achieved by an educative process.

The Committee submitted its report in 1929. It opined that in every civilised society, legislation had been used as a remedy to remove social injustice. The committee observed: ‘There is an ample justification for legislation to prevent early maternity, both on the grounds of humanity and in furtherance of social justice. The Committee recommended that the age of consent under section 375 of the IPC be raised to fifteen and a law penalising marriages below the age of fourteen years be enacted. It strongly recommended that no exemptions should be granted on any grounds for performing a marriage below this age. At the same time the Committee was of the strong opinion that the validity of a marriage should be left unaffected. After prolonged debates on the report, the Sarda Bill was finally given the shape of legislation in 1929. It was entitled the Child Marriage Restraint Act.⁶

In the latter half of the nineteenth century, social reformers were trying to build up public opinion in favour of the legal sanctions against child marriage. The major reason to prevent child marriages was to give protection to young wives who suffered enormously due to forcible sexual intercourse with them by their husbands. They had to face their husbands sometimes even before they reached the age of puberty or immediately after reaching menarche. Another reason for demanding legal sanctions against child marriage was to control a large population of young widows. Very young girls were given in marriage to men who were in their thirties or even forties. Life expectancy in those days being quite low, young bride used to become widows on a large scale during the first few years of their married life. Remarriage of a widow, particularly of a Hindu widow, was not allowed by law, religious, and society. The living conditions of such widows were very pathetic.

1.2 The Child Marriage Restraint Act, 1929

The Child Marriage Restraint Act, popularly known as the ‘Sarda Act’ received the Governor-General’s assent on 1 October 1929. It came into force on April 1, 1930. It was however, only in 1929 that a comprehensive legislation known as the Child Marriage Restraint Act (also called the Sarda Act, after the name of its architect) was enacted. This Act fixed the minimum age of marriage for boys at 18 years and for girls at 14 years. It restrains the marriage of a child though the marriage itself is not declared void. Accordingly, contracting, performing and facilitating the marriage of boys under eighteen and girls less than fourteen years of age was an offence.

The Act aimed only at restraining solemnisation of child marriages and not its prevention or prohibition. The procedures laid down under this law to act against solemnisation of child marriages were very cumbersome and time consuming. It did not identify authorities responsible for preventing child marriages. To overcome the shortcomings of Child Marriage Restraint Act, the age of girls was later on raised to fifteen years.



The provisions of the Act prescribes penalty but the marriage itself remains valid. The offence under the Act is non-cognisable and provides punishment for the bridegroom, parents, guardian, and the priest which is three months of simple imprisonment and a fine of up to Rs.1, 000. No women are, however, punishable with imprisonment under this Act. The Act also provides for the issue of injunction order prohibiting the child marriage. But no action can be taken for the offence if a period of more than one year has expired from the date of the alleged marriage. Under the Madras (State Alteration of Name) Act, 1968, the Special Marriage Act, 1954 (Central Act (XLIII of 1954) general birth, death and marriage were registered⁷.

In 1938, Indian Legislature passed the Child Marriage Restraint (Amendment) Act, 1938. In this Act, Section 1 of the Child Marriage Restraint Act, 1929, the following shall be added namely:- all British subjects and servants of the crown in any part of India and all British subjects who are domiciled in any part of India wherever they may be.⁸ Subsequent amendments to the Act, during 1938, 1949 and 1978 raised the minimum age of marriage to 21 years for boys and 18 years for girls. Although this Act is applicable to all communities, it becomes ineffective in respect of communities who practise the personal Laws. Another drawback of this Act is that it simply imposes restrictions on the solemnisation of the marriage of the minors but does not invalidate the marriage⁹.

1.3 Special Marriage Act 1954

The Special Marriage Act provides for a child marriage without any religious significance. Two persons of any religious persuasion, provided they are not within the degrees of prohibited relationship or are not married to any other persons under any other persons under any other ceremony, and have both reached the age of the majority may be married under the Act. For a marriage to be solemnised under this Act, the parties must give notice in writing to the marriage officer of the District in which at least one of the parties has been living for not less than thirty days. This notice is displayed in some prominent place in the Marriage Registry Office¹⁰. The marriage is to be performed and registered not before thirty days, but within three months of this. The marriage is registered by the Marriage Officer in the presence of three witnesses and recorded. A certificate of marriage is then issued to the couple. In exercise of the powers conferred by section 50 of the Special Marriage Act, 1954 (Central Act 43 of 1954) the Governor of Tamil Nadu make the amendments to the Madras Special Marriage Rules, 1954¹¹.

1.4 Hindu Marriage Act 1955

The Hindu Marriage Act, 1955 is another effort to check the incidence of child marriage. The More progressive legislation which affects the marriages of minors is the Special Marriages Act of 1954. While the minimum age requirement is the same as under the Marriage Restraint Act, it does not admit marriages of minors even with the consent of their guardians. Any marriage procured by concealment of age in violation of the statutory rules, is void under Act. Muslims in India still practise their classical laws, according to which the



age of puberty is considered the appropriate age for boys and girls to enter the institution of marriage. Different schools of ancient Muslim law recognise the earliest age of puberty as 12 years for boys and 9 years for girls. As such, marriage between a 12 year for boy and 9 year old girl could be valid among Muslims. The only exception to these laws being the 'option of puberty' provided under the Dissolution of Muslim Marriage Act of 1939¹². Muslims in India have stoutly resisted any change in classical Muslim Law, notwithstanding the fact that most Islamic countries in the world have already reformed the ancient laws to suit present requirements.

1.5 The Child Marriage Restraint (Amendment) Act of 1976

The act is raised the age of marriage for girls from 15 to 18 years and for boys 18 to 21 years. The offences under this act have been made cognisable. To enter into a marriage a woman must, if she is under 18 have the consent of her natural or legal guardian, i.e., her father in his absence, her mother or in their joint absence, whoever has been appointed by them or the state as her guardian. In case she suffers harassment from her natural or legal guardian she may appeal to the state for relief. It is necessary for her in this instance to file a report called a first information report with the local police station. In case it is possible she should also consult a lawyer and be represented through the offices of any voluntary organisation or major persons who are willing to espouse her cause.

A minor girl may not be compelled to marriage. In case she is being forced into marriage, she may have recourse to the court¹³. She is being forced into marriage; she may have recourse to the court. In the event that the marriage is solemnised, she may appeal for relief either in the form of annulment or of divorce under every personal law. In case of a child marriage, the girl may file for annulment between the ages of fifteen and eighteen. Repudiation of such a marriage is recognised under Hindu law. If, however, she willingly engages with her husband in inter-course after attaining her majority, she may not file for annulment. Under Muslim law, a minor wife is entitled to dissolution of her marriage if she proves the following fact: the marriage has not been consummated. The marriage took place before she attained the age of 15 years. She has repudiated the marriage before attaining the age of 18 years. If she has attained her majority, women may freely marry any men of her choice. Her guardian may not seek to restraint or violence or psychological pressure amounting to cruelty or by refusing to hand over guardianship of her assets or property, is illegal. She has a right of residence in her parental home until she marries, and if she belongs to a Hindu joint family, she is entitled to have marriage expenses paid by the family.

In 1978, the law was amended to make it more effective and rise in minimum age of marriage by three years i.e. from 15 to 18 years in case of girls and from 18 to 21 years in case of boys. However, despite the law, child marriages continued to take place. There are many marriages in which both the girl and the boy are children. In others the girls are children/minors who are married off to much older men, or sometimes even sold into marriage. More than half of the women in India are married before the legal minimum age of 18¹⁴. By



contrast, men in the same age group get married at a median age of 23.4 years. Sixteen percent of men aged 20-49 are married by age 18 and 28 percent by age 20.

1.6 The Prohibition Of Child Marriage Act, 2006

The Prohibition of Child Marriage Act, 2006 (PCMA, 2006) was notified on 10 January 2007 to overcome the constraints of the former legislations in effectively dealing with the problem of child marriages in India and to put in place a comprehensive mechanism. It came into force on 1 November 2007¹⁵. The law seeks to prevent child marriages by making certain actions punishable and by appointing certain authorities responsible for the prevention and prohibition of child marriages. These persons are responsible for ensuring that the law is implemented. It is also the responsibility of the community to make use of the law.

The Prohibition of Child Marriage Act, 2006, under section 11 provides punishment for those who permit and promote child marriages. Hence, it is necessary that every individual who is aware of any child marriage that is going to be conducted or is being conducted or has been conducted, to make sure that he/she does not permit or promote the child marriage by not reporting about it. He/she can be made liable under the present law and also the Indian Penal Code for abetting the offence. The Government of India enacted the Prohibition of Child Marriages Act, 2006 (PCMA), which received the assent of the President of India on 10 January, 2007¹⁶. The Act came into effect from 1 November, 2007.

The Government of Tamil Nadu has been in the forefront in the fight against the evil of child marriage by taking a proactive stand on eradication of child marriage and initiating measures to tackle the problem of child marriage in a systematic and effective manner. Tamil Nadu accounts for one in four child marriage cases registered in the country. Chennai tops the list of districts in Tamil Nadu with most married girls less than 15 years of age, according to recent data released by census 2011. With 5,480 girls under the age of 15 married, Chennai is followed by industrialised Coimbatore that had 3,025 married girls below the age of 15. Madurai, Tirunelveli, Tirupur and Salem too showed more than 2,000 girls under the age of 15 who were married. Activists working against child marriage say that while child marriage is predominant in rural areas, the numbers are higher in urban areas because of more population.

1.7 Conclusion

Child Marriage below a certain age is blatant child abuse. The Indian Penal Code considers any sexual intercourse with a minor wife below 15 years of age rape. The case of phulmonee which galvanized public opinion against child marriage in last century, and for raising the age of consent, was a case in which a girl aged 11 years died by her husband. The Child Marriage Act lays the foundation for such an abuse by not invalidating any child Marriage. Early Marriage deprives all girl children of their basic fundamental human rights to develop in a natural, healthy environment. It deprives girls of their right to education and to physical and mental and



psychological development. Child marriages were extremely wide spread and a child-bride was merely transferred from one large home to another. The spread of western education and the western culture created a lot of awareness among the educated and forward thinking Indians. Legal protection is extremely important for the promotion of rights of any powerless, non-vocal, vulnerable groups like adolescent girls. It is the responsibility of the national and international community to see that rights of adolescents are promoted and protected through proper legislation. All of us, including academicians, researchers, representatives at the national, international, intergovernmental, non-governmental levels, and activists in various fields, need to work together relentlessly, utilising an interdisciplinary approach, to ensure justice for young girls.

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