

## **Emancipation and Approval of Underage Marriages**

*By, Jagrati Gupta  
Banaras Hindu University*

### **Introduction**

Marriage constitutes a fundamental element of society. Through its institution, families, which are the building blocks of society, come into existence. Marriage as a conjugality of love is a fairly new concept and for centuries, marriage has been used as a device to attain other objectives. Since time immemorial, control and authority over marriage has been employed by guardians/parents, community members, etc., to subdue the future outcomes of such marriage. Child marriage or underage marriage is one of the vicious outcomes of this domination aiming to regulate and control the personal lives and future of individuals.

### **Definition of Child Marriage and Marriageable Age**

Child marriage refers to the marriage of a person who is below the legally required age to be considered an adult competent to marry. The determination of marriageable age was initiated by the 1956 Supplementary Convention on the Abolition of Slavery and followed by the 1962 Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages. UNICEF (dedicated organisation for the rights of children) declares the marriage of a child to be a violation of rights. Article 1 of the Convention on the Rights of Child defines a child as a person below 18 years. Article 23 of the International Covenant on Civil and Political Rights (ICCPR), article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), etc., also aspires to curb child marriage. India has ratified these conventions and treaties which aims to compulsorily devise legal measures to ensure the rights of children and restrain child marriages. Accordingly, through a series of legal developments, India has devised the Prohibition of Child Marriage Act, 2006 containing the relevant provisions related to child marriage. Section 2 of the said Act defines the marriageable age for a male as 21 years and for a female as 18 years.

## Statistics on Child Marriage

The official statistics enumerating the status of child marriage around the world are horrific and concerning. According to the UN, 37,000 girls under the age of 18 are married each day. Globally, almost 400 million women now aged 20-49 were married before the age of 18. The highest rates of child marriage by country are observed in Sub-Saharan Africa, in countries such as Niger, the Central African Republic, and Chad.<sup>1</sup> The National Family Health Survey (NFHS)-III determined that around 47% of women aged 20 to 24 were married before the age of 18. According to the National Population Policy “over 50% of girls marry below the age of 18, resulting in a typical reproductive pattern of ‘too early, too frequent, too many’, resulting in high IMR.”<sup>2</sup>

## Importance of Compulsory Registration of Marriages

Apart from the relevant measures in the name of legislations, policies and programmes to curb child marriage and preserve the rights of children, one of the measures adopted is the compulsory registration of all marriages. India became a signatory of the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) which advocates compulsory registration of marriages but gave justified leeway to India due to its magnificent diversity in customs, religions and level of literacy. Due to the deficiency of information on the accurate number of child marriages in India, the Supreme Court in the 2006 case of *Seema V/s Ashwani Kumar*<sup>3</sup> formulated a set of guidelines aimed at compulsory registration of marriages which is imperative and highly beneficial in curbing child marriage, ensuring marriageable age, preventing coercive marriages, enabling widows to claim their inheritance rights and other benefits and privileges which they are entitled to after the death of their husband, etc. The Supreme Court clarified that the compulsory registration will not deem a marriage to be valid per se but rather it would be of great evidentiary value in the matters of custody of children, right of children born from the wedlock of the two persons whose marriage is registered and the age of parties to the marriage.<sup>4</sup> The states have been given the

---

<sup>1</sup> The Facts on Child Marriage, International Women’s Health Coalition <https://iwhc.org/resources/facts-child-marriage/> .

<sup>2</sup> Pallavi Gupta, *Child Marriages and the Law: Contemporary Concerns*, Vol. 47, No. 43, Eco. And Pol. Weekly, 49, Oct. 27(2012) [https://www.jstor.org/stable/41720300?seq=1#metadata\\_info\\_tab\\_contents](https://www.jstor.org/stable/41720300?seq=1#metadata_info_tab_contents).

<sup>3</sup> *Seema V/s Ashwani Kumar*, (2006) 2 SCC 578.

<sup>4</sup> Shivam Goel, *Effect of Non-Registration of Marriage: Seema V/s Ashwani Kumar*, (2006) 2 SCC 578, Read Cube, <https://www.readcube.com/articles/10.2139%2Fssrn.3338031>.

discretion to make registration of marriages compulsory and have been clarified that the failure to register will in no way impact the validity of the same. Till now, no uniform law has been formulated regarding the same owing to the high extent of diversity, as well as illiteracy and ignorance in India.

### **Rajasthan Compulsory Registration of Marriages (Amendment) Bill, 2021**

On 17<sup>th</sup> September, 2021, the Rajasthan government led by the Chief Minister Ashok Gehlot, passed the Rajasthan Compulsory Registration of Marriages (Amendment) Bill, 2021 by a voice vote. The said legislation amended Section 8 of the Rajasthan Compulsory Registration of Marriages Act, 2009 which now states, *“if the bride is under 18 and the groom is under 21, their parents or guardians must submit a memorandum for registration of marriage within 30 days from the date of marriage.”* The ratification of this law has become a controversial topic among the opposition leaders and child rights activists. Activists said that the Act ostensibly legitimized child marriage, taking Rajasthan “100 years back”.<sup>5</sup> The National Commission for Protection of Child Rights (NCPCR) wrote to the State Government to take the said law into reconsideration. Dr. Kriti Bharti, managing trustee of Jodhpur-based Saarthi Trust, has filed a Public Interest Petition in the Rajasthan High Court challenging the constitutional validity of this amendment.<sup>6</sup> This widespread agitation forced the Rajasthan government to demystify the said controversy in a 4- page clarification ensuring that the said amendment is just a “technical change” with an objective to record the victims of child marriage. The Parliamentary Affairs minister of Rajasthan, Shanti Kumar Dhariwal, while referring to the 2006 Supreme Court case, clarified that the said law does not give legitimacy to the registered marriages and that the minor child will still have the authority to annul his/her marriage as soon as he/she attains majority. Although the law does not endorse child marriages as complained by social activist and child's rights advocate Kirti Bharti, it indeed contains some serious fallacies that will hamper its central motive.

---

<sup>5</sup> Gita Aravamudan, *What would really stop child marriages*, Live Mint, (Oct. 7 2021, 10:09 AM IST),<https://lifestyle.livemint.com/news/talking-point/what-would-really-stop-child-marriages-111633539606123.html>.

<sup>6</sup> *Ibid.*

### **Fallacies of Rajasthan's registration of marriage law**

Under Sections 9 to 12 of the Prohibition of Child Marriages Act, 2006, the punishment for aiding in the marriage of a child by an adult is rigorous imprisonment of 2 years and fine up to 1 lakh rupees. In addition to this, via the 2017 landmark judgment of the Supreme Court in *Independent Thought Vs. Union of India and Anr.*<sup>7</sup>, the Court amended Exception 2 of Section 375 of the IPC to conform it with Section 3 of the POCSO Act that states “*if the wife is not less than eighteen years of age, then sexual intercourse would not amount to Rape.*” The novel amendment fails to take cognizance of the fact that since aiding or abetting child marriage is a punitive crime, the adults required under this amendment to register the marriage within 30 days would certainly be discouraged to register the same. Another problem exists in the implementation of the said law, since there is little awareness regarding the new law and widespread illiteracy and ignorance, it's impossible to encourage people to register marriages. Another concern that the said law fails to clarify upon is the kind of penal action that will be adopted in cases where child marriages are registered. Although the district collectors have been authorised to act in such cases, they will only be able to punish the wrongdoers but the nullification of the said marriage does not come under their jurisdiction and hence, the damage done to the children through such marriage would not be remedied and the marriage will remain intact.

### **Conclusion**

Considering that only penal action will suffice the mission to stop child marriages is a grave misunderstanding, the social environment of Rajasthan or to say of India does not understand the legality or illegality of an act and such marriages are considered to be valid and respectable under the social norms and values. The key issue that needs to be addressed is that much of the discourse on child marriages is focused on statutory reforms alone which should also include measures aimed at ensuring the rights of girls, married or those vulnerable to early marriage. For instance, Karnataka on 26<sup>th</sup> April, 2017 ratified the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 by which child marriages are void-ab-initio or invalid from the moment of marriage, but the same has not made an iota of improvement in its statistics on child marriage reporting the highest number of child marriages in 2020 in the entire country. Thus, instead of punitive or legislative actions, the issue of child marriage needs to be made socially undesirable and the same could be

---

<sup>7</sup> *Independent Thought v. UOI and Anr.*, (2017) 10 SCC 800.

accomplished through education, special livelihood training, safety, empowerment programmes and other opportunities for girls that offer viable social and economic options outside of marriage.<sup>8</sup>

---

<sup>8</sup> Mani Chander, *Why Rajasthan's law on Registration of Child Marriages is Legally sound but unlikely to stem the tide*, Article 14,( Oct.1 2021) <https://www.article-14.com/post/why-rajasthan-s-law-on-registration-of-child-marriages-is-legally-sound-but-unlikely-to-stem-the-tide--615679fb0941e>.