



CHILD MARRIAGE, A GATEWAY TO HUMAN TRAFFICKING

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ABSTRACT :

Despite the passing of numerous laws, child marriages are still very common in India. The Indian government developed several legislations and initiatives to address the issue of early marriage, but they were never put into action. Child marriage is considered a form of abuse where children are trafficked and forced to enter prostitution and are then sexually exploited and physically violated. Furthermore, these forced marriages or underage weddings are examples of gender inequality that, regrettably, spread the idea that young girls are nothing more than things to be used for another person's gain. To pinpoint the shortcomings and issues within, this essay analyses the legal and policy framework disputes. It tries to comprehend the causes, sociological setting, and numerous related aspects of the child marriage controversies. It makes an effort to demonstrate how these discussions have advanced the movement against the practice of child marriage that has an incidental effect to trafficking of these young brides, which violates the child's right to consent.



KEYWORDS : Child marriage, consent, trafficking, gender inequality, forced marriages.

1. INTRODUCTION:

One of the most prevalent form of human rights abuse of child protection law is the system of child marriage where a child is subjected to torture as a result of marriage by their parents who are subsequently trafficked, violating the very dignity and respect of a child.¹ A child marriage is a formal or informal relationship that occurs before the age of 18 years. It is a violation of children's human rights as well as a kind of gender-based abuse that deprives children of their youth.² Child marriage also jeopardizes their education and makes them vulnerable to assault, prejudice and abuse. When a girl marries at a young age, her life becomes completely ruined. Her childhood is effectively over when she marries as a child. Girls are pushed to become adults before they are physically and psychologically ready.³ Child brides' rights to health, education, safety, and participation are frequently violated.

¹Sarkar, S. (2016) *Child Marriage Trafficking in India: Victims of Sexual and Gender-Based Violence*, 8(1) pp. 62–70.

²*Id* at 71.

³*Early Marriage: A traditional harmful practice - A statistical exploration - UNICEF DATA* <<https://data.unicef.org/resources/early-marriage-a-traditional-harmful-practice-a-statistical-exploration/>> accessed on 20 October 2021.

Furthermore, an arranged marriage frequently implies that a girl is forced to marry an older, and sometimes significantly older, man.⁴

Gender-based violence takes many forms, including child marriage, which is widely accepted throughout the world. Both of these actions are breaches of other human rights. Child marriage puts woman and girls at greater risk of physical, sexual and emotional abuse, as well as other negative consequences, for the rest of their lives. Sexual and reproductive health consequences including HIV infections, unplanned pregnancy, unsafe abortion, mental illness, depression and femicide or suicide are all linked to gender-based violence including child marriage. lower educational achievement and economic and job prospects may potentially be consequences⁵.

Ironically, one of the motivators for child marriage is the idea that marriage would make a girl “safer” and that marriage will shield her from physical and sexual abuse. In fact, the opposite is true. The 15 million girls who marry each year across the globe are particularly vulnerable to physical, psychological and sexual abuse.⁶

Child brides are susceptible to physical abuse from their spouse or the relatives of their partners. According to research, they are more likely than later married girls to be mistreated, intimidated or beaten by their husbands. Child brides are often married off to guys who are older than they are. This age difference is significant because the older the females are, the more likely they are to be abused.⁷

Child marriage is a violation of human rights. The practice is influenced by complex factors that differ from one context to another, including gender inequalities, poverty, discriminatory social norms against girls, customary or religious law which tolerates the practice and loopholes the legislative framework and the civil registration system.⁸In India , one in five girls is married as a child today.⁹ The greatest progress has been made in the wealthier circles where,¹⁰19% of girls in the world today marry as children¹¹. 36% of girls in the lowest income countries marry before the age of 18, almost double the global average¹².According to NFHS fordata between (2015–2016), Bihar had the highest rate of child marriage in India. In 2019–2020,¹³ West Bengal reported the highest numbers of cases of child marriage followed by Bihar. States with high rates of child marriage are also known to be source states of child trafficking. Child trafficking for the purpose of marriage is a reality, with men from richer states such as Haryana and Punjab seeking brides due to the skewed sex ratio in these states.¹⁴An organisation called Drishti Stree Adhyayan Prabodhan Kendra from Pune, Maharashtra, India, conducted a field study on the effect of sex ratio on the marriage pattern in Haryana in 2010.¹⁵Over 50% of the 10,000 households included in the study buy married women from other States.¹⁶ The survey included 92 villages from the districts of Mahendragarh, Sirsa, Karnal, Sonapat, and Mewat.¹⁷ Although the majority

⁴*Id.*

⁵Icrw.org <<https://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Domestic-Violence.pdf>> accessed on 19 October 2021.

⁶Icrw.org, *supra* note at 5.

⁷Icrw.org, *supra* note at 5.

⁸Icrw.org <<https://www.icrw.org/files/images/Child-Marriage-Fact-Sheet-Domestic-Violence.pdf>> accessed on 19 October 2021.

⁹*Id.*

¹⁰. COVID-19: A threat to progress against child marriage - UNICEF DATA

<<https://data.unicef.org/resources/covid-19-a-threat-to-progress-against-child-marriage/>> accessed on 20 October 2021.

¹¹*Id.*

¹²*Id.*

¹³Ministry of Health and Family Welfare, *National Family Health Survey(NFHS-5) 2019-2021*.

¹⁴*Id.*

¹⁵Pamela S. MHRD, *Human Resource Management*, 1(1), pp.2-11.

¹⁶*Id.*

¹⁷*Id.*

of participants acknowledged it as a frequent practise, most denied buying a bride for their family. They discovered that more than 50 females had been bought in every community, some of whom are as young as 13, and that very few of them are married. The majority are untraceable, mistreated, or copied by the males who marry or purchase them as domestic employees.¹⁸ The survey also discovered instances when the ladies were resold to different husbands after a few years of marriage, women seldom ever spoke about domestic problems, the pretence of marriage and the social stigma made it challenging for authorities or NGOs to track down human trafficking or other atrocities.¹⁹

1.1 Definitional aspects of Child marriage:

Sexual exploitation of children which consists of any activity in which a child participates for the sexual pleasure of another person, or any sexual activity before the child has reached the age of consent in their country affects children around the world.

“Child marriage” refers to a formal or informal union in which at least one of the parties is a child. Article 1 of the Convention on the Rights of Child, defines the “Child” as every human being below the age of eighteen years.²⁰ The Committee on the Rights of the Child, a body of independent experts that monitors the implementation of the Convention on the Rights of the Child, has urged State parties to review the age of majority if it was under 18 years old.²¹

The Prohibition of Child Marriage Act, 2006 under section 2(b) defines “child marriage” as marriage to which either of the parties is a child. The Child Marriage (Restraint) Act, 1929 defines a “child” as a person who, if they are male, has not reached the age of 21, and if they are female, has not reached the age of 18.²² Anyone who executes, conducts, or orders a child marriage constitutes an offence under the Child Marriage (Restraint) Act, 1929. Parents, family members, or even the pandit who officiates the marriage may be the culprit. The criminal faces a maximum sentence of three months in jail and a fine, and the magistrate has the power to halt the marriage after being told of the offence. To tell the police of a child marriage, a close relative or friend of the minor may file a report at the police station.

1.2 Laws and Statutes pertaining to Child Marriage in India:

Laws and Legislative Frameworks are present to regulate the offences that take place under the pretext of Child Marriage. The most important Statutes relating to such a criminal offense is as follows:

1.2.a Child Marriage Restraint Act

The Child Marriage Restraint Act was passed in 1929 in an effort to end the scourge of child marriage. The goal is to eradicate the particular evil that posed a risk to the life and health of a female child who was unable to bear the stresses of marriage and to prevent the early deaths of such young moms. The first day of April 1930 saw the implementation of this law.

According to this section 3, any male who marries a kid while under the age of twenty-one and over the age of eighteen is subject to a fine of up to one thousand rupees or both simple imprisonment that may last up to fifteen days.²³ It applies to all Indian citizens both inside and outside of India, with the exception of the State of Jammu & Kashmir.²⁴

¹⁸Pamela, *supra* note at 14.

¹⁹*Id.*

²⁰*Convention on the Rights of Child* (20AD)

²¹*Id.*

²²*The Child Marriage Restraint Act* (1929)

²³*The Child Marriage Restraint Act* (1929)

²⁴*Id.*

1.2.b The Prohibition of Child Marriage Act

The Government of India introduced the Prohibition of Child Marriage Act (PCMA) in 2006, and it went into effect on 1 November 2007 to address and correct the shortcomings of the Child Marriage Restraint Act in response to the argument (Writ Petition (C) 212/2003) of the Forum for Fact-finding Documentation and Advocacy before the Supreme Court.²⁵ The name change was intended to emphasise preventing and outlawing child marriage rather than merely restricting it. The previous Act did not place much emphasis on authorities as potential sources for stopping child marriages, which made it difficult and time-consuming to take action against them. This Act makes several substantial adjustments to further protect the children while keeping the age difference between adult males and girls²⁶. The PCMA, which attempts to forbid child weddings, has established child marriage as a cognizable and non-bailable offence.

1.2.c Indian Penal Code (IPC).

The IPC does not directly criminalise child weddings, however Section 366 on forced marriage makes it an offence to kidnap or abduct a woman in order to force her into marriage or to employ any other form of coercion.²⁷ Other laws in the IPC may also apply to child marriage in some circumstances. For example, Section 496 of the IPC makes it illegal to enter into a marriage with the intent to defraud, and Section 370 was amended in 2013 to address human trafficking for the purposes of exploitation sexually, enslavement, and servitude²⁸.

1.2.d Protection of Children from Sexual Offences

Marriage is no longer an exception because of the Protection of Children from Sexual Offences Act of 2012, which accepted 18 as the legal age of consent for both men and women. In order to empower women and ensure gender parity, the Indian Parliament and present administration has started a contentious debate about an amendment to the PCMA 2006 that would raise the legal age of marriage for women from 18 to 21 year.²⁹

1.2.e. Juvenile Justice Act (Care and Protection)

By adopting a child-friendly approach to the adjudication and disposition of matters in the best interest of the child and his or her rehabilitation through the process offered and institutions and bodies established, this Act ensures that every offender who is a child who is under the age of 18 and in conflict with the law should be taken care of properly with every basic need, ensuring safety, protection, development, and every social re-integration process.³⁰

1.2.f. Convention on the Discrimination Against the Women

The CEDAW contains clear provision against the Child Marriage, under Article 16(2), which states that no legal consequences will result from a child's engagement or marriage, and all necessary measures, including legislation, will be implemented to establish a legal minimum age for marriage and make marriage registration in an official registry mandatory.³¹

1.2.g. United Nations Conventions on the Rights of the Child:

Article 24 of the Convention states that the States Parties are required to take all feasible steps to end traditional practises that are harmful to children's health. States Parties acknowledge the child's

²⁵The Prohibition of Child Marriage Act (2006)

²⁶*Id.*

²⁷Indian Penal Code (1860)

²⁸*Id.*

²⁹Protection of Children from Sexual Offences (2012)

³⁰Juvenile Justice Act (2015)

³¹Convention on the Discrimination Against the Women (1979)

right to an education, with the goal of attaining this right gradually and on the basis of equal opportunity, according to Article 28. States Parties are obligated under Article 34 to safeguard children from all types of sexual exploitation and abuse.

1.3 Child marriage: A harmful traditional practise:

All communities around the world have their own traditional practices. Some of these practices benefit members, while others are dangerous for a particular group. Child marriage, early and forced marriage, female circumcision, "bride price" and dowry systems are all examples of harmful traditional practices.³² Traditional practices harmful to women and girls inflict immediate long-term psychological and physical pain on them, and have serious consequences for their development.³³

According to a joint statement from United Nations agencies, "It is unacceptable that the international community remains passive in the name of a distorted view of multiculturalism. Human behaviours and cultural values, however insane and destructive they may appear from the personal and cultural perspective of others, have meaning and serve a function for those who apply them.³⁴ However, culture is not a static thing: it is constantly evolving, adapting and reforming with the times. People change their attitude when they understand the dangers and unworthiness of harmful practices, and when they realize that it is possible to let go of those practices without giving up the sane aspects of our culture."³⁵

1.3.a. Child marriage in India one of the worst violations of children's rights

In generally, birth, marriage and death represent the three main events in an individual's life. Marriage, however, is the only event that is a matter of choice. Sadly, millions of children around the world (young girls and boys) are forced into marriage without the ability to exercise their right to choose. In India, early marriage remains a customary and ancestral practice that seriously harms the development and future of children³⁶. Despite the law, the rate of early marriage remains very high in India.

Although child marriage is prohibited by Indian law, this ancient practice continues. India, which is ranked second in child marriage in South Asia after Bangladesh, has a sad record as 40% of child marriages in the world are still celebrated today.³⁷ Girls at birth, are promised in advance to men very often older than themselves; then as soon as their first menstruation appears, generally at the age of 10 or 11, they are given in marriage.³⁸ These children see themselves very early on torn from their early childhood and confronted with the reality of adulthood. Child marriage in India is very common in rural areas of Madhya Pradesh, Uttar Pradesh, Rajasthan, Chhattisgarh, Bihar and Andhra Pradesh, where 47% of girls are married.³⁹

1.3.b Prevalence of Domestic Violence in Child Marriage

Unsurprisingly, domestic violence occurs where there is an imbalance of power. The lack of negotiation power the girl will have in bed with her husband, who is often much older than she, represents the power imbalance in child marriage. A sign of sexual, verbal, physical, and emotional abuse by a partner is called intimate partner violence (IPV). According to Indian tradition, a girl is prepared for marriage and childbearing once she reaches puberty. The girl also suffers a shame if she is

³²Suresh B. (2015) *Child Marriage in India: Factors and Problems*4(4), pp, 4-7.

³³*Id.*

³⁴UNFPA-UNICEF *Global Programme to End Child Marriage*(2016)

³⁵*Id.*

³⁶B Pramila, 'CHILD MARRIAGE: SCENARIO IN INDIA' (2013) 74 *Proceedings of the Indian History Congress* <<https://www.jstor.org/stable/44158905>> accessed 6 October 2021.

³⁷UNFPA-UNICEF *Global Programme to End Child Marriage*(2016)

³⁸*Id.*

³⁹*Id.*

unable to conceive or give birth, which may cause both her own and her husband's families to shun her.⁴⁰

It is impossible to overestimate the trauma caused by IPV experiences. For females in early marriage, there are two separate traumatising experiences: interpersonal trauma and trauma associated to society as a result of IPV experiences. A girl's lack of sexual education leads to interpersonal distress. She is not introduced to the man she will marry before the wedding because her parents are arranging the union. Additionally, a girl's negotiating power in bed is impacted by the age gap between the man and her, which results in a lack of autonomy over decisions affecting her body. Consent is rarely provided when one lacks the information necessary to make an informed choice, turning marital relations into a type of ongoing rape. Every marriage-related act, especially one without mental health treatment, exacerbates the trauma.⁴¹

Lack of support from her own family members as well as experiencing physical and mental stress from her husband and his family are both indicators of societal-related trauma. Girls' painful experiences are further exacerbated because they are frequently compelled to marry the late husband's family member in order to retain their social standing in the neighbourhood.⁴²

1.3.c. Child marriage increases the risk of sexual and gender-based violence for girls and women

Child marriage makes girls and women particularly susceptible to sexual, physical and psychological violence throughout their lives. Girls married before the age of 18 are more likely to experience domestic abuse and a first forced sexual experience compared to their single counterparts⁴³. Child marriage triggers an uninterrupted chain of rights violations that continues throughout the lives of girl-wives. To eliminate gender inequalities and empower young women, it is necessary to ensure respect for girls' human rights and needs, including their right to education, sexual and reproductive health, food and their right to be protected from violence – rights violated by child marriage. Early marriage will continue to be a significant obstacle to human rights until steps are made to overcome it.⁴⁴

According to estimates, the human trafficking in India could reach between 20 and 65 million people⁴⁵. Women and girls are trafficked within the country for the purposes of sexual exploitation and forced marriage, especially in areas where the sex ratio is heavily biased in favour of men. India is also the destination for women who come from neighbouring countries to be sexually exploited. Indian women can also be sent to the Middle East for the same purpose. And finally, Indian migrants who travel voluntarily to the Middle East and Europe to work as domestic servants or low-skilled workers can sometimes be caught in the nets of the human trafficking industry and find themselves in situations of forced labour or debt bondage.

India is the largest democratic republic in the world, but the country suffers from widespread poverty and a lack of education⁴⁶ which results in numerous human rights violations, especially against

⁴⁰ Anjali M. *Intimate Partner Violence in Indian Child Brides: Mechanisms of Trauma*, https://wp.nyu.edu/steinhardt-appsych_opus/intimate-partner-violence-in-indian-child-brides-mechanisms-oftrauma/ (last visited Mar. 1, 2021).

⁴¹ Kathryn M. Yount et al., *Child Marriage and Intimate Partner Violence in Rural Bangladesh: A Longitudinal Multilevel Analysis*, HHS PUB. ACCESS 5 (2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5568420/pdf/nihms827890.pdf>.

⁴² Ilene S. Speizer & Erin Pearson, *Association between Early Marriage and Intimate Partner Violence in India: A Focus on Youth from Bihar and Rajasthan*, 7 (July 2011), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3741349/pdf/nihms491273.pdf>.

⁴³ *Hidden in Plain Sight* <<https://www.unicef.org/reports/hidden-plain-sight>> accessed on 4 October 2021.

⁴⁵ *A Report On Trafficking Of Women And Children In India* (2003).

⁴⁶ *India - Education in India* <http://web.worldbank.org/archive/website01291/WEB/0_CO-14.HTM> accessed on 4 October 2021.

women and girls⁴⁷. Discrimination and violence against women are deeply rooted in Indian society. Discrimination begins at birth, because many people believe that giving birth to a girl is a curse⁴⁸. As a result, female infanticide and selective abortions⁴⁹ are rife, reflecting the societal status of Indian women at the lowest level - activists estimate that some eight million female fetuses have been aborted in the past decade. Discrimination continues throughout childhood: Indian girls, especially girls in rural areas, are often denied any right to education⁵⁰ despite the increased general literacy rate that of women is still much lower than that of men (65% against 82%)⁵¹. Discrimination continues to be endemic in adulthood, contributing to the gender pay gap: Indian women workers earn an average of 64% of the wages of their male counterparts for the same occupation and the same level of qualification⁵².

Young children are stolen to facilitate the work of beggars, women are forced into prostitution, around 70,000 children work in virtual bondage in private mines while others are used as domestic servants after inheriting debt of their parents; some of them are even sold to organ traffickers⁵³. Until recent years, the problem of human trafficking went almost unnoticed due to the high prevalence of poverty in the countryside. Tribal Areas Children in particular are too often the victims of trafficking, including Kuki peoples of Manipur and Naga northeast, while the state of Jharkhand⁵⁴ and parts of Prakasam and Anantapur in the State of 'Andhra Pradesh⁵⁵ are among the areas most at risk.

2. CAUSES OF CHILD MARRIAGE IN INDIA

Child marriage is a complicated issue with many contributing factors. Child marriages are a result of cultural practises that include low female status, the importance of marriage in most people's life, rules governing property partition, and societal restrictions on women's sexuality.⁵⁶

India's states all have their own distinct cultures and traditions. For instance, there is less shame associated with teens and young adults having consensual relationships in the north-eastern states.⁵⁷ The informal marriage of consenting young people is known as a "Dhuku marriage" and is common in the tribal society of Jharkhand.⁵⁸

Even though these traditions have the potential to cause child and early marriages, the stigma attached to premarital sex—which is widespread in other parts of India—also contributory factorsof

⁴⁷World Report 2019: Rights Trends in India <<https://www.hrw.org/world-report/2019/country-chapters/india#d91ede>> accessed on 6 October 2021.

⁴⁸Birth of a Girl - Curse or a Blessing? My question to the society <<https://www.worldpulse.com/community/users/bharti-singh-chauh/posts/67817>> accessed on 3 October 2021.

⁴⁹Trends in selective abortions of girls in India <<https://www.unfpa.org/resources/trends-selective-abortion-girls-india>> accessed on 5 October 2021.

⁵⁰Why Are So Many Girls in India Not Getting an Education? <<https://time.com/5614642/india-girls-education/>> accessed on 6 October 2021.

⁵¹Tanushree Chandra, Literacy in India: The gender and age dimension | ORF <<https://www.orfonline.org/research/literacy-in-india-the-gender-and-age-dimension-57150/>> accessed on 7 October 2021.

⁵²Wcd.nic.in <https://wcd.nic.in/sites/default/files/Final%20Draft%20report%20BSS_0.pdf> accessed on 4 October 2021.

⁵³Nhrc.nic.in <<https://nhrc.nic.in/sites/default/files/ReportonTrafficking.pdf>> accessed on 3 October 2021.

⁵⁴India News, Tribal Girls Sold as Maids: Rescued Jharkhand maids continue to be stalked by human traders | India News - Times of India <<https://timesofindia.indiatimes.com/india/rescued-jharkhand-maids-continue-to-be-stalked-by-human-traders/articleshow/38568680.cms>> accessed on 7 October 2021.

⁵⁵Traffickers target tribal children from A.P., 4 other States <https://www.thehindu.com/news/national/andhra-pradesh/traffickers-target-tribal-children-from-ap-4-other-states/article30959041.ece> accessed on 3 October 2021.

⁵⁶Sankar S, Nair P. (2005) *Trafficking in Women and Children in India*, 1(1) pp 45-60

⁵⁷, Jean D'Cunha (2002) *Trafficking in persons: a gender and rights perspective* 8(1) pp 32-66

⁵⁸*Id.*

child marriages marriages.⁵⁹ Religious, regional, and caste-based variances in the causes of child weddings are brought on by customs of paying large dowries, personal laws that authorise marriage at the age of puberty, such as the Shariat, and denial of equal property rights to daughters in both Hindu and Muslim laws.⁶⁰

Given the complexity and diversity of India, the following list of causes of child marriage is indicative rather than an exhaustive analysis of the practise.⁶¹

2.1 Poverty and lack of education

One key factor that encourages the practise of child marriage is a household's economic situation. This is seen as an easy solution for families that are struggling to make ends meet as well as a way for girls to rise beyond their circumstances. Girls from impoverished households are actually more likely to stay poor and pass it on to their children, continuing a cycle of intergenerational poverty. It is thought that child marriage is a way to pay for a girl's education. In turn, the poverty cycle is exacerbated by the absence of high-quality education for girls that could encourage them to pursue further education, support them in finding jobs, or help them acquire employable skills. It is abundantly obvious that school instruction, which contributes significantly to CEFM, is not intended to promote skill development.

Another important element that supports child marriage is parental illiteracy. Daughters are negatively impacted by early marriage, and parents with little or no education are unaware that it infringes on a child's basic human rights.⁶²

2.1 Control over a girl's sexuality and fear of violence against women and girls

The practise of forced marriage of children is one of the ways that women are oppressed and subjugated in a patriarchal culture. Parents frequently push their daughters into early marriages out of worry that the girls' sexual liberty will result in premarital sex, unplanned pregnancies, and sex- and gender-based abuse.⁶³ As a result, her spouse and in-laws gain influence over the sexual and reproductive lives of girls, taking it away from her family.

2.2. Caste as a strong determinant for child marriage in rural areas

India fervently upholds the caste system in many ways. It is sustained via the institution of marriage, in keeping with the concept of endogamous marriage relationships. Through these alliances, the "ideal" marriages between families of the same varna and caste are strictly enforced.⁶⁴ Because the upper caste adheres to the idea of caste purity and pollution and patriarchy adheres to the idea of pure patrilineal succession, the system of control over women's sexuality and morality becomes the main concern as a shield for their ideology.⁶⁵

The brahminical caste structure views the lower caste men's desire as a threat to the purity of the upper caste. As a result, endogamy is a social institution that restricts upper caste women's access to lower caste males.⁶⁶ There is a tremendous lot of dread of women opposing the caste system, which again affects them and frequently leads to underage marriage, because their morals and sexuality are frequently restricted.⁶⁷

⁵⁹*Id.*

⁶⁰ This paper was presented at the Seminar on Promoting Gender Equality to Combat Trafficking in Women and Children, co-convened by the Ministry of Foreign Affairs Sweden and UNIFEM, with support from UNESCAP, 7-9 October, 2002, Bangkok, Thailand.

⁶¹ Cohen, L. L. and Morrison K. (2012) *Research methods in education* 38(3) pp- 507-509

⁶² Cohen, *supra* note at 60.

⁶³ Sankar S, Nair P. (2005) *Trafficking in Women and Children in India*, 1(1) pp 45-60

⁶⁴*Id.*

⁶⁵*Id.*

⁶⁶*Id.*

⁶⁷*Id.*

2.3 Dowry existing in child marriage:

In India, it is customary for the bride's family to give the groom money or presents in exchange for their daughter being married. The less suitors a daughter has as she ages, the more money her parents must spend to find a match. Therefore, in order to save money on dowry, families prefer to marry off their daughters when they are young.⁶⁸

2.4 Inadequate implementation of laws

Child marriage is illegal, but the laws against it have not been adequately enforced. In India, the PCMA 2006 is not being enforced effectively. States have not allotted a sufficient funding for carrying out the law, which has resulted in overworked child marriage prohibition officials, some of whom are even unaware of their duties. Lack of knowledge about the PCMA and the duties and rights that officials and people have. Less than one-fourth of respondents said that they were aware of the PCMA, according to the Planning Commission report *Child Marriage in India: A Study of Situation, Causes & Enforcement of Prohibition of Child Marriage Act*. Only roughly 27% of respondents agreed that 16 children's human rights are violated by child marriage.⁶⁹ Similar to this, Chapter V reports that there is a dearth of knowledge on the activities and schemes for the empowerment of adolescent girls. When procedures are not understood and regulations are not being followed, it is very difficult for the government to address the practise of child marriage.⁷⁰ The PCMA has very little influence and little power to implement. Government authorities and society do not have any control over this behaviour.⁷¹

2.5. Cultural practices, social norms, customs and traditions

It is crucial to recognise that child marriage is still a practise since it has developed into a societal standard that is supported and encouraged by communities. Child marriage is still very much a part of religious traditions and beliefs in several Indian regions.⁷² First off, in India, marriage is essential to a woman's identity, and she is bound to her husband's. Parents are pushed to marry females as soon as they enter puberty out of worry that they won't be able to marry their daughters, and they typically do so out of fear of rejection. Parents who lack literacy are under pressure to follow cultural standards and have little to no power to do so.

Gauna marriages in Rajasthan (a union between children in which the marriage is completed only upon attaining adulthood - it effectively serves as cover for the fact that the child marriage has taken place) and Dhuku marriages in Jharkhand are two examples of region-specific customs that support child marriages.⁷³ Mrityu Bhoj, a tradition in Rajasthan where expensive funerals are the norm, encourages child weddings by reducing funeral expenses by holding the wedding concurrently with the funeral.⁷⁴

3. Interface between Child Marriages and Human Trafficking:

In India (as in other parts of the world), marriages have historically been associated with the maintenance of social control rather than individual choices and preferences. Marriages traditionally consolidate gender roles, with women taking on household responsibilities and men expected to be bread earners. Society is maintained and structured on many norms among which marriage is a very important one because it underpins the core values of both patriarchy and caste in India.⁷⁵ Marriage is

⁶⁸ Jean D'Cunha (2002) *Trafficking in persons: a gender and rights perspective* 8(1) pp 32-54

⁶⁹ *Id.*

⁷⁰ Human Rights Law Network, *Child Marriage The Worst Form of Slavery* (2017)

⁷¹ *Id.*

⁷² *Id.*

⁷³ Sankar S, Nair P. (2005) *Trafficking in Women and Children in India*, 1(1) pp 45-60

⁷⁴ UNFPA – UNICEF Global Programme to End Child Marriage, Country Profile India, 2020, <https://www.unicef.org/media/111381/file/Child-marriage-country-profile-India-2021.pdf>

⁷⁴ *Id.*

⁷⁵ *Id.*

seen as a legal contract through which a woman has given herself to her husband. It further reinforces a sexual subjugation of women in different ways – through religious rituals, social and cultural practices, and other popular norms of society.⁷⁶ A woman is always seen as the property of men and hence men need to protect the woman and her sexuality and chastity, which limits a women's agency.⁷⁷

A framework that is strongly linked to the establishment of patriarchy, parental and societal control over who and when to marry, and control of women's sexuality is enforced through the institution of child marriage.⁷⁸

In child weddings, the bride is guaranteed to have minimal negotiating leverage; she is unlikely to be able to bring any resources into the marriage and would not be able to leave it. In addition to harming adolescents and men who are deprived of the "right to choice" in dating, the practise reinforces patriarchal constraints.⁷⁹ The prevalence of child, early, and forced marriages (CEFM) is widespread, even in developed nations. According to reports, 87% girls and 13% boys married over 200,000 youngsters in the United States in 2018.⁸⁰

The percentage of girls getting married before turning 18 is highest in underdeveloped nations, particularly Niger (76%), Central African Republic (68%) and Chad (67%). India is the nation with the greatest absolute number of child weddings, and it is thought that one-third of all child brides reside there.⁸¹

The British were responsible for defining child marriage in India for the first time and passing legislation to outlaw it. In the Indian Penal Code of 1860, the age of consent was set at ten years old. The incident involving Phulmoni Dasi, a 10-year-old girl who passed away from profuse bleeding after her husband consummated the marriage, served as the impetus for the implementation of a legislation outlawing child marriage.⁸² When child bride Rukhmabai refused to live with her husband in 1884, he dragged her to court. Even after Rukhmabai lost the case, she insisted on staying away from her husband. The social reform movement was started as a result of this case, which sparked a heated discussion about child marriages.⁸³

The social reform movement was started as a result of this case, which sparked a heated discussion about child marriages. The Age of Consent Act, which raised the legal age of consent for marriage for girls to 12 years old, was passed in 1891 as a result of these two incidents. The social reform movement put pressure on the government to raise the marriage age to 18 for males and 14 for women in 1929.⁸⁴ After India gained independence, the Child Marriage Restraint Act (also known as the "Sharda Act") was revised in 1949 to set the marriage age at 15 for girls. A second revision to the Sharda Act was made in 1978 to set the marriage age at 18 for women and 21 for men. The Prohibition of Child Marriage Act (PMCA), passed in 2006, set the marriage age at 18 for women and 21 for men.⁸⁵

It is crucial to remember that each country has a different definition of what age someone can agree to sexual engagement. In 1940, the Indian Penal Code of 1860 increased the consent age for girls from 12 to 16. Marriage was an exemption, and a husband was allowed to marry a girl between the ages of 15 and 18. Sexual contact with a girl under the age of 16 constituted rape regardless of permission.

⁷⁶*Id.*

⁷⁷*Id.*

⁷⁸*Id.*

⁷⁹*Id.*

⁸⁰*Id.*

⁸¹ UNFPA – UNICEF Global Programme to End Child Marriage, Country Profile India, 2020, <https://www.unicef.org/media/111381/file/Child-marriage-country-profile-India-2021.pdf>

⁸²*Id.*

⁸³ UNFPA – UNICEF Global Programme to End Child Marriage, Country Profile India, 2020, <https://www.unicef.org/media/111381/file/Child-marriage-country-profile-India-2021.pdf>

⁸⁴*Id.*

⁸⁵ Kaur, Kuldeep & Randhawa, Gurpreet. (2012). Kaur, K. and Randhawa, G. (2012), *Quality of Work Life Issues : A Comparative Study of Multinational and Indian Food Companies of Punjab*, 3(2) pp. 91-97.. 2. 91-97.

Marriage is no longer an exception because of the Protection of Children from Sexual Offences Act of 2012, which accepted 18 as the legal age of consent for both men and women.⁸⁶

In order to empower women and ensure gender parity, the Indian Parliament and present administration has started a contentious debate about an amendment to the PCMA 2006 that would raise the legal age of marriage for women from 18 to 21 years.⁸⁷ Many women get married before they have the necessary negotiating power, such as before they can earn money or decide whether to use contraception, or before they have the legal knowledge necessary to end a marriage. A true picture of the nature of the violation of the rights of both children and young adults entering relationships can therefore be obtained from a more nuanced definition of child marriages, which encompasses early and forced weddings.

3.1 Human Trafficking:

One of the worst ways that human rights are violated is through the trafficking of women and children. The rights to life, liberty, human dignity, and personal safety are all violated, as is the freedom from torture and other cruel treatment, to name a few. Human trafficking is viewed as the illegal trade of human people, whereas trafficking is understood as the "trade in something that should not be traded for various social, economic, and political reasons."⁸⁸ A highly detailed definition of trafficking is provided in the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children 2000. Article 23 of the Indian Constitution forbids all forms of trafficking.⁸⁹

Following India's ratification of the International Convention on the Suppression of Immoral Traffic and Exploitation of Prostitution of Others in 1950, the Suppression of the Immoral Traffic Act of 1956 (SITA), later renamed the Immoral Traffic (Prevention) Act (ITPA), was passed. The only other Indian law that addresses trafficking is the Goa Children's Act 2003, however it only applies in certain circumstances. However, no independent, long-lasting mass movement against trafficking in the nation has been supported by any of these laws.⁹⁰

According to Indian discourse, the nation is a source, destination, and transit point for men, women, and children involved in forced labour and sex trafficking. In India, 90% of trafficking occurs internally, and people from the lowest social castes and other socially disadvantaged groups are the most vulnerable. Children are also victims of human trafficking, in addition to adults. The caste structure promotes the growth of human trafficking. It is recognised that those at the top exploit those at the bottom, even going so far as to traffic them for use as slave labour, because those in the lower caste are taught that they have less worth than those in the upper caste. According to India's history of female and child trafficking, these victims are typically sold into prostitution or other forms of sexual exploitation.⁹¹ India receives an increasing number of women and girls who are victims of sex trafficking from Nepal and Bangladesh, followed by Uzbekistan, Ukraine, and Russia. Reports also point to a pattern of females from India's north-eastern states and Odisha being trafficked to regions with low female-to-male sex ratios (Haryana, Punjab) for servile marriages, as well as reports of Indian women being trafficked to the Middle East for transactional sexual exploitation in exchange for false promises.⁹² The practise of human trafficking has become more widespread, shifting from typical

⁸⁶ Fulford, W. M. (2013). *Values-based practice: Fulford's dangerous idea*. 19(3), 537-546.

<https://doi.org/10.1111/jep.12054>

⁸⁷ Kumar, P. (2011). Lynn Welchman and Sara Hossain (eds), *Honour: Crimes, Paradigms, and Violence against Women*. 45(3) pp-133-136

⁸⁸ *Id.*

⁸⁹ Shekar K, McDonald CI, Fisquet S, Barnett AG, Mullany DV, Ghassabian S, Wallis SC, Fung YL, Smith MT, Fraser JF. Sequestration of drugs in the circuit may lead to therapeutic failure during extracorporeal membrane oxygenation. (2012) doi: 10.1186/cc11679. PMID: 23068416; PMCID: PMC3682296.

⁹⁰ Natalie A. (2013) *Forced Sterilization of Women in Uzbekistan by open society's foundation*,

⁹¹ *Id.*

⁹² *Id.*

locations and from urban to rural areas instead of the typical trend of rural to urban areas. It is more difficult to identify trafficking operations as a result of the movement and expansion of the crime.

3.2 Forced Marriages

Given that the decision to marry someone must be made voluntarily, the United Nations views forced marriage as a violation of human rights. The phrase has undergone numerous analyses. According to the widely accepted definition, a forced marriage is one in which one or both spouses were wed against their will or without their consent.⁹³ It differs from an arranged marriage in that neither side agrees to have their parents or another third party help them choose a spouse. Deception, kidnapping, compulsion, terror, and inducements are used to lure victims into forced marriages. Typically, women are the ones who are most vulnerable.⁹⁴

Some people who are forced into marriage are deceived by their families into leaving the country, where they frequently suffer from physical abuse, rape, kidnapping, torture, false imprisonment, enslavement, sexual abuse, mental and emotional abuse, and occasionally murder.⁹⁵ In India, most marriages are arranged, with the parents selecting a suitable partner before the ceremony. Another point made by Kha is that wealthy, educated parents frequently impose planned marriages against their children's wishes in order to find compatible partners. She uses the example of a 13-year-old girl who was married to an 18-year-old boy to argue that the marriage required some amount of coercion because the girl was too young to understand the implications of marriage. When minors are involved, it can be challenging to establish logical distinctions between forced and arranged marriages.

Forced marriage is an example of the gender imbalance that, regrettably, spreads the idea that women are nothing more than things to be used for another person's gain. Internationally, forced marriages are seen in a variety of ways. According to the UN High Commissioner for Human Rights' 2014 Annual Report, a marriage is considered forced if it takes place without the full and free consent of one or both parties and/or if one or both parties cannot end the marriage or leave it due to duress or significant social or family pressure. Cross-border unions are another term for forced unions.⁹⁶

The phrase "cross-border marriages" places attention on the movement of people across national or state borders in order to get married. The most major kind of migration for women in India has been marriage migration. Women moving to live with their husband's family after marriage in India is the largest permanent migration in the world. In India, 75% of women over the age of 22 have moved away from their hometown to get married.⁹⁷ Out of 65 million female migrants in 2001, 42 gave marriage as their primary motivation.⁹⁸ In India, cross-border marriages occur when males from economically impoverished or marginalised sections of the nation marry women from such regions.

Cross-regional marriages are becoming more common, which raises concerns about their acceptance and the motivations behind such unions that transcend national, regional, religious, linguistic, and cultural boundaries.⁹⁹ The main drivers of cross-border marriages appear to be poverty and social-cultural practises such as dowries. While the practise of dowry is a significant factor causing cross-state marriages, other factors like the unfavourable sex ratio, skin tone, appearance, and low levels of literacy also play a role.¹⁰⁰ In the sending families, marriage is seen as a way to send away extra members of the household in order to balance the household's resources and members; however, Kerala, where people marry within their caste, religion, and region, is showing a different trend.¹⁰¹

⁹³ Pamela S. MHRD, *Human Resource Management*, 1(1), pp.2-11.

⁹⁴ Pamela S. MHRD, *Human Resource Management*, 1(1), pp.2-11.

⁹⁵ *Id.*

⁹⁶ Das, N.P., and Devamoni, D, (2008) *Female Age at Marriage in India: Trends and Determinants*, *Demography*, (Special Issue on the Golden Jubilee Years of India's Independence 27(1) pp. 91-115.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ Pamela S. MHRD, *Human Resource Management*, 1(1), pp.2-11.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

The practise of picking spouses for many reasons, regardless of caste, religion, and area, has become popular. In particular, the flow of cross-border marital migration between Kerala, Karnataka, Haryana, and Tamil Nadu has increased quickly as a result of this.¹⁰² There are several various cross-border unions, including those known as Haryana weddings, Mysore Kalyanam, Mali Kalyanam, and Arabi Kalyanam, among others, and many women leave Kerala in search of husbands in the nearby states every year.

In the article, "Eliminating the Child Marriages in India by Shashank Shekhar, the author looked at the rise in young women being married abroad, such as in Haryana weddings in Kerala and Tamil Nadu marriages. The majority of the brides, he continued, came from the Keralan districts of Trichur, Palghat, Idukki, and Malappuram and belonged to the most backward caste, the Ezhava.¹⁰³ There are not enough girls available in Jhajjar District, Haryana, to marry their boys.¹⁰⁴ If it hadn't become apparent that there are no brides for the males in the area, the situation might not have attracted the attention of scholars, the media, and policymakers. The arrival of a son, which the locals saw as a blessing, has brought about a grave crisis in the state, forcing it to 'buy' females from other states to wed their men—an emergent type of trafficking.¹⁰⁵

According to the United Nations, "adverse sex ratio" is a major factor in interstate marriages. In India, there are currently an estimated 50 million women and girls who are unaccounted for due to criminal practises such female feticide and infanticide. The Haryana evidence is a suitable testimony to these estimates.¹⁰⁶ These projections have an impact on the male-to-female sex ratio, which either directly or indirectly contributes to organised crime in the nation.¹⁰⁷

3.3 Case Studies of Children being trafficked under the disguise of forced marriages:

A minor from West Bengal, who was about 16 years old and lived in the hamlet of Kalayanganj within the jurisdiction, was courted for marriage in the month of June 2010, and an arranged marriage was celebrated with a resident of the village of Molopur in Uttar Pradesh.¹⁰⁸ A few months later, the girl's parents learned through their extensive inquiries that she had been sold to a different guy from the girl's village in Rajasthan. Without any resources, the girl's mother travelled to the UP to look for her daughter, when it was discovered that her so-called son-in-law had abused and sold the girl to another person for exploitation. Without assistance from the authorities, the mother called Childline to ask for help rescuing her daughter who is now safe living with her parents but the accused is yet to be detained.¹⁰⁹

A second underage victim from Bihar, who was roughly 26 years old, was discovered in Forbesganj's red-light district. The West Bengali girl, who resided with her parents and two brothers, completed her third grade education.¹¹⁰ She was forcibly married at the age of 13, and her husband eventually abandoned her, leaving her alone with a child. The young person approached her friend, who forced her into prostitution since she was desperate for work. The child had then attempted suicide out of mental pain, but she is compelled to work in order to provide for her child and her family.¹¹¹

The mother-in-law of a minor child who was forcefully married off to Bihar, managed a brothel, and her husband, a member of the Nutt Community, pushed his wife into prostitution so he could

¹⁰²Id.

¹⁰³Shashank S.(2012) Eliminating the Child Marriages in India 9(4), pp 34-56

¹⁰⁴Id.

¹⁰⁵Id.

¹⁰⁶Shashank S.(2012) Eliminating the Child Marriages in India 9(4), pp 34-56

¹⁰⁷Id.

¹⁰⁸Dr. Sarfaraz Ahmed Khan (2018)*Sex Trafficking and Law*, 1(1)pg 196 to 217.

¹⁰⁹Dr. Sarfaraz Ahmed Khan (2018)*Sex Trafficking and Law*, 1(1)pg 196 to 217.

¹¹⁰Id.

¹¹¹Id.

support his family.¹¹² They were married at the age of nine in a home-based brothel. Her husband, who used to beat her up, tortured the child mentally.

The sex-trafficking nexus with child marriage and prostitution, needs to be stopped and sufficiently highlighted. Child marriage is one of the ways that children are trafficked, and child marriage-related vulnerability may be found in most Indian states. West Bengal and Bihar are particularly notorious for their high rates of trafficking for commercial sexual exploitation. Additionally, both States serve as the origin, passageway, and final destination for post-marriage trafficking.

4.CONCLUSION

Stopping the horrific practise of forcing young girls into forced marriages is necessary. This is only possible if both women and men in the state value girls and do not view them as a burden. Organisation, monitoring, and evaluation are required for government projects and rigorous awareness-building campaigns. In addition to hurting young girls in impoverished regions, the practise is a sign of the cruel custom of killing female foetuses and mistreating females after they are born.

The existing information through the National Family Health Surveys (NFHS)¹¹³ and the compilation of reported cases through the National Crime Records Bureau (NCRB)¹¹⁴ statistics, do help us understand its patterns and manifestations. A distinct study is the need of the hour as no national representative data exists on cases received on support provided in the health or social welfare sector and at this stage it is imperative to further understand and dive deep into such issues. Child abuse not only impairs child's productivity but also hampers a smooth growth and development of the same. The existing laws highlights the urgent necessity to bring about much reform that is required in the area of child abuse. Therefore, greater participation is required on the part of children and its primary caretakers in the path of innovation, development and evolution of the future generation to be seen.

Although early marriage is practiced in some countries around the world, India alone accounts for a third of married children. This is an alarming situation to which solutions should be found, and measures should be taken for a total eradication of this phenomenon. Awareness efforts must be increased by the Indian government, international organizations and civil society in order to inform parents and young people involved in this practice, on the dangers faced by children and the harmful impacts of early marriage on their development. and their future.

To control the menace of child marriage that a close nexus with human trafficking bringing legislative reforms and strengthening the Child marriage must be made unlawful by the PCMA Act if child marriage is to be addressed. It must supersede all personal laws, and all laws pertaining to consent age and rape must be harmonised. It is necessary to correct the inconsistencies between the POCSO Act, the new age-related sections in the IPC, the PCMA, and the Personal laws. Since women frequently play a part in making financial decisions and have control over their income or savings, economic empowerment of women must be ensured in its truest sense. Researchers recommended creating programmes to educate parents on the importance of creating a home environment that encourages their daughters to learn how to manage money, make financial decisions, and use savings accounts among other recommendations for savings programmes for adolescent girls and young women.¹¹⁵

Due to a lack of development and adequate education, child marriage is still a common cultural practise in rural communities. Due to poor economic backgrounds, such as the fact that farmers who are in debt frequently utilise child marriage as a strategy to lessen financial responsibilities, these prejudices are strengthened even further. Particularly in rural areas, local bodies (i.e., the panchayat) frequently participate in approving child marriage in order to uphold patriarchy and caste inequalities.

¹¹²*Id.*

¹¹³Ministry of Health and Family Welfare, *National Family Health Survey(NFHS-5) 2019-2021*.

¹¹⁴Government of India, *National Crime Records Bureau, 2019-2021*.

¹¹⁵Kalyanwala, S (2007)*The Population Council, Inc., Influencing girls' lives: Acceptability and effectiveness of a livelihoods skill building intervention in Gujarat*, 18(3), pp-12-34

The members of the panchayat should play an active role in such rural areas, recognising that the Gramme Panchayat Development Plan (GPDP) cycle comprises decentralised, participatory planning and that Gramme Panchayats (GPs) are closest to communities.

The administration of justice and the interpretation of laws enacted by the legislative branch and put into effect by the executive branch fall under the purview of the legal system and international organisations. There are several steps that the legal system and courts can do to stop child marriage, care for the needs of children in marriage, and assist those who have been the victim of child marriage. Support the institutionalisation of the "UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime," which aim to make criminal justice systems more kid- and gender-friendly. Children should be given legal autonomy and the public should be made aware of child marriage and the criminal justice system.

To ensure that CMPOs (Child Marriage Prohibition Officer) are appointed in all states, especially at local levels, CMPOs must be appointed. They must also be trained and overseen. establishing coordination procedures and ensuring appropriate training for those appointed to carry out duties under the PCMA, the Protection of Women from Domestic Violence Act (PWDVA), and the Juvenile Justice Act (JJA). Create a monitoring system to monitor how well local officials respond to concerns about child marriage. sanctions for non-compliance or failure to carry out statutory obligations by law enforcement and CMPOs, the Act's implementing bodies. Penalties on an administrative level could be used. To coordinate efforts in implementing the PCMA, it is necessary to create a specialised Child Marriage Monitoring Cell at the state level and monitoring committees at the district and sub-district levels.

Community people should be inspired to keep an eye out for unusual movements of child victims to and from areas where their potential traffickers and hideouts may be located after being made aware of the problem of human trafficking. NGOs operating in rural regions should make sure parents are aware of the legal protections for children.