



An analysis of custody of minor wife in India

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Abstract

Millions of youngsters throughout the globe are affected by early marriage. It is described as a marriage that takes place before the girl is physically, medically, and mentally ready to take on the duties of marriage and childbearing, known as minor or child marriages. A child's marriageability is jeopardised by a slew of variables. Children are encouraged to get married early on in the expectation that it will benefit them both financially and socially, as well as relieve the family's financial stress. It has long been established that the age at which a woman marries, the age at which she gives birth to her first child, and the age of her husband all have strong relationships with each other.

Key Words: Early, Marriage, Custody, Minor, Wife etc.

Introduction

Getting married too early is not a new occurrence at all. Throughout history, it has been a well-established societal norm. International and regional agreements have been approved by the Indian government. At 18, the government also determined the legal age for marriage. It is not uncommon for them to be incapable of enforcing already-enacted legislation or to correct inconsistencies between national legislation and local customs and religious norms. Children's marriages are often seen as family matters and are thus controlled by religion and tradition, ensuring their survival. Because of this, girls and women's rights are often violated, putting them at danger of being sexually abused or exploited.

Ill effects of Minor Marriages

If we are talking about the issue of child marriage in India, we can say that centuries ago a monster called child marriage was born in India. Today, it is still there, only little impeded, but still quite active. That 57 percent of Indian females are married off before the age of 18 means that our efforts to eradicate this deep-rooted evil have failed miserably. “When Shri Harbilas Sarda wrote the Child Marriage Restraint Act, 1929 (often referred to as the Sarda Act) in 1929, we had our first encounter with the social ill of child marriage. In 2006, the Sarda Act was superseded with the Prohibition of Child Marriage Act” in order to stop the mostly unchecked practise of child marriage. Child marriages are still regulated by this Act in India. Although it had promised to stop this practise, it has failed miserably. Today, this kind of marriage is often



seen as morally repugnant since it always leads to the death of a child. There's a good reason for this belief. When it comes to marriage's psychological toll, it's a no-brainer. It is terrible to subject a youngster to the onerous complexities of a family life. A young pair that gets married as children faces a slew of health risks, ranging from minor diseases to the possibility of death. It's important to remember that children's genitals aren't fully developed. As a result, the young couple is at greater risk of contracting sexually transmitted illnesses because of their frequent intercourse.

The Prohibition of Child Marriage Act, 2006 was enacted to ensure that children under the age of 18 are not married since they lack the mental and physical maturity to enter into a committed relationship. If the kid is a female, such a marriage might have a variety of psychological and other ramifications. When it comes right down to it, child marriage is an outright violation of a girl's human rights since it puts her in danger of pregnancy at an early age and causes her to be socially isolated. Young married women constitute a distinct, but frequently overlooked, subset of the population. Married girls and child moms are confined in their decision-making and have fewer options in life because of the heavy household labour, the demonstration pressure, and the responsibility of raising children when they are still youngsters. Even though child marriage affects boys, it is mostly a problem that affects women. A girl who takes on the position of caretaker for a guy, even if she hasn't yet attained the age of 18, is commonly assumed to be an adult lady. The following is a list of some of the negative consequences of child marriage.

- HIV and obstetric fistula are among the health concerns linked with early sexual start and childbirth that girls who marry early are more likely to face.
- Domestic violence, sexual abuse, and social exclusion are common experiences for young women who lack status, authority, and maturity.
- Women's education and meaningful job suffer as a result of early marriage, which adds to the persistence of poverty.
- The cycle of gender inequity, illness, and poverty is perpetuated through child marriage.

Legislative position

There are several laws in India pertaining to child weddings, however there is no clear guidance for the underage married girl. Under the context of the “Child Marriage Restraint Act, 1929, a child marriage was accepted as a lawful marriage in Hindu Law, notwithstanding the Act's enforcement. The Hindu Marriage Act, 1955 was enacted on May 18, 1955, and took effect



immediately. At least one other legislation that was in effect prior to the effective date of the aforementioned act will be rendered null and void if and to the extent that it conflicts with any of the provisions included in this act, according to Section 4. Between the provisions of the Child Marriage Restraint Act of 1929 and those in the Hindu Marriage Act of 1955, no contradictions could be found. Both acts coexist. Under Section 5 of the Hindu Marriage Act 1955, the bridegroom must be at least twenty-one years of age, and the bride at least eighteen, when they get married; if these qualifications are not met, a breach of these standards is referred to in Sections 11 and 12. According to Section 12 of the Hindu Marriage Act, an annulment of a marriage is possible.

1. It is voidable and may be annulled by a nullity decree on any of the following reasons, whether the marriage was solemnised before or after this Act was passed:

- That the respondent's impotence prevented the marriage from being consummated, or
- Clause (iii) of Section 5; or, if the marriage does not meet the conditions indicated therein.
- the petitioner's consent was obtained by force or by fraud as to the nature or any material fact or circumstance regarding the respondent; or the consent was obtained by force or by fraud as to the nature of the ceremony or any material fact or circumstance regarding the respondent; or that the consent of the respondent's guardian in marriage was obtained by force [or by fraud]; or the consent was obtained by force or by fraud as to the nature of the ceremony or any material fact or circumstance regarding the respondent; or it was obtained by force or by fraud as to any material fact or circumstance regarding the respondent.
- That the respondent was pregnant by someone other than the petitioner at the time of the marriage”.

(2) Regardless of subsection (1), no request for the annulment of a marriage:

- For the reasons listed in subsection (1) paragraph (c), consideration must be given if
- It was more than a year after the force had stopped operating or the Fraud had been detected before the petition was submitted.
- It is the petitioner's complete permission that he or she has been living as a husband or wife with the other party to the marriage after the force had ended or the deception had been detected;

If the court is not convinced that the petitioner was not aware of the allegations at the time of the marriage, the case will not be entertained. If the court is not convinced that the petitioner was not aware of the allegations at the time of the marriage, the case will not be entertained. If



the court is not convinced, the case will not be heard. Section 5 of the Hindu Marriage Act contains two sections that together establish that a marriage that was solemnised in contravention of subsection (iii) of that section is neither invalid nor annulable. According to Section 12, a marriage that is avoidable may be declared null and invalid by a decree of nullity for any or all of the reasons listed in “Section 11 of the Act. This means that any marriage that falls under Section 11 is null and void from the beginning. A child marriage has always been accepted in Indian law, and the inclusion of the option of puberty in Section 13(2) (iv) of the Hindu Marriage Act, which was inserted by the Marriage Laws (Amendment) Act, 1976, shows that the law is silently accepting child marriages as long as it does not explicitly state that a marriage between a minor and an adult is void or voidable. Girl who is married before the age of fifteen and then repudiates the marriage between the ages of 15-18 years has a specific reason for divorce under the option of puberty”. Even after the marriage has been consummated, but not according to Islamic law.

This year's PCM Act is notable for the following:-

- To provide the contracting party to the marriage, who was a minor, the option of voiding the marriage?
- To stipulate that the husband or, if he is a minor, his guardian must pay the minor girl's maintenance until she remarries.
- To provide for the care and support of children who have been married off as youngsters.
- Because of the proposed section 3, any child born from a child marriage, whether or not it was declared null and void before or after the passage of the Act, would be recognised as a genuine human being for all purposes.
- As a last resort, (v) the district court is given the authority to amend, alter, or rescind any order pertaining to the petitioner's financial support.
- To allow for the nullification of a child marriage under specified conditions.
- An injunction banning weddings being solemnised in violation of the proposed law should be granted to the Courts.
- Allowing law enforcement and other agencies to investigate and use the proposed legislation's crimes as evidence.
- Child Marriage Prevention Officers should be appointed by the State Governments.
- To provide the State Government the authority to implement the law respecting the girl's natural father or mother in a manner that is efficient and effective.



He is the guardian of the minor wife under the Hindu Minority and Guardianship Act, 1956. There's a good chance that the husband won't and can't take on the role of guardian for his underage Wife in this case. In this context, the term "guardian" refers to the girl's biological father or mother. The provisions of the HMA Act will be superseded by the PCM Act, which is a unique statute, and any future legislation to that effect. Section 12 clearly states that a minor child's marriage is invalid if it occurs under the conditions outlined therein. This law does not automatically nullify a child marriage, but rather gives the parties to an underage union the choice to do so if they so want within a certain period of time after the marriage has taken place. Legislators' acceptance of child marriage is fascinating. Even the idea that underage marriage is a violation of human rights was recognised. By inserting provisions for prosecution and imprisonment of some individuals, the legislation even made child marriage a penal felony.

Conclusion

An investigation of statutes and court views on the custody of youngsters married to a man has concluded. It's also worth noting that parliament should pay attention to the issue of custody for underage married girls and enact comprehensive legislation for them. We may infer from the above discussion that a marriage between an adult man and a girl under the age of 18 is voidable, and as such, it will continue to exist until an appropriate court grants an annulment under Section 3 of the Prohibition of Child Marriage Act. The marriage in question is not a 'legitimate marriage,' strictly speaking, but it is 'not invalid,' according to the categorization. Instead of enjoining all the rights that a lawful marriage *stricto sensu* would, the male contracting party would enjoin just a restricted set of rights. When an adult man agrees to marry a female kid, he will not be her natural guardian since Section 6(c) of the Hindu Minority and Guardianship Act, 1956, has been impliedly repealed.

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