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## ***ABOUT US***

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# CHILD MARRIAGE

AUTHORED BY - ANESHA.V

## **ABSTRACT:**

Child marriage in India refers to a marriage where either the bride or the groom, or both, are below the legal age of marriage. According to Indian law, the legal age for marriage is 18 for women and 21 for men. Child marriage is a marriage or informal union between a child under 18 and an adult or another child. It can include formal marriages and informal arrangements where a child lives with a partner as if they are married. Child marriage is considered a form of forced marriage because one or both parties may not have given their full, free, and informed consent. Child marriage is a violation of human and child rights and can have devastating consequences for children, including: Health problems, Domestic violence, Pregnancy before turning 18, and Severe complications during pregnancy and childbirth.

## **CHILD MARRIAGE IN INDIA:**

**One in three of the world's child brides live in India.** Child brides include girls under 18 who are already married, as well as women of all ages who first married in childhood.

**Over half of the girls and women in India who married in childhood live in five states: Uttar Pradesh, Bihar, West Bengal, Maharashtra and Madhya Pradesh.** Uttar Pradesh is home to the largest number.

Nearly one in four young women in India (23 per cent) were married or in union before their 18th birthday.

**The prevalence of child marriage varies across states and union territories in India.** At least 40 per cent of young women were married before turning 18 in West Bengal, Bihar and Tripura, compared to 1 per cent in Lakshadweep. **A girl's risk of child marriage depends on certain background characteristics.** Girls who live in rural areas or come from poorer households are at greater risk, and a higher proportion of child brides are found among those with little or no education.

The majority of young women who married in childhood gave birth as adolescents.

**Child brides face challenges in continuing their education.** Fewer than 2 in 10 married girls remain in school.

**The practice of child marriage is less common today than in previous generations.** Evidence shows accelerating progress over the last 15 years.

**India's progress is strong compared to other countries in South Asia.** Nonetheless, if child marriage is to be eliminated by 2030, additional efforts will be required.

### **Child marriage violation of human rights:**

The smells and colors—bold yellow turmeric smeared on hands and faces, a strip of red powdered vermilion applied to the hairline—offer the first clues that a wedding is about to happen or has just happened. The girls at this event are often too young to understand marriage, but they're old enough to know what the spices being ceremoniously applied to their bodies signify.

This is what, saumya khandelwal a 27-year-old Reuters photographer based in New Delhi, heard from girls who weren't as lucky as she was. Khandelwal was born in Lucknow, a city in the same state but a world apart from the district of Shravasti. Growing up, she and her friends understood that child marriage happened in India, just not to anyone they knew. But 120 miles away, along the impoverished border of Nepal, girls as young as eight years old are married off by their families. In 2015, Khandelwal started traveling back and forth from New Delhi to the state of Uttar Pradesh, home to both her and the Taj Mahal, to photograph these young brides. "If I was born in Shravasti, these girls could have been me," Khandelwal says.

Technically, child marriage is illegal in India. A law passed in 1929, the government passed a law banning the practice, and it was updated again in 2006. Today, both women under 18 and men under 21 cannot legally get married. Parents or older spouses can be punished with up to two years in prison for coordinating or allowing arrangements that ignore these restrictions. Despite a plunge in the rate of child marriages over the past decade, there are more underage brides in India than any other country in the world. More than a quarter of Indian girls are married by the age of 18, according to the organization girls not bride.

When Khandelwal decided to turn her camera on these girls, she expected tradition and patriarchy



to dominate each family's decision to marry off their daughters. What she found was a practice also rooted in poverty, a lack of education, and the volatility of life. In Shravasti, Khandelwal asked the mother of a young bride who had also been married as child: Why are you subjecting your daughter to the same fate? The mother replied that she'd prefer not to, but there were few other options. Her husband was a day laborer and she and her children gathered and sold firewood. They lived day to day, so it was better to marry off their girls before outside forces intervened. "If we lose our house to floods tomorrow, we won't have anything to give for our daughter's wedding dowry," she said.

Khandelwal found that many families considered their daughters similarly—as liabilities. She met Muskaan (whose name has been changed here for privacy reasons), a vivacious girl with two sisters, and returned again and again to visit her. "Having three girls is seen as three times the expenses and dowry to be paid," says Khandelwal. Some families wait to pull their daughters out of school until after she moves in with her husband, but when Muskaan was married at 14 her father stopped her education immediately. From then on she stayed inside, learning how to cook and take care of the house.

Soon after the wedding, Khandelwal visited Muskaan to find out how she felt. "What she said was particularly disappointing," Khandelwal recalls. "She said, 'What's there to feel about it? This has to happen.' That just tells you how helpless and hopeless these girls are. They don't even know that as women they can have careers." "What do you expect a kid who's 15 to understand about marriage or relationships or managing a house?" asks Khandelwal. "They're not educated, and that trickles down to their own kids. They already don't have money, and they're already too young to have kids. It's a vicious cycle. Will they ever be able to come out of this?" After two and a half years spent photographing the child brides of Shravasti, Khandelwal sees signs of young girls forced into marriage across the country, even in the metropolis of New Delhi. She plans to turn her camera's lens on these communities to show how the practice may be illegal and declining, but in India it's still flourishing on the sidelines.

## **LAW AGAINST CHILD MARRIAGE:**

### **The Child Marriage Restraint Act of 1929**

The Child Marriage Restraint Act, also known as the Sarda Act, was a law passed in 1930 to limit child marriage in India. Initially, it set the legal age for marriage at 18 for males and 14 for females. After India's independence, the age limit for females was raised to 15 in 1949. In 1978, the minimum age for marriage was increased to 18 for females and 21 for males. The law imposed penalties on those involved in child marriages. For males aged 18-21 marrying a child, the punishment could include up to 15 days in jail, a fine of 1,000 rupees, or both. For males over 21, the punishment could be up to three months in jail and a possible fine. Those who conducted or directed child marriages could face up to three months in jail and a fine unless they could prove it was not a child marriage. Parents or guardians involved in child marriages also faced up to three months in jail or a fine. The Act was amended in 1940 and 1978 to raise the minimum marriage age further.

### **The Prohibition of Child Marriage Act, 2006**

The Prohibition of Child Marriage Act (PCMA) was introduced by the Indian government in 2006 and came into effect on 1 November 2007. It was created to address the shortcomings of the earlier Child Marriage Restraint Act. The PCMA focused on preventing and prohibiting child marriages rather than just restraining them. While the legal marriage ages remained the same—18 for females and 21 for males—the Act introduced new protections. It allowed boys and girls who were married as minors to void their marriages within two years of reaching adulthood. In some cases, the marriage could be declared null and void before they became adults. If a marriage is nullified, all valuables must be returned, and the girl must be provided with a place to live until she marries again or becomes an adult. Children born from child marriages are considered legitimate, and the courts must prioritize the children's best interests when deciding custody. Any male over 18 who marries a minor, or anyone who conducts a child marriage, can face up to two years in prison or a fine.

### **Prohibition of Child Marriage (Amendment) Bill, 2021**

In December 2021, the Indian government introduced the 'Prohibition of Child Marriage (Amendment) Bill, 2021' in Parliament. The bill aims to raise the legal marriage age for women to

21 years, making it equal to the legal age for men. The intention behind this change is to reduce the occurrence of child marriages. Women and Child Development Minister Smriti Irani mentioned that the bill is designed to override all existing laws, traditions, and customs related to marriage. Regarding applicability, some Muslim organizations in India have argued that laws like the 2006 child marriage law do not apply to Muslims since marriage falls under personal law. However, various courts in India, including the Delhi High Court, have ruled that the Prohibition of Child Marriage Act, 2006, applies to all citizens, regardless of their personal laws. The courts have stated that underage marriages (where one party is over 16) are not automatically void but can be annulled. If either party is under 18, the marriage is considered void, as sexual activity with minors under 18 is a statutory crime under the Indian Penal Code. High Courts in Gujarat, Karnataka, and Madras have also upheld that the Act takes precedence over personal laws.

### **CASE LAWS:**

#### **Hardev Singh v. Harpreet Kaur & Ors case:**

Hardev Singh and Harpreet Kaur got married without their parents' permission. Harpreet Kaur's parents caused trouble, so the couple asked for police protection. The High Court gave them protection but later took it back and ordered a police case against Hardev Singh because he was under 18. The Supreme Court said the law punishing men aged 18-21 for marrying minors shouldn't apply to Hardev Singh since he was under 18. The law is meant to protect young girls, not punish young boys.

#### **Laxmi Sagar v. State of Rajasthan**

Laxmi Sagar, a minor girl, was married off at the age of 15. Her marriage was arranged by her parents due to financial difficulties. Laxmi Sagar's marriage was challenged under the Prohibition of Child Marriage Act, 2006. The case was brought to court to annul the marriage and provide protection to Laxmi. The court declared the marriage voidable at Laxmi's option, as she was a minor at the time of marriage. The court ordered protection for Laxmi and directed the authorities to ensure her safety and well-being. This case highlights the legal provisions under the Prohibition of Child Marriage Act, 2006, which allow minors to annul their marriages. It also underscores the importance of legal and social support systems in protecting the rights of minors.

## **Conclusion:**

Child marriage in India has long been a deeply rooted social issue, influenced by cultural, religious, and economic factors. Over the years, the Indian government has taken significant legal steps to combat this practice, starting with the Child Marriage Restraint Act of 1929, followed by the Prohibition of Child Marriage Act (PCMA) in 2006, and most recently, the proposed Prohibition of Child Marriage (Amendment) Bill, 2021. These laws have progressively raised the legal age of marriage and introduced stricter penalties, aiming to protect children and reduce the prevalence of child marriages.

In conclusion, while progress has been made, the complete eradication of child marriage in India requires continued efforts from the government, civil society, and communities to ensure that every child is allowed to grow and develop without the constraints of early marriage.



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