

## “Prevent Early Marriage- Initiatives Taken by Government of India”

Jamshed Ansari

Asstt. Professor (Guest Faculty), Faculty of Law, University of Delhi, Delhi (India)  
E-Mail: [jamshedansari024@gmail.com](mailto:jamshedansari024@gmail.com)

**Abstract:** The aim of this paper is to show steps taken to prohibit child marriages from pre Constitution period to present period and lay down suggestions to eradicate the evil practice of child marriage. The scope of this article extends to the legislative reforms in pre Constitution period to present period and how far it succeeded in prohibiting child marriage.

[Ansari, Jamshed. **Prevent Early Marriage- Initiatives Taken by Government of India.** *Rep Opinion* 2014;6(4):16-25]. (ISSN: 1553-9873). <http://www.sciencepub.net/report>. 3

**Key Words:** Child Marriage, Social Reforms, Prohibition, Restraint, Legislative reforms etc.

### **Introduction:**

General meaning of child marriage is a marriage of individuals before they attain the age of adulthood. The child marriage restraint Act, 1929 under section 2 (b) defines the child marriage in the following ways:

*“Child marriage” is a marriage to which either of the contracting parties is a child. Further, Section 2 (a) defines child as a person who, if a male, has not completed twenty one years of age, and if a female, has not completed eighteen years of age.”*

Child marriage is wide spread in some parts of India and systematically engraves the exploitation and subjugation in society. Unfortunate aspect of child marriage is that some are forced into marriage at a very early age. Others are simply too young to make an informed decision about their marriage partner or about the implication of marriage itself. Once married, a girl or boy is expected to meet different obligations arising out of such marriage, including towards the spouse, the family and society. In a child marriage, the individual involved are not yet physically, mentally and emotionally ready to perform the obligations. In a child marriage, not only the rights of the individual involved get violated but their unprepared ness to protect against any violation make them more vulnerable to further exploitation. The child marriage takes away all the innocent life of the children, so child marriage is a clear violation of human rights. The steps which are taken to eradicate the evil of child marriage are not only in India but also in many other countries. The right to free and full consent to marriage is recognized in the 1948 Universal Declaration of Human Rights and in many subsequent Human Rights instruments which recognize that consent cannot be free and full when one of the parties involved is not sufficiently mature to make an informed decision about a life partner.

Many steps were taken for the prohibition of the child marriage in India, since from the pre Constitution time till present time but this evil of child

marriage could not be eradicated. In the pre Constitution period through media many voices were raised to prevent the child marriage, and also religious movement and social reformer played an important role to prevent evil of the child marriage, but this evil could not intoto eradicated. These are all the issues which the author will focus in this paper.

### **History: The Prohibition of Child Marriages in India**

#### **Ancient Period:**

The movement against child marriage started in India about mid nineteen century, but before discussing, the author would like to mention few lines of the history of child marriage in India. The ancient Indian literature indicates no prevalence of child marriage at that time. The most popular form of marriage was the Swayamvara where grooms assembled at the bride's house and the bride selected her spouse. Swayamvara can be translated as self-selection of one's husband (swayam- self, Varahusband). Instances of the Swayamvara ceremony are found in our national epics, the Ramayana and Mahabharata. Various types of marriages were then prevalent in ancient India Gandharva Vivaha (love marriage) Asura Viviha (marriage by abduction) etc. But among this Bal-Viviha(child marriage) is conspicuous by its absence, which refutes the argument that the custom of child marriage stemmed from tradition and religious practices. The Vedic Mantras, such as the Rig-Veda, mentioned that a girl could be married only when she was fully developed, both physically and mentally and that she should be fully developed physically, before leaving her father's home. Men were advised to marry a girl with a fully developed body.

One of the schools of thought argues that the practice of child marriage originated and strengthened its roots during the medieval ages. The invasions, war and expansion of territory trailed the trends of the times. The established structures and practices were

being disturbed by the new rulers who brought in their own ideas and rules. Law and order was not yet a universal phenomenon and arbitrary powers were concentrated in the hands of a few. The status of women deteriorated from bad to worse, as they were being exchanged as gifts, concubines and slaves. This slowly led to a downfall in the practices like wearing of the veil and isolating women from the rest of society. During this time, customs like Sati, denigrating the birth of a female baby and female infanticide, were spawned. The general insecurity that prevailed, especially with regard to women, made the presence of young, unmarried girls a potential disaster. The practice of child marriage reached its height, so that guardians could get rid of this insecurity as soon as possible. Hence parents sought to dispense with the responsibilities of their daughters by getting them married before they reached marriageable age.

#### **Social Reforms Period:**

To prohibit the child marriage many steps were taken by the social reformers and religious movement in India. The media was an important element for prohibiting the child marriage. The movement for eradication of the child marriage started at about mid nineteen century, especially in Bengal through news papers, a few Bengali women from chinsura ventilated their grievances through news paper. Their complaints were focused in the form of questions in the samachar darpan. These grievances of the women of Bengal did not go unheeded, and contribute much to the agitation against traditional system of marriage.

In July 1847, the **Samvad Pravakar** pointed out that the early marriage was detrimental to the education of young boys. Early marriage was likely to distract their attention, hamper their studies and spoil their future. Ishwar Chandra Vidyasagar published an article in sarvasubhakari patrika stating the evil of child marriage.

The movements against child marriage gather momentum throughout the sixties and seventies of nineteen century. The Bomabodhini patrika published an article with regard to the evil of child marriage, pointing out that many evils caused by it, such as early death, ill health, lack of education, poverty etc. it burden growing young men, hamper their studies and led them to horror of poverty. Even the weekly paper somprakash was against the child marriage and wrote against it. Early marriage, it observed was the root of numerous evils and the main cause of the gradual decay of the human race. Just as strong tree could not grow from week seed, so a prosperous mankind could never grow from physically weak and mentally undeveloped boys and girls.

Social reformers and religious movements such as the Brahmo Samaj and the Arya Samaj was also

against the child marriage, they have done lot of work for to prevent this evil. The contribution of **Raja Ram Mohan Roy** in curbing the ill practices of marriage cannot go unnoticed. He was anxious to put a curb on child marriages and considered an early marriage to be a curse on society and stigma on women. He emphatically fought for eradication of this ill practice throughout his life. During the 1860 the younger members of the Brahmo samaj under the leadership of Keshab Chandra Sen, after the split in the samaj, propagate marriage reforms. In fact it was in 1861, Devendranath Tagore, the leader of the older group, had first introduced a simplified and reform Brahmo marriage ceremony from which the idolatry aspects of the orthodox Hindu rites were excluded. The younger Brahmos under the leadership of the Keshab Chandra Sen went a step further and introduced a inter caste marriage in December 1867; the number of old rituals were dropped.

In 1868 the question of legal changes of this question was raised and the Advocate general declared the marriages performed according to the Brahmo samaj rites legally invalid. **Keshab Chandra sen** discuss the matter with the authority in charge of the legislation, particularly Sir Henry Maine who was then the law member of the Viceroy's council, Henry Maine proposed a comprehensive measure making the Brahmo ceremony a kind of civil marriage. It was called the Native marriage bill and was applicable to all non Christians. He introduced the bill on 18<sup>th</sup> November 1868 and circulated it among the local government officials for their views. The opinion poll bill went against the proposed bill on the ground that it was likely to introduce far reaching change in native law and would interfere with native social relations. There was mass opposition to this bill among the orthodox Hindu, landlords of Bengal, pandit of Varanasi. Therefore the bill was kept in abeyance for two years. Sir James Stephen who succeeded Maine as law member considers the opposition from the orthodox Hindus and modified the Bill after receiving the select committee report on March 1871. The bill became one intended exclusively for Brahmos under the name of Brahmo Marriage Bill, according to which the fourteen years fixed as the minimum marriageable age for girls.

By the year 1865, the **Brahmo Samaj** had been divided into two camps, the conservative and the progressive, the former called the adi Brahmo samaj led by the Devendranath Tagore, and opposed the bill. They pointed out many grounds and opposed the passing of this bill; one of the grounds was that it would extend to whole body of the Brahmos, although the majority of Brahmo samaj member did not feel the necessity of such enactment, nor had they applied for any legislation on the subject of Brahmo marriage. In

view of the opposition of adi Brahmo samaj, the bill was renamed as the Special marriage Bill, and three days later it was passed into law as Act III of 1872. The Act abolished early marriage and made polygamy penal, sanctioned widow remarriage and inter caste marriage. The act of 1872 was passed, but the storm it roused within the Brahmo samaj did not subside. Since the inception of the bill, some of its provision was subject to criticism by somprakash a weekly news paper.

The special marriage Act (1872) gave more rights to women than those permitted in the traditional form of marriage. Under this Act a husband could not marry second time during the life time of first wife. On the demise of the husband, who was married under the Special marriage Act, his widow succeeded to his estates, and was not helpless. Further, the raising of the marriageable age came relief as to young girls who were relieved to some extent from the hazard of early marriage. Though the Special marriage Act was passed it could not stop the evil practice of the child marriage. The orthodox Bengali supported the child marriage and raised serious objection against Garret (officer of the British govt) proposal that married boys should not be allowed to sit for final exam. However other group of the Brahmo samaj i.e. progressive section endorsed Garret's proposal, because they believed that early marriage was a pernicious practice. In august 1878, nearly four hundred students held a meeting in Albert Hall, a public hall in Calcutta, and resolved that no student would marry until he turned twenty one.

The agitation with regard to child marriage became stronger in the eighteen eighties. **Beramji Merwanji Malabari** had been agitating to secure legislation against child marriage and published his notes on Infant Marriage and Enforced widowhood in 1884. In his notes, Malabari exposed the abuses of early marriage and suggested remedies for the social evil. These were that: married boys not be allowed to sit for the university examinations, the government should prefer unmarried men to married ones in the matter of the appointment of jobs, and national Association for the social reform be created with the existing societies as branches and its member were to be most prominent official, from the Viceroy of the governor. Malabari's movement roused great excitement all over India. Many leaders supported like Justice M.G.Ranade, scholar and thinker, K.T. Telang the judge of the Bombay High court, Bipin Chandra pal the famous orator, freedom fighter and social reformer. In early January in 1885, Tilak the great nationalist leader organized a number of meeting in which he vehemently urged that it was humiliating to appeal to the alien government to remedy an Indian social evil. He did not deny the harmful effect of the

early marriage but was of the opinion that education not legislation was required to eradicate the evil. There was also opposition in the Bengal where Malabari was severely criticized by the many vernacular news paper. But liberal Hindus however supported his social campaign.

The Indian penal code enacted in 1860, had made rape an offence and prescribed punishment which may extend to transportation for life. The offence extended to husband who had sex with his wife if she was below 12 years of age. Gidumal proposed that IPC be amended so as to raise the age of consent of girls from ten to twelve and as before, the offence was applicable to married wives below twelve as well. But there was fierce opposition from the orthodox section, particularly from Bengal. The problem was raised in the Indian national social conference. Ranade strongly supported Gidumal's proposal for the amendment. The third annual session of conference held in Bombay in 1889 resolved that in order to prevent early consummation of marriage, which leads to impairment of physical health of both husband and wife, cohabitation with wife below twelve years of age should be punishable as criminal offence.

In the fourth session of Indian national social conferences held in Calcutta in 1890, the following resolution was passed:

This conference is of opinion that the practice of child marriage is discourage by public sentiment and that within the sphere of the various caste and communities strenuous effort be made to postpone the celebration of the marriage rites till 12 in the case of girl 18 in the case of boys.

The agitation spread throughout the country. Fifty five women doctors from different part of India appealed to the Viceroy to pass a law prohibiting consummation of marriage with girls below fourteen. Sixteen hundred Indian women sent a similar petition to Queen Victoria. Gidummal's proposal of bill was supported by Brahmo samaj whole heartedly. A public meeting held at 12, Wellington square in Calcutta on 15<sup>th</sup> February 1891 formed a committee which sent a memorial in favor of the bill signed by 8000 persons to the government of India. However the bill was opposed by Tilak and his orthodox friend.

On 9<sup>th</sup> January 1891 the issue of the age of consent was placed before the Viceroy's council by Andrew Scoble a member of the council. He said that under section 375 of the Indian penal code offence of rape was committed when a man has sexual intercourse with a woman under certain circumstances, one of those being with or without the consent of the girl under ten years of age. No exception was made in favor of the married persons. On the other hand, it was stipulated that sexual inter-

course by a man with his own wife provided that wife was above ten years of age, could not be classified as rape. Scoble proposed that age of consent be raised both for married and unmarried women from ten to twelve. According to him the object of the bill were two fold. It was intended to protect female children: 1) from premature prostitution, and 2) from pre mature cohabitation. However there were many who opposed this proposal. The Bill was passed on 19<sup>th</sup> march 1891 as Act X of 1891. By virtue of this Act, the age of consent prescribed in the Indian penal code 1860 was amended and raised from ten to twelve. Although the immediate effect of this Act was not very encouraging a silent change in social attitude gradually became visible. This was perhaps due to the spread of the education and the consequent change in the thinking of the people. This change was noted by many eminent persons. Two Indian princely states, which adopted measures to abolish child marriage, deserve special mention. First the Mysore Government passed the infant Marriage prevention Regulation in 1884 to stop marriage of girls under eight and to prevent marriage between man and woman of unequal age, particularly of girls below fourteen. Second Gaekwad of Baroda, in the face of good deal of opposition, passed the infant Marriage Prevention Act for his state in 1904, which absolutely forbade the marriage of girls below the age of nine and allowing girls below the age of twelve and the boys below the age of sixteen to marry only if the parents first obtained the consent of tribunal consisting of local sub-judge and the three assessors of the petitioner's case.

Effort to fight this evil continued. On September one 1925, Sir Alexander Muddiman, the home member, introduced a bill prescribing thirteen as the age of consent in marital cases and fourteen in the extra martial cases. On September 3<sup>rd</sup> 1925, Dr S.K. Datta, member of Legislative Assembly moved in the Assembly that the age of consent for the marriage of girls be raised to fourteen, instead of thirteen as provided the Bill. He said his amendment was for educating the community. He referred to the unhealthy growth of children in Calcutta, holding the low age of marriage responsible for it and stating that the remedy was to raise the age of consent. However the Bill of 1925 was not treated as finally settled, either by the government or by the assembly, and early marriage persisted in the early part of twentieth century.

In December 1925, the All India social conference, presided by Sarla Devi Choudhurani, emphasized the need for further raising the age of marriage both for boys and girls in view of physical degeneration and other evils resulting from early marriage. The first All India conferences of women held at Poona, in January 1927, under the president

ship of Maharani of Borada adopted the following resolution:

This conference deplores the effect of early marriage on education and urges the government to pass legislation to make marriage below the age of sixteen a penal offence ... it demand that the age of consent be raised to sixteen.

On February one 1927, **Rai Sahib Harbilas Gour Sarda** introduced a Bill on child marriage among Hindus. The Bill was called the Marriage Restraint Bill, popularly called the Sarda Bill. It prohibited marriages of girls below the age of 12 and of boys below the age of 15. The bill was referred to the select committee on 15<sup>th</sup> September 1927 but was kept in abeyance for two years. In the meanwhile an Age of consent Committee was appointed by the government of India on 25 June 1928. On September eight Harbilas Sarda moved before the assembly that the bill be recommitted to a select committee as the bill had been before the country for about two years and wanted that the select committee should report within three days. The move was supported by Lala lajpat Rai.

After amendment by the select committee, the Bill came up before the assembly on 29 January 1929. The amendment that the select committee made to the original Bill was that Bill was to be applicable to all classes and communities in British India. Secondly clause 6 of the original Bill i.e. the conscience clause was completely eliminated. Thirdly originally the intention was to declare all objectionable marriage of boys and girls below certain age to be invalid, instead the select committee introduced a provision to make it penal. Finally not only the substance of the Bill but also the very title and preamble were altered. Harbilas Sarda moves the Bill in the house and delivered a forceful speech. He stated that despite its reference to the select committee, the principal of Bill had not been changed. The government had agreed that the principal was that there should be legislation with regard to child marriage. He further stated that the Bill was circulated to the public for eliciting their opinion. Hundred of conferences were held in the country, women association and sabhas met and passed resolution supporting this Bill and there was not a single instance of public meeting of women protesting against the Bill. However there was Sasha ayyangar, a member of the legislative assembly, opposed the bill. **M.K. Acharya** member Legislative Assembly said the consideration of the Bill should be postponed until the aged of consent committee's report was published and the report became available to the members of the council. His motion was put to vote and carried by fifty three against thirty four.

On august 1929, the report of the age of consent committee popularly called the Joshi committee was

published. The committee recommended that the age be raised to fifteen in martial cases, consummation before fifteen be martial behavior and the offender be punished with imprisonment of either description for ten years and fine when the wife was under twelve and imprisonment for one year or fine or both when she was between twelve and fifteen. In extra martial cases the age was to be raised to eighteen. In the case of any sex relation with a girl under sixteen the offender was to be punished with transportation for life or with imprisonment of either description for ten years. With a view to protecting younger girls the committee further recommended that marriage of girl under fourteen should be prohibited and made penal. It further recommended that definition of the offence of rape should be amended so as to exclude a husband and that instead of the present provision a new offence to be termed martial misbehavior should be provided. In order to give better protection to a girl against rape by a person who was not her husband, the age of consent was to be raised to eighteen years.

After publication of the report of the consent committee, the Bill once again came up to the Legislative assembly on 4<sup>th</sup> September 1929, but was severely criticised by M.K. Acharya who raised a number of points. It was also criticized in Bengal. The torrent of arguments raged unabated against the Bill. Notable among the supporters of the Bill were Pandit Motilal Nehru, Pandit Madan Mohan Malviya. The upshot of their arguments was that early marriage was a great evil which resulted in many women becoming widows and even hindered women's education. Sir James Crear the home member explained the standpoint of the government in the house. In his opinion, the Joshi committee had rendered a great social service. The measure was then put to vote, and the motion was carried by sixty seven votes against fourteen. On 23 September 1929, the president declared the Bill as amended and passed. Though the Bill was passed, the discussion continued on it continued for several days in the Assembly House. On 26 September, at the Simla session Mohammed Yakul, the Deputy President of the Assembly, severely criticized the government's attitude towards the Bill. There was also some people who proposed for the postponement of consideration of the bill was put to the house and defeated. The public encouraged the Marriage Bill and sent a letter to the editor of the Newspaper in favor of it. It became an Act on 1 October 1929 (Act No. XIX of 1929) and came into force on April 1930. It fixed the marriageable age for boys at eighteen and for girls at fourteen. The Oudh Women's conference held at Lucknow on 23 November 1929 under the presidency of Iravati Mehta also supported the Bill and resolved that the conference cordially welcome the action of Legislative assembly

in passing the Sarda Bill and thereby preventing the evil of early marriage.

Despite these efforts, the Act did not effect the validity of child marriage, because once the marriage was performed, it was validated after the payment of nominal fine, sadly the Act lacked teeth and failed to serve its purpose. The most glaring defect of the Act was that it did not make child marriage a cognizable offence, so no action could be taken by the government for its breach, unless a complaint was made within one year of the performance of the marriage. Secondly such a complaint had to be lodged in a court of the presidency Magistrate or a District Magistrate or a Magistrate of first class. Further, nearly six months lapsed between the dates on which the Act was passed and the date on which it came into force. As a result the passing of the Sarda Act was followed by a frantic rush of parents to marry off their minor children before the Act came into effect. Gujarat and Bengal in particular witness thousand of child marriage and other parts of India were not far behind. An interesting account of such marriage appeared in the paper liberty which wrote, a matrimonial wave is just passing over the country. Bride in embryo is being mated to groom in the cradle. The Sarda Act is coming into force and the poor girl just learning to suck the feeding bottle is being carried to the weeding bower. Early marriage in fact did not stop even when the act came into force. This will be evident if the census report of 1931 is compared to 1921. No practical improvement took place in this respect, even two years after passing Sarda Act. During the period when the Sarda Act was in effect the law in England permitted a girl to marry at twelve and boy at fourteen. This shows that child marriage was prevalent in England as well at that time. In 1929 a Bill was introduced in the House of Lords making sixteen the lowest age for marriage, effectively abolishing the custom of child marriage.

The movement to raise the age of marriage did not stop with the passing of Sarda Act. The fervor of agitation did not die and even after 1929, the movement carried on. However in view of the turmoil in the country triggered off by pressing political developments emerging from the freedom struggle, and outbreak of World War II during the late thirties and until the mid forties, the issue of the age of marriage was kept in abeyance. The issue was again taken up by the Pandit Thakur Das Bhargava after India's independence in 1947. This was but a continuation of efforts that had been undertaken by the government of India in 1928, when it had appointed the Age of Consent Committee even before the passing of Sarda Act. On the basis of recommendation Pandit Thakur Das Bhargava moved the three Bills on 4<sup>th</sup> April 1949 to amend the Indian

Marriage Restraint Act 1929 or the Sarda Act. The Bill was designed to give effect to certain recommendation of the age of consent committee of 1928. The first sought to raise the marriageable age of boys from eighteen to twenty and that of girls from fourteen to fifteen. A clause was also sought to be introduced to prevent girls below the age of eighteen from being married to men over the age of forty five. The other Bill sought to make offence under the child marriage Restraint Act cognizable. The Bill had the general support of the members, though there were some difficulties so as to details and they were ultimately referred to a select committee on 25 August 1948.

The select committee considered the three Bill together and submitted a revised Bill which sought to raise the marriageable age of girls from fourteen to fifteen, and of boys from eighteen to twenty, stating that the punishment of a fine prescribed for offence against this had not been sufficiently deterrent. The select committee recommended that the courts should be vested with the power to award simple imprisonment in suitable cases. For serious offences, compulsory imprisonment was the punishment considered suitable. The select committee also recommended that offences under the Act should be cognizable, bailable and non-compoundable and that circle inspector of police be authorized to investigate the offence under the Act. As time went by, child marriage before the age of fourteen practically did not exist in the upper class of society. Poorer people too, for various reasons did not marry at an early age any more. Therefore Gadgil said, there was no particular need for legislation in this matter.

A compromise was however effected as the Bill was passed with certain important amendment. It raised the marriageable age of girls to fifteen; the marriageable age of boys was however retained at eighteen, as provided in the Act. Clause 6 of the Bill making offence under the Act cognizable and vesting the power to investigate an offence in police officer was deleted. The Bill when put to vote was adopted without amendment. It came to be known as Marriage Restraint Act and came into force along with other matrimonial Act of the first part of the Hindu code in 1955. When the first part was passed in 1955, the age of marriage for girls was retained at fifteen. The Amrita Bazaar Patrika had already commented, however, whatever might have been the case in the days gone by; child marriage was gradually going out of vogue in all parts of India. In fact it began to disappear quickly during the forties and fifties, and the age of marriage of girls rose far beyond the expectations of legislators and reformers. The credit for the reforms, however, was not due to social or educational progress, but mainly due to the fact that

the society at that time was adversely affected by political and socio-economic changes. World War II and the inflation that followed it disrupted the economic situation of the country. Further, many educated middle class families in certain parts of India especially the provinces of Bengal and Punjab were badly affected by the partition of India. Economically hard hit middle classes were forced to defer the marriage of their daughters because of their inability to meet the heavy expenses of weddings. Though many steps were taken to eradicate this evil practice of child marriage, it could not eradicate it.

#### **Social Evil of the Child Marriage:**

Child marriage is the worst form of human rights violation that any society is witness to. Young girls who are married at an early age are denied opportunities for education and skill development. They grow up as adults with no special skills, rendering them unfit to join the work force. This impairs them from economic self-reliance thus making them vulnerable and dependent on male members of the family. Early marriage prevents them from enjoying the rights of a child. The joys of play, peer interaction and leisure are all taken away from a married child. The worst form of human rights violation takes place when child brides are forced into sexual intercourse with their partners without any understanding of what it is all about. The child marriage is evil which is against the society.

In some parts of Indian society the girl child is discriminated by their own parents when they reach the age of eight to ten they are forced to marry, and with this many problems arise to them, which include their health. The condition of the child bride worsens with an early pregnancy. A girl requires four or five years of physical growth after she attains menarche. Between the 14th and the 18th year, a girl gains on an average six to eight kg in her body weight and five cm in height. If a girl is married soon after menarche and if the marriage is consummated immediately, it may lead to pregnancy. Such adolescent mothers have to compete for a three-fold nutrition demand and maintenance of their own tissues, for foetal growth and for their own future growth. Marriage and mandatory sexual relations with her husband expose her to another kind of health hazard. Poor physical health and lack of access to reproductive health care exposes them to unsafe abortions. There are many other problems if the child is married at an early period. It is really a social evil.

Given the seriousness of the issue and the magnitude of the problem it must be accorded top priority by the government and by civil society. The Child Marriage Restraint Act, 1929 has been in existence for decades and yet child marriages are still rampant in India. People carry out child marriages

even though they are illegal. India must urgently examine whether its laws on child marriage have been truly effective. Further the child marriage prohibition Act should come into effect as soon as possible. The public authorities should take a pro active role to prevent these evil practices of child marriage. To prevent this practice the people in the rural area should be educated about the social evil of child marriage, so that this evil practice may come down.

#### **Legislative Reforms:**

For the prohibition of the child marriage, the legislative reform started since 1860's in 1860 the Indian penal code was passed prohibiting inter course with a wife who had not reach ten years. And some changes were made like age of marriage was increase. Special marriage Bill was passed into law as Act III of 1872. The Act abolished early marriage and made polygamy penal, sanctioned widow remarriage and inter caste marriage. In 1929 the child marriage restraint act was passed which came into force on 1<sup>st</sup> April 1930. After the independence also some changes were made in this Act. The Act popularly known as Sarda Act was enacted with a view to restraining solemnization of child marriages it has undergone various changes largely in the form of increasing the age of marriage. In 1929, the minimum age of marriage for a male was eighteen years and that of a female fourteen years. The age limit was subsequently raised in the case of female from fourteen to fifteen years by the child marriage restraint (Amendment) Act, 1949 (41 of 1949). Again, by the Child Marriage restraint (Amendment) Act 1978 (2 of 1978), the Act was amended so as to redefine the word 'Child' to mean a person who, if a male, has not completed twenty-one years of age, , and if a female, has not completed eighteen years of age. The said amendment Act of 1978 also incorporated a new section 7 in the Principal Act to make the offences under the Act to be cognizable for certain purposes.

#### **Some of the important sections of child marriage restraint Act 1929 are:**

Section 3 lay down Punishment for male adult below twenty one years of age marrying a child: whoever being a male of above eighteen years and below twenty one years, contracts a child marriage shall be punishable with simple imprisonment which may extend to fifteen days or with fine which may extend to one thousand rupees or with both.

Section 4 lays down Punishment for male adult above twenty years of age marrying a child: whoever, being a male above twenty one years of age, contract a child marriage shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine

Section 5: Punishment for solemnizing a child marriage - Whoever performs, conducts or directs any

child marriage shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine, unless he proves that he had reason to believe that the marriage was not a child marriage.

Section 6 lays down Punishment for parent or guardian concerned in a child marriage: where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian, or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine: Provided that no woman, shall be punishable with imprisonment.

#### **How Far Legislative Reform Success:**

The 1929 Act was a queer piece of legislation rendering all child marriages illegal but not void as a result of which child marriage remained valid in the eyes of the law. This also explains the reason why child marriages still remain unabated. Under the Act a police officer has no power to arrest without a warrant or an order of a magistrate. In the absence of stringent penal provisions, the act has virtually become redundant. The Act also does not affect the validity of the marriage even though solemnization of such marriages may be in contravention of the provisions of the Act. Ineffectiveness of the Act can be gauged by the fact reported by a study made by UNICEF which found that the number of prosecutions under the Act did not exceed 89 in any year. How many of these ended in convictions and what was the sentence imposed is not known.

Further it can also be point out that the Act of 1929 has failed in achieving the desired results. because there has been a wide range criticism in and out of Parliament that even though since the enactment of the Child Marriage Restraint Act 1929 yet it could not eradicate or effectively prevent the evil practice of solemnization of child marriages in the country. The Act aims at only restraining solemnization of child marriages and not completes prevention. Further, the procedures under the Act to prevent the solemnization of child marriages are very cumbersome and time consuming. Illiteracy and orthodoxy of the people have proved to be the other stumbling blocks. There seems to be no fear of law due to lack of education and deep-rooted social beliefs especially among the rural folk. Because of social pressures, no one reports cases of child marriages or comes forward to give evidence. In view of the ineffectiveness of the provisions of the Act, considerable numbers of child marriages are taking place in the country, especially on the occasion of Akshaya Tritiya, popularly known as Akha Teej. Only

a limited number of such cases are coming to the official notice of the State governments and only a very small percentage of them end in prosecution.

#### **Child Marriage in the Contemporary Period:**

The legal age for marriage in India is 18 years for women and 21 for men. Any marriage of a person younger than this is banned in India under the Child Marriage Prevention Act of 1929. But child marriages still take place in India particularly around the Hindu holy day of Akshya Tritiya. Normally Hindus decide the date for marriages based on horoscopes interpreted by pundits. Some dates however are considered so auspicious that no pundit needs to be consulted. One such day is Akshya Tritiya (also known as Akha Teej), the third day of Baishakh, the month of the Hindu calendar generally falling in May. During this time lots of marriages take place. Unfortunately, many of them are child marriages.

Usually we consider marriage as a very serious decision to be taken by people who are ready to spend the rest of their lives with someone of their choosing. Children are not ready to take such decisions, and it can be assumed that when child marriages take place the children who are getting married do not have a choice in the matter and are being forced, or are too young to understand what marriage means. Yet it is a religious tradition in many places in India and therefore difficult to change. People feel that traditions are valuable and should not be changed, especially religious traditions, since changing these would amount to asking people not to practice their religion, a fundamental principle of democracy.

Probably the main reason such child marriages were first started and then kept going was because in feudal times they served to strengthen family alliances for business or military purposes. It was like a business deal for two rich or powerful families to marry their children so they would have to work together or defend each other; betrayal would mean their own children got hurt. Such matrimonial alliances worked only if the bride and groom were not too fussy about whom they were going to marry. This fussiness could be reduced by making sure they were too young to even understand choice or what was happening to them. By the time they reached an age where they might object or decide to find their own marriage partners, it was already too late.

According to census 1991, the percentage of married females in the total number of females in the age group 10 to 14 was 13.2 in Rajasthan, the highest in the country. In second place was Madhya Pradesh at 8.5 percent; followed by Uttar Pradesh at 7.1 for the country, the percentage of married women under the age of 18 stood at 53.3. The situation did not change substantially in the following decade. Census 2001 has revealed that there are nearly three lakh girls

under 15 who have given birth to at least one child. The census further reports that 6.4 Indians under the age of 18 are already married and that taking into account the legal marriageable age 11.8 million (4.9 million females and 6.9 million males) are married underage. Figures showing high prevalence of child marriages in Rajasthan and Uttar Pradesh are corroborated further by the two surveys, one, conducted by the Government in Rajasthan in 1993 where a sample of more than 5000 women was taken. It was revealed that 56 percent had married before age of 15 and, of these, 17 percent were married before they were 10. Second survey was conducted in 1998 in Madhya Pradesh which found that nearly 14 percent of girls were married between the ages of 10 and 14.

According to Jaya Sagade who has done extensive research on child marriages in India, the Country has one of the lowest median ages for marriage in the world. The Second National Family Health Survey (NFHS) which was conducted in 1990-99, confirmed that 50 percent of women currently aged 20-24 years were married before the age of eighteen years. The percentage is much higher in rural (58.6 percent) than in urban areas (27.9 percent). As revealed by the research of Jaya Sagade on child marriages in India, another significant fact is that performance of child marriage is not uniform in all the States. There are Stark variations in marriage pattern across the country from state to state. About half of the women aged 25-49 married before the age of fifteen in Madhya Pradesh (52.6 percent), Bihar (51.0 percent), Uttar Pradesh (49.7 percent), Andhra Pradesh (48.9 percent) and Rajasthan (47.8 percent). And about four fifths of the women of these states Madhya Pradesh (78.5 percent), Bihar (83.9 percent), Uttar Pradesh (79.6 percent), Andhra Pradesh (79.8 percent) and Rajasthan (81.5 percent) were married before reaching the legal minimum age of eighteen years. In four states, where more than 50 percent of women are married before they turn eighteen years of age, religious and cultural hold is very strong. In northern states like Bihar, Madhya Pradesh and Uttar Pradesh, the status of women generally is much lower in comparison with the southern states like, Goa, Kerala and Tamil Nadu. In the southern states women are more educated and are economically more independent. Rajasthan, a northern state is one of the most educationally backward, industrially underdeveloped and economically poor states of the Country. The percentage of marriages of girls at ages below thirteen and fifteen years in Rajasthan are the highest in the country. 13 and 21 percent of girls are married before age thirteen and fifteen respectively. The percentage of women currently aged 20-24 years

and married before the age of eighteen years stands at 70.

The above figures show that the practice of child marriage is highly prevalent in different parts of the Country. Backed by the traditions and customs, child marriages in many parts of the country are performed in large number. It is sad to note that being a social evil; such marriages are neither reported nor recorded due to social pressures, absence of sensitization and commitment for social cause in officials and absence of a standard data collection system. So, the figure of such marriages may be in several thousands. The statistics whichever available, are not sufficient to bring out the magnitude of the Problem or factual position correctly. In fact, such marriages are celebrated with the active as well as passive support of people. The auspicious occasion

Of Akha Teej, is associated with the custom of child marriage. This occasion is also known as child marriage day in Rajasthan. Though many Acts were passed to prevent the child marriage but it could not be prevented, after looking at the above figure, it is very said to tell that the child marriage is still prevailing in the contemporary period. The government should take more active role to prevent this evil practices.

#### **Suggestions:**

Taking into account the glaring shortcomings and inadequacies of the existing Act and the experience gained in its enforcement, the Government should pass such legislation so that it will prevent this social evil of child marriage.

The custom of solemnizing child marriage is a deep rooted social evil in the Indian society so that the eradication of this social evil could be done, by improving the status of women by educating them and also by creating awareness among them. Since the Child Marriage Restraint Act being mainly a penal piece of legislation, there is no separate administrative machinery envisaged under it. The State governments have to take action to create necessary social awareness by educating the people and also by gearing up the administrative machinery. The union cabinet on 21, September 2006, gave approval for passing of Child Marriage Prohibition Act. It is welcome Act, because of this Act the percentage of child marriage will reduce. Approval or passing of the Act is not sufficient; the more important is to educate the people. Further the social custom and practices which permits child marriage should be banned and punishment or fine should be imposed who are practicing and abetting the child marriage.

Child Marriage Prevention officers should be appointed immediately by the Government, so that the officer will take notice of the practice of the child marriage and lodge a complaint and punishment or fine

may be imposed upon them. The punishment provided under section 23 of the Child Marriage Restraint Act should be amended and made more stringent, so that this evil of child marriage will be reduced.

Marriages performed in contravention of the Act should be made void. It should be a penal obligation for every person attending a child marriage, to prevent it or report it to the concerned authorities. But the most important thing is awareness should be generated among masses about the evils of child marriage. An offence under the Child Marriage Restraint Act should be made cognizable. The prohibition of child marriage Act which has been approved by the government should come into effect as soon as possible.

#### **Recommendations of the National Human Rights Commission (NHRC):**

The National Human Rights Commission (NHRC) has, after detailed study, recommended comprehensive amendments to the Child Marriage Restraint Act, 1929 and, accordingly, made its recommendation by way of suggesting an amendment Bill called the "Child Marriage Restraint Bill", 2002.

The Child Marriage Restraint Act, 1929 contains only 11 sections. While the Act seeks to restrain solemnization of child marriages, the proposed legislation aims at preventing solemnization of child marriages. The numbers of amendments suggested are considerable and require re-arrangement of the sections. Having regard to these aspects, it has been proposed to enact a new legislation titled as "the Prevention of Child Marriage Bill, 2004" by repealing the child marriage restraint Act 1929.

The Prevention of Child Marriage Bill, 2004 introduced in the Rajya Sabha on 20th December, 2004 aims at:

(i) Making a provision to declare child marriage as voidable at the option of the contracting party to the marriage, who was a child.

(ii) Providing a provision requiring the husband or, if he is a minor at the material time, his guardian to pay maintenance to the minor girl until her remarriage.

(iii) Making a provision for the custody and maintenance of children born of child marriages.

(iv) Providing that notwithstanding a child marriage has been annulled by a decree of nullity under the proposed section 3, every child born of such marriage, whether before or after the commencement of the proposed legislation, shall be legitimate for all purposes.

(v) Empowering the district court to add to, modify or revoke any order relating to maintenance of the female petitioner and her residence and custody or maintenance of children, etc.

(vi) Making a provision for declaring the child marriage as void in certain circumstances.

(vii) Empowering the courts to issue injunctions prohibiting solemnization of marriages in contravention of the provisions of the proposed legislation.

(viii) Making the offences under the proposed legislation to be cognizable for the purposes of investigation and for other purposes. Providing for appointment of Child

Marriage Prevention Officers by the State Governments. Empowering the State Governments to make rules for effective administration of the legislation. The recommendation made by the NHRC is welcome; the government should take notice of it, and take necessary steps, so as to prevent the child marriages.

### **Conclusion:**

Child marriage is a practice which continues to be a major stumbling block to the achievement of human rights, as we see in the news paper we find that there is report with regard to child marriage, for example, "3 lakh girls under 15 have given birth". These are headlines that appeared in some of India's leading newspapers. Like other issues reported by the media are soon forgotten. Today several thousand child marriages take place quietly in different parts of this country. Young girls are married even before they can understand what it is all about. The young girls life becomes full of sorrow, they are torture by their in-laws physically as well as mentally. They live in such a miserable life that it becomes hell for them. The child marriage is clear violation of the human rights.

To stop such child marriage, government and civil society organization should bring laws against child marriage and must make stronger, since it does not seem to be working in its present state. Right now the police cannot make arrests without applying for a magistrate order, which may take days. The punishment, a maximum of three months in punishment, a compulsory registration of all marriages rather than just religious rites, the appointment of anti child marriage officer in every state, and making it a law that anyone who attends a child marriage has to report. The recent approval of the central government for passing a prohibition of

child marriage has to be effective, and it should not be like the child marriage restraint act of the 1929, which is not well effective.

As we have seen in the previous page, the evil practices of child marriage is still prevailing in India, especially in states like Rajasthan, Madhya Pradesh; Uttar Pradesh the government of these states should take important steps, so as to prevent the child marriage. The non government organization and other organization also should come forward to prevent this evil practices. Further the custom of child marriage should be stopped to be banned. The most important thing is to educate the people especially in the rural areas. So that this evil practices of child marriage can be completely eradicated.

### **References:**

1. Bomabodhini patrika, November 1864.
2. Aparna Bhat, Aatreyee Sen, Uma Pradhan, "Child marriage and the law".
3. Jaya sagade, "Child marriage in India, Socio-Legal Dimension"
4. Child marriage Restraint Act 1929
5. Gidumal, Dayaram, "The Life and Life Work of Behramji Malabari.
6. Bajpai, Asha, "Child Rights in India, Law, Policy and Practice", Oxford University Press, 2003
7. Gupte S., "Hindu Law of Marriage", Bombay, Tripathi, 1961
8. Liberty 13<sup>th</sup> march 1930
9. Mitra, M.M., The Indian Quarterly Register, 1927, vol I
10. Reading materials, vol. 1 (1<sup>st</sup> sem. LL.M, NLSIU, Bangalore)
11. Iyer, Justice V.R., "The Children's Code", Universal Law Publishing Co. Pvt. Ltd., New Delhi-India, 2012
12. Samvad pravakar , July, 1847.
13. Somprakash , June, 1868.
14. Somprakash August, 1878.
15. www.clapindia.org
16. www.expressindia.com
17. www.Rajyasabha.nic.in
18. www.stromloader.com
19. www.zeenews.com