

AMBIGUITY IN LAWS — ARE CHILD BRIDES IN INDIA ADEQUATELY PROTECTED FROM DOMESTIC VIOLENCE?

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Abstract: Child marriages in India have been a long existing reality. It has had its adverse effect of many girls and women. There is also no conflict when we try and understand its worthwhile impact on the progress of the Indian society as a whole. With the advancement of legislative intent to protect women from violence in intimate relationships the Protection of Women from Domestic Violence Act, 2005 was passed. However, the definition of child contained within the Act has ignored the girls who were married before the legal age despite the fact that law itself gives recognition to these marriages if concluded without any interference to disallow the same. The paper aims at examining the various aspects of this inadequacy and brings to light some key issues that will be worth pondering over.

Keywords: child marriage, domestic violence, child

Introduction: Domestic violence has often taken the spotlight while talking about crime against women and often this intimacy between the two has resulted in far reaching and expansive research into this area. Violence at home against women by their intimate partners has effects that are serious both physically and mentally.

This paper aims at highlighting the gap that remains in the laws for adequate protection of child brides from the indiscriminate act of domestic violence.

Child marriages in India are still a harsh reality amidst the development of society. The age old beliefs continue to exist and make their presence felt in regions especially the rural parts of India. The urban women have far advanced and girls in city areas are being given adequate chances for studying at least till age 18 and even beyond. However, it is also not accurate to say that in urban parts of India the same does not exist. The census of 2011 reveals that 41.3% of girls at the age of 19 years in 2011 were already married and of them some were even divorced, separated or widowed [1]. The National Crime Records Bureau (NCRB) report of 2013 reflects that the charge-sheet rate was highest in respect of child marriages under the Prohibition of Child Marriage Act, 2006 after rape [2]. Stated at a 95.1% [3] the figures highlights the harsh reality of prevalence of these marriages many of which under the parasol of a well-established patriarchal set up can be conveniently presumed to go unreported or under-reported. This patriarchal web is a potent contributor to the silence of victims. Girls are bound to feel threatened for their very existence in the absence of adequately enforced State provisions for protection and also for want of economic sustenance for their survival.

Child Marriage- A Questionable Practice: Sagade [4] in her writings on child marriages has brought forward many views and elucidated many reasons behind the prevalence of child marriages. However,

one of the striking observations she made was whether in the 21st century this practice must still continue to exist [5]. She undoubtedly states that in the 20th century, a tainted image was attached to divorces and that women were looked at with much disgrace in the event of a divorce [6]. Women themselves also felt economically insecure out of the confines of a marriage and therefore accepted the atrocities that came within those confines. However, the social stigma attached with divorces has also taken a great leap and more couples today are applying for divorce in the occasion where they feel their marriage cannot work. They are also being given the requisite social acceptance. In the light of the above it becomes highly questionable as to why the practice of child marriage be given the validity by law.

The Prohibition of Child Marriage Act, 2006 is the piece of legislation that repealed the British colonial law of the Child Marriage Restraint Act, 1929. The Act is punitively harsh and provides for measures to be undertaken in order to prohibit child marriages. However, the figures [7] discussed earlier evince the lack of proper enforcement of the law which is aimed at prohibiting these marriages. It is also worth noting that the child marriages successfully solemnised are voidable in nature and remain open for being annulled on the instance of either of the contracting parties. However some important questions to investigate into are that whether the contracting parties to such a marriage are aware of the fact that they are being married at an age below their legal adulthood? Are they even aware that what is happening to them is prohibited by law? These and many more questions revolving around this issue are worth pondering and dealing with.

Convergence of Domestic Violence and Child Marriages: The subject of child marriage has often shook hands with the menace of domestic violence. Many child brides have been subjected to cruelty and

intimate partner violence within the confines of marriage.

Delving into the definitions provided by the Protection of Women from Domestic Violence Act, 2005 [8], it becomes particularly noteworthy to highlight sections 2(a) and 2(b). These two sections starkly bring out the legislative silence on the inclusion of child brides within the ambit of this legislation.

Section 2(a) defines “aggrieved person” under the Act [9]. The definition is limited in its scope to the extent that it takes into account women and not girls. It is important to reiterate that the Prohibition of Child Marriage Act, 2006 does not make the concluded child marriages void but instead gives them the status of voidable. Therefore they are valid marriages in the eyes of the law unless either party moves to the court to get the same annulled.

Section 2(b) defines “child” under the Act [10]. It has been careful of including not just a child which is one’s own but also the other categories by which a child receives the care and parentage. However, does the definition include child brides? The girls are minor too when we see from the age of attainment of majority but they cannot be said to fall within the category of own children. They are brides because they are legally married. But it is worth pondering on whether they are even brides in the truest sense when owing to their tender age it is recognised that they are unable to fully understand and fulfil their marital obligations.

Now reading the two definitions from the Protection of Women from Domestic Violence Act, 2005 along with the Prohibition of Child Marriage Act, 2006 it would not be incorrect to arrive at a finding that the former does not squarely cover child brides. It is bent towards advocating for women alone and not child brides.

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With the Criminal Law (Amendment) Act of 2013 [11], the age of consent for sexual intercourse has been increased from 16 years to 18 years, however the Exception-2 to Section 375 remains intact [12]. This has resulted in a huge gap of girls aged between 15-17 years being left unaddressed. Married girls within this age block do not own the choice of having sexual intercourse or not. The term “sexual acts” within the said exception is a term of wide import since its expanse will encompass acts of sexual abuse too. The married girls have no recourse to law if they are being sexually exploited within the confines of marriage especially in the absence of their explicit presence in the aggrieved persons as defined in the Protection of Women from Domestic Violence Act. If we analyse from our previous discussion on the two legislations we notice that they are not guaranteed precise and clear protection under the Domestic Violence law. This amounts to a serious threat to their dignity.

Conclusion: The act of child marriage is surrounded by a myriad of questions. These continue to hover on till there are some definite legislative changes brought into place to address these questions. There is a need to review laws more thoroughly, analyse and identify the gaps and address the issues that are of serious impact on the lives of many women. Laws need not be women-centric always however they must be gender neutral and sensitive to the special needs and circumstances of women as is the case with child brides.

There is no ambiguity is so far as recognition of child marriages are concerned however covering the empty spaces warrants immediate attention.

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