Contesting Marriage: Law, Reform, and Social Change in India

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ABSTRACT

This paper traces the evolution of marriage laws in India from the colonial period to the present, analysing how legal frameworks, case laws, and personal law reforms have shaped the institution of marriage. It examines key shifts in legislation and judicial interpretation to show how marriage law has been used to negotiate questions of gender, community identity, and state authority. The study argues that the changing legal landscape reflects the ongoing tension between tradition, social reform, and constitutional principles in modern India. Methodologically, this paper adopts a doctrinal and interpretive legal approach, analysing statutes, judicial decisions, and secondary literature within a broader socio-legal framework.

KEYWORDS

Understanding laws, historical analysis, sociological analysis, legal framework, critical evaluation

The debate on the age of consent has been an issue that has grown perpetually through centuries and still have not been able to reach to a satisfactory conclusion. Older laws have been modified and newer laws have been drafted but hardly any permanent solution has been reached at till now. This makes us question why? Why is it that this problem has taken such a shape? What exactly is there in this issue that keeps it alive and unsolved till date? The legal framework regarding child marriage fails to encounter the problem satisfactorily, and thus there remain gaps and problems in it. We will try to recognize exactly those and try to understand the problem in a bigger historical and sociological background alongside dealing with questions like the age of discretion, guardianship and elopement, that are some of the few tokens that complicates this discussion further. This paper seeks to examine why child marriage persists in India despite an extensive legal framework aimed at its prevention. It asks how contradictions between personal laws, criminal law, and judicial interpretation have produced legal ambiguity around age of consent, guardianship, and marital validity. The paper argues that the persistence of child marriage cannot be addressed through statutory reform alone without confronting the socio-legal conditions that sustain it.

Well, I believe, it's the fact that the problem is evolving itself outrageously with time and circumstances, and through all its journey it has adapted rather spectacularly with the needs and the demands of the time to create even a bigger katzenjammer. Child marriages are very widely practised in India despite the unending tries of the government to stop it. Numerous laws have been promulgated and wide variety of other measures have been undertaken to put an end to it, but it is fair to claim that they have mostly proved to be abortive. The National Family Health Survey III conducted in 2005-2006, estimated that 47% of women in India, aged 20-24, were married before the age of 18.[1] The National Family Health Survey IV states that the median age at first marriage is 18.6 years for women and 24.5 years for men age 25-49[2].

[1] GUPTA, PALLAVI. "Child Marriages and the Law: Contemporary Concerns." Economic and Political Weekly 47, no. 43 (2012): 49. http://www.jstor.org/stable/41720300.
[2] India National Family Health Survey (NFHS-4) 2015-16 [FR339]

There definitely has been improvement, as is shown by the data, but the practice still survives in the articles of faith for many. Oftentimes it camouflages itself in the broad daylight of enlightenment, but we hardly every pay enough attention to recognize the signs of it. Having said that, one always needs to remember that even though this practice mostly stems from poverty and illiteracy but, that might not be the case always. The idea of recognising the prerogatives of the women to every part of life with liberty and the responsibility of making them independent to make conscious decisions for oneself, remains absent from a good deal of the so-called modern households.

While existing scholarship has examined child marriage either through doctrinal analysis or social critique, this paper brings these strands together by closely reading judicial responses to elopement, guardianship, and consent. By placing case law alongside social realities, it highlights how law simultaneously enables protection and produces vulnerability for minor girls.

Though India has ratified various international conventions and treaties that obligate amendment actions in the legal framework for it to guarantee the rights of children and prevent child marriages, the data shows, child marriages are widely prevalent in our country. The social dogmas and its evil practices have played the most dreadfully crucial role in it all. The case of Bhanwari Devi from Bhateri village in Rajasthan, 1992, is one such and it survive as a testament of happens to women who try to oppose patriarchy of the Indian society. She worked with the Women's Development Program to fight against practices like child marriage and had made efforts to prevent the marriage of a young girl in their village. As a result of which she was attacked vehemently by the members of the girl's family, who belonged from upper caste, and was gang-raped by them. They had also beat up her husband brutally, who was present at at the scene, when both were working their field at the opening of dawn. Though her case led the Indian Supreme Court to formulate guidelines to deal with matters of sexual harassment in the workplace, her attackers hardly faced any charges and remained free. They were further cleared of rape charges by the trial court and the High Court heard her appeal only once in more two decades till now[1]. The judge gave clearing to the accused citing some rather bizarre

[3] Geeta Pandey, 'Bhanwari Devi: The rape that led to India's sexual

justifications like the village head cannot rape, men of different castes cannot participate in gang rape, elder men of 60-70 years cannot rape, a man cannot rape in front of a relative, a member of the higher caste cannot rape a lower caste woman because of reasons of purity and that Bhanwari Devi's husband couldn't have quietly watched his wife being gang-raped.Clearly this was a politically charged case and so was confirmed by Girija Vyas who was the MP from Rajasthan and, also the head of the Indian Government's National Commission for Women at the time. This case shows the naked reality of the turpitude of the androcentrism in the Indian society and prove the deep entrenchment of it, not only in the common people but also in the dignitaries employed to deliver justice to them like the judges.

A thorough examination of the gaps in the criminal and marriage legislations is essential to understand the perpetration of this practice. The Child Marriage Act 2006 is a revolutionary step towards the extirpation of the practice of under-age marriages, but it too have to take into account the various implications of the personal and the secular laws on marriage to function; and it is here that the apertures often appear in them. The Hindu Marriage Act stipulates that the male must have completed 21 years and the female 18 years of age to fulfil the conditions of a lawful Hindu marriage. However, marriages taking place without following this norm is not declared invalid outright but a small fine and a meagre tenure of imprisonment is assigned to the violator. The reason the Prohibition of Child Marriage Act, 2006 (PCMA) avoids declaring all such marriages void ab initio is that lawmakers were conscious that thousands of already-married minors would be left without legal protection. If the law had invalidated these marriages outright, it would have stripped young girls of maintenance, legitimacy of children, and property rights. Hence, Parliament opted for the category of "voidable marriages," allowing the minor to annul the marriage while still safeguarding her civil rights.

The Muslim law on marriage, on the other hand, cites the age of puberty as the age of marriage for the girls, but the girls are allowed to repudiate their marriage if it was performed before they had attained fifteen years of age and had to be done before they turn eighteen. This law when interpreted from the practical point of view seems like its intention is to abet the perversion of child

marriage instead of putting a kibosh on it. What seems to be occurring here is burdening a teenage girl with responsibilities she patently will never be able to exercise and thus will be stuck forever tackling the burden of forceful espousal. Even though it seems rather crude to ascertain the matter in this way, it does not negate the fact that most of the betrothal that takes place in India, happens in accordance with the whims and megrims of the guardians and not the individuals being bound in the actual commitment.
Both the Muslim and the Christian Marriage Act require the consent of the guardian in case of a minor's marriage. The Christian marriage Act goes so far as to claim that anyone under the age of 21 will be considered as a minor, but it does not invalidate marriages involving people below the stipulated age. All of it combined compels any sensible person to probe the question as to why is this even allowed? When the final goal is to eliminate this social evil, then why is it still permitted under all sorts of pretexts and orifice in the laws? It is only the Special Marriages Act 1954 that makes child marriage as void with fixing the legal age for marriage for men at 21 and women at 18.

The Indian Penal Code also fails to provide a cogent disapproval of child marriages. Though it essentially brings in the question of rape in the deliberation, but ultimately set out different ages for child rape, and the rape of married and unmarried women. While section 375 of the IPC states that sexual intercourse with a child under the age of 16 with or without consent will be considered rape; it decriminalizes this act if the woman happens to be the perpetrator's wife and above 15 in age, according to section 376. The consent of the girl holds no value once in the situation; however, the Act provisions the rape of a child wife, between 12 and 15 years of age, with imprisonment, fine or both. This poses as a dichotomous problem for us because the interpretation of such laws put together brings to the conclusion that the Penal Laws neither recognise marital rape nor provide implicit disapproval to child marriage.

Jurisprudence addresses the issue of child marriage in three principal ways. The first concerns the "age of discretion," especially in habeas corpus petitions involving elopement or self-arranged marriages where parental consent is absent. In several such cases, courts have upheld these unions on

the basis of the minor girls's own consent. the second approach relates to the "enticement of a girl from her lawful guardian," a ground on which child marriages may be declared void despite the minor's willingness. These cases highlight the persistent legal question of guardianship, specifically whether a husband can legally act as the guardian of a minor wife. The third concerns Muslim personal law, which treats the age of puberty as the valid age of marriage - a position that has recently been challenged in litigation concerning child marriage. What stands out, however, is the near absence of cases addressing forced child marriages arranged by parents between young girls and older men. This silence reflects the reality that patriarchal structures remain so entrenched and resilient that modern feminist interventions struggle to penetrate or transform these social norms through legal reform alone.

The following cases illustrate how courts have struggled to reconcile statutory prohibitions on child marriage with claims of personal liberty, consent, and welfare. In Amrinder Kaur and Another vs State of Punjab and Haryana, the petitioners, an eloping couple, sought protection under Article 21 of the Constitution as the girl's family was threatening their lives. The sixteen-year-old girl had gotten married to a twenty-one-year-old man following Sikh rites and her counsel had argued that since she had attained the "age of discretion", their marriage could not be treated as void. The girl's father however claimed that the man and his family had kidnapped her with the intention of marrying her. The Court, referring to the earlier judgements and the provisions of the Child Marriage Act 2006, discerned the marriage to be void because the girl was only sixteen years and two months old. She was not capable of either contracting a valid marriage or of being removed from the lawful guardianship of her father. The Court thus declined the grant of protection stating that it could not validate a marriage that the statute declared void and observed that any threat to the couple's life existed only insofar as the marriage legally subsisted; given that such a treat would cease to exist, the marriage itself would also be declared null.

This judgement accentuated a deeper inconsistency in the Indian law. Where marital rape was allowed to reside unrecognised under the IPC, still implicitly accommodating child marriages, despite the country having ratified several international conventions requiring stronger protections for minors, the issue of individual right was not recognised. The target must be getting rid of child

marriages altogether but not without recognising the shadows of the social stigma lurking around it. Though the judgement remains commendable in this case because of the primacy given to the issue of involvement of an underage girl in a marital commitment, but one cannot help but wonder that when sixteen is too young an age for marriage then how is it that someone who is being sexually assaulted by their husband at the same age cannot get justice claiming it to be a crime. The Parliamentary Standing Committee underscored this contradiction and recommended deleting the marital rape exception in Section 375 of the IPC to align the statute with the PCMA and international norms in 2005. The 172nd Law Commission ultimately advised against the deletion, arguing that doing so would constitute "excessive interference in marital relationships."

In contrast to Amrinder Kaur, several other High Courts have adopted a more accommodating stance in elopement cases, particularly where petitions are filed either under habeas corpus or Section 363 of the IPC, which deals with kidnapping of minors. Jurisprudence on child marriage largely takes three forms: (1) The age of discretion, especially in cases of love marriages where courts sometimes recognize the minor's consent; (2) Enticement from the lawful guardian, which can render a child marriage void regardless of the minor's will; and (3) The application of personal laws, including Muslim personal law, which fixes the age of puberty as the permissible age for marriage.

In contrast, subsequent judgments reveal a more accommodating judicial approach, particularly in cases of elopement involving adolescents. Another contrasting example is seen in Jitender Kumar Sharma v. State and Another, where both the parties, Poonam and Jitender, were minors who had eloped and married under the Hindu Marriage Act (HMA). The Delhi High Court held that violation of Section 5(iii) of the HMA does not render the marriage void under either the HMA or the PCMA; rather, the marriage is voidable, as all child marriages now are. However groundbreakingly, in determining Poonam's custody, the Court examined the Guardians and Wards Act, 1890, alongside the Hindu Minority and Guardianship Act, and concluded that the husband, and not the father, would be constituted as her natural guardian unless proven unfit. The Court emphasized on the welfare of the minor and upheld her right to life and liberty above all, ruling that she could not be compelled to reside with her parents or in state-run homes merely because she was underage.

More importantly, the Court distinguished between forced child marriages and self-arranged unions between minors, characterizing the latter as expressions of personal choice rather than coercion. It reiterated that the “age of discretion” is a factual determination dependent on the circumstances of each case. In situations where a minor girl demonstrates a mature and reasoned predilection not to return to her parents or guardians, the Court may place her in the custody of her chosen guardian. The judgment, in a way, implored the legislature to address such legal ambiguities, warning that in the absence of a coherent statutory response, the courts will continue to be inundated with habeas corpus petitions involving young couples entangled in legal and familial conflict, especially in matters of love and nuptials.

In another case, Sivakumar, the father of a seventeen-year-old girl named Sujatha, filed a habeas corpus petition seeking her custody. In her affidavit, Sujatha stated that she was in love with Anbu and that her parents were attempting to coerce her into marrying her uncle. Leveraging upon earlier High Court precedents, the division bench for the case, held that a marriage involving a minor girl is voidable, not automatically void, and may be annulled only through a competent court under Section 3 of the Prohibition of Child Marriage Act, 2006. The Court observed that although such a marriage is not strictly valid, it is not invalid either. The male contracting party cannot, however, claim the full set of marital rights that arise from a legally valid marriage; his rights remain limited until the marriage is either affirmed or annulled. The central concern highlighted by these cases is the legal and rights-based significance of the choices made by the minor girls.

Feminist scholarship has long debated the questions of age at marriage and age of consent. Fixing a uniform statutory age of marriage functions as a double-edged instrument: while it effectively curtails pre-pubertal marriages, it simultaneously restricts the autonomy of the adolescent girls who make independent decisions regarding their relationships. As Flavia Agnes argues, legal reform around child marriage often becomes ineffective when it ignores the lived realities of young girls and the complexities of diverse personal laws. She cautions that a purely punitive or uniform legal approach, without addressing structural inequalities and social pressures, risks pushing minor girls

into greater vulnerability, particularly if marriages are declared void without providing them alternative support systems. Her critique reinforces the point that the legal framework must be grounded in social context rather than abstract moral prescriptions.

The broader question that arises is how the legal system should respond to circumstances where adolescent girls are simultaneously vulnerable to forced alliances and, in some cases, drawn into relationships that result in habeas corpus petitions. The issue cannot be resolved merely by adjusting legal classifications of void or voidable marriages. Rather, it calls for a deeper engagement with the socio-economic environments that shape these situations in the first place. Instead of entertaining the proposition that girls aged sixteen to eighteen are sufficiently mature to enter marriage, the state and legal institutions must prioritise creating conditions in which young girls neither face coercion into early marriage nor perceive marriage as their only viable option.

This requires ensuring sustained access to education, social protection, and economic opportunities so that adolescent girls remain engaged in developmental pathways rather than entering premature marital relationships. Such structural interventions need to be essentialized in the very plinths of the social structure to reduce the appeal and incidence of underage marriages. Although the transformation of these underlying social conditions is bound to be gradual, it must remain a sine qua non throughout the process to engineer all sort of meaningful social progress. Without this foundational change, reliance on punitive measures or statutory thresholds alone will not curb the persistence of child marriage. From a policy perspective, the findings suggest that legal reform must move beyond punitive measures and rigid age thresholds. Greater emphasis is required on ensuring access to education, economic security, and social support for adolescent girls, alongside uniform enforcement of existing laws. Future research may further examine how welfare institutions, schooling, and community interventions can work alongside law to reduce the social conditions that make child marriage appear inevitable.

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