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EVALUATING THE PROBLEM OF CHILD MARRIAGE WITH RESPECT TO THE MUSLIM PERSONAL LAWS

Introduction-

Child Marriage is a phenomenon where upon a person under the age of 18 is married to a another child or someone older. In India, child marriage is a pervasive societal problem with a long historical background. It is not restricted to a particular community or religion. According to an official report of UNICEF, “Nearly one in four young women in India (23 per cent) were married or in union before their 18th birthday”.¹ In the same ereport it is stated that “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.”²

This social evil affects Hindus ,Muslims ,Parsis and other communities. But for our discussion this practice of child marriage in muslim community is relevant. Muslims are governed by the Muslim personal laws which are based upon the Islamic books and commentaries like the Quaran and the Hadith.

Provisions relating to marriage in Muslim Personal Laws-

¹ Ending child marriage: A profile of progress in India, UNICEF DATA (2023), <https://data.unicef.org/resources/ending-child-marriage-a-profile-of-progress-in-india-2023/> (last visited Jan 18, 2024).

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To understand how the provisions in Muslim personal laws affect the child marriage scenario it is important to understand the provisions relating to marriage in the Muslims laws. One of the key concepts. Marriage under muslim law is a contract between the bride & groom. It requires the offer from one party and acceptance by the other, and consent plays an important role in muslim marriage. The parties must also have the capacity to contract. One who is of sound mind and has attained puberty is capable to contract a marriage himself or herself. Now it must be taken into account that puberty is different from the age of majority meaning this leaves a scope for child marriage. As per Hedaya the capacity to enter into matrimonial contract for male is when he attains 12 years of age and for female is when she attains 9 years of age. As per Hanafi law which is a Sunni school of thought the age of maturity or puberty is presumed to be 15 years of age unless it could be proved that the it has been attained earlier. According to Shia law female attains puberty when her menstruation begins. Even in certain cases in court such marriage has been held to be valid. The Delhi High Court ruled in *Mrs. Tahra Begum v. State of Delhi and Others*³ that a Muslim girl may choose her spouse at the age of 15 if she had reached puberty, and that a minor girl's marriage was valid and she could live in her matrimonial home. Even if someone has not attained puberty can be contracted in marriage by his/her guardian. This also provides a scope for child marriage.

Legal provisions to combat child marriage

The Prohibition of Child Marriage Act⁴ (PCMA) was passed in 2006 which is a key piece of legislation designed to end the pervasive practise of child marriage. It defines the term child as female under the age of 18 years and male under the age of 21 years.⁵ It further makes such marriage voidable at the option of the party who was child at the time of marriage. In certain cases like when a child is sold for the purpose of marriage make such marriage void.⁶ It further makes the promotion of child marriage as a cognizable and non bailable offence.⁷ It further provides for Child Marriage Prohibition Officers while also making provisions for court so that it can play a proactive role in stopping child marriages.

³ *Mrs. Tahra Begum v. State of Delhi and Others*, 2012 SCC OnLine Del 2714

⁴ Prohibition of Child Marriage Act, 2006, No.6, Acts of Parliament, 2006 (India)

⁵ Prohibition of Child Marriage Act, 2006 §2(a), No.6, Acts of Parliament, 2006 (India)

⁶ Prohibition of Child Marriage Act, 2006 §12, Acts of Parliament, 2006 (India)

⁷ Prohibition of Child Marriage Act, 2006 §15, Acts of Parliament, 2006 (India)

The conflict between the laws and the stance of courts

The problem arises because of gaps in the legislation. Many times courts are faced with the question as to whether the Muslims should be subjected to their own personal laws or secular legislations like PCMA can override the personal laws. In different cases the courts had different stances.

In *Mis. Seema Begum vs. State of Karnataka*⁸ a Muslim girl who was 16 years old when the petition was filed requested a declaration that the PCMA, 2006 did not apply to her and that, instead, Muslim personal law permitted her to get married at the age of 15. It was held by the court that the PCMA will prevail over the personal laws and will be applicable to all the citizens of the country.

*Abdul Khader v. K. Pechiammal*⁹ - The dispute between Muslim Personal Laws and the PCMA was the matter at hand. The petitioners claimed that The Muslim Personal Law (Shariat) Application (Tamil Nadu Amendment) Act, 1949¹⁰ made the MPL applicable to Muslim marriages and the PCMA was not. It was further argued that the Shariat Act of 1937 is special law and PCMA is a general law. Based on the reasoning that special law supersedes general law, the Shariat Act will prevail over PCMA. However the court held that The Shariat Act of 1937 would need to be read down to the degree that it violated constitutional prohibitions. The PCMA was passed primarily to forbid child marriages from being solemnised. The Court would not issue an order causing young girls to become child brides when the legislature has set the minimum age for females to marry at 18.

Both the cases show that the PCMA prevails over personal laws. But despite the legislation in place to prohibit child marriage the problem still persists.

Conclusion-

⁸ *Mis. Seema Begum vs. State of Karnataka*, (Writ Petition No. 75889 of 2013, Karnataka H.C. (2013))

⁹ *Abdul Khader v. K. Pechiammal*, 2015 SCC ONLINE MAD 5212

¹⁰ The Muslim Personal Law (Shariat) Application (Tamil Nadu Amendment) Act, No.18, Acts of Parliament, 1949 (India)

PCMA must be enforced efficiently and awareness must be raised regarding the hazards of child marriage. A nationwide database that tracks child marriage instances and results can offer useful information for evidence-filled policymaking. These problems further show that there is a need for a Uniform Civil Code to curb such social problem as it would apply to all the citizens irrespective of their religious faith.