

Report National Seminar

Constitutional Rights for Welfare of Girl Child

Interface among Practitioners, Academicians and Policy Makers

Organized by

Deep Welfare Organisation and Independent Thought



30 October 2013

Auditorium, Indian International Centre, Lodhi Road, New Delhi

Introduction

The National Consultation “*Constitutional Rights for Welfare of Girl Children*” provided the platform to discuss the mismatch between the Constitutional Guarantees and ground realities in relation to girl child. Two most significant impediments in the life of an Indian girl are restrictions in her access to *the Constitutional Right to Education* and more significantly the issues of *illegal Child Marriage*.



The Consultation successfully brought into discussion the *Rights violations attached to Child Marriages and a possible solution in the form of extending Right to Education to girls till the age of 18 years from the present 14 years*. The Consultation held in the backdrop of the ongoing Public Interest Litigation, *Independent Thought vs. Union of India*; [W.P.(Civil) No. 382 of 2013 – where Hon’ble Supreme Court Issued notices to Centre on 10 July 2013) challenges the Constitutional Validity of provisions of Exception 2 to Section 375 of IPC, as amended by Criminal law (Amendment) Act, 2013. The situation demands to look at the issue of child marriages from all aspects of rights violation and sexual offences, denial of education due to societal mindset and systemic failure on part of State and other issues.

The Consultation became more relevant for the fact that Indian government has refused to co-sponsor the UN led global resolution on early and forced marriages of children floated by UN Human Rights Council stressed the need to include child, early and forced marriages in post-2015 international development agenda and acknowledgment of the multifaceted impact of early marriage on the ‘economic, legal, health and social status of women and girls’ as well as ‘the development of the community as a whole’.

The Consultation was an opportunity to hear the views and stances put forth by all leading institutions, agencies and movements who are directly and indirectly in their own way are working to solve the issues of girl child. The platform became the meeting point for views from National Commission for Women, Delhi Commission for Protection of Child Rights, Arunachal Pradesh State Commission for Women; Academicians from Indian Law Institute, Delhi University, Jamia Milia Islamia; UNFPA, UNDP, RTE-Forum, Breakthrough, Childline India Foundation, Child Rights & You (CRY), Plan International, PACS India, Save the Children among several other organizations and individuals.

Background

The Constitution of India is the legal safe guarder and protector of our rights and children have been given special mention. While Article 15 of the Indian Constitution reinforces the ideals of Equality; it also recognizes the Equity in the same breath and the need for special protection under Article 15

(3) which reads '*nothing in this Article shall prevent the State from making any special provisions for women and children*', provides scope for positive discrimination and action to rectify the historical injustice meted out to girls children in the patriarchal character of our society. The provision attempts to rectify the issues of historical injustice through affirmative action from State interventions.

Even after 60 years of independence, India's children are still treated as chattels to be forced fixed to anyone with complete disregard to their *Best Interest* and State seems to be mere spectator in the whole *illegal act of child marriage*. Child marriage is one of the most pressing issues that India continues to face. The Government of India has adopted the Prohibition of Child Marriage Act in 2006, replacing the Child Marriage Restraint Act, 1929. Complementarily, the Compulsory Registration of Marriages Act, 2006, The Dowry Prohibition Act, 1961 and Right to Free and Compulsory Education Act, 2009 reinforce India's legal framework against child marriage.

Even though the legal age of marriage has been set to 18 years for girls and 21 years for boys, UNFPA data reveals that India has the largest number of child brides in the world, with 47% girls married under the legal age of 18, projecting that 140 million child marriages may take place between 2011 and 2020, cutting across most developing nations¹. Though there has been a decline in the incidence of child marriage nationally and in nearly all states from 54% in 1992-3 to 43% in 2007-8, it is a common practice all throughout the country, it affects girls in rural areas (48%) more than in urban regions (29%).

Significant Contributions

- Presentation by Breakthrough
- Presentation by Child line
- Circulated, Position Paper by Centre for Child and Law, National Law School, Bangalore
- Circulated, Brief note on ongoing Independent Thought vs. Union of India(W.P. Civil 382 of 2013)by Independent Thought



The problems are rooted within the societal mindset and traditional and religious practices and so are the solutions. There is a need for external catalyst in the form of providing avenues for education till

age of 18 years and criminalizing sexual relationship within child marriages as motivators for promotion of girl children and to frustrate the purpose of marriage as a protective strategy. UNICEF Fact Sheet on Child Marriage states that Investing in girls education is perceived as a waste of resources since families believe that a girl's education will only benefit her husband's household, and not the family of origin. It requires State intervention by providing for *Right to Free and Compulsory Education as a Fundamental Right till higher secondary / 18 years of age*. Similarly it is the responsibility of the State to protect girl children from any person or situation which is not in their *Best Interest, Sexual violence within child marriages being one*.

Session I – Context Setting – Critical Sharing

The Inaugural session highlighted the following issues

- India has refused to co-sponsor U.N. Human Rights Council resolution against the practice of child, early and forced marriages on the ground that of the resolution's vague definition of "early marriage,". While there is no legal impact of this, however we failed as a Nation to acknowledge our stance against child marriage, globally.
- There are lots of issues related to women and girls, such as female feticide, gender inequality, dowry, family hereditary etc. which are obstructing the growth and development of the girls. Education of girls and women can have an impact on the situation.
- There is definite imbalance in the sex ratio, which could mean that after 15-20 years, for 2 crore male there would be no female. There seems to be a linkage of marrying young children as demand for brides is high.
- As the RTE Act, 2009 talks about free and compulsory education till 14 years of age, Government is not compelled to make schools with classes above 8th or provide Higher education especially in the rural areas. It becomes important that free and compulsory education should be made till 18 years of age which forces the government and parents to provide their girl child with education till 18 years.
- Education also means learning life skills, other culture and to respect others value and having overall knowledge. It becomes essential that children are given this kind of education as well.



The session began with a Welcome address by Mr. Ajay Prakash, Secretary, Deep Welfare Organization, followed by key note address by Mr. Vikram Srivastava, Founder, Independent Thought who laid down the framework and background in terms of the PIL information.

The Chief Guest Hon'ble Chairperson, National Commission for Women, Ms. Mamta Sharma, gave insight on the topic of Child marriage and education in India and shared her personal experience in the field. Prof. Dr. Manoj Kumar Sinha, Director, Indian Law Institute, enlightened on the International aspect of the law on child marriage and India's stand on the resolution of Human Rights. The session ended with Ms. Jarjum Ete, Ex Chairperson, State Commission for Women, Arunachal Pradesh who gave detailed information on the status of Child marriage in north-eastern

region and among the tribal people. The session was presided over by Mr. MM Vidyarthi, Member, Delhi Commission for Protection of Child Rights.

Session 2 – Right to Education – Critical Sharing

The second session focusing on the importance of education in life of girls and the need for extending the provisions of the Fundamental right provisions till 18 years of age, brought the following key points;

- Girl Child Protection and Education are correlated. The children between age of 14 to 18 years should have fundamental right to education and the concentration should be on holistic child right development
- There is a need to have technical roundtable discussions among the civil society, academicians, government and UN officials on the issue of girl child protection and education and find solution for girl child protection.
- There is an urgent need of neighborhood schools/Common school system – where all children irrespective of class living in a particular neighborhood can study together and upward and downward extension of RTE is required.
- There are several reasons for girl child drop out after primary schools and few of them are child sexual abuse in schools, text books are gender biased, system is antigirl and the issue of Child marriage is more of political problem than social problem.
- While Education should not be seen as a panacea for all societal ills, there is no denial that there is a logical linkage between education and child marriage.



Mr. Amrish Rai, Convenor, RTE Forum gave detailed information about the RTE Act, 2009 and the actual status of law after 4 years of its inception. He was followed by Mr. Virendra Vidrohi, Social Activist, Alwar, Rajasthan who shared his work experience in the field of child marriage and education. Dr. Sanjeev Rai, Save the Children cautioned that education has its limitation and circumstances have to be seen while stopping the child marriage. Mr. Ravi Prakash, PACS put emphasis on direct connection between child marriage and education and how education has a critical role in delaying marriages. Ms. Vijayalakshmi Balakrishnan, Centre for Social Development raised pertinent issue as to the complexity in relation to child marriage and the need to study the changing demography in last few decades. Mr. Pankaj Mehta, Child Rights & You (CRY) commented on India's stand on child marriage and its relation to International laws. The session was chaired by Dr. Rajesh, HOD, Department of Adult Continuing Education and Extension, Delhi University.

Session 3 – Child Marriages – Critical Sharing

The third session was focused on the issues of child marriage and what can be the formidable strategies beyond awareness generation, sensitization and wait for societal change; similar to the

demand for extending *right to education till 18 years in previous session* or *raising the issue of sexual offences within child marriage as under the PIL*. The sessions brought out varied perspective and with two strong empirical presentations by Childline India Foundation and Breakthrough on their work and study on Child Marriages, the following key points came out from the discussions;

- It is important that to tackle the issue of child marriage and girl education the focus should be to address and sort the incoherency in legal framework, Sexual and reproductive health education, empowerment intervention of married girls, engagement of men and boys in the process and comprehensive and integrated approach.
- On the ground level, education does have positive effect. It reduces the chances of early marriage as it has been visible that girls who complete higher studies get married after 18 years and girls who complete middle level studies get married by 16 years.
- Even after 7 years of the act related to child marriage, all the state have not formed their own set of rules while most of the state have not added anything new in their state rules. A serious review of the state rules and monitoring is pending.
- In most of the cases protection officers are not even aware of their roles and duties and powers, as these are additional charges on already loaded with work officers.
- Child marriages as a construct are oppressive and build on the premise of denial of rights to girls, requiring State Intervention to protect and promote them.



The Third Session began with presentation from the Breakthrough on their ground study of the issue of child marriage and education of children. This was followed by presentation of CHILDLINE. The presentation was followed by comment of Ms. Mamta Sahai, Delhi Commission for Protection of Child Rights on the issue of child marriage within Delhi NCR based on the complaints received and actions taken by the Commission. The session was continued by Mr. Ashutosh Srivastava, Access to Justice, United Nations Development Programme (UNDP) who gave brief on the project of UNDP in relation to child marriage. Ms. Shobhana Boyle, United Nations Population Fund (UNFPA) pointed that the best approach to handle the issue requires comprehensive and integrated approach. The session ended with comments of Adv. Soumya Bhaumik (Child Marriage & State Rules) on the existing various state rules of Child Marriage and the prevailing confusion on roles of CMPO.

Session 4 – Way Forward – Critical Sharing

As a concluding session the focus was brought back on the interlinkages of the two rights of girl children namely ‘promotion of right to education’ and the ‘protection from forced and illegal child marriages’. The emphasis was on the need to scale the fight for justice for the girl children on all fronts through all possible means and strategies. The main points raised were;

- Countries which have given focus on the quality education and have considered it as investment for the future have less number of child marriages.

- It has to be inserted in the system as well as in the society that child marriage is violation of fundamental rights of children and all the laws and schemes should treat children equally.
- It is important that for the development of child education more emphasis is made on reporting and generating awareness.

The final session began with comments of Ms. Tanushree Soni, Regional Gender Programme Specialist, PLAN Asia on the aspect of child marriage and status of children education in South Asia and South East Asia and also laid down the strategy and way forward for the issue. Mr. Vikram Srivastava, Founder, Independent Thought emphasized that while there is no denial on the social dimensions of child marriage, its high time that all state and non-state actors start looking at child marriage as a rights violation where state cannot be a silent spectator and leave life of children at the mercy of parents wisdom. The seminar ended with the last comment of Mr. MM Vidyarthi, Member, DCPCR who consolidated the day long discussions and pointed out the strategy to tackle the issue of child marriage and the role education plays in it.



Summary and Outcomes

The Day long consultations generated several debates on the larger cause and effect; around the patriarchal politics, culture and ideology; and sharing of data as to the severity concerning Child Marriages and Right to Education. The overall discussions revolved around the following:

- State a Silent Spectator: While State has undoubtedly undertaken an aggressive awareness generation campaigns on Child Marriage maybe only next to its Polio campaign, however, State seems to be silent and convenient spectator of a situation where girls keep on suffering and being

abused by leaving gaps within laws (Voidable with Prohibition of Child Marriage Act; exceptionally allowing Rape within Indian Penal Code and denial of Fundamental Right to Education for children between 14 – 18 years)

- In *absence of fundamental right obligation* on the state to provide neighborhood schools above 8th standard in many places girls are occupation less and to avoid any untoward situation, marrying them seems to be the best solution for parents. There is a need to create obligations on both parents and state for active engagement to end child marriages. Even actions of parents if not in the Best Interest should be under scrutiny and there are numerous instances to prove that parents/guardians have married off their girl child for purposes of sexual exploitation, trafficking, forced labour etc. and also for making some quick money for themselves.
- The Legal Positions are vague and damaging, certainly not in the best interest
 - There is a *need to bring uniformity in the age of consent* within the provisions of various laws namely *Indian Penal Code, 1860, Protection of Children from Sexual Offences, 2012, Prohibition of Child Marriage Act in 2006, and Juvenile Justice (Care & Protection of Children) Act, 2000.*
 - While PCMA intends to prohibit child marriages, it is silent on sexual relations in a child marriage and provides legitimacy to children born of child marriages. It leaves a situation of legal uncertainty.
 - *POSCO* is a special law and it has an *overriding effect*; does not allow any exception, and makes sexual relationship within marriages as an aggravated offence.
 - While POC SO protects and secured girls between the age of 15-18, the Exception Clause of Section 375 of Criminal Law (Amendment) *legalizes penetrative sexual assault*; a clear contradiction in law.
- Holistic Child Rights – While it is important to focus on specific rights of children, the important of working on *interlinkages and not losing the larger picture is important. Right to Development (Education) is complementary to the Right to Protection; one fails without the other.*

Suggested way forwards

- It is necessary that state becomes more accountable on the issue and acts beyond the realm of awareness generating.
- As there is no sure shot strategy to remove the child marriage, it is vital that integrated approach is taken to provide:
 - Access to safe and quality Education;
 - Reproductive and Sexual Health Education;
 - Career oriented vocational and training courses;
 - Engagement of men and boys in the issue.
 - Global and regional level advocacy and networking.



- To guarantee the rights of girl child and to solve the issue of child marriage, education is the vital strategy which has to be adopted and free and compulsory education has to be made up to 18 years.
- The solution to the issues can be achieved by starting the continuous process of group based activity and regular meeting of minds from all the fields related to the issues to discuss on the technical provisions and nuances.
- It is imperative that is strategic focus by the statutory and state bodies on the adolescent girls between age of 13 to 18 years. Scope to build pressure on State presence and services for protection and development of girl children.
- Advocate towards a more coherent legal system for children with no inconsistency within laws.
 - Civil society is contributory and complimentary factor for the state and it has resources to bring out ground level reality and implement the monitoring process which makes essential that there is linkage with state on guaranteeing the constitutional rights of the girl child.



बालिकाओं को संवैधानिक अधिकारों के लिए आयोजित कार्यक्रम का दृश्य प्रस्तुतित करते अतिथिगण।

बालिकाओं को संवैधानिक अधिकारों की पहल

शाहू लक्ष्मण सम्पादकता आई दिल्ली। सीपी जेलापीयर आयोगीयेशन ने आई सीई के साथ मिलकर बालिकाओं का संवैधानिक अधिकार विषय पर नेशनल सेमिनार का आयोजन इंडिया इंटरनेशनल सेंटर लोदी रोड आई दिल्ली में किया गया। यहिना आयोज की अध्यक्षता समता शर्मा ने सेमिनार का बीच प्रस्तुतित करने सुधारण किया। संस्था के संविधान आयोग प्रकाश पांडे ने सेमिनार में देश के अलग अलग हिस्सों से आयी प्रतिनिधियों अतिथियों का स्वागत किया उन्होंने संस्था द्वारा लगातार पिछले पांच सालों से प्रोजेक्शन ऑफ गर्ल ब्राइड्स अभियान के अंतर्गत विभिन्न विषयों पर लगातार देश विभिन्न हिस्सों में आयी जा रही गतिविधियों की जानकारी दी। आई सीई के अध्यक्षता में विषयों की अध्यक्षता में आयी। आयोजन के संवैधानिक अधिकार विषय पर विचारों से चर्चा की तथा

अच्छे से ब्राइड्स विचारों को रखने की लेकर कार्य करने की आवश्यकता पर बात किया। मुख्य अतिथी समता शर्मा ने कहा कि आज के समय बालिकाओं की संस्था करने में महत्वपूर्ण भूमिका होती है आज संस्थाएं बहुत ही लोकल लेवल पर कामकाज पर चलने की नहीं बल्कि समाधान पर बात करने की है। उन्होंने कहा आज बालिकाओं से संबंधित समस्याओं को जो ज्यादा राहत में ही रही है।

उन्होंने अगर हम बालिकाओं के प्रति संवेदनशील नहीं होंगे तो बहुत बड़े बाले बच बालों में ही करीब ऐसे दुर्घटना होने शुरू हो जाएंगे जो किने लक्ष्मण वसीय नहीं होने वाली है। उन्होंने यहिना आयोज के द्वारा कार्य जो रहे बालों के बारे में जानकारी दी। नेशनल इंटरनेशनल सेंटर लोदी रोड कासरेक्टर नेशनल सुधार विभाग ने लक्ष्मणों को कानूनी अधिकारों पर

विचारों से प्रकाश डाला वहीं संस्थाओं में प्रवेश से आई अतिथी अलग-अलग प्रदेशों में आयोजन की मुने अध्यक्षता ने आयोजन को प्रारंभ किया लक्ष्मणों को आयोजन कार्यक्रमों के बारे में बताया रहने की लिये वादधान किया। उन्होंने कहा कि आज लक्ष्मणों को राष्ट्रीयतात्मक दृष्टि को देख कर कार्य करने की जरूरत बताया। आई सीई के अध्यक्ष राम जी ने आई सीई की लक्ष्मणों के प्रति संस्थाओं के बारे में बताया साथ ही आयोजन की भी जानकारी किने विषयों सुधारों को लेकर है। उन्होंने बताया कि एक संस्था किने ही संस्थाओं की विधियों में सुधार होने से बालिकाओं की डिस्ट्री में बहुत सुधार हो जायेगा है। संस्थाओं के अंतर्गत से आयोजन आयोजी सीई विदेशी ने बताया किने, कानून, सुधार, सुधार, जोसे लक्ष्मण संस्थाओं को जोसे संस्थाओं के संस्थाओं में आयोजन

GIRL CHILD WELFARE



NEW DELHI: Ex Chairperson of State commission for women, Arunachal Pradesh, Jarjum Ete and Chairperson NCW Mamta Sharma lighting the lamp at a seminar for constitutional right for welfare of girl child. AS Bhushan