

**ASSESSING THE IMPACT OF LEGISLATIVE INTERVENTION ON CHILD MARRIAGE IN BIHAR,
INDIA: UNTYING THE KNOTS BETWEEN LAW, ECONOMICS AND SOCIETY**

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<https://doi.org/10.69893/gjle.2024.000076>

ABSTRACT

Child marriage across India has shown a declining tendency, however, the State of Bihar continues to exhibit this harmful practice at a staggering high percentage. It is considered as an economic solution to deal with the financial burden attached with the upbringing of a girl child. The author has used economic analysis of law to examine the efficacy and efficiency of the Prohibition of Child Marriage Act, 2006, in the state of Bihar. The study is based on secondary data available from National Family Health Survey-4 and NFHS-5, Census of India and Economic survey of Bihar. The use of descriptive and exploratory studies helped the author in yielding stimulative insights into the relationship between individual behaviour and social practices. Based on scientific and logical understanding, the study proves that a society would always prefer to choose, exercise and continue solemnising child marriage practices if the benefits (economic, social and psychological) of child marriage is higher than the opportunity cost of getting arrested and convicted under the law. The social benefits associated with child marriage for the poor, populous, patriarchal society like Bihar outweighs the social cost linked to the prohibition law.

Keywords: *Prohibition of Child marriage, economic analysis of law, Bihar, crime*

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1. INTRODUCTION AND CONTEXT

International human rights agreements recognize that child marriage is a detrimental and discriminatory practice and have called for government action in response to the multiple hazards that child marriage poses to the health and development of child brides, their children, and their wider communities. As a result, governments across the globe have agreed to take measures to eliminate the practice of child marriage (Arthur et al., 2018). Child marriage is one of the forms of sexual violence that has a devastating consequence on a girl child since it denies reproductive rights and hampers her educational and employment probabilities. It is a violation of human rights and has the potential of adversely affecting society, economy and national growth. Moreover, it is a violation of various international instruments and the commitments contained in the directive principles of the Indian Constitution. The Universal Declaration of Human Rights of 1948 also recognises the right to free and full consent to a marriage which cannot be fulfilled in the presence of partner being immature (NCPCR, 2017). Furthermore, India being signatory of United Nation's Convention on the Rights of the Child in 1989, is committed to stop this social malpractice which essentially prevents both boys and girls from exercising their right to freedom, opportunity for personal development, right to education, health and well-being. In 2015 the Sustainable Development Goals were adopted by the United Nations. The governments across the world have committed to end child marriage by 2030. Target 5.3 of SDGs aims to "eliminate all harmful practices, such as child, early and forced marriage and female genital mutilations" by 2030.

Although child marriage across India have shown a declining tendency, the State of Bihar in India continues to exhibit the harmful practice at a staggering high percentage (nearly 40%) (UNICEF, 2019). As per the report and findings of UNICEF, one in three of the world's child brides lives in India and over half of Indian child brides live in just five states of India, Bihar being one of them. According to the report of National Family Health Survey-5 (2019-20), the percentage of women in the 20-24 age group, married before the legal age in rural areas is as high as 43.4% and in urban areas is nearly 28% (UNFPA, 2022). It is worth mentioning that India is still not a signatory to 'The Convention on Consent to Marriage, Minimum Age for Marriage and Registration for Marriages', which came into force in December 1964 (UN Treaty Collection, n.d.). The Convention reiterates the consensual nature of marriages and requires the parties to establish a minimum marriage age by law and to ensure the registration of marriages. However, in the case of India the law prohibiting child marriage has relatively

little influence on the practice of child marriage and even after two decades, fifty percent of all females are married before they reach marriageable age (Nguyen & Wodon, 2015).

Child marriage has a number of detrimental effects like physical, mental and emotional on both boys and girls (UNICEF, 2016). It results in early pregnancy and health issues resulting in increased maternal and neonatal mortality rate. The absence of economic rights or limited decision-making ability of child results in lower livelihood prospects. The negative consequences of child marriage are significantly higher for female child as compared to male child and is even acknowledged by the international community as a form of gender discrimination (UNICEF, 2014). Often a girl child is under the control of husband or in-laws which may limit her ability to voice her opinion. These child brides regularly encounter intersecting vulnerabilities, and they are mostly poor, young and undereducated (Parsons et al, 2015). The majority of households in India, do not consider a girl child as an asset; rather, they are regarded as an economic liability. This problem worsens in a patriarchal social set-up as girls are assigned lower status and are married at a young age, often too immature to understand the significance of their consent. Moreover, it is a common misconception that women are unable to actively contribute to economic growth or the advancement of society (Scolaro et al, 2015). Evidently, when marriage is solemnised at an early age, the vulnerability of such children increases manyfold due to their limited life options (Mikhail, 2002). Child marriage adversely affects both sexes, however, girls are more vulnerable and as a consequence, more likely to face the negative impact of early marriage. Economic factors like the inability to afford the costs involved in education and the economic benefits in reducing the burden of living costs on the poor families act as catalysts for child marriage (Lebni et al, 2020). In fact, economic reasons like poverty often underpin a family's decision to marry off minors. Child marriage serves as a measure to effectively cope with the economic problems faced by the poor families by reducing the size of the family and thereby lowering their cost of living (Goli, 2017). Unfortunately, economics is not the only reason for parents marrying their daughters early. In a study conducted by the International Centre for Research on Women (ICRW) and UNICEF in 2011, it was also found that traditional and religious beliefs of protecting the girl's sexuality also result in child marriage (Nanda, 2011). Several studies indicate that parents weigh the costs and the benefits associated with early marriage when they have to decide their daughter's marriage (Parsons et al., 2015). One cannot deny that child marriage is the economic solution to deal with the financial burden attached with the upbringing of a girl child. According to one of the studies done on the prevalence of child marriage, approximately 12 million girls are

married before they reach the age of 18 years worldwide (Paul et al, 2019). Child marriage remains pervasive, despite several efforts taken at international and national levels.

Even before the independence, India had a law the Child Marriage Restraint Act, 1929, popularly known as the *Sarda* Act which prohibited marriage of girls below the age of 15 years and boys below the age of 18 years. Later, in the year 1978, through an amendment in the Act the minimum age was raised to 18 years and 21 years for girls and boys respectively. The present law, which is the Prohibition of Child Marriage Act, 2006, has retained the minimum age of marriage to 18 years for girls and 21 years for boys.

The Prohibition of Child Marriage (Amendment) Bill, 2021, was introduced in the Lok Sabha on December 20, 2021. The Bill says that despite the Prohibition of Child Marriage Act, 2006, the practice of child marriage is still prevalent in society, and it has to be urgently addressed. The bill recommends raising the marriage age from existing 18 to 21 for girls. Moreover, it also says that the law will have a superseding effect on contrary provisions contained under different personal laws in India. Although, the law prohibits child marriage, the effective implementation of the law is a big challenge in India and particularly, in the State of Bihar. Over the past twenty years, the state government has launched numerous programs in collaboration with civil societies, NGOs, and other stakeholders for effective implementation and enforcement of the Act. However, evaluations of these programmes indicate mixed results, and there is a need to explore the reasons and driving forces behind this prevalent practice. In order to address the issue of social justice and improve the status of women in society, the state government of Bihar has initiated the Mukhyamantri Nari Jyothi Programme with the aim to empower women. Moreover, to tackle gender discriminatory norms and practices, a total of eight schemes operates in this domain. Mukhyamantri Kanya Vivah Yojana, a programme of the Government of Bihar, financially supports the girls of BPL families who get married at the age of 18 years. But unfortunately, the above schemes are not demand-driven, and also the benefits of the scheme are not availed by the intended beneficiaries and therefore are quite ineffective. The main issues or challenges related to various social welfare schemes in place are primarily inefficient and ineffective monitoring, lack of administrative coordination and clear directives, absence of various institutional level support, and most importantly, societal level resistance. As a result, the target set by the state government of Bihar is hardly achieved. However, they represent only one side of the story. The other side of the story demonstrates a web of more complex socio-economic drivers that contribute to early marriage in the state of Bihar. Poverty, illiteracy, prevalence of demand for dowry, tradition, customs, sexuality, and

chastity, along with deep rooted patriarchy, emerge as key drivers of early marriage in the state. At this juncture, it becomes crucial for the researcher to undertake a comprehensive and systematic study of the causative factors behind the prevalence of a high child marriage rate in Bihar and critically analyse, examine why, despite the implementation of the Prohibition of Child Marriage Act, 2006, the state remains unable to prevent this socially harmful practice. The present research article is based on an economic analysis of the abovementioned law and its socio-economic impact in the state of Bihar. The author has explored and attempted to find out

- Whether criminalising child marriage through the PCMA Act, 2006 is an efficient and effective solution to handle the problem of child marriage.
- Whether the existing legislation that deals with issues of child marriage is economically efficient?

The present study highlights the mixed trend of increase as well as decrease in the child marriage, particularly during the pandemic in Bihar. The article also analyses the impact of Prohibition of Child Marriage Act, 2006 on society in general and identifies the socio-economic and cultural factors responsible for the prevalence of child marriage in the state of Bihar.

Economic analysis of law plays a very important role in the field of crime and punishment. It is based on one of the most important concepts of economics, i.e., rationality. The concept of rationality is based on the idea of maximizing one's own utility in a given situation. A rational person is capable of maximising his satisfaction. It implies that he is busy calculating the cost and the benefits attached to the different alternatives available to him. The decision maker, *i.e.*, the rational individual, has a reason and justification for his choice, and so there is no wild or inexplicable choice of object by him (Hix, 1994). Because of this understanding, the rational choice theory becomes very attractive, convincing, and reasonable for scholars to apply in other disciplines as well, where choice making is important. In fact, it is the central idea to the economic analysis of crime and punishment as well. The main reason could be economic theory being complete in explaining coherence in decision-making by an individual. Legal decisions can result in market like choices, and an individual is capable of evaluating these choices (Ulen, 1999). While committing a crime, a criminal calculates the expected social, economic, psychological and even legal cost attached to the crime. If he finds that the gain from committing crime is far more than the above cost, he intentionally commits crime. The

above economic considerations help the individual to engage in criminal behaviour *i.e.*, when he finds that the rewards attached to the crime outweigh the existing risks, he is inclined to commit crime. The present study uses economic analysis of the law on the Prohibition of Child Marriage Act, 2006, and uses microeconomic tools like rationality, cost benefit analysis, and Pareto efficiency criteria to examine and test the efficiency and efficacy of the law. By offering a thorough viewpoint based on the above analysis, the research aims to provide suggestions and recommendations to the policymakers as well as the state government of Bihar for making the current legislation more effective and efficient in curbing child marriage.

2. RESEARCH DESIGN AND METHODOLOGY

The present research is based on the secondary data available from the National Family Health Survey-4 (NFHS) and NFHS-5, the Census of India, and Economic survey of Bihar. It uses both qualitative and quantitative analysis and descriptive methods to understand the various socio-economic facets of child marriages. The use of descriptive and exploratory studies helped the author in yielding stimulative insights into the relationship between individual behaviour and social practices. The state of Bihar is administratively divided into nine divisions namely, Patna, Tirhut, Saran, Darbhanga, Kosi, Purnea, Bhagalpur, Munger and Magadh. The researcher has selected one district from each division with an aim to gather the facts, figures and insights needed for a comprehensive understanding of the child marriage incidents in the state. Accordingly, the nine districts from each division of Bihar namely East Champaran, Madhubani, Supaul, Kishanganj, Bhagalpur, Jamui, Jehanabad, Rohtas and Saran were selected for the study.

In a table given below, the percentage of child marriage among women below 18 years in the nine districts of the state of Bihar is taken for addressing this issue. (Refer Table 1). The data is collected from the NFHS-5 and NFHS-4 for a comparison. A comparative analysis shows that out of these 9 districts, 3 districts are high incidence districts namely East Champaran, Kishanganj and Bhagalpur showing an increasing trend in the cases of child marriage, whereas 5 districts namely Madhubani, Supaul, Jamui, Rohatas and Saran show a declining tendency of child marriage incidents. Jehanabad districts do not show any significant improvement and there is just a marginal fall in the rate of child marriage in recent times.

Districts	2019-20 (+5)	2015-16 (NFHS-4)
East Champaran	49.2	44.1
Madhubani	39.2	42.7
Supaul,	55.9	60.8
Kishanganj,	36.6	25.4
Jamui,	51.9	60.2
Jehanabad	41.6	42.6
Rohtas	30.3	38.3
Bhagalpur	42.4	29.7
Saran	26.2	30.0

Table 1 Percentage of Women age 20-24 married before 18 years in Bihar

Source: National Family Health Survey, India (2019-20)

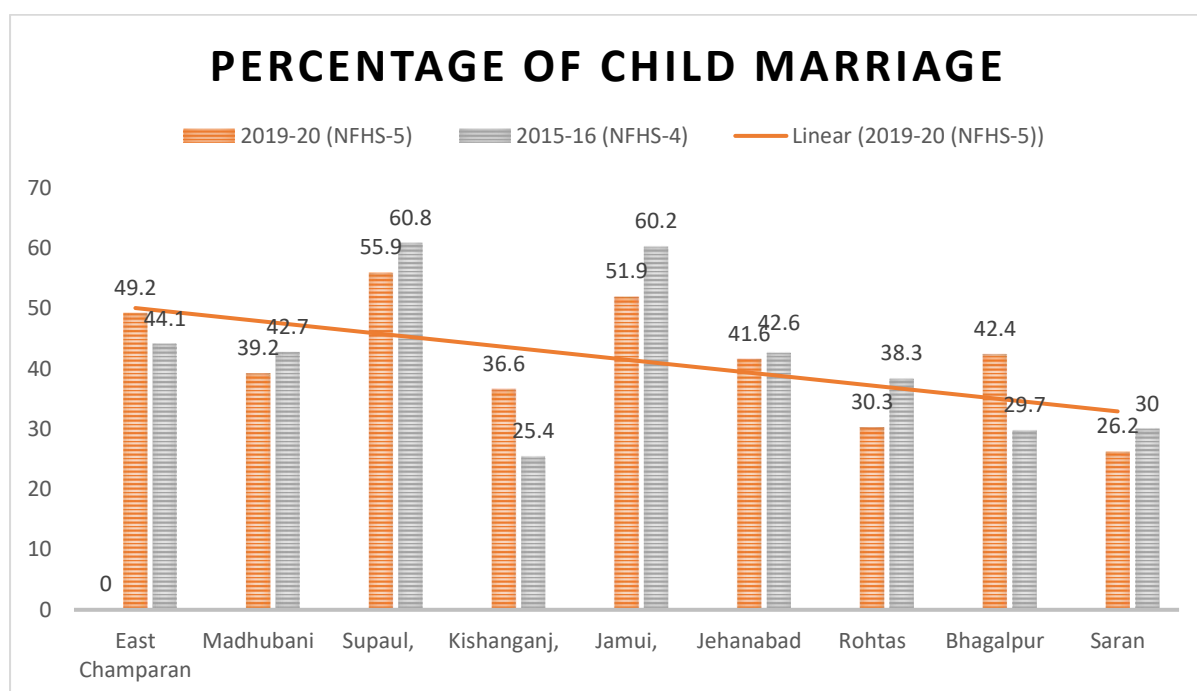


Chart 1 Percentage of Child Marriage

Source: National Family Health Survey, India (2019-20)

These data align with the findings of the other studies which have documented comparable patterns in the incidence of child marriage in the state of Bihar. Taking serious note of the pervasive incidents of child marriage, the government of Bihar issued a directive on July 28,

2022, stating village head (Mukhiya) and ward member will be held responsible for the forbidden act of child marriage in a particular locality, which would result in their termination from the post. The Panchayati Raj department of the state government of Bihar, ordered all the district collectors to strictly enforce the Prohibition of Child Marriage Act, 2006 (The Indian Express, 2022).

The NFHS 5, confirms that the child marriage exhibits a conflicting pattern in the state of Bihar with a deep-rooted socio-economic disparity. A report on child marriage in Bihar by UNFPA, based on the key insights from NFHS-5 (2019-21) also highlights the closeness of child marriage with poverty (UNFPA, 2022). Accordingly, girls with no education or below primary level education were more likely to experience child marriage. The report further indicates that, in terms of wealth index, child marriage displays variations across income groups. It indicates that 54% of the girls within the lowest income quintile are married before reaching the legal age of marriage as compared to only 9% of girls in the highest quintile who marry before the age 18 (UNFPA, 2022).

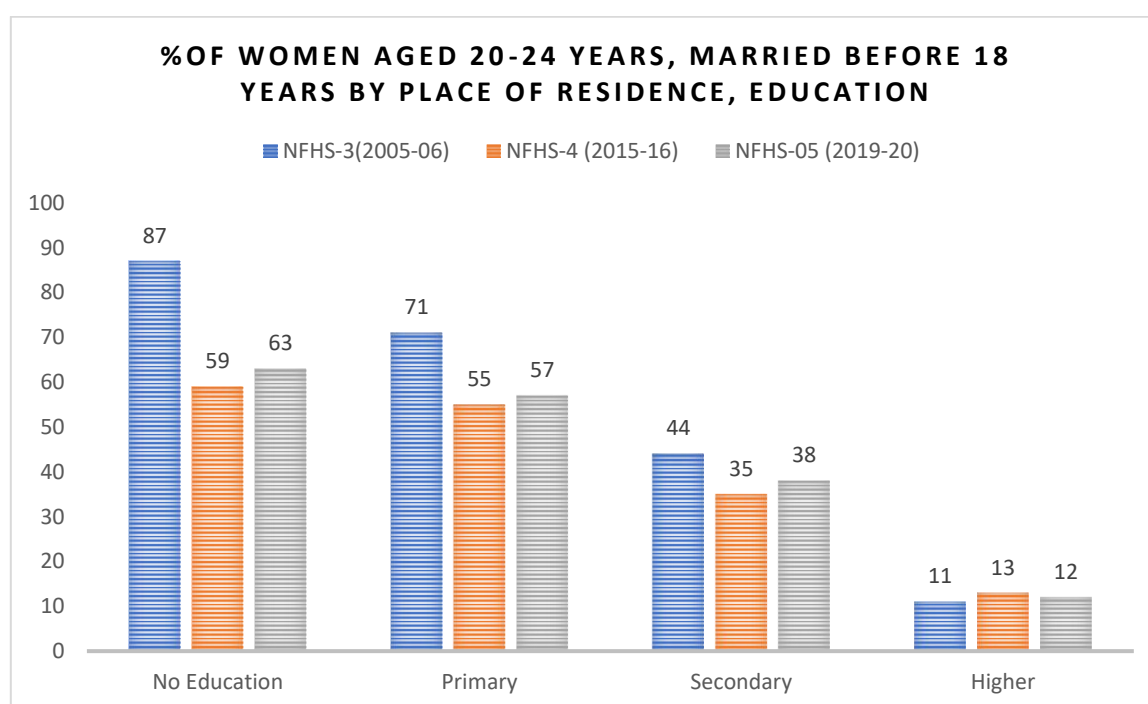


Chart 2 Percentage of women married before 18

Source: UNFPA, 2022. Analytical Paper Series1A

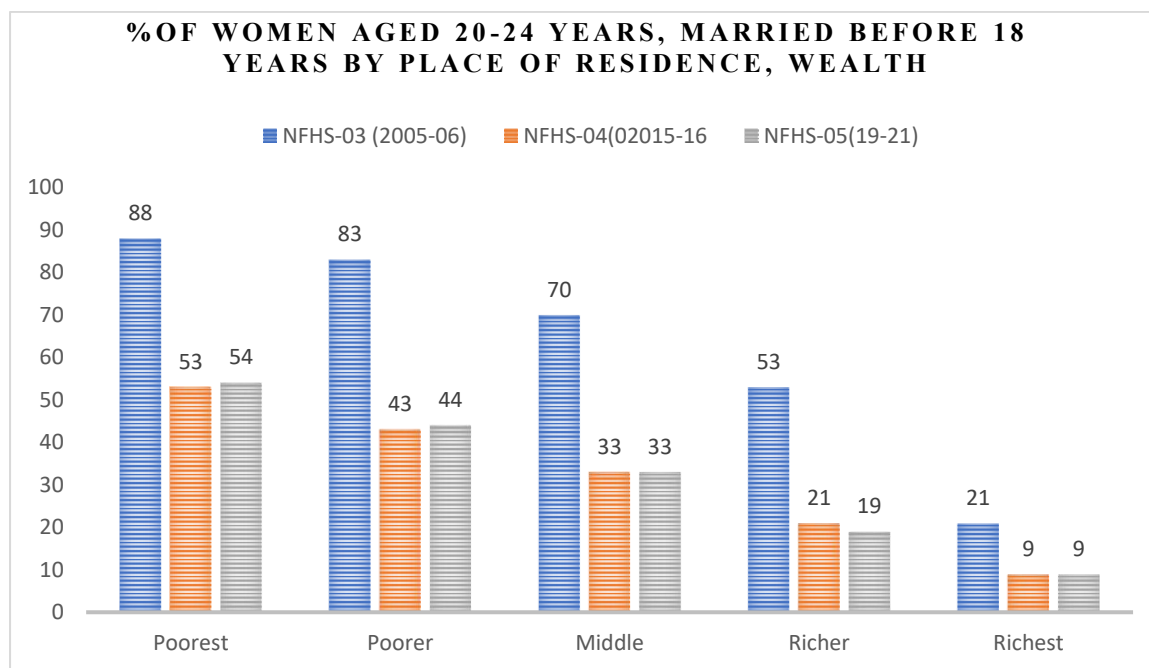


Chart 3 Percentage of women married before 18 years by place of residence, wealth

Source: UNFPA, 2022. Analytical Paper Series 1A

3. FACTORS RESPONSIBLE FOR SPIKE IN CHILD MARRIAGE IN HIGH INCIDENT DISTRICTS

Although there are specific legislations related to the legal age of marriage, their effectiveness in curbing the practice of child marriage remains limited. Particularly in Bihar, child marriages continue to be widespread and therefore, it is important to explore the direct and indirect socio-economic determinants influencing the occurrence of child marriage. The combination of social and economic variables like a child's education, parents' education, income level, religion, caste, social customs, and tradition are responsible for the prevalence of child marriage in these regions of Bihar. Moreover, 'lesser dowry for younger girls' is a significant contributing factor to child marriages in the state. The tendency to solemnise the marriage of a girl at an early age increases manyfold if there are more than one daughter in the family. However, what is more interesting is that poverty is not the main driving force behind child marriage. Even in some affluent families, the practice of child marriage continues because of parents' inability to challenge customs or cultural practices. The social norm of marrying a girl child early is considered a healthy practice and is internalised by parents. It is worth mentioning here that in a research study conducted by the CRY (Child Rights and You) it was revealed that majority of the parents in India were aware that child marriage is prohibited but very few of them were aware about the minimum legal age for marriage (CRY, 2021). A study done by

UNFPA on child marriages in Bihar highlights the strong link between education and delayed marriage. Based on the regression analysis the study showed that on every additional year of raising a girl's education, the age of marriage increased by 0.19 years (UNFPA, 2022). To put it differently, in order to raise the age at marriage of women in the state of Bihar, there has to be increase in the number of years of a girl's education by minimum five years (UNFPA, 2022). While the state government of Bihar has several schemes offering support to the girl child, like Mukhamantri Kanya Suraksha Yojana (MKSY) and Mukhyamantri Kanya Utthan Yojana (MKUY), providing financial assistance to supporting education at various stages of life of a girl child, the child marriage continues to prevail. The higher incidences of child marriage can be attributed to lack of public awareness and knowledge about these government policies and schemes in Bihar.

4. ECONOMIC ANALYSIS OF PCM ACT, 2006: UNTYING THE KNOTS BETWEEN LAW AND ECONOMICS BASED ON THE APPLICATION OF ECONOMIC MODEL OF CRIME & PUNISHMENT AND PARETO EFFICIENCY

Nobel laureate Gary Stanley Becker in his famous article "Crime and Punishment: An Economic Approach (Becker, 1968)" says that *"crime" is an economically important activity or "industry," notwithstanding the almost total neglect by economists.*" Most of the economists assumes that criminals are rational human beings and their decision to commit crime is based on cost-benefit analysis of the alternatives available to them. On that basis one can understand that committing crime is immoral but not an inefficient decision. If a theft of few dollars makes the thief richer and the other person from whom it is stolen poorer by few dollars, the total wealth of society still remains unchanged. However, theft can become economically inefficient if most of the productive resources of society are diverted from increasing investment, production and economic growth to the business of stealing (Becker, 1968). In that case, the victim's loss becomes a net social loss which of course results in an equation where:

- i.) Social cost of theft > amount stolen by thief (if theft results in additional costs like defensive precautions by potential victims) and
- ii.) Thief's net gain will be > social cost (if thieves become more skilful and capable)

However, this understanding can also have an interesting interpretation when theft is considered inefficient and illegal. But more importantly, in a legal system punishment can also become inefficient as it not only affects offenders but also other members of society. Punishments involve huge cost (imprisonment expenditures, supervisory, food, fine

collection cost, detention cost etc.) Therefore, the total social cost of punishments becomes higher,

- i.) If more money is spent to prevent just a few dollars theft and
- ii.) If reducing theft to the negligible level costs more to the state.

This simple explanation raises several issues, both practically as well as theoretically. Practically because it is unclear if high social cost of punishment is capable of deterring/discouraging crime. If affirmative, then by how much? Theoretically, punishments itself can be inefficient for the reasons like:

- i.) Catching criminals is costly
- ii.) Criminal's loss in the form of imprisonment does not result in net gain of anybody
- iii.) Society has to pay for the jail

Before extending the same model to the Prohibition of Child Marriage Act 2006, it is important to highlight the actual situation related to child marriage in the state of Bihar. According to the report of International Centre for Research on Women (ICRW) on Empowering Girls to End Child Marriage, Bihar stands with the highest sustained level of child marriage at 60%, way above than the national average of 47% (DNA, 2015). In a study conducted by Kailash Satyarthi Children's Foundation in 2021, there was a 5% increase in the total number of crimes committed against children from 6,591 in the year 2020 to 6,894 in 2021 respectively, however, there was a staggering 160% increase in the number of victims of child marriage from 5 in 2020 to 13 in 2021 (Satyarthi, 2022). In contrast, during the same period, the national average increase of victims of child marriage increased by 34% from 792 victims in 2020 to 1050 cases in 2021 (Satyarthi, 2022). The numbers may though seem unappalling but the incident of child marriage prevails and it remains largely unreported because of poor legal enforcement and reluctance to challenge existing social norm in Bihar.

On the basis of cost-benefit analysis of crime explained above, child marriage becomes economically inefficient if it is adversely affecting the overall welfare of the children in the form of their physical, mental and emotional sufferings. The child victim's loss will become a net social loss if the practice of child marriage continues and the social cost of child marriage remains insignificant. The equation can be explained as

- i.) **Social cost of child marriage > social benefit of child marriage** (if enforcement and the severity of the punishment are complemented and supported by society, and prohibition law expressly criminalise child marriages.)

- ii.) **Social gain/benefit of child marriage will be > social cost of child marriage** (if legal enforcement is weak, poor families can easily reduce the economic burden of raising a girl child, early marriage reduces marriage cost in the form of dowry and continuance of tradition and customs believing in early marriage etc resulting in more social benefit derived by solemnising child marriage.)

In other words, it can be expressed in the form of the following equation:

$$L_d + E_c + S_c + P_s + W_e > P + (P_a + P_c)$$

L_d refers to less Dowry

E_c refers to the economic cost of raising a girl child and the economic liability of a girl child

S_c refers to the benefits of following societal customs and norms of solemnising child marriage and saving money on marriage

P_s refers to the intangible psychological benefits of upholding women's honour by marrying them before they reach puberty, thereby reducing the chances of women related crime like rape and other offences and the cost associated with it.

W_e refers to weak enforcement of prohibition law

P refers to the economic cost of punishment under the law for solemnising a child marriage

P_a refers to probability of arrest and

P_c probability of conviction

That is, in the above situation, a society would always prefer to choose, exercise and continue solemnising child marriage practices irrespective of the law prohibiting such acts. On the basis of the above cost-benefit analysis, it is evident that, if the benefits (economic, social and psychological together) of child marriage are higher than the opportunity cost of getting arrested and convicted, the PCM Act, 2006 would be economically inefficient legislation to deter crime and social evil like child marriage.

It is significant to analyse the specific provision of the Prohibition of Child Marriage Act, 2006, at this juncture. The punishment prescribed under Sec. 10 of the PCM Act, 2006 for

solemnising a child marriage and promoting or permitting solemnisation of child marriage does not seem very strict and therefore lacks deterrent effect (PMCA Act, 2006). Section 10 of the Act provides for the punishment of rigorous imprisonment extending up to two years and fine up to one lakh rupees only, for any person who performs, conducts, directs or abets any child marriage, unless he proves that he had reasons to believe that the marriage was not a child marriage. Furthermore, the absence of birth certificates in the rural areas act as a technical challenge in verifying age, which easily undermines the effectiveness of the law and reduces the social cost of engaging in child marriage.

Though Sec. 15 of the existing legislation considers the offence to be cognizable and non-bailable, the conviction rate is highly insignificant to prevent the offence (Sharma, 2022). According to Kailash Satyarthi Children's Foundation (KSCF), the conviction rate in child marriage cases in India is "extremely poor" at just 10%, with at least 96% of the cases still pending trial all over the country (Sharma, 2022). As per the research done by the Nobel Laureate's foundation (Satyarthi, 2022), the following table explains the current status of the number of convictions in India in matters related to child marriage

Year	No of Conviction
2019	12 (out of 1640)
2020	6 (out of 2,092)
2021	10 (out of 2865)

Table 2: No. of Conviction in India in matters related to Child Marriage

Source: Kailash Satyarthi Children's Foundation

Unfortunately, this represents the lowest conviction rate of all types of crimes committed against children. Child marriage in this state has not received the attention it deserves as a violation of human rights (Ali & Bharti, 2015).

a. The Pareto Efficiency

In a large and complex society like India, enacting or repealing a law to prohibit a social evil can make some people better off and some worse off. The cost-benefit approach of economic analysis of law, stems from 'Paretian Efficiency' criteria. In order to get a better finding in the above case, society's choice of whether or not to solemnise child marriage, should also be examined from the approach of Paretian criteria as well. Pareto efficiency is said to be

achieved when any change responsible for improvement in the well-being of some individuals does not reduce the well-being of others and therefore such activity should be undertaken. In the given situation, if the overall impact of the above law has to be examined, then it is important to consider its effects on different stakeholders involved:

- b. Children (because the prohibition law aims to protect the children from the negative impacts of child marriage)
- c. Families (dissuade the families from practising child marriage by imposing penalty and punishment on solemnising child marriage and thereby disrupting their old social and cultural practices)
- d. Society (The law aims to improve the social, mental, physical, psychological, educational and economic well-being of the female child and thereby promoting gender equality.)

It is important to determine whether there is any possibility of 'Pareto improvement' with the implementation of above Law in the state of Bihar. If the existing law is capable of eliminating child marriage from the state of Bihar and thereby protects children from the negative consequences of early marriage, it makes them better off (in the long run, children's social, economic, physical, emotional and mental conditions improve). Society is benefitted from the reduced child marriages and improved health, education and economic outcomes. If no individual's economic condition is worsened, then the child marriage prohibition law can be considered a Pareto improvement.

However, in the present situation in the state of Bihar, based on data and analysis provided in the above segments, pareto improvement or even optimality seems to be a distant dream. The cultural and social traditions and practice related to child marriage is deep rooted and is capable of potentially making these families worse off if the law is strictly enforced. In fact, there are huge 'economic costs' involved, if the families are forced to adapt and adjust to new social condition. In the case of the state of Bihar, the existing cultural and social norms often conflict with the idea of economic efficiency. Besides, there are significant enforcement costs which varies across the state. Though, these conditions do not make the law inefficient in itself but makes the prohibition law less effective. Until and unless, education and awareness against the social practice of child marriage and related negative consequences are not spread and acknowledged, acceptance of the above law becomes difficult and families may find themselves in a worse-off situation. To achieve pareto efficient position, financial or economic support to the potentially affected families along with other alternative social

schemes and services have to be provided, so that the socio-economic benefits of raising a girl child can keep them in economically better-off condition.

A quick glance on the data provided by the Breakthrough campaign, which covered some 3,360 households in three districts of Bihar and Jharkhand for the survey testifies the above arguments (Jenkins, 2013). As per the findings of the survey, parents are aware of the ill effects of child marriage, but still, they prefer to practice this social evil because of huge social pressure and tradition. In the reports of the survey, it was found that 88.43% of the parents agree that child marriage results in ill-health and almost 76.56% accepted that it disrupts a child's education as well (Jenkins, 2013).

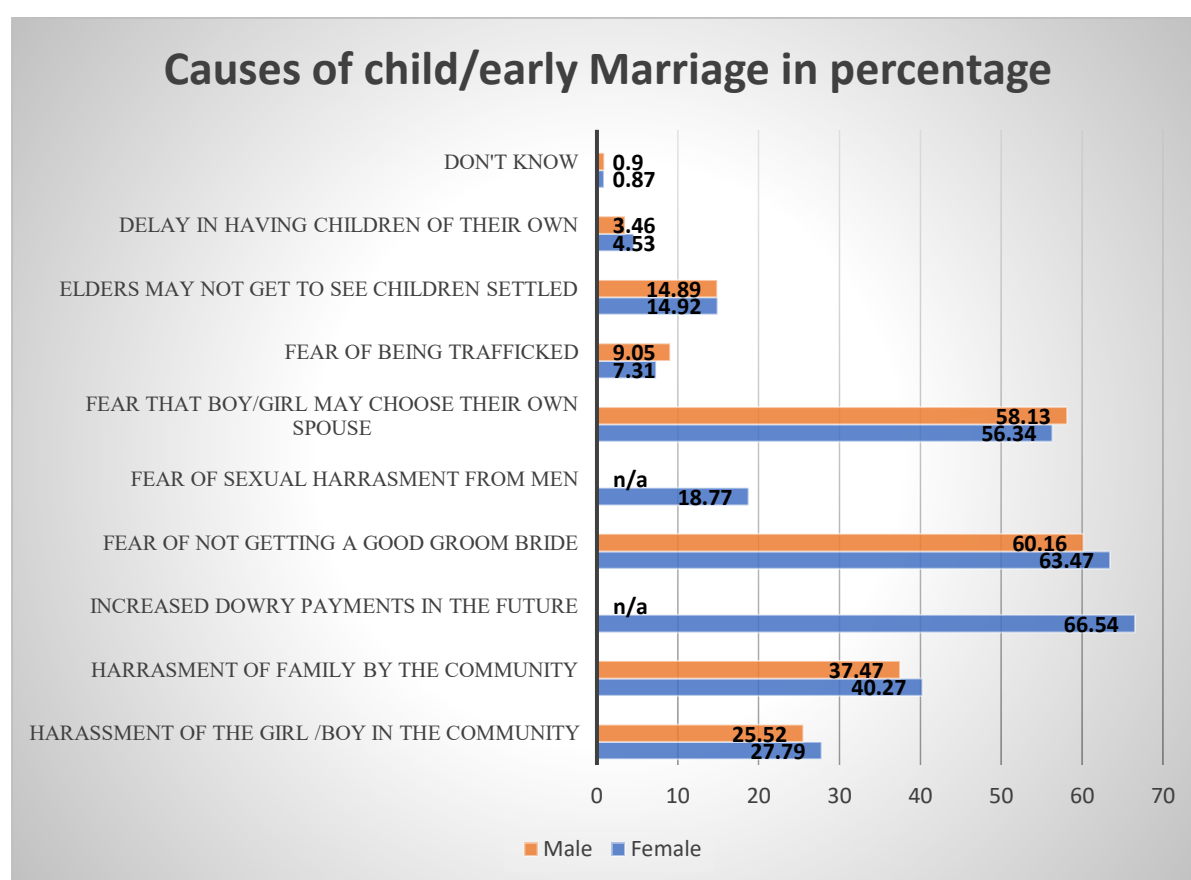


Chart 4 Causes of child marriage

Source: Breakthrough survey with Catalyst Management Services, 2012

The efficiency and effective implementation of the existing law, the PCM Act, 2006, much depends upon on the consistency and enforcement of other laws that define a child. Presently, in the Juvenile Justice (Care and Protection of Children) Act, 2000, a “juvenile” or “child” means a person who has not completed eighteen year of age, whereas as the Child Labour (Prohibition and Regulation) Amendment Act, 2016 defines a child as a person who has not

completed his fourteenth year of age or such as may be specified in the Right of Children to free and Compulsory Education Act, 2009, whichever is more. While the Prohibition of Child Marriage Act, 2006, defines a 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. The above contradiction in defining “child” makes the legal enforcement of the above statute very weak and less effective. Another important issue related to the PCM Act, 2006 is its conflict with the personal laws. The coexistence of multiple laws within the country complicates this problem (Scolaro et al, 2015). Though the PCM Act, 2006 was implemented with a purpose of uniform applicability to all religions, as a secular law, it has failed to supersede personal laws like the Muslim Personal Law, Jewish Personal Law, and even the Indian Christian Marriage Act. This complex legal structure highlights the existing contradictions, which can jeopardize children’s ability to seek and obtain legal protection (Scolaro et al, 2015).

Justice A.K. Sikri’s remark at the release of data related to child marriage in June 2017 validates the issue of discrepancy, inconsistency and conflict between PCM Act 2006 and some personal laws. In the words of Justice Sikri,

“Prevention of Child Marriage Act is a secular law. But the Muslim personal law says once a girl attains puberty, she is ready for marriage. Nowadays, a girl attains puberty at the age of 11,” adding, “child marriage was one of those laws that had failed to deliver because of non-acceptance by society.”

In recent times, the various courts, while deliberating upon the legality of child marriage, have upheld the child marriage. In a case *Yusuf Ibrahim Mohammed Lokhat v. State of Gujarat* (2014) the honourable High Court of Gujarat, upheld the child marriage, since it was keeping with the Muslim Personal Law. Likewise, in *Jitendra Kumar Sharma v. State* (2010) the Delhi High Court upheld the child marriage citing that the marriage must be viewed from the perspective of Hindu marriage and therefore is not void under it as long as Section 12 of PCM Act, 2006, is not violated. Yet the Delhi high court’s three judge division bench in, *Court on its own Motion (Lajja Devi) v. State* (2012) held that

“This marriage, as per our discussion above, is voidable. Since she has not attained majority and is residing with her parents, this arrangement would continue. When she becomes major it would be for her to exercise her right under the PCM Act if she so desires and future course of action would depend thereon.”

Recently while delivering a 141-page judgement on a PIL, the hon'ble Supreme Court bench comprising of the then Chief Justice D Y Chandrachud and Justice J B Pardiwala and Justice Manoj Misra, highlighted the persistence of child marriage on an alarming scale even after 18 years of enactment of the PCMA, 2006 (Times of India, 2024). The bench said that

“The issue of the interface of personal laws with the prohibition of child marriage under PCMA has been subject of some confusion.”

When closely observed, it is seen that in the judgments related to the matter of child marriage, the High Courts of various states have not used the PCM Act 2006, to supersede personal laws, and therefore, such marriages are not declared void and continue to remain legal unless and until the guardian of the minor or minor after attaining maturity files an application for annulment of marriage. Interestingly, minors who are subjected to child marriage are often unaware of their rights, less educated, economically dependent and therefore chances of annulment of such marriages are rare and mostly nil. Therefore, the PCM Act, 2006 has to a very great extent failed to bring favourable change in society, and the practice of child marriage is still rampant. The abovementioned Act, to a certain extent, has created a great deal of misunderstanding and confusion by considering marriages are voidable at the discretion of parties involved and therefore marriages are valid until court nullifies it (Ganguly, 2015).

5. FINDINGS OF THE ANALYSIS

In a general parlance, a regulation is effective as well as efficient if reasonable individuals behave in a way that improves overall society's welfare. A close and careful examination of the above issue clearly reveals the following inferences about that the Prohibition of the Child Marriage Act, 2006.

- The PCMA, 2006, is not an efficient law and has a mixed impact in curbing the practice of child marriage in the state of Bihar because it does not increase the social cost of child marriage in the form of criminalising child marriage or in terms of punishment prescribed under the provisions of act.
- The social benefits associated with child marriage for the poor, populous, patriarchal society in the state of Bihar is higher than the social cost of child marriage therefore, child marriage is not considered a crime in the state.
- The coexistence of multiple laws within the country defining 'child' makes the legal enforcement of the PCM Act, 2006 very weak and less effective.

- The PCM Act, 2006 as a secular law, has failed to supersede personal laws like the Muslim Personal Law, Jewish Personal Law, and even the Indian Christian Marriage Act.
- The existing social schemes of the state of Bihar for the girl child are not demand-driven and the benefits of the scheme are not availed by the intended beneficiaries making these schemes less effective.
- In the absence of compulsory registration of marriages, there is limited deterring effect on child marriage.
- In the absence of birth certificates in the rural areas, verifying a child's age becomes difficult, thereby undermines the effectiveness of the law and reducing the social cost of engaging in child marriage.
- The government of Bihar till date has no focussed intervention in force to curb high rate of child marriage.

6. CONCLUSION

At this juncture, when countries across the globe are committed to ending child marriage by 2030, India and more importantly, the state of Bihar has inadequately addressed the root cause of child marriage. Persistent gender inequality, social and economic insecurity are majorly responsible for social evils like child marriage to prevail. To understand and assess the enormity of the situation, one can refer to the data provided by *Girls Not Bride* a global partnership of more than 1600 civil society organisations from over 100 countries working collectively towards ending child marriage (Girls Not Brides, 2025). According to it

“...every year 12 million girls are married before the age of 18 i.e., 23 girls every minute or 1 girl in every 2 second.”

The existing legislation, that is, the PMC Act, 2006 will be more effective if there is an equal focus of the government on empowering young girls and challenging existing gender inequality. Empowering girls through education and free access to education can play a very important role in curbing this social evil as it increases the social benefits of complying with the prohibition law. Moreover, improving the quality of secondary and higher education can provide more life-options for girls which will not only result in delayed marriage but will also

enhance a girl's social and economic opportunities, thereby strengthening the incentive for families to comply with the law.

Offence like child marriage should be treated as an offence affecting the health and material welfare of society as a whole and not just individual victims. In fact, social opposition from the community itself can control and eliminate this evil. A society's response to the issue of child marriage can play a vital role in resisting and reporting crime. Inclusive economic growth including all the marginalised sections of the society can tackle the issue of child marriage to a great extent. It's high time to address internalised inequalities, harmful practices, and gender issues in society by involving all the stakeholders of the society including men and boys. Their involvement is important as they are the decision makers in familial and societal structures and their active participation can go a long way in achieving the objective toward gender equality. A multi-sectoral approach capable of highlighting the challenges existing in education, health, social welfare and legal enforcement is the need of the hour. This approach will help in a better understanding and effective implementation of the Prohibition of Child Marriage Act, 2006. Policymakers can play a very important role in addressing the issue of high-incidence districts through microplanning and the implementation of specially designed programmes aiming to change the social norms and mindsets of the people. The state government of Bihar must undertake several other initiatives to improve the status of a girl child in order to discourage child marriages. The recent decision of the government to implement a focussed intervention to child marriage in the form of a state level 'task force' to monitor the actions taken against child marriage is a commendable step (PTI, 2025). While JEEViKA, a state level women's socio-economic empowerment programme plays important role in dealing with this issue, more such organisations and their comprehensive approach is required to combat this challenge. The state of Bihar needs many other civil society organisations and not just confining to international agencies like UNFPA, but other development partners to formulate a multidisciplinary action plan. While Sec 16 of the Prohibition of Child Marriage Act (PCMA, 2006) authorises the state government to appoint an officer or officers as the 'Child Marriage Prohibition Officers' known as 'CMPO', the state government has assigned this task to DMs and SDMs at district and subdivision levels respectively. It is only recently that the state government decided to develop and ensure an effective coordination through Special Juvenile Police Unit (SJPU) and Child Marriage Prohibition Officers. The Act authorises the CPMO's to prevent solemnising of child marriages by taking actions as they may deem fit, collect evidence for the effective prosecution of persons contravening the provisions of the Act. These

dedicated officers are also given the responsibility of counselling, creating awareness about the ill effects associated to child marriage.

Here it is worthwhile to mention that poverty often exacerbates the practice of child marriage and therefore, to some extent the relevance of 'Samoochik-vivah' or community wedding, can solve the economic issue related to child marriage to a very great extent. In the state of Rajasthan, many villages signed the petition to end child marriage, while extensive community-level measures were undertaken to raise awareness of the law criminalizing child marriage. As a part of 'Sajha Abhiyan' collaborative efforts of multiple stakeholders were taken to address this issue comprehensively (UNFPA, n.d.).

It is imperative to understand that child marriage is not just a legal issue but also an economic and social issue. A close and comprehensive understanding of social, cultural, economic, and legal aspects would make the law more progressive and pragmatic in its approach. An effective enforcement of the Prohibition of Child Marriage Act, 2006 is possible if it is implemented strategically and the with the requisite multi-sectoral approach to deal with the issue of child marriage in the state of Bihar.

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