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Forced to Wed : Right to choose, if when and whom to marry

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Abstract : *Forced marriages may seem a remote problem but it largely takes place in all parts of the world. The tender age of childhood is often transformed into a responsible task. The marriage without consent has involved in many forms. Marriage has been a very old social institution. It has been in the history since ages. This paper presents the different kinds of forced marriages practiced in India. Pakadwa Vivah in Bihar, Slave brides in Haryana, Contract marriages with Sheikhs in Hyderabad, Marriages with Rapists and child marriages are the different forms of forced marriages. There are different*

factors responsible for forced marriages mainly poverty, lack of education and dowry, family prestige etc. We also come across severe violence associated with forced marriages. The domestic violence leads to divorce, dowry, health issues et cetera. Forced marriages are not only practiced in India but also in developed countries like Canada, USA and UK. We have interviewed lawyers of Patna High Court and Police Officers to precisely understand the extent of forced marriages and existing laws related with it, we have conducted surveys on approximately 500 people to understand the factors responsible for forced marriages and so on. The problem of forced marriages is one that hits closer to home than many readers might suspect, but governments both In India and abroad are aware of the problems and taking steps to address it. With the continued support of government and non-governmental organizations more victims will be able to come forward and, in course of time this practice will get stagnated.

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Introduction:

Forced marriage is internationally recognized as the **violation of human rights** and a **form of gender-based violence**. There is no official **definition of forced marriage**. Common elements of forced marriage as interpreted by international and EU bodies include the issue of consent, coercion and duress. There is a close link between forced marriage and **child marriage**. Forced marriage needs to be **distinguished from arranged marriages and marriages of convenience**. Arranged marriages are marriages in which the families of one or both spouses take a leading role in choosing suitable partners but the spouses might still have the choice of whether to accept the arrangement or reject it. Marriages of convenience are marriages contracted for the sole purpose of enabling the person concerned to enter or reside in a Member State. The national research revealed that arranged marriages and marriages of convenience are tantamount to forced marriage when elements such as coercion, duress, violence or threat vitiate the consent.

Forced marriage has been outlawed for many decades and it is somewhat surprising that the issue is still prevalent. The historical background of forced marriages were derived from laws interpreted in the **Dharmashatras** or sacred text which had its root in the **VEDAS**, the oldest surviving document from the Vedic period (C.N. Shankar Rao, Sociology of Indian Society, 2014).

There is a **lacuna of national data on forced marriages** in the country. This can be partly explained by the fact that, forced marriage has only recently been criminalized and the use of the legislation is too early to assess. Moreover, many cases of forced marriage are not reported at all. In some cases, data is not reliable as cases of forced marriage are reported to different public authorities at the same time (e.g. counseling centers of different cities) or to private organizations and NGOs rather than to public authorities.

“Article 16(2) of the Universal Declaration on Human Rights(UDHR) says: Marriage shall be entered into only with the free and full consent of the intending spouses.....men and women have the **right to marry** , according to the national **laws** governing the exercise of that right. But the truth is that arranged, early and forced marriages are traditional in South Asian society.”

Although forced marriage is applicable to both sexes, the number of women involved is considerably larger. Not only women even girls more often experience forced marriages, the impact is more serious on women and girls than men, as they are much more likely to be confronted with domestic violence, sexual abuse and rape. The **United Nation Committee** on the elimination of the discrimination against women emphasized that the provisions encompass, **“the right to choose, if when and whom to marry”** (Universal Declaration of Human Rights, 10 Dec, 1948).

Hypothesis :

- The forced marriages continue to be a reality because of a variety of factors. The major factors are poverty, lack of education and job opportunities, insecurity in the face of war and conflict and the force of custom and tradition.
- Forced marriages are practiced not only in developing countries like India but also in developed countries like Canada.
- There are several law, policies and government's efforts to address the problem of forced marriage but the attempts to implement legal measures have failed.

Objectives :

- To explicate the nature, causes, kinds and consequences of forced marriages.
- To illustrate the extent of child marriages under the specific type of forced marriages.
- To examine nature and type of violence associated with forced marriages and condition of victims.
- To draw attention, encourage and educate people about the aftermath of forced marriages.

Methodology :

- The research is based on primary as well as secondary data.
- The research is based on information and data collected from various books, internet, journals, newspapers, media and other available sources.

- Survey will be conducted in the form of questionnaire and explorative interviews with various personalities.
- Our research consisted of three phases:
 - Desk research
 - Field work
 - And analysis of the finding

History of Marriage : The primitive society was a nomadic society. There was perhaps only a herd-instinct type marital relationship before the dawn of civilization. With the passage of time, the nomadic human beings evolved into an agricultural society and it was considered necessary to ascertain the paternity of children. Based on Hindu Scriptures, marriage system in India was well established in Vedic period(4000-1000 B.C.), and has been closely adhered to by a vast majority of the population ever since. Marriage was treated as an alliance between two families rather than a mere union of two individuals. From ancient times, marriage is considered as a ritual and a sacramental union.

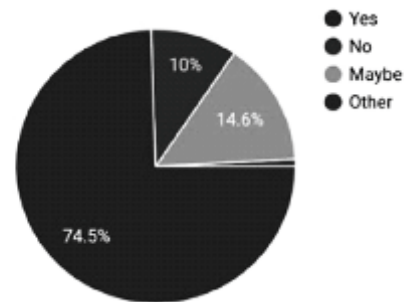
Forms of Marriage : Marriage is one of the universal social institutions. It is a corner stone of a society and very necessary part of the Indian social system. The expression “forms of marriage” normally refers to four major forms of marriage such as – Monogamy, Polygamy, Polyandry and group marriage – as mentioned by anthropologist Malinowski. Hypergamy and Hypogamy; Endogamy and Exogamy are other forms of marriages existing (Vidya Bhushan and D.R.Sachdeva, An Introduction to Sociology, 2014).

Different Types of Forced Marriages Practiced In India:

1. **Child Marriage:** It is one of the most common type of forced marriage. It is more prevalent in rural India and in parts of Bihar and Rajasthan. India contributes an astounding percentage, as many as 40% of world’s child brides (https://www.rusavazw.be/digidocs/dd-001257_2016-Forced-Marriage_EP.pdf).

Through conducting a survey among the married, unmarried, students, lawyers, policemen and professionals. The following data was collected. 449 responses were received.

Graph 1. ”Do you think that child marriages are special form of forced marriages?”



The graph concluded from the responses show that 74.5% people agree that child marriage is a form of forced marriage.

2. **Arranged Marriages:** Arranged marriages without consent is also one of the forms of forced marriages.

3. **Pakadwa Vivah:** Pakadwa Vivah or Shotgun Wedding refers to forced marriages by abduction. It refers to the marriage by abduction in regions like Bihar (Indian Express, 4th February, 2018).

4. **Contract Marriages:** Contract marriages in Hyderabad has been another picture. Hyderabad witnesses thousands of Muslim child brides falling victims of the sexual desires of the rich Arab Sheikhs from Middle East Countries (Hindustan Times, 2nd Oct, 2017).

5. **Slave Brides:** Sex-selective abortions and female infanticide has created the culture of slave brides in Haryana due to shortage of women. These brides suffer human trafficking from other states (www.guardian.com).

6. **Widow Inheritance Marriages or Levirate Marriages:** It’s a practice where a widow is forced to marry her brother-in-law or other relatives (PTI, India, December 15, 2017).

7. **Marriage with rapists:** It has become one of the tools to survive punishment, court’s verdict and to maintain family honour (Sonali Kokara, Forced to marry alleged rapist to support the baby born out of rape 31, 2017).

Section 377 of Indian Penal Code

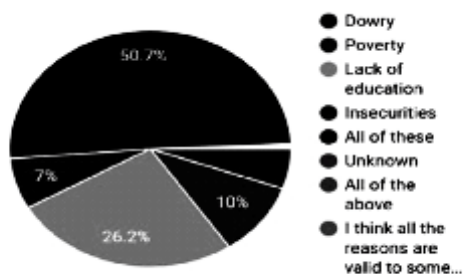
Homosexuality is mostly a **taboo** subject in Indian civil society and for the government. Section 377 of the IPC made sex with persons of the same sex **punishable by law**. Over the past decade, LGBT people have gained more and more tolerance in India, especially in large cities. Nonetheless, most LGBT people in India remain closeted, fearing discrimination from their families, who might see homosexuality shameful. Reports of **honour killings, attacks, torture, and beatings of members of LGBT community are not uncommon in India**.

On 6th September 2018, the Supreme Court of India decriminalized homosexuality by declaring Section 377 of the Indian Penal Code unconstitutional.

Major Factors Responsible for Forced Marriages in India:

- A guarantee against poverty is one of the major cause.
- Some parents do not ask their children for their opinion because they consider marriage as a social act.
- To protect young women and to ensure a solid future.
- To save family honour
- To comply with a religious percept
- Socio- economic factors like high dowry demands and lack of education (<https://www.ohchr.org/Documents/.../ForcedMarriage/.../SouthAsiaLegalclinic3.pptx>).

Graph 2. “what according to you is the major factor responsible for forced marriages.”



The responses show that maximum number of people (approximately 26.2%) held that lack of education is responsible for forced marriages.

Violence Associated With Forced Marriages:

Domestic Violence : Domestic violence includes different kinds of domestic violence like physical, sexual and psychological assault. **Section 498A IPC “Of cruelty by husband or relatives of husband”** states that whoever, being the husband or the relative of the husband of a woman, subject such woman to cruelty shall be punished with imprisonment for a term which may extent to 3 years and shall also be liable to fine. (Women’s Link, October-December, 2014).

Misuse of Section 498A : In the last 20 years of criminal law reform, a common argument made against laws relating to violence against women in India has been that **women misuse these laws**. The police, civil society, politicians and even judges of the High Court have offered these arguments of the “misuse” of laws vehemently. The allegation of misuse is made particularly against **Sec 498A of the IPC** and against the offence of **dowry death in Sec 304B**

Dowry : Dowry, yet another social and marital evil heading to practice of forced marriages. Many a times domestic violence takes place due to dowry. Now- a-days parents have to give hefty amount in dowry, the in-laws of the girl are not concerned whether they can afford it or not. If a girl brings large amount of dowry she is given respect and is treated well in her new home and if she does not bring dowry according to expectations of her in-laws then she has to suffer harassment. Due to this evil practice many newly wed women of India had to lose their lives.

Marital Rapes : Marital rapes which often remains unreported, recently there have been several amendments and plea for marital rape to be criminalized. On which the Delhi government contended before the high court that the act of marital rape has already been criminalized under Section 498A of IPC, which criminalizes a situation where a married woman is subjected to cruelty by husband or his relatives, and hence. (Soni Mishra, The Week Magazine, 24th September, 2017).

Adultery : Adultery is yet another consequence. Sometimes forced marriages lead to adultery as the

person being forced into marriage may have a relation before the marriage or may develop feelings outside the marriage. Section 497 of the Indian Penal Code was dealing with adultery. As per the Indian law, a woman cannot be punished for the offence of adultery. Only a man who has consensual sexual intercourse with the wife of another man without his consent can be punished under this offence in India. If someone lives in adultery, the partner can file a divorce.

The law became defunct on 27th September 2018 by Supreme Court of India. The Supreme Court called the law unconstitutional because it “treats a husband as the master.”

Outcomes of Forced Marriages:

- **Health Issue** : This can come from the spouse, or be the result of violent coercion to marry from within the victim’s immediate or extended family. The family of the victim’s spouse can also be abusive. The victim may present with psychological or emotional problems, such as depression or self-harm. These may result either from being in a forced marriage, or from fear of an impending forced marriage.
- Many forced marriages leads to **divorce**. The Hindu Marriage Act, 1955 gives the following explanation. According to this act, “any marriage solemnised, whether before or after the commencement of this act, may, on a petition presented by either the husband or the wife, be dissolved by a decree of divorce.”
- Victims of forced marriages also witness **early abortions** (International Center for Research on Women, <https://www.icrw.org>).

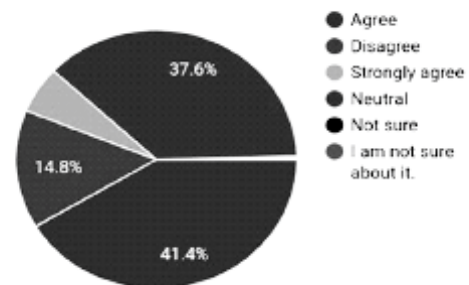
Comparative Study between Developing and Developed Countries:

Forced marriages is a global problem that acts across countries, cultures, religious and ethnicities. Forced marriages are not only practiced in India but also in Developed countries like Canada. The cases of domestic violence associated with forced marriages is seen all across the globe. If there is no reduction in child marriage, the global number of women married as children will reach 1.2 billion by 2050. 1 IN 5 GIRLS in the world are said to be married before 18. Over 650 million women alive today were married as children (G.S.

Bajpai and Mehek Bajpai, Vivtomological Narratives on Gender Violence, 2014)

A ground breaking three-year study of forced marriage in **Canada** has found more than 200 women who were wed against their will. It found 219 reported cases between 2010 and 2012, with **97 per cent of the victims being women**. The survey found the majority of victims, **81 per cent, were between 16 and 34 years old. The report found that parents, siblings, extended family, grandparents and religious leaders were all involved in pushing individuals into forced marriage. The reason were mostly culture (66 per cent), but honour, money and immigration purposes were also behind some forced marriages.**

Graph 3. “Forced marriages are not only practiced in developing countries like India but also in developed countries like Canada.” Do you agree to this statement?



449 responses were collected in which 41.4% of people have the opinion that forced marriages do take place in developed countries too. While 14.8% disagree with this , for them forced marriages in countries like Canada and UK does not exist.

Government Laws and policies:

Several steps are taken by the government to ensure that social evils like forced or child marriages could be eradicated. Ensuring that girls have access to quality education at the primary and secondary level is one of the most important factors in prevention of forced and early marriages. Research shows that the prevalence rate of child or forced marriage is highest among the girls with little or no formal education, and among households with the lowest income levels.

Enacting and enforcing laws that provide for free and compulsory education is an important step in prevention of forced marriages. There are Protecting Children from Harmful Practices in Plural Legal Systems, office of the Special Representative of the Secretary on Violence against Children, 2012 and Sexual Harassment in Education section (<http://rightsofwomen.org.uk>),

Glimpse of Forced Marriages into Movies, Literature and History:

Indian cinemas, literature and history have several documents showcasing the irony and violence associated with forced marriages. These are nothing but the glimpse of society that we live in. Hence through movies and literature of various times, we trace the prevalence of forced marriages in the society. There are several movies, books and novels which reflect the trauma of forced, early and child marriages. Such as movies like "Hum Dil De Chuke Sanam" and novels like Premchand's "Nirmala." In history too we come across several cases of forced marriages such as Firoz Shah Tughlaq's mother Bibi Nala who was a victim of forced marriage.

Findings:

- The socio-economic factor causes forced marriages. Poverty, Lack of education, dowry demands are the root cause. When there was education in early Vedic Era, women and men shared equal rights to choose their partners. Later on, the system slowly started degrading. Women were considered inferior and that led to deterioration. The modern India witnessed marriages without consent. Then, different kinds of forced marriages evolved. Pakadwa vivah is one of the kinds of forced marriage which occurs due to excessive dowry demands. Poverty and lack of education in the lower section of society is responsible for forced marriage.
- The data collected from various sources like surveys, internet, newspaper articles justified that forced marriages are also practiced in developed countries like United Kingdom, Canada et cetera. The statistics show large number of victims of forced marriages worldwide. Even in North America such cases goes unreported most of the times.

- The **Supreme Court has defanged Section 377**, of IPC which deemed that gay sex is a punishable offence. There are many laws for child marriage, rapes, kidnapping but they all tremendously fail due to the societal pressure. There is Women Violation Act, 498A, Hindu Marriage Act and so on. **The victims of forced marriages make compromises instead of divorce.** Also the Supreme Court modifies its judgment on **safeguard against misuse of section 498A.** The Court has also declared that Section 497 is unconstitutional and adultery is not a crime.

Suggestions:

Here are few suggestions to help control child and forceful marriages:

- There should be awareness camps regularly in each district. The officials should keep a check on increasing child marriages case.
- The government is making laws and provisions. They are also implementing laws on certain level. There must be individual approach to eliminate the social evils from root cause. The government should ensure education to all.
- The government should take measures to eradicate poverty and strict laws for dowry demands.
- We should urge governments to ensure that national legal frameworks are in line with international human rights standards. Accordingly, we should call on governments to enact, enforce and raise public awareness of legislation and asserting the primacy of national law over religious or customary laws.
- There is a need to spread awareness. The pen is mightier than the sword, write about it. With the social media in vogue there are so many platforms to voice your opinions.
- Refuse to be a part of it. You need an intrepid attitude to deal with such social malaise if you reside in areas and communities where forced marriages are practiced.
- If you witness a friend/relative being forced into an unwanted marriage, stand up against it, provide emotional support and guidance to the victim. Try to speak up against it in community.

Conclusion:

The United Nation defines forced marriage as the “Union of two person at least one of whom has not given their full and free consent to the marriage.” It is important to recognize child marriage, early and forced marriage not only as an act of human right violations, but also a barrier to development. In free India, we are still the slaves of social evils like poverty and lack of education which directly or indirectly leads to another social evil like forced marriages. There are thousands of laws, policies and provisions but only few of them are implemented. The journey from colonial chains to the marital chain is still in dogma and has not reached the destination. The legislation, executive and judicial wings should collectively work to end this practice of forced marriages. The individual play the major role behind the scene. Everyone can raise the voice and put an end to this. Each and every person has the right to choose if, when and whom to marry.

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