



# Development of Law around Child Marriage in India

Dr. Rekha Chavan

*Asst. Professor of law  
Government law college, Hassan.*

Date of Submission: 06-07-2021

Date of Acceptance: 21-07-2021

## I. CHILD MARRIAGE: A BROAD OVERVIEW

Child marriage – marriage before the age of 18 – is a human rights violation. Despite laws against it, the harmful practice remains wide spread. Child marriage can lead to a lifetime of suffering. Girls who marry before they turn 18 are less likely to remain in school and more likely to experience domestic violence. Young teenage girls are more likely to die due to complications in pregnancy and childbirth than women in their 20s, and their children are more likely to be stillborn or die in the first month of life.<sup>1</sup>

Child Marriage disables the future of many girls. It has an adverse impact on their health, safety and overall development. The lives of child brides are filled with unimaginable difficulties as they're pushed to play roles for which neither their bodies nor their minds are developed. Child marriage is an age-old practice that has both social and religious sanction and cuts across all sections of society. Child, early or forced marriage or unions are a violation of children's human rights. Despite being prohibited by international law, it continues to rob millions of girls under 18 around the world of their childhood. Early marriage is a harmful practice that denies girls their right to make vital decisions about their sexual health and well-being. It forces them out of education and into a life of poor prospects, with an increased risk of violence, abuse, ill health or early death. The economic cost of a girl child is considered a 'burden' on families, and traditionally the attitude of many societies has been to marry them off as soon as possible. The reason cited is that the earlier you marry off a girl child, the lower the cost of dowry. In this practice, a girl child is

reduced to a mere mathematical factor and her life is beholden often to a much senior stranger. She spends no time with her parents. This practice is followed despite the law prohibiting dowry.<sup>2</sup>

In communities where the practice is widespread, the conventional belief is held that marrying off a girl child would prevent her from being subject to unwanted male attention or any form of sexual violence, thus "protecting" her chastity. But behind closed doors, many young brides are subjected to sexual violence by their spouses, often resulting in painful and forced sexual intercourse, multiple sexual health issues and pregnancies during puberty.

## II. REASONS WHY CHILD MARRIAGES CONTINUE

- A girl child is generally considered to be a burden, and traditionally the attitude of the society has been together married as early as possible.
- The justification used by parents and the community is that of having to pay lower dowry when the bride and the groom are young. What they seem to forget is that giving or receiving dowry is a crime under the Dowry Prohibition Act, 1961.<sup>3</sup>
- The demand for a younger bride creates an incentive for families to marry the girl child early and avoid high dowry payments for older girls. Child marriages are also the easy way out for parents who want their children to accept their choice of partner.
- Safety of the girl child from sexual violence and the inability of parents to guarantee such safety is yet another justification for child marriage. There is a belief that child marriage is

1

UNICEF/UNIALB2181/http://www.unicef.org/stories/childmarriage-around-the-world

<sup>2</sup> UNICEF, 'Child Marriage'

<[http://www.unicef.org/protection/57929\\_58008.html](http://www.unicef.org/protection/57929_58008.html)

<sup>3</sup> Asha Bajpai Child Rights in India. Oxford University Press. New Delhi 2003. p.220



a protection for girls against unwanted male attention and promiscuity. Early marriage is a way to ensure chastity and virginity of the bride.

- Parents see marriage as a way to secure the girl's future socially and economically.
- Lack of education and awareness about the consequences of child marriage, poor implementation of the law and lack of will and action on the part of the administration are important reasons for the continuation of child marriage.<sup>4</sup>

### III. CONSEQUENCES OF CHILD MARRIAGE

• All children have a right to care and protection; to develop and grow into a complete and full individual, regardless of their social and economic situation. Child marriage is a blatant violation of all these rights.

• Child marriage denies children their basic rights to good health, nutrition, education, and freedom from violence, abuse and exploitation.<sup>5</sup>

• When the persons in the marriage are children, their body and mind are put to grave and heinous danger. Most often the child is not even aware of what really awaits her/him as

a consequence. Marriage by its very institution imposes certain social responsibilities on the persons in it. It also provides the legal sanction for engaging in sexual activity and procreation. This amounts to sanction for child sexual abuse and rape.

• For girls early marriage is the beginning of frequent and unprotected sexual activity which has serious health consequences. It exposes them to early motherhood, reproductive tract infections and sexually transmitted diseases, including HIV/AIDS<sup>4</sup>. It also means frequent pregnancies and abortions.

• Early marriage resulting in early motherhood means placing both the young mother and her baby at risk. It lead to increase in the rate of infant mortality and maternal mortality and birth of babies who have low birth weight, malnutrition and anaemia.

• Early child marriage violates the child's right to education. Children remain illiterate and unskilled, which in turn limits their opportunities for economic employment and economic independence as an adult.

<sup>4</sup> Government of India. Law Commission. Proposal to Amend the Prohibition of Child Marriage Act 2006 an other Allied Laws. Report 205. February 2008.

<sup>5</sup> Ibid

• Child brides often experience a sudden decline in their social networks, leaving them with few friends and peers if any. Such social isolation pose a host of other challenges that limit their ability to promote their health, development and well-being.

• Parents justify early marriage as a way to protect the girl child from violence. However, parents do not understand that child marriage actually opens the door to an endless and vicious cycle of domestic violence and abuse. Marriage is also often used as the first step to

trafficking for commercial sexual exploitation, forced labour or any other purpose.<sup>6</sup>

• Son preference leading to female foeticide adds to the woes of the girl child. It results in fall in the number of girls available for marriage and hence buying of young brides, particularly in states with a skewed sex ratio. Some girl children are victims of "fake marriages" after which they are trafficked for sexual exploitation or as labour. Reports from Haryana, Punjab, Gujarat, Madhya Pradesh, Uttar Pradesh and Rajasthan bear testimony to this.

### IV. THE ROLE OF THE LAW

#### 1. Child Marriage Restraint Act, 1929,

The Child Marriage Restraint Act, also called the "Sarda Act" as it was sponsored by Rai Sahib Harbilas Sarda was passed by the British Indian Government. The Sarda Bill received the Governor General's assent on 1st October, 1929. The Act came into force on 1st April 1930. The object of this legislation was prevention of child marriages. This legislation was a result of a social movement that was lead by the organised women's group of India. It was a first of its kind.

Initially, the Child Marriage Restraint Act, 1929, was brought into the statute books as a culmination of sustained pressure by social reform groups and conscientious individuals who campaigned against the adverse consequences of child marriage. The law in India around child marriage developed in the 20th century when for the first time the Child Marriage Restraint Act, 1929 was enacted after much push from reformers of the time who had sought the enactment of a specific legislation on child marriage.<sup>7</sup>

#### Shortcomings of Child Marriage Restraint Act, 1929

<sup>6</sup> Ibid.

<sup>7</sup> Initially the Child Marriage Restraint Act, 1929 followed by the current Prohibition of Child Marriage Act, 2006



- The Act aimed only at restraining solemnisation of child marriages in the country and not its prevention or prohibition.
- The procedures laid down under this law to act against solemnisation of child marriages were very cumbersome and time consuming.
- It did not identify authorities responsible for preventing child marriages.

## 2. Prohibition of Child Marriage Act, 2006

The new and current legislation of the Prohibition of Child Marriage Act, 2006<sup>8</sup> brought in a sign of relief. Changes that were sought for under the CMRA were brought in with this enactment. To overcome the shortcomings of Child Marriage Restraint Act, the Government of India enacted the Prohibition of Child Marriages Act, 2006 (PCMA), which received the assent of the President of India on 10 January, 2007. The Act came into effect from 1 November, 2007.

What Does this Law Provide for?

The basic premise of the law is:

To make a child go through a marriage is an offence<sup>9</sup>

Child or minor is a person up to 18 years in the case of girls and 21 years in the case of boys<sup>10</sup>

The provisions of this law can be classified into three broad categories:

### A. Prevention

### B. Protection

### C. Prosecution of Offenders

#### A. Prevention

The law seeks to prevent child marriages by making certain actions punishable and by appointing certain authorities responsible for the prevention and prohibition of child marriages. These persons are responsible for ensuring that the law is implemented. It is also the responsibility of the community to make use of the law. More specifically, under the law:

1. The solemnisation of child marriages is a cognisable and non-bailable offence.<sup>11</sup>

2. Child Marriage Prohibition Officers (CMPOs) are to be appointed in every state to prevent child

marriages, ensure protection of the victims as well as prosecution of the offenders.<sup>12</sup>

3. The Courts have the power to issue injunction for prohibiting child marriages from taking place.<sup>13</sup>

4. Child marriages will be declared null and void if the injunction prohibiting a child marriage from taking place is violated/contravened or, if the child is taken away from their lawful

guardian by enticement, force or use of deceitful means or, is sold or trafficked for the purpose of marriage.<sup>14</sup>

5. The law lays down penal provisions for those who solemnise child marriages.<sup>15</sup>

6. The CMPO and District Collector are responsible for sensitisation and awareness creation in the community<sup>16</sup>

#### B. Protection

1. The law makes child marriages voidable by giving choice to the children in the marriage to seek annulment of marriage.<sup>17</sup>

2. It provides for maintenance and residence of the female contracting party.<sup>18</sup>

3. It gives a legal status to all children born from child marriages and makes provisions for their custody and maintenance.<sup>19</sup>

4. The law provides for all support and aid including medical aid, legal aid, counselling and rehabilitation support to children once they are rescued.<sup>20</sup>

5. The Child Marriage Prohibition Officer has been empowered:

- to provide necessary aid to victims of child marriage<sup>21</sup>

- to provide legal aid<sup>22</sup>

- to produce children in need of care and protection before the Child Welfare Committee or a First Class Judicial Magistrate, where there is no Child Welfare Committee<sup>23</sup>

<sup>8</sup> Prohibition of Child Marriage Act, 2006

‘Statement of Objects and Reasons’

<<https://books.google.co.in/books?id=uHFLYimaEgC&pg=PA1&lpg=PA1&dq=national+commission+for+women+annual+report+1995-96>

<sup>9</sup> Sections 10, 11 and 15 of the Prohibition of Child Marriage Act, 2006 (PCMA, 2006)

<sup>10</sup> Section 2 (a), PCMA 2006

<sup>11</sup> Section 15, PCMA 2006

<sup>12</sup> Section 16, PCMA 2006

<sup>13</sup> Section 13, PCMA 2006

<sup>14</sup> Sections 12 and 14, PCMA 2006

<sup>15</sup> Section 10, PCMA 2006

<sup>16</sup> Sections 13 (4) and 16 (3) (d), PCMA 2006

<sup>17</sup> Section 3(2) and 3(3), PCMA 2006

<sup>18</sup> Section 4, PCMA 2006

<sup>19</sup> Sections 5 and 6, PCMA 2006

<sup>20</sup> Section 16 (3) (g), PCMA 2006

<sup>21</sup> Section 16 (3) (g), PCMA 2006

<sup>22</sup> Section 16 (3) (g), PCMA 2006

<sup>23</sup> Section 32 of Juvenile Justice (Care and Protection of Children) Act 2000, as amended in 2006.



### C. Prosecution of Offenders

1. The law provides for punishment for an adult male above 18 years of age marrying a child.<sup>24</sup>  
2. It also lays down punishment for those performing/conducting/abetting a child marriage.<sup>25</sup>  
3. It prescribes punishment for promoting or permitting solemnisation of child marriage, including for parents, guardians or any other person/association/organisation.<sup>26</sup>

4. The law clearly states that women offenders in any of the above categories cannot be punished with imprisonment. However, they can be penalised by way of imposition of a fine.<sup>27</sup>

#### 5. Mechanisms under the law

The authorities identified for prohibiting child marriage under the present law are:

1. Child Marriage Prohibition Officer
2. District Magistrate
3. First Class Judicial Magistrate or Metropolitan Magistrate
4. Police
5. Family Courts
6. Any person(s) called upon by the State Government to assist the Child Marriage Prohibition Officer. These could include -a respectable member of the locality with a record of social service, officer of the Gram Panchayat or Municipality, officer of the government or public sector undertaking, office bearer of any non-governmental organisation.

#### 6. Reporting Child Marriages

Any person can report an incidence of child marriage before or after it has been solemnised. An immediate report needs to be made to:

- The Police
- The Child Marriage Prohibition Officer or such persons as may be appointed to assist him/her
- First Class Judicial Magistrate or Metropolitan Magistrate
- Child Welfare Committee or a member of the Child Welfare Committee set up under the Juvenile Justice (Care and Protection of Children) Act, 2000 as amended in 2006
- Child Line
- District Magistrate

A First Class Judicial Magistrate is empowered to take *suo moto* cognisance of any reliable report of information of child marriage. The Child Marriage Prohibition Officers are also responsible for

reporting and preventing child marriages. In case of mass marriages the District Magistrate is also deemed to have the powers of a Child Marriage Prohibition Officer and therefore has the powers to stop or prevent solemnisation of child marriages.

#### 7. Complaint

A complaint can be filed by any person, including those who report an incidence of child marriage. Such persons may include:

1. A person who has reason to believe that a child marriage is likely to take place.
2. A person who has personal information.
3. School teachers, doctors, ANMs, anganwadi workers, village level workers, SHG members, village elders, neighbours etc.
4. A parent or guardian of the child.
5. The Child Marriage Prohibition Officer or persons appointed to assist her/him.
6. A non-governmental organisation having reasonable information.

It is critical that concerted efforts are made towards creating awareness that motivates and empowers all community members to assume a pro-active role in curbing child marriages without fear. It is also important to ensure protection for the complainants to avoid repercussions that could defeat the purpose of social justice.

#### 8. Where to File a Complaint?

Since arranging or solemnising a child marriage is a cognisable offence, a complaint has to be made in the nearest police station. The police must make a DD entry (an entry in the Daily

Diary Register maintained at every police station) and register an FIR (First Information Report) based on such complaint. A complaint can also be filed with a Judicial Magistrate of First Class or a Metropolitan Magistrate.

Complaints can be either oral or written, in the form of a phone

call, a letter or a telegram, e-mail, fax or a simple handwritten note duly signed by the complainant. Despite the existence of a stronger law on child marriage, the practise has continued at an alarming rate. This is also because there are still loopholes within the law. The legal contradictions on age of marriage, under-reporting of cases, the voidable nature of child marriages and the low rates of annulments of child marriages in India are some of the major problems when we talk about the law and its implementation. It also leads us to question about whether child brides are aware of their rights under the law and whether they would be provided the requisite safeguards in the event that they stand up to have their marriage annulled.

<sup>24</sup> Section 9, PCMA 2006

<sup>25</sup> Section 10, PCMA 2006

<sup>26</sup> Section 11, PCMA 2006

<sup>27</sup> Provison to Section 11 (1), PCMA 2006



### 3. The Criminal Amendment Act, 2013

The Criminal Amendment Act, 2013 was a huge step with regards to strengthening laws with regards to Rape and increasing the age of consent from 16 years to 18 years. However, Exception 2 to Section 375, IPC continued to remain present in its earlier form. This Exception inadvertently legalised forced sexual intercourse within marriage and especially when a girl is between 15 years to 18 years it fell within the purview of child marriage. On one side child marriage itself is an offence but on the other hand violence against them received protection under the parasol of marriage.<sup>28</sup>

### 4. THE PROHIBITION OF CHILD MARRIAGE (KARNATAKA AMENDMENT) ACT, 2016<sup>29</sup>

On 26<sup>th</sup> April, 2017, the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 was passed, declaring child marriages as *void ab initio* or invalid in law. This was the culmination of efforts at the state level, including a specific recommendation of the Justice Shivraj Patil Committee (2011), which was set up to review the status of child marriage in Karnataka.

The central Prohibition of Child Marriage Act of 2006 ("PCMA"), recognizes child marriage as valid marriage, but "*voidable*" at the option of the minor contracting party.<sup>30</sup> Recognition of child marriage as 'voidable' brings with it all the consequences of a valid marriage, including of conjugal access, and continues to provide impunity to the practice. The reality is few women exercise the option of filing a decree of nullity in the court to void their marriage, once it is consummated. Courts have also been reluctant to declare child marriage as void marriage, unless the facts of the case fall conclusively within the circumstances provided under Section 12 of the Act.<sup>31</sup> This reluctance to address the issue of "voidability" permeates the entire legislative and policy discourse on child marriage.

More than the married girl, it was concern for 'illegitimate' children of 'void' marriages that underlined judgments of various courts on personal laws. With developing jurisprudence under personal laws, and statutory protections under the Hindu

Marriage Act, 1955, the Special Marriage Act, 1954, and the PCMA, 2006, however, this issue has now been addressed to a large extent. In the context of the Karnataka amendments, the available statutory protections under the PCMA and their interpretation through case law will now apply to 'void' child marriages. For example, children of such void marriage are deemed legitimate<sup>32</sup>, and have right to inherit property of the parents, both self-owned and ancestral, if they are Hindus.<sup>33</sup> Courts can also grant maintenance and residence to the woman in a void child marriage<sup>34</sup> The order continues to operate till her remarriage.

Under the PCMA, these reliefs are granted along with a decree of nullity for a 'voidable' marriage. With child marriage declared void *ab initio* in Karnataka, however, there should be no legal requirement to obtain a decree of nullity from the court.<sup>35</sup> Although the Karnataka Amendment Act of 2016 does not clarify this procedural aspect, existing case law suggests that a girl victim of child marriage should be able to file for relief of maintenance and residence under Section 4 of the Act, without first seeking a decree of nullity.

Declaring child marriages 'void' reiterates zero tolerance of the practice. Such norm setting is valuable and has been on the cards but action was taken in this regard. International human rights instruments such as the CEDAW state that *marriage of a child shall have no legal effect*.<sup>36</sup> By amending the PCMA and declaring child marriages void, Karnataka has taken a bold step. Its impact will be played out in courts in the coming years and will be interesting to see if this brings down the actual numbers of under-age marriages in the State

The Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 passed in April 2017 declared all marriages between minors void. "...Therefore, any marriage of a child, ie. a female aged below 18 years and a male below 21 years is void *ab initio* in the state of Karnataka. This is how the law should have been throughout the country. As stated by **Justice Shivraj Patil** "There is a need for cooperative, coordinated and collective efforts of ever vigilant civil society, dedicated NGOs, honest and committed law enforcing agencies, proactive judiciary and meaningful and active media, in

<sup>28</sup> The Criminal Amendment Act, 2013

<sup>29</sup> Karnataka Act no.26 of 2017

<sup>30</sup> Section 3, PCMA of 2006

<sup>31</sup> *Jitender Kumar Sharma; and Association for Social Justice & Research v. Union Of India and Ors.*

<sup>32</sup> Section 6, PCMA

<sup>33</sup> Supreme Court in *Revannasiddappa and Anr. v. Mallikarjun & Ors.*

<sup>34</sup> Section 4, PCMA.

<sup>35</sup> *M.M. Malhotra v. UoI & Ors.*

<sup>36</sup> Article 16 of CEDAW



preventing child marriages.<sup>37</sup> The girls vulnerable today i.e. those who are below the age of 18 years are all born in the 21st century i.e. born in the year 2000 or after. They deserve an India free of this social evil.

---

<sup>37</sup> <https://www.deccanherald.com/state/though-outlawed-child-marriage-717642.html>