

PART IV INDEPENDENT THOUGHT V. UNION OF INDIA AND ANR

The Supreme Court of India issued a judgment in *Independent Thought* which discussed the harms and consequences of child marriage.

The “**Statistical Analysis of Child Marriage in India**” by **Young Lives and NCPCR** was relied upon by the Supreme Court to inform its decision and resulted in the reading down of an existing exception in IPC that prevented the criminalization of rape within child marriage.

The Court affirmed that “*a child remains a child whether she is a married child or an unmarried child or a divorced child or a separated child or a widowed child.*” The Court ruled that child marriage is an indisputable “*reprehensible practice... an abhorrent practice; that... violates the human rights of a child.*” It noted that child marriages strip away “*the self-esteem and confidence of a girl child and subjects her, in a sense, to sexual abuse. Under no circumstances can it be said that such a girl lives a life of dignity.*”

The Court reviewed a wide range of material detailing the harmful effects of child marriage, and summarized their understanding as follows:

“an early marriage and sexual intercourse at an early age could have detrimental effects on the girl child not only in terms of her physical and mental health but also in terms of her nutrition, her education, her employability and her general well-being.”

Justice Lokur stated, “*Welfare schemes and catchy slogans are excellent for awareness campaigns, but they must be backed up by focused implementation programmes, other positive and remedial action, so that the pendulum swings in favor of the girl child who can then look forward to a better future.*”

Justice Gupta also spoke to the ambiguity about the primacy of PCMA, and stated that, “*in my opinion, PCMA is a secular act applicable to all. It being a special act dealing with children, the provisions of this act will prevail over the provisions of both the Hindu Marriage Act (HMA) and the Muslim Marriages and Divorce Act, in so far as children are concerned.*”

The Court further clarified that married girls should be considered children in need of care and protection under the JJ Act.

At Young Lives we believe, implementation of this decision is critical, especially given the barriers in access to justice faced by married child brides and the spirit of this judgment must be realized.



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CHILD MARRIAGE IN INDIA

Understanding
the Law

PART I CHILD MARRIAGE AND PROHIBITION OF CHILD MARRIAGE ACT, 2006

What is child marriage?

According to the **Prohibition of Child Marriage Act, 2006** (“PCMA”), a “child” is defined as a male below 21 years of age and a female below 18 years of age; and a marriage in which either party is a “child” is considered a child marriage.

Are child marriages void in India?

It is critical to note that under Section 3(1) of PCMA child marriages are **legally voidable (not void as per the law)** at the option of the party who was a “child”.

As per PCMA, there are only four circumstances wherein a child marriage is considered null and void - firstly, when a “child” is “enticed out of the keeping of the lawful guardian”; secondly, where the marriage is through force or deceitful means; thirdly, where the “child” who is married is sold or trafficked or used for immoral purposes; and fourthly, when a child marriage is solemnized in contravention of an injunction order issued under Section 13.

Is child marriage an offence? What are the penalties as per PCMA?

Yes. As per Section 10 under PCMA, whoever performs, conducts or participates in any child marriage is punishable with 2 years imprisonment or a maximum fine of Rs. 1 lakh or with both.

Offenders under PCMA include:

- A groom marrying a minor girl, provided he is above 18 years of age;
- Parents/guardian;
- Any priest or person who conducts the marriage; and
- Any member of an organization or association of persons, who promote the marriage or permit it or fail to prevent it, which includes attending or participating in a child marriage shall be punishable.

Offences under PCMA are **cognizable and non-bailable**.

Note that under Section 13, no woman can be punished with imprisonment under PCMA.

What are the power of courts under PCMA?

PCMA grants courts the power to issue injunctions either *suo moto* (on its own motion) or in response to complaint filed by any person including non-governmental organization ("**NGO**") to prohibit the solemnization of child marriage.

It is relevant to note that after hearing an application for issuance of injunction prohibiting child marriage under Section 13, the court may reject the application in whole or in part but shall be required to provide reasons for doing so.

Under Section 13(4), the District Magistrate ("**DM**") shall be deemed to be Child Marriage Prohibition Officer ("**CMPO**", for discussion on CMPO see Part II, below) with powers to prevent solemnization of mass child marriages. In discharge of his/her duties to prevent solemnization of child marriage, Section 13(5) of PCMA grants the DM the power to "*take all appropriate measures and use the minimum force required*".

The court issuing a decree of nullity for child marriage also has the power to make an order for maintenance from the husband or his parents (if he is a minor), and to provide the child bride residence until remarriage.

What can I do to stop a child marriage?

You can take any of the following actions:

- Immediately report the child marriage to the nearest police station, CMPO in your district or taluka, Child Welfare Committee, or NGO; or
- You can also directly file a complaint before a Judicial Magistrate of First Class or a Metropolitan Magistrate.

Who can report a child marriage?

- The child (herself/himself);
- A next friend of the child (any family member, friend, or NGO representative may file as next friend of the child);
- CMPOs; and
- Any other person or NGO.

PART II OFFICERS UNDER THE LAW Who is a CMPO?

CMPOs are government officers responsible for preventing child marriages. In most states, the District Social Welfare Officer, District Child Protection Officer, Child Development Project Officer, and Protection Officer under the DV Act are also CMPOs.

What are the duties of the CMPO?

- After receiving a complaint: to visit any place where a child marriage is likely to take place and to prevent the marriage;
- To provide information to the police for registering complaints (first information reports) against offenders under PCMA;
- To collect evidence for effectively prosecuting offenders;
- To meet with, counsel, and encourage family members, individuals, and community members to refrain from promoting or allowing child marriages; and
- To create awareness and sensitise the community on the issue of child marriage.

PART III RIGHTS OF MARRIED MINOR GIRLS

What are the legal remedies available to a child bride?

The following remedies are available:

1. Annulment of marriage and remedies under the PCMA

A minor bride or groom can file an annulment petition to dissolve the marriage.

As per Section 3(3) of PCMA, the petition should be filed upto 2 years after turning 18 for girl and 21 for boys. A legal guardian or next friend can file the petition on behalf of the minor married person.

In the same petition, a girl married under 18 years can also request additional remedies:

- Maintenance or monetary support, which can be on a monthly basis or as lump- sum amount, until she remarries;
- Residence order until she remarries;
- Child custody order;
- Maintenance for children; and
- Return of money, valuables, ornaments, and other gifts received in marriage.

2. Orders under the DV Act

Any physical, emotional, economic, or sexual violence faced by a minor girl (whether currently or in the past) in a child marriage is considered domestic violence.

A girl in a child marriage can ask for the following under the DV Act:

- Maintenance or monetary support (including for medical expenses);
- Residence order (in the matrimonial home or a separate rented or owned house);
- Immediate temporary custody of children until a family court can hear the case;
- Compensation (for domestic violence); and
- Protection order to stop any future abuse.

3. Maintenance under Section 125 of the Code of Criminal Procedure, 1973 ("CrPC")

Under CrPC, a woman can claim maintenance (irrespective of applicable personal law) from her husband who neglects or refuses to provide for her.

4. Remedies under IPC

Cruelty by a husband or one of his relatives is an offence under Section 498A of IPC. If a minor married girl is being subjected to physical or mental cruelty, she may file a criminal complaint (known as a first information report) at the nearest police station. Cruelty includes any willful conduct that may lead the married girl to suicide or cause grave injury or danger to her physical or mental health, as well as any harassment for dowry.

5. Protection under Juvenile Justice (Care and Protection of Children) Act, 2015 ("JJ Act")

The Supreme Court, in Independent Thought v. Union of India (2017) held that girls in child marriage are considered "*children in need of care and protection*" and can seek remedy under JJ Act.

6. Divorce

Child bride can file for divorce on the ground of cruelty or other grounds applicable under the relevant personal law. Under Hindu, Muslim, Parsi, and Christian personal laws, some of the main grounds of divorce are cruelty, desertion, adultery, and bigamy.

As per section 6 of PCMA, a child born of void marriage is recognised as a legitimate child. Such children will have the right to inherit the property of their parents.