

GOVERNMENT OF INDIA

**LAW
COMMISSION
OF
INDIA**

**PROPOSAL TO AMEND THE PROHIBITION OF CHILD
MARRIAGE ACT, 2006 AND OTHER ALLIED LAWS**

Report No. 205

FEBRUARY 2008

**THE LAW COMMISSION OF INDIA
(REPORT NO. 205)**

**PROPOSAL TO AMEND THE PROHIBITION OF CHILD
MARRIAGE ACT, 2006 AND OTHER ALLIED LAWS**

Presented to the Union Minister for Law and Justice, Ministry of Law and Justice, Government of India by Dr. Justice AR. Lakshmanan, Chairman, Law Commission of India, on 5th day of February, 2008.

The 18th Law Commission was constituted for a period of three years from 1st September, 2006 by Order No. A.45012/1/2006-Admn.III (LA), dated the 16th October, 2006 of Government of India, Ministry of Law and Justice, Department of Legal Affairs, New Delhi.

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DO No. 6(3)/117/2006-LC(LS)

February 5, 2008

Dear Dr. Bhardwaj ji,

Sub: Proposal to Amend the Prohibition of Child Marriage Act, 2006 & other allied Laws

I am forwarding herewith the 205th Report of the Law Commission on "Child Marriage".

The Supreme Court in Writ Petition (Crl) No. 81/2006 had requested the assistance of the Law Commission on certain legal issues relating to Child Marriage, and the different ages at which a person is defined as a child in different laws. During the pendency of the Writ Petition, however, the Prohibition of Child Marriage Act, 2006 was enacted giving certain important rights to victims of child marriage and children born from these marriages. The Commission took these changes into account and further examined whether the new Act addressed all the concerns relating to child abuse, health and human rights, which are an inevitable consequence of child marriage. Thereafter, the Commission forwarded its suggestions to the Supreme Court in December, 2007.

The present report is divided into six chapters. After the introduction, the 2nd chapter deals with the salient features of the Prohibition of Child Marriage Act, 2006. Chapter - 3 outlines the data available on the incidence of Child Marriage throughout the country and the possible causes for this. The chapter deals, in some detail, about recent studies on the consequences of Child Marriage. It notes that Child Marriage stunts the growth and development, particularly of the girl child who is the more vulnerable partner. The report takes into account the fact that child marriage may often result in early pregnancy and that complications during child birth and both maternal and infant mortality (both of the mother & child) are common during child birth for young pregnant girls. It further notes that child marriage results in child labour at home and young girls have very little decision making powers. Child marriage makes girls more vulnerable to domestic violence and sexual abuse. It also deprives the girl child of her right to obtain education and live a life of freedom & dignity.

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The report looks at the laws relating to child marriage from various countries and the International Covenants that mandate the eradication of child marriage like CEDAW (The Convention On The Elimination of All Forms of Discrimination Against Women) and Covenants like the CRC (Convention on the Rights Of The Child), which makes it obligatory for states to protect children from all form for violence and abuse and neglect.

After noting the changes to the Child Marriage Restraint Act, 1929 with reference to the age of marriage and age of consent for sexual inter- course and judgments which have upheld child marriage through the years the report recommends that child marriage below 18 for both girls and boys should be prohibited and that marriages below the age of 16 be made void while those between 16 and 18 be made voidable. However, to ensure that young women and children are not left destitute the report recommends that provisions relating to maintenance and custody should apply to both void and voidable marriages. The report further recommends that the age for sexual consent should be 16 for all young girls, regardless of marriage. Finally, it recommends that registration of marriage be made compulsory.

The present report thus aims to suggest a law which will eradicate the evil of child marriages.

I acknowledge the extensive contribution made by Ms Kirti Singh Part time member and Ms Pawan Sharma, Additional Government Counsel in preparation of the final Report.

With kind regards,

Yours Sincerely,

(Justice AR Lakshmanan)

Dr. H.R. Bhardwaj,
Hon'ble Minister of Law and Justice
Shastri Bhavan,
New Delhi-110 001.

LAW COMMISSION OF INDIA

PROPOSAL TO AMEND

THE PROHIBITION OF CHILD MARRIAGE ACT, 2006

AND OTHER ALLIED LAWS

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CHAPTER I

Introduction

The Supreme Court of India, in Writ Petition (Criminal) No. 81 of 2006, has requested the Law Commission to assist it with certain issues relating to child marriage. The Supreme Court in its order dated 27.3.2006 has also noted that different laws specify different ages while defining a child and there are various contradictions between these legislations.

The Writ Petition, which has been filed by the Delhi State Commission for Women and the National Commission for Women, points out that while the word, “child” is defined as any person below the age of 18 in the Indian Majority Act and The Juvenile Justice (Care and Protection) Act, 2000, it was 18 for girls and 21 for boys in the Child Marriage Restraint Act, 1929 (hereafter CMRA). The Hindu Marriage Act also prescribes the same minimum ages for a marriage. The Writ Petition further states that though the Indian Penal Code contains no definition of the word “child”, the age of consent for the girl for sexual intercourse is 16 under Section 375 IPC while in married couples the age of consent is presumed to be 15. According to the Petitioner the Shariat allows marriage at the age of 15.

The Petition further lists as a grievance the following:-

- a) Section 5 and 11 of the HMA do not authorize the court to declare a marriage void on the ground that either of the parties is underage.
- b) The exception to section 375 of the Indian Penal Code exempts a husband from the charge of rape if his wife is not under 15 years of

age. The Petition sees this as a direct contradiction to the Child Marriage Restraint Act of 1929, under which no child marriage is allowed. However the Petition notices that child marriages are not invalid under the Child Marriage Restraint Act, 1929.

The Petition therefore recommends that there should be a uniform definition of child in all legislations for the sake of uniformity and for the sake of protecting children against child abuse. It argues that the legal minimum age for marriage is 18 under a number of ratified international agreements and the laws of many countries. It argues that all marriages under the age of 18 should be void.

It further prays that the Union of India should be directed to amend the laws relating to age of marriage and minimum age of giving sexual consent so that both are in conformity with each other. The petition prays for deletion of the explanation under Section 375 IPC under which marital rape is not considered rape unless the wife is under 15 years of age.

Amongst the reasons given for declaring marriages under the age of 18 void is the reason that child marriage is usually forced marriage and no full and informed consent can be given by a person under 18. Child marriage is also stated to be akin to child abuse and for many girls is the beginning of frequent and unprotected sexual activity which can have serious health consequences like anemia, maternal mortality, infant mortality, and result in certain diseases like HIV/AIDS. The Petition points out that young girls are more prone to domestic violence and have limited social networks. The rights of young girls like the right to education and the right to an all-round development are violated by child marriage.

It is pertinent to point out that after the Writ Petition was filed the Child Marriage Restraint Act, 1929 has been revamped and the Prohibition of Child Marriage Act, 2006 has been enacted. It is a well known fact that child marriage has a specific gender dimension and the adverse effects of child marriage have a greater impact on a girl child. We need to examine whether the new Act addresses all the concerns relating to child abuse, health, and human rights which are inevitable consequences of child marriage.

CHAPTER II

Main Features of the Prohibition of Child Marriage Act, 2006

The new Prohibition of Child Marriage Act, 2006 (hereafter PCMA) brings about far reaching changes in the law as under:-

- Section 3 of this Act states that “child marriages shall be voidable at the option of the contracting party who was a child at the time of the marriage.” It allows for a petition to be filed to declare the marriage void within 2 years of the child attaining majority. However, since a girl is supposed to attain majority at the age of 18 and a boy at the age of 21, the girl can file a petition till she becomes 20 years of age and a boy till he becomes 23 years of age.
- The Act also allows for maintenance and residence for the girl till her remarriage from the male contracting party or his parents.
- It further allows for appropriate orders for custody for any child born from the marriage.
- All the punishments for contracting a child marriage have been enhanced. The punishment for a male over 18 years of age has been enhanced to rigorous imprisonment of up to 2 years or with a fine upto 1 lakh rupees or both.
- A similar punishment is prescribed for anyone who performs, conducts, directs or abets any child marriage.

- The same punishment is also prescribed for anyone who solemnizes a child marriage including by promoting such a marriage, permitting it to be solemnized or negligently failing to prevent the marriage. No woman can however be punished with imprisonment. The Act also makes all offences cognizable and non-bailable.
- The Act further allows for injunctions to prohibit child marriages including ex parte interim injunctions. It states that any child marriage solemnized in contravention of an injunction order will be void.

The Act lays emphasis on the prohibition of child marriages by providing for the appointment of Child Marriage Prohibition Officers by the State Governments and gives powers to these Officers to prevent and prosecute solemnization of child marriages and to create awareness on the issue. However without the required financial allocations these Officers will probably not get appointed. The Act gives the District Magistrate powers to stop and prevent solemnization of mass child marriages by employing appropriate measures and minimum police force apart from giving him all the powers of the Child Marriage Prohibition Officer.

In view of the provisions of PCMA we have to examine whether any further amendments to the law of child marriage are necessary. The present law while making child marriage voidable under a gender neutral provision has also given a male child the right to get out of a forced marriage. The law, however, does not make a marriage invalid whether it is performed when the child is an infant or later at puberty or adolescence. Under the

criminal law, however, Section 375 IPC makes it a crime to have a sexual relationship with a child under 15 years of age. A contradiction therefore remains between the PCMA and Section 375 IPC. It is relevant to mention that prior to the new Act a Parliamentary Standing Committee had examined the government Bill on the Prevention of Child Marriage and suggested that child marriages solemnized after the introduction of the new Act should be made void ab initio. The Standing Committee had pointed out that research had shown that a girl child “has to suffer irreparable losses due to biological factors and inability to sustain pressure of marriage at an early age.”¹ In the next chapter we therefore examine the scope, causes and consequences of child marriages.

¹ Rajya Sabha *Thirteenth Report on the Prevention of Child Marriage Bill, 2004*, New Delhi, November 2005, Para 10.4

CHAPTER III:

The Scope, Causes and Consequences of Child Marriages

Child marriages continue to be a fairly widespread social evil in India. In a study carried out between the years 1998 to 1999 on women aged 15-19 it was found that 33.8% were currently married or in a union.² In 2000 the UN Population Division recorded that 9.5% of boys and 35.7 % of girls aged between 15-19 were married.³ This showed that child marriage was far more prevalent amongst girls and this highlighted the gender dimension of the problem. The National Family Health Survey of 2005-2006 (NFHS-3) carried out in twenty-nine states confirmed that 45% of women currently aged 20-24 years were married before the age of eighteen years. The percentage was much higher in rural areas (58.5%) than in urban areas (27.9%) and exceeded 50% in eight states.⁴ The percentage of women aged 20-24, married by the time they are 18, stood at 61.2% in Jharkhand followed by 60.3 % in Bihar, 57.1% in Rajasthan, 54.7% in AP, and 53% in MP, UP and West Bengal. The NFHS-3 findings further revealed that 16% of women aged 15-19 were already mothers or pregnant at the time of the survey. It was also found that more than half of Indian women were married before the legal minimum age of 18 compared to 16% of men aged 20-49

² The Demographic and Health Survey (DHS) figures retrieved from UNICEF based website, <www.childinfo.org/areas/childmarriage/>, visited on November 2007

³ UN Population Division (2000). *World Marriage Patterns*, Department of Economic and Social Affairs, Washington, <www.un.org/esa/population/publications/worldmarriage/worldmarriage.htm>, visited on November 2007

⁴ *National Family Health Survey of 2005-2006 (NFHS-3)*, <<http://www.nfhsindia.org/>> (The NFHS-3 facts and figures mentioned hereafter have all been retrieved from this website) , visited on October 2007

who were married by age 18. Though NFHS-3 did not compile data on girls who were married below the age of 15, the 2001 Census of India⁵ had revealed that 300,000 girls under 15 had given birth to at least one child. Further in a survey conducted by the Government of Rajasthan in 1993 it was found that 56% girls had been forced into marriage before the age of 15 and of these 7% were married before they were 10.⁶ A second survey conducted in 1998 in the State of MP found that 14 % girls were married between the ages of 10 and 14. ⁷In states like Rajasthan, mass marriages of very young children take place on occasions like the Akha Teej.

The NFHS-3 findings show a slight rise in the median age of marriage for women aged 20-49 from 16.7⁸ in NFHS-2 to 17.2. However this data does not reveal how many marriages are taking place even below the age of 15. Furthermore, with about 315 million people in India being in the age group of 10–24 years (RGI 2001)⁹, and 44.5 % of women aged 20-24 still getting married by the time they are 18, and 29.3% of men aged 25-29 getting married by the time they are 21, the improvement seems trivial.

In 2006 the Hindustan Times reported that 57% of girls in India are married off before they are 18 as per the International Centre for Research on Women.¹⁰

⁵2001 Census of India, [<www.censusindia.gov.in/>](http://www.censusindia.gov.in/), visited on November 2007

⁶ UNICEF website on *Married Adolescents*. Cited in UNFPA. 2004. Child Marriage Advocacy Programme: Fact Sheet on Child Marriage and Early Union

⁷ *Ibid.*

⁸National Family Health Survey of 1998-99 (NFHS-2), [<www.nfhsindia.org/data/india/indfctsm.pdf>](http://www.nfhsindia.org/data/india/indfctsm.pdf), visited on November 2007

⁹ Census-2001 Registrar General of India(RGI) figure as taken from K.G. Santhya and Shireen J. Jejeebhoy paper: *Young People's sexual and reproductive Health in India: Policies, programmes and realities*, Population Council regional working papers No.19, New Delhi, 2007

¹⁰ The Hindustan Times daily on 29.8.2006

The phenomenon of child marriage can be attributed to a variety of reasons. The chief amongst these reasons is poverty and culture, tradition and values based on patriarchal norms. These norms do not take into account that “(i)n actuality, child marriage is a violation of human rights, compromising the development of girls and often resulting in early pregnancy and social isolation, with little education and poor vocational training reinforcing the gendered nature of poverty.

Young married girls are a unique, though often invisible, group. Required to perform heavy amounts of domestic work, under pressure to demonstrate fertility, and responsible for raising children while still children themselves, married girls and child mothers face constrained decision-making and reduced life choices. Boys are also affected by child marriage but the issue impacts girls in far larger numbers and with more intensity... Where a girl lives with a man and takes on the role of caregiver for him, the assumption is often that she has become an adult woman, even if she has not yet reached the age of 18.”¹¹

The marriage of a minor girl often takes place because of the poverty and indebtedness of her family. Dowry becomes an additional reason, which weighs even more heavily on poorer families. The general demand for younger brides also creates an incentive for these families to marry the girl child as early as possible to avoid high dowry payments for older girls.

The girl in our patriarchal set up is believed to be *parki thepan* (somebody's property) and a burden. These beliefs lead parents to marry the girl child. In doing so, they are of course relieving themselves of the

¹¹ Taken from UNICEF based website, <www.childinfo.org/areas/childmarriage/>, visited on November 2007

'burden' of looking after the child. The girls are considered to be a liability as they are not seen as individuals who can contribute productively to the family. Unfortunately, the patriarchal mindset is so strong that the girl has no say in decision making. Texts like Manu Smirti which state that the father or the brother, who has not married his daughter or the sister who has attained puberty will go to hell are sometimes quoted to justify child marriage. Child marriages are also an easy way out for parents who want their daughters to obey and accept their choice of a husband for them.

There is also a belief that child marriage is a protection for the girls against unwanted masculine attention or promiscuity. In a society which puts a high premium on the patriarchal values of virginity and chastity of girls, girls are married off as soon as possible.

Furthermore securing the girl economically and socially for the future has been put forth as a reason for early marriage.¹²

The institution of marriage in communities or societies can be used to serve or strengthen economic and social ties between different families and even communities. Also a young girl may be offered to a family in order to improve the financial and social standing of the girl's family.¹³

Other reasons that have been listed for the high prevalence of child marriages in India are lack of education and knowledge, shortcomings in the law, and the lack of will and action on part of the administration.¹⁴

As stated above, child marriage is a grave violation of the rights of the child depriving her of opportunities and facilities to develop in a healthy manner to obtain education and to lead a life of freedom and dignity. It

¹² Chatterji, Jyotsna, *Child Marriage*, paper presented at India Social Forum, November 2006, New Delhi

¹³ International Center for Research on Women (ICRW) *Policy Advisory on Child Marriage*, <www.icrw.org/docs/childmarriage0803.pdf>, visited on November 2007

¹⁴ Chatterji, Jyotsna, *supra* note 12.

deprives the young girl of capabilities, opportunities and decision-making powers and stands in the way of her social and personal development.

Young brides face the risk of sexual and reproductive ill health because of their exposure to early sexual activity and pregnancy. The NFHS-2 had recorded that only 4% of married girls practiced *gauna*. It had further been recorded that the period between marriage and *gauna* had been reduced to about one year in most cases. The NFHS-3 figures show that the practice has been further restricted to 0.7% married girls. Complications and mortality are common during childbirth for young pregnant girls. Girls who come from poor backgrounds and who are often married at an early age have little or no access to health care services. Risks associated with young pregnancy and childbearing include “an increased risk of premature labour, complications during delivery, low birth-weight, and a higher chance that the newborn will not survive.”¹⁵ Young mothers under age 15 are five times more likely to die than women in their twenties due to complications including haemorrhage, sepsis, preeclampsia/ eclampsia and obstructed labour.¹⁶ Maternal mortality amongst adolescent girls is estimated to be two to five times higher than adult women.¹⁷ Maternal mortality amongst girls aged 15-19 years is about three times higher.¹⁸ Young women also suffer from a high risk of maternal morbidity. It has been found that for “every woman who dies in childbirth, thirty more suffer injuries, infections

¹⁵ Black, Maggie, *Early Marriage, Child Spouses*, UNICEF, Innocenti Research Centre, Digest no.7 (2001), p.10

¹⁶ Mensch, Barbara S., Judith Bruce and Margaret S. Greene, *The Uncharted Passage: Girls' Adolescence in the Developing World*, The Population Council (1998), New York.

¹⁷ Sethuraman, Kavita and Nata Duvvury, *The Nexus of Gender Discrimination with Malnutrition: An Introduction*, Economic and Political Weekly, Vol XLII No44 November 3-9, 2007, p.49

¹⁸ Barua, A., Heman Apte, Pradeep Kumar, *Care and Support of Unmarried Adolescent Girls in Rajasthan*, Economic and Political Weekly, Vol XLII No44 November 3-9, 2007, p.54

and disabilities, which usually go untreated and some of which are lifelong”.¹⁹ Research further indicates that the babies of mothers below the age of 18 tend to have higher rates of child morbidity and mortality. “Infants of mothers aged younger than 18 years have a 60 per cent greater chance of dying in the first year of life than those of mothers aged 19 years or older [UNICEF 2007].”²⁰ Babies are born premature or underweight or young mothers simply lack parenting skills and decision-making powers.²¹

Secondly, young girls face the risk of infection with sexually transmitted diseases including HIV. Young brides who run away from early marriages may end up as sex workers or eventually resort to use sex work as a way of earning additional income.

Young brides also run the risk of catching diseases from their respective spouses, as older husbands often engage in sexual relations with other women outside the marriage. Young married girls do not have bargaining power in the marriage and therefore cannot negotiate safe sex and are deemed vulnerable. It has also been found that young girls are physiologically more prone to contracting HIV/AIDS, as her vagina is not well lined with protective cells and her cervix may be more easily eroded. An analysis of the HIV epidemic shows that “the prevalence of HIV infection is highest in women aged 15–24 and peaks in men between five to ten years later.”²²

¹⁹ Black, Maggie, *supra* note 15, p.11

²⁰ Barua, A., *supra* note 18, p.54

²¹ Otoo-Oyortey, Naana and Sonita Pobi, *Early Marriage and Poverty: Exploring links for policy and programme development*, The Forum on Marriage and the Rights of Women and Girls, London, 2003, p.19

²² Barua, A., *supra* note 18, p.26

Women experience domestic violence from their spouses and their relatives for a variety of reasons. These reasons include dowry and the wife not behaving according to norms set by the husband and his family which are often patriarchal in nature. A study has shown that India has the highest rate of “domestic violence among women married by 18 with a rate of 67 per cent, compared to 45 per cent of women who had not experienced violence.”²³ Since an age gap between men and their wives generally exists and quite often men are much older, the power dynamics between them can be extremely unequal. The girl becomes socially isolated and does not have any decision-making powers and consistently faces harassment from her husband and in-laws. NFHS-3 indicates that decision-making power is extremely limited for married women in general as only 52.5% of currently married women participate in household decisions. Furthermore because young brides enter the marriage at an early age, they do not develop personal and social skills that will enable them to fend for themselves. They become totally dependent on their spouses and are not likely to leave a violent marriage.

Women also undergo sexual violence in marriage and young girls are particularly vulnerable. In a study carried out in Calcutta in 1997 where half the women interviewed were married at or below the age of 15, with the youngest being married at 7 years old, findings revealed that this age group had “one of the highest rates of vulnerability to sexual violence in marriage, second only to those whose dowry had not been paid.”²⁴ The women

²³ U.N Children’s Fund (UNICEF). *Early Marriage: A Harmful Traditional Practice*, UNICEF: Florence (2005), p.22

²⁴ Somerset, Carron, *Early Marriage: Whose Right to Choose?* Forum on Marriage and the Rights of Women and Children, London (2000), p.21

interviewed said they had sexual intercourse before menstruation had started, that sex was early and very painful, and “many still continued to be forced into sexual activity by their husbands.”²⁵ Additionally the young girls “had made their husbands aware of their unwillingness to have sex or of pain during sex, but in 80 per cent of these cases the rapes continued.”²⁶

As husbands are often much older than their brides, girl brides are likely to be widowed at an early age. A child bride who is widowed can suffer discrimination including loss of status and they are often denied property rights, and other rights. Child widows have little or no education or other skills to be able to take care of themselves. At a 1994 Conference in Bangalore, India, participants told of being married at five and six years old, widowed a few years later, and rejected by their in-laws and their own families. These widows are, quite simply, left with no resources and nowhere to go.²⁷

Young girls who are married early usually stop going to school. Giving an education to a girl is perceived by both the girl’s and boy’s families unnecessary for becoming a good wife or a mother, if not a deterrent. Those who have a choice are eventually forced to drop out of school because they are forced to assume the responsibility of doing domestic chores and starting a family etc. Early marriage is often linked to low levels of schooling for girls. NFHS-3 figures show that 71.6% of Indian women currently aged 20-24 years, who had been married before the age of

²⁵ Otoo-Oyorley, Naana, *supra* note 21, p.21

²⁶ Ouattara, M., P. Sen, and M. Thomson, *Forced Marriage, Forced Sex: The Perils of Childhood for Girls*, (1998) p.31, <http://www.nepalsathi.ws/birendra/writings/bhutanrefugees/bt_1998ouattara.pdf> , visited on November 2007

²⁷ Black, Maggie, *supra* note 15, p.9

eighteen years, did not have any education at all. Furthermore, by not going to school, young brides are denied the opportunity to make friendships with peers or acquire critical life skills.

It has been said that “(e)ducated women are more likely to have a say in decision-making regarding the size of their families and the spacing of their children. They are also likely to be more informed and knowledgeable about contraception and the health care needs of their children.”²⁸ Since married girls leave their homes and often villages, towns, cities etc. they “tend to lose the close friendships they had formed in their parental homes, and often become quiet and subdued. This means that even where girls have developed social networks they are unable to access them.”²⁹

The loss of adolescence, the forced sexual relations, and the denial of freedom and personal development attendant on early marriage have profound psychosocial and emotional consequences. Researchers on child marriage in Rajasthan and Madhya Pradesh state that young married girls suffered more than boys due to the abovementioned consequences of child marriage.³⁰

²⁸ Otoo-Oyortey, Naana, *supra* note 21, p.13

²⁹ *Ibid.*, p.21

³⁰ Black, Maggie, *supra* note 15, p.9

CHAPTER IV

Human Rights and the Prohibition of Child Marriage Act, 2006

Child marriage is thus child abuse and a violation of the human rights of the child. It has an extremely deleterious effect on the health and well being of the child. It is a denial of childhood and adolescence; it is a curtailment of personal freedom and opportunity to develop to a full sense of selfhood as well as a denial of psycho-social and emotional well being and it is a denial of reproductive health and educational opportunities. The girl child is the most affected and suffers irreparable damage to her physical, mental, psychological and emotional development.³¹

It is important therefore, to examine whether the new law on child marriage (PCMA) takes into account and seeks to redress the disastrous effects of child marriage in a holistic manner. By making a provision for child marriage protection officers and giving powers to Magistrates to stop mass child marriages and by making child marriages both cognizable and non-bailable the new law certainly seeks to prevent child marriages from taking place and sets a machinery in place to do so. Further, by providing that ex-parte interim injunction orders can be given by a Magistrate to stop child marriages the new law is a definite improvement over the old law which stipulated that no interim injunction orders could be passed without notice. The enhancement of punishment in Sections 9, 10 and 11 for the guardian and others who promote or permit or fail to stop a child marriage, for a groom above 18 and for those who perform, conduct or direct any

³¹ Chatterji, Jyotsna, *supra* note 12.

child marriage, up to two years from the earlier three months and the increase in fine up to rupees one hundred thousand are also welcome changes.

However, three important criticisms of the new Act have been made by Women's and Human Rights Groups and other concerned individuals. One of the main criticisms of the new Act has been that it does not invalidate a marriage even below a certain age. Thus a child of 10,11,12 or 13 years of age can be married and subjected to sexual and other forms of abuse which normally have lasting and irreversible mental and physical consequences. Merely giving a girl child an option to end the marriage after the age of 15 years may not be sufficient. Also, though under the criminal law sexual intercourse with a wife under 15 years is punishable, the marriage is still held to be valid under the new Act. It has been proposed by some that the age of consent under the rape laws should be the same as the minimum age of marriage and all marriages below this age should be held void. Some others have proposed that in special circumstances a marriage may be allowed between over 16 years (hereinafter called the relaxed age of marriage) and the age for consent to sexual intercourse and the relaxed age of marriage should be the same and marriages below the age of 16 should be void.

The new Act like the old CMRA continues to stipulate different minimum ages for a girl and a boy to get married. This provision has been criticized by some as being discriminatory, biased and based on patriarchal notions of marriage.³² Another criticism that has been raised vis-à-vis the new Act is the fact that though a boy can opt out of the marriage till the age

³² Sagade, Jaya *Child Marriage in India*, Oxford University Press, 2005

of 23 years, a girl can only do so till the age of 20 years (2 years after reaching the age of majority).

If we examine the laws in different countries, we see that most countries ban child marriages and punish rape within and outside marriage. However, child marriage continues to be prevalent in most of the developing world. In some countries, though the legal age for marriage is 18 years a person may be allowed to marry before that age in exceptional circumstances. Otherwise the marriage is void. For instance, in Australia a person can apply to a judge or magistrate for an order allowing him/her to marry if he/she has reached the age of 16 years.³³ However, by 1991 every state in Australia had abolished the marital rape exception.

In New Zealand, a person under 20 years of age but over 16 years old can only marry with parental consent. The age of sexual consent for women is also 16 years.³⁴ There is no exception for marital rape in the Crimes Act, 1961 of New Zealand.³⁵ The marital rape exemption was abolished in 1985.³⁶

In the UK, a marriage below the age of 16 years is void.³⁷ The Marital rape exemption was abolished in its entirety in 1991.

³³ *The Australia Marriage Act, 1961 with amendments up to act No. 46 of 2006*, Part II, 11, <[www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/62C9133A12096F07CA25719C00335E03/\\$file/MarriageAct1961_WD02.pdf](http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/0/62C9133A12096F07CA25719C00335E03/$file/MarriageAct1961_WD02.pdf)>, visited on December 2007

³⁴ *Marriage Act 1955*, <www.legislation.govt.nz/libraries/contents/om_isapi.dll?clientID=578134860&infobase=pal_statutes.nfo&jump=a1955-092&softpage=DOC> , visited on December 2007

³⁵ *Crimes Act 1961*, Section 128, Clause 4, <www.legislation.govt.nz/libraries/contents/om_isapi.dll?clientID=578134913&infobase=pal_statutes.nfo&jump=a1961-043%2fs.128&softpage=DOC#JUMPDEST_a1961-043/s.128>, visited on December 2007

³⁶ Mishra, Saurabh & Sarvesh Singh, *Marital Rape — Myth, Reality and Need for Criminalization*, (2003) Practical Lawyer WebJour 12, <www.ebc-india.com/lawyer/articles/645.htm>, visited on December 2007

³⁷ *Marriage Act 1949*, Halsburuy's Laws of England, 4th Edn. Reissue, Vol.29(3) p.41

In Egypt, the age of majority for all legal purposes except marriage is 21 years. The marriageable age is 18 for males and 16 for females.³⁸ But again the age of consent is different from marriageable age. The age for giving consent is 18 years³⁹ and the penal code says that intercourse with a girl below 18 years is rape.⁴⁰

In the U.S., different States have different laws. The legal age for marriage under most of these laws is however 18 for both males and females.⁴¹ However, in States like California a person can marry below that age with the permission of parents.⁴² The marital rape exception has been abolished in 50 States of the US.⁴³

In Pakistan under the Muslim Family Law Ordinance, the girl must have attained the age of 16 years and the boy must have attained the age of 18 years and both need to consent before the marriage can take place.⁴⁴ In Indonesia the age of majority as well as marriageable age is 16 for girls and

³⁸ ~~CEDAW Egypt Country Report~~ (30 March 2000), pp.14-5

³⁹ UNICEF Website, <http://www.unicef.org/knowyourrights/know_oldenough.html> , visited on November 2007

⁴⁰ CEDAW Egypt, *supra* note 38, p.16

⁴¹ Cornell University Law School, Legal Information Institute(LII), <www.law.cornell.edu/topics/Table_Marriage.htm>, visited on December 2007

⁴² California Family Code, Section 301, <www.leginfo.ca.gov/cgi-bin/displaycode?section=fam&group=00001-01000&file=300-310>, visited on November 2007

⁴³ Narayan, Chitra, *When the spouse turns abusive*, the Hindu (Metro Plus Chennai), Jun 03, 2006

⁴⁴ Article 16, CEDAW Pakistan Country Report (2005), p.122

19 for boys.⁴⁵ The age for giving a valid consent to a sexual act is also set at 16 years for a girl. Any marriage below the legal age is void.⁴⁶

The Domestic Violence law in Indonesia also punishes a person in the household who forces sex on another person in the same household with a maximum sentence of 15 years.⁴⁷

The detailing of laws from different countries therefore shows that barring a few countries, most countries have 18 as a minimum age of marriage for both boys and girls. Some countries allow marriage below the age of 18 but above the age of 16. The age of consent to sexual intercourse is the same as the minimum or relaxed age of marriage.

International Conventions also support the proposition that child marriage should be eradicated. Various international bodies such as the UNICEF and the United National Population Fund have suggested that 18 should be considered the minimum age of marriage.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which India has ratified, specifically addresses age of marriage. Article 16(2) provides that "the betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory". The Committee that oversees the Women's Convention, has, however, issued its interpretation of article 16(2) in the form of General Recommendation No.

⁴⁵ Article 16, *CEDAW* Indonesia Country Report (27 July 2005), p.57

⁴⁶ *Ibid.*, p.58

⁴⁷ Amnesty International, *Indonesia: Exploitation and abuse: the plight of women domestic workers* (Report), AI Index: ASA 21/001/2007, February 2007, p.12.

21. entitled "Equality in marriage and family relations."⁴⁸ This recommendation has also suggested that the age of marriage for both men and women should be 18. The recommendation quotes with approval the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, 1993, that States are urged to repeal existing laws and regulations and to remove customs and practices which discriminate against and cause harm to the girl child. It further states, "when men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act. According to the World Health Organization, when minors, particularly girls, marry and have children, their health can be adversely affected and their education is impeded. As a result their economic autonomy is restricted. This not only affects women personally but also limits the development of their skills and independence and reduces access to employment, thereby detrimentally affecting their families and communities."

Further the Committee on the Status of Women under CEDAW has criticized the fact that certain countries have different ages of marriage for boys and girls as follows:

"Some countries provide for different ages for marriage for men and women. As such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial, these provisions should be abolished. In other countries, the betrothal of girls or undertakings by

⁴⁸ Though India has made a reservation regarding Article 16(2) the reservation only deals with registration of marriage and not minimum of age of marriage. See CEDAW, *General Recommendation 21*, UN GAOR, 1994, Doc. No. A/47/38.

family members on their behalf is permitted. Such measures contravene not only the Convention, but also a woman's right freely to choose her partner.” Various International Conventions have emphasized the important principle that marriage should be on the basis of equality and with the full and free consent of the parties. The Universal Declaration of Human Rights, 1948; provides that men and women are entitled to equal rights in marriage and marriage breakdown, and that both potential spouses should freely and fully consent to the marriage vide Article 16(2).⁴⁹ Accordingly, the 1956 Supplementary Convention on the Abolition of Slavery and Practices Similar to Slavery considers forced marriage akin to slavery [Article 1(c)]. The 1964 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages stipulates that a marriage requires the consent of both parties [Article 1]; calls upon parties to eliminate the marriage of girls under the age of puberty and requires that states stipulate a minimum age of marriage. The ICCPR [Article 23]⁵⁰ and the ICESCR [Article 10]⁵¹ again reiterate that marriage shall be entered into with the free and full consent of both parties.

The 1989 Convention on the Rights of the Child (CRC) to which India is a signatory, makes it obligatory for states to protect the child from all forms of mental or physical violence, injury or abuse, neglect,

⁴⁹ *The Universal Declaration of Human Rights, 1948* available on the United Nations website, <www.un.org/Overview/rights.html>, visited on December 2007

⁵⁰ *International Covenant on Economic, Social and Cultural Rights* available on the Office of the United Nations High Commissioner for Human Rights website, <www2.ohchr.org/english/law/cescr.htm>, visited on December 2007

⁵¹ *International Covenant on Civil and Political Rights* available on the Office of the United Nations High Commissioner for Human Rights website, <www2.ohchr.org/english/law/ccpr.htm>, visited on December 2007

maltreatment and exploitation, including sexual exploitation. This inevitably happens in the case of a girl child when she is married while still a child.

CHAPTER V

The Child Marriage Restraint Act, 1929: Legislative History, Judgments, and various Recommendations for Amendments on Child Marriage and Age of Child

The Child Marriage Restraint Act was the result of sustained pressure by social reform groups and individuals who felt deeply about the adverse consequences of child marriage. The minimum age of marriage was upwardly revised on several occasions due to social pressure and increased from 10 years to 16 years. In 1940 the age of consent for married and unmarried girls was 15 though the minimum age of marriage became 16.

The rise in age of marriage under CMRA and the age of consent for sexual intercourse under the Penal Code have mostly gone side by side as can be seen from the table below:

Table

Year	Age of consent under s.375, 5 th clause, IPC	Age mentioned in the Marital Rape Exception to s.375, IPC	Minimum age of marriage under the Child Marriage Restraint Act, 1929

1860	10 years	10 years	--
1891 (Act 10 of 1891) after the amendment of I.P.C.)	12 years	12 years	--
1925 (after the amendment of I.P.C.)	14 years	13 years	--
1929 (after the passing of the Child Marriage Act)	14 years	13 years	14 years
1940 (after the amendment of the Penal Code and the Child Marriage Act)	16 years	15 years	15 years
1978	16 years	15 years	18 years

The CMRA law, however, remained ineffective for a variety of reasons. In a study by UNICEF in 2001 it was found that the number of prosecutions did not exceed 89 in any one year.⁵² According to the National Crime Bureau Records 2005, 122 incidences were reported in the country under the Child Marriage Restraint Act in 2005, compared to the 93 cases that were reported in 2004.⁵³ These statistics are obviously not an accurate reflection of the

⁵² Black, Maggie, *supra* note 15, p.9

⁵³ National Crime Records Bureau, *Crime in India 2005*

number of cases of child marriage which are occurring in the country. Most cases of child marriage are not being reported and/or being ignored by the police and government authorities. Even from the reported 122 cases, only 45 resulted in conviction.⁵⁴

With regard to the question of validity of marriages performed in violation of the age requirement prescribed by the Child Marriage (Restraint) Act, the judiciary has taken a well settled stand. Starting from the earliest case that came up in 1885 to a recent judgment of 2006, the pronouncements of various High Courts and the Supreme Court have approved the validity of such marriages. A recent judgment of the Delhi High Court reiterated that marriages solemnized in contravention of age prescribed under Section 5(iii) of the Hindu Marriage Act, 1965 are neither void nor voidable.⁵⁵ The court held that the judgment was based on public policy and the Legislature was conscious of the fact that if marriages, performed in contravention of the age restriction, are made void or voidable, it could lead to serious consequences and exploitation of women. The view that child marriages were valid was upheld in many other judgements like *Durga Bai v. Kedarmal Sharma*⁵⁶, *Shankerappa v. Sushilabai*⁵⁷, *Smt. Lila Gupta v. Laxmi Narain and others*⁵⁸, *Rabindra Prasad v. Sita Dass*⁵⁹, *William Rebello v. Angelo Vaz*⁶⁰, *Neetu Singh v. State & others*⁶¹ and *Ravi Kumar v. The State & Anr.*⁶².

<<http://ncrb.nic.in>> , visited on November 2007

⁵⁴ *Ibid.*

⁵⁵ *Manish Singh v. State Govt. of NCT. And Ors.*, 2006(1) HLR 303

⁵⁶ *Durga Bai v. Kedarmal Sharma*, 1980(Vol. VI) HLR 166

⁵⁷ *Shankerappa v. Sushilabai*, AIR 1984 Kar 112

⁵⁸ *Smt. Lila Gupta v. Laxmi Narain and others*, 1978 SCC (3) 258

⁵⁹ *Rabindra Prasad v. Sita Dass*, AIR 1986 Pat 128

⁶⁰ *William Rebello v. Angelo Vaz*, AIR 1996 Bom 204

⁶¹ *Neetu Singh v. State & others*, 1999(1) Vol. 39 HLR 466

⁶² *Ravi Kumar v. The State & Anr.*, MANU/DE/1497/2005

Under the old CMRA there were very few convictions. It has been said that “the courts have been reluctant to find adults guilty under the Act. It has been held, for instance, that a guest escorting the bride and reminding others to raise a customary chorus cannot be punished under the Act.⁶³ Negotiation and preparation for the marriage is also not punishable.⁶⁴ Section 5 of the Act, which makes the person who conducts, directs, or performs the marriage liable, has been very narrowly construed by the court. It has also been held by the courts that for a person to be punished under the Act it must be proved that the marriage has been duly performed in accordance with all the religious rites applicable to the form of marriage.⁶⁵ This kind of reasoning allows an accused party to raise the plea that the marriage has not been performed according to applicable ceremonies. Though there have been some positive judgments under the Act saying that deterrent punishment should be awarded, courts have given extremely light punishments and let off the accused with small fines.^{66,67}

Under the old CMRA a police officer had no powers to arrest without a warrant or an order of the Magistrate. The Act also prohibited complaints after the first year of marriage and therefore made prosecution of child marriages extremely difficult.⁶⁸ However, while most of these issues have been dealt with and the present PCMA holds all those who are participating

⁶³ *Emperor v. Fulabhi Bhulabhai Joshi and others*, AIR1940 Bombay 363

⁶⁴ *Sheikh Haidar Sheikh Rahimmo Attar Musalman v. Syed Issa Syed Rahiman Musalman and others*, AIR 1938 Nagpur 235

⁶⁵ *Khushalchand Janki Prasad v. Shankar Pandey Gaya Prasad*, AIR 1963 Madhya Pradesh 126

⁶⁶ *Mt. Jalsi Kuar & others v. Emperor*, AIR1933 Patna 471 and *Kondepudi Sriramamurthi v. State of Andhra Pradesh and another*, AIR 1960 Andhra Pradesh 302

⁶⁷ Singh, Kirti and Diviya Kapur, *Law, Violence and the Girl Child*, Heath and Human Rights and, An International Journal, Vol 5. No.2 , 2001, p.18

⁶⁸ CEDAW, *General Recommendation 21*, UN GAOR, 1994, Doc. No. A/47/38

in and abetting a child marriage guilty and provides harsher punishment, judicial attitudes will also have to change and see the issue of child marriage from the point of view of the girl child. Further it has been found that there is a complete lack of awareness of the law relating to child marriage. It is therefore, extremely important for the government to publicize the contents of the present Act and create awareness about the ills of child marriage. Consequent changes will also have to be made in The Hindu Marriage Act, 1955 to have equivalent punishment under Section 18 of the Act.⁶⁹

Under the Special Marriage Act however, Section 4(c) provides that at the time of marriage the male must have completed the age of 21 years and the female the age of 18 years. A marriage solemnized in contravention of this clause is treated as void and can be so declared under section 24 of the Act. Thus no provision makes a minor's marriage possible under this Act and a child marriage is treated as void and is subject to the penal provisions of CMRA.

Marriages in the State of Goa are governed by the family laws of Goa, Daman & Diu. Under the family law in Goa there is a chapter dealing with Civil Marriage and its Solemnization.⁷⁰ Article 3 provides that all Portuguese shall solemnize the marriage before the respective officer of civil registration under the conditions and in the manner established in Civil Law, and only such a marriage is valid. Article 4 (3) provides that males below the age of 18 years and females below the age of 16 years shall not contract. According to Article 5, consent of parents is necessary for marriage.⁷¹

⁶⁹ Presently Section 18 of the Hindu Marriage Act stipulates a lesser punishment of upto 15 days imprisonment or fine upto Rs. 1,000/-.

⁷⁰ See *William Rebello v. Jose Angelo Vaz*, AIR 1996 Bom 204

⁷¹ *Ibid.*

Renunciates of Pondicherry are governed by the French Civil Code, Chapter I, Article 144 of the French Civil Code provides that a man cannot contract a marriage before he has completed 18 years and a woman till she has completed 15 years of age.

The above study makes it clear that under Indian laws, the minimum age for marriage is prescribed as 21 years for males and 18 years for females. In spite of these legal provisions, child marriage is still widely practiced and a marriage solemnized in contravention of these provisions is not void even under the new PCMA, 1929, the Hindu Marriage Act, 1955 and also under the Muslim Law.

If the wife is below 15, then the husband can be charged for the offence of rape. However, here also the law makes a distinction between a wife below 12 and a wife over 12. Under Section 376 when the wife is below 12, the penalty is severe, i.e. imprisonment of either description for a term, which shall not be less than seven years but which may be for life or for a term which may extend to 10 years and fine. If, however, the wife is not under 12, i.e. she is above 12 but below 15, the punishment is milder i.e. imprisonment of either description for a term which may extend to two years or fine or both.

The 84th Report of the Law Commission had recommended an increase in the minimum age of consent and the minimum age in the Exception Clause. The Commission had recommended as follows:

“2.20. The question to be considered is whether the age should be increased to 18 years. The minimum age of marriage now laid down by law (after 1978) is 18 years in the case of females and the relevant clause of section 375 should reflect this changed attitude. Since

marriage with a girl below 18 years is prohibited (though it is not void as a matter of personal law), sexual intercourse with a girl below 18 years should also be prohibited.”

The laws relating to rape were again considered by the Law Commission in its 172nd Report on “Review of Rape Laws” (2000). The Law Commission before submitting its Report circulated a draft of proposed changes. The National Commission for Women submitted its recommendations on the Draft. In respect of provision relating to sexual intercourse with one’s own wife, the NCW suggested that “marital sexual intercourse by a man with his own wife without consent should also be considered as sexual assault.”⁷² Certain Women’s Groups including the All India Democratic Women’s Association and Sakshi had also recommended that marital rape be recognized as rape. Though the Law Commission did not agree with this suggestion it recommended that the age of consent for both unmarried and married women should be 16 years, below which sexual intercourse should be considered rape and punished accordingly.

The National Commission for Women in its report in 1995-96 had recommended that child marriages be declared void. It had further recommended that there should be compulsory registration of marriages and emphasized on free and compulsory education till the age of 14. The Commission felt that all these steps could play an important part in checking child marriages.

The Central Government after consulting the State Governments introduced the Prevention of Child Marriage Bill, 2004 and this was referred to the department related Parliamentary Standing Committee on Personnel, Public Grievances, Law & Justice for examination and report.

⁷² See *The National Commission for Women Recommendations* available on its website: <<http://ncw.nic.in/>> (visited on November 2007)

The Committee has proposed a common marriageable age for both the sexes i.e., 18 years so as to avoid any serious consequences to the individual and the society as a whole. The Committee has further recommended that child marriage should be void ab initio and not voidable at the option of either contracting party keeping in view the inhibitions that parties have against court proceedings. The Committee has further recommended initiating social measures such as creation of rehabilitation fund for providing shelter, food, education, health and security for the victims of child marriages and also recommended active support and coordination of officials of Panchayat, Tehsil, District and State levels, NGOs, and social groups and agencies.

Another recommendation made by the Committee was that the punishment laid down in the Hindu Marriage Act for conducting child marriages should be raised significantly in order to bring it at par with the penal provisions proposed in the new legislation.

The Committee has also recommended compulsory registration of marriages and called for active involvement of NGOs and other civil agencies to prevent the occurrence of child marriages. It has suggested that a proper system for prevention of child marriages should be set up to deal with the issue in a holistic manner.

It has also been recommended that one way of curbing the phenomenon of child marriages would be to register all marriages. The Supreme Court in the case of *Smt. Seema Vs. Ashwani Kumar*⁷³ observed that compulsory registration of marriages would be a step in the right direction as child marriage was still prevalent in many parts of the country. The Court directed that steps for registration of marriage should be taken by

⁷³ *Smt. Seema Vs. Ashwani Kumar*, 2007(12) Scale 578

the State Governments who had not yet passed Acts for this purpose. The States were further asked to invite objections from the public and make registration of marriages compulsory for all citizens regardless of community ⁷⁴ within three months of its order dated 19.12.2007.

The third issue raised by the petitioner is to make a uniform definition of 'child' in all legislations in conformity with the Convention on the Rights of the Child. Since different legislations have come into existence with different and specific purposes, a uniform definition of a child may not be possible. For instance, the age of consent for sexual intercourse would be lower than 18 because consensual sex above the age of 16 is fairly widespread and routine. Similarly the object behind the Child Labour (Prohibition & Regulation) Act, 1986 is to ban child labour completely below the age of 14 and regulate it above that age and therefore the definition of a child is in tune with these objectives.

Every law provides its own definition of the term 'child'. Some refer to a child as a person who has not completed the age of 18 years and in some statutes a child is defined as a person below 16 years and in other statutes it is 14 years. Some of such statutes are as under:

1. As per the Child Marriage Restraint Act, 1929, a child is a person who if a male has not completed 21 years of age, and if a female, has not completed 18 years of age.
2. The Immoral Traffic (Prevention) Act, 1986 defines child as a person who has not completed the age of 16 years and a minor means a

⁷⁴ The Supreme Court noted that A.P., Bihar, Chattisgarh, Goa, M.P., Karnataka, Maghalaya, Mizoram, Rajasthan, Sikkim, Tamil Nadu, Tripura have already enacted laws for Registration of Marriages.

person who has completed the age of 16 years but has not completed the age of 18 years.

3. A person is deemed to have the majority on completion of 18 years under the Indian Majority Act, 1875.

4. A child is a person below 18 years of age under the Juvenile Justice (Care and Protection of Children) Act, 2000.

It is urged in the petition that there should be a uniform definition of 'child' in all statutes relating to child welfare and their rights. However at the present time it is not feasible to have a uniform definition of child as the different legislations serve different objectives and purposes. Each act should be examined on its own to deter whether the definition of the child is Justified. As far as the PCMA is concerned however, we feel that there is no rationale basis for having different ages for marriage between boys and girls as discussed in detail earlier.

CHAPTER VI

CONCLUSION AND RECOMMENDATIONS

An increasing number of studies have highlighted the extremely harmful and traumatic effects of child marriage. Child marriage below a certain age is blatant child abuse. The Indian Penal Code considers any sexual intercourse with a minor wife below 15 years of age rape. The case of Phulmonee⁷⁵ which galvanized public opinion against child marriage in the last century, and for raising the age of consent, was a case in which a girl aged 11 years died of hemorrhage from a rupture of vagina caused by her husband who had forced sex on her. However, even the present law on child marriage does not address a situation like Phulmonee's. There is no provision in the law to stop a child bride from living with her husband and from being sexually abused apart from other forms of abuse. The Child Marriage Act, in fact lays the foundation for such an abuse by not invalidating any child marriage. Research has further shown how the child bride is more liable to suffer from pregnancy related problems and how high both maternal and infant mortality is in the case of child marriages. Apart from this child marriage deprives all girl children of their basic fundamental human rights to develop in a natural, healthy environment. It deprives girls of their right to education and to physical and mental and psychological development. It isolates girls from their environment and infringes on their fundamental right to liberty, speech, movement. To ignore the well-known

⁷⁵ *Queens Empress v. Huree Mohan Mythee* XVIII Indian Law Reporter (Calcutta) 49 (1891); Sagade, Jaya *supra* note 32, p.40.

adverse effects of child marriage vis-à-vis the girl child would be to ignore the manner in which the child bride experiences life and would amount to a denial of the fact that girls are human beings and have certain fundamental rights including the right to life. The adverse health consequences and the violence faced by the girl child below a certain age are factors which outweigh certain 'social' considerations in not invalidating the marriage.

We further feel that there is no rationale for stipulating different ages for consent to sexual intercourse for a minor bride and for other minor girls. The rationale behind the minimum age of consent is that the girl is not mature enough to know the consequences of sexual intercourse and this rationale would be the same for a minor bride and other minor girls. We therefore, recommend the following.

- i) That child marriage below a certain age, ie. 16 years of age be made void. However, all the Sections relating to maintenance in Section 4 of the PCMA 2006 regarding maintenance to the female party to the marriage till her remarriage and the provisions relating to child custody and legitimacy of the children in Section 5 and 6 of the PCMA 2006 be made applicable to cases of void marriages also.
- ii) All marriages between 16 and 18 should be made voidable at the option of either party. The sections relating to maintenance, child custody, and legitimacy in Sections 4, 5 and 6 should be applicable to voidable marriages as they are at present.

Consequently Section 3(1) and 3(3) of the PCMA 2006 should be amended to incorporate the changes outlined in paras (i) and (ii) above and will read as under:-

“3(1) (i) Any marriage of a child below 16 years of age solemnized after the commencement of this Act will be null and void and may, on a petition be presented by either party thereto against the other party be so declared by a decree of nullity.

(ii) Every marriage of a child between the ages of 16 and 18, whether solemnized before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage.”

Section 3(3) should be amended to read as under:-

“(3) The petition under Section 3(1)(ii) may be filed at any time till the person contracting a child marriage attains 20 years of age.”

- iii) That the exception to the rape Section 375 of the Indian Penal Code be deleted. This would ensure that the age of consent for sexual intercourse for all girls, whether married or not, is 16. The 172nd Report of the Law Commission had recommended increasing the age of consent for all girls to 16.
- iv) Registration of marriages within a stipulated period, of all the communities, viz. Hindu, Muslim, Christians, etc. should be made mandatory by the Government.

- v) The age of marriage for both boys and girls should be 18 years as there is no scientific reason why this should be different.

Consequently the present Section 2(a) of the PCMA should be deleted and replaced by the following Section 2(a):-

“(a) ‘child’ means a person who has not completed 18 years of age.”

- vi) Other acts like the Hindu Marriage Act should also be amended to ensure that the provisions in the said acts are the same as and do not contradict the Prohibition of Child Marriage Act, 2006.

(Dr. Justice AR. Lakshmanan)
Chairman

(Dr. D. P. Sharma)
Member-Secretary

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