

SOCIETY FOR ENLIGHTENMENT AND VOLUNTARY ACTION & ANR V. UNION OF INDIA & ORS: A CASE COMMENT

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Abstract

Child marriage remains a current social and legal problem despite all efforts by national and international actors to bring an end to the practice. Society for Enlightenment and Voluntary Action & Anr. v. Union of India & Ors. is on the right path towards reinforcing the prohibition on child marriage and closing loopholes in the Prohibition of Child Marriage Act, 2006 (PCMA). The case, which was moved under Article 32 of the Constitution, threw up some serious issues, among them the inadequacy of the current laws, non-existence of trained Child Marriage Prohibition Officers (CMPOs), and absence of provisions under the law prohibiting child betrothals. The Court held child betrothals to be illegal and called upon the Parliament to enact a law on the subject. It laid stress on preventive measures like community-based campaigns, technological intervention for monitoring, and accountability of the enforcement apparatus. The judgment also recognized the socio-economic determinants of child marriage like poverty, gender discrimination, and illiteracy. By changing emphasis from only penal punishment to active deterrence, the choice has profound policy implications.

Keywords: child marriage, prohibition of child marriage Act, child marriage restraint Act, child marriage prohibition officers

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Introduction

Child marriage is the practice of marrying children below the legally stipulated age; it is a crime and a social evil. International efforts and laws have been put in place. Yet, this custom continues in a large part of the world due to patriarchal society, gender inequality, and lack of education and employment. According to the “2019-2021 National Family Health Survey-5, 23.3% of girls under 18 and 17.7% of boys under 21 were married, based on a survey of women aged 20-24 and men aged 25-29 (International Institute for Population Sciences (IIPS) & Ministry of Health and Family Welfare, 2021).” This marks a decrease from the “2015-2016 NFHS-4, which reported that 26.8% of girls and 20.3% of boys were married under the legal age. The prevalence of child marriages in India has steadily declined, halving from 47% in 2006, to 27% in 2015-16 (International Institute for Population Sciences (IIPS) & Ministry of Health and Family Welfare, 2017).” At the national level, close to one in four girls (23%) were married below the age of 18 by 2023. In 2022, about 1.6 million child marriages were conducted, which is about 4,400 a day or three girls wedded per minute (Pandit, 2024). Disturbing as it is, some states still boast exorbitant rates in spite of prevention work. West Bengal and Bihar remain among the worst-hit, with at least 40% of girls wedded in childhood. At the same time, Assam registered an 81% fall in child marriages between 2021-22 and 2023-24, from 3,225 cases to 627 in 1,132 villages (UNICEF, 2023).

Efforts at preventing child marriage have found some success—panchayats and civil society organizations intervened to stop more than 73,000 child marriages in 265 districts in 17 States and Union Territories between 2023-24. Although there is lot that still needs to be done in regards to curbing the practice of child marriage. For instance, Madras High Court receives at least 5 habeas corpus cases in which the girl’s relatives file a petition to rescue the girl back from the husband when both the girl and husband elope at home because of the caste consideration. Often girls in court questioning are discovered to be under 18 years, and court has still not decided a satisfactory solution and so-called honour killing of the inter-caste couple is on the rise (The New Indian Express, 2023).

Despite these significant reductions, no region worldwide is on track to meet the Sustainable Development Goal (SDG) 5 target. Along with 192 other

countries, India has committed to ending child, early, and forced marriages under Sustainable Development Goal 5.3. To achieve this target, the rate of progress in reducing child marriage must increase twelvefold from the pace observed in the last ten years.

Facts

The Supreme Court of India's decision in *Society for Enlightenment and Voluntary Action & Anr v. Union of India & Ors* is a crucial judgement in the continuing battle against child marriage in India. The honourable bench consisted of Hon'ble Chief Justice Dr Dhananjaya Y Chandrachud, Hon'ble Justice Pamidighantam Sri Narasimha, and Hon'ble Justice Manoj Misra. The petitioner (an NGO) had moved a Public Interest Litigation (PIL) under Article 32 of the Constitution, raising serious concerns regarding the Prohibition of Child Marriage Act, 2006 (PCMA), i.e., its failure to deter child marriages. The petition also asked for enforcement machinery to be made effective, sensitization campaigns, appointment of Child Marriage Prohibition Officers, and a general supportive mechanism for child brides in the shape of education, medical care, and compensation.

Issues

- The central issue here was the increase in child marriages all over the country while the Prohibition of Child Marriage Act, 2006, was in force. Thus, the inadequacy of the law.
- Another issue was the dual responsibility given to Child Marriage Prohibition Officers that limit their ability to focus on preventing child marriages.
- Also, there is no law prohibiting or preventing child betrothals in the country.

Decision

The Supreme Court of India held that Child Marriage veiled under Child Betrothals was illegal and implored the Parliament to legislate upon it. Further, it issued guidelines to prevent and prohibit Child Marriage by appointment of CMPOs, introducing accountability measures, preventive “community-driven” strategies instead of focussing solely on improving prosecution and

use of technology for improving monitoring, data collection and enforcement. It also ordered this judgement to be transmitted to the Secretaries of all concerned ministries, Government of India, statutory authorities, institutions and organizations under the respective ministries.

Background

Rukhmabai's case was a catalyst for change in Indian legislation on child marriage, her defiance highlighted the need for legal reforms. Justice Pinhey's judgement in this case catered to the rights of women when Child Marriage was the norm. Similarly, a ten-year-old Phulmoni Dasi died after her husband, Hari Mohan Maiti, attempted to consummate their marriage. Both these cases shook the conscience of the Indian society at that time. The pre-independence cases lead to a development of law in this area.

The National Commission for Women, in its 1995-96 report, recommended a number of amendments to the Child Marriage Restraint Act, CMRA, by appointing Child Marriage Prevention Officers, CMPOs, increasing the punishment for violations, declaring child marriages void, penalizing those who attend child marriages, and making all offences under the CMRA cognizable—that is, they can be investigated without a warrant.

In 2001-02, the NHRC considered the CMRA and recommended even stronger measures like harsher punishments against the perpetrators, prosecution of organizers of mass child marriages, annulment of child marriages within two years from attaining major age by the minor party and provision for maintenance by the husband to the minor wife till she remarries. It also suggested that all dowry and gifts that were given at the time of child marriage be returned and stated that the government should work with NGOs to sensitize the communities on the issue.

After such recommendations, the Government of India annulled the CMRA and came up with the Prohibition of Child Marriage Act, 2006 (PCMA). The Prohibition of Child Marriage Act, 2006 (PCMA) applies universally to all communities, irrespective of religion, and is intended to curb child marriages across different cultural and religious practices. In addition to the PCMA, Tamil Nadu enacted the Compulsory Registration of Marriages Act, 2009, mandating the registration of all marriages irrespective of religion. While this aims to

enhance the legal oversight of marriages, challenges persist, including the potential submission of falsified age certificates to circumvent legal scrutiny.

Despite various legislative measures, the practice continues unabated, particularly in rural and impoverished communities. According to the “National Family Health Survey-5 (2019-2021), approximately 23.3% of girls under the age of 18 were still being married” (International Institute for Population Sciences (IIPS) & Ministry of Health and Family Welfare, 2021), a slight decrease from earlier figures but nonetheless a stark reminder of the challenge at hand.

Analysis

The implications of this case extend beyond the courtroom. It has significant repercussions in the existing framework, children and society at large. “The PCMA states nothing on the validity of the marriage as we have noted above. The Prohibition of Child Marriage (Amending) Bill 2021 was introduced in Parliament on 21 December 2021. The Bill was referred for examination to the Department Related Standing Committee on Education, Women, Children, Youth and Sports. The Bill sought to amend the PCMA to expressly state the overriding effect of the statute over various personal laws. The issue, therefore, is pending consideration before Parliament. Lastly, we note that while the PCMA seeks to prohibit child marriages, it does not stipulate on betrothals. Marriages fixed in the minority of a child also have the effect of violating their rights to free choice, autonomy, agency and childhood. It takes away from them their choice of partner and life paths before they mature and form the ability to assert their agency. International law such as CEDAW stipulates against betrothals of minors. Parliament may consider outlawing child betrothals which may be used to evade penalty under the PCMA. While a betrothed child may be protected as a child in need of care and protection under the JJ Act, the practice also requires targeted remedies for its elimination” (Society for Enlightenment and Voluntary Action & Anr. v. Union of India & Ors, 2024).

Problems of the Implementation

The Court analysed Prohibition of Child Marriage Act, 2006, which establishes the legislative marriage age at 21 years for boys and 18 years for

girls, wherein the child marriage was understood as marriage wherein both the contracting parties are a child under Section 2(a) and (b). The Prohibition of Child Marriage Act, 2006, in Section 3, states that child marriages are voidable at the election of the contracting party who was a minor at the time of marriage, and an action for annulment may be filed within two years after having attained majority. But the Court perceived a humongous gap in the law, observing that only marriages through trafficking, force, or fraud are rendered void by Section 12, and all other child marriages are only voidable, which is not a sufficient deterrent to the practice.

The Court reiterated the requirement for stricter provisions to make all child marriages null and void ab initio, in consonance with the purposes of the law to safeguard children against exploitation. The Court then scrutinized the penal provisions contained in Sections 9, 10, and 11 of the PCMA, which penalize adult men contracting child marriages, persons performing such marriages, and those who encourage or facilitate them, respectively. The penalty for the same offences is two years' rigorous imprisonment and a fine of up to one lakh rupees. The Court, however, noted that since there is no minimum punishment under Section 9, it weakens the machinery of enforcement with judicial discretion to award nominal sentences, diluting the deterrent value of the law. The Court also examined Section 15, which makes offenses against the Act cognizable and non-bailable. This intended to increase the ability of the state to prevent child marriages through proactive intervention by law enforcement agencies. But the Court observed the enforcement issue, i.e., the ineffectiveness of Child Marriage Prohibition Officers (CMPOs) under Section 16. The Court reiterated CMPOs be separately assigned with the task to halt child marriages, well trained and equipped, and protected against the charge of administrative burden for the purpose of being responsible and effective.

The Question of Autonomy

The three-Judge Bench observed, "...while the PCMA seeks to prohibit child marriages, it does not stipulate on betrothals....it has the effect of violating their rights to free choice, autonomy, agency and childhood.... choice of partner and life paths before they mature and form the ability to assert their agency. International law such as CEDAW stipulates against betrothals of minors. Parliament may consider outlawing child betrothals which may be used

to evade penalty under the PCMA” (Society for Enlightenment and Voluntary Action & Anr. v. Union of India & Ors, 2024).

It is remarkable of the Supreme Court to recognize that this practice has no one-sided effect. As much as a girl child is impacted with such a practice, a boy of young age is also forced into a relationship that he may not be able to comprehend, which is the cause of many mental/behavioural problems with such children. These marriages violate Article 21, i.e., it snatches the right to self-determination, choice, autonomy, sexuality, health and education, right to fully develop and enjoy childhood. It objectifies a child, putting too mature burdens such as pregnancy, earning a living, being with someone other than their own family, etc., violates the right of a girl to make her choice with respect to her reproductive body and other choices related to her body.

The Court had relied on its judgment in *Independent Thought vs. Union of India* (2017), where it had read down the exception to marital rape in Section 375 of the Indian Penal Code (IPC) in child marriage cases, keeping in view the fact that a child’s consent is constitutionally and legally nugatory. It confirmed again that the consent in child marriage is still a legal fiction and made mention of the mandate of the State for protecting the children from sexual exploitation and abuse under the cloak of marriage.

The court extended its consideration to constitutional provisions under Articles 14, 15, and 21A of the Indian Constitution. It was found that child marriage contravened the right of equality under Article 14, namely on its discriminatory effect on girls and upholding gender discrimination and inequality. It also emphasized the constitutional responsibility under Article 21A which gives the right to freedom of and compulsoriness of education between 6 to 14 years of age. Child marriage, by interfering with education, directly infringes upon such a right and facilitates socio-economic inequality.

The Court also emphasized Article 15(3), the children’s special provisions, and requested a strong legal framework that truly discourages such marriage and safeguards rights of the children. The rationale of the Court was justified by international treaty commitments such as the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), in which India bound itself to discard practices prejudicing children’s well-being and attain gender equality.

Child marriage is also highly endemic in some tribal groups due to deeply ingrained traditions and socio-economic factors. In Karnataka, for instance, a number of tribal youths from Coorg and Mysore have been arrested and detained in Observation Homes under the Juvenile Justice Act for committing child marriages. This indicates the need for rigorous education and motivational interventions among such communities.

The Problem of Vicious Cycle of Socio-Economic Conditions

One of the most remarkable parts of the judgment was the socio-economic determinants' analysis of child marriage. The Court recognised that child marriage is not only a social evil but also a vicious cycle perpetuated by poverty, gender inequality, and lack of education. Hon'ble Justice Narasimha, reflecting on the socio-cultural roots of the issue, stated that culturally constructed values of chastity and virginity are employed by men and families to regulate women's sexuality, marrying off young girls to save family honour and reduce economic burdens. The Court put a strong emphasis that the intervention in child marriage should be intersectional in nature in analysing different intersecting risks of children, particularly girls in vulnerable groups. It clarified that intersectionality is about taking into account factors like gender, caste, class, and location, which tend to cluster together and compound the risk of early marriage. Therefore, prevention efforts must be targeted at the particular context of various communities and address the underlying causes of child marriage, such as poverty, gender discrimination, illiteracy, and strongly ingrained social traditions.

The most striking part of the judgement was recognition of child betrothals as an adverse practice and the court urging the legislature to outlaw this practice for future generations, also declaring it as void and illegal, effectively closing the legal loophole in the legal system. This is a huge achievement for the judicial system, as they have identified a problem before it could be used more than it already has. It logically linked the practice to broader issues such as poverty, gender inequality, lack of education, and inadequate law enforcement. The decision has significant policy implications, particularly in shifting the focus from legislative amendments to enforcement and accountability.

Conclusion

The Supreme Court judgment in *Society for Enlightenment and Voluntary Action & Anr v. Union of India & Ors* is the hallmark judgment in the battle against child marriage in India. The emphasis upon enforcement gaps and disproportionate effect of child marriages on social, economic, health- mental and physical and education of a child irrespective of gender, the court took a step forward in safeguarding the vulnerable juveniles. The Court's insistence on stricter implementation strengthens the legal system's ability to tackle this issue. The ruling emphasises on enforcement, accountability, and victim support could significantly influence future legal and policy measures aimed at eliminating child marriage. Yet, the law alone may be insufficient to ban child marriage. There should also be intensification in the shape of socio-economic intervention. Further measures such as offering incentives to families for sending girls to school, compulsory secondary education, community participation schemes, and regulation of mass marriage functions can support and complement the impact of banning child marriage. A multi-component approach—fusing legal, economic, and social interventions—would be the most suitable to address the causal factors of child marriage and instil lasting change. The ruling not only reaffirms India's international and constitutional commitments but also provides a precedent for future court proceedings on child protection from harmful practices. To lawyers, the decision is a wake-up call of the judiciary in setting the rights of the most underprivileged in society, especially in the case of settled social usages and economic crisis.

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