

## PART III

### VOID MARRIAGE AND THE LAW IN KARNATAKA

#### **What is the legal status of child marriage in Karnataka?**

In Karnataka, a state amendment in April 2017 declared child marriages **void ab initio**. This means that a child marriage is not a valid marriage, and courts will not recognise the parties as husband and wife.

*Note: This change applies only to child marriages that have taken place after April 2017. If the marriage took place before April 2017, the earlier law applies, meaning that a declaration of nullity must be obtained in order to void the marriage.*

#### **In Karnataka, is there a need to file an annulment petition since child marriage is void?**

The Supreme Court has said that since a void marriage is non-existent in law, a formal court decree is not mandatory (*M.M. Malhotra v. Union of India*, 2005).

However, it is advisable to file a petition before a district court asking for a declaration of nullity of marriage, even for a child marriage that is void as per the Karnataka law. This will enable the child to obtain maintenance, custody, or residence orders under the PCMA—and, most importantly, to avoid any future legal issues, particularly in case of remarriage.

#### **Does the law recognise the rights of a minor girl whose child marriage is considered legally void?**

**Yes.** A minor married girl can claim the same remedies that are applicable to married girls who file a petition for annulment of marriage (see Part II).

Some personal laws also have provisions for maintenance where a marriage is declared void. However, it is advisable to file for maintenance under the PCMA, as it is a special law dealing with child marriage and prevails over personal laws.

## PART IV

### OFFICERS UNDER THE LAW

#### **Who is a Child Marriage Prohibition Officer (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. In Karnataka, the Deputy Commissioner, District Superintendent of Police, District Social Welfare Officer, District Child Protection Officer, Revenue Officers, Block Education Officers, Protection Officers, Tehsildars, and school Head Masters are designated by the government as 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 criminal complaints (first information reports) against offenders under the 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
- To create awareness and sensitise the community on the issue of child marriage

### **A CMPO may approach the court for injunctions, maintenance, and custody. She or he may also file an annulment petition along with the child.**

For details on CMPOs, you may call the CHILDLINE helpline (dial 1098) or visit the website of your state's Department of Women and Child Development. In case you cannot contact a CMPO or are not satisfied with the CMPO's response, you may approach the District Collector or Deputy Commissioner, who have supervisory powers. You may also contact your State Commission for Protection of Child Rights, which is charged with receiving and looking into complaints of child rights violations.

## ACT NOW AGAINST CHILD MARRIAGE

Anyone can report a child marriage.

To do so:

- Contact your nearest Child Marriage Prohibition Officer, or police station.
- Call the toll-free CHILDLINE helpline by dialling 1098 (available 24 hours a day).
- In Karnataka, call the Department of Women and Child Development's Child Marriage Helpline at 080-22351098 or visit the website of the Karnataka State Commission for Protection of Child Rights.

For legal assistance or if you want to file a case, contact:

Centre for Law and Policy Research (Bangalore):  
080-40912112 or [reachout@clpr.org.in](mailto:reachout@clpr.org.in)  
D6, Dona Cynthia Apartments, 35 Primrose Road,  
Ashok Nagar, Bengaluru 560025



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RIGHTS

## CHILD MARRIAGE AND RIGHTS OF MARRIED GIRLS

# WHAT DOES THE LAW SAY?

## PART I

### LAWS RELATING TO CHILD MARRIAGE

#### **Who is a child?**

Indian law defines a child as **any person under the age of 18 years**. The Prohibition of Child Marriage Act, 2006 (PCMA); the Juvenile Justice Act, 2000; the Protection of Children from Sexual Offences Act, 2012; the Indian Penal Code, 1860; and the Indian Majority Act, 1875 use this definition.

#### **Does the law in India prohibit child marriage?**

**Yes.** The PCMA prohibits the marriage of a girl under 18 and the marriage of a boy under 21.

The Supreme Court, in *Independent Thought v. Union of India* (2017), noted that “*child marriage is an abhorrent practice and constitutes a violation of a child's human rights.*”

The Court reiterated the harms of child marriage, including that “*married girls are more vulnerable to domestic violence, and unable to negotiate safe sex and family planning—which puts them at high risk of sexually transmitted infections, pregnancy and childbearing.*” It also stated, “*The girl child must not be deprived of her right of choice. When the girl child is deprived of her right to study further, she is actually deprived of her right to develop into a mature woman, who can earn independently and live as a self-sufficient independent woman.*”

### ***Is child marriage an offence? What are its penalties?***

Under the PCMA, solemnising, participating in, promoting, or helping solemnise a child marriage is an offence. Any person or organisation that is involved in any of these activities can be punished with up to two years' imprisonment and a maximum fine of Rs 2 lakhs. (Sections 9, 10, 11 of the PCMA)

Offenders may include:

- A bridegroom who is an adult marrying a girl under 18 years of age
- Parents or relatives who arrange or participate in the marriage
- Any priest or person who solemnises the marriage
- Any organisation (including religious or charitable organisations) that coordinates mass marriages where a child marriage takes place
- Any person who attends the ceremony or helps in fixing the marriage, including caterers, pandals, and other service providers

No girl can be punished with imprisonment under the PCMA.

### ***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, Child Marriage Prohibition Officer (CMPO) in your district or taluka, Child Welfare Committee, or nongovernmental organisation (NGO). See **Part IV** for who a CMPO is.
- 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)
- A Child Marriage Prohibition Officer
- Any other person or NGO

The District Magistrate also has special powers to **direct police to immediately visit the place where a child marriage ceremony is taking place**, stop the ceremony, and rescue the child. Generally, a rescue is done with the help of social workers from CHILDLINE. Once the child is rescued, she should first be brought to a Child Welfare Committee. (PCMA Section 13(5))

A Judicial Magistrate of First Class or Metropolitan Magistrate **can also take notice of a child marriage on his or her own**, based on information received or any report. **The magistrate has the power to issue an order to stop the child marriage** from taking place. This is called an **injunction order**. The magistrate can also pass an **emergency interim injunction order**, which means passing the order without giving notice to the other side in urgent situations. (PCMA Section 13(7))

## **PART II** \_\_\_\_\_ **RIGHTS AND REMEDIES**

### ***Rights of Married Girls to Legal Remedies***

- Right to annul the marriage (PCMA)
- Right to maintenance, residence, custody of children, and recovery of money, valuables, ornaments, and other gifts received at the time of marriage (PCMA)
- Right to protection against domestic violence and cruelty (Protection of Women from Domestic Violence Act; Indian Penal Code, Section 498A)
- Right to file a criminal complaint (known as a first information report) in cases of rape by the husband if the girl is under 18 (Indian Penal Code, Section 376, Exception 2)

- Right to medically terminate a pregnancy in cases where the pregnancy does not exceed 20 weeks and if at least two registered medical practitioners confirm that the continuance of the pregnancy would involve a risk to the pregnant woman's life or grave injury to her physical or mental health, or if there is a substantial risk of fetal impairment. A pregnancy alleged to have been caused by rape or from contraceptive failure for a married couple is presumed a grave injury to the mental health of the pregnant woman. After 20 weeks, termination is allowed in cases of risk to the pregnant woman's life. In some cases, courts have also allowed termination after 20 weeks of pregnancy for minor victims of rape. Although a girl under 18 years of age needs written consent from a guardian, this person does not have to be her legal guardian. Spousal consent is not required under the law. (Medical Termination of Pregnancy Act, 1971)
- Reproductive and maternal health services in government and private hospitals—including free services and other benefits under government schemes, such as Janani Suraksha Yojana and other state-specific schemes—may be applicable. Some states' schemes are limited to Below Poverty Line and Scheduled Castes/Scheduled Tribes categories, and some schemes restrict benefits to a woman's first two live births. More information about specific central and state government schemes are available on each state's Department of Health and Family Welfare website.
- Contraceptive services are also available free of charge under the National Family Welfare Programme, at all government health facilities, and through ASHA (Accredited Social Health Activist under National Health Mission) government workers. This includes oral contraceptives for women and condoms (which are also available through home delivery by ASHAs at a nominal cost); intrauterine contraceptive devices (IUCDs), and emergency contraceptive pills. Pregnancy-testing kits can also be accessed free of cost at village-level sub-centres and through ASHAs. No consent is required either from the spouse or from a guardian to access these services. Permanent methods of contraception, such as sterilisation for women and men, are available at the Primary Health Centre level or above. Unless medically indicated, sterilisation for women is available only to women aged 22–49 who have at least one child older than one year. (Ministry of Health and Family Welfare, Reference Manual for Female Sterilisation).
- One can also ask a CMPO or any government health centre or hospital for more information about available services and schemes.

Girls in child marriage are considered “children in need of care and protection.” This means that anyone can approach the nearest **Child Welfare Committee** to present a complaint of abuse. Details on Child Welfare Committees are available from each state's Department of Women and Child Development website, through the CHILDLINE helpline (1098), or by visiting the nearest police station.

### ***What legal remedies are available if a child marriage has already taken place?***

Once a child marriage has taken place, it is usually considered a valid marriage, except for those solemnised in Karnataka after April 2017. However, the minor bride or groom may file a petition in court to dissolve the marriage. This is called a **voidable marriage**.

*Note: Child marriage is void in certain cases, meaning that it is treated as invalid from the outset: where a minor is taken out of the custody of his or her parents or guardians, or where a minor is sold for marriage, trafficked, or sexually exploited.*

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.

The petition should be filed before a district court. It must be filed within two years of turning 18 for girls and two years of turning 21 for boys. A legal guardian or next friend can file the petition on behalf of the minor married person. (PCMA Section 3)

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
- Return of money, valuables, ornaments, and other gifts received in marriage

*Note: The law recognises a child born of void marriage as a **legitimate child** (PCMA, Section 6). Such children will have the right to inherit the property of their parents.*

#### **2. Orders under the Protection of Women from Domestic Violence Act, 2005 (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)
- Protection order to stop any future abuse

These orders can be sought in the annulment petition filed under the PCMA . One can also file an application directly under the DV Act asking for these orders, for instance where one has not filed an annulment petition under PCMA. A DV Act application is filed before the Metropolitan Magistrate. *Note: In any application under this Act, one must give details of domestic violence faced in the marriage.*

#### **3. Maintenance under Section 125 of the Code of Criminal Procedure, 1973**

Under the Code of Criminal Procedure, a woman can claim maintenance (irrespective of applicable personal law) from her husband who neglects or refuses to provide for her. This remedy is available in addition to maintenance under personal laws or a maintenance order requested under the DV Act. An application for maintenance under Section 125 of the Code of Criminal Procedure must be filed before a Metropolitan Magistrate or a Judicial Magistrate of First Class.

#### **4. Remedies under the Indian Penal Code**

**Cruelty by a husband or one of his relatives is an offence under Section 498A of the Indian Penal Code.** 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 wilful 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.

Under the law, forced sexual intercourse by the husband with his wife who is under 18 is rape. In such cases, the wife can approach the police and file a **criminal complaint for rape under Section 376 of the Indian Penal Code**.

In *Independent Thought v. Union of India* (2017), the Supreme Court recognised the high risk of sexual violence faced by girls in child marriages. It noted that “*girls below the age of 18 years are subjected to **three times more marital rape** as compared to the grown up women. . . . A 15 or 16 year old girl, when forcibly subjected to sexual intercourse by her ‘husband’, undergoes a trauma, which her body and mind is not ready to face.*”

#### **5. Divorce**

If a woman who was married as a child is over the age of 20 and cannot annul the marriage under the PCMA, she can still 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.