CHALLENGES AND CONCERNS

THE PROHIBITION OF CHILD MARRIAGE ACT, 2006 (PCMA)
WHAT IS PCMA?

• **Main legislation** to prohibit and prevent child marriages

• **Section 3**: child marriage is valid but “voidable” at the option of the minor contracting party

• Parties may annul the marriage **within 2 years** of attaining adulthood or through a guardian

• Very **few women are able to exercise the option of annulling their marriage**, after it is consummated
JUSTICE SHIVARAJ PATIL COMMITTEE REPORT

- **2010**: Karnataka High Court constituted committee after Ms. Muthamma Devaya vs. Union of India

- Prepare a report on **status of child marriages in Karnataka**

- Report submitted on 30th June 2011:
  - **High prevalence** of child marriages
  - Child marriages **should be declared void**
  - **Enhanced punishment** for all people involved in solemnising a child marriage
2016 KARNATAKA AMENDMENT

• Karnataka Govt. accepted recommendations of the Justice Shivaraj Committee

• Passed The Prohibition of Child Marriages (Karnataka Amendment) Act, 2016

• Declared all marriages between minors shall not be considered a valid marriage (void ab initio)
2016 KARNATAKA AMENDMENT

• Enhanced punishment of minimum 1 year, extendable to 2 years for:
  • Section 9: Male adult marrying child
  • Section 10: Solemnising a child marriage
  • Section 11: Promoting and permitting child marriage
  • Section 13: Powers of court to issue injunction prohibiting child marriage

• Adds Section 15 (A): Powers to police officers to take cognisance of offences suo moto
INDEPENDENT THOUGHT VS. UNION OF INDIA

- October 2017: Supreme Court recognised child marital rape
  - Declared sexual intercourse with a minor wife (15-18 years) a criminal offence
  - Cited PCMA Karnataka Amendment as a model law against child marriages in India
KARNATAKA AMENDMENT: CHALLENGES

• How should child marriages taking place after the amendment be viewed?

  • Are they automatically void or require a court order to be declared void?

• Rules to PCMA need to be framed to clarify legal position

• Amendment to Section 4 of PCMA: Provide maintenance and other reliefs to parties not only when final decree of annulment is passed but at any time
OTHER CHALLENGES

• Families/couples may be indifferent to the void status of the marriage, irrespective of the amendment.

• The Karnataka Marriages (Registration and Miscellaneous Provisions) Act, 1976 does not make registration mandatory.

• NHRC Report and Recommendations: make child marriage under 16 yrs void.

• Time period for filing annulment petition to be increased.
“Merely because something is going on for a long time, (that) is no ground to legitimise and legalise an activity which is per se illegal and a criminal offence. The least, that one would expect in such a situation, is that the State would not take the defence of tradition and sanctity of marriage in respect of girl child, which would be totally violative of Article 14 (equality), 15 (discrimination) and 21 (life) of the Constitution.” here.”
THANK YOU!