

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.”

**JUSTICE LOKUR & JUSTICE DEEPAK GUPTA
INDEPENDENT THOUGHT VS. UNION OF INDIA(2017)**

THANK YOU!