

The Child Marriage Restraint Act, 1929
(19 of 1929)

An Act to restrain the solemnisation of child marriage.

Section 1 : Short title extent and commencement –

- (1) This Act may be called the Child Marriage Restraint Act, (1929).
- (2) It extends to the whole of India (except the State of Jammu and Kashmir) and it applies also to all citizen of India without and beyond India.
- (3) It shall come into force on the 1st day of April, 1930.

Section 2 : Definitions -- In this Act, unless there is anything repugnant in the subject or context:

- (a) "Child" means a person who, if a male, has not completed twenty one year of age, and if a female, has not completed eighteen years of age ;
- (b) "child marriage" means a marriage to which either of the contracting parties is a child ;
- (c) "contracting party" to a marriage means either of the parties whose marriage is (or is about to be) thereby solemnised and
- (d) "minor" means a person of either sex who is under eighteen years of age.

Section 3 : Punishment for male adult below twenty one years of age marrying a child

-- Whoever, being a male above eighteen years of age and below twenty one, contracts a child marriage shall be punishable with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both .

Section 4 : Punishment for male adult above twenty one years of age marrying a child

-- Whoever, being a male above twenty one years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine.

Section 5 : Punishment for solemnising a child marriage -- (1) Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine unless he proves that he had reason to believe that the marriage was not a child -marriage.

Section 6 Punishment for parent or guardian concerned in a child marriage --

(1) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine.

Provided no woman shall be punishable with imprisonment.

(2) For the purpose of this section, it shall be presumed unless and until the contrary is proved, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent marriage from being solemnised.

Section 7 : Offences to be cognizable for certain purposes. The Code of Criminal Procedure, 1973 (2 of 1974) shall apply to offences under this Act as if they were cognizable offences -

(a) for the purpose of investigation of such offences : and

(b) for the purposes of matters other than (i) matters referred to in Section 42 of that Code and (ii) the arrest of a person without a warrant or without an order of a Magistrate.

Section 8 : Jurisdiction under this Act - Notwithstanding anything contained in Section 190 of the (Code of Criminal Procedure, 1973) (2 of 1974), no Court other than that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall take cognizance of, or try, any offence under this Act.

Section 9 : Mode of taking cognizance of offences -- No Court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed.

Section 10 : Preliminary inquiries into offences -- Any Court, on receipt of a complaint of an offence of which it is authorised to take cognizance, shall unless it dismisses the complaint under Section 203 of the Code of Criminal Procedure, 1973 (2 of 1974) either itself make an inquiry under Section 202 of that Code or direct a Magistrate subordinate to it to make such inquiry.

Section 11 -- Repealed by the Child Marriage Restraint (Amendment) Act, 1949 (41 of 1949), Section 7.

Section 12 : Power to issue injunction prohibiting marriage in contravention of this Act --

- (1) Notwithstanding anything to the contrary contained in this Act the Court may, if satisfied from information laid before it through a complaint or otherwise that a child marriage in contravention of this Act has been arranged or is about to be solemnised, issue an injunction against any of the persons mentioned in Sections 3, 4, 5 and 6 of this Act prohibiting such marriage.
- (2) No injunction under sub-section (1) shall be issued against any person unless the Court has previously given notice to such person, and has afforded him an opportunity to show cause against the issue of the injunction.
- (3) The Court may either on its own motion or on the application of any person aggrieved rescind or alter any order made under sub-section (1).
- (4) Where such an application is received, the Court shall afford the applicant an early, opportunity of appearing before it either in person or by pleader, and if

the Court rejects the application wholly or in part, it shall record in writing its reasons for so doing.

- (5) Whoever knowing that an injunction has been issued against him under subsection (1) of this Section disobeys, such injunction shall be punished with imprisonment or either description for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both.

Provided that no woman shall be punishable with imprisonment.

The Child Marriage Restrain Act, 1929

Commentary

To eradicate the evil of child marriage, the Child Marriage Restraint Act was passed in 1929. The object is to eliminate the special evil which had the potentialities of dangers to the life and health of a female child, who could not withstand the stress and strains of married life and to avoid early deaths of such minor mothers.

It extends to the whole of India except the State of Jammu and Kashmir and it applies also to all citizens of India within and beyond India.

It came into force from the 1st day of April, 1930.

- (a) "Child" means a person who, if a male, is under twenty one years of age, and if a female, is under eighteen years of age
- (b) "child marriage" means a marriage to which either the contracting parties is a child ;
- (c) "contracting party" to a marriage means either of the parties whose marriage is or is about to be thereby solemnised ;
- (d) "minor" means a person of either sex who is under eighteen years of age.

The penal provisions do not invalidate the fact of marriage nor do the penal provisions apply to a child. Its section 3 provides that, who ever, being a male above eighteen years of age and below twenty one, contracts a child marriage shall be punished with simple imprisonment, which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both.

Whoever, being male above twenty one years of age contracts a child marriage shall be punished with simple imprisonment which may extend to three months and shall also be liable to fine.

In the Indian social set-up a male adult can be imputed greater sense of foreseeability of the consequences of this social evil of child marriage and in this context the punishment prescribed by the law to deter them is too mild in effect specially in this era of social justice when penology has become more reformatory than deterrent.

Whoever performs, conducts or directs any child marriage shall be punished with simple imprisonment which may extend to three months and shall also be liable to fine, unless he proves that he had reasons to believe that the marriage was not a child marriage (section 5).

Though their liability under the criminal law is that of the abettors, but it should not preclude their direct responsibility for the offence and suitable amendment should be made in the Act to punish them as principal offenders. If this social evil is to be eradicated the role of such intermediaries should be brought to book with deterrent punishment. The present law is lukewarm in this regard.

Consummation of "Gauna" is not part of marriage ceremony. The marriage being complete before the consummation, a person may be convicted under this Act, though consummation has not taken place.

Section 6 provides that where a minor contracts a child marriage any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, shall be punished with simple imprisonment which may extend to three months and shall also be liable to fine.

Provided that no woman shall be punishable with imprisonment. Under this section, it is presumed that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnised. Minors are incapable of entering into any valid contract and marriage under the Hindu law is not a contract. So the words "where a minor contracts a child marriage" in section 6(l) ought not to be literally interpreted as per its dictionary meaning but ought to be understood as meaning "where a child marriage" takes place or where a minor enters into a child marriage.

The child bride or the child bridegroom are mere passive actors in such a marriage and the active participants are the parents, guardians or the custodians of such children. As the law is not mindful about the active culpability of these persons, this Act has not yielded the desired results. The imposition of fine only lacks the deterrent effect which is needed most in such cases. Further this Act does not take into account the performance of preparatory ceremonies of such a marriage like engagements etc. Some provision should be made in this Act to prevent and punish such actions also if they culminate in child marriage.

It is note worthy that a contravention of the provisions of the Act does not render the marriage invalid as the validity of the marriage is a subject beyond the scope of the Act. A marriage under the Hindu Law by a minor male is valid even though the marriage was not brought about on his behalf by the natural or lawful guardian. The marriage under the Hindu Law is a sacrament and not a contract. The minority of an individual can operate as a bar to his or her incurring contractual obligations, but it cannot be an impediment in the matter of performing a necessary "Sanskara". A minor's marriage without the consent of the guardian can be held to be valid on the application of the doctrine of factum valet.

Section 7 provides that the Code of Criminal Procedure, 1973 shall apply to offences under the Act as if they were cognizable offence for the purpose of investigation.

Notwithstanding anything contained in section 190 of the Code of Criminal Procedure, 1973, no Court other than a Metropolitan Magistrate or a Judicial Magistrate of the First Class can take cognizance of, or try any offence under this Act.

Limitation -- No Court can take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed. This further dilutes the efficacy of the law.

Injunction -- Section 12 empowers the Magistrate to issue injunction prohibiting marriage in contravention of this Act. The Court may issue an injunction against any of the persons mentioned in Section 3, 4, 5 and 6 of this Act prohibiting such marriage.

This injunction shall not be issued against any person unless the court has previously given notice thereof to the person concerned and has afforded him an opportunity to show cause against the issue of the injunction. This requirement of the law may defeat the purpose of social justice where there is imperative need of judicial intervention to save the welfare and interest of the child. No doubt frivolous petitions by interested persons may sometimes result in dislocation of arrangements in genuine cases and such victims may also face social humiliation but this can be safeguarded by making deterrent provisions in the Act for those who move such frivolous petitions.

The Court may either of its own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1).

When such an application is received, the Court shall afford the applicant an early opportunity of appearing before it either in person or by pleader; and if the court rejects the application wholly or in part, it shall record in writing its reasons for so doing.