

Annulment of Child Marriage

under the Prohibition of Child Marriage Act, 2006

A Primer

Enfold Proactive Health Trust with support from UNFPA | 2024



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Annulment of Child Marriage
under the Prohibition of
Child Marriage Act, 2006

Justice B. V. Nagarathna
Judge
Supreme Court of India



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June 10, 2024

FOREWORD

I congratulate Enfold Proactive Health Trust for bringing out this comprehensive publication, *'Annulment of Child Marriage under the Prohibition of Child Marriage Act, 2006: A Primer'* with the support of the United Nations Population Fund (UNFPA).

The persistent and pervasive reality of child marriage is an egregious violation of human rights. The National Family Health Survey 2019-2021, recorded that 23.3% of women in the age group of 20-24 years were married before they turned 18 years.¹ Besides causing the menace of unwanted and unsafe pregnancies, child marriages worsen the gendered nature of poverty by depriving child brides of educational attainments.² The consequent denial is the autonomy of the girl child depriving her of the rights guaranteed under Articles 14 and 21 of the Constitution.

The Prohibition of Child Marriage Act, 2006 ('PCMA, 2006') seeks to preserve the social, economic, psychological and physiological health of children, especially girl children. The Prohibition of Child Marriage Act, 2006 was enacted to not only prevent and prohibit child marriages but also to offer an option to underaged brides and grooms to exit the marriage and secure other reliefs. These rehabilitative remedies allow such vulnerable women to start their lives afresh and exit the illegal child marriages with dignity.

However, the statutory relief would elude a significant number of erstwhile child brides due to a lack of awareness, parental support or access to legal services. The process of annulment traverses the complex terrain as it permits the annulment of a

¹ Ministry of Health and Welfare, National Family Health Survey (2019-2021), India Fact Sheet - India Key indicators, 3

² *Association for Social Justice & Research vs. Union of India*, 2010 SCC OnLine (Del) 1964 and *Seema Begam vs. State of Karnataka*, W.P.(C) No. 75889/2013.

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voidable, albeit valid marriage, except in Karnataka and Haryana where all child marriages are void.

This primer provides helpful and actionable details about the legal process and strategies that preserve the agency of children affected by child marriage. It provides an overview of the allied reliefs like maintenance, residence, and custody of children from the marriage under the PCMA. The exposition of the range of available and overlapping remedies under secular and personal family laws, the role of the guardian/next friend and state functionaries in obtaining a nullity petition would greatly aid the State and District Legal Services Authorities (SLSAs and DLSAs), Child Welfare Committees (CWCs), Child Marriage Prohibition Officers (CMPOs), District Child Protection Units (DCPUs), civil society organisations, lawyers, and individuals who may assist those seeking legal support, the court process of filing for nullity, and documents required as evidence.

The publication of *'Annulment of Child Marriage under the Prohibition of Child Marriage Act, 2006: A Primer'* marks a critical landmark in the quest for the removal of the social scourge of child marriage. By equipping those working with children in vulnerable situations with the primer to empower child parties who wish to exit their marriages, this initiative marks a step towards realising the noble vision of the framers of the Constitution. This noble vision for the welfare and socio-economic empowerment of children is enshrined in Articles 15(3), 24 and 45, as read in the context of Article 19 of the Convention on the Rights of the Child, 1989.

I am certain that this material would aid the Juvenile Justice Committees of the Supreme Court and all the High Courts in the discharge of their mandate of training stakeholders regarding this vital child rights legislation.

A handwritten signature in blue ink, appearing to read 'B.V. Nagarathna'.

(B.V. Nagarathna)



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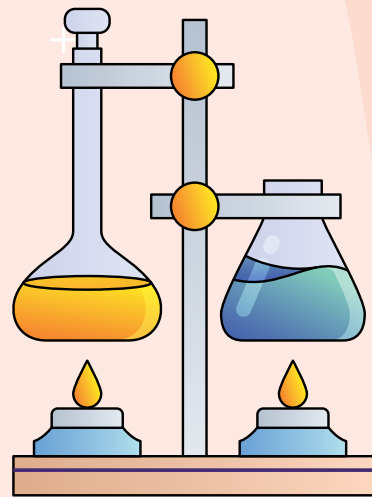
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Abbreviations

AIR	All India Reporter
BNS	Bhartiya Nyaya Sanhita, 2023
BNSS	Bharatiya Nagarik Suraksha Sanhita, 2023
CCI	Child care institution
CEDAW	UN Convention on the Elimination of All Forms of Discrimination Against Women
CMPO	Child Marriage Prohibition Officer
CMRA	Child Marriage Restraint Act, 1929
CNCP	Child in need of care and protection
CPC	Code of Civil Procedure, 1908
CriLJ	Criminal Law Journal
CrPC	Code of Criminal Procedure, 1973
CSO	Civil society organisation
CWC	Child Welfare Committee
DCPU	District Child Protection Unit
DLSA	District Legal Services Authority
DMMA	Dissolution of Muslim Marriage Act, 1939
FIR	First Information Report
HMA	Hindu Marriage Act, 1956
IPC	Indian Penal Code, 1860
JJ Act	Juvenile Justice (Care and Protection of Children) Act, 2015
MTP	Medical termination of pregnancy
NALSA	National Legal Services Authority
NCPCR	National Commission for the Protection of Child Rights
NCT	National Capital Territory
NFHS	National Family Health Survey
NGO	Non-governmental organisations
PAN	Permanent account number
PCMA	Prohibition of Child Marriage Act, 2006
PMDA	Parsi Marriage and Divorce Act, 1936
POCSO Act	Protection of Children from Sexual Offences Act, 2012
PRI	Panchayati Raj Institution
PWDV Act	Protection of Women from Domestic Violence Act, 2005
SCC	Supreme Court Cases
SCPCR	State Commission for the Protection of Child Rights
SLSA	State Legal Services Authority
UNFPA	United Nations Population Fund
UNICEF	United Nations Children's Fund



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Finally, we would like to thank the UNFPA team for giving us the opportunity to develop this primer, which we hope will serve as a knowledge base for authorities, organisations and individuals working in the space of child marriage.



About Enfold

Enfold Proactive Health Trust, a non-profit based in Bengaluru founded in 2001, aims to address gender-based violence and sexual abuse, through education, awareness, rehabilitative support for survivors of child sexual abuse, and restorative processes with children in schools and the juvenile justice system. The organisation works towards creating safe spaces, where all genders are equally valued and respected, every child is safe, and people of all genders feel empowered and accountable. This is achieved through strong field-based engagement, and direct work with children and adults in colleges, schools, in Child Care Institutions, and the community. Enfold works with State Governments across the country, conducting research studies, providing training and technical support to authorities and functionaries under the child protection system, offering recommendations for the effective implementation of child laws, and supporting the formulation of Child Safeguarding Policies and their effective implementation. The Research Team aims to generate evidence on implementation of child protection laws and their impact on children and adolescents so as to ensure that laws and policies advance children's rights. The Research Team has also supported State Governments with the drafting of delegated

legislation and child protection policies, made submissions to Parliamentary Standing Committees, the Central Government, NALSA, and other authorities on laws and policies relevant to children. Enfold's prevention team has been working towards addressing and preventing child sexual abuse across multiple platforms through age-appropriate, value-based Personal Safety and Comprehensive Sexuality Education programmes. Children are supported to learn to recognize abuse, and exercise agency in order to act against and report sexual abuse to safe adults. The team also supports schools in setting up robust systems for effective prevention and response to child sexual abuse. The Rehabilitation and Reintegration team provides a range of support services to children and families who report sexual abuse, right from the time of reporting of the abuse, through the various procedures in the criminal justice system, focusing on enabling child survivors of sexual abuse to live with dignity, access justice and healing. The Restorative Practices team has been actively using Restorative Practices to build and strengthen community, impart social and emotional learning, address misbehaviour or harm, and repair relationships within the Juvenile Justice System and in schools. For more information, visit <http://enfoldindia.org/>



About UNFPA

UNFPA is the United Nations' sexual and reproductive health agency. UNFPA's mission is to deliver a world where every pregnancy is wanted, every childbirth is safe and every young person's potential is fulfilled. UNFPA calls for the realisation of reproductive rights for all and supports access to a wide range of sexual and reproductive health services, including voluntary family planning, quality maternal healthcare and comprehensive sexuality education.

Operating in India since 1974, UNFPA focuses on empowering young people with critical life skills and invests in adolescent health

and well-being; ensuring universal access to high quality sexual and reproductive health and rights and services; addressing gender discrimination and harmful practices such as gender-biased sex selection and child marriage, and using population data to maximise the demographic dividend. UNFPA has state offices and concerted on-ground programme implementation in the four Indian states of Rajasthan, Madhya Pradesh, Bihar and Odisha. UNFPA's support includes policy advocacy, technical support for systems strengthening and programme implementation, and knowledge management.

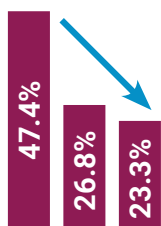


Introduction

While passing the PCMA there was a conscious focus on providing relief to children already married and restoring the dignity and agency of child parties by giving them an option to annul their marriage, along with the relief of maintenance for female child parties.

Within domestic law,¹ and international human rights law,² child, early, and forced marriages are seen as a violation of human rights, causing physical, psychological, and emotional harm, depriving children of developmental opportunities, posing reproductive health risks, and increased vulnerability to domestic violence for girls entering matrimony. The problem of child marriage has received considerable attention within India and globally, with ample emphasis on prevention and prosecution. Elimination of child, early and forced marriage by 2030 is one among the several targets for achieving the sustainable development goal of gender equality.

Global trends indicate a decline in the prevalence of child marriage, with one in every five women aged 20–24 years being married as a child in 2023, compared to almost one in four a decade ago.³ India, has seen a significant 20% reduction in child marriage over the past 10 years.⁴ According to the National Family Health Survey (NFHS), among women of the ages 20–24 years surveyed, the percentage who were married before the age of 18 years was 47.4% in NFHS-3 (2004–2005),⁵ which declined to 26.8% in NFHS-4 (2015–2016),⁶ and further declined to 23.3% in NFHS-5 (2019–2021).⁷



According to the NFHS, among women of the ages 20–24 years surveyed, the percentage who were married before the age of 18 years was **47.4% in NFHS-3** (2004–2005), which declined to **26.8% in NFHS-4** (2015–2016), and further declined to **23.3% in NFHS-5** (2019–2021)

¹ *Independent Thought v Union of India*, [2017] 10 SCC 800 [12], [27]; Prohibition of Child Marriage Act, Statement of Objects and Reasons.
² [UN Convention on the Elimination of All Forms of Discrimination Against Women, 1979, Article 16\(2\); Joint General Recommendation No. 31 of the Committee on the Elimination of Discrimination against Women/General Comment No. 18 of the Committee on the Rights of the Child \(2019\) on Harmful Practices](#), CEDAW/C/GC/31/REV - CRC/C/GC/18/Rev.1.
³ 'Is an End to Child Marriage within Reach?' (UNICEF, 5 May, 2023), <<https://data.unicef.org/resources/is-an-end-to-child-marriage-within-reach/>> accessed 13 May 2024.
⁴ 'Despite significant progress, we need to go 20 times faster to end child marriage by 2030, shows new data' (*Girls Not Brides*, 11 May, 2023) <<https://www.girlsnotbrides.org/articles/despite-significant-progress-we-need-to-go-20-times-faster-to-end-child-marriage-by-2030-shows-new-data/>> accessed 13 May 2024.
⁵ Ministry of Health and Family Welfare, 'National Family Health Survey (2015-2016) India Fact Sheet: India Key indicators', 3 <<https://rchiips.org/nfhs/pdf/NFHS4/India.pdf>> accessed 13 May 2024.
⁶ Ibid.
⁷ Ministry of Health and Family Welfare, National Family Health Survey (2019-2021), India Fact Sheet - India Key indicators, 3 <https://main.mohfw.gov.in/sites/default/files/NFHS-5_Phase-II_0.pdf> accessed 13 May 2024.

The persistence of child marriage results from societal factors such as deeply entrenched patriarchal norms, gender inequality, and humanitarian crises or conflicts/natural disasters.⁸ Poverty at both community and household levels contributes to child marriage,⁹ exacerbated by limited access to schools, health care facilities, and programmes in impoverished villages and districts.¹⁰ While child marriage affects both girls and boys, evidence indicates that girls are disproportionately impacted.¹¹

Deeply ingrained patriarchal norms perpetuate the belief that girls' sexual independence threatens family honour and is a financial burden. Consequently, parents seek to exert control over their daughters by arranging early marriages and also avoid substantial costs associated with weddings and dowries.¹² The dowries demanded for older girls are considerably higher than those for younger girls, as older girls are seen as less adaptable and consequently less desirable

compared to their younger counterparts.¹³ Concerns about girls engaging in romantic or sexual activities before marriage, choosing their own husband, or eloping if marriage is delayed are often cited as reasons for marrying girls at a young age. Delaying marriage is seen as potentially leading girls to stray from traditional expectations of chastity, often compromising with the family's aspirations for their daughter's marriage.¹⁴

In the Indian context, the practice of child marriage was first sought to be regulated through the Child Marriage Restraint Act (CMRA), 1929 passed during colonial times and amended thereafter. The amendments passed after independence, which increased the age of marriage,¹⁵ were driven by the purpose of population control¹⁶ and to ensure the physical and mental maturity of persons entering into marriage.¹⁷ However, the CMRA was unsuccessful in reducing child marriages, did not provide effective remedies for married girls,¹⁸ and was unclear about the legal status of child

⁸ 'Global polycrisis creating uphill battle to end child marriage - UNICEF' (UNICEF, 2 May 2023) <<https://www.unicef.org/press-releases/global-polycrisis-creating-uphill-battle-end-child-marriage-unicef>> accessed 13 May 2024; 'Is an End to Child Marriage within Reach? Latest trends and future prospects' (UNICEF, 2023) <<https://data.unicef.org/resources/is-an-end-to-child-marriage-within-reach/>> accessed 13 May 2024.

⁹ Mary E. John, 'The marriage age misconception' *The Hindu* (21 August, 2020) <<https://www.thehindu.com/opinion/lead/the-marriage-age-misconception/article32406793.ece>> accessed 13 May 2024.

¹⁰ Shireen J Jejeebhoy, 'Ending Child Marriage in India, Drivers and Strategies' (UNICEF, 2019) <<https://www.unicef.org/india/media/2556/file/Drivers-strategies-for-ending-child-marriage.pdf>> accessed 13 May 2024.

¹¹ Shruti Shukla, Jessy Amarachi Ezebuibe and Janina Isabel Steinert, 'Association between public health emergencies and sexual and reproductive health, gender-based violence, and early marriage among adolescent girls: a rapid review' [2023] 23(117) *BMC Public Health*, 1-8.

¹² [n 10].

¹³ *Ibid.*

¹⁴ Jennifer Roest, Oxford: *Young Lives, Child Marriage and Early Child-bearing in India: Risk Factors and Policy Implications* (Policy Paper 10) (2016).

¹⁵ In 1929, the age of marriage for a male was 18 and for a female it was 14 years. The Amendment in 1949, increased the age of the female to 15 years and the 1978 Amendment increased the age of the male to 21 years and female to 18 years.

¹⁶ Minister of Law and Justice, Shanti Bhushan moving the bill for amendment of the Child Marriage Restraint Act in Rajya Sabha in 1978, *Rajya Sabha Debates*, 134, 137-138, <https://rsdebate.nic.in/bitstream/123456789/421118/1/PD_104_02031978_9_p131_p222_17.pdf> accessed 13 May 2024. However, Jaya Sagade argues that the amendment was driven primarily by the purpose of population control rather than women's rights. Jaya Sagade, *Child Marriage in India* (2012 Oxford University Press) 46-47. See also Geraldine Forbes, 'Women and Modernity: The Issue of Child Marriage in India' (1979) 2(4). *Women's Studies Int. Quart.* 407; Mary John, 'A Suitable Girl? Marriage, Age and Equality' (*The India Forum*, 2 February 2022) <<https://www.theindiaforum.in/article/suitable-girl/>> accessed 11 July 2024. In the revision to the National Population Policy (April, 1976) the minimum age of marriage was raised to 18 for females and 21 for males.

¹⁷ Minister of Law and Justice, Shanti Bhushan moving the bill for amendment in Rajya Sabha in 1978, *Rajya Sabha Debates*, 132-133, <https://rsdebate.nic.in/bitstream/123456789/421118/1/PD_104_02031978_9_p131_p222_17.pdf> accessed 13 May 2024.

¹⁸ The government itself recognised the CMRA as ineffective and the opinions of various stakeholders such as the NHRC and NCW were sought on how to improve it. See Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, *13th Report on the Prevention of Child Marriage Bill, 2004* (29th November 2005), para 5-6; The minister introducing the Prohibition of Child Marriage Bill, 2006 in the Lok Sabha also noted the ineffectiveness of the CMRA, *Lok Sabha Debate*, 14th Lok Sabha, Session 9, 19 December 2006, available at <<https://feministlawarchives.pldindia.org/wp-content/uploads/6955.pdf>> accessed 13 May 2024; Jaya Sagade argues that the protectionist approach and the object of population control that formed the basis for formulating and amending the Child Marriage Restraint Act, 1929 as opposed to gender equality considerations, set it up for ineffective implementation, Jaya Sagade, *Child Marriage in India: Socio-legal and Human Rights Dimensions* (Oxford University Press, 2nd ed. 2012) 47; Human Rights Law Network, *Child Marriages in India*, 43-48, <<https://slrc.org.in/uploads/2019/01/child-marriage-and-the-law.pdf>> accessed 13 May 2024 (HRLN Report).

marriages.¹⁹ The Prohibition of Child Marriage Act (PCMA) was passed in 2006 to remedy the lacunae in the CMRA by enhancing the prevention and prosecution framework²⁰ and providing under age brides and grooms an option to exit the marriage and other reliefs.²¹ The PCMA introduced the role of Child Marriage Prohibition Officers (CMPO) to help implement the Act and prevent child marriages. It strengthened the criminal sanctions by enhancing the power of the police to arrest for child marriage offences and by imposing more stringent punishments.²²

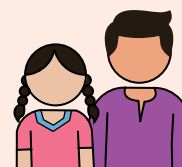
While passing the PCMA there was a conscious focus on providing relief to children already married and restoring the dignity and agency of child parties by giving them an option to annul their marriage, along with the relief of maintenance for female child parties. In this context, the Minister of State for the Ministry of Women and Child Development, while introducing the Bill in the Lok Sabha noted, that child parties to a marriage are “coerced, bullied, black-mailed, emotionally exploited and quite often under duress” and the PCM Bill sought to give these children “the strength, the exit policy, and the ability to sustain themselves”.²³

Under the PCMA, “child marriage” signifies a marriage “to which either of the contracting parties is a child”.²⁴ The term “child” is defined to mean a male who has not completed 21 years of age, and a female who has not completed 18 years of age.²⁵

In this primer,

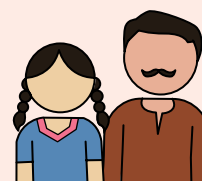
Child party

A “child party” is a bride or groom who was under the legal age of marriage at the time of the marriage, i.e. a bride below 18 years and a groom below 21 years.



Adult party

An “adult party” to a child marriage is a bride or groom who was above the legal age of marriage but married a person who was under the legal age of marriage.



Under Section 3, a child party to a child marriage can petition the District Court for annulment of the marriage. However, there is no official data available on the number of child marriages nullified. A study by Partners for Law and Development based on 83 cases adjudicated in 2008–2017 by the District Courts and High Courts under the PCMA revealed that only 12 pertained to a declaration of nullity.²⁶

The decline in child marriage has been considerable in India and is attributable to improvement in female education, a decline in poverty and fertility rates, and promotion of positive gender norms among other

¹⁹ Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, *13th Report on the Prevention of Child Marriage Bill, 2004* (29th November 2005), para 5; HRLN Report [n 18] 43.

²⁰ PCMA, Statement of Objects and Reasons.

²¹ National Human Rights Commission, *Annual Report 2001-2002*, para 5.10, p. 50, <<https://nhrc.nic.in/sites/default/files/Annual%20Report%202001-2002.pdf>> accessed 13 May 2024.

²² The offences under CMRA were cognizable to a limited extent under Section 7 of the CMRA. The police could investigate such offences without permission from a magistrate, like other cognizable offences (see Section 2(c) and 41(1)(a) of the Code of Criminal Procedure). However, unlike other cognizable offences, the police were not empowered to make any arrest for offences under the CMRA without a warrant issued by a magistrate. This was designed to reduce the scope of harassment by the police, keeping in mind the prevalence of child marriage as a custom at the time (See Minister of Law and Justice, Shanti Bhushan moving the bill for amendment of the Child Marriage Restraint Act in Rajya Sabha in 1978, Rajya Sabha Debates, 135, <https://rsdebate.nic.in/bitstream/123456789/421118/1/PD_104_02031978_9_p131_p222_17.pdf> accessed 13 May 2024. Under the PCMA, however, all offences are fully cognizable and non-bailable.

²³ Srimati Renuka Chowdhury, *Discussion on the motion for consideration of the Prohibition of Child Marriage Bill, 2006*, as passed by Rajya Sabha (Bill passed), 19 December 2006 (14th Lok Sabha), <<https://eparlib.nic.in/bitstream/123456789/729217/1/6955.pdf#search=null%20GOVERNMENT%20BILLS%20Shailendra%20Kumar%20Prabodh%20Panda%2014%20Karuna%20Shukla>> accessed 13 May 2024; V. Radhika Selvi from Tamil Nadu welcomed the option for minor girls married without their consent to declare their marriage void.

²⁴ PCMA, s 2(b).

²⁵ PCMA, s 2(a).

²⁶ Partners for Law in Development, *Child Marriage Prosecutions in India - Case Law Analysis of Actors, Motives and Outcomes 2008-2017* (2021) (PLD study).

interventions.²⁷ However, a significant number of girls and young women who entered into a marriage as a child, may continue to remain in them due to a lack of awareness of the option of annulment, a lack of parental support where child marriage is a customary practice, enjoys cultural sanction, or a lack of external support to approach a court of law to exercise this option. A 2022 publication by HAQ and MJAS titled "*Bal Vivah Nirastikaran - Kanuni aur Samajik Jatiltay (Child Marriage Nullification - Legal and Social Complexities)*", highlighted the legal and

social challenges associated with the nullification of child marriages.²⁸ The report briefly discusses the legal framework of child marriage nullification and outlines some of its challenges and deficiencies. It noted challenges like social acceptance of child marriage,²⁹ lack of legal awareness regarding child marriage among the stakeholders,³⁰ lack of effective reporting mechanisms,³¹ lack of coordination and communication between the officials and beneficiaries,³² and lack of rehabilitation efforts for victims of child marriage.

Why is this Primer needed?

Awareness campaigns and resource materials³³ on child marriage have been geared towards prevention and prosecution of child marriages. However, not enough attention or resources have been invested in operationalising the option of nullification of child marriages for those who wish to exit a child marriage. While there are State Government schemes³⁴ that offer financial support, reservation in employment, and funds for re-marriage of divorced women, there are no

similar schemes available to girls and women who choose to nullify their marriage. There is a lack of easily accessible material on legal options to annul child marriages, including relevant legal provisions, timelines, required evidence and the appropriate forum. Preliminary discussions with organisations focused on child marriage revealed an interest in understanding the legal avenues available to help children nullify their marriages as there is lack of knowledge on how to navigate this process.

The Primer is meant to serve as a reference guide to generate awareness and empower child parties to exercise the option of nullity under the PCMA. It explains the option of nullity, differences between voidable and void marriages, the procedure for petitioning the court, civil reliefs that can be availed by the child party, and the differences between nullity and divorce proceedings. While this Primer acknowledges the existence of customary practices, it does not delve into them, and instead focuses on legal avenues available for nullifying child marriage under the PCMA.

²⁷ United Nations Children's Fund, 'Ending Child Marriage: A profile of progress in India', 2023 (UNICEF, 5 May 2023) <<https://data.unicef.org/resources/ending-child-marriage-a-profile-of-progress-in-india-2023/>> accessed 13 May 2024.

²⁸ HAQ and Mahila Jan Adhikar Samiti, *Bal Vivah Nirastikaran - Kanuni aur Samajik Jatiltay* (2022) <<https://www.haqcrc.org/wp-content/uploads/2021/08/bal-vivaah-nirastikaran.pdf>> accessed 13 May 2024. (HAQ & MJAS study)

²⁹ Ibid 26.

³⁰ Ibid 27.

³¹ Ibid 27.

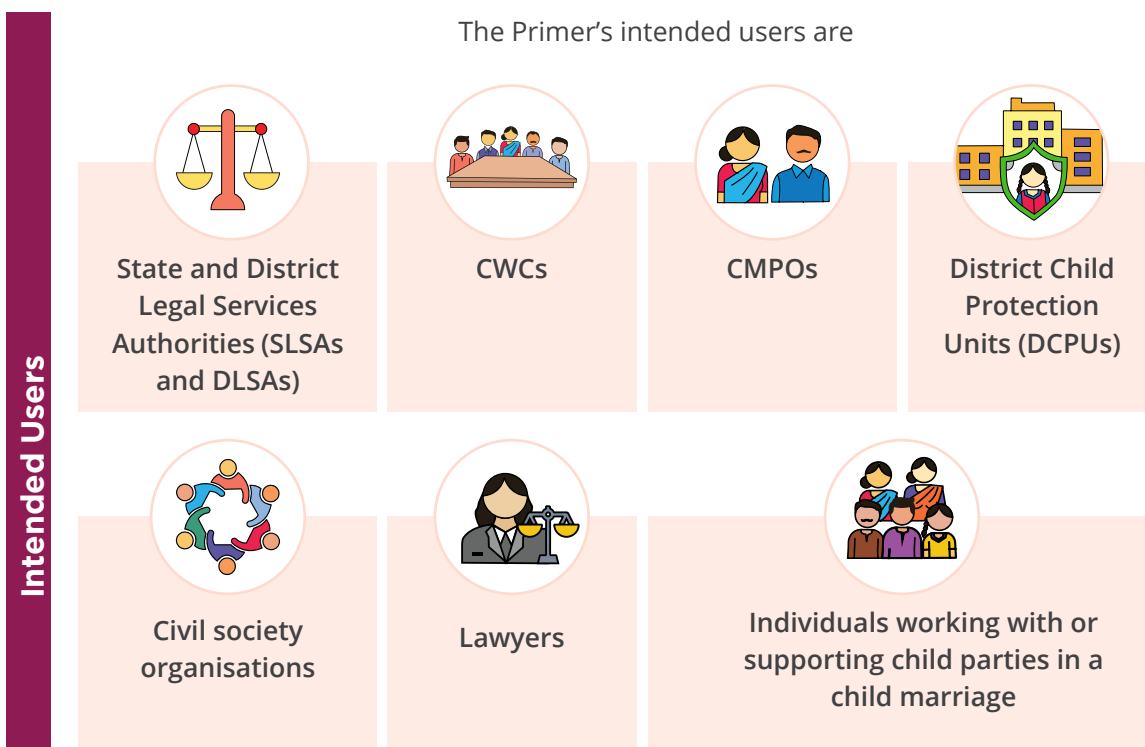
³² Ibid 28.

³³ HAQ Centre for Child Rights, UNICEF & Ministry of Women and Child Welfare, *Handbook on the Prohibition of Child Marriage Act 2006*, <<https://www.haqcrc.org/publication/handbook-prohibition-child-marriage-act-2006/>> accessed 13 May 2024; Socio-Legal Information Centre, *The Status of Child Marriage in India: A Guide for NGOs and CSOs on Using the Law to End Child Marriages in India* (June 2022).

³⁴ Schemes for divorced women include schemes such as Single Women Pension Scheme by the Government of Telangana, that provides pension of Rs.1000/- per month for eligible divorced women [Single Women Pension Scheme (*Government of Telangana*) <<https://jagtial.telangana.gov.in/scheme/single-women-pension-scheme/>> accessed 13 May 2024], the "Mangalya Scheme" by the Department of Women and Child Development, Government of Kerala, which provides financial assistance of ₹25000/- to eligible widows and divorced women to remarry [Mangalya Scheme for Widow Remarriage (*My scheme*) <<https://www.myscheme.gov.in/schemes/mswr>> accessed 13 May 2024]. Section 7B of the Rajasthan Educational Service Rules 1970, provides reservation of 30% posts for women, out of which one third of them shall be for widows and divorced women in the ratio 80:20 (<https://www.rajteachers.in/wp-content/uploads/2018/08/raj_education-1970.pdf> accessed 13 May 2024).

This primer is based on research on relevant judgements and resource materials on nullity petitions, interviews with organisations, experts, and lawyers across India. Relevant decisions of High Courts and Supreme Court were referred, and an attempt was also made to gather and study nullity orders passed by District Courts in Rajasthan and Tamil Nadu to understand how these matters are decided. Though there is no official data on the number of nullity petitions, conversations with organisations working in the field revealed that nullity petitions are being filed in Rajasthan under the PCMA. Hence, field visits were made to Jodhpur, Ajmer and Jaipur in Rajasthan to gain an understanding of ground realities and

challenges in filing nullity petitions. Interviews were conducted with lawyers and young women who have accessed the nullity option, as well as organisations supporting young women in filing nullity petitions. District and State Legal Services Authorities, along with experts and academicians from different States who have conducted research in the field of child marriage and trainings on PCMA were also interviewed. The purpose of these interviews was to understand the circumstances under which nullity petitions are filed, the reasons behind the low filing rate of petitions, practical challenges faced and the use of community resolution mechanisms to end marriages.



We acknowledge that in its current format the primer may not be accessible to child parties. It is our hope that those working with children in vulnerable situations will use the primer to empower child parties who wish to exit their marriages.

Structure of the Primer

Legal framework related to child marriage

This section explains the legal definition of child marriage and provides an overview of the laws applicable to various aspects of child marriage including its prevention, care and protection for child parties, criminal sanctions against child marriage and associated activities, and civil remedies available to child parties.

Legality and validity of child marriages in India

This section explains the legal status of child marriages, including the interaction of the PCMA with personal laws and Special Marriage Act 1954 as applicable to child marriages, and the meaning of voidable marriages and how they are different from void marriages.

Who can exercise the option of nullity?

This section explains the concept of nullifying a child marriage, who has the option to nullify a child marriage and factors that may bar child parties from filing a nullity petition, including the age limits for male and female child parties.

Procedure for filing a nullity petition

This section details the forum, role of the guardian/next friend and state functionaries in obtaining a nullity petition, who can be approached for legal support, the court process of filing for nullity, and documents required as evidence.

Additional reliefs with annulment under PCMA

This section provides an overview of the allied reliefs like maintenance, residence and custody of children from the marriage under the PCMA.

Disclaimer: The contents of this Primer do not constitute legal advice. Those seeking or facilitating annulment petitions should seek independent legal counsel.

I. LEGAL FRAMEWORK RELATED TO CHILD MARRIAGE

Child marriage has different dimensions and is dealt with under a range of criminal, civil, and socially beneficial legislations, as well as religion-based personal laws.

CASE STUDY

Khushi, a 15-year-old girl lives in a city with her parents and two siblings. Her father is a daily wage labourer and her mother works as a domestic helper. She is studying in 8th Standard. The family incurred a heavy debt and decided to marry Khushi off to reduce the pressure on the household. Khushi's parents pulled her out from school and got her married to 25-year-old Rajesh, a distant relative in accordance with Hindu rites. Her husband forcibly has sex with her, and beats her regularly. Khushi becomes pregnant, but does not wish to have the child. Her parents and husband are against termination of the pregnancy. She manages to connect with a teacher in her school and conveys her plight. The teacher contacts a social worker, who in turn, informs the CMPO and the police.

There are several laws that become applicable in this situation and support may be provided to Khushi under the following legal provisions:

- I. Khushi's marriage could have been prevented if her teachers, neighbours, or local representatives alerted the police, Child Welfare Committee (CWC), Child Helpline, or the CMPO before the marriage had been solemnised. These authorities have a duty to prevent child marriages and can also seek an injunction from the Judicial Magistrate of the First Class to prohibit Khushi's marriage. To know more about prevention efforts, see [Question 3\(i\)](#).
- II. Criminal action can be initiated against Khushi's parents and husband under the PCMA and the Juvenile Justice (Care and Protection of Children) Act (JJ Act), 2015 for the solemnisation of the marriage. For more information refer to [Question 3\(iii\)](#).
- III. The sexual violence she has been subjected to by her husband constitutes aggravated penetrative sexual assault under the Protection of Children from Sexual Offences (POCSO) Act, 2012, as well as rape under the Bhartiya Nyaya Sanhita (BNS), 2023 or IPC, as applicable. For more information refer to [Questions 3\(iii\)](#) and [4](#).
- IV. Khushi can also seek criminal action against her husband for domestic violence under the BNS or IPC, as applicable, and cruelty under the JJ Act. Additionally or alternatively, she can seek civil reliefs under the Protection of Women from Domestic Violence (PWDV) Act, 2005 such as a protection order and residence order, if she wishes to remain in the same house, but does not want him to enter the house. For more information refer to [Question 3\(iv\)](#), [5](#) and [6](#).
- V. If Khushi does not wish to remain in the same house as her husband or live with her parents, she has to be produced before the CWC, which can decide about her immediate shelter and long-term rehabilitation.

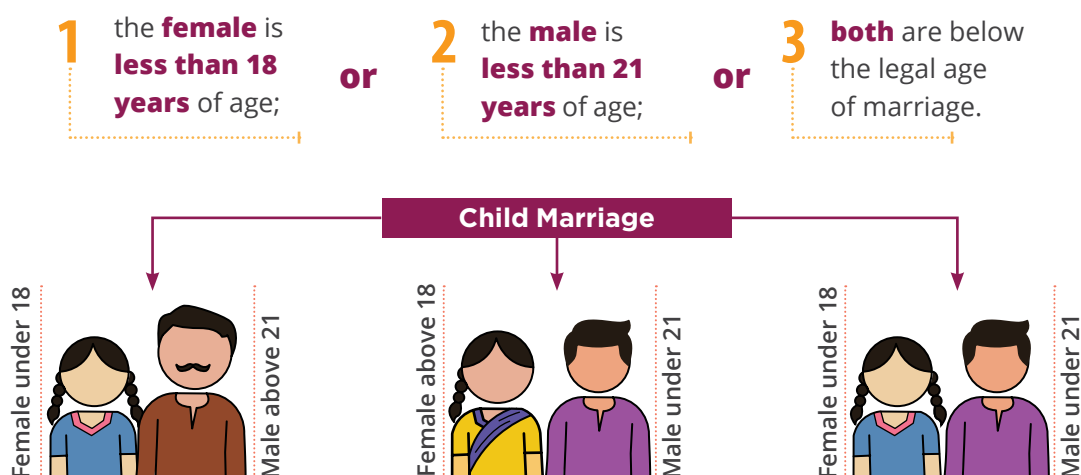
VI. Since she wants to terminate the pregnancy, and both of her parents and husband are unwilling, the CWC can recognise a guardian who can give consent on her behalf if the conditions for termination under the Medical Termination of Pregnancy (MTP) Act, 1971, are satisfied. For more information refer to [Question 3\(ii\)](#).

VII. If Khushi wants to opt out of the marriage, she can be supported by the CMPO, CWC, District Legal Services Authority (DLSA), or a next friend to petition the District Court for annulment of the marriage under the PCMA or repudiate her marriage and dissolve it under the Hindu Marriage Act (HMA), 1956. For more information refer to [Questions 5 and 6](#).

1. What is meant by “child marriage”?

The Prohibition of Child Marriage Act (PCMA), 2006 defines “child marriage” as “a marriage to which either of the contracting parties is a child”³⁵ and defines “child” as “a person, who if a male, has not completed 21 years of age, and if female, has not completed 18 years of age”.³⁶

Thus, a child marriage is a marriage where:



The term “contracting party” has been defined as “in relation to a marriage, means either of the parties whose marriage is or is about to be thereby solemnised”.³⁷ This means the bride and groom to a child marriage that is already performed or about to be performed.

2. What is meant by “annulment” of a child marriage?

Annulment or nullification of a marriage is declaring that marriage is null and void. If a marriage is annulled, it is as though the marriage never took place, and the parties to such a marriage are considered unmarried. A petition before a court to get a marriage declared null and void is called a nullity petition.

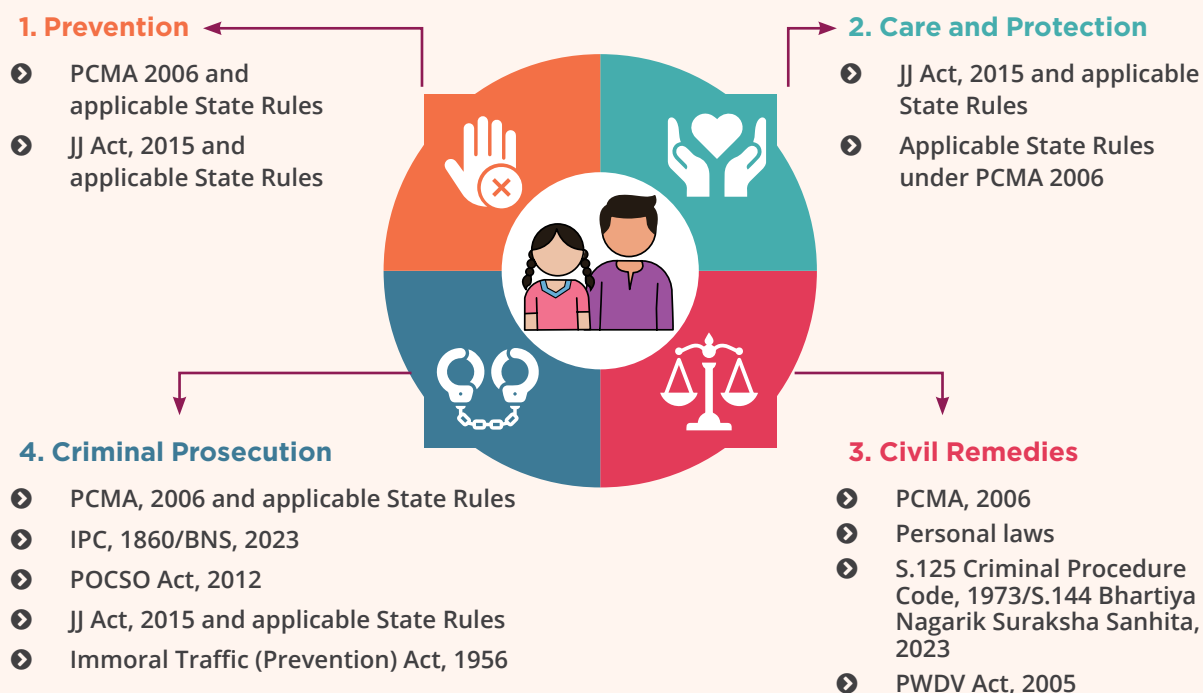
³⁵ PCMA, s 2(b).

³⁶ PCMA, s 2(a).

³⁷ PCMA, s 2(c).

3. What are the laws relevant to child marriage in India?

Legal Framework on Child Marriage



Child marriage has different dimensions and is dealt with under a range of criminal, civil, and socially beneficial legislations, as well as religion-based personal laws. These laws address different aspects of child marriage:

I. Prevention

The PCMA has provided for the appointment of CMPOs to ensure constant oversight, long-term, and continuous efforts to prevent child marriages.³⁸ CMPOs are tasked with sensitising the community and raising awareness on the issue of child marriage,³⁹ and collecting statistics regarding child marriage.⁴⁰ They can be assisted by community leaders, panchayat officers, schools, non-governmental organisations (NGOs), government officers and Public Sector Undertaking officers in discharging these duties.⁴¹ This is supplemented by rules under the PCMA passed by the State Governments that require the CMPOs to collect data regarding child marriages,⁴² and hold meetings with residents of their locality to raise awareness.⁴³ Apart from the PCMA, the State Legal Services Authority and District Legal Services Authorities established under the Legal Services Authorities Act, 1987 to conduct awareness campaigns regarding the age of

³⁸ PCMA, s 16.

³⁹ PCMA, ss 16(3)(c)(d) and (e).

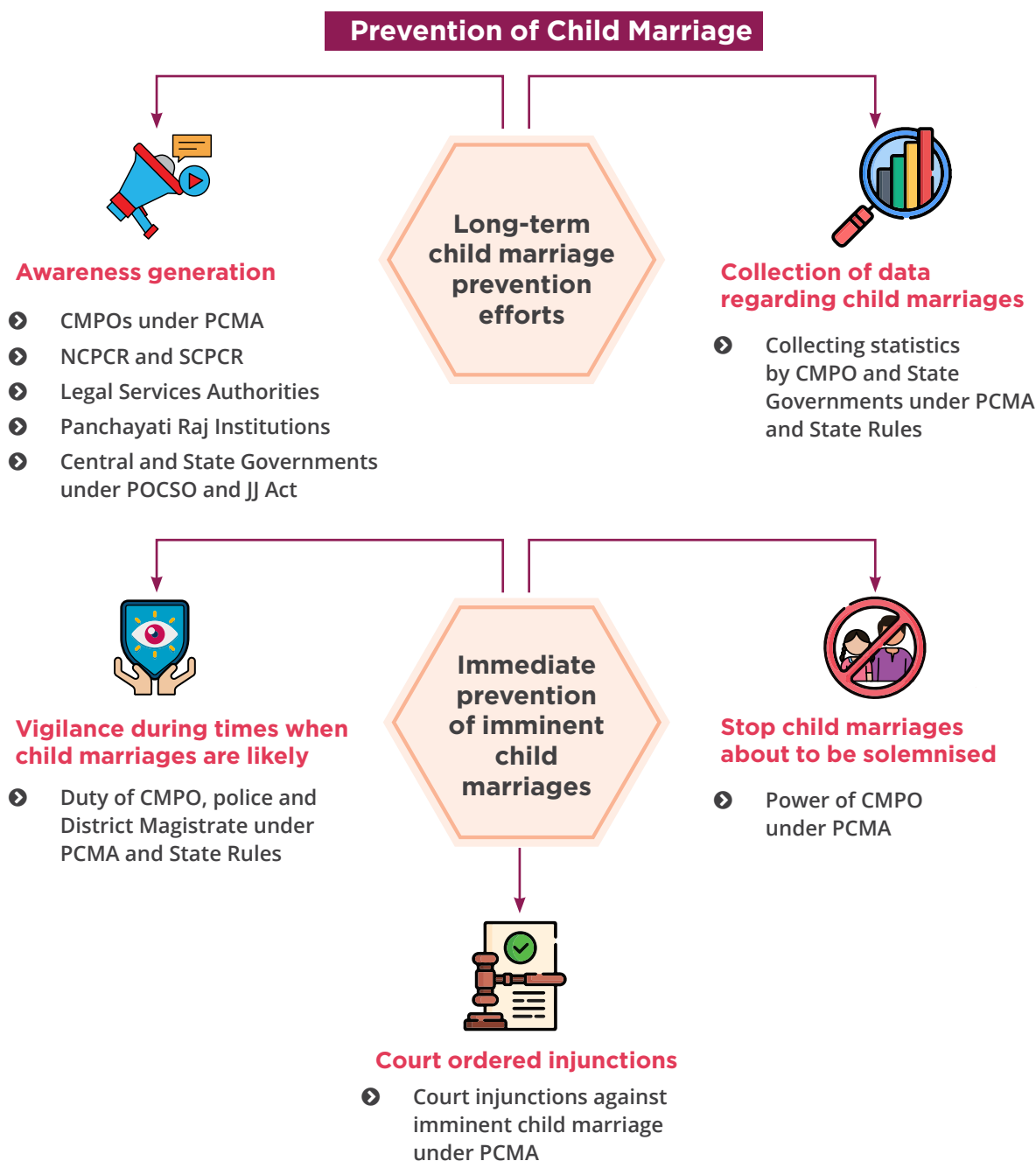
⁴⁰ PCMA, s 13(f).

⁴¹ PCMA, s 16(2).

⁴² See for example, Tamil Nadu Prohibition of Child Marriage Rules 2009, Rule 3(b); Odisha Prohibition of Child Marriage Rules 2009, Rule 3(b) and the Bihar Prohibition of Child Marriage Rules 2010, Rule 11.

⁴³ See for example, the Bihar Prohibition of Child Marriage Rules 2010, Rule 10(7).

marriage and criminal sanctions under the PCMA.⁴⁴ Human rights institutions such as the National and State Commissions for Protection of Child Rights (NCPCR and SCPCRs) are also tasked with raising literacy regarding child rights and can spread awareness regarding child marriage.⁴⁵ Obligations are also cast on the Central Government and State Governments to give wide publicity to the provisions of the JJ Act, 2015 and the POCSO Act, 2012 so as to create awareness of the provisions.⁴⁶



⁴⁴ For example, the Rajasthan State Legal Services Authority and many district legal services authorities in the state have distributed posters and pamphlets on the negative effects of child marriage and conduct awareness campaigns and community pledges against child marriage especially around the time of *teej*, a festival when mass child marriages are organised.

⁴⁵ Commissions for Protection of Child Rights Act 2005, s 13(1)(h).

⁴⁶ JJ Act, s 108. POCSO Act, s 43.



कतिपय परिस्थितियों में बाल-विवाह शून्य प्रभावहीन माना जायेगा-

1. जबकि यह किसी बालक को उसके विधिपूर्ण संरक्षण की संरक्षकता से बाहर ले जाकर किया गया हो।
2. बल प्रयोग द्वारा अथवा किसी प्रवंचना पूर्ण साधनों द्वारा उत्प्रेरित करके उसे किसी अन्य स्थान पर ले जाकर किया गया हो।
3. अवयस्क को विवाह के उद्देश्य से बेचा गया हो अथवा शादी के उपरान्त अनैतिक उद्देश्यों, कृत्यों या वैश्यावृत्ति के लिए बेच दिया गया हो।

The PCMA also provides immediate action to prevent or stop a child marriage that is imminent. The CMPO can “prevent solemnisation of child marriages by taking such action as he may deem fit”.⁴⁷ It also empowers Judicial Magistrates of First Class and Metropolitan Magistrates to issue injunctions against any person in order to prohibit a child marriage that is arranged or about to be solemnised, based on any reliable report or information and disobeying these injunctions is a punishable offence.⁴⁸ Further, on days such as *Akshaya Tritiya* when child marriages are likely to occur, the District Magistrate is deemed to be a CMPO with all the powers vested in the CMPOs.⁴⁹

A pamphlet by the Rajasthan State Legal Services Authority raising awareness on child marriage

II. Care and Protection

A child party at imminent risk of marriage or rescued from a situation of violence or exploitation within a marriage is a ‘child in need of care and protection’ under the JJ Act, 2015 and has to be produced before the CWC. Such a child may require shelter if their safety and care cannot be assured in their natal home or if the child is unwilling to stay with their family. The CWC has the authority to pass orders for the care, protection, treatment, development, and rehabilitation of a child in need of care and protection.⁵⁰ It is also possible that the child party may be pregnant and may wish to terminate the pregnancy against the wishes of her husband and her family members. In such a situation, the CWC can recognise a guardian who can give consent on her behalf for the termination of the pregnancy, if the pregnancy is under 24 weeks.⁵¹ For example, in *Lavanya Anirudh Verma v NCT of Delhi*, a minor’s father was accused of sexually abusing her leading to criminal proceedings under POCSO Act and her mother had abandoned the family. The Delhi High Court upheld the decision of the CWC to appoint the director of the Child Care Institution (CCI) in which she was placed as her guardian for all legal proceedings arising out of the POCSO case. In such a situation, if the child party is placed in a CCI, the Superintendent of the CCI may be recognised as a guardian.

⁴⁷ PCMA, s 16(3)(a).

⁴⁸ PCMA, ss 13(1)-(3), (10).

⁴⁹ PCMA, s 13(4).

⁵⁰ JJ Act 2015, ss 29-30.

⁵¹ JJ Act 2015, s 2(31) read with s 30(vi). Also see *Lavanya Anirudh Verma v NCT of Delhi*, [2017] Cri LJ 3179 (Del).

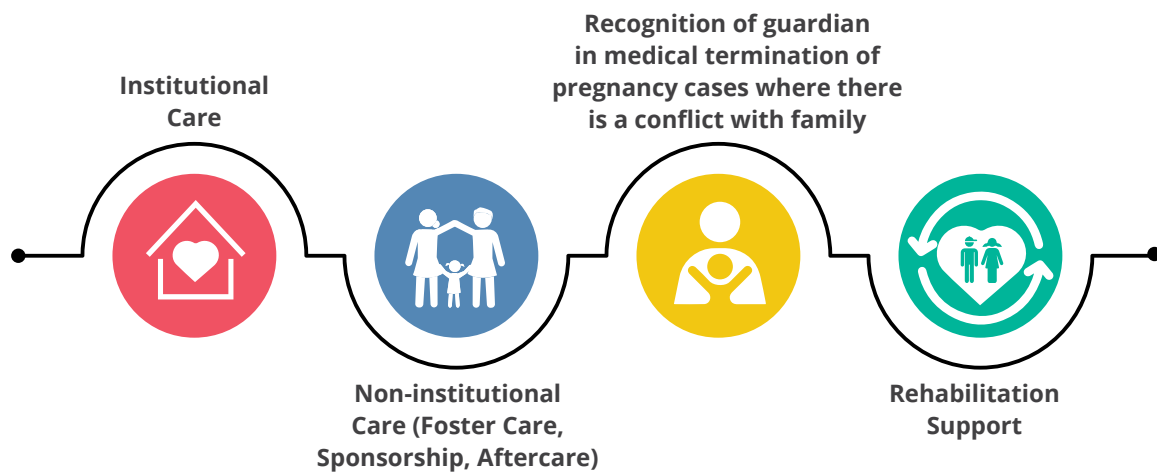
The JJ Act describes a child

- who is at imminent risk of marriage AND
- whose parents or family members are likely to be responsible for the solemnisation of the marriage

As a “**child in need of care and protection (CNCP)**” under Section 2(14)(xii).

A child residing with a person who has injured, exploited, abused or neglected the child or violated any other law in force meant for protection of the child is also a CNCP u/s 2(14)(iii)(a).

Care and Protection under JJ Act and Model Rules



Rule 55(1), JJ Model Rules, 2016: On receipt of information of risk of a child being given in marriage, the police or any officer authorised under the Act or under the PCMA, 2006 (6 of 2007), shall produce the child before the Committee for appropriate directions and rehabilitative measures.

III. Criminal Prosecution

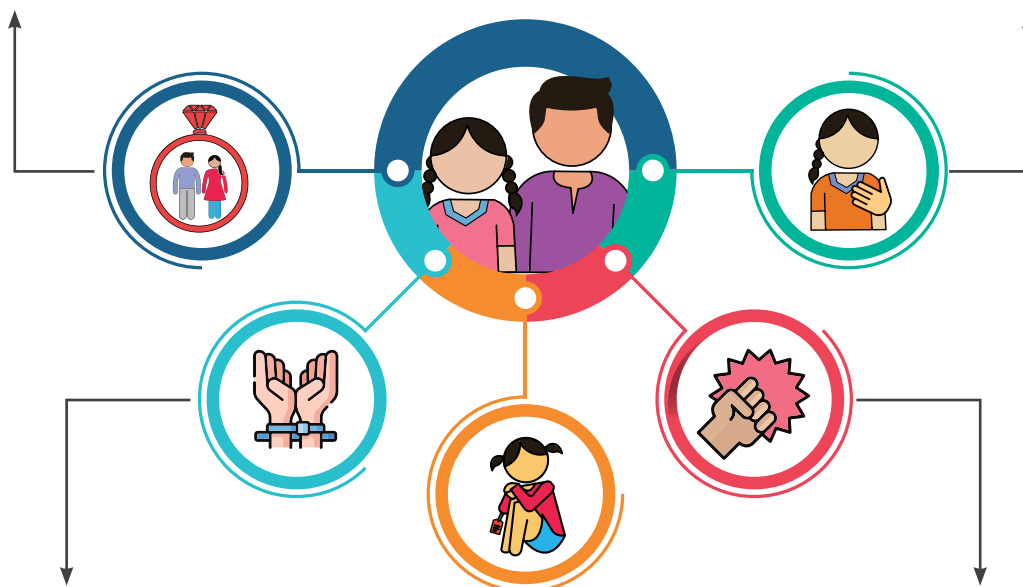
Illustrative Criminal Laws applicable in cases of child marriage

Conduct of Child Marriage

- S. 9, PCMA – Adult male marrying a child
- S. 10, 11, PMCA – Performing, conducting, directing, abetting, promoting or permitting a child marriage
- S. 13, PCMA – violation of court injunction prohibiting a child marriage
- S. 75, JJ Act read with Rule 55, Model JJ Rules– giving a child in marriage is cruelty

Sexual Offences

- Ss. 63 & 65, BNS/Ss. 375, 376, 376AB, IPC – Sexual intercourse with a wife below 18 years attracts charges of rape for the male party
- Ss 5(n) & 9(n), POCSO Act – Ground for aggravated penetrative sexual assault and aggravated sexual assault is commission of the offence by a “relative of the child through blood or adoption or marriage....”



Kidnapping and Abduction

- S. 135, 137 BNS/ Ss. 361, 363, IPC – Kidnapping from lawful guardianship
- S. 85, BNS/S. 366, IPC – Kidnapping woman to compel her marriage

Trafficking

- Ss. 141, 96 & 97, BNS/Ss. 370, 372 & 373, IPC – Trafficking for exploitation, sale and buying of children for prostitution
- Ss. 5 and 5A, ITPA – Procuring, recruiting, transporting or harbouring children for prostitution
- S. 81, JJ Act - Sale and procurement of children for any purpose

Exploitation and violence

- S. 84, BNS/S. 498A, IPC – Dowry Harassment, cruelty by husband and his relatives
- S. 75, JJ Act – Assault, exploitation and abuse and of child by person having actual charge of child amounts to cruelty



Conduct of Child Marriage

Certain activities within and related to child marriage are criminal offences and attract imprisonment. The PCMA and HMA 1955, criminalise an adult male marrying a child.⁵² It should be noted that while the PCMA only prescribes punishment for the crime of an adult male above 18 years of age marrying a female child below 18 years of age, the HMA also punishes a female marrying a male below 21 years of age. The PCMA criminalises the conduct and abetting of child marriages.⁵³



Sexual Offences

Sexual acts within a child marriage will attract rape charges under the IPC/BNS against the husband if the wife is below 18 years, and the POCSO Act will be attracted if either or both parties are below 18 years.⁵⁴ It must be noted that if both are minors in a marriage, and a case under the POCSO Act is lodged against either party or both parties, they will have to be dealt with as a child in conflict with the law under the JJ Act. Technically, both may also fall within the ambit of children in need of care and protection under the JJ Act, if they are residing together in the same or shared household or are in a homeless situation and without parental support,⁵⁵ or if they do not wish to reside with their family. Although the POCSO Act is gender neutral and victims can be males as well, in cases of elopements and self-initiated marriages, First Information Reports (FIRs) are predominantly lodged by the family of the girl against the male party.⁵⁶



Exploitation, Violence and Kidnapping

Exploitation, neglect and abuse of the child by persons in charge of the child constitutes the offence of cruelty under the JJ Act. The JJ Model Rules add that giving a child in marriage will be considered as cruelty to the child.⁵⁷ Based on the facts and circumstances of the case, other penal provisions under the BNS or IPC as applicable such as kidnapping and laws like the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, Information Technology Act, 2000, Dowry Prohibition Act, 1961 and others may also be attracted.

⁵² PCMA, s 9; HMA, s 18.

⁵³ PCMA, ss 10-11.

⁵⁴ IPC, ss 375, 376 and 376 AB/BNS 63, 64 and 65; POCSO Act, ss 3-12.

⁵⁵ POCSO Rules, Rule 4(4).

⁵⁶ *Rahul Chandel Jatav v State of Madhya Pradesh*, Misc. Criminal Case No. 24691 of 2023 decided by the Madhya Pradesh High Court on 27.06.2023 - "Today, most of criminal cases in which prosecutrix is under 18 years of age, due to aforesaid anomaly, injustice is going on with adolescent boys."; *Kothandapani v State and Ors.* CrI. O.P. No. 20729 of 2022 decided by the Madras High Court on 02.09.2022 - "As a consequence of such a FIR being registered, invariably the boys get arrested and thereafter, their youthful life comes to a grinding halt. The provisions of the POCSO Act, as it stands today, will surely make the acts of the boys an offence due to its stringent nature. An adolescent boy caught in a situation like this will surely have no defence if the criminal case is taken to its logical end"; *Aarush Jain v State of Karnataka*, Criminal Petition No. 3710 of 2022 decided by Karnataka High Court on 09.09.2022 [14] - "It would not be inapt to notice that young children or boys who have not yet reached the age of 18 years, many a time, without realising or being ignorant of the consequences of their act which they perform in the frenzy of youth, emerge themselves as offenders under the provisions of POCSO Act and face serious consequences. Romantic love between a boy and a girl of the age of adolescence sometimes arising out of infatuations results in the boy embroiling himself into the vortex of the provisions of the POCSO Act." and ICCW, *Children apprehended under POCSO Act for elopement in Tamil Nadu* (2017), UNICEF 40.

⁵⁷ JJ Act, s 75 read with JJ Model Rules 2016, Rule 55(1).



Trafficking

Children may be trafficked or sold for the purpose of marriage or may be forced into prostitution in the guise of marriage. Section 12 of the PCMA declares such marriage void at the very outset.⁵⁸ Trafficking, selling or buying of minors for the purpose of marriage is an offence, and cases of trafficking a minor can attract a minimum of 10 years and maximum of life imprisonment.⁵⁹ Under the Immoral Traffic (Prevention) Act, 1956, procuring, inducing, or taking a child for the sake of prostitution is an offence punishable with rigorous imprisonment for a minimum of 7 years.⁶⁰

Refer to Annexure for a table of offences and punishments applicable in cases of child marriage.

IV. Civil Remedies

The PCMA is designed to provide civil reliefs to child parties in a child marriage. It allows child parties to nullify their child marriage within 2 years after they have attained majority, i.e. 18 years.⁶¹ Refer to [Question 18](#) for a detailed explanation of the time limit. It also provides for the custody and maintenance of children born from such a marriage. Female child parties can claim maintenance under the PCMA. While there are reliefs specific to child marriages under PCMA and some personal laws, other laws like the PWDV Act, 2005 can also be relied depending upon the facts and circumstances of the case. For a more detailed explanation of civil remedies in cases of child marriage see Questions [5](#), [6](#), and [7](#).

4. What is the interaction between child marriage, rape provisions under the BNS/IPC, and the POCSO Act?

The POCSO Act criminalises sexual activities with a child of any gender below 18 years of age.⁶² Marriage is an aggravating factor and attracts higher punishment for the offences of aggravated penetrative sexual assault and sexual intercourse. Consummation of a child marriage will attract charges of aggravated penetrative sexual assault under POCSO Act.⁶³

It will also attract charges of rape for the male party under the BNS/IPC.⁶⁴ The severity of the punishment increases if the girl is below 16 years⁶⁵ and further increases if she is below 12 years.⁶⁶ While the IPC contained an exception stating that sexual intercourse by a man with his wife is not rape if she is above 15 years of age,⁶⁷ Section 42A, POCSO Act,⁶⁸ clarified that in case of inconsistency with provisions of any other Act, the POCSO Act would override. Since the POCSO Act does not provide any exception in favour of marriage, it would override the exception under the IPC. This interpretation was affirmed by the Supreme Court in *Independent Thought v Union of India*,⁶⁹ and it was held that sexual intercourse between a man and his wife below 18 years of age will constitute rape under the IPC. The BNS has incorporated this and thus no exception is available to a man for sexual intercourse with his wife below 18 years of age.⁷⁰

⁵⁸ PCMA, s 12.

⁵⁹ BNS, ss 143, 98 and 99/IPC, ss 370, 372 and 373.

⁶⁰ ITPA, s 5.

⁶¹ PCMA, s 3.

⁶² POCSO Act, ss 3-12.

⁶³ See also *Aleem Pasha v State of Karnataka* [2022] SCC OnLine Kar 1588 and *Rahul v State of Karnataka* [2021] SCC OnLine Kar 12728.

⁶⁴ BNS, s 63(vi) read with s 65/IPC, s 375 sixthly read with s 376.

⁶⁵ Under BNS, s 65(1)/IPC, s 376(3), rape of a woman below 16 is punishable with rigorous imprisonment for a minimum of 20 years and can extend up to life imprisonment.

⁶⁶ BNS, s 65(2)/IPC, s 376 AB. This offence is punishable with rigorous imprisonment for a minimum of 20 years and can attract the death penalty.

⁶⁷ IPC, s 375, Exception 2.

⁶⁸ Introduced by Criminal Laws (Amendment) Act, 2013.

⁶⁹ *Independent Thought v Union of India* [2017] 10 SCC 800.

⁷⁰ BNS, s 63, Exception 2 - "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under eighteen years of age, is not rape."

5. What are the civil remedies available under the PCMA?

Civil Remedies under PCMA

Section 3(2): If at the time of filing a petition, the petitioner is a minor, the petition may be filed through his or her guardian or next friend along with the Child Marriage Prohibition Officer.



ANNULMENT

SECTION 3

The party that was a child at the time of marriage can petition the District Court to annul the marriage at any time but before completion of 2 years of attaining majority.

MAINTENANCE & RESIDENCE

SECTION 4

Female child party to child marriage and a child borne from the marriage can be granted maintenance. The female child party has residence rights on annulment of the child marriage. Maintenance can be interim/final and has to be paid till her remarriage.



CUSTODY & MAINTENANCE OF CHILDREN

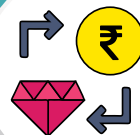
SECTION 5

Custody of children borne of such a marriage is based on the welfare and best interest of the child. All such children are legitimate even if nullity decree is passed.

RETURN OF EXCHANGED VALUABLES

SECTION 3(4)

While granting a decree of nullity, the District Court should direct parties to return money, valuables, ornaments, and gifts exchanged at the wedding.



The PCMA provides the following civil remedies:

- 1 Child marriage is voidable at the option of the child** – It enables the party that is a child at the time of a child marriage to annul the marriage through a nullity petition before the District Court.⁷¹
- 2 Certain child marriages are void** – A child marriage is void in circumstances that entail the enticement or sale of a child for marriage or use of force or deceitful means or the sale and trafficking of a child for immoral purposes.⁷² For more details refer to [Question 10](#).
- 3 Return of valuables exchanged** – While annulling the child marriage, the District Court should direct both parties and their families to return gifts, money, and valuables that were exchanged on the occasion of the child marriage.⁷³
- 4 Maintenance and residence of female party** – While passing the nullity order, the District Court can pass an interim or final order directing the male party above 18 years or his parents, if he is a minor, to pay maintenance to the female party until her remarriage and pass suitable orders for her residence until her remarriage.⁷⁴ The District Court should determine the quantum of maintenance based on a consideration of the needs of the child, lifestyle enjoyed during the marriage, and the means of income of the paying party.⁷⁵
- 5 Custody and maintenance of children borne out of child marriage** – Where there are children born out of a child marriage, the court should pass orders for the custody of the children and may also pass orders for providing maintenance to the children borne out of such a marriage by a party to the marriage or their parents or guardians.⁷⁶

Though the PCMA is applicable to all child marriages irrespective of the faith of the parties to the marriage, there are religion-based personal laws concerning marriage and divorce that are applicable. For more details on how personal laws affect the validity of child marriages, refer to [Question 13](#).



18-year-old Shakti lives with Nirmal, her 17-year-old husband, their 10-month-old daughter, Lipi, and her in-laws. Shakti is an orphan and was married off by her aunt and uncle to Nirmal, in accordance with Hindu rites when she was 17-years-old and he was 16-years-old. At the wedding, her aunt and uncle gifted Nirmal all the jewellery that Shakti's mother had left for her before she died and she received a set of silk sarees on the occasion. Though Shakti wanted to become a police officer, Shakti dropped out of school after her marriage and pregnancy.

Nirmal's parents are dissatisfied with the gifts received at the wedding and still demand money and gifts from Shakti's aunt and uncle. They also stopped Shakti from going back to school to complete her education. She approached her aunt and uncle for help but they are reluctant to oppose her in-laws because they are worried that they may

⁷¹ PCMA, s 3(1).

⁷² PCMA, s 12.

⁷³ PCMA, s 3(4).

⁷⁴ PCMA, s 4.

⁷⁵ PCMA, s 4(2).

⁷⁶ PCMA, s 5(4).

be alienated by their local community. Shakti tried to enrol herself into an open schooling course and met a boy close to her own age. She wants to marry him when he turns 21 and they have both completed their 12th standard exams.

Shakti is worried about her and her daughter's future and wants to leave the marriage. Nirmal feels that he was too young when he got married and he would have liked to choose his life partner when he was older and had a job.

What are the civil reliefs available to Shakti and Nirmal under the PCMA?

Relief	Available to Shakti?	Available to Nirmal?
File a petition to nullify the marriage	Yes	Yes
Return of gifts obtained during the wedding	Yes, the court can pass an order directing Shakti's in-laws to return all the jewellery that her in-laws received on the occasion of the marriage. ⁷⁷	Yes, the court can pass an order directing Shakti to return the silk sarees she received on the occasion of the marriage. ⁷⁸
Maintenance	Yes, the court can pass an order directing Nirmal's parents, as he is still a minor to pay her maintenance till she gets remarried. ⁷⁹ This can be an interim order , i.e. Nirmal's parents will have to pay maintenance during the time the case is ongoing, and can also be a final order , i.e. Nirmal's parents will have to pay maintenance after the case is over and the marriage is nullified till she is remarried.	No
Arrangement for residence	Yes, if she files the petition to nullify the child marriage. The court can pass an order as to Shakti's residence till her remarriage. ⁸⁰ The PCMA is silent about such an order for Shakti's residence if Nirmal files the nullity petition and not Shakti.	No

What are the civil reliefs Lipi can obtain under the PCMA if her parents' marriage is annulled under the PCMA?

- I. **The Court can decide who will have custody of Lipi.** Under Section 5 of the PCMA, the court can pass an order for the custody of Lipi with either Shakti or Nirmal, keeping in mind Lipi's welfare and best interest. The order for custody can include directions on giving the other party (the party that does not have custody) access to Lipi in a way that is in her best interest. Refer to [Question 44](#) for more details.
- II. **The Court can pass orders for Lipi's maintenance.** Under Section 5(4), the court can pass an order directing Nirmal, Shakti, Nirmal's parents or Shakti's aunt and uncle to pay maintenance for Lipi. Refer to [Question 42](#) for more details.
- III. **Lipi will have the rights of a legitimate child.** Even if the marriage is annulled, Lipi will be deemed to be a legitimate child and will have a claim to the separately owned (not ancestral) property of her parents. Refer to [Question 41](#) for more details.

⁷⁷ PCMA, s 3(4).

⁷⁸ PCMA, s 3(4).

⁷⁹ PCMA, s 4(1).

⁸⁰ PCMA, s 4(4).

6. What are the additional civil reliefs available to a child-bride?

Reliefs in the nature of protection, maintenance, and residence orders are available under several laws such as:

- If a child-bride is abandoned by her husband after the marriage or he neglects or refuses to maintain her, and she is unable to maintain herself, an application can be filed before a Magistrate seeking a direction for payment of maintenance under Section 125 of the Code of Criminal Procedure, 1973 or Section 144 of the BNSS.⁸¹
- Relief can be sought under the PWDV Act, 2005 in cases where the child-bride is being subjected to domestic violence such as physical abuse, sexual abuse, verbal and emotional abuse and economic abuse. She can seek residence rights in a shared household,⁸² monetary relief including maintenance for herself and her children,⁸³ and custody orders.⁸⁴ She can also obtain “protection orders” from the court depending on the circumstances, which may include orders that prohibit her husband from committing any more violence, entering her place of employment or education, communicating with her, and using or disposing of any of her financial assets.⁸⁵ A child bride subjected to domestic violence can seek relief under both PCMA and the PWDV Act and petition the Family Court where a nullity petition is filed.

The civil relief of dissolving the child marriage is available in certain circumstances under some personal laws:

- **Repudiation under HMA, 1955:** Under the HMA, a wife can approach courts for a divorce if her marriage was solemnised before she was 15 years old, and she repudiated the marriage between the ages of 15 years and 18 years.⁸⁶ There is no specific method of repudiation described in the HMA. In *Indira v Balbir Singh*,⁸⁷ a girl was married when she was 8 years old. She filed a petition for divorce under this provision when she was 15 years old and the trial court rejected her claim on the ground that her repudiation was not established. She filed an appeal before the Punjab and Haryana High Court, which granted the divorce decree holding that “no particular form for repudiation of marriage is provided. Repudiation can be by any act or even by overt conduct of the appellant. The very fact of filing the petition would amount to repudiation of marriage”.⁸⁸

Some High Courts have considered refusal to go to the matrimonial home as a method of repudiation by a minor girl. In *Savitri Devi v Kailash Jat*,⁸⁹ a girl was married when she was 11 years old. When she was 17 years old, her husband’s family tried to take her to her matrimonial home but she refused to go and remained with her parents. Six years later, when she was a 23-year-old adult, she filed a petition for dissolution of her marriage and her act of refusal to join her husband was considered repudiation of the marriage by the High Court of Rajasthan.⁹⁰

⁸¹ Though the provision is in a criminal statute, the nature of the relief under this section is civil.

⁸² PWDV Act, ss 17 and 19.

⁸³ PWDV Act, s 20.

⁸⁴ PWDV Act, s 21.

⁸⁵ PWDV Act, s 18.

⁸⁶ HMA, s 13(2)(iv) - “A wife may also present a petition for the dissolution of her marriage by a decree of divorce on the ground - that her marriage (whether consummated or not) was solemnised before she attained the age of fifteen years and she has repudiated the marriage after attaining that age but before attaining the age of eighteen years.”

⁸⁷ *Indira v Balbir Singh*, [1994] SCC OnLine P&H 686.

⁸⁸ For more cases where filing a petition for divorce between the age of 15 to 18 is itself repudiation, see *Raju Alias Rajendra v Ratan* 1988 WLN (UC) 2 decided by the Rajasthan High Court on 6.10.1987 and *Suman v Karan Singh* FAO. No. 63-M of 1978 decided by the Punjab & Haryana High Court on 21.03.1979.

⁸⁹ AIR [2016] Raj 22.

⁹⁰ For more cases where refusal to go to the matrimonial home is repudiation, see *Sushil v Priyanka* FAO No. 1464 of 2017(O&M) decided by the Punjab & Haryana High Court on 24.01.2019; *Panbai v Bhagwan Sahai*, Division Bench Civil Miscellaneous. Appeal No. 6177/2016 decided by the Rajasthan High Court on 2.06.2017.

Returning to the natal home even after the girl has lived with her husband and refusing to go to the marital home has also been considered repudiation. In *Gopal Kishan v Nirmala Devi*,⁹¹ a 12-year-old girl was married and lived with her husband. At the age of 16 years, she left her marital home to live with her father, and refused to go back to her husband. When she filed for a divorce at the age of 20 years, the act of refusing to go back to her husband was considered repudiation of the marriage.

➤ **Repudiation in Muslim Personal Law:** Under Muslim Personal Law, both males and females have the right to dissolve a marriage solemnised before they attained puberty, but females have to satisfy certain conditions before repudiating the marriage. A male upon reaching puberty can dissolve his marriage if it is arranged by guardians other than his father or father's father before he reached the age of puberty.⁹² This is called *Khayar-ul-Bulugh* or "option of puberty".⁹³ Female parties have a similar right that is codified in the Dissolution of Muslim Marriage Act (DMMA), 1939. The female party is entitled to obtain a decree dissolving her child marriage if:

- ⦿ She was married by her father or guardian before she was 15 years old;
- ⦿ She repudiated her marriage before she was 18 years old; and
- ⦿ The marriage was not consummated.⁹⁴

There are conflicting court judgements on whether "repudiation" in the DMMA is an oral repudiation, repudiation before a qazi, or if a decree of dissolution of marriage under the DMMA is required by a court. In *Piramohammad Kukaji v The State of Madhya Pradesh*,⁹⁵ the Madhya Pradesh High Court held that "Mere exercise of the option of repudiation does not operate as a dissolution of the marriage. The repudiation is required to be confirmed by the Court".⁹⁶ However, in *Smt. Khatiza Tul Qubra @ Tara Bano v Iqbal Mohd*,⁹⁷ the Rajasthan High Court held that "it is not necessary for Muslim lady to obtain a decree for dissolution of her marriage after she exercises her option of puberty (*Khyar-ul-Bulugh*) upon attaining the age of puberty, i.e. 15 years. If the factum of such revocation or exercise of option of puberty is proved before the trial Court even by oral evidence...It should be sufficient satisfaction of requirement of Section 2 of the Dissolution of Muslim Marriages Act, 1939." It relied on *Abdul Karim v Aminaba*⁹⁸ where repudiation occurred before a qazi and was accepted as valid repudiation.

It should be noted that the child party has both the option of dissolution under the applicable personal law and annulment under PCMA,⁹⁹ subject to the conditions that are specified for both under the applicable laws.

⁹¹ *Gopal Kishan v Nirmala Devi* F.A.O. 58/1986 decided by the Madhya Pradesh High Court on 9.07.1987.

⁹² Mulla, *Principles of Mahomedan Law* (LexisNexis, 19th Edition, 2021) para 274 - "When a marriage is contracted for a minor by any guardian other than the father or father's father, the minor has the option to repudiate the marriage on attaining puberty (1). This is technically called the "option of puberty" "*khyar-ul-bulugh*"... in the case of a male, the right continues until he has ratified the marriage either expressly or impliedly as by payment of dower or by cohabitation"; there are differences in the nature and scope of the right based on which school of muslim law is applied. For differences between Hanafi and Shia law, see Lucy Carroll, 'Muslim Family Law in South Asia: the right to avoid an arranged marriage contracted during minority' (1981) 23(2) JILI.

⁹³ *Smt. Khatiza Tul Qubra @ Tara Bano v Iqbal Mohd*, [2009] SCC OnLine Raj 271; Lucy Carroll, 'Muslim Family Law in South Asia: the right to avoid an arranged marriage contracted during minority' (1981) 23(2) JILI 150.

⁹⁴ Dissolution of Muslim Marriages Act, 1939, s 2(vii) - "A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years. Provided that the marriage has not been consummated."

⁹⁵ AIR 1960 MP 24.

⁹⁶ See also, *Sahib Ali Biswas v Jinnatan Nahar* AIR [1960] Cal 717.

⁹⁷ *Smt. Khatiza Tul Qubra @ Tara Bano v Iqbal Mohd*, [2009] SCC OnLine Raj 271.

⁹⁸ AIR 1935 Bombay 308.

⁹⁹ See *Shamsuddin v State* [2009] SCC OnLine Del 1443 [8] - "This clearly indicates that a child marriage even under the secular laws is not void *ab initio* but voidable at the option of the contracting party who was a child at the time of marriage. Interestingly, this is also in consonance with the principle under Muslim law where a minor has the option of annulment of marriage on her attaining the age of majority/puberty. The principle is well-known and is commonly referred to as the option of puberty or *khyar-ul-bulugh*. This clearly indicates that the marriage of a 'child' is not void but voidable."

7. Is a child party entitled to receive victim compensation?

Where a case under the POCSO Act is lodged, child-brides and grooms below 18 years can receive interim or final compensation based on an order of the Special Court under the POCSO Act.¹⁰⁰ The Special Court can be guided by the quantum of compensation laid down in the NALSA Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes.¹⁰¹ The NALSA Scheme also offers compensation of INR 1 lakh to 2 lakh to women victims for grievous physical injury or any mental injury requiring rehabilitation.¹⁰² If a child-bride is subjected to physical violence or mental injury, and relevant offences under the IPC/BNS, JJ Act, 2015, etc., are mentioned in the complaint, an application can be filed for compensation to the State or DLSA. A criminal court, while disposing of a case under PCMA, can direct the fine amount to be paid as compensation to the victim.

8. Can proceedings for civil relief and criminal trials for offences related to child marriage take place simultaneously?

Yes, both proceedings can be simultaneous. A child party can petition the District Court to nullify the child marriage while the investigation or trial in a case of child marriage is underway.

9. Will a nullity petition lead to the filing of a criminal case against family members and/or spouse?

PCMA offences can be investigated by the police based on information received,¹⁰³ without the victim of the child marriage making a criminal complaint.

It is possible that the victim of child marriage may want to obtain civil remedies such as an annulment of the marriage without any criminal action against their family or the other party to the marriage.¹⁰⁴ In such a case, it should be noted that approaching the courts for an annulment will involve admitting to the existence of a child marriage before courts and may expose those who arranged the child marriage and the adult partner to criminal action under the PCMA. Where either partner to the marriage is a minor, a case may be registered under the POCSO Act if the marriage was consummated. Some lawyers interviewed during the preparation of the primer dealt with such cases where the victim of child marriage wished to obtain an annulment decree but wanted to reduce the risk of her parents being criminally liable. One lawyer shared that even though the parents were witnesses to the child marriage and admitted the child marriage before the court during the annulment proceedings, they clarified in their statements to the court that the child marriage was arranged against their wishes by elders in the family who are no longer alive.

¹⁰⁰ POCSO Act, s 33(8) read with POCSO Rules, Rule 9.

¹⁰¹ *Nipun Saxena v Union of India*, Writ Petition (C) No. 565 of 2012 decided by the Supreme Court on 5.09.2019.

¹⁰² National Legal Services Authority, Compensation Scheme for Women Victims/Survivors of Sexual Assault/other Crimes - 2018, Schedule applicable to women victims of crimes, <<https://nalsa.gov.in/services/victim-compensation/nalsa-s-compensation-scheme-for-women-victims-survivors-of-sexual-assault-other-crimes---2018>> accessed 13 May 2024.

¹⁰³ Cr.P.C. 1973, ss 156-157.

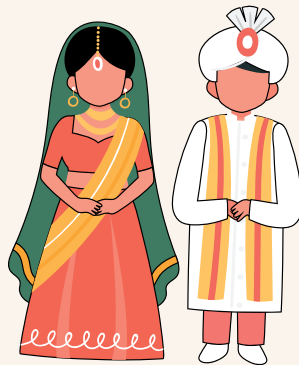
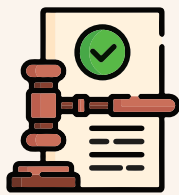
¹⁰⁴ In the interviews conducted while preparing this primer, lawyers mentioned that young persons approaching them for annulment did not want their families or in-laws to face criminal charges.

II LEGALITY AND VALIDITY OF CHILD MARRIAGES IN INDIA

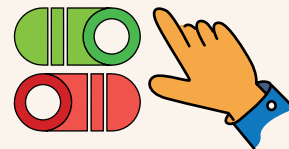
Child marriages are illegal but valid. They are voidable at the option of the child party, and void in certain specific situations.

10. What is the legal status of child marriage under the PCMA?

Child marriage is legally **valid**,



but is **voidable** at the option of the child.



However, **consummation** of the child marriage* is a **criminal offence** under POCSO and IPC/BNS.

Solemnising, promoting, or permitting a child marriage is a **criminal offence** under PCMA.



*Except in cases where both parties are above 18 years of age

Under the PCMA, child marriages are valid but voidable at the option of the party who was a child at the time of the marriage, i.e. the child party can choose to annul the marriage.¹⁰⁵ The Supreme Court in *Independent Thought v Union of India* observed that "...the PCMA provides that a child marriage is voidable at the option of any one of the parties to the child marriage – a child marriage is not void, but only voidable....Parliament recognises that although a child marriage is a criminal activity, the reality of life in India is that traditional child marriages do take place...while prohibiting a child marriage and criminalising it, a child marriage has not been declared void".¹⁰⁶

¹⁰⁵ *Court on its Own Motion (Lajja Devi) v State* [2013] CRI. L. J. 3458; PCMA, s 3.

¹⁰⁶ *Independent Thought v Union of India* [2017] 10 SCC 800 [37].

An earlier decision by the Madras High Court in *T. Sivakumar v The Inspector of Police*, clarified this point as follows:

“the [child] marriage shall remain voidable..and the said marriage shall be subsisting until it is avoided by filing a petition for a decree of nullity by the child within the time prescribed in Section 3(3) of the Prohibition of Child Marriage Act. If, within two years from the date of attaining eighteen years in the case of a female and twenty-one years in the case of a male, a petition is not filed before the District Court under Section 3(1) of the Prohibition of Child Marriage Act for annulling the marriage, the marriage shall become a full-fledged valid marriage. Similarly, after attaining eighteen years of age in the case of female, or twenty-one years of age in the case of a male, if she or he elects to accept the marriage, the marriage shall become a full-fledged valid marriage. Until such an event of acceptance of the marriage or lapse of limitation period... occurs, the marriage shall continue to remain as a voidable marriage. If the marriage is annulled as per Section 3(1) of the Prohibition of Child Marriage Act, the same shall take effect from the date of marriage and, in such an event, in the eye of law there shall be no marriage at all between the parties at any point of time.”¹⁰⁷

Some child marriages are void ab initio

The PCMA also prescribes certain conditions under which a child marriage, where one or both parties are a minor, i.e. less than 18 years of age¹⁰⁸ will be void from inception. These are “where a child, being a minor:

- a. is taken or enticed out of the keeping of the lawful guardian; or
- b. by force compelled, or by any deceitful means induced to go from any place; or
- c. is sold for the purpose of marriage; and made to go through a form of marriage, or if the minor is married after which the minor is sold or trafficked or used for immoral purposes”.¹⁰⁹



Further, a child marriage solemnised in violation of an injunction order under PCMA by a court is also void *ab initio*.¹¹⁰ State-specific amendments to the PCMA have made all child marriages void (rather than voidable) in Karnataka¹¹¹ and Haryana.¹¹² Void marriages are also known as void *ab initio*, from the Latin phrase which means “from the beginning”.

¹⁰⁷ *T. Sivakumar v The Inspector of Police* AIR [2012] Mad 62 [21].

¹⁰⁸ PCMA, s 12 refers to “a child, being a minor” while describing void child marriage. A “child” is defined as a male less than 21 years of age and a female less than 18 years of age (s 2(a), PCMA). A “minor” is defined as a person who is not a major as per the Majority Act, 1875 (s 2(f), PCMA), i.e. less than 18 years of age. Thus, a child, being a minor, is a child of any gender less than 18 years of age. See *Amnider Kaur and Another v State of Punjab and others* [2010] CRI. L. J. 1154 [14].

¹⁰⁹ PCMA, s 12.

¹¹⁰ PCMA, ss.13, 14.

¹¹¹ The Prohibition of Child Marriage (Karnataka Amendment) Act 2016 came into force on 3 March 2018.

¹¹² The Prohibition of Child Marriage (Haryana Amendment) Act 2020.

Legal Status of Child Marriage



Void

Under S.12, marriage of a “minor” child is void if they were taken/enticed out of the keeping of the lawful guardian, sold, trafficked, or by force compelled or induced to go to any place by deceitful means.

Child marriage solemnised in violation of court injunction is also void. All child marriages are void in Karnataka and Haryana after respective State amendments came into effect.



Voidable

Under S.3, either party who was a child when the marriage was solemnised has the option to nullify the marriage within 2 years of them attaining majority.



Valid

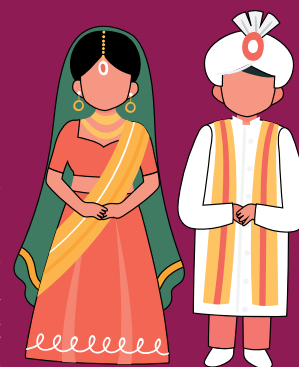
Child marriage is valid unless it is nullified by the party who was a child at the time of the marriage.

Though child marriage itself is valid, related activity is criminalised

- ▶ Conducting, abetting arranging and, in some circumstances, attending child marriages are offences under the PCMA
- ▶ Consummation of a child marriage can be an offence under IPC/BNS and POCSO

Should Child Marriages be Void *Ab Initio*?

Whether child marriages should be legally void or remain voidable is a matter of policy that is under examination. There are conflicting views on the implications of these legal approaches on the rights of girls affected by child marriages. In the case of *Independent Thought v Union of India*, an argument was raised that it is unfair to place the burden of getting the marriage declared void on the victims of child marriage¹¹³ and the Supreme Court made an observation that it would be wise for all State Governments to declare child marriages void given that sexual intercourse with minors is a criminal offence.¹¹⁴ On the other hand, the Delhi High Court in *Manish Singh v State Government of NCT*,¹¹⁵ in 2005 observed that, “[t]he consequences of considering such [child] marriages as void or voidable need to be



¹¹³ *Independent Thought v Union of India* [2017] 10 SCC 800 [18, 27].

¹¹⁴ *Ibid* [75-77].

¹¹⁵ *Manish Singh v State Government of NCT* AIR [2006] DEL I37 [18]. This point was reiterated in *State v Hasim*, Criminal Application No. 822/2009 decided by the Delhi High Court on 29.01.2014.

evaluated since the State as well as the social reformists who have not been successful to change the mindset of the people tuned to early marriages...it is also to be noted that any adverse fall out of any law that makes such underage marriages as void or voidable would be borne by none other than the women and their progeny.”¹¹⁶ In *Aisha Kumari v State of NCT of Delhi and Others*,¹¹⁷ the Delhi High Court is currently examining a plea for the PCMA to be amended to declare all child marriages void.

In the interviews conducted during the preparation of this primer, the respondents were asked their opinion on whether child marriages should be void. Those in favour felt that child marriages will continue to take place unless the marriage is not given legal recognition. As criminal provisions against the family are difficult to enforce and are disruptive, refusing to grant legal recognition to child marriages is a strong policy move that will dissuade the practice. They also suggested that these marriages, though void, can be registered and made legal once the children come of age. In this context, the Parliamentary Standing Committee examining the Prohibition of Child Marriage Bill, 2004 favoured declaration of child marriages as being void as opposed to voidable “considering the social pressures and mind set of the people belonging to lower strata of society who may have inhibitions to be subjected to courts’ proceedings” and the harmful impact of child marriage on the girl child.¹¹⁸

Those against child marriages being declared void *ab initio*, were of the view that the girls in the marriage will be adversely impacted because they may not be aware of the law or status of their marriage, may be easily abandoned, and be deprived of the benefits available to a legally wedded wife. Further, a policy decision like this cannot be made without considering the disruptive impact that a declaration of void *ab initio* may have on the girls. In this context, in its submission to the Ministry of Women and Child Development, the National Coalition for Advocating Adolescent Concerns, a coalition of 21 organisations working with children and adolescents, highlighted the plight of child brides in Karnataka - “*what will be the legal status of the girls, their children, their right to matrimonial property be, in the long run if the underage marriage lacked legal recognition? How will the law tackle abandonment and destitution of girls in void marriages, and respond to husbands who take advantage of the void status to re-marry?*”¹¹⁹

11. What is a voidable marriage and how is it different from a void marriage?

A voidable marriage is a marriage where one or both the parties can opt out of the marriage on certain grounds, i.e. they can nullify the marriage. This can be done by filing a nullity petition before the court and if the grounds are satisfied, the court will pass a decree of annulment.

¹¹⁶ Ibid.

¹¹⁷ *Aisha Kumari v State of NCT of Delhi & Ors.* [2021] SCC OnLine Del 53.

¹¹⁸ Rajya Sabha related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice, *Thirteenth Report on the Prevention of Child Marriage Bill 2004*, presented to the Rajya Sabha on 29 November 2005, <<https://feministlawarchives.pldindia.org/wp-content/uploads/13th-Standing-Committee-Report-on-PCMB-2004.pdf>> accessed 13 May 2024.

¹¹⁹ National Coalition for Advocating Adolescent Concerns, *Submissions to the MWCD: In the Context of Early Marriage and Age of Consent*, <<https://pldindia.org/wp-content/uploads/2020/06/Coalition-Submissions.pdf>> accessed 13 May 2024.

The differences between void and voidable marriage are given below:

	Void	Voidable	Comments
Legal Status	A void marriage is void from the very inception and is treated like it never existed. ¹²⁰	A voidable marriage is valid but either party or both parties have the option to nullify it. If the party chooses to nullify it, they can approach the appropriate court for a decree of nullity and till such decree is obtained the marriage subsists. ¹²¹	A voidable marriage is valid only if the parties choose to remain in the marriage. If either party obtains a nullity petition from the court, the marriage is treated like a void marriage from the date of the marriage. ¹²²
Is a court decree required to declare the marriage as void/voidable?	The marriage is void from the very beginning so it does not strictly require a court decree to declare it a void marriage. ¹²³ However, a decree declaring the marriage void can be obtained as a matter of precaution and record. ¹²⁴ Further courts are reluctant to deny women benefits where the husband merely states the marriage was void from the beginning without any decree. In such cases, some courts insist on obtaining a decree declaring the marriage void. ¹²⁵	A decree of nullity from the court is required for a marriage to be annulled. ¹²⁶	The decree obtained to declare a void marriage and the decree obtained to nullify a voidable marriage are both called “decrees of nullity”. ¹²⁷
When does the court decree of nullity take effect?	The marriage is void from the date of the marriage, i.e. before the date of the decree of nullity.	The marriage is void from the date of the marriage, and not the date of the decree of nullity. ¹²⁸	

¹²⁰ *Yamunabai v Anantrao* AIR [1988] SC 64 [3].

¹²¹ *Chand Patel v Bismillah Begum* AIR [2008] SC 1915 [19-20], the Supreme Court observed that “In the case of a marriage covered by Section 12 of the 1955 Act [voidable marriage], the marriage is not void ipso-jure from its inception, but a decree would have to be obtained from the competent court declaring the marriage to be void and so long as such declaration is not made, the marriage will continue to subsist.”; In *Lakshamma and Another v Thayamma*, AIR 1974 AP 255 [6], the Andhra Pradesh High Court observed that “In the case of a void marriage, the marriage is null and void even from the date of the marriage. All that the Court has to do is to make a declaration that the marriage is and has always been null and void; there is no need to have it avoided. On the other hand, in the case of a voidable marriage, the marriage is valid until it is avoided.”

¹²² *Rekha Mathur v Manish Khanna* [2015] SCC OnLine Del 10725 [27]- “A decree of annulment of the marriage under Section 12(1)(a) [of HMA on void marriages] relates back to the date of marriage, since the marriage is held to be a nullity. On the other hand, the decree of divorce operates only prospectively.”

[n 120].

¹²⁴ *A. Subash Babu v State of Andhra Pradesh and Another* AIR [2011] Supreme Court 3031 [10].

¹²⁵ *A. Subash Babu v State of Andhra Pradesh and Another* AIR [2011] Supreme Court 3031; *Deoki Panjhiyara v Shahshi Bhushan Narayan Azad* [2013] (2) SCC 137 - Courts in these cases have been reluctant to treat a void marriage as never having existed to the detriment of the woman. In such a case where the woman may get denied benefits of the PWDV Act or maintenance, they have insisted on obtaining a decree declaring the marriage void.

¹²⁶ PCMA, s 3.

¹²⁷ *Ashok Ratti Lal Trivedi v Anjani Madhusudan Oza* ILR [1971] Delhi 97 [3] decided by the Delhi High Court in the context of HMA says - “the Act contemplates four types of decrees, namely, a decree for restitution of conjugal rights, a decree for judicial separation, a decree of divorce, and a decree of nullity-either on the ground that the marriage is null and void or on the ground that the marriage is voidable”.

¹²⁸ *Rekha Mathur v Manish Khanna* [2015] SCC OnLine Del 10725 [27]. See also *T. Sivakumar v The Inspector of Police* AIR [2012] Mad 62 [21] where a full bench of the Madras High Courts noted that, “..If the marriage is annulled as per Section 3(1) of the Prohibition of Child Marriage Act, the same shall take effect from the date of marriage and, in such an event, in the eye of law there shall be no marriage at all between the parties at any point of time.”



12. In the context of “void” marriages, what is meant by “taken or enticed out of the keeping of the lawful guardian”?

Under the PCMA, when a child under 18 years is “taken” or “enticed” out of the keeping of the lawful guardian and married, such a marriage is void.¹²⁹ Taking or enticing a minor under 16 years if male and under 18 years if female, out of the keeping of the lawful guardian constituted the offence of kidnapping under the IPC,¹³⁰ and several High Courts have relied upon the interpretation of these terms in the context of kidnapping while deciding whether the child marriage is void *ab initio* under the PCMA.

S. Varadarajan v State of Madras

The interpretation of the Supreme Court in *S. Varadarajan v State of Madras*¹³¹ has guided the High Courts. In this case, a minor girl studying in college, expressed the desire to marry her neighbour. Her parents did not agree and sent her to a relative’s home. She left the home and called the neighbour who then joined her and they got married. The minor girl’s parents accused the neighbour of kidnapping her by taking and enticing the girl. The Supreme Court noted that the girl was on the verge of attaining majority and was educated, coming to the conclusion that she was “capable of knowing what was good and what was bad for her”.¹³² It also noted that the accused had not made any threats or induced her to leave her parents, and that, instead, she had called him and accompanied him. The apex court held that it will not amount to “taking” if the minor leaves the guardian of their own volition and without “inducement held out by the accused person or an active participation by him in the formation of the intention of the minor to leave the house of the guardian”.¹³³

Yunus Khan v State of Haryana

In *Yunus Khan v State of Haryana*,¹³⁴ a minor girl above 15 years of age married an adult male against the wishes of her parents. Her father filed a case of kidnapping against her husband and filed a writ before the High Court of Punjab and Haryana seeking her custody. The High Court considered whether the marriage performed by them was void under the PCMA due to allegations that the husband had taken her out of the keeping of the lawful guardian. The court referred to the interpretation of “taken” in *Varadarajan* and held that since the girl herself stated that she voluntarily married him and had been living with him of her own free will, she was not taken or enticed out of the keeping of her guardians. Therefore, the marriage was considered valid and not void under the PCMA. Additionally, according to Muslim Personal law, a girl is capable of consenting to a marriage after the age of 15 years and this contributed to the court’s conclusion that she was not enticed.

¹²⁹ PCMA, s 12.

¹³⁰ IPC, s 361. This is also now incorporated into Section 137 of the BNS which states that whoever takes or entices any person below 18 out of the keeping of their lawful guardian without the consent of such guardian, is said to kidnap the person. Section 84 of the JJ Act applies this section to any child below 18, not only females.

¹³¹ AIR [1965] SC 942.

¹³² *S. Varadarajan v State of Madras* AIR [1965] SC 942 [8].

¹³³ *Ibid* [11].

¹³⁴ *Yunus Khan v State of Haryana*, [2014] SCC OnLine P&H 3588.

In *Manish Kumar and Others v State of Uttar Pradesh*,¹³⁵ the Allahabad High Court recognised the free will of the child party to enter into a marriage. In this case a 16-year-old boy married an adult woman of his own free will and wished to live with her. His mother claimed that he was enticed and forced into a marriage, making the marriage void under the PCMA. However, the Allahabad High Court held that since he married the adult woman of his own free will, he was not enticed or forced and thus this child marriage was not void.¹³⁶ Similarly, in *Ravneet Kaur and Others v State of Punjab*,¹³⁷ the Punjab and Haryana High Court held that the 15-year-old petitioner could choose to solemnise the marriage with a person of her choice,¹³⁸ thus recognising that in some cases, the minor is not enticed but left of their own volition, and a marriage of this nature would not be void.¹³⁹

However, this is not always the case. In *Aminder Kaur and Others v State of Punjab*,¹⁴⁰ a 16-year-old girl and a 28-year-old man from different castes got married. The family of the girl accused the man of kidnapping her and claimed that she was enticed out of the keeping of her lawful guardians. The couple petitioned the High Court of Punjab and Haryana to obtain police protection from the girl's family. The Punjab and Haryana High Court held that the marriage was void because the girl was a minor.

13. How do personal laws affect the validity of a child marriage? What is the status of child marriage under personal laws and the Special Marriage Act, 1954?

The PCMA is applicable to all marriages irrespective of the faith of the parties. However, religion-based personal laws also govern marriages in India. They may affect the status of the child marriage.¹⁴¹ For example, a child marriage is not a ground for a void or voidable marriage under the HMA which governs marriages between Hindus, Jains, Sikhs and Buddhists. Child marriages are valid under the HMA.¹⁴² However, the PCMA applies to a Hindu marriage,¹⁴³ making the child marriage valid but voidable, and void if it is established that it is solemnised in circumstances specified under Section 12, PCMA.

Under Muslim Personal Law, marriages of children above 15 years are valid.¹⁴⁴ However, PCMA is applicable to them and such marriages are valid but voidable, and will also attract penal consequences.¹⁴⁵ Such marriages

¹³⁵ *Manish Kumar and Others v State of Uttar Pradesh*, [2021] SCC OnLine All 1251. In this case the mother of the minor boy filed a habeas corpus writ before the Allahabad HC to get him back to his natal home.

¹³⁶ Ibid [24].

¹³⁷ *Ravneet Kaur and Ors. v State of Punjab and Others* [2021] SCC OnLine All 1251. *Aminder Kaur* was referred to in this case.

¹³⁸ Ibid [83].

¹³⁹ For a similar example of a muslim marriage, see *Shamsuddin v State* [2009] SCC OnLine Del 1443; See also *Chhavi and Ors. v State of U.P. and Ors.* [2021] SCC OnLine All 219, and *Sunita v State of U.P. and Ors.* [2019] SCC OnLine All 1055.

¹⁴⁰ 2010 CRI. L. J. 1154

¹⁴¹ See Pallavi Gupta, 'Child Marriages and the Law: Contemporary Concerns' (2012) 47(43) EPW 49-55.

¹⁴² *Lila Gupta v Laxmii Narain* [1978] AIR 1351 SC; *Aminder Kaur and Ors. v State of Punjab* [2010] CRI. L. J. 1154; *The Court on its own Motion (Lajja Devi) v State* [2013] CRI. L. J. 3458; *Shalini @ Janvi and Another v State of Uttar Pradesh* [2019] SCC OnLine All 4310 [16] - "However, it be noticed that marriage between a bridegroom, who has not attained 21 years and/or a bride, who has not attained 18 years would not be void under the provisions of Section 11 of the Hindu Marriage Act. Clause (iii) of Section 5 of the Hindu Marriage Act is conspicuous by its absence in Section 11 above extracted. This makes it evident that even though marriage has been performed in contravention of condition laid down in Clause (iii) of Section 5 of the Hindu Marriage Act, it would not be a void marriage as per Section 12 of the said Act."

¹⁴³ *Shalini @ Janvi and Another v State of Uttar Pradesh* [2019] SCC OnLine All 4310.

¹⁴⁴ Mulla, *Principles of Mahomedan Law* (LexisNexis, 19th Edition, 2021) para 251 - "Capacity for marriage (1) Every Mahomedan of sound mind, who has attained puberty, may enter into a contract of marriage....*Explanation*: Puberty is presumed, in the absence of evidence, on completion of the age of fifteen years."

¹⁴⁵ *Yunus Khan v State of Haryana* [2014] SCC OnLine P&H 3588.

can also be stopped under the PCMA through an injunction or the action of the CMPO or other authorised functionary and the validity of the child marriage under the PCMA or any personal law cannot be used as sanction to conduct a child marriage. For example, in *Abdul Khader v K. Pechiammal*,¹⁴⁶ the decision of a lower court to pass an injunction restraining parents of a minor Muslim girl from conducting her wedding was upheld under the PCMA.

Status of Child Marriage under Personal Laws and Special Marriage Act, 1954

	Void	Voidable	Offence	Ground for divorce/ dissolution	Comments
Hindu Marriage Act, 1955	No ¹⁴⁷	No ¹⁴⁸	Yes (up to 2 years rigorous imprisonment with fine up to INR 1lakh) ¹⁴⁹	Yes, but only for girls who were married before the age of 15 years and then repudiated ¹⁵⁰ the marriage before reaching the age of 18 years. ¹⁵¹	Though child marriage is neither void nor voidable, PCMA is applicable to Hindu marriages and such marriages are voidable. ¹⁵²
Christian Marriage Act, 1872	No. However, there are requirements for the consent of parents or guardians of the child based on who solemnises the marriage and the church canon applicable. ¹⁵³	No ¹⁵⁴	Yes, for the Minister of Religion solemnising a marriage where either party is less than 21 years old without the consent of their parents or guardian. Punishment is a maximum of 3 years of imprisonment and a fine. ¹⁵⁵ AND For the marriage registrar solemnising a marriage where either party is less than 21 years old without an authorising court order under certain conditions. ¹⁵⁶	No ¹⁵⁷	

¹⁴⁶ *Abdul Khader v K. Pechiammal* [2015] SCC OnLine Mad 5212.

¹⁴⁷ Section 11 of the HMA lists the grounds for a void marriage. Underage bride or groom is not a ground listed here. *Lila Gupta v Laxmii Narain* [1978] AIR 1351 SC; *Amnider Kaur and Ors. vs. State of Punjab* [2010] CRI. L. J. 1154; *The Court on its own Motion (Lajja Devi) v State* 2013 CRI. L. J. 3458. *Shalini @ Janvi and Another v State of Uttar Pradesh*. [2019] SCC OnLine All 4310 [16] - "However, it be noticed that marriage between a bridegroom, who has not attained 21 years and/or a bride, who has not attained 18 years **would not be void under the provisions of Section 11 of the Hindu Marriage Act**. Clause (iii) of Section 5 of the Hindu Marriage Act is conspicuous by its absence in Section 11 above extracted. This makes it evident that even though marriage has been performed in contravention of condition laid down in Clause (iii) of Section 5 of the Hindu Marriage Act, it would not be a void marriage as per Section 12 of the said Act."

¹⁴⁸ Section 11 of the HMA lists the grounds for a voidable marriage. Underage bride or groom is not a ground listed here.

¹⁴⁹ HMA, s 18.

¹⁵⁰ There is no method of repudiation described in the HMA. Refusal to go to the matrimonial home has been one method of repudiation by a minor girl - see *Smt. Savitri Devi v Kailash Jat* AIR [2016] Raj 22; *Sushil v Priyanka*, [2019] SCC OnLine P&H 7383; *Panbai Saini v Bhagwan Sahai*, [2017] SCC OnLine Raj 1660. Returning to the natal home even after the girl has lived with her husband and refusing to go to the marital home has also been considered repudiation - see *Gopal v Nirmala* [1987] SCC OnLine MP 355.

¹⁵¹ HMA, s 13(2)(iv).

¹⁵² *Court on its own Motion (Lajja Devi) v State* [2013] CRI. L. J. 3458; *Shalini @ Janvi and Another v State of Uttar Pradesh* [2019] SCC OnLine All 4310.

¹⁵³ Indian Christian Marriage Act, 1872 is divided into parts, each of which are self contained and have slightly different requirements for marriages based on the official solemnizing the marriage. Some of them have an age requirement but do not expressly declare a marriage void if the party is a minor. See *Lakshmi Sanyal v Sachit Kumar Dhar* [1972] AIR 2667 SC. Further, marriages should not be inferred to be void unless statutorily provided for. See *Lila Gupta v Laxmii Narain* [1978] AIR 1351 SC.

¹⁵⁴ Grounds for nullity of a Christian marriage are provided in Section 19 of the Indian Divorce Act, 1869. The minority of either party is not a ground for nullity.

¹⁵⁵ Indian Christian Marriage Act 1872, s 70.

¹⁵⁶ Indian Christian Marriage Act 1872, s 71.

¹⁵⁷ Indian Divorce Act 1869, ss 10-10A.

	Void	Voidable	Offence	Ground for divorce/ dissolution	Comments
Parsi Marriage and Divorce Act (PMDA), 1936	Parsi marriage where either the boy is less than 21 years or the girl is less than 18 years is invalid. ¹⁵⁸	No ¹⁵⁹	No ¹⁶⁰	No	
Muslim Personal Law¹⁶¹	<p>Marriage of children below 15 years or before they have attained puberty can be arranged by their guardians.¹⁶²</p> <p>However, a marriage of a person who has attained puberty without their consent is void.¹⁶³</p> <p>Marriage of minors who have attained puberty or are above 15 years is valid.¹⁶⁴</p>	N/A - there is no explicit concept of voidable marriages in muslim law.	No	<p>Male upon reaching puberty can dissolve marriage arranged by a guardian other than the father or father's father.¹⁶⁵ This is called Khayar-ul-Bulugh or "option of puberty".¹⁶⁶</p> <p>For similar options for females, see below.</p>	If a Muslim marriage of underage persons (18-year-old female and/ or 21-year-old male) is planned, it can be stopped under the PCMA. ¹⁶⁷

¹⁵⁸ Parsi Marriage and Divorce Act 1936, s 3(1)(c).

¹⁵⁹ Parsi Marriage and Divorce Act 1936, ss 30-31.

¹⁶⁰ Parsi Marriage and Divorce Act 1936, s 32.

¹⁶¹ Made applicable by the Shariat Act 1937.

¹⁶² Mulla, *Principles of Mahomedan Law* (LexisNexis, 19th Edition, 2021) Para 270 - "Marriage of minors.— a boy or a girl who has not attained puberty, is not competent to enter into a contract of marriage, but he or she may be contracted in marriage by his or her guardian." In *Abual Kasim v Smt. Jamila Khan and others*, AIR 1940 Cal 251, the Calcutta High Court considered the consequence of a marriage entered by children who have not reached the age of marriage without the appropriate guardian's consent - "The next point for consideration is as to what the legal consequences would be when a marriage is contracted on behalf of a minor by a remoter guardian when the nearer guardian is present and has not given his consent." "If a minor boy or girl should marry himself or herself without the permission of the guardian, and then they attain majority, the marriage contracted by them is not valid unless they ratify the same after attaining majority."; *Ayub Hasan v Mt. Akhtari and Others*, AIR 1963 ALL 525.

¹⁶³ Mulla, *Principles of Mahomedan Law* (LexisNexis, 19th Edition, 2021) Para 251 (3) -"A marriage of a Mahomedan who is of sound mind and has attained puberty, is void, if it is brought about without his consent."

¹⁶⁴ Mulla, *Principles of Mahomedan Law* (LexisNexis, 19th Edition, 2021) Para 251 - "Capacity for marriage (1) Every Mahomedan of sound mind, who has attained puberty, may enter into a contract of marriage....Puberty is presumed, in the absence of evidence, on completion of the age of fifteen years." See also *Fija and Another v State Government of NCT of Delhi* [2022] SCC OnLine Del 2527; *Mrs. Tahra Begum v State of Delhi and Others*; [2012] SCC OnLine Del 2714 [4]; *Shamsuddin v State* [2009] SCC OnLine Del 1443.

¹⁶⁵ Mulla, *Principles of Mahomedan Law* (LexisNexis, 19th Edition, 2021) Para 274 - "When a marriage is contracted for a minor by any guardian other than the father or father's father, the minor has the option to repudiate the marriage on attaining puberty (1). This is technically called the "option of puberty" "khyar-ul-bulugh"... in the case of a male, the right continues until he has ratified the marriage either expressly or impliedly as by payment of dower or by cohabitation". There are differences in the nature and scope of the right based on which school of muslim law is applied. For differences between Hanafi and Shia law, see Lucy Carroll, 'Muslim Family Law in South Asia: the right to avoid an arranged marriage contracted during minority' (1981) 23(2) JILI.

¹⁶⁶ *Smt. Khatiza Tul Qubra @ Tara Bano v Iqbal Mohd*, [2009] SCC OnLine Raj 271; Lucy Carroll, 'Muslim Family Law in South Asia: the right to avoid an arranged marriage contracted during minority' (1981) 23(2) JILI 150.

¹⁶⁷ *Abdul Khader v K. Pechiammal* [2015] SCC OnLine Mad 5212 - The decision of a lower court to pass an injunction restraining parents of a minor muslim girl from conducting her wedding was upheld under the PCMA. Though the marriage would have been valid if conducted (this is not contrary to the PCMA), the provisions of PCMA will still apply and there is no right of muslim parents to get their minor daughter married.

	Void	Voidable	Offence	Ground for divorce/ dissolution	Comments
Dissolution of Muslim Marriages Act (DMMA), 1939	N/A	N/A	No	Yes, but only for girls who were married before the age of 15 years and then repudiated ¹⁶⁸ the marriage before reaching the age of 18 years and the marriage is not consummated. ¹⁶⁹	The “option of puberty” for girls/women is codified and expanded in the DMMA. ¹⁷⁰ A girl/woman has both the option of dissolution under DMMA and annulment under PCMA. ¹⁷¹
Special Marriage Act, 1954	Yes. Marriage involving females below 18 years and/ or males below 21 years are void. ¹⁷²	No	No	No	

¹⁶⁸ There are conflicting court judgements on whether “repudiation” is an oral repudiation, repudiation before a qazi or if a decree of dissolution of marriage under the DMMA is required by a court. In *Piramohammad Kukaji v The State of Madhya Pradesh* reported AIR [1960] MP 24, the Madhya Pradesh High Court held that “mere exercise of the option of repudiation does not operate as a dissolution of the marriage. The repudiation is required to be confirmed by the Court.” See also, *Sahib Ali Biswas v Jinnatan Nahar* AIR [1960] Cal 717. However, in *Smt. Khatiza Tul Qubra @ Tara Bano v Iqbal Mohd* [2009] SCC OnLine Raj 271, the High Court held that “it is not necessary for Muslim lady to obtain a decree for dissolution of her marriage after she exercises her option of puberty (Khyar-ul-Bulugh) upon attaining the age of puberty i.e. 15 years. If the factum of such revocation or exercise of option of puberty is proved before the trial Court even by oral evidence...it should be sufficient satisfaction of requirement of Section 2 of the Dissolution of Muslim Marriages Act, 1939.” It relied on *Abdul Karim v Aminabai* [1934] AIR 1935 Bom 308 where repudiation occurred before a qazi.

¹⁶⁹ Dissolution of Muslim Marriages Act 1939, Section 2(vii).

¹⁷⁰ *Smt. Khatiza Tul Qubra @ Tara Bano v Iqbal Mohd* [2009] SCC OnLine Raj 271.

¹⁷¹ See *Shamsuddin v State* [2009] SCC OnLine Del 1443 [8] - “This clearly indicates that a child marriage even under the secular laws is not void *ab initio* but voidable at the option of the contracting party who was a child at the time of marriage. Interestingly, this is also in consonance with the principle under Muslim law where a minor has the option of annulment of marriage on her attaining the age of majority/puberty. The principle is well-known and is commonly referred to as the option of puberty or khyar-ul-bulugh. This clearly indicates that the marriage of a ‘child’ is not void but voidable.”

¹⁷² The Special Marriage Act 1954, s 24(1)(i).



**Will the
POCSO Act
apply to child marriages that are
considered valid under personal law?**

Salma, a minor girl aged 16 years is married to an adult, Atif, in accordance with Muslim rites. Their marriage is valid as per both Muslim personal law and PCMA, and Salma wishes to remain in this marriage. Will sexual activity between Salma and Atif attract charges under POCSO Act? Does it make a difference if Salma claims she was in love with Atif and willingly married him and that her marriage is recognised under Muslim Personal Law?

The POCSO Act does not recognise consent of a person below 18 years of age to sexual activity. Sexual activity with a minor irrespective of marriage or willingness of the minor, is an offence under the POCSO Act. Some courts have interpreted this strictly and held that sexual activity within a child marriage will attract charges under POCSO Act. For example, in *Khaledur Rahman v State of Kerala and Another*,¹⁷³ a 16-year-old married girl was found pregnant at a Family Health Centre and this was reported by the medical officer to the police. Her husband was charged with offences under POCSO Act and IPC. In his application for bail before the Kerala High Court, he claimed that the POCSO Act was not applicable to him as he was in a valid marriage with the alleged victim. The High Court held that even if the child marriage is valid, offences under POCSO Act will apply if it is consummated. Factors that were considered by the High Court before arriving at this conclusion were (a) the parents of the girl were unaware of the marriage and believed their daughter was abducted by the husband, (b) the girl was less than 15 years old when she was married, raising some doubts about its validity as parties to a muslim marriage can consent only if they have reached puberty or are 15 years of age and above, (c) the husband was 31 years old and significantly older than her; and (d) with charges of abduction, it was possible that the marriage was void under Section 12 of the PCMA. The husband was denied bail.

Other High Courts have taken a different approach. In *Mohammed Waseem Ahamad v State*,¹⁷⁴ a 17-year-old girl, whose marriage was arranged to an adult by her family, was found to be pregnant during a medical check up and the police was informed by the hospital, resulting in POCSO charges against her husband. The husband filed a petition before the Karnataka High Court to quash these charges. The High Court noted that “continuing to allow criminal proceedings is abuse of process of law and no purpose would be served if the victim turns hostile during trial and the question of conducting investigation against the petitioners by the investigation officer is a futile exercise” and quashed the criminal proceedings against the husband.

¹⁷³ *Khaledur Rahman v State of Kerala and Another*, [2022] SCC OnLine Ker 5833.

¹⁷⁴ Criminal Petition No. 5917 of 2022 decided by the High Court of Karnataka on 10 October 2022.



The willingness of the minor girl to be married is sometimes taken into account by the Courts. For example, in *Fija and Another v State Government of NCT of Delhi*,¹⁷⁵ a 15-year-old girl who married a man against the wishes of her parents, willingly lived with him after their marriage and was expecting a child. The parent tried to forcibly marry her to someone else even though she was in love with the petitioner and beat her. Her husband was charged with offences under POCSO Act and the couple filed a writ before the Delhi High Court for grant of protection and to ensure that nobody separates them. The Delhi High Court observed that this was not a “case of exploitation but a case where the petitioners were in love, got married according to the Muslim laws, and thereafter, had physical relationships,” and concluded that they “cannot be denied the company of each other which is the essence of the marriage.” The High Court further observed that “If the petitioners are separated, it will only cause more trauma to the petitioner no.1 and her unborn child. The aim of the state here is to protect the best interest of petitioner no.1. If the petitioner has wilfully consented to the marriage and is happy, the state is no one to enter the private space of the petitioner and separate the couple.” They were granted police protection and the girl was allowed to live with her husband.

In *Gulam Deen and others v State of Punjab and others*,¹⁷⁶ a 16-year-old girl and 21-year-old man married each other according to Muslim rites against the wishes of their family. Apprehending danger from the family, the couple approached the High Court of Punjab and Haryana for police protection. The High Court granted them protection, observing that “a Muslim boy or Muslim girl who has attained puberty is at liberty to marry anyone he or she likes and the guardian has no right to interfere.” There was no reference to POCSO Act or PCMA. In *Javed v State of Haryana and others*,¹⁷⁷ a minor girl above 16 years and a 26-year-old male got married as per Muslim rites against their wishes of the girl’s family. She was placed in a Children’s Home and her husband filed a writ before the High Court of Punjab and Haryana asking for her custody. The High Court granted custody to the husband observing that “15 years is the age of puberty of a Muslim female, and on her own willingness and consent, after attaining puberty (15 years of age) can marry a person of her choice and such a marriage would not be void in terms of Section 12 of the PCMA 2006...” but did not discuss the effect of POCSO Act. Unlike in *Fija*, in both these cases, there was no clear reasoning as to why the POCSO Act should not be applicable to the facts. The findings in both these cases of the High Court of Punjab and Haryana has been challenged by the NCPCR.¹⁷⁸ It is currently pending before the Supreme Court which has issued an order stating that these judgements should not be relied on as precedent in any other case.¹⁷⁹

¹⁷⁵ *Fija and Another v State Government of NCT of Delhi* [2022] SCC OnLine Del 2527.

¹⁷⁶ *Gulam Deen & Anr. v State of Punjab & Ors.* [2022] SCC OnLine P&H 1485.

¹⁷⁷ *Javed v State of Haryana & Ors.*, CRWP-7426 of 2022, decided by the High Court of Punjab and Haryana on 30.09.2022.

¹⁷⁸ *National Commission for Protection of Child Rights (NCPCR) v Javed & Ors.*, Special Leave Petition (Criminal) Diary No. 35376/2022, order by the Supreme Court of India dated 13 January 2023.

¹⁷⁹ *Ibid.*

14. Who can be given the custody of a child-party in a child marriage?



While child marriages are valid, there has been litigation on the point of custody of the child-party, especially in cases in which the child girl has eloped and married a boy or an adult male. In matters of custody of a minor child, the interest of the child is paramount.¹⁸⁰

In cases decided before the POCSO Act came into force, some courts allowed child brides to live with their marital partner upon expressing their wish to do so, considering the particular facts.¹⁸¹ For example, in *Mrs. Tahra Begum v State of Delhi and others*,¹⁸² the Delhi High Court allowed a 15-year-old girl to reside in her matrimonial home as she requested but directed her presence with her partner and in-laws before the CWC periodically till she attained majority.

However, there was no entitlement of the husband to have custody of a minor wife. The Madras High Court in *T. Sivakumar v The Inspector of Police*, observed that automatically granting custody of a minor wife to an adult husband will defeat the object of the PCMA.¹⁸³ In this case, a 17-year-old girl fell in love with an adult male, and married him against the wishes of her parents, who petitioned the Madras High Court for custody of the minor girl. The Madras High Court clarified that “If the minor girl expresses her desire not to go with her parents, provided in the opinion of the court she has capacity to determine, the court may order her to be kept in a children home set up for children in need of care and protection under the provisions of the Juvenile Justice [Care and Protection] Act.” In *Association for Social Justice and Research v Union of India*,¹⁸⁴ where the parents of a minor female arranged her marriage with an adult, the Delhi High Court ordered that the child will reside with her parents till she turns 18 and ordered the husband not to consummate the marriage till then. Further, the court held that neither the parents nor the husband will perform the *gauna*¹⁸⁵ ceremony without the consent of the minor girl.

Since the POCSO Act and the IPC criminalise sexual acts with a child, even if she is married, this has been considered by courts while examining whether the husband can be given custody of the child-wife. In *Court on its own motion (Lajja Devi) v State*,¹⁸⁶ the High Court of Delhi sought to answer whether the adult husband of a minor wife can be given custody of the minor wife when her parents claim custody. The court noted that allowing the consummation of the marriage is against the spirit of the PCMA and the POCSO Act. It also noted that, “[s]uch a marriage, after all, is voidable and the girl child still has right to approach the Court seeking to exercise her option to get the marriage declared as void till she attains the age of 20 years. How she would be able to exercise her right if in the meantime because the marriage is consummated when she is not even in a position to give consent which also could lead to pregnancy and child bearing.”

The High Court of Allahabad in *Manish Kumar v State of Uttar Pradesh*,¹⁸⁷ was faced with a similar question. In this case, a 16-year-old boy, Manish, married an adult woman against his family's wishes, and his mother filed a petition before the Allahabad High Court to be granted custody of the boy. When presented before the

¹⁸⁰ *Court on its own motion (Lajja Devi) v State*, [2013] Cri LJ 3458 [45]; *Elizabeth Dinshaw v Arvand M. Dinshaw* [1987] 1 SCC 42; *Gaurav Nagpal v Sumedha Nagpal*, AIR [2009] SC 557, [35].

¹⁸¹ *Shamsuddin v State* [2009] SCC OnLine Del 1443; *Mrs. Tahra Begum v State of Delhi & Ors.* [2012] SCC OnLine Del 2714, Justice Ravindra Bhat allowed the minor child to reside in her matrimonial home but directed her presence with her partner and in-laws before the CWC periodically till she attained majority.

¹⁸² *Ibid.*

¹⁸³ *T. Sivakumar v The Inspector of Police* AIR [2012] Mad 62 [49].

¹⁸⁴ *Association for Social Justice & Research v Union of India & Ors.* [2010] SCC OnLine (Del) 1964.

¹⁸⁵ The *gauna* ceremony is an event after the solemnization of the marriage where the bride moves to her matrimonial home and starts residing there.

¹⁸⁶ *Court on its own motion (Lajja Devi) v State* [2013] Cri LJ 3458. Though the facts of the case relate to incidents that occurred before the POCSO Act was enacted, the Delhi High Court took into account the objectives of the act while arriving at its decision.

¹⁸⁷ *Manish Kumar & Anr. v State of U.P. & Ors.* [2021] SCC OnLine All 1251.

High Court, he clearly expressed his will to live with his wife and mother-in-law, and refused to live with his mother. On the question of custody, the High Court considered the welfare of the child and observed that:

“if the welfare of the minor, in the judgment of the Court in a given case, is to be found better served, cutting across one or the other criteria statutorily laid down, the Court must lean in favour of welfare of the minor, ameliorating the letter of the law...where a minor decides to stay away from his parents or natural guardian with a stranger of his choice, he cannot be compelled to be restored to the custody of a natural guardians through a writ of habeas corpus, subject to the condition that the Court comes to the conclusion that the welfare of the minor is better secured with the stranger, in comparison to the natural guardian.”¹⁸⁸

However, it also considered that allowing his wife to have custody of the minor husband would be “virtually sanctioning the imminent commission of the offence” under POCSO Act, “in violation of the interest of the child that the said Statute is designed to protect.” Keeping this in mind, the High Court directed that the child party should be housed in a CCI till he reaches the age of 18 years, and then he would be free to reside with whomever he wants.

Thus, the question of custody of the minor party to a child marriage is determined keeping in mind the best interest of the minor, as well as applicable laws that prohibit child marriage and sexual acts with a child.

¹⁸⁸ *Manish Kumar & Anr. v State of U.P. & Ors.* [2021] SCC OnLine All 1251 [50-51].

III. WHO CAN EXERCISE THE OPTION OF NULLITY?

Only a child party can petition for nullity and it can be done even when they are a minor.

Unpacking annulment and its distinction from divorce

15. What is the difference between annulment (voiding a marriage) and divorce?

A void marriage is null and void from the very inception. A voidable marriage, if chosen to be made void, becomes null and void. Both these types of marriages – void and voidable marriages that are declared void – result in a “nullity” or “annulment” or annulled marriage. According to the law, it is as though the marriage never took place and the parties to such a marriage are considered unmarried.

On the other hand, a divorce is when a valid marriage subsists for a time and is then brought to an end or dissolved. In cases of divorce, the parties are divorcees. The High Court of Delhi, in *Rekha Mathur v. Manish Khanna* in the context of the HMA, describes it as follows:

“[divorce and annulment are] separate causes of action, and are premised upon qualitatively and materially different fact situations. Even the relief granted is qualitatively and materially different inasmuch, as, by a decree of divorce, a valid marriage is dissolved; whereas a decree under Section 12(1)(a) [voidable marriages] declares the marriage to be a nullity, i.e. there was no marriage in the eyes of law. The status of the petitioner in the first case – post the decree, is that of a divorcee, whereas in the second case, it is that of an unmarried person. *The said status has different connotations for the petitioner in the society, and the future marriage prospects of the petitioner hinge on the nature of relief granted by the Court, in case he/she wishes to re-marry* [emphasis added]. A decree of annulment of the marriage under Section 12(1)(a) relates back to the date of marriage, since the marriage is held to be a nullity. On the other hand, the decree of divorce operates only prospectively.”¹⁸⁹

Notably, children born out of such marriages will remain legitimate even if the marriage is subsequently nullified or dissolved through divorce. However, there may be differences in the inheritance rights of the children based on the personal law applicable.

During interviews with lawyers in Rajasthan, it emerged that divorce is preferred over annulment under the PCMA as it is felt that courts are more familiar with divorce proceedings under personal laws. Lawyers were also of the view that it is easier for a girl in a child marriage to obtain maintenance when the marriage is recognised and then dissolved through divorce proceedings. **However, it must be noted that filing of a divorce petition requires considerable resources and is time consuming. Significantly, the child-party seeking a divorce has to prove certain grounds like cruelty, desertion, adultery, and bigamy, among others based on the personal law applicable. On the other hand, nullity under PCMA only needs the establishment of the fact that there was a child marriage.**

¹⁸⁹ *Rekha Mathur v Manish Khanna* [2015] SCC OnLine Del 10725 [27].

	Annulment	Divorce
Legal status	The marriage is null and void like it never existed.	There is a valid marriage that subsists till the divorce is granted. A decree of divorce ends the marriage. ¹⁹⁰
Is a court decree required to declare the annulment/divorce?	For void marriage, the marriage is void from the very beginning so it does not strictly require a court decree to declare it a void marriage. ¹⁹¹ However, there are some exceptions - see Question 11 . For voidable marriages that are nullified, a court decree of nullity is required. ¹⁹²	A decree of divorce is required for a marriage to be dissolved. ¹⁹³
When is the decree of annulment/divorce effective?	The marriage is void from the date of the marriage, i.e. before the date of the decree of nullity if there is one. ¹⁹⁴	The marriage ends on the date of the decree of divorce. ¹⁹⁵
Is child marriage a ground?	Child marriage is a ground for annulment of all marriages under the PCMA. ¹⁹⁶	Child marriage is generally not a ground for divorce. However, in Hindu marriages, girls who were married before the age of 15 years and then repudiated the marriage before reaching the age of 18 years, can get a divorce on this ground. ¹⁹⁷ In Muslim marriages, both the boy ¹⁹⁸ and the girl ¹⁹⁹ have the option of dissolving a marriage that was arranged for them before they reached the age of 15 years provided that they fulfil the required conditions prescribed under Muslim Personal Law and the Dissolution of Muslim Marriages Act, 1939 respectively.

¹⁹⁰ *Lila Gupta v Laxmi Narain and Ors.* [1978] 3 SCC 258; A decree of divorce dissolving a marriage stands on a different footing than a decree for annulment of the marriage declaring the marriage to be null and void. In the former case it postulates a valid and effective marriage which for subsequent events had to be dissolved. The latter case postulates a voidable marriage which has been declared void. If a party was held to be a lunatic or idiot on the date of the marriage such a marriage was not a valid or effective marriage between the parties. On the passing of a decree annulling such marriage and declaring that the marriage was null and void meant what was contracted as a marriage was no marriage in the eye of law. In other words, the marriage was rendered non est. The result would be that the parties to such a marriage would be under no impediment to contract a fresh marriage. - *Jamboo Parasad Jain v Smt. Malti Prabha* AIR [1979] ALL 260.

¹⁹¹ *Yamunabai v Anantrao* AIR [1988] SC 64 [3].

¹⁹² PCMA, s 3; Hindu Marriage Act 1955, s 12.

¹⁹³ However, there are some exceptional situations in which personal law provides for dissolution without a court decree. For example in *Smt. Khatiza Tul Qubra @ Tara Bano v Iqbal Mohd* [2009] SCC OnLine Raj 271, a woman dissolved her marriage through "the option of puberty", i.e. where a woman upon reaching 15 years of age can repudiate a marriage that was arranged for her when she was younger than 15. In this case the Rajasthan High Court held that "it is not necessary for Muslim lady to obtain a decree for dissolution of her marriage after she exercises her option of puberty (Khyar-ul-Bulugh) upon attaining the age of puberty i.e. 15 years. If the factum of such revocation or exercise of option of puberty is proved before the trial Court even by oral evidence...it should be sufficient satisfaction of requirement of Section 2 of the Dissolution of Muslim Marriages Act, 1939." It relied on *Abdul Karim v Aminabai* AIR [1935] Bombay 308 where repudiation occurred before a qazi.

¹⁹⁴ n [122].

¹⁹⁵ Ibid.

¹⁹⁶ PCMA, s 3.

¹⁹⁷ Hindu Marriage Act 1955, s 13(2)(iv).

¹⁹⁸ *Smt. Khatiza Tul Qubra @ Tara Bano v Iqbal Mohd* [2009] SCC OnLine Raj 271; Lucy Carroll, 'Muslim Family Law in South Asia: the right to avoid an arranged marriage contracted during minority' (1981) 23(2) JILI 150.

¹⁹⁹ Dissolution of Muslim Marriages Act 1939, s 2(vii).

	Annulment	Divorce
Access to government benefits	Girls or women who annul their marriage may not technically be eligible for government schemes and benefits targeting divorced women.	Divorced girls and women may be special categories of beneficiaries for education and income schemes by the State Governments or Central Government. ²⁰⁰
Inheritance rights of child borne of the marriage	The rights of a child borne from a marriage that is later annulled under the PCMA may be affected by the annulment though such a child is considered legitimate for all purposes. This will depend on the personal law applicable. For more details, refer to Questions 40 and 41 .	The divorce of the parents usually does not affect the rights of inheritance of the child. ²⁰¹



Who can exercise the option of nullity?

16. Who can petition the Court for annulment under PCMA? Can a nullity petition be filed by a child under 18 years of age?

As per Section 3, PCMA, an annulment petition can be only filed in the district court by a person who contracted the marriage as a child.²⁰² The PCMA envisages that a child party can opt out of the marriage and move a petition for nullity even when they are a minor. The child party does not have to wait till they attain the age of 18 years to file such a petition. However, it can be challenging for a child party to file such a petition on their own. In this context, Section 3(2), PCMA states, "If at the time of filing a petition, the petitioner is a minor, the petition may be filed through his or her guardian or next friend along with the Child Marriage Prohibition Officer CMPO." Therefore, such a petition can be filed by the guardian of the child or a "next friend".

17. Can a party who was an adult when the child marriage was solemnised seek annulment under the PCMA?

No, if a party to a child marriage was an adult at the time of the marriage, they cannot seek annulment of the child marriage under the PCMA. Only parties who were a child at the time of the child marriage can seek annulment under the PCMA. For instance, if a 24-year-old man is married to a 14-year-old girl, he cannot file a petition seeking annulment of the marriage on the ground that his wife was underage. This relief is available only to his wife.

²⁰⁰ n [34].
²⁰¹ *Srimathi Narayanan v Vijaya Parthasarathy (Deceased)*, C.S.No.433 of 2009 decided by Madras High Court on 8.06.2022 - in the context of Hindu marriage, "if the parents are divorced, the children still have a legal right to their property. The normal succession laws as per one's religion apply in such cases. So the child has a right over the ancestral property, and in case of a self-acquired property, if the father dies intestate, children have the first right over it since they are Class I heir. After divorce, only the relation between man and woman comes to an end, but the relation of father/mother and son/daughter remains unchanged."
²⁰² PCMA, s 3(1).

18. Can a child party who is now an adult seek annulment under the PCMA? What is the time limit for filing a nullity petition?

A party who was a child at the time of the child marriage but is now an adult can seek annulment under the PCMA, provided that it is filed at any time before the child filing the petition completes two years of attaining majority.²⁰³ While “child” means a girl under 18 years of age and a boy below 21 years of age,²⁰⁴ majority is attained upon completion of 18 years and this is uniform for both males and females.²⁰⁵ Further, the definition of minor under the PCMA is a person who has not attained majority under the Majority Act, 1875.²⁰⁶ Under the Majority Act, a person domiciled in India attains the age of majority on completing the age of 18 years and not before.²⁰⁷ **A literal reading of the provisions of the PCMA thus suggests that both male and female parties can seek annulment before they attain 20 years of age, i.e. within 2 years of attaining the age of 18 years.**

The fact that the definition of “child” for males is a person who has not completed 21 years and the definition of “minor” is a person who has not attained majority, i.e. 18 years, has given rise to different interpretations of the age limit within which male parties can annul their marriage.²⁰⁸

If the age limit for a male child party to annul their child marriage is interpreted to be 20 years - the same as the age limit for female child parties - a boy married at the age of 20 years will have a limited option of just one year or less to file for annulment of the marriage, even though he is married under the legal age of 21 years.²⁰⁹

A full bench of the Madras High Court in *T. Sivakumar v The Inspector of Police*,²¹⁰ while addressing questions regarding the validity of a child marriage and custody of the minor where the minor party has married of their own will, noted that:

“if the child marriage of a male takes place on his completing twenty years of age and if a literal interpretation is given to sub section (3) of the Prohibition of Child Marriage Act, surely, he will not be in a position to file a petition to annul the marriage. Such literal interpretation in the case of a male would create anomalous situation. It is too well settled that no provision of any law shall be interpreted in such a way to make it either anomalous or unworkable. Therefore, in our considered opinion, sub section (3) of section 3 shall be read that in the case of a male, a petition for annulment of child marriage shall be filed before he completes two years of attaining twenty-one years of age.”

²⁰³ PCMA, s 3(3).

²⁰⁴ PCMA, s 2(1).

²⁰⁵ The use of “child, being a minor” in s 12 also suggests that the Prohibition of Child Marriage Act 2006 is drawing a distinction between child and minor, which means minor is less than 18 whereas child means less than 21 for a boy.

²⁰⁶ PCMA, s 2(f).

²⁰⁷ Majority Act 1875, s 3.

²⁰⁸ For an account of conflicting definitions of a child and minor in the law, see Sarasu Thomas, “All that Glitters...Recent Law Reforms and their impact on Child Marriages” (NLS, 10 March 2021) <<https://www.nls.ac.in/wp-content/uploads/2021/03/faculty-seminar-child-marriage.pdf>> accessed 13 May 2024; Centre for Law and Policy Research and Centre for Reproductive Rights, *Ending Impunity for Child Marriage in India: Normative and Implementation Gaps* (2018) 17 - Further, this provision may impact girls’ ability to leave child marriages, as they can only invalidate the marriage until 20 years of age while boys can void a marriage until he is 23 years of age.

²⁰⁹ See *T. Sivakumar v The Inspector of Police* AIR [2012] Mad 62, where a full bench of the Madras High Court noted that, “if the child marriage of a male takes place on his completing twenty years of age and if a literal interpretation is given to sub section (3) of the Prohibition of Child Marriage Act 2006, surely, he will not be in a position to file a petition to annul the marriage. Such literal interpretation in the case of a male would create anomalous situation. It is too well settled that no provision of any law shall be interpreted in such a way to make it either anomalous or unworkable. Therefore, in our considered opinion, sub section (3) of section 3 shall be read that in the case of a male, a petition for annulment of child marriage shall be filed before he completes two years of attaining twenty-one years of age.”

²¹⁰ *T. Sivakumar v The Inspector of Police* AIR [2012] Mad 62.

In *Independent thought v Union of India*, the Supreme Court observed “a girl who was married before she attained the age of 18 years, can get her marriage annulled *before she attains the age of 20 years*. Similarly, a male child can get the marriage annulled *before attaining the age of 23 years*”.²¹¹ It must be noted, however, that this was not a question being decided by the apex court, and these observations were made in passing, and are not necessarily binding.

The Law Commission of India in its Report No. 205, explained Section 3 in the following manner:

“Section 3 of this Act states that “child marriages shall be voidable at the option of the contracting party who was a child at the time of the marriage.” It allows for a petition to be filed to declare the marriage void within 2 years of the child attaining majority. However, since a girl is supposed to attain majority at the age of 18 and a boy at the age of 21, the girl can file a petition till she becomes 20 years of age and a boy till he becomes 23 years of age.”²¹²

The above-mentioned observations result in an anomalous situation as despite attaining majority, the male “child” party will be afforded additional time to nullify the marriage, while the female child party will not. Such an interpretation also appears to conflict with the PCMA’s clear recognition of the distinction between minor, child, and the age of majority in the context of Section 3, as well as Section 12.

19. Do both the bride and the groom have to be within the prescribed age limit for a child party to seek annulment?

No. Only the child party seeking the annulment of the PCMA is required to be within the prescribed age limit, i.e. within 2 years of the party attaining majority. Whether the other party is within the age limit or whether the other party was a child or adult at the time of the marriage does not affect the child party’s right to seek annulment. For example, if the bride is 16 years old, i.e. within the age limit for filing a nullity petition, but her husband is 24 years, she can file a petition to annul the marriage. Similarly if the husband is 19 years old and the bride is 21 years old, the husband can file a petition to annul the marriage as he is within the time limit prescribed although the bride is above 20 years.

20. Can a child party file a petition for nullity even if they willingly entered into the marriage or themselves initiated the marriage?

Yes. The PCMA does not distinguish between child marriages where the family or guardians has/have arranged the marriage and self-initiated child marriages where the parties have willingly married each other. If the marriage occurred when the party was a child, he or she can file a petition to nullify the marriage regardless of whether such a marriage was arranged or self-initiated.

²¹¹ *Independent Thought v Union of India* [2017] 10 SCC 800 [137].

²¹² Law Commission of India, *Proposal to Amend the Prohibition of Child Marriage Act 2006 and other allied laws* (Report No. 205, 2008) pg. 12 <<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081072-1.pdf>> accessed 13 May 2024.

CASE STUDY

Who can file a nullity petition?

Vidya (17) and Kala (13) are two sisters from a community where girls are married off at an early age. Their mother, Janki Devi, was wary of this practice and tried to ensure they complete their education before getting married. Unfortunately, Janki Devi went away for a few months to care for her ailing parents. During this time, at the Akha Teej festival when mass marriages are common in this community, Vidya (17) got married to her boy friend Vijay (23) and the elders in the family insisted that Kala (13) to get married to Karan (17) at the same time to reduce wedding expenses. When Janki Devi returned she was dismayed to find out her daughters were married and insisted they continue their education.

At the time of the child marriage



Vidya
17 years



Vijay
23 years



Kala
13 years



Karan
17 years

Two years later, when Vidya was 19 years, she regretted getting married at a young age as it was becoming very difficult for her to manage household responsibilities while also pursuing her education and career. In her college, a legal awareness camp was organised in her college where she found out that child parties to a marriage can get their marriages annulled. She informed her sister Kala, and her mother Janki Devi. However, both Vidya and Kala were busy with their exams and had no time or money to get involved in court proceedings, but kept this option in mind.

Two years later



Persons who can nullify child marriage



Vidya
19 years



Kala
15 years



Karan
19 years



Persons who cannot nullify child marriage



Vijay
Adult at the time of marriage

It is now 4 years from the date of their marriage. Vidya is 21 years and has a job. Kala, now 17 years, is a college student. The same periodic legal awareness camp is organised in her college and she is reminded that child parties to a marriage can get their marriages annulled. She discusses this with her family. They now have the resources to consider filing a petition for annulment.

Four years later



Persons who can nullify child marriage



Kala
17 years



Persons who cannot nullify child marriage



Vidya
21 years



Vijay
Adult at the time of marriage



Karan
21 years

At each stage, who among them can exercise the right to annul the child marriages under PCMA?

Person	2 years from the child marriage	4 years from the child marriage
Janki Devi	NO. Janki Devi cannot annul either child marriage because she is not a party to the marriage. However, she can act as the guardian for her minor daughter Kala in the event she decides to annul her child marriage.	NO. Janki Devi cannot annul either child marriage because she is not a party to the marriage. However, she can act as the guardian for her minor daughter Kala in the event she decides to annul her child marriage.
Vidya	YES. Vidya at 19 years can annul her child marriage. She was a child (under 18 years) at the time of the marriage and she is now below the age limit of two years from attaining majority (18 years).	NO. Vidya at 21 years cannot annul her child marriage. Though she was a child (under 18 years) at the time of the marriage, she is now 21 years and has crossed the age limit of two years from attaining majority (18 years). However, the District Court may be appealed to condone the delay if there were compelling circumstances that prevented her from filing within the stipulated period.
Vijay	NO. Vijay cannot annul the child marriage to which he is a party. He was an adult above 21 years at the time of the child marriage. Only child parties can annul the child marriage.	NO. Vijay cannot annul the child marriage to which he is a party. He was an adult above 21 years at the time of the child marriage. Only child parties can annul the child marriage.

Person	2 years from the child marriage	4 years from the child marriage
Kala	YES. Kala at 15 years can annul her child marriage as she was a child (under 18 years) at the time of her marriage and is still within the age limit. However, as she is now only 15 years and is still a minor, she can file the nullity petition through her mother Janki Devi.	YES. Kala at 17 years can annul her child marriage as she was a child (under 18 years) at the time of her marriage and is still within the age limit. However, as she is now only 17 years and is still a minor, she can file the nullity petition through her mother Janki Devi.
Karan	YES. Karan at 19 years can annul his child marriage as he was a child (under 18 years) at the time of his marriage and is still within the age limit according to both interpretations of the age limit for boys - 20 years and 23 years .	CONFLICTING POSSIBILITIES POSSIBILITY 1: According to the Supreme Court's observation on the age limit for boys prescribed in the PCMA (23 years), Karan can annul his child marriage. He was a child (under 21 years) at the time of his marriage and has not yet reached the age of 23 years. However, this will result in an anomalous situation as though Vidya and Karan were the same age (17 years) at the time of their respective child marriage, Karan can still annul his child marriage now whereas Vidya cannot. POSSIBILITY 2: Based on a literal reading of the PCMA, Karan attained majority upon completing 18 years and hence cannot seek annulment after he completes 20 years of age.

It should be noted that the Prohibition of Child Marriage (Amendment) Bill, 2021 proposes to **increase the time within which a child party can file a nullity petition from 2 years to 5 years** of attaining majority.²¹³ As can be seen from the above illustration, male child parties get more time than female child parties to file a nullity petition. This discrepancy is due to the difference in age of marriage between men and women. The Bill proposes that the minimum age for marriage of both men and women be 21 years.²¹⁴ However, the Law Commission of India, in its 205th report, has recommended that the age of marriage for both men and women be made uniform at 18 years, in alignment with the minimum age of consent for sex and that both male and female child parties to a child marriage have the option of nullification up till the age of 20 years.²¹⁵ The Convention on the Elimination of All Forms of Discrimination against Women, which India has ratified, states that there should be a minimum age of marriage²¹⁶

²¹³ The Prohibition of Child Marriage (Amendment) Bill 2021, s 4 <[https://prsindia.org/files/bills_acts/bills_parliament/2021/The%20Prohibition%20Of%20Child%20Marriage%20\(Amendment\)%20Bill,%202021.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2021/The%20Prohibition%20Of%20Child%20Marriage%20(Amendment)%20Bill,%202021.pdf)> accessed 13 May 2024.

²¹⁴ The proposed definition of "child" is "a male or female who has not completed twenty-one years of age". See the Prohibition of Child Marriage (Amendment) Bill 2021, s 3 <[https://prsindia.org/files/bills_acts/bills_parliament/2021/The%20Prohibition%20Of%20Child%20Marriage%20\(Amendment\)%20Bill,%202021.pdf](https://prsindia.org/files/bills_acts/bills_parliament/2021/The%20Prohibition%20Of%20Child%20Marriage%20(Amendment)%20Bill,%202021.pdf)> accessed 13 May 2024.

²¹⁵ Law Commission of India, *Proposal to Amend the Prohibition of Child Marriage Act, 2006 and other allied laws*, (Report No. 205, 2008), pg 43-44, <<https://cdnbbsr.s3waas.gov.in/s3ca0daec69b5adc880fb464895726dbdf/uploads/2022/08/2022081072-1.pdf>> accessed 13 May 2024.

²¹⁶ *The Convention on the Elimination of All Forms of Discrimination against Women*, Article 16(2), <<https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm#article16>> accessed 13 May 2024.

and the Committee that oversees the implementation of the Convention recommends that the minimum age for marriage should be 18 years for both men and women.²¹⁷ The “Young Voices” National Report that collected findings from a consultation with around 2,500 young people in 15 states of India to hear their views on age of marriage, reports that young people feel that an increase in the age of marriage from 18 years to 21 years will not change the social reality of the pressure to marry at a young age and has to be accompanied or preceded by comprehensive education, life skills, and employment opportunities to enable agency of young people.²¹⁸ The National Coalition Advocating for Adolescent Concerns emphasised that raising the age of marriage of girls will be counterproductive as PCMA is used against elopements or self-arranged marriages more than it is used against arranged marriages and results in impeding the access of young people to sexual and reproductive healthcare. Their statement on the increase in age of marriage for girls clarifies that, “without addressing the root causes of child marriage, which happens in the context of marginalisation, poverty, and lack of opportunities, an increase in age will aggravate the vulnerability and harm to young people, whose interest these laws envisage to protect”.²¹⁹

Role of parents and guardians

21. Is parental consent necessary for filing a petition? What can be done if the parents refuse to support such a petition?

There is no mention of parental consent as a requirement for filing a child marriage nullity petition by a minor under the PCMA. However, given the social realities, there are more hindrances for girls to nullify their child marriage due to lack of financial means, lack of societal and familial support, and weak decision making power.²²⁰ Further, the legal requirement of presence of parent, guardian, or next friend along with a minor girl for filing a nullity petition poses an additional difficulty as many of the marriages may have been solemnised by their families.²²¹ In such a situation, support of the CMPO, CWC, DLSA, or civil society organisations may be sought to approach the court.

22. Can the parents or guardian get their child’s marriage nullified?

The child marriage is voidable at the option of the contracting party who was a child at the time of the marriage. Thus, the choice to file a nullity petition is of the child contracting party alone, and not their parent or guardians. If the child contracting party is below 18 years at the time of filing the nullity petition, it may be filed through their guardian, i.e. the guardian can aid in the exercise of this choice by the child contracting party.

²¹⁷ *Committee on the Elimination of Discrimination against Women*, General Comment No.21 (1994), Comments on Article 16(2) <<https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm>> accessed 13 May 2024.

²¹⁸ Young Voices - National Report, *Submission to the Task Force examining Age of Marriage and other concerns*, July 2020 <<https://www.girlsnotbrides.org/documents/957/Young-Voices-National-Report.pdf>> accessed 13 May 2024.

²¹⁹ National Coalition Advocating for Adolescent Concerns (NCAAC), *Statement on Increase in the Age of Marriage for Girls* (20 December 2021) <<https://pldindia.org/wp-content/uploads/2022/01/ncaac-statement-increase-in-the-age-of-marriage-for-girls.pdf>> accessed 13 May 2024.

²²⁰ Centre for Law and Policy Research and Centre for Reproductive Rights, *Ending Impunity for Child Marriage in India: Normative and Implementation Gaps* (2018) 18.

²²¹ *Ibid.*

The term “guardian” is not defined under the PCMA. As per the JJ Act, 2015, guardian means “in relation to a child, means his natural guardian or any other person having, in the opinion of the Committee or, as the case may be, the Board, the actual charge of the child, and recognised by the Committee or, as the case may be, the Board as a guardian in the course of proceedings.”²²² The term is also defined under the personal laws. As per the Hindu Minority and Guardianship Act, 1956, guardian is defined as “a person having the care of the person of a minor or of his property or of both his person and property, and includes — (i) a natural guardian,²²³ (ii) a guardian appointed by the will of the minor’s father or mother, (iii) a guardian appointed or declared by a court, and (iv) a person empowered to act as such by or under any enactment relating to any Court of wards.”²²⁴

In *Court on its Own Motion (Lajja Devi) v State*,²²⁵ the Delhi High Court dealt with questions of voidability of child marriage under the Hindu Law and whether a husband can be regarded as a legal guardian of a minor wife. It clarified that for the purpose of moving a petition for child marriage nullification, “guardian” would mean the natural father or mother of the girl. It held:

“The use of the term “guardian” in Section 3 (2) does cause confusion and is ambiguous. A husband under the Hindu Minority and Guardianship Act, 1956 is the guardian of the minor wife (see Section 6(c)). Obviously, **the husband, in such a situation, will not and cannot act as a guardian and move a petition on behalf of his minor wife.** “Guardian” in this case will mean the natural father or the mother of the girl. Fortunately, the legislature has permitted the next friend to also move an application for annulment of marriage.”²²⁶

23. Does consummation of marriage bar a child party from filing the annulment petition?

Under PCMA, there is no reference to consummation of marriage being a bar for seeking relief for nullifying one’s child marriage under PCMA.²²⁷

24. Should the marriage have been registered?

There is no reference to requirement of marriage registration for seeking child marriage nullification under the PCMA. However, a marriage certificate, where available, in a case, may help prove the factum of child marriage. For instance, in *K. Manimala v P. Mariappan*,²²⁸ while declaring a child marriage null and void, the District Court relied on marriage registration certificate as a proof of marriage. For more on evidence needed in a nullity case, refer to [Question 34](#).

²²² JJ Act, s 2(31).

²²³ Natural guardian is defined under the Hindu Minority and Guardianship Act 1956, s 6.

²²⁴ Hindu Minority and Guardianship Act 1956, s 4(b); Guardian defined under Guardians and Wards Act 1890, s 4(2).

²²⁵ *Court on its own motion (Lajja Devi) v State* [2013] Cri LJ 3458.

²²⁶ *Court on its own Motion (Lajja Devi) v State* 2013 Cri. L. J. 3458.

²²⁷ However, there may be a perception that if the marriage is consummated, nullity is not an option and this is reflected in the petitions presented before District Courts. For instance, in *Chotta Devi v Mahendra Sihag*, Case No. 722/18, decided by Family Court No.2, Jodhpur on 23.08.2018, the petitioner requested for annulment of her child marriage with the respondent under s 3(1), PCMA, because her parents got her forcefully married when she was 14-years-old (at the time of petition, she was 19). The petitioner’s lawyer emphasised that the marriage was not consummated hinting at an understanding that it is an essential element for grant of annulment. This was also seen in one more case from Rajasthan on nullity under s 3, PCMA (*Sangeeta Bishnoi v Rakesh*, Case No. 203/2022 decided by Family Court No-1, Jodhpur on 13.04.2023). A possible reason behind the understanding could be the possibility of triggering criminal prosecutions under the POC SO Act and the IPC/BNS in case of consummation of marriage with a minor wife.

²²⁸ *K. Manimala v P. Mariappan* C.M.O.P No.21/2017 And O.P No.14/2019 decided by Court of the Principal District Judge, Thoothukudi, Tamil Nadu, decided on 22.03.2022.

IV. PROCEDURE FOR FILING A NULLITY PETITION

A child marriage under PCMA can be nullified only by a district court.

Forum

25. Is it necessary to approach the court to nullify a child marriage?

Yes. As per Section 3 and 8,²²⁹ PCMA, a nullity petition has to be filed before a district court having jurisdiction.

The jurisdictional court can be:

- a. where the child or the other party resides,
- b. where the child marriage was solemnised,
- c. where the parties last resided together, or
- d. the place of the residence of the petitioner at the time of petition.

In *M. Janaki v K. Vairamuthu*,²³⁰ the Madras High Court clarified that a child marriage does not become automatically void and requires filing the nullity petition before the court.

26. Which court can annul a marriage?

Which court can be approached to file a nullity petition?

Section 3, PCMA says that a petition for annulling a child marriage may be filed in the "district court".*

"District court" is explained Section 2(e), PCMA:



* The State Government can specify any other civil court by notification in the Official Gazette.

²²⁹ PCMA, s 8 - Court to which petition should be made.—For the purpose of grant of reliefs under sections 3, 4, and 5, the district court having jurisdiction shall include the district court having jurisdiction over the place where the defendant or the child resides, or where the marriage was solemnised or where the parties last resided together or the petitioner is residing on the date of presentation of the petition.

²³⁰ *M. Janaki v K. Vairamuthu* [2016] SCC OnLine Mad 1409.

Under the PCMA, the “district court” can be approached to file a nullity petition. As per Section 2(e), PCMA, district court means:

“any area for which a Family Court established under Section 3 of the Family Courts Act, 1984 exists, such Family Court, and in any area for which there is no Family Court but a city civil court exists, that court and in any other area, the principal civil court of original jurisdiction and includes any other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act.”

Family courts, as per the Family Courts Act, 1984 were established to promote conciliation and speedy disposal of “disputes relating to marriage and family affairs and for matters connected therewith”.²³¹ Marriage nullification is one of the subject matters that falls within the exclusive jurisdiction of family courts.²³² Thus, a child marriage nullification case can only be initiated in a family court.

27. Can a child marriage be annulled without approaching the District Court?

For a child marriage to be annulled under the PCMA, a petition of nullity has to be filed before the court having jurisdiction as explained in [Question 26](#). Practices of self-declaration on plain paper or affidavits stating that the marriage is nullified in the offices of an advocate or an organisation will not constitute annulment as provided for under the PCMA. If a legal notice is sent by a spouse stating their intent to file a nullity petition, this will not constitute annulment. The party must file a nullity petition before the District Court, and obtain an order of annulment for the marriage to be nullified. There may also be practices where the parties to the marriage sign agreements or affidavits before witnesses declaring they wish to end the child marriage, without an annulment order from a court. This is not a legal annulment of the child marriage and it only indicates the intention of the parties.

It must be noted that there are customary practices in certain parts of India where parties dissolve marriages without approaching a court of law. **Such dissolution is distinct from annulment.** Section 29(2), HMA recognises the customary rights for dissolution of a Hindu marriage, solemnised before or after the enactment of the HMA. In *Sanjana Kumari v Vijay Kumar*,²³³ the Supreme Court held that a Hindu marriage can be dissolved through a customary divorce deed, if the party relying on such a deed, proves the existence of such a customary right. Further, the Court stated that the obligation rests upon the party relying on a customary divorce deed to demonstrate that such a custom has been consistently practised over a significant period and is not unreasonable or against public policy, and this validation of customary divorce is listed in the exception outlined in Section 29(2) of the HMA, 1955. The court relied on the case of *Yamanaji H. Jadhav v Nirmala*,²³⁴ where the wife contested the validity of a customary divorce deed, leading to the matter being brought before the Supreme Court due to inadequate consideration of the custom’s validity by the lower court. The Supreme Court emphasised the necessity for explicit pleading and establishment of such customs, given their departure from standard divorce laws.

²³¹ The Family Courts Act 1984 preamble.

²³² The Family Courts Act 1984 s 7, explanation (a) and s 8.

²³³ *Sanjana Kumari v Vijay Kumar*, Criminal Appeal No..2905/2023, decided by the Supreme Court of India on 18.09.2023.

²³⁴ *Yamanaji H. Jadhav v Nirmala* [2002] 2 SCC 637.

Dissolution of marriages by *jati panchayats* or caste panchayats is common in Rajasthan. The high consultation fee charged by lawyers may also prompt girls and their families to approach the *jati panchayats* for dissolution of the marriage.²³⁵ For example, the custom of 'nata pratha' among certain castes in Rajasthan enables men and women to leave their marriages and enter into a new relationship with another person. When a female party leaves her husband, the prospective partner is expected to pay a sum called 'jhagra' to the erstwhile husband for the 'nata pratha' to take place.²³⁶ These are performed through *jati panchayats* who typically charge a fee.²³⁷ However, women have little control over this transaction, or access to the money. Such practices may hinder child parties as they entail deference to the decisions made by the *jati panchayat* or powerful elders in the community, and high costs such as vast sums of money that are imposed by the *jati panchayat* and the 'jhagra' amount that the *nata* husband is required to pay to the former husband in the case of 'nata pratha'.²³⁸ There are instances where women are "sold" without their consent by their relatives or the husband, and do not have the right to take their children along and leave them behind either with the previous husband or natal family. Moreover, from interviews of grassroot level organisations working with child brides, it was found that *jati panchayat* also sometimes passes decisions to ostracise the family from the community or instruct families to keep their daughters under their "control", which results in them confining her at home, confiscating her phone, or stopping her schooling, and also arranging her marriage to someone else from a far-off village without the usual level of diligence in verifying his family's credentials, which increases her vulnerability to abuse.

Role of functionaries and support

28. What is meant by "next friend" and who can act as one in the context of the annulment petition?

Every petition before a court by a minor must be instituted in their name by a person known as the next friend of the minor.²³⁹ Any person of sound mind and who is an adult, having attained majority, can act as the next friend for the suit, provided their interests are not adverse to the minor's interests.²⁴⁰ Such person need not be the parents of the child party as long as they fulfil the aforementioned criteria.²⁴¹

29. What is the role of the CMPO in the context of annulment petition?

CMPOs are appointed by the State Government through a gazette notification for the entire State or specified areas.²⁴² They have several duties, which include prevention of child marriage, awareness creation, supporting effective prosecution of persons violating the PCMA, among others.²⁴³ CMPOs can create awareness about the option of nullity under the PCMA. Specifically, in cases where the petitioner is a minor and wishes to nullify their marriage, the CMPO can provide support and be a co-petitioner along with their next friend if their guardian is unsupportive.²⁴⁴

²³⁵ HAQ and Mahila Jan Adhikar Samiti, *Bal Vivah Nirastikaran - Kanuni aur Samajik Jatiltay*, (2022) 20.

²³⁶ Abdul Azeez E P, Dandub Palzor Negi and Pooja Choudhary, 'The Customary Practice of Nata Pratha in Rajasthan, India: Is It Freedom or Captivity for Women?' (2021) 62(2) *Journal of Divorce & Remarriage* 127-143.

²³⁷ *Ibid.*

²³⁸ *Ibid.*

²³⁹ CPC, Order 32 Rule 1.


²⁴⁰ CPC, Order 32 Rule 4(1).

²⁴¹ *Nagaiah & Anr. v Smt. Chowdamma (dead)* [2018] 2 SCC 504; *Kalu & Ors. v Prakash & Ors.* [2014] AIR CC 1803 (Raj).

²⁴² PCMA, s 16(1).

²⁴³ PCMA, s 16(3).

²⁴⁴ PCMA, s 3(2).



How can the CMPO be identified?

To obtain contact information for CMPOs, you can **dial 112 helpline or visit your state's Department of Women and Child Development website**. In several states, the District Social Welfare Officer, District Child Protection Officer, Child Development Project Officer, and Protection Officer under the Domestic Violence Act are also CMPOs.²⁴⁵

Visit the website of the nodal department dealing with child development or protection in your State.

30. Can a nullity petition filed by a minor be denied on the ground that the CMPO was not present?

No, PCMA mentions no such requirement. Further, the presence of CMPO is meant to enable and not to act as a bar to the relief. None of the District Court cases from Rajasthan and Tamil Nadu studied for this report had reference to CMPO but relief was still granted in all the cases.

31. Do you need a lawyer to file the petition?

No. A petition for nullity under Section 3, PCMA, can be filed without a lawyer. Section 13, Family Courts Act, 1984 states: "Notwithstanding anything contained in any law, no party to a suit or proceeding before a Family Court shall be entitled, as of right, to be represented by a legal practitioner."²⁴⁶ However, it is advisable to have a lawyer given the procedural and legal complexities of a child marriage annulment case.

32. What is the role of the CWC in the context of nullification of a child marriage?

The CWC, a statutory authority under the JJ Act, 2015 can play a vital role in supporting a child who wishes to nullify their marriage and does not have any parental or family support. Such a child may be declared a "child in need of care and protection" and the CWC can pass necessary orders to advance the child's care, protection, treatment, development, and rehabilitation.²⁴⁷ Specifically, the CWC can enable the child's access to legal services for the filing of a nullity petition.²⁴⁸ If the child does not have a safe shelter and the natal family is unwilling to support the decision to opt out of the marriage, the CWC can provide immediate shelter in a CCI or a fit facility or place the child with a fit person.²⁴⁹ Following the conduct of an inquiry, and upon consideration of the Social Investigation Report and the child's wishes, the CWC can

²⁴⁵ Centre for Law and Policy Research, *Child Marriage and the Right of Married Girls, "What does the Law Say"* (2018) <https://clpr.org.in/wp-content/uploads/2018/10/FAQ-Brochure_07sept_018.pdf> accessed 13 May 2024.

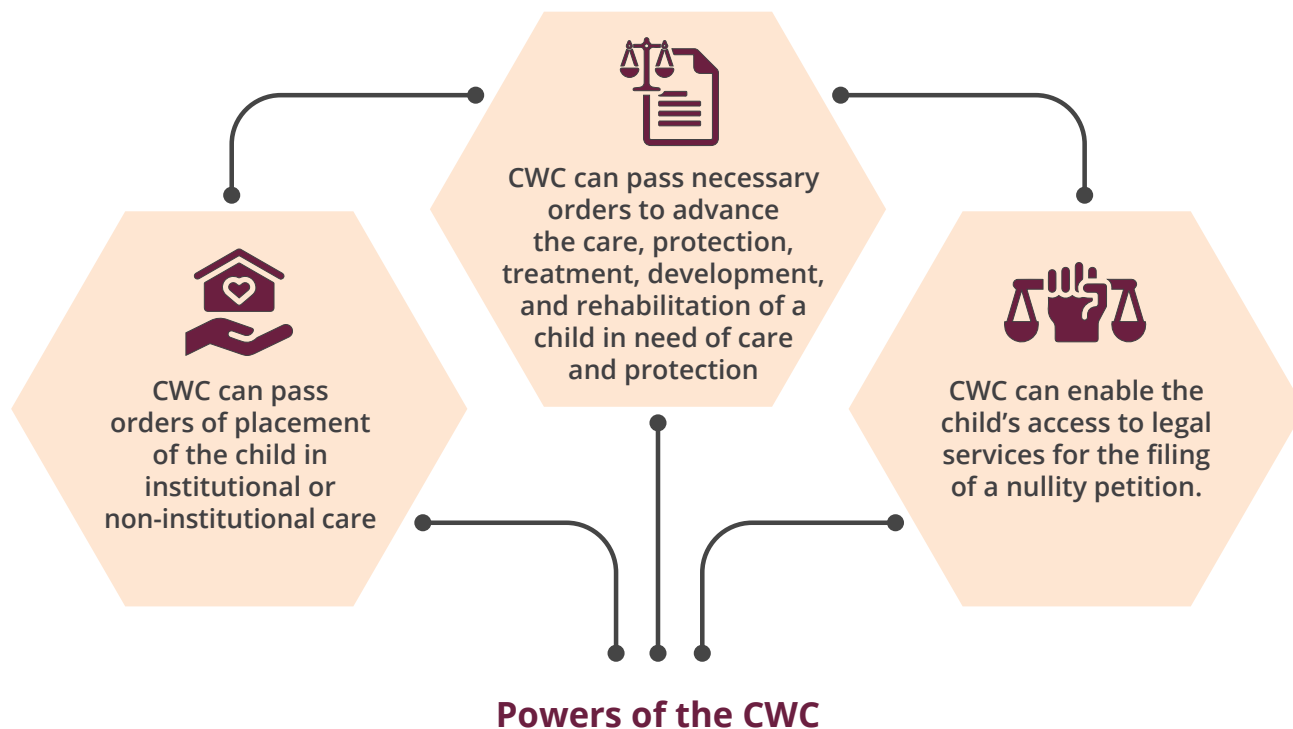
²⁴⁶ Family Courts Act 1984, s 13.

²⁴⁷ JJ Act, ss 2(14) and 29.

²⁴⁸ JJ Act, s 30(xvii).

²⁴⁹ JJ Act, s 36(1).

pass orders of placement of the child in institutional or non-institutional care.²⁵⁰ In the event that a child party is placed in institutional care against their will or are not satisfied with the order passed by the CWC, an appeal can be filed against such order within 30 days before the Children’s Court.²⁵¹ An application can also be filed before the CWC to amend the order with respect to the institution or the person in whose care or supervision the child is placed.²⁵²



33. Who can be approached for legal support for filing a petition under Section 3, PCMA?

The DLSA can be approached for free legal assistance. Under Section 12(c) of the Legal Services Authorities Act, 1987 a woman or child who has to file or defend a case is entitled to free legal services. The DLSA is usually located in the District Courts Complex in every District, and chaired by the District Judge of the respective district.²⁵³ The CWC can also be approached and they can facilitate legal representation through the DLSA. Local organisations working on child marriage or women’s issues can also be approached for the purpose of seeking assistance in the filing of a nullity petition.

²⁵⁰ JJ Act, s 37(1).

²⁵¹ JJ Act, s 101(1).

²⁵² JJ Act, s 104(1).

²⁵³ ‘National Legal Services Authority’ (NALSA) <<https://nalsa.gov.in/about-us>> accessed 13 May 2024.

Who can be approached for Legal Assistance?

 Local Organisations	Local organisations working on child marriage or women's issues can also be approached for the purpose of seeking assistance in the filing of a nullity petition.
 Child Welfare Committee	The CWC can also be approached and they can facilitate legal representation through the DLSA.
 District Legal Service Authority	The DLSA located in the District Court Complex can be approached for free legal assistance.

Court Process

34. What does the petitioner have to establish in order to get a decree of nullity?

What the petitioner has to establish to get a decree of nullity

Documents required to prove that the petitioner was minor at the time of marriage and has filed petition within limitation period.

Establish age of the child party



Birth certificate from school



Birth certificate by Panchayat, Municipality or Corporation

In the absence of these documents, **medical age determination test** results may be considered.

Establish marriage



Wedding invitation card



Photos of the wedding



FIR if filed for child marriage offences

In the absence of these, **testimonies from witnesses** may be required.

In a petition for nullity under Section 3, it is adequate to establish that the **petitioner was below the legally permissible age for marriage when it occurred, establishes the occurrence of the marriage, and makes a prayer for the annulment of the marriage. It also needs to be established that the petitioner has filed the petition within 2 years of attaining majority.**

The consent of the party at the time of the marriage or whether the marriage has been consummated or not, is irrelevant to legal proceedings. Establishing the fact of marriage, including the date and location, requires evidence in the form of documentary proof or testimonies. If available, documentary evidence may include items like a marriage card or a wedding photograph. Even if a wedding photograph is presented, particularly in instances where marriages took place when the parties were very young, it becomes crucial to verify that the individuals depicted are indeed the parties involved.

When documentary evidence is lacking or needs corroboration, witness testimonies become essential. An eyewitness, for instance, can provide testimony about having witnessed the marriage of the parties. Alternatively, a family member might testify to having arranged the marriage. However, if a family member admits to arranging the marriage or an eyewitness admits to attending the marriage, they may face potential criminal liability for facilitating the child marriage.

There is no legal requirement for the petitioner to state the reason they want an annulment. The fact that a child marriage was conducted is adequate for annulment of the marriage. However, if there are particular reasons such as violence or abuse within the marriage, these reasons can be mentioned in the petition.

35. How will the court determine the age of the petitioner while considering a nullity petition?

The PCMA is silent on the procedure that must be followed by the District Court for determining the age of the petitioner at the time of the child marriage. District Courts have considered birth certificate, 10th standard marks card and PAN Card to arrive at conclusions about the age of the child parties. It must be noted that Section 94, Juvenile Justice (Care and Protection of Children) Act, 2015 lays down the procedure for age determination by Juvenile Justice Boards and CWCs, while dealing with children in conflict with the law and children in need of care and protection as defined in the JJ Act. The Supreme Court has held that this process can also be applied by courts dealing with child victims of sexual offences.²⁵⁴ It must be noted, however, that the relief of nullity is civil in nature and the standard of proof is a preponderance of probabilities and not beyond all reasonable doubt as it is in a criminal offence.

36. Can an ex parte annulment decree be passed?

Yes, the District Court can pass an annulment order ex parte, i.e. in the absence of the appearance of the defendant, if it is proven that that the summon was duly served to them.²⁵⁵

²⁵⁴ *Jarnail Singh v State of Haryana* [2013] 7 SCC 263; *P. Yuvaprakash v State* [2023] AIR 2023 SC 3525.

²⁵⁵ CPC, Order 9, Rule 6.

V. ADDITIONAL RELIEFS WITH ANNULMENT UNDER PCMA

A female child party can seek maintenance and residence orders, while both male and female child parties can seek custody of their child.

37. Can maintenance be asked for by a child party seeking to nullify their marriage?

Under Section 4 of PCMA, a female contracting party in child marriages can seek maintenance and residence. The District Court, when granting a decree under Section 3, has the authority to issue interim or final orders directing the male contracting party, or their parents or guardian if they are below 18 years old²⁵⁶ to provide maintenance to the female contracting party until her remarriage. The maintenance amount can be determined by the court after taking into consideration the female party's needs, the lifestyle during the marriage, and the paying party's income. The maintenance can be specified as a monthly or lump-sum payment. If the female party initiates the petition under Section 3, the court may also make a suitable order regarding her residence until remarriage.

38. Are the parties obliged to return gifts given during the marriage?

Yes, under Section 3(4), PCMA while granting a decree of nullity, the District Court also has to pass an order directing both parties and their respective parents or guardians to return the money, valuables, ornaments, and other gifts they received from other party on the occasion of marriage. Alternatively, an equivalent amount corresponding to the value of these money, valuables, ornaments, and other gifts should be returned.

39. Can a female party seek residence orders along with the petition of nullity?

Yes, under Section 4 PCMA, if the petitioner filing the petition under Section 3 is the female party the District Court can issue an appropriate order regarding her place of residence until she remarries.

Further, if the female petitioner is facing or has faced domestic violence in her child marriage, she can also seek relief under the PWDV Act, 2005. No separate petition needs to be filed before a Magistrate for reliefs under the PWDV Act, as reliefs such as a residence order can be sought in ongoing proceedings before a civil court or family court.²⁵⁷ Domestic violence includes any act, omission, or conduct of the respondent that harms, endangers, or injures the mental or physical health, safety, life, limb, or well-being of the aggrieved person.²⁵⁸ It includes physical, sexual, verbal, and emotional abuse, as well as economic abuse. Domestic violence also occurs when the respondent harasses or coerces the aggrieved person or her relatives for dowry or other properties, or when there is a threat by the respondent to cause harm. The female petitioner can petition the District Court²⁵⁹ to pass an order recognising her right to reside in the shared household irrespective of her legal interest.²⁶⁰ She cannot be evicted or excluded from the shared household without

²⁵⁶ "Minor" refers to an individual who, as per the provisions outlined in the Majority Act of 1875 (Act 9 of 1875), is considered not to have reached the age of majority. According to Section 3, Majority Act, the provision states that an individual with their domicile in India achieves majority upon reaching the age of eighteen years.

²⁵⁷ PWDV Act, s 26.

²⁵⁸ PWDV Act, s 3.

²⁵⁹ PWDV Act, s 17.

²⁶⁰ PWDV Act, s 17.

following the established legal procedure. She can also ask for a residence order to restrain the respondent from dispossessing her, directing the respondent to leave the shared household, and impose other restrictions, and such an order can be passed by the court if it is satisfied that domestic violence has taken place. The court can also direct the respondent to provide alternate accommodation matching the standard of the residence she had in the shared household, or pay rent for such an accommodation. She can also ask for a protection order if domestic violence has occurred or is likely to occur.²⁶¹ The protection order may prohibit the respondent from committing any act of domestic violence, entering specific places, or communicating with the aggrieved person. It may also restrain the alienation of assets and include conditions to protect the aggrieved person and any child.

40. Does the nullification of a child marriage under PCMA affect the legitimacy of children born in such a marriage?

Under Section 6, PCMA, children born from child marriages that are annulled through a decree of nullity are legitimate, even if the child is born before the PCMA came into force.²⁶²

41. Will a child born out of a marriage that has been nullified have any rights to the property of the parents?

The PCMA is silent on the right to property of a child born of a marriage that is void or has been nullified. However, it clearly states that children born from a child marriage that is nullified under Section 3 of the PCMA are legitimate children.²⁶³ The right to property will be determined based on the applicable personal law. In this context, parties may wish to consider the relative advantage of seeking a divorce instead of an annulment. This is because the inheritance rights of a child may be clearer and/or better in case of divorce as compared to annulment. For instance, under HMA, a child born of a voidable marriage that is nullified under HMA is deemed a legitimate child.²⁶⁴ In *Revanasiddappa & Anr. v Mallikarjun & Ors.*,²⁶⁵ the Supreme Court clarified that such children have rights only in their parents' self-acquired property and their parents' share of ancestral property, but not in the property of other relations. On the other hand, a child born from a Hindu marriage which ends in a divorce, will have a share of the ancestral property by birth and the divorce will not affect such a child's right in the ancestral property.

42. Can a child borne from a child marriage claim maintenance from the parents, i.e. the parties to the child marriage?

Yes. If there is a child borne from the child marriage, the court can pass an order providing maintenance to such a child from either party to the marriage, or their parents or guardians.²⁶⁶

43. Can the girl/woman surrender the child borne out of such a marriage without the consent of the child's father, upon nullification?

The JJ Act allows for a parent or guardian to surrender a child for adoption due to physical, emotional, and social factors beyond their control.²⁶⁷ The JJ Act and Adoption Regulations, 2022 expressly address surrender

²⁶¹ PWDV Act, s 18.

²⁶² PCMA, s 6 - "Notwithstanding that a child marriage has been annulled by a decree of nullity under Section 3, every child begotten or conceived of such marriage before the decree is made, whether born before or after the commencement of this Act, shall be deemed to be a legitimate child for all purposes."

²⁶³ PCMA, s 6.

²⁶⁴ HMA, s 16(2).

²⁶⁵ *Revanasiddappa & Anr. v Mallikarjun & Ors.* [2023] 5 SCC 7831.

²⁶⁶ PCMA, s 5(4).

²⁶⁷ JJ Act, s 35(1).

by an unwed mother,²⁶⁸ “unwanted child of victim of sexual assault”²⁶⁹ and by married couples.²⁷⁰ In the context of an unwed mother, the decision to surrender can be made only by the mother and if she is a minor, her guardian or family can decide to surrender the child.²⁷¹ The Adoption Regulations state the procedure for surrender by a “female biological parent including an unwed mother”.²⁷² Surrender of a child born to a married couple requires the consent of both parents.²⁷³ The law also provides that the Specialised Adoption Agency, DCPU, and CWC shall make efforts for exploring the possibility of retaining the child with the parent through counselling and explaining that the surrender is irrevocable after 60 days from the date of signing the Deed of Surrender.²⁷⁴ The law is, however, silent on surrender by parties whose marriage has been annulled.

One possible interpretation is that as sexual contact with a minor constitutes an offence under the POCSO Act and the IPC/BNS, the female child party may be seen as a victim of sexual assault. She can decide to surrender her child and consent of the biological father may not be needed after the marriage is annulled. The CWC can make available a legal aid lawyer to guide her through the process if she requires assistance with the application.²⁷⁵ Another interpretation is that since the PCMA considers a child born in a child marriage to be legitimate, creates obligations of maintenance by the parent or guardian, and also provides for custody of the child, consent of both parents will be required before a child is surrendered for adoption. A clarification from the Central Adoption Regulation Authority or an authoritative ruling by the High Courts or the Supreme Court will lend more clarity on this matter.

44. How will the custody of children of parties in a child marriage be determined, if a nullity petition is filed?

Where a nullity petition under Section 3, PCMA has been moved, the District Court is obligated to pass an appropriate custody order under Section 5, PCMA. In this context, the paramount consideration will be “the welfare and best interests of the child”. In *Nil Ratan Kundu & Anr vs Abhijit Kundu*,²⁷⁶ the Supreme Court held that, while determining the custody of the child, the welfare and well-being of the child must be determined by considering the:

“child’s ordinary comfort, contentment, health, education, intellectual development and favourable surroundings. But over and above physical comforts, moral and ethical values cannot be ignored..If the minor is old enough to form an intelligent preference or judgement, the Court must consider such preference as well, though the final decision should rest with the Court as to what is conducive to the welfare of the minor.”

The custody order may also include directions for providing the other party access to the child in a manner that serves the child’s best interests, and the District Court has the authority to make additional orders it deems proper for the child’s benefit. Furthermore, the District Court is empowered to make an order providing maintenance for the child, which can be sought from a party to the marriage, or their parents or guardians.

²⁶⁸ Adoption Regulations 2022, Regulation 7(7).

²⁶⁹ JJ Act, s 38(3).

²⁷⁰ Adoption Regulations 2022, Regulation 7(5).

²⁷¹ Adoption Regulations 2022, Regulation 7(7).

²⁷² Adoption Regulations 2022, Regulation 7(4).

²⁷³ Adoption Regulations 2022, Regulation 7(5).

²⁷⁴ Adoption Regulations 2022, Regulation 7(11).

²⁷⁵ Adoption Regulations 2022, Regulation 7(2).

²⁷⁶ *Nil Ratan Kundu & Anr v Abhijit Kundu* [2008] 9 SCC 413.

VI. SUGGESTED ACTION POINTS FOR EMPOWERING CHILD PARTIES TO ACCESS ANNULMENT



Interviews with girls who annulled their marriages revealed that they faced several socio-economic challenges while filing the nullity petition and underlined the need for functional support mechanisms to enable them to file nullity petitions and deal with its aftermath. The following aspects need to be considered:



1. Need for comprehensive support such as shelter, education, and vocational training

In their interviews, girls shared they faced social ostracisation for filing a nullity petition, with several family members, and residents of their village expressing their disapproval of them filing the nullity petitions. In some cases, this extended to immediate family members, which meant that the petitioners had to find means to sustain themselves and live independently, as they could no longer access their natal home or marital home, or economic support from them. This presents challenges, as the very circumstances that enabled the child marriage, including poverty and lack of access to education, also prevented them from accessing employment options that would enable them to live independently and sustain themselves. The girls shared that they were often told they had brought dishonour to their family, faced extreme pressure from their family to withdraw the petition, were blamed for the social ostracisation their family was facing, or were disowned by their family, leading to feelings of isolation and distress. They emphasised the crucial role that organisations played in this context by providing them with support through the legal process, enabling access to scholarships, offering counselling services, helping them access affordable housing, and facilitating conversations with their family members to help them become more accepting of the girls' decision to file a nullity petition. Several girls also complained of repeated threats, stalking, and harassment from their husbands and in-laws, forcing them to leave their parental homes and causing fear while carrying out everyday activities such as attending college. This highlights the necessity of establishing linkages with the child protection system and organisations that can provide them with support. **Importantly, there is a need to operationalise access to residential shelters, aftercare facilities, sponsorship, and hostels with options for education and vocational training. The CWCs and DCPUs can facilitate their access to such shelters and relevant Schemes.** Without such support on the ground, the annulment provision will continue to remain largely ineffective.



2. Enhance access to information

Interviews conducted with girls who filed nullity petitions revealed that they were unaware of the possibility of filing such a petition beforehand. They became aware of it only through conversations with different organisations or by reading articles in the media. Furthermore, discussions with DLSA and SLSA highlighted that their awareness campaigns in villages primarily focused on preventing child marriage, and did not address the legal options available to individuals already in child marriages who wish to nullify them. **This points to the need for the DLSA, SLSA, PRIs, SCPCR, and other frontline agencies and functionaries involved in awareness-raising to consciously emphasise the right granted by the PCMA to child parties to opt out of a child marriage.** Specific information about the process of filing nullity petitions, time period, and other reliefs or support available should be integrated into all awareness campaigns on child marriage.



3. Improve access to justice

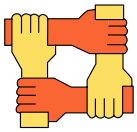
A significant challenge expressed by petitioners is the difficulty in accessing legal assistance, as some had initially consulted private lawyers who demanded exorbitant fees before they eventually got free legal support through NGOs. **The SLSAs and DLSAs in collaboration with the Taluk Level Legal Service Committees, DCPOs, CWCs, Block Development Officers, PRIs, and other frontline authorities need to ensure the availability and accessibility of free legal aid.** Girls also expressed that the legal process was confusing and intimidating to them, emphasising that the presence of a representative from an NGO was crucial for them to understand the legal process and feel supported. Therefore, ensuring access to a Support Person, akin to that provided under the POCSO Rules,²⁷⁷ to navigate through the justice system is essential. Another challenge highlighted was that the legal proceedings were lengthy due to the repeated issuance of summons and the non-appearance of the other party, hindering their ability to move on with their lives, and requiring them to make repeated appearances in court. Further, the preference for lawyers to file for divorce instead of nullity also results in long-drawn proceedings and a strain on their financial resources. This draws attention to the need for the courts to ensure the expeditious disposition of the case and for sensitisation of the judiciary about the relief of nullity under PCMA.



4. Proactive consideration of maintenance

Interviews with lawyers revealed that while final maintenance was rarely awarded in nullity petitions, interim maintenance had not been awarded in any of the cases they had filed. As petitioners filing nullity petitions are often under great economic duress, courts must consider awarding both interim and final maintenance to support the needs of the petitioner throughout the process. Courts must consider awarding maintenance *suo moto*, and legal aid lawyers must inform petitioners that this is a matter of legal right.

²⁷⁷ Under Rule 5(6), POCSO Rules, 2020, a Support Person “may be a person or organisation working in the field of child rights or child protection, or an official of a children’s home or shelter home having custody of the child, or a person employed by the DCPU.” As per Rule 2(1)(f), Support Persons are assigned by the CWC to render assistance to the child through the process of investigation and trial of offences under the POCSO Act.



5. Capacity-building of stakeholders

While the role of CMPO to support minors in filing nullity petitions is mentioned under the PCMA, in conversations and interviews with stakeholders it was observed that CMPO was not part of any legal proceedings in the matters they were involved in. Discussions with lawyers revealed several misconceptions surrounding the filing of nullity petitions such as if a marriage is consummated, a nullity petition cannot be filed, or that interim maintenance cannot be sought during a nullity petition or that ages of both parties must be within the specified time limit for a petition to be filed. Additionally, there were differing opinions regarding the cut-off age for boys to file a nullity petition, and whether it is 20 or 23 years. Lawyers also indicated a preference for filing divorce petitions over nullity petitions due to judges' familiarity with the divorce process. This calls for inclusion of modules on facilitation of annulment petitions for CMPOs and for extensive capacity building programmes for Family Courts, legal aid lawyers, and private advocates on annulment under the PCMA.



6. Policy considerations

- Interviews with lawyers also revealed that the testimony of eyewitnesses that could be used to establish the fact of the child marriage and initiate criminal proceeding against them. The fear that seeking annulment of their marriage could inadvertently lead to criminal charges against their own family members or witnesses can act as a significant barrier in accessing this relief. **Suitable legal reforms need to be considered to ensure that child parties are able to access this relief and those providing evidence about the marriage are protected from prosecution.**
- **The confusion about the time available for male parties to annul the child marriage also needs to be resolved either through a legislative amendment or by the apex court.**
- In their interviews, girls shared that while ostracisation, stigma, and the socio-economic challenges they faced were similar to those experienced by divorced women, due to the mere fact that they opted to file a nullity petition instead of a divorce petition, they were not eligible for various schemes providing pension and reservation in employment for divorced women. **State Governments must consider extending benefits available to divorced women and widows under various Schemes, equally to women who nullify their child marriage.**

ANNEXURE – OFFENCES AND PUNISHMENTS RELEVANT TO CHILD MARRIAGE



Adult male marrying a child below 18 years

- **PCMA, Section 9 – Punishment for male adult marrying a child.** Whoever, being a male adult above 18 years of age, contracts a child marriage shall be punishable with **rigorous imprisonment which may extend to 2 years or with fine which may extend to one lakh rupees or with both.**²⁷⁸
- **HMA, Section 18 read with Section 5(iii)**
 - ⦿ **HMA, Section 5(iii)** – A marriage may be solemnised between any two Hindus, if the following conditions are fulfilled, namely ... the bridegroom has completed the age of 21 years and the bride, the age of 18 years at the time of the marriage
 - ⦿ **HMA, Section 18** – Every person who procures a marriage of himself or herself to be solemnised under this Act in contravention of the conditions specified in clauses (iii), (iv), and (v) of Section 5 shall be punishable
 - (a) in the case of contravention of the conditions specified in clause (iii) of Section 5, with **rigorous imprisonment which may extend to 2 years** or with fine which may extend to **one lakh rupees**, or with both.

Performing or arranging a child marriage

- **PCMA, Section 10 – Punishment for solemnising a child marriage.** Whoever performs, conducts, directs or abets any child marriage shall be punishable with **rigorous imprisonment which may extend to 2 years** and shall be liable to fine which may extend to **one lakh rupees** unless he proves that he had reasons to believe that the marriage was not a child marriage.
- **PCMA, Section 11(1)** – Punishment for promoting or permitting solemnisation of child marriages. Where a child contracts a child marriage, any person having charge of the child, whether as parent or guardian or any other person or in any other capacity, lawful or unlawful, including any member of an organisation or association of persons who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, including attending or participating in a child marriage, shall be punishable with **rigorous imprisonment which may extend to 2 years** and shall also be liable to fine which may extend up to **one lakh rupees**. Provided that no woman shall be punishable with imprisonment.

²⁷⁸ In Karnataka, the minimum punishment is rigorous imprisonment of one year. See The Prohibition of Child Marriage (Karnataka Amendment) Act 2016.

- **PCMA, Section 13(10) read with Section 13(1)**
 - ⊙ **PCMA, Section 13(1)** – ... if, on an application of the CMPO or on receipt of information through a complaint or otherwise from any person, a Judicial Magistrate of the first class or a Metropolitan Magistrate is satisfied that a child marriage in contravention of this Act has been arranged or is about to be solemnised, such Magistrate shall issue an injunction against any person including a member of an organisation or an association of persons prohibiting such marriage.
 - ⊙ **PCMA, Section 13(10)** – Whoever knowing that an injunction has been issued under sub-section (1) against him disobeys such injunction shall be punishable with imprisonment of either description for a term **which may extend to 2 years** or with fine which may extend to **one lakh rupees** or with both. Provided that no woman shall be punishable with imprisonment.

Consummation of a child marriage where the party is below 18 years

Rape

- **IPC, Section 375 sixthly read with Section 376(1)/BNS, Section 63(vi) read with Section 64**
 - ⊙ **IPC, Section 375 sixthly/BNS, Section 63(vi)** – Rape – A man is said to commit “rape” if he—
 - (a) penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a woman or makes her to do so with him or any other person; or (b) inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of a woman or makes her to do so with him or any other person; or (c) manipulates any part of the body of a woman so as to cause penetration into the vagina, urethra, anus or any part of body of such woman or makes her to do so with him or any other person; or (d) applies his mouth to the vagina, anus, urethra of a woman or makes her to do so with him or any other person, under the circumstances falling under any of the following seven descriptions: ... With or without her consent, when she is under 18 years of age.
 - ⊙ **IPC, Section 376(1)/BNS, Section 64** – Whoever ... commits rape, shall be punished with rigorous imprisonment of either description for a term which **shall not be less than 10 years, but which may extend to imprisonment for life**, and shall also be liable to **fine**.
- **IPC, Section 376(3)/BNS, Section 65(1)** – Whoever, commits rape on a woman under 16 years of age shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life, and shall also be liable to fine.
- **IPC, Section 376 AB/BNS, Section 65(2) – Punishment for rape on woman under 12 years of age.** Whoever, commits rape on a woman under 12 years of age shall be punished with rigorous imprisonment for a term which shall **not be less than 20 years**, but which **may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person’s natural life**, and with fine or with **death**.

Penetrative Sexual Assault

➤ POCSO Act, Section 3 read with Section 4 (1)

- ⦿ **POCSO Act, Section 3** – Penetrative sexual assault.—A person is said to commit “penetrative sexual assault” if— (a) he penetrates his penis, to any extent, into the vagina, mouth, urethra or anus of a child or makes the child to do so with him or any other person; or (b) he inserts, to any extent, any object or a part of the body, not being the penis, into the vagina, the urethra or anus of the child or makes the child to do so with him or any other person; or (c) he manipulates any part of the body of the child so as to cause penetration into the vagina, urethra, anus or any part of body of the child or makes the child to do so with him or any other person; or (d) he applies his mouth to the penis, vagina, anus, urethra of the child or makes the child to do so to such person or any other person.
- ⦿ **POCSO Act, Section 4** – Punishment for penetrative sexual assault. Whoever commits penetrative sexual assault shall be punished with imprisonment of either description for a term which shall **not be less than 10 years** but which **may extend to imprisonment for life**, and shall also be liable to fine.

➤ POCSO Act, Section 4(2) – Whoever commits penetrative sexual assault on a child below sixteen years of age shall be punished with imprisonment for a term which shall **not be less than 20 years**, but which **may extend to imprisonment for life, which shall mean imprisonment for the remainder of natural life** of that person and shall also be liable to fine.

Aggravated Penetrative Sexual Assault

➤ POCSO Act, Sections 5(j)(ii), (l), (m), (n) [Aggravated Penetrative Sexual Assault] read with Section 6

- ⦿ **POCSO Act, Section 5(j)(ii)** – whoever commits penetrative sexual assault on a child, which in the case of female child, makes the child pregnant as a consequence of sexual assault;
- ⦿ **POCSO Act, Section 5(l)** – whoever commits penetrative sexual assault on the child more than once or repeatedly;
- ⦿ **POCSO Act, Section 5(m)** – whoever commits penetrative sexual assault on a child below 12 years;
- ⦿ **POCSO Act, Section 5(n)** – whoever being a relative of the child through ... marriage ... or who is living in the same or shared household with the child, commits penetrative sexual assault on such child;
- ⦿ **POCSO Act, Section 6** – Punishment for aggravated penetrative sexual assault. Whoever commits aggravated penetrative sexual assault shall be punished with rigorous imprisonment for a term which **shall not be less than 20 years**, but which **may extend to imprisonment for life**, which shall mean imprisonment for the **remainder of natural life** of that person and shall also be liable to fine, or **with death**.

Sexual Assault

- **POCSO Act, Section 7** – Sexual Assault – whoever, with sexual intent touches the vagina, penis, anus or breast of the child or makes the child touch the vagina, penis, anus or breast of such person or any other person, or does any other act with sexual intent which involves physical contact without penetration is said to commit sexual assault.
- **POCSO Act, Section 8** – Punishment for sexual assault - whoever, commits sexual assault, shall be punished with imprisonment of either description for a term which shall **not be less than 3 years** but which **may extend to 5 years**, and shall also be liable to fine.

Aggravated Sexual Assault

- **POCSO Act, Section 9(l), (m), (n) and (q) read with Section 10**
 - ⦿ **POCSO Act, Section 9(l)** – whoever commits sexual assault on the child more than once or repeatedly;
 - ⦿ **POCSO Act, Section 9(m)** – whoever commits sexual assault on a child below 12 years;
 - ⦿ **POCSO Act, Section 9(n)** – whoever, being a relative of the child through ... or marriage ... or who is living in the same or shared household with the child, commits sexual assault on such child;
 - ⦿ **POCSO Act, Section 9(q)** – whoever commits sexual assault on a child knowing the child is pregnant;
 - ⦿ **POCSO Act, Section 10** – Punishment for aggravated sexual assault – whoever, commits aggravated sexual assault shall be punished with imprisonment of either description for a term which shall **not be less than 5 years** but which **may extend to 7 years**, and shall also be liable to fine.

Kidnapping

- **Kidnapping under IPC**
 - ⦿ **IPC, Section 361** – Kidnapping from lawful guardianship – whoever takes or entices any minor under 16 years of age if a male, or under 18 years of age if a female, or any person of unsound mind, out of the keeping of the lawful guardian of such minor or person of unsound mind, without the consent of such guardian, is said to kidnap such minor or person from lawful guardianship.
 - ⦿ **IPC, Section 363** – Punishment for kidnapping – whoever kidnaps any person from India or from lawful guardianship, shall be punished with imprisonment of either description for a term which **may extend to 7 years**, and shall also be liable to fine.
- **Kidnapping under BNS**
 - ⦿ **BNS, Section 137(1)(b)** – Whoever takes or entices any child or any person of unsound mind, out of the keeping of the lawful guardian of such child or person of unsound mind, without the consent of such guardian, is said to kidnap such child or person from lawful guardianship.
 - ⦿ **BNS, Section 137(2)** – Whoever kidnaps any person from India or lawful guardianship shall be punished with imprisonment of either description for a term which may **extend to 7 years**, and shall also be liable to fine.

Kidnapping, abducting or inducing woman to compel her marriage

IPC, Section 366/BNS, Section 87 – Whoever kidnaps or abducts any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced to illicit intercourse, or knowing it to be likely that she will be forced or seduced to illicit intercourse, shall be punished with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine; and whoever, by means of criminal intimidation as defined in this Code/*Sanhita* or of abuse of authority or any other method of compulsion, induces any woman to go from any place with intent that she may be, or knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall also be punishable as aforesaid.

Abuse and neglect of a child

🔍 **JJ Act, Section 75** – Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which **may extend to 3 years** or with fine of one lakh rupees or with both.

🔍 **Juvenile Justice (Care and Protection of Children) Model Rules, 2016, Rule 55(1)** – Procedure in case of offence under Section 75 of the Act – (1) For the purposes of Section 75 of the Act and this rule, giving a child in marriage shall be considered as cruelty to the child.

These criminal provisions are only indicative and are not exhaustive. Other charges such as those under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, may be applicable based on the circumstances of each case.

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