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# In Fact: Between void and voidable, scope for greater protection for girl child

A 2014 UNICEF report found that the median age at first marriage was 15.4 years for women in the poorest quintile, and 19.7 years for those in the richest quintile.

Written by [Shalini Nair](#) |

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As marriages in India come under the purview of personal laws, the PCMA stops short of invalidating child marriage.

The landmark Supreme Court order criminalising sex with a child bride removed an exception in India's criminal jurisprudence which had until then accorded legal protection to men who raped their minor wives. The judgment, passed earlier this month, made rape laws consistent with The Protection of Children from Sexual Offences (POCSO) Act, The Juvenile Justice Act, and The Prohibition of Child Marriage Act (PCMA), all of which recognise 18 years as the age of consent for a girl.

The judgment noted that "under no circumstance can a child below 18 years of age give consent, express or implied, for sexual intercourse" and hence sex with a minor wife in itself constitutes rape.

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The order is undeniably a milestone in the history of women and child rights in India. Nonetheless, since child marriage cannot be held as proof of sex within marriage, implicit in the judgment is a belief in the agency of the child bride to defy her parents and file a criminal complaint against her husband. For the order to be effective, it is important for the legislature to step in and amend the PCMA, making marriage between minors void, and not just voidable, i.e., capable of being adjudged void, as is the case now.

As marriages in India come under the purview of personal laws, the PCMA stops short of invalidating child marriage. It holds that marriage between a boy of under 21 years and a girl under 18 years of age is voidable, at the option of the contracting parties.

This means a child marriage, even under the secular laws, can only be annulled if a case is filed in a district court by either of the two contracting parties within two years of becoming adult, or through a guardian if still a minor.

The discrepancies in personal laws are greater. Under the Hindu Marriage Act, 1955, (applicable to Hindus, Buddhists, Sikhs, Jains) and the Dissolution of Muslim Marriages Act, 1939, a girl can legally seek dissolution of her marriage if she was married off before the age of 15 years — but she has to do so before she is 18 years of age (unlike the PCMA which sets the age at 20 for girls and 22 for boys).

The uncodified Muslim personal law considers puberty (presumed to be 15 years) as the minimum age of marriage for girls. The Hindu Marriage Act, while making the marriage of an under-18 girl punishable, applies the punitive measures only against the boy who is over 18 years of age, and not against the parents or guardians. The Indian Christian Marriage Act also in a way legitimises child marriage by stating that marriage registrars have to put up a public notice for 14 days prior to the marriage of a minor.

While the PCMA overrides personal laws, it has been argued that personal laws should be amended to make them consistent with PCMA. This is in the light of court judgments such as *Tahra Begum vs State Of Delhi and Ors* (2012), wherein Delhi High Court allowed a 15-year-old Muslim girl to stay with her husband.

The Child Marriage Restraint Act, 1929, was amended to create the PCMA in 2006, introducing more stringent punishments, including a jail term of up to two years for the 18-years-plus boy or anyone who abets/performs such a marriage. Yet, the National Family Health Survey 4 (2015-16) showed that one out of every four women (26.8%) aged 20-24 years was married off as a minor — the prevalence in Rajasthan was as high as 65%, followed by Jharkhand at 63%.

Evidence for the inefficacy of the PCMA lies in National Crime Records Bureau (NCRB) data. In 2014, 2015 and 2016, only 280, 293, and 326 cases respectively were registered under the Act. Rajasthan registered only 5, 6, and 12 cases under PCMA in these three years, while Jharkhand saw 4 cases being registered last year and just one each in the preceding two.

Decadal data, too, show no reduction in the incidence of child marriage. The country's apex child rights' body, the National Commission for Protection of Child Rights (NCPCR), and the NGO Young Lives used Census 2011 data to bring out a report on the incidence of child marriage in June 2017. The report showed that in 2011, 5.16 million girls were married before the age of 18 years — virtually the same as in 2001, when this figure was 5.05 million.

A 2014 UNICEF report, which ranked India 6th among the top 10 countries with high rates of child marriage among women, found that the median age at first marriage was 15.4 years for women in the poorest quintile, and 19.7 years for those in the richest quintile.

This month's Supreme Court order (*Independent Thought vs Union Of India*) pointed out that the “most obvious and appropriate resolution of the conflict” has been provided by Karnataka. In April 2017, the state legislature inserted “sub-Section (1A) in Section 3 of the PCMA, declaring that henceforth every child marriage that is solemnised is void ab initio”, i.e., it is to be treated as invalid from the outset.

Various expert panels have stated that the union Ministry of Women and Child Development, which has maintained a silence on the issue so far, would do well to amend the central legislation to make all child marriages void. A 2008 Law Commission Report listed the many problems with child marriage — from early pregnancy-related complications for both the mother and child to the child bride

being subjected to sexual violence and forced labour while being deprived of the right to education and bodily autonomy.

The Report recommended compulsory registration of all marriages, and for keeping the age of marriage for both boys and girls at 18 years, breaking with the current “patriarchal notion” that mandates an older age of 21 for the groom. The Law panel also said that marriages below the age of 16 years should be made void, while keeping those between 16 and 18 voidable, provided the age of consent is reduced to 16 years for all girls.

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The Justice Verma Committee, set up in the wake of the December 2012 Delhi bus gangrape, too, had asked that the age of consent be kept at 16 years.



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