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## CRIMINAL LAW AND CHILD MARRIAGE A COMPARATIVE STUDY OF INDIAN AND INTERNATIONAL LAW

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### Abstract

Child marriage remains a prevalent issue worldwide, with significant legal, social and psychological implications. This research paper explores the relationship between criminal law and child marriage, with a particular focus on the legal framework in India and internationally. It analyses the legal age of marriages, the criminalization of child marriages and the enforcement of these laws. A comparison is made between Indian law and the approaches adopted by international bodies, including the United Nations and regional organizations. The papers aim to understand the role of criminal law in preventing child marriages and offers insights into improving legal mechanism to protect children from early marriages. Key challenges and the need for effective implementations of laws are discussed.

**Keywords:** Child Marriages, Criminal Law, Indian Law, International Law, Legal Framework, Child Protection, Marriages Law, Human Rights, Gender Equality, Enforcement.

### INTRODUCTION

Individual below the age of 18, is a deeply rooted social issue with profound legal, psychological, and health implications. Despite global commitments to child marriage, defined as a formal or informal union involving at least one end the practice, millions of children—primarily girls—are married off each year, often against their will. The legal response to this practice varies significantly across jurisdictions, reflecting differing cultural norms, religious practices, and stages of legal development.

In India, child marriage has been criminalized under various laws, including the Prohibition of Child Marriage Act, 2006, and intersects with personal laws, creating a complex legal framework. Enforcement remains inconsistent due to social acceptance and lack of awareness. Internationally, numerous treaties and conventions, such as the Convention on the Rights of the Child (CRC) and CEDAW, mandate the protection of children from harmful

practices, including early marriage. Countries around the world have adopted a range of legal measures to comply with these obligations, but gaps between legislation and implementation persist.

This study aims to conduct a comparative analysis of criminal law approaches to child marriage in India and under international law. It will evaluate the effectiveness of legal instruments, highlight areas of convergence and divergence, and propose reforms to strengthen the protection of children from premature and coerced unions.

Child marriage, the union of individuals below the legal age of adulthood, is a global human rights concern that not only violates children's rights but also undermines their health, education, and potential. While the practice is declining in some regions, it remains widespread due to factors such as poverty, gender inequality, cultural traditions, and lack of legal enforcement.

In the context of criminal law, child marriage presents a unique challenge. It blurs the line between personal customs and legal protections, especially in countries like India where diverse religious and customary practices coexist with statutory law. In such societies, the effectiveness of criminal legislation is often tested against deeply entrenched socio-cultural norms.

India has a dual legal system that includes both secular and personal laws. The primary legislation criminalizing child marriage is the Prohibition of Child Marriage Act (PCMA), 2006, which defines the legal age of marriage as 18 for females and 21 for males. Under the Act, child marriage is not automatically void but is voidable at the option of the minor. Furthermore, criminal penalties are imposed on those who promote, permit, or conduct such marriages. However, enforcement remains weak due to societal acceptance, underreporting, and conflicts with personal laws such as Hindu and Muslim marriage laws.

Internationally, child marriage is condemned under various legal frameworks. The United Nations Convention on the Rights of the Child (UNCRC) recognizes child marriage as a harmful practice and emphasizes the need for legal protection of children. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) also compels states to take legislative measures to eliminate discrimination against women, including in matters related to marriage. Moreover, the Universal Declaration of Human Rights (UDHR) asserts that marriage shall be entered into only with the free and full consent of the intending spouses, a condition impossible to fulfill when one party is a child.

The legal frameworks under international law provide strong normative standards, but the implementation is largely dependent on national legislation and political will. Some countries have adopted strict measures, criminalizing child marriage with clearly defined penalties and making such marriages void ab

initio (invalid from the outset). Others continue to allow exceptions based on parental consent or religious laws, weakening the global effort to eradicate the practice.

This comparative study seeks to explore how criminal law in India addresses child marriage and how it aligns or deviates from international standards. It will examine:

The statutory and personal laws governing child marriage in India

The challenges in enforcement and social resistance

International treaties and legal obligations concerning child marriage

Case studies from other jurisdictions that have successfully tackled the issue

Legal reforms necessary to strengthen child protection mechanisms

Ultimately, the research aims to offer a critical perspective on the effectiveness of criminal law in deterring child marriage and to propose harmonized legal strategies that can better safeguard children's rights both in India and globally.

Child marriage is defined as a formal marriage or informal union before the age of 18. Despite its widespread occurrence globally, child marriage continues to violate children's rights to health, education, and overall well-being. Criminal law plays a crucial role in safeguarding children from such harmful practices. However, the effectiveness of legal measures varies significantly across countries, with differing legislative frameworks and levels of enforcement. This research focuses on a comparative analysis of child marriage laws in India and international law, evaluating the extent to which criminal law can address and prevent this issue. Child Marriage: A Global Perspective The prevalence of child marriage remains alarming, particularly in developing countries. According to the United Nations, approximately 12 million girls are married before the age of 18 every year, with sub-Saharan

Africa, South Asia, and Latin America being the most affected regions. Child marriage has serious consequences, including health risks, limited educational opportunities, and social exclusion. The international community, recognizing these harms, has sought to address child marriage through various conventions and protocols. International frameworks, such as the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), emphasize the need to set a minimum age for marriage, protect children's rights, and prevent harmful practices like child marriage. In addition, the Sustainable Development Goal (SDG) 5.3 aims to eliminate child, early, and forced marriage by 2030. Child Marriage in India: Legal Framework India, with its diverse culture and vast population, faces a significant challenge regarding child marriage. Despite the legal minimum marriage age being set at 18 for women and 21 for men under the Prohibition of Child Marriage Act (PCMA), 2006, the practice of child marriage remains widespread, especially in rural areas. The Prohibition of Child Marriage Act, 2006 The Prohibition of Child Marriage Act, 2006 (PCMA) is the primary legal framework in India addressing child marriage. It criminalizes the act of marrying a child and provides provisions for the annulment of child marriages, rescue operations, and the provision of relief and rehabilitation for victims. Under the Act, child marriages are considered voidable at the discretion of the minor and can be annulled by a court. The Act Sparents, guardians, and religious leaders. However, the law's effectiveness is limited by inadequate enforcement and widespread social acceptance of child marriage. Despite legal provisions, the practice remains deeply ingrained in certain communities, with families often preferring early marriages to protect girls' supposed honor and security. The Juvenile Justice (Care and Protection of Children) Act, 2015 The Juvenile Justice Act, 2015 also contributes to child protection by treating

marriage involving minors as a form of abuse, making child marriage a ground for declaring a child as "in need of care and protection." This act provides for the rescue, rehabilitation, and reintegration of children subjected to child marriage. Challenges in Enforcing Child Marriage Laws in India While the legal framework is robust, enforcement remains a major issue. The cultural acceptance of child marriage, particularly in rural and underprivileged communities, complicates the implementation of laws. Additionally, there is often a lack of awareness about legal rights among the communities affected, as well as limited access to justice. Moreover, cases of child marriage are frequently not reported due to stigma, fear of social repercussions, and lack of trust in the legal system. International Law and Child Marriage International legal instruments aim to eradicate child marriage by setting clear guidelines for member states. Several international treaties and agreements outline the minimum age for marriage and emphasize the protection of children's rights.

### Highlights of the Bill

The Bill amends the Prohibition of Child Marriage Act, 2006 to increase the minimum age of marriage of females to 21 years. Further, the Bill will override any other law, custom, or practice.

Under the 2006 Act, a person married below the minimum age may apply for annulment within two years of attaining majority (before 20 years of age). The Bill increases this to five years (23 years of age).

### Key Issues and Analysis

The minimum age of marriage at 21 years is higher than the minimum age of majority (18 years). The Supreme Court has ruled that marriage between adults is a fundamental right. The question is whether prohibiting marriage for persons between 18 and 21 years is a reasonable restriction on their right to marry.

About a quarter of 20-24 year old women are married before the age of 18 years, despite that being the minimum age of marriage since 1978.

The limited success of the current law raises the question whether an increase in minimum age would have any significant impact on reducing the incidence of child marriage

### **Context**

According to the National Family Health Survey 2019-21 (NFHS-5), 23% of women between the age of 20 and 24 were married before 18 years of age.[1] This figure has reduced significantly over the years from 47% in NFHS-3 (2005-06) to 27% in NFHS-4 (2015-16), and to 23% in the latest survey.[2],[3] In India, the practice of child marriage was first legally prohibited in 1929 through the Child Marriage Restraint Act, 1929. As per the 1929 Act, marriage of girls below the age of 14 years and boys below the age of 18 years was prohibited. This Act was amended in 1978 to increase the minimum age to 18 years for females, and 21 years for men. The Prohibition of Child Marriage Act, 2006 replaced the 1929 Act, with the same minimum age limits. The Prohibition of Child Marriage (Amendment) Bill, 2021 seeks to increase the minimum age of marriage for females to 21 years. The Bill was referred to the Standing Committee on Education, Women, Children, Youth, and Sports on December 21, 2021.

In June 2020, the central government set up a task force (Chairperson: Ms Jaya Jaitly) to examine the correlation of age of marriage and motherhood with: (i) health, medical well-being, and nutritional status of mother and child, during pregnancy, birth and thereafter, (ii) key parameters such as Infant Mortality Rate (IMR), Maternal Mortality Rate (MMR), Total Fertility Rate (TFR), Sex Ratio at Birth (SRB), Child Sex Ratio (CSR), and (iii) any other relevant points pertaining to health and nutrition in this context.[4] The Task Force was also required to suggest measures for promoting higher education among women. According to news reports, the Committee submitted its report in December 2020, where the suggestion to increase the age of marriage for females to 21 was made. However, the report of the task force is not available in public domain.

### **Key Features**

Increasing the age of marriage for females: The Prohibition of Child Marriage Act, 2006 provides that the minimum age of marriage is 21 years in case of males, and 18 years in case of females. The Bill increases the minimum age for females to 21 years. It also specifies that the provisions of the Act shall override any other law, custom, usage or practice.

Time period for filing petition to annul child marriage: Under the 2006 Act, a person who is married before the minimum specified age may apply to annul the marriage. The petition must be filed within two years of attaining majority (20 years of age). The Bill increases this to five years (23 years).

### **Different age for attaining majority and being allowed to marry**

The Bill increases the minimum age of marriage for females to 21 years, bringing it on par with that for males. However, the age of attaining majority is 18 years under the Majority Act, 1875. This difference may have consequences regarding the rights and responsibilities of persons between 18 and 21 years of age.

There are inconsistencies between the minimum age for marriage and certain decisions of the Supreme Court. In 2018, the Supreme Court said that right to marry is part of right to life under Article 21 of the Constitution.[6] It stated that the right cannot be taken away except through a law which is substantively and procedurally fair, just, and reasonable.<sup>6</sup> In another case in 2018, the Court held that when two adults consensually choose each other as life partners, it is a manifestation of their choice, which is recognised under Articles 19 and 21 of the Constitution.[7] The Bill restricts the right to marry before the age of 21 years. The question is whether this restriction for those between the ages of 18 and 21 years meets the standards of reasonable restrictions as explained by courts. In general, for any restriction of fundamental rights by law, there needs to be three criteria: a public purpose, the

restriction having a nexus with such purpose, and absence of a less intrusive way to achieve the purpose.

In 2018, the Supreme Court, while reading down Section 377 of the Indian Penal Code, 1860, ruled that consensual sex between consenting adults is a fundamental right under Articles 14, 15, 19 and 21 of the Constitution. If this Bill were passed, it would be legal to have sexual relations but illegal to marry for those between the ages of 18 and 21 years. Note that this is the current status for males.

### Annuling a child marriage

The 2006 Act permitted a person married before the minimum age of marriage to apply for annulling the marriage. The Bill increases the minimum age of marriage of females to 21 years. This implies that a person married between 18 and 21 years may also apply for annulling the marriage.

However, in India, persons who attain majority are considered to be eligible for taking their own decisions and are held responsible for their actions (except in certain specified cases, such as persons of unsound mind) under most laws. These include both civil law (such as the Indian Contract Act, 1872) and criminal laws (such as the Juvenile Justice Act, 2015). Allowing a person who married between the age of 18 and 21 years to apply for annulment is inconsistent with this principle.

1: Minimum age for certain actions in India.

Minimum Age: 18

Voting: 18

Driving license : 18

Signing a contract : 18

Criminal liability : 18

persons in 16–18 year group can be tried as adults for heinous offences

Contesting elections

Lok Sabha: 25

Rajya Sabha: 30

President: 35

increase in minimum age of marriage for women to 21 years as provisioned in the Prohibition of Child Marriage Amendment Bill, 2021, would come into effect two years after the Bill is notified following its passage in Parliament, the government said on Wednesday. This gap would provide ample time to citizens to prepare for this “momentous” reform, it added.

The Bill, currently with the Parliamentary Standing Committee, envisions making the age of marriage of women at par with men.

It has provisions to make consequential amendments relating to age of marriage in The Indian Christian Marriage Act, 1872; The Parsi Marriage and Divorce Act, 1936; The Muslim Personal Law (Shariat) Application Act, 1937; The Special Marriage Act, 1954

## 2 LITERATURE REVIEW

The Convention on the Rights of the Child (CRC) The CRC, adopted by the United Nations in 1989, obligates states to protect children from early and forced marriages. Article 19 of the CRC emphasizes the need for states to take appropriate measures to protect children from all forms of violence, including child marriage. Furthermore, Article 24(3) urges countries to ensure the protection of children’s health and well-being, which includes preventing early marriage. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) CEDAW, adopted in 1979, calls for the elimination of all forms of discrimination against women and girls, including early marriage. Under CEDAW, member states are required to set the minimum legal age for marriage at 18, ensuring that girls are not subjected to child marriage and are allowed to fully participate in society. Regional Approaches to Child Marriage Various regional agreements also address child marriage. The African Charter on the Rights and Welfare of the Child (ACRWC) (1990) explicitly calls for the prohibition of child marriage, setting the minimum age for marriage at 18.

Similarly, in South Asia, the South Asian Association for Regional Cooperation (SAARC) has made commitments to eliminate child marriage in the region. Comparative Analysis: India vs. International Law. The legal approaches to child marriage in India and at the international level exhibit both similarities and differences. Both legal systems acknowledge child marriage as a harmful practice that violates human rights. However, the gap between law and practice remains a challenge globally.

**1. Minimum Age for Marriage India:** The legal minimum age for marriage is 18 for girls and 21 for boys under the PCMA, 2006. International Law: The United Nations and CEDAW recommend a minimum age of 18 for marriage.

**2. Criminalization and Enforcement India .** The PCMA criminalizes child marriage and provides penalties for those who facilitate it. However, enforcement is weak due to cultural practices and insufficient legal awareness. International Law. Treaties such as the CRC and CEDAW advocate for the elimination of child marriage, but the responsibility for enforcement lies with individual countries, many of which face challenges in practical implementation.

**3. Legal Framework India:** Laws such as the PCMA and Juvenile Justice Act aim to annul child marriages and offer remedies for victims. However, the impact of these laws is limited in rural and impoverished areas. International Law: International frameworks provide a guiding principle but often lack binding enforcement power, relying on states to adhere to the norms and implement them locally. Conclusion Child marriage continues to be a serious global issue, with legal mechanisms in place to combat the practice both in India and internationally. The criminalization of child marriage is essential, but legal measures alone are not sufficient. Effective enforcement, social awareness, and community engagement are crucial to addressing the root causes of child marriage. While Indian law has made significant strides in criminalizing child marriage, more needs to be done in terms of

awareness, education, and enforcement. At the international level, a united and consistent approach, supported by stronger enforcement mechanisms, is necessary to eradicate child marriage. Through a concerted effort involving legal reforms, societal change, and global cooperation, child marriage can be prevented, ensuring the protection of children's rights and their futures.

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