

Bill No. 285 of 2022

THE CHILD MARRIAGE ABOLITION BILL, 2022

By

SHRI RAHUL SHEWALE, M.P.

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BILL

to abolish the practice of child marriages in the country.

BE it enacted by Parliament in the Seventy-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Child Marriage Abolition Act, 2022.

Short title,
extent and
commencement.

(2) It extends to the whole of India.

5 (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In this Act, unless the context otherwise requires:—

Definitions.

(a) “child” means a person either male or female who has not completed twenty-one years of age;

10 (b) “child marriage” means a marriage to which either of the contracting parties is a child;

(c) “contracting party”, in relation to a marriage, means either of the parties whose marriage is or is about to be thereby solemnised;

(d) “Child Marriage Annulment Officer” includes the Child Marriage Annulment Officer appointed under sub-section (1) of section 6; and

(e) “district court” means, in 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. 66 of 1984. 5

Child marriages to be void.

3. Notwithstanding anything contained in any law at the time being in force, every child marriage solemnized on or after the date of coming into force of the Child Marriage Abolition Act, 2022 shall be “*void ab initio*”. 10

Punishment for promoting or permitting solemnisation of child marriages.

4. (1) Where a child marriage is solemnised, 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 ten years and shall also be liable to fine which may extend up to five lakh rupees or both. 15

(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a child marriage was solemnised, the person having charge of such child has negligently failed to prevent the marriage from being solemnised. 20

Offences to be cognizable and non-bailable. Child Marriage Annulment Officers.

5. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under this Act shall be cognizable and non-bailable. 2 of 1974.

6. (1) The State Government shall, by notification in the Official Gazette, appoint for the whole State, or such part thereof as may be specified in that notification, an officer or officers to be known as the Child Marriage Annulment Officer having jurisdiction over the area or areas specified in the notification. 25

(2) The State Government may also request a respectable member of the locality with a record of social service or an officer of the Gram Panchayat or Municipality or an officer of the Government or any public sector undertaking or an office bearer of any non-governmental organisation to assist the Child Marriage Annulment Officer and such member, officer or office bearer, as the case may be, shall be bound to act accordingly. 30

(3) It shall be the duty of the Child Marriage Annulment Officer,—

(a) to prevent solemnisation of child marriages by taking such action as he may deem fit; 35

(b) to collect evidence for the effective prosecution of persons contravening the provisions of this Act;

(c) to advise either individual cases or counsel the residents of the locality generally not to indulge in promoting, helping, aiding or allowing the solemnisation of child marriages; 40

(d) to create awareness of the evil which results from child marriages;

(e) to sensitize the community on the issue of child marriages;

(f) to furnish such periodical returns and statistics as the State Government may direct; and

(g) to discharge such other functions and duties as may be assigned to him by the State Government. 45

(4) The State Government may, by notification in the Official Gazette, subject to such conditions and limitations, divest the Child Marriage Annulment Officer with such powers of a police officer as may be specified in the notification and the Child Marriage Annulment Officer shall exercise such powers subject to such conditions and limitations, as may be specified in the notification. 50

7. (1) Notwithstanding anything to the contrary contained in this Act, if, on an application of the Child Marriage Annulment Officer 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 voiding such marriage.

Power of court to issue annulment prohibiting child marriages.

(2) A complaint may be made by any person having personal knowledge or having reason to believe, and a non-governmental organisation having reasonable information, relating to the likelihood of taking place of solemnisation of a child marriage or child marriages.

(3) The Court of the Judicial Magistrate of the first class or the Metropolitan Magistrate may also take *Suo motu* cognizance on the basis of any reliable report or information.

(4) For the purposes of preventing solemnisation of mass child marriages on certain days such as *Akshaya Trutiya*, the District Magistrate shall be deemed to be the Child Marriage Annul Officer with all powers as are conferred on a Child Marriage Annul Officer by or under this Act.

(5) The District Magistrate shall also have additional powers and he may take all appropriate measures and use the minimum force required to stop or prevent solemnisation of mass child marriages.

(6) No injunction shall be issued against any person or member of any organisation or association of persons unless the Court has previously given notice to such person, members of the organisation or association of persons, as the case may be, and has offered him or them an opportunity to show cause against the issue of the injunction:

Provided that in the case of any urgency, the Court shall have the power to issue an interim injunction without giving any notice under this section.

(7) An injunction issued may be confirmed or vacated after giving notice and hearing the party against whom the injunction was issued.

(8) The Court may either on its own motion or on the application of any person aggrieved, rescind or alter an injunction issued.

(9) Where an application is received the Court shall afford the applicant an early opportunity of appearing before it either in person or by an advocate and if the Court, after hearing the applicant rejects the application, wholly or in part, it shall record in writing its reasons for so doing.

(10) Whoever knowing that an injunction has been issued against him disobeys such injunction shall be punishable with imprisonment of either description for a term which may extend to two years or with fine which may extend to one lakh rupees or with both.

8. The Child Marriage Annulment Officers shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

Child Marriage Annulment Officers to be public servants. Protection of action taken in good faith.

9. No suit, prosecution or other legal proceedings shall lie against the Child Marriage Annulment Officer in respect of anything in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

10. (1) The Central Government or the State Governments may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

Power of Central Government and State Governments to make rules.

(2) Every rule made under this Act by the Central Government shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in the making any modification in the rule or both the Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that

any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Repeal.

11. (1) The Prohibition of Child Marriage Act, 2006 is hereby repealed.

6 of 2002.

(2) Notwithstanding such repeal, all cases and other proceedings pending or continued under the said Act at the commencement of this Act shall be continued and disposed of in accordance with the provisions of the repealed Act, as if this Act has not been passed.

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STATEMENT OF OBJECTS AND REASONS

The problem of child marriage in India is a complex one because of religious traditions, social practices, economic factors and blind beliefs.

The legal age of marriage for women being 18 years, child marriages continue in India and a decrease in such marriages has been not because of the existing law, but an increase in girls' education and employment opportunities.

The Prohibition of Child Marriage Amendment Act, 2021, (PCMAA) has no provisions to make child marriage void.

The PCMAA outlines conditions under which a marriage is void. When a minor child is enticed out of the keeping of the lawful guardian to marry, is forced or compelled or by deceitful means is induced to go from any place or is sold for marriage.

However, marriage itself with a minor is not void under the PCMAA. It makes child marriage voidable at the option of any contracting party, who was a 'child' at the time of the marriage.

Hence this Bill.

NEW DELHI;
November 21, 2022

RAHUL SHEWALE

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 10 of the Bill empowers the Central Government and the State Governments to make rules for carrying out the purposes of the Bill. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

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(Shri Rahul Shewale, M.P.)