

Amendment to Rajasthan Compulsory Registration of Marriages Act

September 27, 2021

Rajasthan Compulsory Registration of Marriages (Amendment) Bill, 2021 that recently passed by the Rajasthan State Assembly has generated controversy. The National Commission for Protection of Child Rights (NCPCR) has written to Rajasthan chief minister urging him to reconsider and review provisions of the bill. In this context, the topic of Child Marriages and Registration of marriages becomes important.

In news: Row over changes to Rajasthan's marriage registration Act

Placing it in syllabus: Law & Policy

Dimensions:

- Provisions of the amendment and the controversial points in it
- NCPCR take on the amendments
- SC verdict in Seema Vs Ashwani Kumar (2007) case
- Law commission's recommendation to amend Prohibition of Child Marriage Act, 2006

Content:

Provisions of the amendment and the controversial points in it:

- On Sep 18, the Rajasthan Assembly passed the Rajasthan Compulsory Registration of Marriages (Amendment) Bill, 2021.
- It amends the provisions of the Rajasthan Compulsory Registration of Marriages Act (RCRMA), 2009 .

- The Bill has sought to amend Sections 5 and 8 of the Act, dealing with the appointment of Marriage Registration Officers and the duty of parties to a marriage to submit the memorandum for registration.
- The amendment changes the age at which the obligation to register shifts from the parents or guardians to the parties to the marriage.
- Section 8 of the amended Act now requires all marriages in the state where the parties are under the age of 21 (in the case of the groom) and 18 (in the case of the bride) to be compulsorily registered within 30 days from the date of solemnisation.

Criticisms:

- Critics claim that the bill has brought child marriage under its ambit and this has created a controversy.
- The Amendment Bill violated the law against child marriages and would pave the way for the wedding of minor children as a social evil

State Government's Reasoning:

- Parliamentary Affairs Minister Shanti Dhariwal clarified in the Assembly that the provision for mandatory registration of all marriages, including the child marriages, existed in the Act of 2009
- the amendment had only reduced the age of girls from 21 years to 18 years for their responsibility to report about their marriage, which was earlier the duty of their parents.
- The State government said the Amendment Bill had been brought to protect legal rights of children, stop multiple marriages and take care of the matters related to maintenance and inheritance.

Earlier, it was the duty of the parties to the marriage to submit a memorandum on their marriage to the registrar if they were both above 21 years; and if younger, it was the duty of

the parents or guardians. The amendment changes this age limit to 21 for men and 18 for women.

NCPCR take on the amendments:

- The National Commission for Protection of Child Rights wrote a letter to Rajasthan chief minister to “reconsider and review” the provisions of the Rajasthan Compulsory Registration of Marriages (Amendment) Bill.
- The NCPCR said the bill legitimised child marriages in Rajasthan and it went against the centrally passed Prohibition of Child Marriage Act, 2006, that prohibited solemnisation of such unions.
- The Commission is apprehensive that the enactment of the bill, may have serious impact on the physical, psychological, social and education of minors in the state

System of Matrimonial Laws in India:

- India has a **dual system of matrimonial laws.**
- **Community Specific:** Various communities or groups of communities are ordinarily governed by their personal laws, codified or uncodified (Example The Hindu Marriage Act 1955, The Kazis Act 1880, Indian Christian Marriage Act 1872 etc)
- **Individual Focused:** At the same time individuals can opt out of the community-specific family-law regime and voluntarily subject themselves to the national laws on civil marriages. (e.g. Special Marriage Act 1954, Foreign Marriage Act 1969)
- Provisions for registration of marriages, optional or mandatory, are found under most of these laws.

SC verdict in Seema Vs Ashwani Kumar (2006) case:

- The most landmark case dealing with registration of marriages is the case of Seema v. Ashwani Kumar

- The Supreme Court made an observation that in a large number of matrimonial suits over the years, unscrupulous people denied the existence of marriage by taking the advantage of unavailability of any official record of solemnization of marriage which leads to abeyance of proceedings.
- It held that the registration of marriages would be a step in the right direction.
- It consequently issued a directive to the state governments and union territories to take measures in the direction of compulsory registration of marriages within a span of three months.

211th Law Commission Report:

- In 2008, the Law Commission of India released its 211th report titled 'Laws on Registration of Marriages and Divorce – A proposal for Consolidation and Reform' that recommended having a law for compulsory registration of marriages.
- The subject was taken up suo motu in the light of the directions of the Supreme Court verdict in Seema v. Ashwani Kumar
- The Law Commission recommended enactment of a "Marriage and Divorce Registration Act" to be made applicable in the whole of India and to all citizens irrespective of their religion and personal law and without any exceptions or exemptions.
- The proposed law should deal only with registration of marriages and divorces and not with any substantive aspect now governed by various matrimonial laws – general and community – specific

Law commission's recommendation to amend Prohibition of Child Marriage Act, 2006:

- The Prohibition of Child Marriage Act, 2006 was enacted

giving certain important rights to victims of child marriage and children born from these marriages.

- The PCMA, 2006 makes it punishable for parents and guardians of children (excepting women) with imprisonment of up to 2 years and a fine if they promote child marriage or permit it to happen either willfully or negligently.
- The Commission further examined whether the new Act addressed all the concerns relating to child abuse, health and human rights, which are an inevitable consequence of child marriage.

Law Commission's Observations:

- The report takes into account the fact that child marriage may often result in early pregnancy
- and that complications during childbirth and both maternal and infant mortality (both of the mother & child) are common during childbirth for young pregnant girls.
- It further notes that child marriage results in child labour at home and young girls have very little decision making powers.
- Child marriage makes girls more vulnerable to domestic violence and sexual abuse.
- It also deprives the girl child of her right to obtain education and live a life of freedom and dignity.
- child marriage deprives all girl children of their basic fundamental human rights to develop in a natural, healthy environment.
- It deprives girls of their right to education and to physical and mental and psychological development.
- It isolates girls from their environment and infringes on their fundamental right to liberty, speech, movement.

The Law Commission recommended that:

- That child marriage below a certain age, ie. 16 years of

age be made void.

- All marriages between 16 and 18 should be made voidable at the option of either party.
- The sections relating to maintenance, child custody, and legitimacy in Sections 4, 5 and 6 should be applicable to voidable marriages as they are at present.
- Registration of marriages within a stipulated period, of all the communities, viz. Hindu, Muslim, Christians, etc. should be made mandatory by the Government

Evaluation of the Rajasthan Law Amendment

- Under the law, child marriages are not void, but only voidable at the instance of one of the parties, who may approach the court for nullifying the marriage within two years of attaining majority.
- Registering such a marriage may help establish the legal rights of the underage party and those of any children born and deter any attempt to deny the marriage later.
- It may even help prosecution of those solemnising child marriages and implement provisions relating to maintenance and residence of the girl whose marriage is invalidated later.
- Nothing prevents the marriage registrar from alerting the child marriage prohibition officer after registering the marriage.
- One must note that there was never any specific prohibition on registering child marriages.
- Even the Supreme Court observed that even though registration itself could not be proof of a valid marriage as such, it would have “great evidentiary value in the matters of custody of children, right of children born from the wedlock of the two persons whose marriage is registered and the age of parties to the marriage”.
- Parliament should to consider the Law Commission’s recommendation to amend the Prohibition of Child Marriage Act, 2006, to make child marriages below 16

years void, and those solemnised when either party was between 16 and 18, voidable.

Mould your thought: The recent amendment to the Rajasthan Compulsory Registration of Marriages Act does not amount to validating or legitimising child marriage. Critically evaluate. *Approach to the answer:*

- Introduction
- Discuss laws related to Child Marriages and Marriage registration in India
- Discuss the provisions of the amendments
- Discuss the criticisms of the amendments
- Discuss the Supreme Court and Law Commissions' view on the matter
- Mention your final evaluation of the statement
- Conclusion