

Prohibition of Child Marriage Act, 2006

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Manifest pedagogy: Child marriage has been a key issue in India. Other issues such as POCSO, dowry and gender gap emerging from household work done by girl child are also issues which deserve attention.

In news: SC has recently held that Section 9 of Child Marriage Act is only concerned with punishment for male adult marrying a child.

Placing it in syllabus: Social issues

Dimensions:

- Interpretation of Section 9 of the Act
- Recent judgement by Supreme Court
- Its importance and drawbacks

Content: Supreme Court held in a recent judgment that the Child marriage act does not intend to punish a male aged between 18 and 21 years for marrying a “female adult”.

Interpretation of Section 9 of the Act: Section 9 of the Child marriage act (**Punishment for male adult marrying a child**) states that – “ *Whoever, being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both*”.

- In November, 2019 verdict, SC had held that a provision of the child marriage law that punishes a man aged between 18 and 21 years for marrying an adult woman is **not a correct interpretation of the law.**

- The bench held that punishing the male for such a marital union on grounds that it amounts to child marriage is **against the “legislative history” of the law.**
- The legislative intent was to **punish men who married minor girls.**
- Although both men and women are deemed to be adults at the age of 18 under other laws, a **differential metric has been adopted in the Prohibition of Child Marriage Act, 2006**, which says a man has to attain the age of 21 to be considered an adult.
- Thus, even if the **husband is between 18-21 years** of age, the **law treats it as a child marriage** and punishes the male.
- According to the SC bench this **anomaly had occurred due to the literal interpretation of Section 9** of the Act that goes against the very object of the Act.

Recent judgement by Supreme Court:

- The case at present was concerned a boy who married a 21-year-old woman when he was 17 years old.
- The **Punjab and Haryana High Court** had set aside its own order providing protection to the couple.
- **Prosecution was instituted against the boy** for contracting a child marriage, in which he himself was the child.
- The **Supreme Court set aside the HC order**, saying the intent behind Section 9 was not to punish a child for contracting a child marriage.
- SC bench has said that **neither does the provision punish a child for marrying a woman nor a woman for marrying a male child** because in Indian society decisions regarding marriage are usually taken by the family members of the bride and groom, and women generally have little say in the matter.
- The **SC bench held that the sole objective of the**

provision is to punish a man for marrying a minor girl.

- The intention behind punishing only male adults contracting child marriages is **to protect minor girls.**
- It said that the 2006 Act gives an **option for prospective grooms** who are between **18 and 21 years old to opt out of marriages.**

Importance of the Act and its drawbacks:

- Under the Act, child marriages **will be declared null and void if**
 - the injunction prohibiting a child marriage from taking place is violated/ contravened
 - the child is taken away from their lawful guardian by enticement, force or use of deceitful means
 - the child is sold or trafficked for the purpose of marriage.
- The law makes child marriages voidable by **giving choice to the children** in the marriage to seek annulment of marriage.
- It **gives a legal status to all children born from child marriages** and makes provisions for their custody and maintenance.
- The law provides for all **support and aid including medical aid, legal aid, counselling and rehabilitation** support to children once they are rescued.
- **Section 11** of the Act provides punishment for those who permit and promote child marriages.
- **Section 12** of the Act lays down that if someone kidnapped and married a minor girl and contested claim over the minor's guardianship in defense to charges of kidnappings, in such cases the marriage would be treated as null and void.
- Now the **recent SC interpretation of Section 9** helps in dealing with the problem of men in the 18-21 year age group being punished for marriage with a woman.

Drawbacks:

- The **Act has failed to make all child marriages automatically void**, instead making them void only where the child is “taken or enticed” from the care of a guardian, in cases of compulsion, fraud or trafficking, and if performed in violation of an injunction.
- The Act holds that a child marriage is voidable only upon the filing of a petition for annulment in district court. Hence it does not automatically declare child marriages void, only making them **voluntarily voidable**.
- The Act criminalizes **criminalizes family members** who themselves are often living in poverty, lack adequate education and may be succumbing to social pressure.

Facts (UNICEF):

- While there has been a **decline in the incidence of child marriage** nationally from 54 per cent in 1992-93 to **27 per cent in 2016**, the pace of change remains slow, especially for girls in the age group 15-18 years.
- Child marriage is **more prevalent in rural areas (48 per cent)** than in urban areas (29 per cent).
- The rates of child marriage are **highest in the central and western parts of India** and lower in the eastern and southern parts of the country.
- **Other states** that have an incidence of child marriage **higher than national average are: Jharkhand, Uttar Pradesh, West Bengal, Madhya Pradesh, Andhra Pradesh and Karnataka.**