



Ayana Legal

THE BUZZ

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Guidelines

Some of the Guidelines recommended by the Supreme Court are:

- State Governments and Union Territories (UTs) must appoint officers solely responsible for discharging the functions of Child Marriage Prevention Officer (CMPO) at the district level.
- The State Ministries of Home Affairs shall consider the viability of integrating the Special Juvenile Police Unit into the child marriage prevention framework.
- The State Governments and UTs shall constitute a State Special Child Marriage Prohibition Unit and where there are more than one CMPOs in any district.

SUPREME COURT JUDGMENT IN SOCIETY FOR ENLIGHTENMENT AND VOLUNTARY ACTION & ANR. VS. UOI & ORS.: A WATERSHED MOMENT?

The recent judgment of the Hon'ble Supreme Court dated 18th October 2024 in Society for Enlightenment and Voluntary Action & Anr. Vs. UOI & Ors [W.P. (C) No. 1234 of 2017] witnessed the Supreme Court issuing a series of guidelines to the Central and State governments in order to curb and prevent child marriage across the country. The Hon'ble court observed that simply adopting a harm-based approach by focusing on penalization has not been effective to bring about social change, which is clearly the objective of this judgment. Subsequently, the Supreme Court touches upon the legal jurisprudence which lead to enactment of the present law, as well as the constitutional guarantees against child marriage.

The guidelines focus extensively on education, incentivising communities and spreading awareness against the practice of child marriage. The poor implementation of Prevention of Child Marriage Act (PCMA) has led to appreciation that fear of prosecution is in-effective to prevent child marriage. Rather, it is important to educate communities, especially children, about their constitutional rights, and also to try and eviscerate patriarchal mindsets right at the grassroots level. The effective implementation of these guidelines could likely serve as a watershed moment with respect to preventing child marriages in India.

Other landmark judgements

The Supreme Court in, *Shafin Jahan v. Ashokan KM*, (2018) 10 SCC 1 held that child marriage causes irreversible physical and psychological damage in girls, and extinguishes the rights to selection of partner, time of marriage, reproductive freedom and sexuality, all protected by Article 21.

Further, *X v Principal Secretary* (2023) 9 SCC 433 held that the right to choice and autonomy includes the right to reproductive freedom.

Furthermore, in *Independent Thought v UOI* (2017) 10 SCC 800 wherein the marital exception to rape under Section 375 of the Indian Penal Code 1860 was struck down, since it relates to under-age wives.

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The first major issue is the age of consent, in which two judgments are significant- the Bombay HC's judgment in *Dadaji Bhikaji v Rukhmabai* (1886) ILR 10 Bom 301 and the Calcutta HC's judgment in *Queen-Empress vs Hurree Mohun Mythee* ("Phulmani") (1891) ILR 18 CAL 49. In *Rukhmabai* at 11 years old, she was married off to *Dadaji Bhikaji*, who was 19. However, she did not immediately go to live with her husband. In 1884, *Dadaji* filed for restitution of conjugal rights. *Rukhmabai* cited economic, social and emotional incompatibility with *Dadaji* and stated that she was not bound by the marriage. Justice Pinhey ruled in her favour, that she was married before she could consent thereto, and hence could not be compelled to live with her husband. This judgment was however overruled by the Division Bench on appeal.

The case of *Queen-Empress vs Hurree Mohun Mythee* [(1891) ILR 18 CAL 49] ("Phulmani") dealt with the death of 11-year-old bride *Phulmani Dasi*, who died due to haemorrhaging, resulting from rupture of the vagina, caused by marital rape by her 35-year-old husband. The court ruled that as she had reached her 10th birthday and was married, the rape law was inapplicable. In contrast to *Rukhmabai*, this judgment disregarded the woman's right to bodily autonomy, and reaffirmed child marriage. The immediate outcome of the *Phulmani* judgment was to enact the Age of Consent Act in 1891, which raised the age of consent from 10 years to 12 years^[2].

The above two judgments lead to debates on regulating marriage age, with the result that one *Haribilas Sarda* introduced a bill ("Sarda Bill") prescribing a minimum age for marriage, post which the government formed the Age of Consent Committee, chaired by *NM Joshi*. The Committee recommended the age of consent be raised to 15 years, and for enactment of a law penalizing marriages below 14 years of age. The *Sarda Bill* was subsequently enacted as the *Child Marriage Restraint Act 1929*, later replaced by the *Prevention of Child Marriage Act 2006* ("PCMA").