

THE CHILD MARRIAGE RESTRIANT ACT, 1929

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THE CHILD MARRIAGE RESTRAINT ACT, 1929¹

[1st October, 1929]

An Act to restrain the solemnization of child marriages

Whereas it is expedient to restrain the solemnization of child marriages; It is hereby enacted as follows:

Comments

Preamble-Use of.- It is true that the preamble and the aims and objects cannot be used for interpreting the statute. The preamble as well as the aims and objects of the Act can be used for limited purpose of ascertaining the conditions prevailing at the time of legislation and for finding out the purpose of the enactment by furnishing valuable historical material.²

Object and reasons of the Act.- The objects and reasons of the Act are to be taken into consideration in interpreting the provisions of the Statute and not the debates in Parliament on the Bill.³

Intention of Legislature.- In *Prithvi Pal Singh Bedi v. Union of India*,⁴ it was held that literal meaning of the statute must be adhered to when there is no absurdity in ascertaining the legislative intendment and for that purpose the broad feature of the Act can be looked into.⁵

Principle of “noscitur a sociis”-Application of.-Where two constructions are possible, that which would be more conducive to reason and justice is to be preferred by applying the principle of *noscitur a sociis*.⁶

Punctuation marks-Effects.-It is well known that punctuation marks by themselves do not control the meaning of a statute when its meaning is otherwise obvious.⁷

Words, clear, intelligible and unambiguous-Must be given effect to.-If the language of the statute is clear and intelligible and does not admit of two

¹ Published in the Gazette of India, 1927 Pt. V, p. 28.

² Nagpur Hotel Owners Association v. Corporation of the City of Nagpur, A.I.R. 1979 Bom. 190 at p. 196; Baboolal v. Director of Municipal Administration, A.I.R. 1974 Bom. 219 relied on.

³ Chern Taong Shang v. Commander S. D. Baijal, 1988(1) Crimes 524 at p. 529 (S.C.); see also Kameshwar Singh Srivastava v. IVth Additional District Judge, Lucknow, A.I.R. 1987 S.C. 138 at p. 141.

⁴ A.I.R. 1982 S.C. 1413.

⁵ Jumman v. State of Uttar Pradesh, 1988 Cr. L.J. 199 at p. 203 (All.).

⁶ Sipra Dey, Smt. V. Ajit Kumar Dey, A.I.R. 1988 Cal. 28 at p. 33.

⁷ Dadaji *alias* Dina v. Sukhdeobabu, A.I.R. 1980 S.C. 150 at p. 156.

meanings, effect must be given to the words used and thus the intention of the Legislature must be carried out.¹

Mandatory rule and directory rule-Difference.-The difference between a mandatory rule and a directory rule is that while the former must be strictly observed, in the case of the latter, substantial compliance may be sufficient to achieve the object regarding which the rule is enacted. Certain broad propositions which can be deduced from several decisions of courts regarding the rules of construction that should be followed in determining whether a provision of law is directory or mandatory may be summarized thus: The fact that the statute uses the word "shall" while laying down a duty is not conclusive on the question whether it is a mandatory or directory provision. In order to find out the true character of the legislation the Court has to ascertain the object which the provision of law in question is to sub serve and its design and the context in which it is enacted. If the object of law is to be defeated by non-compliance with it, it has to be regarded as mandatory. But where a provision of law relates to the performance of any public duty and the invalidation of any act done in disregard of that provision causes serious prejudice to those for whose benefit it is enacted and at the same time who have no control over the performance of the duty, such provision should be treated as a directory one. Where, however, a provision of law prescribes that a certain act has to be done in a particular manner by a person in order to acquire a right and it is coupled with another provision which confers an immunity on another when such act is not done in that manner, the former has to be regarded as a mandatory one. A procedural rule ordinarily should not be construed as mandatory if the defect in the act done in pursuance of it can be cured by permitting appropriate rectification to be carried out at a subsequent stage unless by according such permission to rectify the error later on, another rule would be contravened. Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that a failure to comply with the said requirement leads to a specific consequences, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow.²

Interpretation must further and not frustrate the object of a statute.- Interpretation of a statute, contextual or otherwise must further and not frustrate the object of the statute.³

1. Short title, extent and commencement.-(1) This Act may be called the Child Marriage Restraint Act, 1929.

(2) It extends to the whole of India ¹[except the State of Jammu and Kashmir] and it applies as also to all citizens of India without and beyond India:

¹ Chandrabhan Chunnilal Gous v. Dr. Sharwan Kumar Kunnolal Gour, A.I.R. 1980 Bom. 49 at p. 51.

² Sharif-ud-din v. Abdul Gani Lone, A.I.R. 1980 S.C. 303 at pp. 305-06; *see also* State of Jammu and Kashmir v. Abdul Gani, A.I.R. 1979 J. & K. 17 at p. 20 (F.B.); Messrs. Choudhary v. Frick-India Ltd., A.I.R. 1979 Delhi 97 at p. 99.

³ Muddada Chavanna v. Karnam Narayana, A.I.R. 1979 S.C.1320 at p. 1323.

²[Provided that nothing contained in this Act shall apply to the Renoncants of the Union territory of Pondicherry.]

(3) It shall come into force on the 1st day of April, 1930.

2. Definitions.-In this Act, unless there is anything repugnant in the subject or context,-

³[(a) “child” means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age;]

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

(c) “contracting party” to a marriage means either of the parties whose marriage is or is about to be thereby solemnized; and

(d) “minor” means a person of either sex who is under eighteen years of age.

3. Punishment for male adult below twenty-one years of age marrying a child.-Whoever, being a male above eighteen years of age and below twenty-one, contracts a child marriage shall be punishable with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both.

Comment

Penal provisions-Interpretation.-The provision authorizing confiscation is a drastic one. In regard to such a provision it is well accepted that court should place construction which is in favour of the subject. Where the conjunction used is “or” unless there are compelling reasons to read “or” as “and” it is well settled that any word should be given its natural meaning. If it was intended that both the conditions must be satisfied there was no difficulty for the Legislature to use the expression “and” instead of “or”.⁴

4. Punishment for male adult above twenty-one years of age marrying a child.-Whoever, being a male above twenty-one years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine.

Comment

Whoever-Meaning of.-According to the Shorter Oxford English Dictionary, Vol. 2, p. 2543, “whoever” means “any one who, any who”. The meaning given in Webster Comprehensive Dictionary, International Ed., Vol.2 at p. 1437 is “any one without exception any person who”.⁵

¹ Subs. By Act 3 of 1951, Schedule.

² Ins. By Act 26 of 1968, Schedule.

³ Subs. By Act 2 of 1978, Sec. 2 (w.e.f. 2nd October, 1978).

⁴ Somiseti Ramanath v. District Supply Officer, Chittoor, A.I.R. 1979 A.P. 9 at p. 20: see also Kamla Kant Singh v. Chairman/Managing Director, Bennetta Colman and Co. Ltd., 1988(1) Crimes 106 at p. 109 (All.).

⁵ Rai Bahadur Seth Shreeram Durgaprasad, Messrs. V. Director of Enforcement, A.I.R. 1987 S.C. 1364 at p. 1369.

5. Punishment for solemnizing a child marriage.-Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to three months and also be liable to fine, unless he proves that he had reason to believe that the marriage was not a child marriage.

Comment

If marriage of Hindu male below eighteen years of age or female below fifteen years of age is invalid or illegal.-The marriage of Hindu male below eighteen years of age with a Hindu girl of fifteen years of age is not invalidated or rendered illegal by the force of the Child Marriage Restraint Act of 1929. It will remain a valid marriage binding under the Hindu Law if otherwise performed under any recognized form of Hindu La. It would be seen that the Child Marriage Restraint Act only restrains a marriage of minors and that is its

Objective, but does not prohibit marriage rendering it illegal or invalid. It punishes those persons who arrange that marriage and actively participate in celebrating it. The minor spouses who get married are not punished under the Act. Once it be held that the marriage itself is not illegal or invalid under the Child Marriage Restraint Act, 1929, then a debt incurred by the major members of the family for marrying a minor member of the family will not be for an illegal purpose as the marriage is legal and the debt is incurred for the marriage. It may be that the debt is incurred for the marriage. It may be that the consequence under the law would be that the major members be punished for their act in making arrangements for celebration of the marriage.¹

“May” and “shall”.-The word “may” implies what is optional, but it should in some context in which it appears, mean “must”. There is an element of compulsion. It is power coupled with a duty. In Maxwell on Interpretation of Statutes, 11th Ed., p. 31, the principle is stated thus: “Statutes which authorize persons to do acts for the benefit of others, or, as is sometimes said, for the public good or the advancement of justice, have often given rise to controversy when conferring the authority in terms simply enabling and not mandatory. In enacting that they ‘may’ or ‘shall’ ‘if they think fit’, or ‘shall have power’ or that ‘it shall be lawful’ for them to do such acts, a statute appears to use the language of mere permission but it has been so often decided as to have become an axiom that in such cases such expressions may have to say the least a compulsory force, and so would seem to be modified by judicial exposition.” The word “may” even if it was prima facie enabling, the Legislature may use it in the sense or “must” or “shall”.²

6. Punishment for parent or guardian concerned in a child marriage.

- (1) Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or solemnized, or negligently fails to prevent it from being solemnized, shall be punishable with

¹ Parasram v. Smt. Naraini Devi, A.I.R. 1972 All. 357 at p. 359.

² Delhi Administration v. I.K.Nangia, A.I.R. 1979 S.C. 1977 at p. 1980; Sohan Lal v. Hodal Singh, A.I.R. 1979 All. 230 at p. 232.

simple imprisonment which may extend to three months and shall also be liable to fine:

Provided that no woman shall be punishable with imprisonment.

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

STATE AMENDMENT

Gujarat. –After Sec. 6 of the principal Act the following section shall be inserted namely:

7. Offences to be cognizable. –Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (V of 1898), now new Code of 1973 (2 of 1974), an offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of the Code.¹

Comment

Family. –The word “family” has to be given not a restricted but a wider meaning so as to include not only the head of the family but all members or descendants from the common ancestors who are actually living with the same head. The term “family” must always be liberally and broadly construed so as to include near relations of the head of the family.²

³[7. **Offences to be cognizable for certain purposes.** –The Code of Criminal Procedure, 1973 (2 of 1974), shall apply to offences under this Act as if they were cognizable offences-

- (a) for the purpose of investigation of such offences; and
- (b) for the purpose of matters other than (i) matters referred to in Sec. 42 of that Code, and (ii) the arrest of a person without a warrant or without an order of a Magistrate.]

8. **Jurisdiction under this Act.** –Notwithstanding anything contained in Sec. 190 of the ⁴[Code of Criminal Procedure, 1973 (2 of 1974)], no court other than that of a ³Metropolitan Magistrate or a Judicial Magistrate of the first class] shall take cognizance of, or try, any offence under this Act.

Comment

Offences under the Act cannot be tried by any Court other than the Courts referred therein. –There is an express prohibition under Sec. 8 of the Child Court other than the Courts referred to therein. Even any other Court cannot take cognizance of such offences. In view of this express prohibition in the special law which has an overriding effect, it is evident that even though the committing Magistrate has committed the accused to stand their trial, for offences under the Penal Code, which are triable by the Sessions Court, will not have jurisdiction to try

¹ Ins. By Gujarat Act 11 of 1964, Sec. 2.

² Baldev Sahai Bangia v. R.C. Bhasin, A.I.R. 1982 S.C. 1091 at pp. 1093-94.

³ Ins. By Act 2 of 1978, Sec. 3 (w.e.f. 2nd October, 1978).

⁴ Subs. By Sec. 4, *ibid*.

these offences under the Act. The reason underlying it is that there is an express prohibition in special law which has got overriding effect over the provisions of general law.¹

9. Mode of taking cognizance of offences. –No Court shall take cognizance of any offence under this Act after the expiry of one year from the date on which the offence is alleged to have been committed.

10. Preliminary inquiries into offences. –Any Court, on receipt of a complaint of an offence of which it is authorized to take cognizance, shall, unless it dismisses the complaint under Sec. 203 of the ²[Code of Criminal Procedure, 1973 (2 of 1974)], either itself make an inquiry under Sec. 202 of that Code or direct a Magistrate subordinate to it to make such inquiry.

Comment

Power vested in Magistrate to postpone issue of process. –Any Magistrate on receipt of a complaint of an offence of which he is authorized to take cognizance may do one of the two things. (1) He may for reasons to be recorded in writing, if he thinks fit, postpone the Issue of process for compelling the attendance of the person complained against. The content of the power vested in the Magistrate to postpone the issue of process for compelling the attendance of the person complained against, would also cover the power of issuing process for compelling the attendance of the person complained against. (2) After doing one of these two things, the Magistrate may either enquire into the case himself or he can direct any Magistrate subordinate to him to make an enquiry only for the limited purpose of ascertaining the truth or falsehood of the complaint.³

STATE AMENDMENT

Gujarat. –Section 10 is deleted.⁴

11. Power to take security from complainant. – [*Repealed by the Child Marriage Restraint (Amendment) Act, 1949 (41 of 1949), Sec. 7.*]

⁵[**12. Power to issue injunction prohibiting marriage in contravention of this Act.** – (1) Notwithstanding anything to the contrary contained in this Act, the Court may, if satisfied, from information laid before it through a complaint or otherwise that a child marriage in contravention of this Act has been arranged or is about to be solemnized, issue an injunction against any of the persons mentioned in Secs. 3, 4, 5 and 6 of this Act prohibiting such marriage.

¹ State of Gujarat v. Fulsinh Bhimsing, A.I.R. 1971 Guj. 1 at p. 6.

² Subs. By Act 2 of 1978, Sec. 5 (w.e.f. 2nd October, 1978).

³ Jagadeesa Thevar V. Rajabakita Theval, 1971 Cr. L.J. 1350 at p. 1351 (Mad.).

⁴ Deleted by Gujarat Act 11 of 1964, Sec. 3.

⁵ Ins. By Act 19 of 1938, Sec. 6.

(2) No injunction under sub-section (1) shall be issued against any person unless the Court has previously given notice to such person, and has afforded him an opportunity to show cause against the issue of the injunction.

(3) The Court may either on its own motion or on the application of any person aggrieved, rescind or alter any order made under sub-section (1).

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

(5) Whoever knowing that an injunction has been issued against him under sub-section (1) of this section disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both:

Provided that no woman shall be punishable with imprisonment.]

STATE AMENDMENT

Gujarat. –After Sec. 12 of the principal Act the following sections shall be added, namely:

“13. *Child Marriage Prevention Officer.* – (1) The State Government may, by notification in the official Gazette, appoint for the whole State or for such part thereof as may be specified in that notification, an officer to be known as Child Marriage Prevention Officer.

(2) It shall be the duty of the Child Marriage Prevention Officer –

- (i) to prevent marriages being performed in contravention of the provisions of this Act by taking such action under this Act as he deems fit;
- (ii) to collect evidence for the effective prosecutions of persons contravening provisions of this Act; and
- (iii) to discharge such other functions as may be assigned to him by the State Government.

(3) The State Government may, by notification in the official Gazette, invest the Child Marriage Prevention Officer with such powers of a police officer as may be specified in the notification and the Child Marriage Prevention Officer shall exercise his powers subject to such limitation and conditions as may be specified in the notification.

(4) The State Government may associate with each Child Marriage Prevention Officer a non-official advisory body consisting of not more than five social welfare workers, of whom at least two shall be women workers known in the

area within the jurisdiction of the officer for the purposes of advising and assisting him in the performance of his functions under this Act.

(5) The terms and conditions of appointment of persons on the advisory body shall be such as may be prescribed by rules.

13-A. *Officer appointed under the Act to be public servant.* –The Child Marriage Prevention Officer appointed under Sec. 13 shall be deemed to be a public servant within the meaning of Sec. 21 of the Indian Penal Code (XLV of 1860).¹

13-B. *Protection of action taken in good faith.* –No suit, prosecution or other legal proceedings shall lie against the Child Marriage Prevention Officer appointed under this Act in respect of anything in good faith done or intended to be done in pursuance of this Act or of any rules or orders made thereunder.²

14. Power to make rules. – (1) The State Government may, by notification in the official Gazette, make rules, for the purposes of carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for all matters expressly required or allowed by this Act to be prescribed by rules.

(3) The power to make rules conferred by this section is subject to the condition of the rules made after previous publication.

(4) All rules made under this section shall be laid for not less than thirty days before the State Legislature as soon as possible after they are made, and shall be subject to rescission by the State Legislature or to such modifications as the State Legislature may make during the session in which they are so laid or the session immediately following.

(5) Any rescission or modification so made by the State Legislature shall be published in the official Gazette and shall thereupon take effect.”³

¹ Ins. By Gujarat Act 11 of 1964, Sec. 4.

² Ins. By Gujarat Act of 1973, Sec. 2.

³ Ins. By Gujarat Act 11 of 1964, Sec. 4.

Other Measures to Prevent Child Marriages:

Apart from the implementation of the Child Marriage Restraint Act, the Department has taken the following measures to prevent Child Marriages: -

- All the Programme Officers (ICDS) in the districts have been given instructions to keep a watch on child marriages and report such cases to District Administration and appropriate authorities for taking action as per Child Marriage Restraint Act.
- Director Panchayats, State Women Commission all the Deputy Commissioners and Superintendents of Police and Programme Officers have been circulated instructions received from National Commission for women to launch Bal Vivah Virodh Abhiyan.
- Department has also requested Dowry Prohibition Officers to keep vigial on Akha Teej & during marriage season to prevent child marriage.
- Department has also instructed Programme Officers / Child Development Project Officers to be vigilant regarding child marriages during marriage season.
- Instructions issued to all the Programme Officers to bring provisions of the Child Marriage Restraint Act to the notice of all Sarpanches as well as Pandits, Granthis and Molvees who get the marriages solemnized through a letter to them. The format of letter to be sent by all Child Development Project Officers to above mentioned persons periodically given in annexure.
- Directions given by the Hon'ble Supreme Court in Writ Petition Civil No. 212 of 2003 conveyed to all Superintendents of Police in the State, Secretary Home Department, director General Health Department, Director Primary / Higher Education, Director Panchayat and Secretary, Revenue Department, Haryana to monitor the implementation of the Child Marriage Restraint Act, 1929 and to give wide publicity to the provisions of the Act to educate the public about it so that the menace of early child marriage which violates the provisions of the said act is fully taken care of.

- NGOs are being involved by organizing vocational / cultural activities for children through Education Department.
- Awareness against child marriages is being created through Public Relations Department, Haryana and Haryana State Social Welfare Advisory Board.