

# HANDBOOK ON CHILD MARRIAGE



KAILASH SATYARTHI CHILDREN'S FOUNDATION

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## **Disclaimer:**

The Handbook consist the contents and facts about the Act which have been simplified for the benefit of the community social worker. It has also formulated in a user friendly language. This handbook does not in any way substitute the Prohibition of Child Marriage Act, 2006 or its provisions.

The Handbook consist of different data and quotes to create an awareness. The data support to prove the ill effects of early marriage. The book is to create an awareness among the communities and community social work.

The book consist of different laws and provisions to stop the practice of Child Marriage. It mainly focuses on the Prohibition of Child Marriage Act, 2006 and its provisions. It has been developed by Kailash Satyarthi Children's Foundation, New Delhi.

# 1. What is Child Marriage?

Child Marriage is a traditional practice that has been practiced in the society. There is a definite age, which has been defined in which a child is a person who has not completed 21 years in case of male and 18 years in case of female. Some of the definitions under the Child Marriage Prohibition Act, 2006 are:

- (a) "Child marriage" means a marriage to which either of the contracting parties is a child.
- (b) "Contracting Party", in relation to a marriage, means either of the parties whose marriage is or is about to be thereby solemnized.
- (c) "Child Marriage Prohibition Officer" includes the Child Marriage Prohibition Officer appointed under sub-section (1) of section 16.
- (d) "Minor" means a person who, under the provisions of the Majority Act, 1875 (9 of 1875), is to be deemed not to have attained his majority.

Child marriage is an evil practice that snatches all these rights from a child. It is an age old social evil which is prevalent in our society since times immemorial. The ill effect of child marriage is prevalent across cultures and has no barriers of caste or religion. Girls as low as 8 years old are married and even boys are also married under their legal age in many rural communities. And there are cases where girls are married to way older men. Child Marriage has a number of ill effects on children who are married at an early age. Child marriage raises many other prevalent and hideous issues. There are also cases of child trafficking of girls after their child marriage.

## 1.1 Reasons of Child Marriage:

A girl child has been traditionally considered as a burden to the family. She has been always ignored towards her rights.

- Many other justifications have been given as a background for the early marriage by the parents. They say that to minimize the limit of dowry it is better to conduct the marriage in early age. What they seem to forget is that giving or receiving dowry is a crime under the Dowry Prohibition Act, 1961.

- The question and insecurity towards the sexual desire of a girl has been always a taboo in the traditional communities. The virginity is one of the parts of such traditional norms. There is a myth in which the parents say that child marriage is to safeguard the girl and their virginity. Early marriage is a way to ensure chastity and virginity of the bride.
- In any communities they were unaware about the ill effects of the child marriage upon their children, which is one of the major reasons for conducting the practice.

## 1.2 Whom Does it Apply to?

- It applies to all citizens of India irrespective of religion, without and beyond India.
- It however, does not apply to the State of Jammu and Kashmir.

## 1.3 Facts and Data:

Census 2011 has released some disturbing figures about the child marriage, almost one in every three married women were married while she was still under the age of 18 years. 78.5 lakh girls who were married till 2011 were married before the age of 10 years, the figure constitutes 2.3% of all women or girls that were ever married.

The census 2011 also shows that 30.2% (10.3 crore) of all married women were married before they turn 18. This data, however, shows an improved trend as compared to the census 2001 which showed that out of 43.5 % married women were married before the age of 18 years.

Child Marriage	
Total No. of persons getting married before attainment of legal age of marriage	1,21,07,181
Boys getting married before attainment of legal age of marriage (below 21 Yrs)	69,49,318
Percent boys getting married before attainment of legal age of marriage to total boys in the same age group	3%
Girls getting married before attainment of legal age of marriage (Below 18 Yrs)	51,57,863

<b>Child Marriage</b>	
Percent girls getting married before attainment of legal age of marriage to marriage to total girls in the same age group	2%
Percent boys & girls from rural areas to the total who gets married before attainment of legal age of marriage	75%
Total No. of ever married Children (0-17 Yrs)	75,32,869
Percent girls among ever married children (0-17 Yrs)	68%
Total No. of currently married children (10-17 Yrs)	71,83,814
Total No. of currently married girls (10-17 Yrs)	49,42,730
<b>Childhood Pregnancy among children in the age group 15-17 Years</b>	
Total No. of currently married girls	32,32,919
Percent currently married girls to total girls in the age group	10%
Approximate No. of children who gets pregnant every years	2,64,626

Figure 1- Children & Their Protection in India - KSCF Compilation of data on children available on various public domains like Census 2011, NCRB & NFHS 3.

### 1.3 Marriage and Fertility Data - NFHS 4:

<b>Indicators</b>	<b>NFHS 4 (2015-16)</b>			<b>NFHS 3 (2005-06)</b>
	<b>Urban</b>	<b>Rural</b>	<b>Total</b>	<b>Total</b>
Women age 20-24 years married before age 18 years (%)	17.5 %	31.5 %	26.8%	47.4%
Men age 25-29 years married before age 21 years (%)	14.1%	24.4%	20.3%	32.3%
Women age 15-19 years who were already mothers or pregnant at the time of the survey (%)	5 %	9.2%	7.9%	16.0%

- NFHS 4 which was conducted in 2015-16 shows that 26.8 % of married women between the age group of 20-24 years, were married before the age of 18 years, which is in itself a huge number, but it also witnesses the improvement level as compared to 47.4% from the data collected in NFHS 3 conducted in 2005 -06.
- NFHS 4 also shows that 20.3% men in the age group of 25 to 29 years who are married before the age of 21.
- NFHS 4 shows that 7.9% women between the age group of 15 to 19 years were already into motherhood or have been the victim of early pregnancy at the time the data was collected for the survey. There is an about 16% improved performance data as compared to NFHS 3.

In 2003, a woman Sarpanch in a Haryana village got the information about a ten-year-old Kavita who was parents planned her to marry her to a forty year old man by her father. She immediately went to the village and managed to rescue the child just as she and her family were about to board the taxi for the wedding venue. She took the help of the local police and was able to save Kavita from child marriage and got her father arrested. She had to face a lot of opposition and hatred from the rest of the villagers for taking such step. If she had not intervened in the proper time the marriage ceremony had been taken place, and Kavita had to undergo many issues.

## 2.III Effects of Child Marriage:

- Child marriage deprives a child to his & her right to childhood.
- Child marriage denies basic rights to a child such as - health, nutrition & education.
- Early marriage increases the risk of early pregnancy putting the mother and child both in life threatening situations, thereby increasing the rate of infant and maternal mortality.

- Babies born out of child marriage have high possibility of low birth weight, malnutrition & anemia.
- The children are placed with a lot of social responsibilities as a consequence of child marriage which adversely affects their development.
- Child marriage exposes girls to increased risk of domestic violence.
- Child marriage also implies child rape as children can never be said to have attained the age of maturity for their action or inaction at that age.
- Child brides often end up as young widows with a number of children to take care of
- Early marriage of boys is as much a violation of their rights as it is for girls. It takes away their right of choice and imposes family responsibilities beyond their age and capacity

Kanchan is a 14 year old girl who got married a year ago, her husband is 2 years elder to her and he is also a minor. Kanchan lived in a remote village in Jharkhand. Her parents were landless labourers who work on other persons fields in order to provide for a family of 13 people. Kanchan is the eldest girl among her 11 siblings, she studied till class and then dropped out of school to help the family to improve their economic condition. She did not want to get married and wanted to pursue her studies to become a teacher one day. She initially resisted to get married but finally gave up considering the poor status of her family and her parents' desperation to marry off their elder daughter in order to release their burden.

## 2.1 Psycho-Social effects of Child Marriage:

- Depression.
- Isolation from the society due to shyness and over responsibilities.
- Lack of schooling affects their socialization.
- Awareness level will be low due to lack of exposure to the facts.



- Anxiety issues.
- Exploitation of Girl Child as loss of Adolescence.
- Denial of Education.
- Denial of Freedom.
- Young girls are vulnerable to sexual abuse by their own partners and have no way of defending themselves or approaching anybody for help.
- Too young, mentally and physically to become a mother, early motherhood puts the health of the mother and child in danger.

### 3. Myths & Facts

#### 1. CHILD MARRIAGE IS A CULTURAL PRACTICE. WE HAVE TO RESPECT CULTURE

**FACT-** In many communities, child marriage has been a tradition for decades, if not centuries. So much so that it can be seen as a core part of the culture. But not all cultural practices are positive. Child marriage deprives girls of education and economic opportunities, and puts their health and safety at risk

#### 2. “CHILD MARRIAGE ONLY HAPPEN TO GIRLS.”

Child marriage is driven by gender inequality. But boys are married off too. Child marriage often pushes boys into the workforce and forces them to take on adult responsibilities before they are ready.

#### 3. “CHILD MARRIAGE IS A FAMILY MATTER. IT DOES NOT CONCERN US”

The consequences of child marriage do not just stay within the family. When 12 million girls are married before 18 every year, everyone is affected. Child marriage perpetuates cycles of poverty, inequality and oppression – from one generation to another. It is one of the most blatant manifestations of gender inequality worldwide. It should concern us all.

#### 4. “CHILD MARRIAGE IS A RELIGIOUS PROBLEM”

Child marriage is not linked to a single religion. It happens to girls of Hindu, Muslim or Catholic faith, as well as girls from other faiths. In fact, religious leaders play a crucial role in tackling child marriage. They can check that the bride and the groom are both above the legal age of marriage before a wedding, promote progressive interpretation of religious texts, and help people understand that their religion does not condone child marriage.

#### 5. “THESE GIRLS MUST BE COMPLETELY HELPLESS”

Girls can play a huge role in ending child marriage if they have access to education and know about their rights. Many girls who once faced child marriage are now advocates to end this practice. Girls speaking from experience are well placed to change the minds of their peers and community members.

The causes and drivers of child marriage are as varied as they are complex.

Ritu is a 13 year old girl living in a remote village near Kathmandu. A close relative brought her to Delhi in order to work as a domestic help and earn money for her family. She gets placed in a family and works there for more than 6 months but the family did not treat her well and refused to pay her. Ritu ran away from there but she had no idea where to go and wanted to return home. She met a helpful lady at the bus stand who promised to help her and to send back her home. But instead of reaching home Ritu is sold off to a household in Haryana who are looking for a bride for their son for Rs 30,000. A year later Ritu is rescued from the family of her inlaws on the complaint of her mother who came to know about her whereabouts. Ritu is now placed in a shelter home in Delhi to be sent back to her mother. Her In-laws including her husband are in police custody and she herself is 5 months pregnant at the age of 15 years

## 4. Legal Provisions to deal with Child Marriage

### 4.1: Background

Recognising child marriage as a social evil, the Child Marriage Restraint Act (CMRA) 1929, popularly known as the Sharda Act came in the pre independence era, this act prohibited child marriages of girls below the age of 15 years and of boys below the age 18. This law applied to all citizens of India.

In 1978, the law was amended to make it more effective and raise the minimum age of marriage by three years, i.e. from 15 to 18 years in case of girls and from 18 to 21 years in case of boys. The amended law came to be known as the Child Marriage Restraint Act, 1929. However, despite the law, child marriages continued to take place.

The Government of India then brought the Prohibition of Child Marriage Act (PCMA) in 2006, and it came into effect on 1 November 2007 to address and fix the shortcomings of the Child Marriage Restraint Act. The change in name was meant to reflect the prevention and prohibition of child marriage, rather than restraining it. The previous Act also made it difficult and time consuming to act against child marriages and did not focus on authorities as possible figures for preventing the marriages.

Prohibition of Child Marriage Act (PCMA) 2006 has provisions to prohibit child marriages, protect and provide relief to victims and enhance punishment for those who abet, promote or solemnize such marriages. The Act also calls for appointment of Child Marriage Prohibition Officers for implementing the Act.

### 4.2: What is Child Marriage?

- Child marriage means a marriage in which either of the contracting parties is a child.
- Contracting party means either of the parties whose marriage is or is about to be solemnized.

### 4.3: Who is considered as a “Child” in case of child marriage?

The Child is a person who:

- If Female – has not completed 18 years of age.
- If Male – has not completed 21 years of age.

### 4.4: Who can Complaint?

- Anyone who knows that a child marriage has already taken place or is likely to take place.
- Anyone having knowledge or reason to believe that a child marriage is going to be solemnized.
- A Non-Governmental Organisation having reasonable information.

### 4.5: Who is a CMPO?

- CMPO – Child Marriage Prohibition Officer is an officer appointed by the State government for the whole state responsible to take action against child marriage
- The State government sometimes requests -
  - Respectable members of the locality with a record of social service
  - Members of gram Panchayat
  - Municipality Officer
  - Government or any Public Sector Undertaking
  - NGO

To assist the CMPO in prohibiting child marriages

- The District Magistrate automatically assumes the power of a CMPO on important occasions like Akshay Tritiya when a number of child marriages are solemnized.

### 4.6: Where to Report?

- Child Marriage Prohibition Officer (CMPO)
- Childline - 1098
- Police – 100

- Women helpline
- National Commission for Women
- District Magistrate
- Court of Judicial Magistrate of First class
- Court of Metropolitan Magistrate
- Child Welfare Committee



#### 4.7: What Does a Child Marriage Prohibition Officer do?

A CMPO- Child Marriage Prohibition Officer is mandated to

- Solemnisation of child marriage.
- Evidence for prosecution of offenders.
- Individual cases & counsel the residents of the locality not to promote/ support , indulge/aid or allow solemnisation of child marriages.
- Creates awareness about the evil of child marriage.
- Sensitizes community on ill effects if child marriage.

#### 4.8: Who can be punished?

- Male adult above 18 years of age for marrying a minor girl
- Anyone who performs child marriage like-priests or religious heads who preside over the ceremony
- Anyone who conducts a child marriage like- parents ,guardians, anyone having custody (legal or illegal) of the child being married
- Anyone who directs or abets a child marriage like a relative who brings proposal for child marriage, middlepersons who intervene between two families to help conduct a child marriage.
- Anyone who takes part in any way in soleminsation of child marriage, permits child marriage like- guests, caterers, tent provider, decorator, tailor or anyone who has given his/her services in the solemnization of a child marriage
- Anyone who has knowledge about child marriage & fails to report or prevent it.

**Punishment:**

- Rigorous imprisonment extendable upto 2 years or fine upto 1 lakh rupees or both
- All offences under this act are cognizable and non-bailable.

**Exceptions:**

- No woman shall be punishable with imprisonment.

**4.9: How can a Child Marriage be declared Null & Void?**

- Any person who was a child at the time of his/her marriage can seek to end his/her marriage.
- The petition can be filed before the child completes two years after attaining the majority, which is 18 years.
- A parent /guardian/friend or other person along with CMPO can seek to void the marriage on behalf of a minor.
- The district court, which declares the marriage null & void can direct the parents or guardians of both the parties to return any gifts, valuable, ornaments received on the occasion of such marriage or an amount of equal value.
- Any child marriage solemnized in contravention of the injunction order issued by court shall be considered void.

**4.10: Marriage to be considered null & void automatically in the following circumstances**

- If the child is taken away from the lawful guardian and married.
- If a child is married by force or deceitful means.
- If the child is sold for the purpose of marriage.
- If the child is married and then sold or trafficked or used for immoral purposes.

#### **4.11:What are the provisions for maintenance for residence to female contracting parties of child marriage?**

- In case the groom is a minor, his parents or guardians could be directed by court to pay maintenance charges to the girl until her remarriage.
- The amount payable will be decided by the court taking in regard the needs of the child, her lifestyle and the means of income of the paying party.
- The court can direct to pay the maintenance monthly or in a lump sum.
- In case a girl approaches to void her marriage the court can give orders for her suitable residence until her remarriage.

#### **4.12:Who will provide custody & maintenance of children born out of child marriages?**

- The court ensures best interest & welfare of the child born from a child marriage as a top priority
- The court can also order to provide maintenance for the child by either party to the marriage or their guardians
- Every child born out of such marriage should be treated as legitimate.

## **5.Authorities & Stakeholders**

### **5.1: Powers of the court:**

- On receiving a complaint if the Metropolitan Magistrate is satisfied that the child marriage is being solemnized then the Magistrate can issue injunction against any person involved in it
- The Court of Judicial Magistrate of first class or Metropolitan Magistrate can take suo motu cognizance on the basis of any reliable information
- In case of urgency the court can issue interim injunction without giving any prior notice

## 5.2: Powers of DM(District Magistrate):

- For preventing mass child marriages on occasions such as Akshay Tritiya, the District Magistrate shall be deemed as a Child Marriage Prohibition Officer(CMPO) with all powers of CMPO under the Prohibition of Child Marriage Act - 2006
- District Magistrate has additional powers to stop or prevent solemnisation of child marriages.
- District Magistrate may take all appropriate measures and use minimum force required to prevent child marriages

## 5.3: Role of Teachers is Important

Every school teacher has been made liable under section 16 to provide assistance to the Child Marriage Prohibition Officer to prevent child marriages. School teachers can play a key role in preventing child marriages.

### *What can the teachers do?*

- Inform the nearest police station as soon as you know that a child marriage is being performed or is about to be performed.
- Visit the nearest Judicial or Executive Magistrate to record a complaint, if it is not feasible to go to the police station or if the police fail to record your report. Make a phone call or write to the nearest police station/SP (Superintendent of Police)/Child Line/Child Welfare Committee/ the Department of Women and Child Development or the Social Welfare Department in the state, etc.
- In case the police station is far away or there are no Courts in the vicinity. You could also solicit support from the nearest non-governmental organization working with children
- Keep a direct check over the children in school who could be potential victims of child marriage, by keeping regular attendance at school.
- Make immediate visit to the house of the child if his/her absence is alarming and there is a potential of the child being married.
- Talk to the parents and try to convince them not to marry off their children early by informing them about its negative consequences.



- Inform parents about the law against child marriage, that the law declares child marriage an offence and lays down the legal consequences for parents who get their children married.
- Educate the children in school that child marriages are barred under the law.
- Educate children in school on their rights and availability of these to every child irrespective of their gender, caste, ethnicity or religion.
- Encourage participation of children in voicing their concerns and views about child marriages through different ways such as drawings, writings, plays and discussions.
- Conduct special sessions and invite members of the police and the CMPO to talk about child marriage.

The Prohibition of Child Marriage Act, 2006, under section 11 provides punishment for those who permit and promote child marriages. Hence, it is necessary that every individual who is aware of any child marriage that is going to be conducted or is being conducted or has been conducted, to make sure that he/she does not permit or promote the child marriage by not reporting about it. He/she can be made liable under the present law and also the Indian Penal Code for abetting the offence.

## 6. What can be done:

### 6.1: If a Child Marriage is About to Take Place in the Near Future:

- Visit the home of the children to be married and make the parents aware that child marriage is a punishable offense and advise them not to conduct the marriage.
- Speak to the guardians/relatives/community elders and make them aware and try and convince them against child marriage.
- Try and speak to the child to make him/her aware of the ill consequences of child marriage and tell the child that it is his/her right not to get married.

- Seek the assistance of the Panchayat, the local leaders, the teachers, government officials/public servants or a local NGO to convince the parents against child marriage.
- Complain to the police and with the assistance of the police get the offender arrested. The police have powers under section 151 of the Criminal Procedure Code to make arrests in order to prevent the commission of a cognisable offence.
- File a complaint to a First Class Judicial Magistrate if parents refuse to concede, seeking an injunction order under section 13 to prevent a child marriage from taking place.

#### **6.2: If the Marriage is Currently Taking Place:**

- Collect evidence of the marriage taking place (such as photographs, invitations, receipts of payments made for marriage purposes).
- Make a list of offenders who are responsible for arranging, performing, supporting, encouraging and helping in the marriage or attending it.
- Complain to the police and with the assistance of the police get the offenders arrested.
- Complaint to child marriage prohibition officer. The District Magistrate automatically assumes the power of a CMPO on important occasions like Akshay Tritiya when a number of child marriages are solemnized.

#### **6.3: If a Child Marriage has Already Taken Place:**

- Collect evidence of the marriage that has taken place (such as photographs, invitations, receipts of payments made for marriage purposes, witnesses).
- Make a list of offenders who were responsible for arranging, performing, supporting, encouraging and helping in the marriage or attending it.
- Complain to the police and with the assistance of the police get the offenders arrested.
- Remember that women involved in such offences are also offenders although they cannot be punished with imprisonment. Therefore arrests should be made where necessary. The court will decide the penalty to be imposed on women offenders.

- Any person who was a child at the time of his/her marriage can seek to end his/her marriage.
- The petition can be filed before the child completes two years of attaining majority
- A parent /guardian/friend or other person along with CMPO can seek to void the marriage on behalf of a minor.



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**TO COMPLAINT ABOUT CHILD ABUSE, PLEASE CALL US ON:**

 **1800-102-7222** (Toll-Free)