

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

PUBLIC INTEREST LITIGATION NO. 62 OF 2022

Child Marriage Prohibition
Committee and Ors. .. Petitioners
Versus
State of Maharashtra & Ors. .. Respondents

Mr. Ajinkya Udane with Mr. Vinayak Pandit i/b.
Mr. Asim Sarode for the Petitioners.

Mr. P. P. Kakade, Government Pleader with Mr.
B. V. Samant, AGP and Ms. N. M. Mehra, AGP.
For Respondents 1 to 8 (State).

CORAM: NITIN JAMDAR, ACTING CJ. &
ARIF S. DOCTOR, J.

DATE: 12 JULY 2023

P.C.:

1. Heard learned counsel for the parties.
2. This PIL raises various issues regarding implementation of Prohibition of Child Marriages Act, 2006 (the Act of 2006). The Petitioners have made a grievance that the Act of 2006 has been enacted in 2006. The Rules to be framed under the said Act by the State Government as per section 19 of the Act have not been finalised.
3. The learned Government Pleader states that on 21 October 2022, the Maharashtra Prohibition of Child Marriage Rules, 2022 (the Rules of 2022) have been notified.

4. Section 16 of the Act of 2006 states that the State Government shall appoint, for the whole State, or such part thereof, as may be specified in the notification, an officer or officers to be known as the Child Marriage Prohibition Officer having jurisdiction over the area or areas specified. Section 16 contemplates that the State Government may also request a respectable member of the locality, or an officer of the Gram Panchayat or Municipality or an officer of the Government or any public sector undertaking or an office bearer of any non-governmental organisation to assist the Child Marriage Prohibition Officer. Section 16(3) casts duties on Child Marriage Prohibition Officer to prevent solemnisation of child marriages by taking such action, collect evidence for effective prosecution, advise either individual cases or counsel the residents of the locality, create awareness, sensitize the community on the issue of child marriages. The Child Marriage Prohibition Officer is required to furnish periodical returns and statistics to the State Government.

5. The Rules of 2022 elaborates on the duties of the Child Marriage Prohibition Officer. Rule 3 casts several duties on the Child Marriage Prohibition Officer. Rule 3 reads thus: -

3. Duties of Child Marriage Prohibition Officer (CMPO). – (1) In addition to the duties mentioned in sub-section (3) of section 16 of the Act, the Child Marriage Prohibition Officer shall discharge the following functions and duties, namely: -

- (a) to prohibit child marriages, the Child Marriage Prohibition Officer shall, -
 - (i) create awareness of compulsory registration of marriages;

(ii) collect and scrutinize data regularly for girl drop outs from schools;

(iii) create awareness of the adverse effects of child marriages and for sensitizing the community on the issue of child marriages and to prevent solemnization of child marriage, the Child Marriage Prohibition Officer may, with the help of persons working in the field of protection of women and children or professionals including councillors, lawyers, health care providers, psychiatrists, -

(a) use print, broadcast and all other forms of media;

(b) organize lectures of experts in law, social work, psychology, medicine, psychiatry, health care providers and other experts;

(c) organize awareness drives and campaigns;

(d) organize visits to educational institutions.

(iv) inform the District Magistrate or the District Child Protection Unit established under the Juvenile Justice Act to plan preventive strategies on special occasions like Holi, Akshaya Tritaya, when mass marriages are likely to happen;

(v) inform the police and file First Information Report to stop the offences in relation to child marriages;

(vi) inform the Child Welfare Committee to take appropriate preventive measures to stop the child marriage;

(vii) keep updated list of various stakeholders, like Non-Government Organizations working on issues of women and children, counsellors, health care providers, lawyers, legal services authorities, etc.;

(viii) inform child, parents, guardians involved in child marriage about various schemes of the Government and suggest them to apply for obtaining benefits under the applicable Schemes;

(ix) keep vigilance in the area under his jurisdiction for eliminating the possibility of solemnization of child marriage;

(x) collect information regarding mass child marriages within his jurisdiction;

(x) encourage Gram Sabha to pass a resolution against solemnization of child marriages in their village.

(b) When the child marriage is being solemnized, the Child Marriage Prohibition Officer shall, -

(i) if he receives reliable information that a child marriage is likely to be solemnized, he in such an emergency situation shall seek immediate help of the Police or the Child Welfare Committee or District Child Protection Unit and visit the place of incident and record the Child Marriage Incidence Report in Form I and submit it to the Judicial Magistrate First Class or Metropolitan Magistrate without any delay for seeking appropriate orders under the Act;

(ii) in emergency, the Child Marriage Prohibition Officer in presence of two reliable witnesses or respectable members or members of Child Line or members of non-Government Organization from the community may visit the place where child marriage is likely to be solemnized for taking immediate action to stop the solemnization of child marriage;

(iii) take steps for age verification of the child;

(iv) file an application before the Judicial Magistrate or a Metropolitan Magistrate for injunction order or ex-parte interim injunction order under section 13 of the Act against any person including a member of an organization or an association of

persons prohibiting such marriage;

(v) to assist the aggrieved person in filing an application in the Court of a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, regarding the offences committed under the Act;

(vi) immediately inform Child Welfare Committee and take all necessary steps as directed by Child Welfare Committee to place such child, if need be, in a State funded residential school, shelter home, or any other safe place where the child being in need of care and protection is placed as per the provisions of the Juvenile Justice Act.

(c) After the child marriage is solemnized, the Child Marriage Prohibition Officer shall, -

- (i) collect all evidences like age proof, marriage invitation, marriage photo etc.;
- (ii) file a complaint with the Police or a Judicial Magistrate or a Metropolitan Magistrate, as the case may be in respect of offences committed under the Act;
- (iii) take assistance of the Child Welfare Committee to rescue the child if need be and give the required care and protection as directed by the Child Welfare Committee;
- (iv) assist the child, parents, guardians in accessing services like counselling, healthcare, shelter home, legal aid, etc.;
- (v) assist the aggrieved person in filing an application in the Court of a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, regarding the offences committed under the Act;
- (vi) assist in filing petition for annulling a child marriage by a decree of nullity; and in case the petitioner is minor at the time of filing a petition, then file a petition alongwith his or her guardian or next friend as per the

provisions of sub-section (2) of section 3;

- (vii) inform the police authorities including the special police officers appointed under the Immoral Traffic (Prevention) Act, 1956 (104 of 1956), if he comes to know of the solemnization of any child marriage wherein the child being minor, is, --
 - (a) taken or enticed out of the keeping of the lawful guardian; or
 - (b) compelled by force; or
 - (c) induced by any deceitful means to go from any place; or
 - (d) sold for the purpose of marriage and made to go through a form of marriage; or
 - (e) married and after which is sold or trafficked or used for immoral purposes.

6. Rule 4 specifies duties of designated police and special juvenile police unit to assist the Child Marriage Prohibition Officers. Under Rule 5, any person, organization or educational institution, who has reason to believe that a child marriage has been, or is being, or is likely to be solemnized or the child himself or herself may give information through letter, email or a telephone call or call on child helpline number or in any other form, either in writing or orally to the Child Marriage Prohibition Officer having jurisdiction in the area or any other Child Marriage Prohibition Officer. Under Rule 6, the Child Marriage Prohibition Officer is empowered to enter into the premises where child marriage is likely to take place or has taken place and make necessary inquiry, demand production of documents, record statements of witnesses, collect evidence and complete every such inquiry within three months. Under Rule 11, every Child

Marriage Prohibition Officer is required to submit a monthly report in the first week of every month in Form III to the District Women and Child Development Officer about the actions taken by him under the Act and the Rules within his jurisdiction. Rule 12 states that if any Child Marriage Prohibition Officer or District Women and Child Development Officer fails to perform any of his duties specified in the Act and the Rules without having sufficient reasons for non-performance or flouts any order of Court under this Act, then, he shall be subjected to the disciplinary actions under the governing service rules.

7. Therefore, a conjoint reading of Section 16 of the Act of 2006 and the Rules of 2022 indicate that an important role is to be performed by the Child Marriage Prohibition Officer. It is also mandatory that if he fails to perform his duty, he is liable to face disciplinary action.

8. In the reply affidavit, the State has given a chart where certain statistics regarding number of child marriages prevented is presented. The number of child marriages prohibited in the year 2018-2019, 2019-2020, 2020-2021 and 2021-2022 are indicated. However, it is not explained as to how this figure has arrived at. This being the work of Child Marriage Prohibition Officer, we presume that this information is supplied by the Child Marriage Prohibition Officers. The affidavit is silent on how many Child Marriage Prohibition Officers are appointed by the State Government, whether they have been submitting periodical returns to the State Government as per section 16(f) and Rule 3 of the Rules of 2022. The State

Government shall file additional affidavit placing on record the number of Child Marriage Prohibition Officers who have not submitted periodical returns and what action is taken against them for non- performance of their duties and the source of the data presented in the affidavit as above.

9 Considering the important role to be performed by the Child Marriage Prohibition Officers, it is necessary that adequate Child Marriage Prohibition Officers are appointed and strict supervision is conducted as regards the performance of their duties.

10. We direct the affidavit to be filed by the Secretary, Women and Child Development Department of the State or vetted by him giving the information as above.

11. Stand over to 2 August 2023 at 2.30 p.m.

JAYANT
VISHWANATH
SALUNKE

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(ARIF S. DOCTOR, J.)

(ACTING CHIEF JUSTICE)