

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) NO. \_\_\_\_\_ OF 2020

IN THE MATTER OF:

Aisha Kumari

PETITIONER

VERSUS

State of N.C.T. of Delhi & Ors.

RESPONDENT

WRIT PETITION UNDER ARTICLE 226 READ WITH ARTICLE 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF ISSUE A WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT OR ORDER OR APPROPRIATE DIRECTION THEREBY DECLARING SEC. 3 (1) OF THE PROHIBITION OF CHILD MARRIAGE ACT, 2006 IN SO FAR AS IT PROVIDES THAT A CHILD MARRIAGE SHALL BE VOIDABLE AS ULTRA VIRES OF ARTICLE 21 OF THE CONSTITUTION OF INDIA AND OTHER RELIEF

**MOST RESPECTFULLY SHOWETH:**

1. The petitioner is filing the present petition under Article 226 read with Article 227 of the Constitution of India, seeking issuance of a writ, order or directions in the nature of mandamus to the Respondent No. 1 to pass appropriate resolution / amendment to declare every child marriage that is solemnized within the State of Delhi as void ab-initio in wake of the observation made by the Hon'ble Apex Court in **Independent Thought v. Union of India, (2017) 10 SCC 800 : (2018) 1 SCC (Cri) 13 : 2017 SCC OnLine SC 1222 at page 844 in Para 78** and in the manner the State of Karnataka has adopted where the State Legislature inserted sub-section (1-A) in Section 3 of the PCMA (on obtaining the assent of the President on 20-4-2017) declaring every child marriage in the State as null and void-ab-initio. The present Petition further seek

any other appropriate writ, order or declaration of the child marriage of the petitioner with respondent No. 2 as null and void which was performed by respondent No. 3, when both were minor and now the Petitioner is being forced to acknowledge the said marriage in order to do away the illegality committed with the Petitioner. The Petitioner apprehend danger to her life and since the Respondent No. 1 fail to prevent the child marriage performed by the other Respondent, the State may be directed to take necessary steps to protect the Petitioner, who at present hiding from her own family to protect herself. The copy of Judgment passed by the Hon'ble Apex Court in **Independent Thought v. Union of India, (2017) 10 SCC 800 : (2018) 1 SCC (Cri) 13 : 2017 SCC OnLine SC 1222** is Annexure A and copy of the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 is Annexure B.

2. That by means of present Writ the following question of law is to be examined by this Hon'ble Court as to,

*A. Given that the pro-child statutes are intended to and do consider the best interest of the child, whether the provisions of Sec. 3 (1) of the Prohibition of Child Marriage Act, 2006 in so far as it provides that a child marriage shall be voidable are to read down to make all child marriages void ab intio?*

*B. Whether the provisions of Sec. 3 (1) of the Prohibition of Child Marriage Act, 2006 in so far as it provides that a child marriage shall be voidable, violates the fundamental right of minor girl child to*

*have life with dignity and thus in teeth of Article 21 of the Constitution of India?*

**C.** *Whether under the doctrine of parens patriae the Respondent No. 1 State is duty bound to protect the interest and look after wellbeing of children particular minor girls who are most vulnerable?*

**D.** *Whether this Hon'ble Court has jurisdiction to declare a child marriage as null and void, which could not be challenged within two years after attaining age of majority under Prohibition of Child Marriage Act, 2006?*

3. That the Petitioner is filing the present petition to get her child marriage with the Respondent no.2 nullified which was solemnized at residence of the Petitioner situated at New Delhi. The Petitioner live with her parents at B-51, Gali No. 19, Raja Puri, Uttam Nagar, New Delhi but since 20.11.2020, she is living at some other place as to save herself from the Respondent No.2 & 4 and will disclose her present address, in case directed by this Hon'ble Court as the Petitioner apprehend danger to her life.
4. It is submitted that the Respondent No. 2 is also a relative of the Petitioner as he is son of her maternal aunt (real mausi) and is a resident of Gujarat. The Respondent No. 3 is the real father of the Petitioner and the Respondent No. 4 is the brother of the Petitioner, who along with Respondent No. 2 & 3, is compelling the Petitioner to accept Respondent No. 2 as his husband from a child marriage concluded by the parents of Petitioner and Respondent No. 2 when they were minor.

5. **FACTS OF THE CASE:**

- a. That the Petitioner is daughter of Md. Nasrudeen from his second marriage and apart from her he has 2 daughters from his first marriage and 4 daughter and 2 sons from second marriage.
- b. The Petitioner was born out of the said second marriage on 10.12.1993 and was admitted to school at Delhi where she perused her schooling from Govt. Co-Ed, Senior Secondary School, Bindapur Extn., New Delhi. She was all through her school was a bright student and was into various sports and extra-curricular activities and had participated in various District level activities.
- c. It is submitted that when she was in 10<sup>th</sup> Standard awaiting result during April, 2010, some ceremony was conducted at her residence and on the day of the child marriage, she was informed that a ceremony is being performed which include her and Respondent no.2. The petitioner at the time of the child marriage had no choice to go against the wish of her parents and community and despite her request, she was forced to give her consent for the said ceremony of child marriage. The copy of Tenth passing certificate and marksheets issued by the Central Board of Secondary Education to show the age of Petitioner at the time of marriage is annexed as **Annexure C**.
- d. However, after the said ceremony, the Petitioner was neither sent with the Respondent no. 2 to live with him nor they ever visited the petitioner and Petitioner kept on living with her parents and pursued her studies from her parental home. The Petitioner completed her

Senior Secondary from Government Co-Ed Senior Secondary School Bindapur Extn, New Delhi on 28.05.2012.

- e. It is submitted that thereafter, the Petitioner pursued a Diploma in Education [Special Education (Mental Retardation)] course from 2012-2014 for two years reorganized with Rehabilitation Council of India affiliated with National Institute for the Mentally Handicapped, Secunderabad. The copy of the Bonafide certificate dated 15.10.2014 is annexed as **Annexure D.**
- f. Thereafter the petitioner persuaded her Bachelor of Education (Special Education (Learning Disability)) degree from 2016-2018 Guru Gobind Singh Indraprastha University, Delhi. The copy of the provisional certificate issued by Guru Gobind Singh Indraprastha University, Delhi is annexed as **Annexure E.**
- g. It is thereafter, the Petitioner cleared her Central Teacher Eligibility Test (CTET) on 04.01.2019 from C.B.S.E.
- h. That the petitioner herein has been residing with her parents only and completed her schooling, graduation and Diploma as Special Tutor and started taking private tuitions of specially-abled students. At present the Petitioner is awaiting her M.Ed. entrance result and in case, she clears the same, she will be pursuing her M.Ed. from Jamia Millia Islamia, New Delhi. That after completing her education, the petitioner did some teaching in the Dept. of social welfare, govt. of NCT of Delhi. She then had started her job St. PBN Public School, Gurugram and also taking private tuitions for the especially abled children afterwards, which has

made her financially independent. She purchased a scooty [Activa bearing No. DL09TC1259] from her savings which is currently used by her family members.

- i. That the petitioner was living a peaceful life with her parents until, 19.11.2020, when the respondent no.2 visited the residence of the petitioner along with his parents and Respondent No. 3 introduced the Petitioner with the Respondent no. 2 as his husband and further told her that they came to take her with them to Gujarat.
- j. That the petitioner straight away protested to the demand of the respondents and showed her disagreement towards the existence of any marriage with Respondent no.2, but it came as an utter shock to the petitioner when at the behest of the respondent No. 2, the Respondent No. 4 started beating her in front of all. The petitioner was slapped, pushed and spat on her face by Respondent No. 4 in front of the family and was compelled to accept the Respondent No. 2 as her husband.
- k. That the petitioner in order to save herself from the atrocities, sought for some time to think over it and asked for two-day time and on very next day, she somehow managed to run away from her home and find a temporary place for living. The petitioner had also visited the doctor as she had bruises on her body due to the above said quarrel. The copy of the prescription of the doctor dated 21.11.2020 is hereby annexed as **Annexure F.**
- l. The Petitioner is approaching this Hon'ble Court for by means of present writ with a prayer to direct the respondent No. 1 to protect from the other

Respondents and further direct the Respondents to provide her protection as her life is in danger and further declare the said child marriage which was conducted when she was minor as null and void and further direct the Respondent not to harm and threaten the Petitioner as she apprehends danger to her life.

**Thus, in the above circumstances and in view of the illegal acts of the Respondents the petitioner having no other option but to file the present petition before this Hon'ble Court on the following amongst the other grounds:**

**GROUND OF CHALLENGE:**

- i. Because the acts of the respondents are totally illegal, unlawful and in violation of the rights of the petitioner.
- ii. Because the Prohibition of Child Marriage Act, 2006 under section 2(a) defines a "child" which is reproduced herein for the perusal of this Hon'ble court: -

*"2. Definitions.—In this Act, unless the context otherwise requires,— (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;"*

- iii. Because the Prohibition of Child Marriage Act, 2006 under section 2(b) defines a "child marriage" which is reproduced herein for the perusal of this Hon'ble court:-

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

- iv. Because the Prohibition of Child Marriage Act, 2006 under section 2(f) defines a "minor" which is reproduced herein for the perusal of this Hon'ble court: -

*"(f) "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"*

And the Majority Act, 1875 define Age of majority as,

*"3. Age of majority of persons domiciled in India. —  
(1) Every person domiciled in India shall attain the age of majority on his completing the age of eighteen years and not before."*

- v. Because the Prohibition of Child Marriage Act, 2006 under section 3 defines a "Child marriages to be voidable at the option of contracting party being a child" which is reproduced herein for the perusal of this Hon'ble court: -

*"3. Child marriages to be voidable at the option of contracting party being a child.—*

*(1) Every child marriage, whether solemnised before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage: Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of the marriage.*

...



*(3) The petition under this section may be filed at any time but before the child filing the petition completes two years of attaining majority.*

...”

- vi. It is submitted that since the Petitioner and the Respondent are Muslim by religion, it is also relevant to look into the provisions of the Muslim Law wherein there is no provision for declaring a Muslim Marriage as null and void and only provision is provided for dissolution of a Muslim marriage i.e. Section 2 of the Dissolution of Muslim Marriage Act, 1939, which provide grounds for dissolution of Marriage, which is as under,

**“2. Grounds for decree for dissolution of marriage:**

*A woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage on any one or more of the following grounds, namely:*

- (i) that the whereabouts of the husband have not been known for a period of four years;*
- (ii) that the husband has neglected or has failed to provide for her maintenance for a period of two years;*
- (iii) that the husband has been sentenced to imprisonment for a period of seven years or upwards;*
- (iv) that the husband has failed to perform, without reasonable cause, his marital obligations for a period of three years;*
- (v) that the husband was impotent at the time of the marriage and continues to be so;*
- (vi) that the husband has been insane for a period of two years or is suffering from leprosy or a virulent venereal disease;*

*(vii) that she, having been given in marriage by her father or other guardian before she attained the age of fifteen years, repudiated the marriage before attaining the age of eighteen years:  
Provided that the marriage has not been consummated;  
..."*

- vii. Because, since the marriage of the Petitioner with the respondent No. 2 was solemnized without her consent, she can't be compelled or forced to accept the Respondent No. 2 as her, even otherwise, since the marriage was performed when the Petitioner and Respondent No. 2 were minor, therefore, the said marriage was in no manner be termed as a valid marriage.
- viii. Because the Petitioner had no occasion to challenge the said child marriage at any earlier stage as she was neither had the financial independence to support herself and live without the assistance of her father i.e. Respondent No. 3 nor she had the guts to face her brother Respondent No. 4, it is submitted that it is after the incident of 20.11.2020, that is when the Petitioner left with only two option to either end her life or rescue herself from her petty situation, when the Petitioner decide to run away from the custody of the Respondent No. 3 & 4 and approach this Hon'ble Court.
- ix. Because the Petitioner is an individual who has right to live her life with dignity and freedom which also include her right to choose her life partner. It is submitted that nowhere it is provided that what recourse should Petitioner adopt in case, she wishes to get out of a child marriage which is now imposed upon her.

- x. Because when she was forced into the child marriage, she was 16-year-old and since then she was living with her parents and now, she has nowhere else to go other than approaching this Hon'ble Court to protect her from this sham marriage.
- xi. Because the Hon'ble Supreme Court, while considering the Constitutional validity of Exception 2 of Section 375 Indian Penal Code, in the landmark judgment of **Independent Thought v. Union of India, (2017) 10 SCC 800 : (2018) 1 SCC (Cri) 13 : 2017 SCC OnLine SC 1222** observed the consequences of child marriage and please to further observed and analyze various provisions and statues enacted by the Parliament and State Legislature from time to time to improve the situation of Women and Child in the Country and pleased to observed that all States should declare the child Marriage as Void ab-initio. The relevant observations made by the Hon'ble Apex Court in the above case are reproduced herein for the ready reference,

*“10. For the present, the counter affidavit of the Union of India refers to the National Family Health Survey - 3 (of 2005) in which it is stated that 46% of women in India between the ages of 18 and 29 years were married before the age of 18 years. It is also estimated, interestingly but disturbingly, that there are about 23 million child brides in the country. As far as any remedy available to a child bride is concerned, the counter affidavit draws attention to Section 3 of the Prohibition of Child Marriage Act, 2006 (the PCMA). Under Section 3(1) of the PCMA a child marriage is voidable at the option of any contracting party who was a child at*

the time of the marriage. The marriage can be declared a nullity in terms of the proviso to Section 3(1) of the PCMA through an appropriate petition filed by the child within two years of attaining majority and by approaching an appropriate court of law. It is also stated that in terms of Section 13(2)(iv) of the Hindu Marriage Act, 1955 a child bride can petition for a divorce on the ground that her marriage (whether consummated or not) was solemnized before she attained the age of 15 years and she has repudiated the marriage after attaining that age but before attaining 18 years of age. In other words a child marriage is sought to be somehow 'legitimized' by the Union of India and the onus for having it declared voidable or a nullity is placed on the child bride or the child groom.

...

**36.** One of the more important legislations on the subject of protective rights of children is the Prohibition of Child Marriage Act, 2006 (for short 'the PCMA'). For the purposes of the PCMA, a 'child' is a male who has not completed 21 years of age and a female who has not completed 18 years of age and a 'child marriage' means a marriage to which either contracting party is a child.

**37.** Section 3 of the PCMA provides that a child marriage is voidable at the option of any one of the parties to the child marriage – a child marriage is not void, but only voidable. Interestingly, and notwithstanding the fact that a child marriage is only voidable, Parliament has made a child marriage an offence and has provided punishments for contracting a child marriage. For instance, Section 9

of the PCMA provides that any male adult above 18 years of age marrying a child 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. Therefore regardless of his age, a male is penalized under this section if he marries a girl child. Section 10 of the PCMA provides that whoever performs, conducts, directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees; Section 11 of the PCMA provides punishment for promoting or permitting solemnization of a child marriage; and finally Section 13 of the PCMA provides that the jurisdictional judicial officer may injunct the performance of a child marriage while Section 14 of the PCMA provides that any child marriage solemnized in violation of an injunction under Section 13 shall be void.

**38.** It is quite clear from the above that Parliament is not in favour of child marriages per se but is somewhat ambivalent about it. However, Parliament recognizes that although a child marriage is a criminal activity, the reality of life in India is that traditional child marriages do take place and as the studies (referred to above) reveal, it is a harmful practice. Strangely, while prohibiting a child marriage and criminalizing it, a child marriage has not been declared void and what is worse, sexual intercourse within a child marriage is not rape under the IPC even though it is a punishable offence

under the Protection of Children from Sexual Offences Act, 2012.

...

**77.** The most obvious and appropriate resolution of the conflict has been provided by the State of Karnataka—the State Legislature has inserted sub-section (1-A) in Section 3 of the PCMA (on obtaining the assent of the President on 20-4-2017) declaring that henceforth every child marriage that is solemnised is void ab initio. Therefore, the husband of a girl child would be liable for punishment for a child marriage under the PCMA, for penetrative sexual assault or aggravated penetrative sexual assault under the Pocso Act and if the husband and the girl child are living together in the same or shared household for rape under IPC. The relevant extract of the Karnataka Amendment reads as follows:

**“3. (1-A)** Notwithstanding anything contained in sub-section (1) [of Section 3 of the PCMA] every child marriage solemnised on or after the date of coming into force of the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 shall be void ab initio.”

**78.** It would be wise for all the State Legislatures to adopt the route taken by Karnataka to void child marriages and thereby ensure that sexual intercourse between a girl child and her husband is a punishable offence under the Pocso Act and IPC. Assuming all other State Legislatures do not take the Karnataka route, what is the correct position in law?

**80.** *What is sought to be achieved by this artificial distinction is not at all clear except perhaps to acknowledge that child marriages are taking place in the country. Such child marriages certainly cannot be in the best interest of the girl child. That the solemnization of a child marriage violates the provisions of the PCMA is well-known. Therefore, it is for the State to effectively implement and enforce the law rather than dilute it by creating artificial distinctions. Can it not be said, in a sense, that through the artificial distinction; Exception 2 to Section 375 of the IPC encourages violation of the PCMA? Perhaps 'yes' and looked at from another point of view, perhaps 'no' for it cannot reasonably be argued that one statute (the IPC) condones an offence under another statute (the PCMA). Therefore the basic question remains - what exactly is the artificial distinction intended to achieve?*

...

**89.** *We have adverted to the wealth of documentary material which goes to show that an early marriage and sexual intercourse at an early age could have detrimental effects on the girl child not only in terms of her physical and mental health but also in terms of her nutrition, her education, her employability and her general well-being. To make matters worse, the detrimental impact could pass on to the children of the girl child who may be malnourished and may be required to live in an impoverished state due to a variety of factors. An early marriage therefore could have an inter-generational adverse impact. In effect therefore the practice of early marriage or child marriage even if sanctified by tradition and custom*

may yet be an undesirable practice today with increasing awareness and knowledge of its detrimental effects and the detrimental effects of an early pregnancy. Should this traditional practice still continue? We do not think so and the sooner it is given up, it would be in the best interest of the girl child and for society as a whole.

...

**93.** Looked at from another perspective, the PCMA actually makes child marriages voidable and makes the parties to a child marriage (other than the girl child) punishable for an offence under the said Act. For someone who supports the institution of marriage, nothing could be more destructive of the institution of marriage than the PCMA which makes a child marriage voidable and punishable on the one hand and on the other, it otherwise collaterally legitimizes the pernicious practice of child marriages. It is doubtful if the Parliamentary Standing Committee intended such a situation along with its attendant adverse and detrimental impacts and so we leave it at that."

**126.** Section 2(vii) of the Dissolution of Muslim Marriages Act, 1939 entitles a woman married under Muslim Law to obtain a decree of dissolution of marriage if she is given in marriage by her father or other guardian before she attained the age of 15 years and she repudiates the marriage before attaining the age of 18 years provided that the marriage has not been consummated. This provision deals with girls below the age of 15 years who are got married. Such a girl is required to repudiate her marriage before she attains majority



and she can only repudiate the marriage if the marriage has not been consummated. This virtually makes mockery of the PCMA. Therefore, even in a marriage which is void under PCMA, the girl will have to obtain a decree for dissolution of her marriage, that too before she attains the age of majority and only if the marriage has not been consummated. Another anomalous situation is that if the husband has forcible sex with such a girl, the marriage is consummated and the girl child is deprived of her right to get the marriage annulled.

**127.** Similarly under Section 13(2)(iv) of the Hindu Marriage Act, 1955, a Hindu girl can file a petition for divorce on the ground that her marriage, whether consummated or not, was solemnised before she attained the age of 15 years and she has repudiated her marriage after attaining the age of 15 years but before attaining the age of 18 years. This is also not in consonance with the provisions of PCMA, according to which marriage of a child bride below the age of 15 years is void and there is no question of seeking a divorce. A void marriage is no marriage. Another anomaly is that whereas a child bride, who is above 15 years under PCMA, can apply for annulment of marriage up to the age of 20 years, under Section 13(2)(iv) of the Hindu Marriage Act, a child bride under the age of 15 years must repudiate the marriage after attaining the age of 15 years but before she attains the age of 18 years i.e. even before she attains majority. The question that remains unanswered is who will represent or help this child, who has been forced to marry, to approach the courts.

**128.** *It is obvious that while making amendments to various laws, some laws are forgotten and consequential amendments are not made in those laws. After the PCMA was enacted both the Hindu Marriage Act, 1955 and the Dissolution of Muslim Marriages Act, 1939 also should have been suitably amended, but this has not been done. In my opinion, the PCMA is a secular Act applicable to all. It being a special Act dealing with children, the provisions of this Act will prevail over the provisions of both the Hindu Marriage Act and the Muslim Marriages and Divorce Act, insofar as children are concerned.*

**179.** *There can be no dispute that every citizen of this country has the right to get good healthcare. Every citizen can expect that the State shall make best endeavours for ensuring that the health of the citizen is not adversely affected. By now it is well settled by a catena of judgments of this Court that the "right to life" envisaged in Article 21 of the Constitution of India is not merely a right to live an animal existence. This Court has repeatedly held that right to life means a right to live with human dignity. Life should be meaningful and worth living. Life has many shades. Good health is the raison d'être of a good life. Without good health there cannot be a good life. In the case of a minor girl child good health would mean her right to develop as a healthy woman. This not only requires good physical health but also good mental health. The girl child must be encouraged to bloom into a healthy woman. The girl child must not be deprived of her right of choice. The girl child must not be deprived*

*of her right to study further. When the girl child is deprived of her right to study further, she is actually deprived of her right to develop into a mature woman, who can earn independently and live as a self-sufficient independent woman. In the modern age, when we talk of gender equality, the girl child must be given equal opportunity to develop like a male child. In fact, in my view, because of the patriarchal nature of our society, some extra benefit must be showered upon the girl child to ensure that she is not deprived of her right to life, which would include her right to grow and develop physically, mentally and economically as an independent self-sufficient female adult."*

**(...Emphasis Supplied)**

- xii. It is submitted that not only the Respondent No. 1 is failing in protecting the evil of Child Marriage as in the case of Petitioner, the situation is even more difficult as because of the reservations and lack of financial and moral support as well as the burden put upon a minor child to get the marriage declared void, the evil of Child Marriage is still in existence despite the fact the same is declared as a criminal act.
- xiii. Because the Respondent No. 1, is duty bound to take such measures to ensure the protection of the fundamental rights of the Petitioner and many more girl child around the State who are forced into child marriage, because of lack of strict law. It is submitted the Child Marriage is still in existence as the same is still reorganized by the Respondent No. 1, however, if the same is declared *void ab-initio*, the children who are

forced to child marriage would be rescued without any onus or requirement on their part.

- xiv. Because vide Karnataka Act no. 26 of 2017, the State of Karnataka Government while accepting the report of the core committee which was headed by Dr. Shivaraj V Patil, Former Judge of Supreme Court of India, set up in compliance of directions passed by the Hon'ble High Court of Karnataka in its judgment in Writ Petition No. 11154 of 2006, made consequential amendments to the Prohibition of Child Marriage Act, 2006, (central Act 6 of 2007).
- xv. Because the State of Karnataka vide the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 which received the assent of the President on the 26<sup>th</sup> day of April, 2017, declared the child marriage as *void ab-initio* and added sub-section (1-A) after Section (3) sub-section (1) as follows,

*"(1A) Notwithstanding anything contained in sub-section(1) every child marriage solemnized on or after the date of coming into force of the Prohibition of Child Marriage (Karnataka Amendment) Act, 2016 shall be void abinitio".*

- xvi. Because, the Hon'ble Supreme Court, in the judgment of Independent Thought supra, has observed in Para 78 that, *"It would be wise for all the State Legislatures to adopt the route taken by Karnataka to void child marriages..."*.
- xvii. It is submitted that none of the statute as mentioned above provide for any way out or provide any remedy to save her from her piteous situation and therefore, the only remedy available with her is under writ jurisdiction of this Hon'ble Court.

xviii. Because the Hon'ble Karnataka High Court in the matter of **Seema Begaum v. State of Kar., 2013 SCC OnLine Kar 692**

*“26. When there is legislative ban on the child marriages, the Courts cannot go out of their way to help the promoters of child marriages.*

*27. The Courts will prefer the construction, which advances the object rather than the one which attempts to find some way of circumventing it. It is the duty of the Courts not to facilitate the circumvention of the parliamentary intent.*

*28. As held by the Apex Court in the case of Radhakishan (supra), when the statutory law has commenced to govern a particular field, the personal law becomes inapplicable. Reiterating this view in the subsequent case of Kumar Gonsusab (supra), the Hon'ble Supreme Court has held that the personal law dealing with the transfer of property cannot override the provisions of the Transfer of Property Act.*

*29. In the case of Shabana Bano (supra), it was contended that under the provisions of Muslim Women (Protection of Rights on Divorce) Act, 1986, the divorced wife is not entitled to maintenance after the expiry of the iddat period. Not accepting this contention, the Hon'ble Supreme Court has laudably held as follows:*

*“The appellant's petition under Section 125 of the Cr. P.C. would be maintainable before the Family Court as long as the appellant does not remarry. The amount of maintenance to be awarded under Section 125 of the Cr. P.C. cannot be restricted for the iddat period only.”*

*30. In the case of Molly Joseph (supra), the Apex Court has categorically held that when the Legislature*

*enacts the law in respect of the personal law of a group of persons following a particular religion, then such statutory provisions would prevail over and override any personal law, usage or custom prevailing before the coming into force of such Act.*

**31.** *In the case of Smt. Parayankandiyal (supra), the Apex Court has negated the submissions that a person can be permitted to acquire a second wife during the life-time of the first wife and during the subsistence of the first marriage, just because the second marriage was customarily permitted under certain circumstances and for some purposes in the era of pre Hindu Marriage Act, 1955.*

**32.** *On the conspectus reading of paras 441, 442 and 443 of the Halsbury's Laws of England, the contents of which are extracted hereinabove, it becomes clear that the custom stands abrogated or destroyed, if it is running contrary to the statutory provisions, unless the custom is saved or preserved by a statute. The previously existing rights do not re-emerge, as they are superseded by the statute.*

**33.** *As the codified law prevails over all other laws, be they are ecclesiastical, personal or customary, the rights which the Muslim girls had under Muslim Personal Law (Shariat) Application Act, 1937 do not remain alive on the commencement of the P.C.M. Act.*

**34.** *There can be no dispute with what Patna and Delhi High Courts have said. But then, in both the cases, the Courts were confronted with a situation where the child marriage had already taken place. But the said decisions cannot be used to demand that a Mohammedan girl be permitted to marry before she attained the age of 18 years.*

**35.** *The issue can be examined with reference to the territorial dimension of the P.C.M. Act. That the P.C.M. Act has the application for the people of all States and Union Territories of India except the State of Jammu and Kashmir is spelt out in the P.C.M. Act itself. Section 1(2) of the P.C.M. Act, the provisions of which are extracted supra, makes it sternly clear that it applies to all the citizens of India, whether they are in India or outside India. The only exceptions made are in respect of State of Jammu and Kashmir and renoncants of the Union Territory of Pondicherry. Therefore, no Indian citizen on the ground of his belonging to a particular religion, can claim immunity from the application of the P.C.M. Act. The Legislature has not left anything to implication or interpretation as far as the application of P.C.M. Act is concerned.*

**36.** *The childhood of a person is precious. On the child attaining the age of majority, anything may be given to it like the job, house, husband/wife; but what cannot be got back is its precious childhood. What is therefore of paramount importance is that the child should fully enjoy his/her childhood before entering the wedlock. More often than not, it is the girl's happy childhood that would ensure a happy wifhood and happy motherhood. In whatever form it is, the child marriage is a gross violation of human rights of a girl or boy."*

- xix. Because it is pertaining to mention that the said child marriage is unregistered and after the said child marriage, the Petitioner lived with her parents only and the marriage is not consummated and the Petitioner has never stayed with the Respondent for even a single day.
- xx. Because till date the marriage is unconsummated and the petitioner has no intension to either live with the

Respondent or start any life with the Respondent, therefore, the child marriage if allowed to sustain, it will spoil the entire life of the Petitioner.

- xxi. Because the Petitioner is a free citizen and has a right to choose her life partner and the manner in which the Respondent is being imposed upon her by the parents, she has nowhere else to go other than approaching the Hon'ble Court seeking protection of her fundamental rights and liberty.
  - xxii. Because the child marriage manifests itself as a grave social evil which not only infringes upon the rights of the child cherished by various UN instruments but also violates the Constitutional commitment contained in the directive's principles of the Constitution of India.
  - xxiii. Because the action and acts of the respondent are in violation of the very basic principles of policies of the respondent.
  - xxiv. Because the petitioner has no other alternative efficacious remedy to challenge the action of the respondent before this Hon'ble Court.
6. That the petitioner has not filed any other petition either before the Hon'ble Apex Court of this Hon'ble Court or any other court for the similar relief's claimed in the present petition.
  7. That there is no other alternative efficacious remedy available with the petitioner except filing the present petition.
  8. That the annexures enclosed with the present petition are the true copies of their respective originals.



**PRAYER**

In view of the above-mentioned facts and circumstances, it is most respectfully prayed this Hon'ble Court may be pleased to:

- i. issue a writ of mandamus or any other appropriate writ or order or appropriate direction thereby declaring Sec. 3 (1) of the Prohibition of Child Marriage Act, 2006 in so far as it provides that a child marriage shall be voidable as ultra vires of Article 21 of the Constitution of India; and
- ii. issue a writ of mandamus or any other appropriate writ or order or appropriate direction to the Respondent No. 1 to declare the Child marriages as performed in the State of NCT of Delhi as void-ab-initio; and
- iii. issue writ of mandamus to the Respondent No. 1 to make necessary arrangement in order to provide complete protection to petitioner from Respondent No. 2, 3 & 4; and
- iv. issue writ of mandamus thereby declaring Petitioner's child marriage with Respondent No. 2 as null and void-ab-initio; and
- v. Pass any other order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

AND/OR ANY OTHER FURTHER WRIT, ORDER AND/OR DIRECTION, WHICH THIS HONBLE COURT MAY DEEM

JUST FIT AND PROPER, IN THE FACTS AND CIRCUMSTANCES OF THE CASE, IN FAVOUR OF THE PETITIONERS.

PETITIONER

NEW DELHI

Dated: 09.12.2020

FILED BY

**BAKUL JAIN, ADVOCATE**  
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