

'Sexual intercourse with minor wife is rape'

These include the Prohibition of Child Marriage Act of 2006, Protection of Children from Sexual Offences Act and Juvenile Justice Act, all which define a "child" as someone who is below 18 years of age.

The court held that the exception clause to rape, carved out in the IPC, created an unnecessary and artificial distinction between a married girl child and an unmarried girl child. The clause took away the right of a girl child to bodily integrity and reproductive choice. It had even the effect of turning a blind eye to trafficking of the minor girl children in the guise of marriage.

"Almost every statute in India recognises that a girl below 18 years of age is a child and it is for this reason that the law penalises sexual intercourse with a girl who is below 18 years of age. Unfortunately, by virtue of Exception 2 to Section 375 of the IPC, if a girl child between 15 and 18 years of age is married, her husband can have non-consensual sexual intercourse with her, without being penalised under the IPC, only because she is married to him and for no other reason," the apex court explained the discrimination shown to a 'married' girl child.

The apex court held that the exception clause will henceforth be "meaningfully" read as: "Sexual intercourse or sexual acts by a man with his own wife, the wife not being under 18 years of age, is not rape."

The court, however, refrained from dealing with the issue of marital rape of a woman above 18 years of age.

Few prosecutions

Justice Gupta, in a separate judgment, dealt with the abysmally low number of prosecutions and annulments of marriage filed under Prohibition of Child Marriage Act (PCMA).

"I am not oblivious to the harsh reality that most of the child brides are even below the age of 15 years. There is a practice in many parts of the country where children, both girls and boys, are married off, even before they attain puberty. They are innocent children, who do not even understand what marriage is," Justice Gupta wrote.

Though child marriage is prohibited, it is not automatically void under India's civil laws. The court criticised the fact that PCMA makes child marriage only voidable, that is, the burden is placed on the child bride to approach a court to declare her marriage a nullity. She has to do this within two years of attaining majority, that is by the time she is 20 years old. If not, the marriage continues.

Govt. pulled up

The court slammed the government for trying to "somehow legitimise" the exception clause. Instead of attempting to effectively implement and enforce the anti-child marriage law, the government diluted it by creating artificial distinctions. The government had urged the court not to tinker with the exception clause as it was introduced keeping in view the age-old traditions and evolving social norms. The government had argued that the "practice of child marriage cannot be wished away and, therefore, legislature in its wisdom has thought it fit not to criminalise the consummation of such child marriages".

Countering this, the court said the exception clause "statutorily cancels a girl child's right to decline sexual intercourse with her husband."

“Union of India cannot be oblivious to the existence of the trauma faced by a girl child who is married between 15 and 18 years of age or to the three pro-child statutes and other human rights obligations... The government tried to somehow legitimise child marriage,” Justice Lokur shot back.

END

Downloaded from **crackIAS.com**

© **Zuccess App** by crackIAS.com

crackIAS.com