



Increasing Legal Age Of Marriage Of Women In India-Socio-Legal Issues And Concerns- A Case Study Of Aurangabad City

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Abstract

The issue of rising the girl's marriage age from existing 18 to 21 years has caught attention of everyone when the Union Minister for Women and Child Development (MWCD) Smriti Irani Introduced the Prohibition of Child Marriage (Amendment) Bill 2021 in the Lok Sabha on December 20, 2021. The government's stake is that it intends to bring gender parity; however, the bill has been sent to parliamentary panel for scrutiny. This has given rise to several socio-legal issues and concerns.

In this paper the first part is of introduction about the subject in which historical background about laws relating to child marriages in India is discussed and justification given by government for this move are discussed; followed by merits and demerits of the move and then issues and concerns are highlighted.

The researcher has tried to explore the possible outcomes of increasing the legal marriageable for girls in India. For exploring the researcher had undertaken case study method in which survey was conducted in Aurangabad city to understand people's perception about the government's move and finally some concrete solutions are given.

Introduction

India is a pluralist country where people belonging to different faiths are governed by Personal laws relating to marriage and other related practices including age of the bride and groom. Several customary practices were common with respect to marriages like child marriage but in 1929 The Child Marriage Restraint Act was enacted and minimum age for males was fixed to 18 years and 14 for females. Post-independence in 1949, the minimum age for females was increased to 15, and in 1978, it was again increased for females to 18 and for males, and 21 years.

Indian constitution ensures right to freedom of religion as a fundamental right¹. As per The Hindu Marriage Act, 1955, minimum age of 18 is fixed for the bride and 21 for the groom². This is the same for Christians³. However, for Muslims, attaining age of puberty is the criterion which is assumed to be 15 years of age. In 2021 a bill was introduced⁴ in the Lok Sabha⁵ by Smriti Irani⁶. According to the *amendment bill* definition of "child" will be altered to "mean a male or female who has not completed 21 years of age. The legal age of *marriage* for girls will be increased to 21 years of age from existing 18 years. At present the bill is pending before Standing Committee for further scrutiny.

Justification

According to the 2019 report by United Nations Children's Fund titled *Ending Child Marriage: A profile of child marriage in India*, India is home to over 223 million child brides⁷. The government's National Family Health Survey-4 (2015-16)⁸, estimated that about one in four young women in the country have been married before 18 years of age. According to National Family Health Survey-5 (NFHS-5) 2019-21, women in the age group of 20-24 years who were married before they turned 18, are 14.7% in urban and 27% in rural areas. Women aged 15-19 years who were already mothers or pregnant at the time of the survey were 3.8% (urban) and 7.9% (rural). According to the National Crime Records Bureau (NCRB) data of 2020, a total of 785 cases were registered under the Prohibition of Child Marriage Act. In 2019, 523 cases were registered under the act, while in 2018, 501 cases were lodged. According to the data, the number of cases registered under the Prohibition of Child Marriage Act in 2018 was 501, in 2017 were 395, in 2016 were 326 and in 2015 were 293⁹.

In the light of above facts and figures immediate action to curb child marriage is vital and hence Government has come up with the action plan in the form of Child marriage (Amendment) Bill 2021. Law is a tool to bring in social transformation and probably the proposed law may help to bring in gender parity and resolve other related issues.

Merits

By increasing the age of marriage for females to 21 years gender parity will be achieved. The Maternal Mortality Rate (MMR) and Infant Mortality Rate (IMR) due to early marriages will be reduced¹⁰. It will lead

¹ Article 25-28

² Section 5(iii)

³ The Indian Christian Marriage Act, 1872 and the Special Marriage Act

⁴ The Prohibition of Child Marriage (Amendment) Bill 2021

⁵ December 20, 2021

⁶ The Union Minister for Women and Child Development (MWCD)

⁷ As accessed from <https://www.unicef.org/india/media/1176/file/Ending-Child-Marriage.pdf>

⁸ As accessed from http://rchiips.org/nfhs/factsheet_nfhs-4.shtml

⁹ As accessed from <https://ncrb.gov.in/en/Crime-in-India-2020>

¹⁰ Nirmala Sitharaman in her Budget speech of 2021

to social-economic empowerment of women¹¹. It will be a positive step towards adopting Uniform Civil Code¹². It will reduce the risk health complications due to early pregnancies¹³.

Demerits

Reforms in personal laws could lead to serious legal implications and mass instability as a result of the clash between the validity of the pre-existing personal laws and the newly formed uniform law¹⁴. Enforceability is doubtful as despite having punitive punishments under earlier laws still Child marriages are prominent in rural India¹⁵. Will increase criminalization of marginalized communities¹⁶ Marriages will go underground¹⁷

Issues

Several global organizations such as UNICEF have specified children under the age of 18 as minors and marriages below the specified age as child marriage;¹⁸ will this move of increasing marriage age for girls not be in contravention of global organizations specifications. Issue will arise If a person is not mature enough to marry at the age of 18; how can they cast vote¹⁹ Age of Majority Act as per Majority Act 1875 is 18²⁰. As per Juvenile Justice Act, Child is under age of 18 years. As per various Labor law legislations Adult is 18 years of age and above²¹. Under POSCO²² Act also child is below 18²³. Age for entering contract is 18 years²⁴. Even the Supreme Court, in the *Independent Thought* case²⁵, held that it is universally accepted that a child is someone who's under the age of 18, and that should be the age of marriage. The CEDAW (Convention on the Elimination of all Forms of Discrimination against Women)²⁶ Committee also recommends 18 as the age of marriage²⁷.

¹¹ Jaya Jaitley only women M.P in the panel of 31.

¹² D. Gupta and A. Rai, "Increase in age of marriage for girls in India-A two-way analysis", March 24, 2022 as accessed from <https://articles.manupatra.com/article-details/Increase-in-age-of-marriage-for-girls-in-India-A-two-way-analysis> April 19, 2022

¹³ Marphatia, Akanksha A et al. "Women's Marriage Age Matters for Public Health: A Review of the Broader Health and Social Implications in South Asia." *Frontiers in public health* Vol. 5 269. 18 Oct. 2017, doi:10.3389/fpubh.2017.00269

¹⁴ Puniyani, Riya, "Uniform Civil Code and Conflicts of Personal Laws", (July 4, 2020). Available at SSRN:

<https://ssrn.com/abstract=3643457> or <http://dx.doi.org/10.2139/ssrn.3643457>

¹⁵ Summary report of research in Bangladesh, India and Nepal Pg no 13 as accessed from <https://www.icrw.org/wp-content/uploads/2016/10/PLAN-ASIA-Child-Marriage-3-Country-Study.pdf>

¹⁶ In a petition initiated by The Concerned for Working Children CWC started this petition to Ministry of Women and Child Development <https://www.change.org/p/ministry-of-women-and-child-development-we-do-not-want-the-minimum-age-of-marriage-of-girls-to-change-from-18-to-21-years>

¹⁷ H. Horii, "Child Marriage, Rights and Choice: Rethinking Agency in International Human Rights", Routledge, 2021

¹⁸ Arthur, Megan et al. "Child Marriage Laws around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities." *Journal of women, politics & policy* vol. 39,1 51-74. 22 Nov. 2017, doi:10.1080/1554477X.2017.1375786

¹⁹ 61st Constitutional Amendment Act of 1988

²⁰ Sec 3(1)

²¹ The Factories Act, 1948, the young person is defined as "child" or "adolescent" (a person who has reached the age of 15 but has not reached the age of 18).

²² Protection of Children from Sexual Harassment Act, 2012

²³ Sec 2(da)

²⁴ Section 11 of the Indian Contract Act

²⁵ *Independent Thought vs. Union of India* (2017) 10 SCC 800

²⁶ An international treaty adopted in 1979 by the United Nations ...

²⁷ Article 16 (2) and the provisions of the Convention on the Rights of the Child

The ratio of men and women is 30:1 in Parliamentary panel reviewing the bill relating to increasing age of girls for marriage.²⁸ Still the reason to bring the change in age is said to bring Gender Parity. It may increase the cases of live in relationship as there is no law in India prohibiting it²⁹.

Concerns

Increasing the age of marriage will add to the existing difficulties of girls' access to reproductive and sexual healthcare facilities³⁰. Law would be coercive and have a negative impact on marginalized communities like SCs and STs³¹. This move would also criminalize a vast number of marriages and would add to the existing burden on the judicial system. Increase the age of marriage to 21 years would mean that girls will have no say in their personal matters until they are 21 may only strengthen patriarchy³². May increase persecution of girl's right up till 21 years; like in Hadiya case³³. The elementary right that the child rights convention bestows upon minors the right to be heard, the right for their views to be considered will be denied to girls right up till 21, beyond adulthood.

Perception of People in Aurangabad based on their responses

A case study was conducted in Aurangabad city and people's opinion was sought through questionnaire circulated through Google forms based on their responses their perceptions are put forth by the researcher in this paper.

The respondents were between the age group of 16-18 years (one respondent); 18-21 years (19 responses) and 21 years and above (36 responses). The respondents were from two dominant religions in Aurangabad from Hinduism (13) from Islam (41). From females (46) responded whereas from males (10). Responses from married persons were (24) unmarried (31) and one from divorcee. (26) Respondents were post graduate (20) graduate (7) intermediate (2) matriculate and (1) non-metric. Out of (56) respondents (24) have said that in their culture women are married after 18 (10) have said girls are married before they attain the age of 18 years and (22) have admitted that no such criteria is followed amongst them.

²⁸ India Today Jan 2, 2022

²⁹ C.L Narayan, M. Narayan, M. Deepanshu, "Live-In Relationships in India—Legal and Psychological Implications" Journal of Psychosexual Health. 2021;3(1):18-23. doi:10.1177/2631831820974585

³⁰ Marphatia, Akanksha A et al. "Women's Marriage Age Matters for Public Health: A Review of the Broader Health and Social Implications in South Asia." Frontiers in public health vol. 5 269. 18 Oct. 2017, doi:10.3389/fpubh.2017.00269

³¹ V. Bhalla, "Increasing the marital age of women to 21 is counter-productive", says pioneer of the women's movement, Flavia Agnes", January 27, 2022, as accessed from <https://theleaflet.in/incr>

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³² F. Agnes, "Increasing marriage age for girls may only strengthen patriarchy" Times of India Dec 19, 2021

³³ Shafin Jahan vs Ashokan K.M. & Ors (2018) 16 SCC 368, AIR 2018 SC 1933

The following table shows the details of the responses collected based on questionnaire

Table 1.0

Q. No.	Question	Yes	No	Not sure	Total
1	Are you aware that government is planning to increase the age of marriage for girls from present 18 to 21 years?	53	03	01	56
2	Do you support the idea of increasing age of marriage for girls from 18 to 21 years?	30	19	07	56
3	Will this move bring Gender Equality?	21	21	14	56
4	To bring gender Parity Should male's age be reduced to 18 from existing 21?	16	23	17	56
5	Do early marriages hinder Educational and Socio-economic status of females?	34	15	07	56
6	Will this move encourage live in relationship as no law in India prohibits it?	31	10	15	56
7	Will it lead to criminalization of vast number of marriages in India?	30	11	15	56
8	Will it add to the existing difficulties of girls' access to reproductive and sexual healthcare facilities?	33	10	13	56
9	Will it lead to fertility issues?	25	15	16	56

Source: Survey Questionnaire via Google form

https://docs.google.com/forms/d/e/1FAIpQLSfmx2seHVdjO8qXBQ3dtIP98qfnL2tUPfEmD5NF-HSKph-YiQ/viewform?usp=sf_link

Conclusion and suggestions

Thus, from the above table following conclusions can be drawn; most of the people are aware about the proposed legislation; many are favoring the idea of increasing the legal age of marriage for girls; as far as plea of gender parity is given by government for making this move people's does not seem to agree with it; regarding reducing male's legal age for marriage people's opinion are divided. Most of the people are of the opinion that early marriages do hinder socio-economic status of females. More than half of the respondents apprehend that this move will encourage the idea of live-in relationship. More than half of the respondents feel that criminalization of marginalized community will increase as child marriages are common in their culture. Girls getting into marital relationship usually hide their age and this move will be detrimental in the interest of such girls as it will adversely affect their right to access reproductive and sexual healthcare facilities. As far as fertility issues are concerned people don't opine that it will arise.

- To bring gender parity women empowerment is vital and it requires addressing core issues that women face, rather than imposing coercive laws. Such as: increase in access to educational facilities, healthcare facilities, skill and career development, creating job placement and employment opportunities this will obviously cause delay in the age of marriage of women.
- The reviewing panel must have a greater number of female members.
- Laws must be framed for Live in relationship as age of marriage between adults is being regulated same must be applicable for Live-in otherwise to avoid criminalization due to age of marriage the girls will prefer to enter in live-in as what cannot be done legally can be done illegally in absence of law.

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