

## 18 v 21: AN ANALYSIS OF MARRIAGEABLE AGE IN INDIA

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### ABSTRACT

*The Prohibition of Child Marriage (Amendment) Bill 2021 seeks to amend the Prohibition of Child Marriage Act (PCMA) 2006. The Bill proposes to increase the legal marriageable age of women to 21 years. The basic purpose of the research is to analyze the provisions of the bill in relation to various issues associated with it. Further, there is inclusive research to find out the advantages and disadvantages of the Bill.*

**Keywords:** Marriage, Age, Women, Prohibition, PCMA, Legal.

### INTRODUCTION

India is a multi-religious country where people believe and follow different religions and faith. Thus, marriages in India are also a multi-religious and multi-faceted concept. This has resulted in the formulation of various personal laws relating to marriage and other cultural practices. Therefore, the age requirement for a valid marriage also differs from religion to religion. For example, according to The Hindu Marriage Act, 1955, the minimum age requirement for a valid marriage is 21 years for males and 18 years for females. But according to Muslims, 15 years or the age of puberty is considered the minimum age requirement to get married.<sup>1</sup>In addition, India being a Patriarchal society, women were the victims of child marriage since time immemorial. Thus, in order to bring uniformity in the legal age of marriage, the centre introduced a bill that raised the minimum age requirement for females from 18 to 21 years. The Prohibition of Child Marriage (Amendment) Bill 2021 provides equal opportunity to women at par with men. This bill has universal application irrespective of religion and community. Further analysis of the bill has been dealt with later in this paper.

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<sup>1</sup>Dr. Shahela Yasmeen, Increasing Legal Age Of Marriage Of Women In India-Socio-Legal Issues And Concerns- A Case Study Of Aurangabad City ISSN: 2320-2882 IJCRT 2022  
<<https://ijert.org/papers/IJCRT22A6707.pdf>>

## RESEARCH METHODOLOGY

The researchers have used doctrinal methods i.e., references from primary sources like Acts, Rules and Regulations to study the present Bill at hand. The researcher has also taken references from secondary sources like books, articles, journals, and newspaper letters to understand and analyse the issues relating to the Prohibition of Child Marriage (Amendment) Bill 2021.

## HISTORY AND EVOLUTION OF MARRIAGEABLE AGE IN INDIA

Since the Rig Vedic era, child marriage has been in practice throughout the nation. The personal laws of Islam and Hinduism do not specifically forbid child marriage.<sup>2</sup> According to Manusmriti, a girl can find a spouse herself if her father fails to marry her off within three years of the child reaching puberty.<sup>3</sup> According to Medhatithi, one of the earliest and most experienced commentators on the Manusmriti, the age of eight years old is the ideal age for a girl to be married.<sup>4</sup> The Rig Veda also states that Garbhadhan (achieving the womb's wealth) is one of the 16 Samskaras that a Hindu is obliged to perform. Megasthenes, a Greek explorer, observed that women belonging to the Pandian empire in South India start having children at the age of six. According to a Persian Polymath, Al Biruni, child marriages were common in India around seven centuries later.

However, a reform in the practice was observed during the colonial period. The Age of Consent Act, of 1861 was the stepping stone in the reformation. The Act set forth the minimum age for sexual intercourse at 10 years. In 1891, an amendment was introduced in the aforementioned Act. The Amendment increased the age of consent from 10 to 12 years irrespective of marital status. Any violation of this provision was punishable as rape.

The Joshi Committee was established to provide recommendations on the legal age for consent and marriage for both men and women in British India. The National Council of Women in India, The All-India Women's Conference, Women's Indian Association were active supporters of raising the legal age for consent and marriage. Thus, they formulated and presented the case for the same before the Joshi Committee. Further, Muslim women also supported the idea of increasing the age for marriage. On 20 June 1929, the Joshi Committee

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<sup>2</sup> Optimize IAS, <https://optimizeias.com/history-of-child-marriage/> (last visited June 12, 2023)

<sup>3</sup> Ibid.,2

<sup>4</sup> Ibid.,2

submitted its report to the Legislative Council. It was passed on September 28, 1929, and was known as the Child Marriage Restraint Act, 1929. The Act also came to be known as the Sarda Act, named after its proponent, judge and Arya Samaj member, Harbilas Sarda. After Independence, an amendment was further made to the Act in 1978 which raised the marriageable age to 21 and 18 years for males and females respectively.

However, the above-mentioned Act did not emphasise authorities as potential sources for preventing child marriages, which made it difficult and time-consuming to take action against such marriages. Thus, in order to address this issue, the centre introduced the Prohibition of Child Marriage Act (PCMA) in 2006 which was effected on 1 November 2007. This Act made several substantial adjustments to further safeguard the youngsters while keeping the legal age of marriage the same. It made it possible for minors who were coerced into child marriages to annul their marriage up to 2 years after becoming adults. In some cases, marriages between minors can be dissolved before they are 18 years old. If the marriage is declared invalid, all gifts, money, and possessions must be returned, and the girl must be given a place to live until she marries or reaches adulthood. Moreover, the Act provides that children born out of such child marriages are legitimate. Children born from child marriages are considered legitimate, and the courts are expected to give parental custody with the children's best interests in mind. It punishes any male above the age of 18 years who marries a minor or anybody who oversees or performs a child marriage ceremony with a fine or up to two years of imprisonment.<sup>5</sup>

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Now, The Prohibition of Child Marriage (Amendment) Bill, 2021 seeks to amend the PCMA.

### **THE PROHIBITION OF CHILD MARRIAGE (AMENDMENT) BILL 2021**

The Ministry of Women and Child Development instituted a committee led by Jaya Jaitley to analyse the relationship between marriage and issues relating to Infant Mortality Rate (IMR), Maternal Mortality Rate (MMR), nutrition, etc.<sup>6</sup> The analysis recommended raising the marriageable age to 21.

Another factor that led to the amendment is gender equality. According to the Special Marriage Act, 1954 the legal marriageable age for a woman is 18 years and for a man is 21

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<sup>5</sup> Ibid.,5

<sup>6</sup>Tejaswini Kaushal and Vidushi Maheshwari, 18 Or 21: The Debate Over the Legal Age for Marriage Analysed, Human Rights Pulse (last visited June 12, 2023 <https://www.humanrightspulse.com/mastercontentblog/18-or-21-the-debate-over-the-legal-age-for-marriage-analysed>)

years. However, when the legal age for giving valid consent, for casting a vote and the age of majority is the same (18 years) for both men and women, there seems to be no reasonable justification for such a difference in marriageable age.<sup>7</sup>

### *Independent Thought v Union of India*<sup>8</sup>

In this landmark case, the Apex Court it is crucial to bring parity in the marriageable age of men and women. Thus, all of the above factors led to the introduction of The Prohibition of Child Marriage (Amendment) Bill, 2021 in the Lok Sabha on December 21, 2021.

### **KEY AMENDMENTS**

- The Bill seeks to amend the PCMA, 2006 by raising the legal age of marriage for women to 21 years. Moreover, the bill will have an overriding effect over all other laws, practices and customs.<sup>9</sup>
- The Bill also increases the time period for annulment of marriage to 5 years from the date of attaining majority i.e., 23 years.

### **OBJECTIVE**

The objective behind the amendment is empowering a woman through improvements across various factors like nutrition level, infant and maternal mortality rates, the sex ratio at birth, labour force participation and gender equality.<sup>10</sup>

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### **ADVANTAGES**

The following are the advantages of raising the marriageable age of women:

- The first and foremost advantage is gender quality. The same age for marriage for both men and women will provide gender parity in line with Article 14 of the Constitution.
- Even today, in many parts of the country, children, especially girls, are forced to drop out of education and get married. Thus, with the increase in the legal age to marry,

<sup>7</sup> Divvyaa Jain, IMPACT OF INCREASE IN MINIMUM LEGAL MARRIAGE AGE OF WOMEN IN INDIA, Project State Craft, (last visited June 12, 2023) <https://www.projectstatecraft.org/post/impact-of-increase-in-minimum-legal-marriage-age-of-women-in-india>

<sup>8</sup>Independent Thought v Union of India AIR 2017 SC 4904

<sup>9</sup> PRS India, <https://prsindia.org/billtrack/the-prohibition-of-child-marriage-amendment-bill-2021> (last Visited June 13, 2023)

<sup>10</sup> Ibid., 10

girls will have an opportunity to continue their studies. Subsequently, the number of dropouts will also decline. Moreover, the three-year extension will provide both boys and girls an opportunity to enhance their skills in financial literacy. Also, this will help them in better decision-making relating to the management of financial resources at home and at work.

- This amendment seeks to address issues associated with maternal aging. According to data from the National Family Health Survey (NFHS), unlike early marriages, late marriages enable mothers to receive all the nutrients they need and provide them the essential parenting skills.
- Marriages that are forced violate the rights of an individual. It has an adverse impact on mental, physical and emotional well-being. Child marriage not only affects boys and girls but also the society at large. Society slips into the cycle of poverty that sustains gender inequality, illiteracy, starvation, and high rates of newborn and maternal death. One of the main goals of this bill is to provide the most marginalised teenage girls the ability to make educated decisions, specifically, those who are already married or at risk of becoming child brides. Therefore, the introduction of this legislation might eradicate the evils from society.
- The age extension will provide both boys and girls with better access to education and government programmes. This will lead to opening up new pathways for employment and thereby accelerating the progress of the country. Such opportunities will help in the better application of skills and knowledge in the process of job hunting. It may also enable them in setting up their own business or startups and thereby gain financial independence and add to the country's income.

## **DISADVANTAGES**

The following are the disadvantages of raising the marriageable age of women:

- Even after the introduction of The Prohibition of Child Marriage Act, 2006 child marriages continue to be practised in many parts of the country. Some reports suggest that one in four females is getting married before attaining the age of 18 years. This reveals a lack of proper implementation. Thus, an amendment will not solve the problem but only delay the issue for 3 years. The spirit of execution will also be harmed because there is no effective monitoring system with the government, which would defeat the very objective of the amendment.

- It is also not certain if more families will permit females to continue their education when the legal age of marriage is increased to 21 years. The patriarchal households might misuse this period to impose limits and regulate their actions.
- A large number of dropouts from schools or colleges are not solely for marriages. Poverty, lack of good quality education, and poor infrastructure like toilet facilities also influence the dropout rate. Thus, increasing the legal age of marriage won't solve this problem. Instead, efforts should be made to provide good quality education.
- With the introduction of such a bill, there is a higher chance that new instances of marriages founded on grounds of illegal age would be registered. This will significantly slow down the speed at which justice is delivered to young people, both male and female and increase the number of cases in the legal system.
- Marriage at an early age is an age-old and deep-rooted concept. It is believed that marrying off girls at a young age decreases the amount of dowry and acts as a shield against sexual violence. In addition, altering people's mindsets is a major challenge and a very challenging process. Change is something that is a difficult process and requires universal acceptance from both sides, despite creative solutions and ongoing attempts by the government to educate and increase awareness among communities.

#### **COMMITTEE RECOMMENDATION**

- A report released by United Nations International Children's Fund (UNICEF) 2020, suggested that at the age of 18 years, an individual is physically, mentally and emotionally mature enough to get married. Thus, it recommended 18 years as the legal age for both males and females.
- In 2016, a report released by the United Nations Convention on the Rights of the Child suggested that the legal age of marriage for both males and females should be the same as that of the age of majority.
- The parliamentary standing committee suggested 18 for females and 21 for males. Although two distinct ages are acceptable socially and culturally in the country, it was also noted that contradicting definitions of a child in various laws may result in misunderstanding, uncertainty, and doubt.
- Law Commission report released in 2008 stated that there is no scientific rationale behind different marriageable ages. Thereafter in 2018, it stated that people have the

right to elect their representative at the age of majority. Thus, people should also have the right to choose their partners at 18 years of age.

## ANALYSIS OF THE BILL

**The difference in the age of marriage and the age of the majority.** The age of majority according to the Majority Act, 1875 is 18 years. However, the bill seeks to raise the marriageable age to 21 years. Such differences might affect the rights and duties of people belonging to 21 and 18 years of age.

**Prohibition of marriage below 21 years:** The minimum legal age requirement of marriage is at odds with some Supreme Court judgments.

In the case of *Shafin Jahan vs Ashokan and Others*<sup>11</sup>, the Apex Court ruled that the Right to Life under Article 21 of the Constitution includes the right to marry as well. Further, it opined that the “*right could not be restricted unless it was done so by a law that was both substantively and procedurally just and reasonable.*”<sup>12</sup>

In the case of *Shakti Vahini v Union of India and others*<sup>13</sup>, it was observed that selecting each other as partners consensually is an expression of choice within the meaning of Articles 19 and 21 of the Indian Constitution.

The Bill imposes a restriction to marry under the age of 21 years. However, the issue is whether such a restriction falls within the legal definition of reasonable restriction. There are 3 conditions to be fulfilled to impose restrictions on the fundamental rights of citizens:

- It must have a public purpose,
- The restriction must be related to that purpose,
- and there must be no less invasive means to accomplish the goal.

In the case of *Navtej Singh Johar and Others Vs Union of India*<sup>14</sup>, the Apex Court held that consensual sexual relations between consenting adults are a basic right under Articles 14, 15, 19 and 21 of the Constitution while reading down Section 377 of the Indian Penal Code,

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<sup>11</sup>Shafin Jahan vs Ashokan and Others AIR 2018 SC 1933

<sup>12</sup>Ibid.,12

<sup>13</sup>Shakti Vahini v Union of India and others(2018) 7 SCC 192

<sup>14</sup>Navtej Singh Johar and Others Vs Union of India,AIR 2018 SC 4321

1860. If this Bill were to become law, sexual activity will be legal however marrying below the age of 21 years is illegal.

**Infant Mortality Rate and Maternal Mortality Rate:** Reports reveal that Infant Mortality Rate and Maternal Mortality Rates have significantly improved. Maternal Mortality Rate has decreased by 80% since 1990 and Infant Mortality Rate has reduced by 69%.<sup>15</sup> According to the Ministry of Women and Child Development, there is no viable source or date to show that child marriage is the sole reason behind Maternal Mortality Rate and Infant Mortality Rate. The reason behind IMR and MMR might be some other factors such as nutrition, poverty, lack of hospital privileges, etc. For instance, a number of studies suggest that one of the primary causes of a high MMR is anemia. According to the most recent NFHS-5 (2019–2021) study, 57% of women between the ages of 15 and 49 have anemia.<sup>16</sup>

**Participation in Labour:** The Labour Force Participation Rate is the proportion of the population that is employed or actively seeking employment. Annual Periodic Labour Force Survey 2019–20 reveals that women between the ages of 15 and 59 had an LFPR of 32.3%, which was much lower than the 81.2% for males. According to a report from the International Labour Organisation (ILO), the LFPR is impacted by a number of economic and social factors. They are (i) level of education, (ii) marriageable age and fertility rates, (iii) economic consequences, (iv) social standards, and (v) urbanisation. According to the ILO, India's low LFPR is mostly due to a lack of work options, the impact of growing household income, an inaccurate assessment of women's labour force participation, and increased secondary school enrolment.

## SUGGESTIONS

The Government of India has taken a commendable step by increasing the marriageable age for women. The step aimed at solving social issues, however, is not enough to effect change. A report released by the Ministry of Statistics and Programme Implementation reveals that the average marriageable age for women has climbed to 22.1 years, which is much higher than the current and planned minimum age requirement. The average age of 22.1 years mostly pertains to Urban women. Thus, it follows that this transformation is not just voluntary but is accompanied by a rise in income and education levels. In order to bring

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<sup>15</sup>PRS India, <https://prsindia.org/billtrack/the-prohibition-of-child-marriage-amendment-bill-2021> (last visited June 15, 2023)

<sup>16</sup>Ibid.,16



about a change in society, such amendments must be accompanied by other pertinent initiatives and measures such as:

- Initiatives must be taken for providing a safe and secure environment for a girl's education. The Government must take steps to improve the quality of education so as to make education worthy of investment for guardians.
- Organising capacity and skill development programs for teenage girls in order make them realise their strength and potential to become financially independent.
- More emphasis must be paid to creating paid employment opportunities that are safe and secure for a woman.
- In order to keep track of illegal marriages, marriage registration must be made compulsory.
- Programmes and policies for marginalised and backward communities to get access to education, health, employment and other related facilities.

## CONCLUSION

The institution of marriage is not affected by age; rather it is shaped by many other factors such as economic and financial situations, early pregnancy, fear of torture and violence and sexual relationships. Legislation should not be the one-stop solution to solve an issue. One must comprehend and understand the issue from its core. Girls must have parity in terms of health, education, and living conditions. Increasing the number of women in the workforce can also assist to reduce early marriages and address gender inequality. At present, the Bill has been referred to a standing committee of Parliament. However, India has a long journey ahead to bring women an equal standing as that men regardless of their socioeconomic situation, caste, or religion.