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Is 3 years Margin, the Indian women’s maturity margin?

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The Union decision on the report submitted by Jaya Jaitley led Task Force in approbation of women's conditions, to the Office of Prime Minister and other high officials materialized into the amendment of Prohibition Of Child Marriage Act (PCMA), 2006. The paper tries to collate the row of critical opinions swarming about, from women's organizations, Islamic followers, and various NGOs along with the developmental goals, the government has tied with the marital age raise of women from 18 (since 1978) to 21 years. The paper conscientiously examines the central regime's strategic approach in curbing individual privacy, its patriarchy appeasing vigilantism and previous in-state enactments erstwhile considering the prospect of accuracy, political fabrication worn to safeguard personal interests, and the veracity of claims put forth by the critics. The paper has employed a statistical backbone to salvage the critical, analytical and probationary attempt at harmonizing massive opinions and realities, using Doctrinal methodology. The paper entailing a comprehensive explication of the amendment and stances that have made popular appearances seeks to conclude on the note of dissecting intent from implementation and arriving at a real-time elucidation of what will work, what might not, and what is expected to.

Keywords: *women, maturity, margin.*

INTRODUCTION

The Critics' Reflection of the Amendment (Using Virginia Woolf's “Stream of Consciousness” technique)

The Feminists ask, is sublimating the age of marriage from 18 to 21 years, restricting a woman's autonomic sexual rights until 21? Given the ambiguities on the age of consent, many women's organizations see the elevation as tongue-tied over the legal discretionary powers a woman exercises to have herself consensually indulged in physical relations after 18 years. As active cases of parents controlling their daughters' sexual preferences, and subsequently chastening them for eloping, establishing premarital love affair or being sexually engaged, to the extent of *penalizing them, with the active collusion of state functionaries*¹ through early settlement marriages, several questions emanate on the contours of women's rights on their bodies. It comes as a displayable rationale for the government to deploy the elevation, given that the law will *unfold within a society that is deeply entrenched in patriarchy*². On the contrary, the All India Muslim Personal Law Board (AIMPLB) representing the Islamic community has held an antagonistic stance apprehending the center to have superseded with uniform amelioration, many personal laws including that of the Islamic Shariat.

Laws that the new amelioration is abrogating or disordering with Uniform Civil Code

- *The Indian Christian Marriage Act of 1872*³
- *The Hindu Marriage Act of 1955*⁴
- *The Muslim Personal Law (Shariat) Application Act of 1937*⁵
- *The Parsi Marriage and Divorce Act of 1936*⁶
- *The Special Marriage Act of 1954*⁷
- *The foreign marriage act of 1969*⁸.

THE ISLAMIC PERCEPTION OF THE CRITIQUE

¹ Flavia Agnes, 'Increasing Marriage Age For Girls May Only Strengthen Patriarchy' (*Times of India*, 19 December 2021), <<https://timesofindia.indiatimes.com/blogs/toi-edit-page/increasing-marriage-age-for-girls-may-only-strengthen-patriarchy/>> accessed 05 January 2022

² *Ibid*

³ Indian Christian Marriage Act, 1872

⁴ Hindu Marriage Act, 1955

⁵ Muslim Personal Law (Shariat) Application Act, 1937

⁶ Parsi Marriage and Divorce Act, 1936

⁷ Special Marriage Act, 1954

⁸ Foreign Marriage Act, 1969

Islamists question the legal consensual authority and deem discernibility that a below 21 girl exploits to establish sexual liaisons, share live-in relationships, and in fact vote, but to not decide for marriage. They allege the conflicting raise to have ceased parallels with the age, Islamic law deems ideal for its women i.e. predominantly 18 years. *Carried forward with the claim of Center's intrusive modifications in the Divorce jurisprudence traditionally enforced by Islamic personal law, and the intended Uniform Civil Code (UCC) is further "chipping away at the personal laws of communities", "undermining the individual's right to freedom of religion guaranteed under Article 25 of the Indian Constitution."*⁹

Their claims also situate 21 years bar as one that stretches parental allegiance towards assuring the security of their daughters for 3 more years in a country quite vulnerable to gender-specific crimes, without the government having empowered them or pushed judicial and administrative channels in place to ensure their safety. Without a biased will to negate the law, however, Islamists seek answers to how malnourishment leading to debilitating physical growth at 18 years has been countered by the 3-years of redundant raise without ensuring proper nutrition and healthcare adequacies for girls, resulting in no tangible difference. Despite the masquerade, Islamic intent, religion-fostered rationale, and the quest to cite farsighted instances to compel the government to enable them the freedom to voluntarily decide marital ages as per their personal laws is clear. As we may find in the history of the *1929 Child Marriage Restraint Act under the Imperial Legislative Council of India*¹⁰, wherein countering the uniform marital age raise of girls to 14 years, Muslims won in favor of retaining the authority to decide for Muslim daughters' wedding, by the guardian's supreme merit. However, they fail to consider that today, India accounts for *223 million victims of child marriage, harboring one-third of the world's early-married girl population*¹¹ and many more with misogynistic mentalities bounded only by the law. And this can't be wiped off by

⁹ Tarushi Aswani, 'India Proposes to Raise Legal Marriage Age for Women' (*The Diplomat*, 28 December 2021) <<https://thediplomat.com/2021/12/india-proposes-to-raise-legal-marriage-age-for-women/>> accessed 07 January 2022

¹⁰ Child Marriage Restraint Act, 1929

¹¹ 'Union Cabinet approves raising the legal age for marriage of women to 21 years' (*Gaon Connection*, 18 December 2021) <<https://en.gaonconnection.com/india-women-marriage-age-health-narendra-modi-niti-aayog-covid19-child-marriage/>> accessed 07 January 2022

gradually bolstering an already corrupt infrastructure, but to license, the law of putting an immediate end to it backed by empowerment, but our only doubt is... is the backup in place?

THE LEGAL INSIGHTS OF THE AMENDMENT AND POSSIBLE QUESTIONS

However, is the amendment recommended by the NITI Aayog having subsumed considerable talks with students from 16 universities, that unsinking with the nation's good? Is it ironically clutching the freedom of early lifestyle transition for women, over equipping them to bring long-run landscape transformations for themselves? Why are the actions set forth to revolutionize the conventional social systems, opposed by Liberal feminists? Are the root causes being worked upon with conscientiousness alongside the act of jurisprudence or is the policy bereft of addressing the real handicaps?

Besides, what exactly is the amendment so far?

Well, the 2021 law proposed as a suite of recommendations by the task force instituted to look into the education and health of early married women led by Jaya Jaitley, Samata Party's chief to the NITI Aayog panel constituted by Academicians, secretaries of higher education, health, women and child development along with other legislative department heads. The law won over with the standing committee's approval on Dec. 15, 2021.¹²

1. Reinstates the definition of 'child' as anyone below 21 years of age.¹³ Having raised the maturity standard, girls below 21 would not be legally exempted if allegedly found engaging in sexual activities which are problematic to many radicals. As there's no subdefinition for 'age of consent, women are robbed of their rights on their bodies and that government isn't decisive of individual maturity.

¹² 'Govt. May Table Bill To Raise Women's Marriage Age To 21' (*The Hindustan Times*, 17 December 2021), <<https://www.google.com/amp/s/www.hindustantimes.com/india-news/govt-may-table-bill-to-raise-women-s-marriage-age-to-21-101639680778337-amp.html>> accessed 07 January 2022

¹³ Eesha Arora & Deeptiman Tiwary, 'Bill To Raise Marriage Age Of Women Seeks To Override Laws Across Faith, Sent To Panel' (*The Indian Express*, 22 December 2021) <<https://www.google.com/amp/s/indianexpress.com/article/india/bill-to-increase-marriage-age-of-women-to-21-yrs-to-be-sent-to-house-panel-smriti-irani-7684161/lite/>> accessed 06 January 2022

2. Disqualifies the existing Prohibition of Child Marriage Act, 2006, countermanding existing legal practices with respect to the same.¹⁴

3. Democratize the age bar to erase marital inequities and consequent age-aided differences.¹⁵ For a woman to ripen herself, become a decisive individual, and get enough room to learn about her rights and for the nation to embark the legal zone of gender equality, escalation in the female workforce, get their women to a parallel pedestal with men and become holistically self-reliant, is the stated goal.

4. Illegalize with more contempt child marriages and any laws (personal), customs, or practices governing the parties involved.¹⁶ (such that early engagement practices and farewell once the bride completes 21 years is prohibited). This translates into communal havoc, religion-based or from those belonging to marginalized, tribal, and poor communities. Their ideology needs a brainwash followed by the legal handcuffs of restriction.

5. Rules out with the overriding impression of the said law over any law, practice, or provision concerned with marriages in India.¹⁷

6. Providing the window of "consequential amendment" to laws that assume a discipline in marriages in India.¹⁸ Property rights along with maintenance and divorce are to be addressed in a raft of ameliorations.

7. Having asserted its revolutionary stance, the law is to be given the executorial license, 2 years from the date it obtains assent from the President.¹⁹

A brief glimpse into history: Now, that the law talks of elevation, the history is somewhat indefinite to unfold. Critics have been unrivaled in calculating backward to *the 1900s, when the*

¹⁴ *Ibid*

¹⁵ *Ibid*

¹⁶ *Ibid*

¹⁷ *Ibid*

¹⁸ *Ibid*

¹⁹ *Ibid*

marital age for girls was 10 years following the 1929 reevaluation to 14 years, thereafter making it to 15 years in 1949, followed by 18 years in 1978 until amended to 21 years in December 2021.

18 YEARS: MATRIMONY VS SUFFRAGE?

The critics have quoted the exemplification of Voting rights that also go in line with 18 years bar, substantiating their claim of the age being the legal standard for men and women to choose a nation's governance while in sharing a conjugal space, the same aged woman is to be held as unqualified as an immature child. Well, it is to be acknowledged that adapting to a completely alien environment alongside addressing emotional and physical fluctuations is too much as compared to pressing a button based on an election mandate in a crowd. However, the incongruity being ushered in by two situations: *A recent amendment coming as reinforcement by the Election Commission of India of the Representation of the People Acts of 1950 and 1951 to roll out months of April, July, and October to compliment prompt registration for the ones who've completed 18 years (14), and the previous government's consistent denial of the Law Commission's 2008 proposition over relegating men's marital age to the uniformity of 18.*

WHY WAS THE AMENDMENT NEEDED IN THE FIRST PLACE?

Further, they argue about the certain upsurge of underage marriages that can be evident in the upcoming years. The *Prohibition Of Child Marriage Act (PCMA)*²⁰ that is amended through verbal stampede and reprobatory challenges in the parliament, had primarily set sail in 2006, after repeated infringements of the minimum legal age of marriage fixed for women as 18 years in 1978, 40 years hence, the early-age marriages account for a similar quantum underlining the failure. However, it was first in 1929 that Child marriages were illegalized under British rule, but in lack of effective demarcation, there was no tangible impact reckoned.

Well, the 2005 statistics make it difficult to deny the aforementioned even in contemporary days, having only considered 18 years as legal. *To see over 23.3% feminine population being ferried-off in child marriages in 2019-20 recording a 4% de-escalation margin from 27% in 2015-16, while 14.7% of the urban marriages were underage.* ⁽¹⁶⁾ *while half of the women*

²⁰ Prohibition of Marriage Act, 2006

*population who were as young as 25 claimed to have been married before attaining minimum legal marital age (as published by the National Family Health Survey)*²¹, and to record the worst, *over 7% of girls falling in 15-18 years margin is pregnant*²², bringing to light that the actual need is of extending more accessibility to education, industrial exposure, and making it a safe and encouraging journey. It is yet another factual intricacy to consider the veracity of marriages that have happened around or just after the girl celebrates her 18th birthday. It boils down to the mentality of the poverty-stricken or the uncouth to have waited for their daughters to turn 18 merely to evade offending the law or inviting cognizance, and not motivated by the goal to have her mature enough for the wedding. The government needs to address people about that they're not burdened for the three extended years, they're but exempted from drowning in the cumbersome psychology of extraditing daughters, who could've been a breadwinner or a matter of pride, had she been given more years to mature and explore.

CENTER'S VISION OF INDIA: A PURPOSEFUL PERCEPTION BASED ON UNADDRESSED ROOT CAUSES

*As the government rightly claims to eliminate comprehensive gender inequality, decelerate **infant mortality rate (IMR)** and **maternal mortality ratio (MMR)***²³, and give extended room for better educational pursuits by legally allowing more years for women to grow anatomically wielding greater nutritional levels and reproductive health, and live through psychological, civilizational and physical changes to bear the course of maternity and responsibilities that come with it.²⁴ It is to be noted that the majority of early marriages happen in rural India or uncivilized urban outskirts who either lack the economic prosperity to finance better education, infrastructural access of institutions within safe proximities, and brighter career opportunities for their girl children or don't nurture the mindset of teaching girls since they're to be married-off with lots of dowries, not eligible of carrying the legacy of primogeniture. There's hardly an explanation needed in respect to the women's sexual privileges, and taboos surrounding talks about consent, control,

²¹ Foreign Marriage Act, 1969

²² Eesha Arora & Deeptiman Tiwary (n 13)

²³ Flavia Agnes (n 1)

²⁴ Foreign Marriage Act, 1969

and contraception. Deprived of her consensual rights and mostly unaware of unguided sexual exploitation, girls succumb to early pregnancies risking their health and birthing anemic, or malnourished children whose survival is threatened by birth. In both cases, legalizing a higher age doesn't motivate people, provide financial aid streamline their access to quality education (inclusive of sex education), or perhaps even reshape opportunities for career growth or wider exposure. There's some fat data collected over the years to have critical opinions materialize from.

DOES THE CENTER'S REGIME HAVE AN IMMACULATE RECORD AS A PARTY? A GLIMPSE AT THEIR PREVIOUS POLICIES

*Besides, acting from a standpoint of BJP's previous state policies, we may advocate that the party's agenda to increase policing of private lives through prejudiced and ambiguous laws, state-exercised powers to presumably apprehend anyone over inter-community marriages, and vigilante activities especially redoubtable in states like UP, Gujarat, and Haryana, the population of which is generally categorized by extremism and conservatism, the conclusion is seemingly feeding the appetites of anyone but the nation.²⁵ The state-sponsored ungrounded vigilance over people's privacy (much under-established of Constitutional statute prohibiting obscenity in public places), the judicial eye often intervening with a biased stance in cases of *interfaith marriages predominantly Love-Jihad*²⁶, and an absence of much clarity over shifting the onus of public services like education in private hands indirectly termed in by New education policy 2020, gives some idea on the fabric of age-raise that has mostly materialized from hollowness. Below 21 years can simply find you anything but an adult, enabling aggressive policing over your legally indecisive self!*

MORE ISSUES THAT ARE SET TO SPROUT FROM THE AMBIGUITIES, THE NEW LAW SHELTERS

To foreground, another issue which may give in to compromises provided the lack of clarity in the amended statute is the concern of marital lawsuits registered by below 21 brides, that might not be

²⁵Jagruti Chandra, 'Is Raising Marriage Age Enough To Help Girls?' (*The Hindu*, 19 December 2021) <<https://www.thehindu.com/news/national/explained-is-raising-marriage-age-enough-to-help-girls/article37988102.ece>> accessed 05 January 2022

²⁶ Child Marriage Restraint Act, 1929

deemed admissible in the court of law based on the backdrop of illegalization of the said age, restricting the reach of below 21 married women's rights to exercise legal authority with respect to rights of matrimony and inheritance in absence of consequential statutory alterations of divorce and succession laws, or avail justice if happens to challenge her spouse²⁷. However, the law conditionally decriminalizes marriage under 21 years for an upcoming couple of years for men and women alike, to render them qualified for the said legal age bar by then.²⁸

As many communities including the Parsis are turning rebellious to the government policies, it's apparent that poor Indian families who see daughters as a burden and try to lower the number of stomachs to feed by marrying them off, or shifting the onus of her security and maintenance through marriage, won't be pushed to suddenly invest in her education because now the marital age is 3 years far. The ones who wait for their daughters to turn 18 to be married, apparently wouldn't celebrate if the law extends it to 21, instead redundantly wait more! Contrastingly, the wealthy Indian orthodoxy generally holds their daughter's marriage as a sign of social prestige, a lavishing show of money, family's honor adherent to tradition governed casteist and religious obligations, a question of maintaining ample age-gap, the obsession with not being too late for bearing children, and something that fathers painstaking their lifetime's entire investment to afford higher dowries for, obviously, raising the bar won't make it self-explanatory until a developmental structure isn't put in place to back it up with. In the land of survival ceasing dowries, attempts to mop the expenses of family members resulting in daughters made scapegoats and a tradition-bound patriarchal dominion, there's much more for the government to centralize its priorities on, but the age, though it is the send-off is much welcomed.

CAN WE NURTURE HOPE?

Overshadowing the critical remarks, we assumedly remind ourselves that it might be fertile to assume the raise as a harbinger of the advent of various upcoming laws and amendments that the government is silently framing for its women. To wrap it up, we shall say that above all the

²⁷ Flavia Agnes (n 1)

²⁸ Govt. May Table Bill To Raise Women's Marriage Age To 21 (n 12)

disparities, India holds an *average age of 22.1 years for women as of 2018* with an age gap of **0.8²⁹** years which reflects the hope of growth.

²⁹ Child Marriage Restraint Act, 1929