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Prohibition of Child Marriage Amendment Bill, 2021

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The Prohibition of Child Marriage (Amendment) Bill, 2021, which aims to raise the legal marriage age for women from 18 to 21, will apply to all communities throughout the nation and, once implemented, will override current marriage and personal laws. The Bill, which calls for changes to the 2006 law, was introduced in Lok Sabha and then forwarded to a Parliamentary Standing Committee for more consideration. The Sarda Act of 1929, an Indian law, established the country's first minimum marriage age. Later, it was renamed the 1929 Child Marriage Restraint Act (CMRA). The legal minimum age of marriage was changed in 1978 to 18 for females and 21 for males. The Prohibition of Child Marriages Act (PCMA), which superseded the CMRA, 1939, is a new statute that maintains the same position.

Keywords: *prohibition, child marriage, hindu marriage, puberty.*

INTRODUCTION

The Hindu Marriage Act of 1955 and the Indian Christian Marriage Act of 1872 specify that the bride must be 18 years old and the husband must be 21 years old. Marriage is permitted under the Muslim Personal Law (Shariat) Application Act of 1937 if both the boy and the girl have reached puberty. The Special Marriage Act of 1954, which regulates interfaith unions, establishes an age of marriage of 18 years for women and 21 years for males. Additionally,

under the Prohibition of Child Marriage Act of 2006, women cannot be married before the age of 18 and men cannot get married before the age of 21¹. The government would establish a task team to investigate the "age of a female entering motherhood," the finance minister said in a speech introducing the 2020 budget. " to reduce maternal mortality rates, boost nutrition standards, and make sure that women have the opportunity to pursue higher education and employment. These conditions of reference also applied to the 10-person panel led by Jaya Jaitly. Raising the marriage age is one of the panel's many recommendations, which also include a vigorous effort to change patriarchal mindsets, improving access to education by giving girls safe transportation to school, and making sure that there are restrooms and sanitary products available so that girls don't drop out, offering sex education, as well as vocational training and livelihood options.

RESEARCH HYPOTHESIS

In terms of both her and her child's undernourishment, the mother's poverty is by far the most important factor. Early marriage and the ensuing pregnancies have an effect on the nutritional status of mothers and their offspring as well as on their general health and mental wellbeing. The mother's age when childbearing has an impact on her education level, her living situation, her health, and her ability to make decisions. The majority of underage marriages worldwide occur in India. The threat of child marriage will be reduced thanks to the law. Children born to adolescent moms are more likely to be underweight and suffer from stunting. The Prohibition of Child Marriage Act (PCMA), 2006, has not been successful in preventing child marriages, and raising the legal age at marriage for girls will increase the number of people deemed to be underage and leave them without legal protection, according to the National Family Health Survey-5 (2019-2021), which found that 3% of women aged 20-24 who were married before turning 18 years old.

¹Apurva Vishwanath, 'Legal implications of enforcing age of marriage' (*The Indian Express*, 17 December 2021) <<https://indianexpress.com/article/explained/legal-age-marriage-for-women-india-law-7676748/>> accessed 19 July 2022

An analysis of NFHS-4 (2015-2016) data revealed that 56 percent of girls were married before the age of 21, and this percentage reached 75 percent among the poorest socioeconomic groups². This is also concerning when one considers the evidence showing how PCMA is mostly utilized by parents to discipline their daughters who marry against their inclinations or elope to avoid forced marriages, domestic servitude, and other forms of abuse and housework. The Bill was challenged by members of opposition parties, who also questioned the "haste" with which it had been introduced to the House. While the majority of minority communities have not voiced opposition to raising the marriage age, they do note that the Constitution protects personal laws. On two main grounds, experts have argued against raising the marriageable age. First, the law intended to stop child marriages is ineffective. Despite a small fall, child marriage has decreased from 27% in 2015–16 to 23% in 2019–20, according to the National Family Health Survey (NFHS) 5.

However, NFHS 4 saw a sharp decline from NFHS 3's 47 percent. The experts claimed that the justification for pulling girls out of school so they can get married off is exaggerated; because she lacks access to further education, young girls frequently stop attending school after primary school and are then married off. The illegality of numerous marriages that will occur once the law is in place is the second argument made against it. While just 23% of brides are under the age of 18, many more marriages take place before the age of 21. For women in the 20–49 age range, the median age at first marriage climbed from 17.2 years in 2005–06 to 19 years in 2015–16, but it stayed below 21 years. Experts stated that 70 percent of early weddings occur in underprivileged populations like SCs and STs and said that the rule will only drive these unions underground rather than outlaw them. According to NFHS 4 (2015-16), women in the social categories of Others (19.5 years), OBC (18.5), ST (18.4), and SC have higher median ages at first marriage (18.1). According to the experts, rural women would be more impacted than metropolitan women.

² Jagriti Chandra, 'Should the age of marriage for women be raised to 21?' (The Hindu, 4 September 2020) <<https://www.thehindu.com/opinion/op-ed/should-the-age-of-marriage-for-women-be-raised-to-21/article62107509.ece/>> accessed 19 July 2022

According to NFHS 4, urban women have a first marriage median age (19.8) that is 1.7 years higher than that of rural women (age 25-49). (18.1). According to research by the International Centre for Research on Women, girls who have dropped out of school are 3.4 times more likely than those who are still enrolled to be married or to have a stable marriage. UNFPA's State of the World Report 2020 states that In India, compared to 29 percent of young women with secondary education and 4 percent with post-secondary education, 51% of young women with no education and 47% of those with only primary education were married by the age of 18³. Enhancing access to education, skill development, and career prospects is necessary since these factors can prevent girls from pursuing further education. Girls are married off young because it is also crucial to create a secure environment free from the continual fear of rape and sexual abuse. For this objective, legislation raising the marriageable age is not necessary.

This measure is cosmetic and doesn't address the underlying issues that young women are dealing with. Instead of concentrating on the age of marriage, action must also be taken to address early pregnancies by expanding family planning and reproductive health support that emphasizes getting ready for pregnancy and postponing the first birth. Since child marriage is a social and economic problem, activists contend that ensuring access to education is the key to postponing the practice. Sex education in schools, as well as skill and business training, will be helpful. The government should look at expanding girls' access to schools and universities, as well as their transportation to these institutions from remote locations.

A large awareness campaign is needed to raise public awareness of the increased marriage age and to promote social acceptance of the new laws, which they claim would be significantly more favourable to women than to men superior to using coercive means. According to the Act, child marriage is one in which one of the spouses is a minor (i.e., their age is less than the minimum age of marriage). According to the Act, the party who was a child at the time of the marriage may cancel the union. Such parties may ask a district court to issue a nullity decree

³ Ambika Pandit, 'Child marriages down but still remain area of concern' (The Times of India, 25 November 2021) <<https://timesofindia.indiatimes.com/india/child-marriages-down-but-still-remain-area-of-concern/articleshow/87899928.cms/>> accessed 19 July 2022

by submitting a petition. Before the party in question has reached a majority for two years, the petition must be filed (i.e., completes 20 years of age). The Bill modifies this to let such a party file the petition before having reached a majority for five years (i.e., completes 23 years of age). Two years after receiving approval, amendments relating to raising the minimum age of marriage for women and extending the window for filing an annulment petition take effect. The Bill further states that any other law, custom, use, or practice regulating the parties to the marriage shall be superseded by the terms of the Act.⁴

WHY SHOULD THE MARRIAGE AGE BE RAISED?

- *Voting and marriage are not the same*: Marriage is regarded in our society as a lifelong commitment for which both the boy and the girl must be mature in body and mind, therefore equating the age for marriage with the age to vote or sign other documents does not fit in here.
- *Time for career development*: Girls need time to prepare if they want to pursue advanced coursework or research, join the civil service, or pursue a career in sports. In these situations, marriage gets in the way, but lifting the age limit will provide them with this important breathing room to advance in life.
- *Prevents malpractice*: It will assist in preventing malpractice like child marriage, which is still practised in some regions of the nation.
- *Suitable for all groups of people*: Even if calling someone younger than 21 a kid will make committee members uncomfortable, the bill complies with the spirit of the Constitution because it states that its requirements apply to all communities "regardless of any law, custom, use, or practice governing the parties." The age of marriage was raised from 16 to 18 in 1978 as a result of a prior change. Better educational opportunities for women were to be made available, and their health was to be improved. 40 years later, we still have an alarming percentage of child marriages at 23%, according to the most recent National Family Health Survey (NFHS 5 2019-'21).

⁴ Arpit Goyal, 'Child Marriage and the Laws Pertaining to it' (*IPleaders*, 26 July 2019) <<https://blog.ipleaders.in/child-marriage-and-the-laws-pertaining-to-it/>> accessed 19 July 2022

This demonstrates the government's failure to meet its goals of granting chances to girls in underdeveloped and impoverished areas or enhancing access to healthcare. Additionally, it hasn't altered male-dominated, anti-women attitudes about women.⁵

CHALLENGES

- Not a significant deterrent: In India, child weddings persist despite the legal age of marriage for women being 18 years old. This decline in child marriages has not been attributed to the legislation as it currently stands, but rather to improvements in girls' educational and career options.
- The law would ultimately be coercive and have a significant negative impact on underprivileged groups, particularly scheduled castes and scheduled tribes.
- Freedom is being restricted, which raises concerns about the rights of minorities to establish laws governing weddings within their communities.

The implementation of this law will take place in a society that is firmly rooted in patriarchy, and it will be primarily used by parents to restrict young girls' sexual autonomy and to punish them for their decisions, with the active complicity of state officials like the police and welfare workers. Age security and marital issues: If an 18 or 19-year-old girl who got married experiences marital issues and goes to court for help, her husband can argue that the marriage is invalid and she has no legal rights. This raises serious concerns.

CONCLUSION

It is important to have a clear directive in the law that a woman who marries when underage will not forfeit her matrimonial or inheritance rights if she becomes widowed. Implement the expansion of girls' access to schools and universities as soon as possible, taking into account their transportation from remote locations, skill and business training, and sex education in the classroom. To ensure that every child receives a basic education, focused programs and

⁵ FlaviaANGES, 'Increasing marriage age for girls may only strengthen patriarchy' (The Times of India, 19 December 2021) <<https://timesofindia.indiatimes.com/blogs/toi-edit-page/increasing-marriage-age-for-girls-may-only-strengthen-patriarchy/>> accessed 19 July 2022

adequate monetary commitments are urgently needed. Only when a girl attends school will there be a decline in child marriages. The law governing marriage among Hindus is codified in the Hindu Marriage Act of 1955. If a woman was married before the age of 15 and ended the union before the age of 18, she is allowed to submit a divorce petition. The Bill updates the 1955 Act to raise the wife's ability to repudiate the marriage's terms to 21 years. The Prohibition of Child Marriage Act, 2006, however, is amended by the Bill to permit annulments of marriages up to the age of 23⁶. Remember that getting a divorce by repudiating the marriage is distinct from getting an annulment, which presumes that the marriage was completely void and, therefore, never valid.

⁶ 'Age and marriage: On raising the age of marriage for women' (*The Hindu*, 20 December 2021) <<https://www.thehindu.com/opinion/editorial/age-and-marriage-the-hindu-editorial-on-raising-the-age-of-marriage-for-women/article37992551.ece/>> accessed 19 July 2022