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Discussion on the Rise of Marriage Age of Women in India: A Reformatory One or Not?

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ABSTRACT

The reason to establish minimum allowable marriage age for women is marriage before 18 is considered to be harmful practice because it denies the right to the highest attainable standard of general, sexual, and reproductive health, and to a life free from violence. The highest level of child marriage are found in west and central Africa. India established the marriage age of women in 1929 as 14 years and finally established as 18 years in 1978. Vedas didn't encourage child marriage and philosophy of Vedas had restriction on child marriage. In Vedas marriage age of male is 25 and marriage age of female is 18. The question of increasing the minimum age of marriage for males and females has been considered in the present context when there is an urgent need to check the growth of population in the country. Such increase of minimum age of marriage result in lowering the total fertility rate on account of lesser span of married life. It will also result in more responsible parenthood and in better health of them mother and child. Their conviction is chosen by the arrangements of laws. Furthermore these laws are made by considering various traditions observed by that religion. Indians are keeping these laws since the frontier time frame. According to Qur'an reaching puberty is not the correct age for marriage, but reaching the maturity is the right age of marriage. It is a shame that the Act of USA on marriage and establishing marriage age is nowhere near reformative. There is no uniform statute regarding marriage and marriage age. The Indian Constitution ensures orientation equity as a feature of the basic freedoms and additionally ensures denial of segregation on the grounds of sex.

Keywords: Marriage age, Puberty, Child Marriage, Religion, Health of women, Vedas and Marriage.

I. INTRODUCTION

The purpose of a marriage is inmate companionship, procreation, mutual respect and support for both husband and wife also a lifelong relationship of love with faithfulness. It is true about

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all of the above but the word equal was not found in any of the marriage quotes that i saw in Google when i was starting to write or type this Article. Whenever there is question of equality our mind instantaneously goes to male and female more than anything. I don't want to sound like a sexiest but it is true that we are living in a male dominate society, some of us may say not anymore because we are giving equal rights to women these days, to begin with women empowerment is reaching its peak. Most of us may bicker that it was our great grand fathers and grand fathers who didn't treat women as equals not us, not Millennials, not this metaverse generation, not this official instagram id generation, not this LGBTQIA+ supporting society. We believe that when we gave up our seat to a older women or a pregnant women or posting some quotes supporting women or ask #justicefor!@#\$ in our social network or cooking and washing dishes in our bachelor room makes us feminist all of a sudden. We should know that is not feminism works or that is not feminism. In USA, if you gave up your seat for a healthy women, she may think you are a sexiest because you are insulting her by indirectly pointing it out that she doesn't have upper body strength to stand for a few minutes. So what i am saying is men who born after 1990s thought they liberated women from the hell hole called 19th century, now 21st century women are more liberated then the former. I have some bad news for the male society because years may gone, new technology may invented day to day, virtual reality may be the next addiction, female celebrity may announce divorce before the male partner, female employees may earn more salary then a male employee, education ratio of girl child may raise, NASA and SPACEX may send female astronauts to space, female directors may direct motion pictures, female gamers may hit the gaming world, Star wars and MCU may cast a female as lead in their next franchise, next POTUS may be a women, but when the married female breadwinner, female astronaut, female lead, female noble price winner, female gamer, female POTUS came home to her Indian house hold after a long day of work the first question of the husband will be "WHAT'S FOR DINNER? . That's equality for Indians. Indian males are far from becoming feminist and far from letting the female to lead the family. The word "MALE PRIVILEGES" is in the DNA of every Indian both male and female. Equality in an Indian house hold is a joke and a long journey. Even at the brink of earth's extinction Indian man won't let his wife to make her own decision without his input or without his criticism.

The real question is, what is the reason to establish minimum allowable marriage age for men and women. Why can't we just arrange a marriage between a male and a female after they hit puberty? Because when it comes to Indian house hold procreation is the ultimate aim of a marriage. It is a sin if you are not procreated or didn't want to have a baby as soon as you married. The logical reason for the above question is before the marriage the male and female

should mature physically and emotionally. Both gender must have successfully transition to adulthood. This Article revolves around the question “The Raise Of Marriage Age Of Women Is A Reformatory Or Not? United Nations(UN) conventions consider “child, early and forced marriage” as a fundamental violation of human rights. The major consequences of early marriage are

- 1) Marriage before 18 is considered to be harmful practice because it denies the right to the highest attainable standard of general, sexual, and reproductive health, and to a life free from violence.
- 2) Under age marriage also constrains evolving physically and emotionally.
- 3) It places restrictions on opportunities in life, such as the right to education and also restrict women’s ability to fully participate in family, socio-cultural and civic activities².

So most of the developed and developing countries increased the marriage age of women, some of the third world countries also establish the minimum age of marriage of women, but non of the above ensure the safety of women and children but that is a topic for another the day. The highest level of child marriage are found in west and central Africa. India established the marriage age of women in 1929 as 14 years and finally established as 18 years in 1978.

On the day of 12th January 2022 the prime minister of our country Narendra Modi addressing the participants of National Youth Festival in Puducherry virtually, our PM said that ”The government believes that sons and daughters are equal. With this thinking, the government has decided to raise the age of marriage to 21 years. He also said the purpose of raise the age of marriage of women from 18-21 years was based on the principle of equality and to bring more women into the country’s workforce allowing them an opportunity to pursue their professional goals. He quoted that” daughters can also make their career, they get more time, this is a very important step in this direction”³.

From the basis of PMs speech i am going to walk you through the evolution of marriage age of women in India and the laws enacted the for this purpose and the amendments made in those laws, the different age of marriage in Hindu law, Muslim law and Christian law. Constitutionality of the laws, comparative analysis on the laws of other countries, consequences of violation of the law, what is the reformation on the raise of age? Finally The Prohibition Of Child Marriage (Amendment) Bill, 2021.

² UNICEF data, <http://www.data.unicef.org> (last visited Jan 22, 2022)

³ The times of India, <http://m-timesofindia-com.cdn.ampproject.org> (last visited Jan 22, 2022)

II. HISTORY OF ESTABLISHING WOMEN MARRIAGE AGE

(A) Ancient India:-

Ancient Indian customs on marriage was upheld through Manu Smiriti. There are eight forms of marriages existed in ancient India.

- i. Brahma Marriage
- ii. Arsha Marriage
- iii. Prajapatiya Marriage
- iv. Gandharv Marriage
- v. Asura Marriage
- vi. Paishacha Marriage
- vii. Rakshasa Marriage

The good news is Vedas didn't encourage child marriage and philosophy of Vedas had restriction on child marriage. In Vedas marriage age of male is 25 and marriage age of female is 18. Child marriage was encouraged during the period of Middle Age to Present day. Reformation for women was good in olden days, medieval period more like mid-evil period changed everything for women and other weaker sections.

(B) Sarda Act :-

We can't talk about women marriage without knowing who is "Har Bilas Sarda". He is a known academic, judge and politician and also known for establishing the "Child Marriage Restraint Act 1929" also known as "Sarda Act". He started working at the judicial department for post independence India from 1892 to 1925. Then he turned into politician and elected as a member of the central legislative assembly. He served in several committees in his role as a politician. As a legislator, he introduced several bills in the assembly including Child Marriage Restraint Act passed in September 1929, came into effect in 1930. First time in India there is a provision for legal marriage age of women. In the beginning imperial legislative council of Indi fixed the age of marriage for girls at 14 years. After the independence the marriage age of girls amended to 15 years through Child Marriage Restraint (amendment) Act 1949 and in 1978 it was amended again as 18 years through Child Marriage Restraint (amendment) Act 1978.

(C) Child Marriage Restraint Act 1929

Section 2: Definitions – In this Act, unless there is anything repugnant in the subject or context-

(a)“child” means a person who, if a male, has not completed twenty one year of age, and if a female, has not completed eighteen years of age.⁴

Section 3: Punishment for male adult below twenty one years of age marrying a child.

Whoever, being male above eighteen years of age and below twenty one, contracts a child marriage shall be punishable with simple imprisonment which may extend to fifteen day, or with fine which may extend to one thousand rupees, or with both.⁵

Section 4: Punishment for male adult above twenty one years of age marrying a child.

Whoever, being male above twenty one years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to three month and shall be liable to fine⁶.

The Act not only established the marriage age and also described the punishment for those who violated the law under this Act. The final amendment of the Act is done 44 years ago. The above Act also repealed 16 years ago and replaced by “The Prohibition Of Child Marriage Act, 2006”.

(D) Child Marriage Restraint (Amendment) Act, 1978 (Objects & Reasons)

The question of increasing the minimum age of marriage for males and females has been considered in the present context when there is an urgent need to check the growth of population in the country. Such increase of minimum age of marriage result in lowering the total fertility rate on account of lesser span of married life. It will also result in more responsible parenthood and in better health of them mother and child. A bill introduced for this purpose in the Lok Sabha on 25th August, 1976, lapsed with the dissolution of the Lok Sabha on 18th January, 1977. The matter has been examined in all its aspects again⁷

(E) The Prohibition Of Child Marriage Act, 2006:-

Section 2 Definitions

(a)“child” means a person who, if a male, has not completed twenty one year of age, and if a female, has not completed eighteen years of age⁸

The question is, it may be 44 years or 16 years but none of the member of legislative think about why the marriage of men and women is not equal. What happens when girl marry a boy with same age? For example 21 year old girl married a 21 year old boy. Why there is no age

⁴ Child Marriage Restraint Act, 1929, Subs. by Act 2 of 1978

⁵ Child Marriage Restraint Act, 1929, Subs. by Act 41 of 1949

⁶ Child Marriage Restraint Act, 1929, Subs. by Act 41 of 1979

⁷ Child Marriage Restraint (Amendment) Act, 1978, No. 2, Amendment Acts of Parliament, 1978 (India)

⁸ The Prohibition Of Child Marriage Act, 2006, No. 6, Acts of Parliament, 2007(India)

neutrality?

(F) The Constitution of India, 1950:-

Article 14: Equality Before Law

The state shall not deny to any person equality before the law or the equal protection of laws within the territory of India⁹.

Article 15: Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth.

The state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them¹⁰.

Article 21: Protection of life and personal liberty.

No person shall be deprived of his life or personal liberty except according to procedure established by law¹¹.

We will take” The state shall not deny to any person equality before the law” this sentence from article 14. If the above was true, whether a women can ask for equality of age in marriage? Because it says equality before law. But both the former Act and the latter didn’t equally raise the marriage age and no reasons are provided in both Acts about why there can be no gender neutrality in marriage age. If it was self explanatory, then HOW?

In Article 15 the key phrase is “The state shall not discriminate against any citizen on grounds only of sex”. Synonym for the word discriminate is “show favouritism”. Whether the Indian law show favouritism against women in the aspect of marriage age by pushing the old agendas against women in a new Name called Act, Law and Rules. The old or Ancient Indian legislators of 21st century still thinking about depriving women of their liberty.

The scope of Article 21 of Indian constitution is Right to life. Right to life does not mean animal existence or the mere act of breathing. Right to life guarantees right to a dignified life. The scope of right to life starts from Right to live with human dignity To Right to electricity. There are 35 rights comes under Right to life including Right of women to be treated with decency and dignity. The full definition of dignity is the quality or state of being worthy, honoured or esteemed. Without equality there will be no worth, honour or esteem. The word decency means proper behaviour. That goes into mirage. To Indian women the equality is nothing but Delusion,

⁹ INDIA CONST. art. 14

¹⁰ INDIA CONST. art. 15

¹¹ INDIA CONST. art. 20

Hallucination and Illusion.

At this advanced age of the 21st century actually harsh. The women stay the principal casualty of the Indian culture, which is even today found inflexible practices, station framework and strict convictions. Innovation and mechanical blast is nevertheless a shallow advancement on the grounds that the common Indian conditions have not developed from the point onward.

III. PERSONAL LAWS OF INDIA REGARDING MARRIAGE

In India, everybody has a place with various position, religion and have their own confidence and conviction. Their conviction is chosen by the arrangements of laws. Furthermore these laws are made by considering various traditions observed by that religion. Indians are keeping these laws since the frontier time frame. In this part, we will find out with regards to the individual laws of Hindu, Muslims and the Christian people group.

The below laws will give the basic of marriage to their respective religion

- i) The Hindu Marriage Act, 1955
- ii) The Indian Christian Marriage Act, 1872
- iii) Principles of Mahomedan Law.
- iv) The Parsi Marriage and Divorce Act, 1936

(A) The Hindu Marriage Act, 1955

Section 5:- Conditions For a Hindu Marriage.

A marriage may be solemnized between any two Hindus, If the following conditions are fulfilled namely:-

(iii) The bridegroom has completed the age of Twenty-one years and the bride, the age of eighteen years at the time of the marriage¹²

*1. Ravinder Kumar v Kamal Kanta*¹³

The concept of Hindu marriage under the Act is still a sacrament as envisaged under the Hindu Law. It cannot, therefore, be contracted by mere consent of the parties to it. A marriage to be valid under the Act must satisfy the conditions laid down in S.5 and should be solemnised as specified in S.7

Section 11: Void marriages:-

¹² The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955(India)

¹³ Ravinder Kumar v Kamal Kanta I.L.R. (1973) Bom. 1220: 1973 Mah.L.J.310

Any marriage solemnized after the commencement of this Act shall be null and void and may, on a petition presented by either party thereto, against the other party, be so declared by a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5.¹⁴

The section specifically said that “a decree of nullity if it contravenes any one of the conditions specified in clauses (i), (iv) and (v) of section 5. So there is no nullity of the marriage that comes under the contravention specified in clause (iii) of section 5, The Hindu Marriage Act, 1955.

2. *Yamunabhai Anantrao Adhav v Anantrao Shivram Adhav*¹⁵

The section permits a formal declaration to be made on the presentation of a petition, it is not essential to obtain in advance such a formal declaration from court in proceeding specifically commenced for the purpose. A marriage in contravention of S.11 must be treated null and void from its very inception.

Section 12 Voidable marriages:-

Any marriage solemnized, whether before or after the commencement of this Act, shall be voidable and may be annulled by decree of nullity on any of the following grounds, namely:-

(c) that the consent of the petitioner, or where the consent of the guardian in marriage of the petitioner was required under section 5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978, the consent of such guardian was obtained by force or by fraud as to the nature of the ceremony or as to any material fact or circumstance concerning the respondent¹⁶.

The section interpreting about the voidable marriage when the consent of the petitioner or the guardian of the petitioner obtained by force or by fraud. This section also didn't mention about the voidable marriage under the con contravention specified in clause (iii) of section 5, The Hindu Marriage Act, 1955.

3. *Chand Patel v Bismillah Begum*¹⁷

A decree would have to be obtained from the competent court declaring the marriage to be void and also and so long as such declaration is not made, the marriage will continue to subsist.

¹⁴ The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955(India)

¹⁵ Yamunabhai Anantrao Adhav v Anantrao Shivram Adhav A.I.R.1988 S.C.644

¹⁶ The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955(India)

¹⁷ Chand Patel v Bismillah Begum A.I.R. 2008 S.C. 1915

The Prohibition Of Child Marriage Act, 2006

Section 3. Child marriages to be voidable at the option of contracting party being a child.

(1) Every child marriage, whether solemnised before or after the commencement of this Act, shall be voidable at the option of the contracting party who was a child at the time of the marriage:

Provided that a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of the marriage.

(3) The petition under this section may be filed at anytime but before the child filling the petition completes two years of attaining majority¹⁸.

Section 9. Punishment for male adult marrying a child:-

Whoever, being male adult above eighteen years of age, contracts child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both¹⁹.

To begin with the law that enacted to stop the child marriage is no way near to achieve the objective of the law. Because the law doesn't say that the marriage is "**void ipso jure**" from the time of the marriage and a decree of nullity may be filed in the district court only by a contracting party to the marriage who was a child at the time of the marriage.

Section 12. Marriage of a minor child to be void in certain circumstances:-

- (a) is taken or enticed out of the keeping of the lawful guardian or
- (b) by force compelled, or by any deceitful means to go from any place.
- (c) is sold for the purpose of marriage and made to go through a form of marriage or if the minor married after which the minor is sold or trafficked or used for immoral purpose, such marriage shall be null and void²⁰

Section 15 offences to be cognizable and non-bailable²¹

The practicality of a situation in a child marriage is if the offender arrested by the police and got bail under section 437 of Cr.p.c. then offender consummated the marriage with the child he married and the child got pregnant, whether the child will file a petition for annulment of the

¹⁸ The Prohibition Of Child Marriage Act, 2006, No. 6, Acts of Parliament, 2007(India)

¹⁹ The Prohibition Of Child Marriage Act, 2006, No. 6, Acts of Parliament, 2007(India)

²⁰ The Prohibition Of Child Marriage Act, 2006, No. 6, Acts of Parliament, 2007(India)

²¹ The Prohibition Of Child Marriage Act, 2006, No. 6, Acts of Parliament, 2007(India)

marriage under section 3 of the The Prohibition Of Child Marriage Act, 2006 or will she continue to live with the offender and try to live a life with happily ever after

Section 437 of The Code of Criminal Procedure, 1973

When bail may be taken in case of non-bailable offence

(1) when any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court other than the high court or court of session, he may be released on bail.²²

There is no point in enacting a law that never fulfils the objective of the law. There is no reformation nor equality given to the female when it comes to marriage or age of marriage.

(B) Principles of Mahomedan Law.

Definition of marriage:-

Marriage (*nikah*) is defined to be a contract which has for its object the procreation and the legalizing of children.

Marriage according to the Mahomedan law is not a sacrament but a civil contract. All the rights and obligations it creates arise immediately and, are not dependent on any condition precedent such as the payment of dower by husband to a wife.²³

1. Abdul kadir v Salima²⁴

The Rajasthan High Court has made a very sound observation in the instant case that unlike a *Hindu Marriage*, which is a sacrament, according to the Islamic Law, a marriage ("Nikah") is a permanent and unconditional civil contract (which comes into immediate effect) made between two persons of opposite sexes with a view to mutual enjoyment and procreation and legalizing of children.

Unlike Hindu marriage, Muslim marriage is contract for procreation and legalizing of children.

a. Capacity of Marriage:-

(1) Every Mahomedan of sound mind, who has attained puberty, may enter into a contract of marriage.

A Mahomedan girl of 15 years who has attained the age of puberty is competent to marry

²² The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India)

²³ Mulla, Principles of mahomedan law, 378, Lexis Nexis, 2020

²⁴ Abdul kadir v Salima (1886) 8 All. 149.

without the consent of her parents. The first question that arise from the above sentence is can a 15 year old is valid under contract? The personal law of Muslim law says different that when it comes to marriage the girl who attained puberty at the age of 15 years is eligible to make a contract.

2. *Mahmad Usaf Abasbhai Bidiwale v. Hurbanu Mansur Atar*²⁵

Marriage under the Mahomedan Law is a civil contract. Hence it should attract all the incidents of contract as any other stipulated in the Contract Act. The provisions of s. 64 of the Contract Act, will be squarely applicable to a case such as the present one where the marriage has been rescinded unilaterally. The provisions of s.64 of the Contract Act are clear in this behalf and require only that person to return the benefits under the Contract.

(2) Lunatics and minors who have not attained puberty may be validly contracted in marriage by their respective guardians (270-275).

(3) A marriage of a Mahomedan who is of sound mind and has attained puberty, is void, if it is brought about without his consent.

Explanation.— Puberty is *presumed*, in the absence of evidence, on completion of the age of fifteen years.

Consent to marriage obtained by force or fraud:-

When consent to a marriage has been obtained by force or fraud, the marriage is invalid unless it is ratified. Where consent to the marriage has not been obtained, consummation against the will of the woman will not validate the marriage²⁶.

3. *Naksetan Bibi v. Habibar Rahman* (1948) 50 C.W.N. 689, ('48) A.C. 66.²⁷

A Mahomedan wife who has attained puberty and is under eighteen years of age may file a suit for divorce without the appointment of a next friend.

b. Marriage of Minors in Muslim Law:-

A boy or a girl who has not attained puberty (in this Part called a minor), is not competent to enter into a contract of marriage, but he or she may be contracted in marriage by his or her guardian²⁸

²⁵ *Mahmad Usaf Abasbhai Bidiwale v. Hurbanu Mansur Atar* (1978) Maha. LJ. 26.

²⁶ *Mt Ahmad-un-nissa Begim v Ali Akbar Shah* (1942) 199 I.C. 531 (42) A

²⁷ *Naksetan Bibi v. Habibar Rahman* (1948) 50 C.W.N. 689, ('48) A.C. 66.

²⁸ Mulla, Principles of mahomeden law, 378, Lexis Nexis, 2020

4. *Shaft Ullah v. Emperor* (1934) All. LJ. 387, 150 I.C. 139, ('34) A.A. 589.²⁹

A boy or a girl who has attained puberty is at liberty to marry anyone he or she, likes and the guardian has no right to interfere if the match be equal.

5. *Jogu Bibi v. Mesel Shaikh* (1936) 63 Cal L.J. 415, 164 I.C. 957.³⁰

If the bride is a minor she cannot appoint an agent or vakil to enter into the contract of marriage on her behalf. The consent must be given by her legal guardian.

On what have we seen in the above principles and case laws the mahomaden law has no reformation in establishing the age of marriage. United Nations (UN) conventions consider “child, early and forced marriage” as a fundamental violation of human rights. The major consequences of early marriage are

- 1) Marriage before 18 is considered to be harmful practice because it denies the right to the highest attainable standard of general, sexual, and reproductive health, and to a life free from violence.
- 2) Under age marriage also constrains evolving physically and emotionally.
- 3) It places restrictions on opportunities in life, such as the right to education and also restrict women's ability to fully participate in family, socio-cultural and civic activities³¹

The marriage of Muslim women is no way near the data of UN conventions on the child marriage and to reform the marriage age of the female and it is totally against the UN conventions data. Logically speaking when it comes to biology every female on Earth has the same anatomy and biological structure. When early marriage of a Hindu female may constrains her from evolving physically and emotionally and it denies the right to the highest attainable standard of general, sexual, and reproductive health so did to a Muslim female. So Muslim personal law need some changes regarding to the relevant of the time and should have an open mind when making laws or changing laws on marriage age. We can also find about marriage age in Islam in the Holy book Qur'an. We will find some straight answers and things we don't know about the true just of Qur'an regarding the marriage age.

c. Qur'an's ideology in marriage age:-

The base standards in Islam for those going into marriage is that they should have shown up at pubescence just as have the expansive improvement to appreciate their honours and obligations

²⁹ *Shaft Ullah v. Emperor* (1934) All. LJ. 387, 150 I.C. 139, ('34) A.A. 589.

³⁰ *Jogu Bibi v. Mesel Shaikh* (1936) 63 Cal L.J. 415, 164 I.C. 957.

³¹ UNICEF data, <http://www.data.unicef.org> (last visited Jan 22, 2022)

in marriage, and have the choice to fulfil them. The Qur'an draws a capability between showing up at pubescence and showing up at an age, past adolescence, where one is totally mature to the point of managing their endeavour and go into genuine understandings. In the case of managing the affairs of orphans for example,

Qur'an[4:6] states: "Test orphans until they reach marriageable age; then, if they have sound judgment, hand over their property to them."³²

That's why according to Qur'an reaching puberty is not the correct age for marriage, but reaching the maturity is the right age of marriage.

(C) The Indian Christian Marriage Act, 1872

Part VI of the Act Deals with Marriage of Indian Christians

Section 60:-

On what conditions marriage of Indian Christians may be certified.-

Every marriage between Indian Christians applying for a certificate, shall, without the preliminary notice required under Part III, be certified under this part, if the following conditions be fulfilled, not otherwise:-

(1) the age of the man intending to be a married shall not be under twenty one years, and the age of the women intending to be married shall not be under eighteen years³³

The eligibility of marriage age of women in Christian marriage is same as Hindu but there is a if in this Act.

Section 3:-

Interpretation clause.—³⁴

In this Act, unless there is something repugnant in the subject or context,—

"minor".—

"minor" means a person who has not completed the age of twenty-one years and who is not a widower or a widow;

"Christians".—

The expression "Christians" means persons professing the Christian religion;

³² The Noble Quran, <http://www.quran.com> (last visited Jan 22, 2022)

³³ The Indian Christian Marriage Act, 1872 No. 15, Acts of Parliament, 1872 (India)

³⁴ The Indian Christian Marriage Act, 1872 No. 15, Acts of Parliament, 1872 (India)

“Indian Christians”.—

The expression “Indian Christians” includes the Christian descendants of natives of India converted to Christianity, as well as such converts.

Section 15:-

Sending copy of notice to Marriage Registrar when one party is a minor.—

When one of the persons intending marriage is a minor, every Minister receiving such notice shall, unless within twenty-four hours after its receipt he returns the same under the provisions of section 13, send by the post or otherwise a copy of such notice to the Marriage Registrar of the district, or, if there be more than one Registrar of such district, to the Senior Marriage Registrar³⁵. If one of the party is minor the minister shall send a notice to the senior registrar of the district to announce a minor is willing to get married under.

Section 16:-

Procedure on receipt of notice.—

The Marriage Registrar or Senior Marriage Registrar, as the case may be, on receiving any such notice, shall affix it to some conspicuous place in his own office, and the latter shall further cause a copy of the said notice to be sent to each of the other Marriage Registrars in the same district, who shall likewise publish the same in the manner above directed³⁶

Section 19:-

Consent of father, or guardian, or mother.—

The father, if living, of any minor, or, if the father be dead. the guardian of the person of such minor, and, in case there be no such guardian, then the mother of such minor, may give consent to the minor’s marriage, and such consent is hereby required for the same marriage, unless no person authorized to give such consent be resident in India³⁷

Section 43:-

Petition to High Court to order certificate in less than fourteen days.—

When one of the parties intending marriage is a minor, and both such parties are at the time resident in any of the towns of Calcutta, Madras and Bombay, and are desirous of being married in less than fourteen days after the entry of such notice as aforesaid, they may apply by petition to a Judge of the High Court, for an order upon the Marriage Registrar to whom the notice of

³⁵ The Indian Christian Marriage Act, 1872 No. 15, Acts of Parliament, 1872 (India)

³⁶ The Indian Christian Marriage Act, 1872 No. 15, Acts of Parliament, 1872 (India)

³⁷ The Indian Christian Marriage Act, 1872 No. 15, Acts of Parliament, 1872 (India)

marriage has been given, directing him to issue his certificate before the expiration of the said fourteen days required by section 41³⁸

Section 70:-

Solemnizing without notice or within fourteen days after notice, marriage with minor.—

Any Minister of Religion licensed to solemnize marriages under this Act, who, without a notice in writing, or, when one of the parties to the marriage is a minor and the required consent of the parents or guardians to such marriage has not been obtained, within fourteen days after the receipt by him of notice of such marriage, knowingly and wilfully solemnizes a marriage under Part III, shall be punished with imprisonment for a term which may extend to three years, and shall also be liable to fine³⁹

Section 71:-

Issuing certificate, or marrying, without publication of notice.—

A Marriage Registrar under this Act, who commits any of the following offences:—

(3) solemnizing marriage with minor within fourteen days, without authority of Court, or without sending copy of notice.—solemnizes, without an order of a competent Court authorizing him to do so, any marriage, when one of the parties is a minor, before the expiration of fourteen days after the receipt of the notice of such marriage, or without sending, by the post or otherwise, a copy of such notice to the Senior Marriage Registrar of the district if there be more Marriage Registrars of the district than one, and if he himself be not the Senior Marriage Registrar;

(4) issuing certificate against authorized prohibition.—issues any certificate the issue of which has been prohibited, as in this Act provided, by any person authorized to prohibit the issue thereof, shall be punished with imprisonment for a term which may extend to five years, and shall also be liable to fine⁴⁰.

The Indian Christian Marriage Act, 1872 specifically held in section 60 of the Act that a marriage age of the female to get married as a Indian Christian is above 18 years, also held in section 3 in the interpretation clause that minor those who is below the age of 21 years. Even though the interpretation clause made a certain difference between Christians and native Christians, there is a small confusion on that part. In section 15 held that if one party in the

³⁸ The Indian Christian Marriage Act, 1872 No. 15, Acts of Parliament, 1872 (India)

³⁹ The Indian Christian Marriage Act, 1872 No. 15, Acts of Parliament, 1872 (India)

⁴⁰ The Indian Christian Marriage Act, 1872 No. 15, Acts of Parliament, 1872 (India)

marriage is minor the minister has to send notice to the senior registrar about the issue and also need to get certificate to from the registrar to officiate the marriage. In section 19 held that the parents of the minor must give consent for the marriage that is also disorienting. In section 43 held that if party is in presidency town they have to get the certificate from the high court of the presidency town. Section 70 and 71 deals with punishment if any of the above section was violated and marriage was solemnized the minister will be imprisoned for extend to three years in the former and five years in the latter with fine. Although it is entirely different from Hindu personal law also it didn't mention any punishment to the major who married the minor and the parents who gave their consent to the marriage. Other confusion is whether the groom who married the minor comes under the Prohibition of child marriage Act 2006 regarding the punishment.

(D) The Parsi Marriage and Divorce Act, 1936

Ahead of the Act we should know a little bit about Parsi. Parsi, also spelled Parsee, member of a group of followers in India of the Iranian Prophet Zoroaster or Zathustra. The Parsis whose name means “Persians” Zoroastrians who emigrated to India to avoid religious persecution by Muslims. They chiefly live in Mumbai and in a few towns and villages mostly to the north of Mumbai, but also at Bengaluru and Karachi(Pakistan). Although they are not, strictly speaking, a caste, since they are not Hindus, they form a well-defined community⁴¹

Section 3:-

Requisites to validity of Parsi marriages.—

No marriage shall be valid if—

(c) in the case of any parsi whether such parsi has changed his or religion or domicile or not who, if a male, has not completed twenty one years of age, and if a female, has not completed eighteen years of age⁴²

The Act has mentioned about the validity of marriage by establishing the marriage of women at the time of marriage and didn't mention about if a minor is a party of the marriage or if a minor was forced to marry an adult. Because of the small community the scope of the personal law was not updated or it was in the early development of their personal laws. But being a naive law it needed some improvements around the law of marriage and regulations of the marriage at the time when the male or female party of the marriage is a minor. The Act also didn't mention anything about “minor” interpretation clause. So reformation on establishing marriage

⁴¹ Parsi- Religion, History and facts, <http://www.britannica.com> (last visited Jan 22, 2022)

⁴² The Parsi Marriage and Divorce Act, 1936, No. 3, Acts of Parliament, 1936 (India)

age is NIL in parsi.

IV. COMPARATIVE STUDY – PERSONAL LAWS & MARRIAGE AGE

Hindu Laws are subjected to co-ordinate with the laws established by the Indian Government. It is very detailed in every way but there are some loopholes for the perpetrators to enjoy the freedom at or after the time of the doing wrong. For example Section 11 Void marriages The Hindu Marriage Act, 1955 didn't mention about the marriage of a child was void abintio. Section 12 voidable marriages The Hindu Marriage Act, 1955 also didn't mention the same. If some of us may think that the punishment, void marriage and voidable marriage is mentioned in the The Prohibition Of Child Marriage Act, 2006. Yes, it was mentioned but the Act specifically held the sentence that "a petition for annulling a child marriage by a decree of nullity may be filed in the district court only by a contracting party of the marriage who was a child at the time of the marriage". Then what's the point of all the commotions. Like a cherry in the top of the ice cream section 12 of the Act says about enticement, compelled, trafficked and kidnapped. What if the 16 year old female minor wanted to marry an adult in the name of Love. The minor girl won't raise a complaint or file a petition to annul the marriage. So the point of establishing an Act to stop child marriage and to raise the marriage age of female doesn't mean anything and has no value.

The most naive and under developed law is the Muslim Personal law. The following sentence is enough to prove how immature the Muslim Personal law is "A Mahomedan girl of 15 years who has attained the age of puberty is competent to marry without the consent of her parents"⁴³. Let me paint a picture "A child who is studying 10th standard is going to have a baby in her 16th birthday and going to raise a child on her own with the help of her psychotic husband because no competent men will marry a 15 year old and consummate marriage and make her pregnant to prove his masculinity, peer pressure and to make his mother happy, who is a 40 year old women who got married at the age of 15, 25 years ago". I have an innate memory that when i was 15 years old, everyday i will watch power puff girls in cartoon network before i go to school. Every Sunday my friends and myself will watch jungle book in DD and if there was a power cut we will go to each and every other house of my friends to see that cartoon. This is what childhood means and should be. My question is whether the consummation of this marriage comes under statutory rape, marital rape or rape? If not, why we need to establish a law to stop adolescents from having sex? An Act was done in the name of religion and custom and it is ultra vires any law of the land it should be struck down.

⁴³ Mulla, Principles of mahomeden law, 195, Lexis Nexis, 2020

Now, the parsi law. It is in the early stage of development so we can't compare this with any other personal law.

At last The Indian Christian Marriage Act, 1872. Just like The Hindu Marriage Act, 1955 the former also had some amendments regarding the marriage age of male and female. The one thing i love most is this interpretation “minor” means a person who has not completed the age of twenty-one years and who is not a widower or widow. The Act particularly didn’t separate the marriage age of female and male. So, the reformation of establishing marriage age may have started from here, but for the purpose of Indian Christians the law held the marriage between the male above 21 and female above 18 is valid. This is for the sake of Indian Christians. So this is how it went down. The Acts of all personal laws of each religion is different from others but the Christian law, Hindu law and parsi law came close depends on establishing the marriage age of women.

V. COMPARATIVE STUDY INDIAN LAW-USA LAW-UK LAW

This title will deal with laws of USA and UK on marriage age and compared with Indian law on the matter of marriage age.

(A) USA law on marriage age:-

Initially we will deal with Law regarding marriage age in USA. Unlike India USA is a federal country. It is an union of 50 individuals states come together as a country. The 50 states has individual constitution and individual laws on everything. For example out of 50 states 5 states like Alabama, Georgia Missouri, Tennessee and Texas of USA have death penalty. Like that the marriage age of each state differ from others. The below is the eligible age of marriage in each and every state of USA.

- 2 states – Delaware and New Jersey – set the age floor at the age of majority, age 18, with no exceptions.
- 18 states do not set an age floor by statute, though some (e.g., Massachusetts) may set an age floor through case law.
- 6 states require parties to be legal adults: Delaware and New Jersey (age 18 or older), Texas and Virginia (age 18 or older, or age 16-17 and emancipated by court order), and Kentucky and New York (age 18 or older, or age 17 and emancipated by court order, granted at the same time as a petition is granted for permission to marry).

- 6 states require parties to be at least age 17: Florida, Kentucky, Nebraska, New York, Oregon, and Tennessee. Nebraska also requires parental consent until age 19, that state's age of majority.
- 17 states require parties to be at least age 16: Alabama, Arizona, Connecticut, Georgia, Illinois, Iowa, Minnesota, Missouri, Montana, New Hampshire, North Dakota, South Carolina, South Dakota, Texas, Vermont, Virginia and Wisconsin. The District of Columbia also requires parties to be at least age 16.
- In 11 states, clerks acting on their own – without judges – can issue marriage licenses for all minors: Florida, Maryland, Missouri, Nebraska, North Dakota, Oregon, South Carolina, South Dakota, Tennessee, Vermont, and Wisconsin. The District of Columbia also does not involve judges.
- Only 13 states require all minors to get judicial approval before they can marry: Alabama, California, Connecticut, Georgia, Iowa, Kentucky, Massachusetts, Minnesota, Montana, New Hampshire, New York, Texas, and Virginia. Some of these judicial processes are bare-bones, and may not even clearly require a judge to meet with or question the minor, while others set several criteria for approval.
- In states with judicial approval requirements that apply at least to younger minors or under certain circumstances, only 18 states require judges to consider the minors' best interests.
- Statutes in a few states – Arkansas, Mississippi, and Ohio -- set different conditions for approvals based on a party's gender.
- 7 states expressly permit pregnancy to lower the minimum marriage age: Arkansas, Indiana, Maryland, New Mexico, North Carolina, Ohio, and Oklahoma⁴⁴

Out of 50, 2 states sets the age of 18 years, 6 states sets marriage age as 18 but if emancipated 17 years, 18 states no statutes only case laws, 6 states at least 17, 17 states at least 16, 11 states on their own, 13 states require judicial approval if minors and 7 states permit pregnancy to lower the minimum marriage age.

(B) UK law on marriage age:-

Unlike USA and like India, UK has a specific law regarding marriage and establishing of

⁴⁴ Understanding States Statutes on Minimum Marriage Age and Exceptions <http://www.tahirih.org> (last visited Jan 22, 2022)

marriage age.

Marriage Act 1949 of UK

Section 1

Marriages within prohibited degrees--

A marriage solemnized between a person and any person mentioned in the list in Part 1 of Schedule 1 shall be void.

Subject to subsection (3) of this section, a marriage solemnized between a person and any person mentioned in the list in Part 2 of Schedule 1 shall be void.

Any such marriage as is mentioned in subsection (2) of this section shall not be void by reason only of affinity if both the parties to the marriage have attained the age of twenty-one at the time of the marriage and the younger party has not at any time before attaining the age of eighteen been a child of the family in relation to the other party⁴⁵.

Section 2

Marriages of persons under sixteen.--

A marriage solemnized between persons either of whom is under the age of sixteen shall be void⁴⁶.

Section 3.—

Marriages of persons under twenty-one.

Where the marriage of a child, not being a widower or widow, is intended to be solemnized on the authority of issued by a superintendent registrar under Part III of this Act, the consent of the person or persons specified in subsection (1A) of this section shall be required⁴⁷.

To begin with under section 2 of the Act held that marriage of 16 year old is void. That's a good start up, section 1 held that if one party of the marriage is twenty years and another one is 18 years of age but the marriage is not void. Section 2 has to be read with section 3 of the Act because it needs the consent of the parent or the guardian.

One thing that we need to address is the same sex marriage. USA legalized same sex marriage under the ruling of supreme court of USA in 2015 finally guaranteed the right the federal level. The 14th Amendment guarantee of equal protections to the heterosexual couples. British

⁴⁵ Marriage Act 1949 of UK Public General Acts

⁴⁶ Marriage Act 1949 of UK Public General Acts

⁴⁷ Marriage Act 1949 of UK Public General Acts

parliament passed a bill in July 2013 and ratified by the queen the next day and the law took effect on March 29, 2014 but it does not allow same sex marriage within the church of England. It is a shame that the Act of USA on marriage and establishing marriage age is nowhere near reformative. There is no uniform statute regarding marriage and marriage age. I found something obnoxious that is a developed country allowing 16 year old to get married and they didn't consider the physical and mental health of the child who is 16 years of age. It also says that the judges can approve the marriage of a minor. The USA states can legislate laws regarding marriage age on their own but that leads to fallout like they live in a stone age. My opinion is USA needs a uniform statute regarding marriage age. This is one of the common between personal laws of India and marriage age of USA because there is no uniformity regarding marriage age law in Indian personal law. I am okay with the marriage Act, 1949 of UK. Because the minimum age of marriage is 18 years under section 3 and section 2 specify the void marriage of 16 year old. But the most important thing that they initiate is prohibited degrees. It is implied in part 1 and 2 of the schedule 1 it is called kindred and affinity. For example in kindred adoptive child, child, adoptive parent. For example in affinity child of former civil partner, child of former spouse. Former civil partner of parent. The one thing that is also common is the prohibited relationship, it is mentioned in the Hindu law, 1955. But prohibited relationship is not mentioned anywhere near the USA law. We couldn't expect a law from the country which doesn't have the rule regarding marriage age it tells the children of the country to be savage. USA is the pioneer of ages of consent, it has several laws to protect minors from sexual predators but it doesn't impose any age limit. On 1st August 2018 the age of consent in each state of USA was either 16 years, 17 years or 18 years. The most common age of consent is 16.⁴⁸ I am fine with the consent of age for sexual intercourse but logically speaking i am not fine with marriage at the age of High school. That will lead to pregnancy, attrition in school attendance, dropping out of school and all. In my deepest opinion i want our parliament to enact a law on age of consent to decrease the age to intercourse to 16 years and the consent to marriage to 21 years, but that will be a long journey.

VI. THE PROHIBITION OF CHILD MARRIAGE (AMENDMENT) BILL, 2021

This Act may be called the Prohibition of Child Marriage (Amendment) Act, 2021. (2) This section and section 2, clause (ii) of section 3, section 5 and the amendment to the enactment mentioned against serial number 5 of the Schedule shall come into force on the date this Act receives the assent of the President; and the other provisions shall come into force on the date

⁴⁸ Ages of consent in North America, <http://en.m.wikipedia.org> (last visited Jan 22, 2022)

of completion of two years from the date of assent and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

In section 1 of the Prohibition of Child Marriage Act, 2006 (hereinafter referred to as the principal Act), in sub-section (2), after the words “citizens of India without and beyond India”, the words, figures and brackets “notwithstanding anything contrary or inconsistent therewith contained in the Indian Christian Marriage Act, 1872; the Parsi Marriage and Divorce Act, 1936; the Muslim Personal Law (Shariat) Application Act, 1937; the Special Marriage Act, 1954; the Hindu Marriage Act, 1955; and the Foreign Marriage Act, 1969, or any other custom or usage or practice in relation to marriage, under any other law for the time being in force” shall be inserted.

In section 2 of the principal Act,— (i) for clause (a), the following clause shall be substituted, namely:— ‘(a) “child” means a male or female who has not completed twenty-one years of age;’; (ii) in clause (b), after the words “is a child”, the words “notwithstanding anything to the contrary or inconsistent therewith contained in any other law for the time being in force, including any custom or usage or practice governing the parties” shall be inserted⁴⁹

(A) Statement of Objects and Reasons:-

The Child Marriage Restraint Act, 1929, was supplanted by the Prohibition of Child Marriage Act, 2006, to restrict of youngster relationships, yet this exceptionally malignant practice is as yet not totally annihilated from our general public. Thus, there is a dire need to handle this cultural issue and to get changes. We can't guarantee progress except if ladies progress on all fronts including their physical, mental andceptive wellbeing. The authorizations, bury alia, connecting with time of marriage of gatherings, like the Indian Christian Marriage Act, 1872; the Parsi Marriage and Divorce Act, 1936; the Muslim Personal Law (Shariat) Application Act, 1937; the Special Marriage Act, 1954; the Hindu Marriage Act, 1955; and the Foreign Marriage Act, 1969, don't accommodate uniform least time of marriage for people.

The Constitution ensures orientation equity as a feature of the basic freedoms and additionally ensures denial of segregation on the grounds of sex. The current laws don't satisfactorily secure the Constitutional command of orientation equity in eligible age among people. Ladies are regularly placed to disadvantageous situation as to higher training, professional guidance, achievement of mental development and ranges of abilities, and so forth Going into business circle and being essential for the work power to make themselves self dependent before young

⁴⁹ The Prohibition Of Child Marriage (Amendment) Bill, 2021, Bill No. 163 of Parliament 2021

ladies getting hitched is a basic region. These impediments sustain reliance of ladies on men. There are likewise goals for bringing down maternal mortality rate and newborn child death rate, just as progress of sustenance levels and sex proportion upon entering the world, as these would advance prospects of capable life as a parent for both dad and mother, making them more equipped for caring more for their kids.

It is additionally vital to bring down the occurrence of high school pregnancies, which are not just unsafe for ladies' by and large wellbeing yet additionally bring about more unsuccessful labors and stillbirths. Victimization ladies too comes in the approach to accomplishing sustainable improvement objectives, and conflicts with the standards articulated under the Convention on the Elimination of All Forms of Discrimination against Ladies, to which India is a signatory. It is basic to handle orientation imbalance and orientation segregation and to set up satisfactory measures to get wellbeing, government assistance and strengthening of our ladies and young ladies and to guarantee status and a chance for them at standard with men.

VII. CONCLUSION & OPINION

The Prohibition of Child Marriage (Amendment) Bill, 2021, was enacted to increase the marriage age of women from 18 years to 21 years. The million dollar question is, is it reformative? Cambridge dictionary say that the meaning of the word "Reformation" is the act of making and improvement. Reformation only happens when it truly applied not just in paper. The so called reason for increasing the marriage age was "the government believes that sons and daughters are equal. With this thinking, the government has decided to rise the age of marriage to 21 years. The purpose of raise the age of marriage of women from 18-21 years was based on the principle of equality and to bring more women into the country's workforce allowing them an opportunity to pursue their professional goals". I found this reason as hypocrite why because only rising the marriage age of women will give equality for women and more women will come into the country's work force. Women are in the country's work force for a long time so we can strike that of the list. The former reason is based on the principle of equality. Article 14 specifically held that the state shall not deny to any person equality before the law or the equal protection of laws within the territory of India and Article 15 specifically held that the state shall not discriminate against any citizen on grounds only of religion, race, caste, sex, Place of birth or any of them. Both Articles came into force in 1950 as a law. Based on the reasons prompted to us, government says that for the past 71 years the government ultra vires the constitution by not rising the age of women from 18 to 21. Before replaced by prohibition of child marriage Act 2006, the child marriage restraint Act 1929 was amended

twice in the matter of marriage age of women. At the time of second amendment in child marriage restraint (Amendment) Act 1978 then government should have raised the age of both men and women equally but they didn't. Indian bride always have to be younger than her groom, why because? What will the people in society say? Some may say that girls will mature way before boys that's why the Indian bride has to be younger. But the truth is every early Indian men wanted a younger wife, she must be a virgin, she will obey her husband, she won't ask questions, he can abuse her through violence but she won't compliant. Now you can marry a younger bride but you cannot expect your wife to tolerate your abuse. That doesn't mean women are liberated from man, it is not the sign of equality. I conclude that rising the marriage age of women will only be a reform in paper not in practical life. It will become a reform one day but not today or not even tomorrow, it will take some time. Reformation only happens to women, when the society abolishes MALE PRIVILEGES.
