

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 4

2021

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The Age of Female Marriage: A Legal Conundrum

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ABSTRACT

The issue of the marriageable age of women has always been controversial in India. Recently, PM Modi's speech on increasing the marriageable age of women from 18 to 21 has opened up a debate across the country. Even after seven decades of independent India, where the Right to Equality and prohibition of discrimination is one of the fundamental rights enshrined in the Constitution, issues like gender discrimination, child sexual abuse, child marriage, female foeticide is rampant in India. As per the Global Gender Gap Index 2019-2020, India ranks at 112; in the marker of health and survival, it is ranked 150 out of the 153 countries. The question which arises after looking into such rankings is that what should be the pertinent issue which the government should look into rather than deciding at what age women should marry.

The primary focus of this paper is to find out whether the decision to increase the marriageable age for reasons like bringing gender equality, reduction in the mortality rates, or progress in the nutritional value of women will be achieved in reality, or it is just a hollow initiative by the government. The authors also aim to highlight the prevalent child marriages in India, child pregnancies, and other relatable issues with a focus on the provisions of the Prohibition of Child Marriage Act, 2006" (PCMA) and Child Marriage Restraint Act, 1929.

I. INTRODUCTION

The much-debated speech which PM Modi delivered was a curtain fall on deciding to increase the marriageable age of women from 18 to 21 years. The mixed reactions witnessed from various critics raise the issues to the pedestal as to whether the 'leveling up' of the marriageable age solves the various women issues, which still cries for help. The age of marriage has a history of its own, and yet again, it finds itself in the pits of controversy. The question whether tinkering with the marriageable age by the government has a positive focus on the rights and development of the women or is it just a political gimmick to hide the failures of the "Beti Bachao Andolan" initiated by the government is to be noticed.

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Pulling the historical strings, the reasons for defining the age of marriage is to prevent child marriage and child abuse. The earliest law regarding the age of marriage was the "Child Marriage Restraint Act, 1929" also known as "Sarda Act". It positions the age of marriage for girls and boys to 14 and 18 years respectively. This Act was amended twice, thereby increasing the age to 18 and 21.³ Later on, the "Prohibition of Child Marriage Act, 2006", repealed this Act and was passed to prohibit the prohibition of solemnization of child marriages in India and punish an adult marrying a child.

The recent speech given by PM Modi needs reflection as to what is the aim and object that the government has pondered to implement the scheme. In an article it is learnt that the plan is to decrease the "maternal mortality rate" and increase the nutritional level among the women by increasing the marriageable age for women.⁴ The heights of fake delusional success to portray gender equality goals can also come handy to be achieved by raising the age bar to marry for women.⁵

Various women activists and active media brought into light the issue and critiqued it, claiming whether the catapulted move to achieve gender equality will bury the prevailing unrest with women denied laws such as child marriage, child pregnancies, lack of job access, lower levels of illiteracy, lack of proper nutrition which are issues unsolved from times ancient.⁶

On the other hand, praises are shrouded to the move as it will aid a woman to gain her socio-economic status and non-interference to her personal matters till she attains 21 years. A report has been published by the "State bank of India". In it an assumption has been made that there will be more participation of women for doing graduation and a chance of 5-7% growth of women in the academics can be witnessed.⁷

The paper through this topic intends to bring light on how the move of the government to raise the bar of marriage will just be another hollow initiative of the government which will not in real graph achieve gender equality, reduction in the mortality rates or progress in nutritional value of women.

The paper will be dissected for proper understanding in various parts which will consist of understanding the prevalent child marriage, child pregnancies and the attached impacts that they carry regarding health and well-being of the women. It is also necessary to learn the access

³ Act 2 of 1978, sec. 2 (w.e.f. 2-10-1978).

⁴ Shireen J. Jejeebhoy, "Raising the Minimum Legal Age of Marriage for Women to 21 Years is Neither Feasible Nor Promising", Scroll (3 Sep,2020).

⁵ Abhijit Das, "Does India Need a New Law That Revises the Age at Which Women Are Married?", Wire (13 Sep 2020).

⁶ Jagriti Chandra, "Activists Against Raising Age of Marriage for Women", The Hindu (25 August 2020).

⁷ Ecowrap, "Increasing the Legal Age of Women Marriage: A Dominant Strategy For Societal Good, Financially Empowering Women", State Bank of India (22 Oct 2020).

to job and education to women and also a critical analysis whether a age increase is a doable solution to settle women related issues.

II. UNDERSTANDING THE 'FEMALE HEALTH' CRITERIA IN INDIA INVOLVING CHILD MARRIAGE, CHILD PREGNANCIES AND RELATED ISSUES

India has an untapped crime rate with child sexual abuse cases. The rates fluctuate to a much more depressed picture which indicates that the percentage of crime rates are much more higher than it was the latter year. In a report published by UNICEF it cushions the idea that India has the highest number of child brides, with the statistics pointing to be a sketchy one-third of the total.⁸

A deeper analysis of 'child' leads to referring "The Prohibition of Child Marriage Act, 2006" (PCMA), it defines a child through the age markers. It is below 18 years for females and below 21 years for males.⁹

Child marriage is a primary social concern, and it is a social menace whether it happens to a girl or a boy. Child marriage denies the fundamental human right to health, education, and freedom from violence, abuse, and exploitation. It also bereaves the child of their childhood. Moreover, child marriages drastically impact the life of a girl more than a boy. Child marriage is defined "as a marriage to which either of the contracting parties is a child."¹⁰ The statute aims to halt child marriages which take place as they are considered illegal. The PCMA sprouted in the year 2006 to control the population explosion in India.¹¹ A survey which was conducted by the "National Family and Health Survey" was found that 6.8% of women between 20-24 are married before they attain the age of maturity.¹²

During the pandemic and lockdown in the previous year, there was a spike in India's child marriage incidences. However, as per Smriti Irani, the Union Minister of Women and Child Development stated:

*"As per the information received from National Crime Records Bureau (NCRB), there is no data to indicate a rising number of child marriage cases during the lockdown period."*¹³

On the minister's response, an RTI was filed, and it was found out that there has been a rise of 33% cases of child marriages from June to October 2020 compared to NCRB data of 2019.

As per the NCRB Data of 2019, the total number of child marriage incidences in the entire

⁸ Shireen J. Jejeebhoy, "Ending Child Marriage in India, Drivers and Strategies". UNICEF (India) (30 Nov 2020).

⁹ Sec 2(a), "The Prohibition of Child Marriage Act, 2006".

¹⁰ Sec 2(b), "The Prohibition of Child Marriage Act, 2006".

¹¹ Jagriti Chandra, "Activists Against Raising Age of Marriage for Women", The Hindu (25 August 2020).

¹² International Institute for Population Sciences, "National Family Health Survey-4 2015-16".

¹³ <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1655610>, accessed on 30 Jun 2020.

country under the PCMA, 2006 reported is 525. Assam reported 115 cases being the state with the highest number of child marriages in India and Karnataka, West Bengal, and Tamil Nadu; said cases were 111, 70, and 46.¹⁴

The consequences of child marriage is a crime, but it attaches itself to more crimes like dowry. The idea of dowry in child marriages include lesser dowry for child which is a win-win situation for the family to get rid of the female daughters.¹⁵ The situation is dire in rural areas as the girl child is looked as an economic liability rather than a bundle of joy. In areas of Rajasthan, female child are killed as soon as they are born or dumped in the garbage bin to get rid of them.¹⁶ The cultural perceptions adds to the unemployment opportunities for the females as well as the paucity of educational access remains perennial.

Studies claim that childbirth to an adolescent mother can be prone to suffer from malnutrition. It is learned that adolescent mothers due to pregnancy results from under nutrition because of issues like no access to health service, poor maternal nutritional status, feeding practices are not known to them properly, and on top of it the hazardous health standards maintained.¹⁷

Child marriage attaches itself to the social evil of child pregnancy which is in itself a major health issue that can become complicated and be hazardous for both the child and the mother. States like Bihar and Andhra Pradesh have seen an increased rate of child marriages and child pregnancies which is a pathetic condition as the regulatory framework has failed to deal with issues of rights of the child enshrined under the Constitution of India.¹⁸ The related complications which the child's mother has to undergo are many, namely high risks of premature baby being born, intrauterine growth reduction, birth asphyxia, complications which are prenatal etc.¹⁹

Even though the PCMA has been initiated, however, the rural cultures and their various practices of child marriages are still going on. The failure of the PCMA can be pointed to the gaps it has within the PCMA. Under the statute, it is stated that the child, whether the bride or the groom, has the sole right to file a case to annul their matrimonial ties.²⁰ At many times, it is impossible for a child to file a petition relating to it, considering the societal issues and

¹⁴ National Crimes Records Bureau (Ministry of Home Affairs), "Crime in India 2019".

¹⁵ Aparna Mitra, "Son Preference in India: Implications for Gender Development". 48(4) *Journal of Economic Issues* 1021(2014).

¹⁶ Mirror Now, "Rajasthan: Newborn baby girl dies after mother dumps her in bushes in Ajmer", Times now news (22 Jan 2020).

¹⁷ P.H. Nguyen and others, "Social, Biological, and Programmatic Factors Linking Adolescent Pregnancy and Early Childhood Undernutrition: A Path Analysis of India's 2016 National Family and Health Survey". (2019) 3 *The Lancet Child and Adolescent Health* 463-473.

¹⁸ Srinivas Goli, "Social Determinants of Child Marriage in Rural India", *Oschner Journal* 396-97(2018).

¹⁹ *Ibid.*

²⁰ Malavika Rajkumar, "To Root Out Child Marriage, Existing Laws Need Tightening", *The Wire*, (11 Sep 2019).

pressures. The child may even not be allowed to move out of the house or if caught doing such action, they may be brutally attacked, which is a problem to itself as in many cases it is found that the sole guardians want their child daughters to get married. It is shocking to learn that the personal laws at times allow child marriages and restrain the usage of PCMA.²¹ Also, a marriage registry is not a pre-requisite under the Act, which is a big loophole in itself. These gaps need to be plugged by the government by amending such laws as it will help in the holistic development of the child marriage laws, and mere increasing the age will not resolve the issue.

III. A SNIPPET IN UNDERSTANDING WOMEN'S RIGHT TO EDUCATION AND EMPLOYMENT

Right to education and employment is crucial for the development of women to fight in the patriarchal society. But fighting with numbers for marriageable age has been a long feminist struggle. The right to equality has been drawn from the Constitution of India to share the rights of a person equally. To implement the right to equality on the age of marriage, we need to understand why the difference occurred in the beginning. This leads us to trace back the "Child Marriage Restraint Act, 1929". Under this statute, it was stated that the girls mature earlier than the boys and therefore lowering the age was justifiable, which has grown outdated in the present scenario.

Learning more about the educational aspect, even though the prevalence of "Right to Education" persists, the girl child's education is considered poor and does not sip its way forward to overcome the inter-generational poverty. The necessity of education in the rural agricultural villagers' mindset has not been hammered properly to understand its real value. Also, it is learned that many parents prefer private education over Governmental education as it is considered superior. Still, in the long run, due to lack of funds, they cannot afford it and makes the child quit their education.

It is also observed that poor family needs the girl child to help them in their domestic chores which pulls the girl child out of the school. Many issues have led the girl child getting denied of their education as they sacrifice their education for the welfare of others bearing their personal loss. Thus, a step needs to be encouraged of compulsory education of girl child till they complete their vocational studies.

In a 2017 report which was published by "the National Commission for Protection of Child Rights" it draws a comparison that 39.4% of girls under the age group of 15-18 years drop out

²¹ Ibid.

from either schools or colleges.²² Out of the drop outs 64.8% of the girls are forced to do household work or pushed to do begging.²³ Glancing the literacy rates, India's female literacy rate stands at a mere 66%, but the average World female literacy rate stands at 82.65%. When looked at the rankings, India ranks even below the middle and lower-income countries, which is quite a dismal picture to be realised.

In the workplace, the scenario has a blanket of patriarchy shrouded in it. There is a state of competitiveness that lingers all over the workplace. Women are sometimes underpaid compared to the work done by males. The women have to take maternity leaves which sometimes makes their job insecure because of the replacement on their positions. There are various issues even job transfers make a woman quit their jobs which adds up to women being relegated in their job positions. Thus, in conclusion, various issues like gender issues, patriarchy, infrastructure, health conditions, non-implementation of laws, or government-initiated effective planning leads to women being subjugated of their rights.

IV. CRITICAL ANALYSIS TO WHETHER INCREASING "MARRIAGEABLE AGE" WILL LEAD TO THRIVING OF EQUALITY

The idea of marriageable age to be brought to equality needs a broad spectrum of understanding to analyze whether do we really need the age bar to level up to 21 years?

There has been a hue and cry by various women activists demanding the age of marriage to equalize with that of the males. The comparison is even brought through with the voting rights. If the government can set the same voting rights with both males and females, why is there a differential treatment with the marriageable age?

In the earlier law of the "Child Marriage Restraint Act," it was realized that girls mature faster than boys thus, this difference is an outdated understanding of the issue.

Understanding the various legalities relating to it, we can learn that the "Law Commission Report, 2008" recommends same age for both the genders to be précised at 18 years and not 21 years.²⁴ The "National Human Rights Commission,2018" recommends a uniform age for marriage but has not focused on the women's marriage age to be 21 years. Also, the "Indian Majority Act" provides equal rights to both men and women, from having the right to vote to make legal decisions. The Supreme Court in the case of "Independent Thought," stated that a child is someone who is below the age of 18 years and the specific age is universally being

²² "National Commission for Protection of Child Rights", "Vocational & Life Skills Training of Out of-School Adolescent Girls in the age group 15-18 years" (2017).

²³ Ibid.

²⁴ "Law Commission Report,2008".

accepted and that is the stipulated age decided to marry.²⁵ In various International Conventions such as the "Convention on the Elimination of All Forms of Discrimination Against Women" (CEDAW) agrees the marriageable age of women to be 18 years.

The laws of POCSO accepts child to be below 18 years of age, and any sexual encounter below the age is considered a crime but the increase in the age bar to 21 years will still allow a woman of 18 years and above to have the right to consent for sexual encounter and will not be punishable by law which totally runs contrary to the idea of raising the marriageable age. On the parallel lines the right of unmarried couples to live together is legalized in India, which may still be an escape for the people to hide their marriage and live together under the umbrella.

In the cases of elopement where the boys flee with his minor wife, it is observed that the boys are prosecuted with charges of repeated rape on his minor wife under the statute of "Protection of Children from Sexual Offences" (POCSO). The imprisonment is a minimum of 20 years under the law. The law runs contrary when the issue of an arranged marriage of child victims is at a pedestal. The punishment is mere two years in comparison to 20 years. Is this a mockery of law?

Laws need to be fair and unjust. It should not play games with a child's life. The proportion of punishment should be equal to the crime done. This disparity automatically replaces honor killing by the rule of law. This is a complex state of law, and the heinous state needs recovery with proper amendments in law.

V. CONCLUSION: THE MANDATORY POLICY IMPLICATIONS

The "World Economic Forum's Global Gender Gap Index, 2019-2020", ranks India at 112; in the marker of "health and survival," it is ranked 150 out of the 153 countries, which is quite disappointing for a rate at which India is developing.²⁶ The whole statistics makes to realize India is still a third world country as it still lacks to provide the basic human right that people deserves. These statistics on the report clearly point out that there is a limitation to the economic opportunities for Indian women, which is a failure to the various programs that the government initiates from time to time.²⁷ The Indian neighbors are in the stage of progress relating to it, and South Asian countries such as Sri Lanka, Bangladesh, and Nepal have outdone their past results in the "Global Gender Gap Index".²⁸

The recent Coronavirus surge leading to lockdown has further raised the bar of gender

²⁵ "Independent Thought v. Union of India", W.P. (Civil) No. 382 of 2013.

²⁶ World Economic Forum, "The Global Gender Gap Report 2020", (http://www3.weforum.org/docs/WEF_GGGR_2020.pdf), accessed on 1 Jul, 2021.

²⁷ Ibid.

²⁸ Ibid, 9.

inequality again in India. A research being done by the "Centre for Monitoring Indian Economy" states that post lockdown the female labor participation has shrunk more by 13%.²⁹ The achievement of aiding the females is a hard task that requires the government to understand the core issues which directly are associated with gender disparity.

The infrastructural constraints are a major concern while accessing education as developing it will aid to encourage the female children to be a part of the schooling and complete the education. The recent project which needs attention will be developing more toilets for females in the schools which is a pre-requisite for a girl child to meet her private needs and will not hinder her enrolment rate in schooling.

The Assam Government has taken the initiative to provide the girl child with scooties and cycles to help her reach school, but the reality is the family members tend to use the vehicle for their own use which is again pointless in achieving its goal. In states like Kerala, Rajasthan has launched a scheme to increase female enrolment rates through "She Pad" project which was launched in 2017. Through this project, the schools are provided with incinerators, pads. The government can take steps to implement laws to protect the rights of women and does not need to plug holes to cover up the failed beti bachao program, which ran hollow. It is of no use to raise the level of marriageable age to 21 just so to do something for a change. A law needs proper understanding and reasoning with a foresight of achieving its goals through the process of implementation, which will be an overall success to the upliftment of the female society and well-being of humanity.

Laws will be in the statute book, but how effective an implementation of laws is done needs a proper check. The failure in the world ranking relating to female's overall development is a matter of concern. Women belong to a weaker section like children. They need upliftment in society. Extra care and protection with proper implementation of laws will boost the society and India.

²⁹ Mahesh Vyas, "Female Workforce Shrinks in Economic Shocks", Business Standard (14 Dec 2020).