



REVISING THE MARRIAGEABLE AGE- A CURSE OR BLESS

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ABSTRACT

Our society has a long history of struggling against child marriage. We often increased the marriageable age based on the concern of our nation. The revised marriageable age always had a positive impact on society. It increased the socio-economic welfare of the country. The gender inequality laws are often repealed in our country. Now in this era, again the demand for revising the marriageable age has arisen. In this paper, this demand has been discussed. Further, the history of the marriageable age in India is mentioned. My study showed a strong correlation between marriageable age and motherhood. The related complexities and gender neutrality are also discussed. The paper also highlights the impact of marriageable age in our society. Later, the Conventions, Articles, Indexes, Sustainable Development Goals related to the demand are also mentioned. The Important Judicial Precedents which support the demand are also stated. At the end of the paper, recommendations are given clearly to understand the need for revising the marriageable age.

Keywords: Marriageable age, society, motherhood



INTRODUCTION

During the Budget Speech 2020, Finance Minister Nirmala Sitharaman said that a task force has been setting up to revise the minimum age of marriage for women in India from 18 to 21 years. Similarly, in the Independence Day Speech of 2020, Prime Minister Narendra Modi has announced that the Central Government set up a committee to reconsider the minimum age of marriage for women. The National Human Rights Commission in the year 2018 also suggested setting the uniform marriageable age for both men and women.

These instances raised the question, “Whether there is a need for raising the legal age of marriage to 21 years for women in India?”.

WHAT DOES MARRIAGE MEAN?

It is a State of being united as a spouse in a consensual and contractual relationship recognized by Law¹.

In other words, it is the legal or formal recognition of the union of two people as partners in a personal relationship that can only be dissolved by Law. Marriage is a social institution that is very important for our society. It lays down the foundation for another institution called Family. The Functions of marriage include regulation of sexual behaviour, reproduction, nurturance, protection of children, socialization, etc.²

In India, various religion defines marriage in its terms. According to Hindu Law, marriage is considered being a religious sacrament and not a contractual obligation. But under Muslim Law, marriage is a contract between two individuals and not a sacrament.

In our society, women are considered as another person's property by their parents always. So, parents will be in a hurry to get their daughter married. There are so many reasons like poverty, a perception that marriage will give protection, social norms, cultural or religious practices and to save the family honour, etc.... increase the chances of early marriage. So, the Lawmakers fixed a certain age as a “Marriageable age” or “Minimum age for Marriage” to avoid child marriage and prevent the abuse of the minor. If anyone forces their daughter to get married below the prescribed age, then they will be punished under the law.

¹ “Marriage.” *The Merriam-Webster.Com Dictionary*, www.merriamwebster.com/dictionary/marriage. Accessed 22 Jan. 2021.

² Nambi. “Marriage, Mental Health, and the Indian Legislation.” *Indian Journal of Psychiatry*, Volume 47, Issue 1, Pages 3-14, 2005, www.indianjpsychiatry.org/article.asp?issn=00195545;year=2005;volume=47;issue=1;spage=3;epage=14;anlast=Nambi.



WHAT IS THE MEANING OF MARRIAGEABLE AGE?

Marriageable age is the legal age at which one can get married. In India, according to Section 2(a) of the Prohibition of Child Marriage Act, 2006 marriageable age for women is 18 years and for men is 21 years.

HISTORY OF MARRIAGEABLE AGE IN INDIA

In ancient India, girls got married early in the ages of about 6 to 8 years. But they remained with their parents until their puberty. Indian Penal Code, 1860 criminalized sexual intercourse with a girl below ten years. Later, through the Age of Consent Act, 1891 British Government increased the age of consent for sexual intercourse from 10 years to 12 years. Bal Gangadhar Tilak opposed this move stating that no alien is having the power to interfere in the customs of our society. But Bal Gangadhar Tilak himself convinced people to raise the marriageable age to 16 years in the latter stage. In the Age of Consent Bill, 1927 it was declared that the marriage with a girl under 12 years of age would be invalid. Various bills addressing the issue of the age of consent got introduced.

But none got approved. The Members of the All-India Women's Conference, Women's Indian Association, and National Council of Women in India proposed to raise the minimum age of marriage and consent before the committee headed by Sir Moropant Vishvanath Joshi. The Committee then presented its report to the Imperative Legislative Council on 20th June 1929 and the council passed the bill on 28th September 1929. It became the Child Marriage Restraint act on 1st April 1930. In this act, the legal age of marriage for girls in India got revised from 12 years to 14 years and for boys, the age was fixed as 18 years. This act is popularly known as Sarada Act which was named after Rao Sahib Harbilas Sarada who sponsored this act ⁴.

But the act remained a dead letter during the British period ⁵. In the year 1978, Sarada Act got amended which revised the minimum age of marriage for women from 14 to 18 years and men from 18 to 21 years.

The Special Marriage Act which was enacted in the year 1954 & the Prohibition of Child Marriage Act, 2006 also fixed the marriageable age for women in India as 18 years and for men as 21 years.

PERSONAL LAWS OF THE VARIOUS RELIGIONS

Every personal Law has its own set of standards for marriage as per their customary practices. Section 5(iii) of the Hindu Marriage Act, 1955, Section 60(1) of the Indian Christian Marriage Act, 1872, Section 3(1)(c) of the Parsi Marriage and Divorce Act, 1936 also prescribes that the age of



consent for marriage of women must be 18 years and for men 21 years. But Islam Law differs in its stand. According to Muslim Law, a person who attained puberty is eligible to get married; that marriage is valid even though he/ she is a minor.

There is no relationship between the age of the majority and marriage. In India, according to the Indian Majority Act, 1875, those who attained 18 years of age without any gender discrimination are considered as Major and have voting rights under Article 326 of the Indian Constitution. But marriageable age is different for both men and women. Why So?

NEED FOR A GENDER NEUTRALITY

India is a patriarchal society. This nature often reflects in its law too. In my view, the Major reason for having the different legal age for marriage is basically to dominate the wife. It contributes to the stereotype that “wives must be younger than their husbands”⁶. There is a belief in society that women are more mature than men of the same age. So, this is also the reason for having different legal ages for marriage among men and women. Law Commission recommended that the age difference has no basis in law because the spouses entering into marriage are all considered as equals and their partnership must also be equal⁶.

A Public Interest Litigation was filed by Ashwini Kumar Upadhyay, who is an advocate and BJP leader before the Delhi High Court under Article 226 Challenged the different minimum ages of marriage for men and women. He contended that this difference is against Article 14, 15, and 21 of Part III of our Indian Constitution⁷.

HOW THE DIFFERENT LEGAL AGES FOR MARRIAGE VIOLATES ARTICLES 14, 15, AND 21?

Every Citizen of India should be treated equally before the law. But the different ages for men and women treat both of them differently. So, it violates Article 14. There should be an equal age limit for both men and women.

Every Citizen of India without any discrimination should be considered equals. But the difference in marriageable age for men and women discriminates a citizen on the ground of sex. So, it violates Article 15. There should not be any gender discrimination.

In the Maneka Gandhi v. Union of India⁸, the court interpreted the term “Right to Life” guaranteed under Article 21 of the Constitution & held that the right to “Live” is not merely confined to physical existence but also includes the right to live with human dignity.



The Right to Live with human dignity means equal social status and approach. No one should be treated inferior or unequal in society. But the different marriageable age treats, women as an unequal and inferior individual in society. So, it is against the right to live with human dignity that violates Article 21 of the Indian Constitution.

CEDAW CONVENTION

Convention on the Elimination of All Forms of Discrimination against women was adopted by United Nations General Assembly on 18th December 1979. India became the signatory on 30th July 1980 and ratified on 9th July 1993.

Article 5(a) and 16(1)(a) of the Convention states as follows:

Section 5(a) of the Convention provides that the State Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, to achieve the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or stereotyped roles for men and women;

Section 16(1)(a) of the Convention provides that the States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular, shall ensure, on a basis of equality of men and women the same right to enter into marriage;

In Vishaka v. State of Rajasthan³, Supreme Court held that the contents of the Fundamental Rights should always be informed by International Human Rights obligations. India as a signatory should take all appropriate measures to follow the convention. The different marriageable age for men and women violates Article 5(a) and 16(1)(a) of the Convention. So, there should be no gender discrimination law relating to marriage & a uniform age limit should be fixed for men and women.

IMPACT OF MARRIAGE ON MOTHERHOOD AND RELATED ASPECTS:

Early marriage results in early motherhood. Such early motherhood is associated with poor maternal health outcomes that include Pregnancy Complications and Maternal Mortality. In India, Maternal Mortality Ratio is 113 per 1,00,000 live births according to the 2016-2018 report.

³ (1997) 6 SCC 241



Pregnancy-related complications are the major cause of death among 15 and 19-years old girls. Because the adolescent girls still at the stage of growing only. It increases the risk of complications during pregnancy and results in maternal mortality⁴.

And as per the 2019 report, Infant Mortality Rate is 28 per 1,000 live birth, Under-five Mortality is 34 per 1,000 live birth, Neonatal Mortality is 21 per 1,000 live birth.

According to the National Family health survey, Most Adolescent mothers (10-19 years) are likely to be anemic who in turn give birth to the undernourished child.

In India, Children born to 10-19 years old mothers were ten percent more likely to be wasted than children born to 20-24 years old mothers. Child Wasting means low weight for height under the age of five.

As per the study of the International Food Policy Research Institute (IFPRI) 2019, Children born to 10-19 years old mothers were five percent more likely to be stunted than children born to 20-24 years old mothers. Which means shorter than their age under the age of five (child stunting).

Lack of awareness among women, inadequate access to health care, maternal depression, malnutrition, poverty, etc. are the reasons for the above-mentioned conditions.

Though there is a steady decline in maternal mortality, infant mortality, under-five mortality, neonatal mortality, we need to eliminate these completely to achieve a healthier society. It also helps us to achieve our Sustainable Development Goals (SDGs).

SUSTAINABLE DEVELOPMENT GOALS:

United Nations Member States adopted the Sustainable Development Goals (SDGs) in 2015 to eradicate poverty, protect the planet and ensure that all well-being enjoy peace & prosperity by 2030. India is one of the founding members of the United Nations. Totally 17 Sustainable Development Goals to achieve by every member state and fixed some global targets to accomplish by 2025.

The Member States should take all steps to end all forms of malnutrition, and should also achieve the internationally fixed target on child stunting and child wasting by 2025, and address the nutritional needs of adolescent girls, pregnant women, lactating women, and elderly⁵.

⁴ <https://www.unicef.org/india/what-we-do/maternal-health>

⁵ <https://www.un.org/development/desa/disabilities/envision2030-goal2.html>



The Member States should take all steps to reduce the global mortality ratio to less than 70 per 1,00,000 live births and should end the preventable deaths of newborn and child under the age of five to at least as low as 25 per 1,000 live birth and neonatal mortality to 12 per 1,000 live births⁶. The Member States Should Adopt and strengthen policies & legislation to promote gender equality and empower all women and girls at all levels. The states should take all necessary steps to eliminate child, early, and forced marriages & end all forms of discrimination against women and girls everywhere⁷.

⁶ <https://www.un.org/development/desa/disabilities/envision2030-goal2.html>

⁷ <https://www.un.org/development/desa/disabilities/envision2030-goal5.html>



Various initiatives got introduced by the Government to reduce maternal mortality, infant mortality, under-five mortality, neonatal mortality and to improve the nutritional level of children



and mothers in India. The Initiatives are Pradhan Mantri Surakshit Matritva Abhiyan (PMSMA), Janani Shishu Suraksha Karyakram (JSSK), Pradhan Mantri Matru Vandana Yojana, India Newborn Action Plan, POSHAN Abhiyaan, Mission Indradhanush, Integrated Child Development Services (ICDS), etc. But the major initiative would be revising the marriageable age for women from 18 to 21 years.

According to data published by various institutions, mostly adolescent girl's marriage leads to complexities such as undernourishment, maternal mortality, infant mortality, under-five mortality, neonatal mortality, etc. The marriageable age revisal from 18 to 21 years would reduce these conditions. Through this, we can reach our Sustainable Development goals by 2030. It would also enhance ourselves to achieve the best possible score (zero- means no hunger) in Global Hunger Index (GHI).

Global Hunger Index (GHI) is jointly published by Concern Worldwide and Welthungerhilfe every year since 2006. It has been using to track and combat hunger based on four Indicators. They are undernourishment, child mortality, child stunting, and child wasting.

JUDICIAL PRECEDENTS

In National Legal Service Authority v. Union of India⁸, the Honorable Supreme Court while the recognition of transgender as a third gender, held that all human beings have equal value and should be treated equally before the law.

In Joseph Shine v. Union of India⁹, it was held by the Supreme Court that a law that treats women differently based on gender stereotypes cause a direct affront to women's dignity and violates Article 14 & 21.

In Shayara Bano v. Union of India¹⁰, the Chief Justice of India Khehar ruled that a practice cannot be validated merely based on the fact that it has been in existence for a long time.

CONCLUSION

Life is not only about marriage. Other than this, girls also have dreams to fulfil and the right to live "their" life & enjoy it. The marriage age limitation is fixed based on the patriarchal mindset

⁸ (2014) 5 SCC 438

⁹ (2019) 3 SCC 39

¹⁰ (2017) 9 SCC 1



and stereotypes. This limitation allows only men to pursue higher education & considers men as superior individuals to women. How long women inferior to men? Around 125 countries in the world have the same marriageable age for men and women. Why not us? A healthy society should have a forward way of thinking not a backward one. Marriage should not act as a hindrance for women to achieve their goals. The Revising of marriageable age for women would encourage them to pursue graduation that ultimately results in the women's participation in political, economic, and public life. It would empower women and make them financially independent also. As a society, we should treat both men & women equally and create equal opportunity in all fields. No law, rules, and regulation should treat them differently. Without women, nothing is possible in society. So, we should give importance to women's health and well-being also. Our society should focus on the health of future generations also. Because they are the wealth of our Nation. The initiative of increasing the marriageable age would help us to achieve these by reducing maternal mortality, infant mortality, neonatal mortality, under-five mortality, and undernourishment. This initiative is Socially and Economically beneficial for society at a large. As mentioned earlier, this would also help us to achieve Sustainable Development Goals (SDG), enhance our performance in Global Hunger Index (GHI) and also enable us to follow the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). By achieving this, we can be a better example for other countries. Though some people are against this initiative, in my view this would really be a blessing for our society

REFERENCE: [HTTPS://LEXFORTI.COM/LEGAL-NEWS/](https://lexforti.com/legal-news/)