

Study on Reasons and Consequences of Child Marriage with Special Reference to The Prohibition of Child Marriage (Amendment) Bill, 2021

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Abstract:

Raising the legal age of marriage is an important step to address gender inequalities. Increase in Maternal and Infant Mortality Rate is one of the important issues before Indian Government. National Family Health Survey (2019-2021) shows that one-fourth of the women aged between 20-24 years were married before turning 18 years old. Early age marriage is the main cause of increased maternal mortality rate and infant mortality rate. So, the Prohibition of Child Marriage (Amendment) Bill, 2021, was introduced in Lok Sabha on 21st December 2021. The Bill seeks to increase the minimum age of marriage of females to 21 years from 18 years. The Amendment in Act seeks to tackle gender inequality and gender discrimination. The Amendment also provides adequate measures to secure girl's health, welfare and empowerment. It also aims to ensure education and opportunity to women at par with men. The Amendment protect equality right provided under Article 14, right to life and personal liberty under Article 21 of Indian Constitution. However, it has become debatable issue. The bill proposes to raise the legal age of girls irrespective of religion. So, Bill had been opposed by opposition. The Amendment in the Prohibition of Child Marriage has different social and legal dimensions.

Key Words: Child, Marriage, Legal Age.

I. Introduction:

The marriage age, is the legal age or the minimum age under which a person is legally permitted to marry. Age of marriage vary from place to place, but in many cases, the age of the marriage as a privilege is determined by the age of majority. The age of marriage is usually 18 years, but there may be variations. The age of marriage should not be confused with the age of majority or the age of consent, although it may be the same in many places.

At international level there is a convention called as the [Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages](#), 1962 which specifies the minimum age for marriage. It provides that, when the age of marriage under a civil law is less than that under the law of the land, the law of the land will prevail. However, some religious communities do not accept law of land in this regard, which could lead to child marriage or forced marriage. This convention has been accepted by 55 member countries.

The [Supplementary Convention on the Abolition of Slavery](#), 1956 has provided to accept a minimum “appropriate” age for marriage. In many developing countries, the legal age limit is set as a mere guide.

It is the finding of UNICEF that almost one in five girls are married before the age of 15 years. UNICEF, a United Nations children's agency, provides that child marriage is violation of children's rights.¹ Even Pathfinder, an international organization provides that “Every year approximately 12 million girls are married before the age of 18, an estimated 70% adult death results due to unsafe sex, Complications pregnancy and Child birth are the leading cause of death for girls aged 15-19 globally. These findings are based on the data of United Nations and World Health Organization”.²

Till Amendment in Child Marriage Act, 2021, the minimum age for marrying women was lower i.e. 18 years and for man it was 21 years.

¹UNICEF, Child Marriage, Available at unicef.org.

²Pathfinder, Adolescent & Youth, Available at pathfinder.org.

In the majority of countries, marriageable age is 18 years. Marriage consists rights and responsibilities. Most of the countries allow younger people to marry people below marriageable age with consent of the parents.

The [United Nations Population Fund](#) has provided that India is among 41 countries, who practice child marriage. It is shocking but true that “30 per cent or more women aged 20-24 years were married by 18 years in the last decade. 47 percent Indian women are married before they reach 18 years”³

In India, the states like Rajasthan, Uttar Pradesh, Madhya Pradesh, Jharkhand, Chhattisgarh, Bihar and Andhra Pradesh average age of marriage is below the legal age. States where child marriage is most prevalent are also those who have high population. It has been proven that adolescent brides are likely to have high fertility and a number of unwanted pregnancies.⁴

Child Marriage Concept in India:

Under the Prohibition of Child Marriage Act, 2006 - a child has been defined as “a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age.” Convention on Rights of Child provides that child is any human being below the age of 18 years.⁵

Child marriage, according to the Indian law, is a marriage where either the woman is below age 18 or the man is below age 21 years.⁶ According to UNICEF, “Child Marriage is defined as a marriage of a girl or boy before the age of 18 and refers to both formal marriages and informal unions in which children under the age of 18 live with a partner as if married.”

UN Women proposes that child marriage be defined as a forced marriage because they believe children under age are incapable of giving a legally valid consent. Child marriage is a social phenomenon which is practised in some societies in India. In India a young child (usually a girl below the age of fifteen) is married to an adult man.

A second form of practice of child marriage is that in which the parents of the two children (the girl and boy) arrange a future marriage. In this practice, the individuals (the boy and girl) do not meet one another until they reach the marriageable age, when the wedding ceremony is performed.⁷

Reasons of Child Marriage are as follows:

Main reason behind child marriage in India and other developing countries is socio economic condition of girls involved in child marriage. These reasons also include gender inequality, social norms, perceived low status of girls, poverty, lack of education, safety concerns about girl children and control over sexuality are considered to be reasons for prevalence of child marriages. Girl children in rural areas are more affected than their urban counterparts. It is the finding of UNICEF that child marriage is a social norm in various developing countries.⁸

Consequences of Child Marriage are as follows:

³Times of India, India among 41 nations still practicing under age marriage for girls, Available at timesofindia.indiatimes.com.

⁴Childline 1098, Childhood is not an idle age for an idle marriage, Available at childlineindia.org.

⁵Article 1, CRC.

⁶Social Welfare Department, The Prohibition of Child Marriage Act, 2006, Available at nsocialwelfare.org

⁷Vikaspedia, Child Marriage, Available on vikaspedia.in.

⁸Supra not 2. Available at UNICEF.

High MMR (Maternal Mortality Rate)

Child Marriage may be resulted into reproductive problems in girls. It leads to high maternal mortality rate. Such maternal mortality is high in the girls between 15 and 19 years of age. Many girls die during childbirth. Many times, such girls need to face termination of pregnancy, still birth, miscarriage.

High IMR (Infant Mortality Rate)

The possibility of death of infant born from the girls 15-19 years of age are more. Such infants take birth with deformity, low weight, low cognitive ability.

Violence

India is a male dominating country where girls and women are at subordinate position. They are just home makers. It is said that they are born to serve. And man is born to protect them. They are treated as liability. If they marry according to their will with the person who is not accepted by his family member, it is said as bringing shame to her family. So, before she gets capability to think, parents compel her to marry. Such young girls have low level of immunity. Early sexual experience is violence for them.⁹ It was the finding of International Centre for Research on Women that, girls married before 18 years of age are twice as likely to be beaten, slapped, or threatened by their husband, and three times more likely to experience sexual violence. They are the victims of sexual abuse and post-traumatic stress.¹⁰

Child Marriage Laws in India:

Child marriage was outlawed in 1929, under Indian law. However, in the British colonial times, the legal minimum age of marriage was set at 14 for girls and 18 for boys. Under protests from Muslim organizations in undivided British India, a personal law

The Child Marriage Restraint Act, 1929

The Child Marriage Restraint Act is also Called as Sharada Act. The Child Marriage Restraint Act, 1929 came into existence on 1st April 1930. The objective of the Child Marriage Restraint Act was to eradicate the evil of child marriage. Child marriage causes dangers to the life and health of a female child. It may also cause stress and deaths of such minor mothers.

According to this Act, child means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age. Child marriage means a marriage to which either of the contracting parties is a child. Contracting party to a marriage means either of the parties whose marriage is or is about to be thereby solemnised; and minor means a person of either sex who is under eighteen years of age.¹¹

According to the Child Marriage Restraint Act, 1929, where male who is above eighteen years of age and below twenty-one, contracts a child marriage, he shall be punishable with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both.¹²

Where a male above twenty-one years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine.

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⁹Sneha Karma Foundation, Society at Stake: A take on Child Marriage, Available at snehkarma.org.

¹⁰ICRW, Adolescent and Youth, Intimate Partner, Violence, Violence Against Women and Girls, Available at icrw. Org.

¹¹Section 2, the Child Marriage Restraint Act, 1929.

¹²Section 3, the Child Marriage Restraint Act, 1929.

¹³Section 4, the Child Marriage Restraint Act, 1929.

This Act also makes punishable performing, conducting or directing any child marriage punishable with simple imprisonment which may extend to three months and shall also be liable to fine, unless he proves that he had reason to believe that the marriage was not a child marriage.¹⁴

This Act makes child marriage a cognizable offence. For the purpose of its investigation and arrest, no warrant is required.¹⁵ The Act also provides that the court has a power to issue injunction prohibiting marriage in contravention of this Act. It also provides that whoever “disobeys such injunction shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both”.¹⁶

The Muslim Personal Law (Shariat) Application Act, 1937

[Sharia](#) Act was passed in 1937. The Sharia Act permitted child marriages, if consented by girl's guardian. After India's independence in 1947, the act underwent two revisions. After revision of this Act, the minimum legal age for marriage was increased to 15 for girls in 1949, and to 18 for females and 21 for males in 1978.

The child marriage prevention laws have been challenged in Indian courts, with some Muslim Indian organizations seeking no minimum age and that the age matter be left to their personal law. Child marriage is an active political subject as well as a subject of continuing cases under review in the highest courts of India.

The effect of these laws was, if any partner engages in marriage at a younger age, He can ask for the marriage to be declared void / annulled.

The Prohibition of Child Marriage Act, 2006

The Prohibition of Child Marriage Act (PCMA) in 2006, and it came into effect on 1 November 2007. The objective of this Act was to remedies the shortcomings of the [Child Marriage Restraint Act](#). This Act prevent and prohibits child marriage than restraining it. This Act has not made any difference in age of the child. However, the girls and boys have option to declare their marriage void after reaching adulthood, and in certain circumstances, marriages of minors can be null and void before they reach adulthood.

It also provides that All valuables, money, and gifts must be returned if the marriage is nullified, and the girl must be provided with a place of residency until she marries or becomes an adult.

Children born from [child marriages](#) are considered legitimate, and the courts are expected to give parental custody with the children's best interests in mind.

Any male over 18 years of age who enters into a marriage with a minor or anyone who directs or conducts a [child marriage](#) ceremony can be punished with up to two years of imprisonment or a fine.

The Act is controversial in case of Muslim because, 2006 child marriage law do not apply to Muslims, because marriage is a personal law subject.

The Prohibition of Child Marriage (Amendment) Bill, 2021

The Prohibition of Child Marriage (Amendment) Bill, 2021, was introduced in Lok Sabha on December 21, to increase the minimum age of marriage of females to 21 years from the current 18 years. The legal age for girls is increased by Central Government on the recommendations of the Jaya Jaitly Committee. The Jaya Jaitly Committee was constituted by Women and Child Development Ministry in June, 2020.¹⁷

¹⁴Section 5, the Child Marriage Restraint Act, 1929.

¹⁵Section 7, the Child Marriage Restraint Act, 1929.

¹⁶Section 12, the Child Marriage Restraint Act, 1929.

¹⁷The Task Force was set up to examine issues regarding the age of motherhood, Maternal Mortality Rate, improvement of nutritional level and related issues. It submitted its report on 31st July 2020. (Para 67 of the *IMPACT FACTOR – 7.958 by SJIF*

“The Bill will be made applicable to all communities in the country and, once enacted, will supersede existing marriage and personal laws”. The Bill was introduced in Loksabha by Smriti Irani, Union Minister for Women and Child Development. The said Bill proposes amendments to the 2006 law. The Bill has been sent to a Parliamentary Standing Committee for further discussion.¹⁸

The said Bill has been criticised by members of the Congress and other Opposition parties on the ground of ‘haste’. The Bill has been also opposed on the ground that the Bill is going to violate fundamental rights and affect personal laws of citizens of India as it is a violation of Article 19 and 25 of Indian Constitution. Before presenting the Bill, States are not consulted.

It is the finding of the International Centre for Research on Women and the Population Council that there is no evidence that the enforcement of child marriage laws has been effective in reducing child marriages.¹⁹

Need of raising the minimum legal age of marriage for woman: Arguments in favour of raising minimum legal age of marriage.

- In India maternal mortality rate is 122 per 100000 live births. Main reason behind raising the minimum age of marriage is to decrease maternal mortality rate. It has been proved by survey that adolescent girls die more in pregnancy and child birth.²⁰ Adolescent “Girls lacks the power to negotiate safer sex and have little access to information or services to prevent either pregnancy or infection”.²¹
- Fundamental inequality is seen in education of man and woman. Till the age of 18 a child can complete his/her higher secondary, if such person needs to complete her education, she needs to complete graduation. In the world of competition, she needs to complete graduation, post-graduation and skill development courses. Marriage of a girl at the age of 18 deprives her from advanced education.
- Equality in marriage age of male and female will face the problem of gender inequality and gender discrimination. It is an important step towards securing health, welfare and women empowerment. The Bill will place the women at par in case of opportunities.
- It is the finding of National Family Health Survey that 23.3 per cent women in the age group of 15-19 years are already mothers or pregnant.²² Early pregnancy leads to non-completion of education which results into denial of right of employment opportunities.
- Child marriage is a form of sexual violence against girls.
- Women are fighting for matrimonial rights since last 75 years. “In 19th century, legal marriageable age was 10. In the year, 1940, age of marriage was increased to 12-14 years. In the year, 1978 the girls who reached the age of 15 were married.
- The Bill in its Statement of Object provides that

Budget Speech for FY 2020-21), There were 10 members in Task Force. The Composition of the Task Force is Ms. Jaya Jaitly: Chair person, Dr. Vinod Paul: Member of Health, Secretary of Ministry of Health and Family Welfare, Secretary of Department of higher Education, Secretary of Department of School Education and Literary, Secretary of Legislative Department, Ms. Najma Akhtar, Ms. Vasudha Kamath (Maharashtra), Dr. Dipti Shaha (Gujarat) Available on pib.gov.in.

¹⁸Esha Roy, Bill to raise marriage age of women seeks to override laws across faith, sent to panel, Available at indianexpress.com.

¹⁹Child Marriage and the Law: Technical Note for the Global Programme to end Child Marriage, Available at unicef.org.

²⁰Ann K. Blanc, New findings for Maternal Mortality Age Patterns: Aggregated Results for 38 Countries, 2013, Available at ncbi.nlm.nih.gov.

²¹The Pixel Project 16 for 16 Campaign, 16 ways of preventing and Intervening in child marriage, Available at 16days.thepixelproject.net

²²Ministry of Health and Family Welfare, India, National Family Health Survey 4 (2015-16): In India, 8 percent of women age 15-19 have begun childbearing; 5 percent of women have had a live birth and 3 of women percent are pregnant with their first child., Available at, rchiips.org.

“In order to address the issues of women in a holistic manner, as a measure for empowerment of women, gender equality, increasing the female labour force participation, make them self-reliant and to enable them to take decisions themselves, the Bill, inter alia, proposes to —

- (i) amend the Prohibition of Child Marriage Act, 2006, to reinforce its application overriding all other existing laws, including any custom, usage or practice governing the parties in relation to marriage;*
- (ii) bring women at par with men in terms of marriageable age;*
- (iii) prohibit child marriage irrespective of any law, custom, usage or practice governing the parties;*
- (iv) declare that provisions of the Act shall have overriding effect over every other law, custom, usage or practice governing the parties;*
- (v) make consequential amendments to the other laws relating to marriage; and*
- (vi) make the amendments effective, in relation to marriageable age, two years from the date the Bill receives in assent of the President, so as to provide sufficient opportunity to one and all in our collective efforts and inclusive growth, and to make effective other provisions immediately.”*

Contradictions in India's legal system with regard to the age of consent, the minimum legal age of marriage:

There are many contradictions regarding the age of marriage and age of consent for sex in India. E.g. In case of the Hindu Marriage Act, Indian Christian Marriage Act, Special Marriage Act and Prohibition of Child Marriage Act, legal age of Bride is 18 years and 21 for groom. (After Amendment in Prohibition of Child marriage Act, legal age of marriage for bride and groom is 21 years) However, in case of Muslims, Muslim Personal Law i.e. under Shariat Act, the minimum age for Bride as well as Groom is the age of puberty, i.e. 15 years. “So, what is valid under Shariat could actually constitute a child marriage, under the Prohibition of Child Marriage Act.”

According to POCSO Act Child is any person below the age of 18 years. It shows that the age of consent for sex is 18 years. Section 375 of Indian Penal Code defines rape as intercourse committed by a man with woman, with or without her consent, when she is under sixteen years of age. The Section provides exception that where a man commits sexual intercourse with his own wife, where the wife is not being under 15 years of age is not a rape. Protection of Child Marriage Act provides that parties to marriage i.e. bride or groom can file petition in the court of law to annul marriage, if the petitioner is minor, the petition can be filed through guardian or through Child Marriage Prohibition Officer. So, the question arises how many parties approaches to court to annul their marriages. Court can declare such marriages voidable and not void. Where such marriages result into pregnancies, it may be resulted into health complications to girls, premature deliveries and deformity in children. In this way the child marriage has different social and legal dimensions.

Suggestions to prevent child marriage

1. Woman Empowerment and Parents counselling: Education to girl child can empower her in future. Literacy can help her to stay healthy. Education can give girls confidence. Girls should be made capable to Say ‘No’ to Child marriage. Girls should be motivated for higher education. Even parents counselling can also give fruitful results.
2. Girls should be made aware about their rights.
3. Gender equality should be promoted by State.
4. Society should change the attitude of looking at girls. Instead of looking at girls as liability, they should be treated as asset.
5. Parents should be made aware about ill effect of early and premature sex and pregnancies on girl’s health.

6. People should support the Prohibition of Child Marriage (Amendment) Bill, 2021, to increase the minimum age of marriage of females to 21 years from the current 18 years.

Conclusion:

In this way child marriage is one the evil of society. The Executive Director of UNICEF has rightly said that child marriage is not only wrong, it is dangerous. It exposes a young girl to profound health risks from early pregnancy and difficult childbirth and it exposes her baby to complications of premature birth. Efforts to prevent child marriage is being taken at national and international level. Still child marriage is an international concern. In India the Prohibition of Child Marriage (Amendment) Bill, 2021 has increased the minimum age of marriage of females to 21 years from the current 18 years. The bill has been opposed on the ground of 'haste' and religious ground. However, it is a high time to think the problem of high maternal mortality rate and Infant mortality rate which is the consequence of early marriage. Even it also needs to think that female has equal right to higher education and employment opportunity like male. Legal age of marriage at 18 years of girl creates many physical obstacles to girls. So, people should welcome this Amendment with open minded.