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**TYING THE KNOT AFTER 21- A CONTENTIOUS OPPORTUNITY**- Diya Gaur<sup>1</sup>**ABSTRACT**

Marriage is a fundamental social institution. Recently, the cabinet has cleared the proposal to raise the legal age of marriage for girls from eighteen to twenty-one. The paper attempts to analyse the socio-legal consequences if the bill becomes law. It discusses the various marriage linked laws in India and the discrepancies that exist between them. It examines the various judicial decisions that have taken place in this context. It also explores the reasons behind the recommendation namely for addressing gender discrimination, for instance, by bringing in gender neutrality, ensuring well-being and curbing child marriage. Furthermore, it discusses the opposition and the criticism of the bill which mainly stands on the ground that introducing the bill may not bring about a considerable change and the problems of child marriage and gender discrimination need to be addressed at grassroot level. The paper concludes with comments and suggestions regarding the subject.

**INTRODUCTION**

Marriage is invariably a fundamental social institution. Any modification in the laws related to the domain of marriage is bound to produce social and legal outcomes. There are various marriage linked laws that have certain discrepancies among them. The courts have passed conflicting judicial opinions in such matters as well. In June 2020, a task force headed by Jaya Jaitly was set up by the ministry of women and child development to revise the minimum age of marriage for women in relation with health and social facets such as education and maternal mortality rate, which suggested in its report to increase it from 18 to 21. Recently, the cabinet has cleared this proposal. The change is going to take effect through The Prohibition of Child

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Marriage (Amendment) Bill, 2021. Though, the bill is yet to become a law, it has already started making headlines.

## CURRENT MARRIAGE RELATED LAWS

Presently, there are several laws that govern the domain of marriage as well as that of inheritance and other connected matters. These are applicable based on religion a person belongs to except for Special Marriage Act, 1954. The Special marriage act is applicable to all the citizens of India irrespective of their religion.<sup>2</sup> Another paramount law in respect to marriage is The Prohibition of Child Marriage Act, 2006 which provides for the prohibition of solemnization of child marriage. In the Act, 'child' refers to in case of male, a person who has not completed 21 years of age and in case of a female, a person who has not completed 18 years of age.<sup>3</sup> In this respect, it is congruent with the Special Marriage act and the Hindu Marriage Act in terms of age. However, the Muslim personal law allows marriage after the age of attaining puberty which is assumed to be 15 years. There is no established principle on the question, if The Prohibition of Child Marriage Act (PCMA), 2006 overrides the personal laws. There have been discrepant decisions by the courts regarding this matter. In this respect, it is pertinent to note that in *Independent Thought v. Union of India*, the Supreme Court opined that, "The PCMA is a secular Act applicable to all. It being a special act dealing with children, the provisions of both the Hindu Marriage Act and the Muslim Marriages and Divorce Act, in so far as children are concerned."<sup>4</sup> This acknowledges the overriding effect of the PCMA. Though the statement clears the ambiguity but even after the above judgment a different stance was taken by the Punjab and Haryana High Court in the case of *Shoukat Hussain &Anr. v. State of Punjab and Others*, in which a criminal writ petition was filed in nature of the writ of mandamus directing the respondents to protect the life and liberty of the petitioners who were a Muslim couple. The girl was of 17 years of age and was married to a 36-year-old person. The court opined that the boy and the girl were of marriageable age under the Muslim Personal Law and hence, protection was

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<sup>2</sup>Special Marriage Act, 1954, § 1, No. 43, Acts of Parliament, 1954 (India).

<sup>3</sup>The Prohibition of Child Marriage Act, 2006, § 2, No. 6, Acts of Parliament, 2007 (India).

<sup>4</sup>*Independent Thought v. Union of India*, (2017) 10 SCC 800 .

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granted to them.<sup>5</sup> This gave primacy to the personal laws over PCMA. The issues that can arise due to such discrepancies across PCMA and personal laws is not limited to the direct validation and invalidation of marriage based on age but can also be more complicated on basis of certain sections. For instance, PCMA prohibits and punishes child marriage but does not declare it void, instead, makes it voidable at the option of of the contracting party who was a child at the time of the marriage.<sup>6</sup>The Hindu Marriage Act, 2006 likewise declares child marriage to be voidable and not void. On the other hand, Special Marriage Act declares a marriage between a female under the age of eighteen years and a male under the age of twenty-one years void as per Section 24(i).<sup>7</sup>

### THE NEED FOR INCREASING THE AGE

The need of laws to be gender neutral is gaining more attention. One of the reasons for why the age of marriage for women should be raised is that the proposed amendment introduces gender neutrality in the concerned law. There is no necessity for the minimum age of women for marriage to be less than that of men. Thus, the law brings into picture the principle of gender equality. According to Jaya Jaitly, head of the committee which made the recommendation, population control was not the motive behind the recommendation.<sup>8</sup> Gender equity, curbing child marriage and MMR are the focus of the recommendation. Unfortunately, in certain circumstances, where the employment of women is not much appreciated, marriage negatively impacts a woman's education and career. Even if a woman is working after marriage, there may be partial restrictions or conditions being imposed on her by her family in respect to her employment. Also, housework and taking care of the needs of the family is taken to be wholly the job of women. An employed married woman, who is not receiving support from her husband or family, may find it difficult to maintain a work life balance. In a survey, it was found that after marriage, the priorities of women changed, women required permission for every decision that

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<sup>5</sup>Shoukat Hussain &Anr. v. State of Punjab and Others, (2021) 2 HLR 262.

<sup>6</sup>*Supra* note 3

<sup>7</sup>Special Marriage Act, 1954, § 24, No. 43, Acts of Parliament, 1954 (India).

<sup>8</sup>Sangeeta BaroohPisharoty, *We Were Progressive in Our Thinking': Jaya Jaitly Takes on Women's Marriage Age Move Criticisms*, THE WIRE (Jan 14, 2022), <https://thewire.in/women/we-were-progressive-in-our-thinking-jaya-jaitly-takes-on-womens-marriage-age-move-criticisms>.

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was made, and there were restrictions on what they could or could not do. Their personal ambitions and aspirations became unimportant.<sup>9</sup> If the age is raised, women who may have been subjected to such abysmal conditions could utilize that time for fruition of their goals and aspirations. Undoubtedly, the presence of the will and resources is a pre-requisite for achieving this.

### THE OPPOSITION TO THE BILL AND THE RESPONSE

The bill has been criticized based on certain grounds. One of these is that the bill will fail to achieve its stated objectives as the problems of child marriage and gender inequality needs to be addressed at grass root level i.e., through education, awareness and measures to reduce poverty. They contend that it is the developments in the sector of women education and employment that have led to the reduction in the number of child marriages.<sup>10</sup> Another argument that is being raised is that a person above the age of 18 is taken to be a major and is given the right to vote. This is based on the reasoning that a person above 18 years of age has sufficient knowledge to make decisions and take actions. When a similar argument was raised, Jaya Jaitly refuted it by saying that marriage cannot be equated with voting, both having quite different requirements.<sup>11</sup> The bill is also being seen as restrictive of marital freedom and rights on the basis of a similar argument.<sup>12</sup> One of the merits of the bill is that it aims to bring gender neutrality; an argument was raised in this respect to reduce the marriageable age of men from 21 to 18 instead. Jaya Jaitly said in response that even 21-year-old man may not be fit to raise a family but still have to meet some unrealistic expectations sometimes since people may not always have a free choice in

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<sup>9</sup> Gitanjali Chaturvedi and Garima Sahai. "Understanding Women's Aspirations: A Study in Three Indian States.", vol. 4, ANTYAJAA: Indian Journal of Women and Social Change 70 , pp. 70–91, (2019) <https://doi.org/10.1177%2F2455632719831828>.

<sup>10</sup>Esha Roy, *Raising legal age of marriage for women: the law, the reasons and the criticism*, TheIndianEXPRESS, (Dec. 16, 2021 8:48 PM), <https://indianexpress.com/article/explained/raising-legal-age-for-marriage-for-women-law-reasons-criticism-7675447/>.

<sup>11</sup>*Supra* note 8

<sup>12</sup>Sai Priya Chodavarapu, *Why raising the legal age of marriage for women is more posturing than progress*, Firstpost, (Jan 22, 2022, 9:52 PM ) [https://www.firstpost.com/india/why-raising-the-legal-age-of-marriage-for-women-is-more-posturing-than-progress-10230501.html#:~:text=According%20to%20a%202019%20report,of%2018%20\(according%20to%20the.](https://www.firstpost.com/india/why-raising-the-legal-age-of-marriage-for-women-is-more-posturing-than-progress-10230501.html#:~:text=According%20to%20a%202019%20report,of%2018%20(according%20to%20the.)

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certain scenarios.<sup>13</sup>It remains to be seen whether the act if enacted will give rise to such repercussions and demonstrate a fallacy in logic as argued by the critics or will achieve its stated objectives.

## **SOCIO-LEGAL IMPLICATIONS OF INCREASING THE AGE OF MARRIAGE FOR WOMEN**

The change in the age challenges the social norm that wife should be younger than husband which is still prevalent. The change in the age of marriage may also be followed by health effects. The report stated, on the basis of data collected to show the association between maternal age and infant mortality, that the risk of newborns suffering from ailments decreases if they are born to mothers above the age of 21 years.<sup>14</sup>It is evident from the above information that a change in the PCMA, if not followed by changes in other codified acts, could lead to discordance and inconsistency. There is a requirement to establish a definitive principle on the current ambiguity of the overriding of PCMA over other laws concerning marriage which may be fulfilled if the bill is enacted, taking into consideration one of its stated objectives regarding the same.<sup>15</sup>The amendment proposes amendments to other laws concerning marriage as well. Hence, if the bill becomes law, other codified marriage related laws will be amended as well as per the bill which will ensure consistency and a better implementation of the amendments proposed.<sup>16</sup> Another legal outcome that could follow is the criminalization and potential invalidation of a high number of marriages.<sup>17</sup>The amendment may open a gateway of opportunities for women who are barred from employment or are not allowed to continue their education after marriage due to conservative ideologies. As a result, the proportion of women in the workforce might see an increase. Clearly, the presence of such opportunities and the will to make use of those is imperative to achieve this. Though marrying at a later age does not by itself ensure that it will

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<sup>13</sup>TejasHarad, 'Voting & Wedding Not Same': Jaya Jaitly on Women's Marriage Age Criticism, The Quint (Jan 14, 2022, 3:24 PM), <https://www.thequint.com/neon/gender/jaya-jaitly-on-women-age-of-marriage-criticism#read-more>.

<sup>14</sup>Sanya Dhingra, *Increase women's marriage age to 21 for health benefits — Modi govt task force recommends*, (15 Jan., 2021 12:03 PM), <https://theprint.in/india/increase-womens-marriage-age-to-21-for-health-benefits-modi-govt-task-force-recommends/585519/>.

<sup>15</sup> The Prohibition of Child Marriage( Amendment) Bill, 2021, Statement of Objects and Reasons Bill No. 163, 2021 (India).

<sup>16</sup>The Prohibition of Child Marriage( Amendment) Bill, 2021, § 6, Bill No. 163, 2021 (India).

<sup>17</sup>*Supra* Note 10

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not break but maturity does play a role in making the right decisions. Another social implication that may be brought about by the amendment is reduction in the societal and parental pressure for marriage that some girls have to face on turning eighteen. On the face value, though there seems to be no strong rationale behind how increasing the age from 18 to 21 will directly help in curbing the rate of child marriages, it may help to reduce the problem in the long run by affecting some of its core issues indirectly. However, there is also a possibility that as a law it may not bring a huge difference as the median age of women at marriage is 22.1 year as per a 2019 report released by the Ministry of Statistics and Programme Implementation.<sup>18</sup> If the bill is to work effectively and achieve its intended purposes, improvements in the status quo and have to be made. Nevertheless, the bill invariably brings gender equality in the concerned law which is crucial as there is no legitimate reason for why there should be disparity between the ages.

## CONCLUSION

The bill has been received by varied responses and different outlooks. Undoubtedly, child marriage is one of the most prominent social evils in the country. Each year at least 1.5 million girls below the age of 18 years get married in India. This makes it home to the largest number of child brides in the world, accounting one-third of the global numbers.<sup>19</sup> Patently, the bill is not the only requirement for curbing child marriages and empowering women. Issues like education and poverty stand at the grass root level and steps should be taken in these domains for the bill to achieve its stated objectives. Unless the core issues causing social maladies like child marriage and gender discrimination are addressed, there will not be considerable development in the status quo. Adopting an overarching approach addressing the fundamental grounds of these social evils is the panacea to put a halt to these social evils.

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<sup>18</sup>*Supra* Note 12

<sup>19</sup> UNICEF, <https://www.unicef.org/india/what-we-do/end-child-marriage>, (last visited Jan. 12, 2022).

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