

MARRIAGEABLE AGE OF WOMEN IN INDIA- Muskan Jain¹**ABSTRACT**

Marriage, also known matrimony or wedlock, is a cultural union of two people. It also gives rise to rights between the contracting parties, their children, and the in-laws. Since it is also a cultural union, the practices and rituals involved in marriage differ between religions. For instance, in Christian marriages the contracting parties take vows and say “till death do us part”, while in Hindu marriages, they take 7 promises and 7 rounds around the holy fire. Regardless of religious contexts, a marriage is a sacred bond between two people. There are practices, however, that are tarnishing the institution of marriage like child marriages. This study aims to talk about the drawbacks of the PCMA, 2006 and about the increase in the legal marriageable age of women in India.

Keywords: Marriage, Child marriage, marriageable age, women, laws, PCMA

INTRODUCTION

Marriage is usually understood as the pious unification of two people, bonding for life; or as Hindu traditions describes it, the pure bond of 7 births. The concept of marriage, however, is quite old and has a deeper meaning attached to it. Plato described the communism of wives and property, that both had to be ‘shared’. Women have been denied their rights, their livelihood and treated as a second-grade citizen not only in physical society but in literature as well, like in the works of Aristotle. They were only known and expected to be in the domestic sphere and be responsible for child rearing and bearing. They had to be economically dependent for all of their lives, first on their fathers and then on their husbands. This exists not only in western literature but also in Indian literature, women have been described as snakes, as inferior beings who are answerable to the male counterparts in their lives.

¹ Student at Amity Law School, Noida

More so than spiritual considerations, the economics of marriage play an important role in the process. In the movie *Little Women* (2019), based on the 1868 novel written by Louisa May Alcott, the character Amy March describes marriage as an “economic proposition”, and says that in order to be financially stable, to have legal right over property and her own children and to be well off in life generally, a woman has to get married, because if she doesn’t, she’d be worse off.

While this perspective has changed drastically in the 21st century, with several laws in place to protect the rights, modesty and dignity of women, the idea of a daughter being a burden hasn’t changed much over the last century in the rural areas of India. India accounts for the largest number of child brides each year, despite several laws in place. The instances of child marriage are far more in rural areas (14.1%) than in urban areas (6.9%).² Nearly half of the 700 million child brides across the world live in South Asia and 1 in 3 are the residents of India.³ The state with the highest number of child marriages in India is Uttar Pradesh (36 million⁴.) even after great efforts by social reformists like Pandita Ramabai and Raja Ram Mohan Roy, this social plague refuses to go away.

In response to this, the Central Government has set up a committee, headed by Jaya Jaitley, to increase the legal marriageable age of women in India to 21, equal to the marriageable age of men. With the deliberations in process, the move seems like a good idea and a step towards further minimizing gender inequality. To completely understand the implications of the move, the existing laws that prohibit child marriage and the flaws that exist within those laws need to be analysed.

Specific Objective

- To critically analyse the flaws and drawbacks that Prohibition of Child Marriage Act, 2006 (PCMA) contains and how it has somehow failed to achieve its purpose.
- To analyse the question about increasing the marriageable age of women in India from 18 to 21, with the deliberations of the decision in process.

Prohibition of Child Marriage Act, 2006

The institution of Child Marriage is not just a serious infringement of basic fundamental rights,

² Data from National Family and Health Survey

³ According to a 2015 report of UNICEF

⁴ UNICEF report, February 2019

but it also takes away the childhood and innocence away from the child. PCMA sets the legal marriageable age for women at 18 and at 21 for men. The act prohibits marriage of minors. However, the greatest flaw is that it does not consider a child marriage 'void ab initio'. The act treats the underage marriage as valid, but voidable. It allows the minor party in the marriage to approach and get the marriage nullified.

Another flaw is that, only the bride or groom could annul their marriage in their personal capacity. If they are minor, their guardian or a friend who is over 18 years of age has to approach the Child Marriage Prohibition Officer. Children are not really put in authority of decision making to even reach the first point of contact. They might even be physically restrained and face resistance while convincing and approaching the legal guardian, for they might be the ones who got these children married in the first place.

PCMA has no regulations or consequences towards the Child Marriage Prohibition Officer, if they fail their duty. This creates a serious lack of accountability and effective implementation of the whole act. In other codifications like Protection of Children from Sexual Offences Act, 2012 (POCSO), the officers are held accountable for negligence in the performance of their duty, which makes them more liable of their duties. Such inconsistency in the PCMA contributes to the lack of strictness in this legislation.

Personal laws of communities also obstruct the execution of PCMA. For instance, Muslim Law allows the marriage of children who have attained puberty, which is roughly around the age of 15. The responsibility of describing legislation is left to the jurisdiction of courts. The courts have also given contradictory judgements regarding the prevalence of personal laws. In *Yunusbhai Usmanbhai Shaikh v. State of Gujarat (2015)* the Gujarat High Court upheld the legislation of PCMA over Muslim law and all other communities, stating that the marriages before the age of 18 are punishable under the legislation, while in *Mohd. Samim v. State of Haryana and OR's*, the Punjab and Haryana High Court held that such practices are not illegal and do not come under the purview PCMA.

In addition, it is also important to note that in Child Marriages, there is a deprivation of opportunity to develop the emotional, social and intellectual faculties. The impact of child marriage extends to the health of the children. There's a higher maternal and infant mortality rate, a higher risk of STDs and evidently, people who get married early, have larger families.

The situation has only worsened with the Covid19 pandemic. The rural population thinks that they would easily escape police scrutiny with this pandemic going on, making the affair all

hush and quiet. Officials of the Women and Child Development Department came over 100 instances of child marriage in the lockdown in Mysuru district alone in mid-March and July.⁵ Maharashtra, Karnataka, Tamil Nadu etc., has seen the highest surge of child marriage in India.⁶ The numbers are only soaring.

The existing laws in place have already proved inefficient in uprooting the century old problem, and if the age of legal marriage is increased from 18 to 21, there's a possibility that it would result in further serious infringement of the basic fundamental rights.

Should the legal marriageable age be increased?

The committee deciding the legal marriageable age of women in India is chaired by Jaya Jaitley, a veteran politician and an activist. This committee has been formed under the Women Welfare Division under the Ministry of Women and Child Development. The committee is required to study the implications of the age of marriage, age of childbirth, maternal health, infant health and the maternal and infant mortality rate. This issue was further highlighted by the Finance Minister Nirmala Sitharaman in her annual budget speech, who implored that “age of the girl entering into motherhood needs to be seen in this light”, and further proposed the taskforce.

The focal point of the conversation is how early motherhood leads to higher rates of maternal and infant mortality rate. The thought of increasing the marriageable age has its certain roots to a case in 2017, *Independent Thought v. Union of India, SC 2017*⁷, according to a report in Economic Times. The article questioned whether sexual intercourse between a man and his wife, who is between 15 to 18 years of age, is rape. While exception 2 of Section 375 of the Indian Penal Code 1860 (IPC) declines this but the court said that sexual intercourse with a girl below 18 years of age is rape, regardless of the fact if she's married or not. Economic Times refers this judgement “which held that child marriage should be held void ab initio to shield women from marital rape, had set the ball rolling for the Centre to amend the existing law to declare child marriages invalid.”⁸

The government has various programmes and schemes in motion to promote awareness about the girl child and the importance of education like “*Beti Bachao, Beti Padhao*”. While the

⁵ Laiqh a. Khan, The Hindu, August 18th, 2020

⁶ Poloumi Ghosh, India.com, July 12th, 2020

⁷ Indiankanoon.org

⁸ Karuna john, Sabrangindia.in, 29th June, 2020

decision is pending as the committee is yet to submit its report, the move is good to further minimize the gender inequality by raising the marriageable age of women from 18 to 21, equal to that of men. But there are pros and cons to every decision.

If the concern is about the reproductive health, fewer pregnancies or to avoid early pregnancies in young girls, the existing laws need to be strengthened first. With these concerns in place, amending PCMA and making it more stringent would have greater results rather than increasing the legal marriageable age of women. Increasing the age may result in adversity and complexity with respect to the laws already in place.

Moreover, if the court considers a person below the age of 18 as a child, a minor, then there may be further persecution of rights when the child turns 18 and is not allowed to marry. In Hadiya Case, 2018, an adult woman's decision to marry was questioned by the parents of the woman. The elementary rights that the Child Rights Convention gives to minors i.e., the right to be heard and the right for their voices to be considered will be denied to girls right up till the age of 21. It is very important to declare child marriages void ab initio to further the decline of child marriages in India. Women run and marry their lovers after they turn 18, lovers whom the parents do not approve of. This freedom to marry someone out of one's own volition is bestowed as soon as the person in question turns 18. They have the right to vote, right to make their own independent decisions and be accountable for it and the right to marry. If this age is increased, there will be further persecution of personal liberty, a right which is not even suspended in the times of National Emergency.

In order to avoid underage marriages, the Prohibition of Child Marriage Act, 2006 needs to be amended first. Otherwise, the freedom of expression, personal liberty would be at mercy. The Karnataka government has amended this act to make child marriages void ab initio based on the recommendations of a committee under Justice Shivraj Patil, but there hasn't been much impact because of its failure to advertise and to create awareness about the same. But even amending this act has its own adversities. If the act is amended, if the child marriages are declared invalid and if these marriages are not reported in due course, how would it help those young girls who have no recognition in the eyes of law?

On the other hand, this unequal legal marriageable age affects girls more adversely than boys. The Prohibition of Child Marriage Act 2006 gives 2 more years to the people in the contracting marriage to dismiss their marriage after they reach their legal marriageable age. So, the girls could dismiss their marriage before they turn 20, and boys could do the same before they turn

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23.⁹ 19 or 20 is fairly a really young age to have the personal capacity to make a decision on whether to dismiss or continue with the marriage. This could definitely be rectified by having the same marriageable age. But again, in order to protect the infringement of basic fundamental rights, the time limit to repudiate the marriage could be increased for girls till 4 years after they achieve their marriageable age.

Conclusion

In conclusion, before trying to set up new legislations, the already existing laws needs to be more strengthened and they should be executed strictly as well. There should be accountability on behalf of the Child Marriage Prohibition Officer and there should equitable data reported of child marriages. Child marriages should not go under reported. Certain amendments should take place in PCMA, 2006 by declaring underage marriage as void ab initio. Further laws should be there to uproot the practice of child marriage completely. It is a social issue and it's been over a century that we've been dealing with the same problem. Change has certainly occurred and the number has declined over the years.

The nation needs be developed in all its aspects and not just technologically. In order to emerge as a developed nation, we need to stop taking childhood and education away from children and completely prohibit such practices and make people more aware about the importance of education and how education would create sources of income in their families rather than hurrying to get their daughters married off.

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⁹ Interview Moderated by Jagriti Chandra, the Hindu, 4th September,2020

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