

**RAISING THE MARRIAGE AGE FOR FEMALES TO TWENTY-ONE:  
A SINE QUA NON**- Abhinav Ojha<sup>1</sup> & Dr. Nidhi Sharma<sup>2</sup>**ABSTRACT**

Marriage at a young age causes havoc in the lives of girls, as they suffer much due to numerous factors such as lack of education and the influence on their mental and physical health. With the changing time and mentality of people there was an evolution in the minimum age limit for the marriage of both men and women from no explicit laws to eighteen years we could mark the change in the age of marriage. However, the figures are still staggering, and our track record in reducing marriage between minors under the age of eighteen is dismal. The present female's marriage age breaches the concepts of gender equality, gender justice, and women's dignity. Child marriages are currently just voidable, not void by default – such unions are not declared void until the partners involved contest it. Raising the legal marriage age for women to twenty-one years will help in preventing health problems among women at their most vulnerable ages. India has seen dramatic drops in both fertility and child marriage during the last decade. These changes have occurred not as a result of legislation or incentives, but rather as a result of more accessible schooling, health, and other entitlements, which have resulted in a radical shift in norms for girls, as well as a willingness to invest in them and postpone their marriages. This change will undoubtedly give all women more power and legal support, allowing them to choose possibilities to study and empower themselves before being burdened with marriage and parenthood. Moreover, it will also provide a significant time window for young girls, bridging the gap between rural and urban Indian girls and proving to be an empowering option for the overall improvement of young girls.

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## I. INTRODUCTION

For any community to thrive and prosper, change is unavoidable. As a result, revising the marriageable age of girls in India is unavoidable too. In previous year, on Independence Day's speech from the walls of Red Fort, the Honourable Prime Minister hinted at a modification in the minimum age limit for marriage specifically for females. The *status quo* of the early marriage of girls is a very significant issue. The Prime Minister Narendra Modi addressed the nation on Independence Day, saying, "We have constituted a committee to ensure that the daughters no longer suffer from hunger and are married off at the appropriate age."<sup>3</sup> Relevant decisions regarding the age of marriage for daughters will be made as soon as the report is filed. Moreover, Finance Minister Nirmala Sitharaman launched the task group during the budget session in February 2020-21, stating that variables where changes such as education, healthcare, and maternal mortality must be considered. To shed some light on history, the Sharda Act was revised in 1978, and the marriage age for women was raised to 18 years. The Prohibition of Child Marriage Act of 2006 upheld the same position. According to data gathered by UNICEF in India, 27 per cent of Indian women marry before the age of 18. If the government raises the marriage age for women to 21, new strict laws will be enforced to prevent early marriages.

Early marriage of a girl has been used as a weapon by parents in our patriarchal society to punish their daughters for elopement, and it has been used in conjunction with other laws to punish males in self-arranged marriages. A male adult in the Indian social structure has a greater sense of foreseeability of the consequences of this social evil of child marriage, and the punishment prescribed by law to deter them is too mild in effect, especially in this era of social justice when penology has become more reformatory than a deterrent. If the government does not change the minimum age limit for girls, they would continue to suffer from the issues such as unwanted pregnancies, sexually transmitted diseases (STD), poor sexual and reproductive health, lack of nutrition and maternal mortality. However, concerning the change in marriage age for females, the question arises as to whether the

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<sup>3</sup>Jagriti Chandra, *Government May Relook Marriage Age for Women*, THE HINDU (Aug. 15, 2020, 11:54 PM), <https://www.thehindu.com/news/national/government-may-relook-age-of-marriage-for-women/article32364889.ece>.

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implementation of the new marriage laws will have an impact on religious or secular legislation? Various Muslim organizations in India have challenged the minimum marriage age in court, claiming that it should be left to Sharia law (after the attainment of puberty). Also, in Hindu Law, there is no strict law to prevent the early marriage of girls. All the personal laws provide for their particular rules, considering the umbrella rule as the minimum age limit of females is Eighteen, it should be increased to twenty-one to give a better life to females of our society. Let us analyse the effect of the government's move to address the issue of marriage age along with respecting religious views.

## II. PRE-INDEPENDENCE ERA

Child Marriage is one of the very severe issues in our Indian society from ancient age to the modern age. In Niti Shastra, Chanakya said: *Naranaamvivheshu, pratidhwanayuasthi/sarvangeshupupgradeam, shaaririk, manasikchasarventuitardwidasham*<sup>4</sup> which means that a female must only go into the alliance of marriage when she crosses the age of 20, as only after this age, a girl gains mental, physical, and emotional maturity. In ancient India, the marriage age of girls was three or five years less than that of the boys whose age was around 20 years, which means that girls were married around the age of fifteen. The text of Dharma Sutras which flourished around 400 B.C. to 100 A.D. advised that the girl's marriageable age should be lowered and gradually be done as soon as they attain puberty. Further, around 200 A.D., 'before puberty' marriage became the trend of the day. The people of the lower section of the society who have a custom of having a bride price were taking advantage of decreasing the marriageable age of girls for their selfish end. Earlier, Sati systems also supported the cause of early marriage as if the father died and the mother followed him then at least the father-in-law could be there to take care of the orphans.

However, the marriage age of girls used to vary, and it was uncommon for females younger than 12 years to marry in antiquity. Nonetheless, as the medieval period progressed, female brides became younger, and it became more customary for girls as young as six or eight to marry in Indian society. Young women were considered immature and irrational in love during the medieval era, parents married them off early before they became embroiled in any

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<sup>4</sup>PROF. NITYANAND MISHRA, NITI SHASTRA (ETHICS)- PRINCIPLE AND PRACTICE(Motilal Banarsidass Publishers Pvt. Ltd. 2017).

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scandal. The primary goal of the marriage negotiations was to determine the compatibility of the two families. It was believed at the time that if two people knew each other from childhood, it increased understanding and affection. As a result, parents decided on their children's marriages at a very young age, even if the daughter stayed with her parents until she reached adolescence. The political climate was volatile under the Delhi Sultanate, which was ruled by Muslim Sultans in an absolute monarchy regime. During this time, the Sultans instituted policies such as child marriage and severely reduced women's positions. The Smriti authors mentioned that girls were being married off between the age of six and eight years.<sup>5</sup> However, this cruel behaviour of society over young girls didn't pass on in the British Period. Although initially there were no explicit or implicit laws for restricting the minimum legal age of marriage, gradually things started coming in favour.

In 1872, *The Indian Christian Marriage Act*<sup>6</sup> was passed which brought a law about the minimum age of marriage. According to Section 60 of the same Act,<sup>7</sup> the marriage age for men and women should not be less than twenty-one and eighteen respectively. Even in the 1870s people could think about having a raised marriage age but it was just for a particular community but at least we could sense the change somewhere in our country and that was a huge success. However, in the 1920s, various debates and discussions were held raising the issue about the age of marriage, among Britishers and social reformers of India. It was never an easy task; upgrading or increasing the legal age of marriage affects all the communities residing in India. Despite knowing the fact that social reformers will face massive opposition to the change which is being proposed, they didn't give up. Following this, Child Marriage Bill was introduced in the Legislative Assembly by Rao Sahib Harbilas Sarda, in 1927. This bill aimed at restraining the solemnization of child marriage which was applied to all the classes of British India, it was full of controversies from its initial stage till the enactment. Various religious communities and the Britishers were not in support to bring such a huge change as they were in fear that Indians might get offended at a large level.

An editorial was published in a newspaper named 'The Bhala' in opposition to the measures which were taken by the government. It said that "it is difficult to analyse whether our so-called government has that power to interfere in such critical topics such as marriage which

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<sup>5</sup>NCERT, *MEDIEVAL INDIA* 38 (11 ed, 2005).

<sup>6</sup>The Indian Christian Marriage Act, 1872, No. 15, Acts of Parliament, 1872 (India).

<sup>7</sup>*Id.* § 60.

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are related to religion. It added that it is rigid towards the fact that a government that is non-native or outlandish should not be permitted to settle religious disputes. Moreover, If the parliamentary assembly is ready to accept these kinds of measures, then Hindus will have to agree about the fact that in the year 1929, they lost their religious freedom, just the way they lost their political freedom earlier.”<sup>8</sup> However, breaking all the glass ceilings, finally, the bill passed in 1929 and became the Sarda Act, 1929 after its sponsor. It raised the marriageable age for girls to 14 years and boys to 18 years. Later, it was renamed ‘*Child Marriage Restraint Act, 1929.*’<sup>9</sup>

Once, in the parliament, Mrs Rathbone was asked whether the government would think about the steps which should be taken to Child marriage and make the people of our country India realize that this constitutes as an evils practice, the Tamil Nadu Observed that ‘The fact that the governments are quite forbearing in the matter of enforcing the Sarda Act just because they do not wish to incur the displeasure of the orthodox.’<sup>10</sup> Due to the orthodox mentality of the society, India still faces a lack of application of laws. Even after the enforcement of The Sarda Act, 1926, girls were kept under the pressure of child marriage due to the societal unaccepted behaviour that was prevailing at that time. After this Act, in 1936, The Parsis Marriage and Divorce Act was passed which states that the minimum age limit for females is eighteen and for males, it is twenty-one years. Except for Parsis and Christian communities, all others did not have eighteen as the minimum age limit for females. Moreover, uniformity in the ages of both males and females was still a matter of concern.

### III. POST-INDEPENDENCE ERA

After India got independent, there was an evolution in the minimum age limit for the marriage of both men and women. These changes were seen when personal law came into effect. Initially, *the Special Marriage Act, 1954*<sup>11</sup> passed on 9.10.1954. It included Section 4(c),<sup>12</sup> where it is mentioned that the marriage can be solemnized if the following conditions

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<sup>8</sup>Neerja Hatekar, Rajni Mathur, Pallavi Rege, *Legislating social change: the strange case of Sarda Act*, 42 EPW, (2007), <https://www.epw.in/journal/2007/02/special-articles/legislating-social-change-strange-case-sarda-act.html>.

<sup>9</sup>The Child Marriage Restraint Act, 1929, No. 19, Acts of Parliament, 1929 (India).

<sup>10</sup>R.Kalaivani, *Child Marriage Restraint Act (1929) – A Historical Review*, 4INT. J. HUMANIT. SOC. SCI. INVENT. (ONLINE), (2015), [http://www.ijhssi.org/papers/v4\(1\)/Version-1/D04101014018.pdf](http://www.ijhssi.org/papers/v4(1)/Version-1/D04101014018.pdf).

<sup>11</sup>The Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

<sup>12</sup>*Id.* § 40(c).

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are fulfilled: ... (c) The male has completed the age of twenty-one years and the female at the age of eighteen years. Further, In 1955, *Hindu Marriage Act*<sup>13</sup> was passed and if we look into Section 5 of the said act it clearly states, “A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely: ... (iii) The bridegroom has completed the age of twenty- one years and the bride the age of eighteen years at the time of the marriage; ...”<sup>14</sup> These up-gradations in the laws have shown a change in trend in the minimum age limit of marriage. Along with these laws, punishments were also set up despite bringing changes in the minimum age for marriage; implementation of the law was still a challenge. Moreover, Muslim laws were completely different as there was no minimum age limit, the marriage of a minor is valid in Islam if any person whether major or minor has attained the age of puberty. Even when there is an existence of The Child Marriage Restraint Act, 1929,<sup>15</sup> but according to the Act, the marriage will be valid with suggested punishments for the guardian and the person who are involved in the same. Due to the absence of a Uniform Civil code in the country, laws vary according to different religious communities. This creates havoc in the lives of girls; they suffer a lot due to various reasons being lack of education, an impact on their mental as well as physical health, and many more. This shows that discrimination which is being faced by females if not something new is practised as the culture which also reflects as law in this contemporary time. Moreover, to abolish this system of discrimination against women India took a step forward.

In 1980, India signed *The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)*.<sup>16</sup> It is an international bill for women’s rights that explains what exactly constitutes discrimination against women and calls for action.<sup>17</sup> India ratified the convention in 1993 and according to this convention; all the countries that have ratified the convention are bound to follow its provisions. However, the basic principle of the convention i.e. to subsume the principle of equality of men and women in one’s legal system and the abolition of discriminatory laws has failed to some extent. As we have seen the transition in the minimum age limit of marriage for women from 14 years to 18 years, but the point on which we must lay our focus is that the age of men and women differ. This shows that it lacks

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<sup>13</sup>The Hindu Marriage Act 1955, No. 25, Acts of Parliament, 1955 (India).

<sup>14</sup>*Id.* § 5.

<sup>15</sup>The Child Marriage Restraint Act, 1929, No. 19, Acts of Parliament, 1929 (India).

<sup>16</sup>UN WOMEN, <https://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (last visited June 26, 2021).

<sup>17</sup>UN WOMEN, <https://www.un.org/womenwatch/daw/cedaw/> (last visited June 25, 2021).

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uniformity in the minimum age limit for both genders and it implies discrimination against women.

This UN convention affected India, however, the effects were not only laid down in personal laws but were also a part of national law which came up as *The Prohibition of Child Marriage Act, 2006*.<sup>18</sup> It defines 'child' as a person who has not completed the age of 21 years, if male and 18 years, if female. Here, also, there is no uniformity in the age limits for both genders which itself is discriminatory and shows an absence of the principle of gender neutrality. Gender neutrality is not only a topic of our nation but is widely used across the world. The stereotype behind this age system is that 'wives must be younger than the husbands. However, it does not have any legal backing. *"Myths and stereotypes are a form of bias because they impair the individual judge's ability to assess the facts in a particular case in an open-minded fashion. In fact, judging based on myths and a stereotype is entirely incompatible with keeping an open mind, because myths and stereotypes are based on irrational predisposition and generalization, rather than fact."*<sup>19</sup> Nowadays, people are becoming more and more sensitive towards the 'patriarchal stereotype' which has been followed for ages, and to stop this orthodox mentality among the subjects of our nation, people are engaging in debates and discussions to put forward the principle of gender neutrality. However, after thousands of debates and discussions, Indian laws are stagnant over the same and no change has been made till that time.

#### IV. CONTRADICTING LAWS

The current laws on the minimum age limit for marriage are flawed in both conception and implementation. Early marriage of girls is still not considered a felony in many countries. It is not even a child protection issue because the department in charge of enforcing the child marriage statute and related programs and plans falls within the Ministry of Women's Welfare and Women and the Development of Children. A comprehensive examination of the national laws in this section explains how the contradicting laws affect females negatively on the occasion of early marriage. Marriages have been addressed mostly through the lens of reproductive health. Nutrition and education programs for adolescent girls are more important

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<sup>18</sup>The Prohibition of Child Marriage Act, 2006, No. 6, Acts of Parliament, 2006 (India).

<sup>19</sup>The Honourable Madame Justice Claire L'Heureux-Dubé, *Beyond the Myths: Equality, Impartiality, and Justice*, 10 J. SOC. DISTRESS HOMELESS 87, (2001).

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than child protection. The difference in the marriage age of boys and girls has no scientific support and it is just a mere patriarchal stereotype. Here are some laws which are being violated if the marriage age of girls and boys are 18 and 21 respectively.

### *CONSTITUTIONAL VIOLATIONS*

The minimum age limit for marriage that has been set for females violates the concept of gender equality, gender justice, and women's dignity, and also because of the marriage age of girls at 18, the disparity is exacerbated by the age gap because age itself creates a power hierarchy. The Supreme Court observed in the case of *Joseph Shine v. Union of India*,<sup>20</sup> that a law that discriminates against women based on gender stereotypes is an affront to their dignity and violates Articles 14 and 21. As a result, a younger spouse is expected to respect and serve her elder partner, exacerbating the pre-existing gender-based hierarchy in the marriage partnership. As a result, the challenged statutory provisions, which result in this direct and unavoidable result of discrimination, contravene articles 14, 15, and 21 of the Indian Constitution.<sup>21</sup> In the case of *National Legal Service Authority v. Union of India*, The Hon'ble Supreme Court held that the right to live with dignity entails the right not to be viewed as unequal or inferior members of society.<sup>22</sup> To put it another way, it entails the right to equal social position and perception.

### *CONTRADICTIONS IN PERSONAL LAWS*

Under the Prohibition of Child Marriage Act, 2006<sup>23</sup> The marriage age for a female is 18 years, and for a male, it is 21 years. A girl who has gone into a child marriage within two years of reaching the age of 18 can get a nullity decree. However, this law lacks its value while its implementation is done against the other personal laws. Though it is an act that has no bias against any religion, it is applicable all through our country but due to the existence of various laws of different religions, it is hard to apply as it contradicts other personal laws which are discussed further.

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<sup>20</sup> *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

<sup>21</sup> INDIA CONST. art. 14, 15 & 21.

<sup>22</sup> *National Legal Service Authority v. Union of India*, (2014) 5 SCC 438.

<sup>23</sup> The Prohibition of Child Marriage Act, 2006, No. 6, Acts of Parliament, 2006 (India).

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*THE HINDU MARRIAGE ACT, 1956*<sup>24</sup>

Only the parties to child marriage are penalized under the Hindu Marriage Act, even if they did not consent to the relationship. There are no measures for punishing the parents or those who performed the marriage ceremony. A girl can have her marriage annulled only if she was married before the age of 15 and contests the marriage before the age of 18. There is no explicit legislation that forbids child marriage.

*THE MUSLIM PERSONAL LAW, 1937*<sup>25</sup>

The Muslim Law provisions are dependent on academics' interpretations of the Quran. Early girl marriage is not prohibited under Islamic law. A guardian has the authority to marry a child. However, the pair has an 'option of puberty' known as *khyar-ul-bulugh*, which allows them to repudiate the marriage once they reach puberty. They must, however, do so before the age of 18 and only if the marriage has not been completed. Under Muslim law, the age of marriage is the age of puberty, which is 15 years. Marriage before the age of seven, even if contracted by a legal guardian, is void from the start.

*INDIAN CHRISTIAN MARRIAGE ACT, 1872*<sup>26</sup>

If the marriage is to be contracted between minors, the Indian Christian Marriage Act requires a preliminary notification to be issued 14 days before the wedding. After the specified period has expired, the couple may proceed with the marriage without the agreement of their guardians.

*CONTRADICTIONS IN POCSO ACT, 2012*

When addressing child marriage, it is important to remember that laws about sexual offences should not be neglected. Sexual activity with minors under the age of 18 has been designated as a crime under the Protection of Children from Sexual Offences Act of 2012.<sup>27</sup> Consent has no relevance when it comes to minors, and even when it comes to valid child marriage, the boy may face punishment under the provisions of the POCSO act. Nonetheless, the Criminal

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<sup>24</sup>The Hindu Marriage Act 1955, No. 25, Acts of Parliament, 1955 (India).

<sup>25</sup>The Muslim Personal Law (*Shariat*) Application Act, 1937, No. 37, Acts of Parliament, 1937 (India).

<sup>26</sup>The Indian Christian Marriage Act, 1872, No. 15, Acts of Parliament, 1872 (India).

<sup>27</sup>Protection of Children from Sexual Offences Act, 2012, No. 32, Acts of Parliament, 2012 (India).

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Law Amendment Act of 2013 was drafted in haste following the 16th of December (2012) a gang rape case in Delhi raises questions about consent and sexual activity in a lawful marriage between minors. On the one hand, it makes consent irrelevant in the case of rape victims under the age of 18, while on the other hand, it designates sexual intercourse between a husband and his wife as statutory rape only if the wife is under the age of 15 years. Several voices had requested that the age of sexual consent be raised as these laws were being created. Consent should be reduced to 16 years of age so that young people can engage in voluntary sexual engagement and should not be prosecuted under this act. As a result, sexual conduct between young married couples should not be criminalized. These ambiguities must be removed to guarantee that young people are not denied safeguards due to ambiguities in existing legislation.

Eventually in India, many laws are there just to degrade the dignity of girls, making them marry at an early age. The laws are being contradictive with each other only. These marriage laws are so confusing and don't have any lawful base but instead are based on an orthodox mentality. Legislation alone will not serve the objective unless it is supported and backed up by society. To some extent, a uniform civil code would also aid in the prevention of underage marriage.

#### **V. POLICIES, PROGRAMS, AND SCHEMES REGARDING THE CHILD MARRIAGE**

##### *NATIONAL POLICY FOR CHILDREN, 2013<sup>28</sup>*

In April 2013, the Government of India established a new policy to replace the obsolete National Policy for Children in 1974. The Ministry of Women and Child Development is the nodal Ministry in charge of managing and coordinating the Policy's implementation. The policy, which aims to reinforce the overall child protection framework, includes provisions for tracking, rescuing, and rehabilitating out-of-school children, including married children, as well as ensuring their access to their right to an education.

##### *NATIONAL STRATEGY ON CHILD MARRIAGE*

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<sup>28</sup>National Policy for Children, No. 16-1/ 2012- CW-I, Ministry of Women and Child Development, 2013 (India).

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The Ministry of Women and Child Development has suggested a National Strategy on Child Marriage dated 14 February 2013, which represents the Government of India's commitment to reduce child marriage. It has proposed establishing links with the Integrated Child Protection Scheme (ICPS) structures and statutory entities in order to recognize and refer instances that require care and protection as soon as possible. One of the strategic orientations is that 'children who have previously married should not face discrimination when receiving services such as health, nutrition, education, and employment programs.'

*THE RAJIV GANDHI SCHEME FOR EMPOWERMENT OF ADOLESCENT GIRLS<sup>29</sup>*

In 2010, the 'Rajiv Gandhi Scheme for Empowerment of Adolescent Females – Sabla', a comprehensive scheme for the holistic development of adolescent girls aged 11-18 years, was implemented. Sabla is being rolled out in 205 districts across the country. Sabla includes nutrition provision at INR 5/- every day for 300 days per year; iron and folic acid supplementation (52 tablets annually)<sup>30</sup>; health check-up and referral services; nutrition and health education; counseling/guidance on family welfare, child care practices, and home management; life skills education and access to public services; and vocational training for girls aged 16 and above under the National Skill Development Program.

*NATIONAL PLAN OF ACTION ON PREVENTION OF CHILD MARRIAGE<sup>31</sup>*

According to the MWCD's Press Note on Child Marriages in India, a draught Plan of Action was addressed at a Regional Consultation in Lucknow on July 8, 2013, and a National Consultation in New Delhi on July 18, 2013. It is being finalized as a result of the discussions at these consultations. It lacked a schedule and clarity on how funding would be allocated to implement the Plan in its previous form.

*KISHORI SHAKTI YOJANA<sup>32</sup>*

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<sup>29</sup>The Rajiv Gandhi Scheme for Empowerment of Adolescent Girls, No. 6-12/2010, Ministry of Women and Child Development, 2010 (India).

<sup>30</sup>*Id.*

<sup>31</sup>National Plan of Action on Prevention of Child Marriage, No. , Ministry of Women and Child Development, 2013(India).

<sup>32</sup>Kishori Shakti Yojana, No. 5-5/2000-CD-I, Ministry of Women and Child Development, 2000(India).

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It was founded in 2001, with the goal of improving the nutritional and health status of adolescent girls aged 11 to 18, as well as encouraging school attendance. The scheme has now been combined with Sabla and is only applicable in districts where Sabla does not exist.

### *DHANALAKSHMI*

In 2000, the MWCD launches a pilot scheme (Dhanalakshmi) in selected backward districts of the country as a conditional cash transfer scheme that provides cash to the girl child's family (preferably the mother) in exchange for the girl child fulfilling certain conditions, such as birth registration, immunization, school enrollment retention, and delaying marriage age beyond 18 years. The system also contained a sub-component for providing insurance to girls.

The national goals outlined in India's many policies and plan documents are still far from being reached. Although there are no consistent patterns, girls from poorer regions are frequently excluded from all of these policies, and as a result, they are offered for sale into marriage in rich states, which correlates with the fact that intimate relations unwanted pregnancies are performed more frequently in prosperous states among wealthy people who could avail to use modern technologies.

## **VI. GLOBAL PERSPECTIVE**

The concept of gender neutrality is not something that is limited to the walls of India but it extends all around the world. Goal 5 of UNICEF includes the achievement of gender neutrality and the empowerment of girls and women.<sup>33</sup> Moreover, under its target 5.3, it mentions the elimination of early, forced as well as child marriages.<sup>34</sup>

If we look upon the data from various developed and under-developed countries, we will be able to see that there are countries like Egypt, Puerto Rico, Singapore, South Africa, Grenada, and Fiji where the legal age of marriage is twenty-one for both genders.<sup>35</sup> Setting twenty-one years as the minimum age limit shows the upgraded mentality among people of these countries. Moreover, these are not the sole countries but also, there are countries like the

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<sup>33</sup>UNICEF INDIA, <https://www.unicef.org/india/what-we-do/end-child-marriage> (last visited Jun.30, 2021).

<sup>34</sup>*Id.*

<sup>35</sup>UN DATA: A WORLD OF INFORMATION, <http://data.un.org/DocumentData.aspx?id=336> (last visited July 1, 2021).

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United States of America, Russia, Germany, and France where the legal age for marriage is uniform. This uniformity in ages is a shred of evidence to show that females of these countries face less discrimination than females of India or any other countries like India where there is no uniformity in marriage ages just because of some stereotypical mindset among people that wives should be younger than husbands.

Countries	Age (female) <sup>36</sup>	Maternal Mortality Rate <sup>37</sup>
Indonesia	>18 years	177
Pakistan	>18 years	140
India	18 years	145
USA	18 years ( <i>uniform for both genders</i> )	19
South Korea	<18 years	11
China	<18 years	29

Taking the inference of the data collected in 2017 by the World Bank,<sup>38</sup> We can say that the maternal mortality rate in the countries, where the minimum age limit of marriage is twenty-one years, is very much lower than in India. India's maternal mortality rate is 145 whereas Singapore's is 8 and Egypt's is 37. Moreover, countries with uniform marriage ages also have a lower maternal mortality rate than India, like Russian Federation's ratio is 17 and France's ratio is 8.

The main objective as suggested by our government to up-grade the minimum age limit of females to 21 is to lower the maternal mortality rate and to work on the nutrition that is provided to females. However, to implement this objective it is necessary to follow the global trend of uniformity in ages which will not only be beneficial in lowering down the maternal mortality rate but also, will be a good throw to quash the discrimination which is faced by females and will maintain the gender neutrality among people of India.

<sup>36</sup>*Id.* at 24.

<sup>37</sup>THE WORLD BANK,[https://data.worldbank.org/indicator/SH.STA.MMRT?locations=IN&name\\_desc=false](https://data.worldbank.org/indicator/SH.STA.MMRT?locations=IN&name_desc=false) (last visited July 2, 2021).

<sup>38</sup>*Id.*

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## VII. PROPOSAL FOR MODIFICATIONS

In a country like India where the whole female community faces discrimination in every field although various conventions have been signed and ratified, along with various laws which are prevailing as a sword to quash this discrimination and bring on an egalitarian society where the concept of Gender Neutrality is promoted. It is imperative to bring a wave of change in the minimum age limit of marriage for girls and make it equivalent to that of boys. It is not only important to increase this age limit to 21 years for gender neutrality but also it does have various advantages and an upper hand on the age of 18 years. The above-mentioned analysis of various countries where there is uniformity in ages of both males and females shows the affirmative side.

Through this model, we propose to increase the minimum age limit of females from 18 to 21 years as it is only in the favour of the whole female community. Moreover, we also propose 21 years as a uniform age for all the religious communities prevailing in India. As increasing the age limit is not related to religion, it is all about a woman's life and women, whether she belongs to either India or any other country or any religion she will still be a female, who has to go through the same situation and suffering as other ones.

Earlier, the reason which has been given to maintaining an age gap between males and females was that '*wives must be younger than their husbands.*' This statement leads to a stereotypical ideology as suggested by a paper on 'Reforms in family laws'<sup>39</sup> which must be quashed. In the 205th report of the Law Commission of India, it observed that there exists no scientific evidence for such a statement.<sup>40</sup>

Since there is no scientific basis to support this age gap it should not be carried on in any laws about the marriage age of women. Moreover, it is not only at odds with gender justice and gender equality but also unsympathetic to the dignity of women. The consequences of early marriage and an upper hand of 21 years over 18 years as the minimum age limit for the marriage of girls will be described further.

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<sup>39</sup>*Reform of Family Law*, LAW COMMISSION, (2018), <https://lawcommissionofindia.nic.in/reports/CPonReformFamilyLaw.pdf>.

<sup>40</sup>Proposal to Amend the Prohibition of Child Marriage Act 2006 and other Allied Laws, 2008, Report no. 205, Law Commission, 2008(India).

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*EARLY MARRIAGE AFFECTING RIGHT TO EDUCATION OF GIRLS*

Under Article 21A of the Indian Constitution, the right to education is there which gives a fundamental right to all children aged between six to fourteen years to have compulsory education.<sup>41</sup> It is the constitutional obligation of the state to provide for free and compulsory education of children till they complete the age of 14 years<sup>42</sup>. A young female who marries is more likely to drop out of school and further, she is kept out of work which results in no contribution to her country. She is more likely to be subjected to domestic violence and infected with HIV/AIDS. When she is a minor, she is expected to have children. She has a higher chance of dying as a result of complications during pregnancy and birth. These troubling situations develop as a result of a lack of education. According to a recent study, additional years of secondary school attendance in several countries significantly reduced the risk of girls marrying at an early age, as a result, pregnancies are safer and newborns are healthier. Furthermore, child marriage and lower educational attainment have an impact on the next generation by limiting educational prospects for child brides' offspring.

In other words, child marriage may contribute to poverty persistence. On one hand, there are health and safety constraints that can prevent families, such as a lack of female toilet facilities or safe transportation to schools. Considerations such as the out-of-pocket cost of school tuition and uniforms, as well as young women's limited employment options, are even more important. When all variables are evaluated, it may appear that investing in a son's education produces greater advantages, whereas families may perceive marriage as the only practical option for girls. Increased educational attainment, according to research, has several positive outcomes. Lower educational achievement, for example, increases the probability of child marriage, whereas higher educational attainment reduces the risk of child marriage.

*IMPACT ON HEALTH*

A lower age limit has its drawbacks. When a girl is married at a younger age her mental as well as physical health deteriorates. As we know, consummation is an essential part of marriage.<sup>43</sup> However, when a young girl becomes a part of this process, she has to go through

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<sup>41</sup>INDIA CONST. art. 21A.

<sup>42</sup>DD BASU, INTRODUCTION TO THE CONSTITUTION OF INDIA 127 (23rd ed. 2018).

<sup>43</sup>The Hindu Marriage Act 1955, § 12, No. 25, Acts of Parliament, 1955 (India).

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various complications. At the time of marriage, she is neither physically nor emotionally prepared for having sexual intercourse. Moreover, this is not the only issue involved. Early marriages lead to early pregnancy which affects a female's health and puts her at great risk. This is the reason why each year females die due to some causes which can be prevented (like marrying girls at a stable age) that are related to giving birth to a child and pregnancy.<sup>44</sup> Further, leading to a high Maternal Mortality rate. According to the World Health Organisation,<sup>45</sup> The main cause of death among girls aged 15-19 years globally is the complication in childbirths and pregnancies. Moreover, according to the WHO Global health estimates, adolescent girls face a higher risk of Eclampsia than the girl aged 20-24 years.<sup>46</sup> The point which is of the prime focus is that one of the major complications faced by two-thirds of maternal deaths is Eclampsia i.e. higher blood pressure during pregnancy.<sup>47</sup> Since the girls are in their adolescence, they become more prone to diseases if they get pregnant. In an AIDS Campaign, it was said that girls who are married before 20 years of age are at higher risk of getting infected with HIV.<sup>48</sup> It is not about maternal mortality rate, HIVs, early pregnancies but there will also be improvements in the nutrition level of females. According to sources, the task committee recommends that a woman be 21 years old at the time of her first childbirth. Evidence demonstrates that postponing marriage has favourable economic, social, and health consequences for families, women, children, and society as a whole. Furthermore, the report claims that research based on evidence from more than 50 low- and middle-income countries that found a relationship between maternal age and newborn mortality, child anthropometric failure, diarrhoea, and anaemia for first deliveries suggest that the risk decreases after age 21. Increasing the minimum age limit is not only a national concern but a global concern as people's health is involved in the same. If we increase the minimum age limit for the marriage of girls it will be a great success for our country. 21 is one of the most suitable ages for the marriage of girls. If the girls are married at this age, then there will be a very less chance of having any physical or mental health issues.

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<sup>44</sup>UNICEF, *supra* Note 31, at 24.

<sup>45</sup>WORLD HEALTH ORGANIZATION, <https://www.who.int/en/news-room/fact-sheets/detail/adolescent-pregnancy> (last visited July 4, 2021).

<sup>46</sup>*Id.*

<sup>47</sup>UNICEF INDIA, <https://www.unicef.org/india/what-we-do/maternal-health> (last visited July 4, 2021).

<sup>48</sup>Nawal M. Nour, *Health Consequences of Child Marriage in Africa*, NATIONAL CENTER FOR BIOTECHNOLOGY INFORMATION (Nov. 2006), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3372345/>.

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### *ECONOMIC INDEPENDENCE*

When girls are married off at an early age, they tend to be more dependent on their husband and his family. This is due to the lack of education, skills, and knowledge provided to them. At 18 years of age, most of the girls are in their higher secondary, which means they are a school student and when their marriage takes place at this age, they lack to pursue bachelors or any other skills. As a result, they lack job opportunities and work as housewives. This is not the only effect of being economically dependent, marrying at an early age means starting a whole new family early and this increases the economic burden on one person. Economic independence is very important not only for a female but also for her married life as there will be two people who'll be earning. Moreover, this will lead to a more stable lifestyle and a child's parents, if both are economically independent, can give him/her a better lifestyle including education and health facilities. A broad mindset will also be developed if a mother is economically independent as she is the first teacher of her child so this thinking of being economically stable before getting married will be carried on. This may also help in promoting an all-egalitarian society with less discrimination towards women. "*Beti Bachao Beti Padhao*" means to save the girl child we have to educate the girl child. It is a Government of India initiative that aims to raise awareness and improve the effectiveness of social services for girls in India.

### *DOMESTIC VIOLENCE*

Child marriage inhibits the skills, resources, knowledge, social support, mobility, and autonomy of young girls. Young married women have little authority over their husbands and in-laws. As a result, they are particularly prone to domestic violence, abuse, and abandonment. Physical, sexual, or psychological abuses are all forms of violence. Married girls and young women between the ages of 15 and 19 with a low level of education are far more likely than older and more educated women to face domestic and sexual violence from their spouses. According to research, the spousal age gap, which is common in child marriage, is a significant risk factor for violence and sexual abuse against girls. Where legal safeguards exist to protect girls from child marriage or other types of violence, authorities sometimes fail to implement those safeguards or prosecute violators. Domestic violence cases in India demonstrate that many women and girls are unwilling to seek help from the legal or

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security systems for fear of more abuse or being forced to return home. Elham Mahdi Al-Assi, a 12-year-old girl from Yemen,<sup>49</sup> received international media attention in 2010 when she died three days after marrying a considerably older man. Her death was caused by significant bleeding from tears in her vaginal and anal areas. Elham's mother informed the Associated Press that her daughter had complained to her husband about being tied up and raped. Elham's mother had told her that failing to consummate the marriage would bring dishonour to her family.

These all areas of discussion show why there should be uniformity in the minimum age limit of marriage. Hence, considering all the mentioned factors, the personal laws should be amended along with the Prohibition of Child Marriage Act<sup>50</sup> to maintain the dignity of women and to promote gender neutrality. Any ground-level transformation will occur only when people's psyches shift. No law is effective until internal change occurs. Raising the legal marriage age is a requirement, even if it means breaking the notion that women are more mature than males of the same age and hence should be permitted to marry earlier. In terms of the issue of girls rejecting marriage, it should be increased from two to four years. As a result, there will be more time to reconsider the marriage. According to the Global Childhood Report produced by the UK-based NGO Save the Children<sup>51</sup>, child marriage frequency in India is still greater in rural regions than in urban areas, with statistics of 14.1 per cent and 6.9 per cent for rural and urban areas, respectively, for the age group 15-19 years. India has seen dramatic drops in both fertility and child marriage during the last decade. These changes have occurred not as a result of legislation or incentives, but rather as a result of more accessible schooling, skilling, health, and other entitlements, which have resulted in a radical shift in norms and aspirations for girls, as well as a willingness to invest in them and postpone their marriages. If any legislation regarding the increase of the marriage age of women is adopted and implemented in India, then surely the scenario will be very different as there will be equality in gender and all problems which are faced by girls because of early marriage will completely vanish.

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<sup>49</sup>Agence France-Presse, *Yemen Child Forced Into Marriage Dies*, THE SYDNEY MORNING HERALD (Apr. 9, 2010), <https://www.smh.com.au/world/yemen-child-forced-into-marriage-dies-20100408-rvaj.html>.

<sup>50</sup>The Prohibition of Child Marriage Act, 2006, No. 6, Acts of Parliament, 2006 (India).

<sup>51</sup>Sample Registration System Statistical Report, Office of the Registrar General & Census Commissioner, 2018(India).

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## VIII. CONCLUSION

The increase in female's minimum age limit for marriage is a topic of great concern. It is very important to address this as a problem that is related to human life as well as human health as it is connected to a woman, who is a birth giver. If we give it a thought then marriage is connected to consummation or we can say it is incomplete without the same. Moreover, through consummation couples produce offspring. Hence, it is important to look after the health of the mother which deteriorates when she is married at a young age. And if we look further into in-laws then we'll see that the right to health is a human right, which is universal. Anything which is against human rights is considered not applicable.

Moreover, this is not the sole issue. The Right to Education of females is also affected due to girls being married off at an early age. Eighteen is an age when girls and boys are ready to move to their higher secondary education but most of the girls lack this opportunity because of the minimum age limit that is set for them. Females of young age face this discrimination due to discriminatory laws which are prevalent in our country. Although, India has signed various conventions to countermand these discriminatory laws, which are against the vibrant notion of Gender Neutrality, however, still, this isn't in practice in India.

It is not the only stumbling block, since India is a nation with diversity in religion; it has separate personal laws for each community which creates a problem while deciding the minimum age limit for females. It is different for every community. Through this paper it is suggested to bring legislation that works as an umbrella rule for all the communities under which the minimum age limit for females is twenty-one years, equivalent to that of males.

By bringing this uniformity in ages, it will bring a change for good for both males and females. Various problems are faced by women like lack of economic independence, domestic violence, etc which have been explicitly explained throughout this paper. To curb all these issues, we need to upgrade our mentality by upgrading the minimum age limit for females to twenty-one. This will not only help in getting rid of discrimination in this particular area but also it will be helpful to maintain the dignity of women. Hence, the model which is suggested in this paper brings out the problems along with the solution which is to bring uniformity in marriage age for both the sexes and suggests bringing legislation for the same.

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