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## REVISION OF THE LEGAL AGE OF MARRIAGE FOR WOMEN: A BRIEF OVERVIEW

*The article discusses the latest news of revising the legal age of marriage for women in India focusing on the history of marriageable age prevalent in India along with analysing its merits and demerits.*

### **Introduction**

Recently Prime Minister Narendra Modi in an interview revealed that a committee has been formed to look into the age of marriage for women and tackling malnutrition. On the same lines, Nirmala Sitharaman, revealed in her budget speech<sup>1</sup> on February 1, 2020, that a task force had been implemented to look into the age of a girl entering motherhood and marriage. In the Consultation Paper on the Reform of Family Law, the Law Commission claimed that the disparity in age between husband and wife has no legal basis because spouses entering into a marriage are equal and their relationship must also be equal. The final aim of the legislative effort for women's empowerment or gender justice should give priority to women's autonomy. The law panel said that holding the gap between 18 years for women and 21 years for men clearly adds to the stereotype that women should be younger than their husbands. In 2019, a petition was filed before the High Court of Delhi where the marriageable age of woman i.e., 18 years was challenged to be based on patriarchal assumptions, has no scientific evidence, perpetrates de jure and de facto inequality against women, and goes totally against global trends.

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<sup>1</sup> Jagriti Chandra, *Government may relook age of marriage for women*, THE HINDU, August 15, 2020.

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## **The task force**

The task force set up by Nirmala Sitharaman consists of 10 members led by Jaya Jaitley and includes members such as VK Paul (a member of NITI Aayog), Health Secretaries, Women & Child Development, Law & School Education; some of the task force members are among them. The autonomous members of the task force include Najma Akhtar (New Delhi), Vasudha Kamath (Maharashtra) and Dipti Shah (Gujarat).

The task force is aimed at re-examining the age of motherhood and reducing the rate of maternal mortality (MMR). The need to reduce the high percentage of child marriages occurring in India is another significant factor considered in increasing the minimum legal age. India is one of the countries with one of the highest infant marriage rates to date. Increasing the minimum legal age can lead to a decrease in the number of child marriages overall.

A six-month duration was given to the task force to present its findings and recommendations. On July 31, 2020, the task force established by the Central Government had to conclude and submit its recommendations but did not do so on the date set.

## **Why is there a minimum age for marriage?**

To effectively outlaw child marriage and discourage the trafficking of children, the legislation prescribes a minimum marriage age. Personal law of different religions dealing with marriage has their own standards, mostly reflecting the tradition. Some of these are as follows:

### **1. The Indian Christian Marriage Act, 1872**

Section 60 of this act<sup>2</sup> states that a marriage will be deemed valid “when the age of the man intending to be married shall not be under twenty-one years, and the age of the woman intending to be married shall not be under eighteen years.

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<sup>2</sup> The Indian Christian Marriage Act, 1872, § 60, No. 15 of 1872 (India).

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## **2. The Parsi Marriage and Divorce Act, 1936**

Section 3(1) of this act<sup>3</sup> requires the age of a man to be 21 and a woman to be 18 for a marriage to be considered valid.

## **3. The Special Marriage Act, 1954**

Section 4(c) of the act<sup>4</sup> states that a marriage will be considered valid when it's between a man who is at least 21 years old and a woman who is at least 18 years of age.

## **4. The Hindu Marriage Act, 1955**

Section 5 of the Hindu Marriage Act<sup>5</sup> states that a marriage may be solemnized between any two Hindus when the bridegroom has completed the age of 21 years and the bride is of atleast 18 years at the time of the marriage.

Only in the 1880s did a legal structure for the age of consent for marriage in India begin. The Child Marriage Restraint Act defined 16 and 18 years in 1929 as the minimum marriage age for girls and boys, respectively. In 1978, the law, popularly known as the Sarada Act after its sponsor Harbilas Sarada, a judge and a member of Arya Samaj, was eventually amended to provide 18 and 21 years for a woman and a man as the age of marriage.

### **Arguments against the marriageable age of 18 for girls:**

#### **i. Contravenes the principles of equality and dignity under Articles 14, 15 and 21.**

The Hon'ble Supreme Court in the case of National Legal Services Authority v. Union of India<sup>6</sup> has held that the right to live with dignity implies the right to not be perceived as unequal or inferior individuals in the society.

In the context of women, the Supreme Court in Joseph Shine v. Union of India<sup>7</sup> observed that a law which differentiates between gender causes a direct affront to women's dignity, ultimately violating Articles 14 and 21. This principle

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<sup>3</sup> The Parsi Marriage and Divorce Act, 1936, § 3(1), No.3 of 1936 (India).

<sup>4</sup> The Special Marriage Act, 1954, § 60, No.43 of 1954 (India).

<sup>5</sup> The Hindu Marriage Act, 1955, § 60, No.25 of 1955 (India).

<sup>6</sup> National Legal Services Authority v. Union of India, (2014) 5 S.C.C. 438.

<sup>7</sup> Joseph Shine v. Union of India, (2019) 3 S.C.C. 39.

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can also be found in Article 5(a) of CEDAW which seeks to abolish all such prejudices and customary practices and all other practices which are based on the idea of gender inferiority or superiority or stereotyped male and female roles.

Therefore, any provision that perpetrates or reinforces discriminatory stereotypes against a class of persons is prima facie arbitrary and violative of Articles 14, 15 and 21.

**ii. Aggravates social inequality, thereby breaching Articles 14 and 21.**

In most marital partnerships, a power imbalance between the husband and wife occurs. The age difference deeply aggravates this power inequality, since age itself represents a power hierarchy. Therefore, a younger spouse is required to honour and represent her older counterpart, which worsens the pre-existing hierarchy based on gender in the marital partnership. The challenged legislative provisions which give rise to this direct and unavoidable consequence of discrimination are therefore in violation of Articles 14, 15 and 21 of the Constitution.

**iii. Global trends point in the same direction.**

In the world, more than 125 countries have a uniform marriage age for men and women. Noting this fact, pursuant to the National Conference on Child Marriage held in New Delhi on 29-30 August 2018, the National Human Rights Commission recommended that India follow suit and introduce uniformity within the minimum age limits.

**iv. Equalize the minimum age of marriage for both men and women at 21 years.**

Minimum age of marriage be equalized and fixed at 21 years for the following reasons:

- After completing school at the age of 18, women have a fundamental right to be able to pursue studies and/or professions. However, it is a social reality that women are expected (and often pressured) to give birth to children right after marriage. This damage both their educational and economic pursuits and also often impairs their reproductive autonomy. In this way, under social pressure to get married and procreate, women's rights are often taken away. A higher minimum age will, in every sense, ensure more autonomy for women.

Women who get pregnant before the age of 20 "face higher risks of low birth weight, preterm delivery, and severe neonatal conditions," as per the World

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Health Organization. Besides, newborns born to such mothers face severe health risks as well.

- The minimum marriage age for males has traditionally been set at 21 because after finishing high school, males are socially expected and encouraged to pursue education or/and occupations. Women should also have the same opportunity in a constitutional republic without the sword of marriage hanging over their heads, which often implies a loss of freedom.

## **Benefits of raising the age for marriage**

Marriage at a young age implies that despite accounting for nearly half of the 1.3 billion population, not even a quarter of women in India get into the workforce compared to the global average of a 16 per cent gap, women earn 35% less on average than men. Therefore, raising the legal age for marriage will get us out of the stereotypical mindset that women are more mature than men of the same age and can therefore be allowed to marry earlier. This way, India will also join the league of a handful of nations (like China, Singapore, South Africa, etc.) that have legal marriage age of 21 years. This decision will have enormous social and economic advantages, as per the latest SBI Ecowrap report<sup>8</sup>. It will open up opportunities for women to pursue and become financially empowered in higher education and careers, resulting in a more equal society. It will also push the average marriage age higher at the same time and will lead to more women graduating.

## **Child marriage and the role of minimum legal age**

According to the SBI, while the average female marriage age in India is already above 21 years, about 35% are married before the current legal limit at 18 years. According to the United Nations Children's Fund (UNICEF), India is home to every third child bride in the world, with more than 100 million married even before turning 15. In India, almost 16% of the girls aged 15 to 19 are currently married. The Government's approach with the increasing of the legal age of marriage for women is that it might help in curbing child marriages to an extent. According to a report of the National Family Health Survey released in 2015-16, 26.8% of women between

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<sup>8</sup> Asian News International, *Increasing legal age for women's marriage has enormous social, economic benefits: SBI Ecowrap*, THE ECONOMIC TIMES, December 10, 2020.

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ages 20-24 were married before the age of 18,<sup>9</sup> even with the existence of the 1978 amendment in the Sarda Act which made marriage with women under the age of 18 years illegal.

The Government's decision to raise the minimum legal age represents the risks of early pregnancy, sexually transmitted disease, maternal mortality rate, etc. Many of these are conditions resulting from child marriages. Although the minimum age for women to get married is set at 18 years a lot of child marriages occur in India - the consequences of child marriage are one of the reasons cited for the rise in the legal age.

## **Conclusion**

Revising the marriageable age can therefore help India in creating an amicable environment for the women along with fighting social vices like dowry and child marriage. It will also provide an impetus to the women to complete their education at least till graduation so that she can become independent and capable of making life choices. The revision will also prevent inequality between the men and women which has existed for a long time. The government should therefore bring such laws into force at the earliest.

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<sup>9</sup> Sanjay Kumar, Measuring Child Marriage from Census and large-scale Data Systems in India, 45 Demography India 59-76 (2016).