
THE AGE OF MARRIAGE IN INDIA: THE REQUIREMENT FOR A CHANGE

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ABSTRACT

The Age of Majority for most parts of our laws is 18 for girls and 21 for boys. Even though scientifically proven on the basis of maturity, it is true, such age criteria present certain challenges for girls especially in the respect of marriages. Despite the 21st century change, where equality is required even on a gender basis, we still haven't fully understood it; and most of the time try to achieve equity between them instead. This is not only causing marginalisation between men and women, but also increasing the gender biases in our vey laws. Thus this research paper focuses on bringing about the importance of gender equality in the laws, with the first instance towards the age of marriage. In the next phase we would try to understand the arguments presented for the uniform age of marriage and its benefits in the past. To understand more appropriately from the viewpoint of people, the research paper would also involve research articles as well, focusing on people's view towards the age of marriage. Apart from this, the research paper would also involve the counter arguments towards such an approach and the attempts of other nations towards the age of marriage. This would be followed by a conclusion towards the application for a uniform age.

Introduction

At first, it was rare that children were married off at the earliest, but during Medieval times, the age just became a joke, and the auspiciousness of marriage was tied even at the age of 8 to 10 yrs old. For the children, marriage was like a game. They didn't understand the bond that they got into. The book **Phaniyamma by I.K. Indira** shows how families trained women at an early age of 3-5 to become obedient and respectful wives.¹ But even child marriage was gender-biased. More than boys, it was the girls who were trained for married life. Apparently according to law, men and women must be 21 years old and 18 years old, respectively, to marry. While there is no hurry for men to be married off immediately, there is always a necessity to marry off women after attaining the age of 18. This age criterion was established to prohibit child marriage, as marriage is an important decision of life and should be decided by the individuals themselves when they are mature to understand what is right for them. Even though the law has been enacted and is strictly followed, one must see the side effects. With women marrying being 18 yrs they are not able to complete their education further. This causes a setback in education and a lapse in economic position, as they cannot get proper jobs. It is scientifically proven that women attain the age of majority at 18 yrs, but this is not true for all. Some of them are even late bloomers, and getting married at such a stage can be mentally and emotionally harmful. Apart from this, they may not even be ready to enter the location of motherhood, which they are expected to do after marriage. One of the law provisions that make marriage at 18 more prominent is the validity of underage marriage. According to law, underage marriage is voidable at the option of minors, and they are provided with the term of 2 yrs until they reach the majority to decide whether to continue the marriage or not. In many rural areas, it has been seen that girls get married off just before they attain the age of majority, giving the justification that her age doesn't matter, as, in the end, she is to get married. What's more unfair is that there is no equality in the age of marriage. Marriage is an essential part of life, but it depends on the individual when they want to get married.

Requirement of 'equality' and not 'equity.'

The Preamble of our Constitution aims for equality as one of its objectives. In this context, equality refers to the lack of advantages or discrimination against any segment of society, and the Preamble guarantees everyone in the country equal position and opportunity. The

¹ Phaniyamma by M.K. Indira

Constitution strives to provide social, economic, and political equality in the country. However, our government and our nation are moving towards equity instead of equality. Under the 73rd Constitutional Amendment Acts approved in 1992, our government allowed reservations in different honourable institutions and national committees, such as one-third of the total seats for women in all elected officials in local bodies, whether rural or urban. Apart from that, all laws, even though they are not genderspecific, the provisions of law affecting women significantly have been reviewed periodically, and amendments carried out to keep pace with the emerging requirements.² But none of this wouldn't achieve equality. Indeed, there is a need for equality in our present laws instead of equity in our nation. Thus providing a uniform age is one step towards achieving the goal of equality.

History for the demand of Uniform age

The demand for equality in respect of age has been going on before the establishment of our Constitution. The need for the change in the age of marriage started when Rukhmabai fought her husband in 1884, and her courage led to the 1891 Age of Consent Act which, without announcing her marriage, increased the age at which sex consented from 10 to 12 years. While it made no difference, it was seen as a step towards establishing religious and cultural limits. Differing Members of the Women's Conference, the Women's Indian Association, and the National Women's Council raised arguments about the growing marriage age during India's fight against the British Raj. And the Joshi Committee raised these claims in a report which led to the passing of the Child Marriage Restricting Act of 1929. According to the Act, the minimum marriage age was 14 and 18 years for girls and boys. However, the Act remained a dead letter as very few cases were reported, and child marriage was still rampant. Subsequently, the Prohibition of Child Marriage Act 2006 was enacted, which revised to 18 for girls. However, at present, approximately 6% of women, by age 15 and 26.8%, are married at 18 and 48% at 20 ages according to data of the National Family Health Survey data of 2015-2016, which shows that the women are being married as soon as they attain the age of majority with no heed on their higher education or will.

In **Ashwini Kumar Upadhyay v. Union of India & Others**, the petitioner wanted a uniform marriageable age for males and women, i.e., under 21 years of age.³ The petitioner claimed that

² Digvijay Singh, Women Security and Legal Safeguards in India, *academike*, (November 17th, 2015), <https://www.lawctopus.com/academike/women-security-legal-safeguards-india/>

³ *Ashwini Kumar Upadhyay v. Union of India & Others*

the current legislative framework, which enables girls to marry at 18 and boys at 21, will exacerbate gender imbalance within a marital partnership. According to the petition, such distinction is based on patriarchal norms, demonstrating both de jure and de facto injustice against women. ⁴Abdul Mannan filed a similar suit before the Rajasthan high court. Both petitions claimed that the varied marriage ages violated Articles 14, 15, and 21 of the Constitution.

The effects on fundamental rights

The Supreme Court in **Joseph Shine v. Union of India, (2019) 3 SCC 39** observed that a law that treats women differently based on gender stereotypes causes a direct affront to women's dignity, violating Articles 14 and 21. ⁵

Equality before the law and equal protection under the law are guaranteed under Article 14. Whereas Article 15 provides that a state cannot discriminate against its citizens on these grounds. The State has to treat everybody equally before the law. As a result, Articles 14 and 15 of the Constitution forbid the government from discriminating against men and women unless it can demonstrate that the categorization is justified. But even though the law has been enacted and is strictly followed, one must see the side effects. With women marrying being 18 yrs they are not able to complete their education further. This causes a setback in education and a lapse in economic position, as they cannot get proper jobs. In a similar vein, Article 5(a) of CEDAW states that any provision that promotes discriminatory stereotypes against a group of people is plainly arbitrary and, as a result, violates Articles 14, 15, and 21. Additionally, Article 16(1)(a) of the CEDAW requires States who are parties to the Convention to eliminate discrimination against women in all matters related to marriage and to ensure that women have the same Right to freely choose a spouse and enter into marriage with their full and free consent.

It is scientifically proven that women attain the age of majority at 18 yrs, but this is not true for all. Some of them are even late bloomers, and getting married at such a stage can be mentally and emotionally harmful. Apart from this, they may not even be ready to enter the location of motherhood, which they are expected to after marriage, thus violating the Right to health which

⁴ Abraham Thomas, SC notice on transfer petition to settle uniform age of marriage for men, women, Hindustan Times, (Feb 03, 2021 03:46 PM), <https://www.hindustantimes.com/india-news/sc-notice-on-transfer-petition-to-settle-uniform-age-of-marriage-for-men-women-101612347102439.html>

⁵ Joseph Shine v. Union of India, (2019) 3 SCC 39

is an integral part of Article 21. It offers protection, prevention, treatment, and enhancement of health, and it is a necessary condition for a person to live with dignity. The government must guarantee that favourable health circumstances are created and maintained.

When we look at the big picture, we can see that requiring a consistent age in marriage is a must.

It is a change that must be adapted, just like past gender equality amendments passed. The Supreme Court has taken up the case; thanks to writ petitions filed by Ashwini Kumar Upadhyay, the Court will decide whether the minimum age of marriage difference violates Articles 14, 15, and 21 of the Constitution.

The support of the National Commission and other dignitaries

This issue received a lot of support from the Law Commission Report of 2008, which also advocated for a uniform age of marriage for boys and girls of 18 years instead of 21 years because couples entering marriage are in every way equal, and both men and women must build their partnership on equality. Even the National Human Rights Commission proposed in 2018 that boys and girls marry at the same age. Apart from that, Prime Minister Narendra Modi declared on Independence Day that the government would shortly decide on the era of women's marriage.

Benefits of a Uniform Age

When there is a uniformity, it makes everyone become and look equal, and because we are all a team, there are no distinctions or divisions. Hence there is a requirement of uniformity in the age of marriage as well.

One view is that increasing the age bar is the benefit of education. Usually, families believe that spending on a girl's education will be of no use as she has to live with her in-laws one day, and it wouldn't be her who would be looking after her parents. Hence boys' education is given more importance than girls. It is believed that, by raising the age to 21yrs, women will be able to complete their education, graduation, and even college by 5-7 % more than provided by the mean age of marriage. When we see the contribution of women to the workforce in India, it is not more than 18%. But by enabling women to complete higher education, the young Indians will become an enticing choice for global stakeholders wanting to invest in the country. Under

Age at Marriage of Women, Kumudini Dandekar, the author describes India's 20th century, having an early marital age. Even when many countries were falling under the depression, they didn't marry off early in India. The yearly statistical data shows the effects of birth rate and fertility rate with the rise in the age of marriage. The author believed that only high motivation among women for a better life for themselves could change in the age of marriage.⁶

Another benefit deriving from raising the age bar is the demographic benefit where delayed marriages will lead to delay in pregnancies and hence population reduction. It is regrettable to see that Uttar Pradesh, in particular, has the highest motherly death rate in our world. This rate indicates the number of young children pushed into adulthood. Motherhood from a young age is expected to be accepted by children. Such children may suffer domestic abuse, sexual harassment, and assault.

According to the data collected from a sample of 585 students in four colleges in India in 1975 by **V.V. Prakasa Rao and V. Nandini Rao**. The study reveals that an overwhelming majority of college students prefer to get married at a higher age when compared to the average age of the general population.⁷

The drawbacks in legal system

But the pickle here is that most of the time the child bride/groom are not in position to approach the court or the CMPO Officer, as they suffer from threats by the spouses family or even restraint. Another loophole is that there is no strict law against CMPO's. The PMCA does not punish CMPO's for not carrying out their duties properly.

Why it should not be increased

Many claims that raising or changing the age of marriage would not have much effect. Instead, the issues will increase. According to data gathered by NGOs based in Delhi: Forming Law Partners, PCMA has been used in about 65% of cases for elopement by two consenting older youth. The rise in marriage age for women from 18 to 21 would lead to a higher retaliation of the parents against young people. They are supposed to be pure or not engaged in sexual activity

⁶ Age at Marriage of Women, Kumudini Dandekar, Economic and Political Weekly, Jun. 1, 1974, Vol. 9, No. 22 (Jun. 1, 1974), pp. 867+869+871-874

⁷ Ideal Age at Marriage and Inferred Parental Age at Marriage: Attitudes of College Students in India, by V.V. Prakasa Rao and V. Nandini Rao, Journal of Comparative Family Studies, Vol. 10, No. 3 (AUTUMN 1979), pp. 331-343 (13 pages)

and dishonored persons who wish not to do so. People are always concerned about the reputation in society, and girls are considered to be the crow of that reputation. If she gets pregnant, has sex, or even gets raped, the community would shamefully see her. The new proposition does not appear to be youth-friendly in its intent at all.

⁸It is said that an increase in the marriage age between 18 and 21 for women will lead to equality with men. Marriage, however, does not only concern numbers. The myriad underlying issues that drive women to marry young will not be solved by legal age manipulation. Families fear patriarchal thinking and culture. You fear marriage and the future family of your daughter. They fear. In addition, families in rural areas fear that their daughters will be married with a large amount of dowry. 18 to 21 shifts can deal with nothing. **Feminist lawyer Madhu Mehra** pointed out that such laws also become a new source of abuse during a recent press conference called Partners for Law in Growth (PLD). She gave the example of a young woman in Karnataka who was denied a widow's pension after marrying because she was under the age of 18.

Another argument presented by the new law is to improve maternal and infant mortality rates (MMR & IMR). With 21 as the age of getting married, there will be less marriage at the age of 18 and hence less pregnancy. This is a classic patriarchal solution and is not supported by much promise. According to the current MMR rate (2016-2018), the nation's average MMR is 113, and thus showing a complete downfall. Yet Kerala's MMR is 43 (national average 113), and IMR is 10. The reasons for Kerala's far better health conditions must be in how it has tackled poverty, female education, reproductive health, and awareness levels.⁹ This shows that claims of improving the IMR and MMR by changing the age are only a step; what it requires is a change in more than one field.

The situation of other countries and the changes required in our system

If we look at the age of marriage of other countries, we find that most nations around the world prefer a uniform period, which has been beneficial for them. For example, in Algeria, the

⁸ Abhijit Das, Does India Need a New Law That Revises the Age at Which Women Are Married?, The Wire, (13th

September, 2020), <https://thewire.in/women/india-new-law-age-at-marriage-women>

⁹ Vaishna Roy, Just another meaningless number, The Hindu, (August 28th, 2020 12:14am),

<https://www.thehindu.com/society/on-the-indian-governments-move-to-increase-the-age-of-marriage-from-18-to-21-for-women/article32463351.ece>

minimum age of marriage is 19 for both men and women. Still, minors may marry with parental consent, and the law forbids legal guardians from forcing children under their care to match against the minor's will. The UN statistics from 2013 showed that 6 percent of women ages 20 to 49 were married by or before age 18.¹⁰

In Argentina, the legal minimum age for men and women to marry is 18. In Australia, the minimum age for marriage is 18 for both boys and girls, and anybody between the ages of 16 and 18 can petition to a court for permission to marry someone beyond the age of 18. However, parental or guardian approval is still required for underage unions. Marriages involving a person under the age of 18 were uncommon. In Belgium, the law requires both (consenting) partners to be at least 18 years old before they may marry.

What we require is a change of the way of thinking towards the bar of age. Although it is necessary to have an age bar for the term of becoming an adult or 'not a minor,' however there should be uniformity of age in other respect, such as in Islamic law, according to the Al-Qur'an and hadiths, there is no specification for the age limit of brides; instead, it implicitly requires them to be mature, mentally and physically ready, who will apprehend the meaning and purpose of marriage.

Similarly, the Maruntakkatiayam System preferred the system of female inheritance, the right of female residence, and the right to divorce and remarry if widowed; provided a special status to women, which affected not only the age of marriage of women but also their civil conditions. Such as allowing higher education among women and reducing infertility. It would be unfair to convict based on a 159-year-old law without considering the change in it.

Conclusion

In the end, both the arguments are righteous in their manner, and there is a requirement of both to support our youth if the age needs to be increased then so along with the development of its factors as well needed to be seen.

At various places, mainly in rural areas, it has been seen that many girls leave their education in between for their marriage. These life decisions are sometimes forced upon them and even

¹⁰ PEW RESEARCH CENTER, Marriage Laws around the World, https://assets.pewresearch.org/wpcontent/uploads/sites/12/2016/09/FT_Marriage_Age_Appendix_2016_09_08.pdf

influenced. There are even people who don't send their girls to school either due to backward patriarchal thinking or poverty. And it is not just girls but boys as well, who have to get married even at early ages and give up their education to carry out the family business, due to poverty in the family. Apart from that, certain families are strict followers of custom and tradition. Many believe that girls should remain pure before marriage. Suppose girls get pregnant at puberty or have sexual intercourse with their boyfriends. In that case, our society makes such nonsense proclamations out of it that the only solution left for the family is to marry off their daughter as soon as possible.

As a result, a new number will not solve anything, but it will put the lives and rights of poorer people in jeopardy, making them more exposed to police brutality due to a lack of legal, social, and financial protections. If the government wants to help, it should concentrate on both the constitution and social reform.