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RAISING THE LEGAL MARRIAGE AGE OF WOMEN – THE NEED OF THE HOUR

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ABSTRACT

It is fundamental for any given country to have a minimum age of marriage as it legally protects children from abuse, harm, violence and sexual exploitation. Most countries around the world have laws that set a minimum age of marriage, usually at the age of 18. However, according to a 2013 mapping of the minimum age of marriage laws by the World Policy Analysis Center, 93 countries legally allow girls to marry before the age of 18 with parental consent. In India, since 1978, the minimum legal marriage age for women has been 18 years. Nevertheless, India has the highest absolute number of child brides in the world. Moreover, with the outbreak of COVID-19, the number of child marriage instances has increased drastically. It has been rightly said that the empowerment of women should be recognized as one of the best financial investments a nation can undertake. Presently, as the nation progresses further towards a hopeful future, India is set to revise the legal age of marriage of women from 18 to 21 years. The government has subsequently constituted a high-level task force to delve into the matter and submit its recommendations. It is hoped that increasing the minimum age of marriage for women to 21 years will bring about stricter laws restricting children from being married off too young. The constitution of the task force is an opportunity to define measures that will end early and forced marriages that severely hamper the health and well-being of girls and women. Apart from these, several other advantages are also dealt with in this paper.

Keywords - *Child marriage, forced marriage, legal age, task force, empowerment*

INTRODUCTION

“A woman is the full circle. Within her is the power to create, nurture and transform”

- Diane Mariechild¹

The Convention on the Elimination of All Forms of Discrimination against Women requires states to ensure, on the basis of equality between men and women, the right to freely choose a spouse and enter into marriage only with free and full consent.² Currently, most countries around the world have laws that set a minimum age of marriage, usually at the age of 18. However, according to a 2013 mapping of the minimum age of marriage laws by the World Policy Analysis Center, 93 countries legally allow girls to marry before the age of 18 with parental consent. In India, since 1978, the minimum legal marriage age for women has been 18 years. Nevertheless, as stated by the United Nations Children’s Fund, India has the highest absolute number of child brides in the world. The problem of child marriage in India remains rooted in a complex matrix of religious traditions, negative social norms, lack of educational opportunities, economic factors like low income, poverty and other deeply rooted prejudices. Therefore, such a violation of the law, on such a large scale, is a grave issue to be tackled for enhancing the welfare of women and should be much higher on the political agenda.

HISTORY OF LEGAL AGE OF MARRIAGE IN INDIA

In the year 1929, during the time of the British colonial period, the Child Marriage Restraint Act entered into force and set the minimum marriage age of women and men as 14 and 18 years respectively. This law came to be known as the Sarda Act which was named after Harbilas Sarda, a Judge and a member of Arya Samaj. Later, in 1937, under disagreements from Muslim organizations in undivided British India, a personal law called the Shariat Act was passed that

¹ An American author

² Art 16 (A/RES/34/180, 18 December 1979)

permitted child marriages with consent from the girl's guardian. After the independence and adoption of the Indian constitution in 1950, the child marriage act underwent various emendations. In 1954, the Special Marriage Act was passed under which the people of India and all Indian nationals in foreign countries, irrespective of the religion or faith followed by either of them can marry. In 1978, the Sarda Act was amended and the legal minimum age of marriage for women was increased to 18 years and for men to 21 years. The Prohibition of Child Marriage Act of 2006³ also maintained the minimum age of 18 and 21 years for women and men respectively. Even though with the introduction of the PCMA most problems of the old Act were legally addressed, the societal and cultural practice of child marriage still persists. Some of the loopholes with the Act are as follows:

- **The burden on the child to question validity** - Only the child bride/groom can file a petition to annul their marriage in their personal capacity. If the petitioner is statutorily a minor as per PCMA, the petition can be filed only through a guardian or the next best friend of the married child (who must be an adult of 18 years or more) with the help from the child marriage prohibition officer. ⁴
- **Officers are not penalized for dereliction of duty** - The PCMA does not punish CMPO's for dereliction of duty. This results in a paucity of accountability, thereby causing difficulties for children striving to access justice.
- **Inconsistencies with personal laws** - Personal law immunities also hamper the execution of the PCMA. Since the personal laws of certain Hindu and Muslim communities still allow child marriages, and the PCMA concomitantly tries to prevent them, the conflict leads to significant legal obstacles.
- **Registration has not been made mandatory** - Registration of marriages has not been made mandatory under the PCMA, thus leading to a lot of unreported child marriages. The Supreme Court in *Smt. Seema Vs. Ashwani Kumar*⁵ stated that compulsory registration of marriages in each state would be a step in the right direction.

³ Hereinafter PCMA

⁴ Hereinafter CMPO

⁵ AIR (2006) SC 1158, (2006) 2 SCC 578.

Child marriage is therefore definitely an active political concern as well as a subject of continuing cases under review in the highest courts of India.⁶

GIRLS NOT BRIDES - THE IMPORTANCE OF RAISING THE LEGAL MARRIAGE AGE OF WOMEN

It is fundamental for any given country to have a minimum age of marriage as this legally protects children from abuse, harm, violence and sexual exploitation. Despite the fact that both the girls and boys fall prey to child marriage, in most cases, it is the girls who are the ones affected more. As the nation progresses further towards a hopeful future, India is now set to revise the legal age of marriage of women from 18 to 21 years. This historic move is supposed to have risen from a Supreme Court landmark decision in which it was laid down that child marriages should be rendered void-ab-initio to shield women from marital rape.⁷ The government has subsequently constituted a high-level task force to delve into the matter and submit its recommendations. The task force will examine the correlation of age of marriage and motherhood with implications on the health of mothers and infants, the impact of the age of marriage on infant mortality rate, maternal mortality rate, total fertility rate, the sex ratio at birth and child sex ratio. The proposal is an appurtenance to the population control law as the number of reproductive years will automatically come down if the motherhood age is legally increased to 21 years.

Recently, an age-long gender stereotype which was prevailing in the Indian Army was struck down by the Supreme Court to provide equal opportunities for women in the Army. The court held that women Army officers too are eligible for the permanent commission since command appointments were not automatic for men officers alone.⁸ The move to increase the minimum legal age of marriage will be beneficial as there is a substantial need to bring parity between the legal age of

⁶ Muzaffar Ali Sajjad Vs. State Of Andhra Pradesh (2002) 1 ALD 112, (2001) 2 ALT Cri 497, (2002) CriLJ 1068; Ruhul Amin Vs. State of West Bengal W. P. NO. 8619 (W) OF 2015; Mohamed Abbas Vs. Chief Secretary (2015) 4 CTC 132; Chandra Sreenivasa Rao Vs Korrapati Raja Rama Mohana Rao AIR 1952 Mad 579, (1951) IIMLJ 264

⁷ Independent Thought Vs Union of India (2017) 10 SCC 800

⁸ Secr., Ministry of Defence Vs Babita Puniya MANU/SC/0194/2020

marriage of men and women. Gender inequality is actually both a cause as well as a consequence of child marriage. It would be very encouraging if the recommendations of the task force look beyond just the age of marriage and focus also on durable change, not by legislation alone, but by bringing in attitudinal changes to end the practice of early marriage. It could deliberate upon the difference between consent and consensual sexual behavior. Investments in behavioral social change communication should be stepped up manifold to change marriage norms that exclude girls and boys from marriage-related decision-making. Equally important would be to improve the quality and enhance access to family planning services.

It is now very perspicuous that child, early and forced marriage is a human rights violation and a harmful practice that disproportionately affects women and girls globally, preventing them from living their lives free from all forms of violence. It threatens the lives and futures of girls and women around the world, by shunning their dreams, robbing them of their agency to make decisions about their lives, disrupting their education and professional life, making them more vulnerable to violence, discrimination and abuse, and preventing their full participation in economic, political and social spheres. Moreover, it violates the [right to health](#), as [recognized by the World Health Organization](#) – that pregnancy prior to the age of 20 is harmful to the health of a young woman. *In addition, Article 24 of the Convention on Rights of Child obligates State Parties to take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.*⁹ Child marriage is often accompanied by early, unwanted and frequent pregnancy and childbirth, resulting in higher than average maternal morbidity and mortality rates. According to the American Society for Reproductive Medicine, the reproductive organs of a woman attain optimum size and function by the age of 21 years. Children, who are born to undernourished mothers or to those who are married off at an early age, tend to develop health problems. It also exerts a huge impact on the mental health of the child or woman and results in them attempting to flee their communities or to commit suicide to avoid or escape the marriage. Setting a minimum legal marriage age helps battle the harmful effects of a child or forced marriage.

⁹ UN Commission on Human Rights, *Convention on the Rights of the Child*, 7 March 1990, E/CN.4/RES/1990/74, available at: <https://www.refworld.org/docid/3b00f03d30.html> [accessed 31 July 2020]

It is also beneficial from the viewpoint of the maturity of the woman getting married. Young girls who get married will most likely be forced into having sexual intercourse with their, usually much older, husbands. This also brings severe negative health consequences as the girl is often not psychologically, physically and sexually mature. Because they are not ready for the responsibilities and roles of being a wife, sexual partner and a mother, child, early or forced marriage has a serious negative impact on their psychological well-being and personal development.

Further, more women will be entering into the higher education space since societal pressure to get married at 18 would be reduced. More educated women mean a more egalitarian society and better-educated children. As a corollary, better-educated women mean a society with better civic sense. It is no secret that women are the driver of societal change and civic sense amongst the populace. Mothers, who are educated, are better prepared for childbirth and motherhood and are more open to accessing healthcare facilities and understanding the implications of their health on their children. This would give women increased access to economic independence and greater freedom of marital choices.

THE PATH FORWARD

With the outbreak of COVID-19, the number of child marriage instances has increased drastically. The situation exacerbated by the pandemic hitting economies of people has driven many families to marry off their daughters early. The closure of school and health care facilities also leaves girls increasingly vulnerable. Therefore, in the immediate context of the COVID-19 pandemic, the need to end underage marriages assumes greater significance. It is hoped that increasing the minimum age of marriage for women to 21 years will bring about stricter laws restricting children from being married off too young. Unbending measures will need to be in place to make sure that the laws are implemented across the country, particularly in rural regions where sexism is still rampant. This social evil must be rooted out through the legal route, with more solid penal provisions and accountability checks for authorities established under the PCMA Act. Lawmakers and law enforcers must address this issue of vital importance to make sure that children are protected

and kept safe. A clear and unambiguous position on child and forced marriages should be adopted and the legislative loopholes between religious, customary and civil marriages should be rectified. The government should raise awareness among all stakeholders, including parents, on the negative impacts of child marriage and should create safety nets for girls and young women who escape a forced, and often violent, marriage. Birth, death and marriage data registries with full national coverage should be created and maintained properly. The sexual and reproductive health and rights of girls and young women, through legislation, availability of services and information and community outreach should be promoted and protected. There should be absolute gender equality regarding their right to education. They should be provided access to finer opportunities than what is being dispensed now for their education and career. Empowerment of women should be recognized as one of the best financial investments a nation can undertake. It has been rightly said, “*The empowered woman is powerful beyond measure and beautiful beyond description*”.¹⁰

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¹⁰ Steve Maraboli - An American writer and motivational speaker