

***THE RAISED MARRIAGEABLE AGE FOR WOMEN: AN OPPORTUNITY OR  
OBSTACLE.***

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**Abstract:**

*The raise in the age of marriage of women in India to 21 years has attracted some major debates across the nation pertaining to the objective and enactment of this said amendment in the Prohibition of Child Marriage (Amendment) Bill, 2021. Raising marriage age is going to be the key to securing gender equality and justice when applying it across all faiths is what Government's opinion is, but this has created a point of debate in the area of personal laws and how is it going to affect the marginalized strata of the society. The bill aims at "women to progress on all fronts including physical, mental and reproductive health", which is the main concern for the debates as the critics and activists ask if this proposal is capable for the empowerment or if it is just a blanket fix to multilayered issues associated with child marriages.*

*Keywords: personal-laws, child-marriage, empowerment, gender-equality, raised-age.*

## **Introduction:**

The raise in the age of marriage of women in India to 21 years has attracted some major debates across the nation pertaining to the objective and enactment of this said amendment in the Prohibition of Child Marriage (Amendment) Bill, 2021. This proposal first found its mention in the Prime Minister of India's speech at the Red Fort on the occasion of Independence day, 2020; in which he had said that "to save daughters from malnutrition, it is necessary that they get married at the right time." Two major factors that played a crucial role for the enactment of this proposal were viz. firstly, the case of *Ashwini Kumar Upadhyaya vs. Union of India*<sup>1</sup> wherein the issues of whether personal laws governing differences in marriage age are violative of Articles 14,15 and 21 of the Constitution of India and whether the personal laws governing differences in marriage is discriminatory on the basis of gender were discussed<sup>2</sup>; & secondly, while the discussions on the said proposal were going on, the Prime Minister had said that "necessary discussion is going on to decide what should be the ideal age of marriage of daughters. I also get letters from such conscious daughters across the country who asks to decide it quickly."

With this aim, on June 2, 2021 a task force headed by Minister Jaya Jaitley comprising of Department of Health and Family Welfare, Women and Child Development, Ministry of Law and Justice, higher education and school education along with the Literacy mission was set up to examine the imperatives of lowering maternal mortality rate, improvement of nutrition levels amongst the women and child marriages can be declared as void on the request of the minor involved which are amongst many other aspects pertaining to the age of the women during her marriage. The amendments to personal laws such as Hindu Marriage Act, 1955 and Special Marriage Act, 1954 to raise the minimum age of marriage are also being looked upon. "All women from all faiths, under Hindu Marriage Act or the Muslim Personal Law, should get equal rights to marry", saying this Union Minister for women and child development Smriti Irani proposed the secular legislation in the Lok Sabha.

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<sup>1</sup> *Ashwini Kumar Upadhyaya v Union of India*, T.P. (C) 1249-1250/2020 (India).

<sup>2</sup> Scobserver.in, Supreme Court Observer, <https://www.scobserver.in/cases/ashwini-kumar-upadhyay-union-of-india-uniform-marriage-age-case-background/>, *Ashwini Kumar Upadhyaya v Union of India*.

The bill came to be opposed by few members who demanded the same to be referred to a parliamentary panel saying that this would infringe many personal laws in violation of the fundamental rights. The bill seeks to amend the following personal laws, namely, The Hindu Marriage Act, The Muslim Personal Law (Shariat) Application Act, the Special Marriage Act, the Indian Christian Marriage Act, the Parsi Marriage and Divorce Act and the Foreign Marriage Act. The bill was termed as a “disaster”, “a retrograde step” and “passed in a haste” by the members opposing it, whereby in reply to those, the Union Minister Smriti Irani said that “As a democracy, we are 75 years late in providing equal rights to men and women to enter into matrimony” and that “7% of the girls between age group 15-18 years were found to be pregnant and nearly 23% were married below the age of 18 years.” The statement of objects and reasons in the bill states that the Child marriage restraint act, 1929 was replaced by the Prohibition of the Child Marriage Act, 2006 to prohibit solemnization of child marriages, but this highly pernicious practice is still not eradicated from our society and that the constitution guarantees gender equality as a part of the fundamental rights and also guarantees prohibition of discrimination on the grounds of sex. The existing laws do not adequately secure the Constitutional mandate of gender equality in marriageable age among men and women.<sup>3</sup> Raising marriage age is going to be the key to securing gender equality and justice when applying it across all faiths is what Government’s opinion is, but this has created a point of debate in the area of personal laws and how is it going to affect the marginalized strata of the society.

### **Salient Features of the Bill:**

The Bill proposes six major objectives viz., “(a) to amend the prohibition of child marriage act, 2006 to reinforce its application overriding all other existing laws, including any custom, usage or practice governing the parties in relation to marriage, (b) bring women at par with men in terms of marriageable age, (c) prohibit child marriage irrespective of any law, custom, usage of practice governing the parties, (d) declare that provisions of the act shall have overriding over every other law, custom, usage or practice governing the parties, (e) make consequential amendments to the other laws relating to marriage, (f) make the amendments effective, in relation to marriageable age, two years from the date the bill receives in assent of the President, so

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<sup>3</sup> The Prohibition of Child Marriage (Amendment) Bill, 2021, 163 of 2021, (India).

as to provide sufficient opportunity to one and all in our collective efforts and inclusive growth, and to make effective other provisions immediately.”<sup>4</sup>

Where on one hand the Government says that this decision is for empowerment of women, it has faced a major backlash by the rights activists with the major argument that it would affect the vulnerable and poorer groups. The critics all over have named this proposal as a disaster. In India where till the date women from poorer and vulnerable groups get married at an early age as the patriarchy still prevails and this raise in the age will prevent the sexual violence against the young girls and other associated issues. Well, these perceptions in women of the urban areas, who are more educated has been changing but not amongst the women in rural areas. There has to be a proper balance between the increasing age of women and their nutrition along with the education.

Underage marriages in the bill are considered as valid but voidable and having no legal validity where there are instances of trafficking, enticement and fraud involved. The delay in marriages would create a positive impact in the areas such as economic and social growth of women. The critics are of the opinion that this would legally sanction the choice of marriage of women which till now was also being interrupted in by the society; rather the minimum age of marriage of the men should also be 18 as a uniform age for women as well as men. Union Minister Smriti Irani answering to the criticisms replies that “We are 75 years late in providing equal rights to men and women to enter into matrimony. In the 19th century, the marriageable age for women was 10 years. By 1940, it was increased to 12-14 years. In 1978, women who reached the age of 15 were married. For the first time, through this Bill, men and women, keeping in mind the right to equality, can decide on their marriage.”

The bill aims at “women to progress on all fronts including physical, mental and reproductive health”, which is the main concern for the debates as the critics and activists ask if this proposal is capable for the empowerment or if it is just a blanket fix to multilayered issues associated with child marriages. The proposal to raise the marriage age was also discussed by the law commission of India in its 205<sup>th</sup> report<sup>5</sup> titled as “Proposal to amend the prohibition of child

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<sup>4</sup> Ibid.

<sup>5</sup> Government of India, Law Commission of India, “Proposal to amend the prohibition of Child Marriage Act, 2006 and other allied laws, Report no. 205, February 2008.

marriage act, 2006 and other allied laws”, of the year 2008, meaning the idea of this proposal was rooted back in 2008 and along with the discussion of certain other amendments, where the commission had said that “ there is no scientific reason why this should be different”, this here meaning that the uniform age to marry for women as well as men should be 18 years of the age. Even though the objectives laid down by the bill are considerable, the questions of social stigma regarding this whole issue are raised alongside poverty and the literacy rates amongst the females. India has experienced that no law has been able to absolutely prevent the child marriages. One main issue that is being discussed is that where at the age of 18 a women can cast her vote, is considered as a major for the application of other laws and is capable of giving the consent for sexual intercourse and despite of all these rights available to her, she cannot enter into the marriage. While this could be an issue in the urban areas, the rural areas where the social stigma and patriarchy prevails in high amounts, this bill could prove to be efficient.

### **Conclusion:**

In my opinion this move of the government is in the right direction but it doesn't really address the underlying causes that why are girls forced to marry at such a young age and the social norms that still prevails which have no sense of gender-equality rather carries a sense of patriarchy. As the government says that it intends to disable child marriages and prevent the abuse of minors and that empowerment, not population control is the aim, we now need a proper approach, directives and initiatives to enforce this law and empower women economically and socially where even the increased age of marriage would constitute a major role. Inequalities in all the aspects are the major setback of marrying at an early age. This empowerment needs a multidimensional approach and one of them is reduced demographics of child marriage, access to education and proper employment to women, general upliftment and social and economic with legal changes.