

ESSAY SERIES - ESSAY 8

REVISING MINIMUM AGE OF MARRIAGE FOR WOMEN

Prime Minister Narendra Modi during his 74th Independence Day of India speech specified that the central government would reconsider the minimum age of marriage for girls on the recommendation of a committee set up by the Union Ministry for Women and Child Development. The announcement is confined to increasing the legal age of marriage for girls thus no longer subjecting them to malnutrition/undernourishment and will be married off at an appropriate age. However, discussion on the minimum age of marriage of women has always been a contentious issue. The law in this aspect evolved after huge resistance from social and religious conservatives.

Law essentially provides minimum age of marriage to prevent child marriages and abuse of minors. However, child marriages are not illegal though it can be declared void at the request of the minor in marriage. Personal laws of various religions have codified their own standards to deal with marriage that often reflect their customs and religious practices. As per Child Marriage Restraint Act 1929, the minimum age of marriage for girls and boys was 16 and 18 respectively, however with amendment in 1978 in this law popularly known as Sarda Act, the current prescribed age of marriage is 18 and 21 years for woman and man respectively. The same is recommended by Special Marriage Act 1954, Hindu Marriage Act 1955 and Prohibition of Child Marriage Act 2006. In Islam, marriage of a minor is considered to be valid if he/she has attained puberty. Though it is essential to note that minimum age of marriage is distinct from the age of majority which is gender neutral and 18 years for both men and women. Even with laws in place that mandate minimum age of marriage and criminalise sexual intercourse with minor, child marriage at large scale is prevalent in country. UNICEF suggest that every year, approximately 1.5 million minor girls are

married in married thus making India the home to largest number of child brides in the world which accounts for third of the global total. Though there is no particular reason that justifies the law for having different legal standards of age for men and women to marry as spouses entering into marriage are by all means equal but the law has been challenged for violating Article 14 of Constitution that guarantees right to equality and Article 21 of Constitution that ensures right to live with dignity. In **Joseph Shine v. Union of India**, Supreme Court stated that **“a law that treats women differently based on gender stereotypes is an affront to women’s dignity”**. Further, the **Committee of Convention on the Elimination of All Forms of Discrimination against Women, 1979** to which India is a state party, monitors the implementation of Convention and calls for the abolition of laws that assume women have a different physical or intellectual rate of growth than men. The Law Commission argued that different legal standards fuel the notion and stereotype that wife must be younger than husband.

The committee was proposed in the Union Budget 2020-21. Set up by **Union Ministry for Women and Child Development on 2nd June 2020**, the committee consisting of 10 members is **headed by Jaya Jaitely** and will examine matters pertaining to age of motherhood, imperatives of lowering Maternal Mortality Ratio and improvement of nutritional levels among women. Further it will examine the correlation of age of marriage and motherhood with health, medical well-being and nutritional status of mother and neonate, infant or child, during pregnancy, birth and thereafter. It also covers key parameters like Infant Mortality Rate (IMR), Maternal Mortality Rate (MMR), Total Fertility Rate (TFR), Sex Ratio at Birth (SRB) and Child Sex Ratio (CSR) and will scrutinize the possibility of increasing the age of marriage for women from 18 years to 21 years. The committee also has to suggest suitable legislations or amendments in existing laws and provide a detailed plan with proper timelines to implement these recommendations. A study conducted by **International Food Policy Research Institute (IFPRI)** published in 2019 provided that children born to

adolescent mothers (10-19 years) were 5% points more likely to be stunted than those born to young adults (20-24 years) and 11% points more stunted than children born to adult mothers (25 years or older). Children born to adolescent mothers also had 10% points higher pervasiveness of low weight as adult mothers. Other factors such as lower education among teenage mothers and their poor economic status which had the most robust ties with the height and weight measurements of child, was also highlighted in the study. The study further recommended that increasing age at first marriage, age at first birth, and education of girls are encouraging approach to advance maternal and child nutrition. From bringing in gender-neutrality to reduce the risks of early pregnancy among women, there are many arguments in favour of increasing the minimum age of marriage of women. Early pregnancy is associated with increased child mortality rates and affects the health of the mother. Thus, benefits such as lower maternal mortality and reproductive health morbidities, improving nutrition levels of women, increase in working age population, better education and greater financial independence for women in long term will result from increasing the minimum age of marriage for women. Introducing gender neutral laws will also lift the spirit of right to equality.

It is asserted by National Coalition Advocating for Adolescent Concerns that increasing the legal age of marriage for girls will only “artificially expand the numbers of married persons deemed underage and criminalise them and render underage married girls without legal protection” as minimum age of marriage is not a mandatory age and only signifies that marriage below that age could lead to criminal prosecution under child marriage law. This law will also result in criminalising and worsening the existing vulnerabilities of girls belonging to Adivasi and Dalit community in rural India since as a matter of practice they are married at a young age. It will also create a class divide as marriage is also linked with education of girls.

Legal age for marriage has been a point of debate for long. The need for uniform age for marriage for both men and women was also raised by National Human Rights

Commission from time-to-time. The focus of government is to deal with malnutrition in underage and young brides by increasing the age of marriage for girls. Transformative and well-resourced measures that increase for girls, access to education and health must be adopted and create enabling opportunities by placing empowerment for girls at the centre. This will not just delay marriage but also lead to long term, positive health and education outcomes. It is also essential to address the gender and caste based disparities instead of blanket laws that may have various adverse impacts on the marginalised sections of society. The efforts to curb child marriage in India must be in consonance with socio-economic realities that call for investment in education and welfare and opportunities for women and even the most vulnerable and backward societies.