

# Age of marriage for women

October 5, 2020

Child marriages are at helm due to corona pandemic. The laws in place have failed to tackle the menace. At this point of time the recent proposal of increasing the legal age of marriage for girls should be analyzed from mains point of view.

## In news:

- In his Independence Day speech, Prime Minister Modi announced that the government will soon take a decision on the age of marriage of women.

## Placing it in syllabus: Society- women Static dimensions

1. Provisions and problems with Prohibition of Child Marriage Act 2006
2. Is raising age to 21 the solution?
3. How can child marriages be avoided?

## Current dimensions

1. Is the Karnataka model feasible?
2. Various reports and judgements

## Content:

### Various reports and judgements on this:

- The **Law Commission Report of 2008**, on reforming family law, recommended a uniform age of marriage for boys and girls at 18 years and not 21.
- The **National Human Rights Commission** in 2018 recommended that there should be a uniform age of marriage for boys and girls.

- The Supreme Court, in the **Independent Thought case** said that it's accepted universally that a child is someone who's under the age of 18 and that should be the age of marriage.
- The **CEDAW** (Convention on the Elimination of all Forms of Discrimination Against Women) Committee also recommends 18 as the age of marriage.

The minimum legal age of marriage for women to be increased from 18 years to 21 years is recommended as a **means of "lowering maternal mortality and improving nutrition levels"**.

At the central level, a committee has been formed to look into the matter of raising the marriage age to 21 years and a task force to consider the situation has already been notified. The **10-member task force is headed** by MP Jaya Jaitly and NITI Aayog member Vinod Paul.

### **Is the Karnataka model feasible?**

- **Karnataka amended the Prohibition of Child Marriage Act (PCMA) in 2017** to make **child marriage automatically void**.
- According to the amendment, the **husband of a girl child would be liable for punishment** for child marriage,
- for penetrative sexual assault or aggravated penetrative sexual assault under the POCSO Act;
- if the husband and the girl child are living together in the same or shared household for rape under the IPC.

In July, 2019, the Karnataka government formed a **committee to address the issues of early (child) married children**. The committee's objective is to prepare a standard operating procedure to look into the status of early married girls and work towards their protection, rehabilitation and empowerment.

## Provisions and Problems with Prohibition of Child Marriage Act 2006:

- Under the Act, **child marriages will be declared null and void if**

the injunction prohibiting a child marriage from taking place is violated/ contravened

the child is taken away from their lawful guardian by enticement, force or use of deceitful means

the child is sold or trafficked for the purpose of marriage.

- The law **makes child marriages voidable** by giving choice to the children in the marriage to seek annulment of marriage.
- It gives a **legal status to all children born from child marriages** and makes provisions for their custody and maintenance.
- The law provides for all **support and aid** including medical aid, legal aid, counselling and rehabilitation support to children once they are rescued.
- **Section 9** of the act (Punishment for male adult marrying a child) states that – “ Whoever, being a male adult above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment.
- **Section 11** of the Act provides punishment for those who permit and promote child marriages.
- **Section 12** of the Act lays down that if someone kidnapped and married a minor girl and contested claim over the minor’s guardianship in defense to charges of kidnappings, in such cases the marriage would be treated as null and void.

### **Drawbacks:**

- The Act has **failed to make all child marriages automatically void**, instead making them void only where

the child is “taken or enticed” from the care of a guardian, in cases of compulsion, fraud or trafficking, and if performed in violation of an injunction.

- The Act holds that a child marriage is voidable only upon the filing of a petition for annulment in district court. Hence it does not automatically declare child marriages void, only making them **voluntarily voidable**.
- The Act **criminalizes family members** who themselves are often living in poverty, lack adequate education and may be succumbing to social pressure.

## Is raising age to 21 a correct solution?

According to the **National Family Health Survey 4 (2015-16)**, 26.8% of women between ages 20-24 were married before the age of 18, despite the 1978 law making child marriage for girls below 18 and boys below 21 illegal.

- Despite the legal age of 18 child marriages are getting continued and there is **no guarantee that they will be stopped if the age is increased even more**.
- **Female foeticide might increase** as the parents will be more burdened by girl children.
- As women in rural areas aren't educated much, they don't have employment opportunities either and they will **end up being burdens on their parents** and increasing the marriage age increases this burden.
- The **girls will not be having any say in their personal matters until they are 21**.
- The **parents can use the law to punish elopement right up to 21 years** and women could become even more vulnerable to parental control and backlash.
- As child marriages don't have legal validity, which means they **cannot exercise their legal marriage rights till they are 21**.

However, as in India, hypergamy is more practised where the boy has to be older, more educated, must have a higher income

etc...if the age of marriage for boys is brought down to 18, it is possible that the most desirable bride for that boy would be 15 or 16 years old. This again promotes child marriage.

### **How can child marriages be avoided?**

According to National Family Health Survey data, 26.8 percent of girls are marrying below the legal age nationally and most of these marriages occur between the age of 14 and 18.

**Ensuring an enabling environment for youth and adolescents** should be the need of the hour. The **focus should be more on** safety, security, education, training, employment and income generation. Increasing understanding of changes in body and mind during adolescence will be helpful in deciding on choosing a partner.

Encouragement for **higher education, counselling for career, social and financial support for vulnerable families** may enable girls to spend more years in school. This will automatically push the age of marriage.

The PCMA sets the minimum age of marriage at 18 years for women and at 21 for men. It treats underage marriages as valid, but voidable. Hence it is important to have the **PCMA declare child marriages void ab initio, which means that all child marriages would be considered as invalid marriages.**

The courage to say no to child marriage will be more when an environment is created for girls to realise their dreams. This will encourage them to be innovative and do things differently.

#### **Mould your thought:**

1. Is the proposal of increasing minimum legal age of marriage for women from 18 years to 21 years a solution for curbing child marriage. Analyse.

#### **Approach to the answer:**

- Write why it is news
- Write the advantages of the proposal
- Jot down the disadvantages
- What needs to be done to avoid child marriages?