

# Legal Age of Marriage for Women

December 23, 2021

## Manifest pedagogy:

Greater awareness and stronger laws have meant that India has come a long way in tackling child marriage. However, despite the improvement, child marriage rates are at 23%, according to latest survey. The rationale behind the recent bill is to make the age of marriage equal for both men and women to achieve gender equality. However, only bringing changes in the statute does not do much to serve the purpose. Education, health and economic equality are prerequisites for achieving gender-neutral progress in society.

**In news: The Prohibition of Child Marriage (Amendment) Bill, 2021, introduced in Lok Sabha has been sent to a Parliamentary Standing Committee for further discussion**

**Placing it in syllabus:** Society

## **Static dimensions:**

- History of statutes on minimum marriage age
- Existing statutes on minimum age for marriage
- Why does the practice of early marriage still exist in India?

## **Current dimensions:**

- Mandate for Task force on re-examining the minimum age of marriage
- Advantages of raising the minimum age
- Issues of raising the minimum age
- Way forward

## Content:

### Mandate for Task force on re-examining the minimum age of marriage:

- Prime Minister Narendra Modi had announced in his Independence Day speech that the government would soon take a decision on the age of marriage of women.
- Followed by this, the government appointed a **four-member task force led by former Samata Party chief Jaya Jaitly in June 2020.**
- The panel's **terms of reference (ToR)** included examining the correlation of age of marriage and motherhood with the health of the mother and infant.
- It included key health and population indicators like Infant Mortality Rate (IMR), Maternal Mortality Rate (MMR), Total Fertility Rate (TFR), Sex Ratio at Birth (SRB), Child Sex Ratio (CSR) etc...
- It was also tasked to suggest measures for promoting higher education among women.
- The panel **submitted its report in December 2020 and recommended that the age of marriage of women be raised to 21.**
- However, the panel's report has not been made public yet.
- The bill to amend the Prohibition of Child Marriage Act (PCMA), 2006, was introduced in Lok Sabha during winter session.
- It seeks to raise the age of marriage for women to 21 years, amends the definition of child to mean "a male or female who has not completed twenty-one years of age".
- The proposed Bill also contains amendments to various personal laws relating to marriage of various communities to ensure a uniform age of marriage.

### History of statutes on minimum marriage age:

- The **Child Marriage Restraint Act, 1929**, passed on 28

September 1929, in the Imperial Legislative Council of India, fixed the age of marriage for girls at 14 years and boys at 18 years.

- It is popularly known as the **Sharda Act, after its sponsor Harbilas Sharda.**
- It **came into effect on 1 April 1930** and applied to all of British India.
- However, the law was superseded for Muslims of British India by the **Muslim Personal Law (Shariat) Application Act of 1937**, which implied no minimum limit and allowed parental or guardian consent in case of Muslim marriages.
- In 1949, after India's independence, the Act was **amended** to 15 for girls, and **in 1978 to 18 for girls and 21 for boys.**
- The definition of child marriage was last updated in **The Prohibition of Child Marriage Act of 2006**, which applies to all Indians.

#### Existing statutes on minimum age for marriage:

- The **Special Marriage Act, 1954** and the **Prohibition of Child Marriage Act, 2006** prescribe 18 and 21 years as the minimum age of consent for marriage for women and men, respectively.
- Section 5(iii) of **The Hindu Marriage Act, 1955**, sets a minimum age of 18 for the bride and 21 for the groom.
- This is the same for Christians under the **Indian Christian Marriage Act, 1872.**
- In Islam, the marriage of a minor who has attained puberty (the bride or groom turns 15) is considered valid.
- **Note-** The lowest legal marriage age for women across the world is in Trinidad and Tobago, an island country in the Caribbean (age of 12 years), followed by Iran (13 years). The highest legal marriage age for women is in China (20 years).

## Why does the practice of early marriage still exist in India?

- Early marriage still persists in India because of the **economic status and education levels of women.**
- Around 45% of women with no education and 40% with primary education married before the age of 18, according to the National Family Health Survey (NFHS)-4.
- In terms of economic status, women from **poor households** tend to marry earlier.
- Child marriages are more prevalent in **rural areas and among Scheduled Castes and Scheduled Tribes.**

## Advantages of raising the minimum age:

- It assures **gender-neutrality.**
- The **negative impacts on nutritional levels** of mothers and their children, and their overall health and mental wellbeing due to early marriages can be **avoided.**
- It aids in **self-empowerment** of women who are otherwise cut off from access to education and livelihood due to an early marriage.

## Issues of raising the minimum age:

- Experts argue that even at the current age of marriage of women and men, the **implementation of the child marriage law is very hard** and hence there is no basis for increasing the age of marriage of women to 21.
- As the **nutritional status of women remains low** from birth onwards, getting married at 21 and having a child after that cannot improve the condition of maternal and child health or mortality.
- This law will unfold within a society that is deeply entrenched in **patriarchy** and that it will be used primarily by parents to control the autonomy of young girls and to penalise them for their choices.

## Legal issues-

- The Prohibition of Child Marriage Act does not contain any provision that explicitly says the law would override any other laws (personal laws) on the issue and there is an obvious discrepancy in the letter of the law between the Act and Muslim law on the minimum age of marriage.

**Who's a child?** | While most laws fix 18 as the age when one ceases to be a child, there are exceptions:

- The Majority Act, 1875 sets the age of majority at 18
- 61st Constitutional Amendment Act fixes the minimum voting age at 18
- POCSO Act, 2012 and Juvenile Justice Act, 2015 define a child as someone under the age of 18
- Right to Education Act, 2009 says a child is someone between the ages of six and 14
- Child Labour Amendment Act, 2016 says a child is someone under the age of 14 and an adolescent is aged between 14 and 18



- The 61st Constitutional Amendment Act of 1988 defines the voting age for elections to the Parliament and Legislative Assemblies as 18 years.
- The Majority Act, 1875, defines the age of majority as “the age of eighteen years and not before”, and as 21 years if a guardian is appointed.
- Under the Indian Contract Act, 1872 a person should have attained the age of majority in order to be able to enter into a contract.
- The law to punish sexual crimes against children, the Protection of Children from Sexual Offences (POCSO) Act, 2012 too recognises a child as someone under the age of 18 and thereby implies that the age of consent for sex is also 18 years.
- The Juvenile Justice (Care and Protection) Act, 2015 that deals with juvenile offenders (or children in conflict with law) and children who need care and protection, does the same.
- The Child Labour (Prohibition and Regulation) Amendment

Act, 2016, prohibits the engagement of children in all occupations and bans adolescents in hazardous occupations, a child is “a person who has not completed 14 years” and an adolescent means “a person who has completed his 14th year of age but has not completed his 18th year”.

- When all the above stated laws recognise that a person has the mental capacity to make decisions that will affect his/ her life commercially or as a citizen at the age of 18, amending only the age of marriage makes an artificial distinction.

### Way forward:

According to the National Family Health Survey-5 (2019-2021), 23.3% of women in the age of 20 to 24 were married before the age of 18, which is an improvement from 26.8% in 2015-2016. As part of the United Nations’ Sustainable Development Goals, India has promised to eliminate child marriage by 2030. To achieve this, there should be **greater emphasis on girl’s education and making education more accessible to and affordable for girls from poor families.**

Access to schools and colleges for girls, including their transportation to the institutes from far-flung areas needs to be increased. Providing Skill and business training as well as giving sex education in schools is necessary. Focussed programmes and necessary budgetary allocations to ensure that every child receives basic education is needed.

Awareness campaigns with the help of NGOs must be undertaken on a massive scale to increase the age of marriage, and to encourage social acceptance of the new legislation.

### Mould your thought:

1. The recent Prohibition of Child Marriage (Amendment) Bill, 2021 that aims to change the marriageable age of women to bring the same at par with that of men acts as

a game changer in achieving gender equality. Comment.

**Approach to the answer-**

- Write about the changes proposed in the bill
- Write its advantages
- Write the related issues
- Conclude by saying what needs to be done