

“The Adverse Effect of Increasing the Legal Age of Marriage for Girls”

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ABSTRACT

The Government of India recently introduced the Prohibition of Child Marriage (Amendment) Bill, 2021 which plans to increase the legal age of marriage of women in India from 18 years to 21 years. The intentions of the Government behind this amendment are to promote the equality and welfare of women, but in vain. While the objectives for introducing this modified bill may be of necessity, the bill will do more harm than good. This article, aims to convey how this bill, with its legal issues, poses a threat to the freedom of women, conflicts its objective to achieve equality and transgresses into various personal laws and also how this bill with its logical issues is nothing but a futile attempt by the Government to please the public. In India, to achieve the desired objective of this modified bill, the Government should focus more on improving the access to education in rural areas and also on better implementation of the existing laws rather than introducing new legislations.

Keywords: Women Freedom, Child Marriage, Empowerment, Women Education.

INTRODUCTION

On 20th December, 2021, the Prohibition of Child Marriage (Amendment) Bill¹ was introduced in the Lok Sabha after the Union Cabinet approved a proposal to raise the legal age of marriage of girls from 18 to 21. Union Minister of Child and Women Development, Smriti Irani, while introducing the concerned bill said that,

“We're, in a democracy, 75 years late in providing equal rights to men & women to enter into matrimony. Through this amendment, for the first time men and women will be able to make a decision on marriage at the age of 21, keeping in mind the right to equality.”

The bill introduced will have effect on all the existing personal laws irrespective of any custom, practice or usage in relation to marriage.

The rationale given by the central government, for their decision to amend the Prohibition of Child Marriage Bill is that the said amendment will improve the opportunities for women to pursue higher education and careers and, at the same time, it will also help lower the Maternal Mortality Rate (MMR) and Infant Mortality Rate (IMR) while eventually increasing the nutritional levels and Sex Ratio at Birth (SRB).

Now while the government introduced the amendment bill with a well intention, there are several problems with this amendment bill, on both legal as well as logical aspect. Addressed in detail below, the legal problems with the bill stems from the fact that the bill will repudiate

¹ The Prohibition of Child Marriage (Amendment) Bill, 2021, Bill No. 163 of 2021

and invalidate the provisions in various personal and marriage laws in relation to the age of marriage. It can also potentially open the gate for criminalizing of women that are married off by their families at a young age. Subsequently, from the logical point of view, the main contentions due to which the government introduced the bill, have no correlation with the legal age of marriage being 18 years.

LEGAL ISSUES WITH THE BILL

From the legal perspective, it can be observed that this amendment is a step towards Uniform Civil Code (UCC). Now, while the UCC is necessary to ensure that all citizens be treated equally with regard to their personal laws, it is not that relevant in the Indian context due to the wide spread diversity and culturally rich history. According to the Law Commissions Report of 2018, on the feasibility of UCC, it was concluded that UCC in India is neither necessary nor desirable at this stage and that “secularism cannot contradict plurality prevalent in the country”. Furthermore following the report, Justice BS Chauhan, the chairman of the commission said that “cultural diversity cannot be compromised to the extent that our urge for uniformity itself becomes a reason for threat to the territorial integrity of the nation”.²

Now, for the reasons why the UCC was found to be to undesirable are the reasons that pose the primary legal problem with the Prohibition of Child Marriage (Amendment) Bill, 2021.

The proposed bill seeks to override all the existing personal laws pertaining to the age of marriage in place, disregarding all the customs and usage of the religions.

To abrogate the differences in marriageable age in different personal laws, the bill inserts a clause in Section 1³ which says that, “notwithstanding anything contrary or inconsistent therewith contained in the Indian Christian Marriage Act, 1872; the Parsi Marriage and Divorce Act, 1936; the Muslim Personal Law (Shariat) Application Act, 1937; the Special Marriage Act, 1954; the Hindu Marriage Act, 1955; and the Foreign Marriage Act, 1969, or any other custom or usage or practice in relation to marriage, under any other law for the time being in force”. Therefore, this reform could lead to serious legal questions and apprehensions among the masses due to the clash between this new law and their existing personal laws and practices. Like for instance, the Muslim Personal Law⁴ states that a girl attains the age of marriage when she attains puberty, which is generally considered to be 15 years of age, and the concerned personal law is a codification of Shariah law, the religious and divine law of the Muslims. Hence, arbitrarily imposing a law on people rather than establishing a consonance between their divine personal laws and the new law could open the gate to conflicts.

² Krishnadas Gopal, *Uniform civil code neither necessary nor desirable at this stage, says Law Commission*, The Hindu, August 31, 2018

³ Ibid

⁴ Roychowdhary, Arijia, *Shariat and Muslim Personal Law: All your questions answered*, The Indian Express, August 22, 2017

Another legal issue with this amendment is that it will lead to criminalizing many women whose family marry them at a young age. The proposed bill leaves the women vulnerable and without any legal protection from potential prosecution because of being married off by their families before the legal age of marriage. According to National Family Health Survey, 2019-21⁵, around 23.3% women were married before turning 18, most of which ought to be due to the societal and family pressure, further aiding the point that almost a quarter of women would be at risk of criminal prosecution for something that was not even their choice in the first place. Another side of this coin is that the bill takes away the right of adult women to marry according to their wish. As was reiterated in *Ashok Kumar Todi v. Kishwar Jahan*⁶, where a boy and girl who have attained the age of majority, choose to marry and the marriage is duly registered, “the police officials have no role in their conjugal affairs and the law enforcing authorities have no right to interfere with their married life and, in fact they are duty bound to prevent others who interfere in their married life.”

Instead of empowering the women, that this bill was intended to do, it further curtails women’s rights by taking away their right to freedom of choice. There are countless examples of the members of girl’s family exploiting laws to further undermine the girl’s right to marry of her own choice. For instance, the Section 360 of the IPC⁷ is used, by making false allegations of kidnapping, to stop the girl from marrying into another caste or religion. Therefore, this bill has a great potential to be used in a similar manner, leading to greater harm than good.

LOGICAL ISSUES WITH THE BILL

Now, on a careful examination of the concerned bill, from a logical point of view, the bill contradicts all the contentions that it was introduced for. The bill was introduced to provide better opportunities to women and to lower the Maternal Mortality Rate (MMR) and Infant Mortality Rate (IMR).

To begin with, there is no evidence that supports the government’s contention that solely increasing the legal age of marriage of girls would provide better opportunities to them to pursue higher education and have a career. According to a report⁸, the National Commission for Protection of Child Rights had said that around 40% of 15 to 18-year-old-girls were out of school and among them almost 65% were engaged in household work. From this report, it can be inferred that the majority of girls deprived from education are due to poverty. Furthermore, there is a sizable group of girls who have never attended school. Poverty is a big component in this situation. The lockdown has only made things worse. These critical issues are right in front of us. To ensure that every child receives a basic education, we need focused programmes and the required economic commitments. Only when a girl is in school

⁵ National Family Health Survey (2019 – 2021)

⁶ 2011 3 SCC758)

⁷ Section 361 in The Indian Penal Code, <https://indiankanoon.org/doc/1515807/>

⁸ *School Has Been a Right for Girls in India Since 2009. So Why Aren’t They Going?*, Time, June 27, 2019

will there be fewer child marriages. In 1978, the legal age of marriage of girls was increased from 15 years to 18 years and, but the rate of child marriage has not shown much improvement since then. In fact, according to NFHS-5, states like Manipur⁹ (16.3% from 13.7% in 2015-16), Tripura¹⁰ (40.1% from 33.1% in 2015-16) and Assam¹¹ (31.8% from 30.8% in 2015-16) have shown an increase in the rate of child marriages.

The aim of the bill is to reduce child marriage but as the trend suggests, raising the legal age of marriage is not the solution, rather, for higher studies and better opportunities, the Government should focus more on improving access to education which still remains distant, especially in the rural areas, where the rate of child marriage is 27%.

Another contention behind the amendment bill is that it will help lower the Maternal Mortality Ratio (MMR) and Child Mortality Ratio (CMR) by lowering the rate of teenage pregnancies. The main causes of MMR include anaemia and high blood pressure which leads to complications in pregnancies but, as Mary John says, who is a professor at the Centre for Women's Development Studies, "An anaemic woman will remain anaemic, whether she gets married at 18 or 21. She stops being anaemic only if she gets better health and nutrition."¹²

The claims that are being made that the nutritional status of the mother and child and maternal mortality rates will improve with the increase in the age of marriage simply do not hold up. If you look at higher ages at marriage, you will look at better data sets because higher ages at marriage correspond with better-off people with better health indicators. People who are wealthier marry at later ages. However, if you control for all these factors, and only concentrate on the factor of age, then you find that age plays the least significant role in any of these indicators. Anaemia is not affected by age at marriage and it is the cause for our terrible maternal mortality rates.

CONCLUSION

To conclude, it can be said while the objective of the government behind passing this bill is good and a need of the hour, the bill is not as bulletproof. The bill, with its legal loopholes and lack of logical rationale, seems nothing more than a complaisant attempt by the government to please the public rather than really empowering women. In 2018, the Law Commission of India suggested that the legal age of men to be decreased to 18 years, so that it was a par with the legal age of women and also, in its consultation paper on 'Reform of Family Law', the panel also said "if a universal age for majority is recognised, and that grants all citizens the right to choose their governments, surely, they must then be also considered capable of choosing their spouses".¹³ Although this amendment bill to increase the legal age

⁹ National Family Health Survey-5 of Manipur (2019 – 2020)

¹⁰ National Family Health Survey-5 of Tripura (2019 – 2020)

¹¹ National Family Health Survey-5 of Assam (2019 – 2020)

¹² Anjana Pasricha, *India Could Raise Marriage Age for Women from 18 to 21*, VOA News, December 22, 2021

¹³ *Let 18 years be recognised as legal age for marriage for men too: Law panel*, The Economic Times, August 31, 2018

of marriage of women may be effectual, it will have a very little impact in reality. The women more likely to benefit from this bill will be the ones who are well educated and from an economically sound background whose families support higher education. However, the problem lies in its implementation in the rural areas where people are not even aware about their rights and lack or have minimal legal support. According to 2019 government data¹⁴, the average age for women to marry is 22.1 years. This number has gradually increased over time, indicating that the transition is voluntary. The shift has mostly occurred as women's educational levels have improved. Therefore, the solution to the problem that the government seeks to address lies in enhancing the education of girls and stricter implementation of already existing laws instead of introducing new legislations.

¹⁴ Vishna Roy, *Just another meaningless number*, The Hindu, August 28, 2020