
PROPOSAL TO RAISE THE LEGAL AGE OF MARRIAGE FOR WOMEN: A STEP TOWARDS WOMEN EMPOWERMENT

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Abstract

On Independence Day this year, our Prime minister announced the move to reconsider the legal age of marriage for girls in India while addressing the nation. Low value to girls' aspirations for economic independence and neglect of their health at child bearing seems to be the major concerns. To re-examine the age of marriage, the Union Ministry for Women and Child Development is strategically studying the health of women with factors responsible for the wellness quotient of the mother with foetus during pregnancy. For marriage at the majority age, the girls are neither physically nor psychologically mature. With the raised age of marriage, age of first pregnancy will also be raised resulting into improved maternal mortality ratio. Marriage of a young girl undermines her self-respect too, which is an additional rational given by the Government for the proposal. The legal reform will bring acceptance to the importance of education especially in rural India. In turn, enabling girls to take up opportunities with their own choice will ensure their empowerment. This will gradually support girls to be equal partners, parents and citizens.

To equalize the age of marriage is a positive step towards gender equality because it imbibes gender mainstreaming in amending the legislations. Perpetual adherence to any legal provision seems unreasonable. Thus, there is a need to endorse the government's well intentioned and far-sighted proposal. However, while the objectives of the proposal are directed towards social reformation, the results might be bleak if implemented without strict legal sanctions.

Introduction

Maternal mortality ratio and malnutrition of pregnant women has been an issue since many years. As per World Health Organization, the maternal mortality ratio (MMR) is defined as the number of maternal deaths during a given time period per 100,000 live births during the same time period.ⁱ Consequently, the government is considering to raise the legal age for marriage of girls to 21 years. In an attempt to decrease malnutrition, honourable Prime Minister announced this proposal in his Independence Day speech.ⁱⁱ The Prime minister also referred to a ten-membered ‘taskforce’ constituted in June, 2020 by Union Ministry for Women and Child Development which is studying the issue in order to secure healthy life for women. The Prime Minister added that as soon as the report is submitted, appropriate decisions will be taken. To re-examine the right age of marriage, the Taskforce is in the process to analyse the age of motherhood, reasons of stagnant maternal mortality ratio and the measures for upgrading nutritional levels in women. The verification of the inter-relationship between age of marriage and motherhood with respect to wellness quotient of the mother with foetus during pregnancy and further in life is also an important agenda of the Taskforce.ⁱⁱⁱ

Presently, the minimum age for marriage for women is 18 years and 21 years for men under Section 5(iii) of the Hindu Marriage Act, 1955. This minimum age of marriage has been prescribed to essentially outlaw child marriages and prevent abuse of minors. However, child marriages are not illegal, although they can be declared void at the request of the minor in the marriage. The Special Marriage Act, 1954 and the Prohibition of Child Marriage Act, 2006 also prescribe 18 and 21 years as the minimum age of consent for marriage for women and men respectively.^{iv}

The minimum age of marriage is distinct from the age of majority which is gender-neutral. Under the Indian Majority Act, 1875, a minor attains majority at 18. Here, the concerning issue is regarding different legal age for men and women for marriage. In year 2018, for the implementation of Uniform Civil Code, the Law Commission through its consultation paper on ‘Reform of Family Law’ had viewed that having different legal standards “*contributes to the stereotype that wives must be younger than their husbands.*”^v The consultation paper had also observed that -

“The difference in age for husband and wife has no basis in law as spouses entering into a marriage are by all means equals and their partnership must also be of that between equals.”^{vi}

Women's rights activists have criticised that the law perpetuates the stereotype that women are more mature than men of the same age and, therefore, can be allowed to marry sooner. The International treaty Committee on the Elimination of Discrimination against Women (CEDAW), also calls for the abolition of laws that assume women have a different physical or intellectual rate of growth than men.^{vii}

Therefore, the government's idea to increase the legal age of marriage is to bring gender-neutrality and to reduce the risks of early pregnancy among women. Early pregnancy affects the health of the child and is associated with increased maternal mortality ratio as well.^{viii}

The aim of this paper is to analyse the said proposal in the light of wellness quotient of both the mother and the foetus and to counter the arguments against the proposal. The paper has been structured in three parts. The *first* part will critically analyse the impact of the proposal on maternal mortality ratio in India. The *second* part will try to judge whether early marriage results in low education level, or in turn, disinterest in studies leads to early marriages. In the *third* part, some recommendations on increasing the efficacy of the government proposal are forwarded, like the need to increase awareness and strengthening of the instrumental government agencies. The paper presents a new thought and differing perspective from the arguments which oppose the governments' proposal.

The Proposal *vis-à-vis* Maternal Health in India

Pursuant to the proposal, the National Coalition for Advocating Adolescent Concerns^{ix} (NCAAC) submitted its report before the Taskforce on July 9, 2020. In the beginning itself, the report has cautioned against the government proposal on the basis of the National Family Health Survey, 2016 (NFHM-4).^x The NFHM-4 shows a decline from 46% to 27% for women, and 29% to 20% for men in child marriage in the last decade and an increase in the median age of marriage from 17.2 years to 19 years for women, and from 22.6 to 24.5 years for men. Under NFHM-4 variables of nutrition, sexual behaviour, reproductive health, fertility, marriage, contraception children's immunizations, childcare, HIV/AIDS, domestic violence, etc. were studied with regard to women.^{xi}

However, girls do not get family support in actualizing their informed choice to get married after 21 years, which is also conveyed aloud by the female respondents. The Report has also registered the dismal constraints of housework even with continuing pregnancies and child

bearing. Resultantly, demand for optimum efforts from the Anganwadi centres in distribution of supplement pills has also been laid.^{xii}

Young menstruating females are more at risk of iron deficiency anaemia because of the increased demand of iron.^{xiii} Early age pregnancy is a risk factor for developing pre- eclampsia i.e. increased blood pressure during pregnancy.^{xiv}

However, the efforts of health centres in door-to-door free distribution of such supplement pills are usually rendered futile. This is because of the orthodox mindset of older women discarding the pills with the belief that they might cause harm to the body. There is need for more directed health awareness schemes to change this mind set.

Moreover, in a study, the International Food Policy Research Institute (IFPRI) has welcomed the Proposal. It has affirmed that the children born to adolescent mothers (10-19 years) are more likely to be stunted than those born to young adults (20-24 years).^{xv} A senior researcher fellow at IFPRI, Poornima Menon has stated that –

“This is a welcome recognition at the highest levels in the government about the links between the health of mothers and babies when a girl is married too early and has a child before the age of 20 years.”^{xvi}

The results of Demographic and Health Survey, 2016 shows highest chances of short body structure, slimness, and iron deficiency among poor mothers. Poor indicators of maternal malnutrition restrict normal foetal growth which is the common cause of low birth weight.^{xvii}

A leading gynaecologist, Dr. Ratna Singhal at Ratna Nursing Home, Narnaul (Haryana) having 21 years of experience has also opined that any 18 years old girl is not ready physically as well as psychologically to bear a child. She might have problems at either the hypothalamus brain level or at ovarian level.^{xviii} Married adolescent girls are also less likely to use contraceptives.^{xix} Consequently, doctors are especially worried if an adolescent girl is pregnant. It becomes pertinent to physically examine her with ultrasound and hormones as well to control maternal mortality ratio. Moreover, along with raising the legal age of marriage, the girls should be supplied with adequate nutrition and access to well-equipped health centres during pregnancy to maintain sound health and strength for normal delivery.^{xx}

A study provides that 25% of teenage mothers were more at risk as compared with older mothers.^{xxi} In a survey, the age exhibited a deep U-shaped graph with maternal death and this relationship still remained unaltered after exhaustive review of other contributory risk factors.^{xxii}

Social determinants related to gender, education, sanitation and poverty are some of the key contributory risk factors of stunting and undernutrition.^{xxiii} A study on the malnutrition among India's urban poor women shows the need to formulate better ways for improving the implementation of government schemes in urban areas. This is because the frontline health workers, who usually work in rural areas, are unable to give results in cities due to multiple reasons like the higher population density in urban areas. The study also finds that there is a need to ensure supply of adequate and nutritious food along with appropriate counselling services to the malnourished women. The study also claims that the government has been unable to address the issue of obesity in its National Nutrition Mission since the urban population is still suffering from this serious health risk in large numbers.^{xxiv}

It is to be understood that early pregnancy not only deteriorate the maternal health but also brings malnutrition to children born out of it. This continuing malnutrition in childhood results in diseased adulthood also.^{xxv} Therefore, the age for pregnancy should be seriously discussed and worked out by the young married couples.^{xxvi} It is equally important that the society and the elder family members restrain interference and pressure upon them.

By default, with the raised age of marriage, age of first pregnancy will be raised resulting into improved maternal mortality ratio.

Girls have fearfully conveyed through the Report that, *“though the age of consent is 18 years, if the age of marriage is increased, if we are unmarried and get pregnant, we will have to resort to home remedies/quacks for quick abortions and this will be unsafe.”*^{xxvii}

However, it is pertinent to note and to make adult girls aware that under Medical Termination of Pregnancy Act, 1971(MTP Act) abortions are not illegal after attaining the age of majority. Safe abortion access is an issue of reproductive and sexual rights where a woman makes choices and decisions regarding her body and life. The Act recognises the personhood of a woman and respects the rights of an adult person in India.^{xxviii}

Access to education for girls has also been demanded as an alternative approach to improve the maternal and child nutrition in the Report.

Is Education an Alternative to Fulfil the Intended Objectives?

In the NCAAC Report, good number of respondents have affirmed that –

“Extension of marriage age is a buffer to avoid early marriage. We will have the

opportunity to complete our degree, take up a job, become independent and then get married and contribute to the family's earning. Along with the change in law, change in schemes for supporting our studies should be introduced.^{xxix}

Thus, preference for the girl education for appropriate maturity and employability in place of the proposal has been conveyed. The respondents have also laid the need for a Sexual Health Intervention Programme in school education to have guidance on reachable sexual and reproductive health services. The Report also highlights limited education opportunities for girls as one of the crucial causes for their early marriage.^{xxx}

However, the Report seems to be silent about countless government schemes for free school and college education and fails to identify the narrow mindset of parents as the real barrier to education. Due to illiteracy and conservative mindset, parents undermine girls' education and aspirations. Parents are scared of daughters developing relationships and eloping with boys of their choice if they send them to school. In addition, burden of household work on girls contributes in their very low attendance. Hence, girls drop out the school due to the lack of enabling environment at home. Further, although the demand for sex education in schools is valid, it can be beneficial only when the target group reaches the school. Thus, the notion that girls discontinue education due to their marriage is a misconception.^{xxxi}

However, due to government's step to raise the age of marriage to 21 years, education might gain intended importance in girls' life. Since education is a means of social growth,^{xxxii} the educated mothers will have the potential to inculcate positive attitude for education in the future generations as well. When educated girls become mothers, they also provide better health care to their children. Overall, educating girls will enable them to be aware of their health, need for medicines and appropriate time to bear a child. It will thus contribute to lowering of maternal mortality ratio. Moreover, as a means of social reform education stimulates the ability of girls to comprehend their fundamental rights and demand equality at the collective level.^{xxxiii}

Further, notions of 'Empowerment' and 'Equality' have to be understood critically. Empowerment is not limited to being financially independent but it should also be considered as a measure to strengthen girls to withstand social pressures and take decisions as a self-reliant individual. Though ensuring gender equality has been a prime objective of education policy in India, it has not been implemented as envisaged.^{xxxiv} With regard to gender equality, as far as the age of marriage is concerned, there is inequality. The inequality increases the chances of male

chauvinism and domestic abuse in a marriage because the husband does not consider his wife as an equal partner and always demands submission. The government's proposal to equalize the age of marriage is a positive step towards gender equality because it imbibes gender mainstreaming in amending the legislations. To achieve gender equality is a dynamic and consistent procedure integrating gender neutral perspective into various aspects and phases of the social growth. Gender mainstreaming means integrating a gender equality perspective at all stages and levels of policies, programmes and projects which is thus used as a tool to achieve gender equality. Combination of gender sensitivity into planning, policy making, legislation, and most importantly, public support plays a crucial role in achieving gender neutrality.^{xxxv} Thus, with a view to enable equality between married men and women, there is need to endorse the government's well intentioned and far-sighted proposal.

In the year 2018, a uniform age of marriage for both men and women was endorsed by the National Human Rights Commission too. Laws such as the Indian Majority Act, 1875 grant the right to vote, and to enter into contracts, for those who attain the age of 18. And they are equal for men and women. Even the Supreme Court, in the *Independent Thought* case,^{xxxvi} asserted that the minimum marriage age for both boys and girls must be similar. CEDAW also recommends same age for both genders on the international front. Hence, if we are looking for legal reform, a different age for marriage should no longer be supported.

Suggestions and Conclusion

Changing social realities is challenging and not the same as merely amending the laws. As far as this proposal is concerned, there will be protests from various sections of society. The submission of report from the Taskforce constituted by the Ministry of Women and Child Development was due on 31 July, 2020 but has not yet been submitted.^{xxxvii} In the report, the Taskforce is likely to propose appropriate legislation and amendment in the present laws. Still, the objective behind conceiving the proposition is to improve maternal health and gender equality which is commendable.^{xxxviii}

The government has taken up an uphill task with numerous obstacles, be it protests from rural population, local MLA's eyeing the vote bank or other agencies of criminal justice system in India. Although the objectives of the proposal are directed towards social reformation, the results might be bleak if implemented without strict legal sanctions. With the delay in marriage,

the population blast is also likely to be controlled to some extent.^{xxxix} However, to make the proposal successful in its true sense, the government needs to strengthen many ineffective agencies which have continuously been reported as barriers in India. Poverty and adult education need to be addressed. For that, the government will have to sustain additional financial costs too.^{xi}

Due to the age gap, economic dependence and lack of education, girls are regularly exposed to domestic as well as sexual violence at home. Equalising the age of marriage will also ensure violence free sexual relationships with husband and wife being healthy equals. It is of utmost importance that the government and the society as a whole do not live in denial about the frequent marital inequalities, but rather actively work to create safe spaces for information, support and legal redressal whenever needed.^{xli}

The proposal to raise the legal age of marriage for women will definitely prove to be a socially transformative step with a marked downward graph of maternal mortality ratio in India. The legal reform will bring acceptance to the importance of education especially in rural India. Girls should be seen beyond marriage and motherhood. Marriage is not the soul surety for her security. Rather, education and employability ensure security and respect for girls. Formal education also needs to become an equality enhancing space. In turn, enabling girls to take up opportunities with their own choice will ensure their empowerment.

The increase of legal age of marriage for girls from 18 years to 21 years will lead to a long term, positive health and education outcome. Also, the amendment will gradually support girls to be equal partners, parents and citizens.^{xliii}

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ⁱⁱ 15 August 2020; Jagriti Chandra, *Government may re-look age of marriage for women*, THE HINDU (Aug.16, 2020, 10.18 IST), <https://www.thehindu.com/news/national/government-may-relook-age-of-marriage-for-women/article32364889.ece#:~:text=The%20government%20may%20re%20look,off%20at%20the%20right%20age.>

ⁱⁱⁱ Apurva Vishwanath, Esha Roy, *Explained: The logic of, and debate around minimum age of marriage for women*, INDIAN EXPRESS (August 17, 2020, 11:36 AM), <https://indianexpress.com/article/explained/pm-modi-74th-independence-day-women-empowerment-marriage-age-6555937/>.

^{iv} *Id.*



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- viii *Supra* note 3.
- ix Submissions To The Taskforce Constituted To Examine Matters Pertaining to Age Of Motherhood Among Other Concerns, National Coalition Advocating for Adolescent Concerns (July 9, 2020), <https://pldindia.org/advocacy/submissions-to-domestic-and-international-bodies/submissions-to-the-task-force-constituted-to-examine-matters-pertaining-to-age-of-motherhood-among-other-concerns/>.
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- xi *Id.*
- xii *Supra* note 9.
- xiii HIRALAL KONAR, DC DUTTA'S TEXTBOOK OF OBSTETRICS 305(Jaypee Brothers Medical Publishers, 8th ed. 2016).
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