

Explained: Why to raise the legal age of marriage for women, or why not

The rationale

1. The age of marriage has a correlation to health and social indices such as infant mortality, maternal mortality, and nutrition levels among mothers and children.
2. The recommendation is not based on the rationale of population control (India's total fertility rate is already declining) but more with women's empowerment and gender parity.
3. The committee has said access to education and livelihood must be enhanced simultaneously for the law to be effective.
4. A study by the International Centre for Research on Women has found that girls out of school are 3.4 times more likely to be married or have their marriage already fixed than girls who are still in school.
5. According to the State of the World Report 2020 by UNFPA, in India, 51% of young women with no education and 47% of those with only primary education had married by age 18, compared to 29% of young women with secondary education and 4% with post-secondary education.



The opposition

1. Experts have been opposing a raised age of marriage on two broad counts. First, the law to prevent child marriages does not work. While child marriage has declined, it has been marginal: from 27% in 2015-16 to 23% in 2019-20, according to National Family Health Survey (NFHS) 5. The decrease was, however, dramatic in NFHS 4, from 47% in NFHS 3.

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2. The marriage age at 18 was set in 1978, but child marriage started to decline only in the 1990s, when the government stressed primary education of the girl child and took measures to reduce poverty.
3. The experts said girls being taken out of school to be married off is reasoning blown out of proportion; often the girl child drops out after primary school simply because she has no access to higher education, and is then married off.
4. The second objection being raised is the criminalisation of a large number of marriages that will take place once the law comes into effect. While 23% of marriages involve brides under age 18, far more marriages take place under age 21.
5. The median age at first marriage for women aged 20-49 increased to 19 years in 2015-16 from 17.2 years in 2005-06, but remained under 21 years.
6. Personal laws that govern marriage and other personal practices for communities prescribe certain criteria for marriage, including age of the bride and groom. For example, 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 and the Special Marriage Act. For Muslims, the criteria is attaining puberty, which is assumed when the bride or groom turns 15.

Who will be affected?

1. Experts noted that 70% of early marriages take place in deprived communities such as SCs and STs, and said the law will simply push these marriages underground instead of preventing them.
2. According to NFHS 4 (2015-16), the median age at first marriage for women aged 25-49 is higher among the social categories of Others (19.5 years), OBC (18.5), ST (18.4) and SC (18.1)
3. The experts said rural women will be affected more than urban women. According to NFHS 4, the median age at first marriage (age 25-49) for urban women (19.8) is 1.7 years more than that for rural women (18.1).

What happens to such marriages once detected?

1. Child marriages are illegal but not void. It is voidable at the option of the minor party. This means the marriage can be declared void by a court only if the minor party petitions the court.
2. This flexibility is kept to ensure that the rights of the minor, especially the girl, is not taken away in marital homes later on

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3. However, if a court finds a minor was coerced into marriage by parents or guardians, the provisions of the Juvenile Justice (Care and Protection of Children) Act come into effect to keep the custody of the minor until he or she attains majority and can make a decision on the marriage.

What laws will have to be changed to raise the minimum age of marriage?

1. First, the age limit in the Prohibition of Child Marriage Act will have to be changed. The government had indicated this will be followed by necessary changes in personal law.
2. The Hindu Marriage Act, the Indian Christian Marriage Act and the Special Marriage Act will also have to be changed consequently.
3. However, changes in Muslim law could raise significant legal issues.

What are these legal issues?

1. The Prohibition of Child Marriage Act does not contain any provision that explicitly says the law would override any other laws on the issue. And there is an obvious discrepancy in the letter of the law between the Prohibition of Child Marriage Act and Muslim law on the minimum age of marriage.
2. For example, although the marriage of a 16-year-old girl deemed to have attained puberty is not considered invalid in Muslim law, it would be a child marriage under the Prohibition of Child Marriage Act.
3. Additionally, the Supreme Court, in a landmark 2017 verdict, has held that in the case of a minor wife, the law recognises marital rape.
4. Husbands of minor women, as opposed to husbands of adult women, cannot enjoy the blanket immunity that the Indian Penal Code provides in Exception 2 to Section 375 against charges of marital rape.

Can Muslim law be amended too?

1. Muslim law is a mere codification of Shariah law.
2. In *Shayara Bano v Union of India*, the case in which the Supreme Court declared the practice of instant triple talaq as unconstitutional, one of the key questions was whether the Supreme Court could quash a religious or divine law.
3. The court said all personal laws will have to fall under the constitutional framework and will be subject to public order, morality and health.
4. Experts suggest the minimum age of marriage can be justified under public health. However, there are several differing verdicts from high courts on this issue.

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Summoning CEC, EC to PMO is outrageous

Recently the Chief Election Commissioner and two Election Commissioners were summoned by the PMO to attend a meeting with the Principal Secretary to the PM.

It is in violation of the constitutional spirit, irrespective of how important or urgent the issue.

The Independence of ECI:

1. An independent ECI is a gift of the Constitution to the nation. Free and fair and credible elections are sine qua non of the EC. The Supreme Court has repeatedly stressed this point, calling it part of the basic structure of the Constitution.
2. The PMO summoning or “inviting” not just the CEC but the full bench is in violation of the Constitution, irrespective of how important or urgent the issue
3. There is no difference between the neutrality and independence of the Supreme Court and ECI in this context. Both are independent constitutional authorities deliberately separated from the executive.
4. Not to speak of summoning CEC and ECs, the PS to the PM cannot even call on the ECI without public knowledge of the meeting and what transpired in it.
5. Politicians of all hues visit the ECI regularly with their petitions or complaints or suggestions, but with full transparency. Transparency is the keyword here and perception of transparency is equally important.
6. Now, let us talk about the protocol, though that is secondary. The CEC is very high in the warrant of precedence — ninth, while the PS to PM is 23rd.
7. The law ministry, which advises the government on all legal and constitutional matters, should have known better than convey that the PMO “expects” the CEC/ECs to attend.

This incident is a transgression that should not happen again. The distance of an arm's length in interactions between institutions envisaged in the Constitution is sacrosanct. It should not only be maintained but also “seen” to be maintained.



Functions of Election Commission in India

1. EC takes decision on every aspect of conduct and control of election from the announcement of election to the declaration of results.
2. It implements the code of conduct and punishes any candidate or party that violates it.
3. It can also order the government to follow some guideline, to prevent use and misuse of governmental power to enhance its chance to win elections, or to transfer some governmental officials
4. When on the election duty, government officers work under the control of the EC and not the government.
5. To give an advice to the President on some certain issues.