

Raising the marriage age is not the solution

The government on Tuesday referred the Prohibition of Child Marriage (Amendment) Bill, 2021, to a parliamentary panel for further scrutiny. After examining the bill, the panel will present its recommendations before Parliament. The bill seeks to modify the definition of a child, stating that it means a male or female who has not completed 21 years.

It also seeks to make consequential changes to various personal laws relating to the marriage of different communities to ensure a uniform marriage age. Existing laws do not adequately secure the constitutional mandate of gender equality in marriageable age among men and women, the draft legislation said. Increasing the marriageable age of women to 21 years would help in lowering maternal and infant mortality rates while improving nutrition and sex ratio at birth, the proposed legislation added.

The amendment bill for increasing the minimum age of marriage for girls from 18 to 21 years is a misplaced solution for child marriage, malnutrition, early dropout of girls from education, or improving their capacity to enter the workforce. Prohibiting young adults from marrying cannot resolve structural vulnerabilities that drive child marriage and flies in the face of available evidence.

Although child marriage persists, it has gradually declined from 27% (National Family Health Survey-4, 2015-16) to 23% (NFHS-5, 2019-2021). The family health survey included girls (20-24 years) who were married before they turned 18. The mean age of marriage of girls has also risen.

Contrary to popular assumptions, child marriage is the cause and not the consequence of girls dropping out of school. NFHS lists the poor quality and high cost of education for the early dropout of girls. Other causes include the burden of unpaid housework and the lack of hygienic toilets, unavailability of sanitary napkins, sexual harassment, and apprehensions of premarital sexual activity. This explains the reported spike in child marriages, following the closure of schools and job losses, in the wake of Covid-19 in India and elsewhere.

Child marriage laws have existed in India since 1929, but have failed to end the practice. What has helped the decline is the

expansion of the middle-class population and the availability of affordable quality education, a higher standard of living, and employment opportunities. Currently, child marriages occur due to poverty, a large section of which comprises Scheduled Caste and Scheduled Tribe groups.

The increase in the minimum age to 21 is unlikely to end child marriage. On the contrary, it may render young women (under 21 years) voiceless in decision-making over their lives; and correspondingly empower the writ of parental, community, and state patriarchy over them.

Studies by Partners for Law in Development show that most child marriage prosecutions are retaliatory actions by parents against self-initiated marriages of their daughters. In contrast, the cases filed by the child marriage prohibition officer designated to stop child marriages are negligible. These findings are instructive of the extended weaponisation of the law that could follow if the minimum age of marriage for girls is 21.

The statutory framework either infantilises or criminalises adolescents' sexuality, instead of facilitating sexual and reproductive health information and services. This is contrary to the Convention on the Rights of the Child, which requires the child's best interests to correspond with developmental stage, evolving capacities of the child, and their right to participate and be heard in matters affecting their lives.

Even as the Convention prohibits criminalisation of adolescent sexuality, the Protection of Children from Sexual Offences (POCSO), 2012, denies sexual consent to adolescents until they are 18, including within non-coercive relationships between peers. Consequently, the retaliatory child marriage prosecutions by parents often include statutory rape charges against the daughters' husbands, attracting a minimum 10-year sentence.

POCSO casts the net of criminalisation wide by requiring health providers to report their underage patients, seeking sexual and reproductive health services, to the police. The resulting widespread prosecution of consenting minors and elopement cases, obstructs timely justice delivery in genuine sexual abuse cases. Jurisprudence also leans towards recognising the older adolescent's capacity for discretion to minimise the harm of incarcerating husbands in jails and minor wives in shelter homes.

The minimum age of marriage sets a bar below which such cases can be prosecuted. It cannot be confused with an ideal age of marriage. The law confers adulthood at 18, accompanied by rights to vote, contract, and marry. To realistically delay the marriage of girls from multiple marginalised social groups, who are vulnerable to early marriage, the State must guarantee quality education up to 18 years, accessible schools with hygienic toilets, safety, comprehensive sexuality education, together with skills and livelihoods.



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The views expressed are personal