

Legislative Brief

The Prohibition of Child Marriage (Amendment) Bill, 2021

The Prohibition of Child Marriage (Amendment) Bill, 2021 was introduced in Lok Sabha on December 21, 2021.

The Bill was referred to the Standing Committee on Education, Women, Children, Youth, and Sports on December 21, 2021.

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Highlights of the Bill

- ◆ The Bill amends the Prohibition of Child Marriage Act, 2006 to increase the minimum age of marriage of females to 21 years. Further, the Bill will override any other law, custom, or practice.
- ◆ Under the 2006 Act, a person married below the minimum age may apply for annulment within two years of attaining majority (i.e., before 20 years of age). The Bill increases this to five years (i.e., 23 years of age).

Key Issues and Analysis

- ◆ The minimum age of marriage at 21 years is higher than the minimum age of majority (18 years). The Supreme Court has ruled that marriage between adults is a fundamental right. The question is whether prohibiting marriage for persons between 18 and 21 years is a reasonable restriction on their right to marry.
- ◆ About a quarter of 20-24 year old women are married before the age of 18 years, despite that being the minimum age of marriage since 1978. The limited success of the current law raises the question whether an increase in minimum age would have any significant impact on reducing the incidence of child marriage.

PART A: HIGHLIGHTS OF THE BILL

Context

According to the National Family Health Survey 2019-21 (NFHS-5), 23% of women between the age of 20 and 24 were married before 18 years of age.¹ This figure has reduced significantly over the years from 47% in NFHS-3 (2005-06) to 27% in NFHS-4 (2015-16), and to 23% in the latest survey.^{2,3} In India, the practice of child marriage was first legally prohibited in 1929 through the Child Marriage Restraint Act, 1929. As per the 1929 Act, marriage of girls below the age of 14 years and boys below the age of 18 years was prohibited. This Act was amended in 1978 to increase the minimum age to 18 years for females, and 21 years for men. The Prohibition of Child Marriage Act, 2006 replaced the 1929 Act, with the same minimum age limits. The Prohibition of Child Marriage (Amendment) Bill, 2021 seeks to increase the minimum age of marriage for females to 21 years. The Bill was referred to the Standing Committee on Education, Women, Children, Youth, and Sports on December 21, 2021.

In June 2020, the central government set up a task force (Chairperson: Ms Jaya Jaitly) to examine the correlation of age of marriage and motherhood with: (i) health, medical well-being, and nutritional status of mother and child, during pregnancy, birth and thereafter, (ii) key parameters such as Infant Mortality Rate (IMR), Maternal Mortality Rate (MMR), Total Fertility Rate (TFR), Sex Ratio at Birth (SRB), Child Sex Ratio (CSR), and (iii) any other relevant points pertaining to health and nutrition in this context.⁴ The Task Force was also required to suggest measures for promoting higher education among women. According to news reports, the Committee submitted its report in December 2020, where the suggestion to increase the age of marriage for females to 21 was made.⁵ However, the report of the task force is not available in public domain.

Key Features

- **Increasing the age of marriage for females:** The Prohibition of Child Marriage Act, 2006 provides that the minimum age of marriage is 21 years in case of males, and 18 years in case of females. The Bill increases the minimum age for females to 21 years. It also specifies that the provisions of the Act shall override any other law, custom, usage or practice.
- **Time period for filing petition to annul child marriage:** Under the 2006 Act, a person who is married before the minimum specified age may apply to annul the marriage. The petition must be filed within two years of attaining majority (i.e., 20 years of age). The Bill increases this to five years (i.e., 23 years).

PART B: KEY ISSUES AND ANALYSIS

Different age for attaining majority and being allowed to marry

Clause: 3(1)

The Bill increases the minimum age of marriage for females to 21 years, bringing it on par with that for males. However, the age of attaining majority is 18 years under the Majority Act, 1875. This difference may have consequences regarding the rights and responsibilities of persons between 18 and 21 years of age.

Prohibiting marriages between the ages of 18 and 21 years

There are inconsistencies between the minimum age for marriage and certain decisions of the Supreme Court. In 2018, the Supreme Court said that right to marry is part of right to life under Article 21 of the Constitution.⁶ It stated that the right cannot be taken away except through a law which is substantively and procedurally fair, just, and reasonable.⁶ In another case in 2018, the Court held that when two adults consensually choose each other as life partners, it is a manifestation of their choice, which is recognised under Articles 19 and 21 of the Constitution.⁷ The Bill restricts the right to marry before the age of 21 years. The question is whether this restriction for those between the ages of 18 and 21 years meets the standards of reasonable restrictions as explained by courts. In general, for any restriction of fundamental rights by law, there needs to be three criteria: a public purpose, the restriction having a nexus with such purpose, and absence of a less intrusive way to achieve the purpose.⁸

In 2018, the Supreme Court, while reading down Section 377 of the Indian Penal Code, 1860, ruled that consensual sex between consenting adults is a fundamental right under Articles 14, 15, 19 and 21 of the Constitution.⁹ If this Bill were passed, it would be legal to have sexual relations but illegal to marry for those between the ages of 18 and 21 years. Note that this is the current status for males.

Annulling a child marriage

The 2006 Act permitted a person married before the minimum age of marriage to apply for annulling the marriage. The Bill increases the minimum age of marriage of females to 21 years. This implies that a person married between 18 and 21 years may also apply for annulling the marriage.

However, in India, persons who attain majority are considered to be eligible for taking their own decisions and are held responsible for their actions (except in certain specified cases, such as persons of unsound mind) under most laws. These include both civil law (such as the Indian Contract Act, 1872) and criminal laws (such as the Juvenile Justice Act, 2015). Allowing a person who married between the age of 18 and 21 years to apply for annulment is inconsistent with this principle.

Table 1: Minimum age for certain actions in India¹⁰

Action	Minimum Age
Voting	18
Driving license	18
Signing a contract	18
Criminal liability	18; persons in 16-18 year group can be tried as adults for heinous offences
Contesting elections	Lok Sabha: 25; Rajya Sabha: 30; President: 35

Source: Given in endnote 10; PRS.

Implementation challenges of the 2006 Act

The minimum age of marriage for females has been 18 years since 1978. However, according to NFHS-5 (2019-21), the prevalence of under-age marriages remains high, with 23% of women between 20 and 24 years of age married before the age of 18. At the same time, the detection of such marriages remains low, with only 785 cases registered under the law in 2020.¹¹ This shows that there has been limited success in curbing marriage of

girls below the age of 18 years. This raises the question of whether the increase in the minimum age would have any significant impact in reducing child marriages.

According to UNICEF, while the roots of the practice of child marriage vary across countries and cultures, poverty, lack of educational opportunities, limited access to health care, and poverty perpetuate it.¹² In March 2020, the Minister of Women and Child Development informed Lok Sabha that the practice of child marriages is largely due to the prevailing social customs, tradition, illiteracy, poverty, low status of women in society, and lack of awareness.¹³ The Minister said that these issues cannot be tackled by legislative interventions alone.¹³

Objects and Reasons of the Bill

According to the statement of objects and reasons (SOR) of the Bill, increasing the age of marriage will help in achieving various goals including improvement of maternal and infant mortality rates (IMR and MMR), nutrition levels, sex ratio at birth (SRB), female labour force participation, and gender equality, and will lead to empowerment of women.

Health indicators

Data on MMR and IMR shows that both the indicators have been improving in the country. The national MMR was 113 per lakh live births in 2016-18, an 80% decrease from the MMR in 1990 (556).¹⁴ The IMR has declined by 69% from 35 per 1,000 births in 2019-21 from 114 in 1990.¹ In March 2021, the Minister of Women and Child Development had replied to a question in Lok Sabha that there is no credible data to suggest that child marriage is the major reason for IMR and MMR.¹⁵ There may be various factors that affect motherhood like health, nutrition, and lack of medical facilities which may be contributing to the issues of IMR and MMR. For example, several studies indicate that anaemia is one of the main reasons for high MMR.^{16,17} As per the latest NFHS-5 (2019-2021) survey, 57% of women aged between 15 to 49 years of age are anaemic.¹

Labour force participation rate (LFPR)

LFPR is defined as the percentage of the population who are employed or are looking for work. According to the Annual Periodic Labour Force Survey 2019-20, the LFPR for women between 15-59 years was 32.3% (much lower than 81.2% for men).¹⁸ As per the International Labour Organisation (ILO), there are various economic and social factors that affect the LFPR. These include: (i) educational attainment, (ii) fertility rates and age of marriage, (iii) economic effects, (iv) social norms, and (v) urbanisation. Further, the ILO states that in India, the reasons for a low LFPR mostly include lack of employment opportunities, effect of rising household income, mismeasurement of women's participation in the labour force, and increased enrolment in secondary schooling.^{19,20}

Recommendations of various Committees

The table below provides recommendations by various national and international Committees and Conventions on age of marriage.

Table 2: Recommendations by various Committees and Conventions on minimum age of marriage

Committee/Convention	Recommended age	Rationale/Observations
UNICEF (2020)	18 for both male and female	<ul style="list-style-type: none"> A person is emotionally, physically and mentally mature to marry at 18.¹²
The United Nations Convention on the Rights of the Child (2016)	18 for both male and female	<ul style="list-style-type: none"> Should be equal to the age of majority.²¹
Parliamentary Standing Committee (while examining the 2004 Bill, which later became the 2006 Act)	21 for male, 18 for female	<ul style="list-style-type: none"> Two different ages have been accepted socially as well as culturally in the country; however, it also observed that conflicting definition of child in different legislation may cause confusion, ambiguity, and doubt.²²
Law Commission of India	18 for both male and female	<ul style="list-style-type: none"> There is no scientific reasons for the age to be different (2008).²³ Age of majority grants all citizens the right to choose their governments, the legal age of marriage should also be recognised as such (2018).²⁴

Sources: The United Nations; Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice; Law Commission of India Reports; PRS.

Different ages for repudiation and annulling Hindu marriages

Clause: 3(1)

The Hindu Marriage Act, 1955, codifies the law relating to marriage among Hindus. It permits a woman to file a petition for divorce if she was married before the age of 15 years and she repudiated the marriage before she turned 18. The Bill amends the 1955 Act to increase the maximum age till which the wife can repudiate the marriage to 21 years. However, the Bill also amends the Prohibition of Child Marriage Act, 2006 to allow annulment of marriages till the age of 23 years. Note that annulment implies that a marriage was entirely void, and hence was never valid, which is different from obtaining a divorce by repudiating the marriage.

1. [National Family Health Survey – 5 \(2019-21\)](#), Ministry of Health and Family Welfare.
2. [National Health Family Survey – 3 \(2005-06\)](#), Ministry of Health and Family Survey.
3. [National Family Health Survey – 4, \(2015-16\)](#), Ministry of Health and Family Survey.
4. Task Force set up to examine matters pertaining to age of motherhood, imperatives of lowering MMR, improvement of nutritional levels and related issues, Ministry of Women and Child Development, Press Information Bureau, June 6, 2020.
5. [Task force on age of marriage for women “submitted report to PMO”](#), The Hindu, January 18, 2021.
6. [Shafin Jahan vs Ashokan and Others, Criminal Appeal No. 366 of 2018](#), Supreme Court of India, April 9, 2018.
7. [Shakti Vahini vs Union of India and Others, Writ Petition \(Civil\) No. 231 of 2010](#), Supreme Court of India, March 27, 2018.
8. [Justice K. S. Puttaswamy Vs. Union of India](#), Supreme Court, Writ Petition (Civil) 494 of 2012, August 24, 2017.
9. [Navtej Singh Johar and Others Vs Union of India, WP \(Crim.\) No. 76 of 2016](#), Supreme Court of India, September 6, 2018.
10. [The Motor Vehicles Act, 1988; The Indian Contract Act, 1872; The Juvenile Justice \(Care and Protection of Children\) Act, 2015](#); Articles 58, 84, and 326 of the Constitution of India.
11. [Crime in India 2020](#), National Crime Records Bureau, Ministry of Home Affairs, September 2021.
12. [Child Marriage and the Law 2020](#), UNICEF, November 2020.
13. [Lok Sabha Unstarred Question No. 4526](#), Ministry of Women and Child Development, March 20, 2020.
14. Maternal Mortality Rate (MMR), Ministry of Health and Family Welfare, Press Information Bureau, February 12, 2021.
15. [Lok Sabha Unstarred Question No. 2870](#), Ministry of Women and Child Development, March 12, 2021.
16. [Maternal anaemia and risk of mortality: a call for action](#), The Lancet, May 1, 2018.
17. [Risk of maternal mortality in women with severe anaemia during pregnancy and post partum: a multilevel analysis](#), The Lancet, May 1, 2018.
18. [Annual PLFS 2019-20](#), July 2019-July 2020, Ministry of Statistics and Programme Implementation.
19. [Women’s labour force participation in India: Why is it so low?](#), International Labour Organisation, 2014.
20. [The paradox of low female labour force participation](#), International Labour Organisation, March 9, 2017.
21. [General comment No. 20 \(2016\) on the implementation of the rights of the child during adolescence](#), United Nations Convention of Rights of the Child, December 6, 2016.
22. [Report on the Prevention of Child Marriage Bill](#), 2004, Standing Committee on Personnel, Public Grievances, Law and Justice, November 29, 2005.
23. [Report on Proposal to amend the Prohibition of Child Marriage Act, 2006 and other allied laws](#), Law Commission of India, February 5, 2008.
24. [Consultation Paper on Reforms of Family Law](#), Law Commission of India, August 31, 2018.

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