

# IS IT RIGHT TO INCREASE THE AGE OF MARRIAGE OF WOMEN TO 21?

Relevant for: Developmental Issues | Topic: Rights & Welfare of Women - Schemes & their Performance, Mechanisms, Laws Institutions and Bodies

Beautiful Photo of handshake of a newly married Couple In India, promising each other love and affection for the rest of their life.

In the recent session of Parliament, the government introduced [the Prohibition of Child Marriage \(Amendment\) Bill, 2021](#), to raise the age of marriage for women from 18 years to 21 years. After Opposition MPs demanded greater scrutiny of the Bill, it was [referred to the Parliamentary Standing Committee on Education, Women, Children, Youth and Sports](#). The government says the proposed law will ensure equal chance for women in higher education and access to jobs and help improve maternal mortality rate and nutrition levels. In a conversation moderated by **Jagriti Chandra, Mary E. John** and **Noorjehan Safia Niaz** discuss whether the Bill is welcome. Edited excerpts:

**Mary E. John:** The minimum age of marriage could well be the same as the age of majority, which is 18 years. If the question of equality is so critical, the age of marriage for boys should also be 18 years. But we really need to put focus on what should be the minimum age, not the right age. When I look at the government's pronouncements, the talk is about the right age for marriage. There has almost never been a reference to a minimum age. The law should prescribe a minimum age and I think 18 years is as good as any. It should continue to be a legal presumption, and there is no reason, therefore, to raise it to 21 years.

Is it right to increase the age of marriage of women to 21? | The Hindu Parley podcast

**Noorjehan Safia Niaz:** The main concern of this law is not so much about equality but to raise the age of marriage for women to 21 years. The law shows the way to society, right? When [the] 18 years [rule] also came in, there was some resentment to that. Whenever a law which is a little ahead of its time comes in, there will be some people who won't like it. But the job of the law is also to show where we are moving as a society. If you look at urban metro cities, where girls are getting educated, that is one section of society that has moved ahead. And that section of society also needs certain protection by the law. But the issue here is of effective implementation of the law. Unless that improves, we are going to have problems of whether the age of marriage for girls is 18 years or 21 years.

**Noorjehan Safia Niaz:** If you have to really use the word 'encroachment' for personal laws, I would say that has been happening for the Muslim community for a long time, even before Independence. The British government brought the Shariat Application Act way back in 1937, and two years later, we had the Dissolution of Muslim Marriages Act, which codified the divorce law and gave the right to Muslim women for divorce. Then came the 1986 Act [Muslim Women (Protection of Rights on Divorce) Act]. Because we don't have fully codified laws, we have had piecemeal legislation. In the 1986 Act, which came after the Shah Bano case, Parliament intervened on the demand of these very religious groups who don't want parliamentary intervention now. The groups asked Parliament to override the Supreme Court judgment, which was in favour of Shah Bano. And then we have the triple talaq legislation where again Muslim women demanded an intervention by the state to end this practice. Look at the Hindu Marriage Act, which was codified in 1955. It includes the Sikhs and the Buddhists, who are religious minorities. So, the state recognises that each community is to be governed by their personal

laws and if there are problems with the personal laws, then it steps in. The state has to be there to listen to grievances. The state has to play its role whether you are a majority or a minority. So, I don't think this is encroachment. And if there's a progressive law in the country, why should I be deprived of it just because I am a Muslim woman? There are laws for the Hindu community, which includes Sikhs, Buddhists and the Jains who are otherwise a religious minority. All aspects of the personal law such as marriage, divorce and custody are already codified, i.e. passed by Parliament. Christians are governed by their own personal law, and so are the Parsis. But because of the kind of politics that played out at the time of Partition, and the communalisation and the violence that Muslims faced as a minority, the issue of family law reform always took a back seat. The process of codification of laws began in 1937 [for Muslims], and had Partition not happened, I'm sure Muslims would have had a codified law probably earlier than the Hindu community. But after India gained Independence, there was absolutely no movement towards codifying the Muslim family law till Shah Bano went to court demanding maintenance. Then, too, the legislation went against the Supreme Court judgment. So, Muslim women were again deprived of the provisions of Section 125 of the Code of Criminal Procedure. Of course, later on, with the Danial Latifi judgment, the damage that that law caused was subverted. But the fact remains that this law [1986 Act] was an attempt to get Muslim women out of the ambit of all legislative protections and constitutional safeguards. And till date, we don't have a codified family law.

We are in the 75th year of Independence and Muslims [constitute] 15% of the population of this country. But Muslims are deprived of the legal security which everybody else has. Our tragedy is that even 18 years as the year of marriage for girls is not fully implemented in the Muslim community. There have been contradictory High Court judgments: while some have held that the Prohibition of Child Marriage Act applies to the Muslim community, others have held that it does not. The Shariat law, which is again not codified, says the age of marriage is puberty or age 15. So, where is the protection even for the 18 years of marriage that everybody else has had for so many years? And that is why we are insisting that within this current Bill, a special mention has to be made that the Muslim community will also come under its ambit. Even if tomorrow 21 years is not implemented and even if the law is as it exists today, it should be made applicable to Muslims. To that extent, an amendment is necessary.

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**Mary E. John:** Noorjehan has raised very important points about the sharp differences post-Partition which have been the subject of considerable debate in the women's movement. Let us, therefore, take on board that it is not the same kind of question [for Muslim women]. But I just want to point out that if you look at the data on underage marriage, there is no difference between Hindus and Muslims. There are similar proportions of 26.6% in the National Family Health Survey-4 (2015-2016) data. If anything, there's a slightly better picture on the part of the Muslims compared to the Hindus. So, the popular conception that Muslims are always backward compared to Hindus is not true here. As far as our underage marriage data goes, the pattern is much the same.

**Noorjehan Safia Niaz:** The Muslim community may be better on some of the parameters that we are discussing but the question is here of legal parity. Why are Muslims not on par with the rest of the citizens? If 18 is the age of marriage for the entire country, why should Muslim women be left behind? If polygamy is not allowed and if Section 494 of the Indian Penal Code governs Christians and Parsis, why should it be not applicable to Muslims as well? How long are Muslim women going to be suffering this, because we have been told time and again that our minority status is in danger. We have the provision of codifying our personal law to bring it on par with the society we are living in, and bring the best of provisions of the Quran. But if we don't reform, the state will step in. The part of the community [that resists reform] will allow the state to

step in.

## Women MPs flag gender imbalance in House panel on marriage Bill

**Mary E. John:** 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. Similarly, a poorly nourished woman does not become better nourished because she's being married off three years later. And sex ratio is particularly off because States with the worst sex ratio, such as Punjab and Haryana, have higher-than-average ages at marriage. So, there is a lot of confusion here and the so-called scientific basis that is being put out by the government does not hold up.

**Noorjehan Safia Niaz:** The law is necessary, but it's not sufficient. If the commercialisation of education continues, how are the poor, especially women and girls, going to access education? If our districts, villages and smaller towns don't have health facilities, how are women going to access various schemes and programmes? So, these need to simultaneously get addressed.

Law to raise marriage age causes a flutter in western U.P.

**Noorjehan Safia Niaz:** I understand there are issues. There are going to be problems. Any law when it comes into being does not play out equally for different sections of society. We are a huge country. We have different economic strata, different religions and caste compositions. And maybe that is where the courts come in and judges decide.

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**Mary E. John:** Existing studies show that the Prohibition of Child Marriage Act is not being used to stop communities from holding underage marriages. It is being used by parents of a girl who is in a so-called elopement or love marriage that they are opposed to. So, please imagine what will happen tomorrow if the age is raised to 21. These women are not children. By the laws of the land, they are young adults who will find themselves at cross purposes with this new law whereby other adults will be able to render their relationships null and void and leave them in a complete legal limbo if not in a criminalised situation. In Nepal where the age of marriage was recently raised to 20 for both men and women, there are large numbers of young women in shelter homes simply because they're in this legal limbo. Is this the kind of future we want the law to create for us?

*Safia Niaz is co-founder of the Bharatiya Muslim Mahila Andolan; Mary E. John is former Professor and Acting Director at the Centre for Women's Development Studies*

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