

Complete the justice

The recent Supreme Court judgment making sex with a girl between 15 and 18 years even within marriage a criminal offence may have set in motion a series of positive effects for the girl child. In its order, the apex court said that it is removing the distinction between an unmarried and married child because "it is arbitrary, capricious, whimsical and violative of the rights of the girl child and not fair, just and reasonable and, therefore, violative of Article 14, 15 and 21 of the Constitution of India".

The immediate consequence of this order will be for proponents of child marriage who take cover under the garb of "tradition" and "belief". They will now face a severe deterrent. It is shocking, that even in 21st century India, child marriage continues to be rampant. At last count, there were 23 million child brides, with approximately 30 per cent of marriages in 2016 being child marriages. With the entrenched patriarchy in our country, a child bride is often bought by old men looking for sexual and domestic servitude. By making it criminal to have sex with child brides the court, we hope, has snatched away one of the primary motives for child marriage.

A major consequence of this judgement is also its potential towards reducing India's burden of maternal and infant mortality. There is a close causative link between child marriage and maternal, neo-natal and infant mortality along with stunting and malnutrition. Early marriage generally leads to early pregnancy. Twelve per cent of girls aged 11-19 are already mothers. We know that a child's body is not adequately prepared for pregnancy or child birth, and risks to both the mother and infant's survival are much higher. In addition, underweight mothers tend to give birth to underweight babies. Nearly 50 per cent of new-born deaths are caused due to complications arising out of low birth weight and premature delivery.

According to the National Family and Health Survey-4 (NFHS-4) nearly 50 per cent pregnant women in the age group 14 to 59 are anaemic. More than half of these women - in the age group 20-24 years - were married before they attained the age of 18 years, and nearly 27 per cent were anaemic. This has severe consequences for both maternal and infant mortality.

States and regions with high incidence of child marriage also show greater prevalence of maternal and infant mortality and morbidity. Madhya Pradesh, for instance, has the worst infant mortality of 47 deaths per 1,000 live births and also tops the list of states for the number of child marriages. Other states that display a similar pattern are Odisha, Assam, Uttar Pradesh, Jharkhand and Rajasthan among others.

In its judgment, the Supreme Court acknowledges the link between early marriage and the physical and mental well being of both mother and infant. It says, "the National Plan of Action for Children recognises that the early marriage of girls is one of the factors for neo-natal deaths; early marriage poses various risks for the survival, health and development of young girls and to children born to them and most unfortunately it is also used as a means of trafficking."

Despite laws against child marriage being in place since 1929, and the legal age of marriage being declared as 18 for girls and 21 for boys under the Prohibition of Child Marriage Act, 2006, there are still 23 million child brides in the country. The recent judgment points to severe anomalies within the law which does not, in fact, ban child marriage outright but says that it is voidable at the option of the contracting party who is a child at the time of marriage and void only in certain circumstances. In addition, child marriages continue to be valid under the Hindu Marriage Act, 1955 and Muslim Personal Law. This is a violation of the human rights of children - both boys and girls - with particularly negative consequences for the health, welfare and dignity of the girl child.

Child marriage is deeply entrenched in society and cannot be removed by the law alone. A few years ago, a district collector in Rajasthan told me how she got wind of child marriages taking place in a village but before she could stop it, they had actually travelled to another village and got over 50 child marriages conducted en masse.

Now that the apex court has rejected the arguments of the government of India, it is time for us to re-examine the Prohibition of Child Marriage Act and work together to get a definitive position from the government and the legislature to ensure that there is in fact a complete legal ban on child marriage which continues despite efforts such as Beti Bachao, Beti Padhao.

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