

REVISITING THE AGE OF MARRIAGE FOR GIRLS IN INDIA

A Critical Legal Analysis

ABSTRACT

In India, the minimum age of marriage is a product of personal laws. The minimum age of marriage, especially for women, has been a contentious issue. The law evolved in the face of much resistance from religious and social conservatives. There is no reasoning in the law for having different legal standards of age for men and women to marry. Despite laws mandating minimum age of marriage, child marriages, health issues and crimes are very prevalent in the country.

The Indian Penal Code in 1860 criminalised sexual intercourse with a girl below the age of 10, introducing the first legal framework for a minimum age of consent for girls. Increasing the age by even just two years to 12 in the Age of Consent Bill in 1927 was opposed by many nationalists who saw the move as imperial interference with local customs. In 1929, the barrier was further raised to outlaw marriage of girls below 16. From then, it took nearly five decades to bring the law to its current standard of 18 years for women and 21 for men.

The research paper analyses the trends in the past decades in the age of marriage for females. The research examines the relation and trend between the different religions and age of marriage. The research paper intends to find out the possible reasons for increasing the age of marriage and analyses the reason on the touchstone of constitution. The research further endeavours to analyse the probable impacts of increasing the age of marriage for females to 21 by analysing the past trends. The research also throws light on the possibility of implementation of the endeavour to increase the age of marriage and compares them with the other feasible mechanisms to achieve the expected outcomes.

INTRODUCTION

Various aspects of patriarchy are unfavourable, non-discriminatory laws such as those in the legal age of marriage are among the worst heads of gender inequality. Although the legal age for girl marriage was increased from 15 to 18 forty years ago, it remains lower than the legal age for boys' marriage of 21 years. The current situation is particularly frustrating for women because it is based on the idea that women should get married earlier, rather than study and work to earn financial security. This concept of security is a slightly overshadowed attempt to control women's bodies and their choices, as it comes with unspecified financial dependence on male providers in their families. As a result, current legal marriage rules discriminate against men and women, furthering their role as breadwinners and parents.

Social and economic groups and regions where under-age marriages are rampant are marked by a lack of quality schooling and higher education opportunities, reinforced by poverty and limited economic opportunities. The question of increasing the age of marriage for women raises a number of questions. One plausible reason would be to eliminate the gender gap in the legal age of marriage and the social norms that require women to be younger than men at the time of marriage. Another related reason could be that getting married at a young age before experiencing physical growth, understanding, and emotional maturity lead to a gradual transition into adulthood. Marriage in India marks a point in a woman's life when childbearing is socially acceptable. Thus, Age in the first marriage has a significant impact on childbearing because women who marry early on average have a longer exposure to pregnancy and a higher birth rate for life.

According to the National Family Health Survey 3 (2005-06)¹, more than one-quarter (30 percent) of Indian women age 25-49 married before age 15; over half (61 percent) married before the legal minimum marriage age of 18, and three-quarters (76 percent) married before reaching age 20. This percentage decreased according to NFHS-4², with 15 percent women married before age 15, 40 percent before 18 and 59 percent married before reaching 21. The trend shows that child marriage has decreased but age of marriage above 18 has also decreased. The survey also shows that in the age group of 25-49, percentage of females marrying at the age of 21 also decreased from 82 percent to 69 percent (*Table 1*). This

¹ *National Family Health Survey-3*, INTERNATIONAL INSTITUTE FOR POPULATION SCIENCES (Sept. 2007), <http://rchiips.org/nfhs/NFHS-4Reports/India.pdf>.

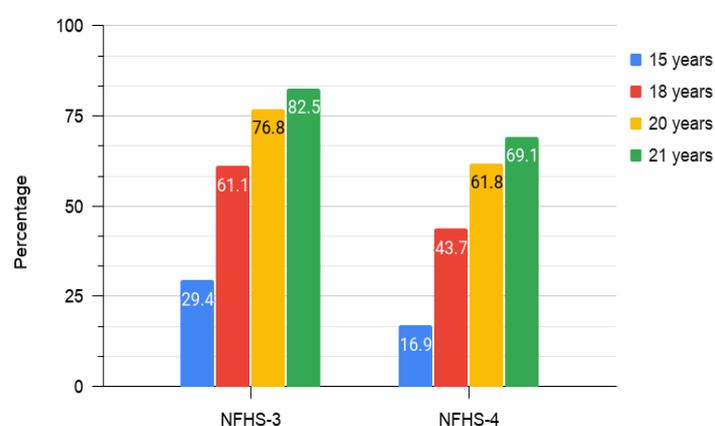
² *National Family Health Survey-4*, INTERNATIONAL INSTITUTE FOR POPULATION SCIENCES (Dec. 2017), <http://rchiips.org/nfhs/NFHS-4Reports/India.pdf>.

implies that less percentage of females are inclined towards marrying at the age of 18 or even 21 (*Figure 1*).

Table 1: Trend in percentage of female first married at exact specific ages

Census	Percentage first married by exact age			
	15	18	20	21
NFHS-3	29.4	61.1	76.8	82.5
NFHS-4	16.9	43.7	61.8	69.1

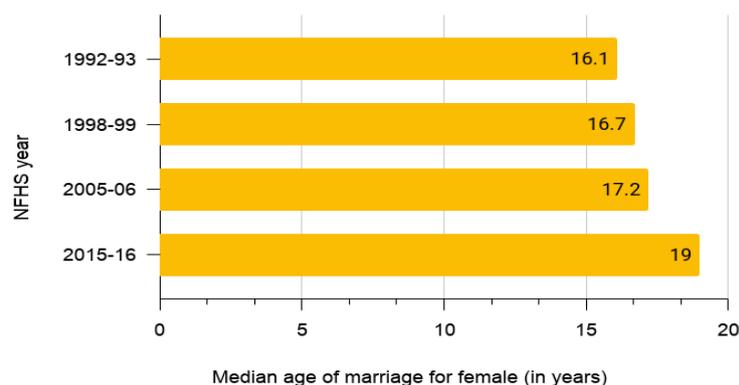
Figure 1: Trend in percentage of female first married at exact specific ages



On the other hand, the trend of median age of marriage for females in the past decades show that the age of marriage for females has been increasing in practice from 16.1 in 1992 to 19.0 in 2015. *Table 2* and *Figure 2* shows how the median age of marriage has been increasing in the past decades.

Table 2: Trends in Median age of marriage for female (in years)

NFHS year	Median age of marriage for female (in years)
1992-93	16.1
1998-99	16.7
2005-06	17.2
2015-16	19.0

Figure 2: Trends in Median age of marriage for female (in years)

AGE OF MARRIAGE, RELIGION AND LAW

DEVELOPMENT OF AGE FOR MARRIAGE AMONG DIFFERENT RELIGIONS

Age and marriage are related to each other from the very beginning of the concept of marriage. Both marriage and religion often lead to misunderstandings and disagreements in different places. Of course, most disputes over marriage are sometimes religious in nature, and most religious disputes are sometimes about marriage. Similar conflicts have arisen over the age of marriage between the various religions. There are very different opinions about how unity between two people is considered. While in Hindu law, marriage is a sacrament, in Christian law, divorce continues to be marginalized; in Islamic law, marriage is a contract and the registration of the Parisian law is central to the custom of marriage.

LEGISLATIVE INTERVENTIONS IN RELIGIOUS CUSTOMS

The trends suggest that the minimum age of marriage was revised on several occasions due to further social pressures. But never, age was same for male and female. Marriage is defined religiously but it cannot be religiously motivated only. The trends show that the law is codifying and modifying the legal age of marriage. Laws have evolved through a series of legislative interventions to recognize the various rights of women.

Prior to the 1978 amendment to the Hindu Marriage Act 1955³, the age of bride and groom was 15 and 18 years respectively. But it has been amended in 1978 and the age of bride and groom

³ Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955 (India).

is 21 and 18 years respectively. Similarly, for attesting marriage to Indian Christians, the age of a man and woman desirous of marrying must be 21 and 18 years old respectively..

The Child Marriage Restraint Act was passed in 1929.⁴ The act provided the age of marriage as 18 years for men and 15 years for women. The provisions of the Prevention of Child Marriage Act, 1929 were applicable to all Indians irrespective of their caste and creed. It was implemented with a view to prevent child marriages, i.e. marriages in which either party was below the prescribed age. There has been a demand to make the provision of Prevention of Child Marriage Act more effective. The Central Government, after consulting the State Governments and the Administration of Union Territories on the recommendation of the National Commission for Women and the National Human Rights Commission, decided to repeal and re-enact the Prohibition of Child Marriage Act, 1929.⁵ The Government of India passed The Child Marriage Prohibition Act, 2006. Therefore, as a measure to check population growth and to ensure more responsible paternity, it was decided to increase these age limits to 18 for female and 21 for male. Section 2 of the Act was amended in 1978 with section 60 of the Hindu Marriage Act, 1955⁶ and section 60 of the Christian Marriage Act, 1872⁷, to give effect to this increase in the minimum age of marriage. Further, under the Special Marriage Act⁸, if a man has completed the age of twenty-one and the woman has completed the age of eighteen, the marriage between any two persons can be done.

History shows that amendments to codify personal laws is not only a tried and tested way of bringing targeted social legislation but also of developing jurisprudence on family laws. For instance, Hindu law evolved through a series of piecemeal legislative interventions on recognition of women as coparceners in 2005⁹, recognition of diverse customs within the Hindu Marriage Act (Madras Amendment), 1967 incorporating priest-less marriages among many others. Amendments to Christian marriage and divorce laws in 2001¹⁰, and Hindu Adoption and Maintenance Act, 1956¹¹ and Guardians and Wards Act, 1890, in 2010 are also examples of how once codified, personal laws can be opened up for further public debates and scrutiny.

⁴ The Child Marriage Restraint Act, 1929, No. 19, 1929.

⁵ Prohibition of Child Marriage Act, 2006, No. 6, Acts of Parliament, 2006 (India).

⁶ Supra note 10.

⁷ Indian Christian Marriage Act, 1872, No. 15, 1872.

⁸ Special Marriage Act, 1954, No. 43, Acts of Parliament, 1954 (India).

⁹ Supra note 10.

¹⁰ Supra note 14.

¹¹ Hindu Adoption and Maintenance Act, 1956, No. 78, Acts of Parliament, 1956 (India).

JUDICIAL INTERVENTIONS IN RELIGIOUS CUSTOMS

There has been an extensive discussion on the relationship between law and religion in India, which has followed various lines of inquiry. The management of religious institutions in the name of administrative redemption, the history of religion and political consequences of British laws, the preservation of political freedom and the protection of freedom of religion for administration (Articles 25 and 26)¹² and the role of the courts in implementing this constitutional mandate. Courts are required to define the legal boundary between religion and law. Through a series of decisions, a limitation that became clear and permanent as was the case with the related law. There are cases that are awarded by the courts as religious but still have administrative powers. This is in view of the fact that disputes related to certain religious matters relate to questions about human rights, which should be decided by civil courts.

A very recent example can be taken of the case of *Shayara Bano v. Union of India*¹³, the SC held Triple Talaq unconstitutional. The judgment of the Supreme Court in the matter of Sabarimala temple, *Indian Young Lawyers Association & Ors. V. The State of Kerala & Ors*¹⁴ is the typical instance of interference of the judiciary in the matter of faith and beliefs. The judgment lifted the ban from religious customs of Ayyappa Temple, on the ground of untouchability and violation of article 14 as it prevented women of age group of 10 to 50 from entering into the temple. Similarly, instances of judicial intervention in the matter of religious affairs in the case of *Sunita Tiwari vs Union of India and Ors*¹⁵ is another finest example. This was the case in which genital mutilation of females among *Dawoodi Bohras* was questioned before the Supreme Court under Article 32 contending that the said practices are in violation of UN Convention on the Rights of the Child and Article 21 that defines the right to life and personal liberty. Also in the case of *Nikhil Soni V. Union of India*¹⁶, Rajasthan High Court declared the Jain process of achieving salvation i.e. The Santhara illegal and declared it as equal to suicide.

These interventions show that the secular character of the Indian constitution is always balanced with the religious rights and the latter is not given an upper pedestal in every case.

¹² INDIA CONST. art 25 &26.

¹³ *Shayara Bano v. Union of India* (2017) 9 SCC 1.

¹⁴ *Indian Young Lawyers Association & Ors. V. The State of Kerala & Ors*, (2017) 10 SCC 689.

¹⁵ *Sunita Tiwari vs Union of India and Ors*, (W.P. (C) No.286/2017).

¹⁶ *Nikhil Soni V. Union of India*, (2015) Cri LJ 4951.

The instances show that the religious beliefs, practices or the customs can be challenged in the court of law if they violate the fundamental rights of people.

TRENDS IN AGE OF MARRIAGE IN DIFFERENT RELIGIONS

The age of marriage in different religions has evolved as observed from NFHS¹⁷ (Table 3). In the year 1992-93 and 2005-06, the median age at first marriage in Hindu religion increased from 15.9 to 16.7. Similar trends are among Muslims (15.9 to 16.7), Christian (20.0 to 20.6), Sikh (19.5 to 19.9) and other religions (17.1 to 17.7).

Table 3: Median Age of Marriage among different religions

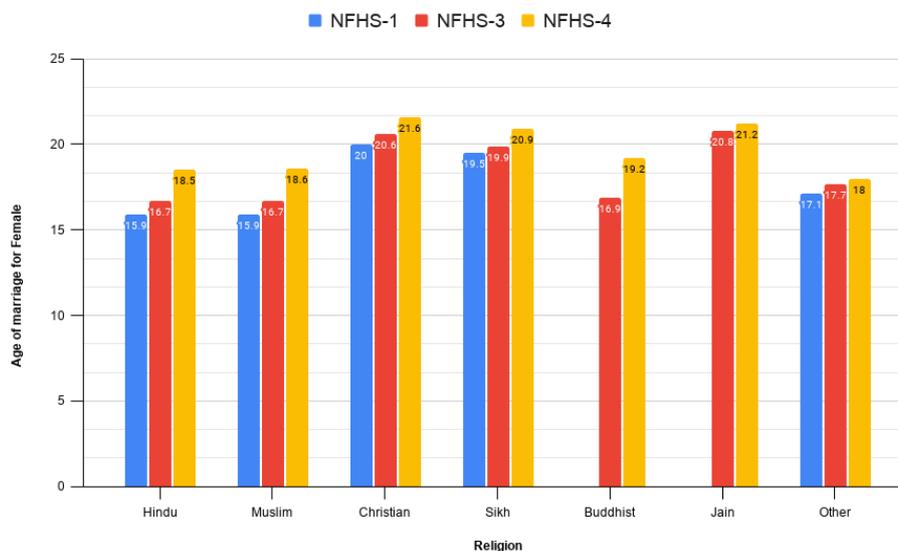
Religion	NFHS-1	NFHS-2	NFHS-3	NFHS-4
Hindu	15.9	NC	16.7	18.5
Muslim	15.9	NC	16.7	18.6
Christian	20.0	NC	20.6	21.6
Sikh	19.5	NC	19.9	20.9
Buddhist	NC	NC	16.9	19.2
Jain	NC	NC	20.8	21.2
Other	17.1	NC	17.7	18.0

The National Family Health Survey-4 (2015-2016)¹⁸ also reported the trend of age at first marriage among different religions. It states that among Hindu women, the median age at first marriage is 18.5 years and among Muslim women, the age is 18.6. Similar trends are among Christian (21.6), Sikh (20.9), Buddhist (19.2), Jain (21.2) and among other religion (18.0). These trends show that there has been shift from the earlier age of marriage and that the custom has evolved and changed (Figure 8). It can be inferred that age of marriage does not have the sole fixed basis of religion and is a custom which has evolved.

¹⁷ National Family Health Survey, INTERNATIONAL INSTITUTE FOR POPULATION SCIENCES, <http://rchiips.org/nfhs/NFHS-4Reports/India.pdf>.

¹⁸ Supra note 2.

Figure 8: Median Age of Marriage among different religions



AGE OF MARRIAGE AND FUNDAMENTAL RIGHTS

RIGHT TO LIVE WITH DIGNITY

Gender stereotyping is the practice of ascribing to an individual woman or man specific attributes, characteristics, or roles by reason only of her or his membership in the social group of women or men. Gender stereotyping is considered wrongful when it results in a violation or violations of human rights and fundamental freedoms. According to Cook and Cusack¹⁹, a gender stereotype is a generalised view or preconception about attributes or characteristics that are or ought to be possessed by, or the roles that are or should be performed by women and men. According to OHCHR report²⁰, a gender stereotype is harmful when it limits women's and men's capacity to develop their personal abilities, pursue their professional careers and make choices about their lives and life plans.

International human rights law imposes specific obligations on states to eliminate harmful gender stereotypes and wrongful gender stereotyping. In relation to specific obligations on gender stereotypes, Article 5 of the Convention on the Elimination of All Forms of

¹⁹ REBECCA J. COOK AND SIMONE CUSACK, GENDER STEREOTYPING TRANSNATIONAL LEGAL PERSPECTIVES 9 (University of Pennsylvania Press, 2011).

²⁰ *Gender Stereotyping as a Human Rights Violation*, OHCHR COMMISSIONED REPORT (Oct. 2013), https://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/OHCHR_GENDER_STEREOTYPING_AS_HR_VIOLATION_2013_EN.PDF.

Discrimination against Women²¹ provides that State Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customs and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. Article 2(f)²² requires states to take ‘all appropriate measures’, including: ‘legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women’

The Law Commission of India has observed that there exists no scientific basis for such a distinction, and that the differential limit simply contributes to the stereotype that wives must be younger than their husbands.²³ Likewise, the Committee on the Elimination of Discrimination against Women suggest that such provisions should be abolished because such measures contravene not only the Convention, but also a women's right freely to choose her partner.”²⁴

This stereotypical and patriarchal difference between the minimum age limits for marriage for men and women is a fortiori violative of the principles of gender equality gender justice and dignity of women as enshrined in Articles 14, 15 and 21 of our Constitution.²⁵ The right to live with dignity implies the right to not be perceived as unequal or inferior individuals in the society. In other words, it implies the right to equal social standing and perception. The Hon’ble Supreme Court has held this in *National Legal Services Authority v. Union of India*²⁶ stating:

Article 21 protects the dignity of human life, one’s personal autonomy, one’s right to privacy, etc. Right to dignity has been recognized to be an essential part of the right to life and accrues to all persons on account of being humans. Article 21, as already indicated, guarantees the protection of “personal autonomy” of an individual.

²¹ Convention on the Elimination of All Forms of Discrimination against Women, 1979, Sept. 3, 1981, <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf>.

²² *Id.* art. 2, cl. f.

²³ *Consultation Paper on Reform of Family Law*, LAW COMMISSION OF INDIA (Aug. 31, 2018), <http://images.assettype.com/barandbench/import/2018/08/Consultation-Paper-LCI-Family-Law.pdf>.

²⁴ Convention on the Elimination of All Forms of Discrimination against Women, 1979, Sept. 3, 1981, <https://www.ohchr.org/documents/professionalinterest/cedaw.pdf>.

²⁵ INDIA CONST. art 14, 15 & 21.

²⁶ *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438.

Similar was traced in *Pravasi Bhalai Sangathan v. Union of India*²⁷ and *Jeeja Ghosh v. Union of India*²⁸. In *Anuj Garg v. Hotel Association of India*²⁹, this Court held that personal autonomy includes both the negative right of not to be subject to interference by others and the positive right of individuals to make decisions about their life, to express themselves and to choose which activities to take part in.

Specifically in the context of women, the Supreme Court in *Joseph Shine v. Union of India*³⁰ observed that a law that treats women differently based on gender stereotypes causes a direct affront to women's dignity, violating Articles 14 and 21 as

Individual dignity has a sanctified realm in a civilized society. The civility of a civilization earns warmth and respect when it respects more the individuality of a woman. The said concept gets a further accent when a woman is treated with the real spirit of equality with a man. Any system treating a woman with indignity, inequity and inequality or discrimination invites the wrath of the Constitution.

RIGHT TO EQUAL EDUCATION

The right to education on the basis of non-discrimination and equality is a recognised right under human rights law. Provisions relating to gender equality in education can be found in both general and specific international treaties, as well as treaties concluded in most regions of the world. All provisions related to non-discrimination carry immediate obligations and are considered a minimum core obligation, which means states must take immediate action as a matter of priority.

The senior secondary education in India is complete by the age of 17-18 years. An individual starts with higher education only at the age of 18 or after that and completes it by the age of 21.³¹ This higher education gets hampered for the females because of the age of marriage. The legal age set at 18 hinders them to either start or continue higher education because of pressures of marriage from the family. Early marriages disproportionately affects girls who have received little or no formal education, and is itself a significant obstacle to educational opportunities for girls and young women, in particular girls who are forced to drop out of school owing to

²⁷ *Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477.

²⁸ *Jeeja Ghosh v. Union of India*, (2016) 7 SCC 761.

²⁹ *Anuj Garg v. Hotel Association of India*, (2008) 3 SCC 1.

³⁰ *Joseph Shine v. Union of India*, (2019) 3 SCC 39.

³¹ Handbook on diplomas, degrees and other certificates in higher education in Asia and the Pacific.

marriage and/or childbirth, and educational opportunities are directly related to women's and girls' empowerment, employment, and economic opportunities, and their active participation in economic, social and cultural development, governance and decision-making.

INTERNATIONAL TRENDS

The Convention on the Elimination of All Forms of Discrimination against Women, 1979 is the only legally binding treaty at the international level focusing exclusively on women's rights.³² It interprets and applies the right to education in a way that considers the specific needs and circumstances of women and girls.

Article 2 sets out the legal and policy measures states should undertake to eliminate discrimination against women and therefore applies to the totality of rights found in CEDAW.³³ This includes legal and policy measures related to the implementation of the right to education on a non-discriminatory basis. Article 10 of CEDAW is the most comprehensive provision on women and girls' right to education in international law.³⁴ It sets forth the normative content in relation to the elimination of discrimination against women and ensuring equal rights with men in the field of education, including the same conditions for access to studies and diplomas at all educational levels, in both urban and rural areas.

Further, The Committee on the Elimination of Discrimination against Women has issued an authoritative interpretation of Article 10 in General Recommendation 36 on girls' and women's right to education³⁵, which elaborates the legal obligations of states under CEDAW to eradicate the discriminatory barriers preventing girls from enjoying their right to education and implement measures to bring about equality in practice, and makes concrete and actionable legal and policy recommendations which would bring states into compliance with CEDAW.

The Universal Declaration of Human Rights adopted in 1948, proclaims in Article 26 that 'everyone has the right to education'.³⁶ The International Covenant on Economic, Social and Cultural Rights³⁷ guarantees the right to education of everyone on the basis of equality and

³² Supra note 31.

³³ Supra note 31, Article 2.

³⁴ Supra note 31, Article 10.

³⁵ General recommendation No. 36 (2017) on the right of girls and women to education, Committee on the Elimination of Discrimination against Women, Nov. 16, 2017, https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/I_Global/CEDAW_C_GC_36_8422_E.pdf

³⁶ Universal Declaration of Human Rights, Article 6, Dec. 10, 1948, https://www.ohchr.org/en/udhr/documents/udhr_translations/eng.pdf.

³⁷ International Covenant on Economic, Social and Cultural Rights, Dec 16, 1966, <https://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>.

non-discrimination (Articles 13 and 14) and expressly prohibits discrimination on the basis of sex (Articles 2 (2) and 3). Similarly, Article 2 (2) of the Convention on the Rights of the Child³⁸ prohibits discrimination on the grounds of sex.

TRENDS IN INDIA

The judicial decision from which the right to education emanated as a fundamental right was from the one rendered by the Supreme Court in *Mohini Jain v. State of Karnataka*³⁹. In this case the Supreme Court held that ‘the right to education flows directly from the right to life. The right to life and the dignity of an individual cannot be assured unless it is accompanied by the right to education.’ The rationality of this judgment was further examined by a five judge bench in *Unnikrishnan v. State of Andhra Pradesh*⁴⁰ where the enforceability and the extent of the right to education was clarified in the following words:

The right to education further means that a citizen has a right to call upon the State to provide educational facilities to him within the limits of its economic capacity and development.

Table 4 furnishes the median age at marriage by current age according to the level of schooling/education in India for 2005 and 2015. In 2005 and 2015 census, the age at marriage of currently married women was tabulated by 5 levels namely, No education, <5 years complete, 5-7 years complete, 8-9 years complete, 10-11 years complete and 12 or more years complete. The table shows that increasing educational level had a positive impact in raising the age at marriage of the female. It can also be observed that women having a higher educational level showed a significant rise in their age; such women had married, on an average only after 18 years.⁴¹ (Figure 10) This was consistent with the findings of previous studies, according to a 2016 study.⁴²

Table 4: Median Age of Marriage with respect to level of education (Female)

Schooling/education	Median age at marriage	
	Census year 2005-2006	Census year 2015-16
No schooling	15.4	17.2
<5 years complete	16.5	17.5

³⁸ Convention on the Rights of the Child, Nov 20, 1989, <https://www.ohchr.org/documents/professionalinterest/crc.pdf>.

³⁹ *Mohini Jain v. State of Karnataka*, (1992) 3 SCR 65.

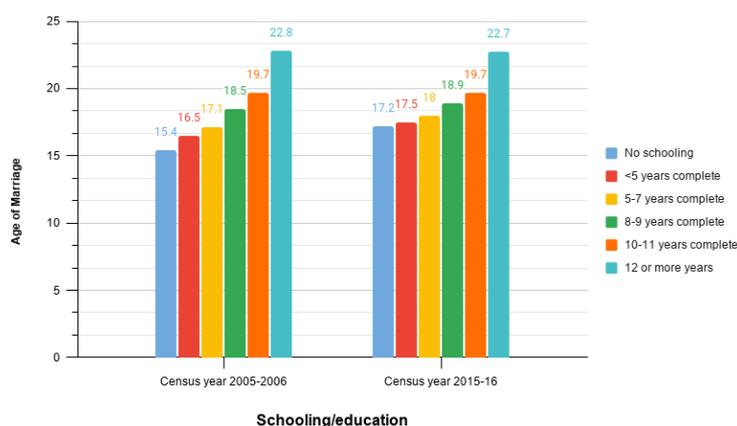
⁴⁰ *J.P. Unnikrishnan v. State of Andhra Pradesh*, (1993) 1 SCR 594.

⁴¹ *Supra* note 2.

⁴² KERRY L.D. MACQUARRIE, MARRIAGE AND FERTILITY DYNAMICS: THE INFLUENCE OF MARRIAGE AGE ON THE TIMING OF FIRST BIRTH AND BIRTH SPACING (DHS Analytical Studies No. 56, Aug. 2016)

5-7 years complete	17.1	18.0
8-9 years complete	18.5	18.9
10-11 years complete	19.7	19.7
12 or more years	22.8	22.7

Figure 10: Median Age of Marriage with respect to level of education (Female)



The need for revisiting the age of marriage to 21 is for the purpose to ensure the same quality of education, the elimination of any stereotyped concept of the roles of men and women, the same opportunities to benefit from scholarships and other study grants, the same access to programmes of continuing education, including literacy programmes, particularly those aimed at reducing the gender gap in education. It must also focus on the reduction of female student drop-out rates and programmes for women and girls who have left school prematurely.

RIGHT TO HEALTH

Among the many health issues that adolescents face, teenage pregnancy is arguably of the greatest consequence due to its effects on the wellbeing of both the mother and child. An estimated 16 million girls aged 15–19 years give birth annually, and 95% of these births occur in low-income and middle-income countries.⁴³ Although marriage before the age of 18 years has been illegal in India since 1929 with the law updated as the Prohibition of Child Marriage Act in 2006 girls, especially those from poor rural areas, continue to be married early. Furthermore, owing to societal pressure to consummate the marriage and low sexual

⁴³ *Adolescent pregnancy in Geneva*, WORLD HEALTH ORGANIZATION (2014), http://apps.who.int/iris/bitstream/handle/10665/112320/WHO_RHR_14.08_eng.pdf;jsessionid=C11D6606928A0524BEDCFB1FC06ADF2A?sequence=1.

reproductive health knowledge, among other factors, 31% of married Indian women gave birth by the age of 18 years in 2016.⁴⁴

Women's nutritional status is also affected.⁴⁵ The prevalence of thinness among Indian women is twice as high in those married before 18 years of age than those married after 24 years of age.⁴⁶ Furthermore, women who become pregnant as adolescents might not have access to high quality health services during the crucial first 1000-day period,⁴⁷ which might have long-term consequences for their children.⁴⁸

The recent study by International Food Policy Research Institute⁴⁹ explained the detrimental effects of early childbearing age on child stunting. The study found that adolescent pregnancy is associated with child under nutrition through factors such as poorer maternal nutritional status, lower educational attainment, less access to health services during antenatal or postnatal care and early childhood, suboptimal complementary feeding practices, and poorer living conditions compared with adult pregnancy.

The study found that women who first gave birth during adolescence got married earlier compared with those who first gave birth as young adults or adults. Adolescent pregnancy was negatively associated with maternal nutritional status. Compared with women who first gave birth as adults, women who first gave birth during adolescence were shorter, weighed less, had lower haemoglobin, had lower body-mass index, and had a higher prevalence of underweight and anaemia.

Adolescent pregnancy was negatively associated with optimal living conditions, women's education, and most bargaining power indicators except for work for pay and ownership of land or house. Compared with adult mothers, women who gave birth during adolescence were more likely to live in a household with lower socioeconomic status and poorer sanitation.

⁴⁴ *India child marriage and teenage pregnancy. Based on NFHS-4 (2015–16)*, NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS, YOUNG LIVES (2018), <https://www.younglives.org.uk/sites/www.younglives.org.uk/files/India%20Report.pdf> (accessed April 8, 2019).

⁴⁵ NGUYEN PH, ET AL. THE NUTRITION AND HEALTH RISKS FACED BY PREGNANT ADOLESCENTS: INSIGHTS FROM A CROSS-SECTIONAL STUDY IN BANGLADESH (2017).

⁴⁶ S GOLI & A RAMMOHAN, THE EFFECT OF EARLY MARRIAGES AND EARLY CHILDBEARING ON WOMEN'S NUTRITIONAL STATUS IN INDIA (2015).

⁴⁷ GODHA D & HOTCHKISS DR, ASSOCIATION BETWEEN CHILD MARRIAGE AND REPRODUCTIVE HEALTH OUTCOMES AND SERVICE UTILIZATION: A MULTI-COUNTRY STUDY FROM SOUTH ASIA 552 (2013).

⁴⁸ MARPHATIA AA, ET. AL., WOMEN'S MARRIAGE AGE MATTERS FOR PUBLIC HEALTH: A REVIEW OF THE BROADER HEALTH AND SOCIAL IMPLICATIONS IN AOUTH ASIA 269 (Front Public Health, 2017).

⁴⁹ PHUONG HONG NGUYEN, ET AL., SOCIAL, BIOLOGICAL, AND PROGRAMMATIC FACTORS LINKING ADOLESCENT PREGNANCY AND EARLY CHILDHOOD UNDERNUTRITION: A PATH ANALYSIS OF INDIA'S 2016 NATIONAL FAMILY AND HEALTH SURVEY (May 15, 2019), <https://marlin-prod.literatunonline.com/pb-assets/Lancet/pdfs/S2352464219301105.pdf>.

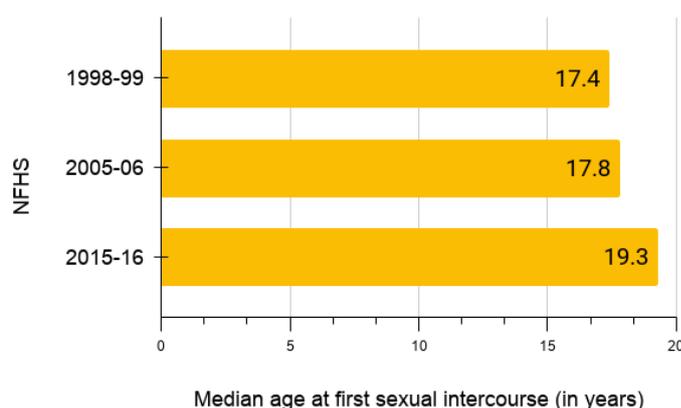
Stunting and underweight were 11 percentage points more prevalent in children born to adolescent mothers compared with children born to adult mothers. Compared with women who first gave birth as adults, women who were mothers in adolescence were shorter and thinner, and these maternal nutritional insults were associated with lower length or height and weight in their children.

The median age at first sexual intercourse for women age 25-49 years is 17.6 years, which is almost identical to the median age at cohabitation in NFHS-3.⁵⁰ This clearly reveals that Indian women generally begin sexual intercourse at the time of their first marriage. The median age at first sexual intercourse among women has increased over the past two decades, from 17.4 among women age 45-49 to 18.7 years among women age 20-24. In the recent NFHS-4, the median age at first sexual intercourse for women age 25-49 years is 19.0 years.⁵¹

Table 5: Trend of Median age at first sexual intercourse (in years) (female)

NFHS	Median age at first sexual intercourse (in years)
1998-99	17.4
2005-06	17.8
2015-16	19.3

Figure 12: Trend of Median age at first sexual intercourse (in years) (female)



The Supreme Court has also retreated the right to reproductive health of female over a long time period. In the case of *Devika Biswas vs. Union of India and Ors.*⁵² the court held that:

⁵⁰ Supra note 1.

⁵¹ Supra note 2.

⁵² *Devika Biswas vs. Union of India and Ors.*, (2016) 10 SCC 726.

Over time, there has been recognition of the need to respect and protect the reproductive rights and reproductive health of a person. Reproductive health has been defined as "the capability to reproduce and the freedom to make informed, free and responsible decisions. It also includes access to a range of reproductive health information, goods, facilities and services to enable individuals to make informed, free and responsible decisions about their reproductive behaviour.

In *C.E.S.C. Limited and Ors. v. Subhash Chandra Bose and Ors.*⁵³ dealing with the right to health of workers, it was noted that the right to health must be considered an aspect of social justice informed by not only Article 21 of the Constitution, but also the Directive Principles of State Policy and international covenants to which India is a party.

CONCLUSION

Transforming, streamlined measures that increase girls' access to education and health, creating enabling opportunities and implementing girl empowerment at the center will not only delay marriage, but also have long-term, positive health and education outcomes. To bring about real change, we need free education beyond girls' schooling, coupled with job guarantees, especially those from rural areas and vulnerable social places. The government needs to emphasize economic and social empowerment of women and girls, as well as targeted social and behaviour change communication (SBCC) campaigns. It recommended legislation for children aged between three and five years and children aged 15 to 18 years under the Right to Education, instead of enacting laws for children aged 6 to 14 years. While the Right to Education Act, 2009, the quality of education is poor and it does not show the way out of inter-generational poverty. Therefore, we must ensure an increase in the scope of the right to education for the right to vocational education.

Education and awareness campaign at school and village level can be an effective initiative to remove this social evil from our society. An array of proposed actions can be practiced related to the implementation of legislation, capacity building of executives, building a knowledge base, creating awareness at all levels including reaching out to children through the education

⁵³ *C.E.S.C. Limited and Ors. v. Subhash Chandra Bose and Ors.*, (1979) 1 SCR 80.

system. The inclusion of child marriage in the school curriculum and the promotion of girls' education to curb such practices have also not brought about the desired change.