

## **Some reflections on the age of marriage debate from Forum against Oppression of Women (FAOW), Bombay**

While many feminists, developmental sector activists, social workers have critiqued and rightly so, the amendment in the proposed Age of Marriage Bill 2022 that raises age of marriage of women to 21 years. It is being argued that increase in age of marriage, rate as proposed by the Government in this Bill, does not guarantee improvement in maternal mortality rates, fertility rates, nutrition of mother and child, sex ratios, school drop-out rates, labour force participation. However how keeping the age of marriage of women at 18 years can guarantee the above, cannot be fully understood from the ongoing statements and campaigns. We need to look at Government responsibilities to empower women and girls, to say that marriage is not the only option irrespective of age and religion.

### **Historical view of age of marriage in India: To restrain child marriages**

The historical view of child marriage gives us a long-drawn battles around age of marriage.

The first major case relating to child marriage goes back 19<sup>th</sup> century, where Rakhmabai born into shudra caste family refused to accept her marriage with a person she was married to in 1875, at age of 11. When her husband won the legal case for restitution of conjugal rights, she refused to cohabit with him. Finally, by 1888 a financial settlement was proposed whereby Dadaji relinquished his rights over her. (The challenge to restitution of conjugal rights is pending in Supreme Court even as of now)

The very first legislation, The Age of Consent Act of 1891 was prompted by the death of a young bride due to violent sexual intercourse by her husband. This Act brought in by the colonial government addressed the issue of child marriage by enhancing the age of sexual cohabitation from 10 to 12 . The British imperial legislature, which passed this Act, had no Indian representation. This Bill was opposed by many orthodox leaders, who believed that it was interference in Hindu religion, which included leaders like Bal Ganagdhara Tilak.

The scenario changed in 1919 with Indian legislators becoming part of the Central Assembly. From 1920s onwards AIWC played active role in creating pressure on the legislators with respect of legal rights of women. The Child Marriage Restrained Act came into being in 1929, which fixed the age of marriage for girls at 14 and for boys 18.

At that time increasing number of child widows was also one major issue. According to the 1921 Census, there were 175 widows in every 1000 females and of these 148 were below 15; 93 out of 1000 girls between the ages 5 and 10 years; and 399 out of 1000 girls between the ages 10 and 15 years were married (Gulati 1976: 1225)

The Act was applicable to both Hindu and Muslim community though there was opposition to this Act from conservatives from Hindu, as well as Muslim religion. Many amendments were tabled but not accepted, which included the ones to exclude Muslims and Brahmins, and some caste

from Hindus from the Act. Even after a decade of passing of the Act lack of political will on part of the colonial powers made the implementation ineffective. AIWC then sought amendments for stricter implementation of the Act. AIWC worked for amendments, which were passed in 1938 and ensured that courts could issue injunctions against proposed child marriages, that offenders could be prosecuted, and that husbands had to make provision for the separate custody and maintenance of a child wife until she was of legal age.

But today after independence, which brought in personal laws based on religious faith the age of marriage differs according to the religion in which child is born. In 2012 Delhi high court and in 2014 Gujarat High court noted that a Muslim girl can marry when she attains puberty or complete 15 years of age.

It is imperative that the Age of Marriage Act needs to be applicable across religions.

### **Failure of Governments to deter child marriages: exacerbated by Covid pandemic**

According to UNFPA, despite laws against it, the practice of child marriages remains widespread: Globally, one in every five girls is formally married or in an informal union, before reaching age 18. In the least developed countries, that number almost doubles – 36 per cent of girls are married before age 18, and 10 per cent of girls are married before age 15.

According to UNICEF documents, estimates suggest that each year, at least 1.5 million girls under 18 get married in India, which makes it home to the largest number of child brides in the world - accounting for a third of the global total. Nearly 16 per cent adolescent girls aged 15-19 are currently married.

While the prevalence of girls getting married before age 18 has declined from 47 per cent to 27 per cent between 2005-2006 and 2015-2016 it is still too high.

**Nearly 12 million Indian children were married before the age of 10 years—84% of them Hindu and 11% Muslim—reveals an India Spend analysis of recently released 2011 Census data. As many of 7.84 million (65%) married children were female, reinforcing the fact that girls are significantly more disadvantaged; eight in 10 illiterate children who were married were also girls.**

The COVID-19 pandemic is profoundly affecting the everyday lives of girls: their physical and mental health, their education, and the economic circumstances of their families and communities. Changes like these increase the likelihood of child marriage, and over the next decade, up to 10 million more girls will be at risk of becoming child brides as a result of the pandemic. Shuttered schools, isolation from friends and support networks, and rising poverty, death of earning members, parents. Absolutely inadequate response from the Government has made the situation alarming. Pandemic-related travel restrictions and physical distancing make it difficult for girls to access the health care, social services and community support that protect them from child marriage, unwanted pregnancy and gender-based violence. As schools remain closed, girls are

more likely to drop out of education and not return. Job losses and increased economic insecurity may also force families to marry their daughters to ease financial burdens.

### **Government duties for putting stop to early marriages**

There is no doubt about need for structural changes, where improvement in educational, health and employment infrastructure for rural and urban poor can only ensure social development. Girls in both rural and urban regions are forced to do household work and very few are enrolled to school. Even among those who access education, poor school infrastructure, quality of education often lead to increase in drop-outs from schools. The covid19 pandemic has only worsened the situation in last two years, as schools closed down and girls became more and more tied to home, obviously increasing the chances of early and child marriages. A symbolic increase in age of marriage for girls or even keeping the marriage age at 18 will not achieve any change, unless Government makes the effort to ensure that quality of education at village level improves with better infrastructure, facilities and increase in social awareness programs.

### **Societal situation which leads to early marriages**

That poor families marry off girls because of poverty, unemployment, which is explained by many activists as a compulsive act somewhere becomes a problematic argument, because marrying off girls at 18 do not actually reduce the burden of poverty and insecurities. The household labour and also earning capacity of adolescent girls in poor families are productive and reproductive labour that remains unaccounted. Marriage in Indian society still exists as an occupation for women in most castes and communities, where women are forced into reproductive labour first in natal household and then in marital household. This situation explains that poverty is not the reason for early marriage. Early and forced marriages are not compulsive acts of poor and marginalized communities, but a customary practice in the feudal and patriarchal society of India. Early and forced marriages happen with girls, because girls are seen as social burden, even if she is administering household work, earning for the family or pursuing education. Additionally families also fear that girls will marry someone of their choice which will bring disgrace to the family.

### **Early marriages: disaster for women**

While it is true that factors like poverty and accessible quality public healthcare services are instrumental in ensuring the nutritional and health situation of women, it is also true that early and forced marriage leads to early pregnancy and childbirth. It is probably because of early and forced marriages in India, that gynecological and nutritional health discourse of women is dominated only by maternal and child health care. Being mother becomes the primary and defining identity of Indian women and her well-being is only valued because she has children to provide for. It is true that maternity health care cannot be improved by increasing age of marriage. But increase in age of

marriage may impact choice of young women who are scarcely able to exercise right to body and sexuality, more so after marriage and become pregnant at an early age?

### **Marriage cannot be the only option**

The debate against increasing age of marriage of girls, somewhere presupposes that marriage does exist as an only avenue of liberation, emancipation for young girls, who face torture, violence in natal family. In a society that always romanticizes and upholds the institution of marriage, it is very natural that young adults and especially girls who want to escape family violence may resort to marriage. But does marriage always open up an emancipatory path for young girls? We have experience that even for many adolescent girls who elope or marry against family wishes find themselves in a trapped situation, because the life they imagined and the life they are forced into after marriage are drastically different. Is our responsibility as feminists, activists, social workers only to ensure that girls enjoy sexual freedom only through marriage? Or have we been fighting to create situations where girls can exercise more choice, autonomy about life decisions, where marriage does not remain as the only pre-determined avenue to exercise sexual freedom, friendship, social mobility?

A society that cannot and does not believe in freedom of choice of young adults, that creates violence in case of inter-caste, inter-religious, as well as same-sex relationships, our position as feminist activists, thinkers cannot be limited advocating marriage as an only option. We need to support the right of young adults (cis-girls, non-binary persons, transgender people and also cis-boys) across class, caste, religious communities to be free of compulsory marriages.

Since the institution of marriage is of utmost importance and the pressure of marrying is tremendous on young adults, with little alternatives and choices of living a life beyond this institution, raising the age of marriage for girls to 21 notionally and legally has an impact in some communities in urban and rural India. The pressure of marriage is quite scary even in educated middle class, business families to farming, land owning middle class and middle caste families in India. This symbolic change in law may give certain bargaining capacities to young women, who want to be financially independent, pursue higher studies, think of different life choices.

When entering the discourse of choice and autonomy, it can be seen that whether it is in educated, middle class families or in poor, oppressed caste communities, the notion of consent is quite alien in Indian families. Consent of young adults whether at the age of 18 or even 21 does not matter in most families. This law does not recognise that marriage of girls even at the age of 21 may be forced marriage, without consent. The debate regarding age of marriage probably needs to focus on forced marriages irrespective of the age factor. No matter what the minimum age is, forced marriage remains an issue, will continue to be so, even if age of marriage is raised to 21.

Here it must be mentioned that the need to leave home because violence is a very common experience for queer, non-binary and transgender persons, for whom there is no option of marriage to legitimize romantic relationships. We live at a time when many young people are

facing crisis with natal family and leaving home every day. They leave home to find a life of freedom, a life without violence, sometimes with a partner/friend, sometimes alone. The economical, educational and health crisis for the young adults are immense as they face violence and discrimination at every step in society. As more and more people with education, social awareness, access to digital information are nurturing very independent views about life and living, the question of choice and autonomy becomes utmost important. Making 21 the minimum age of marriage for all young adults, somewhere provides time and space for queer and trans\* people to negotiate at home.

This government has not passed any act, which in reality helps their slogan of *Beti Bachav, Beti Padhav*. Whether it is Triple Talaq Act or the current increasing age of marriage for girl, the entire emphasis is on incarcerating people for violation of laws. Any violation ends up putting some people behind bar, which in fact most of the time goes against the interest of the woman on whose behalf the law seems to have brought it. Exposing young people or their parents to criminalization cannot help any woman, because ultimately the woman will need support from parents and friends for pursuing education and employment. So incarceration is not a solution to stop early and forced marriages.

The approach to ensure the purpose of fulfillment of this Act can be best fulfilled, if Government legally makes itself accountable for providing nutrition, education, healthcare, hostel accommodation to each and every young woman.

**Demands of Campaign can be:**

- a. Instead of deliberating only on age of marriage, our focus should be to communicate that we are against forced marriage. Raising marriage age of girls does not ensure there will not be forced marriages. Marriage is not binding but optional choice.
- b. Criminalization of bridegroom or parents, family members will not help the woman in crisis. Scrap criminalization and incarceration of family and friends. Since this does not take into account the economic vulnerability of the families.
- c. Ensure girls forced to be married are able to pursue education in school and college as required. Provide financial assistance for girl's education. Provide hostel accommodation to women, if they face violence at home and when educational institution is far away from home.
- d. Ensure that village and district level schools are functioning properly and have the infrastructure necessary for children. Increase overall investment in

schools and give financial assistance to families who cannot afford to keep children in schools. Those responsible for school enrolments should ensure attendance of girls and boys are optimum according to number of families in the village

- e. Make this provision of law implementable, whereby any Govt. authority which violates or fails to provide financial assistance for education and residence to the woman who has been forced into marriage, can be made accountable.
- f. Advertise this amendment which details financial and other support for the girls in all local languages at village levels through posters, newspaper