

CRITICAL ANALYSIS OF THE AGE OF MARRIAGE AND ITS RATIONALITY

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I. Introduction

Age and marriage is related to each other from the very beginning of the concept of marriage. The objective behind age of marriage is to make the matrimonial life healthy. It is medically and biologically proved that after attaining certain age, parties to marriage became competent to consummate the marriage so that the physical desire of parties is fulfilled and child born out of that marriage is healthy and intelligent. Secondly they are in position to give healthy company and make their lives fruitful.

According to Dharmasutra, the age of marriage of girl was age of puberty. But Under Dharmashatra, the trend was to marry the girl as soon as they become conspicuous. Manu Samhita says that a man of thirty may marry a girl of twelve and a man of twenty one with a girl of eight. Kapadiya says that in Mahabharata, the age of husband and wife are said to be thirty and ten or twenty one and seven.² The social reformer, Raja Ram Mohan Roy were the pupil of Ishwarchandra Vidyasagar was strongly opposed the child marriage at national level. The child marriage was prevalent in our society; resultant girl child was become in pathetic condition because after death of her husband, a teenage child could not be remarried. Owing to the efforts of Ishwarchandra Vidyasagar, Hindu Widow Remarriage Act, 1856 was passed and remarriage now become possible. But in 1929, the Child Marriage Restraint Act was passed. This Act provided the age of marriage 18 years for male and 15 years for female.³ The various Indian States have also passed certain legislations to improve the status of women. The provisions of the Child Marriage Restraint Act, 1929 were applicable to all Indians irrespective of their caste and creed. In year 2006, The Prohibition of Child Marriage Act was passed and repealed the Child Marriage Restraint Act, 1929.

II. Age of Marriage Under Various Religions

II.I. Age of Marriage Under Hindu Marriage Act, 1955

Before the Amendment of 1978 in Hindu Marriage Act 1955, the age of bride and bridegroom was 15 and 18 years respectively. But it has

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² Kapadiya K.M, *Marriage and Family Law in India*(1972), p.139

³ Sec. 2 of Child Restraint Marriage Act, 1929

amended in 1978 and age of the bridegroom and bride now is 21 and 18 years respectively.⁴ Contradiction of this condition is punishable with simple imprisonment, which may extend to fifteen days or with fine, which may extend to one thousand rupees or with both.⁵ However, breach of this condition does not make the marriage void or voidable. It only attracts imprisonment or penalty. But this breach gives an opportunity to his wife to repudiate the marriage. If marriage (whether consummated or not) was solemnized before she attained the age of fifteen years, she has right to repudiate the marriage after attaining the age of fifteen years, but before attaining the age of eighteen years.⁶ Where the consent of the guardian in marriage of the petitioner was required under sec.5 as it stood immediately before the commencement of the Child Marriage Restraint (Amendment) Act, 1978 and consent of such guardian was obtained by force or fraud as to material fact, such marriage was voidable and may be annulled by a decree of nullity.⁷ But Child Marriage Restraint Act 1929 restricts child marriage. Under this Act, child means a person who, if a male, has not completed twenty-one years of age and if a female has not completed eighteen years of age.⁸ Marriages solemnized in contravention of this Act were punishable.⁹ The marriage solemnized in violation of Sec. 5(iii) of the Hindu Marriage Act 1955, remains unaffected, neither the Marriage is void nor voidable.¹⁰

There has been a growing demand for making the provision of Child Marriage Restraint Act more effective and the punishment there under more stringent so as to eradicate or effectively prevent the evil of practice of solemnization of child marriages in the country. This will enhance the health of children and the status of women. The National Commission for Women in its annual report for the year 1995-96 recommended that the Government should appoint Child Marriage Prohibition Officers immediately. It further recommended that the punishment provided under the existing Act should be made more stringent, marriages performed in contravention of the Act should be made void and the offences should be made cognizable.

Thereafter the National Human Rights Commission undertook a comprehensive review of the existing Act and made recommendation for comprehensive amendments therein vide its Annual Report 2001-2002. The Central Government after consulting the State Governments and Union Territory administrations on the recommendation of the National Commission for Women and the National Human Rights Commission has

⁴ Sec.5 (iii) of The Hindu Marriage Act, 1955

⁵ Sec.18 of The Hindu Marriage Act, 1955

⁶ Sec.13 (2) of The Hindu Marriage Act, 1955

⁷ Sec.12 (I) of The Hindu Marriage Act, 1955

⁸ Sec.2 (a) of The Child Marriage Restraint Act, 1929.

⁹ Secs.3, 4, 5 and 6 of The Child Marriage Restraint Act, 1929.

¹⁰ Ravindra Prasad Vs Sita Devi, AIR 1986 Pat. 128.

decided to accept almost all the recommendations and give effect to them by repealing and re-enacting the Child Marriage Restraint Act, 1929.

The Indian Parliament passed the Prohibition of Child Marriage Act, 2006. Every child marriage shall be voidable¹¹. Child means a person who if a male has not completed twenty one years of age and if female has not completed eighteen years of age¹². But where a child being minor is taken or entice out of the keeping of the lawful guardian or by force compelled or by any deceitful means induced to go from any place or is sold for the purpose of marriage and made to go through a form of marriage or if the minor is married after which the minor is sold or trafficked or used for immoral purposes, such marriage shall be null and void¹³. Minor means a person who under the provisions of the Majority Act, 1875 is to be deemed not to have attained his majority¹⁴. Any child marriage solemnized, against the injunction order passed by the competent authority (Judicial Magistrate of First Class or Metropolitan Magistrate) under section 13 of the Act, 2006 on the receipt of application of the Child Prohibition Officer or on the receipt of information through a complaint or otherwise from any person, shall be void ab initio¹⁵. Offences under this Act is cognizable and non bailable¹⁶.

II.II. Age of Marriage Under the Muslim Law

Puberty and Discretion are essential conditions to enter into valid contract of marriage in all the systems of law. Muslim law makes distinction between a contract made by a minor possessed of discretion or understanding and one made by a child who does not possess understanding. If any minor who has not attained the age of understanding enters into a contract of marriage is merely a nullity.¹⁷ The Muslim Law is silent as to when the discretion should be presumed. Under English Law, age of seven marks the difference between want of understanding in children and capacity to comprehend the legal effects of a particular age. Indian Penal code, 1860 imposes liability upon the person who has attained the age of seven years and has understanding the nature of act. Marriage solemnised by the child under the age of seven years may be regarded as a nullity.¹⁸

¹¹ Section 3 of The Prohibition of Child Marriage Act, 2006

¹² Section 2(a) of The Prohibition of Child Marriage Act, 2006

¹³ Section 4 of The Prohibition of Child Marriage Act, 2006

¹⁴ Section 2(f) of The Prohibition of Child Marriage Act, 2006

¹⁵ Section 14 of The Prohibition of Child Marriage Act, 2006

¹⁶ Section 15 of The Prohibition of Child Marriage Act, 2006

¹⁷ Ameer Ali Syed, *Mohammadan Law* (5^{ed}, 1929), Vol. II, p. 274

¹⁸ Bishop, *Marriage and Divorce*, Vol.II, p. 274 in M.A. Qureshi, *Marriage and Matrimonial Remedies*(1978), p. 58.

There are two basic requirements in Muslim Law for legal competence to freely contract a marriage is sanity and puberty. Puberty is biological phenomenon. It is generally presumed to have been attained at age 15. A person, who has attained the age of puberty, is called Baligh (Major). The possibility of attaining puberty at an earlier age is not ruled out in exceptional cases boys and girls have been found to have attained puberty even at age 12 and a respectively.¹⁹ Under Muslim law, age of majority is considered to be equal to the age of puberty, which is applicable only in regard to marriage, dower and divorce. Age of puberty is an age at which a person is supposed to acquire the sexual competency. This competency may be ascertained on the basis of the physical feature of the boy and the girl. According Hedaya,²⁰ the earliest possible age of puberty with respect to a boy is twelve years and with respect to a girl, nine years. But this cannot be treated as absolute rule regarding the age of marriage because sexual competency as evidenced by physical features, depends upon several factors and may vary from person to person. It is therefore difficult to ascertain this age by physical appearance. Keeping in view the practical difficulty of ascertaining the age of puberty by physical features, the courts have presumed that age of puberty is acquired on the completion of 15 years. In *Nawab Sadiq Ali Khan case*,²¹ the Privy Council had observed that the age of puberty for a girl is nine years. But this has not been accepted as a general rule. In *Mst. Atika Begum case*²², the Privy Council clearly laid down a clear law about the age of puberty – “According to Mohammedan Law, a girl become major on the happening of either of the two events - (i) The completion of her 15th year or (ii) on her attainment of age of puberty at an earlier period.” A Mohammedan girl of 15 years who has attained the age of puberty is competent to marriage without the consent of her parents.²³ Among the Hanafies and the Shias, the majority is completed on fifteen years. Under Muslim Law, a person who has not attained the age of puberty (15 yrs) is a minor and he or she has no capacity to give consent for valid marriage. A minor’s marriage without consent of guardian is void. A minor’s marriage is valid only with the consent of the guardian. Minor has also option of puberty (Khyar-ul-Bulugh). In other word, minor has option either to ratify or to repudiate it after attaining the age of puberty (15 yrs). But under Dissolution of Muslim Marriage Act, 1939, only wife has option of puberty or after attaining the age of puberty (15 yrs) but before attaining the age of eighteen years, can repudiate the marriage provided that the marriage has not been consummated.

¹⁹ Mahmood Tahir, *The Muslim Law of India* (3rd ed, 2002), pp. 149-50

²⁰ Hamilton Charles, (trans.), *The Hedaya*, (2nd ed., 1870), p. 530

²¹ *Nawab Sadiq Ali Khan Vs Jai Kishori*, (1928) 30 Bom. LR 1346

²² *Mst. Atika Begum Vs Mohd. Ibrahim*, AIR 1916 PC 250

²³ *Md. Idris Vs St. of Bihar*, 1980 Cri L.J. 764

Before the Amendment of 1978 in Child Marriage Restraint Act, 1929 and Hindu Marriage Act, 1955, age of bride and bridegroom was 15 and 18 years respectively. But now age of bride and bridegroom is 18 and 21 years. It is reform in codified law. But in Muslim there has not been reform because it is not a codified law. Before Amendment in Hindu and Muslim law, marriage age approximately similar. But the Child Marriage Restraint Act, 1929 is applied to all citizen of India except Jammu & Kashmir.

II.III. Age of Marriage Under Parsi and Christian Law

No marriage shall be valid if in case of any Parsi (Whether such Parsi has changed his or her religion or domicile or not) who, if a male, has not completed twenty one years of age and if a female, has not completed eighteen years of age.²⁴ For the certification of the marriage of Indian Christians, the age of man and woman intending to be marriage must have attained the age of 21 and 18 years respectively.²⁵

II.IV. Age of Marriage Under Special Marriage Act, 1954

Marriage between any two persons may be solemnized if male has completed the age of twenty one years and the female the age of eighteen years.²⁶ It is one of the conditions for marriage under this Act.

V. Conclusion

Parsi, Christian and Hindu Law has recommended similar age of marriage -21 years for male and 18 years for female and the marriage is solemnized under codified law of Parsi, Christian and Hindu which has been amended from time to time as per social, political, economical and scientific development

But Muslim Law is not codified law and it is not possible to amend it. So it remains untouched. But our Parliament has imposed restriction by enacting the Child Restraint Marriage Act, 1929 (Known as Sharda Act) to every person in India including Muslim. Under this Act, minimum age of marriage for male and female were 21 and 18 years respectively. Marriage in violation of this Act was not void, but was punishable. The Prohibition of Child Marriage Act, 2006 has been passed on the recommendation of National Commission for Women and National Human Rights Commission to make stringent and effective after repealing the Child Restraint Marriage Act, 1929 and such Act has provisions of void or voidable marriage, if the

²⁴ Sec. 3 (c) of the Parsi Marriage and Divorce Act, 1936

²⁵ Sec. 60 (I) of the Indian Christian Marriage Act, 1872

²⁶ Sec. 4 (c) of the Special Marriage Act, 1954

marriage has been solemnized against the provision of the Act²⁷. So, it is a major effort towards the unification of personal laws in India. Now Biological outcomes also supports the age prescribed under this Act. The age of male and female, 21 and 18 years respectively has been universally accepted for example developed country like U.S.A. Marriage law is an exclusive subject of state legislation in the U.S.A. Most of the state laws in the U.S.A fix the minimum age of a boy at 18 and that of a girl at 15 or 16 for a valid marriage. There are, however, deviations in some states. In Alabama, the minimum marriageable ages were fixed at 17 for male and 14 for female, in North Carolina, the minimum marriageable age fixed for both male and female is 16. The law further provides generally in all states that a boy below the age of 21 and a girl below the age of 18 must have consent of their guardian before any licence of marriage is issued. Why not developing country accepts this marriageable age (21 years for male and 18 years for female) by making uniformity in all religion. The reason behind non acceptance of this marriageable age is only the vote of politics and some section of the society always makes the people fool by saying that it is interference in the religion. There is needed to take strong initiative by our parliamentarian as like Hindu Code Bill was passed. The Prohibition of Child Marriage Act, 2006 is a specific Act and it is applicable irrespective of their caste, creed or religion. This is a central act applicable in all over India. But only hesitation of our government is to codify the Muslim law relating to age of marriage. It creates confusion in some sections of illiterate society. In this regard, it is suggested that there is need of uniform law for all.

²⁷ Section 3, 4 and 14 of The Prohibition of Child Marriage Act, 2006