

## A COMPARATIVE STUDY OF LEGAL AGE AND MARRIAGE IN DIFFERENT JURISDICTIONS ; A COMPARISON BETWEEN INDIA AND SUB-SAHARAN COUNTRIES

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### ABSTRACT

This study examines international concerns related to marriage laws, with a particular focus on the legal age of marriage in different nations, and a comparative examination of Indian rules. It looks at the justifications for establishing particular legal marriage ages as well as the sociocultural effects of these laws, particularly in Sub-Saharan Africa. The legal age of marriage in India is normally 18 for women and 21 for men, despite the fact that different religious groups have different marriage laws, such as the Muslim Personal Law and the Hindu Marriage Act (1955). The research emphasizes how difficult it is to oversee a multicultural legal system.

The approach taken by India is compared with that of Sub-Saharan African nations, where child marriage is still common even though laws have been passed to set an 18-year-old minimum marriage age. Despite governmental efforts to set a minimum marriage age of 18, child marriage is nevertheless common. Cultural, religious, and economic issues are the reasons behind the continued practice of child marriage in the area. The study uses secondary sources, international agreements, legislation, and doctrinal research methodology to examine the legal systems of Sub-Saharan Africa and India. The results highlight the necessity of enforcing marriage rules more strictly, and they include suggestions for increasing India's legal marriage age for women and stiffer punishments for those who violate the law by marrying children. The study emphasizes how crucial it is to implement child rights laws consistently and effectively around the world.

### Introduction

The paper deals with the cross-national issues concerning the marriage laws and with special attention towards the legal age of marriage in different countries. The paper deals and explores the provisions and the laws available across different international jurisdictions and also peeps into the reasons why these provisions act in that particular manner and also the reasons for such provisions and the impact that they have in those countries. The comparison is done with respect to the Indian provisions so as to understand how the Indian legal system operates with respect to the marriage laws in the pan world platter.

India is a country with varied cultural and religious diversity has accepted, accommodated and embraced the aspects of each of these cultures and religions with regards to the marriage laws in specific. There are different laws covering different religions and they give value towards the customs and the traditions of the people who belong to these religions. This multicultural and multi religious existence has made the country and its legal system unique. The biggest advantage that India has over the rest of the world in this aspect is the management of the multicultural legal system difference. Let us take the Muslim laws and the Hindu marriage laws for example,

the legal age for marriage when it comes to the Hindu Marriage Act 1955 is 18 for Women and 21 for Men. But the Muslim personal laws don't specify anything as such with respect to the age perspective but rather the contention is the attainment of puberty.

This paper is looking at different other countries where the legal age for marriage, the conditions leading to this setting up of the age. The comparison of the aspects leading up to the setting up of the legal age of marriage is something this paper is trying to look up.

### **Research questions**

1. What are the reasons behind the setting up of legal age for marriage in other countries like in the Sub-Saharan countries?
2. What are the reasons for such difference in the legal age for marriage?
3. What can be an inference from such a difference and how does this impact the lives of the people living in these regions ?

### **Objectives**

1. To understand the conditions leading to the legal age of marriage in different countries
2. To study and analyse the reflections of the legal age in these countries.
3. To compare and see how the difference in the legal provisions in these countries for legal age for marriage impacts the lives of the people in these countries.

### **Research Method**

The research method used in the process of this paper is the doctrinal research method. The reason for utilizing this method of research is that this paper revolves around a lot primary sources like the statutes and provisions and the secondary sources like graphs and articles authored by various resource persons.

### **Body of the paper**

#### **Law & provisions in India**

There are several laws in India that regulate the legal age of marriage. These regulations specify the minimum age at which a man and a woman can get married legally. These are the main acts which are key and instrumental in this cause:

#### **1. The Prohibition of Child Marriage Act (PCMA) of 2006:**

The legal age of marriage as per the act for men is twenty-one years old and women is eighteen years. This law forbids the solemnization of child marriages, or unions in which one of the parties is under the legal age of majority in that country. The punishment as per the act is that those who encourage or carry out underage marriages are subject to legal sanctions the Section 10<sup>1896</sup> of the Act states that Whoever performs, conducts, directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend to two years and shall be liable to fine which may extend to one lakh rupees unless he proves that he had reasons to believe that the marriage was not a child marriage. If the person was a minor when they got married, it permits child marriages to be dissolved.

#### **2. Hindu Marriage Act of 1955:**

The legal age of marriage as per the Hindu Marriage Act 1955 for men, is of age 21 and 18 years old for the women.

Although the legal age for marriage is established by this law, breaking this age does not always render a marriage null and void; rather, there may be consequences under the PCMA.

#### **3. Muslim Personal Law (Shariat) Application Act, 1937:**

A person can marry under Muslim personal law once they have reached puberty, which is generally considered to be at the age of fifteen.

<sup>1896</sup> Section.10 The Prohibition of Child Marriage Act (PCMA) of 2006.

Puberty is presumed, in the absence of evidence, on completion of the age of fifteen years.

#### 4. Special Marriage Act, 1954:

The legal Age for Marriage for men is 21 years and for women it is 18 years. This law governs civil marriages for individuals irrespective of religion, allowing inter-faith and inter-caste marriages.

#### 5. Indian Christian Marriage Act 1872:

This is the central act that governs the marriage aspects among the Indian Christians and even this act states that the legal age for marriage for men is twenty-one years and for women it is kept at 18 years

Marriages between minors are not always void, but they can be cancelled, and those who help make them happen may face consequences.

Although personal laws for various communities have specific provisions, they are nevertheless governed by more general national laws such as the Prohibition of Child Marriage Act, 2006.

The understanding that we get amongst all these provisions is that the legal age in India is kept at 21 and 18 respectively for men and women. But there still are some religions and cultures where the attainment of puberty is sufficient enough for a marriage. The judiciary is very very clear when it comes to the crime of conducting the marriage of minors which is commonly known as Child Marriage and it penalises those who are conducting and facilitating the Child marriages in India and this marriage can be voidable by the parties on their options and choice. The marriage which is done to the children with respect to Indian context is something which is still prevalent in some parts of the country where the social, economic, financial and other aspects of the parties involved in the marriage is affected heavily. They do not get to put themselves in a position of stability whether in respect of their educational, professional or financially and socially also. Now, this is something which causes a state of bother for the society. Just

imagine a girl who has attained puberty and of the age of 16 is being married of, irrespective of the religion and she is pregnant through the marriage and is also someone who is dependent on the income of her husband or through his estate or the estate or income of his family has come to a situation where she cannot push herself out of an environment where she can live in her free will and she will have to be under the influence of the family of her husband. Once caught such marriages can be opted to be declared as void. Also, with respect to the same example of the girl, there can be high levels of complications in the pregnancy which can lead to the death of the mother or the child as well. Another aspect which can be understood to have been played a key role in the decision of setting up 21 for men and 18 for women is that this is the age of maturity and they are adults post the age of 18 hence the decision-making capacity in any matter is better during that age and this can be considered as a significant thought with respect to the lives of the people.

#### Conditions and Provisions in the Sub-Saharan Countries with relation to the legal age of marriage

The reason for the paper to discuss the legal age for marriage in the Sub-Saharan countries and the western world is that the understanding of the way these laws have impacted the operation of the legal system across these countries. 37 of 41 countries in Sub-Saharan Africa (90%) have legislated minimum marriage ages of 18 or older for females. However, 12 of the 37-permit marriage before age 18 with parental consent, thus allowing parents to marry off their daughters before they reach adulthood<sup>1897</sup>. In Sub-Saharan Africa, the legal age of marriage is typically eighteen for both sexes, but in reality, cultural and religious traditions frequently permit younger ages, particularly for girls<sup>1898</sup>. Parental consent or

<sup>1897</sup> UNICEF, Early marriage: child spouses, Innocenti Digest, Florence, Italy: UNICEF, 2001, No. 7.

<sup>1898</sup> Belinda Maswikwa, Linda Richter, Jay Kaufman and Arijit Nandi, Minimum Marriage Age Laws and the Prevalence of Child Marriage and



judicial approval is often required for marriages involving minors. The parents' consent and mostly they arrange the marriage for their children below the age of 18 and this as stated earlier is something which is predominant in these countries and culturally as per a lot of the tribal traditions of these countries these marriages are considered to be valid and hence, they do not affect a lot which is a contributing factor for the parents to accept the marriage. Numerous Sub-Saharan African nations continue to permit exclusions based on customary law or religious traditions, even in spite of these legislative requirements. Religion and customs in places like Nigeria, Tanzania, and some portions of Ethiopia permit marriages between people who are younger than 18, especially between girls. The age of puberty, which is significantly lower than the statutory age, is frequently recognized as an adequate threshold in customary law marriages.

For instance, sharia law in some parts of Nigeria permits girls to marry at any age after they reach puberty and does not set a minimum age. Similar to Tanzania, where the Law of Marriage Act permits girls to marry at 15 with parental approval, the legal age for civil marriages is 18 years old. Inconsistent legal proscription is problematic because in Sub-Saharan Africa, child marriage has been practiced for generations and is still seen as a culturally legitimate way of protecting girls from premarital sex and any potentially dishonourable consequences (e.g., unintended pregnancy, STIs). In addition, factors that contribute to the demand for and supply of child brides such as poverty, high fertility rates, poor educational opportunities, women's subordinate status, and economic shocks from unemployment and HIV/AIDS continue to plague the<sup>1899</sup>. Poverty is a huge cause in these countries having such irregular maintenance of the legal system and the following of the same. In accordance with international agreements

like the African Charter on the Rights and Welfare of the Child (ACRWC) and the Convention on the Rights of the Child (CRC), many Sub-Saharan nations have passed laws establishing the minimum marriage age at 18. Legislation in nations like Zambia, South Africa, Ghana, Kenya, and South Africa expressly forbids marriage between individuals under this age<sup>1900</sup>.

These legislative frameworks demonstrate a dedication to resolving child marriage and conforming to international human rights norms. In order to legally oppose the practice, many nations have also enacted further legislation that makes it illegal for anybody to encourage child marriages. But then the problem again has been the application of these frameworks.

Let us take the example of some Countries that have the highest percentage of 20–24-year-olds who were married or in a union before age 18 through a survey done by the UN<sup>1901</sup> and it states that the top 5 countries in this list from the Sub Saharan region are Niger 75%, Chad 68%, Central African Republic 68%, Mozambique 56% and Burkina Faso 52%. The age set up by the laws in these countries like Burkina Faso is 17, 15 in Gabon and 14 in Sao Tome and Principe<sup>1902</sup>. So, this shows the conditions there. People in these countries have given a lot of reasons and have also suffered a lot due to this kind of non-maintenance of a proper legal age for marriage which in itself is something that is pathetic

### **Conclusion**

These are some aspects and reality that we have seen in the course of the study and the clear indicator is that a better enforcement of the laws can be done and it can create a better living for the people and especially women. India in comparison to the Sub-

Adolescent Birth: Evidence from Sub-Saharan Africa ; Guttmacher Institute Law Journal Pg. 60

<sup>1899</sup> Nour NM, Health consequences of child marriage in Africa, Emerging Infectious Diseases, 2006, 12(11):1644–1649

<sup>1900</sup> Belinda Maswikwa, Linda Richter, Jay Kaufman and Arijit Nandi, Minimum Marriage Age Laws and the Prevalence of Child Marriage and Adolescent Birth: Evidence from Sub-Saharan Africa ; Guttmacher Institute Law Journal Pg. 71

<sup>1901</sup> UNICEF, State of the World's Children 2013: Children with Disabilities, New York: UNICEF, 2013.

<sup>1902</sup> International Planned Parenthood Federation (IPPF), Ending Child Marriage: A Guide for Global Policy Action, London: IPPF, 2006

Saharan countries is in a better position with respect to prevention of child marriage but the problem is that it is not very great also there is a lot of work done to improve in this matter. A suggestion that I can give is that the legal age should be increased for women to 21 and also punishments for child marriages should be harsher with respect to repeat offence and there should be uniformity in the way these laws are implemented.

