



#Issues

India may up Marriageable age of girls but what about age of Sexual Consent?

RUDRANI GUPTA | Updated On January 21, 2021



In **January** of 2020 at Khadki of Pune, a Muslim woman of 17-year-old eloped with a Buddhist man and the duo got married as she turned 18. But the woman's mother filed an FIR accusing the man of kidnapping her daughter who was a minor at the time she eloped. She also informed the police and court that the woman was already married in November 2019 as a minor. The boy was booked under section 363 of kidnapping. However, later he was released as the court dismissed the mother's FIR on the context that the woman was an adult when she consented to marry her boyfriend and so the marriage stands valid.

Why didn't the mother file the same complaint when she forced her daughter to marry as a minor?

The woman married her Buddhist boyfriend at the age of 18 which is the current legal age of adulthood, casting vote, giving sexual consent and marriage for women in India. Was it right for the mother to charge the cases of kidnapping on the man when her adult daughter married him with full consent? The Indian government is now considering to increase the marriageable age of women beyond 18 but will this move be practical? Are women not mature enough to decide about their marriage and sex life at 18? And will the minimum age of sexual consent and accessing reproductive rights also be increased beyond 18? What would be its impact?

We discussed the two aspects with lawyer **Kudrat Dutta Chaudhary**, who is a graduate of Fletcher School of Law and Diplomacy and is currently a gender specialist at Law Office of Robert B. Jobe.

Aren't women mature to choose her husband at 18?

If women of 18 years old are mature enough to vote, they are also capable of deciding when and to whom they want to marry. Considering that the marriageable age of women is raised to 21 years, the law might be used to curb the agency of a woman who wants to marry at 18 or before 21.





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Chaudhary said, "Even if a woman is mentally mature to give consent by the time she is 21 years, her marriage would be considered voidable until 21 years. This could also be adversely used by family members who are against inter-caste/inter-faith marriage of a woman. If she elopes before the age of 21 years, the husband could face serious charges." According to reports by National Law School Bangalore and UNICEF, as quoted by [India Today](#) and NCAAC, in the year 2008 to 2017, 65 per cent of cases registered under Prohibition of Child Marriage Act were aimed at punishing the consenting adolescents who eloped and married against their parents wish.

If the marriageable age is increased further, it will also increase the possibility of an adult woman's family members to take legal actions against her if she marries by her own choice. While there will be the least possibility of using the law when the woman marries someone of her parents' choice even if she is a minor. Considering the Khadki case, if the marriageable age was 21, the Buddhist boyfriend would have been termed as guilty under kidnapping charges. And the woman would have to return back to her mother who had earlier forced her to marry as a child.

Will The Age Of Sexual Consent Increase Too?

As per the 2017 amendment of Protection of Children from Sexual Offences Act, sex with a minor wife or woman, i.e. below 18, is a criminal offence. Considering that the marital age is increased to 21 years, will it mean that a girl below 21 cannot be sexually active? "If there is an increase in the marriageable age of women, the age of [sexual consent](#) will be increased as well. The most possible impact of this would be that relationships with women under 21 years which hold any form of sexual contact would be criminalised," said Chaudhary.

As per the fourth [National Family Health Survey](#), the median age at which women in urban area have their first sexual intercourse is 20.3 while for women in rural India is 18.6. If this is criminalised, women will lose the freedom to make decisions about their sex life. They will also be divested of accessing reproductive rights and services in case they get pregnant before 21. As per the Medical Termination of Pregnancy Act, if a woman below the minimum age of sexual consent gets pregnant, she will have to get consent from her guardian to abort the child.

What should be the government's focus?

It can be argued that women in India who are sexually active before 21 are mainly the cases of child marriage or early marriage. But if a woman of age 18 or more is considered as an adult with voting rights by law, why can't she have sexual freedom too? This necessitates sex education of women to make them understand the difference between consensual and non-consensual relationship, and not raising the minimum age of marriage or sexual consent.

Kudrat Dutta rightly said, "Reproductive behaviour of women and men can be changed by changing the mindset rather than changing the age of consent or marriageability."

The National Family Health Survey of 2015-16 reveals that 48 per cent of young, **urban and educated** women in India of age 20-24 marries at the age of 20. Women are already choosing to marry later than the current minimum marital age and it is a positive sign. This clearly shows that rather than increasing the marital age further, the government needs to focus on encouraging the education of the woman so that she can make a better decision about her marriage and sexual life.

In the words of Kudrat Dutta Chaudhary, "The increase in marriageable age can only serve the society better if, with this increase efforts are made to make women educated, independent and are given a chance to make decisions about whom they want to marry and when...Access to reproductive care and services should be provided to women at all ages and they should be educated. If this change is done in a silo, then the increase of marriageable age would only serve as a bane than a boon as desired." [Check Out Our Bot](#)



age of sexual consent

Child Marriage

consent

Marriageable age

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