The institution of marriage is one that affects us all, regardless of our gender, nationality, religious beliefs or civil status. While some parts of the world are grappling with the phenomenon of people marrying later, or not marrying at all, other countries are combating people getting married too early. Several countries and different cultures in the world are faced by the issue of child marriage. While there can be no consensus on what exactly is the right age to get married, a broad majority of voices agree that getting married very early is a violation of basic human rights and has catastrophic effects on children, especially girls.

Seen in this light, it might seem that the recent move of the Indian government to appoint a task force to look into increasing the age of marriage for women from 18 to 21 years, is a step in the right direction. The government’s stated aim is to reduce maternal mortality and increase nutritional levels, ostensibly amongst girl children. The press release announcing the appointment makes reference to the last time the age of marriage was increased for women from 15 to 18 years in 1978, in a bid to prevent child marriages. However, no reference is made to any research that links delayed motherhood in adults
with a drop in maternal mortality rates or improved nutrition levels.

THE LAWS ON MARRIAGE AND MAJORITY IN INDIA

Marriage in India is not governed by a uniform, secular state law. Each religion lays down its own rules regarding when and whom one can marry and the marriage statutes are mere codification of existing religious practices. All major religions allowed for the marriage of minors before the British colonial authorities outlawed this practise via the Child Marriage Restraint Act of 1929. Despite the enactment of several laws like the Hindu Marriage Act (1955), and the Prohibition of Child Marriage Act (2006) among others, 27% of girls in India today are child brides. It is ironic that although the law lays down the rule that women below the age of 18 and most men below the age of 21 (depending on the religion they follow) cannot get married, it does not invalidate any marriage that is contracted by individuals below the permitted ages. Such marriages are voidable at the instance of the minor and can be dissolved, by an application to a court, within two years of attaining majority.

The link drawn by the Indian government and the media between the 1978 raising of age and the present move is tenuous. Persons who are 18 years and older are no longer children. The Convention on the Rights of the Child (1990) as well as the Indian Majority Act (1875) declare the age of majority as 18 years. It has been suggested that the Indian government set up this task force in reaction to the Supreme Court of India’s decision in Independent Thought v. Union of India (2017). In this case the Court held as unconstitutional a provision in the Indian Penal Code which did not consider sexual intercourse between a man and his wife,
above the age of 15 but below the age of 18, as rape. While the Court did not declare child marriages to be void from when it was entered into, it did suggest this was the “most obvious and appropriate resolution of the conflict”.

Child marriages remain a reality despite various laws and Supreme Court decisions dwelling on the undesirability thereof. Which begs the question: if raising the marriage age to 18 did not eradicate child marriages, how will raising the age to 21 achieve this purpose? If anything, the number of “child” brides in India will increase further if the definition of the child, for the sole purpose of marriage, encompasses women aged 18 to 21.

INFANTILISING WOMEN

18 is the magic number: the age that marks the end of childhood and the beginning of adulthood. The usual accompaniments of adulthood include being allowed to drive, to vote, to enter into contracts and to marry. In essence, being an adult means to be in control of your own life. Most countries deem 18-year olds to be mature enough to make decisions that will affect the sexual, reproductive and marital aspects of their lives. Which is why the motivation behind this move seems suspect. By reigning in a woman’s right to choose when she will marry and when she will have children, the Indian state is signalling to women that it does not consider them responsible enough to take these decisions. It is further entrenching its control over women’s bodies.

This is also not the first time that retrogressive steps of this nature have been taken. In 2016 the High Court in the Hadiya case annulled the marriage of a 22-year-old medical student because it was performed against her parents’ wishes. While there is no legal requirement in India for parental consent
to marry, Hadiya’s Hindu parents were affronted that she decided to convert to Islam and marry a man of her choice. Although this High Court decision was severely criticised and ultimately overturned, it is illustrative of the societal norms and expectation that adult children should defer to their parents’ (and the state’s) wishes when it comes to making life decisions.

AGE OF CONSENT VS. AGE OF MARRIAGE

The age of consent across the world is usually 16 or 18 years, while the legal age of marriage is predominantly 18, for both men and women. This is in line with the minimum standard that the international community is expected to adhere to. The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1964) did not lay down a minimum age of marriage, but only a requirement that states specify a minimum age and ensure that people below this age are not able to legally wed each other. However, Article 16(2) of the Convention on the Elimination of All Forms of Discrimination against Women (1979) (CEDAW) specifically outlaws child marriages and betrothals. CEDAW also broadly recognises the right of women to marry whom and when they want to, along with how many children to have and when to have them, a right also recognised and protected by the Indian Constitution.

Every woman who marries at 18 will not automatically bear children immediately. Conversely, a woman may become a mother before she gets married. Keeping aside social norms, it is not unlawful to become an unwed mother (or father). No law will punish a woman, or a girl, for becoming a mother before the “right time”. The Indian government falls prey to the correlation-causation fallacy when it assumes that early marriage will invariably lead to early motherhood. It seems to be conflating
the age of marriage with the age of consent. With the age of consent in India being 18 years, raising the age of marriage to 21 years will mean that in the eyes of the law it is acceptable for women in the 18-21 years range to engage in consensual sexual activities but not acceptable for them to get married. This will not prevent women from getting pregnant and becoming mothers earlier. It will also not decrease the maternal mortality rate. It will, however, increase policing of women’s bodies and choices, given the taboos associated with pre-marital sex in Indian society.

**BETTER WAYS TO ACHIEVE LEGITIMATE AIMS**

The stated objectives of the decision to increase the age of marriage – to reduce maternal mortality rate and increase nutritional levels – can be better achieved by other means. The World Health Organisation [opines](https://www.humanrightspulse.com/mastercontentbl... about:reader?url=https://www.humanrightspulse.com/mastercontentbl...) that providing high-quality health care during and after pregnancy goes a long way in preventing maternal mortality. Similarly combating malnutrition requires the availability of nutritionally rich food and dissemination of nutrition knowledge. India already has several such [programmes](https://www.humanrightspulse.com/mastercontentbl... about:reader?url=https://www.humanrightspulse.com/mastercontentbl...) in place and is making [good progress](https://www.humanrightspulse.com/mastercontentbl... about:reader?url=https://www.humanrightspulse.com/mastercontentbl...) in tackling both issues. What is needed is effective implementation of existing laws and policies, rather than creating new ones which do not address the issue at hand, and which may create further challenges.

What is also needed is that the Indian state fulfils its obligations under international law. The time has come to stop giving precedence to personal and religious practices regarding marriage, at the expense of child rights. The first step is to de-recognise child marriages instead of considering them voidable, as has been suggested by the Supreme Court. This will help
achieve the United Nations goal of banning child marriages across the globe by 2030. It is uncontested that child marriages have devastating physical, psychological and socio-economic effects on the contracting parties. This country needs to stand up for its children, and not defer to administrative convenience or harmful traditions.

The second step would be to remove the disparity between the genders regarding the marriage age. Due to its focus on girls and women, the government’s policy has completely excluded child grooms. While the number of boys who get married in their childhood is less than the number of child brides, male child marriage is also a human rights issue. Men who marry as children are also deprived of several educational and employment opportunities. There has also been little discussion on the restriction on the autonomy of men aged 18-21 years to contract marriages. Raising the marriage age for women to 21 will ensure equality by making 21 years the common marriage age for both men and women, but is this a step in the right direction?

Countries such as Philippines and Japan are moving towards the universally accepted standard of 18 years as the age of majority, marriage and consent. In fact, as late as 2019 the Indian government was considering lowering the age of marriage for men to 18 years so as to bring parity between women and men, and declaring all child marriages as void from when it was entered into. It is truly unfortunate that these progressive proposals were discarded for one that is placing India on the wrong side of history.

Finally, if the state wants women to bear children at a later age, it must enable these women to access better education, healthcare, and livelihood options. In short, more agency in the
running of their own lives, not less. Treating adult women as children unable to take decisions for themselves is a form of hidden violence which robs them of confidence to live their lives to the fullest potential, degrades them and deprives them of basic human rights. The fight for liberty and equality is fraught with challenges and the international community is slowly overcoming these obstacles. Each right placed in the international conventions is the result of a long fought and hard-won battle. We cannot afford to cede any space. The Indian government should not take a few steps backwards on the long road to human rights protection.