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## Child redefined

The 18th Law Commission in its report, addresses the lacunae in the Prohibition of Child Marriage Act, 2006

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JUSTICE A.R. LAKSHMANAN (right), Chairman of the Law Commission, submitting a copy of the report to Union Law Minister Hansraj Bharadwaj.

The Commission has not only taken into account national and international opinion on the implications of child marriage but **gone a step further by suggesting lowering the age of marriage for men.**

IN 1890, Phulmonee, an 11-year-old child bride, died of a ruptured vagina and haemorrhage caused by the "assault" on her by her 29-year-old husband, Hari Maiti, in order to establish his marital rights. This incident set into motion the debate on child marriage and raising the age of consent for sexual intercourse. Several studies, including the 2005-06 National Family Health Survey, or NFHS-3, have shown that child marriages take place despite legislation such as the Child Marriage Restraint Act,

1929, and the Prohibition of Child Marriage Act (PCMA), 2006. The two Acts never prevented a child bride from living with her husband or from being abused, sexually or otherwise!

The 205th report of the Law Commission, submitted by the 18th Law Commission on February 5, has, for the first time, addressed the lacunae in the PCMA in the context of the wider implications of child marriage. The Commission was asked to do so by the Supreme Court in the context of a writ petition filed by the Delhi Commission for Women and the National Commission for Women. The court also requested the Law Commission to look into the various laws that laid the definition of "child". The Commission did not go into the definition of "child" but has come up with several pertinent recommendations to end child marriage, taking into account factors such as child abuse, health and human rights. It has also upheld the recommendations of a Parliamentary Standing Committee, which had examined the Bill and suggested that all child marriages be declared void after the introduction of the Act. Not

only did the Law Commission take into account national and international opinion on the implications of child marriage but it went a step further by recommending lowering the age of marriage for men, from 21 to 18 years, on the grounds that no scientific evidence indicated that a differential age of marriage was necessary for men and women. The Commission has recommended that there need be no differential age of consent for sexual intercourse for a minor bride and for other minor girls. It has suggested that all marriages below the age of 16 be declared null and void and all marriages between the ages of 16 and 18 be rendered void at the option of either party.

#### CUT-OFF AGE

The argument for 18 as the cut-off age for marriage is that child marriage was usually a forced form of marriage where no full and informed consent could be given by a person under 18. The report has critically assessed the PCMA and pointed out several deficiencies in it. It has suggested several amendments to strengthen the provisions of the Act.

The PCMA has not specified the age below which child marriages could be declared void. The Law Commission has suggested that any marriage of a child below 16 years of age solemnised after the commencement of the Act be treated null and void.

Under the PCMA, a petition to annul the marriage can be filed any time before the child petitioner completes two years of attaining majority. By this reasoning, a girl can file the petition by the age of 20 and a boy by the age of 23. This, by itself, is discriminatory as the marriageable age is different for boys and girls. The Commission has suggested that this be amended in a manner that allows the petitioner to file a petition at any time until the person contracting the child marriage attains 20 years of age.

The writ petition had argued that although the Indian Penal Code (IPC) did not have a definition for child, the age of consent for sexual intercourse

for women was 16 under Section 375 of the IPC while for married couples, the age of consent was presumed to be 15. Relevant sections in personal laws also did not allow a court to declare a marriage null and void even if either party was underage. The Hindu Marriage Act is a classic example. The Sharia also allows marriages at the age of 15. Under Section 375 of the IPC, a husband is exempted from marital rape if his wife was not under 15 years of age. This meant that marital rape was acceptable between the ages of 15 and 18.

The PCMA failed to invalidate a marriage performed when the girl was an infant or when she attained puberty. That is, a child in the 10-13 age group could be married off, subjecting her to all kinds of consequences. This was one of the main criticisms made by women's organisations.

Giving an option to end the marriage was not enough, they felt. On the other hand, Section 375 criminalised a sexual relationship with a child under 15. So, even if the act was criminal, the marriage was still valid. There was a need to invalidate all marriages under a particular age, they argued. There was an opinion that the age of consent and the age of marriage ought to be the same.

They also felt that a relaxed age of marriage, that is, over 16 years, could be considered as well. In the opinion of the women's organisations, a lot of sexual activity was taking place between couples in the 16 to 18 age group for which they were persecuted not only by the law but by communal, caste and other sectarian interests. This meant that there were some obvious contradictions. In addition, changes were also taking place in society.

The Commission seems to have considered all these while making its recommendations, in the overall interests of protecting child rights as well as the rights of young couples but with the clear understanding that child marriage is nothing but child abuse.

However, there has been some discomfort over bringing down the age of marriage for boys to 18 and about the age of consent to both married and



unmarried girls to 16 years. It has been felt that the age of consent for sexual intercourse should be the same as the age of marriage.

Kirti Singh, member of the Law Commission and one of the main drafters of the report, told *Frontline* that those who demanded that the age of consent in rape laws should be 18 years were not in tune with reality. There was, she said, a patriarchal approach to the problem, which entailed control of the sexuality of young people. There was also this patriarchal notion that the boy should be "older" than the girl at the time of marriage.

She said that there were many examples of young couples in the 16 to 18 age group who had, cutting across caste, religious and community boundaries, exercised their choice in the selection of their partners and suf-



