Personal Laws in Marriage

What is the issue?

The proposed amendment to the Prohibition of Child Marriage Act, 2006 have raised a debate on female autonomy and the application of personal laws in marriage.

What does the amendment propose?

- The key argument in favour of rising the minimum age for marriage is in correlation to health and social indices such as infant mortality, maternal mortality, and nutrition levels among mothers and children.
- **Minimum age of marriage -** Currently, the minimum age of marriage is 18 years for women and 21 for men.
- The bill proposes to amend the definition of a "child" to mean a male or a female who has not completed 21 years of age thus making the minimum age of marriage same for both men and women.
- **Declaring child marriage void**- Under the law, child marriages, although illegal, are not void but voidable.
- This means that child marriage can be declared null and void by a court if the child files a petition before completing two years of attaining majority (Currently, a woman can file the petition before she turns 20 and for a man before he turns 23).
- After that, the marriage would be deemed valid and the couple can file for divorce.
- A void marriage means as if the marriage had never taken place in the first place, unlike a divorce.
- The Bill proposes to extend this window for both the woman and the man to 5 years after attaining majority.
- Since the age of majority is 18 for both, the man or the woman can file a petition to declare the child marriage void before they turn 23, or until two years after reaching the new minimum age of marriage.
- **Introduction of a "notwithstanding" clause**- This essentially paves way for equal application of the Prohibition of Child Marriage Act across religions, notwithstanding any customs.

What is the opposition to the amendment?

- **Interference in personal matters** - Increasing the age of marriage is viewed as a paternalistic approach by the state in personal matters of an individual.
- **Limits the personal law**- The application of the child marriage law across faiths is seen as a limitation on personal law.
- Muslim law recognises attaining puberty, which is legally assumed at 15 years, as the minimum age of marriage.
- **Violation of Article 25**- Some argue that the bill is violative of Article 25 of the Constitution, which guarantees the freedom of conscience and free profession, practice and propagation of religion.

- **Increase in illegal marriages**- Increasing the minimum age of marriage will further push many marriages to the brink of illegality and marginalise vulnerable sections.

How have courts interpreted the child marriage law so far?

- **Upholding the child marriage law** - In *Seema Begaum D/O Khasimsab vs State Of Karnataka (2013)*, the Karnataka High Court said that "no Indian citizen on the ground of his belonging to a particular religion can claim immunity from the application of the prohibition of child marriage act".
- **Upholding the personal law**- In 2021, the Punjab and Haryana High Court ruled that the marriage of a Muslim couple (a 17-year-old girl married to a 36-year-old man) as legal under personal law.
- The HC held that since the special law does not override personal laws, Muslim law will prevail.

Has there been overriding of personal laws before?

- **Transfer of property**- In a 1960 case, the Supreme Court held that the Transfer of Property Act, 1882 would apply over Muslim law on transfer of property.
- **Solemnising a second marriage**- In 1996, the Supreme Court said that even though the Ecclesiastical Court (a church court) can grant a divorce or nullify a Christian marriage, the Church cannot solemnise a second marriage of a party till the marriage is dissolved by the judiciary.
- **Maintenance after divorce**-.Under Muslim law, a divorced Muslim woman can claim the maintenance from her husband only during the iddat(mourning) period.
- In *Shabana Bano v Imran Khan (2009),* the Supreme Court held that the maintenance can be awarded under Section 125 of the Criminal Procedure Code even after the expiry of iddat period, as long as she does not remarry.
- **Triple talaq**- In Shayara Bano v Union of India (2017), the Supreme Court declared the practice of instant triple talaq as unconstitutional although it is provided for under Muslim law.

Reference

1. https://indianexpress.com/article/explained/personal-laws-in-marriage-explained-7686088/

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