



**IN THE HIGH COURT OF DELHI AT NEW DELHI**

WRIT PETITION (C) NO ..... OF 2019

(PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

**IN THE MATTER OF:**

Ashwini Kumar Upadhyay ...Petitioner

Verses

Union of India & Another ...Respondents

**NOTICE OF MOTION**

**To,**

The Standing Council

Union of India / Election Commission of India

High Court of Delhi, New Delhi,

**Sir,**

Please find enclosed herewith copies of above mentioned Writ Petition, which is being filed today before this Hon'ble Court and likely to be listed before the Hon'ble Court on 16.08.2019 or any other date fixed by the registry.

It's for your information and necessary action.

**PETITIONER-IN-PERSON**

**(Ashwini Kumar Upadhyay)**

Advocate En. No-D/1119/12

15, M.C. Setalvad Chambers

Supreme Court, New Delhi-01

G-284, Govindpuram, Gzb-13

#08800278866, 9911966667

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**MEMO OF PARTIES**

Ashwini Kumar Upadhyay

S/o Sh. Suresh Chandra Upadhyay

Office: 15, M.C. Setalvad Chambers

Supreme Court of India, New Delhi-110001

Residence: G-284, Govindpuram, Ghaziabad-201013 ...Petitioner

Verses

**1. Union of India**

Through the Secretary,

Ministry of Women & Child Development

Shastri Bhawan, New Delhi-110001

**2. Law Commission of India**

Through the Chairman/Secretary

4<sup>th</sup> Floor, Loknayak Bhawan,

Khan Market, New Delhi-110003

...Respondents

**PETITIONER-IN-PERSON**

**(Ashwini Kumar Upadhyay)**

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Supreme Court, New Delhi-01

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**IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**WRIT PETITION (CIVIL) No. \_\_\_\_\_ of 2019**  
**[Under Article 226 of the Constitution of India]**

In the matter of:

|                          |                |
|--------------------------|----------------|
| Ashwini Kumar Upadhyay   | ...Petitioner  |
| Versus                   |                |
| Union of India & Another | ...Respondents |

**SYNOPSIS**

This Petition, filed in public interest under Article 226, challenges a blatant, ongoing form of discrimination against women. That is the discriminatory ‘minimum age’ limit for marriage for men and women in India. While men in India are permitted to get married only at the age of 21, women are allowed to get married when they are 18. This distinction is based in patriarchal stereotypes, has no scientific backing, perpetrates *de jure* and *de facto* inequality against women, and goes completely against the global trends.

The following statutory provisions are responsible for this discriminatory bar:

- Section 60(1) of the Indian Christian Marriage Act, 1872;
- Section 3(1)(c) of the Parsi Marriage and Divorce Act, 1936;
- Section 4(c) of the Special Marriage Act, 1954;
- Section 5(iii) of the Hindu Marriage Act, 1955;
- Section 2(a) of the Prohibition of Child Marriage Act, 2006.

This differential bar discriminates against women, thus contravening the fundamental principles of gender equality, gender justice and dignity of women and breaching Articles 14, 15 and 21 of the Constitution of India.

This is so for the following reasons.

**I. India's International Human Rights law obligations inform the content of the fundamental rights enshrined in the Indian Constitution.**

In *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241, at paras 7 & 15, the Hon'ble Supreme Court unequivocally held that the content of the fundamental rights contained in the Indian Constitution must be informed by India's International Human Rights obligations. Accordingly, provisions of the Convention on the Elimination of All Forms of Discrimination Against Women ("CEDAW"), which India ratified in 1993, inform the content of Articles 14, 15 and 21.

It follows that the principles of equality and dignity enshrined in the CEDAW apply on all forms in the Indian context. The submissions below rely on the said principles to drive home the constitutional point.

**II. Differential limit is based on & reinforces patriarchal and stereotypical notions about women. For this reason alone, it completely contravenes the principles of equality and dignity under Articles 14, 15 and 21.**

The right to live with dignity implies the right to not be perceived as unequal or inferior individuals in the society. In other words, it implies the right to equal social standing and perception. The Hon'ble Supreme Court has held this in *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438, *Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477 and *Jeeja Ghosh v. Union of India*, (2016) 7 SCC 761. Specifically in the context of women, the Supreme Court in *Joseph Shine v. Union of India*, (2019) 3 SCC 39 observed that a law that treats women differently based on gender stereotypes causes a direct affront to women's dignity, violating Articles 14 and 21. In the same spirit, Article 5(a) of CEDAW obliges States Parties to "*take all appropriate measures... [t]o modify social and cultural patterns of conduct of men and women, with a*

*view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”* Hence, any provision that perpetrates or reinforces discriminatory stereotypes against a class of persons is manifestly arbitrary and a *fortiori* violative of Articles 14, 15 and 21. The differential age limit is based solely on stereotypes. The Law Commission of India has observed that there exists no scientific basis for such a distinction (**Annexure-1** at p. 33), and that the differential limit “*simply contributes to the stereotype that wives must be younger than their husbands*” (**Annex-2** p. 36). Likewise, the Committee on the Elimination of Discrimination against Women has noted that:

*“Some countries provide for different ages for marriage for men and women. As such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial, these provisions should be abolished. In other countries, the betrothal of girls or undertakings by family members on their behalf is permitted. Such measures contravene not only the Convention, but also a women's right freely to choose her partner.”* (**Annexure-3** at p. 40)

Therefore, this stereotypical and patriarchal difference between the minimum age limits for marriage for men and women is a *fortiori* violative of the principles of gender equality gender justice and dignity of women as enshrined in Articles 14, 15 and 21 of our Constitution.

**III. The differential limit is *de jure* unequal as between men and women. Thus, it completely contravenes Articles 14, 15 and 21.**

Articles 14 and 15 of the Constitution prohibit the State from treating men and women differently unless it can show a reasonable basis for the classification it has created. Article 16(1)(a) of the CEDAW specifically commands States Parties

to take “*all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations*”, and to ensure to women “[t]he same right to enter into marriage... [and] the same right freely to choose a spouse and to enter into marriage only with their free and full consent.”

The Law Commission in its Consultation Paper (supra) has stated as follows:

*“For equality in the true sense, the insistence on recognising different ages of marriage between consenting adults must be abolished.... The difference in age for husband and wife has no basis in law as spouses entering into a marriage are by all means equals and their partnership must also be of that between equals.” (Annexure-2 at p.36)*

On the face of it, therefore, the differential age limit violates these basic tenets of equality. It is discriminatory and manifestly arbitrary, and hence violative of Articles 14, 15 and 21 of the Constitution of India.

**IV. The differential limit is *de facto* unequal as between men and women. It aggravates social inequality, thereby breaching Articles 14 and 21.**

Committee on the Elimination of Discrimination against Women has stated:

*“Reports of States parties disclose that there are still countries where de jure equality does not exist. Women are thereby prevented from having equal access to resources and from enjoying equality of status in the family and society. Even where de jure equality exists, all societies assign different roles, which are regarded as inferior, to women. In this way, principles of justice and equality contained in particular in article 16 and also in articles 2, 5 and 24 of the Convention are being violated.”*

**(Annexure P-3 at p.41)**

The differential limit causes *de facto* discrimination. It is a social reality that women in a married relationship are expected to perform a subordinate role vis-à-vis the husband. Hence, there exists a power imbalance between the husband and wife in most marital relationships. This power imbalance is deeply aggravated by the age differential, because age itself constitutes a hierarchy of power. A younger spouse is therefore expected to respect and be

servile to her elder partner, which aggravates the pre-existing gender-based hierarchy in the marital relationship. Hence, the impugned statutory provisions that bring about this direct and inevitable result of discrimination violate Articles 14, 15 and 21 of the Constitution.

**V. Global trends point in the same direction.**

More than 125 countries in the world have a uniform age of marriage for men and women. Noting this fact, the National Human Rights Commission, pursuant to the National Conference on Child Marriage held in New Delhi on 29-30 August 2018, recommended that India follow suit and bring uniformity in the minimum age limits (**Annexure P-4** at p. 57).

**VI. The discriminatory provisions should be read down to equalise the minimum age of marriage for both men and women at 21 years.**

To protect women's fundamental rights, it is imperative that the minimum age of marriage be equalised and fixed at 21 years. This is so for three reasons.

**First**, women have a fundamental right to be free to pursue studies and/or occupations after finishing school at the age of 18. Yet, it is a social reality that women are expected (and often also pressurised) to beget children immediately after marriage. They are also forced to take up household chores in accordance with their stereotypical 'roles' in the family. This harms their educational as well as economic pursuits, and often impinges on their reproductive autonomy as well. In this way, women's rights are often taken away under social pressure to get married and procreate. A higher minimum age will ensure more autonomy to women in every sense.

**Second**, as per the World Health Organization, women who get pregnant before the age of 20 "*face higher risks of low birthweight, preterm delivery, and*

*severe neonatal conditions*". Further, newborns born to such mothers also face severe health risks. (Annexure P-5 at p. 62).

**Third**, it is apparent that the minimum marriage age for men has traditionally be fixed at 21 because men are socially expected and encouraged to pursue education or/and occupations after finishing high school. In a constitutional republic, women should also have the same opportunity without the sword of marriage – which often means a loss of freedom – hanging over their heads.

Hence, it is most humbly prayed that this Hon'ble Court read down the aforesaid discriminatory statutory provisions to equalise the minimum age of marriage for both men and women at 21 years.

#### List of Dates

| Date       | Event   |
|------------|---|
| 18.07.1872 | <p>The Indian Christian Marriage Act, 1872 was passed. Section 60 states that:</p> <p><i>“Every marriage between Indian Christians applying for a certificate, shall, without the preliminary notice required under Part III, be certified under this Part, if the following conditions be fulfilled, and not otherwise: ...</i></p> <p><i>(1) the age of the man intending to be a married shall not be under twenty-one years, and the age of the woman intending to be married shall not be under eighteen years; ...”</i></p> |
| 23.04.1936 | <p>The Parsi Marriage and Divorce Act, 1936 was passed. As per Section 3(1):</p> <p><i>“No marriage shall be valid if – ...</i></p> <p><i>(c) in the case of any Parsi (whether such Parsi has changed his or her religion or domicile or not) who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age. ...”</i></p>  |

|            |  |
|------------|--|
| 09.10.1954 | <p>The Special Marriage Act, 1954 was passed. As per Section 4(c):</p> <p><i>“Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled namely: ...</i></p> <p><i>(c) the male has completed the age of twenty-one years and the female the age of eighteen years; ...”</i></p> |
| 18.05.1955 | <p>The Hindu Marriage Act, 1955 was passed. As per Section 5:</p> <p><i>“A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely: ...</i></p> <p><i>(iii) the bridegroom has completed the age of twenty one years and the bride the age of eighteen years at the time of the marriage; ...”</i></p>  |
| 30.07.1980 | <p>India signed the CEDAW.</p>   |
| 09.07.1993 | <p>India ratified the CEDAW.</p>   |
| 10.01.2007 | <p>The Prohibition of Child Marriage Act, 2006 was passed. As per Section 2 :</p> <p><i>(a) “child” means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age; ...</i></p>  |
| 14.08.2019 | <p>Different minimum age of marriage for men and women is not only against the doctrine of gender equality and gender justice, guaranteed under Article 14 and 15 of the Constitution of India, but also against the dignity of women, which is an integral part of Article 21 of the Constitution. Hence, this writ petition in larger public interest and in the interest of justice.</p>  |

## IN THE HIGH COURT OF DELHI AT NEW DELHI

WRIT PETITION (CIVIL) No. \_\_\_\_\_ of 2019

[Under Article 226 of the Constitution of India]

In the matter of:

Ashwini Kumar Upadhyay ...Petitioner

Versus

Union of India &amp; Another ...Respondents

**PIL ARTICLE 226 SEEKING COMMON MINIMUM AGE OF MARRIAGE****To,**

THE HON'BLE CHIEF JUSTICE

AND LORDSHIP'S COMPANION JUSTICES

OF THE HON'BLE HIGH COURT OF DELHI

HUMBLE PETITION OF ABOVE-NAMED PETITIONER

**THE MOST RESPECTFULLY SHOWETH AS UNDER:**

1. Petition is not guided by self-gain or for gain of any other individual person, institution or body. There is no motive other than the larger public interest in filing this petition. Petitioner has no personal interest or individual gain, private motive or oblique reasons in filing this PIL. It is bona-fide with sole purpose of larger public interest and interest of justice.
2. The source of averments made in this petition is personal knowledge and information collected from various sources, including newspapers and websites. Petitioner is filing this PIL to implement Law Commission proposals on minimum age of marriage.
3. Present petition is for benefit of poor, disabled, economically weaker section and socially-economically down trodden people. As they are incapable of accessing this Hon'ble Court themselves, petitioner is filing this PIL to secure fundamental rights guaranteed under Article 21 of the Constitution.

4. The Union Government and Law Commission of India is likely to be affected by the orders sought in this petition, which has been impleaded as Respondent. Petitioner submits that to its knowledge, no other persons, bodies, institutions are likely to be affected by the order sought in this petition.
5. Petitioner's full name is Ashwini Kumar Upadhyay. Residence at: G-284, Govindpuram, Ghaziabad-201013, U.P. Ph No: 08800278866, Email:aku.adv@gmail.com, PAN: AAVPU7330G, AADHAAR: 659982174779. Annual Income is Rs. 4 Lakh. Petitioner is an Advocate, practice in this Hon'ble Court and a social-political activist, contributing his best to the development of socially-economically downtrodden people. Petitioner is able to bear the cost if any, imposed by the Court.
6. Petitioner has not filed any other petition either in this Court or in other Court seeking same or similar directions.
7. Petitioner has not submitted any representation to the respondents. There is no requirement to move concerned authority for relief sought in this writ petition. There is no other remedy available except approaching this Hon'ble Court by way of the instant petition.
8. The present Writ Petition has been filed to challenge the discriminatory 'minimum age' limit for marriage for men and women in India. While men in India are permitted to get married only at the age of 21, women are allowed to get married when they are 18. This distinction is based in patriarchal stereotypes, has no scientific backing, perpetrates *de jure* and *de facto* inequality against women, and goes completely against the global trends.
9. The facts constituting the present cause of action are as follows:

- a. Various legislations governing marriage viz. the Indian Christian Marriage Act, 1872, the Parsi Marriage and Divorce Act, 1936, the Special Marriage Act, 1952, the Hindu Marriage Act, 1955 and the Prohibition of Child Marriage Act, 2006, all contain a condition regarding eligibility for marriage under the relevant Act, to the effect that the intended bride be at least eighteen years of age and the intended groom be at least twenty-one years of age. The dates on which these legislations were passed and the relevant provisions are extracted below:

| Date       | Relevant Provision  |
|------------|---|
| 18.07.1872 | <p>The Indian Christian Marriage Act, 1872 was passed. Section 60 states that:</p> <p><i>“Every marriage between Indian Christians applying for a certificate, shall, without the preliminary notice required under Part III, be certified under this Part, if the following conditions be fulfilled, and not otherwise: ...</i></p> <p><i>(1) the age of the man intending to be married shall not be under twenty-one years, and the age of the woman intending to be married shall not be under eighteen years; ...”</i></p> |
| 23.04.1936 | <p>The Parsi Marriage and Divorce Act, 1936 was passed. As per Section 3(1):</p> <p><i>“No marriage shall be valid if – ...</i></p> <p><i>(c) in the case of any Parsi (whether such Parsi has changed his or her religion or domicile or not) who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age. ...”</i></p>  |
| 09.10.1954 | <p>The Special Marriage Act, 1954 was passed. As per S. 4(c):</p> <p><i>“Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized under this Act, if at the time of the marriage the following conditions are fulfilled namely: ...</i></p> <p><i>(c) the male has completed the age of twenty-one years and the female the age of eighteen years; ...”</i></p>   |

|            |  |
|------------|--|
| 18.05.1955 | <p>The Hindu Marriage Act, 1955 was passed. As per S. 5:</p> <p><i>“A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely: ...</i></p> <p><i>(iii) the bridegroom has completed the age of twenty one years and the bride the age of eighteen years at the time of the marriage; ...”</i></p> |
| 10.01.2007 | <p>The Prohibition of Child Marriage Act, 2006 was passed.</p> <p>As per Section 2:</p> <p><i>(a) “child” means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age; ...</i></p>  |

- b.** India signed the Convention on Elimination of All Forms of Discrimination Against Women (“**CEDAW**”) on 30.07.1980 and ratified it on 9.07.1993. Article 5(a) of CEDAW obliges States Parties to *“take all appropriate measures... [t]o modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women.”* Article 16(1)(a) of the CEDAW specifically commands States Parties to take *“all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations”*, and to ensure to women *“[t]he same right to enter into marriage... [and] the same right freely to choose a spouse and to enter into marriage only with their free and full consent.”*
- c.** In *Vishaka v. State of Rajasthan*, (1997) 6 SCC 241, at paras 7 & 15, the Hon’ble Supreme Court unequivocally held that the content of the fundamental rights contained in the Indian Constitution must be informed by India’s international human rights obligations. Accordingly, provisions of the CEDAW inform the

content of Articles 14, 15, 21. It follows that the principles of equality and dignity enshrined in the CEDAW apply on all fours in the Indian context.

- d. The Law Commission of India in its 205<sup>th</sup> Report has observed that there exists no scientific basis for such a distinction. A true copy of the relevant extracts of the 205<sup>th</sup> Report of the Law Commission on “*Proposal to Amend the Prohibition of Child Marriage Act, 2006 and Other Allied Laws*” dt. 5.02.2008 is annexed herewith and marked as **Annexure-1** (pp. 26 to 33).
- e. The Law Commission of India in its Consultation Paper on Reform of Family Law has stated that the differential ages for marriage “*simply contributes to the stereotype that wives must be younger than their husbands*”. A true copy of the relevant extracts of the Consultation Paper on Reform of Family Law published by the Law Commission dated 31.08.2018 is annexed herewith and marked as **Annexure-2** (pp. 34 to 37).
- f. The Committee on the Elimination of Discrimination against Women in its General Recommendations, 1994 has noted that:
- “Some countries provide for different ages for marriage for men and women. As such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial, these provisions should be abolished. In other countries, the betrothal of girls or undertakings by family members on their behalf is permitted. Such measures contravene not only the Convention, but also a women's right freely to choose her partner.”*
- A true copy of General Recommendation 21, 1994 of the Committee on the Elimination of Discrimination against Women is annexed herewith and marked as **Annexure-3** (pp. 38 to 47).
- g. Noting that more than 125 countries in the world have a uniform age of marriage for men and women, the National Human Rights Commission pursuant to the National Conference on Child Marriage held in New Delhi on

29-30 August 2018, recommended that India follow suit and bring uniformity in the minimum age limits. A true copy of the Recommendations of the National Human Rights Commission pursuant to the National Conference on Child Marriage held in New Delhi on 29-30 August 2018 is annexed herewith and marked as **Annexure-4** (pp. 48 to 59).

- h.** A Factsheet published by the World Health Organization states that women who get pregnant before the age of 20 “*face higher risks of low birthweight, preterm delivery, and severe neonatal conditions*”, and that newborns born to such mothers also face severe health risks. A true copy of the Factsheet on Adolescent Pregnancy dt. 23.02.2018 published by the World Health Organization is annexed herewith and marked as **Annexure-5** (pp. 60 to 65).

#### GROUNDS

The present Writ Petition is being filed, *inter alia*, on the following grounds:

- A.** That the right to live with dignity implies the right to not be perceived as unequal or inferior individuals in the society. In other words, it implies the right to an equal social standing and perception. The Hon’ble Supreme Court has held this in *National Legal Services Authority v. Union of India*, (2014) 5 SCC 438, *Pravasi Bhalai Sangathan v. Union of India*, (2014) 11 SCC 477 and *Jeeja Ghosh v. Union of India*, (2016) 7 SCC 761.
- B.** That the Supreme Court in *Joseph Shine v. Union of India*, (2019) 3 SCC 39 observed that a law that treats women differently based on gender stereotypes causes a direct affront to women’s dignity, violating Articles 14 and 21. Necessarily, such a law would also result in the non-fulfilment of India’s obligations under Article 5(a) and 16(1)(a) of the CEDAW.

- C. That any legal provision that perpetrates or reinforces discriminatory stereotypes against a class of persons is manifestly arbitrary and *a fortiori* violative of Articles 14, 15 and 21.
- D. That there are several counts on which the present discriminatory minimum age for marriage, for men and women, violates Articles 14, 15 and 21.
- E. That different age limit is based solely on stereotypes. The Law Commission has observed that there exists no scientific basis for such a distinction, and that the differential limit “*simply contributes to the stereotype that wives must be younger than their husbands*”. Likewise, the Committee on the Elimination of Discrimination against Women has noted that (**Annexure-3** at p. 40):

*“Some countries provide for different ages for marriage for men and women. As such provisions assume incorrectly that women have a different rate of intellectual development from men, or that their stage of physical and intellectual development at marriage is immaterial, these provisions should be abolished. In other countries, the betrothal of girls or undertakings by family members on their behalf is permitted. Such measures contravene not only the Convention, but also a women's right freely to choose her partner.”*

- F. That the differential age requirement is *de jure* unequal as between men and women and hence violates Articles 14, 15 and 21. Articles 14 & 15 of the Constitution prohibit the State from treating men and women differently unless it can show a reasonable basis for the classification it has created. Additionally, Article 16(1)(a) of the CEDAW requires States who are parties to the Convention to eliminate discrimination against women in all matters related to marriage, and to ensure that women have the same right to freely choose a spouse and enter into marriage with their full and free consent.

The Law Commission of India in its Consultation Paper on Reform of Family Law (**Annexure P-2** at p. 36) has stated as follows:

*“For equality in the true sense, the insistence on recognising different ages of marriage between consenting adults must be abolished.... The difference in age for husband and wife has no basis in law as spouses entering into a marriage are by all means equals and their partnership must also be of that between equals.”*

Therefore, the differential age limit violates the basic tenets of equality. It is discriminatory, manifestly arbitrary, offends Articles 14, 15, 21.

**G.** That the differential age requirement is *de facto* unequal as between men and women, and aggravates the social inequalities between them. The Committee on the Elimination of Discrimination against Women has stated as follows (**Annexure P-3** at p. 41):

*“Reports of States parties disclose that there are still countries where de jure equality does not exist. Women are thereby prevented from having equal access to resources and from enjoying equality of status in the family and society. Even where de jure equality exists, all societies assign different roles, which are regarded as inferior, to women. In this way, principles of justice and equality contained in particular in article 16 and also in articles 2, 5 and 24 of the Convention are being violated.”*

The differential requirement causes *de facto* discrimination. It is a social reality that women in a married relationship are expected to perform a subordinate role vis-à-vis the husband. Hence, there exists a power imbalance between the husband and wife in most marital relationships. This power imbalance is deeply aggravated by age differential, because age itself constitutes a hierarchy of power. A younger spouse is therefore expected to respect and be servile to her elder partner, which aggravates the pre-existing gender-based hierarchy in the marital relationship. So, impugned statutory provisions that bring about this direct and inevitable result of discrimination offends Articles 14, 15, 21.

**H.** That global trends point to a uniform age of marriage. More than 125 countries in the world have a uniform age of marriage for men and women. Noting this fact, the NHRC, pursuant to the National Conference on Child Marriage held

in New Delhi on 29-30 August 2018, recommended that India follow suit and bring uniformity in the minimum age limits (**Annexure P-4** at p. 57).

- I. That women have a fundamental right to be free to pursue studies and/or occupations after finishing school at the age of 18. Yet, it is a social reality that women are expected (and often also pressurised) to beget children immediately after marriage. They are also forced to take up household chores in accordance with their stereotypical 'roles' in the family. This harms their educational as well as economic pursuits, and often impinges on their reproductive autonomy as well. In this way, women's rights are often taken away under social pressure to get married and procreate. A higher minimum age will ensure more autonomy to women in every sense.
  - J. That as per the World Health Organization, women who get pregnant before the age of 20 "*face higher risks of low birthweight, preterm delivery, and severe neonatal conditions*". Further, newborns born to such mothers also face severe health risks. (**Annexure P-5** at p. 60).
  - K. That it is apparent that the minimum marriage age for men has traditionally be fixed at 21 because men are socially expected and encouraged to pursue education or/and occupations after finishing high school. In a constitutional republic, women should also have the same opportunity without the sword of marriage – which often means a loss of freedom – hanging over their heads.
10. Right to health is integral part of Article 21. It includes protection, prevention, cure and improvement of health and is a minimum requirement to enable a person to live with dignity. It is duty of the State to ensure creation and sustaining of conditions congenial to good health. Article 21 read with Article 39 and 47, casts duty on the State to take appropriate steps to improve health

of the citizens and provide necessary information/instruction in this regard. Every branch of the Executive has the constitutional obligation to extend his services with due expertise for protecting the health. Right to live as a human being is not insured by meeting only the animal needs of man but is secured only when he is assured of all facilities to develop himself and is free from restrictions, which inhibit the physical mental social and economic growth.

11. The NCRWC is a very prestigious Judicial Commission. Former Chief Justice of India Justice Vankatchalaih was the Chairman and Justice Sarkaria, Justice Jeevan Reddy and Justice Punnaiya were its members. Former attorney General Mr. Keshav Parasaran and Soli Sorabjee and Loksabha Secretary General Mr. Subhash Kashyap were its members. The Member of Parliament Sumitra Jee and late P.A. Sangama Ji were also its Member. Senior Journalist C.R. Irani and Mr. Abid Hussain, Ambassador to America, were also members.
12. The NCRWC after making immense efforts for two years and elaborate discussion had suggested addition of Article 47A in the Constitution and formulation of Population Control Law. Till now the Constitution has been amended 125 times, the decision of the Apex Court has been altered thrice, hundreds of new laws have been enacted, but population control Law, utterly required for country is not made, though it'll curtail more than 50% problems.
13. That this Hon'ble High Court has jurisdiction to entertain the present Writ Petition because the cause of action arises with reference to, *inter alia*, New Delhi, within which this Hon'ble Court exercises territorial jurisdiction.
14. The Petitioner craves the liberty to submit additional documents/affidavits and/or add, alter or amend the present petition at a later stage of the proceedings in public interest and in the interest of justice.

**PRAYER**

It is the most respectfully prayed that this Hon'ble Court may be pleased to issue a writ, order or direction or a writ in the nature of mandamus to:

- (a) direct and declare that the words "*and the age of the woman intending to be married shall not be under eighteen years*", occurring in Section 60(1) of the Indian Christian Marriage Act, 1872, are contrary to Articles 14, 15 and 21 of the Constitution of India, and hence void and inoperative;
- (b) direct and declare that the words "*and if a female, has not completed eighteen years of age*" occurring in Section 3(1)(c) of the Parsi Marriage and Divorce Act, 1936, are contrary to Articles 14, 15 and 21 of the Constitution of India, and hence void and inoperative;
- (c) direct and declare that the words "*and the female, the age of eighteen years*" occurring in Section 4(c) of the Special Marriage Act, 1954, are contrary to Articles 14, 15 and 21 of the Constitution, and hence void and inoperative;
- (d) direct and declare that the words "*and the bride, the age of eighteen years*" occurring in Section 5(iii) of the Hindu Marriage Act, 1955, are contrary to Articles 14, 15 and 21 of the Constitution, and hence void and inoperative;
- (e) direct and declare that the words "*and if a female, has not completed eighteen years of age*" occurring in Section 2(a) of the Prohibition of Child Marriage Act, 2006, are contrary to Articles 14, 15 and 21 of the Constitution of India, and hence void and inoperative;
- (f) pass such other order as this Hon'ble Court may deem fit and proper in facts of the case and to ensure a uniform age of marriage for men and women.

**14.08.2019**  
**New Delhi**

**PETITIONER-IN-PERSON**  
**(Ashwini Kumar Upadhyay)**

**IN THE HIGH COURT OF DELHI AT NEW DELHI**  
 WRIT PETITION (C) NO ..... OF 2019  
 (PIL UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)

**IN THE MATTER OF:**

Ashwini Kumar Upadhyay ...Petitioner

Verses

Union of India & Another ...Respondents

**AFFIDAVIT**

I Ashwini Kumar Upadhyay aged 44 years, S/o Sh. Suresh Chandra Upadhyay, Office at 15, M.C.Setalvad Chambers, Supreme Court, New Delhi-110001, R/o G-284, Govindpuram, Ghaziabad-201013, at present at New Delhi, do hereby solemnly affirm and declare as under:

1. I am sole petitioner above named and well acquainted with facts and circumstances of the case and as such competent to swear this affidavit.
2. I have filed the present writ petition as PIL. There is no personal gain, private motive or oblique reasons in filing this petition. It is totally bona-fide and purely in larger public interest and in the interest of justice.
3. I have gone through the Delhi High Court (Public Interest Litigation) Rules, 2010 and do hereby affirm that the PIL is in conformity thereof.
4. I have no personal interest in the litigation and neither myself nor any body in whom I am interested, would in any manner benefit from the relief sought in the present litigation save as a member of the General Public. The petition is not guided by self-gain or gain of any person, institution, body and there is no motive other than of Public Interest.
5. I have done whatsoever enquiry/investigation, which was in my power to do, to collect all data/material which was available and relevant for this Court to entertain the present petition. I further confirm that I have not concealed in the present petition any data/material/information which may have enabled this Court to form an opinion whether to entertain this petition or not and/or whether to grant any relief or not.
6. I have read and understood the contents of accompanying synopsis and list of dates pages (4- 10) and writ petition pages (11-21) and total pages (1-66) which are true and correct to my personal knowledge and belief.
7. Annexures filed along with this petition are true copies of their respective originals.
8. The averments made in this affidavit are true and correct to my personal knowledge and belief. No part of this Affidavit is false nor has anything material been concealed there from.

DEPONENT

(Ashwini Kumar Upadhyay)

**VERIFICATION**

I, the Deponent do hereby verify that the contents of above affidavit are true and correct to my personal knowledge and belief. No part of it is false nor has anything material been concealed there from. I solemnly affirm today i.e. 14<sup>th</sup> day of August 2019 at New Delhi.

DEPONENT

(Ashwini Kumar Upadhyay)

## APPENDIX

## SECTION 60 IN THE INDIAN CHRISTIAN MARRIAGE ACT, 1872

60. On what conditions marriages of 1[Indian] Christians may be certified.—Every marriage between 1[Indian] Christians applying for a certificate, shall, without the preliminary notice required under Part III, be certified under this Part, if the following conditions be fulfilled, and not otherwise:—

(1) the age of the man intending to be married 2[shall not be under 3[twenty-one years]], and the age of the woman intending to be married 4[shall not be under 5[eighteen years]];

(2) neither of persons intending to be married shall have wife or husband still living;

(3) in the presence of a person licensed under section 9, and of at least two credible witnesses other than such person, each of the parties shall say to the other— “I call upon these persons here present to witness that, I, A.B., in the presence of Almighty God, and in the name of our Lord Jesus Christ, do take thee, C.D., to be my lawful wedded wife or husband” or words to the like effect:

## SECTION 3 IN THE PARSI MARRIAGE AND DIVORCE ACT, 1936

3. Requisites to validity of Parsi marriages.—<sup>6</sup> [

(1) ] No marriage shall be valid if—

(a) the contracting parties are related to each other in any of the degrees of consanguinity or affinity set forth in Schedule I; or

(b) such marriage is not solemnized according to the Parsi form of ceremony called “Ashirvad” by a priest in the presence of two Parsi witnesses other than such priest; or [(c) in the case of any Parsi (whether such Parsi has changed his or her religion or domicile or not) who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age];

<sup>8</sup> [(2) Notwithstanding that a marriage is invalid under any of the provisions of subsection (1), any child of such marriage who would have been legitimate if the marriage had been valid, shall be legitimate.]

## SECTION 4 IN THE SPECIAL MARRIAGE ACT, 1954

4. Conditions relating to solemnization of special marriages.—Notwithstanding anything contained in any other law for the time being in force relating to the solemnization of marriages, a marriage between any two persons may be solemnized

under this Act, if at the time of the marriage the following conditions are fulfilled, namely:—

(a) neither party has a spouse living; 1[(b) neither party—

(i) is incapable of giving a valid consent to it in consequence of unsoundness of mind;

(ii) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(iii) has been subject to recurrent attacks of insanity 2[\*\*\*];]

(c) the male has completed the age of twenty-one years and the female the age of eighteen years; 3[(d) the parties are not within the degrees of prohibited relationship: Provided that where a custom governing at least one of the parties permits of a marriage between them, such marriage may be solemnized, notwithstanding that they are within the degrees of prohibited relationship; and] 4(e) where the marriage is solemnized in the State of Jammu and Kashmir, both parties are citizens of India domiciled in the territories to which this Act extends]. 5[Explanation.—In this section, “custom”, in relation to a person belonging to any tribe, community, group or family, means any rule which the State Government may, by notification in the Official Gazette, specify in this behalf as applicable to members of that tribe, community, group or family: Provided that no such notification shall be issued in relation to the members of any tribe, community, group or family, unless the State Government is satisfied—

(i) that such rule has been continuously and uniformly observed for a long time among those members;

(ii) that such rule is certain and not unreasonable or opposed to public policy; and

(iii) that such rule, if applicable only to a family, has not been discontinued by family.]

#### SECTION 5 IN THE HINDU MARRIAGE ACT, 1955

5. Conditions for a Hindu marriage. A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:—

(i) neither party has a spouse living at the time of the marriage;

<sup>2</sup> [(ii) at the time of the marriage, neither party—

(a) is incapable of giving a valid consent to it in consequence of unsoundness of mind;

(b) though capable of giving a valid consent, has been suffering from mental disorder of such a kind or to such an extent as to be unfit for marriage and the procreation of children; or

(c) has been subject to recurrent attacks of insanity<sup>3</sup> [\*\*\*];]

(iii) the bridegroom has completed the age of <sup>4</sup> [twenty-one years] and the bride, the age of <sup>5</sup>[eighteen years] at the time of the marriage;

(iv) the parties are not within the degrees of prohibited relationship unless the custom or usage governing each of them permits of a marriage between the two;

(v) the parties are not sapindas of each other, unless the custom or usage governing each of them permits of a marriage between the two;

(i) A marriage between a Hindu man who converted as Christian and a Christian lady in Hindu form is not a valid marriage. According to section 5 of the Act marriage can be solemnised between two Hindus; Vijayakumari v. Devabalan, AIR 2003 Ker 363.

(ii) To draw an inference merely from the fact that the spouses had no co-habitation for a short period of about a month, is neither reasonable nor permissible. To brand the wife as unfit for marriage and procreation of children on account of the mental disorder, it needs to be established that the ailment suffered by her is of such a kind or such an extent that it is impossible for her to lead a normal married life; R. Lakshmi Narayan v. Santhi, AIR 2001 SC 2110.

#### **SECTION 2 IN THE PROHIBITION OF CHILD MARRIAGE ACT, 2006**

2. Definitions.-In this Act, unless the context otherwise requires,-

(a) "child" means a person who, if a male, has not completed twenty-one years of age, and if a female, has not completed eighteen years of age;

(b) "child marriage" means a marriage to which either of contracting parties is child;

(c) "contracting party", in relation to a marriage, means either of the parties whose marriage is or is about to be thereby solemnised;

(d) "Child Marriage Prohibition Officer" includes the Child Marriage Prohibition Officer appointed under sub-section (1) of section 16;

(e) "district court" means, in any area for which a Family Court established under section 3 of the Family Courts Act, 1984 (66 of 1984) exists, such Family Court, and in any area for which there is no Family Court but a city civil court exists that court and in any other area, the principal civil court of original jurisdiction and includes and other civil court which may be specified by the State Government, by notification in the Official Gazette, as having jurisdiction in respect of the matters dealt with in this Act;

(f) "minor" means a person who, under the provisions of the Majority Act, 1875 (9 of 1875) is to be deemed not to have attained his majority.

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**IN THE HIGH COURT OF DELHI AT NEW DELHI**  
**WRIT PETITION (CIVIL) No. \_\_\_\_\_ of 2019**  
**[Under Article 226 of the Constitution of India]**

**IN THE MATTER OF:**

Ashwini Kumar Upadhyay

...Petitioner

Versus

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**PETITIONER-IN-PERSON**  
**(Ashwini Kumar Upadhyay)**  
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New Delhi  
 14-08.2019