

IN THE SUPREME COURT OF INDIA  
ORIGINAL JURISDICTION

TRANSFER PETITION (CIVIL) NO.....OF 2020  
[TRANSFER PETITION UNDER ARTICLE 139A (1) OF THE  
CONSTITUTION READ WITH ORDER XLI OF THE SUPREME  
COURT RULES 2013, SEEKING TRANSFER OF WRIT PETITION  
(CIVIL) NO 8905 OF 2019 PENDING IN THE DELHI HIGH COURT  
AND D.B. CIVIL WRIT PETITION NO. 13784 OF 2019 PENDING IN  
THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JODHPUR]

**IN THE MATTER OF WP(C) 8905/2019, DELHI HIGH COURT**

NAME OF PARTIES	HIGH COURT	SUPREME COURT
Ashwini Kumar Upadhyay,	Petitioner	Petitioner
<b>VERSUS</b>		
Union of India, Through the Secretary, Ministry of Women & Child Development, Shastri Bhawan, New Delhi-110001	Respondent-1	Respondent-1
Law Commission of India Through Chairman /Secretary, 4 <sup>th</sup> Floor, Loknayak Bhawan, Khan Market, New Delhi-110001,	Respondent-2	Respondent-2

**IN THE MATTER OF D.B. CIVIL WRIT NO. 13784 OF 2019, HIGH  
COURT OF JUDICATURE FOR RAJASTHAN, JODHPUR**

NAME OF PARTIES	HIGH COURT	SUPREME COURT
Abdul Mannan	Petitioner	Respondent-4
<b>VERSUS</b>		
Union of India, Through Secretary, Ministry of Women & Child Development, Shastri Bhawan, New Delhi-110001	Respondent-1	Respondent-1

Law Commission of India Through Chairman /Secretary, 4 <sup>th</sup> Floor, Loknayak Bhawan, Khan Market, New Delhi-110001,	Respondent-2	Respondent-2
State of Rajasthan Through the Secretary, Ministry of Women & Child Development, Secretariat, Jaipur- 302001,	Respondent-3	Respondent-3

TRANSFER PETITION UNDER ARTICLE 139A (1) OF THE CONSTITUTION READ WITH ORDER XLI OF THE SUPREME COURT RULES 2013, SEEKING TRANSFER OF WRIT PETITION (CIVIL) NO 8905 OF 2019 PENDING IN THE DELHI HIGH COURT AND D.B. CIVIL WRIT PETITION NO. 13784 OF 2019 PENDING IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN, JODHPUR

To,  
THE HON'BLE CHIEF JUSTICE  
AND LORDSHIP'S COMPANION JUSTICES  
OF THE HON'BLE SUPREME COURT OF INDIA  
HUMBLE PETITION OF ABOVE-NAMED PETITIONER  
THE MOST RESPECTFULLY SHOWETH AS THE UNDER:

1. Petitioner is filing this transfer petition under Article 139A (1) of the Constitution read with order XLI of the Supreme Court Rules 2013, seeking transfer of Writ Petition (Civil) No 8905 of 2019, pending in the Delhi High Court and D.B. Civil Writ Petition No. 13784 of 2019 pending in the High Court of Judicature for Rajasthan, Jodhpur; seeking '*Uniform Minimum Age of Marriage for Men and Women*', in order to secure gender justice, gender equality and dignity of women, in spirit of Articles 14, 15, 21 of the Constitution of India and various International Conventions in this regard.

2. Petitioner has not filed any other similar petition either in this Court or in any other Court seeking same or similar directions as prayed.

3. Petitioner's full name is Ashwini Kumar Upadhyay. Residence at:

. Petitioner is an Advocate & social-political activist and striving for the development of downtrodden people.

4. Present TP has been filed to challenge the discriminatory 'minimum age' limit for marriage for men-women. While men are permitted to get married only at the age of 21, women are allowed to get married when they are 18. Distinction is based in patriarchal stereotypes, has no scientific backing, perpetrates *de jure* and *de facto* inequality against women, and goes against the global trends.

5. The facts constituting the present cause of action are as follows:

a. Legislations governing marriage viz. Indian Christian Marriage Act, 1872, Parsi Marriage and Divorce Act, 1936, Special Marriage Act, 1952, Hindu Marriage Act, 1955 and Prohibition of Child Marriage Act, 2006, all contain a condition regarding eligibility for marriage,

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.

- b.** India sign Convention on Elimination of All Forms of Discrimination Against Women (**CEDAW**) on 30.07.1980 and ratified 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) specifically commands States 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. Law Commission in its 205<sup>th</sup> Report has observed that there exists no scientific basis for such a distinction. Relevant extracts of 205<sup>th</sup> Report of Law Commission on “*Proposal to Amend the Prohibition of Child Marriage Act, 2006 and Other Allied Laws*” dated 5.02.2008 is annexed herewith and marked as **Annexure-1. [pg. 22 - 29]**
- e. Law Commission 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*”. Relevant extracts of the Consultation Paper on Reform of Family Law published by Law Commission dated 31.08.2018 is annexed herewith and marked as **Annexure-2. [pg. 30 - 33]**
- 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, 1994 of the Committee on the Elimination of Discrimination against Women is annexed herewith and marked as **Annexure-3. [pg. 34 - 44]**

**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 NHRC pursuant to the National Conference on Child Marriage held in New Delhi on 29-30 August 2018 is annexed herewith & marked as **Annexure-4. [pg. 45 - 56]**

**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 dated

23.02.2018 published by the World Health Organization is annexed herewith and marked as **Annexure-5. [pg. 57 - 62]**

6. On 14.8.2019, petitioner filed WP(C)8905/2019 in Delhi High Court [**Annexure P-6, pg. 63-94**] and the prayers of the writ petition are:

- a) direct and declare that 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 14,15,21 of the Constitution, 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 S.3(1)(c) of Parsi Marriage and Divorce Act, 1936, are contrary to Articles 14, 15, 21. hence void;
- c) direct and declare that words “*and the female, the age of eighteen years*” occurring in S.4(c) of Special Marriage Act, 1954, are contrary to Articles 14, 15, 21 of the Constitution, hence void and inoperative;
- d) direct and declare that the words “*and the bride, the age of eighteen years*” occurring in S.5(iii) of Hindu Marriage Act, 1955, are contrary to Articles 14, 15, 21 of the Constitution, hence void and inoperative;
- e) direct and declare that the words “*and if a female, has not completed eighteen years of age*” occurring in S.2(a) of Prohibition of Child Marriage Act, 2006, are contrary to Articles 14, 15, 21. hence void;

7. On 19.8.2019, the Delhi High Court issues notice. Copy of the Order dated 19.8.2019 in WP(C)8905/2019 is **Annexure P-7. [pg. 95]**
8. On 12.9.2019, Mr. Abdul Mannan filed CW/13784/2019 in Rajasthan High Court [**Annexure P-8, pg. 96-124**] with the prayers as under:
- a) direct and declare that 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 14,15,21 of the Constitution, 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 S.3(1)(c) of Parsi Marriage and Divorce Act, 1936, are contrary to Articles 14, 15, 21. hence void;
  - c) direct and declare that words “*and the female, the age of eighteen years*” occurring in S.4(c) of Special Marriage Act, 1954, are contrary to Articles 14, 15, 21 of the Constitution, hence void and inoperative;
  - d) direct and declare that the words “*and the bride, the age of eighteen years*” occurring in S.5(iii) of Hindu Marriage Act, 1955, are contrary to Articles 14, 15, 21 of the Constitution, hence void and inoperative;
  - e) direct and declare that the words “*and if a female, has not completed eighteen years of age*” occurring in S.2(a) of Prohibition of Child Marriage Act, 2006, are contrary to Articles 14, 15, 21. hence void;

9. On 5.2.2020, the Rajasthan High Court issues notice. Copy of Order dated 5.2.2020 in CW/13784/2019 is **Annexure P-9. [pg. 125]**

### **G R O U N D S**

Petitioner is filing this Transfer Petition on the following grounds:

- A.** Because the fundamental basis of the legal system is that the dispute should be finally settled and when the same/similar facts are placed in different petitions before different Courts for the judicial test, there is a likelihood of divergence of views, different interpretations and contradictory appreciation of the materials placed before such Courts and in such a case, the aspiration of litigants to find finality to the disputes may be reduced more to a mirage than reality.
- B.** Because the grounds taken in the above stated writ petitions before different High Courts are more or less common in nature and the factual and legal issues are more or less the same or similar.
- C.** Because these similar PILs are pending in two High Courts so respondents may face extreme difficulty in effectively conducting the same in different Courts. For this reason also, all these matters require to be withdrawn from the respective High Courts and be transferred to this Hon'ble Court so that all grounds-contentions can be decided by common judgment in order to ensure uniformity

in directions. Moreover, the Judgment by this Hon'ble Court will be binding for all and also save precious time of the judicial system.

- D.** Because if the aforesaid writ petitions having same/similar prayers are not withdrawn from various High Courts and transferred to this Hon'ble Court, then respondents would be put to wastage of the resources, manpower and also the public exchequer.
- E.** Because there is every possibility that different judgments or views may be taken by different High Courts in the above matters and to avoid this confusing situation, the cases may be withdrawn from the High Courts and be transferred to and decided by this Court.
- F.** Because in the interest of justice it would be appropriate that all the matters be heard at a single place preferably by this Hon'ble Court so that divergent orders from various High Courts may be avoided and the said issue may be finally settled by this Hon'ble Court.
- G.** Because right to live with dignity implies right to not be perceived as unequal or inferior in the society. In other words, it implies right to equal social standing and perception. Apex Court has held this in National Legal Services Authority[(2014) 5 SCC 438] Pravasi Bhalai Sangathan[(2014) 11 SCC 477] Jeeja Ghosh [(2016) 7 SCC 761].

- H. Because the Court in Joseph Shine Case [(2019) 3 SCC 39] held that the law that treats women differently based on gender stereotypes causes direct affront to women's dignity, violating Articles 14,15,21.
- I. Because 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.
- J. Because there are several counts on which present discriminatory minimum age for marriage, for men and women, violates Articles 14, 15 and 21 of the Constitution and international conventions.
- K. Because 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*".
- L. Because the Committee on 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.”

- M.** Because differential age requirement is *de jure* unequal as between men and women and hence violates Articles 14, 15 and 21.
- N.** Because 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.
- O.** Because 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 and similar right like men to freely choose a spouse and enter into marriage with their full and free consent.
- P.** Because the Law Commission of India in its Consultation Paper on Reform of Family Law has stated that: “For equality in the true sense, the insistence on recognizing 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.”

- Q.** Because the differential age limit for marriage violates the basic tenets of equality. It is discriminatory, manifestly arbitrary, offends Articles 14, 15, 21 of the Constitution of India.
- R.** Because differential age requirement is *de facto* unequal as between men and women, and aggravates the social inequalities between them. **CEDAW** has stated that: *“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.”*
- S.** Because differential requirement causes *de facto* discrimination. It is a social reality that women in a married relationship are expected to perform subordinate role vis-à-vis the husband. Hence, there exists power disparity between husband-wife in most marital relationship. This power imbalance is deeply aggravated by age differential, because age itself constitutes hierarchy of power. A younger spouse is therefore expected to respect and be servile to her elder partner,

which aggravates pre-existing gender-based hierarchy in marital relationship. So, impugned provisions that bring about this direct and inevitable result of discrimination offends Articles 14, 15, 21.

- T. Because global trends point to a uniform age of marriage. More than 125 countries have uniform age of marriage for men-women. Noting this fact, NHRC, pursuant to 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.
- U. Because 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.
- V. Because 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 short term and long term physical and mental health risks.

- W.** Because minimum marriage age for men has been fixed 21 so they can pursue higher education, at least graduation, after finishing the schooling. 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.
- X.** Because 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. Hence, 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.

- Y. Because being custodian of the Constitution and protector of fundamental rights, the Court can pass appropriate directions.

### **PRAYERS**

Keeping in view the above stated facts and circumstance; it is the most respectfully prayed that this Hon'ble Court may be pleased to:

- a) transfer WP(C) 8905 of 2019 (pending in the Delhi High Court) and CW/13784/2019 (pending in Rajasthan High Court) and similar matters to this Hon'ble Court and decide them collectively, in order to secure gender justice, gender equality and dignity of women;
- b) in the alternative, direct the Centre Government to take appropriate steps to remove the anomalies in the minimum age of marriage and make it '*gender neutral, religion neutral and uniform for all citizens*' in spirit of the Articles 14, 15, 21 and International Conventions;
- c) alternatively, being custodian of the Constitution and protector of the fundamental rights, declare that the *discriminatory minimum age of marriage* offends Articles 14,15,21 & international conventions  
Hence, minimum age of marriage shall be 21 years for all citizens;

**d)** pass such other order(s) or direction(s) as this Hon'ble Court may deem fit in the facts and circumstances of the case & secure gender justice, gender equality and dignity of women and allow the cost.

**26.10.2020**

***ASHWANI KUMAR DUBEY***

**NEW DELHI**

**ADVOCATE FOR PETITIONER**

## APPENDIX

### **ARTICLE 14 OF THE CONSTITUTION OF INDIA**

14. Equality before law, The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India

### **ARTICLE 15 OF THE CONSTITUTION OF INDIA**

15. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth

(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them

(2) No citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to

(a) access to shops, public restaurants, hotels and palaces of public entertainment; or

(b) the use of wells, tanks, bathing ghats, roads and places of public resort maintained wholly or partly out of State funds or dedicated to the use of the general public

(3) Nothing in this article shall prevent the State from making any special provision for women and children

(4) Nothing in this article or in clause ( 2 ) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes

### **ARTICLE 21 OF THE CONSTITUTION OF INDIA**

21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law

### **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 married shall have wife/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 sub-section (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;
- (iii) 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 SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

TRANSFER PETITION (CIVIL) NO. OF 2020

[TRANSFER PETITION UNDER THE ARTICLE 139 A(1) READ WITH  
ORDER XLI OF THE SUPREME COURT RULES 2013]

IN THE MATTER OF:

ASHWINI KUMAR UPADHYAY & OTHERS .....PETITIONER

VERSUS

UNION OF INDIA & OTHERS .....RESPONDENTS

CERTIFICATE

1. It is certified that the prayers of writ petition WP(C)8905/2019, pending in the Delhi High Court and writ petition CW/13784/2019, pending in the Rajasthan High Court are similar.
2. It is certified that the questions raised in the above stated petitions are the substantial questions of general importance in terms of Article 139A(1) of the Constitution of India.
3. It is certified that similar writ petition WP(C) 869/2020 is pending in this Hon'ble Court for detailed deliberations.
4. It is submitted that similar facts are placed in above petitions and there is likelihood of divergence of views, different interpretations and contradictory appreciation of the materials placed before High Courts and in such case, the aspiration of litigants to find finality to the issues may be reduced more to a mirage than reality. Hence, the Court may be pleased to transfer above stated writ petitions.

28.10.2020

ASHWANI KUMAR DUBEY

NEW DELHI

ADVOCATE FOR PETITIONER

IN THE SUPREME COURT OF INDIA

ORIGINAL JURISDICTION

TRANSFER PETITION (CIVIL) NO.        OF 2020

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PAPER BOOK

(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR PETITIONER - ASHWANI KUMAR DUBEY

**DIARY NO.....OF 2020**

**DECLARATION**

All defects have been duly cured. Whatever has been added/deleted/modified in this petition, is the result of curing of the defects and nothing else. Except curing the defects, nothing has been changed. Paper books are complete in all respects.

**ADVOCATE FOR PETITIONER**

**(ASHWANI KUMAR DUBEY)**

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**INDEX OF RECORD OF PROCEEDINGS**

<b>Sr. No.</b>	<b>Date of Record of Proceedings</b>	<b>Page</b>
1		
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		

INDEX				
S.N	Particulars of documents	Page no. to which it belongs		Remark
		Part-I (Contents of Paper Book)	Part-II (Contents of file alone)	
(i)	(ii)	(iii)	(iv)	(v)
1	Listing Performa	A-A1	A-A1	
2	Cover Page- Paper Book		A-2	
3	Record of Proceedings		A-3	
4	Defect List		A-4	
5	Note Sheet		NS1	
6	Synopsis & List of Dates	B-K		
7	Transfer Petition & Affidavit	1-17		
8	Appendix : Articles 14, 15, 21 and the provisions related to minimum age of marriage	18-21		
9	Annexure P-1 : Extract of Law Commission Report-205	22-29		
10	Annexure P-2: Extract of Law Commission Report on Reform of Family Law	30-33		
11	Annexure P-3: General Recommendations of the Committee on Elimination of Discrimination Against Women 1994	34-44		
12	Annexure P-4: NHRC Minutes of Meeting dated 29-30 August 2018	45-56		
13	Annexure P-5: WHO Report on Adolescent Pregnancy	57-62		
14	Annexure P-6: Copy of Writ Petition, WP(C)8905/2019	63-94		
15	Annexure P-7: HC Order in WP(C)8905/2019, 19.8.2019	95		
16	Annexure P-8: Copy of Writ Petition, CW/13784/2019	96-124		
17	Annexure P-9: HC Order in CW/13784, 5.2.2020	125		
18	F/M		126	
19	V/A		127	
20	ID Proof		128	

## PERFORMA FOR FIRST LISTING

### Section: PIL

The case pertains to (Please tick / check the correct box):

- Central Act: Constitution of India
  - Section: Articles 14, 15, 21, 139A of the Constitution
  - Central Rule: N/A
  - Rule No: N/A
  - State Act: N/A
  - Section: N/A
  - State Rule: N/A
  - Rule No: N/A
  - Impugned Interim Order: N/A
  - Impugned Final Order / Decree: N/A
  - High Court: N/A
  - Name of Judges: N/A
  - Tribunal / Authority Name : N/A
- 

1. Nature of Matter: Civil
2. (a) Petitioner / Appellant : Ashwini Kumar Upadhyay  
(b) Email ID: aku.adv@gmail.com,  
(c) Phone No: 08800278866,
3. (a) Respondent: Union of India and others  
(b) Email ID: N/A  
(c) Phone No: N/A
4. (a) Main Category: 08 PIL Matters  
(b) Sub Category: 0818, others
5. Not to be listed before: N/A

- 6(a). Similar disposed of matter: No similar matter
- 6(b). Similar pending matter: No similar matter
7. Criminal Matters: N/A
- (a) Whether accused / convicted has surrendered: N/A
  - (b) FIR / Complaint No: N/A
  - (c) Police Station: N/A
  - (d) Sentence Awarded: N/A
  - (e) Period of Sentence Undergone including period of detention / custody under gone: N/A
8. Land Acquisition Matters:
- (a) Date of Section 4 Notification: N/A
  - (b) Date of Section 6 Notification: N/A
  - (c) Date of Section 17 Notification
9. Tax Matters: State the Tax Effect: N/A
10. Special Category: N/A
11. Vehicle No in case of motor accident claim matters: N/A

Date: 26.10.2020

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## SYNOPSIS & LIST OF DATES

Petitioner is filing this Transfer Petition under Article 139A(1) seeking transfer of WP(C)8905/2019, pending in Delhi High Court, and CW/13784/2019, pending in Rajasthan High Court. Petitioner is compelled to approach this Hon'ble Court as more PILs may be filed in other High Courts seeking '*Uniform Minimum Age of Marriage for Men and Women*'. Therefore, in order to avoid multiplicity of the litigations & conflicting views on interpretation of Articles 14, 15, 21 and judgments on gender justice and gender equality, the Court may be pleased to transfer these PILs and decide them collectively.

Through WP(C)8905/2019, petitioner challenged blatant ongoing discrimination against women, that is discriminatory 'minimum age of marriage' for men and women. While men are permitted to get married at the age of 21, women are married when they are just 18. The distinction is based on patriarchal stereotypes, has no scientific backing, perpetrates *de jure* and *de facto* inequality against women, and goes completely against the global trends.

Following 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.

The differential bar discriminates against women thus contravenes the fundamental principles of gender equality, gender justice and dignity of women and offend Articles 14, 15, 21 of the Constitution and international conventions. This is so for the following reasons.

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

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 said principles to drive home the constitutional point.

**Differential limit is based on and reinforces patriarchal and**

**stereotypical notions about women. For this reason alone, it completely contravenes the principles of gender justice, gender equality and dignity of women 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.

Differential age limit is based solely on stereotypes. The Law Commission has observed that there exists no scientific basis for such distinction (**Annex-1,pg.22**), and that differential limit “*simply contributes to the stereotype that wives must be younger than their*

*husbands*” (**Annex-2,pg.30**). Likewise, Committee on 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 women's right freely to choose her partner.” (**Annex-3, pg.34**)

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.

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

Articles 14-15 prohibit the State from treating men and women differently unless it can show a reasonable basis for 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.”

Law Commission in its Consultation Paper has stated as follows:

*“For equality in true sense, the insistence on recognizing 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 marriage are by all means equals and their partnership must also be of that between equals.”(Annexure-2, pg.30)*

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.

**III. Differential limit is *de facto* unequal as between men-women. It aggravates social inequality, thereby breaching Articles 14,15,21.**

Committee on Elimination of Discrimination against Women state:

*“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, pg.34)*

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.

#### **IV. Global trends point in the same direction.**

More than 125 countries have a uniform age of marriage for men and women. Noting this fact, 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 minimum age limits (**Annex P-4, pg. 45**).

#### **V. The discriminatory provisions should be read down to equalize minimum age of marriage for both men and women at 21 years.**

To protect women's fundamental rights, minimum age of marriage be equalized 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 pressurized) 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 World Health Organization, women who get pregnant before the age of 20 “*face higher risks of low birth weight, preterm delivery, severe neonatal conditions*”. Further, newborns born to such mothers face severe health risks. (**Annex P-5, pg.57**).

**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 equalize the minimum age of marriage for both men and women at 21 years.

<b>Date</b>	<b>Event</b>
18.07.1872	The Indian Christian Marriage Act, 1872 was passed. Section 60 states that: “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,

	<p>and not otherwise: ...</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.</p> <p>As per Section 3(1): “No marriage shall be valid if – ...</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>Special Marriage Act, 1954 was passed. Section 4(c):</p> <p>“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 following conditions are fulfilled namely: ...</p> <p><i>(c) male has completed the age of twenty-one years and the female the age of eighteen years; ...”</i></p>

18.05.1955	The Hindu Marriage Act, 1955 was passed. Section 5:  <i>“A marriage may be solemnized between any two Hindus, if the following conditions are fulfilled, namely:  (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>
09.07.1993	India ratified the CEDAW.
10.01.2007	Prohibition of Child Marriage Act, 2006 was passed.  Section 2:(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; ...
14.8.2019	Petitioner filed PIL seeking Uniform Age of Marriage
19.8.2019	Delhi HC issues notice in WP(C)8905/2019
12.9.2019	Abdul Mannan filed PIL seeking Uniform Marriage Age
05.2.2020	Rajasthan HC issues notice in CW/13784/2019
26.10.2020	Different minimum age of marriage for men-women is against the doctrine of gender justice gender equality & dignity of women, guaranteed under Article 14, 15, 21.  Two PILs on pending on same issue. Hence, this TP.