

Age of Marriage: A Position Paper

By Khawar Mumtaz, Sohail Warraich, Shariq Imam *et al.*

**Committee for Standardisation
of Female Age of Marriage**

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Executive Summary

1. Introduction

Marriage sets the course of a girl's reproductive life in Pakistan. While the age of first marriage for women overall has been increasing in the country 13% of girls are married by the time they are 15 and 40% by age 18. With laws on minimum marriage age poorly enforced and birth registration not widely practiced or records maintained it is difficult to determine the correct age of girls at the time of marriage. Thus large swathes of female youth are left out of the education and development mainstream because of the prevailing practice of young age marriages.

2. Young age marriage: the impacts

Health impact: A direct consequence of young age marriage is early childbirth and greater vulnerability to related complications especially morbidities like fistula. The top three causes for maternal death in Pakistan are post-partum haemorrhage (excessive bleeding), sepsis (major infection) and eclampsia (hypertensive disorder). All three are found to have greater prevalence in teen pregnancies due to biological and physiological factors. Teenage mothers are in greater danger of not gaining sufficient weight, suffering from vitamin deficiencies, becoming anemic and developing preeclampsia and as their pelvic bones do not reach their maximum size until about the age of 18, the teenage mother may not be able to have vaginal delivery of a normal-size baby. Babies born to teenage mothers are more likely to die in the first year of life compared with babies born to mothers older than 20 years of age.

Social impact: When married early, girls are in effect denied opportunities of education and broadening their horizons are ill prepared for their roles as informed mothers, and inadequately equipped to face livelihoods demands. They are also denied the right recognized in religion, to “free and full” consent to a marriage. Unable to refuse

¹ **Khawar Mumtaz, Sohail Waraich and Shariq Imam** are the principal authors of this paper. Dr. Yasmeen S. Qazi and Iftikhar Ahmed, and Mehreen Baloch, Kamyla Marvi, and Insha Hamdani, contributed short papers collating information on the health, and cultural and religious impacts respectively of young age marriages. Feedback and inputs from all members of the Committee for Standardization of Female Age of Marriage under the Chairpersonship of Secretary Women Development Department, Government of Sindh has shaped the paper.

unprotected sex, these young women are exposed to sexually transmitted diseases placing their babies too at high risk. Most are also subjected to domestic violence.

There is a proven positive correlation between education, age of marriage and reproductive health behaviour. Women with higher education are found to enter marriage later than those with secondary education, have their first birth later, and are ten times less likely to start early childbearing. There is also a dramatic increase in contraceptive use with women's education and their knowledge of HIV-AIDS and its prevention is also higher. When denied education due to early marriage their full potential is not realised.

3. Drivers of young age marriages

Customary practices: like: *pait likkhi, watta satta, vulva, etc* and others whereby women are given in appeasement and often result in child as well as forced marriages, like: *vani* in Punjab, *sang chati* in Sindh, *swara* in NWFP, and *ljai or khasaniye soor* in Baluchistan. Despite the illegality of the custom under the law it continues to be practiced. Discrimination against women is evident in practices marriage of young boys in Sindh to much older women in order to protect family property, or that of "marriages with the Quran." Women end up suffering in the former situation where the boys on growing older remarry and in the latter by remaining unmarried for their entire lives.

Poverty: Poverty contributes significantly to early marriage both directly and indirectly. In the face of poverty, especially when combined with conflict, families get young girls married as a measure of transferring the economic burden. Indirectly, poverty prevents parents from sending daughters to school thus depriving them the possibility of information and choices.

Gender Discrimination: engrained views regarding girls result in discrimination viewed as *amanat* (in safe-keeping) till they go to their marital home which is seen as their real home. The compulsion is therefore to marry daughters young to pass on the responsibility as early as possible.

Conflicting laws and inadequate implementation contribute to the failure in preventing under age/child marriages.

4. Laws related to Age of Marriage

The legal Age of Marriage in Pakistan is 18 for males and 16 for females with penal sanctions for contracting under-age marriage, however once entered into, such unions remain valid. The laws have direct implications for child marriages are: *Child Marriage Restraint Act, 1929; Dissolution of Muslim Marriage Act, 1939; Muslim Family Laws Ordinance, 1961; Offence of Zina (Enforcement of Hudood) Ordinance, 1979; Women Protection Act, 2006.*

The amendments in the Zina Ordinance by the Women Protection Act, 2006 have reduced the possibilities of conflict of laws. The amendments in the Zina Ordinance by the Women Protection Act, 2006 have reduced the possibilities of conflict of laws mentioned above and have provided the space to include marital rape as an offence with the potential to deter child marriages.

Measures to combat early age marriages: For the Muslim majority, MFLO, 1961 and rules under it attempt to prevent underage marriages. The standard *nikahnama* formulated under MFLO rules provides columns to ensure consent in marriage and bars underage marriage from registration. However these measures have been unable to prevent such marriages of females, because of non registration of marriages combined with inefficient working of the *nikah* registrars who often fail to ensure true compliance of law. Three years ago the government issued a marriage registration form to record marriages for the registration of marriages under the NADRA law. It is however not a substitute for the *nikahnama*.

The Child Marriage Restraint (Amendment) Act, 2009 tabled in the National Assembly in August 2009, seeks to “remove the gender disparity in age” of marriage of males and females among other provisions and make 18 years as the minimum age of marriage for both. The proposed procedural changes will go a long way in strengthening the implementation of this law. Once the age of marriage for females is raised to 18 years under the CMR (Amendment) Bill amendments will be required in the option of puberty provision in the Dissolution of Muslim Marriage Act 1939 to provide effective relief to the victims of under age marriages.

5. Role of the judiciary

Option of Puberty: Case law reveals that the courts have upheld the right of the woman to repudiate a marriage performed by her father, guardian or mother in her minority.

Jactitation: Plaints of jactitation (to cease claim of marriage where in fact marriage does not exist) are filed with success in cases like that of *watta satta* (exchange marriages) where actual *nikah* of minor females is not performed. The courts especially the higher courts have in the majority of cases jealously guarded women’s right of free consent for marriage.

Customary practices; In 2002, the Chief Justice of Pakistan declared *vani* and *swara* as un-Islamic. In March 2004, the Law and Justice Commission stated that all individuals who contract a marriage by *vani* and *swara* through a *jiirga* or *panchayat* would be liable to rigorous imprisonment. In January 2005 section 310-A was inserted in the Pakistan Penal Code which made giving a female in marriage as compensation for compromise in murder cases an offence with three to ten years imprisonment. Anti Women Practices (Criminal Law Amendment) Act, 2008 was moved in the National Assembly in June 2008 (still pending discussion). The Bill criminalises forced marriages and marriage of women with the Holy Quran.

6. Pakistan’s International Commitments

Pakistan has signed and/or ratified a number of binding international commitments like the UN Convention on the Rights of the Child (CRC) 1990 and CEDAW, 1979 and non-binding ones like the U.N. Human Rights Charter (1945), the Beijing Declaration (1995), ICPD (1994) and MDGs that reaffirm faith in fundamental human rights, the equal rights of men and women, etc.

The two binding Conventions --CRC and CEDAW have direct bearing on the age of marriage. The CRC prohibits States parties from permitting to give validity to a marriage between persons who have not attained their majority. CEDAW defines discrimination against women and its Article 16 states that “the betrothal and marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age of marriage.” It further recommends the minimum of age of marriage as 18 years for both girls and boys.

The International Human Rights Declaration, 1948 though non-binding is recognized as establishing standards that all members of the UN have agreed to follow. It states that marriage should be “entered only with the ‘free and full consent’ of the intending spouses.” In order to meet its targets under the Millennium Development Goals Pakistan will have to ensure equal rights of its female citizens to opportunities like education, security from violence and decision making in marriage.

6. Conclusions and Recommendations

It is clear from the discussion above that under age or even young age marriages (under 20) have a direct bearing on the lives of women, keeping them on the margins, putting their health at risk and stunting their ability to fulfil their potential as human beings and citizens. Early age marriages not only constitute the violation of human rights but also act as a barrier to development.

Pakistan lags in meeting its commitments by not bringing laws in conformity with its international commitments, and not removing the conflict in the age of majority whereby females attain majority at 18 for voting but for marriage are seen as majors at 16 years or puberty.

It is equally obvious that the laws as they stand do not provide protection against under age marriages despite the statutory provision of option of puberty both for females and males. Young age marriages continue due to the combination of poverty, absence of accessible educational facilities, embedded gender discrimination and low value attributed to females.

Recommendations:

- Expedite the passage of the Child Marriage Restraint (Amendment) Act, 2009 to legislate equal minimum age of marriage for males and females at 18 years and remove the anomalies in the law.
- Make appropriate amendments in the Dissolution of Muslim Marriages Act 1939 to reflect the amendment in CMRA and to raise the age of option of puberty to 18 years and the cut-off age for exercising the option to 19 years. A provision to make under age marriage a valid basis for divorce and provide statutory relief to victims of *swara*, *vani* and other similar practices.
- Ensure the registration of all births and marriages as per provisions of NADRA, Ordinance 2000 through simplified procedures Implement the ban on verdicts of *jirgas* and *panchayats*.

- Amend the rules under MFLO, 1961 to provide for an appropriate qualification and criteria for the issuance of licenses to *nikah* registrars, and institute training programmes for them.
- Identify support within existing structures to ensure that law of unified age 18 is implemented, after it is passed.
- Make educational facilities accessible to girls at primary level and beyond. The PDHS reveals that secondary education enhances the capacity to exercise reproductive choices.

Age of Marriage: A Position Paper

1. Introduction

Marriage sets the course of a girl's reproductive life in Pakistan. While the age of first marriage for women overall has been increasing in the country and the median age of marriage of currently married 25-29 year old women is 20.3 years, half of Pakistani women are still married by the age of around 19 years (PDHS 2007). Generally speaking the laws on minimum marriage age (16 years under the Muslim Family Laws Ordinance, 1961) are poorly enforced and since birth registration is neither widely practiced nor records properly maintained it is difficult to determine the correct age of girls at the time of marriage. Evidence from the field indicates that there are pockets of geographical areas where below legal age marriages are the norm.²

Given that Pakistan is experiencing a demographic bulge comprised of a large youth population it is imperative that the productive capacities of both male and female youth are developed and channelized towards meeting our Millennium Development Goals as well as realising the aspirations of the people. However, large swathes of female youth are left out of the education and development mainstream because of prevalence albeit slowly declining practice of young age marriages.

According to the Pakistan Demographic and Household Survey (PDHS) 13% of girls in the country are married by the time they are 15 and 40% by age 18. The fact that Pakistan's social and gender indicators continue to be poor especially in areas of maternal mortality (MMR: 276/100,000 live births), infant mortality (IMR: 78/1000), and female literacy invites a closer examination of the age of marriage as a determinant of this worrying situation. It has been established medically that the age at which a woman gets married has long term consequences for women's health. That there are social cultural implications has also been proven.

This paper is an attempt to unpack the complexities underlying the issue of age of marriage and examine them in a composite manner. Where it examines the drivers of early age marriage the paper also focuses on the laws that govern the age of marriage in Pakistan and their implementation given the existential context of customary practices and poverty. Thus the paper looks at:

- the overall impact of young age marriage on women;
- the factors that act as drivers of early marriages;

² See for instance the Pakistan Participatory Poverty Assessments reports for all provinces, AJK and FANA. GOP. 2003.

- the multiple laws that govern the age of marriage in Pakistan, the general lack of knowledge about them and the anomalies between them;
- the role of the judiciary in dealing with the issues; and
- Pakistan's international commitments.

It concludes with suggestions for possible strategies and measures to address problems arising out of women's young age of marriage in the country

2. Young age marriage: the impacts³

Health impact: A direct consequence of young age marriage is early childbirth and greater vulnerability to related complications especially morbidities (like fistula) that do not get reported or counted. According to a UNFPA report "one million babies born to adolescent mothers will not make it to their first birthday. Several hundred thousand more will be dead by age 5."⁴ Recent research published in the *British Medical Journal* adds to the evidence and reconfirms that infants born to girls married before the age of 18 face a higher risk of malnutrition.

In Pakistan, three-fourths of maternal deaths occur during delivery and the post partum period with the top three causes for maternal death being:

- post-partum haemorrhage (excessive bleeding),
- sepsis(major infection) and
- eclampsia (hypertensive disorder).

All three of the above causes are found to have greater prevalence in teen pregnancies due to biological and physiological factors that have been medically established.⁵ Babies born to teenage mothers are more likely to die in the first year of life compared with babies born to mothers older than 20 years of age. Since the teenage mother needs food for her own growth as well as that of her fetus, not getting proper food during pregnancy (especially during the first four months when maximum damage to the mother's and unborn child's health can occur) leads to low birth weight babies (less than 5 1/2 pounds) and makes them vulnerable to diseases. The mothers are thus in greater danger of not gaining sufficient weight, suffering from vitamin deficiencies, becoming anemic and developing preeclampsia. As pelvic bones do not reach their maximum size until about the age of 18, the pelvis of the teenage mother may not have grown enough to allow

3. This section draws heavily from Yasmeen Qazi and Iftikhar Ahmed's, *Pregnancy Complications in below Age 18 years Mothers*. October 2009. p.1; and Mehreen Baloch, Kamyra Marvi, & Insha Hamdani's, *Socio-economic and Health Implications of Early Marriage*. October 2009.

⁴ *Giving Girls Today and Tomorrow: Breaking the Cycle of Adolescent Pregnancy*. UNFPA. 2007

⁵ Baloch et al, opcit

vaginal delivery of a normal-size baby. For this reason, the incidence of cesarean section is higher in teenage mothers -- a baby that can be delivered vaginally when the mother is 20 is often too large to have been delivered vaginally when she was 14 years old. For poorer sections of society the burden of C-sections poses an additional financial burden.

Given that 18% of Pakistani women have had their first birth by age 18; 9% have begun child bearing between 15-19 years and 7% are already mothers in those ages it is not surprising that Pakistan has one of the highest infant mortality (78/1000) and under five mortality rates (94/1000) in South Asia.⁶ Infant Mortality Rate (IMR) is 116 per 1,000 for women who give birth before age 20, versus 75 per 1,000 for the children of women who give birth between the ages of 20–29.⁷

In 2006-07 Pakistan's Maternal Mortality Ratio (MMR) has come down to 276 maternal deaths per 100,000 births from 364/100,000 in 2003. However the MMR among the under 20 age group is a staggering 242 deaths per 100,000 live births strongly underscoring the need to further constrain teenage marriages and by extension prevent the deaths of women (important to remember is that Pakistan continues to have a negative sex ratio). While factors the decline over the past ten years in teenage pregnancies (from 12% to 7%), and reduction (10%) in the proportion of women married by the age of 15 have contributed to the lowering of MMR there is still a long way to go.

Early age of marriage is also directly correlated with fertility which though showing a declining trend in Pakistan, from 4.8 in 2000 to 4.1 in 2007, is higher (at 4.4%) in rural areas where women have their births almost a year earlier than urban counterparts and where early marriages are more prevalent. It is not uncommon, especially in remote areas of the country, to find menarche as the marker of coming of age for marriage rather than years or physical development. The potential psychological damage to a teenage mother and the new born child that can retard mental growth, lead to autism or stunted brain development is not taken into account when marriages are arranged.

Social impact: When married early, girls are in effect denied opportunities of education and broadening their horizons are ill prepared for their roles as informed mothers, and inadequately equipped to face livelihoods demands or claim their due rights. The life-long social and economic disadvantages, a consequence of early marriages and births, limit career opportunities, leaving a teenage bride stuck in a vicious circle that drags her down into grinding poverty. It is not surprising that low skilled and underpaid women form the bulk of the informal sector in Pakistan (70%) and the potential of almost half of the country's population is not capitalized upon.

Moreover, early marriages compromise girls' rights and autonomy within the marriage and also deny her the right, recognized not only in the [Universal Declaration of Human Rights](#) but also in religion, to "free and full" consent to a marriage. It is obvious that

⁶ PDHS 2006-07. p 2

⁷ Ibid

consent cannot be “free and full” when one of the parties involved is not sufficiently mature to make an informed decision about a life partner, nor aware of her constitutional or religious rights. Unable to refuse unprotected sex, these young women (“child brides” as under 18 married girls are referred to) are exposed to sexually transmitted diseases placing the baby too at high risk of contracting the infection. Most teenage brides are subjected to domestic violence which only recently has received national level recognition with the passage of the Domestic Violence Bill, 2009 by the National Assembly. The Bill is now in a joint parliamentary Committee as it lapsed in the Senate due to the delay in tabling it reflecting the subliminal resistance to the law among lawmakers. Since the law is not yet in place and there are palpable dangers associated with domestic violence, young married women accept dysfunctional spousal relationships as a part of daily life.

The correlation between education, age of marriage and reproductive health behaviour is also very well established. Education delays marriage and in turn early childbirth. PDHS 2007 shows that women who have gone for higher education entered into marriage later (median age of 24.5 years -- 6 years later than those with no education), those with secondary education also had later first births (at the median age of 23) and are ten times less likely to start early childbearing (ones with no education start by age 19). Similarly PDHS 2007 reports a dramatic increase in contraceptive use with women’s education – more than secondary educated are twice as likely to use family planning methods, than those with no education (43% vs 25%). Knowledge of HIV-AIDS and its prevention was also found to be higher in women with higher education.

It is obvious from the above that a woman’s life has to be seen from the life cycle perspective. Decisions made in early childhood about marriage or education, for instance, have far reaching consequences not only for the girl who gets deprived of her adolescence but also her children and the country as a whole. There are multiple imperatives driving these decisions: customary practices that in Pakistan vary with locations (rural, urban) and geographical regions, caste, clan and other group identities; poverty; the level of development and accompanying available services (schools and health in particular); access to information and the prevailing laws. Young age/child marriages are a manifestation of deep rooted gender discrimination that gets further perpetuated by the practice.

3. Drivers of young age marriages

Amongst the root causes of early marriage are poverty, parental desire to prevent sexual relation before marriage, protection from gender-based violence, the lack of educational or employment opportunities for girls, and the notion that women’s and girls’ exclusive role is as wives and mothers. Intertwined with these is the deep rooted belief that marriage should be allowed when a girl reaches puberty because “Puberty=Maturity=Marriage.” This simplistic correlation is an unrealistic generalization. If marriage were only a matter of biology, then the age of puberty would have been the same for every girl. However, marriage means much more than biology and age is not the

only determinant of maturity. Other determining factors are time, place, culture and psychological readiness of the person. Major factors considered instrumental in young age marriages in Pakistan are as follows:

Customary practices: The custom of under age marriage, often referred to as “child marriage”, is prevalent in different parts of Pakistan including the tribal belt with different names like: *pait likkhi* literally meaning “written on stomach” whereby two families agree to marry their children before they are born or are still very young. *Watta satta*, means “give and take” that involves bride exchange between two families as a mechanism to prevent mistreatment of daughters but in reality is used as a mutual threat of reciprocity. While all *watta satta* marriages are not “child marriages” they do result in mis-matched unions and unwanted divorces. This form of marriage is prevalent in nearly all parts of Pakistan. Needless to say that in such marriages the opinion of girls is not sought and these are in fact *forced marriages*.

Other practices whereby women are given in appeasement often result in child as well as forced marriages, like: *vani* in Punjab *sang chati* in Sindh, *swara* in NWFP, and *ljai or khasaniye soor* in Baluchistan. The custom in its various forms is often tied to blood feuds among tribes and clans whereby young girls (as young as less than five years) may be given in marriage to men regardless of age and current marital status for settling feuds. *Vani* may be avoided by payment of cash (*deet*) in lieu of a daughter of the family. However, this opportunity is not available in the case of *swara*; women given under this practice end up as life time slaves and spend their lives paying for the ‘crimes’ of their male relatives. Despite the illegality of the custom under the law it continues to be practiced. Recently the courts in Pakistan have begun taking serious note as well as action against the practice.

Vulvar is a practice in which a male suitor pays for the costs of the marriage and the dowry. The money goes to the family head (father or brothers) and often acts as the bride price and implies the notion of women being seen as a property or commodity. The practice also delays marriages of men because of the lack of the required wealth and results in marriages between older men and younger women.

Among other practices related to marriages that reflect discrimination against women is that of young boys in the Sindh province being made to marry women older than them to protect family property, or that of “marriages with the Quran.” Women end up suffering in the former situation where the boys on growing older remarry and in the latter by remaining unmarried for their entire lives. More recently the issue of converting young non-Muslim girls to Islam and forcing them into marriage has surfaced. Reportedly girls can only get out of such marriages under the Option of Poverty provision of the law (discussed in section below).

Poverty: Poverty contributes significantly to early marriage both directly and indirectly. Associated with large family sizes poverty in Pakistan is concentrated in rural areas where 80 percent of the poor of the country live.⁸ Official figures on the basis of head

⁸ Federal Bureau of Statistics, *PSLM FY 2005/06, Government of Pakistan*

count suggest that poverty in Pakistan has vacillated, falling by 13 percent in 1996-97 increasing in 1998-99 and estimated by 2001-02 to have 34.5% of the population living below the poverty line. Subsequent figures (of 23.9% living below the poverty line in 2004-05 and 22.3% in 2006-07) have been strongly contested, the current situation with inflation, high oil prices, energy crisis and the closure of industries has probably contributed further to exacerbate poverty. In the face of poverty, especially when combined with conflict, families get young girls married as a measure of transferring the economic burden (evidenced during the conflict in Karachi as well as with the displaced during the earthquake of 2005 and those of Malakand district following the military action against militants). Since a girl's sexuality is seen to be under threat young age marriage is seen as a measure of protection for daughters.

Indirectly, poverty prevents parents from sending daughters to school thus depriving them of both, education and possibility of information. Instead they are married off early either on the basis of *watta satta*, or for a high bride price setting off the cycle of young age births, frequent pregnancies, and other reproductive and sexual health related vulnerabilities. Although child marriage is seen as a way to escape the cycle of poverty, evidence from other developing countries reveals that in fact it worsens the cycle of intergenerational poverty. On the other hand where income generation by women is seen as a poverty mitigating strategy (particularly in urban areas) early marriage may be delayed because of the incoming earning.⁹

Gender Discrimination: engrained views regarding girls result in discrimination. Not only are there gender stereo-types prescribing what women can or cannot do, daughters are also viewed as *amanat* (in safe-keeping) till they go to their marital home which is seen as their real home. The compulsion is therefore to marry daughters young to pass on the responsibility as early as possible. Once married the pressure on young women is to produce a male offspring at the earliest. Given the premium on male children they are then inclined to keep having children until the male progeny arrives.

Just as much as the devaluing of women and the girl children leads to lower investments in their education and health it also results in rendering them powerless and vulnerable. The powerlessness and vulnerability of the child bride leads to further discrimination in the form of domestic violence, marital rape, and deprivation of food, lack of access to information, healthcare, and general impediments to mobility. It is hence not surprising that Pakistan ranks at 124 out of 177 countries in the UN Gender Development Index (2007-08).

Inadequate Implementation of Law: Conflicting laws (discussed in section below) and inadequate implementation can be counted as factors contributing to the failure in ending the practice of under age/child marriages. The existence of other laws (than those specifically related to age of marriage) that discriminate on the basis of sex make the space for young age marriages to continue.

⁹ Case studies have shown that the earnings of young girls are often spent on making dowries (*jahez*)

4. Laws related to Age of Marriage

In Pakistan, the legal Age of Marriage is 18 for males and 16 for females with penal sanctions for contracting under-age marriage, however once entered into, such unions remain valid. Similarly the penal sanctions for violation of mandatory marriage registration requirements do not invalidate the marriage. As the situation stands now, there is prime facie no ambiguity on the age of marriage, though the age of marriage for girls is lower than the age of majority for most other civil purposes as well as quantum of sentences in criminal cases like death penalty.

The laws that have implications for child marriage are:

- **Divorce Act, 1869**: The said Act interprets the minor in section 3(4) “Minor Children” means, in the case of boy, who have not completed the age of 16 years and in case of girl, who have not completed the age of 13 years: in other cases it means un married children who have not completed 18 years.
- **Child Marriage Restraint Act, 1929**: An act to restrain the solemnization of child marriages, clearly defines, the age of “child” for a male as below eighteen years and for a female as under sixteen years of age (Section 2), while under Section 2 (d) a minor is defined as of either sex under 18 years.
- **Dissolution of Muslim Marriage Act, 1939**: Defined the grounds entitling a women to a decree for the dissolution of her marriage, under Section 2(vii) that she, having been given in marriage by her father or other guardian before she was sixteen years old has repudiated the marriage before attaining the age of eighteen years, provided that the marriage has not been consummated.
- **Muslim Family Laws Ordinance, 1961**: Under this Ordinance, the legal age for marriage is eighteen and sixteen years for male and female persons respectively.
- **Offence of Zina (Enforcement of Hudood) Ordinance, 1979**: Under section 2(a) “Adult” means a person who has attained, being a male, the age of 18 year or, being a female, the age of 16 years, or has attained puberty, whichever is earlier, and is defined as a major. As such under this law a girl or a boy attaining puberty at the age of 12 or 15 becomes a major.

Since colonial days issues of personal status including marriage, divorce etc were kept outside the domain of general laws. Each religious community was permitted to continue to follow its religious or customary law or separate laws were enacted for different religious communities. Some religious communities were left completely outside the application of statutory enactments. The 1875 Majority Act, defined age of majority for different legal purposes but kept marriage, divorce, custody, guardianship etc out of its domain. The age of majority for these purposes was determined as per the personal law of the parties. Most of the religious communities living in United India did not have any minimum statutory age of marriage. The Christian Marriage Act, 1872 defined minor as a person who is under 21 years of age, however, the same law did permit marriage of minors with the consent of the father, guardian or mother of the minor. Similarly, all other matrimonial laws enacted during colonial period for different religious communities

either did not fix a minimum age of marriage, or had different ages of marriage for females and males. And even those laws which fixed minimum age of marriage did permit marriage of minors through certain procedures.

Child Marriage Restraint Act, (CMRA) 1929 was the first general law applicable to all which fixed a minimum age of marriage for males and females as 18 and 14 years respectively. This law attempted to restrain child marriages and prescribed punitive measures against adults responsible for child marriage including the person who solemnised the marriage. This law did not prove effective to combat early marriages for many reasons like there was no compulsory registration of marriages for the Muslims and many other religious communities, so no mechanism to verify the ages of the parties to the marriage at the time of marriage. A marriage solemnised in violation of this law was not invalid and the procedure of complaint on violation of law did not encourage filing of complaints. The law as it stands now has procedural hurdles in its implementation. An individual can not file complaint directly to the magistrate except in the Punjab Province (since 1971) as the authority to file complaint rests with the Union Council in whose jurisdiction a child marriage is solemnised. In practice hardly any violation is reported by the Union Council and even if proceedings start no arrests can take place as the offences carry minor sentences.

For Muslims, the Dissolution of Muslim Marriages Act (DMMA),1939 provided effective statutory relief to under age females married under the Muslim law (below 15 years of age at the time of marriage), to annul such marriages by exercising the option of puberty and getting it endorsed by the court. One major change DMMA brought was that before its enactment a Muslim female married by her father or grandfather in her minority could not get her marriage annulled through exercise of option of puberty unless she could prove that the marriage was against her best interests. The DMMA did away with this exception. It provided for every female given in marriage by her father or guardian when she was less than fifteen years of age to exercise option of puberty on attaining the age of fifteen years and before reaching the age of 18 years, provided the marriage was not consummated. A survey of case law clearly shows contrast in application of CMRA and DMMA. Under the former law there is very little case law while on the exercise of option of puberty there is plenty.

In a case (*Ghulam Qadir Vs Family Judge- Murree*)¹⁰ it was adjudged that “[p]uberty is presumed to have been attained on completion of age of 15 years in the absence of evidence. Provision of Section 2 (vii), Dissolution of Muslim Marriages Act, 1939, does not lay down that female attains puberty at the age of 16 years only, it simply enables a girl to exercise the option of puberty when she attains the age of 16 years”. Several other cases affirm the right of a minor girl to annul her marriage unless she “expressly ratifies it [the marriage], say in express words or by cohabiting with the husband, or by asking for her dower or maintenance”.

¹⁰ Decided by the Lahore High Court. Reported in [1988 CLC 113]

The MFLO amended the CMRA and raised the age of marriage for females to 16 years. Likewise it raised the age from 15 years to 16 years in the Option of Puberty clause of DMMA. It made two more amendments in CMRA, one lowered the age of adult male marrying an underage female from 21 years to 18 years and authorised the local Union Council to file complaint against any marriage taking place in violation of CMRA. This in practice did not prove effective and there are hardly any cases filed on violations.

Some of the laws are not directly relevant to the age of marriage but come into play in cases of “disputed marriages” due to conflict between them. The key example until the introduction of the Women Protection Act, 2006 was the conflict between MFLO and Offence of Zina (Enforcement of Hudood) Ordinance.¹¹ The two laws would come into operation when the validity of a marriage was under challenge regarding:

- the age of the woman;
- consent of the woman in the face of allegations of coercion, force or enticement into marriage;
- challenge on the ground of any other legal impediment which prohibit a valid marriage e.g. an aunt and niece being married to the same man;
- allegation of *zina* on ground of not having contracted a valid marriage;
- defence of marriage by the accused in rape cases and woman being under 16 years of age.

This contributed to a complex situation, resulting in erosion of statutory provisions on the age of marriage and was further complicated as the disputes basically related to personal status of women and were dealt in criminal jurisdictions. Challenges to marriages of choice by women were made by their parents or other family members by launching criminal charges against the husbands of such marriages or against both husbands and wives with the intention of getting them prosecuted under the Zina Ordinance which had the overriding effect upon all other laws (Section 3 of Zina Ordinance gave it overriding effect on all other laws in force. This section has been repealed by Women Protection Act, 2006.)

Zina Ordinance’s definition of a female adult as 16 years *or puberty* affected the age of marriage for females. Under general principles of Muslim jurisprudence, as applied in Pakistan, a Muslim female is assumed adult for marriage on reaching puberty and in absence of any other proof she is presumed to have reached puberty at 15 years. The case law too has established this principle as age of discretion for the female rather than just physical puberty. However decisions of the Federal Shariat Court in zina cases recognised a Muslim female of less than 15 years of age as adult on having reached physical puberty. On the other hand the dominant case law related to age at which a Muslim female acquires the capacity to contract marriage at her own shows that courts

¹¹ Provisions of MFLO and rules under it related to age of marriage, requisites of a valid Muslim marriage and conflict in the definition of marriage. These conflicted with the Hudood Ordinance’s different status of marriages mentioned in the definition of zina, and hadd and tazir punishments for them, and with the Ordinance’s provision of age of female adulthood as puberty..

have recognised 15 years as the age of adulthood. (Some isolated cases, notwithstanding where higher courts used Zina Ordinance's definition of adulthood for females on reaching puberty as the age on which the female could contract a marriage of choice.)

The amendments in the Zina Ordinance by the Women Protection Act, 2006 have reduced the possibilities of conflict of laws mentioned above. The amendments have repealed the definition of marriage from the Zina Ordinance as also the condition of valid marriage. These amendments in the definition of *zina* and repeal of *tazir* sentence for *zina* have also eliminated possibilities of marriages being prosecuted on account of *zina*. The most significant legal change as a result of WPA, 2006 is in the definition of statutory rape introduced in the Penal Code Section 375 according to which rape is defined as sexual intercourse with a woman under circumstances that includes "with or without her consent when she is under sixteen years of age". Other acts of offence of rape are intercourse against a woman's will; without her consent; with her consent when the consent has been obtained by putting her in fear of death or of hurt with her consent, when the man knows that he is not married to her and that the consent is given because she believes that the man is another person to whom she is or believes herself to be married.

This comprehensive definition of rape does not make any exception for an underage wife and has not provided for any ceiling on the age of wife. In fact it raises the question (and possibility) of whether sex with an underage wife can be prosecuted as rape. If so then this penal provision can be an effective deterrent against under age marriages of girls.

Under the Christian Marriage Act, 1872, some safeguards against under age marriage are available under general practice and procedure of solemnisation of marriages. The time gap between notice of marriage to the registrar or Church and the actual marriage provides an opportunity to prevent under-age marriage, or marriage under coercion. The latter may be annulled under the provisions of the Christian Divorce Act, 1869. However, despite these measures there are reports of early marriages amongst Pakistani Christians as well though the ratio is lower than the majority community. For the Hindu community in Pakistan and others following Hindu personal law, there is no statutory matrimonial law. Instead, custom is followed and permits early marriages.

As mentioned earlier in the paper, given that laws regulating minimum marriage age are poorly enforced and births are not routinely registered the correct ages of girls at the time of marriage remains undetermined. Birth registration is supposed to be mandatory but the introduction of new procedures has led to a reduction of registration at least in Punjab pointing to the need to revisit the procedures. Thus on the one hand is the huge age difference between married males and females and on the other is the continued incidence of young age marriages.

Measures to combat early age marriages: There have been efforts to prevent early marriages. For Muslims MFLO, 1961 and rules under it attempted to prevent such marriages. The standard *nikahnama* formulated under MFLO rules provides columns to ensure consent in marriage. Marriage of an underage person is barred from registration

and for women *nikahnama* requires mandatory signature or thumb impressions. In case of males *nikahnama* can be signed either by the groom or his representative. In case of women even if a bride appoints a *wakil* (representative) signing the *nikahnama* is mandatory for the *wakil* as well as the bride. It is the duty of the *nikah khawan* (person solemnising the marriage) to ensure signatures of all required persons according to the situation of each marriage.

These measures could not prevent underage marriages of females, because of non registration of marriages combined with inefficient working of the *nikah* registrars and *nikah khawans* who in many instances fail to ensure true compliance of law. Ages of under age girls are interpolated on *nikahnamas*. Registration of a marriage performed under the MFLO is mandatory and non registration carries punitive measures, however law neither provides a time limit for registration nor a clear procedure for complaint against non registration. No case has been known where any one was prosecuted for un-registered marriage. The law does not provide any clear qualification for the person to be appointed as *nikah* registrar, though it states that license of the registrars can be cancelled on violation of any of the provisions of MFLO and rules under it. The appointment of *nikah* registrars is at the authority and discretion of the chair of the local Union Council.

Over the years the government has introduced various measures to ensure proper implementation of duties by *nikah* registrars. In January 2005 Punjab Local Government & Rural Development Department asked all District Co-ordination Officers (DCOs) to direct the Nazims (chairpersons) of Union Councils to ensure implementation of MFLO and the rules under it. The nazims were further directed to cancel the licenses of *nikah* registrars violating MFLO and its rules.

About three years ago the government also issued a marriage registration form to record marriages¹². These forms require information about the bride and groom, including their names, ages, Computerised National Identity Card (CNIC) numbers, their fathers' names with CNIC numbers, marital status and addresses. The form has columns about dower with details, marriage registration fee paid, and the name of the person with CNIC number who solemnised the marriage. This form is not a substitute of the *nikahnama* but is for the registration of marriages under the NADRA law.

More recently a bill was tabled in the National Assembly, the Child Marriage Restraint (Amendment) Act, 2009 to amend the CMRA, 1929.¹³ In addition to proposing amendments for enhanced imprisonment and fines¹⁴ it seeks to “remove the gender disparity in age” of marriage of males and females (i.e. make 18 years as the minimum age of marriage for both). Furthermore the proposed amendments will make offences under this law cognizable and the court will be able to issue an injunction prohibiting a

¹² Section 21 of National Database and Registration Authority Ordinance, (NADRA) 2000, requires information relating to births, deaths, marriages and divorces of Pakistani citizens.

¹³ National Assembly Bill No 37 of 2007, published in the Gazette of Pakistan dated 11 August, 2009

¹⁴ To enhance the quantum of sentences of imprisonment and fine on violation of provisions of CMRSA; to make offences under CMRA cognizable within the time limit of one year; and to give the jurisdiction of offences to the Family Courts.

proposed/arranged child marriage on a complaint or otherwise and proposes a sentence on violation of the injunction issued by the court. These procedural changes if incorporated in the law will go a long way in strengthening its implementation.

Once the age of marriage for females is raised to 18 years under the CMR (Amendment) Bill concomitant amendments will be required in the Option of Puberty provision in the DMMA to provide effective relief to the victims of under age marriages. At the moment the age limit in the DMMA for exercising the option of puberty is 16 years to be availed up to age 18. If the same principle is followed then the cut off age for availing the option would need to be raised. In Bangladesh, the Child marriage law was amended in 1984 and the age of marriage was raised for females to 18 and for males to 21. The DMMA was amended in 1986 and the ages for exercising the option of puberty were also raised (to 18 and 19 years respectively for females and males). In other words an under 18 year old female can repudiate her marriage in exercise of the option of puberty before reaching 19 years provided the marriage is not consummated.

In the case of Pakistan and learning from the BD experience it would perhaps be advisable in the DMMA to add under age marriage as another ground for divorce in order to provide relief to a female who is subjected to under age marriage but cannot repudiate marriage through option of puberty as the marriage is consummated. It must be kept in mind that while raising the option of puberty age to 18 in DMMA would be advantageous as a higher number of under age marriages will fall under its purview at the same time the condition of non consummation will reduce its application. Hence adding underage marriage as another ground for divorce would be desirable.

5. Role of the judiciary

Pakistan has two levels of courts, the subordinate courts at the District and Tehsil level and higher courts at the provincial and federal level. Family Courts which have exclusive jurisdiction over matters relating to personal status are governed under the Pakistan Family Courts Act, 1964. Although, at the administrative level, there is weak implementation of laws on minimum age of marriage and consent of the females in marriage, the judicial pronouncements on these issues have been encouraging. In the family courts many complaints of option of puberty or for jactitation of marriage (orders to cease claim of marriage where marriage does not exist) are filed with success.

Option of Puberty: Case law reveals that the courts have upheld the right of the woman to repudiate a marriage performed by her father, guardian or mother in her minority. Though, declaration of the court, endorsing that the woman has repudiated her marriage through exercise of option of puberty is required, the higher courts in Pakistan have acknowledged those repudiations even where the woman did not seek a declaration of the court¹⁵. There have been many cases where the woman either repudiated her marriage of minority by contracting another marriage on becoming adult or exercised option of

¹⁵ Irfana Taslim v. S.H.O PLD 1999 Lahore 479, Said Mehmood and another v. State PLD 1995 FSC 1

puberty through other recognised principles of Muslim jurisprudence, accepted in the Indian Sub continent. Elaborating the woman's right of option of puberty, the courts have held that the repudiation of marriage takes place with the announcement by the woman of doing so. The court only endorses such a repudiation formally recognising the repudiation of marriage.¹⁶

In the judgement on a writ petition (*Mohammad Riaz Vs Rubina Bibi*) regarding exercise of option of puberty in a marriage contracted when the girl was under age it was highlighted that [the] "Wife was entitled to dissolution of her marriage by exercising option of puberty if she could prove that marriage had taken place before she attained the age of sixteen years; that marriage had not been consummated and that she had repudiated marriage before attaining age of eighteen years. Decree of Court was necessary to invalidate marriage which had been dissolved by wife in exercise of her option of puberty".¹⁷

Other than the age limit within which the woman has to exercise her option of puberty there is a condition that the marriage is not consummated. There are cases where Pakistani higher courts have not acknowledged consummation of marriage when the girl was minor and endorsed her right of option of puberty. In cases where, either the marriage was consummated or there was a claim of consummation of marriage by the husband the courts have held that in her minority the girl lacked capacity to consent for consummation and such consummation has no status¹⁸.

There is one practical confusion on the issue and that relates to the personal status of the female who exercises the option of puberty --- what status is she to fill in the *nikahnama* in case she remarries or in any other document which requires personal status to be specified? "spinster" or "divorced"? In theory when a minor girl is given in marriage by her parent/guardian the marriage remains incomplete" and she retains the right to ratify or confirm it on being adult or repudiate it.

Similar problems have occurred in cases of *vani* or *swara* in which either through *suo moto* action of the higher courts or initiative of the administration females including minors have been recovered. According to the media and other reports the "marriages" were mostly dissolved through pronouncements of *talaqs* from their "husbands" rather than being declared annulled by courts. Dissolution of marriage through *talaq* means that "marriages" were legally acknowledged and their personal status was changed.

Jactitation: Plaints of jactitation are filed because in many instances, like in *watta satta* (exchange marriages) actual *nikah* of minor females is not performed. The girl is promised in marriage which may be called betrothal. On the basis of the promise of marriage on the girl's reaching adulthood the prospective groom either makes a claim of

¹⁶ For details see *Mst. Munni v, Habib Khan* PLD 1956 Lahore 403, *Mohammad Amin v. Suriya Begum* PLD 1970 Lahore 745

¹⁷ Writ Petition No. 9570 of 1999; Decided by Lahore High Court. Reported in [2000 MLD 1886]

¹⁸ *Mst. Ghulam Sakina v. Falak Sher* PLD 1949 Lahore 75, *Behram Khan v. Akhtar Begum* PLD 1952 Lahore 548

marriage or the community considers the girl to be married. Sometimes, false *nikahnamas* are also made and even registered with the *nikah* registrar. To extricate herself from this situation and close the false claim of marriage by the man, the woman files for the jactitation of marriage. A suit of jactitation of marriage can also be filed if the woman has been coerced into marriage or the marriage has taken place through fraud or deceit irrespective of the age of the woman.

A marriage registered under the MFLO is presumed to be a valid marriage and is barred from challenge before the family court¹⁹. The higher courts in repeated decisions have exempted marriages from this bar which are performed through fraud, deceit or coercion. The courts especially the higher courts have in majority of cases jealously guarded women's right of free consent for marriage. A marriage performed without the consent of woman or performed through coercion, undue influence, fraud, or misrepresentation has been declared invalid²⁰.

Legal options (option of puberty; jactitation of marriage) for females in childhood or forced marriage in reality don't mean that such women have become free from early or "forced" marriages in the future. Many finding themselves in such marriages don't have the financial resources, family support or otherwise, to access justice. These options are mostly used when the girls' parents/families support them. Such support is not always in the best interest of the "survivors" of such marriages. A study of reported cases and work with the community based organisations shows that in many instances they are again given in marriages without their consent either against financial considerations or in *watta satta*.

Actions against *nikah* registrars: Under age marriages can not be legally registered, though there are cases where the ages of the under age brides are entered as higher than their actual ages. The general functioning of a vast majority of *nikah* registrars vis a vis their duties is by no means satisfactory²¹. Their educational qualification, ignorance of Muslim Family Laws as well as duties of their functions as public servants, lack of trainings regarding their functions, influence of local anti women practices and a combination of related factors result in serious violations for women in particular about age of marriage and expression of consent to marriage. In *watta satta* marriage arrangements that are registered *nikah* registrars have been found to register *nikahs* which have incorporated conditions of giving a girl, existing or to be born in the future, to the groom's family in exchange for the bride being married.

On rare occasions when such *nikahnamas* surface before the Family Courts, or come to the courts' notice, no actions are known to be initiated against such registrars. There needs to be more clarity in procedures for disciplinary or other actions to be initiated against registrars in instances when such *nikahnamas* are brought to the notice of the Family

¹⁹ Section 23 of Family Courts Act, bars challenges to marriages duly registered under MFLO.

²⁰ See *Matloob Hussain v. Mst. Shahida and 2 others* PLD 2006 SC 489

²¹ This observation is based on empirical research. Shirkat Gah conducted a mapping exercise in more than 20 districts of Pakistan and examined registered *nikah namas* in hundreds of Union Councils. Case files of Family courts and reported cases of higher courts provide further evidence of these findings.

Courts during any proceedings. In some isolated cases the higher courts have taken actions against *nikah* registrars for registering a child marriage or registering *nikahnamas* which did not provide requisite information regarding the *nikah* to be registered²².

The higher courts, in cases registered against marriages allegedly performed under force or after kidnapping, have warned *nikah* registrars and reminded them of their duties. In one such case²³ the court cautioned the *nikah* registrars, “as public servant which essentially they are, they should demonstrate more sense of responsibility, before authenticating the *nikah* making proper inquiries as to the competency of the parties to understand the nature of their act, their ages and whether or not they are acting of their free will and without any compulsion” The court further warned that, “if they fail, they can to an extent be held responsible for the complications that follow in addition to running the risk of being involved in litigation, both civil and criminal”.

Customary practices: In 2002, the Chief Justice of Pakistan declared *vani* and *swara* as un-Islamic and expressed concern over the rising number of such cases. The Chief Justices of High Courts were given instructions to ensure that trial courts do not allow for a woman to be given as compensation. In March 2004, the Law and Justice Commission stated that all individuals who contract a marriage by *vani* and *swara* through a *jirga* or *panchayat* would be liable to rigorous imprisonment. The Commission also came out with a draft amendment to article 366-C of the Pakistan Penal Code that states: “Whosoever takes part in reconciliation or *panchayat* and thereby requires any person to offer or accept, and whosoever offers and accepts in marriage (defined as having reached the age of 16) against her free will or a female child in lieu of any concession to an accused person, or as a compensation for an act when such an act is an offence under the law, or as a *badl-i-sulh* shall be punished with imprisonment of either description for a term which may be extended to ten years and shall be liable to a fine”. The amendment has not yet been tabled in the NA.

In January 2005 section 310-A was inserted in the Pakistan Penal Code²⁴ which made giving a female in marriage as compensation for compromise in murder cases an offence with three to ten years imprisonment. Another bill titled, Anti Women Practices (Criminal Law Amendment) Act, 2008 was moved in the National Assembly in June 2008. In the bill in addition to criminalising forced marriages and marriage of women with the Holy Quran, substitution of section 310- A is proposed. The proposed text states, “Whoever, gives a female in marriage or otherwise compels her to enter into marriage, as *badal-e- sulh*, *wani* or *swara* or any other custom or practice under any name, in consideration of settling a civil dispute or a criminal liability shall be punished with imprisonment for a term which may be no less than three years and shall also be liable to fine of 500,000 Rupees”.²⁵ However discussion on this bill has not taken place and it seems to be in cold storage for the time being.

²² See Bashir Ahmad v. Usman alias Chara and others NLR 1995 SD 665, Qaisar Mahmood v. Muhammad Shafi PLD 1998 Lahore 72

²³ Shah Din and others v. The State PLD 1984 Lahore 137

²⁴ Criminal Law (Amendment) Act 2004, referred as Act 1 of 2005

²⁵ The same bill was tabled in the previous National assembly in 2006 did not proceed further.

6. Pakistan's International Commitments

Pakistan has signed and/or ratified a number of binding international commitments like the UN Convention on the Rights of the Child (CRC) 1990 and CEDAW and non-binding ones like the U.N. Human Rights Charter (1945), the Beijing Declaration (1995) and ICPD (1994) among others that reaffirm faith in fundamental human rights, the equal rights of men and women, etc. Those with direct bearing on age of marriage are discussed here. The two Conventions --CRC and CEDAW -- provide the foundation for addressing the issue of under age/early marriage by removing limitations upon personal freedom.

The Convention on the Rights of the Child (CRC) 1989: The CRC while not addressing the issue of child marriage directly does prohibit States parties from permitting to give validity to a marriage between persons who have not attained their majority. It provides a number of norms and protective measures for children which collectively provide an enabling framework for tackling child marriage. The CRC defines a child as “below the age of 18 years”, but at the same time it allows a state to legislate for the reduction of the age (of a child) to below 18 years. The Convention however makes it clear that child marriage undermines a number of rights which are guaranteed under it. Furthermore, the Convention recognizes children’s entitlement to human rights in their own right, thus making a paradigmatic shift away from the view of the child as dependent on the family, community and the State for privileges to the view of the child as the bearer of legal rights under international law. The Convention also stresses that “the best interest of the child shall be a primary consideration” in all matters concerning children in the public and private arena. Thus child marriage falls within the protective measures outlined in the CRC, potentially providing valuable opportunities to ensure adequate protection of girls and young women from early marriage.

Table 1- Some CRC rights that relate to under age/child marriage²⁶

Article 1	A child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.
Article 2	Freedom from discrimination on any grounds, including sex, religion, ethnic or social origin, birth or other status.
Article 3	In all actions concerning children....the best interest of the child shall be a primary consideration.
Article 6	Maximum support for survival and development.
Article 12	The right to express his or her views freely in all matters affecting the child in accordance with age and maturity.
Article 19	The right to protection from all forms of physical or mental violence, injury or abuse, maltreatment or exploitation, including sexual abuse, while in the care of parents, guardian or any other person.
Article 24	The right to health and to access health services; and to be protected from harmful traditional practices.

²⁶ *Child Marriage and the Law*. UNICEF. N.Y. 2007. p.5

Article 28 & 29	The right to education on the basis of equal opportunity.
Article 34	The right to protection from all forms of sexual exploitation and sexual abuse.
Article 35	The right to protection from abduction, sale or trafficking.
Article 36	The right to protection from all forms of exploitation prejudicial to any aspect of the child's welfare.

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW): adopted by the General Assembly of the United Nations in 1979, CEDAW defines discrimination against women, the rights of women, and the State's responsibility to guarantee those rights. CEDAW is supplemented by a number of General Recommendations.

CEDAW covers public as well as private spheres and argues for the universality of rights including civil and political rights, as well as socio-economic rights like the right to health. A binding treaty, it seeks to enforce women's legal rights to non-discrimination in areas ranging from political participation to employment, and to the family. It also focuses on women's reproductive rights and speaks to the importance of insuring women's social and cultural equality by achieving modifications to social and cultural patterns of conduct that lead to stereotyped roles and hierarchies between the genders.

Article 1 of CEDAW defines "discrimination against women" as "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms." Child marriage clearly discriminates against girls because they are disproportionately affected by the practice, bear the greater health and social burdens and have no say in the marriage decision.

Article 16 of CEDAW is unambiguous on the issue and states that "the betrothal and marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age of marriage." It further recommends the minimum of age of marriage as 18 years for both girls and boys.

The International Human Rights Declaration, 1948: The declaration though non-binding has moral underpinnings as a recognized standard that all member states of the UN have agreed to follow. It states that marriage should be "entered only with the 'free and full consent' of the intending spouses" (Article 16). In the majority of child marriages there is an element of coercion involved with parents, guardians or families pressurizing, colluding or forcing children into marriage. Given that girls are socialized into accepting marriage as decided by parents as the norm they give their consent as a duty and sign of respect and this can neither be presumed to be "free and full consent" nor to always be in the best interest of the child.

In view of Pakistan's poor social indicators and persistently low GDI ranking the likelihood for Pakistan meeting its targets under the Millennium Development Goals remains bleak unless it does not give its female citizens equal rights to opportunities like: education, decision making in relation to marriage, number of children and contraceptives and security from violence and killing in the name of honour.²⁷ According to the International Planned Parenthood Federation (IPPF) and the Forum on Marriage and Rights of Women and Girls' publication, *Ending child marriage*, child/young age marriage can have a negative impact on realizing at least six of the MDGs priorities set for 2015 (See Table 2)..

Table: 2- Child marriage impedes the Millennium Development Goals²⁸

Goal 1: Eradicate extreme poverty and hunger
Child mothers often have limited skills, education and access to the economic assets and decision making powers necessary to properly nourish their offspring and are therefore likely to perpetuate the cycle of poverty.
Goal 2: Achieve universal primary education
Access to universal education is a right which many girls forced into child marriage are denied.
Goal 3: Promote gender equality and empower women
Eliminating gender inequalities and empowering young women requires access to basic capabilities such as education, health and nutrition, as well as critical social and economic resources and opportunities within an enabling environment. Child marriage disadvantages women and girls and entrenches gender inequalities.
Goal 4: Reduce child mortality
Children of child mothers are more likely to be premature and have low birth weight. Additionally, because child brides are more vulnerable to HIV, there is an increased risk that they will pass their infection to their babies. Delaying child marriage will ultimately reduce child mortality figures.
Goal 5: Improve maternal health
Child mothers have double the chance of dying during or after childbirth, and suffer more from maternal morbidities such as debilitating obstetric fistula.

²⁷ In the year of 2000, leaders of 189 nations gathered at the Millennium Summit, where they agreed on developing a set of 8 Millennium Development Goals (MDGs) aimed at cutting global poverty and hunger in half by 2015, reducing maternal and child deaths, reversing trends of increasing HIV/AIDS, advancing gender equality, and promoting environmentally sustainable development. The Millennium Development Goals (MDGs) have been agreed by UN member states, including Pakistan, as the commonly accepted framework for measuring global progress.

²⁸ *Ending child marriage : A guide for global policy action*. IPPF, UNFPA, Global Coalition on Women and AIDS. 2006. London. p.15

Goal 6: Combat HIV/AIDS, malaria and other diseases

Marriage is a risk factor in the spread of HIV and other STIs. Child brides who marry older and more sexually experienced men have a heightened risk of contracting HIV. Reducing levels of child marriage should be an essential strategy in attaining targets for reducing the rate of HIV infection among young people aged 15-24.

6. Conclusions and Recommendations

It is clear from the discussion above that under age or even young age marriages (under 20) have a direct bearing on the lives of women, keeping them on the margins, putting their health at risk and stunting their ability to fulfil their potential as human beings and citizens. Early age marriages not only constitute the violation of human rights but also act as a barrier to development. The negative impact and consequences of under age marriage are more than evident from the recent PDHS and Pakistan's Gender Development Index (the fact of high Gender Empowerment Measure ranking due to women's increased participation in politics is on the verge of reversals with the suspension of the local government system). It is also clear from the above that there is a correlation between educational levels and age of marriage, and between reproductive behaviour and exercise of choices. While currently there is no concrete data on the emotional and psychological health of teenage mothers, one can safely assume that sexual intercourse, early pregnancy and childbearing, burden of responsibilities and social isolation has a negative impact not only on the girl herself but also on her child, husband and family.

Currently Pakistan lags in meeting its commitments by not bringing laws in conformity with its international commitments, and not removing the conflict in the age of majority whereby females attain majority at 18 years for voting but for marriage are seen as majors at 16 years or puberty. It is equally obvious that the laws as they stand do not provide protection against under age marriages despite the statutory provision of option of puberty both for females and males. For the former however the option is not always available as by the time such a female reaches the age of discretion she may already be a mother and has lost this option. More recently public interest actions of the higher courts on petitions or as *suo moto* actions outlawed both giving of women (mostly young) to settle scores or resolve conflicts and the rulings of informal adjudication forums (*jirgas, panchayats*)²⁹.

Young age marriages continue due to the combination of poverty, absence of accessible educational facilities, embedded gender discrimination and low value attributed to

²⁹ Constitutional petition No 16 of 2004 in Supreme Court praying for prohibition of custom of giving women in appeasement in name of *swara, vani*. It has not been finally disposed off and during its hearings many cases of like nature were taken up by the Supreme court either as *suo moto* or on petitions like CMA No 396 of 2006, *Suto moto* case no. 10 of 2006 related to Custom of Sang Chatti in Sindh province and Human Rights Case No 2473 of 2006. Jirga was banned by the High Court of Sindh in case of Mst. Shazia v. Station House Officer & others SBLR 2004 Sindh 918

females. Limited resources and incentives to invest in alternative options for girls often force poor families to marry their daughters early. That this does not necessarily lead to more security for them does not appear to be too much of a matter of concern as the daughters may (and do) already suffer from domestic violence, marital rape, and deprivation of food along with controlled mobility in their marital homes.

From the point of view of health and particularly reproductive health young age marriages are harmful to girls and are manifested through early pregnancies, IMR of 116/1000 live births among women giving birth before age 20, maternal mortality (“a staggering 242/100,000”) and morbidity and expose them to STIs and HIV-AIDS. The failure to eliminate child marriages also denies girls the right to development.

There are several laws as well as progressive decisions of superior courts to address early age marriages and customary practices that prevent girls from getting education and become full and equal citizens as provided by the constitution, as committed through international commitments (CEDAW, CESPR, Beijing, ICPD and MDGs) as well as religious injunctions. Not only is it important to set an equal minimum age of marriage for males and females but equally important to strengthen systems of implementation of laws in order to eliminate practices that militate against young girls. In this respect the need for training *nikah khawans* deserves a high priority as well as local opinion makers (councillors, religious leaders, school teachers). Equally urgent are greater awareness about the *nikah nama* to protect girls’ interests at the time of marriage, mandatory birth registration and getting NICs for girls.

Following **recommendations** are being made for government action to stop young/under age marriages:

- Expedite the passage of the Child Marriage Restraint (Amendment) Act, 2009 to legislate equal minimum age of marriage for males and females at 18 years and remove the anomalies in the law as well as the practice of forced young age marriages.
- Make appropriate amendments in the Dissolution of Muslim Marriages Act 1939 to reflect the amendment in CMRA and to raise the age of option of puberty to 18 years and the cut-off age for exercising the option to 19 years. A provision to make under age marriage a valid basis for divorce and provide statutory relief to victims of *swara*, *vani* and other similar practices.
- Ensure the registration of all births and marriages as per provisions of NADRA, Ordinance 2000 through simplified procedures Implement the ban on verdicts of *jirgas* and *panchayats*.
- Enact the already admitted Bill on Anti-women practices with measures for effective implementation and prosecution on violations.
- Implement the ban on verdicts of *jirgas* and *panchayats*.
- Ensure the registration of all births and marriages as per provisions of NADRA, Ordinance 2000 through simplified procedures. These are required under the law

but not occurring adequately and showing a decline in some areas due to complicated procedures.

- Amend the rules under MFLO, 1961 to provide for an appropriate qualification and criteria for the issuance of licenses to *nikah* registrars, mandatory trainings for appointed registrars, cancellation of license of registrar who violate conditions of the license.
- Operationalise the special Women in Distress and Detention Fund for free legal aid to women and allocate from within it funds for women forcibly married at young age or as minors. In Sindh the Fund has been converted into “women in prisons” fund and legal aid is being provided to women prisoners and can potentially be used for victims of under age marriages.
- Make educational facilities accessible to girls at primary level and beyond. The PDHS reveals that secondary education enhances the capacity to exercise reproductive choices. While Pakistan has made some headway in primary school enrolment, retaining girls in schools and their going on to secondary level is still not happening.
- Conduct mass awareness campaigns to highlight the negative implications of early and forced marriages.
- Ensure the continued presence of women in governance structures and public life. The local government system had the potential of providing role models for young girls and their families and provided space/opportunities to develop and be better informed.
- Youth and health policies should reflect the issue of young age marriage and Pakistan’s commitments related to it.
- Identify support within existing structures to ensure that law of unified age 18 is implemented, after it is passed.

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