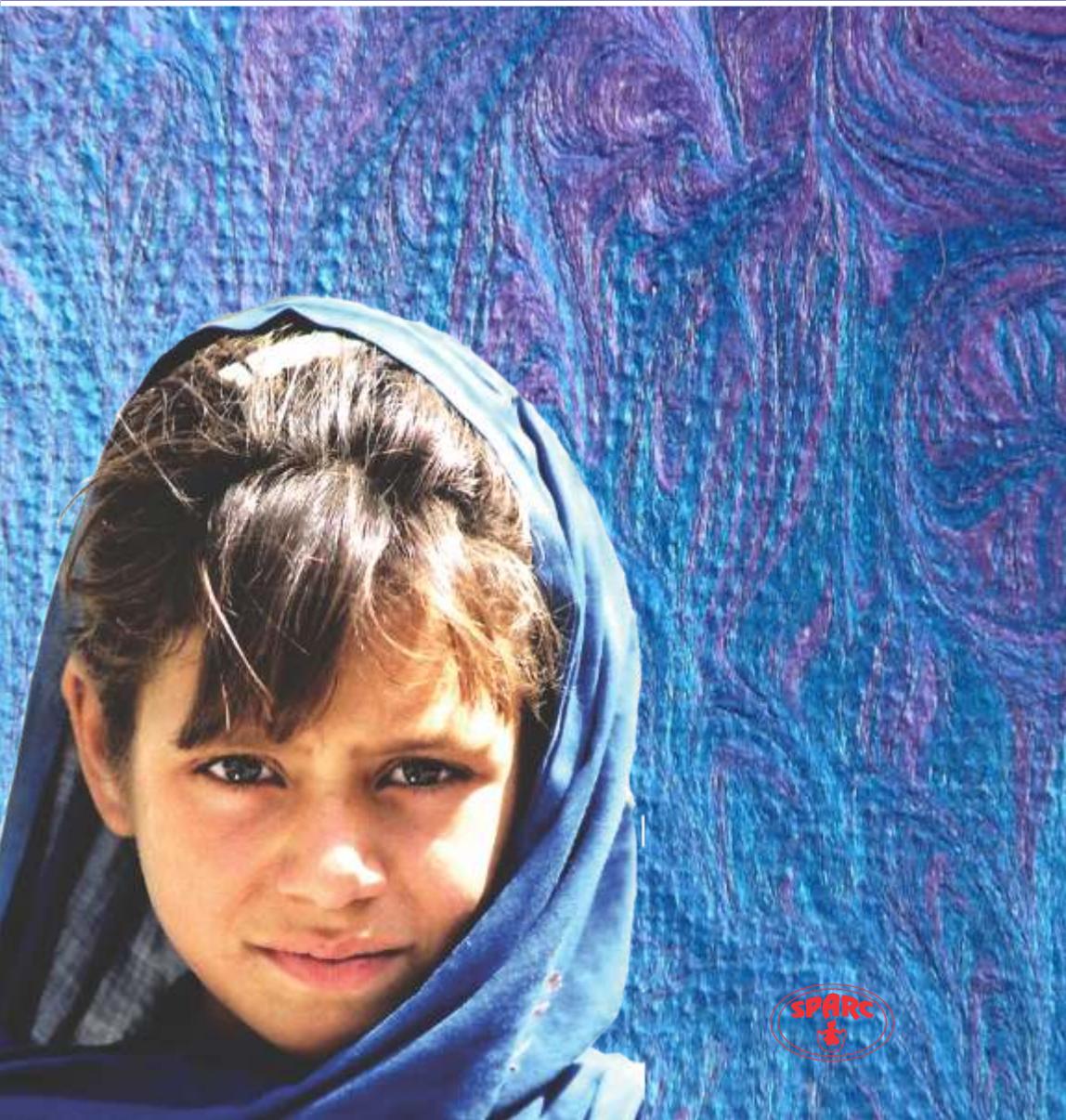


Child Marriage



The practice of child, early and forced marriage is widespread and occurs in all regions Pakistan, with the highest prevalence in the Sindh Province. It disproportionately affects the girl child and constitutes a violation, abuse and impairment of human rights, and prevents children from living their lives free from all forms of violence. It has adverse consequences on the enjoyment of rights by children, such as the right to education, the right to the highest attainable standard of health, including sexual and reproductive health

Child marriage continues to be an impediment to not only the economic, legal, health and social status of girls in Pakistan but to the development of the community as a whole. The empowerment of and investment in girls, as well as their meaningful participation in decisions that affect them, is a key factor in breaking the cycle of gender inequality and discrimination, violence and poverty and is critical for sustainable development and economic growth.

Causes for Child Marriages

Early and child marriage are directly attributable to deep-rooted gender inequalities, norms and stereotypes, and harmful traditional practices, perceptions and customs that are obstacles to the full enjoyment of human rights, in particular of women and girls.

The close relationship between female chastity and family honor forces family members to marry girls at an early age to prevent sexual transgressions and consequent damage to family reputation. Moreover, the conceptualization of the girl child as 'other's property' who has to eventually move to her husband's home prevents parents from investing in their daughter's education and daughters thus are married off at an early age to relieve parents of their 'burden'.

The problem of child marriage is complex in nature as it at times is justified on the basis of religious foundations. Historically, it can be explained as a reaction to invasions by foreigners; desire to perpetuate the cult of the family by marrying the son early; by marrying the daughter early to escape the discredit caused to the family by the presence of grown-up maiden; or by desire of mother to marry her son early so that she may sooner obtain the possession of a daughter-in-law in whom the mother could inculcate her habits of obedience and who could share the domestic chores with the mother. In the case of parents, sometimes it is due to their keenness to relieve themselves of the responsibility of marrying their daughter.

In certain peculiar situations, it takes place under what is known as *dand* or *bada* in Sindh, *vani* in Punjab, and *swara* in Khyber Pakhtunkhwa and the tribal areas. In this practice, an accused family gives its girl or girls



in marriage to an aggrieved family to settle a blood feud between the two parties. Women and girl children who are victims of *vani* or *swara* arrangements live in a hostile environment where they are treated as daughters or relatives of the enemy. In addition to being covered by the Child Marriage Restraint Act 1929, such marriages are also covered by section 310-A of the PPC (Pakistan Penal Code 1860). The offender is liable to be imprisoned up to a term of seven years but not less than three years and to a fine of Rs 500,000.

At times, women and girl children are deprived of their property rights by symbolically marrying them to the Holy Quran. This ensures that the girl child will not bear children in the future and will not demand her rightful share in the family property.

Section 498-C of the PPC prohibits marriage with the Holy Quran. A person found guilty of arranging, facilitating or compelling such marriage of a female can be imprisoned for a period extending to seven years but not less than three years and a fine of up to Rs 500,000.

Exchange marriage or *Watta Satta* is also practiced in many parts of Pakistan. In a *watta satta* arrangement, both families trade brides. Both families must have a daughter and a son and must be willing to betroth them to the daughter and son of the other family. *Watta satta* marriages put females in a precarious position as a divorce between one of the couples may trigger a divorce between the other couple because of strong sibling ties. Such marriages are a crime if child marriages are involved in the arrangement. Section 498-B of the PPC prohibits forced marriages and makes it an offense, punishable with imprisonment extending to seven years but not less than three years and liable to a fine of Rs 500,000.

Generally, a person accused of deceitfully preventing a woman from inheriting property is punishable under section 498-A of the PPC with an imprisonment extending to ten years but not less than five years and a fine of rupees one million or both.

Lack of Data

Several surveys have shown over a period of time that more number of females are married at a young age; and age at marriage has also been lower for females. The phenomenon is also more prevalent among backward classes, poor families and in households where there are no literate female members. Quite a large number of child marriages are experienced in families where the head of the family is uneducated.

Reliable statistics on the phenomenon are unavailable in Pakistan but the figures would be mind-boggling if somehow secured. The limited data available on child marriages in Pakistan presents a bleak picture. Twenty four percent of women in the country were married before the age of 18 years in

the country between 2000 and 2010 with seven percent married before they reached the age of 15 years. Other estimates quote that around 30% of the marriages in Pakistan fall under the child marriage category with the highest prevalence in the Sindh province.

Tragic Consequences

Over the years, there has been a decline in the occurrence of child marriages but it is lower in case of females than males.

The trend of child marriages has been a major cause of girls' illiteracy or lower level of education. It is also evident that child marriages are widely prevalent among cultivators and laborers. Dependency on elders and lack of independent occupational aspirations or occupational mobility further hampers the efforts of limiting child marriages.

As a result, child marriages, particularly in the rural areas of Pakistan, continue to take place. There are, however, spatial trends as indicated by different trends of distinct villages. Big farmers seem to be gradually doing away with child marriages; but it remains more concentrated among the landless farmers and laborers. Exposure to urban areas has helped in reduction of child marriage and realization of bad effects of child marriages has positive relationship with its reduction, indicating thereby a positive role of general understanding and awareness. The mass media can play an important role in educating the people in this regard.

Child marriages can also lead to the possibility of mismatches of marriages.

Additionally, child wives fall ill and lots of times die which explains one of the highest maternal mortality rates in the country. Infants born to the child mothers are many times feeble. The marital lives remain unhappy and child wives lack happiness due to their life-time inability to support their lot.

Many a times, the young wives become vulnerable to sexually transmitted diseases.

The occurrence also results in increasing the population growth rate as child brides start to bear children from a young age.

The Child Marriage Restraint Act 1929

Child marriage in Pakistan is legally prohibited to an extent under the Child Marriage Restraint Act 1929 (No XIX). Under the Act, the minimum age for marriage is 18 years for a male and 16 years for a female (section 2). Contravention is punishable with a fine of Rs.1000 and an imprisonment of one month or both for

- An adult male (above 18 years of age) who contracts marriage with a child (section 4)
- A person who solemnizes a child marriage (section 5)
- A parent or guardian who does not act to prevent a child marriage (section 6).

The 1929 Act is one of those few laws on the statute books that were introduced by Quaid e Azam while he was a member of the British India Legislative Assembly. It was passed on October 1, 1929, to restrain the solemnization of child marriages and applied to the whole of India effective April 1, 1930. It still remains in force, and extends to the whole of Pakistan. It applies to, both Muslim and Non-Muslim, citizens of Pakistan, and regardless of whether they are resident in Pakistan or elsewhere.

The law was a bold move since the incidence of child marriage in 1929 was not just confined to India but was common in many Western societies. The situation of women and children in early Europe had remarkable similarities with many practices familiar in Asian societies.

Despite the similarities, the practice of child marriage was carried out on a much bigger scale in the subcontinent as opposed to the West. The number of child brides, child divorcees and child widows was astounding. The practice of *sati* or self immolation by the widow after the death of her husband added another dimension to an already abusive practice.

Prior to the 1929 Act, the Age of Consent Act in 1892 was enacted which laid down the age below which a marriage should not be consummated. The British rulers, however, lacked the political will to strictly enforce this social legislation, and child marriages continued unabated. It was in order to control this menace that the 1929 Act was enacted.

The purpose of the Act, as its title signifies, is to restrain the solemnization of child marriages. Child was originally defined in the Act to mean a "person who, if a male, is under 14 years of age, and if a female, is under 12 years of age." The age was subsequently raised. The Muslim Family Laws Ordinance 1961 (No VIII) effective July 15, 1961, raised the age of girl child in the Act from 14 to 16 years of age; and lowered the age of male from 21 to 18 years to the extent of the Muslim citizens; this means that the age for the non-Muslim citizens remains the same as prior to the 1961 Amendment. Incidentally, the age of marriage has been raised to 21 for males and 18 for females, in India under the same law.

The Act, after being amended by the 1961 Ordinance, states that, whoever being a male above 18 years of age, contracts a marriage with a girl child of less than 16 years, is punishable with simple imprisonment, i.e. without hard labor (sec 53, PPC), extending up to one month, or with fine extending up to Rs 1000, or with both.

Additionally whoever performs, conducts or directs any child marriage, defined as marriage to which either of the contracting parties is a child, is punishable with simple imprisonment extending up to one month, or fine extending up to Rs 1000, or

with both, unless he proves that he had reason to believe that the marriage was not a child marriage.

Similarly, any person having charge of the minor contracting a child marriage, whether as parent or guardian or in any other capacity, lawful or unlawful,

- who does any act to promote the marriage; or
- permits it to be solemnized; or
- negligently fails to prevent it from being solemnized;

is punishable with simple imprisonment extending up to one month, or with, fine extending up to Rs 1000, or with both, provided that no woman is punishable with imprisonment. For purposes of this section of the Act, it will be presumed under law, unless and until the contrary is proved, that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnized.



No court other than Magistrate of the first class can take cognizance of, or try, any offense under the Act. However even he cannot take cognizance after the expiry of one year from the date of the offense and unless, except in Punjab, a complaint is made by the union council within whose jurisdiction a child marriage is or is about to be solemnized, or if there is no union council in the area by such authority as the provincial government may in this behalf prescribe.

In cases where the court is satisfied based on information given to it through a complaint or otherwise that a child marriage is about to be solemnized, the court may issue an injunction

against any of male contracting the marriage; or the persons involved in the performance or conduct of the child marriage; or the persons having charge of the minor whether as parent or guardian or in any other capacity whether lawful or unlawful. No injunction, however, can be issued unless the court has given the person concerned to explain. Such an injunction order can also be altered by the court. Disobedience of such an injunction order is punishable with imprisonment extending up to three months, or with fine extending up to Rs 1000, or with both, provided that no woman can be punished under this section of the Act.

Failure to Control Child Marriages

Family law even prior to the Eighteenth Amendment passed in April 2010 was within the provincial jurisdiction. However, after the Amendment, it is the responsibility of the provinces to either enact their own laws relating to child marriage or modify it as considered necessary.

The provisions of the 1929 Act are simple but have failed to a great extent in restraining the solemnization of child marriages. The problem is so complex that it cannot be checked merely by legislations. This is partly due to sociological reasons but also in view of the weak nature of the present provisions of the Act.

The difference in the age of the male and female child in the Act is discriminatory, and is in contravention of article 25(2) of the Constitution of Pakistan which lays down that "*there shall be no discrimination on the basis of sex alone.*" The justification for this difference in ages of a male and female child perhaps is based on Muslim Personal Law which is interpreted by some to imply that a girl becomes an adult upon attaining puberty.

In addition, the sentences and penalties that could be imposed under the Act are light and are hardly relevant today. These penalties were introduced more than 84 years ago, and there is obviously a need to revise them upwards. In any case, although no statistics are available on the subject, but few convictions

have taken place under the Act. This is partly due to the cumbersome procedure for initiating proceedings under the Act. This procedure has been made worst in Punjab where the provision to refer complaints of child marriages by the concerned union councils to the first class magistrates has been done away with through the Child Marriage Restraint (Punjab Amendment) Ordinance 1971.



The Sindh Province has taken the lead by introducing a bill which makes the age uniform for both girls and boys for purposes of marriage, fixing it at 18; and enhancing the penalties.

The bill, however, remains pending in the Sindh Assembly and thus has yet to become law.

However the most important reason that the Act has failed to check child marriages is the repeated judgments of our courts, including the Supreme Court, that child marriages despite the Act do not become criminally liable under the Act. As a result, the courts frequently condone child marriages on grounds that a female has the capacity to contract marriage on attaining the age of puberty, and puberty under the Muslim Personal law is presumed at the age of 15 years.

Child marriages, however, also continue unabated, particularly among the rural and poor segments of the population, because it is regarded as a custom. It is observed that even those who have benefitted from modern development are still traditional in nature as far as the question of child marriage is concerned.

Urban contact is seen as affecting the practice but some people working in large cities still marry their little children in villages. If the children are in their adolescence, they are invariably reported as adults.

SPARC's Recommendations

- The menace of child, early and forced marriages is complex and of a challenging nature. It accordingly necessitates the collective efforts of the Federal, Provincial and Local Governments, lawmakers, judicial authorities, law enforcement officials, traditional and religious leaders, civil society, media, the private sector and other relevant stakeholders to address the root causes of this practice that exists in different economic, social and cultural settings.
- The issue of child marriages must be linked by all its opponents to the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices similar to Slavery,
- The prevalence in the country can only be addressed if stringent legislation is complimented by strong implementation. Majority of the cases are reported from remote areas of the country where the administrative setup lacks the capacity or political will to tackle such issues.
- Strong policy level initiatives should be followed by educational campaigns to apprise people of the adverse psychological and physical impacts of child, early and forced marriages. Community awareness and mobilization can go a long way in enhancing the effectiveness of laws at the grassroots.

- The Child Marriage Restraint Act 1929 should be reviewed by each Province to abolish an inherent bias against the girl child. The legal age for contracting a marriage for a girl must be raised from 16 to 18 years which is in conflict with the anti-discriminatory clause of the Constitution.
- The punishment for contracting, soliciting or failing to prevent a child marriage must be made more severe to discourage the practice.
- Steps should be taken to ensure the effective implementation of the Prevention of Anti Women Practices (Criminal Law Amendment) Act 2011.
- An effective database enumerating the reported cases of child, early and forced marriages should be established for policy makers and human rights activists to accurately judge the magnitude of the problem in Pakistan.



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