



Shirkat Gah – Women’s Resource Centre
Submission on child, early and forced marriage

Introduction

Despite national laws and international commitments, child marriage remains a real threat for many in Pakistan. According to the Pakistan Demographic and Household Survey (PDHS 2006-7), 13 percent of girls in the country are married by the time they are 15 and 40 percent by 18 years. 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 leading to one of the highest infant mortality rates in South Asia (PDHS 2006-7).

International commitments and Pakistan's response

Pakistan has signed and ratified a number of international commitments (binding and non-binding) including the UN Convention on the Rights of the Child (CRC) 1990 and CEDAW U.N Human Rights Charter (1945), the Beijing Declaration, ICPD and MDGs. While not all are directly linked to age of marriage, CRC and CEDAW directly address the issue.

In Pakistan, the legal age for marriage is 18 for males and 16 for females (Child Marriage Restraint Act, 1929 and Muslim Family Laws Ordinance, 1961), despite acceptance of the definition of child under CRC as anyone under 18 years of age. Poor implementation of laws result in a high number of child marriages even below the prescribed age limit of 16 years for girls and 18 for boys. The laws that have direct implications on child marriages are:

- Divorce Act, 1869
- Child Marriage Restraint Act, 1929
- Dissolution of Muslim Marriage Act, 1939
- Muslim Family Laws Ordinance, 1961 (MFLO)

For the Muslim majority, MFLO, 1961 addresses early age marriages by barring registration of under-age person. The *nikah nama* (marriage certificate) framed under MFLO provides a section to ensure consent in marriage. The rules under MFLO require mandatory signature or thumb impression of the bride. For grooms, the *nikah nama* can be signed either by the groom or his representative, but signing is mandatory for bride and her representative (if any). It is the duty of the *nikah khawan* (official/person solemnizing the marriage) to ensure signatures of all required persons.

These measures, however, have not been able to prevent child marriage of females mainly because of non-registration of marriages combined with inefficient working of the *nikah* registrars (marriage registration officials) who in many instances fail to ensure true compliance of laws.

Over the years the government has also introduced various measures to implement rules under the MFLO. In 2005 Punjab Local Government and Rural Development

Department asked all Districts Co-ordination Officers (DCOs) to ensure implementation of MFLO and rules under it. The local governments were directed to cancel the licenses of *nikah* registrars violating MFLO and its rules.

Two years later, the government also issued a marriage registration form to record marriages. These forms require information about the bride and groom, including their names, ages, computerised national identity card numbers (CNIC), their fathers' names with CNIC numbers, marital status and addresses. The form is not a substitute for the *nikahnama* (marriage certificate) but is used to register marriages under the National Database and Registration Authority (NADRA) law.

In 2009, the Child Marriage Restraint (Amendment) Act, 2009 was tabled in National Assembly to amend Child Marriage Restraint Act, 1929. The bill aimed to remove the gender disparity by setting 18 years as the minimum age of marriage for males and females. The bill also proposed amendments for enhancing imprisonments and fines. The proposed bill, however, lapsed due to time constraints.

A similar provincial bill in 2013 was rejected in Khyber Pakhtunkhwa (KPK) Assembly after much criticism and on the notion that it would spur an unnecessary debate in the province.

In addition to the above, more than half-dozen laws aiming to promote women rights and mitigate biases women face have been promulgated in past few years. These laws help implement Pakistan's obligations under the many conventions the country has ratified. While not all of these laws directly address early age marriage, but these breakthroughs show commitment in securing women empowerment and fulfilling International commitments. These laws include:

- Amendments in Family Courts Act for Khula (woman's unilateral declaration of divorce to her husband) etc 2002
- Protection of Women (Criminal Laws Amendment) Act, 2006
- Criminal Law (Amendment) Act, 2010
- The Women in Distress and Detention Fund (amendment) Act 2010
- The protection against Harassment of Women at the Workplace Act 2010
- The Acid Control and Acid Crime Prevention Act, 2010
- Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011
- National Commission on the Status of Women Act 2012

Protection of Women Act, 2006, in particular, made a significant legal change by defining rape as sexual intercourse with a woman under circumstances that includes "with or without her consent when she is under sixteen years of age." While the definition does not make any exception for an underage wife and has not provided for any ceiling on the age of wife, but it does raises the question of whether sex with an underage wife can be prosecuted as rape. If so then the penal provision under Women Protection Act, 2006 can be effective deterrent against under age marriages of girls.

Prevention of Anti-Women Practices Act 2011 has also been instrumental in deterring the many drivers (customary practices) that result in early-age or forced marriages. The act outlines strong punishments for customary practices such as *wanni*, *swara* or *budla-i-sulh* where women, of whom many are child brides, are forced into marriage to settle disputes.

The passage of the 18th amendment means that formulation of legislation on social issues is now a province's domain and not the federal government's. In this regard numerous actions have been taken by the provincial governments. These include:

- The Sindh government has formed a committee to finalize a bill for the prohibition of child marriages. The bill sets 18 years the legal age for marriage for both males and females.
- KPK Government constituted Provincial Commission for the Welfare and Protection of Children under the Child Protection and Welfare Act, 2010 which provides protection against child marriage and discriminatory customary practices in accordance with federal laws.
- Punjab Government's child protection mechanism under the Punjab Destitute and Neglected Children Act, 2004 does not address child marriages directly but provides protection to children

Judiciary, another important organ of state, has played an encouraging role in addressing the issue of child marriages. Higher courts in Pakistan have outlawed giving away of women (mostly young) to settle disputes by parallel justice systems such as *punchaiyts* and *jirgas*. Most of these verdicts have come in response to public interest litigations and suo moto actions. Case law reveals that the courts have upheld the right of the woman to repudiate an early-age marriage performed by her father, guardian or mother.

Civil Society Efforts

Civil Society in Pakistan has regularly addressed the issue of early-age marriages by engaging government, legislators and members of the community.

Alliance against Child Marriages (AACM), a platform of 16 civil organizations and representatives from the government was formally launched in November 2013 in an effort to reduce early-age marriages. The alliance is an example of civil society and government partnership to increase the average age of marriage for girls. The alliance has worked closely with Punjab Minister for Population Welfare and Social Welfare Department to end child marriage in Punjab and Sindh provinces of Pakistan.

Another example of efforts by women/child rights activists to address issue of child marriages is a national network of more than 100 civil society organizations called The Child Rights Movement. Working for the protection and promotion of child rights and safety, this network keeps a special focus on child marriages. The network has repeatedly asked the government to take concrete and effective steps by introducing policy, enacting legislation, make budgetary allocation, create awareness among stakeholders and prioritize child rights to prevent child abuses in the country. For example, a postcard campaign was launched by the alliance in October 2013 asking the government for enactment of various laws including the National Commission on the Rights of Children Bill, the Child Protection (Criminal Law) Amendment Bill 2013 and the Child Marriages Restraint (Amendment) Bill.

In addition to the above, Civil Society Organizations have actively involved community through awareness sessions, capacity building trainings and media campaigns. Some examples include:

- A campaign on Safe Age of Marriage titled “Legal age for identity card is 18, why is legal age for marriage less?” was launched by Shirkat Gah to advocate for an increase in legal age for marriage for girls. Posters (English and Urdu) highlighted the causes and consequences of early-age marriages.
- Shirkat Gah produced a position paper on “Age of Marriage” focusing on complexities underlying the issue of age of marriage. The paper also examined the drivers of early age marriage, laws that relate to the issue and their implementation.
- International Day of the Girl Child is commemorated by Civil Society ever since it was first announced in 2012. The day is celebrated to acknowledge girls as a population that faces challenges including gender inequality, violence, discrimination and early-age marriages.

Challenges:

Fundamental challenges that reinforce early-age marriages include patriarchal institutional structures, poverty, limited access to education and, inadequate and conflicting laws related to age of marriage.

At the policy level, legislators are often reluctant to lend support for any proposal that curtails child marriages. One most recent example is when Provincial legislators from Khyber Pakhtunkhwa assembly refused to pass the Child Marriage Restraint Amendment Bill 2013. The bill was rejected by most lawmakers even though it was moved by a woman legislator from the ruling political party, Awami National Party (ANP). The bill aimed to increase the legal age of marriage for a girl from 16 to 18 and increase punishment in the Child Marriage Restraint Act. “The approval of this bill will create a new debate and more issues in the province. There is no need to discuss this bill in the assembly,” said KPK province’s ANP parliamentary leader, adding “there is no age-limit for marriages in other Islamic countries.” The criticism and rejection even from a party which is considered left-wing and liberal reveals the established patriarchal mindsets and the challenges that exist in Pakistan.

Conflicting laws and inadequate implementation of laws is another challenge contributing to the failure in curbing child marriages.

Another challenge faced is the inability of the government to enforce birth registration. Pakistan's overall birth registration rate is believed to be around only 30 percent (UN, Committee on the Rights of the Child). According to UNICEF, only 27 percent of children were registered at birth, as of 2009. The rate is practically nil in Balochistan (0.8 percent) and FATA (1 percent). - This allows *nikah* registrars to enter ages of brides higher than their actual ages. The *nikah* registrars also lack basic education and training in relevant laws which result in serious violations.

The existence of other laws (than those specifically related to age of marriage) that discriminate on the basis of sex make the menace of young age marriages to flourish.

Recommendations:

Following recommendations are being made by girl and child rights activists for government action to stop early-age marriages:

- Amend the Child Marriage Restraint (Amendment) Act, 1929 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 practices¹.
- 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.

¹ Khawar Mumtaz, Sohail Warraich and Shariq Imam - Age of Marriage: A Position Paper, Shirkat Gah, 2011

- 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 of 18 is implemented, after it is passed.