



GOVERNMENT OF PAKISTAN



POLICY BRIEF

THE LEGAL FRAMEWORK FOR CHILD MARRIAGE IN PAKISTAN

ISSUED BY

NATIONAL COMMISSION ON THE RIGHTS OF CHILD

Author



National Commission on the Rights of Child (NCRC) was established by the Government of Pakistan under National Commission on the Rights of Child Act- 2017. The mandate of the National Commission on the Rights of Child in section 15 is to examine, review laws, policies, inquire into violation of child rights, examine international instruments and undertake periodical review of existing policies and programmes on child rights and make recommendations for their effective implementation in the best interest of children; advice the Federal Government to sign, ratify or accede to any proposed International Treaties, Protocols, etc.

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Preface

Child marriage is an outright denial of children's fundamental rights and a form of violence against children. In Pakistan, many children are victims of child marriages, and most of them are girls. It denies girls the right to make important decisions that affect their lives, health and well-being. It makes them more vulnerable to mental, emotional, and physical abuse. Early marriage often excludes girls from education and makes them more vulnerable to pregnancy-related problems that can lead to lifelong complications. These complications are one of the leading causes of death among young mothers.

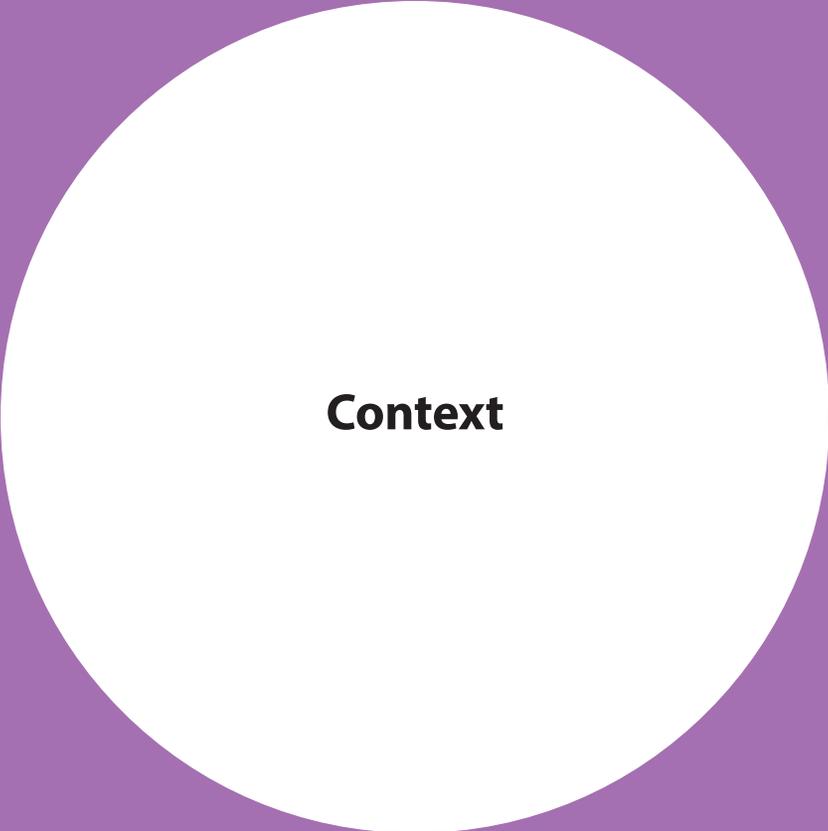


Once a child is married, society considers them an adult and expects them to be mature and responsible. By taking away their right to develop and learn for themselves and understand their abilities and potential, we are only creating individuals who will forever be dependent on others. By allowing child marriages, we disempower our girls and hinder the progress of our future. With every young girl who is married off early, we lose a potential future doctor, engineer, teacher, politician, or leader. The price each of us has to pay for every child bride is enormous. Therefore, ending child marriage is critical to the prosperity and stability of our country.

This practice is largely due to the prevailing gender inequality in society and patriarchal cultural norms. It is exacerbated by weak legislation. Laws are one of the most important elements of a response mechanism to combat child marriage. Because of the devastating impact early marriage has on children's lives, the practice is prohibited by law throughout the world.

Through this policy brief, we seek to contribute to the legislative discourse at the federal and provincial levels to bring about lasting change for the benefit of children. The policy brief is an attempt to identify gaps in the current legal framework on child marriage in order to address and eliminate child marriages in Pakistan.

Afshan Tehseen
Chairperson
National Commission on the Rights of Child



Context

Pakistan ratified the Convention on the Rights of the Child (CRC) in 1990, committing to protect the rights of children, including protecting children from harmful practices such as early and forced marriages. Child marriage is defined as a formal marriage or informal union that takes place before the age of 18 and is a violation of the child's human rights (UNICEF). It undermines the child's right to education, health, survival, and development. Child marriage disregards the best interests of the child, deprives him or her of childhood, and often leads to violence, abuse, and exploitation. It has disastrous effects on the well-being and development of children and negatively impacts overall development.

Over the years, the number of child marriages has declined worldwide, according to UNICEF. The number of girls married off has dropped from one in four a decade ago to about one in five today. Yet the practice remains widespread.¹ UNICEF estimates that before the COVID -19 pandemic, more than 100 million girls would be married before their eighteenth birthday in the next decade. Now, up to 10 million more girls are at risk of becoming child brides as a result of the pandemic², with about half occurring in Bangladesh, Brazil, Ethiopia, India, and Nigeria.

More than 40 percent, or 285 million women, married before age 18 live in South Asia.³ Fifty-nine percent of women aged 20-24 in Bangladesh were married under age 18, 40 percent in Nepal, and 27 percent in India.⁴ In terms of child marriages, where a girl is married before she is 15 years old, 10 million girls are married before their 15th birthday in India, 2.3 million in Bangladesh, and six hundred thousand (600,000) in Pakistan.⁵ The PDHS 2017-18 shows that in Pakistan, 3.6 percent of girls under 15 are married and 18.3 percent of girls under 18 are married. **Pakistan has the 6th highest number of women married before the age of 18 in the world.**⁶

¹ <https://www.unicef.org/protection/child-marriage> (last accessed on 15.02.22)

² Ibid

³ https://www.thefridaytimes.com/understanding-child-marriage-as-a-global-and-national-phenomenon/#_ftn2 (last accessed on 15.02.22)

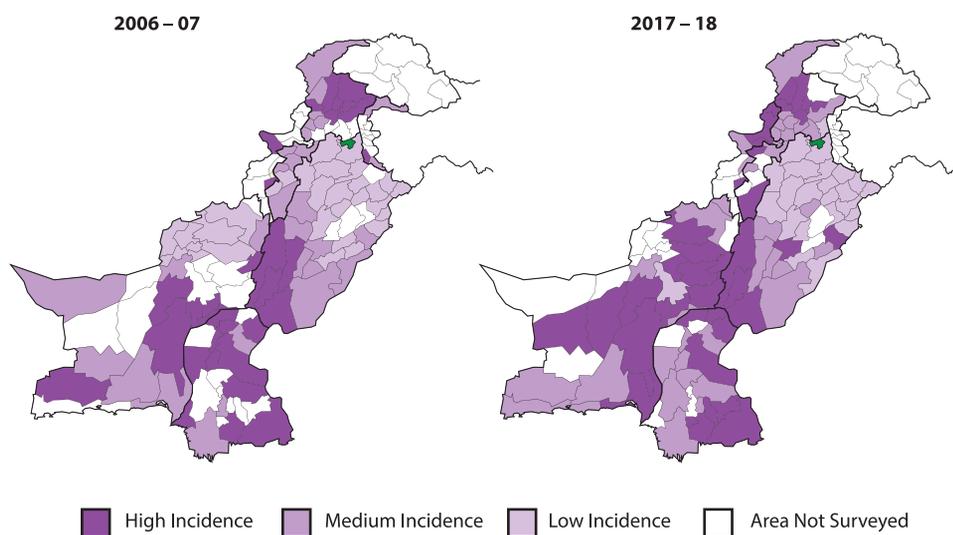
⁴ Child marriage prevalence is the percentage of women 20-24 years old who were first married or in union before they were 18 years old (UNICEF State of the World's Children, 2015). It is based on Multiple Indicator Cluster Surveys (MICS), Demographic and Health Surveys (DHS) and other national surveys, and refers to the most recent year available during the period 2005-2013.

⁵ Vogelstein, R, Ending Child Marriage, How elevating the status of girls advances US foreign policy objectives, Council on Foreign Relations, 2013

⁶ UN Women, National Commission on the Status of Women, "Costing Study on Child Marriage: A Country Level Report 2020-21"

Cases of child marriage are also frequently reported in the media. In 2021, it was reported that a 64-year-old MNA was married to a 14-year-old girl. Recently, the cases of Nimra Kazmi and Dua Zehra attracted media attention. These cases highlight the gaps in the legal framework and its enforcement in Pakistan.

Child marriage is widespread in Pakistan for several reasons, including deeply rooted traditions and customs. There are many drivers or factors for child marriages in Pakistan.⁷ These can be categorised at the social, economic, institutional, legal, and political levels. Together, they affect the socioeconomic status of an individual and a family and lead to child marriage. These factors operate at the state, community, family, and individual levels and depend heavily on the local context.



PDHS Data - Heat Map of Incidence of Child Marriages

Child marriage affects both girls and boys, but girls are disproportionately affected. It has been observed that poor families tend to marry off their daughters at a very young age.⁸ Due to their abject poverty, they cannot afford to educate them and consider a girl child a burden. Therefore, they tend to take the economic burden of raising a girl off their shoulders by marrying her off at an early age. In addition, child marriage is recognised in various cultures as a

⁷ Anam Naeem, AnamAther Rana, Sana Salman (2017), "Minimum Marriage Age in Pakistan: Policy Brief", Social Enterprise Development Center, LUMS available at <https://sedc.lums.edu.pk/research-publications/minimummarriage-age-pakistan-0> (last accessed on 15.02.22)

⁸ Ibid

practice to preserve honour or settle disputes, such as *Wani* or *Swara* in Pakistan. Misinterpretation of religious beliefs may also contribute to the prevalence of child marriage. However, the most important factor encouraging the practice of child marriage and preventing progress toward its elimination is poverty.

Study on Knowledge, Attitudes and Practices Related to Child Marriage in Pakistan

The study conducted by UNICEF (2022) aims to document baseline knowledge, attitudes and practices (KAP) on child protection in Pakistan. UNICEF conducted a survey of both adults and children (14-17 years) to specifically measure understanding, misconceptions and behaviours related to child marriage, taking into account psychological, sociological and environmental factors, in order to establish a baseline for future assessments and measuring the effectiveness of programme activities.



Key Findings – Adult Responses

- 1.** Most adults are aware that child marriage leads to increased health risks for the girl and her child.
- 2.** Most adults are not aware about whether there is a law prohibiting child marriage.
- 3.** Most respondents think that girls and boys should marry after turning 18 years old, but external social expectations can influence whether, when and how a child marries.
- 4.** Children are not actively involved in the decision-making process around their marriage.
- 5.** While most respondents believe that child marriage has negative consequences, about half believe that marriage provides important forms of protection for girls.
- 6.** Most people do not think that incidents of child marriage should be reported because it is part of a family's internal affairs.
- 7.** Most respondents said that both parents are equally responsible for deciding the marriage of girls and boys.



Key Findings – Children’s Responses

1. Many children consider school interruption and increased responsibility to be negative consequences of child marriage.
2. Most children are not aware that there are laws prohibiting child marriage and few children know the minimum legal age for marriage.
3. Nearly all children believe that 18 years old is the youngest acceptable age for marriage.
4. Girls compared to boys are more likely to understand the negative consequences of child marriage.
5. Children’s attitudes towards the negative consequences of child marriage are contradictory. While most children believe that education is beneficial for a girl child, most children also believe that child marriage can provide social and economic protection to a girl child.
6. Boys have a more positive attitude toward reporting child marriage than girls.
7. While most children have a limited role in whether and how they will marry, girls are much less likely to have an active role in deciding their marriage.

To prevent child marriages, governments usually set a minimum age for marriage.

In most countries, the legal age for marriage is 18 years. Therefore, girls who marry before 18 are considered victims of child marriages. Closely related to the legal age of marriage is the issue of the age of sexual consent, i.e., the minimum age at which a person is considered legally competent and can consent to sexual intercourse. While there appears to be a consensus for minimum legal age of marriage, the age of sexual consent varies in most countries and is often lower than the legal age of marriage.

The threshold of 18 years is defined in many international instruments, including the Universal Declaration of Human Rights, the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on Consent to Marriage, the Minimum Age for Marriage and Registration of Marriages of 1964, etc. A child under the age of 18 is not considered to be of legal age, which is a sine qua non for entering into marriage. Moreover, a girl or boy is not capable of giving or forming a free and informed consent.

In Islamic countries, the minimum age for marriage also varies. For example, the legal minimum age for girls is 19 in Algeria and 20 in Libya, while it is 18 in Egypt, Lebanon, Iraq, Oman, and the United Arab Emirates, and 21 for girls in Indonesia. In Islamic countries, the age of marriage is usually defined and set by civil law, although a few countries also have criminal penalties for marriages below this minimum age. Also, in India, Bhutan, Maldives, Bangladesh, and Nepal, the minimum legal age for girls is 18, while in Pakistan it is 16, except in Sindh province, where the legal age of marriage for girls and boys is 18. In addition, the age of marriage in Pakistan is set differently in specific laws for religious minorities. For example, under the Christian Marriage Act, 1872, the age of marriage for indigenous Christians is 13.

Minimum Age for Marriage

	Country	Boy	Girl
1.	Egypt	21	18
2.	Lebanon	18	18
3.	Libya	20	20
4.	Turkey	18	18
5.	Morocco	18	18
6.	Tunisia	18	18
7.	Iraq	18	18
8.	Algeria	19	19
9.	Syria	18	18
10.	Oman	18	18
11.	Indonesia	21	21
12.	Bangladesh	21	18
13.	Saudia Arabia	18	18
14.	U.A.E.	18	18

In October 2021, the Federal Shariat Court in Pakistan categorically stated that the setting of a minimum age for marriage by an Islamic state is not against Islam.

Pakistan has adopted a number of policy and legislative measures to prevent child marriages, which have contributed significantly to reducing the number of child marriages. However child marriages are still widespread in some parts

of Pakistan and have long-lasting effects on the lives of children, their families, and society as a whole. Therefore, the NCRC, in fulfilment of its mandate under Section 15 (a) (b)(c) of the NCRC Act, 2017, has decided to study and analyse the problem of child marriages and the existing legal framework in Pakistan and

“No female whether a widow or divorcee will be forced to marry anyone unless her express and categorical consent have been freely taken and in the same way, a woman who is not previously married can never be forced to marry anyone unless her free consent and permission is taken.” (Sahih Al-Bukhari)



**International Human
Rights Regime for
Child Marriages**

recommend measures to minimise or eliminate child marriages in Pakistan.

The international human rights regime sets out standards and obligations in relation to child marriage.

Universal Declaration of Human Rights (UDHR), 1948

“Article 16(1): Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

Article 16(2): Marriage shall be entered into only with the free and full consent of the intending spouses.”

Article 16 of UDHR states that men and women of full age have the right to marry and to found a family which excludes minors. In addition, Article 16(2) explains that marriage should be contracted with free and full consent of intending spouses. This, together with the phrase “of full age” in Paragraph 1, amounts to a ban on child and/or forced marriage because children may not be in a position to give free and full consent.

Supplementary Convention on the Abolition of Slavery, The Slave Trade and Institutions and Practices, 1956

Pakistan has ratified the Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices, 1956 in March 1958. The Convention declares that any marriage which is forced upon a woman or a girl against her will by any member of her family or the guardians of the girl is considered as slavery and prescribes following measures to eliminate child marriages.

“Article 2: With a view to bringing to an end the institutions and practices mentioned in article 1(c) of this Convention, the States Parties undertake to prescribe, where appropriate, suitable minimum ages of marriage, to encourage the use of facilities whereby the consent of both parties to a marriage may be freely expressed in the presence of a competent civil or religious authority, and to encourage the registration of marriages.”

Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964

Article 2 of the Convention says;

“Article 2: States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses.”

In addition, this Convention obligates state parties to make efforts to stop certain customs, ancient laws and practices relating to marriage and the family which are inconsistent with the principles outlined in the Charter of the United Nations and in the Universal Declaration of Human Rights. Pakistan has not ratified this Convention. Pakistan should ratify this convention considering customary practices, legal and institutional frameworks on minimum age of marriage in Pakistan.

International Convention on Civil and Political Rights (ICCPR), 1976

Pakistan is a party to ICCPR which has ratified it in June 2010. Article 23 of ICCPR says;

“Article 23(2): The right of men and women of marriageable age to marry and to found a family shall be recognized.

Article 23(3): No marriage shall be entered into without the free and full consent of the intending spouses.

Article 23(4): States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution.”

UN Human Rights Committee which reviews the progress of implementation of ICCPR in state parties observed in Concluding Observation to periodic report of Pakistan in August 2017;

Early marriage and forced marriage

41. *The Committee is concerned that the minimum age for marriage is set differently for girls (16 years) and boys (18 years) in some provincial laws; that the practice of ghag, forced marriage and child marriage continues; and that a high number of victims of such practices have attempted or committed suicide (arts. 2 (2), 3, 6, 23 and 26).*

42. *The State party should ensure that the minimum age for marriage is set at 18 years for both girls and boys; intensify its efforts to eradicate forced marriage and related harmful practices, including by carrying out prompt and effective investigations of all reported cases and prosecuting those responsible, if appropriate; and ensure that victims are provided with appropriate remedies and rehabilitation services.⁹ “*

International Convention on Economic Social and Cultural Rights (ICESCR), 1976

Pakistan ratified ICESCR in April 2008.¹⁰ Article 10(1) says;

“Article 10(1): The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.”

The Committee on Economic, Social and Cultural Rights in Concluding Observation to periodic report of Pakistan in July 2017 had following observations;

Minimum age for marriage

55. *The Committee is concerned that the minimum age for marriage for girls varies across provinces and that some provinces have set it at 16 years (arts. 3 and 10).*

56. *The Committee recommends that the State party intensify its efforts to adopt legislation prohibiting the marriage of all persons, both male and female, below 18 years, in line with the Covenant and other international human rights conventions.*

⁹ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fPAK%2fCO%2f1&Lang=en

¹⁰ https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-3&chapter=4

Forced conversion and forced marriage

57. The Committee is concerned that the practices of forced conversion of non-Muslim women and forced marriage continue. It is particularly concerned that the proposed amendment to the Child Marriage Restraint Act, 1929, has been declared un-Islamic by the Council of Islamic Ideology and that efforts to enact a law to prevent forced conversion have been blocked by the Council (arts. 3 and 10, ICESCR)."¹¹

Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), 1979

Pakistan ratified CEDAW in March 1996. CEDAW in Article 16 states that;

"Article 16(1): States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:

(a) The same right to enter into marriage;

(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent

Article 16(2): The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory."

The Committee on the Elimination of Discrimination against Women also expressed its concerns about child marriages in its concluding observations on the fifth periodic report of Pakistan on 10 March, 2020. The committee in its report in para 50 (a) recommends Pakistan to adopt a bill to amend the Child Marriage Restraint Act, 1929 to set the minimum age of marriage at 18 years for both sexes without exceptions throughout the State party.

Convention on the Rights of the Child (CRC), 1989

Pakistan is the sixth country in the world to sign and ratify the convention. It signed the convention on 20 September 1990 and ratified it on 12 November 1990.

¹¹ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fPAK%2fCO%2f1&Lang=en

Child marriage is a protection issue and dealt under Article 19 of the CRC. However, it undermines all rights of children.

Article 19 says;

“Article 19(1): States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

Article 19(2): Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement. “

Article 24(3): States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

The UN Committee on the Rights of Child in its Concluding Observations on the Fifth Periodic Report of Pakistan in 2016 observed the following:

“The Committee reiterates its previous recommendation that the State party ensure the full harmonization of its legislation as regards the definition of the child so as to define a child as any human being below the age of 18 years”. The Committee also recommended aligning the age of marriage for boys and girls by raising the minimum age of marriage for girls to 18 years.¹²

¹² <https://digitallibrary.un.org/record/835009?ln=en>

DENIED !

Article 2

Non-discrimination

Article 20

Right to family environment

Article 3

Best interest of the child

Article 24

Right to health

Article 4

Safeguard of all rights of children

Article 28

Access to education

Article 6

Survival and development

Article 31

Leisure, play and culture opportunities

Article 9

No separation from parents

Article 35

Not to be abducted, sold or trafficked

Article 19

Protection from violence

Sustainable Development Goals

The 2030 Agenda for Sustainable Development lays down 17 Sustainable Development Goals (SDGs). This agenda calls up on the developed and the developing countries to take actions for achieving a sustainable development. Among these 17 goals, goal 5 on gender equality and target 5.3 especially urges the state to "Eliminate all harmful practices, such as child, early and forced marriage...". Pakistan has co-opted these goals and and submitted a report under voluntary national review and shared its progress.¹³

Generalised Scheme of Preferences

Under the GSP+, a special incentive arrangement for sustainable development and good governance, Pakistan has agreed to show progress on 27 international conventions related to human rights, labour rights, protection of the environment and good governance. The EU Special Incentive Arrangement for Sustainable Development and Good Governance ('GSP+') assessment of Pakistan covering the period 2018 –2019 states the following;

*"Despite legislation against forced marriages, there are still reports of forced conversions of Hindu women to Islam (including kidnapping), mostly among lower caste minor girls (mainly in Sindh). The Sindh Child Marriage Restraint Act 2013 has not been enforced effectively and the state's response to forced marriages has been mixed."*¹⁴

¹³ <https://op.europa.eu/en/publication-detail/-/publication/e01fc63a-5327-11ea-aece-01aa75ed71a1/language-en>

¹⁴ <https://op.europa.eu/en/publication-detail/-/publication/e01fc63a-5327-11ea-aece-01aa75ed71a1/language-en>



**National and Provincial
Legal Framework for
Child Marriage**

After 18th amendment to the Constitution of the Islamic Republic of Pakistan, child marriage is a devolved subject. Provincial governments are primarily responsible for enacting laws and developing policies and programmes to eliminate child marriages in their respective jurisdictions.

National Legal Framework

Constitution of the Islamic Republic of Pakistan, 1973

The Constitution of the Islamic Republic of Pakistan pledges to ensure the elimination of all forms of exploitation and protection of law as an inalienable right of every citizen and will undertake special provision for women and children, as needed. As part of fundamental rights, it further elaborates that any inconsistency of any law, or any custom or usage having the force of law with these rights shall be treated as null and void and that no person shall be deprived of life and liberty. .

The Constitution further prohibits slavery and forced labour including child labour in Article 11. Article 25 of the Constitution establishes the equality of citizens and binds the state to provide free and compulsory education to all children between the ages of 5 and 16 years old.

The principles of policy in the Constitution protect the Muslim way of life, individually and collectively. These principles are recommendatory and not part of fundamental rights. Moreover, the Constitution qualifies that the validity of any action or of a law shall not be called into question on arbitrary interpretations of not being in accordance with principles of policy. These principles also aim to discourage parochial, racial, tribal and sectarian prejudices among citizens. They oblige the state to ensure full participation of women and children in all spheres of national life; and protect marriage, the family, mother and the child, as stated in Article 35.

Muslim Family Laws Ordinance (MFLO), 1961

Muslim Family Laws Ordinance, 1961 (MFLO) prescribes a minimum age of marriage of 16 years for girls and assigns a specific role to Union Councils (UC) in preventing child marriages. In addition, Section 5 of the Muslim Family Laws Ordinance, 1961 mandates that every marriage in Pakistan must be registered through the Nikah Registrar at UC. Section 5(4) of the Act also provides for a penalty of up to 3 months or a fine of one thousand rupees if the marriage is not registered, or both. However, the implementation of the MFLO, 1961, remains weak.

Pakistan Family Courts Act, 1964

Pakistan Family Courts Act, 1964 was enacted to establish family courts in Pakistan. The Family Courts have exclusive jurisdiction to settle disputes relating to matrimonial and family matters or any matter connected therewith.

The Punjab government amended the Pakistan Family Courts Act 1964 in March 2015 through the Punjab Family Courts (Amendment) Act 2015, giving the family courts exclusive jurisdiction to try offences related to child marriages. In other provinces, these matters are still heard by the magistrate courts.

Prior to this amendment, Pakistan's Family Courts Act, 1964 was not considered relevant to child marriages, although it actually has jurisdiction over disputes related to marriage. If a girl wants to end the marriage, she has to file a petition in the Family Court to obtain a Khula decree or invoke one of the "Option of Puberty" grounds listed in the Dissolution of Muslim Marriages Act, 1939.

Pakistan Penal Code, 1860

Pakistan Penal Code 1860 (PPC) is the main criminal code of Pakistan. It is a comprehensive code covering all substantive aspects of criminal law. There are several provisions in the PPC that are relevant to child marriages.

In defining rape in section 375 of the PPC, subsection (d) states that rape occurs when the victim is under sixteen years of age, with or without consent or when victims is unable to communicate consent. This means that sexual relations with a girl under the age of sixteen can be interpreted as rape.

The existing section 498-B of the PPC reads,; "Whoever coerces or in any manner whatsoever compels a woman to enter into marriage shall be punished with imprisonment of description for a term which may not be less than three years and shall also be liable to a fine of PKR 500,000." The 2017 amendment added a proviso providing for punishment of up to 10 years and not less than five years and a fine of up to 1 million rupees if the person is a girl child as defined in the Child Marriage Restraint Act, 1929, or a non-Muslim woman.

ICT and Provincial Legal Framework

Islamabad Capital Territory (ICT)

Child Marriage Restraint Act, 1929 is applicable law in ICT regulating child marriages. The legal age of marriage is 18 years for boys and 16 years for girls as per the Child Marriages Restraint Act, 1929.

Child Marriage Restraint Act, 1929

	Features	Gaps
1.	Child defined as male of 18 years and girl of 16 years	Discrimination in age of marriage for boys and girls.
2.	Child marriage means a marriage to which either of the contracting parties is a child.	Age cannot be determined/ensured without CNIC compulsion.
3.	An adult male marrying a child liable upto 1 month imprisonment or fine upto Rs.1,000/- or with both.	Insignificant punishment, 1 month or fine of Rs.1,000/-.
4.	Punishment for solemnizing a child marriage is imprisonment upto 1 month or fine upto Rs.1,000/- or with both.	Offences are non cognisable, bailable and compoundable.
5.	Punishment for parents/guardians child marriage is imprisonment upto 1 month or fine upto Rs.1,000/- or with both.	Complex complaint procedure at UC.
6.	Judicial magistrate 1st class has power takes cognisance on a complaint by Union Council.	No protection and rehabilitation mechanism.
7.	Court can issue injunction for stopping a child marriage.	Government has no express power to make rules of business under the law.

2021 Judgment against vani, or swara

A three-judge bench, headed by Federal Shariat Court Chief Justice Noor Mohammad Meskenzai, observed that the tradition of giving away a minor girl to settle disputes was against the injunctions of Islam.

The Senate of Pakistan passed the bill to amend Child Marriage Restraint Act, 1929 (CMRA) in 2019. It proposed to raise the marriageable age for girls to 18 years old along with stricter punishments for breaking this law. The reasoning behind the amendment was that, *“poverty, illiteracy, [and] anti-human rights socio-cultural practices are the factor for the prevalence of child marriage. An early marriage leads to early conception, which ultimately affects the health of teenage girl, typically enormous pressure to bear children is put on child brides.”*

The bill upon introduction to the **National Assembly** (NA) despite support of the house was referred to the Council of Islamic Ideology (CII) for opinion at the behest of the treasury benches, at the ministerial level. The CII advised to initiate awareness campaigns against harmful practices perpetuating child marriage instead of passing a legislation. The NA Committee could not generate enough members’ support and the proposed bill was rejected.

Khyber Pakhtunkhwa

In Khyber Pakhtunkhwa (KP), child marriages are regulated by the Child Marriage Restraint Act, 1929. Most marriages in KP adhere to the legal minimum age of 16 years for girls. However, it is difficult to ascertain and confirm the legal age of marriage of 16. Moreover, verbal *Nikah* is the norm and does not require documentation. The police in KP, in particular, treat it as a private matter with a patriarchal *Pakhtunwali* mindset.

Department of Social Welfare has been working to draft the Khyber Pakhtunkhwa Child Marriage Restraint Bill (CMRB) to replace the redundant Child Marriage Restraint Act, 1929. The bill is expected to raise the marriageable age to 18 years and provide for higher punishment for the Nikah Registrar, fines and imprisonment. It is proposed to ban verbal *Nikah* and make CNIC mandatory for Nikah besides marriage registration. Mandatory birth registration is also proposed, and most importantly, remove all indemnity clauses.

Non-Muslim Personal Laws

*Pakistan has enacted the Hindu Marriage Act, 2017 (HMA 2017), which regulates the solemnization of marriages in Hindu families. The HMA 2017 stipulates that both parties must be at least 18 years of age for a Hindu marriage to be performed. In 2018, the Punjab assembly passed the Punjab Sikh Anand Karaj Marriage Act, which states that no man and woman of the Sikh community who are below 18 years of age may solemnise marriages. However, the minimum age for a native Christian man is 16 years and for a woman 13 years under the Christian Marriage Act, 1872 (CMA) to contract marriage. **The NCRC recommends that the law be amended to raise the age to 18 for both men and women.***

Balochistan

Child Marriage Restraint Act, 1929 is also applicable law in Balochistan. In 2021, a bill prepared by the Department of Social Welfare to overcome the menace of child marriages in Balochistan was submitted to the Balochistan Cabinet for approval.¹⁵

In addition, the issue of child marriage is indirectly covered by the Balochistan Child Protection Act, 2016. Section 2(w) under “Sexual Abuse and Exploitation” includes forced marriage and gives the Child Protection Officers the power to take protective measures for the victims of child marriages by considering them as victims of forced marriage as all child marriages are in fact forced marriages as the child cannot give consent under the civil law.

Punjab

The Punjab Assembly has promulgated the Punjab Child Marriage Restraint (Amendment) Act, 2015, which now provides for harsher penalties for child marriages and holds both the *Nikah khawan* and the child’s guardians accountable. Underage (below 16 years of age) and forced marriage is a punishable crime and a charge of underage marriage can be filed with the police, the union council and the magistrate’s office. Criminal measures include:

- Punjab CMRA 2015: Any person marrying a girl of less than 16 years of age and the person conducting such marriage, including *Nikah Registrar* shall be liable for imprisonment up to 6 months and fine PKR 50,000/-
- PPC S-310-A & 498-C: Customs like *Vani* and marriage in lieu of compromise, or marriage with the Holy Quran are illegal, liable for imprisonment for 3 to 7 years and fine of PKR 500,000/-
- PPC 498-B: A person forcibly marrying a girl against her will is liable to be punished with imprisonment for 3 to 7 years and a fine of PKR 500,000/-

¹⁵ <https://tribune.com.pk/story/2305546/anti-child-marriage-act-sent-to-balochistan-cabinet>

Punjab Marriage Restraint (Amendment) Act, 2015

	Features	Gaps
1.	Child defined as male of 18 years and girl of 16 years	Discrimination in age of marriage for boys and girls.
2.	Child marriage means a marriage to which either of the contracting parties is a child.	Age cannot be determined/ensured without CNIC compulsion.
3.	Any person marrying a child liable to 6 months imprisonment and Rs.50,000/- fine.	Insignificant punishment, 6 months and fine of Rs. 50,000/-.
4.	Punishment for solemnizing a child marriage is 6 months imprisonment and Rs.50,000/- fine.	Offences are non cognisable, bailable and compoundable.
5.	Punishment for parents/guardians child marriage is 6 months imprisonment and Rs.50,000/- fine.	Complex complaint procedure at UC.
6.	Family Court having judicial magistrate power takes cognisance on a complaint by Union Council.	No protection and rehabilitation mechanism.
7.	Court can issue injunction for stopping a child marriage.	Government has no express power to make rules of business under the law.

Sindh

The provincial government of Sindh has enacted the Sindh Child Marriage Restraint Act in 2013, raising the age of marriage for both boys and girls to 18 years, increasing the imprisonment to a minimum of two years. Child marriage is a cognisable offence and also a non-bailable, non-compoundable offence under the Sindh Child Marriage Restraint Act, 2013, which means that police can take action without seeking court permission.

Under the Sindh Child Marriage Restraint Act, 2013, the court can issue an injunction banning child marriages on the application of a citizen. While notice must be given to any person against whom an injunction is to be issued, the court may dispense with it if necessary.

The CMRA, 1929 does not prescribe a time frame within which a court must conclude a child marriage case, but the SCMRA, 2013 requires the court to conclude the case within ninety days.

The Sindh Child Marriage Restraint Rules, 2016 provide that a medical certificate can be produced to prove age if the CNIC is not available.

Sindh Child Marriage Restraint Act, 2013

	Features	Gaps
1.	Child is defined as person male or female under 18 years of age.	Punishment only for male adult marrying a female child.
2.	Child marriage means a marriage to which either of the contracting parties is a child.	Amount of the fine is not specified. A judge may impose only a fine of a few thousand rupees.
3.	An adult male marrying a child liable to 2-3 years imprisonment and fine.	Rigorous imprisonment for a maximum three years is not enough.
4.	Punishment for solemnizing a child marriage 2-3 years imprisonment and fine.	Upto 1 month imprisonment or fine for violation of injunction to stop marriage.
5.	Punishment for parents/gaurdians child marriage is 2-3 years imprisonment and fine.	No protection and rehabilitation mechanism.
6.	Offences are cognisable, non-bailable and non-compoundable.	Court of judicial magistrate shall try cases instead of family court.
7.	Court can issue injunction for stopping a child marriage.	

The Child Marriage Restraint Act, 1929, the Sindh Child Marriage Restraint Act, 2013, and the Punjab Marriage Restraint (Amendment) Act, 2015, do not provide provision(s) for dissolution of a child marriage under the respective Acts, if contracted or solemnised. The procedure is laid down in the Family Court Act, 1964, and the grounds for dissolution of marriages are laid down in the Dissolution of Muslim Marriages Act, 1939.



**Judgment of
Superior Courts**

In recent years, superior courts of Pakistan have given some important judgments on issue of child marriages particularly focusing on marriage registration and responsibilities of *Nikah Khawan* and *Nikah Registrar*.

Mst. ALISHBA BIBI Versus The STATE and others, PLD 2020 Islamabad 28

In a matter of child marriage in Islamabad, the Islamabad High Court passed the following directions that should strictly be followed for the implementation of the Child Marriages Restraint Act;

Before parting with the instant judgment, this Court feels it necessary to issue the following directions to the authorities concerned to curb the evil of child marriages from the society as well as to ensure the protection of rights of minorities as guaranteed under the Constitution of Islamic Republic of Pakistan, 1973:

- i) The District Administration/license issuing authority of Nikah Registrar shall enlighten the Nikah Registrars about the terms of Child Marriage Restraint Act, 1929 as well as punishment for violation of terms of Child Marriage Restraint Act, 1929.
- ii) If any complaint is filed against the Nikah Registrar in terms of Child Marriage Restraint Act, 1929, who solemnizes marriage for facilitating and registering any marriage of any person against her or his wishes, the Chief Commissioner, Islamabad Deputy Commissioner, Islamabad and the Chairman Union Council shall revoke license of the Nikah Registrar and submit a complaint before the competent Court for criminal prosecution of the Nikah Registrar and any other person, who is involved in such kind of crime.
- iii) The Chief Commissioner, Islamabad, Deputy Commissioner, Islamabad and the Chairman Union Council are also under legal obligation not to issue any license to any such individual as Nikah Registrar, who is involved in such type of mal practice and till conclusion of the said complaint by the competent Court, his license shall be suspended till final judgment of the Trial Court and if the Nikah Registrar is civil servant, departmental action shall also be taken against him.

- iv) All the Nikah Registrars or other persons, who solemnize marriages are under legal obligation to scrutinize the credentials at the time of Nikah as to whether the marriage is solemnized with the free will of the parties and no child is exposed to marriage.
- v) The Family Court in terms of the West Pakistan, Family Courts Act, 1964 are also bound to give their findings in such type of cases and if a Family Court comes to the conclusion that the marriage has been registered in violation of law, the Family Court shall refer the complaint to the concerned Magistrate to proceed in terms of Child Marriage Restraint Act, 1929 against the persons, who have solemnized and registered such marriage.
- vi) IG, Islamabad Police, all the DPOs and the SHOs are under obligation to protect rights of the minorities by all means and if any complaint is filed by any of the family members or by parents of the minor that he or she has been forced to convert his or her religion, such complaint shall be taken up on priority basis and statement of the effectee shall be recorded by the Magistrate at first instance as such kind of practice will bring bad name to the state of Pakistan.
- vii) Federal Government shall fulfil its constitutional obligation to protect the minors as well as children in terms of international covenants and commitments and to establish Child Protection Bureau and Child Protection Homes to provide protection to such kind of minors, who are exposed to cruelty, inhuman behaviour and infringement of child rights by family members, care givers or their employers if any.
- viii) The NADRA Authorities as well as the Registration Authorities of the Government while issuing Marriage Registration Certificate are bound to link Birth Registration Certificate to their system in order to avoid any conflicting age contents and to avoid legal complications.
- ix) Every birth entry, as well as marriage certificate, should be recorded in the NADRA registration record and in case of conflict of the date the subsequent document shall not be registered unless valid order from the competent Court or the authority is not placed before the relevant officer.

- x) Mere submission of oral entries for the purpose of age should not be accepted unless valid documentary proof of Union Council of birth certificate is produced.

TAHIRA BIBI Versus STATION HOUSE OFFICER and others, PLD 2020 Lahore 811

Mr. Justice Anwaarul Haq Pannun held that “whenever it comes to the notice of a Court that prima facie a case of breach of fundamental rights of the minor is made out, the Court, in case of failure of the Union Council in moving a complaint before the Court, while adopting a proactive role in “loco parentis” should, without any hesitation, pass an appropriate order directing the Union Council to send a requisite complaint before the competent Court that a marriage has been contracted in violation of the provisions of the Child Marriage Restraint Act, 1929.”

Mst. Mumtaz Bibi Versus Qasim and others, PLD 2021 Islamabad 4227

Issuing a written order on the plea of a woman seeking recovery of her 16-year-old daughter who had filed an affidavit to say she had tied the knot of her own free will, the Court declared the marriage of anyone under 18 years of age as being unlawful.

A child is defined as a person who has not attained the age of 18 years. A child is required to be placed in somebody’s care whether it is a parent or guardian or other caregiver appointed on behalf of the state.

A female child below the age of 18 cannot be deemed competent to freely grant her consent to enter into a marriage contract merely because she manifests the physical symptoms of having attained puberty.

A marriage contract in which one of the parties is a child under the age of 18 is therefore a contract executed for an unlawful purpose and having no legal effect. Such marriage contract cannot be registered under the Muslim Family Laws Ordinance, 1961.

No one can engage in sexual conduct in any form with a child and neither can any person invite or entice a child to engage in sexual conduct in any form, and any invitation or enticement provided to a child to engage in sexual conduct, even under the cloak of marriage, would fall within the definition of sexual abuse in terms of section 377A.

2021 Judgements related to Child Marriages

- In October 2021, The Sindh High Court (SHC) has dismissed a petition that challenged the Sindh Child Marriages Restraint Act, 2013 terming it against the injunctions of Islam and the Constitution. The court held that under the Article 203 of the Constitution only Federal Shariat Court has exclusive domain to examine and declare any provision of any statute as repugnant to the injunctions of Islam.
- In October 2021 also, a three-judge bench, headed by Federal Shariat Court (FSC) Chief Justice Noor Mohammad Meskenzai, observed that the tradition of giving away a minor girl to settle disputes was against the injunctions of Islam. Court further held that vani/swara violated at least four fundamental rights.
- In October 2021, The Federal Shariat Court dismissed a petition challenging CMRA. In the 10-page verdict, the FSC held that the sections in which the minimum age limit was prescribed by the act for both girls and boys for marriage was not un-Islamic.

Following the Supreme Court's historic ruling on Pakistan's rapid population growth, reported as 2019 SCMR 247, the Government of Pakistan, in light of earlier directions, established federal and provincial task forces in 2018 and made a series of eight commitments to reduce fertility rates. The Supreme Court upheld the recommendations and ordered that they be submitted to the Council of Common Interest (CCI). Accordingly, the recommendations were presented to the CCI at its meeting on 19 November 2018 and the CCI approved all the recommendations in principle.¹⁶

The second legislative recommendation is that the federal and provincial governments introduce the law to restrict child marriage (Sindh passed this law in 2013). The responsibility for enforcing this recommendation has been assigned to the Ministry of National Health Services, the Ministry of Law and Justice, and the provincial governments and population welfare departments respectively.

¹⁶ https://www.familyplanning2020.org/sites/default/files/Brief%20on%20Population%20Symposium_aa7.pdf

Recommendations

The review of the legal framework on child marriage in Pakistan found that gaps, as well as inconsistencies with other laws, have undermined efforts to combat child marriage. Following are the set of recommendations to prevent and prohibit child marriages in Pakistan.

1. Legislative Bodies: Parliament and Provincial Assemblies

- All provisions in national and provincial laws relating to child marriages must be cognisable offences against which the police can take action with or without a complaint, as well as non-bailable and non-compoundable offence.
- Increase the legal age of marriage for girls from 16 to 18 in the Child Marriage Restraint Act, 1929 and the Punjab Marriage Restraint Act (Amendment), 2015.
- The provincial assemblies of Khyber Pakhtunkhwa and Balochistan should enact laws to curb child marriage, setting the age of marriage for girls at 18 years
- Marriage below 18 years should not be allowed under any law. It must be mandatory for the bride and groom to have a valid CNIC card at the time of marriage.
- Pakistan's laws prohibiting child marriages do not contain provisions for dissolving a child marriage once it has been contracted or consummated. It is important to simplify the procedures and invalidate marriages contracted below the legal minimum age and declare them invalid on any pretext such as custom, religion or traditional practices.
- The procedures for verifying age are not very clear in the absence of a CNIC. Any other document, such as school enrolment certificate/matriculation certificate (if the bride or groom has it), B form, or Birth Registration certificate, should be attached as proof of age before solemnizing the marriage.
- Strengthen existing structures at provincial, district and community level to combat violence against children including child marriages.
- Eliminate inconsistencies in existing laws, i.e., Child Marriage Restraint Act, 1929, Sindh Child Marriage Restraint Act, 2013, and Punjab Marriage Restraint (Amendment) Act, 2015, and these laws should take precedence over personal laws regarding age of marriage.
- Penalties for a person contracting a child marriage should be consistent with the legal provisions on rape under the Criminal Laws (Amendment) Act, 2021.
- Review and amend the discriminatory laws against women in the area of divorce and maintenance, especially the personal laws as enshrined in the Muslim Family Laws Ordinance 1961, the Christian Marriages Act 1872 and the Hindu Marriage

Act, 2017, which place serious procedural obstacles in the way of women seeking to end a marriage and which do not provide women with adequate financial security.

- Review and revise the one-year limitation period in the Child Marriage Restraint Act, 1929 to ensure that complaints can be filed at any time.
- The role of the police in preventing child marriages should be defined in the laws. Appropriate definition and substance clauses should be included in the law.

2. Government and Enforcement Agencies

- Federal and provincial governments should develop a strategy to implement laws prohibiting child marriages.
- Registration of all marriages should be ensured to minimise the risk of child marriages. SOPs/guidelines should be prepared and communicated to concerned authorities with strict instructions for compliance.
- Birth registration of all children should be ensured and verification of age proof by marriage officials should be made mandatory.
- Training should be provided to *Nikah Khawan*, *Nikah Registrars*, Child Protection Officers and the Police.
- Political party leaders need to be sensitised on the issue of child marriages.
- The government should initiate educational and awareness programmes through print, electronic and social media to highlight the negative impact of early marriage on a girl child and society as a whole and sensitise the community on the issue of child marriage.
- Efforts to delay childbearing among adolescents should focus primarily on delaying marriage. Policies and programmatic strategies aimed at both delaying marriage and increasing educational attainment may be most effective in addressing both issues, particularly with reference to Article 25A and the Free and Compulsory Education Acts of the respective provincial/territorial governments.
- Victims should have access to support mechanisms, such as medical services, protection services, psychological and reproductive health services, rehabilitation, compensation and legal support.
- There is an urgent need for harmonisation between child and women protection agencies and local government CRVS functions, as well as improved coordination between the Department of Women's Development

and the Department of Social Welfare and other duty bearers such as the police, the judiciary, and local government officials responsible for registering marriages.

- Strong referral mechanisms should be established between law enforcement agencies for the recovery, rehabilitation, placement and protection of a victim of child marriage. Develop coordination with child protection institutes and child protection units to ensure that they provide shelter, counselling, legal and other services to victims of child marriage.
- Sufficient funds should be allocated in the budgets of relevant departments to ensure the implementation of laws prohibiting child marriages at provincial, district and community levels. More resources need to be allocated to monitor cases of child marriage, educate and train law enforcement agencies to implement the laws, and provide legal, medical and psychological support to girls who are subjected to human rights violations due to child marriage.
- The government should Integrate child marriage prevention and gender transformation into existing conditional cash transfer programmes.

3. Judicial bodies: District Judiciary and Higher Judiciary

- Ensure the protection of victims in court proceedings for the prosecution of child marriages, for example by not publishing their identities and allowing courts to order protective custody and waive the presence of the victim.
- The superior judiciary should develop its rules for dealing with children. This will guide the subordinate courts, including trial courts, magistrates and other judicial bodies.
- Hold government officials accountable who do not take action under the law to prevent and prosecute child marriages.
- The superior judiciary should have the protection of the child in mind when making judgments to ensure the best interests of the child as provided for in international human rights law and standards.
- Establish a mechanism to systematically track the progress of child marriage cases in court and the implementation of court judgments.
- The judiciary should be guided by the guiding principles of child justice when it comes to children in contact and children in conflict with the law, so that children are better served and protected by justice systems.

4. National and Provincial Human Rights Institutions

- Develop procedures for effective monitoring of the implementation of child-friendly policies and legal frameworks, as highlighted in the concluding observations of the UN treaty monitoring bodies and in the Universal Periodic Review process.
- NCHR, NCSW, NCRC and Provincial Commissions on the Status of Women, Provincial Commissions/Authorities on Children's Rights as independent bodies should review and examine existing laws.
- National human rights institutions should conduct inquiries/fact finding of child marriage cases and recommend actions to protect victims of child marriage.

5. Civil Society Organisations

- Information, education and communication (IEC) campaigns and behaviour change campaigns (BCC) should be conducted to bring about change in policies, practises and behaviour of stakeholders.
- Initiate mass media initiatives to raise awareness about the legal age of marriage and the penalties and punishments associated with the crime of child marriage.
- Raise awareness about the disadvantages of child marriage, especially for girls and women, and the benefits of postponing marriage for individuals and the community.
- Engage religious leaders and other community leaders and build their capacity to bring about behaviour change to eliminate child marriages.
- Support victims of child marriages to access protection mechanisms and remedies, e.g. through legal counselling, legal aid and information on their rights and the procedures to claim these rights.
- In-depth, evidence-based research on the impact of child marriages should be conducted at provincial levels.
- Civil society organisations should develop a strong advocacy and lobbying strategy to address the problem of child marriage.
- Civil society should focus its social marketing efforts on changing the social norms that accept child marriage and focus on maturity and adulthood.

Annexure

List of Stakeholders Interviews

ICT

Islamabad 7-9 September 2021

1. Muhammad Hassan Mangi (DG- MOHR)
2. Kamran Ali Cheema (Director Labor)
3. Iftikhar Ahmad (Labor Right Expert/International Consultant)
4. Muhammad Khalid (DG-NCCWD/MOHR)
5. Rao Khalil (Assistant Director/Child Protection)
6. CRM members and core team

Sindh

Karachi: 20-23 June 2021

1. SyedaShehla Raza Minister (Women Development)
2. Shamim Mumtaz, Chairperson (Child Protection Authority)
3. Azeem ur Rehman Khan Meo DG (Child Protection Authority)
4. Anjum Iqbal Jumani (Secretary Women Development Department)
5. Rasheed Ahmad Solangi, Secretary Labor Department
6. Iqbal Ahmad Detho, Member NCRC
7. Tahir Malik, Lawyer/ Legal Expert. Civil Society
8. Dr. Farrukh, SSP investigation, Police.

Khyber Pakhtunkhawa

Peshawar: 5-6 July 2021

1. Ayesha Bano (MPA, Provincial Assembly Women Caucus)
2. Rooh Ullah (Social Welfare Department/ Gender Specialist)
3. Ejaz Ahmad Khan (Child Protection Commission)
4. Malak Maqsood (Director Human Rights Department)
5. Dr. Riffat Sardar (Chair KP Women Commission)
6. Aamir Abbas (Deputy Superintendent Police/Investigation)

Balochistan

Quetta 25-26 July 2021

1. Abdul Nasir (Social Welfare Department)
2. Abu Ul Hassan (Head, Child Protection Institution)
3. Pari Gull (ASP Police)
4. Fatima Nangyal

Punjab

Lahore 11-12 September 2021

1. Irshad Waheed (DG Women Protection Authority)
2. Bushra Khaliq (Director WISE , Women Right Expert)
3. Sarah Ahmad, Chairperson (CPWB)
4. Mr. Ijaz Alam Augustine, Minister Human Rights and Minority Affairs, Punjab
5. Mr. Saeed Nasir, Legal Expert, Treaty Implementation Cell

The Commission envisions an enabling, responsive
and productive society for children to enjoy their
rights with dignity.

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