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MDG 5b Alliance

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Sexual Rights Initiative



Key Words: Child marriage; early marriage; forced marriage; rights of the child; adolescent sexual and reproductive health; maternal mortality; gender equality

Executive Summary:

1. This report is jointly submitted by Rahnuma Family Planning Association of Pakistan (FPAP)¹, the MDG5b Alliance² and the Sexual Rights Initiative (SRI)³. In Pakistan it is estimated that 30 percent of all marriages fall into the category of child marriages. This human rights violation is most common in poor, rural communities, and its consequences only perpetuate the cycle of poverty. Child brides are pulled out of school, depriving them of an education and meaningful work. They suffer health risks associated with early sexual activity and childbearing, leading to high rates of maternal and child mortality as well as sexually transmitted infections, including HIV, and are more likely to be survivors of domestic violence, sexual abuse and social isolation. During Pakistan's first review under the Universal Periodic Review, Switzerland recommended that Pakistan do everything possible to prevent early and forced marriage. However, plans to amend legislation to give effect to this recommendation are seriously deficient and must be revised to ensure girls' full protection from early/forced marriage.

Context

2. Child marriage is one of the most wide-spread human rights violations that exist in Pakistan. Child marriage, also known as early marriage, is defined as “**Any marriage carried out below the age of 18 years, before the girl is physically, physiologically, and psychologically ready to shoulder the responsibilities of marriage and childbearing.**”⁴
3. Girls from poor households are more likely to be married as children. In particular, girls from the poorest quintile are more than three times more likely to be married as children than girls from the richest quintile. In Pakistan it is estimated that 30 percent of all marriages fall into the category of child marriages (PDHS 2007). The UN Convention on the Rights of the Child (CRC) defines a child as "every human being below the age

¹ Rahnuma FPAP, the member association of International Planned Parenthood Federation of Pakistan, was established in 1953 and has grown to be Pakistan's largest provider of reproductive health and family planning services.

² MDG5b Alliance is a national coalition of organizations based in Pakistan advocating for universal access to reproductive health.

³ The SRI is a coalition including Akahata (Argentina), Action Canada for Population and Development (Canada), Coalition of African Lesbians (South Africa), CREA (India), Federation for Women and Family Planning (Poland) and Egyptian Initiative for Personal Rights (Egypt).

⁴ *The Inter-African Committee (IAC) on Traditional Practices Affecting the Health of Women and Children. (1993) Newsletter, December 2003*

of eighteen years unless, under the law applicable to the child, majority is attained earlier.” The expert body that monitors the Convention on the Elimination on All Forms of Discrimination against Women (CEDAW) in its General Recommendation 21, which explicitly deals with equality in marriage and family relations, outlaws child marriage, and stipulates 18 years as the minimum age for marriage for males and females. This is the minimum age when young people attain "full maturity and capacity to act." This acknowledges that, from a child rights and equity perspective, marriage should not be permissible before 18 years of age.

4. The 1948 Universal Declaration of Human Rights states that marriage should be "entered only with the free and full consent of the intending spouses." But, in the majority of child marriages, there is often an element of coercion involved: parents, guardians or families pressurize, collude or force children into marriage. Today girls are still socialized into accepting child marriage as the norm, a 'given', and many give their consent as a duty and sign of respect. However, where one of the parties in a marriage is under 18 years, consent to marry in such cases cannot always be assumed to be of 'free and full consent' and may also not always be in the best interest of the child.

Violation of Human Rights:

5. Child marriage is a reality for many young girls and devastates the lives of girls, their families and their communities. It is a harmful traditional practice that deprives girls of their dignity and human rights. The harmful traditional practice of child marriage is most common in poor, rural communities, and its consequences only perpetuate the cycle of poverty. More often than not, child brides are pulled out of school, depriving them of an education and meaningful work. They suffer health risks associated with early sexual activity and childbearing, leading to high rates of maternal and child mortality as well as sexually transmitted infections, including HIV. And they are more likely to be survivors of domestic violence, sexual abuse and social isolation.
6. Child marriage is often associated with multiple health risks. This is because young brides have limited access to, and use of, contraception and reproductive health services and information. The majority are exposed to early and frequent sexual relations and to repeated pregnancies and childbirth before they are physically mature and psychologically ready. Pregnancy-related deaths are also the leading cause of mortality in 15-19-year—old girls, and those aged under 15 years are five times more likely to die than those aged over 20. Infant deaths are also twice as high in babies of very young mothers⁵. International research has shown that child brides often show signs symptomatic of child sexual abuse and posttraumatic stress. Such symptoms include feelings of hopelessness, helplessness and severe depression.
7. Girls with low bargaining power in the household are more likely to experience violence by an intimate partner. For many families child marriage is seen as a way to protect young girls, ensuring they have a man to care for them. Unfortunately, early

⁵ <http://www.trust.org/trustlaw/news/child-brides-face-silent-health-emergency-experts>

marriage does not protect girls, but leaves them physically and socially vulnerable to illness, poverty, and gender inequality. Child brides are at a heightened risk of sexual and physical abuse, reproductive health complications, HIV/AIDS infection, and other adverse physiological and social outcomes. Because of physiological vulnerabilities, girls aged 10-14 are five times more likely to die in childbirth than women aged 20-24. “For every woman who dies in childbirth, some 15 to 30 survive but suffer chronic disabilities, the most devastating of which is obstetric fistula. Fistula is an injury to a woman's birth canal that leaves her leaking urine and/or feces. Young women under age 20 are especially prone to developing fistulas if they cannot get a Caesarean section during prolonged obstructed labour⁶.

8. Child marriage is a violation of Article 16 of the Universal Declaration of Human Rights that states, “Marriage shall be entered into only with free and full consent of intending spouses”. It is in violation of the Convention on the Rights of the Child (1989):
 - a. Under article 1 the child is anyone under the age of 18.
 - b. Under Article 12 children have the right to have their views taken into account in matters that concern them.
 - c. Under Article 24 calls for the abolition of traditional practices that can damage the health of children.
 - d. Under Article 28 bestows the right of education.
9. It is also in violation of the Convention of All Forms of Discrimination against Women (1994). The practice becomes an obstacle to nearly every Millennium Development Goal—eradicating poverty and hunger (MDG 1); achieving universal primary education (MDG 2); promoting gender equality (MDG 3); protecting children's lives (4); and improving health (5, 6).
10. Child marriage is widely practiced across the country and it is prevalent in different parts of Pakistan including the tribal belt with different names that commodify young girls. While the age of first marriage for women overall has been increasing in the country 13% of girls are married by the time they are 15 and 40% by age 18⁷. Pakistan has one of the highest infant mortality (78/1000) and under five mortality rates (94/1000) in South Asia.

⁶ ibid

⁷ Age of Marriage: A Position Paper, Khanwar Mumtaz, Sohail Warraich, Shariq Imam et al, Shirkat Gah, 2011

11. Rahnuma-FPAP recently implemented a project supported by Aus Aid on advocacy against child marriages and through the series of interactive dialogue with policy makers and workshops with relevant stakeholders and desk review and research conducted during developing advocacy tools i.e advocacy kit, media kit, documentary, revealed the complexity of the issue regarding child marriage in Pakistan. Some of the issues identified by this project include:

- Not only that the Child Marriage Restraint Act (CMRA) is not punitive enough, there are many conflicting laws such as Shariah law which gives room for legal loopholes regarding child marriage.
- Young adolescent girls are physically, socially and emotionally affected by this practice
- Child marriage is mainly influenced by poverty, protection of girls, family honour and the provision of stability during unstable social periods and gender roles in Pakistan.
- Large swathes of female youth are left out of the education and development mainstream because of the prevailing practice of young age marriages.
- Laws on minimum marriage age are poorly enforced and birth registration is not widely practiced or records maintained making it is difficult to determine the correct age of girls at the time of marriage.

The Law on Child Marriages in Pakistan

12. The “*Child Marriages Restraint Act 1929*” was enacted in 1929, and it states the minimum age of marriage for boys as 18 years and for girls as 16 years and whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees i.e approximately 8 Euros.

13. The Child Marriage Restraint (Amendment) Act, 2009

More recently a bill was tabled in the National Assembly, the Child Marriage Restraint (Amendment) Act, 2009 to amend the CMRA, 1929. In addition to proposing amendments for enhanced imprisonment and fines it seeks to “remove the gender disparity in age” of marriage of males and females (i.e. make 18 years as the minimum age of marriage for both).

14. Sharia Law (Islamic Law)

Most importantly, Sharia law overrides all civil laws according to a decision of Supreme Court of Pakistan in its reported case law 2005 SCMR Page 1217, “Law of Sharia is a Superior Law.” Regarding child marriage, Sharia law says that the minimum criteria for marriage depends on puberty, which is not a fixed age, and may be age 10 or 12 years. The superior courts have declared that The Child Marriage Restraint Act 1929

only penalizes the guilty person but does not nullify such marriage. Hence even if a child marriage of a girl under the age of 16 years takes place and is reported, if it is taken to the Sharia court and it is proven that the girl had acquired physical puberty at the time of marriage, the marriage would be valid and not punishable.

Ending Child Marriage means girls will:

15. **Stay in school:** Child brides are almost always forced to leave school when, or before, they get married.
16. **Be healthy:** Child brides face higher risks of death and injury due to early sexual activity and childbearing. Girls under 15 are five times more likely to die in childbirth than women in their 20s. Yet child brides are less likely to be in control of when and how many children they have.
17. **Live in safety:** Child brides are more likely to suffer domestic violence and sexual abuse. They are rarely able to negotiate safe sexual behaviour, making them more vulnerable to contracting HIV/AIDS.
18. **Raise healthy children:** When a mother is under 18, her baby is 60 per cent more likely to die in its first year of life than a baby born to a mother older than 19.
19. **Fulfill their potential:** Girls who marry young do not get the educational and economic opportunities that could help lift themselves, their children and their communities out of poverty.⁸

20. Recommendations:

- a) There is a dire need to amend The Child Marriage Restraint Act 1929 in order to make it more effective and in line with international commitments.
- b) Following are recommendations:-
- c) Minimum age of marriage for girls must be raised to at least 18 years to bring the law in line with the country's international commitments for children, women and human rights.
- d) Make the law more punitive to serve as a deterrent.
- e) Addressing ambiguities due to conflicting laws especially Shariah Law.
- f) Enforce mandatory registration at birth and marriage.

The following stakeholders must be part of implementing these recommendations:

- a) Government concerning bodies

⁸ http://www.unicef.org/publications/index_26024.html

- a. Ministry of human rights
 - b. Department of child protection bureau
 - c. Department of law and order
 - d. Provincial and federal parliamentarians
- b) NGOs and other stakeholders