

Protecting Childhood: Unravelling the Child Marriage Restraint Act 1929

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While the concept of early marriage has been in practice in many areas around the globe, it was most evident in the Indian subcontinent. The two major groups of the Indian subcontinent, Muslims and Hindus, had no prescriptions pertaining to the age of marriage from their respective religions. Instead, marriageability was linked to puberty. However, with the passage of time, early marriages converted into child marriages. The history of the subcontinent shows that child marriage became a custom in many rural as well as urban areas. Young girls were married, even before they hit puberty, to much older men. The people of the subcontinent saw no harm in the marriage of minors that lacked mental or physical maturity. There was no legislation that prohibited child marriages at that time.

The subcontinent was then under the rule of the British who were not paying heed to the basic needs of the local people but were, instead, enjoying their command over their supposed slaves. Hence, the issues requiring the utmost focus of the sovereign were neglected. In due course, the number of cases regarding child marriage kept on increasing. However, the death of an 11-year-old girl who was raped by her adult husband was the triggering event that forced the enactment of the Child Marriage Restraint Act in 1929 within the Sub-continent. Under the act, the minimum age to marry was set at 18 years for males and at 14 years for females. After the division of the Indian subcontinent, the Child Marriage Restraint Act, 1929 kept its position in both countries and is still being implemented after some critical amendments.

Shortly after it came into being, Pakistan, for the promulgation of this act, amended the act under the basic injunctions of Islam. Nevertheless, Pakistan enforced an age limit of 18 and 16 years for males and females respectively to execute marriages for its citizens. As there is no age limit prescribed in Islam regarding the minimum age of a child to marry, it was presumed that it was against the provision of Islam to set an age limit within the territorial jurisdiction of a country based on the ideology of Islam. However, this confusion was resolved by Federal Shariat Court in FAROOQ OMAR BHOJA vs FEDERATION OF PAKISTAN (PLD 2022 FSC 1), the honorable court stated that setting an age limit for marriage in an Islamic State is not repugnant to the basic injunctions of Islam.

The Child Marriage Restraint Act is a penal act by nature, it provides punishments for the persons violating the provisions issued within it. There are punishments for three categories of persons in it. Section 4 sheds light on the punishment for the contracting party i.e. the male

adult over 18 years of age who has conducted marriage whereas section 5 outlines the punishment for the person who is assisting, performing, or conducting the child marriage with ample knowledge of the fact that child marriage is being contracted. Likewise, section 6 provides the punishment for the parent or guardian of the minor being married. However, this act doesn't hold the minor liable for punishment even if they have married by their own will.

Under this act, the Magistrate of the first class has the jurisdiction to take cognizance of any issue mentioned in the act but there has been a restriction imposed for the honorable court. The competent court cannot act until and unless a complaint is made by the respective Union Council or by such authority prescribed by the provincial government taking into account the circumstances of the country. Whereas, in case of non-availability of local government due to any cause, an interim authority could be empowered by the federal government to perform functions of the local government. Civil servants are usually trusted with this significant responsibility to serve the people of the nation.

As every law has its own drawbacks, every act has its own flaws. Correspondingly, this act has its own complexities which the superior courts of Pakistan have previously attempted to resolve. Still, the act only mentions the punishment to be enforced when the marriage is conducted with a minor but it remains silent on whether that particular marriage remains valid or not. In *Mst. BAKHSI vs BASHIR AHMAD AND ANOTHER (PLD 1970 SC 323)*, the Supreme Court of Pakistan held that the adult is liable for criminal proceedings against him under the act but the marriage conducted will be valid as the marriage took place with the consent and free will of the minor girl who had attained puberty.

There have been numerous efforts to increase the age of marriageability of females to 18 years. In 2014, the Sindh government raised the minimum age of females for marriage from 16 to 18 within its territorial jurisdiction. For this purpose, the upper house of Pakistan i.e. the Senate proposed a bill in 2019 to harmonize the minimum age for marriage to 18 years within the whole country. However, this bill was rejected by the lower house of Pakistan i.e. the Parliament. On the contrary, in 2022, Islamabad High Court delivered a landmark judgment in *Mst. MUMTAZ BIBI vs QASIM AND OTHERS*, declaring the marriage of children under the age of 18 as illegal. Therefore, there is no hurdle for the government to set the minimum age for marriage at 18 years for, both, males and females.

Pakistan is a country where fabricating documents or producing false documents are common practices, even in the courts of justice. Therefore, NADRA should introduce marriage certificates which must be mandatory to attach with the *nikah nama (Islamic marriage contract)* and this certificate should only be issued to those that have reached the designated legal minimum age for marriage. Furthermore, the system of the local government shall be empowered enough to enquire into and verify the ages of the brides and grooms before their marriages to prevent child marriages to the greatest extent. On top of that, amendments in the

legislation are significantly required to avoid the miscarriage of justice. By doing so, Pakistan could eradicate the distressing issue of child marriage from its root.