

# PAKISTAN'S HUMAN RIGHTS' VIOLATIONS STEMMING FROM THE PRACTICE OF CHILD MARRIAGE

SALEHA TAUQEER\*

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## ABSTRACT

Child marriage is among the gravest human rights issues in the world. Every year, 12 million girls below the age of 18 are married.<sup>57</sup> According to the Pew Research Centre, a minimum of 117 countries in the world allow child marriages. Among the countries where the practice of child marriage persists today is Pakistan. Pakistan has introduced federal and provincial legislations penalizing child marriages. However, the law has proved to be an ineffective mechanism to prevent the practice of child marriage, which remains a prevalent practice in Pakistan. According to UNICEF, Pakistan ranks sixth in the world for the highest number of child brides, with a total of 1,909,000 child brides.<sup>58</sup> The gravity of the issue can be highlighted from the fact that girls as “young as seven or eight”<sup>59</sup> are forced into marriages.

While child marriages have serious implications for children given in marriage, the issue is exacerbated by the fact that intimate partner violence is a common phenomenon in Pakistan, impacting over “one-third of the population”.<sup>60</sup> This paper will examine the legislation dealing with child marriages in Pakistan, identify how the said legislation is inconsistent with international human rights standards as well as the violations of children’s rights resulting from child marriages. Moreover, this paper will make recommendations for curbing the practice of child marriage in Pakistan.

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\* Saleha Tauqeer holds an LLB from the University of London and is currently teaching on Lahore Grammar School’s International Degree Programme.

<sup>57</sup> ‘What is the Impact of Child Marriage?’ (*Girls Not Brides*)

<<https://www.girlsnotbrides.org/what-is-the-impact/>> accessed 8 September 2020

<sup>58</sup> ‘Pakistan’ (*Girls Not Brides*)

<[www.girlsnotbrides.org/childmarriage/pakistan/#:~:text=21%25%20of%20girls%20in%20Pakistan,areas%20and%20in%20Gilgit%20Baltistan.](http://www.girlsnotbrides.org/childmarriage/pakistan/#:~:text=21%25%20of%20girls%20in%20Pakistan,areas%20and%20in%20Gilgit%20Baltistan.)> accessed 8 September 2020

<sup>59</sup> ‘Child Marriage in Southern Asia: Policy Options for Action’ (*International Center for Research on Women*) <[www.icrw.org/wp-content/uploads/2016/10/CHILDMARRIAGE-F-13.pdf](http://www.icrw.org/wp-content/uploads/2016/10/CHILDMARRIAGE-F-13.pdf)> accessed 8 September 2020

<sup>60</sup> Rozina Karmaliani and others, ‘Intimate partner violence in Pakistan: not just a women’s issue’ (*The Agha Khan University*)

<[www.aku.edu/news/Documents/English%20Fact%20Sheet.PDF](http://www.aku.edu/news/Documents/English%20Fact%20Sheet.PDF)> accessed 8 September 2020

## 1. INTRODUCTION

The international framework for the protection of human rights, building on the principle that all human beings are equal in dignity, aims to accord equal respect and rights to all human beings. In addition to general human rights instruments such as the Universal Declaration of Human Rights 1948, the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 and the International Covenant on Civil and Political Rights 1966, the United Nations (UN) has also introduced treaties that aim to protect the rights of specific vulnerable groups in society, such as women, children, people with disabilities etc.<sup>61</sup> The main UN treaty dealing with the rights of children is the Convention on the Rights of the Child (CRC), while the Convention on the Elimination of All Forms of Discrimination against Women is specifically dedicated to the protection of women's rights.

Despite the fact that there is a separate instrument dedicated to the rights of children and this treaty is the “most widely ratified human rights treaty in history”,<sup>62</sup> there are widespread violations of the rights of children across the globe.<sup>63</sup> According to UNICEF, “11 per cent of primary-school-aged children and 20 per cent of lower-secondary-aged children”<sup>64</sup> do not attend school. Moreover, 160 million children are involved in child labour around the world,

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<sup>61</sup> ‘Child rights and human rights explained’ (UNICEF) <[www.unicef.org/child-rights-convention/children-human-rights-explained](http://www.unicef.org/child-rights-convention/children-human-rights-explained)> accessed 8 September 2020

<sup>62</sup> ‘What is the Convention on the Rights of the Child?’ (UNICEF) <[www.unicef.org/child-rights-convention/what-is-the-convention](http://www.unicef.org/child-rights-convention/what-is-the-convention)> accessed 10 September 2020

<sup>63</sup> Esteban Ortiz-Ospina and Max Roser, ‘Violence against children and children’s rights’ (*Our World in Data, April 2017*) <<https://ourworldindata.org/violence-against-rights-for-children>> accessed 10 September 2020

<sup>64</sup> ‘Education’ (UNICEF) <[www.unicef.org/education](http://www.unicef.org/education)> accessed 2 October 2021

and another 9 million children are at risk of being subjected to child labour owing to the effects of COVID-19.<sup>65</sup> Sexual exploitation of children is also common. Statistics reveal that a minimum of 120 million girls below the age of 20 are “forced to engage in sex or perform other sexual acts, although the actual figure is likely much higher.”<sup>66</sup> Millions of boys are also subjected to sexual abuse, but they are unlikely to talk about it.<sup>67</sup> As Pakistan is a signatory to the CRC,<sup>68</sup> by failing to adequately ensure the protection of the rights of children, it has violated its obligations under the CRC. While children face a plethora of issues and challenges in Pakistan, this paper will specifically focus on the issue of child marriage.

## **2. LAWS ON CHILD MARRIAGE IN PAKISTAN**

In Pakistan, the Child Marriage Restraint Act 1929 (hereafter referred to as “the 1929 Act”) was enacted in an attempt to curb the practice of child marriage. The 1929 Act is a federal legislation and is, therefore, applicable to all of Pakistan. However, owing to the fact that provinces in Pakistan have provincial autonomy,<sup>69</sup> individual provinces may formulate their own laws pertaining to child marriages. In fact, the provinces of Punjab and Sindh have passed legislation penalizing child marriages, namely the “Punjab Child

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<sup>65</sup> ‘Child Labour’ (UNICEF, 9 June 2021) <[www.unicef.org/protection/child-labour](http://www.unicef.org/protection/child-labour)> accessed 2 October 2021

<sup>66</sup> ‘Sexual violence against children’ (UNICEF) <[www.unicef.org/protection/sexual-violence-against-children](http://www.unicef.org/protection/sexual-violence-against-children)> accessed 2 October 2021

<sup>67</sup> *ibid.*

<sup>68</sup> Mehnaz Aziz, ‘The rights of the Pakistani child’ (*The News*, 28 February 2019) <[<sup>69</sup> ‘Democracy and provincial autonomy’ \(\*Pakistan Today\*, 21 June 2020\) <\[www.pakistantoday.com.pk/2020/06/21/democracy-and-provincial-autonomy/\]\(http://www.pakistantoday.com.pk/2020/06/21/democracy-and-provincial-autonomy/\)> accessed 8 September 2020](http://www.thenews.com.pk/print/437731-the-rights-of-the-pakistani-child#:~:text=The%20CRC%20is%20a%20human,and%20cultural%20rights%20of%20children.&text=By%20signing%20this%20convention%2C%20Pakistan,or%20living%20in%20its%20territory.></a> accessed 8 September 2020</p>
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Marriage Restraint (Amendment) Act 2015” and the “Sindh Child Marriages Restraint Act, 2013”. However, the remaining provinces of Pakistan have not enacted any laws restricting the practice of child marriage, although the province of Khyber Pakhtunkhwa has come up with a bill (the Child Marriage Restraint Bill 2019) which is intended to supersede the 1929 Act.<sup>70</sup>

In Pakistan, according to the Majority Act 1875, every individual possessing a Pakistani domicile attains majority at the age of 18. However, for certain purposes, including marriage, the age of majority differs from that specified in the Majority Act 1875.<sup>71</sup> The age of majority, according to the Child Marriage Restraint Act 1929, is 18 years for males and 16 years for females.<sup>72</sup> Hence, while the age of majority is the same for both sexes regarding most other matters, it differs with regards to marriage. According to Article 1 of the CRC a child includes “every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.”<sup>73</sup> Therefore, state parties to the Convention may have their own laws specifying majority. Accordingly, Pakistan is not in breach of the CRC by specifying the ages of marriage in the 1929 Act.

The 1929 Act provides that the punishment for an adult male who contracts a marriage with a child<sup>74</sup>, any person who “performs, conducts or directs any child marriage”<sup>75</sup> as well as for the guardian of a child contracted in a child

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<sup>70</sup> ‘Child Marriage Restraint Bill 2019: KP Assembly’s solution to end child marriages’ (*Global Village Space*, 15 July 2019) <[www.globalvillagespace.com/child-marriage-restraint-bill-2019-kp-assemblys-solution-to-end-child-marriages/](http://www.globalvillagespace.com/child-marriage-restraint-bill-2019-kp-assemblys-solution-to-end-child-marriages/)> accessed 8 September 2020

<sup>71</sup> Sulema Jahangir, ‘Age of consent’ (*Dawn*, 7 July 2020) <[www.dawn.com/news/1567501](http://www.dawn.com/news/1567501)> accessed 8 September 2020

<sup>72</sup> Child Marriage Restraint Act 1929, s 2 (a)

<sup>73</sup> Convention on the Rights of the Child, Article 1

<sup>74</sup> Child Marriage Restraint Act 1929, s 4

<sup>75</sup> Child Marriage Restraint Act 1929, s 5

marriage<sup>76</sup> is simple imprisonment for a maximum of one month or a fine amounting to 1000 rupees or both. 1000 rupees is a trivial amount and considering the seriousness of the offence, the punishment specified in the 1929 Act does not seem to be adequate. However, as noted earlier, the 1929 Act only extends to those provinces of Pakistan that have not enacted any laws pertaining to child marriage, i.e., provinces other than Punjab and Sindh.

Under the Punjab Child Marriage Restraint (Amendment) Act 2015 (hereafter referred to as the “2015 Act”), the definition of a child is the same as that provided under the 1929 Act.<sup>77</sup> However, the punishment for contracting a child marriage has been made harsher. According to the 2015 Act, any person involved in a child marriage (other than the child itself), be it an adult contracting party, a person who performs, conducts or directs any child marriage, or the guardian of a child who has been married, is punishable with simple imprisonment lasting up to 6 months or a fine of 50 thousand rupees or both.<sup>78</sup>

In the Sindh Child Marriage Restraint Act 2013, a child has been defined as any person below the age of 18, regardless of sex<sup>79</sup>. Moreover, the Act provides that the punishment for an adult, male contracting party,<sup>80</sup> any person responsible for solemnizing a child marriage,<sup>81</sup> as well as a parent or guardian of a child contracted in marriage,<sup>82</sup> is rigorous imprisonment for a minimum of 2 and a maximum of 3 years and a fine. The child marriage laws in the province of Sindh afford the greatest protection against child marriages.

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<sup>76</sup> Child Marriage Restraint Act 1929, s 6

<sup>77</sup> Punjab Child Marriage Restraint (Amendment) Act 2015, s 3

<sup>78</sup> Punjab Child Marriage Restraint (Amendment) Act 2015, s 4, 5 and 6

<sup>79</sup> Sindh Child Marriage Restraint Act 2013, s 2

<sup>80</sup> Sindh Child Marriage Restraint Act 2013, s 3

<sup>81</sup> Sindh Child Marriage Restraint Act 2013, s 4

<sup>82</sup> Sindh Child Marriage Restraint Act 2013, s 5

However, despite this, the “situation is worst in the interior of the Sindh province”.<sup>83</sup> According to a report by Plan-International Pakistan, in Umarmkot and Sanghar districts of Sindh, 70% of girls get married before attaining the age of 15.<sup>84</sup>

### **3. CHILD MARRIAGE AND THE CONSEQUENT BREACHES OF PAKISTAN’S HUMAN RIGHTS’ OBLIGATIONS**

It is important to note that while all of these statutes stipulate penal sanctions for contracting the marriage of a child, the acts do not provide that the marriage itself is void. Moreover, the cases of *Allah Nawaz v. Station House Officer Police Station Mahmood Kot District. Muzaffargarh*<sup>85</sup> and *Ghulam Qadir vs Judge, Family Court, Murree*<sup>86</sup> provide that even though a marriage with a child below the age of majority is an offence under the Child Marriage Restraint Act 1929, the 1929 Act does not render the marriage void (provided that the consent of the minor was obtained). Rather, where a marriage has been contracted in violation of the provisions of the 1929 Act, the only effect is the imposition of penal sanctions. The case of *Mst. Hajra Khatoon and another v. Station House Officer, Police Station Fateh Jang, District Attock and 2 others*<sup>87</sup> also provides that a marriage contracted by a “woman” who has not attained the age of majority but has nonetheless attained puberty is valid and not void. In

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<sup>83</sup> ‘Child Marriage in Southern Asia: Policy Options for Action’ (*International Center for Research on Women*) <[www.icrw.org/wp-content/uploads/2016/10/CHILDMARRIAGE-F-13.pdf](http://www.icrw.org/wp-content/uploads/2016/10/CHILDMARRIAGE-F-13.pdf)> accessed 9 September 2020

<sup>84</sup> Tanveer ul Islam, ‘Little girls not brides...’ (*The News*) <[www.thenews.com.pk/magazine/you/277335-little-girls-not-brides](http://www.thenews.com.pk/magazine/you/277335-little-girls-not-brides)> accessed 2 October 2021

<sup>85</sup> *Allah Nawaz v. Station House Officer Police Station Mahmood Kot District. Muzaffargarh* 2013 PLD 243 Lahore High Court

<sup>86</sup> *Ghulam Qadir vs Judge, Family Court, Murree* 1988 CLC 113 Lahore High Court

<sup>87</sup> *Mst. Hajra Khatoon and another v. Station House Officer, Police Station Fateh Jang, District Attock and 2 others* 2005 PLD 316 Lahore High Court

*Allah Nawaz v. Station House Officer Police Station Mahmood Kot District. Muzaffargarh*, Muhammad Qasim Khan J acknowledged that the 1929 Act does not provide that the marriage of a girl who has attained puberty but is, nevertheless, below sixteen years of age is invalid. He stated:

“Had the legislators any intent to declare the marriage of a girl below the age of majority invalid, a specific clause could be inserted in the Child Marriage Restraint Act (XIX of 1929). In the absence of any such specific provision in the Act,...it would be highly unjust to import a negative intent which was not considered by the legislators...”<sup>88</sup>

In addition to having ratified the CRC, Pakistan is also a signatory to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>89</sup> Article 16 (2) of CEDAW provides that:

“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.”<sup>90</sup>

By failing to ensure, through the necessary legislation, that child marriages are invalidated, Pakistan is in breach of its obligations under the CEDAW. However, Article 16(2) of the CEDAW is not the only provision relating to

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<sup>88</sup> *Allah Nawaz v. Station House Officer Police Station Mahmood Kot District. Muzaffargarh* 2013 PLD 243 Lahore High Court

<sup>89</sup> Sabrina Khan, ‘Pakistan and the Convention on the Elimination of all forms of Discrimination Against Women’ (2013) 2 (2) *Criterion Quarterly* <<https://criterion-quarterly.com/pakistan-and-the-convention-on-the-elimination-of-all-forms-of-discrimination-against-women/>> accessed 9 September 2020

<sup>90</sup> Convention on the Elimination of All Forms of Discrimination against Women, Article 16 (2)

a human rights convention that Pakistan has breached through its failure to invalidate child marriages. One consequence of validating child marriages is that sex within the marriage is legal. While section 375 of the Pakistan Penal Code provides that sex with a girl below the age of sixteen, regardless of whether her consent has been obtained, constitutes rape,<sup>91</sup> there is a reluctance to apply the provision in circumstances where the victim is married to the perpetrator. For instance, in the case of *Allah Nawaz v. Station House Officer Police Station Mahmood Kot District. Muzaffargarh 2013 PLD 243 Lahore High Court*,<sup>92</sup> it was held that despite the explicit wording of section 375(v) of the Pakistan Penal Code, the said section could not apply where a girl below the age of sixteen admitted that she had entered into the marriage.

This reluctance to hold a man who has sexual intercourse with a minor wife guilty of rape can be attributed to religious principles which allow the marriage of a child, and hence consummation of that marriage and sexual intercourse within the marriage, upon attainment of puberty. Recently, the Sindh High Court, in a case involving a 14-year-old Catholic girl who had allegedly been abducted, and forcefully converted and married, held that, according to *Sharia* law, men can marry girls following their first menstrual cycle.<sup>93</sup> Moreover, marital rape is not distinctly recognized as a criminal offence in Pakistan. However, there is an improvement in the legal position regarding marital rape given that, previously, the offence of rape was limited to sexual intercourse with a person to whom the accused was not married.

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<sup>91</sup> Pakistan Penal Code 1860, s 375 (v) (inserted by the Protection of Women (Criminal Laws Amendment) Act 2006)

<sup>92</sup> *Allah Nawaz v. Station House Officer Police Station Mahmood Kot District. Muzaffargarh 2013 PLD 243 Lahore High Court*

<sup>93</sup> Pia Gralki and Catherine Caruso, 'Pakistan Law Allows Men to Marry Girls After Their First Period' (*Global Citizen*, 11 February 2020) <[www.globalcitizen.org/en/content/pakistan-court-allows-men-to-marry-underage-girls/](http://www.globalcitizen.org/en/content/pakistan-court-allows-men-to-marry-underage-girls/)> accessed 9 September 2020

Now, section 375 of the Pakistan Penal Code has removed the phrase “is not validly married” from the definition of rape. Hence, there is scope for the provision to be applied in a situation where a man has raped his own wife. However, there are no reported judgments of the higher courts on the matter as yet<sup>94</sup> and cultural views and values make it unlikely that the provision will be interpreted in a way so as to include marital rape.<sup>95</sup> Nevertheless, in one case, section 377 of the Pakistan Penal Code, which penalizes “carnal intercourse against the order of nature with any man, woman or animal”,<sup>96</sup> was invoked by a woman claiming marital rape.<sup>97</sup>

According to UNICEF, the risk of marital rape “increases at an alarming rate”<sup>98</sup> for child brides. Therefore, by not invalidating child marriages, Pakistan is allowing children to be subjected to sexual abuse. In addition to sexual abuse, child marriages also result in physical violence against children. As mentioned earlier, intimate partner violence is a common occurrence in Pakistan. It is pertinent to note here that sexual intimacy in Pakistan is only lawful within marriage and, therefore, most intimate partner violence occurs within marriage. According to the ‘Pakistan Demographic and Health Survey 2012-13’, 32% of married women between the ages of 15 and 49 had been subjected to physical violence at least once since they were 15 years old.

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<sup>94</sup> The Legal Brief, ‘Rape Laws in Pakistan’ (*Lawyer Readia*, 20 February 2015) <<https://lawyereadia.wordpress.com/2015/02/20/rape-laws-in-pakistan/>> accessed 9 September 2020

<sup>95</sup> Hamza Rao, ‘Marital rape: Is it criminalized in Pakistan?’ (*Daily Pakistan Global*, 31 August 2017) <<https://en.dailypakistan.com.pk/opinion/blog/marital-rape-is-it-criminalized-in-pakistan/>> accessed 9 September 2020

<sup>96</sup> Pakistan Penal Code 1860, s 377

<sup>97</sup> ‘Woman files case of ‘marital rape’ against husband’ (*The News*, 16 September 2018) <[www.thenews.com.pk/print/369113-woman-files-case-of-marital-rape-against-husband](http://www.thenews.com.pk/print/369113-woman-files-case-of-marital-rape-against-husband)> accessed 9 September 2020

<sup>98</sup> Assad Ali Lund, ‘Penetrating culture of child marriage in Pakistan’ (*The Nation*, 22 January) <<https://nation.com.pk/14-Feb-2019/penetrating-culture-of-child-marriage-in-pakistan>> accessed 15 September 2020

Moreover, 39% of women between the ages of 15 and 49 admitted that their husbands had been physically or emotionally abusive towards them.<sup>99</sup> While both girls and women face domestic violence, brides who are married off as girls have a greater chance of being subjected to domestic violence than brides who get married when they are older.<sup>100</sup> According to the United Nations Population Fund (UNPFA) Pakistan, the largest volume of cases of domestic violence in the past year (24.3%) was reported from girls aged between 15 and 19.<sup>101</sup>

By allowing sexual abuse to occur against children in child marriages, Pakistan is in breach of Article 34 of the CRC which has been produced below:

“States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;

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<sup>99</sup> National Institute of Population Studies (NIPS) [Pakistan] and ICF International, ‘Pakistan Demographic and Health Survey 2012-13’ MEASURE DHS, ICF International and Calverton, Maryland, USA December 2013

<<https://dhsprogram.com/pubs/pdf/fr290/fr290.pdf>> accessed 10 September 2020

<sup>100</sup> Saroop Ijaz, ‘Time to End Child Marriage in Pakistan’ (*Human Rights Watch*, 9 November 2018) <[www.hrw.org/news/2018/11/09/time-end-child-marriage-pakistan](http://www.hrw.org/news/2018/11/09/time-end-child-marriage-pakistan)> accessed 13 September 2020

<sup>101</sup> ‘Child Marriage’ (*UNPFA Pakistan*) <<https://pakistan.unfpa.org/en/topics/child-marriage-4>> accessed 13 September 2020

(c) The exploitative use of children in pornographic performances and materials.”<sup>102</sup>

Moreover, Article 19 of the CRC provides that:

“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.”<sup>103</sup>

If a husband of a child bride can be considered as her ‘legal guardian’ or a person having ‘the care of the child’, Pakistan can be said to have violated Article 19 of the CRC owing to its failure to prevent violence against child brides. It is very much possible for the husband to be considered the guardian of a minor wife in Pakistan as the ‘Guardian and Wards Act 1890’ provides that the court should not appoint a guardian of a minor girl who is married, if her “husband is not, in the opinion of the Court, unfit to be guardian of her person”.<sup>104</sup> Moreover, there are several cases of the Supreme Court of Pakistan where a husband has been held to be the guardian of a minor wife.<sup>105</sup>

Child marriage is a practice that impacts children of both genders. However, the practice is more common among girls. One reason for this is that girls in Pakistan are considered to embody their family’s honour. In Sindh, the

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<sup>102</sup> Convention on the Rights of the Child, Article 34

<sup>103</sup> Convention on the Rights of the Child, Article 19

<sup>104</sup> Guardian and Wards Act 1890, s 19 (a)

<sup>105</sup> Mudasra Sabreen, ‘Sawāra Marriages and Related Legal Issues’ (2020) Vol.1 Islamabad Law Review <<http://dx.doi.org/10.2139/ssrn.3641315>> accessed 13 September 2020

province where child marriages are most common, child marriage “is said to mitigate risks of harming the family honour particularly if the girl has experienced sexual assault, premarital sex and out-of-wedlock pregnancies.”<sup>106</sup> The consequences of child marriage are also far worse for girls. This is not only owing to domestic and sexual violence, but also because child marriages have detrimental effects on the reproductive health of child brides. Children in Pakistan do not receive sex education due to the regressive cultural norms and values prevalent in the country which allow children to be married but do not allow discussion surrounding sex and sexuality.<sup>107</sup> As sex education is a taboo in Pakistan,<sup>108</sup> not only do such discussions not take place at home, sex education is also not incorporated into the curriculum in Pakistani schools.<sup>109</sup> Hence, lack of sex education is a problem that extends beyond economic barriers and affects all children.

Due to this, not only do women and girls in Pakistan lack knowledge of contraception, but contraceptives are also not easily accessible to women. Hence, use of contraceptives remains low. Statistical data provides that only 35% of married women in Pakistan use some form of contraception. Owing to the lack of sufficient reproductive control, married girls and women in

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<sup>106</sup> Albenia Sotirova, Karen van Zaal and Tasneem Kakal, ‘Ready to Marry? Exploring the Dynamics of Child Marriage in Pakistan’ (*Girls Not Brides*, 29 May 2020) <[www.girlsnotbrides.org/ready-to-marry-dynamics-of-child-marriage-in-pakistan-evidence-from-three-development-programmes/](http://www.girlsnotbrides.org/ready-to-marry-dynamics-of-child-marriage-in-pakistan-evidence-from-three-development-programmes/)> accessed 13 September 2020

<sup>107</sup> Sara Malkani and others, ‘Ending Impunity for Child Marriage in Pakistan: Normative and Implementation Gaps’ (*Centre for Reproductive Rights*, 2018) <[www.reproductiverights.org/sites/crr.civicaactions.net/files/documents/64785006\\_endin\\_g\\_impunity\\_for\\_child\\_marriage\\_pakistan\\_2018\\_print-edit-web.pdf](http://www.reproductiverights.org/sites/crr.civicaactions.net/files/documents/64785006_endin_g_impunity_for_child_marriage_pakistan_2018_print-edit-web.pdf)> accessed 11 September 2020

<sup>108</sup> Naimatullah Gadhi, ‘Sex Education’ (*The Nation*, 6 May 2019) <<https://nation.com.pk/06-May-2019/sex-education>> accessed 11 September 2020

<sup>109</sup> S.K. Pakistan, ‘Why Sex-Education Should Be Compulsory in Pakistan’ (*Parhlo*, 18 May 2016) <<https://www.parhlo.com/why-sex-education-should-be-compulsory-in-pakistan/#:~:text=In%20the%20Western%20world%2C%20sex,sexual%20needs%2C%200desires%20and%20control.>> accessed 11 September 2020

Pakistan are unable to decide when and how many children they should have or the gap between their pregnancies. This lack of reproductive autonomy “increases the occurrence of unwanted pregnancies, maternal mortality, and sexually transmissible infections.”<sup>110</sup> Moreover, a study on the relation between child marriage and the use of maternal health-care services in Pakistan suggests that child marriage is “significantly associated with decreased likelihood of any prenatal care”<sup>111</sup> and prenatal care by skilled medical professionals. There is also a higher probability of deliveries by unskilled birth attendants and deliveries at home in child marriages.<sup>112</sup>

Girls are also more vulnerable to issues relating to reproduction than women. According to UNPFA Pakistan, adolescent girls are at a greater risk of death from complications during childbirth as compared to women in their twenties. Moreover, the practice of child marriage “subjects girls to at-risk pregnancies, fistula, sexually transmitted infections or even death.”<sup>113</sup>

Furthermore, the law of Pakistan permits abortion only where this is required to save a woman’s life or to provide “necessary treatment”.<sup>114</sup> As the law does not allow abortions generally, most abortions in Pakistan are carried out

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<sup>110</sup> Sara Malkani and others, ‘Ending Impunity for Child Marriage in Pakistan: Normative and Implementation Gaps’ (*Centre for Reproductive Rights*, 2018) <[www.reproductiverights.org/sites/crr.civicaactions.net/files/documents/64785006\\_endin\\_g\\_impunity\\_for\\_child\\_marriage\\_pakistan\\_2018\\_print-edit-web.pdf](http://www.reproductiverights.org/sites/crr.civicaactions.net/files/documents/64785006_endin_g_impunity_for_child_marriage_pakistan_2018_print-edit-web.pdf)> accessed 11 September 2020

<sup>111</sup> Muazzam Nasrullah, Rubeena Zakar and Alexander Krämer, ‘Effect of Child Marriage on Use of Maternal Health Care Services in Pakistan’ (2013) 122(3) *Obstetrics and Gynecology* <[https://www.researchgate.net/publication/255693703\\_Effect\\_of\\_Child\\_Marriage\\_on\\_Use\\_of\\_Maternal\\_Health\\_Care\\_Services\\_in\\_Pakistan](https://www.researchgate.net/publication/255693703_Effect_of_Child_Marriage_on_Use_of_Maternal_Health_Care_Services_in_Pakistan)> accessed 11 September 2020

<sup>112</sup> *ibid.*

<sup>113</sup> ‘Child Marriage’ (*UNFPA Pakistan*) <<https://pakistan.unfpa.org/en/topics/child-marriage-4>> accessed 13 September 2020

<sup>114</sup> ‘Unintended Pregnancy and Induced Abortion in Pakistan’ (*Guttmacher Institute*, January 2015) <[www.guttmacher.org/fact-sheet/unintended-pregnancy-and-induced-abortion-pakistan#](http://www.guttmacher.org/fact-sheet/unintended-pregnancy-and-induced-abortion-pakistan#)> accessed 11 September 2020

illegally and secretly, through unsafe procedures. In 2002, approximately 197,000 women had to be admitted to hospitals owing to complications arising from unsafe abortions, amounting to “6.4 hospitalizations per 1,000 women aged 15–49.”<sup>115</sup> Unfortunately, this figure does not accurately reflect the actual number of women who face post-abortion complications in Pakistan. While approximately 80% of wealthy women are likely to receive hospital-based treatment for complications following an abortion, impoverished women and those belonging to rural areas are less likely to receive hospital-based care in such circumstances. Experts have estimated that only about 50% of poor women who require medical assistance for severe complications resulting from abortions approach a hospital.<sup>116</sup> This is highly unfortunate, given that girls belonging to rural areas are “hardest hit”<sup>117</sup> by child marriages, and consequently, are not only at a risk of experiencing post-abortion complications, but also not seeking treatment for the same.

In 2012, 4.2 million pregnancies out of a total of nine million pregnancies in Pakistan were unwanted, resulting in 54% induced abortions and 34% unplanned births.<sup>118</sup> There was a significant increase in the unplanned pregnancy rate (UPR) from 2002 to 2012, with the UPR “rising from 71 to 93 per 1000 women aged 15-49”.<sup>119</sup> In 2012, there were “50 abortions per

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<sup>115</sup> ‘Abortion in Pakistan’ (*Guttmacher Institute*, November 2009)

<[www.guttmacher.org/report/abortion-pakistan](http://www.guttmacher.org/report/abortion-pakistan)> accessed 11 September 2020

<sup>116</sup> *ibid.*

<sup>117</sup> ‘Child Marriage in Southern Asia: Policy Options for Action’ (*International Center for Research on Women*) <[www.icrw.org/wp-content/uploads/2016/10/CHILDMARRIAGE-F-13.pdf](http://www.icrw.org/wp-content/uploads/2016/10/CHILDMARRIAGE-F-13.pdf)> accessed 11 September 2020

<sup>118</sup> ‘Unintended Pregnancy and Induced Abortion in Pakistan’ (*Guttmacher Institute*, January 2015) <[www.guttmacher.org/fact-sheet/unintended-pregnancy-and-induced-abortion-pakistan#](http://www.guttmacher.org/fact-sheet/unintended-pregnancy-and-induced-abortion-pakistan#)> accessed 11 September 2020

<sup>119</sup> ‘Unintended Pregnancy and Induced Abortion in Pakistan’ (*Guttmacher Institute*, January 2015) <[www.guttmacher.org/fact-sheet/unintended-pregnancy-and-induced-abortion-pakistan#](http://www.guttmacher.org/fact-sheet/unintended-pregnancy-and-induced-abortion-pakistan#)> accessed 11 September 2020

1000 women aged 15-49”,<sup>120</sup> while the treatment rate for post-abortion complications was “13.9 per 1,000 women aged 15–49”.<sup>121</sup> It is important to note that information regarding abortions in Pakistan is obtained primarily from studies conducted on women who have been hospitalized as a result of complications arising from abortions. Even though there is insufficient evidence to support this proposition, it is obvious that a considerable number of maternal deaths in Pakistan result from complications following abortions.<sup>122</sup>

According to a report of the World Health Organization in 2013, Pakistan was among the ten countries that account for 58% of maternal deaths in the world, having a “national maternal mortality ratio of 276 maternal deaths per 100,000 births.”<sup>123</sup> The appalling state of maternal health in Pakistan can be attributed to the high occurrence of child marriage in the country, given that girls under 18 years of age are “83% more likely than women over 18 to experience barriers to health care services, such as living a significant distance from health care facilities and struggling to find transportation.”<sup>124</sup>

Article 24 of the CRC requires states parties to “ensure that no child is deprived of his or her right of access to”<sup>125</sup> health care facilities. Moreover, the Article also obliges states parties to “ensure the provision of necessary

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<sup>120</sup> *ibid.*

<sup>121</sup> *ibid.*

<sup>122</sup> ‘Abortion in Pakistan’ (*Guttmacher Institute*, November 2009)

<[www.guttmacher.org/report/abortion-pakistan](http://www.guttmacher.org/report/abortion-pakistan)> accessed 11 September 2020

<sup>123</sup> Sara Malkani and others, ‘Ending Impunity for Child Marriage in Pakistan: Normative and Implementation Gaps’ (*Centre for Reproductive Rights*, 2018)

<[www.reproductiverights.org/sites/crr.civicactions.net/files/documents/64785006\\_endin\\_g\\_impunity\\_for\\_child\\_marriage\\_pakistan\\_2018\\_print-edit-web.pdf](http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/64785006_endin_g_impunity_for_child_marriage_pakistan_2018_print-edit-web.pdf)> accessed 11 September 2020

<sup>124</sup> *ibid.*

<sup>125</sup> Convention on the Rights of the Child, Article 24 (1)

medical assistance and health care to all children...”<sup>126</sup> and to “ensure appropriate pre-natal and post-natal health care for mothers”.<sup>127</sup> By failing to invalidate child marriages and legalizing abortion only in extremely limited circumstances, which results in girls and women resorting to unsafe abortion procedures, and sometimes even death, as well as failing to ensure the provision of prenatal health-care for women and child brides, Pakistan is in breach of Article 24 of the CRC.

In addition to reproductive health issues, domestic and sexual abuse, another consequence of child marriages is loss of the opportunity to receive an education. While millions of children in Pakistan are unable to attend schools for reasons other than marriage, such as the lack of enforcement of compulsory education and insufficient funds being contributed to education,<sup>128</sup> “girls are more likely to drop out of school”<sup>129</sup> following marriage. Therefore, by allowing child marriages to take place, Pakistan is also depriving children of their right to education. Consequently, Pakistan is in breach of Article 28 of the CRC which not only requires the provision of compulsory, free primary education,<sup>130</sup> but also places an obligation on states parties to promote secondary education and make it accessible for all,<sup>131</sup> as

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<sup>126</sup> Convention on the Rights of the Child, Article 24 (2) (b)

<sup>127</sup> Convention on the Rights of the Child, Article 24 (2) (d)

<sup>128</sup> Human Rights Watch, ‘Millions of children in Pakistan are being deprived of an education, reports HRW’ (*IZA World of Labour*, 13 November 2018) <[<sup>129</sup> Sara Malkani and others, ‘Ending Impunity for Child Marriage in Pakistan: Normative and Implementation Gaps’ \(\*Centre for Reproductive Rights\*, 2018\) <\[www.reproductiverights.org/sites/crr.civicactions.net/files/documents/64785006\\\_endin\\\_g\\\_impunity\\\_for\\\_child\\\_marriage\\\_pakistan\\\_2018\\\_print-edit-web.pdf\]\(http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/64785006\_endin\_g\_impunity\_for\_child\_marriage\_pakistan\_2018\_print-edit-web.pdf\)> accessed 13 September 2020](https://wol.iza.org/news/millions-of-children-in-pakistan-are-being-deprived-of-an-education-reports-human-rights-watch#:~:text=The%20Washington%20Post%2C%20Millions%20of%20children%20in%20Pakistan%20are%20being%20deprived%20of%20an%2C%20Human%20Rights%20Watch%20(HRW).> accessed 13 September 2020</a></p>
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<sup>130</sup> Convention on the Rights of the Child, Article 28 (1) (a)

<sup>131</sup> Convention on the Rights of the Child, Article 28 (1) (b)

well as to take action to decrease drop-out rates.<sup>132</sup> In addition to Article 28 of the CRC, Pakistan is in breach of Article 10 of the CEDAW, which requires states parties to ensure for men and women the “same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas...in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training”,<sup>133</sup> to reduce girls’ drop-out rates, and to introduce “programmes for girls and women who have left school prematurely.”<sup>134</sup>

Moreover, the practice of child marriage has an impact on the economic and employment opportunities of women who are married as girls, as it “leads to a reduction in labour force participation for girls and for women who marry as girls, causing them to earn less than women who marry as adults.”<sup>135</sup> Additionally, the fact that girls discontinue their education following marriage will obviously limit their choice of profession when they wish to work. In this way, child marriages also lead to a violation of Article 11 of CEDAW, which requires states parties to ensure the same rights to men and women with

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<sup>132</sup> Convention on the Rights of the Child, Article 28 (1) (e)

<sup>133</sup> Convention on the Elimination of All Forms of Discrimination against Women, Article 10 (a)

<sup>134</sup> Convention on the Elimination of All Forms of Discrimination against Women, Article 10 (f)

<sup>135</sup> Sara Malkani and others, ‘Ending Impunity for Child Marriage in Pakistan: Normative and Implementation Gaps’ (*Centre for Reproductive Rights*, 2018) <[www.reproductiverights.org/sites/crr.civicactions.net/files/documents/64785006\\_endin\\_g\\_impunity\\_for\\_child\\_marriage\\_pakistan\\_2018\\_print-edit-web.pdf](http://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/64785006_endin_g_impunity_for_child_marriage_pakistan_2018_print-edit-web.pdf)> accessed 15 September 2020

respect to employment opportunities<sup>136</sup> as well as the “choice of profession and employment.”<sup>137</sup>

#### **4. RECOMMENDATIONS**

Despite the existence of penal sanctions for contracting child marriages, the practice of child marriage is widespread in Pakistan. This is because of the lack of implementation of the law. Moreover, the situation is likely to be worse than reflected in statistics because many parents fail to get the birth of their children, especially that of girls, registered which makes it hard to establish that the child is below the minimum legal age for marriage.<sup>138</sup>

As noted above, the legislation dealing with child marriages in Pakistan provides penalties for an adult contracting party, any person who has solemnized the marriage as well as for the guardian of the child, who will most likely be the father. (Under Islamic law, which is applicable in Pakistan concerning matters of the family, the father is the natural guardian of his children and as per the Guardian and Wards Act 1890, the court is not entitled to appoint a guardian “of a minor whose father is living and is not, in the opinion of the Court, unfit to be guardian of the person of the minor”.<sup>139</sup>) More often than not, the child marriage would have been contracted by the collusion of all of the said parties. Therefore, unless the marriage has been contracted without the knowledge or consent of the parent(s), it is only the

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<sup>136</sup> Convention on the Elimination of All Forms of Discrimination against Women, Article 11 (1) (b)

<sup>137</sup> Convention on the Elimination of All Forms of Discrimination against Women, Article 11 (1) (c)

<sup>138</sup> Sotirova and others, ‘Child marriage in Pakistan: evidence from three development programs’ (*GlobalDev*, 3 August 2020) <[www.globaldev.blog/blog/child-marriage-pakistan-evidence-three-development-programs](http://www.globaldev.blog/blog/child-marriage-pakistan-evidence-three-development-programs)> accessed 14 September 2020

<sup>139</sup> Guardian and Wards Act 1890, s 19 (b)

child himself who would wish to initiate proceedings under the Child Marriage Restraint Act 1929 or one of the provincial statutes. Owing to the fact that child marriages are most common among rural areas, where there is little or no access to education, let alone legal education, individuals who have been married off as children might not be aware of the fact that the marriage of a child constitutes a criminal offence. Furthermore, children and adults alike might not even consider the practice of child marriage a wrong, given the regressive cultural values prevalent in the country which dictate that child marriages are necessary to protect the family's honour and shame women who marry "late".<sup>140</sup> However, even if proceedings are initiated and the perpetrators successfully convicted, the result would only be the imposition of penal sanctions and there would be no redress for victims of child marriage as the legislation does not provide for nullification of the marriage. The situation is exacerbated by the fact that girls and women in Pakistan do not have the unilateral right to divorce. While there are other ways in which a Muslim marriage may be annulled, namely *khula* i.e. dissolution by mutual agreement, and *faskh* i.e. judicial dissolution, a *khula* cannot be obtained without the consent of the husband, while judicial dissolution "is subject to the woman satisfying one of a limited number of grounds such as cruelty, impotency, inability/unwillingness of the husband to maintain the wife etc."<sup>141</sup> The fact that the wife is a minor or that the marriage was contracted during the minority of the wife is not a sufficient ground for the grant of a *faskh*. Moreover, the stigma surrounding the dissolution of marriages in

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<sup>140</sup> 'Pakistan' (*Girls Not Brides*)

<[www.girlsnotbrides.org/childmarriage/pakistan/#:~:text=21%25%20of%20girls%20in%20Pakistan,areas%20and%20in%20Gilgit%20Baltistan.](http://www.girlsnotbrides.org/childmarriage/pakistan/#:~:text=21%25%20of%20girls%20in%20Pakistan,areas%20and%20in%20Gilgit%20Baltistan.)> accessed 15 September 2020

<sup>141</sup> Saleha Tauqeer, 'Placing Islamic Principles in a Human Rights Framework', (2019) Vol. 1 TILS Law Journal 37

Pakistan deters not only child brides but Pakistani women in general from attempting to have their marriage dissolved.

Therefore, the law on child marriages needs to be amended, with stricter penalties for its violation and a specific provision invalidating marriages concluded during the minority of a child. The nullification of marriages contracted before the age of 18 but after the attainment of puberty is problematic from a religious standpoint, as such marriages are regarded as valid under *Sharia* law. However, it is undeniable that notions of childhood and adulthood have changed dramatically over time, and while, historically, puberty “marked both physical and social maturity”,<sup>142</sup> this does not hold true in the contemporary world, where children who have attained puberty are not deemed to possess the mental and social maturity of an adult, and lack capacity, not only for contracting a valid marriage, but also for other important matters, such as making wills, entering into contracts, and the ownership of, and transactions concerning, property. Therefore, it is only appropriate that the laws on child marriages account for changed social circumstances. Moreover, the concept of the best interests of the child in traditional Islamic law can also be used to justify outlawing child marriages. While early marriages might have benefitted children in historical times, as the aforesaid discussion reveals, such marriages result in children being deprived of important rights, for instance, the right to education. The Federal Shariat Court (a constitutional court in Pakistan having the authority to examine and decide whether the laws of the jurisdiction are compatible with *Sharia* law) has recently ruled, in a ground-breaking move, that stipulating a minimum age for marriage is not inconsistent with Islamic injunctions and

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<sup>142</sup> Kecia Ali, *Sexual Ethics and Islam: Feminist Reflections on Qur'an, Hadith, and Jurisprudence* (Oneworld Publications 2006)

would enable girls to acquire a basic education.<sup>143</sup> Furthermore, the fact that child marriages have detrimental effects on the reproductive health of girls and increase the likelihood of maternal mortality suggests that child marriages are not in the best interests of children. As far as marriages of pre-pubescent children by their guardians are concerned, the concept of *khiyar al-bulugh* in traditional Islamic law, which allows a child to dissolve a marriage contracted by his guardian once he attains puberty,<sup>144</sup> can be used to justify the invalidation of such marriages. Moreover, as in Sindh, the minimum age for marriage should be raised to 18 for both males and females in the federal and provincial legislations.

Furthermore, in order to curb the practice of child marriage, the state must ensure that the law is properly implemented. To this effect, the State should take particular interest in prosecuting cases of child marriage, given the severity of the offence and the consequences it has for children, particularly child brides. The State should also ensure that all births are registered through the imposition of penalties on parents or legal guardians who fail to register the birth of a child and should make the production of birth certificates a mandatory requirement at the time of the conclusion of the marriage contract. This requirement will enable persons involved in the solemnization of a marriage to ascertain the ages of both the bride and the groom and the fear of punishment will prevent them from concluding a marriage contract where the contracting party or parties are below the minimum legal age for marriage.

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<sup>143</sup> Nasir Iqbal, 'Setting minimum age for marriage not against Islam: Federal Shariat Court' (Dawn, 29 October 2021) <[www.dawn.com/news/1654648](http://www.dawn.com/news/1654648)> accessed 2 November 2021

<sup>144</sup> David Pearl and Warner Menski, *Muslim Family Law* (3rd edn, Sweet & Maxwell 1998)

Perhaps what is even more important to curbing the practice of child marriage in Pakistan than legislative reform and effective implementation of the law is challenging the regressive cultural norms and the deeply ingrained sexism in the Pakistani society. The fact that the practice of child marriage is more common among females and that women in general get married at a younger age as compared to men has its roots in social norms which provide the roles of the husband and the wife in the family. Social norms dictate that the husband's role is the economic sustenance of the wife and children, while the wife's duty is the stewardship of the family home. Accordingly, men are not expected or required to be married until they are able to provide for their families, and this often means that they are not minors by the time they get married. On the contrary, as managing a home does not require a formal education or a stable income, girls may be married off as soon as they have attained puberty.

Moreover, owing to religious norms, pre-marital sex is deemed to be a sin in Pakistan. In fact, pre-marital sexual intercourse constitutes the criminal offence of *zina* (fornication), which attracts severe punishment. However, as indicated earlier, due to the sexism prevalent in the country, women are considered the “repositories of male honor”.<sup>145</sup> A very unfortunate consequence of this is that females who have been sexually assaulted or raped are not deemed ‘honourable’ and are considered unworthy of marriage. Accordingly, girls may be married off during their minority in order to

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<sup>145</sup> Asifa Quaraishi, ‘Her Honor: An Islamic Critique of the Rape Laws of Pakistan from a Woman-Sensitive Perspective’ (1997) 18(2) Michigan Journal of International Law <<https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1467&context=mjil>> accessed 19 March 2021

preserve family honour by not only preventing the prospect of pre-marital affairs, but also that of non-consensual pre-marital sexual contact.

Therefore, awareness campaigns should be conducted to challenge the regressive cultural norms that encourage child marriages and the sexist views surrounding women's piety that have no logical basis and contribute to the oppression of girls and women. Moreover, in order to discourage child marriages, the masses need to be educated regarding the adverse consequences of child marriages as well as of the fact that contracting a child marriage is a criminal offence which is punishable by imprisonment and/or a fine. Furthermore, as child marriages are primarily justified on the basis of religion, the Parliament can seek a declaration from the Council of Islamic Ideology condemning marriages contracted before the age of 18.

## **5. CONCLUSION**

The federal and provincial legislations pertaining to child marriages in Pakistan penalize the contracting of child marriages but do not comment on the validity of a child marriage. However, case law reflects that a marriage contracted with a child, although punishable, is not itself void. By failing to invalidate child marriages, Pakistan has contravened its obligations under the Convention on the Elimination of All Forms of Discrimination against Women, which provides that child marriages are ineffective. Additionally, child marriages themselves lead to multiple violations of children's rights, including, but not limited to, protection from sexual exploitation and physical violence, access to health-care facilities, the right to education, the right to equal employment opportunities and to the choice of profession and employment. By failing to guarantee the aforesaid rights to children, especially to girls, Pakistan is in breach of various international human rights

obligations. Among the primary reasons for child marriages in Pakistan are the regressive religious and cultural norms in the country that allow children to be married as soon as they have attained puberty, link honour to a woman's piety and consider the practice of child marriage an adequate means of preserving family honour. The practice of child marriage is also common owing to the lack of implementation of the law prohibiting child marriages and the absence of strict penalties for its violation. Therefore, in order to curb the practice of child marriage, a specific provision invalidating child marriages and harsher punishments for contracting child marriages will have to be incorporated in the federal and provincial legislations on child marriages and effectively implemented throughout the country. Moreover, awareness campaigns can be conducted to challenge the regressive cultural and religious norms that encourage child marriages, as well as to educate the general population of the harmful effects of child marriages and of the fact that contracting a child marriage is a criminal offence that can lead to the imposition of severe penalties. Moreover, as religion is advanced as the main justification for child marriages, the state can seek assistance from the Council of Islamic Ideology in this respect, which can issue a statement denouncing the practice of child marriage.