

Child Marriages in Pakistan: Examining the Legal Framework in Light of Islamic Principles

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Abstract:

This study examines child marriage from an Islamic viewpoint, concentrating on the Sindh Child Marriages Restraint Act, 2013. The paper emphasizes how Islamic teachings view marriage as a social duty and a moral safeguard, emphasizing the necessity of partners' consent. It shows how child marriage violates children's basic rights, including their right to an education and freedom of choice, and how it can seriously harm the health of young females. This research paper provides an overview of the issue of child marriages in Pakistan, focusing on the legal framework and its compatibility with Islamic principles. The paper examines the Sindh Child Marriages Restraint Act, 2013 and its implications in light of Islamic teachings. It discusses the debates surrounding the minimum age for marriage, the importance of education for girls, and the protection of minors from early marriages. The research aims to add to the understanding of child marriage laws in Pakistan and their alignment with Islamic principles and human rights.

Keywords: *Islam, Pakistan, Sindh, Child Marriages, education, freedom*

Introduction:

The institution of marriage, as prescribed by Islamic teachings and principles, is critical for cultivating equilibrium and fostering a robust society. Certain conditions render such a union unsanctioned, for instance, when a party to the potential marriage is of unsound mind, the female has not touched the age of puberty, or the male is unable to meet financial obligations. Therefore, the Islamic matrimonial contract, or "Nikkah," is construed as a societal pact between a man and a woman. It is perceived not only as a religious obligation but also as a moral protection and a communal obligation (Meraj, 2018).

Islamic jurisprudence stipulates stringent prerequisites for a marriage contract. The parties involved should be of opposite genders, their consent should be willingly given, and the agreement should be validated by two witnesses. In circumstances where a party is a minor, the presence of a father or guardian is mandated during the contract proceedings (Ullah, Aziz, & Idrees, 2021). Furthermore, the spouses' uncoerced and explicit consent remains the paramount condition for a valid marriage contract. Regrettably, early child marriages infringe upon fundamental rights of children, encompassing their right to education, right to choice, and right to live a fulfilling life. Such underage females often encounter severe health predicaments owing to insufficient guidance on pregnancy and related matters. As a measure to curb these ramifications, the Sindh Government enacted the Sindh Child Marriages Restraint Act, 2013, a commendable initiative aimed at mitigating the prevalence of early child marriages in Sindh.

The issue of the child marriages:

Child marriage remains a deeply rooted problem in Pakistan, fueled by a mix of traditional customs and poverty. According to a UNICEF report, 21% of girls in Pakistan are married before the age of 18, and 3% are married before they turn 15 (UNICEF, 2018). Despite laws prohibiting child marriage, its prevalence highlights a disconnection between legislation and enforcement, predominantly in rural zones where this exercise is more common. Early marriage, also known as marriage in adolescence, is specified as a marriage taking place before the age of 18. The Convention on the Rights of the Child (CRC) also designated adulthood as the lowest age of attainment. The CRC has been ratified by 194 nations and states that everyone under the age of 18 is considered a child according to Article 1 of the CRC (Ahmed, 2015). This definition applies to both girls and boys; however, it is most common in females. In many countries, child marriage is a common practice. The issue hasn't been recognized or accepted as a standard for quite a while, given its significance. It is an emerging problem throughout Pakistan (Nawaz, Koser, Bilal, Shabbir, & Latif, 2021).

Islamic and Child Marriage:

Mutual consent is crucial for determining the legitimacy of marriage in Islam (Abdal-Ati, 1974; Ahmad, Baig, & Hussain; Jaraba, 2020; Rahbari, 2020; Ullah et al., 2021). The Quran promotes the preservation of orphans and their property until they reach a marriageable age (maturity), even though it does not state a minimum age for marriage expressly (Batha; Mohd & Kadir, 2019; Sudarto & Najib). This suggests a necessity for mental and physical preparation for the obligations of marriage. In addition, both individuals must voluntarily consent to the marriage according to Islamic

Child Marriages in Pakistan: Examining the Legal Framework in Light of Islamic Principle

jurisprudence (fiqh), which specifies that they must have attained the age of discernment (rushd), which is commonly interpreted to indicate puberty or the age of legal majority (Shatzmiller, 1995). Forced marriages are indisputably condemned in numerous occasions in Quran and Hadith (Gzoyan & Galustyan, 2021; Ullah et al., 2021).

"Test the orphans until they reach the age of marriage, and then if you find them mature of mind hand over to them their property, and do not eat it up by either spending extravagantly or in haste, fearing that they would grow up (and claim it)..." (Surah An-Nisa (4:1-6).

The verse accentuates the obligation of maturity and sound judgment for marriage.

"Believers! It is not lawful for you to become heirs to women against their will " (Surah An-Nisa (4:19).

While this verse addresses a detailed historical perspective, intellectuals construe it precisely to outlaw forced marriages.

"Narrated Abu Huraira: The Prophet said, A virgin should not be married till she is asked for her consent" (Sahih al-Bukhari (Hadith No: 6968)).

This Hadith underscores the importance of free consent in marriage.

Abdur Rahman bin Yazid Al-Ansari and Mujamma bin Yazid Al-Ansari said: that a man among them who was called Khidam arranged a marriage for his daughter, and she did not like the marriage arranged by her father. She went to the Messenger of Allah and told him about that, and he annulled the marriage arranged by her father. Then she married Abu Lubabah bin Abdul-Mundhir (Sunan Ibn Majah (Hadith No: 1873)).

This reiterates the emphasis on obtaining the woman's consent before marriage.

International Legal frameworks:

Various international and regional legal frameworks address the issue of child marriage, seeking to guard the rights of children and endorse gender parity. Some of the key frameworks include:

United Nations Convention on the Rights of the Child (CRC):

The CRC, adopted in 1989, is an international human rights treaty that sets out the civil, political, economic, social, and cultural rights of children (UN General Assembly, 1989). Article 24 of the CRC necessitates countries to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children," which can include child marriage.

Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW):

Adopted in 1979, CEDAW is an international treaty that focuses on eliminating gender discrimination and promoting women's rights (UN General Assembly, 1979). Article 16(2) of CEDAW states 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."

Sustainable Development Goals (SDGs):

The SDGs, adopted in 2015, are a set of 17 global goals focused at giving a talk on numerous societal, financial, and environmental concerns by 2030 (Cf, 2015). Goal 5 focuses on attaining gender equality and empowering all women and girls, with Target 5.3 specifically calling for the abolition of all unsafe practices, like child, early, and forced marriage.

African Charter on the Rights and Welfare of the Child (ACRWC):

The ACRWC, adopted in 1990, is a regional human rights instrument that seeks to protect the rights of children in Africa (Charter, 1990). Article 21 of the ACRWC calls for the prohibition of child marriage and necessitates countries to take judicial and other necessary measures to stipulate the least possible age of marriage as 18 years.

South Asian Initiative to End Violence Against Children (SAIEVAC):

Established in 2010, SAIEVAC is a regional initiative aimed at ending entire practices of violence against children in South Asia, including child marriage (SAIEVAC, 2010). Through regional action plans and collaborative efforts, SAIEVAC seeks to strengthen national laws and policies addressing child marriage and promote regional cooperation on this issue.

Regional Frameworks:

Pakistan has a complex legal landscape with different laws governing child marriage at the federal and provincial levels. The primary legislation addressing child marriage is the Child Marriage Restraint Act (CMRA) of 1929, which sets the legal age of marriage at 16 for girls and 18 for boys (Act & Act, 2006). However, some provinces have introduced their own laws to raise the minimum age of marriage for girls to 18, such as Sindh with the Sindh Child Marriage Restraint Act in 2013 (Khan & Shehla Aftab, 2014). Despite these efforts, the legal framework remains inconsistent across the country (Nasrullah, Muazzam Zakar, Rubeena Zakar, & Muhammad Zakria, 2014).

Child Marriages in Pakistan: Examining the Legal Framework in Light of Islamic Principle

The Age of Consent:

Child marriage laws in the area that is now Pakistan have their origins in British colonial law. The Age of Consent Act, 1891, was designed to set the legal age of consent to sexual activity for girls at 12 years old in order to prevent child marriage (Kandiyoti, 1991).

The Child Marriage Restraint Act:

The legal age of marriage was set at 16 for girls and 18 for boys by the Child Marriage Restraint Act of 1929, a further outcome of the colonial era (M. Nasrullah et al., 2014).

Revisions in the Legal Age:

In 1961, Pakistan amended the age in the Child Marriage Restraint Act, raising the legal age for girls was set to 16 and maintaining the age of 18 for boys (Abubakar, 2019).

The Sindh Child Marriage Restraint Act:

In 2014, the Sindh province legislated the Sindh Child Marriage Restraint Act, raising the marriageable age for both boys and girls to 18 years. It also laid out stricter penalties for violations (Government of Sindh, 2013).

This concise historical summary gives context for the Sindh Child Marriage Restraint Act, 2013, highlighting its break from customary practices and the important shift it symbolizes in safeguarding children's rights in Pakistan.

Key Provisions of the Act

- **Age of Marriage:** A notable development in Pakistan's legal system was the Sindh Child Marriage Restraint Act, 2013, which was approved. The Act changed the previous rule, which permitted girls to get married as young as 16, and fixed the legal age for marriage at 18 for both girls and boys (Government of Sindh, 2013).
- **Penalties:** The law imposes penalty on those who support, promote, or participate in child marriages. The penalties may consist of imprisonment, a fine, or both. A fine of up to PKR 45,000 and/or a sentence of up to three years in prison may now be imposed on individuals who assist, conduct, or contract such weddings (Government of Sindh, 2013).
- **Obligations of prominent Authorities:** The Act probably outlines explicit obligations for particular authorities to prevent child marriages. These authorities may include local government representatives, law enforcement, and religious leaders who customarily officiate marriages (Government of Sindh, 2013).

- Voidability of Marriage: Child marriages that were contracted illegally may be ruled void or voidable. Those who are forcibly married off at a young age may have legal redress if this rule is in place (Government of Sindh, 2013).

Protection and Relief for Victims: The law could include provisions for methods for reporting abuses, pursuing justice, and safeguarding the safety and welfare of victims of child marriage (Government of Sindh, 2013).

The literature highlights various challenges in implementing child marriage laws in Pakistan, including lack of awareness, weak enforcement mechanisms, and social and cultural norms that support the practice (Nasrullah et al., 2014; Sathar, Wazir, & Sadiq, 2013). Additionally, inadequate coordination between federal and provincial governments, corruption, and limited resources have been cited as factors that undermine the effectiveness of these laws (Razi, Zahoor, Anwar, & Jamshed, 2021).

Pervasiveness and concerns of child marriage:

1. Pervasiveness:

Child marriage is a widespread concern in Pakistan, with significant variations across different regions, provinces, and communities. According to the Pakistan Demographic and Health Survey (PDHS) 2017-18, 16.3% of women aged 20-24 were married before the age of 18, and 3.9% were married before turning 15 (National Institute of Population Studies, 2019). Proportions of child marriage tend to be enormous in rural regions compared to urban areas, and poverty and lack of education are significant contributing factors (Nasrullah et al., 2014; National Institute of Population Studies, 2019). Cultural customs and societal norms significantly contribute to the continuation of child marriage within specific communities (Sathar et al., 2013).

2. Concerns:

The aftermaths of child marriage can be stern and long-lasting, disturbing the healthiness, well-being, and development of the children involved. Some of the key consequences include:

3. Health risks:

Child marriage has been associated with greater chances of maternal and infant death, particularly due to early and frequent pregnancies, inadequate prenatal care, and complications during childbirth (Nour & Nawal M, 2009; Raj, Niranjana Balaiah, Donta Silverman, & Jay G, 2009).

4. Lower educational attainment:

Child brides have a higher propensity to discontinue their education, resulting in lower educational attainment and limited opportunities for personal and professional growth (Nasrullah et al., 2014; Sathar et al., 2013).

Child Marriages in Pakistan: Examining the Legal Framework in Light of Islamic Principle

5. Intimate partner violence:

Research findings indicate that young girls who enter into marriage at an early age face an elevated likelihood of encountering intimate partner violence. This includes various forms of abuse such as physical harm, sexual assault, and emotional mistreatment (Nasrullah et al., 2014).

6. Mental health consequences:

Child marriage can lead to enduring psychological effects, comprising but not limited to depression, anxiety, and post-traumatic stress disorder (PTSD), that can persist over time, resulting from the loss of autonomy, isolation, and the burden of early marriage and motherhood (Santhya et al., 2010).

7. Economic impact:

Child marriage can perpetuate the cycle of poverty, as married girls often have limited access to income-generating opportunities and are more likely to have larger families, further straining limited resources (Unicef, 2014).

8. Factors leading to child marriages:

Child marriage is a multifarious concern with innumerable cultural, economic, and social factors contributing to its persistence. Some key factors that drive child marriage across different contexts include:

9. Cultural and traditional norms:

In many societies, child marriage is intensely engrained in cultural and traditional norms, where the practice is considered a social norm or an essential part of preserving family honor (Unicef, 2014). For example, in some communities, marrying girls at a young age is believed to protect them from premarital sex and preserve their virginity, thereby upholding the family's reputation (Parsons et al., 2015).

10. Poverty:

Poverty is a significant aspect that leads to child marriage, as poor families may perceive marriage as a method to reduce their financial burden or secure their daughter's future through a perceived stable economic arrangement (Unicef, 2014). In some cases, the bride's family may receive a dowry or bride price, which can serve as an incentive for early marriage (Nour & Nawal M, 2009).

11. Lack of education and awareness:

Insufficient educational opportunities and a lack of awareness regarding the adverse implications of child marriage can both contribute to the continued prevalence of this practice (Unicef, 2014). Educated girls and their families are more likely to recognize the value of delaying marriage and investing in girls' education and development (Parsons et al., 2015).

12. Gender inequality and social norms:

Gender inequality and discriminatory social norms that view women as inferior to men or as commodities can perpetuate child marriage (Unicef, 2014). In societies where women's roles are limited to being wives and mothers, girls may be pressured to marry early to fulfill these roles and meet societal expectations (Parsons et al., 2015).

13. Insecurity and conflict:

In contexts of insecurity and conflict, families may see child marriage as a means of protecting their daughters from violence, sexual assault, or abduction (Unicef, 2014). Forced displacement and economic instability can also exacerbate the risk of child marriage, as families struggle to cope with new challenges and uncertainties (Schlecht, Rowley, & Babirye, 2013).

Detailed Analysis of prominent Verdicts regarding Child marriages:

1. Sindh Child Restraint Marriage Act, 2013 and Principles laid down by Federal Shariat Court:

In the Shariat Petition No.05-I of 2022, the petitioner asked the court to get involved in accordance with Article 203-D of the Islamic Republic of Pakistan's 1973 Constitution. The Sindh Child Marriage Restraint Act of 2013 was questioned during the prayers in light of Islamic edicts and the Constitution. They also asked for the Act's definition of "child" to be changed to take into account Muslim puberty signs, sought a reassessment of the Family Appeal No. 18/2021 and Family Suit No. 2117/2020 court files and proceedings, asked the court to affirm their marriage under Muslim Family Law, and asked for physical custody of Respondent No. 2. Some of the pleas addressed personal relief, which the court determined was beyond of its purview. However, it was necessary to look into the issues raised by the disputed statute. The Sindh Child Marriages Restraint Act of 2013's Section 2(a), which sets the minimum legal marriage age at 18, was challenged on the grounds that it violated Islamic edicts.

Following a consideration of the arguments, sources, and teachings from Islam, the court concluded that the references were more pertinent to the significance of marriage in Islam than they were to the right marriage age. According to the teachings of the Quran and the Sunnah, which establish the rights and obligations of a spouse and the husband's duty to protect and provide for his wife, the court emphasized the significance of marriage in human society. The court took into account other texts from the Quran and hadith that talk about situations that hinder marriage, even after a person reaches adulthood. The court also emphasized differing opinions held by

Child Marriages in Pakistan: Examining the Legal Framework in Light of Islamic Principle

Muslim jurists over whether or not a young girl can get married. The decision emphasized the importance of establishing a legal minimum age for girls to receive a basic education, as it is crucial for their intellectual development and women's empowerment, as well as for a successful marriage, personal development, and societal advancement. The Hadith, which mandates knowledge acquisition for all Muslims, male and female, was cited by the court to support the idea of protecting and fostering intelligence.

Federal Shariat Court held in the Ali Azhar's case (PLD 2022 FSC 1) and settled down the principle that the minimum age may be fixed by the government even this such practice is not only limited to the Pakistan but the other Muslims Countries has enacted the laws for providing certain age for marriage; ready reference in this regard is provided as follows: "There are many Islamic countries where such type of law is present wherein a minimum age for marriage for male and female is fixed, like in Jordan, Malaysia, Egypt and Tunisia, etc. However, in such countries according to their laws if in a specific or especial case there is an unavoidable circumstance or situation to solemnize a marriage before the age as set by the law then the family of that girl and boy must approach a specific authority made by the government allowing or disallowing such permission."

2. 2022 PLD 1 FEDERAL-SHARIAT-COURT

Side Appellant: FAROOQ OMAR BHOJA

Side Opponent: FEDERATION OF PAKISTAN through Ministry of Law and Justice of Pakistan through Secretary, Islamabad.

The argument presented in this legal proceeding is about sections 4, 5, and 6 of the Child Marriage Restraint Act of 1929 in the context of the Constitution of Pakistan and its Article 203-D. The dispute centers around a conflict with the Islamic law regarding the prohibition of child marriage. The case argues that the aforementioned sections of the Child Marriage Restraint Act, also known as 'the impugned provisions', conflict with the teachings of Islam. This Act established by the State sets the minimum age for a girl to get married at 16 years.

While a majority of Muslim jurists believe that the marriage of a minor girl is acceptable under Islamic law, there are also some who oppose this view. According to the established principles of Shariah, if an act that is generally permissible, or 'Mubah', turns out to be harmful to society or any specific segment of it, the State has the authority to prohibit that act. This prohibition aims to protect society from greater harm. The State can cautiously set limits on a 'Mubah' act, so long as these limits don't interfere with any other rule defined by Shariah. The decision to set a minimum age of 16 for girls to marry is one such limitation. In Islamic law, there's a well-established principle known as 'Sad-uz-Zaraey', based on the Quran and the teachings of the Prophet Muhammad (Sunnah). According to this principle, the State has

a duty to regulate or limit any action in society that could lead to harmful consequences, regardless of how minor the action might seem.

By the principle of 'Sad-uz-Zaraey', the impugned provisions do not contradict the Quran or the Sunnah. If a rule is being exploited or misused, it can be clarified to prevent further abuse. The impugned provisions do just that. They clearly outline the Shariah law, minimizing the potential for misuse. They stipulate that a marriage cannot be consummated until the girl reaches an age of medical maturity, and setting this age at 16 greatly reduces the chance of breaching this principle. Moreover, setting a legal minimum age of 16 for marriage can also generally ensure that girls get at least a basic education. Education is equally vital for everyone, regardless of gender. Islam makes it obligatory for every Muslim to seek education.

For an individual, especially for a girl, education falls under the concept of Hifz-ul-Aql, meaning the protection and promotion of intellect, which is one of the main objectives of Shariah. For a marriage to be healthy, not only are physical health and economic stability important, but mental health and intellectual growth are equally crucial, and these are achievable through education. In accordance with Islamic teachings, providing the best possible education to a girl or a daughter is one of the greatest deeds a person can do, which guarantees entry to 'Jannah' (heaven). Therefore, the petition challenging sections 4, 5 & 6 of the Child Marriage Restraint Act of 1929 was found to be misguided and was rejected at the outset.

3. Analysis of the 2022 PLD 1 FEDERAL-SHARIAT-COURT:

The case of Farooq Omar Bhoja versus the Federation of Pakistan was decided by the Federal Shariat Court of Pakistan in its ruling, 2022 PLD 1. Sections 4, 5, and 6 of the Child Marriage Restraint Act of 1929 were contested by the appellant on the basis that they were against Islamic law and principles. These provisions establish a minimum marriage age of 16 for girls. A large number of Muslim jurists who were consulted by the court agreed that a minor girl's Nikah (Islamic marriage contract) was legal. But there were also many who disagreed. The court referred to the concept of "Mobah," which refers to behaviors that are legal under Islamic law but may be outlawed by the state if they appear to be damaging to society as a whole or to a particular group within it.

According to the Court, imposing a minimum age requirement for females to marry is a protective measure that does not conflict with any other Shariah law tenets. Additionally, it referred to the well-known Islamic principle of "Sad-uz-Zaraey," which obliges the State to restrict or thwart any action that could have negative effects on society, regardless of how small. The court determined that the disputed passages were not in conflict with the Quran and Sunnah based on this approach. Instead, they ensured that a marriage

Child Marriages in Pakistan: Examining the Legal Framework in Light of Islamic Principle

should not be performed before a girl has attained the age of medical maturity and protected the law or principle of Shariah from misuse or abuse. In addition, the Court emphasized the significance of education, which Islam prescribes for all Muslims, regardless of gender. Girls' access to at least a fundamental education is facilitated by establishing a minimum marriage age. This was brought into line with the Islamic notion of "Hifz-ul-Aql," which relates to the preservation and advancement of knowledge—one of Shariah's main objectives. The Court held that in addition to physical well-being and financial security, a successful marriage also requires mental well-being and intellectual growth, both of which can be acquired through education. It made reference to Islamic beliefs that promote giving a child or daughter a good education as one of the best deeds ensuring 'Jannah' (paradise).

The Shariat petition contesting Sections 4, 5, and 6 of the Child Marriage Restraint Act, 1929 was thus rejected by the court as being misconceived.

4. 2021 PLD 783 LAHORE-HIGH-COURT-LAHORE:

Sections 2(a), 9, and 10 of the Family Courts Act (XXXV of 1964) in conjunction with Section 20 pertain to the prohibition of child marriage. As per the judicial interpretation, the Child Marriage Restraint Act of 1929 (hereafter referred to as 'the Act 1929') identifies three categories of offenders in relation to child marriage. The first category consists of males aged over eighteen who partake in child marriage. The second category encompasses individuals who facilitate, execute, or orchestrate such marriages. The final category includes any person, irrespective of whether they are a parent, guardian, or acting in any other lawful or unlawful capacity, in charge of the minor. These individuals, if they either take action to facilitate the marriage, permit the marriage to proceed, or negligently fail to inhibit the marriage from taking place, are deemed offenders. On these grounds, the constitutional petition was acknowledged and approved.

5. Analysis of 2021 PLD 783 LAHORE-HIGH-COURT-LAHORE:

An important interpretation of Pakistan's legislation governing child marriages is provided by the Lahore High Court's judgement, which is cited in the 2021 PLD 783 Lahore High Court Lahore. It relates to Section 20 as well as Sections 2(a), 9, and 10 of the Family Courts Act (XXXV of 1964), which together serve to restrict child marriages. The Child Marriage Restraint Act of 1929 (the "Act 1929") places restrictions on child weddings, and the court in this judgement gives a comprehensive interpretation of the parties that can be held guilty or can be designated as offenders in the execution of child marriages.

The jury divided the perpetrators into three different categories:

- Males aged over eighteen who engage in child marriage: Males over the age of eighteen who marry a kid are directly responsible in this group since they made the decision to wed a child. The court emphasizes the importance of individual accountability in such unlawful activities by designating them as offenders.
- Persons who facilitate, conduct, or direct such marriages: This category includes anyone who actively participates in setting up, managing, or overseeing a child marriage. It may include of a variety of people, such as clergymen, wedding coordinators, or even close friends or family. By including this classification, the ruling highlights and denounces the larger social institutions and individuals that support child marriages.
- Those who have custody of the minor who permit the marriage or fail to prevent it: Any person in responsibility of the minor, such as parents or guardians, falls under this broad group, regardless of whether they are carrying out their duties legally or illegally. These people may be held accountable if they support the marriage, allow it to happen, or do nothing to stop it. This category makes it quite evident that people in positions of caregiving have a duty to safeguard children from such wrongdoing.

The Lahore High Court improves the legal frameworks to prevent child marriages by expanding culpability beyond the immediate partners by providing this thorough breakdown of who might be regarded as offenders under the Act 1929. It establishes a precedent for holding all parties responsible for their part in such an act and strengthens the laws against underage marriages. The court has shown its determination to respect the rules against child marriages and its willingness to take action against any type of child exploitation by acknowledging and allowing the constitutional petition. The decision upholds the court's position on the matter and provides strong legal support for measures taken to prevent child marriages.

Whether the Sindh Child restraint marriage Act, 2013 declare the child marriage as invalid and hold a minor liable for punishment:

Provisions of SINDH ACT NO.XV OF 2014 do not render the marriage invalid though it makes punishable a marriage made in violation of its provisions. Whereas, Adult husband contracting such marriage or persons solemnizing same may however be held criminally liable-Criminal Procedure Code of 1898), S.491. It is pertinent to mention here that the Said Act, however, did not hold a minor (who had contacted the marriage) liable for punishment.

Child Marriages in Pakistan: Examining the Legal Framework in Light of Islamic Principle

Citation Name : 1970 PLD 323 SUPREME-COURT
Side Appellant : MST. BAKHSHI
Side Opponent : BASHIR AHMAD
Child marriage restraint Act 1929 ----Fact h girl below age of 16 years marrying in violation of Act-Does not make marriage itself invalid-Adult husband contracting such marriage or persons solemnizing same may however be held criminally liable-Criminal Procedure Code of 1898), S.491.

Analysis of 1970 PLD 323:

The applicability of the Child Marriage Restraint Act of 1929 is the subject of the cited case, MST. BAKHSHI v. BASHIR AHMAD (1970 PLD 323). In this particular case, a girl under the age of 16 was married against the law. Whether such a marriage is declared null under the Act is the key topic addressed in this ruling. The Act, according to the court, does not render the marriage null and void. Even if the Act was broken, the marriage is nonetheless regarded as valid. However, any person who solemnized the marriage or the adult husband who entered into such a marriage may be held legally accountable for their actions. Those accountable for arranging or executing the marriage may face criminal charges, even though the marriage is not void.

The Criminal Procedure Code of 1898's Section 491 was cited by the court as outlining maintenance and custody obligations for a wife who is a minor. In such situations, the preservation of the rights and interests of underage wives is emphasized in this section.

Citation Name : 1962 PLD 442 KARACHI-HIGH-COURT-SINDH
Side Appellant : MUSHTAQ AHMAD
Side Opponent : MIRZA MUHAMMAD AMIN AND ANOTHER
Child marriage restraint Act 1929 -- Makes marriage with Child punishable-Act, however, does not render such marriage invalid.

Analysis of 1962 PLD 442:

The Child Marriage Restraint Act of 1929 was the subject of the argument in Mushtaq Ahmad v. Mirza Muhammad Amin and Another (1962 PLD 442

Karachi High Court Sindh). Mushtaq Ahmad, the appellant, contested the Act on the argument that it imposed fines for marrying a child but does not invalidate such marriages. The court determined that while the Child Marriage Restraint Act imposes penalties for marrying a child, it does not invalidate such marriages after taking into account the arguments presented. In a nutshell, even while the Act forbids them and makes them illegal, it does not immediately void child marriages.

This decision implies that while the law imposes sanctions to deter child marriages because of the harm and social repercussions they have, it does not cancel or declare such marriages void. This interpretation emphasizes the distinction between the criminal and civil repercussions of child marriages, highlighting the fact that the Act is primarily concerned with punishing offenders rather than invalidating the marital connection itself.

Citation Name : 2018 PLD 385 ISLAMABAD

Side Appellant : MUHAMMAD SAFEER

Side Opponent : ADDITIONAL SESSIONS JUDGE
(WEST) ISLAMABAD

Ss. 4, 5 & 6---**Child marriage** ---Minor bride/bridegroom---**Child marriage restraint** Act, 1929 provided punishment for three categories i.e. the contracting party, promoter of the (**Child**) **marriage** and guardians/parents of the **Child** ---Said Act, however, did not hold a minor (who had contacted the **marriage**) liable for punishment.

Analysis of 2018 PLD 385:

The case revolves around the interpretation of Sections 4, 5, and 6 of the Child Marriage Restraint Act, 1929, specifically in relation to minor brides or bridegrooms. It has been determined that three categories of offenders are under the purview of the Child Marriage Restraint Act, 1929, and are subject to penalty. The contractual party, or those who enter into a child marriage, is included in the first category. The second category consists of those who enable or support child marriages, including those who do both. The child's parents or guardians, who may also be held responsible for their role in the child marriage, make up the third category. It is crucial to remember that the Act does not penalize minors who have entered into marriage. In other words, the Act does not hold the young bride or groom responsible for any penalties imposed by its rules.

Child Marriages in Pakistan: Examining the Legal Framework in Light of Islamic Principle

Whether the Sindh Child restraint marriage Act, 2013 declare the performance of conjugal rights during such child marriage as illegal and unlawful:

Provisions of SINDH ACT NO.XV OF 2014 do not render the performance of conjugal rights of the spouses are unlawful and illegal during solemnization of the Child marriage. Therefore, such sexual intercourse could be treated as unlawful and did not attract the provisions of the Section 375 PPC for initiating the proceedings against the perpetrator.

Citation Name : 2013 PLD 243 LAHORE-HIGH-COURT-LAHORE

Side Appellant : ALLAH NAWAZ

**Side Opponent : STATION HOUSE OFFICER,
POLICE STATION MAHMOOD KOT DISTRICT,
MUZAFFARGARH**

S. 375---**Child marriage restraint** Act (XIX of 1929), Ss.2(a) & (b)---Rape---Scope---**marriage** of Muslim girl below sixteen years of age, who had otherwise attained puberty and consented to the **marriage** --- Legality---Performance of conjugal rights by the spouses under such a **marriage** could not be termed as "unlawful sexual intercourse" so as to attract S.375, P.P.C. in order to initiate proceedings against them.

Analysis of 2013 PLD 243:

A Muslim girl under the age of sixteen who had reached puberty and given her agreement to the marriage is the subject of the case, which concerns a challenge to the implementation of Section 375 of the PPC. The court assessed whether engaging in "unlawful sexual intercourse" in violation of Section 375 could be justified as exercising the couples' conjugal rights in such a marriage.

The Child Marriage Restraint Act (XIX of 1929), notably Sections 2(a) and (b), which define a "child" and make child marriages illegal, was examined by the court. In connection to the crime of rape under Section 375 of the PPC, the court assessed the reach of the Act. The court came to the conclusion that the performance of conjugal rights by the spouses cannot be classified as "unlawful sexual intercourse" under Section 375 of the PPC when a Muslim girl under the age of sixteen who has reached puberty and voluntarily consented to the marriage enters into a marital relationship. The court argued that because the marriage was recognized as legal under the

relevant personal law, sexual interactions between the spouses could not be classified as a rape offence.

Power of Court to issue injunction against a child Marriage:

The Court under Section 7 of SINDH ACT NO.XV OF 2014 has power to issue injunction on information in the form of application that a child marriage prohibiting child marriage is going to be happen or about to be solemnized contravention of this Act, on this Court issue an injunction prohibiting such child marriage.

Conclusion:

Despite legislative restrictions, child marriage in Pakistan is still a major concern due to its high incidence. The 2013 Sindh Child Restraint Marriage Act is a significant step towards resolving this issue and defending the rights of children in the province of Sindh. The minimum age for marriage was raised to 18 for both boys and girls as part of this Act's important anti-child marriage provisions. Understanding the circumstances of child marriage is crucially influenced by Islamic values. Islam does not specify a minimum age for marriage, but it does stress the significance of mutual agreement and maturity for doing so. Islamic teachings advocate safeguarding people's wellbeing and intellectual growth, especially during the delicate adolescent years.

After reviewing the most notable rulings on child marriages, it is clear that Pakistani courts have struggled with the complicated problems of child marriage and its conformity to Islamic law and constitutional laws. With a focus on the rights and responsibilities of spouses as well as the relevance of preserving and advancing the welfare of those involved in marriages, the courts have acknowledged the significance of marriage in Islam and its function in society. A minimum age restriction has also been accepted as being necessary to protect minors from harm, guarantee females' access to education, and provide them with possibilities for growth.

The Sindh Child Marriage Restraint Act of 2013 has been the subject of legal scrutiny regarding the constitutionality of the minimum marriage age imposed by the Act and its adherence to Islamic tenets. Despite legal challenges to the Act, the courts have upheld the minimum age requirement, highlighting the State's power to control certain behaviors in order to protect the public and promote social welfare. The concept of "Sad-uz-Zaraey," which enables the State to impose restrictions on actions that can have unfavorable effects even though they are legal under Islamic law, has been underlined by the Federal Shariat Court in particular. The Court has acknowledged that establishing a minimum marriage age is a protective measure that is consistent with Shariah's goals, particularly the encouragement of education and intellectual growth.

Child Marriages in Pakistan: Examining the Legal Framework in Light of Islamic Principle

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