



Research Article

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Received: 31 October 2020 / Accepted: 6 January 2021 / Published: 10 May 2021

Child Marriages: International Laws and Islamic Laws Perspective

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DOI: <https://doi.org/10.36941/jesr-2021-0051>

Abstract

A Child marriage is a serious issue in Pakistani society particularly in rural areas and interior Sindh province. The reasons and forms of child marriages are very harmful and against the fundamental rights of children granted by various international and domestic laws. The practice causes severe effects not only to children but also to society as a whole. This article discusses the legislative efforts made by the United Nations and the international community to restrain child marriages around the globe. The issue of child marriages is discussed under the ambit of human rights and women's rights and highlighted in various conventions and treaties. State parties are bound to make their domestic laws according to the essence of such conventions and treaties. Similarly, Islamic law holds an important position in domestic laws of Pakistan. Therefore, the issue is analysed in light of Islamic law as well as international law. This research identifies and analyze the available international, Islamic and domestic legal instruments that are relevant to help in restrain of child marriage. The methodology employed in this research is qualitative method of legal case study, where by researchers analyzed secondary sources including articles, books, reports, online web sites and court cases. After the analysis of the available data and legal instruments, this research finds that i) child marriage in Pakistani society are practiced arbitrarily, ii) very young spouses are not having opportunity to pursue their post marriage education, iii) the community, especially female, are not aware of the existence of legal assistance in the legal system to protect them from such early marriage; iv) available laws in Pakistan are inadequate in restraining of the practice, v) equality promoted in the Constitution of Pakistan is not strictly followed by authorities, vi) although, international conventions condemn the practice but there is no proper international law sanction to prohibit child marriage vii) Islamic law permits a guardian of a child to marry off his ward before she attains puberty but the marriage can only be consummated after she attained puberty.

Keywords: Child Marriage, Human Rights, Islamic Laws, United Nation Conventions

1. Introduction

Marriage is an important and joyful event in everyone's life provided that it must be according to the wishes and aspirations of both parties who enter in this social contract. Marriage is an important institution as it is the beginning of family life and has always been the foundation of every society. From the start, mankind was created as male and female which provides clear evidence that men and

women were designed for each other. Marriage and family institutions were created for the benefit of men and women which are the main fundamental institutions of every society. Marriage therefore, provides a secure, covenant relationship between a man and women. When a man and women enter into contract of marriage, it is meant to be loving safe and caring bond of both parties for each other. It is only possible when both parties have fulfilled all the valid conditions for their marriage and also have rational about their rights and responsibilities which occurred from the contract. In Islamic law there are certain conditions for a valid marriage. Designating the two spouses and their full consent for the contract of marriage are the fundamental requirements for a valid marriage. Similarly, the presence of father or guardian who must be male, adult, free, trustworthy and two male witnesses of the marriage contract are also conditions for a valid marriage. Children are out of this bond as they are incompetent due to lack of their age and consent to make for valid marriage. Unlikely, in various parts of the world children are married by their parents and guardians before puberty without their consent which is against the fundamental concept of marriage. Due to early marriage, most of the children are deprived from their education, freedom of their choices and face many health problems and are less equipped in their skills to live a public life hence, is a grave violation of their fundamental rights. This research is conducting on child marriage in Pakistan where most of the children are compelled to marry at their early ages due to which they face such violation of their rights. In order to understand child marriage, child must be defined. According to the Child Marriages Restraint Act, 1929 a child is “a person who, if a male, is under eighteen years of age, and if female, is under sixteen years of age” (Sec 2 (a) Child Marriages Restraint Act 1929). This means that the age of transformation from minority to majority for the purpose of marriage is eighteen and sixteen years for male and female respectively. Article 1 of the International Convention on the Rights of Child (CRC) defines child as “any human being below the age of 18 years”, the article further explains that the definition of CRC is subject to applicable law of the countries where if age of majority is attained earlier under the law than that would be considered as minimum age for the purpose of the convention (Child Rights Convention, Art 1).

2. International Laws Related to Child Marriage

Child marriage is a form of violation of human rights which is practised in various parts of the globe. There is no particular international instrument legislated explicitly for the prevention of child marriage. However, there are several human rights instruments which cover the issue of early marriage. Important instruments regarding the prevention of child marriage are:

2.1 Child Rights Convention, 1989 (CRC)

UN General Assembly introduced Child Rights Convention during 1989, and later, on 2 September 1990 the convention was enforced after the ratification of required states. The convention has been ratified by all states except the United States and Somalia. Pakistan ratified the convention on Nov 12, 1990 (Convention on the Rights of Child 1989). At the time of its ratification, Pakistan made a general reservation that the provisions of the convention shall be interpreted according to Islamic laws however; the reservation was withdrawn on July 23, 1997. The convention recognises civil, political, social, cultural and economic rights of children. It also plays a vital role in the protection of children rights around the globe. Although, CRC does not directly address the issue of child marriage, it has several provisions which protect children from the solemnisation of their early marriage. The convention defines a child under article 1 as “a child means every human being below the age of 18 years unless, under the law applicable to the child, the majority is attained earlier”. The age of majority varies from country to country and in this regard, child rights organization is created within CRC, which encourages the members, where the majority age is below 18, and to increase and equalise the adolescence age for children as set by the convention (Guiding Principles: General Requirements for all rights, UNICEF).

Article 2 (2) of the convention bounds all the state parties to “take all appropriate measures to

ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members" (Article 2, Convention on the Rights of Child, 1989). Mostly, girls are affected by child marriage as they are considered less valuable than boys and parents consider them as an economic burden. Therefore, parents marry off their daughters at their young ages to dispose of their burden. (Ladan, 1998) states that sons are expected to be with their parents for whole life and would care their parents at their old age, therefore, due to son preference, daughters are discriminated on the basis of sex and married off at their young ages. This discrimination is a clear violation of Article 2 (2) of the convention which is the responsibility of state parties to take all appropriate measures including proper legislation that which categorise such discrimination as illegal and unfair.

Article 6 of the convention binds all state parties to protect the right to life and development of every child. Child marriage is a major cause in violation of this right of children. Mostly young brides bear pregnancy soon after marriage upon her husband's family demand. Fulfilling such demands and family principles, child brides face several health risks and severe diseases which sometimes leads to their death. Therefore, state parties have a responsibility to restrain child marriages to fulfil the demands of this article. Several provisions of the convention ask state parties to protect children from physical and mental abuse and also to provide the appropriate standard of living to children. Article 19 (1) of the convention 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" (Article 19, Convention on the Rights of Child, 1989).

Article 24 (3) binds state parties to "take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children"(Article 24, Convention on the Rights of Child, 1989). In several societies, child marriage is a tradition, such as *Swara* or *Vani* in Pakistani society, which leads to early and frequent pregnancies in very young ages. Therefore, inadequate, underdeveloped bodies of child brides are unable to bear such burdens which are harmful to their health. Child marriage violates this article of CRC therefore, is the state's responsibility to eradicate the tradition for the fulfilment of the law.

The right to education is outlined in article 28 of the convention which demands from all state parties to provide "right to education" to every child (Article 28, Convention on the Rights of Child, 1989). Marriage at a very young age restrains spouses from their proper education. Girls are bound to work at homes as a housewife, and boys are responsible for feeding their families. Therefore, both are deprived of their education. Fulfilling the demand of this article, the state parties have to establish a proper mechanism for restraining child marriages which would be able when children will be involved in their studies. Article 34 provides that state parties will protect children from all forms of sexual exploitations (Article 34, Convention on the Rights of Child, 1989). Children, when entering into their contract of marriage, without their full consent where they do not have proper knowledge of marriage life, therefore, child marriage, leads to sexual exploitation of children which must be restrained by the state parties to save children from all forms of sexual exploitation.

2.2 CEDAW Convention, 1981

In 1946, CSW commission was created for the protection of women's rights with the main objectives to standardise the status and development of women by creating proposals and recommendations. CEDAW "The convention on the elimination of all forms of discrimination against women" was introduced within the ambit of the CSW which is adopted in 1979 by United Nations. On 3 September 1981 after 30 days of ratification by a twentieth member state, the convention took legal effect. The convention has been ratified by 189 states in which Pakistan ratified on March 12, 1996.

Article 16 (2) of the CEDAW expressly prohibiting child marriage stating 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” (Article 16 (2), Convention on the Elimination of all Forms of Discrimination against Women, 1981). Furthermore, under Article 16 says that member countries to the convention must protect their citizen’s rights to choose a spouse and enter into the contract of marriage with their full consent. Furthermore, the state parties are also bound by this convention to take all appropriate measures for preventing discrimination on the basis of sex. Article 16 does not specify a minimum age for marriage, but it compels state parties to describe the minimum age for marriage. However, the committee for CEDAW states that the minimum age for marriage should be 18 for male and female. The committee for CEDAW analysed the significance of article 16(2) as follows:

“When men and women marry, they assume important responsibilities. Consequently, marriage should not be permitted before they have attained full maturity and capacity to act. According to the World Health Organisation, when minors particularly girls, marry and have children, their health can be adversely affected, and their education is impeded. As a result, their economic autonomy is restricted. This not only affects women personally but also limits the development of their skills and independence and reduces access to employment, thereby detrimentally affect their families and communities” (Committee on the Elimination of Discrimination against Women, General Recommendations No.21).

2.3 Consent, Minimum Age and Marriage Registration Convention 1962

Significantly the 1962 Convention purely highlights standards as well as situation of marriage and presented for ratification on 7 November 1962 and later on 9 December 1964 the convention was entered into force after the ratification of required states. Although Pakistan is a party to several international instruments but this convention is not yet ratified by Pakistan.

The convention recalls article 16 of the UDHR which states that men and women of full age with free and full consent without any discrimination have the right to enter into marriage. The convention compels all state parties to take appropriate measures to abolish all customs, practices and laws which are the root causes for practising child marriages and betrothal before puberty (Article 16, Universal Declaration of Human Rights, 1948). Some important provisions of the convention regarding child marriage are:

Article 1

“(1). No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person after due publicity and in the presence of the authority competent to solemnise the marriage and of witnesses, as prescribed by law”. It is clearly stated in the abovementioned article that full consent of spouses is mandatory for marriage. A child does not have a proper sense of marriage and responsibilities to make any decision or give their consent regarding such important bonds of their lives.

Article 2

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

Article 3

“All marriages shall be registered in an appropriate official register by the competent authority”.

2.4 ICCPR 1966 & ICESCR 1976

ICCPR adopted by General Assembly 19 December 1966 by its resolution 2200A (XXI) and on 23 March 1976 the convention was entered into force. Similarly, ICESCR was also adopted on 16 December 1976, and on 3 June 1976 was enforced. Pakistan ratified both conventions respectively on 23 June 2010 and 17 April 2008 and is bound to protect all the human rights enumerated in both conventions.

Furthermore marriage which is involved coercion and compulsion cannot be enforced and

legalised under the particular provisions of ICCPR and ICESCR. Both conventions show that the consent must be there during the solemnisation of marriage. In child marriage, there is no clear consent of both parties as they are incapable of giving their free consent due to lack of their maturity. Thus, ICCPR and ICESCR both conventions direct for prevention of early marriage of children till the age of their puberty.

2.4.1 Universal Declaration of Human Rights, 1948 (UDHR)

According to Articles 16 (1) and (2) of the UDHR

“1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and found a family. They are entitled to equal rights as to marriage, during the marriage and at its dissolution” (Article 16, Universal Declaration on Human Rights, 1948);

“2. Marriage shall be entered into only with the free and full consent of the intending spouses” (Article 16, Universal Declaration on Human Rights, 1948). This article stresses two factors firstly, full age and secondly, free and full consent of both parties to the marriage. (Naveed, 2015) argues that the term “full age” at which a person reaches a legal maturity or sexual maturity. He further explains that the draftsmen of the UDHR intended to prevent child marriage. Thus, they used the term men and women instead of male and female. Although the Universal Declaration of Human Rights does not have legal effects on all states, it is considered a part of customary international law. Therefore, it has value in making different human rights laws at the international and national level.

2.4.2 Resolution adopted by human rights council on 22 June 2017 (Child, early and forced marriages in humanitarian setting)

The resolution recognised that child marriage is abuse and violation of fundamental human rights which causes negative effects on girls and women, and also underscores the commitments of state parties to work for the better protection of human rights. The resolution also recognised that child marriage is a serious threat to the health of young children who face several diseases and impairments such as HIV/AIDS, frequent and unintended pregnancies, maternal and newborn mortality and morbidity because of their early age marriage. It is also mentioned that child marriage maintains the cycle of poverty which becomes a barrier in sustainable development. Women and girls’ participation in decision-making is a leading factor in eliminating gender discrimination. Therefore, child marriage is not only a barrier to the social, legal and economic status of women and girls but it also affects the proper development of a society as a whole. It is highlighted that this is a challenging issue and its eradication needs a collective effort by state governments, lawmakers, judicial and law enforcement authorities, media and religious leaders.

The resolution also urges that all states must make laws and policies for the elimination of child marriages, support to those who have already married at an early age and are facing various problems because of early marriage. It is also urged that states must repeal all those laws which lead or justifying child marriages, and similarly, states must also ensure easy ways for women and girls to get access for justice without any discrimination and delay. The resolution emphasised states to train law officers for spreading quick and effective justice in the cases of early and child marriage. The council showed deep concerns to strengthen the efforts and mechanisms to eradicate the issue of early and forced child marriages (Resolution adopted by Human Rights Council on 22 June 2017). Pakistan has ratified several important international human rights conventions and other related instruments which considered a great move towards protection of human rights in the country. The government however, never fully acknowledge the obligations undertook under international laws and rarely used to guide the domestic laws and policies. The government officials often disclaim international human rights laws as a western concept which is alien to Pakistan’s values.

Pakistan failed to enact a uniform law which helps to curb the practice of child marriage in the country. After 18th amendment in the constitution of Pakistan, Sindh and Punjab provinces deal the

issue by their laws enacted in their respected provinces however, the remaining provinces and capital territory of Islamabad still use old law for the issue. Being a part of international community, Pakistan bears responsibility to organize its domestic laws according to international human rights conventions and to abolish all laws and policies which are against the actual spirit of international laws.

3. Marriage and Child Marriage in Islamic Law

In Islamic law, marriage is a contract which legalises enjoyment between a husband and wife (Al-Tuwajari). According to Islamic jurists, marriage is sometimes obligatory for a person, and sometimes it becomes prohibited. It is obligatory for a person who can fulfilled the requirements of marital obligations and if there is fear of committing adultery. Marriage is prohibited in a sense when a person is incompetent to maintain, i.e., a person who does not have the abilities and resources to maintain the marital life or is afraid to be involved in injustice with his spouse. Further, a person who lacks the ability to maintain his marriage and fears being involved in illegal sexual relations, the following hadith of the Prophet Muhammad (peace be upon him) guides this situation: "O young people! Whoever among you can marry, should marry because it helps him lower his gaze and guard his modesty (i.e. his private parts from committing illegal sexual intercourse etc.), and whoever is not able to marry, should fast, as fasting diminishes his sexual power" (Sahih Al Bukhari. Vol, 7. Hadith No. 5066). The reason behind this obligation is that it is the only solution to save himself from adultery. In Islamic law, a marriage is disapproved for a person who fears injustice with a spouse after marriage. The reason behind this disapproval is that *nikah*, contract of marriage, make both spouses responsible for each other with various responsibilities and declares various rights to be enjoyed by both spouses through the contract. Therefore, the marriage is disapproved by Islamic law in the case of fear of injustice with a spouse (Rushd, 2004). Marriage is recommended for a person who is moderate and has no fear of injustice with spouse and can fulfil all the marital responsibilities.

In Islam, marriage is considered worship or *ibadah* where in a hadith narrated by Anas bin Malik states that: "A group of three men came to the houses of the wives of the Prophet asking how the Prophet worshipped (Allah), and when they were informed about that, they considered their worship insufficient and said, "Where we are from the Prophet as his past, and future sins have been forgiven." Then one of them said, "I will offer the prayer throughout the night forever." The other said, "I will fast throughout the year and will not break my fast." The third said, "I will keep away from the women and will not marry forever." Allah's Messenger came to them and said, "Are you the same people who said, so-and-so? By Allah, I am more submissive to Allah and more afraid of Him than you; yet I fast and break my fast, I do sleep, and I also marry women. So he who does not follow my tradition in religion is not from me (not one of my followers)" (Sahih Al-Bukhari. Vol.7. Hadith No. 5063).

3.1 Definition of Marriage in Islam

Marriage has been defined and discussed by several authors from various angles. Some of the important definitions are:

1. "Marriage, when treated as a contract, is a permanent relationship based on mutual consent on the part of a man and women between whom there is no bar to a lawful union" (Khan, 2007).
This definition says that marriage is a contract which is completed by the consent of man and woman who are free from any legal bar.
2. "It is allowed between two people of different sexes to whose mutual cohabitation there is no natural or legal bar or prohibition. For example, a man cannot marry a hermaphrodite nor any women within the degrees prohibited by divine laws" (Ali, 1979).
This definition explains that marriage is allowed only between man and women who are free from any legal restriction from their marriage.
3. "Marriage is an institution ordained for the protection of society, and in order that human

beings may guard themselves against foulness and unchastity”.

The above definition discusses the main objective of marriage which is the protection of society from illegal sexual relationships. Marriage not only restrains individuals from unchastity but also protects society at large from all nasty relations.

4. According to Dr Tanzil ur Rehman, “marriage or *nikah* is a religious legal contract that regularises the sexual relationships between man and women, establishes the lineage of their progeny and creates civil rights and obligations between them” (Rehman, 1978).
5. *Nikah* is a legal contract, in consequences of which, a married couple acquires the right of enjoyment of all benign association between themselves allowed under the *Shariah*.
6. This verse mentions that the main objective of marriage for a man and women is to get peace and satisfaction from the successful bond of marriage.
7. The family is a fundamental unit and plays a vital role in the development of society, which is established by the relation of a husband and wife. It extends to their generations, and consequently, human societies come into existence. Islam protects the dignity and values of every person and prohibits all illegal sexual relationship between a man and woman. Therefore, marriage is the only way for men and women to enter into for their conjugal relations. Allah Almighty says in the Quran: “And [also prohibited to you are all] married women except those your right hands possess. [This is] the decree of Allah upon you. Moreover, lawful to you are [all others] beyond these, [provided] that you seek them [in marriage] with [gifts from] your property, desiring chastity, not unlawful sexual intercourse. So for whatever you enjoy [of marriage] from them, give them their due compensation as an obligation. And there is no blame upon you for what you mutually agree to beyond the obligation. Indeed, Allah is ever Knowing and Wise” (Al-Qur’an Al Nisa 4:24).
8. Therefore, marriage is a bond through which a person is protected from evil and a factor in developing a peaceful society according to the principles of Islamic law.

Islamic law fixes essential conditions for a man and women to be followed for entering into a contract of marriage. Fulfilling all the relevant conditions, a man and women are declared as husband and wife and could enjoy their conjugal rights and duties. The two key conditions for a valid marriage are:

a. Age of Puberty:

A person is to be considered a “minor” unless he or she attains the age of puberty. In Islamic law, puberty is determined by physical and biological signs of development of a minor which is the inception of menstruation for female and semen emission for males. In Islamic law, age is considered a secondary source for the determination of puberty (Huda, 2017). There are different opinions of Muslim jurists regarding the age of puberty which are:

i. Hanafi school of thought;

According to Imam Abu Hanifa, a boy, in the absence of any evidence of maturity, i.e., semen emission or any other evidence of puberty, to be considered an adolescent on the completion of his 18 years of age. Similarly, for a girl, in the absence of any evidence of maturity as the inception of menstruation or any other evidence of puberty, to be considered adolescent on the completion of her 16 years of age (Hamilton, 1963).

ii. Maliki school of thought;

The Maliki school of thought set 17 years age, in the absence of any evidence of puberty, for both boy and girl as the age of puberty (Buchler, 2013).

iii. Shafi’i & Hanbali schools of thought;

Both Shafi’i and Hanbali schools of thoughts set 15 years of age, in the absence of any evidence of puberty, for both boy and girl as the age of puberty.

iv. Imam Abu Yusuf and Imam Muhammad Al-Shabani (Sahiban) opinion;

Both Imams were pupils of Imam Abu Hanifa. According to both Imams, boy and girl both shall be considered mature after the completion of 15 years of their age.

v. Jafari School of thought;

Jafari school of thought set 15 years of age for a boy and nine years for a girl as the age of puberty.

3.2 Essentials of Marriage in Islam

a. Consent of Parties to Marriage;

(Mansori, 2018) states that the other essential condition for constituting a marriage contract is the “consent” of parties. Meaning that without the consent of parties a marriage would be considered invalid. Therefore, consent of a girl whether she is virgin or not is an essential element in her marriage contract. The girl’s guardian cannot force her into a marriage contract. However, in case the contract is made by her guardian, then the option of puberty is a defensive tool for a girl through which she can annul her marriage contract on the attainment of puberty.

Muslim jurists have a different opinion about the “option of puberty” on the part of a girl. It is, therefore, essential to elaborate different views about the option of puberty among Islamic schools of thoughts.

According to Islamic law, marriages are of three kinds;

- a. Valid Marriage
- b. Irregular Marriage
- c. Void Marriage

Dr. Muhammad Tahir Mansoori defines these kinds of marriages in his book “Family Law in Islam; Theory and Application”.

a. Valid Marriage

“A marriage which in accordance with the requirement of *Shariah*, is a valid marriage, and it will give rise to all legal effects, i.e. legitimacy of children, their paternity and filiation, maintenance of wife, mutual inheritance, etc”.

A marriage which is solemnised under the conditions mentioned by Islamic law is a valid marriage and will raise certain rights and obligations on the spouses.

b. Irregular Marriage

“Irregular marriage is a defective marriage for failing to comply with certain conditions prescribed under Islamic law”.

An irregular marriage is a marriage in which any or some conditions of valid marriage is missing or during *nikah* certain conditions specify which are against the purpose of marriage. By withdrawal of such conditions, the marriage becomes valid.

c. Void Marriage

“A void marriage contract is one which is intrinsically null and void”. It is a *void ab initio* marriage which does not recognise any rights and responsibilities upon the spouses. There is no legal status of husband, wife and legitimacy of their children in void marriage. An example of a void marriage is a marriage contracted between foster sister and brother.

3.3 Child Marriage

As mentioned before, if either of the parties or both of the parties are incompetent regarding the maturity to a marriage contract thus it is called a child marriage. Marriage is a great responsibility for both spouses. Therefore, both must know their rights and responsibilities. It is clear that children cannot recognise their duties for which they are made responsible through a contract of marriage (child marriage). Under the provisions of law, a minor cannot enter into any legal contract. Thus, his or her marriage contract would not have any legal effects on the parties (Tauqir Mohammad Khan). Islamic law categorises some conditions which must be fulfilled by parties to before entering into a contract of their marriage. There is no clear verdict about child marriage in the basic sources of Islamic law which is the Quran and Sunnah. Therefore, it is the responsibility of Islamic scholars to guide the *Ummah* in such cases. In light of Islamic law, Muslim jurists give their rational opinions on the issue of child

marriage which can be divided into two categories which are;

a. The Opinion of the Majority Jurists;

Imam Abu Hanifa, Imam Malik, Imam Shafi'i and Imam Ahmad bin Hanbal accept a marriage contract of a child done by his/her father, grandfather, brother or uncle (Nayazee 2000). They support their argument by several precedents of child marriage which are;

1. Marriage of Prophet Muhammad (PBUH) with Aisha (RAA) during her very young age.
 2. Ali (RAA) gave his very young daughter in marriage to Urwah b. Zubair.
 3. A person gave his daughter in the marriage contract to Abdullah b. Hassan. Ali (RAA) did not invalidate the marriage (Wahba al-Zuhaili).
- b. The Opinion of the Minority Jurists;

According to imam Shubramah and Abu Bakar al-Asim, child marriage is prohibited and against the commands of Allah. They argue that a marriage contract should not be made before the attainment of puberty of contracting parties to the marriage. They support their argument by the verse of the Holy Quran "until they reach the age of marriage". According to them, there could have been no need of the verse if child marriage is lawful before the attainment of puberty. They further say that marriage is based on human necessity and children are in no need of marriage to fulfil such necessities. Therefore, child marriage is not allowed in Islam.

The majority of Muslim scholars who support child marriage base their opinions on the basis of the marriage of Prophet Muhammad (PBUH) with Ayesha (RAA) during her very young age. The absolute age of Ayesha (RAA) during her marriage with Prophet Muhammad (PBUH) is still controversial and debatable among Muslim scholars. Some of them are of view that, the age of Ayesha (RAA) was six years at the time of *nikah*, and later at the age of nine years her marriage was consummated with the Prophet, while others estimate that her age was ten years at the time of *nikah* and the age 15 her marriage was properly solemnised. However, upon researching the historical data and related events, one can make it easy to calculate the real age at the time of her marriage.

A well-known historian Allama Imad-ud-Deen ibn Kathir wrote in his book *Al-Bidayah wan Nihayah* that Ayesha was ten years younger than her sister Asma who was died in 73 AH, at the age of 100 years. Therefore, it becomes clear that Asma was 27 years old and Ayesha was 17 at the time of migration from Makah to Madinah. By subtracting 13 years of Makki life of Prophet from this, the result is 4, so age at the time of consummation is 19 years.

Muhammad Ali in his book, "Muhammad the Prophet" mentioned that it is a fact that Ayesha (RAA) was minor at the time of her *nikah*, but it is not true that she was six years old at that time. He further says that Fatima (RAA), the daughter of Prophet Muhammad (PBUH), was five years older than Ayesha. It is a well-established fact that Fatima was born at the time of renovation of Kabaa which was held five years before the call, therefore, it is clear that Ayesha was born in the year of call and her age could not have been less than ten years at the time of her *nikah*. It is also narrated from Ayesha (RAA) that at the play time she used to recite "Surah Qamar" entitled the moon, 54th chapter of Quran, which was revealed on 4th or 5th year of call so it is not true that the age of Ayesha (RAA) was six years at the time of her *nikah* as in such situation the revelation of Surah Qamar would be her year of birth. It is clear from the above evidence that the age of Ayesha (RAA) was not less than 15 years at the time of consummation of her marriage which was held five years later of *nikaah* in Madinah.

4. Conclusion

Being a part of international community and signatory to several human rights conventions and treaties, it is the responsibility of the government to amend the existing laws or make new laws in light of international human rights laws to curb the issue of child marriage in the country. CEDAW clearly prohibits under age marriages and also stresses on member countries for relevant amendments in their laws. However, CRC provide the definition of child below eighteen years of age and confirms this age is subject to the applicable law of the country where if the age of majority is attained earlier under that law then that would be applicable. The government must fix minimum 18 years age for marriage to

avoid all complexities and bad consequences within the society. The Marriage Convention is a convention which properly deals with the issue of child marriages and bounds state parties to take all appropriate measures to abolish all those customs, practices and laws which promote child marriage. Although, Pakistan has signed several international human rights conventions and treaties but this convention is unratified by Pakistan hence, Pakistan must ratify the convention and amend domestic laws according to the provisions of the convention and other international human right laws. It is recommended that the government must review all the relevant recommendations of universal periodic reviews, CRC, CEDAW and trace the lacunas exists within local communities as well as international perspective to deal better with the situation on both public and private level.

Marriage at very young ages violates several fundamental rights of young spouses such as right to education, right to consensual marriage, right to avail best health facilities and access to reproductive and sexual health care, right to remain with parents till the legal age of marriage, right to be protected from physical and mental violence such as sexual exploitation, rape, assaults and injuries, right to receive proper care and attention from family, right to freedom of moment and right to employment. All these rights are manifest in Universal Declaration of Human Rights, Convention on the Rights of Child, Convention on the Elimination of All Forms of Discrimination against Women, and other international and regional human rights instruments. Entering into contract of marriage with full and free consent is a fundamental right of both parties therefore, provisions must be inserted in child marriage laws to make elders bound to take proper consultation with wards before their marriage. Marriage registrars also must be trained to ensure all the fundamentals of a valid marriage according to Islamic and state's law.

This research finally concludes that child marriages in Pakistani society are practiced arbitrarily and very young spouses are not having opportunity to pursue their post marriage education. Furthermore the community, especially female is not aware of the existence of legal assistance in the legal system to protect them from such early marriage and available laws in Pakistan are inadequate in restraining of the practice. Although, international conventions condemn the practice but there is no proper international law sanction to prohibit child marriage and further Islamic law permits a guardian of a child to marry off his ward before she attains puberty but the marriage can only be consummated after she attained puberty. However in Pakistan, in certain cases, the child brides are taken to her husband's house upon solemnization. Finally, this research recommends that the government of Pakistan to enact strict laws with harsh punishment and also to ratify Marriage Convention to mitigate such practices. More significantly, primary as well as secondary education is made compulsory for every child and to have a nationwide campaign against child marriage to create awareness amongst the people.

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