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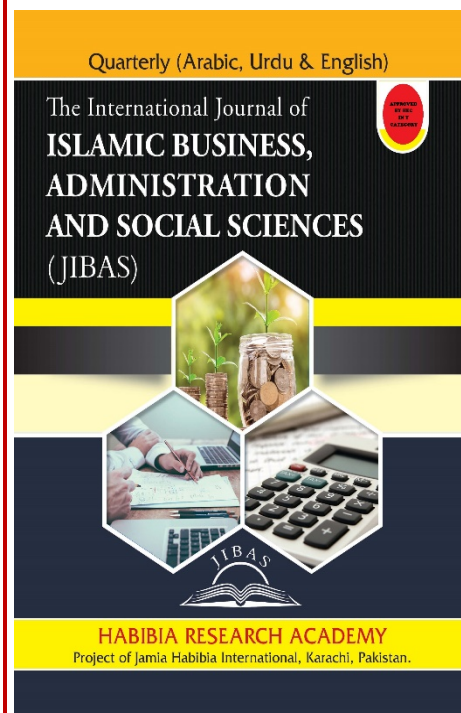
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TOPIC:

FORCED AND UNDER AGE MARRIAGES IN ISLAMIC REPUBLIC OF PAKISTAN IN THE LIGHT OF RELEVANT LAWS

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FORCED AND UNDER AGE MARRIAGES IN ISLAMIC REPUBLIC OF PAKISTAN IN THE LIGHT OF RELEVANT LAWS

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ABSTRACT :

The numerous problems of Forced and under age Marriages are quite common and insidious practice and used as a tool of gender-based violence against women and men, though “The Child Marriage Restraint Act, 1929, The Sindh Child Marriages Restraint Act, 2013, The Punjab Marriage Restraint (Amendment) Act, 2015” are intact in the county and we have been seeing that Khyber Pukhtun Khwa and also Balochistan governments have been currently drafting their child marriages acts. Forced and under age, wedlock's come about frequently in the pretext of gender inequality, poverty, and illiteracy. Resultantly physical, social, psychological, and economic consequences of forced and under-age marriages have become severe on girls and boys, who are usually pulled out of primary or secondary education and more likely to cope with emotional, corporal, and sexual violence. Underage wed locks are generally practiced in cost-effected families, and occurrence of child marriage is greater in poorer families and those with lower levels of education and is also high in fragile states hit by natural catastrophe, child marriages do not end with marriage yet it caused gender-based violence and obviously, females remain at the receiving end. Mostly the population of Pakistan comprises minors and without adequate opportunities poses a threat to the society if not deal with properly and correctly. It needs sober attention to makeover this bulge into a dynamic future.

Keywords: *Gender-based violence, social problems, gender inequality, violence against women, domestic violence and illiteracy.*

INTRODUCTION: Method of Research: In completion of this article laws regarding underage marriages restriction acts in Pakistan have deeply been studied in which author has strived his best to get help from “The Child Marriage Restraint Act, 1929, The Sindh Child Marriages Restraint Act, 2013, The Punjab Marriage Restraint (Amendment) Act, 2015, Muslim Family Laws Ordinance 1961, The Manual of Family Laws in Pakistan, The Criminal Procedure Code, 1898, Pakistan Penal Code (Act XLV of 1860), The Constitution of the Islamic Republic of Pakistan, 1973, and all relevant laws of Universal Declaration of Human Rights, Reports of UNICEF, UNCRC, CEDAW, and UNGA”. In this article Qualitative method of research has been adopted; however, to some extent, the research is quantitative in nature as well.

Child and Forced Marriages: Child marriage is a marriage where either of the party is under the age of 18 years, and forced wedlock is wedlock where either of the party has not shown their consent freely and without any pressure and fear or their consents have been taken with inducement, enticement or under threat of dire consequences

Introduction: Forced and underage marriage is still practiced in several societies across the world, mostly in South Asia and Africa, i.e. Niger, North America, Central African Republic, Burkina Faso, Mali, Bangladesh, India, and Pakistan, etc. ¹The United Nations said that forced and underage marriage is a form of human’s basic and natural rights abuse since it violates the fundamental rights of individuals. ²The UDHR “declares that a woman has a right to choose a spouse and enter freely into marriage is central to her life with dignity and equality as a human being”. “The Roman Catholic Church also declared that forced marriages as annulment and void as for the valid marriage both parties must give their consent freely” Forced marriage is a term of conjugal slavery. Islamic teachings are also against forced marriages. This union is a legal contract between two individuals.

Especially, as per Islamic practices, it is mandatory to obtain free will and consent from both parties before the Nikah for its validity. Islam teaches that consent should be obtained without inducement, enticement, and free of pressure and avarice from both girl and boy before Nikah. The Qur'an states ³“O you who have believed, it is not lawful for you to inherit women by compulsion”. Surah An Nisa (4:19). In Sahih al-Bukhari, reports the Prophet Muhammad (PBUH) says that: ⁴“the widow and the divorced woman shall not be married until her order is obtained, and the virgin girl shall not be married until her permission is obtained”. “Article 16 of the Universal Declaration of Human Rights, 1948 (UDHR)⁵ states: (a), men and women of full age have the right to marry and found a family; they are entitled to equal rights as to marriage, during marriage and at its dissolution, (b) Marriage shall be entered into only with the free and full consent of the intending parties, similar provisions are included in the 1966 International Covenant on Economic, Social and Cultural Rights, article 16.1 of the 1979 Convention on the Elimination of all forms of discrimination against women prescribes equally for men and women: (a) the same right to enter into marriage; (b) the same right freely to choose a spouse and to enter into marriage only with their free and full consent; Article 16.2 states: the betrothal and under age marriage shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage, article XXI of the 1990 African charter on the rights and welfare of the child states: under age marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be eighteen years”. As per UNICEF, ⁶“Worldwide, more than 730 million women alive today were married as children. Every year at least 12 million girls married before they reach the age of 18, this is, 28 girls every minute, one in every five girls is married, or in the union, before reaching the age of 18, in the least developed countries, that numbers double-40 percent of girls are married before the age of 18 and 12 percent of girls are married before age 15, the practice is particularly widespread in conflict-affected countries and humanitarian settings”. As per most of the studies result are that underage wed locks are generally practiced in cost-effected families, and⁷ "Occurrence of child marriage is greater in poorer families and those with lower levels of education and is also high in fragile states hit by natural catastrophe, child marriages do not end with marriage yet it caused gender-based violence and obviously, females remain at the receiving end”. As per the report of UNICEF (2018) ⁸“Realizing the Rights of Adolescent indicates, complications related to pregnancy and childbirth are among the leading causes of death worldwide, child marriage has adverse physical, psycho-social and health effects on girls, impeding their overall development and well bring and it ends girls' childhood, as well as education. Moreover, it increases their risk of violence and abuses”.

The Convention on the Rights of the Child (CRC) also has the following articles ⁹“Article 1 a child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier, article 2 freedom from discrimination on any grounds including sex, religion, ethnic or social origin, birth or other status, article 12 the right to express his or her views freely in all matters affecting the child, in accordance with age and maltreatment or exploitation, including sexual abuse, while in the care of parents, guardian, or any other person, article 24 the right to health and to access to health services; and to be protected from harmful traditional practices, article 28 and 29 the right to education on the basis of equal opportunity, article 34 the right to protection from all forms of sexual exploitation and sexual abuse, article 35 the right to protection from abduction, sale or trafficking, article 36 the right to protection from all forms of exploitation prejudicial to any aspect of the child's welfare”.¹⁰ Another report discloses,

“Almost 50% of all sexual assaults globally are against girls 15 years old and younger”. “According to a study 14 million girls under the age of 18 are married off each year, the UNCRC obligates to adopt measures prohibiting harmful practices against children”, and similarly convention on the Elimination of All Forms of Discriminations Against Women, (CEDAW) emphases¹¹ “that States parties shall take all appropriate measures, including legislation, to modify or abolish existing laws, regulation, customs, and practices which constitute discrimination against women, (UNGA, 1979), It further states, child marriage is a violation of the Universal Declaration of Human Rights (UDHR) and International Human Rights law, there are certain articles in the UDHR which conflict the practice of child marriages”. For instance, it says,¹² “individuals of full age can marry and that such marriage shall be entered into with free consent.”¹³ Pakistan is a Muslim state and follows the Sharia law which allows girls and boys to legally marry at the age of 15 and 16, respectively”. It should be understood, being a signatory of the CEDAW, Pakistan is under obligation,¹⁴ “to take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs, and practices, which constitute discrimination against women”. (UNGA, 1979, Para 16)¹⁵. Article 5 of the same Convention says, “all appropriate measures shall be taken by States parties to modify the social and cultural patterns of conduct of men and women, to achieve the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or stereotyped roles of men and women”.

¹⁶In 2013, the first United Nations Human Rights Council resolution against child early and forced marriage was adopted; the resolution recognizes child marriage as violations of human rights which¹⁷ “prevents individuals from living their lives free from all forms of violence and that has adverse consequences on the enjoyment of human rights, such as the right to education, the right to the highest attainable standard of health including sexual and reproductive health”.

Discussion: Underage wed locks in Pakistan is linked with customary practices, tradition, and culture, it every so often involves the exchange of daughters by Jirga or Panchayat, Social and gender inequality, and a wish to control girl’s sexuality and defend family honor, backwardness and poverty are common factors for underage marriages. Sindh Provincial Assembly is the first Assembly who raised the effective voice against underage marriages and becomes the first elected Assembly who has taken the first step in this regard and has passed a bill against child marriages in the year 2013 and places a ban on the marriage of children under 18 years, “and makes its violation punishable with rigorous imprisonment up to three years, as per¹⁸ The Sindh Child Marriages Restraint Act, 2013, any groom who solemnizes marriage with a girl under the 18 years of age, and parents of such a groom or those facilitating contracting of such a marriage will be given maximum three years rigorous punishment but not less than two years, this bill declares the offence cognizable, non-bailable and non-compoundable and anyone can file a complaint against such a marriage in a court of a judicial magistrate and the court will ensure the case and decide it within 90 days”. Before that, the only legislation on child marriages in Pakistan was “The Child Marriage Restraint Act 1929¹⁹, which originally stated that a girl was of marriageable age when she turned 14, after the Muslim Family Laws Ordinance 1961 (VIII) was promulgated, the age was raised to 16, since the 18th amendment²⁰, provinces have become responsible for drafting their laws on child marriages, while the Child Marriage Restraint Act 1929, remains in place in federal territory, Sindh government was the first to legislate on child marriages, passing the Sindh Child Marriages Restraint Act in 2013, Punjab followed two years later with the Punjab Marriage Restraint (Amendment) Act 2015”. Khyber Pakhtunkhwa and Balochistan governments are also

currently drafting their child marriage acts. In the year 2016, some amendments were made in section 5 of the 1929 act, and enhanced punishment from one month to three years. The objective behind it was to discourage child marriages, as child marriage is not less than a curse biologically and socially but in rural areas of the country this curse is going on non-stop as particularly parents of minor girls contract their marriages without their consent with the person for older in their ages and then they have to suffer throughout their lives. Thus, it is expedient that such social curse should be dealt with iron hands which is not possible expect enhancement of punishment of the offence to ensure effective deterrent for the commission of the offence, it will also particularly protects fundamental rights of female child and minor girls. In the act of 1929 the marriageable age for girls and boys are 16 and 18 respectively, and the offence is non-cognizable and in case of non-cognizable offence police cannot arrest a suspect without prior permission of the court, It is meaning thereby that police are not empowered to take action against the culprits of child marriage even if they are aware of the crime. "Judge of the family court could only take cognizance of the offence based on a complaint by the union council, or, an authority the provincial government may prescribe, however, no cognizance can be taken after the expiry of one year from the date on which the offence was alleged to have been committed". But the Sindh government has increased the marriageable age for girls 16 to 18 years and gives powers to police to apprehend the accused persons involved in underage marriages without obtaining prior permission from the area magistrate and make the offence much harsher with two to three years of rigorous imprisonment and with fine. Recently a bill of Child Marriages Restraint Amendment, 2019 has been introduced in the National Assembly by the member of the National Assembly of PTI government and proposed to fix eighteen years as the minimum age for a lawful marriage. Presently in Pakistan following existing laws are for the child marriages restraint act.

The child Marriage Restraint Act, 1929 (XIX of 1929):²¹"The child marriage restraint act, 1929 come into force on the 1st day of April, 1930 and extends to the whole of Pakistan, as per section 2 of this act child means a person who, if a male, is under eighteen years of age, and if a female, is under sixteen years of age, and child marriage means a marriage to which either of the contracting parties is a child, section 4 is about punishment, whoever, being a male above eighteen years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to one thousand rupees or with both, section 5 whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage, section 6 (1) where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both, (2) for the purposes of this section, it shall be presumed, unless and until the contrary is proved that where a minor has contracted a child marriage, the person having charge of such minor has negligently failed to prevent the marriage from being solemnized".

The Punjab Marriage Restraint (Amendment) Act 2015.²²"Punjab Marriage Restraint (Amendment) Act 2015, Child Marriage Restraint (Punjab Amendment) Ordinance, 1971 has been amended by the Punjab Marriage Restraint (Amendment) Act 2015, it increases the terms of

imprisonment and fines, and increases the powers of family court, the new act further amends the sections 4, 5, 6 and 9 of the previous act: as per section 2 of the act under discussion, child means a person who, if a male, is under eighteen years of age, and if a female, is under sixteen years of age; and child marriage means a marriage to which either of the contracting parties is a child and government means government of the Punjab, section 4 is about punishment for male adult above eighteen years of age marrying a child, whoever, being a male above eighteen years of age, contracts child marriage shall be punishable with simple imprisonment which may extend to six months, or with fine which may extend to fifty thousand rupees, or with both, section 5 is punishment for solemnizing a child marriage, whoever performs conducts or directs any child marriage shall be punishable with simple imprisonment which may extend to six month, or with fine which may extend to fifty thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage”. “Section 6 is punishment for the parent or guardian concerned in child marriage, (1) where a minor contracts a child marriage any person having charge of the minor, whether a parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to six months, or with fine which may extend to fifty thousand rupees, or with both provided that no woman shall be punishable with imprisonment. The punishments specified in Section 4 have been changed to six months and fifty thousand rupees, in section 5 and 6, the expressions one month or with fine which may extend to one thousand rupees, or with both, has been substituted with the words six months and fine of fifty thousand rupees, section 9 is a mode of taking cognizance of offence, no court shall take cognizance of any offence under this act, after the expiry of one year from the date on which the offence is alleged to have been committed, section 9 has been replaced with 9, cognizance of offence and trial, which allows the family court to exercise the powers of a Judicial Magistrate of the first class in conducting a trial after the Union Council forwards a complaint”.

The Sindh Child Marriages Restraint Act, 2013.²³“As per section 2 of the Sindh Child Marriages Restraint Act, 2013, 2 (a) child means a person male or female who is under eighteen years of age, (b) child marriage means a marriage to which either of the contracting parties is a child (c) contracting party to marriage means either of the parties whose marriage is, or is about to be thereby solemnized (d) council means the council as defined in the Sindh Local government Act, 2013, (e) court means the court of a magistrate of first class, (f) government means the government of Sindh, (g) minor means a person of either sex who is under eighteen years of age, as per section 3 whoever being a male above eighteen years of age contracts a child marriage shall be punished with rigorous imprisonment which may extend to two years or with fine which may extend to one hundred thousand rupees or with both as per section 4 whoever performs, conducts, directs, brings about or in any way facilitates any child marriage shall be punished with rigorous imprisonment which may extend to two years, or with fine which may extend to one hundred thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage”. “Section 5, (1) whereas a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it, from being solemnized, shall be punished with rigorous imprisonment which may extend to two years, or with fine which may extend to one hundred thousand rupees, or with both, section 7 of this act says that, not

withstanding anything contained in section 190 of the code of criminal procedure, 1898 (No. V of 1898), no court other than the court of magistrate of the first class shall take cognizance of or try any offence under this act, section 8, no court shall take cognizance of any offence under this act except on a complaint made by the council, or if there is no council the area, by station house officer, (SHO) and such cognizance shall in no case be taken the expiry of one year from the date on which the offence is alleged to have been committed. Section 9, the court taking cognizance of an offence under this act shall, unless it dismisses the complaint under section 203 of the code of criminal procedure, 1898²⁴, inquire section 202 of this code, as per section 11 no women shall be punishable with imprisonment”.

Recommendations / Suggestions: Child marriage is a widely spread phenomenon in Pakistan particularly in the province of Balochistan, Khabar Pakhtoon Khwan, and Sindh. These marriages are in abuse of natural, basic, and fundamental rights of minors and international obligations. To restrain child marriages and protect the fundamental rights of minors, it is expedient to enact a law at the provincial level. “The Child Marriage Restraint Act-1929” especially and other relevant laws of Pakistan generally have been carrying very soft and tokenistic punishments for underage marriage offences, which reflect no deterrent effect. So, keeping in view all international conventions and covenants, Pakistan should present itself as a responsible state and take some measures to stop cultural practices like child marriage, which is clearly against females and encourages the norms that they are inferior and subordinate to males. Child marriages -key drivers and prevailing scenario Pakistan society has been deeply rooted in traditions and customs. Though some initiatives for the deterrence of this practice have been taken by Pakistan’s Federal government as well as some provincial governments so far high rates of underage marriages in the country require a review of the problem, and more sober and significant efforts are needed for its elimination. It is estimated, that “child marriage rates in Pakistan are the sixth highest in the world”.

1. Most people's of Pakistan even do not know that underage/ miner's marriages are a violation of the law of land, hence they need to educate through media, newspapers, social media, and through special campaigns for the awareness of special laws related to forced marriages, especially parents should be educated and underage marriages must be discouraged to control the situation as the birth of underweight babies and their deaths would continue until and unless parents stopped marrying off their underage daughters, for this purpose special budget should be allocated, as at present our budget allocations do not include money for awareness programs.
2. Some factors should also be addressed like poverty, illiteracy, backwardness, and fundamentalism which are also the cause of the enlargement of child marriages.
3. Police officials also need to be educated on the relevant laws under discussion as they do not even know about these special laws and they think that underage marriages are personal family affairs/ matters and there is no need to initiate criminal proceedings like lodging of F.I.R. (First Information Report), inquiry or investigation the matters relating the minor marriages against the violators of the law. And further suggested that laws should be revisited to check for the gaps that come in the way of implementations.

4. Every birth of a child must be registered in the record of the National Database and Registration Authority (NADRA) with the names of their parentage.
5. Every Marriage/Nikah must be registered in the office of the Marriage Registrar.
6. Marriage Registrar should directly be appointed and notified by the Federal or Provincial governments whatever the case may be and they must know/aware about all relevant laws like constitutions, penal laws, criminal procedure code, family laws, and Child marriages restraint acts, etc. and their offices should be directly linked with the office of NADRA for the verification of birth certificates, CNIC's of the groom, bride, and their parentages at the time of their marriages/ Nikahs.
7. All marriages should only be registered in the office of Marriage Registrar who is appointed and notified by the Federal or Provincial governments while the present Nikah Khawan's powers should be withdrawn at once who are Muftis and Molvis as they are not aware of local laws like the constitution, penal code, criminal procedure code, family laws and especially the child marriages restraint acts.
8. At the time of registration of Marriage/Nikah, Computerized National Identity Cards (CNIC's) of groom and bride must be shown to the Marriage Registrar and the Marriage/Nikah registration number must be issued separately to everyone.
9. After marriage, new CNIC's be issued to both groom and bride in which their Marriage Registration /Nikah Nama number should also be written on their CNICs.
10. All related laws for children and especially child marriages restriction acts must be publicized for public awareness especially in newspapers, television, and on social media so that the public should be aware of the special laws regarding children rights and laws of restriction of child marriages, and their penalties and punishments should be enhanced for those who do not abide by the laws regarding child marriages restriction acts.
11. Child Marriage Restraint acts must be implemented in the country as presently government just promulgated the child marriage restraint acts but actually, these acts are not implemented at present, the real position is that police, advocates, and to some extent prosecution and judges are not aware of these acts. Finally, further recommendations are that the existing and upcoming legislation must be improved in the shape of implementations, punishments and penalties should be enhanced.

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