Critical Analysis of the Sindh Child Marriage Restraint Act 2013

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Advocate
(Study conducted for A ACM, VF and Rutgers)
12/15/2017
Critical Analysis of the Sindh Child Marriage Restraint Act - 2013

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Preface

Child marriage is any formal marriage or informal union where one or both parties are under 18 years of age. Child marriage violates girls’ rights to health, education and opportunity. It exposes girls to violence throughout their lives, and traps them in a cycle of poverty. Child marriage directly hinders the achievement of at least six of the Sustainable Development Goals (SDGs).

The practice of child, early and forced marriage is widespread and occurs in all regions of Pakistan, with the highest prevalence in the Sindh Province. It disproportionately affects the girl child.

The Sindh Provincial Assembly passed the Sindh Child Marriages Restraint Act 2013 in April 2014. This law raises the minimum age of marriage to 18 for girls and boys, thus repealing the Child Marriage Restraint Act of 1929 (“Provincial Government of Sindh Pakistan”). It also implements stricter punitive measures. For instance, the offence of contracting marriage with a minor is non-bailable with a mandatory imprisonment period of two years. It also imposes a fine on the guilty party and makes the offence cognizable, which implies that Courts can directly try offenders without the interference of a third party.

The law that has been passed leaves plenty of room for interpretation. Although this was an attempt to offset the traditional set up that promotes child marriages, the issue of “consent” remains unclear, leaving it open to exploitation. However, the bill leaves room for contradiction regarding defining child marriage and the age of a female child and minors as both girls and boys.

In this environment, the collection of data and a study on the current status of implementation of the Sindh Child Marriages Restraint Act 2013 has become important for future advocacy, to improve the law and the situation on ground.

This research study is anticipated to be a good resource for researchers and civil society activists and will play a role in ending violence against women and girls in the country. We do hope that this study its recommendations will help relevant government bodies in making the implementation process more responsive and effective.

Malik Tahir Iqbal Advocate
Executive Director
Legal Rights Forum
About the Authors

This study has been conducted by Mr. Malik Tahir Iqbal along with his advocate team, edited by Mr. Tahir Hasnain Shah and Mr. Ahmer Advocate.

Mr. Mr. Malik Tahir Iqbal is a human rights advocate and Executive Director of Legal Rights Forum (LRF), Karachi, Pakistan. He has long been working on issues related to strengthening the rule of law; improving access to justice; judicial and criminal justice reforms; democratic policing; promoting alternate justice system, human rights, peace building and gender mainstreaming; ending violence against women and girls. He also maintains a strong working relationship with Government Officials, especially with Bar, Bench, Police, Prosecution, Judicial Academies, Law Colleges, Law Departments, Probation and District Legal Empowerment Committees nationwide.

Mr. Tahir Hasnain Shah, Director Programs at LRF, is an experienced development practitioner and researcher who has been serving the development sector for the last 25 years. He has served in reputed national and international organizations in Pakistan at key positions including UN-FAO, SDPI, Oxfam GB, Shirkat Gah, SCOPE, etc. and has demonstrated experience of managing projects, developing programs, and delivering research/advocacy tasks.
Alliance Against Child Marriage – Sindh

Alliance Against Child Marriages Sindh is an alliance of 26 vibrant and key civil society organizations in Sindh working with a mission to engage in legislation against child marriages in Sindh to advocate for the laws are being implemented to stop child marriages. Alliance is working with a key objective to have effective legislation in Sindh against Child Marriages, and support the Government for law implementation for eradication of child marriages through empowering communities.

The alliance members also include Media, CSO, Lawyers, Govt. Departments, MNAs/MPAs, Religious Leaders and Academics.

Visionary Foundation Pakistan – Secretariat AACM

Currently Visionary Foundation Pakistan is holding AACM Sindh secretariat to run its operation with the support of alliance members. Visionary Foundation Pakistan is a youth lead organization working with a mission to Empower individuals, communities and organizations through provision of information and skills; promote rights based approaches, empowerment of underprivileged and marginalized groups; particularly youth, women, person with disabilities and children through literacy, education, awareness and community development in underprivileged areas of Pakistan.

Visionary Foundation Pakistan with the support of Rutgers Pakistan under YES I DO Program, came up with an idea to bring in the data of early marriages registered cases after the approval of Sindh Child Marriages Restraint Act 2013 and Legal Rights Forum has taken onboard as one of key member of Alliance Against Child Marriages Sindh to carry out the study in 10 Districts of Sindh Province.
### List of Acronyms / Abbreviations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AACM</td>
<td>Alliance Against Child Marriages</td>
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<td>ADPP</td>
<td>Assistant District Public Prosecutor</td>
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<td>SCMRA</td>
<td>Sindh Child Marriage Restraint Act</td>
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<td>CEDAW</td>
<td>Convention on the Elimination of Discrimination Against Women</td>
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<td>CPUs</td>
<td>Child Protection Units</td>
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<td>CRC</td>
<td>Convention on the Rights of the Child</td>
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<td>Cr.P.C.</td>
<td>Criminal Procedure Code</td>
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<td>FIR</td>
<td>First Information Report</td>
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<td>ICCPR</td>
<td>International Covenant on Civil and Political Rights</td>
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<td>LRF</td>
<td>Legal Rights Forum</td>
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<td>MDGs</td>
<td>Millennium Development Goals</td>
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<td>NADRA</td>
<td>National Database &amp; Registration Authority</td>
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<tr>
<td>PPC</td>
<td>Pakistan Penal Code</td>
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<td>PKR</td>
<td>Pakistani Rupee</td>
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<td>RoB</td>
<td>Rules of Business</td>
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<td>SDPI</td>
<td>Sustainable Development Policy Institute</td>
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<tr>
<td>SCOPE</td>
<td>Society for Conservation and Protection of Environment</td>
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<tr>
<td>UN-FAO</td>
<td>Food and Agriculture Organization of United Nations</td>
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<td>VF</td>
<td>Visionary Foundation</td>
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<td>WDD</td>
<td>Women Development Department</td>
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1. Context and Introduction

Birth, marriage and death are the standard trio of key events in most people’s lives, but only one – marriage – is a matter of choice. The right to exercise that choice was recognized as a principle of law even in Ancient Rome and has long been established in international human rights instruments. Yet many girls enter marriage without any chance of exercising their right to choose. Some are forced into marriage at a very early age. Others are simply too young to make an informed decision about their marriage partner or about the implications of marriage itself. They may have given what qualifies as ‘consent’ according to local customs or even the law, but in reality, consent to their binding union has been made by others on their behalf.

In most societies, marriage is a celebrated institution signifying a union between two adults and the beginning of their future together. But the reality of marriage is a very difficult story for millions of girls worldwide. Child marriage is a human rights abuse endured by both girls and boys in dozens of countries, even though the internationally recognized age of legal marriage is 18. Some of those married are as young as four years old. There are ways to reduce the practice of child marriage, but very little attention has been given to this widespread problem.

Child marriage is one of the worst forms of children’s human rights violations. Child marriage is a violation of human rights whether it happens to a girl or a boy, but it represents perhaps the most prevalent form of sexual abuse and exploitation of girls. Harmful consequences include separation from family and friends, lack of freedom to interact with peers and participate in community activities, and decreased opportunities for education. Child marriage can also result in bonded labor or enslavement, commercial sexual exploitation and violence against victims. Because sex is forced on them and they are not in a position to use contraceptives, forced marriages often expose girls to serious health risks such as premature pregnancy, sexually transmitted infections and HIV/AIDS.¹

Child marriage is culturally packaged as a social necessity, but in many cases, this amounts to “socially licensed sexual abuse and exploitation of a child.” It is one of the most persistent forms of sanctioned sexual abuse of girls and young women.

Child brides frequently go to live at their in-laws’ homes, where they often become not little more than servants. Within the first year of marriage, there is typically tremendous pressure for the newlywed couple to bear children-- and for the young bride to prove her fertility. Under these circumstances, a child bride has no power to negotiate contraceptive use within marriage. Consequently, she is more likely to become pregnant and give birth while very young--well before her body is prepared for the rigors of pregnancy and childbirth. The grave health risks to
both the child-mother and infant that result is compounded because child brides frequently have little or no access to reproductive health services.\textsuperscript{2}

Child brides also tend to have more and generally less educated children, experience higher incidences of sexually transmitted diseases, and die younger than those who marry later. Most child brides drop out of school upon marriage. Child brides are often victims of domestic violence and abandonment, and they remain disproportionately poor. This collectively contributes to a cycle of poverty, with daughters of child brides themselves often married as children.\textsuperscript{3}

The practice of child marriages is widespread and occurs in all regions of Pakistan but with the highest prevalence rate in Sindh Province as per reports in the media. This is because of higher population, widespread illiteracy and deep-rooted gender inequalities, traditional practices, and customs. It disproportionately affects the girl child rights such as the right to education, the right to health including sexual and reproductive health. Child marriage continues to be an obstacle to not only the socio-economic-legal-health status of girls in Sindh but also to the development of the community.\textsuperscript{4}

There is in fact no standard definition of a child in Pakistan. Under the Majority Act 1875, every other person domiciled in Pakistan shall deem to have attained his majority when he shall complete his age of eighteen years and not before. The Labor Laws fix the minimum age of employment at 14 years for children, voting age is 18 years and the National Identity Card/Citizenship Card is also issued at 18 years of age. Definition of Child under the Child Marriage Restraint Act 1929, law applicable throughout Pakistan except Sindh Province states, “Child means a person who, if a male, is under eighteen years of age, and if a female is under sixteen years of age” so the marriageable age of a girl is sixteen years and for eighteen years for a boy. Child Marriage Restraint Act 1929 has made under-age marriages a penal offence.\textsuperscript{5}

Under Section 3 of The Majority Act, 1875, minority ceases on the completion of the eighteen years, unless a guardian or property or both of the minor has been or shall be appointed before the minor has attained the age of eighteen years, or the property of the minor is under the superintendence of a Court of Wards, in which case the age of minority is prolonged until the minor has completed the age of twenty-one years.\textsuperscript{6}

Under the Muslim Law, majority is attained on reaching puberty, and this definition applies in criminal matters covered under the Hudood Ordinance 1979 in which “adult” means a person who has attained, being a male, the age of eighteen years or, being a female, the age of sixteen years, or has attained puberty. A positive step towards a standard definition of a child is the Juvenile Justice System Ordinance 2000. It sets the definition of a child at 18 years of age.
However, the age of criminal responsibility remains at ten years. In short, the definition of the child is given differently under different laws in the country:

- Under the Majority Act, 1875, section 3, the benchmark age of majority in persons domiciled in Pakistan is given at 18 years.
- Under Succession Act, 1925, the age of a majority is given at 21 years.
- Under the Constitution and Election Laws, the age of majority is 18 years.
- Child Marriage Restraint Act, 1929, under definition 2(a) child is defined as male under 18 years and female under 16 years while 2(d) minors are defined as of either sex under 18 years.
- The law of Juvenile Smoking Ordinance 1959, under Section 2(c) Juvenile is defined as any person under the age of 16 years.
- Under Sindh Children Act, 1955, a child is defined as below 16 years, when the proceedings were initiated.
- Under Hudood Laws, a boy at the age of 18 and a girl at the age of 16 or when they have attained puberty are adults. As such, under this law a girl or a boy attaining puberty at the age of 12 or 15 becomes an adult.

Under the Muhammadan Law, any person who has attained puberty is entitled to act in all matters affecting his or her status or his or her property. But that law has been materially altered by the Majority Act, and the only matters in which a Muhammadan is entitled to act on attaining the age of fifteen years are (1) marriage (2) dower and (3) divorce. In all other matters his majority continues until the completion at least of eighteen years. Until then the Court has power to appoint a guardian of his person or property or both under the Guardians and Ward Act, 1890.

Islam has fixed no age-limit for puberty for it varies with the countries and with races due to the climate, hereditary, physical and social conditions. Thus, in cold regions, one attains puberty at a much later stage as compared to hot regions, where both male and female attain it at quite an early stage. The earliest age of puberty, with respect to a boy, is 12 years and with respect to a girl, it is 9 years.7

According to Islamic Law, the minority of a male or female terminates when he or she attains puberty. Puberty is presumed on the completion of the 15 years. Among the Hanfis and the Shias, puberty is presumed on the completion of the eighteenth year. Under the Majority Act, 1875, minority ceases on the completion of 18 years, Section 2 of the said Act, however, with an
exception in matters relating to marriage, dower, divorce and adoption. Thus, for marriage, the rule of Muhammadian Law must apply in this case, according to which any person who has attained puberty is entitled to act in the matter of marriage on attaining the age of 15 years”.

Under the Muslim Personal Law, a girl under the age of 16 years is, in view of the Child Marriage Restraint Act 1929, incompetent to contract a marriage. The assumption being that the girl’s attainment of puberty also means her mental maturity.

Although the law does not permit the marriage of a girl below the age of 16 years, if any girl below the age of 16 years marries in violation of that law, the marriage itself does not become invalid on that score, although the adult husband contracting the marriage or the persons who have solemnized the marriage can be held criminally liable. But if the girl has attained puberty and marries with an adult male of her free will, the marriage is valid under Muslim Law, and the Court acting under Section 491 Criminal Procedure Code may allow the married couple to live together.

Despite the above-mentioned facts, the law represents confusion and contradiction in defining child marriage and the age of a child and minors, both girls and boys. While the law increases the punitive fine imposed on the guilty, the crime is still bailable meaning that the person responsible for the illegal marriage can escape punishment for a mere Rs. 50,000. Section 4 and 5 of the Child Marriage Restraint Act 1929, explicitly says: “Whoever, being a male above eighteen years of age, contracts child marriage shall be punishable with simple punishment which may extend to one month, or with fine, which may extend to one thousand rupees, or with both.

Child marriages might be a symptom of gender inequality and perpetuate gender control, trapping female children into the vicious cycle of violence, harassment, sexual assault, mental and physical health problems.

Most notably, the existing legal framework on child marriages in Sindh is not implemented in the true spirit such marriages continue to occur across the province reported by electronic and print media. In an effort to figure out the causes behind this phenomenon, LRF has conducted this study for AACM, VF and Rutgers with aim to do in-depth analysis of registered cases under Sindh Child Marriage Restraint Act 2013 (SCMRA); highlight the gaps and lacunas in the implementation of the SCMRA; to underline the gaps and issues facing its implementation; analysis case registration and litigation procedures and impacts on justice delivery mechanism for victims of child marriages; to extend recommendations for its effective implementation.
1.1 Methodology

The study was conducted based on investigative methodology which included desk review, court case analysis and key informant interviews of all stakeholders including family members, Nikkah Registrar, 1st Judicial Magistrate/Civil Judges, District and Session Judges, Member Inspection Team, Registrar High Courts, Lawyers, Police Officials, Prosecutions and Former Judges from the lower courts as well as superior Judiciary.

1.2 Study Locations

This study has been conducted in the districts of Sindh where child marriages cases have been reported in media. In this study, cases of child marriages from the following districts of Sindh Province have been collected:

1. Hyderabad
2. Mirpurkhas
3. Umerkot
4. Tharparkar
5. Thatta
6. Jacobabad
7. Kashmore
8. Ghotki
9. Sukkur
10. Larkana

1.3 About the Sindh Child Marriage Restraint Act 2013

After the 18th Amendment to the Constitution of the Islamic Republic of Pakistan, Sindh Assembly was the first Provincial Assembly which legislated the Sindh Child Marriage Restraint Act 2013 and repealed the Child Marriage Restraint Act 1929. It is a significant breakthrough in the history of legislation for children in Pakistan. Through this law, the minimum age of marriage for girls was raised from 16 to 18 years. Most importantly, this law makes child
marriage a cognizable offence, nonbailable and non-compoundable. After that Women Development Department (WDD) framed its Rules of Business (RoBs) and notified on March 22, 2016 (NO.SO-WD/WDD/2-1OO-2016). It is progressive piece of legislations which sets 18 years as the minimum legal marriagable age for both male and female in light of recommendations of the UN Convention on the Rights of the Child.

Further, SCMRA2013 clearly states in section 2(a) that "child" means a person male or female who is under eighteen years of age. The Act also defines the punishment in section (3) that whoever, being a male above eighteen years of age, contracts a child marriage shall be punished with rigorous imprisonment which may extend to three years but shall not be less than two years and shall be liable to fine.

1.4 Comparison between different Child Marriage Acts in Pakistan

Child Marriages Restraint Act 1929

- Marriages Age:
  - Girls 16
  - Boys 18

- Punishment:
  - 01-month (simple) imprisonment, Rs. 1000/- or both

- Who is culpable:
  - Any adult marrying a child
  - The individuals solemnizing a marriage
  - Parents/guardians of child being married
  - No woman shall be punished by imprisonment

Non-cognizable offences must be reported to Union Councils or competent local authority, not to the police, which will then move a complaint before a Magistrate of the first class. The offences can be reported within one year of solemnization of marriage and not latter then that.
The Sindh Child Marriages Restraint Act 2013

- Marriages Age:
  - Girls 18
  - Boys 18

- Punishment:
  - Not less than 02 years, not exceed 03 years with rigorous imprisonment and fine.

- Who is culpable:
  - Any adult marrying a child
  - The individuals solemnizing a marriage
  - Parents/guardians/Nikkah Registrar, witness of child being married

Cognizable, nonbailable and non-compoundable offence. Can be reported directly to police and trial by 1st Class Judicial Magistrate.

Provision for courts to prohibit impending child marriages.

Punjab Marriages Restraint (Amendment) Act 2015

- Marriages Age:
  - Girls 16
  - Boys 18

- Punishment:
  - 06 months imprisonment and Rs. 50,000/- fine

- Who is culpable:
  - Any adult marrying a child
  - The individuals solemnizing marriages
  - Parents/guardians of child being married
  - No women shall be punished by imprisonment
Non-cognizable offence. Must be reported to Union Councils or competent local Authority, not police, which will then move a complaint before a family court.

Provision for courts to prohibit impending child marriages.

None of existing laws allow for automatic dissolution of marriage when proven to be a child marriage.

1.5 Defining Child Marriages: International and National Legal Framework

Child marriage or marriage without the free and full consent of both spouses is a human rights violation and not in line with several international and regional agreements which are signed and ratified by Pakistan, including:

- Universal Declaration of Human Rights
- Convention on the Elimination of Discrimination Against Women (CEDAW)
- Convention on the Rights of the Child (CRC)
- Convention on Civil and Political Rights (ICCPR)

Committee on the Rights of Child considers that the minimum age for marriage must be 18 years for both a man and woman, while CEDAW obligates Member States to ensure, on the basis of equality between men and women, the right to freely choose a spouse and enter into marriage only with free and full consent.

Many international instruments call for a uniform age of marriage and emphasize the importance of free, full and informed consent to marriage. These International conventions can also be used to hold governments accountable for failure to implement and enforce their obligations related to child marriages.

Under the overall legal framework of Pakistan in which the age limit set for child marriages varies according to different laws such as a girl child defined in the Zina and Hudood Ordinance (1979) is also 16 years or attainment of puberty. However, Child Marriage Restraint Act, 1929, has remained the chief law on child marriages under the category of general/civil law in Pakistan. According to that original law, the marriageable age for male and female was 18 and 14 years respectively. However, after the Independence of Pakistan, it was hybridized with the Muslim Family Law Ordinance 1961 and thus the marriageable age for male and female was set 18 and 16 years respectively.
2. In-depth Analysis the Sindh Child Marriage Restraint Act 2013

According to the Act, whoever, being a male above 18 years of age, contracts a child marriage shall be punished with rigorous imprisonment which may extend to three years but shall not be less than two years and shall be liable to fine. To carry out an in-depth analysis of the implementation and effectiveness of the Sindh Child Marriage Restraint Act 2013, we relied on primary and secondary data.

2.1 Cases Registered under the Sindh Child Marriage Restraint Act 2013

The study team visited targeted districts to collect cases registered under the Sindh Child Marriage Restraint Act 2013. The districts covered were Hyderabad, Mirpurkhas, Umerkot, Tharparkar, Thatta, Jacobabad, Kashmore, Ghotki, Sukkur and Larkana.

The study team collected 15 cases of early age marriage from above mentioned 25 districts of Sindh. A detailed inventory of all cases is given in the Annexure.

Out of 15 collected cases of child marriage, 04 cases were selected for an in-depth analysis of the cases registered under the Sindh Child Marriage Restraint Act 2013. Appended next, please find the case-by-case analysis:

Case-1

FIR No. 143 of 2015

<table>
<thead>
<tr>
<th>District</th>
<th>Thatta</th>
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<tr>
<td>Case Date</td>
<td>23 – 08 – 2015</td>
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<tr>
<td>FIR</td>
<td>Complainant Mr. Mohammad Amin, the father of Ms. Almas, complained that her daughter has been kidnapped by Mr. Azizullah, Mohammad Juman, Molvi Mohammad Anwar (Nikkah Khuwan) from their home in Mohallah Patwani, Word # 04, Thatta. FIR was registered, and later police located the accused and arrested them under section 365-B, 147, 148 and 149 and locked them up under remand of police.</td>
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During investigation, Ms. Almas rejected the allegation that she was kidnapped. She rather claimed under Section 162 Cr. PC (while taking police statement from Ms. Almas) that she had married with Mr. Azizullah and she also produced the Affidavit of Free Will and Nikkahnama. The Complainant was informed accordingly.

**Court Proceeding**

During Court proceeding, the girl, Ms. Almas produced attested copy of the Affidavit of Free Will and Nikkahnama before the Judicial Magistrate for recording her statement under Section 164 Cr. PC.

Meanwhile, the father of the girl, Mr. Amin submitted another application to the court for medical examination of age of Ms. Almas, as he was confident that Ms. Almas is only 15-years-old as per her primary school certificate.

The Judicial Magistrate constituted a medical board, and the medical report confirmed that she is underage (15 – 17 years).

Thereafter, during court proceeding, the Police presented a Challan and submitted a report under section 173 Cr. PC for disposal of FIR “C class”.

The Judicial Magistrate, however, said that the father of Ms. Almas has also submitted another application about Ms. Almas being underage. The Judicial Magistrate hence, took cognizance under section 3, 4, 5 of Sindh Child Marriage Restraint Act 2013, ordered the Police to resubmit the case on prescribed proforma by incorporating section 3, 4, 5 of Sindh Child Marriage Restraint Act 2013 based on the Medical report.

In view of the above discussion, it has been fully established that Ms. Almas was below 18 years of age at the time of her marriage and the accused, Mr. Azizullah has contracted child marriage. The Judicial Magistrate found Mr. Azizullah guilty of the offence punishable under section 3 of the Sindh Child Marriage Restraint Act 2013 and accused Molvi Muhammad Anwar of performing Nikkah in a child marriage. Molvi Muhammad Anwar was found guilty of the offence punishable under section 4 of the Sindh Child Marriage Restraint Act 2013. Mr. Muhammad Juman had not played any role at the time of child marriage and no evidence was available against him.

**Sentence:** Mr. Azizullah and Molvi Muhammad Anwar were convicted and sentenced to rigorous imprisonment for two years and fine PKR 5,000. In case of default of payment of fine, above said accused shall further undergo additional one-month of rigorous imprisonment.
Mr. Muhammad Juman was not convicted and released as evidence was not found against him.

This order was announced in open court.

This was a case of elopement, but the father narrated a story to attract section 356-B, 147, 148 and 149 PPC. Section 365-B is a cognizable offence with strict punishment of imprisonment for life. The police after investigation prepared a disposal of the FIR report under section 173 Cr.P.C (as no sufficient evidence was available). But the Magistrate Thatta took cognizance under section 3, 4, 5 of Sindh Child Marriage Restraint Act 2013, ordered the Police to resubmit the case as sufficient evidence was available on the record to show that the girl was a minor when marriage took place. Although the father initially lodged a false FIR, during trial through the application for medical examination to determine minority and submission of school leaving certificate of the girl was proof that the girl was a minor when married to the accused. The police originally failed to recognize and acknowledge the offence of child marriage which demonstrates poor investigation by the police. If police had conducted a proper investigation and collected evidence, the original offence of 365-B PPC, kidnapping, abducting or inducting woman to compel for marriage, could have also been held to be true. The efforts of the magistrate must be appreciated for not accepting the report of the police for cancellation of original FIR and taking cognizance under Sindh Child Marriage Restraint Act 2013 and handing down imprisonment and fine to the accused groom and Nikkahkuwan.

**Case – 2**

**FIR # 72 of 2017**

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<th>District</th>
<th>Umerkot</th>
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<td><strong>Case Date</strong></td>
<td>24 – 07 – 2017</td>
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<tr>
<td><strong>FIR</strong></td>
<td>An ASI (Mr. Roshan Din Jhanihi) of Police Station Umerkot City arrested Mr. Qadir Bux, Mr. Ahmed, Mr. Manzoor Ali and Ms. Khatoon while checking vehicles at Shah Murad Shah Chowk situated at Ratnore Road based on intelligence information that a child marriage was held at Bakhtawar Colony in Umerkot and that the groom and bride are going to Thar for Rukhsati purpose in a long chassis jeep.</td>
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During the investigation, the groom Mr. Ahmed showed Nikkahnama along with Rukhsati certificate and disclosed that his marriage was solemnized earlier on 18-07-2017. However, it appeared that the bride is underage. A memo of arrest and recovery was prepared and the ASI brought the accused persons and recovered property to the Police Station. FIR was registered under the Sindh Child Marriage Restraint Act 2013 and the accused were locked up under remand of police.

The same ASI has requested 14 days police custody remand of accused under section 3, 4, 5 of the Sindh Child Marriage Restraint Act 2013.

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<th>Court Proceeding</th>
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<td>During Court proceeding, the Judicial Magistrate held an open hearing where the attested copy the Affidavit of Free Will and Nikkahnama was submitted before the Judicial Magistrate for recording the statement of the bride, Ms. Shama, under section 164 Cr.P.C. The bride agreed that she is under sixteen year old and said that the marriage was solemnized with her consent. The accused prayed for the grant of bail since the accused were unaware of the Sindh Child Marriage Restraint Act 2013; the marriage was solemnized with girl’s consent; and that the Rukhsati had not yet happened.</td>
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<th>Court Order</th>
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<td>The order was announced in open court. The Judicial Magistrate admitted the accused persons on bail by furnishing the personal bond amounting PKR 50,000 with the direction that the accused will appear as and when summoned either by the Court or Police during investigation. The remand request by ASI was hence declined. The Judicial Magistrate directed that in the light of statement of the witness, namely Ms. Shama and looking to the present facts and circumstances, the Court emphasizes to finalize the investigation and to do so in accordance with the law and submit the report on U/S 173 within the stipulated period. None of the accused has been convicted so far and the proceedings are continuing before the Court.</td>
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</tbody>
</table>
The FIR was promptly lodged on 24-7-2017 after receiving intelligence that a child marriage has taken place. Police had recovered Nikkahnama dated 18-7-2017, which was not registered as per requirement of the Muslim Family Law Ordinance 1961 and Rukhsati certificated dated 24-7-2017. Challan has been submitted but final decision is still awaited. Civil Judge and Judicial Magistrate -II, Umerkot made interesting remarks in the order written while granting bail to the accused. The judge narrated his research and gave multiple references of judgments of the Supreme and High Courts on cases of child marriages under Child Marriages Restraint Act 1929, discussing marriage and puberty yet failed to give any weight or reference to the cases decided by the Sindh High Court on cases under SCMRA. In his order, the Judge believed the statement of the minor girl related to nonperformance of Rukhsati, when Rukhsati certificate is available on the record and there is a gap of 6 days between the Nikkah (date present on Nikkahnama) and Rukhsati certificate. The Judge was also of the view that accused person had no knowledge of the law and granted them relief of bail while it is a settled principle of law that ignorance of law is no excuse. Police failed to nominate Nikkahkuwan as accused although Nikkahnama and Rukhsati certificates were available on the record.

**Case – 3**

**FIR # 112 of 2017**

<table>
<thead>
<tr>
<th>District</th>
<th>Mirpurkhas</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Case Date</strong></td>
<td>10 – 09 – 2017</td>
</tr>
<tr>
<td><strong>FIR</strong></td>
<td>The complainant on behalf of the State, SIP Mr. Hadi Bux Khashkeli registered this FIR at a Police Station in Taluka Kot Ghulam Muhammad, District Mirpurkhas. According to the FIR, the SIP Mr. Hadi Bux Khashkeli raided a house, based on a intelligence reports, in a village Gulsher Gorchani where a marriage of a minor girl was in progress. On seeing the police, the groom, father of the groom Mr. Irfan, Khair Muhammad and Molvi Muhammad Asif fled the scene. The Police arrested the accused Haji Gorchani (bride’s father) and Ghulam Hussain Gorchani (marriage arranger). The accused disclosed that the age of the bride, Ms. Ayesha was under 15 years. The SIP Mr. Hadi Bux Khashkeli prepared mashirnama of arrest and recover, and brought the arrested accused to the Police Station as the accused, Mr. Haji Gorchani was marrying her minor daughter Ms. Ayesha with Mr. Muhammad Irfan Gorchani, thus, committed an offence under sections 3-4-5 of the Sindh Child Marriage Restraint Act 2013.</td>
</tr>
</tbody>
</table>
The complainant, SIP Mr. Hadi Bux Khaskheli had requested the Court for a police custody remand of accused under section 3, 4, 5 of the Sindh Child Marriage Restraint Act-2013.

After registration of FIR, the police started the investigation.

<table>
<thead>
<tr>
<th>Court Proceeding</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Court trial proceeding had not started at the time of data collection. The accused prayed for the grant of bail based on following claims:</td>
</tr>
<tr>
<td>1. The prosecution story is manipulated and false because the incident that is said to have happened is in doubt.</td>
</tr>
<tr>
<td>2. The bride, Ms. Ayesha is an adult and the marriage was being solemnized with the consent of the bride and her parents.</td>
</tr>
<tr>
<td>3. No offence took place.</td>
</tr>
<tr>
<td>4. The police with mala fide intensions presented Ms. Ayesha as a minor.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Court Order</th>
</tr>
</thead>
<tbody>
<tr>
<td>The order was not yet announced at the time of data collection.</td>
</tr>
</tbody>
</table>

This was the most recent case of child marriage identified during data collection. FIR was lodged on 10-9-2017. The police raided the house where alleged marriage was taking place. The facts narrated in the FIR are weak. For instance, the alleged groom, his father and the Nikkahhuwan all managed to escape the crime scene and only the father of the minor girl and 2 others were arrested. The total amount of PKR 12,000 was recovered from the accused during search. The recovery memo prepared by the police has no independent witnesses. FIR is silent in referring to the minor girl, whether she was present at the scene or if she was rescued or not. These weaknesses in the case of prosecution will eventually result in acquittal for the accused.

**Case – 4**

**FIR # 25 of 2016**

<table>
<thead>
<tr>
<th>District</th>
<th>Hyderabad</th>
</tr>
</thead>
<tbody>
<tr>
<td>Case Date</td>
<td>25 – 02 – 2016</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>FIR</th>
</tr>
</thead>
<tbody>
<tr>
<td>The complainant on behalf of the State, ASI Mr. Tasleem Ahmed Burgari (In charge Police Station, Tando Fazil) registered this FIR at the Police Station, Tando Fazil, District Hyderabad.</td>
</tr>
</tbody>
</table>

According to the FIR, the ASI Mr. Tasleem Ahmed Burgari raided a house, based on an intelligence report, in the village of Khuda Bux Brohi where a
marriage of a minor girl was in progress. The police arrested the accused Mr. Yousuf (groom), Mr. Abdul Majid (brother of groom), Abbas (brother of bride) and Mr. Sharif (the owner of the place where this ceremony was being held). The bride Ms. Husn Bano who was apparently a minor girl disclosed that she does not know anything and that she does not want to be married.

Considering the offence as mentioned under the section 3-4-5 of the Sindh Child Marriage Restraint Act 2013, the ASI Mr. Tasleem Ahmed Burgari prepared mashirnama of arrest and recovery and brought the arrested accused to the police station. The bride, Ms. Husn Bano was kept in safe custody at a women prison.

On 26 – 02 – 2016, the bride was taken for her medical examination.

After registration of FIR, the police started the investigation.

After usual investigation, the police submitted a final report under section 173 Cr.P.C. and issued a Challan for the accused under the section mentioned above.

| Court Proceeding | During Court proceeding, the Judicial Magistrate was not satisfied, and the case was sent for re-investigation. Bail was granted to the accused. Thereafter, the case was sent for Examination in Chief to Mr. Nadir Khan Pathan, ADPP for the State and for cross examination to Mr. Shahnawaz Brohi Advocate for all accused except accused Mr. Sharif and cross-examination to Mr. Tariq Hussain Advocate for accused Mr. Sharif. |
| Court Order | The order was announced in open court. The Judicial Magistrate acquitted the accused under section 245(i) Cr. P.C. based on following ground: 1. The prosecution case was weak, and they were not able to prove allegations. 2. The evidence of the prosecution, witnesses and their cross-verification appear to be having material contradictions between the version of FIR and the deposition of PWs. 3. The prosecution has failed to mention the name of the victim as a witness. None of the accused has been convicted. |

The FIR was registered on 25-2-2016 and the date of alleged marriage is same. 13 of the accused were nominated in the FIR, out of which police arrested 6. 7 of the accused were later declared proclaimed offenders at the start of trial. The judge highlighted glaring weaknesses in the
investigation of the police and the evidence produced before the Court. The police raided the house of the accused based on the information from the spy. Police itself is the complainant in this case and no independent witness has been shown in the FIR or produced before the Court for evidence. There was no independent corroborating evidence produced by the police which, coupled with no independent witness, made the prosecution’s case very weak. Although police reached the crime scene where the marriage was taking place, no Nikkahhuwan had been shown as accused by the police and similarly no Nikkahnama was produced as documentary evidence. The recovery memo prepared by police also did not have any independent witness to verify their claim. The victim's statement as witness was not recorded by the prosecution in the Court. Hence due to weak investigation and prosecution the 6 arrested accused were acquitted by the Court as the prosecution failed to prove their case beyond shadow of doubt.

2.2 Causes of Child Marriage and Reasons for Underreporting

Causes of Child Marriage

- Poverty
- Lack of economic opportunities
- Illiteracy
- Inadequate implementation of law
- Denial of childhood and adolescence
- Denial of education
- Health problems
- Abuse
- Love marriage
- Local Customs
- Exploitation of poor and the vulnerable
- Keeping low status of women

In the Sindh province of Pakistan, there are various causes of child marriages because Sindhi society is deeply rooted in traditions and customs. Parents choose to marry off their daughters early for several reasons. Poor families may perceive a young girl as an economic burden and her marriage a necessary survival strategy for her family. They may think that early marriage offers protection for their daughter from the dangers of sexual assault, or more generally, offers the care of a male guardian. Early marriage may also be a strategy to avoid girls becoming pregnant

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i The loss of childhood and adolescence, the forced sexual relations and the denial of freedom and personal development have profound psychosocial and emotional consequences on girls.

ii Once married, girls tend not to go to school.

iii These include premature pregnancies, which cause higher rates of maternal and infant mortality. Teenage girls are also more vulnerable to sexually-transmitted infections, including HIV/AIDS.

iv This is common in child marriages. In addition, children who refuse to marry or who choose a marriage partner against the wishes of their parents are often punished or even killed by their families in so-called 'honor killings.'
outside marriage. Most of the tradition puts emphasis on child marriages, particularly of females even without their consent. Reasons include: extreme poverty, lack of awareness in public about harmful effects of child marriages; children are treated as commodities; tribal and feudal structure of society; ineffective and non-responsive birth registration system. Additionally, there is no proper intra departmental, central, independent and strong child rights bodies’ mechanism that could monitor child rights violations including the issue of child marriages.

**Reasons for Underreporting**

- Cultural barriers
- No one supports women
- Lack of knowledge of laws
- Women fear men and police
- Non-registration of birth and marriage

### 2.3 Analysis of Effectiveness of SCMRA 2013

Listed below are the leading issues impacting the implementation of the SCMRA 2013:

- Laws fail to deliver on their promises when they are not or less known and understood by the duty bearers responsible for the laws implementation. The SCMRA 2013 also faces same dilemma and tragedy. State actors and institutions responsible for implementation are either not cognizant or are less aware about it. Especially, Nikkah Registrars responsible ensuring the Nikkah, which he is going to solemnize, does not involve a child. Nikkah Registrars are by and large unaware of this law in Sindh. Police, that constitutes as the central agency of administrative justice and is responsible for filing of child marriage offenses also remains less or non-cognizant of the Sindh Child Marriage Restraint Act.

- It is almost impossible to prevent or reduce the cases of child marriages to desired levels with a backdrop of inadequate or nonexistent awareness and understanding of the relevant child marriage law by relevant duty bearers. This gap is further strengthened by the law and its RoBs, which fail to provide for extensive awareness raising, and education programs required for the relevant duty bearers. Customary practices like child marriage need to be changed through behavior communication change and use of mass media i.e. F.M, Print and Electronic.

- Relevant duty bearers and public, which actually practice and promote child marriages, should also be made aware about this law. There is a visible lack of awareness among the public on SCMRA. Even women or child who becomes victims of these child marriages are generally unaware about this law. In such a scenario, legal precedents on prevention
of child marriages cannot prevent the child marriage cases. The most significant element of law, i.e., internalization of law within the social strata, constitutes binding and undeniable pre-requisite for the implementation of SCMRA 2013.

- The implementation of laws operates through the administrative and other structures those laws provide for. Those implementation and monitoring structures translate the provision of such laws into reality. But these administrative and other structures have capacity issues.

- Another issue laws face in implementation is the lack of harmonization and cross application of a set of law relevant to same issues or offense. Various laws related to children and women and their protection are not harmonized and applied on the principle of cross application. In addition to Sindh Child Marriages Restraint Act 2013, there are other laws on child and women protection such as the Women Protection (Criminal Amendment) Act 2000 and the Criminal Law Amendment Act 2011, Sindh Right to Free and Compulsory Education Act 2013 and Sindh Child Protection Authority Act 2011. If these laws are implemented in an effective manner, they can contribute significantly to the purpose and aims of the SCMRA 2013 and cases of child marriages could be prevented to a large extent. Especially, the Sindh Child Protection Authority Act 2011 and its Rules of 2017 which establish a child protection authority, district child protection units (CPUs) and child protection committees can significantly contribute in the reduction and prevention of child marriages cases in Sindh.

- One of the key reasons for the poor implementation of laws and policies is the low or no budgetary allocation for their implementation. Similarly, the implementation of SCMRA 2013 faces the issue of insufficient budgetary allocations.

- As per the law and its RoBs, Provincial Committee on Child Marriages and District Monitoring Committees on Child Marriages are constituted but not sensitized and aware of this law.

- The law does not provide provision(s) for the dissolution of a child marriage when it is contracted. This can be counted as very critical lacuna and loophole of the law which allows a child marriage to remain intact and continues the sufferings of a married child through experiencing marital rape.

- "Whoever" in section 3 and 4 may have elaborated and it can be stretched to those attending or participating the ceremony without any connivance with the parties. So, you can't criminalize the very people from whom you expect support to eradicate the practice.

- The Section 10 (5) of RoBs stated that "The child may be allowed to meet her or his parents, guardians, husband, intended bridegroom or in-laws only upon her or his
informed voluntary written consent in the best interests of the child”. This rule provided that the child (girls) may be allowed to meet the husband. It implies that a child marriage contracted remains intact and is not considered null and void by the law. In cases or situations of forced conversions/marriages this leverage might be exploited against the girl child where she has been subjected to coercion or intimidation.

- The RoBs Section 13 stated that special circumstances to be adopted with but such coordination between the elements of criminal justice stakeholders is lacking while it deals with a vulnerable segment of society such as people belonging to a minority.

- The law, in fact, has plenty of room for interpretation which could create legal complexities and create ambiguities for duty bearers. The Nikkahhuwan, for instance, are not aware of details and spirit of the Law. NADRA itself does not register Nikkah and the Union Council prints English version of Nikkahnama on software provided by NADRA.

- Provisions of automatic dissolution of child marriage have not been incorporated.\(^v\)

- Although child marriage are made cognizable offenses under SCMRA 2013, that means that police can take action without seeking permission from the court, however, the act does not describe clear role of police in preventing child marriages and it would have been good if in definitions and substantive clauses coordinating role of police has been inserted. It can be said that on one hand the role of police as leading institution of the administrative justice has been accepted through placing offences of child marriages within its administrative framework, however, at the same time such a role of police has been subjected to obscurity by the law. Nevertheless, gaps such as this have been filled to some extent by the RoB of the law which focused on the role of police and laid out modus operandi for it, but is sub-ordinate legislation.

- The penalty for the offence of child marriages given in the law i.e. three years rigorous imprisonment is not as severe as it should be. Accompanied by the lack of provision of dissolution of child marriage cases in the law, a moderate penalty fails and does not contribute in overall preventive framework of child marriages.\(^vi\)

\(^v\) However, it is also argued that in cases of Child Marriages where it has been consummated and later reported and resulting in pregnancy that might warrant for charges of adultery in absence of valid Nikkah and further stigmatizing the victim. In extreme scenario of child birth it also brings the tag of illegitimacy of child i.e. Child born out of wedlock. So due to these religious sensitivities provisions of automatic dissolution of child marriage have not been incorporated. The Dissolution of Muslim Marriages Act 1939 can be invoked by girl child before reaching the 18 years in case marriage has not been consummated.

\(^vi\) Amendment in dissolution of Muslim Marriage Act 1939 and other law relate to marriages of minorities may suggest declaring child marriage as null avoid.
3. Conclusion

Recently, a few cases have been filed under the Sindh Child Marriage Restraint Act 2013.

The Sindh Child Marriage Restraint Act 2013 has just started to function in Sindh and many communities, especially rural, do not know anything about the law. In this ambiguous situation, some of the communities still do not consider age of the bride and in some of the cases; persons with mala fide intentions exploit the poor, especially women. It has also been reported that police officers also use this law to harass communities by making false allegations relating to child marriage.

These legal gaps have been impeding the effective utilization of the laws at the hands of the masses, women and duty-bearers. The Sindh Child Marriage Restraint Act 2013 needs to be amended to address the gaps and lacunas affecting the implementation of the law such invalidation (dissolution) of child marriages and penalization of consummation under 16 years of age in line with Section 375 of the PPC. Also, Section 10 (5) of Rules of the act needs to be revised and the word ‘husband’ be deleted.

Some cases of child marriage are actually of domestic violence and an amendment needs to be made in Section 5 of the Domestic Violence Act Prevention & Protection Act 2013 to make such offences cognizable, warrantable, and bailable in Schedule II of the Cr. PC.

There is also a need to make changes in the Anti-Women Practices Act 2011 to make offences covered by the law cognizable under Schedule II of the Cr.P.C to decide on invalidation (dissolution) of child or forced marriages, and to apply the law to persons who take women or girls in customary practices.

Recommendations

1. The SCMRA 2013 should be revised to incorporate the provision on dissolution of child marriages when Nikkah is solemnized and contracting parties are minor.

2. Section 10(5) of Rules\textsuperscript{vii} of the law should be revised and world husband should be deleted.

3. The penalties for person contracting a child marriage should be increased, especially amount of fine must be specified.

\textsuperscript{vii} Section 10 (5) "The child may be allowed to meet her or his parents, guardians, husband, intended bridegroom or in laws only upon her or his informed voluntary written consent in the best interests of the child"
4. When Child Marriage is consummated below the age of 16 years it should be considered as rape as sexual intercourse with girl below 16 years is considered as rape, section 375 PPC. Hence, PPC and SCMRA should be amended accordingly.\textsuperscript{viii}

5. Public awareness and legal education of relevant duty bearers on the law should be started at an extensive level. Particularly, orientation/training workshops need to be conducted for Duty Officer (Moharar) in police stations, Investigation Officers, Lawyers, 1\textsuperscript{st} class Judicial Magistrate, staff of Union Council along with Nikkah Registrars and local government elected representatives need to be sensitized and educated on this law.

6. The Provincial Commission on Rights of Children must be established as soon as possible.

7. Provincial Monitoring Committees and District Monitoring Committees on Child Marriages to be established at the earliest and activated through the involvement of various stakeholders.

8. Proper budget for the implementation of the law should be allocated on annual basis.

9. Implementing agencies should make their annual work plan by incorporating both promotional and protection aspects of law.

10. Coordinating mechanisms on child protection laws in Sindh should be established at all levels so that this law could be effectively implemented.

11. Since sexual intercourse with a child below the age of 18 through marriage is illegal, thus forming offence of rape penalty for the child marriages especially for one who contracts marriage should be in consonance with the legal provisions on rape with child that is death, or imprisonment for life and fine under the Criminal Law (Amendment) (Offences Relating to Rape) Act, 2016 (Act XLIV of 2016). Further, sexual intercourse with a child below the age of 16 even though it done after marriage is declared rape as per case law under Section 375 PPC (rape clause which states the consent of a girl below the age of 16 is irrelevant. Hence it will be better to amend the law (section 375 penal code) and declare the sexual relation prior to 18 years should be count as marital rape.

12. Various coordinating mechanisms exist at district level though non-functional. These need to be activated and linked with vertical mechanisms existing at the provincial level.

\textsuperscript{viii} Concept of marital rape yet needs to be adopted in penal code for that purpose.
such as Sindh Child Protection Authority under the Social Welfare Department, Provincial Monitoring Committee under Sindh Child Marriage Restraint Act 2013, Domestic Violence (Prevention & Protection) Act 2013 under Women Development Department and Provincial Commission on Status of Women. It will be also good to link it with Provincial Commission on the Status of Minorities under Minority Affairs Department.

13. After 18th constitutional amendment, no inter-departmental co-coordinating mechanism has been created at provincial level to assess the cross-cutting role in implementation of these laws.

14. The issues faced by girls because of child marriage can be best handled by the police officers. Therefore, women police desks should be established initially at district level and gradually trickle down to Taluka/Thana/UC and PS Level.

15. Child Protection Units at the District level should be made the focal points for referrals related to the issue child and forced marriages.

16. CPUs, Shelter Homes, Child Protection Authority, Child Ombudsman, Women Development Department and Social Welfare Department should be interlinked.

17. Local governments should collect data of marriages in their jurisdiction which would help Provincial Monitoring Committees and District Monitoring Committees on Child Marriages.
4. References


