

An Analysis of Policies and Laws Governing Child Marriages in SAARC Countries

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INTERNATIONAL INSTRUMENTS

The right to free and full consent to a marriage is recognized in the Universal Declaration of Human Rights (1948) with the recognition that consent cannot be 'free and full' when one of the parties involved are not sufficiently mature to make an informed decision about a life partner.(Article 16) The Convention on the Elimination of All Forms of Discrimination Against Women (1979) states that the betrothal and marriage of a child shall have no legal effect and all necessary action, including legislation, shall be taken to specify a minimum age of marriage.(Article 16.2) The Committee on the Elimination of Discrimination against Women recommends this age to be 18.

INDIA

All systems of law have permitted marriages at an early age, and age of marriage and age of majority have been different. Attainment of puberty has been traditionally considered the age in which marriage is possible, though in most systems the permission or consent of parent/guardian has been required.[1]

Law relating to Child Marriage in India

The Special Marriage Act, 1954 makes marriage between a girl aged 18 years or younger or the boy aged 21 years or younger void and null. This has been done giving regard to the fact that marriage cannot be contracted by under aged individuals if any person has an objection to it.

The Child Marriage Act, 2006 makes Child Marriage, voidable in India.[2] It should be noted that the marriage is voidable at the option of the contracting party who was a child at the time of marriage, and not prima facie void. Even though the Act seeks to prohibit solemnization of Child Marriages,[3] the act never makes any marriage which has been solemnized as void ab initio.

The Hindu Marriage Act, 1955 also mandates solemnization of marriage only if the bride is at least 18 years of age and the bride-groom is at least 21 years of age.[4] But such is the policy of law that non-age does not render the marriage void or voidable. The marriage remains valid. The 59th Report of the Law Commission felt that "the general understanding that the breach of that condition does not affect the validity of marriage" should remain undisturbed.[5] The rationale behind this is that minor marriages in this country are still so rampant that if we would lay down that non-age rendered a marriage void, probably 80% of the marriages would be rendered void. The objective of the Act is still to discourage them; to put a damper on them. But if performed, the validity of marriage won't be affected. In pursuance of the policy of discouraging child marriage, S. 18(a) of the Hindu Marriage Act, [6] attaches some penal consequences to the parties to child marriages.[7]

Provisions in the Indian Penal Code, 1860

The Indian Penal Code makes rape an offence under S. 376. Under the definition of rape in S. 375, an exception has been added which provides for Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, not amounting to rape.

The above exception has been added after due consideration being given to a number of factors, chief among them the ratio later given by the Byrne, J. in R. v. Clarke. [8] It was laid down that the wife, upon marriage gives an unqualified consent to husband for sexual intercourse. The husband does not have to mandatorily seek the consent of the wife before every act of sexual intercourse. In other words, a man has an inherent right of sexual intercourse with his wife.

In view of explanation six of S. 375, I.P.C. sexual intercourse with a girl not related as wife below sixteen years is an offence of rape, no matter whether the victim girl consented or not consented to sexual intercourse. [9]

Reading into above two ratios, confusion could arise as to whether intercourse with a woman, being a wife, under 16 years of age would not amount to rape. In other words, without the exception to S. 375, there is a chance that it could be understood that nothing in the sixth explanation to S. 375 applied to a married woman.

Such being the policy of law in India, a situation could arise where an infant girl could contract to a valid marriage. Upon such a happening, due the operation of the ratio of R. v. Clarke (supra), the girl would have given irrevocable consent to the husband for sexual intercourse. As such, consummation of such a child marriage would not be charged with the offence of rape, notwithstanding the fact that such a perceived consent of the infant bride could have disastrous consequences for her future. However, the exception to S. 375 really comes to the fore here. It makes sexual intercourse with wife amount to rape, if the woman is aged 15 years or younger.

It is a general understanding that there they may be cases where check of law may be necessary to restrain men from taking advantage of their marital rights prematurely.[10] Without the exception included under S. 375, such marital rights could be prejudicially exploited.

The exception has been enacted to ensure harmonization of the law relating to voidable, but valid, child marriages in India. An argument could be made that the sixth explanation to S. 375 would have already covered consummation of child marriage with the bride being less than sixteen years of age, but such a an argument would be in conflict with the right of sexual intercourse granted to bridegroom(husband). As such, the exception to S. 375 goes a long way in being an explanation to the above conflict.

Issues and Concerns

As already discussed under the sixth explanation to S. 375 of IPC, sexual intercourse with a girl aged 16 years or younger is considered rape, notwithstanding her consent.

However, sexual intercourse by a man with his own wife is considered rape if she is under 15 years of age. This discrepancy in the age constitutes discrimination against married women.[11] A bare reading of the sixth explanation of S. 375 connotes the meaning that a woman under sixteen years of age is not capable of giving consent. Her consent is immaterial. But upon marriage, the exception to S. 375 becomes applicable and makes a woman capable of giving consent at just 15 years of age. By all accounts, this is a stray provision. There doesn't seem to be any reason which conveys as why a women who has been married, would become mature enough for granting consent to sexual intercourse 1 year earlier than an unmarried girl.

Such a provision, other than being illogical and discriminatory, tends to promote child marriage and needs to be addressed.

Recommendations

The exception to S. 375 actually serves as an explanation to the prevalent laws relating to the child marriages in India. At the same it tries to harmonize the law relating to child marriage & rape in India. However, on another note the discrepancy in the age of consent for sexual intercourse for married and unmarried woman is an embarrassing and illogical case of discrimination against married women. Such women, already unfortunate enough to be a subject of child marriages, suffer further because the legal age for their consent, upon marriage, has been further reduced.

As such, there is an urgent need to raise the age, as mentioned in the exception to S. 375, to 16 years of age to make it at par with right to consent for sexual intercourse of unmarried woman.

Such a step, while addressing the above explained discrimination, will go a long way in reducing the number of child marriages in India.

NEPAL

Prevalent Laws

Nepal National Code, 1963- The Eleventh Amendment to the National Code, 1963 (Muluki Ain, 2020) has brought about equality in regard to the marriageable age of men and women. Section 2 of the chapter On Marriage in the National Code has stipulated that "No marriage can be entered unless the age of man and woman is 18 years if the guardian has given consent and 20 years if consent of the guardian is not forthcoming and any marriage entered in contravention of that provision shall be punishable".

Under S. 4(3) of the Marriage Registration Act, 2028(1971), males and females can conclude marriage only if both have completed 20 years of age. However, S. 12 of the Act lays down that the Act shall not cause any adverse effect on the legality of marriage concluded to the custom, tradition, usage or practice. As such, the Act makes an exception for child marriage according to customs and practices.

It should be noted that initially the Marriage Registration Act, 2028 mandated the minimum age for marriage as 22 years in case of boys and 18 years in case of girls. However, the Supreme Court declared such discrimination as unconstitutional and inconsistent with the provisions of the Chapter On Marriage of the National Code, 1963. The Court issued a directive to the Government to amend the impugned provision to make it consistent with the various laws relating to marriageable in Nepal.[12] Pursuant to such amendment, the minimum age for marriage for both boys and girls has been mandated as 20 years in the Act.

Child marriage has been recognized as an offence and placed under Schedule 1 of the Government Cases Act, 2049 (1992 A.D).

Issues and Concerns

Definition of “Child”- Like many other countries, the Nepalese legal system fails to adopt a uniform and consistent definition of the age of a child. The Children’s Act defines ‘child’ as children below the age of 16 years.[13] On the other hand, the Labour Act of 1991 defines a child as a person below the age of 14 years.[14]

The Nepalese Child Marriage law provides for inadequate punitive elements and allows for wide discretionary powers in sentencing. Boys and girls are treated differently in the law on child marriage. For example, marriage with a girl below 10 years is punishable with imprisonment from six months to three years and a fine from one thousand to ten thousand rupees. However, the marriage with a boy below the age of 10 years constitutes a lesser offense and is punishable with imprisonment up to six months or a fine up to ten thousand rupees or both.[15]

On July 13, 2006, the Supreme Court issued a directive order in the name of the government for the effective enforcement of the Nepalese law on child marriage. In reference to this order, the Forum for Women, Law and Development conducted research on the causes and consequences of child marriage and to identify effective strategies to enforce the law. Their findings have been summarised below:

Weaknesses in the Nepalese law

Lack of strict liability in the law:

According to the Nepalese law, in the absence of knowledge as to the age of the girl or boy, those responsible for the marriage will go unpunished. This loophole in the law allows perpetrators of child marriage to go unpunished. In the Nepalese context, where registration of marriage is carried out in the breach, the lack of strict liability in the law makes it even more difficult to punish the perpetrators of child marriage.

Inadequate Fines

The maximum fine allowed in Nepalese law is 10,000 rupees. Not only is this fine too low to constitute any punitive element, it is also implemented in the breach.

Reporting Requirements

A case must be filed within three months of the knowledge of child marriage. This is inadequate time given that the reporting of cases in Nepal takes a long time due to poor communication and general lack of awareness of the illegality of child marriage.

Distinction with reference to Indian laws

In PIL filed by Meera Dhungana on behalf of FWLD vs. HMG, Ministry of Parliamentary Affairs, Council of Ministers, Ministry of Law and Justice, Parliament (Writ No.: 55 of 2058), the Court stated that rape could only be understood to be rape, which was a severe form of violence against women. It stated that perpetrators of such violence could not be allowed to be exempted merely on the establishment of marital relation. The main factor in the establishment of the crime stated to be consent. If consent could not be established the act would be considered rape. However, the rape law has not been amended to date.

A distinction can be drawn between Indian and Nepalese laws with reference to the above decision of the Nepal Supreme Court. In Nepal the jurisprudence relating to marital rape exists. However, forced marital sexual intercourse is still not recognized as an offence of rape in India.

SRI LANKA

In Sri Lanka, the Marriages Registration Act of 1995 provides a minimum age of 18 years for both males and females for contracting marriages. Child Marriages are void and invalid.

Kandyan Marriages in Sri Lanka are governed by the Kandyan Marriage and Divorce Act of 1952 which makes marriages invalid if either or both the parties are under eighteen years of age.[16]

Issues/Concerns

Certain personal laws provide lower minimum age or none at all. Under the Sri Lankan Muslim Marriage and Divorce Act, 1951 the approval of the Quazi is deemed sufficient to allow a girl under 12 years to get married.[17] Thus, although in 1995, Sri Lanka raised the minimum age of marriage from 12 to 18, there is a loophole for those following the Islamic religion.

In Sri Lanka, where the legal age for marriage for girls was set at 18 years, even after significant efforts at reform, the minimum age for marriage amidst the country's Muslims has not been addressed.

Under S. 8 the Kandyan Act, a Kandyan minor can be married solely upon the consent given by his guardian. Such a personal law leaves immense scope for taking undue advantage by the guardians of the child, and need to be checked.

BHUTAN

As per an Alternative Report on Bhutan[18], Article 15 of Constitution of Bhutan states that

“Men and women are equal in the eyes of the law. In reality women in Bhutan traditionally enjoyed greater privileges in property inheritance, treatment and work. With development and the import of new ideas and work culture, many of these earlier privileges are now being considered bottlenecks. A case in point is the fact that because women inherited the family properties, they were often bound to the land and missed out on education. This has now been addressed through the amendment (1995) to the Marriage Act of 1980 that provides all children equal rights to inheritance. In practice many families still follow the traditional systems.”

Within the new Constitution of Bhutan, Article 9 (18) states: “The State shall endeavor to take appropriate measures to ensure that children are protected against all forms of discrimination and exploitation including trafficking, prostitution, abuse, violence, degrading treatment, and economic exploitation”. [19] The age of marriage has been fixed at 18 for both boys and girls. No marriage certificate will be issued for marriages under 18, although it is still happening, as is clear from antenatal records in the hospitals. “Know Your Law to Protect Your Rights” is a powerful campaign by the Royal Court of Justice held in schools.

PREVALENT LEGAL POSITION UNDER MARRIAGE ACT OF BHUTAN, 1980:[20]

Kha 1-11. (RESTRICTION ON PERFORMING MARRIAGES OF MINORS)

The traditional performance of marriages between minors as mentioned hereafter in Section Kha 1-14 shall also cease with the enactment of this Act. In contravention of which, the case shall be dealt with in accordance with the provisions laid down hereinafter in Section Kha 8-20.

Kha 1-14. (RESTRICTION ON GRANT OF MARRIAGE CERTIFICATE FOR MARRIAGES OF MINORS)

Consequent to the restrictions on the marriages of minors as stipulated in the aforesaid Section Kha 1-11, no Marriage Certificates shall be granted for marriages performed between a male person not attaining the age of eighteen years and a female not attaining sixteen years as they are considered not to have attained full age. (Amendment to Section Kha 1-2 of THRIMSHUNG 1957).

To address child marriage, the Bhutanese government amended the Marriage act of Bhutan pulling the legal age to 18 for women[21].

Kha 8-20. (Imposition of fine for performing child marriages)

Whereas the performance of child marriages in villages are seemed to be against the laws,

the realization of expenses so incurred for performing such marriages shall not be permitted. And where there have been exchanges of any lands, houses, properties, livestock etc. in such marriages, then the person who has given such properties shall have to take them back, and the persons performing such child marriages in contravention of the prescribed law shall be punished with a fine extending from Ngultrums three hundred to Ngultrums one thousand.

Kha 8-21. (Imposition of fines on performing successive child marriages by fraud)

If evidence is furnished of the performance of successive child marriages by resorting to fraudulent means and of the expenses realized thereof, then the offender shall be punished with the fine prescribed in the aforesaid Section Kha 8-20. In addition, the offender by performing successive child marriages by concealing the fact of the child's prior marriages shall be punished with a separate amount of fine.

In 2010 Human Rights Report: Bhutan by Bureau of Democracy, Human Rights, and Labor, US Department of State [22] by Bureau of Democracy, Human Rights and Labor on April 8, 2011, it states that the minimum age of marriage for women is 18.

As reported in a report on Child Marriage in Southern Asia by Australian AID and International Center for Research on Women[23], according to the 2005 Bhutan Census, 15.4 percent of girls aged 15 to 19 were married while a 2006 UNICEF report found the figure to be 14 percent. The World Health Organisation's 2012 figures are much lower, estimating that 6 percent of girls between the ages of 10 and 19 had been married. What seems clear is that child marriage has become less common in urban areas of Bhutan, while girls as young as 15 in remote villages are still reportedly married in secret ceremonies. Child marriage takes place in all regions, but the incidence is higher in the western and central areas of the country. Areas where the incidence of child marriage is highest, affecting between 24 and 28 percent of girls aged 15 to 19, include: Dzonkhag of Dagana, Gasa, Sarpang, Chukha and Samtse. These relatively high rates of child marriage in Bhutan's rural areas indicate that more deliberate, strategic action needs to be taken to monitor and eradicate the practice.

According to the Child Care and Protection Act of Bhutan, 2011 (CCPA), marrying and having sex with a child is considered statutory rape.

ISSUES AND CONSEQUENCES OF CHILD MARRIAGE:

Across Southern Asia, the less education a girl receives, the more likely it is she will marry young. And like many places where child marriage is common, girls are pulled out of school so they can take on household responsibilities and have children. In Bhutan, figures for 2005-2010 show that 26 percent of those under the age of 18 were married, while the primary school net attendance ratio for urban and rural areas in the same years is 96 and 91 percent respectively. However, only 41.6 percent of students at secondary schools are girls, and women comprise only 32 percent of students at universities. There is limited access to schools in Bhutan, especially in isolated, mountainous regions, and parents are reluctant to allow their daughters to walk long distances to attend school. Additionally, in Bhutanese society, girls are expected to marry in their late teens, leading many families to discontinue the education of teenage girls. A lack of education and poor reproductive health awareness means a heightened risk of child marriage for Bhutan's girls in poorer, rural regions. This also means they are at higher risk of life-threatening maternal complications, reduced income-generating opportunities and a continued cycle of poverty for affected communities.

The National Commission for Women (NCW) recently issued strong warnings to some state governments urging them to address the issue of child marriage on a war-footing. The challenge remains greatest in the states of Rajasthan and Chattisgarh. This year, however, the NCW identified 11 states including Bihar, Maharashtra and Andhra Pradesh where child marriages are rampant.

The Women and Child Department has issued circulars and government orders to all District Collectors and Divisional Commissioners to be vigilant about any child marriage in their area of jurisdiction. With the new Prohibition of Child marriage Act 2006, there were a few welcome steps towards empowering the law enforcement machinery, however inculcating change in the mindset of the people is also necessary to abolish the social custom.

RECOMMENDATIONS:

1. Design effective child marriage monitoring systems
2. Strengthen law enforcement
3. Launch an awareness-raising campaign about child marriage and child marriage laws
4. Create girl friendly facilities and environment within the schools
5. Reproductive health education

MALDIVES

PREVALENT LEGAL POSITION:

Maldives follow Islamic Sharia Law which allows marriages at the age of 15 years while the minimum age for marriage is 18 years. While determining the legal marriages these situation comes in conflict with each other and hence the legal marriage cannot be determined, under which of the two conditions should be accepted.

The minimum age of marriage for women was 18 years old, but marriages at an earlier age occurred. Some of these marriages occurred in Pakistan and India, and those that occurred in Maldives were usually not registered in the court. As a result, it was difficult to know how many cases there were during the year. According to the Ministry of Health, if a minor wished to marry, the ministry would undertake an assessment to ensure the physical and mental well-being of the child. These children can then marry with their parent's consent. Most applications were from girls between the ages of 16 and 18, but the ministry did not provide a count of how many applications they considered. In addition the ministry stopped accepting applications to consider underage marriages. Under Islamic practice, husbands may divorce their wives more easily than vice versa, absent mutual agreement to divorce. Sharia also governs estate inheritance, granting male heirs twice the share of female heirs. In practice the country's inheritance laws are complex. According to the prosecutor general's office, unless the men in the family demand a larger share, property is divided equally among siblings.[24]

Over the past ten years there has been no record of children under 15 being married in Maldives. However, the number of marriages under 18 is increasing.

Structures such as the Units for the Rights of the Children (URC) and the Children's Court have designed programs to respond to the status of children and mandatory reporting of violence against children have been set out in the Law 9/91 to further protect children. In addition, the established Child and Family Protection Authority will look at a case before saying whether a marriage can take place or not. Should it be in the best interests of the girl, such as if there is a pregnancy, it may be possible for her to get married earlier than 18.

As reported in a report on Child Marriage in Southern Asia by Australian AID and International Centre for Research on Women[25], the legal system in the Maldives is based on a mixture of Islamic law and English common law, with the latter being more influential in regulating commerce and other activities that fall outside of the social realm. In relation to personal status, Sharia Law is more dominant, as adapted to the modern Maldivian judicial system. The Maldives acceded to CEDAW in 1993, with general reservations regarding any provisions contradictory to the government's interpretation of Sharia law or Maldivian tradition. Many studies in Southern Asia report that child marriage may be higher in those Islamic communities that follow Sharia Law, which allows girls to marry at age 15. Therefore, even though the legal age of marriage is now 18 for girls in the Maldives, according to custom, the minimum age for marriage in the Maldives that is commonly observed in practice has been 15. This is why many underage unions are carried out without being officially registered. Also, the current civil law allows for girls or their fathers to apply for exemptions, most frequently received for girls between the ages of 16 and 18. And importantly, education is not compulsory in the Maldives, which makes it easier for girls to drop out of school and marry earlier.

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ISSUES AND CONSEQUENCES OF CHILD MARRIAGE:

In addition to the policy implications of weak education laws, girls everywhere who are pregnant under the age of 18 have a much higher likelihood of suffering from birth complications or death than older women. One study in Southern Asia found that girls between the ages of 15 and 19 are twice as likely to die in childbirth as women in their 20s. Furthermore, as a result of prolonged childbirth and inadequate medical care, some young mothers also develop obstetric fistula, a debilitating and stigmatizing injury that can leave girls barren or even rejected by family and society. Babies born to teenage mothers also suffer and are more likely to weigh less than 2.5 kilos. Young brides are also more susceptible to sexually-transmitted infections, including HIV/AIDS, as their older male partners are more likely to have had unprotected sexual intercourse with multiple

partners before marriage. Child marriage can also result in a greater risk of girls falling victim to domestic violence because of an extreme power imbalance in the home between a young bride and her husband. This problem is often exacerbated when there is a large age difference because child brides are usually not mature or skilled enough to carry out the many household responsibilities that are expected of them. One study found that many girls in Southern Asia are overburdened with chores and face verbal and physical abuse at the hands of their in-laws as well. Although exact statistics could not be found, according to a 2006 government-sponsored study in the country, domestic violence and sexual abuse are widely prevalent in the Maldives, and the control of married women over their reproductive lives is often limited.

RECOMMENDATIONS:

- Strengthen marriage registration mechanisms
- Improve law enforcement
- Engage community & religious leaders
- Invest in a countrywide awareness-raising campaign on the adverse effects of child marriage
- Keep girls in school

PAKISTAN

Like all other countries, the issue of child marriage is a matter of great concern for Pakistan. Pakistan is a country with lot of tradition and beliefs, thus their deeply rooted customs govern the society than the laws of the land. These customs are one of the major factors leading to child marriage along with other factors such as poverty and illiteracy. Poverty, traditions, lack of awareness, gender discrimination etc are the main reasons for Child Marriages in Pakistan.

Every child marriage is a gross violation of human rights. The main concern of national legislations of Pakistan is its number of laws that have impact on legal age of marriage and its conflicting content. According to the Mohammedan law, a Nikah is a contractual agreement drawn between a husband and wife. Elements of a valid Nikah are (1) offer of marriage from one party and its acceptance from the other (2) Conclusion of the contract with a witness to avoid suspicion later on.[26]

PREVALENT LEGAL POSITION:

Being a signatory and party to CRC, CEDAW and International Convention on Civil and Political Rights, Pakistan is responsible to include these provisions in its national legislation. In addition to these conventions, there are many other domestic laws such as (1) The Child Marriage Restraint Act, 1929 (2) The Dissolution of Muslim Marriage Act, 1939 (3) The Muslim Family Laws Ordinance 1961 (4) The Offence of Zina (Enforcement

of Hudood) Ordinance 1979 that are relevant to child marriage and emphasis the protection of children[27].

The Constitution of Islamic Republic of Pakistan, 1973: Art 25 of the Constitution guarantees a certain rights and freedom for the people within the State jurisdiction which includes: (1) all citizens are equal before law and are entitled to get equal protection of law (2) There shall be no discrimination on the basis of sex alone (3) Nothing in this article shall prevent the State from making any provision for the protection of women and children. From these provisions it can be concluded that there shall be no direct or indirect discrimination within the provisions of law in relation to the legal age of marriage. And any law inconsistent to this provision of Constitution will be void to that extent of inconsistency.

The Child Marriage Restraint Act, 1929: Child Marriage Restraint Act, 1929 (CMRA) is the most fundamental law governing Child Marriages in Pakistan. Under Art 2(a) of CMRA, a child is defined as a person who if a male is under 18 years of age and if a female is sixteen years of age.

Dissolution of Muslim Marriage Act, 1939: DOMMA is relevant to child marriage as it gives grounds for women to dissolve her marriage. Provisions of this Act help a girl to repudiate her marriage if it is consummated by her father or guardian before she attaining the age of 16 years and she can dissolve the marriage before she attaining the age of 18, under Sec 2 (vii).

Muslim Family Law Ordinance, 1961: Muslim Family Law Ordinance, 1961(MFLO) prescribes various forms of contract of marriage and also lays down the requirements for the marriages to get registered. According to Sec 5(1) of MFLO all marriages once consummated must be registered with a Nikah Registrar, failure of which may result in simple imprisonment of three months or fine which may extend to thousand rupees or both.

Offence of Zina (Enforcement of Hudood) Ordinance, 1979

Offence of Zina (Enforcement of Hudood) Ordinance, 1979 is one of the most relevant laws that establishes the age of majority for both boys and girls. The Hudood Ordinance criminalises any sexual intercourse between an adult man or woman without a valid marriage and Art 2(a) defines an adult as a person who a male, at the age of eighteen and a female, at the age of sixteen or has attained puberty.

ISSUES:

Firstly, the Constitution states clearly the marriageable age of both male and female and any law inconsistent with this provision will be considered invalid. Child Marriage Restrain Act, 1929 lays down the marriageable age under Sec 2(a), the question arises with regards to its inconsistency with the Constitution as it says there cannot be any direct or any indirect discrimination under Art 25. Sec 2(a) also stands inconsistent to Art 2 and Art1 of CRC and CEDAW respectively.

Similarly Dissolution of Muslim Marriages Act, 1939 allows a girl to dissolve her marriage if it was consummated by her father or guardian before 16 years of age, but this provision does not talk about right of a girl to choose a person to marry and when to dissolve it according to her will, though the Court can dissolve a marriage if the wife was married before attaining the age of 16. According to Muslim Family Law Ordinance, 1961, all marriages must be duly registered under the Nikah Registry by the parents of the bride but the fundamental problem with this provision is that firstly there is no proper supervision of registration and consequently the parents merely fill out the registration documents to show that the girls are of marriageable age. Another problem is that, due to lack of awareness no births of children are registered as per the rules. Therefore due to lack of proper documentation and birth certificate it is difficult to establish marriageable age of girls and there is no solid evidence to support the claim.

Finally, Offence of Zina (Enforcement of Hudood) Ordinance, 1979 criminalises any illicit relation between a male and female who are not bound by a marriage and who is below the marriageable age and defines the term adult Art 2(a). But this definition is contradicting to that of Child Marriage Restraint Act; i.e. under the Hudood Ordinance a female is considered adult after attaining puberty and this has an impact on the age of marriage for the girls. But the subsequent Protection of Women (Amendment of Criminal Laws) Act 2006 (POWA) repealed the definition of marriage under the Hudood Ordinance and introduced definition for rape to the Pakistan Penal Code. PPC states that sexual intercourse with or without the consent of a female who is under the age of sixteen amounts to rape. If this provision is effectively enforced then it will protect minor girls from being at the early age.

RECOMMENDATIONS:

From the above laws it can be concluded that, though there are so many laws protecting children from child marriage they lack proper effectiveness and enforceability. All laws are contradicting to one or the other and it makes legislations too complex and confusing. Also punishments granted by each piece of legislation are too simple; maximum of an imprisonment for nine months and fine. If laws lay down severe and harsh punishments, then it will have a deterring effect on those who wish to consummate a child marriage. And finally there is lack of enforceability from the base level, for instance improper documentation of child birth itself is sufficient to prove lack of supervision by law. Thus the Laws talk about child marriage and provide provisions for the same, but its effort to abolish child marriage is too less.

AFGHANISTAN

Conditions in Afghanistan are more or less similar to that of Pakistan with respect to Child Marriages. Factors leading to Child Marriage are also similar in these countries. However, unlike Pakistan, Afghanistan does not have any specific law dealing with Child Marriage. Provisions regarding the marriageable age of both male and female are drawn from the

Civil Law of Republic of Afghanistan. Even the Sharia Law also plays an important role in governing marriages in Afghanistan. Afghan Society is governed by social customs and traditions more than the laws of the land and that is the main reason for increase in the number of Child Marriages in spite of Laws stating the marriageable age of both male and female.

PREVALENT LEGAL POSITION:

The Constitution of Afghanistan: Art 22 of the Constitution grants equal rights and freedom for both men and women in before law.

Civil Law of Afghanistan: According to Art 40, conditions for a valid marriage are: (1) Both parties must have legal capacity (2) In case of under-age marriage; guardian must be present (3) Contract of marriage to be made in the presence of beholder. Art 70 of the Civil Law provides for the legal age for marriage, i.e. 18 for males and 16 years for females. And finally Art 71 states that when a girl has not attained the legal age of marriage, her marriage right belongs to her father. However, under sub-section 2 no girl below 15 years of age is married by any means. Art 66 and Art 77 requires free consent of the parties for a marriage, but in Afghanistan this is ineffective because all marriages are decided and conducted by the elders of the family and consent or the opinion of the parties to marriage is not obtained[28].

Sharia Law: Sharia Law is referred to as Islamic Law that governs all customs and traditions of Muslims. Though there are different schools within Sharia Law with regards to marriage. According to Sharia Law (1) the parties to marriage must be sane and should be adults (2) in case of non-adulthood marriage guardianship of father or grandfather is required (3) fathers and grandfathers are the proprietors of the children and can marry them off. But still the question of attaining adulthood persists as there are no specific provisions dealing with it. Therefore it is assumed that a girl is said to be an adult when she attains puberty which can be between 9 years to 17 years of age.

ISSUES:

Constitution of Afghanistan provides for equal rights for both men and women and there is no room for discrimination in the eyes of law. But Afghanistan is majorly governed by their religious beliefs and customs; therefore they believe that the women are supposed to be dependent on men and inferior to them. And it is not possible for women to give their opinions. Similarly Afghan Civil Law talk's lot about provisions related to marriages, Art 70 and Art 71 deals with the marriageable age of both male and female. Though these provisions lays down the marriageable age for both male and female the exact provision prohibiting child marriage is ambiguous and unclear. Art 70 gives the age for male and female to consummate marriage but subsequently under Art 71 it is stated that marriage rights of an under aged girl lies with her father. This provision implicitly consents for child marriage and sub section 2 prohibiting marriage of girls less than 15 years is also unclear when read along with Art 71. According to law consent of parties are required for a

marriage, but in Afghanistan it is not possible as it is the elders of the family who take decisions. Finally in Sharia Laws though different schools agree that a marriage can be consummated only after the girl attaining adulthood, there are a lot of confusions regarding the age at which the girl reaches adulthood as there are no specific provisions. Therefore the final decision for a girl's marriage lies with her father who can consummate the marriage even if she is not an adult and consent of the child is not important.

RECOMMENDATIONS:

From the above mentioned laws, we can conclude that the law itself is ambiguous regarding the age of marriage and adulthood. And no punishment is prescribed for those who indulge in the same. Unless the law is made effectively and enforced, abolishing child marriage will be a distant dream. Moreover, Afghanistan is one among the signatories to conventions such as International Women's Conference and Convention for Children's Rights. These conventions and declarations have clearly laid down the marriageable age for men can be between 18 to 21 years and for women from 16 to 18 years. Being party to these conventions, Afghanistan is obliged to implement its policies in their national law and bring changes to the child marriage laws by abiding to its rules.

BANGLADESH

According to UNICEF, Bangladesh has the highest rate of child marriages i.e. 66%. [29] Like all other countries, traditions, customs, poverty leads to child marriage. Also it is considered as a means to protect girl child from sexual harassment and to protect them from unsafe environment. Bangladesh is a party to UN Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages. However, Bangladesh has reserved the right to apply these provisions in accordance with the personal laws of the different communities. Though the constitution guarantees equal rights for both men and women the status of women are considered much lower compared to men due to their social customs and traditions. There are legislations to protect women from domestic violence and harassment, but due to absence of Uniform Civil Code, personal laws of religious communities govern the family matters such as marriage, divorce etc.

PREVALENT LAWS AND ISSUES CONCERNED:

Child Marriage Restraint Act, 1929 enacted during the pre-partition of India is still in existence in Bangladesh. And under this Act, a child is defined as a female below 18 years of age and a male below 21 years of age. The Act tries to abolish child marriage on the grounds of age and imposes punishment including imprisonment and fine on those who indulge in such an act. However under-age marriage is considered valid by religious personal laws. CMRA is deficient when it comes to enforcement of the Act and that is the reason for such tremendous increase in the rate of child marriage. In spite of legislations such as Muslim Marriage and Divorce (Registration) Act 1974, Muslim Family

Law Ordinance 1961, Cruelty to Women (Deterrent Punishment) Ordinance etc but still women are in deplorable condition[30].

RECOMMENDATIONS:

From the above studies we can conclude that enacting a law alone is not sufficient enough to abolish child marriage as it is too deep rooted in the society. Even in the presence of law, people of these countries are mainly governed by their customs and traditions especially with regards to the rights and freedom of women. Reasons for ineffectiveness of the Act include the absence of birth registration and marriage registration as mentioned in the earlier cases. Thus, it's the duty of the state to take initiative to spread awareness throughout the society to abolish child marriage along with it laws relating to child marriage should be harmonised and must be in consistent with personal laws of different religious groups. And finally, people should be made aware of the fact that human rights are more superior to ones customs and beliefs, sthus change should be initiated from the grass root level of the society.