

# LLM Dissertation

*by* Rabia Shuja

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Child Marriage in South Asia:  
A Case Study on India, Pakistan, and Bangladesh

Research dissertation presented in partial fulfilment of the requirements for the degree of  
LLM in International Human Rights Law  
(QQI)

Law School, Griffith College Dublin

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2020

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is the result of my own work and that where reference is made to the work of others, due acknowledgment is given.

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### **List of Abbreviations**

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CII	Council of Islamic Ideology
CMPO	Child Marriage Protection Officer
CMRA	Child Marriage Restraint Act
CRC	Convention on the Rights of the Child
DMMA	Dissolution of Muslim Marriages Act
HMA	Hindu Marriage Act
HRW	Human Rights Watch
ICCPR	The International Covenant on Civil and Political Rights
ICESCR	The International Covenant on Economic, Social and Cultural Rights
IPC	Indian Penal Code
JJA	Juvenile Justice Act
NCRB	National Crimes Record Bureaus
NCW	National Commission for Women
NHRC	The National Human Rights Commission
UDHR	Universal Declaration of Human Rights

## **Abstract**

Child marriage is a global phenomenon that severely impacts both the developing and developed world. With emphasis on South Asia, this dissertation aims to address why child marriage remains a prevalent issue, despite being prohibited by international and domestic law. The research was conducted through an analysis of the socio-legal landscape of India, Pakistan, and Bangladesh. It explored the countries' shared colonial history, as well as its influence on current child marriage laws. The domestic legal framework of each country was also critically analysed to ascertain whether their laws were in line with international standards, as well as to identify legal loopholes, and potential problems with implementation. Thus, this dissertation proposed that numerous factors contribute to the high rates of child marriage in South Asia. These factors include inadequate national legislation, dual systems of law, limited access to justice, poverty, gender inequality, restricted access to education, as well as religious and cultural norms. The effects of these factors are twofold - on one hand the laws that 'prohibit' child marriage in fact enable it to occur with impunity. Moreover, it creates a social landscape that promotes the practice of child marriage and prevents victims from obtaining justice due to poverty driven desperation and harmful social norms.

The author proposed that child marriage may only be eradicated if the overall rights of children are protected. Therefore, a strong implementation of child marriage laws coupled with sufficient protection mechanisms, as well as an emphasis on gender equality and education may eventually eliminate the practice.

# CHAPTER 1

## INTRODUCTION

### 1.1. Child Marriage

Child Marriage is a phenomenon that has had a significant impact on both the developed and the developing world<sup>1</sup>. In some countries child marriage is practiced in certain marginalised communities, while in others it is prevalent in society as a whole<sup>2</sup>. The practice of marrying children has a profound effect on society, as well as a consequential impact on national and global development<sup>3</sup>.

The single act of contracting a marriage with a minor leads to numerous human right violations. It has been deemed a violent practice which is rooted in discriminatory attitudes towards women and girls<sup>4</sup>. Child marriage leaves young girls vulnerable to rape, domestic abuse, and sexual exploitation<sup>5</sup>. It also leads to a life of isolation for child brides, as once a girl is married off, she is considered to have reached the age of majority<sup>6</sup>. Thus, she has little to no access to education and is denied the rights and privileges afforded to other children in the community<sup>7</sup>.

According to a survey conducted by the Population Council, one in seven girls in the developing world is married before the age of 15<sup>8</sup>. Moreover, approximately half of the 331 million girls in developing countries are expected to be married before the age of 20<sup>9</sup>. It has been predicted that if this trend continues, approximately 142 million girls will be victims of

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<sup>1</sup> 'Ending Child Marriage: Progress and Prospects' (Unicef 2013) 2

<sup>2</sup> *ibid* 3

<sup>3</sup> 'The Devastating Impact Of Child Marriage On Girls Around The World' (*Amnesty International USA*, 2019) <<https://www.amnestyusa.org/the-devastating-impact-of-child-marriage-on-girls-around-the-world/>> accessed 12 June 2020.

<sup>4</sup> 'Ending Child Marriage: Progress and Prospects' (Unicef 2013) 3

<sup>5</sup> Mabel van Oranje, 'Child marriage: a form of violence too often ignored' (*Girls not Brides* 2016)

<<https://www.girlsnotbrides.org/child-marriage-form-violence-often-ignored/>> accessed 12 June 2020

<sup>6</sup> 'Child Marriage in South Asia: International and Constitutional Legal Standards and jurisprudence for promoting accountability and change' (CRR 2013) 10

<sup>7</sup> *ibid*

<sup>8</sup> 'Ending Child Marriage: A guide for global policy action' (IPPF 2006) 10

<sup>9</sup> 'Ending Child Marriage: Progress and Prospects' (Unicef 2013) 3

child marriage in the next decade.<sup>10</sup> The practice of child marriage spans various cultures and traditions. However, the common themes that exist among them are poverty, sex inequality, lack of education, and religion<sup>11</sup>.

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## **1.2. Research Topic**

The UN Conventions on the Rights of the Child (CRC) states that any individual under the age of 18 is deemed a child<sup>12</sup>. Therefore, any marriage contracted where one or both parties are under the age of 18 is a child marriage<sup>13</sup>. The definition given to a child by the CRC has been echoed in numerous international documents such as the International Covenant on Civil and Political Rights<sup>14</sup> (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)<sup>15</sup>. Furthermore, the Committee on the Elimination and Discrimination against Women also shared the CRC's sentiment and reaffirmed that an individual must at least be 18 years old in order to be legally married<sup>16</sup>. Despite being prohibited by numerous international documents, child marriage remains a global phenomenon<sup>17</sup>.

As discussed earlier, child marriage is considered a gross violation of human rights. According to UNICEF, this crisis occurs at an alarmingly high rate in South Asia, which is responsible for 42 percent of child marriage cases in the world<sup>18</sup>. Child marriage disproportionately affects the girl child. Studies have shown that 45 percent of all women between the ages of 20 to 24 reported being married before the age of 18, 17 percent of

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<sup>10</sup> '142 Million Girls Could Be Married before 18 in the Next Decade, Warns New Report' (*UNFPA* 2012) <<https://www.unfpa.org/press/142-million-girls-could-be-married-18-next-decade-warns-new-report>> accessed 13 June 2020

<sup>11</sup> 'Child Marriage in South Asia: International and Constitutional Legal Standards and jurisprudence for promoting accountability and change' (CRR 2013) 16

<sup>12</sup> Convention on the Rights of the Child (adopted 30 November 1989, entered into force 2 September 1990) 3 UNTS 1577

<sup>13</sup> *ibid*

<sup>14</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 171 UNTS 999

<sup>15</sup> The International Covenant on Economic, Social, and Cultural Rights (adopted 16 December, entered into force 3 January 1976) 3 UNTS 993

<sup>16</sup> 'Child Marriage in South Asia: International and Constitutional Legal Standards and jurisprudence for promoting accountability and change' (CRR 2013) 10

<sup>17</sup> *ibid*

<sup>18</sup> *ibid*

whom were married before the age of 15<sup>19</sup>. Studies predict that 130 million more girls will be married in South Asia between the years of 2010 to 2030<sup>20</sup>.

National governments in South Asia have acknowledged the danger and seriousness of child marriage and have taken steps to eradicate it<sup>21</sup>. The laws in countries such as India and Bangladesh mirror international standards, with the age of majority set at 18 for both sexes<sup>22</sup>. Conversely, Pakistan which is influenced by shariah law, states that females may be married at the age of 16<sup>23</sup>. Although efforts have been put forth by national governments to combat child marriage, it remains a serious problem. High poverty rates, coupled with cultural and religious norms continue to exacerbate the practice of child marriage, and hinder the application of the law<sup>24</sup>. Therefore, the purpose of this dissertation is to examine the current legal framework for child marriage in South Asia as well as its impact on society.

### **1.2.1 Research Question**

The research question this thesis aims to answer is: 'If International and Domestic legal frameworks prohibiting Child Marriage exist, why does it remain a prevalent issue in South Asia today?'

### **1.2.2. Research Objective**

The aim of this dissertation is to examine why South Asia has the highest rate of child marriage in the world, despite the fact that countries have taken legal steps to eradicate the issue. The three countries this dissertation will focus on are India, Pakistan and Bangladesh. It will provide an in-depth analysis of the domestic laws in each country, and analyse whether the current standard of child protection is in line with international law.

This study will be divided into six chapters to provide a coherent and detailed examination of the issue at hand. Chapter one of this thesis introduces the overall problem and objectives of the study. Chapter two will comprise of international laws and norms which address the issue of child marriage. This includes an in-depth look at the standards set by UN Conventions and

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<sup>19</sup> 'Child Marriage' (*Unicef.org*, 2019) <<https://www.unicef.org/rosa/what-we-do/child-protection/child-marriage>> accessed 13 June 2020

<sup>20</sup> *ibid*

<sup>21</sup> 'Child Marriage in South Asia: International and Constitutional Legal Standards and jurisprudence for promoting accountability and change' (CRR 2013) 10

<sup>22</sup> 'Child Marriage in Southern Asia: Policy Options for Action' (ICRW 2012) 1

<sup>23</sup> *ibid*

<sup>24</sup> *ibid*

Resolutions on the rights of a child. It will also discuss the legal steps taken by India, Pakistan and Bangladesh in prohibiting child marriage and safeguarding the rights of children.

Chapter three focuses on how colonialism shaped child marriage laws in South Asia. This chapter is divided into four parts. The first explores the cultural traditions and laws of the Subcontinent prior to Colonialism. The second and third parts discuss how colonialism restructured the norms of the Muslim and Hindu communities. The final aspect of this chapter discusses how British colonialism redefined the age of consent.

Chapter four will be focused on identifying the driving factors of child marriage. The four main factors in relation to South Asia will be discussed, these being: gender inequality, poverty, lack of education, and religious and cultural norms. Furthermore, this chapter will assess the effect child marriage has on society, through addressing child marriage's impact on fertility and population growth, health and violence, as well as economic productivity.

Chapter five analyses the limitations of national legislation in India, Pakistan and Bangladesh. This chapter will primarily focus on the shortcomings of national legislation as well as its enforceability. Issues such as ambiguity in the law, access to justice, as well as societal norms will be discussed as factors hindering the implementation of law.

Chapter six will conclude this research with a discussion on the findings and will also endeavour to provide a solution that is aimed at minimising and eventually eradicating child marriage. This will be premised around making education more accessible, eradicating poverty, registering children at birth, as well as pushing for the enforcement of legislative and administrative measures.

### **1.3. Research Methodology and Limitations**

The research conducted for this paper will be qualitative in nature. Existing data will be drawn upon to provide a comprehensive study on the legal scope of child marriage in South Asia and its effect on society. This study will be supported by four forms of methodological research.

The doctrinal method will be utilised to outline the rights and protection granted to children under international law and used to assess the domestic legislation and case law on child marriage. A doctrinal analysis is essential, since a clear understanding of the law is important in order to understand the universal standard of protection offered to children under the law, and why in certain cases national legislation has failed to meet that standard.

Additionally, a historical analysis will be conducted on the evolution of child marriage laws. This method will be used when discussing the laws and traditions of pre-colonial India and how these norms evolved with the arrival of the British. Furthermore, this paper will also conduct a socio-legal study on the impact the current state of the law and the practice of child marriage has on children and society as a whole. This method will help provide a clear picture on how insufficient laws negatively impact a child's rights.

Finally, this paper will employ the comparative method to illustrate the similarities and differences between each jurisdiction's legal approach to child marriage. Since India, Pakistan and Bangladesh once formed the Subcontinent, they have shared history, traditions, and religious beliefs. Due to this, the comparative method may be used to examine whether a pattern exists between the countries at hand. Furthermore, this method will be used to provide possible solutions to combat child marriage by comparing the legal framework in South Asia to the laws and standards set out in International law.

Possible limitations to this dissertation may be time constraints and limited access to cases, due to the conservative nature of these countries and the sensitive subject matter. Furthermore, this study is qualitative in nature and hence may not be capable of being independently verified.

#### **1.4. Literature Review**

There is a plethora of academic literature when it comes to child marriage. Seminal contributions have been made in this area by numerous international organisations and academics. For instance, Jaya Sagade's 'Child Marriage in India; Socio Legal and Human Rights Dimensions' illustrates India's continuous struggle with eradicating child marriage<sup>25</sup>. The book details the history of child marriage in India, and analyses why the practice

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<sup>25</sup> Jaya Sagade, '*Child Marriage in India: Socio-Legal and Human Rights Dimensions*' (Oxford University Press 2005)

continues to persist<sup>26</sup>. Sagade also draws attention to the devastating effects child marriage has on children, especially the girl child<sup>27</sup>.

Alternatively, Khalid Manzoor Butt and Sofia Naveed's 'The Cause and Consequences of Child Marriage in South Asia: Pakistan's Perspective' identifies the causes and impact of child marriage on children, and the role religion plays in Pakistan<sup>28</sup>. Butt and Naveed shed light on the fact that religious sentiments in Pakistan are highly sensitive, and therefore great importance is given to Islamic Scholars and religious leaders who have previously opposed laws which prohibit child marriage, deeming that such a prohibition would be unIslamic<sup>29</sup>. Moreover, solutions to reduce child marriages in the region are also offered<sup>30</sup>.

In relation to child marriage in Bangladesh, 'Ending Impunity for Child Marriage in Bangladesh', published by the Center of Reproductive Rights<sup>31</sup> offers an analysis of the main factors behind child marriage, as well as discusses Bangladesh's national legal framework<sup>32</sup>. Moreover, it states that issues pertaining to marriage are predominantly dealt with by personal laws which are specific to each religious community; this conflict causes laws regarding child marriage to become stagnant<sup>33</sup>.

Additionally, to consider the impact Colonialism has on laws in India, Pakistan and Bangladesh, this study will be drawing upon Elisa Giunchi's 'Reinvention of Sharia under The British Raj: In Search of Authenticity and Certainty'<sup>34</sup> as well as Varsha Chitni and Danaya Wright's 'The Legacy of Colonialism: Law and Women's Rights in India.'<sup>35</sup> The former article chronicles how the British distorted Hanafi ideology, and articulates that the codification of religious texts coincided with the idea that political incompetence could be

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<sup>26</sup> 26 Jaya Sagade, 'Child Marriage in India: Socio-Legal and Human Rights Dimensions' (Oxford University Press 2005)

<sup>27</sup> *ibid*

<sup>28</sup> Khalid Manzoor Butt and Sofia Naveed, 'The Causes and Consequences of Child Marriage in South Asia: Pakistan's Perspective' (2015) 30 *South Asia: Journal of South Asian Studies* (ns) 161

<sup>29</sup> *ibid* 169

<sup>30</sup> *ibid*

<sup>31</sup> 'Ending Impunity for Child Marriage in Bangladesh: Normative and Implementation Gaps' (CRR 2018)

<sup>32</sup> *ibid*

<sup>33</sup> *ibid*

<sup>34</sup> Elisa Giunchi's 'Reinvention of Sharia under The British Raj: In Search of Authenticity and Certainty' (2016) 16 *Journal of Asian Studies* 1119

<sup>35</sup> Varsha Chitni and Danaya Wright 'The Legacy of Colonialism: Law and Women's Rights in India' (2007) 64 *Walsh and Lee* 1315

counteracted with scripturalist Islam<sup>36</sup>. The latter explores how the British ‘civilising’ mission impacted law reforms in India, specifically amongst the Hindu community<sup>37</sup>.

Lastly, in relation to international law’s role regarding the rights of children, Geraldine Van Bueren offers insight into the nature of violations of children's rights on a global level. Her book, ‘The International Law on the Rights of a Child’, provides a comprehensive examination of the status of children under international law<sup>38</sup>.

The list of academic literature mentioned above is not exhaustive. As previously mentioned, there is a plethora of literature regarding child marriage, many of which will be used in the course of the paper.

#### **1.4.1. Contribution to Existing Academic Literature**

The existing literature provides a detailed account of the causes and consequences of child marriage, as well as its relationship with the law. However, existing works either discuss child marriage in relation to a single country, or on a global level. This at times offers a limited perspective of this issue at hand. The current research will examine the legal scope of child marriage in South Asia by conducting a case study on three countries which produce one of the highest rates of child brides in the world. This study will focus on the case law and legislation of each country and analyse its impact on society. There will also be a comparative study to examine whether similar patterns exist between how each country combats child marriage. Furthermore, it will examine the historical aspect of child marriage laws which help paint a better picture of why the problem persists in South Asia. Additionally, new developments have taken place such as Bangladesh’s enactment of the highly problematic Child Marriage Restraint Act 2017<sup>39</sup>, which permits underage marriages to take place under special circumstances; as well as Pakistan’s failed attempt to pass the Child Marriage Restraint (Amendment) Bill 2019<sup>40</sup>. These along with other new developments will be incorporated into the research.

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<sup>36</sup> Elisa Giunchi’s ‘Reinvention of Sharia under The British Raj: In Search of Authenticity and Certainty’ (2016) 16 *Journal of Asian Studies* 1119

<sup>37</sup> Varsha Chitni and Danaya Wright ‘The Legacy of Colonialism: Law and Women’s Rights in India’ (2007) 64 *Walsh and Lee* 1315

<sup>38</sup> Geraldine Van Bueren, *The International Law on the Rights of a Child* (Martinus Nijhoff Publishers 1998)

<sup>39</sup> Child Marriage Restraint Act 2017, Art 19

<sup>40</sup> Child Marriage Restraint Bill 2019

### **1.5. Dissertation Findings**

This study will provide a clear picture on the current state of law regarding child marriage in South Asia as well as its effect on society. Furthermore, it will identify the various factors that contribute to girls being at risk of child marriage. This includes religious norms and gender inequality. For instance in Islamic law, which is recognised in both Pakistan and Bangladesh, a girl child may legally marry once she attains puberty<sup>41</sup>. Moreover, since most South Asian countries are highly patriarchal, there is stigma surrounding female sexuality and girls are perceived as property, which results in parents marrying their daughters off at a young age<sup>42</sup>. Other driving factors that will be identified are barriers to education and poverty<sup>43</sup>. All three countries discussed have high poverty rates. In the course of this paper it will be revealed that most cases of child marriage take place in rural areas because parents cannot afford to provide for their children, and daughters are seen as economic burdens<sup>44</sup>.

Moreover, this study will determine that child marriage negatively impacts the reproductive health of girls. It often leads to early pregnancies, childbirth, and serious health issues<sup>45</sup>. Young mothers experience higher rates of maternal mortality since their bodies are unprepared for childbirth<sup>46</sup>. The findings in this study will also conclude that child marriage exposes children to various forms of domestic abuse<sup>47</sup>.

Lastly, this study will establish that although India, Pakistan and Bangladesh have enacted national laws to prohibit child marriage, the law is either too weak or fails due to lack of enforcement<sup>48</sup>. Issues such as ambiguity and inconsistencies within the law as well as access to justice play a role in the failure of implementation<sup>49</sup>. Numerous recommendations will be given to help eliminate the practice of child marriage. This includes amending current legislation and emphasising the importance of the overall protection of a child's rights. Hence tackling poverty, promoting education, and registering children at birth, among other factors will be discussed as ways to reduce the chances of child marriage.

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<sup>41</sup> Katie Hodgkinson 'Understanding and Addressing Child Marriage' (Her Choice Alliance 2016) 22

<sup>42</sup> *ibid* 17

<sup>43</sup> Without birth registration, children are shut out of society altogether' (*Unicef* 2019)

<[https://www.unicef.org/protection/57929\\_67803.html](https://www.unicef.org/protection/57929_67803.html)> accessed 14 June 2020

<sup>44</sup> Katie Hodgkinson 'Understanding and Addressing Child Marriage' (Her Choice Alliance 2016) 20

<sup>45</sup> Saragan Hain and Kathleen Kurz 'New Insights on Preventing Child Marriage: A Global Analysis of Factors and Programs' (ICRW 2007) 1

<sup>46</sup> *ibid* 4

<sup>47</sup> *ibid*

<sup>48</sup> 'Ending Impunity For Child Marriage in Pakistan: Normative and Implementation Gaps' (CRR 2018)

<sup>49</sup> *ibid* 18

## CHAPTER 2

### INTERNATIONAL AND DOMESTIC LAWS ADDRESSING CHILD MARRIAGE

The practice of child marriage has been condemned by numerous international organisations and governments alike. Despite the enactment of legislation, both on the international and domestic level, child marriage remains a relevant issue. The United Nations (UN), along with other organisations, have made efforts to reduce the rate of child marriage<sup>50</sup>. Child marriage has been banned both expressly and implicitly by multiple international human rights instruments, such as: the Universal Declaration of Human Rights (UDHR), the ICCPR, the ICESCR, the CRC and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). These human rights instruments have provided legislative guidelines for marriage, particularly regarding issues pertaining to the age of majority, consent, equality within the marriage, as well as other rights guaranteed by the Conventions<sup>51</sup>.

This chapter will discuss the role international and domestic law plays in combating child marriage. The first section will provide a definition of child marriage; whereas the second section shall explore the protection afforded by the UN conventions and treaties against it. The final section will focus on child marriage laws in South Asia.

#### **2.1. The Definition of Child Marriage.**

The term ‘child marriage’ is described as a legal or customary union between two people, of whom one or both spouses are below the age of 18<sup>52</sup>. The practice predominantly affects the girl child<sup>53</sup>. Child marriage is often referred to as ‘early’ or ‘forced’ marriage since children are not able to give free and informed consent<sup>54</sup>. Due to their age, many girls do not understand the consequences of being married or are unaware that they have other options. Therefore, they may ‘willingly’ consent to the marriage without understanding its ramifications<sup>55</sup>. Furthermore, the term ‘forced marriage’ may also be used since girls are

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<sup>50</sup> Unicef, ‘Early Marriage: Child Spouses’ (2001) 7 Innocent Digest 1, 10

<sup>51</sup> Cherreka Montgomery ‘Too Young to Wed’ (2005) ICRW 2, 11

<sup>52</sup> UNFPA, ‘Marrying Too Young: End Child Marriage’ (2012) UNFPA 4, 11

<sup>53</sup> *ibid*

<sup>54</sup> *ibid*

<sup>55</sup> *ibid*

often coerced into getting married by their families due to social and religious pressures as well as economic reasons<sup>56</sup>.

## **2.2. International Human Rights Norms Addressing Child Marriage**

In 1945, the UN Charter articulated a commitment to uphold the fundamental rights of citizens and outlined a broad set of principles which were rooted in the ‘universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.’<sup>57</sup>

### **2.2.1. Universal Declaration of Human Rights**

Although child marriage is not expressly prohibited in the UDHR, there are numerous provisions which conflict with the practice. For instance, Article 3 of the Declaration states that ‘everyone has a right to life, liberty, and security of person’<sup>58</sup>. Whereas Article 5 states that ‘No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment’<sup>59</sup>. These rights are often violated in child marriages since victims are frequently subjected to physical and sexual abuse.

Article 16 of the Declaration references ‘men and women of full age’ and states: ‘Marriage shall be entered into only with the free and full consent of the intending spouses’<sup>60</sup>. The preparatory documents of the UDHR have expressed that the words of Article 16 amounts to a ban on child marriage, since children do not have the capacity to give ‘free’ and ‘full consent’<sup>61</sup>. Although the Declaration is not legally binding, it is morally persuasive and is recognised as a part of customary international law<sup>62</sup>.

### **2.2.2. The International Covenant on Civil and Political Rights**

Like the UDHR, the ICCPR does not explicitly prohibit child marriage. However, its provisions are in direct conflict with the practice. The Political Covenant’s Human Rights Committee has developed numerous interpretations of its articles. For instance, the

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<sup>56</sup> UNFPA, ‘Marrying Too Young: End Child Marriage’ (2012) UNFPA 4, 11

<sup>57</sup> United Nations Charter (adopted 14 August 1941, entered into force 24 October 1945) 1 UNTS XVI art 55(c)

<sup>58</sup> Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A(III) art 3

<sup>59</sup> *ibid* art 5

<sup>60</sup> *ibid* art 16

<sup>61</sup> ‘OHCHR | 70th Anniversary Of The Universal Declaration Of Human Rights’ (*Ohchr.org*, 2018)

<<https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23983&LangID=E>> accessed 25 June 2020.

<sup>62</sup> ‘OHCHR | Declaration On Human Rights Defenders’ (*Ohchr.org*, 2020)

<<https://www.ohchr.org/en/issues/srhrdefenders/pages/declaration.aspx>> accessed 15 July 2020.

Committee interpreted Article 3 of the ICCPR which holds that state parties must ensure that all individuals are afforded the rights set forth in the Covenant<sup>63</sup>, as imposing a positive obligation on states to rectify sex discrimination<sup>64</sup>. This obligation requires not only that states take measures to protect women through the enactment of laws, but also to take affirmative action to ensure the positive enjoyment of rights<sup>65</sup>. Additionally, it imposes a duty on states to procure information regarding the role of women in its jurisdiction to determine what additional measures need to be taken<sup>66</sup>.

Article 23 of the ICCPR provides for the right of men and women of marriageable age to marry<sup>67</sup>. The provision also reiterates the words of the UDHR by stating that no marriage shall be entered into without the free and full consent of the intending spouses<sup>68</sup>. Additionally, Article 24 of the ICCPR recognises the right of every child, without any discrimination, to receive from his family, society, and the State, the protection required by his status as a minor<sup>69</sup>. This includes protection from acts of violence, cruel and inhuman treatment, or from being exploited by means of forced labour, or prostitution<sup>70</sup>. However, the ICCPR fails to establish a clear marriageable age, and instead gives State Parties the freedom to decide the minimum age of marriage<sup>71</sup>.

### **2.2.3. International Covenant on Economic Social and Cultural Rights**

Article 10 of the ICESCR provides socio-economic protections for the family, specifically in relation to mothers and children<sup>72</sup>. Although it provides that ‘marriage must be entered into with the free consent of the intending spouses’, the provision is not dependent on the existence of marriage, and instead focuses on the concept of family<sup>73</sup>. Furthermore, the provision remains silent when it comes to determining the minimum age of consent.

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<sup>63</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art 3

<sup>64</sup> Unicef ‘Child Marriage and the Law’ (2007) Programming Guidance Paper Series 1, 12

<sup>65</sup> *ibid* 13

<sup>66</sup> *ibid*

<sup>67</sup> International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 art 23

<sup>68</sup> *ibid*

<sup>69</sup> *ibid* art 24

<sup>70</sup> UN Committee on the Rights of the Child (CRC), General comment No. 17 (2013) on the right of the child to rest, leisure, play, recreational activities, cultural life and the arts (art. 31), 17 April 2013, CRC/C/GC/17

<sup>71</sup> Unicef, ‘Early Marriage: Child Spouses’ (2001) 7 *Innocent Digest* 1, 11

<sup>72</sup> UNGA International Covenant on Economic, Social and Cultural Rights (16 December 1996) A/RES/2200 art 10

<sup>73</sup> Ben Saul, David Kinley and Jacqueline Mowbray, *The International Covenant On Economic, Social And Cultural Rights* (Oxford University Press 2014) 788

However, in its Concluding Comments regarding Sri Lanka, the ICESCR elaborated on its stance regarding child marriage. It held:

*'The Committee notes with concern the existence of disparities between statutory law and customary law. The age for marriage in statutory law is 18 years but girls as young as 12 years of age are able to marry under customary law, as long as the parents consent... In allowing customary law to prevail over statutory law in this regard, the Government is not complying with its obligation to protect the rights of women against discrimination'<sup>74</sup>.*

#### **2.2.4. The Convention on the Rights of the Child**

The CRC is widely acclaimed as a landmark achievement for human rights<sup>75</sup>. It recognises the roles of children as social, economic, civil, and cultural actors. It sets and guarantees minimum standards for protecting the rights of children<sup>76</sup>. Furthermore, its enactment marked a shift towards a more progressive view of the child as an individual with legal rights under International law<sup>77</sup>.

The CRC has numerous provisions which explicitly and implicitly address the issue of child marriage. Article 1 defines a child as anyone under the age of 18<sup>78</sup>. Other provisions such as Article 2 and 3 highlight a child's right to be free from all forms of discrimination<sup>79</sup>, as well as keeping the child's best interests at heart when making decisions<sup>80</sup>. Furthermore, the CRC details the obligation and responsibility the State and parents have in relation to protecting and safeguarding children's rights<sup>81</sup>. For instance Article 19 states:

*'States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child'<sup>82</sup>.*

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<sup>74</sup> ICESCR Concluding Comments Sri Lanka E/1999/22 (1999) para 73

<sup>75</sup> 'History Of Child Rights' (*Unicef.org*) <<https://www.unicef.org/child-rights-convention/history-child-rights>> accessed 24 June 2020

<sup>76</sup> *ibid*

<sup>77</sup> Unicef 'Child Marriage and the Law' (2007) Programming Guidance Paper Series 1 5

<sup>78</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 3 UNTS 1577 art 1

<sup>79</sup> *ibid* art 2

<sup>80</sup> *ibid* art 3

<sup>81</sup> *ibid* 19

<sup>82</sup> *ibid*

In addition to this, Article 24 provides the right to health and the right to be protected from harmful traditional practices<sup>83</sup>, whereas article 28 recognises the right every child has to education<sup>84</sup>. Since child marriage hinders the education, health, and personal development of a child, the CRC places an obligation on the State Parties to take necessary measures to eradicate the practice<sup>85</sup>.

### **2.2.5. The Convention on the Elimination of All Forms of Discrimination Against Women**

The CEDAW was enacted as a result of the global women's rights movement, which aimed to bring together a single document dedicated to women's rights<sup>86</sup>. The Convention provides protection to women in the public and private spheres<sup>87</sup>. Furthermore, in its preamble, the Convention acknowledges that discrimination against women 'violates the principles of equality of rights and respect for human dignity<sup>88</sup>'. Moreover, the Convention reaffirms the principle of equality by placing a responsibility on States to take 'all appropriate measures, including legislation, to ensure the full development and advancement of women...<sup>89</sup>'.

The Convention covers child marriage under Article 16(2) which states 'the betrothal and the marriage of a child shall have no legal effect<sup>90</sup>'. The provision also states that Member States must specify a 'minimum age of marriage' in their national legislation<sup>91</sup>.

### **2.3. National Legislation Regarding Child Marriage**

Although South Asia has the highest rate of child marriage, it lacks a proper regional human rights mechanism on children's rights, especially in relation to child marriage. Hence, in order to understand the scope of protection offered to children in South Asia, a case study will be conducted on three countries with high rates of child marriage: India, Pakistan and Bangladesh. This section will examine the national legislation of each country.

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<sup>83</sup> Convention on the Rights of the Child (adopted 20 November 1989, entered into force 2 September 1990) 3 UNTS 1577 art 24

<sup>84</sup> *ibid* art 28

<sup>85</sup> Equality Now 'Protecting the Girl Child' (2014) Equality Now 5 10

<sup>86</sup> *ibid*

<sup>87</sup> Unicef 'Child Marriage and the Law' (2007) Programming Guidance Paper Series 1 8

<sup>88</sup> Convention on the Elimination of All Forms of Discrimination Against Women (adopted in 18 December 1979, entered into force 3 September 1981) 13 UNTS 1249 art 1

<sup>89</sup> *ibid* art 3

<sup>90</sup> *ibid* art 16(2)

<sup>91</sup> *ibid*

## 2.4. INDIA

India has the highest number of child brides in the world. According to UNICEF, 27 percent of girls are married before their 18th birthday, and another 7 percent are married before the age of 15<sup>92</sup>. Although child marriage affects boys, empirical evidence suggests it has a disproportionate impact on the girl child<sup>93</sup>. Child marriage in India is embedded in gender inequality, poverty, and religious and cultural norms<sup>94</sup>. Since child marriage is a widespread issue, India has taken multiple legislative steps to eradicate it<sup>95</sup>.

### 2.4.1. National Legislative Framework

The practice of child marriage is a violation of the Constitution and has been prohibited by numerous legal frameworks in India. The Constitution not only grants equality to girls and women, but authorises the State to adopt legislative measures which neutralise the socio-economic, educational, and political disadvantages faced by them. It further protects the fundamental rights of women and ensures equality before the law, prohibiting discrimination against any citizen on grounds of race, caste, and sex<sup>96</sup>.

The Supreme Court of India reaffirmed that child marriage is discriminatory and violates the constitutional rights of underage girls by denying them a life of dignity and liberty<sup>97</sup>. Gupta J held in *Independent Thought v. Union of India*:

*‘... The girl child must be given equal opportunity to develop like a male child. In fact... some extra benefit must be showered upon the girl child to ensure that she is not deprived of her right to life, which would include her right to grow and develop physically, mentally and economically as an independent self-sufficient female adult<sup>98</sup>.’*

Furthermore, it established that child marriage violates the fundamental rights granted to every citizen, such as: the right to life and personal liberty, right to education and freedom from forced labour<sup>99</sup>. Additionally, lower courts in India have listed several other rights which protect girls against child marriage, these include: the right to freedom from torture as well as other cruel, inhuman, and degrading treatment, right to health, autonomy, dignity, and

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<sup>92</sup> Girls Brides, India - Child Marriage Around The World. Girls Not Brides' (*Girls Not Brides*) <<https://www.girlsnotbrides.org/child-marriage/india/>> accessed 25 June 2020

<sup>93</sup> Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 13

<sup>94</sup> *ibid*

<sup>95</sup> *ibid*

<sup>96</sup> Constitution of India 1950 art.14, art.15(i)

<sup>97</sup> *ibid* art 14

<sup>98</sup> *Independent Thought v. Union of India* [2017] 10 SCC 800 (Gupta J)

<sup>99</sup> The Constitution of India 1950 art 18

reproductive rights<sup>100</sup>. Furthermore, the Constitution established that the State has a responsibility in ensuring ‘that children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment<sup>101</sup>.’

#### **2.4.2. Child Marriage Restraint Act 1929 (CMRA)**

The first law which directly addressed child marriage in India was the CMRA 1929. The Act set the minimum age of marriage at 14 for girls and 18 for boys<sup>102</sup>. The provision also laid out penal sanctions for individuals who contracted or solemnised the marriage<sup>103</sup>. Section 3 of the Act held that ‘Whoever, being a male above eighteen years of age and below twenty one, contracts a child marriage shall be punishable with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both<sup>104</sup>.’ Whereas Section 4 of the Act held that ‘Whoever, being a male above twenty one years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine.<sup>105</sup>’

Although the initial passing of the Act was considered a monumental victory for women’s rights, the legislation itself was a complete failure<sup>106</sup>. This was due to a multitude of reasons: firstly, the prosecution rate under the law was incredibly low, as police officers required a warrant or an order from the magistrate to arrest offenders. Secondly, the offence was rarely reported since the Act itself prohibited complaints after the first year of marriage<sup>107</sup>. This can be illustrated in the case of *A.R. Antulay v. Ramdas Srinivas Nayak*, where the Court held that the Magistrate could not take cognisance of the case after a period of one year from the date of the offence<sup>108</sup>. The Act was also criticised for prescribing inconsequential sanctions to those who contracted a marriage with a minor<sup>109</sup>. Additionally the provision which dealt with the minimum age of marriage was also heavily criticised for being too low. This provision was however amended in 1978, raising the minimum age to 18 for girls, and 21 for boys. Due to the consistent failure of the State to implement the law and the numerous loopholes that

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<sup>100</sup> The Constitution of India 1950 art 21

<sup>101</sup> *ibid* art 39(f)

<sup>102</sup> Child Marriage Restraint Act 1929

<sup>103</sup> *ibid*

<sup>104</sup> *ibid* s 3

<sup>105</sup> *ibid* s4

<sup>106</sup> Unicef ‘Child Marriage and the Law’ (2007) Programming Guidance Paper Series 1 24

<sup>107</sup> Child Marriage Restraint Act 1929 s9

<sup>108</sup> *A.R. Antulay vs Ramdas Srinivas Nayak And Another* 1984 AIR 718, 1984 SCR (2) 914

<sup>109</sup> Child Marriage Restraint Act 1929 s 4

existed within the legislation; the CMRA was repealed by the Prohibition of Child Marriage Act 2006 (PCMA)<sup>110</sup>.

### **2.4.3. The Prohibition of Child Marriage Act 2006**

The PCMA 2006 amended most of the issues that existed in the CMRA. The new Act raised the penalty of contracting a marriage with a minor through section 9 which states ‘whoever, being a male adult... contracts a child marriage shall be punishable with rigorous imprisonment which may extend to two years or with fine which may extend to one lakh rupees or with both<sup>111</sup>.’ Furthermore, the act of solemnising a marriage was now considered a cognisable and non-bailable offence<sup>112</sup>.

The Act also introduced the concept of Child Marriage Prohibition Officers (CMPOs), who are appointed in every state to prevent child marriages, prosecute offenders, and ensure the protection of victims<sup>113</sup>. Additionally, Courts were given the power to issue an injunction to stop a child marriage from taking place<sup>114</sup>. The PCMA offers further protection to children with Section 12 which states that a child marriage will be null and void if: the injunction prohibiting the marriage is violated, or if the child is taken by force, or enticed out of the keeping of the lawful guardian, or is sold or trafficked for the purpose of marriage<sup>115</sup>. The Act also places a positive obligation on the CMPO to create awareness about the consequences and dangers of child marriage<sup>116</sup>.

In addition to these provisions, the PCMA gives minors the right to annul the marriage themselves under Section 3<sup>117</sup>. The PCMA also provides that the male contracting party to the child marriage must pay maintenance to the female contracting party until she is remarried<sup>118</sup>. Finally, the PCMA stipulates that support and aid must be provided to the victim, this includes: medical and legal aid, as well as counselling and rehabilitation<sup>119</sup>.

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<sup>110</sup> The Prohibition of Child Marriage Act 2006

<sup>111</sup> *ibid* s 9

<sup>112</sup> *ibid* s 15

<sup>113</sup> *ibid* s 16

<sup>114</sup> *ibid* s 13

<sup>115</sup> *ibid* s 12

<sup>116</sup> *ibid* s 16(3)

<sup>117</sup> *ibid* s 3

<sup>118</sup> *ibid* s 4

<sup>119</sup> *ibid* s 16(3)

#### **2.4.4. Indian Penal Code (IPC)**

The IPC does not specifically penalise the practice of child marriage. However, Section 366 on forced marriages stipulates that the kidnapping or abduction of a woman with the intent that she will be compelled to marry a person against her will, or may be forced into illicit intercourse, will be punished with imprisonment for a term which may extend to 10 years and may also be liable to a fine<sup>120</sup>. The IPC also contains other provisions that may be applicable to child marriage in certain cases. For instance, Section 496 prescribes that whoever goes through a marriage ceremony with fraudulent intent shall be punished with imprisonment for a term which may extend to seven years, and shall also be liable to a fine<sup>121</sup>.

#### **2.4.5. Concluding Comments**

As illustrated above, India has taken significant steps to combat child marriage through its national legislation. Having ratified the CRC and CEDAW, India's national legislation reflects international standards, with the age of consent being set at 18. Furthermore, India illustrated its commitment to eradicate child marriage by repealing a stagnant and practically defunct law. With the enactment of the PCMA, national lawmakers addressed and remedied the shortcomings of the CMRA 1929. The new law not only offers more protection to victims of child marriage, but also heavily penalises the perpetrators. However, despite the laudable legal steps India has taken to combat child marriage, legal barriers and issues of enforceability continue to persist. These barriers will be discussed in Chapter 5.

### **2.5. PAKISTAN**

Child marriage remains a highly prevalent issue in Pakistan. According to UNICEF, it ranks sixth in the world in terms of the highest absolute numbers of child marriages<sup>122</sup>. 21 percent of girls in Pakistan are married before the age of 18, while another 3 percent are married before the age of 15<sup>123</sup>. Much like India, child marriage disproportionately affects the girl child<sup>124</sup>. According to the Pakistan Demographic and Health Survey 2012–2013, 13.9 percent of girls currently aged 15 to 19 are married, as opposed to 2.4 percent of boys in the same age group<sup>125</sup>.

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<sup>120</sup> Indian Penal Code 1860 s 366

<sup>121</sup> *ibid* s 496

<sup>122</sup> Girls Brides, 'Pakistan - Child Marriage Around The World. Girls Not Brides' (*Girls Not Brides*) <<https://www.girlsnotbrides.org/child-marriage/pakistan/>> accessed 26 June 2020.

<sup>123</sup> *ibid*

<sup>124</sup> Ending Impunity for Child Marriage in Pakistan: Normative and Implementation Gaps' (CRR 2018) 7

<sup>125</sup> 'Child Marriage - UNICEF DATA' (*UNICEF DATA*) <<https://data.unicef.org/topic/child-protection/child-marriage/>> accessed 26 June 2020

### **2.5.1. National Legislative Framework**

The Constitution of Pakistan declares that all citizens are equal before the law and are therefore entitled to equal protection<sup>126</sup>. It also affirms that special measures may be enacted for the protection of women and children<sup>127</sup>. Additionally, the right to ‘free and compulsory education<sup>128</sup>’, the right to dignity,<sup>129</sup> and the prohibition of ‘all forms of forced labour and traffic in human beings<sup>130</sup>’ are also guaranteed by the Constitution. The Principles of Policy set out in Chapter 2 of the Constitution affirms that women are entitled to full participation in all spheres of national life, and that the State shall promote social justice<sup>131</sup>.

### **2.5.2. Child Marriage Restraint Act 1929**

The main legislative framework addressing child marriage in Pakistan is the CMRA 1929. This Act is identical to the one that India repealed. Unlike its counterpart, Pakistan has failed to amend the CMRA since its inception. Section 2(a) of the CMRA defines a child as a person who, if male, is under the age of 18, and if female, is under the age of 16<sup>132</sup>. Despite ratifying the CRC and CEDAW, Pakistan has failed to meet international standards by having gender discriminatory age of consent laws<sup>133</sup>.

Furthermore, the Act sets forth lenient punishments for adult men who contract or solemnise a child marriage<sup>134</sup>. The maximum punishment imposed on a man who is found in violation of the law, is a one month prison sentence or a fine of PKR 1,000 (5 euros)<sup>135</sup>. Furthermore, the Act places a one year limitation period from the solemnisation of the marriage to file a complaint<sup>136</sup>. The Act also contains no provisions which require governmental authorities to provide economic or legal support to the victims of child marriage<sup>137</sup>.

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<sup>126</sup> Constitution of the Islamic Republic of Pakistan, 1973 art 25

<sup>127</sup> *ibid* art 25 (3)

<sup>128</sup> *ibid* art 9

<sup>129</sup> *ibid* art 14

<sup>130</sup> *ibid* art 11

<sup>131</sup> *ibid* art 21

<sup>132</sup> Child Marriage Restraint Act s 2(a)

<sup>133</sup> Convention on the Elimination of All Forms of Discrimination Against Women ( adopted 18 December 1979, entered into force 3 September 1981) 13 UNTS 1249

<sup>134</sup> Child Marriage Restraint Act s 4

<sup>135</sup> *ibid*

<sup>136</sup> *ibid* s 6

<sup>137</sup> ‘Ending Impunity for Child Marriage in Pakistan: Normative and Implementation Gaps’ (CRR 2018) 11

### **2.5.3. Pakistan Penal Code (PPC)**

Following an amendment in 2017, PPC declared child marriage a non-bailable criminal offence, which may be punishable by imprisonment of up to 7 years<sup>138</sup>. The amendment added a stipulation regarding child marriage to Section 498B, which deals with forced marriages. According to this section an individual who coerces or compels a woman to enter a marriage, may be punished with imprisonment of up to seven years and may be liable for a fine of PKR 500,000 (approximately 2660 euros)<sup>139</sup>. The amendment also prescribes a harsher punishment for those who violate the CMRA. Under the new provision the accused shall be punished with imprisonment for a term which may extend 10 years but shall not be less than 5 years and may also be liable to a fine which may extend to PKR 1 million (5230 euros)<sup>140</sup>. Furthermore, Section 365B of the PPC criminalises the kidnapping or abduction of a woman aimed at compelling her to marry a person against her will or forcing her to have illicit intercourse, making the offence punishable by imprisonment for life<sup>141</sup>.

### **2.5.4 Sindh Child Marriage Restraint Act 2013 (SCMRA)**

Through the 18th Amendment of the Pakistani Constitution, which allowed provinces to pass their own legislation regarding child marriage, the SCMRA was passed<sup>142</sup>. The SCMRA proved to be a vital and progressive piece of legislation, making Sindh the only province in Pakistan to raise the legal age of marriage to 18 for both sexes<sup>143</sup>. Furthermore, the Act introduced higher penalties for those who violated the law. According to Article 4 of the SCMRA any person who performs, directs, or facilitates a child marriage, and any parent or guardian who allows or fails to prevent a child marriage are subject to up to three years imprisonment, in addition to a fine which may extend to PKR 1000 (5 euro)<sup>144</sup>. Additionally, SCMRA removed the statute of limitations for filing a complaint<sup>145</sup>, and introduced the concept of prosecuting police officers who fail to investigate a complaint<sup>146</sup>. According to a 2019 report there has been an increase of prosecutions in Sindh following the enactment of the SCMRA<sup>147</sup>.

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<sup>138</sup> Criminal Law (Amendment) Act (2017) s 2(3)

<sup>139</sup> Pakistan Penal Code 1860 s 498B

<sup>140</sup> *ibid* s 365B

<sup>141</sup> Pakistan Penal Code 1860 s 366A

<sup>142</sup> The Constitution of the Islamic Republic of Pakistan, 1973 art 70

<sup>143</sup> Sindh Child Marriage Restraint Act 2013 2(a)

<sup>144</sup> *ibid* s4

<sup>145</sup> *ibid* s 11

<sup>146</sup> *ibid* s 6(2)

<sup>147</sup> 'Cruel Numbers – Sahil' (*Sahil.org*, 2019) <<http://sahil.org/cruel-numbers/>> accessed 26 June 2020

### **2.6.5. Concluding Comments**

The state of child marriage laws in Pakistan seems to be weak and convoluted. The country's current laws and punishments are not strong enough to deter the practice of child marriage<sup>148</sup>. Its national legislation, the CMRA has proven to be obsolete and fails to meet international standards. Although positive steps have been taken in the Criminal sector and on a provincial level, Pakistan still lacks a proper national legislative framework on child marriage. Its current laws are contradictory in nature which leads to uncertainty and a lack of enforceability, leaving victims of child marriage vulnerable<sup>149</sup>. The shortcomings of the current legal framework of Pakistan will be discussed in detail in the following chapters.

## **2.6. BANGLADESH**

Bangladesh has one of the highest rates of child marriage globally and the highest rate of child marriage involving girls under the age of 15<sup>150</sup>. According to the International Centre for Research on Women, approximately 66 percent of girls in Bangladesh are married off before the age of 18, while another 32 percent are married by the age of 15<sup>151</sup>. Although the rate of child marriage is high in urban areas at 53 percent, it is even higher in rural areas where 70 percent of girls are married before reaching the age of majority<sup>152</sup>. This widespread practice is detrimental to the development and livelihood of young girls in Bangladesh<sup>153</sup>.

### **2.6.1 National Legislative Framework**

The Constitution of Bangladesh recognises that States have an obligation to address and ensure accountability for gender based discrimination and inequality<sup>154</sup>. It contains special provisions in favour of women and children, such as article 17 which imposes an obligation on the government to establish a free and compulsory 'uniform mass-oriented and universal system of education<sup>155</sup>.' This illustrates Bangladesh's commitment to upholding and protecting the rights of women and children.

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<sup>148</sup> 'Child Marriage in Southern Asia: Context, Evidence and Policy Options for Action' (ICRW 2012) 18

<sup>149</sup> *ibid*

<sup>150</sup> 'Ending Impunity for Child Marriage in Bangladesh: Normative and Implementation Gaps' (CRR 2018) 7

<sup>151</sup> 'Child Marriage in Southern Asia: Context, Evidence and Policy Options for Action' (ICRW 2012) 6

<sup>152</sup> *ibid*

<sup>153</sup> *ibid*

<sup>154</sup> 'Ending Impunity for Child Marriage in Bangladesh: Normative and Implementation Gaps' (CRR 2018) 11

<sup>155</sup> The Constitution of Bangladesh 1972 art 17

### **2.6.2. Child Marriage Restraint Act 2017 (CMRA)**

Like India and Pakistan, the primary legislation that dealt with child marriage was the CMRA 1929<sup>156</sup>. However, due to the numerous weaknesses and loopholes in the legislation, the CMRA 1929 was repealed and replaced with the CMRA 2017<sup>157</sup>. The new Act offered more protection to victims of child marriage and addressed some of the weakness of the previous legislation. For instance, the new Act prescribed more consequential sanctions to those found in violation of the law. Section 7 of the CMRA 2017 states ‘If any adult... contracts a child marriage, it shall be an offence, and for this, he shall be punished with imprisonment which may extend to 2 (two) years, or with fine which may extend to 1 (one) lakh Taka...<sup>158</sup>’ Similarly, parents and guardians who arrange or fail to prevent a child marriage may also face criminal liability<sup>159</sup>.

Much like India’s PCMA 2006, the CMRA 2017 affirms the government’s responsibility to prevent child marriages. Section 4 of the Act gives powers to certain government officials and local government representatives to prevent child marriage<sup>160</sup>. Section 3 on the other hand, calls for the formation of Child Marriage Convention Committees which comprise of numerous government officials, NGOs and ‘local elite persons’ to help eradicate child marriages<sup>161</sup>. The new legislation is also in line with international law in relation to the minimum age of marriage. Article 2 of the Act defines a child as someone who - if female is under the age of 18, and if male, is under the age of 21<sup>162</sup>.

Despite the positive steps taken to protect children, the new Act introduced a retrogressive exception under Section 19. The exception states that an individual may enter into a legally binding marriage in special circumstances, regardless of their age<sup>163</sup>. This exception essentially disregards the minimum age threshold set out in the Act and puts children at a greater risk of being married before attaining majority. Another issue with the 2017 Act is that it imposes criminal sanctions on minors who contract a child marriage<sup>164</sup>. Section 7(2) states ‘if any minor, male or female, contracts a child marriage, he shall be punished with

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<sup>156</sup> Child Marriage Restraint Act 1929

<sup>157</sup> Child Marriage Restraint Act 2017

<sup>158</sup> *ibid* s 7

<sup>159</sup> *ibid* s 8

<sup>160</sup> *ibid* s 4

<sup>161</sup> *ibid* s 3

<sup>162</sup> *ibid* s 2

<sup>163</sup> *ibid* s 19

<sup>164</sup> *ibid* s 7(2)

detention which may extend to 1 (one) month, or with fine which may extend to 50 (fifty) thousand Taka, or with both<sup>165</sup>.’ The main aim of the Act is to protect children from the horrors of child marriage. It is then counterproductive and damaging to impose sanctions on a minor for contracting a child marriage, since neither parties have the mental capacity to consent.

### **2.6.3. Concluding Comments**

Like India, Bangladesh has made a conscious effort to prevent the practice of child marriage. The country has brought about positive reform with the enactment of the CMRA 2017, which repealed the dead letter CMRA 1929. The Act prescribes higher penal sanctions to those who contracted, solemnised, or failed to prevent child marriages and pushes for the creation of committees to help prevent the practice. The Act’s definition of a child is also on par with international standards.

However, the CMRA’s retrogressive exception poses a serious threat to the well-being of young girls and violates both the CRC and CEDAW. Furthermore, the Act also imposes penal sanctions on minors for contracting a child marriage. This sets a dangerous precedent and leaves an already vulnerable segment of society more exposed. The limitations posed by the current laws of Bangladesh will be discussed in the following chapters.

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<sup>165</sup> Child Marriage Restraint Act 2017

## CHAPTER 3

### COLONIALISM'S IMPACT ON CHILD MARRIAGE LAWS IN SOUTH ASIA

This chapter will evaluate how colonialism shaped the legal landscape of the Indian subcontinent. India, Pakistan, and Bangladesh were all once governed by the CMRA 1929. Although India and Bangladesh eventually repealed the 1929 Act with new legislation, child marriage persists in both regions, especially due to the existence of personal laws. The chapter at hand will first discuss the cultural norms that existed in India prior to British rule and how colonialism reconstructed the religious and cultural norms of the Muslim and Hindu communities. It shall also explore how colonialism redefined the age of consent.

#### 3.1. Pre-Colonial India

Pre-colonial India was a predominantly agrarian society which consisted of strict, but diverse customs, developed by various tribes and castes<sup>166</sup>. It was governed by pluralistic religious, cultural, and political systems which lacked uniform authority<sup>167</sup>. The laws of this period were primarily customary in nature. Proprietary and familial disputes were largely dealt with through arbitration within the segregated communities<sup>168</sup>.

Among the Hindu community, Smritis (religious texts) developed over time and governed laws related to marriage and family. These texts were diverse in nature, some religious commentary was more liberal and afforded more rights to women, while others did not<sup>169</sup>. However, not all tribes were governed by Smriti law; some were governed by customs which were considered more liberal in nature.<sup>170</sup> For instance, most of the customs governing the lower castes were more liberal towards women because they were an active part of their labour force. Conversely, the customs that governed the Brahmins were deemed to be anti-women and extremely patriarchal<sup>171</sup>. The concept of divorce and remarriage was common among certain castes, such as the Namosudras and Banias. Proprietary rights were also granted to some women from certain castes, while others were denied it<sup>172</sup>. Child marriage

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<sup>166</sup> Varsha Chitnis and Danaya Wright, 'The Legacy of Colonialism: Law and Women's Rights in India' (2007)

64 Wash. & Lee L. Rev. 1315, 1320

<sup>167</sup> *ibid* 1316

<sup>168</sup> *ibid* 1320

<sup>169</sup> *ibid*

<sup>170</sup> *ibid*

<sup>171</sup> *ibid* 1315, 1320

<sup>172</sup> *ibid*

was also a prevalent practice amongst the Hindu community in pre-colonial India<sup>173</sup>. During this period girls were married between the ages of 9 or 10 years, with the exception of the Brahmin caste, who were known for marrying their girls at the ages of 5 or 6<sup>174</sup>.

The practice of child marriage within the Hindu community was embedded in the religious belief that refraining from getting a young girl married after attaining puberty was a sin<sup>175</sup>. Religious scriptures such as the Vishnu Smithri and the Gautum Sutra stipulate that the father must marry his daughter off within three weeks of her attaining puberty<sup>176</sup>. Whereas the Manu Smithri, held that if a girl remains unmarried after reaching puberty, the father would have failed his duty towards his daughter<sup>177</sup>. Furthermore, numerous castes; such as the Kurmi, Pashwan, and Gupta communities believed that if the girl child was married before her first period, they would be blessed with 7,800 cows - an animal which is considered sacred. Alternatively, if the marriage was solemnised after the girl's first period, the act would amount to the killing of 7,800 cows<sup>178</sup>. Therefore, societal pressures and religious injunctions made child marriage a common phenomenon in the Hindu community.

Although child marriage existed amongst the Muslim community, it was not as prevalent. During the Mughal reign, marriages in the royal family rarely took place before both parties were in their mid to late teens<sup>179</sup>. Furthermore, the Mughal Emperor Akbar was known for his opposition to child marriages. During his reign, he fixed the minimum age of marriage to 16 years for boys, and 14 years for girls<sup>180</sup>. Much like the Hindu community, the Muslim population - particularly under the Mughals - was governed by customs as well as shariah law. The application of shariah was essential for rulers to gain legitimacy, and was used to justify a social hierarchy<sup>181</sup>. However, the actual application of shariah was of little consequence to the Mughals. They instead secured their support through formal compliance

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<sup>173</sup> Rukhsana Iftikhar, *Indian Feminism: Class, Gender & Identity in Medieval Ages* (Notion Press 2016) 190

<sup>174</sup> *ibid*

<sup>175</sup> *ibid*

<sup>176</sup> Unicef 'Child Marriage and the Law' (2007) Programming Guidance Paper Series 1 23

<sup>177</sup> *ibid*

<sup>178</sup> *ibid*

<sup>179</sup> Rukhsana Iftikhar, *Indian Feminism: Class, Gender & Identity in Medieval Ages* (Notion Press 2016) 192

<sup>180</sup> *ibid*

<sup>181</sup> Elisa Giunchi The Reinvention of 'Sharī'a' under the British Raj: In Search of Authenticity and Certainty' (2010) 69 *The Journal of Asian Studies* 1119, 1121

to Islam which was independently governed by the 'Ulama', rather than imposing a rigid version of Islamic law<sup>182</sup>.

Since India's population was predominantly non-Muslim, the rulers understood the impossibility of enforcing shariah nationwide<sup>183</sup>. Furthermore, in order to ensure the approval of prominent non-Muslim lineages, the authorities afforded a great deal of freedom to their people. Disputes were often settled autonomously, usually through arbitration, which enforced customary laws<sup>184</sup>. These laws generally had little to do with religious scripture. The distinction between the laws that governed the Muslim population and the laws that governed the non-Muslim population were often obscure. Furthermore, both communities settled their disputes without the intervention of the State, especially in relation to familial disputes<sup>185</sup>. Only crimes of a serious nature were settled through courts that referred to shariah law. However, even in formal court proceedings, Islamic penalties were not deemed obligatory and were inconsistently enforced<sup>186</sup>.

The religious texts were considered a source of reference for judges, and were used to apply the law in a context sensitive fashion. Decisions were based on a communal interest, in an attempt to avoid disturbing the peace<sup>187</sup>. The judge's main goal was to strike a balance between protecting the most vulnerable fragments of society on one hand, and refraining from altering the status quo on the other<sup>188</sup>. The courts possessed a certain affinity for human weakness and paid attention to the good faith of parties, which afforded leniency<sup>189</sup>. The decisions made by the judges were not arbitrary, and rather followed what was proposed by Islamic jurists. Since Islamic jurisprudence consists of individual contributions, a difference in opinion was customary<sup>190</sup>.

### **3.2 Colonialism and the Codification of Laws**

India differed from other colonies due its various castes and pluralist religious system. This made it difficult for the British to formulate a system of governance that would cause the

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<sup>182</sup> Elisa Giunchi The Reinvention of 'Shari'a' under the British Raj: In Search of Authenticity and Certainty' (2010) 69 The Journal of Asian Studies 1119, 1121

<sup>183</sup> *ibid* 1122

<sup>184</sup> *ibid*

<sup>185</sup> *ibid*

<sup>186</sup> *ibid*

<sup>187</sup> *ibid*

<sup>188</sup> *ibid* 1123

<sup>189</sup> *ibid*

<sup>190</sup> *ibid*

least amount of resistance from the Indian population<sup>191</sup>. In response to the religious and cultural diversity of India, the British redefined Indian society along religious and caste lines. This was done due to the notion that imperial reforms would transpire more easily if religious doctrines were integrated into all major aspects of colonial rule<sup>192</sup>. Defining communities along religious lines had dire consequences for the subcontinent that can still be felt today. The priority given to religious identity over community identity had a negative impact on the numerous castes that existed<sup>193</sup>. Castes that did not share the religious laws or customs of the Brahmins were now classified as Hindu. In relation to the Muslim community, the colonial administrators, driven by stereotypes and personal needs, turned Islamic law from a moral code of reference, to a rigid, law-centred entity<sup>194</sup>.

### **3.2.1. Codification of Islamic Law**

For the British, Islamic law was considered a ‘timeless entity that in the course of time had been submerged by traditions.’<sup>195</sup> British colonists and scholars alike believed it was their duty to uncover and modernise it. According to Elisa Giunchi, Indians were not initially seen as inferior by the British<sup>196</sup>. In fact, Warren Hastings, the governor general of Bengal believed that the mark of a great Empire was tolerating differences and respecting colonised society<sup>197</sup>. However, as time went by, Indian culture was seen in a negative light. The respect for local customs and laws contradicted the pursuit for a ‘modern’ society which was based on a uniform legal system<sup>198</sup>. Thus, there was a shift in the European vision for India which now focused on the law-centred ideals of uniformity and certainty<sup>199</sup>. Jeremy Bentham, an English jurist, held that reliance on religious norms that lacked the elements of a modern legal system must be replaced by a comprehensive and uniform code<sup>200</sup>.

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<sup>191</sup> Varsha Chitnis and Danaya Wright, ‘The Legacy of Colonialism: Law and Women's Rights in India’ (2007) 64 Wash. & Lee L. Rev. 1315, 1321

<sup>192</sup> *ibid*

<sup>193</sup> *ibid*

<sup>194</sup> Elisa Giunchi The Reinvention of ‘Sharī‘a” under the British Raj: In Search of Authenticity and Certainty’ (2010) 69 The Journal of Asian Studies 1119, 1123

<sup>195</sup> *ibid* 1124

<sup>196</sup> *ibid*

<sup>197</sup> *ibid*

<sup>198</sup> *ibid* 125

<sup>199</sup> *ibid*

<sup>200</sup> *ibid*

By the mid-1700s, colonial authorities limited the application of customary laws to the local population on the condition that they could not excessively diverge from English law<sup>201</sup>. In 1753, a new Charter established that the local population of India was to use their own religious personal laws on matters relating to the private sphere<sup>202</sup>. Furthermore in 1772, the Hastings Regulation reiterated the notion that religious laws would be applied to Muslims and Hindus on matters pertaining to marriage, caste, and inheritance<sup>203</sup>. The reinstatement of native laws and the implementation of religious norms secured the support of India's elite which was crucial to exercise control and curtail resistance<sup>204</sup>.

By the end of the 18th Century, the British started introducing their own laws to Indian society. However, there were differing views as to the scope of these laws and whether they could replace Islamic norms.<sup>205</sup> Hastings argued that if the administration of the law seemed 'repugnant to the principles of good government and common sense,' then British law could supersede Islamic norms<sup>206</sup>. The British, during the end of the 18th century believed that they could help 'refine' colonised societies by introducing more humane and civilised norms and principles<sup>207</sup>. Under the guise of these moral aims, the British gradually eliminated religious precepts. Due to increasing frustration with religious texts, which were considered ambiguous and archaic, religious norms were predominantly replaced by English concepts<sup>208</sup>. However, religious laws were not completely eliminated, but rather modified.<sup>209</sup>

The first Indian Law Commission, which was set up by the Charter Act of 1833, strongly argued in favour of codification<sup>210</sup>. The general consensus amongst the colonisers was to give eminence to one system of law, i.e. the English system. The elimination of religious laws through the enactment of codes increased after 1857, when the Crown government started to play an active role in the 'modernisation' of the Indian administration. By the late 19th Century, Anglo-Muhammadan law was replaced by the English system, except in areas

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<sup>201</sup> Elisa Giunchi The Reinvention of 'Sharī'a' under the British Raj: In Search of Authenticity and Certainty' (2010) 69 *The Journal of Asian Studies* 1226

<sup>202</sup> *ibid* 1126

<sup>203</sup> *ibid* 1127

<sup>204</sup> *ibid*

<sup>205</sup> *ibid* 1130

<sup>206</sup> *ibid*

<sup>207</sup> *ibid*

<sup>208</sup> *ibid*

<sup>209</sup> *ibid*

<sup>210</sup> Charter Act 1833

relating to family law<sup>211</sup>. The new legislation, while remaining conscious of the local circumstances, completely distanced itself from traditional Islamic law<sup>212</sup>. The Penal Code of 1860 brought about significant change in India's legal system, however not all legal changes were progressive or protected women<sup>213</sup>.

### **3.2.2. Codification of Hindu Law**

The process of codifying Hindu law began in the late 18th Century. Colonial rulers were keen on creating a uniform body of law which consisted of aspects of the social and political norms of the diverse communities which existed in India<sup>214</sup>. This intervention into the internal matters of various communities had never been done before, as Islamic law expressly upheld the rights of each community to resolve its own disputes<sup>215</sup>. The complexity of Indian society bewildered the colonial rulers, who were accustomed to a uniform body of law governing most aspects of family and community affairs. The British aimed to achieve the same amongst the Hindu community<sup>216</sup>.

The British decided to develop a set of rules for governing Indian society through studying ancient 'shastras' (sacred scripture)<sup>217</sup>. During his term, Hastings declared that matters relating to castes, marriage, or inheritance were to be resolved by the shastra. Since Western marriage laws were predominantly based on Biblical scripture, the British believed that the personal laws of the communities must also be legitimised by some form of fundamental religious precept<sup>218</sup>. In England, matters such as marriage, divorce, and religious worship, were within the dominion of the Bishop's court. The colonial rulers attempted to achieve the same legal system for the various castes in India; however there was no homogenous body of religious law to legitimise a uniform code<sup>219</sup>. This did not stop the British, and in 1772 eleven pandits were hired to help create a digest of Hindu law. However, the British failed to realise that pandits did not possess the same powers as bishops, and hiring only Brahmin pandits to interpret customary law led to a heavy Anglo-Brahmanical influence which failed to take

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<sup>211</sup> Elisa Giunchi The Reinvention of 'Shari'a' under the British Raj: In Search of Authenticity and Certainty' (2010) 69 The Journal of Asian Studies 1119, 1131

<sup>212</sup> *ibid*

<sup>213</sup> *ibid*

<sup>214</sup> Madhu Kishwar, 'Codified Hindu Law: Myth and Reality' (1994) Economic and Political Weekly 29 2145

<sup>215</sup> *ibid*

<sup>216</sup> *ibid*

<sup>217</sup> *ibid*

<sup>218</sup> *ibid*

<sup>219</sup> *ibid*

other castes' local customs into consideration<sup>220</sup>. This process of codification failed to put an end to conflicting opinions, which led to the British losing confidence in the pandits<sup>221</sup>. There was also growing frustrations about having to deal with an extensive range of customs which had no religious authority to back them. This resulted in the British working on a more decisive code of Hindu law<sup>222</sup>.

The work of English authors regarding shastra law eventually replaced the genuine Sanskrit shastra scripts. The newly codified laws, which were backed by British authority, started altering Indian customs. Subsequently, customs struggled to survive against the Anglo-shastric law which was created under colonial rule.<sup>223</sup> This Anglo-shastric law was eventually accepted as Hindu personal law. The lack of understanding of the original shastric teachings, coupled with the unyielding adherence to its rules, resulted in an Anglo-Hindu law which was more stringent than traditional shastric principles<sup>224</sup>. This social reform was backed by the English educated elite of India who had accepted colonial ideology<sup>225</sup>. The Indian elite promoted themselves as a progressive mechanism of social reform, who labelled Indian society as uncivilised and backwards<sup>226</sup>. However, they failed to realise that many of the laws enacted under the new legal system such as the CMRA 1929, were considered 'paper tigers', since there was a lack of social awareness<sup>227</sup>.

Despite the creation of the new legal system, most castes continued to assert their right to regulate their own affairs<sup>228</sup>. They refused to abide by the rules of ancient scripture or parliament enacted laws<sup>229</sup>. In retaliation, the British contended that only ancient customs that were observed without interruption, and were uniform, obligatory and not 'immoral' or 'opposed to public policy' would be recognised<sup>230</sup>. This rule was eventually incorporated into the Hindu code, giving judges the power to arbitrarily override any custom it deemed

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<sup>220</sup> Madhu Kishwar, 'Codified Hindu Law: Myth and Reality' (1994) Economic and Political Weekly 29 2145, 2146

<sup>221</sup> *ibid*

<sup>222</sup> *ibid*

<sup>223</sup> *ibid*

<sup>224</sup> *ibid*

<sup>225</sup> *ibid* 2147

<sup>226</sup> *ibid*

<sup>227</sup> *ibid*

<sup>228</sup> *ibid*

<sup>229</sup> *ibid*

<sup>230</sup> *ibid*

‘immoral’<sup>231</sup>. Once the British gained control over the courts, they often mistranslated texts, and would reject them arbitrarily. Much like what the British did with Islamic law, it rescinded some practices and customs that favoured women<sup>232</sup>. The newly codified ‘Hindu law’ essentially took the power away from India’s local population and gave it to the British<sup>233</sup>.

### 3.3. Redefining the Age of Consent

In the mid-19th century, the British attempted to bring upon a new legal reform regarding the age of consent<sup>234</sup>. In India, child marriage, which was primarily an upper-caste custom, clashed with the traditional colonial concept of sexual restraint and family structure<sup>235</sup>.

During the late 19th Century, there had been sporadic reports about child brides being abused by their husbands. In 1873, the Education Gazette reported an incident where a grown man murdered his 11 year old wife<sup>236</sup>. Similarly, in 1875, the Dacca Prakash reported that an adult male murdered his child wife when she refused to sleep with him<sup>237</sup>. Despite both being convicted, they were let off with minimal sentences. Such reports remained sporadic and were not considered a widespread problem until the death of Phulmoni Dasi in 1889<sup>238</sup>. Phulmoni was a young girl who was either 10 or 11 years of age, who was raped to death by her 35 year old husband, Hari Maiti<sup>239</sup>. During the trial, Phulmoni’s family stated that although child marriage was custom in their caste, cohabitation was forbidden until the girl attained puberty<sup>240</sup>. According to her family’s account, the couple was living separately. However, when Hari visited his in-laws, he snuck into Phulmoni’s room and forced himself on her<sup>241</sup>. Hari, on the other hand claimed that Phulmoni had spent a fortnight with him and had engaged in sexual intercourse before. If Hari’s account was accepted by the court, then it could be argued that since no harm was caused previously, he had no reason to suspect that

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<sup>231</sup> Madhu Kishwar, ‘Codified Hindu Law: Myth and Reality’ (1994) *Economic and Political Weekly* 29 2145 2148

<sup>232</sup> *ibid*

<sup>233</sup> *ibid* 2149

<sup>234</sup> Varsha Chitnis and Danaya Wright, ‘The Legacy of Colonialism: Law and Women's Rights in India’ (2007) 64 *Wash. & Lee L. Rev.* 1315, 1326

<sup>235</sup> *ibid* 1327

<sup>236</sup> Tanika Sarkar, ‘Rhetoric against Age of Consent: Resisting Colonial Reason and Death of a Child-Wife’ (1993) 28 *Economic and Political Weekly* 1869

<sup>237</sup> *ibid*

<sup>238</sup> *ibid*

<sup>239</sup> *Queen-Empress vs Hurree Mohun Mythee (1891) ILR 18 Cal 49*

<sup>240</sup> *ibid*

<sup>241</sup> *ibid*

‘vigorous penetration’ may lead to harmful consequences<sup>242</sup>. In this case Wilson J, an English judge believed that the child had engaged in sexual intercourse previously – and thus acquitted Hari from the charge of culpable homicide<sup>243</sup>. Furthermore, the court did not even consider the charge of rape as the Penal Code did not recognise rape within marriage if the wife was above the age of 10<sup>244</sup>.

This case illustrated that the law itself was sculpted in a way to protect custom and the man's right to marry a girl child<sup>245</sup>. During the trial, the judge failed to question why a 35 year old would insist on sleeping with a child, or why such customs exist that allow him to do so<sup>246</sup>. Indeed, it seemed Wilson J went out of his way to justify the system that allowed such marriages to happen<sup>247</sup>. Since issues relating to marriage were governed by Hindu law, both the Hindu male and the marriage system were exempt from criticism. British officials stated that India’s indigenous community must be given the freedom to decide when their children may be married and stated that the constitution of Hindu society was a ‘matter in which no government could meddle’ in<sup>248</sup>. The Public Health Society, upon evaluating the medical and legal data on sexual injuries inflicted on child brides, concluded that despite the serious implications of such a practice, it could not be stopped without the express consent of the Hindu community<sup>249</sup>. Therefore, despite the grave implications of child marriage, British officials allowed the practice to persist due to the fear of interfering in the personal laws of the Hindu community and possibly losing the support of its religious leaders<sup>250</sup>.

Phulomi’s case however, did spark outrage, particularly amongst British feminists, and it was her death that led to the introduction of The Age of Consent Bill<sup>251</sup>. This Bill, however, faced backlash from the native population since it interfered with the rights of an Indian man over his wife<sup>252</sup>. In response to the claims of interference colonial authorities held that the Age of Consent Bill was not concerned with the age of marriage, but rather the appropriate age for

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<sup>242</sup> *Queen-Empress vs Hurree Mohun Mythee (1891) ILR 18 Cal 49*

<sup>243</sup> *ibid*

<sup>244</sup> *ibid*

<sup>245</sup> Tanika Sarkar, ‘Rhetoric against Age of Consent: Resisting Colonial Reason and Death of a Child-Wife (1993) 28 Economic and Political Weekly’ 1869, 1874

<sup>246</sup> *ibid*

<sup>247</sup> *ibid*

<sup>248</sup> *ibid*

<sup>249</sup> *ibid*

<sup>250</sup> *ibid*

<sup>251</sup> Varsha Chitnis and Danaya Wright, ‘The Legacy of Colonialism: Law and Women's Rights in India’ (2007) 64 Wash. & Lee L. Rev. 1315, 1327

<sup>252</sup> *ibid*

sexual intercourse<sup>253</sup>. Hence, the colonial authorities asserted that their main aim was to protect young girls from sexual acts which could have physically harmful consequences<sup>254</sup>. Despite facing serious opposition, the Age of Consent Act was passed in 1891<sup>255</sup>. The Act raised the age of consent by a meagre two years, from the age of 10 to 12<sup>256</sup>. Some scholars have argued that the Age of Consent Act was enacted to give the impression that colonial authorities were taking action to protect young girls, when in reality, the law offered little protection<sup>257</sup>.

As mentioned earlier, interfering in Indian family and religious practices was not in the best interest of colonial rulers, as they did not want vulnerable women being dependent on the parish or to lose the support of the Indian elite<sup>258</sup>. Feminist academics argue the only time the British interfered in such matters was when it enraged the British public. The British rulers lacked incentive to challenge the cultural norms which were detrimental to women and young girls. As a result of which, it took another 40 years before child marriages were officially outlawed with the enactment of the CMRA 1929<sup>259</sup>.

### **3.4 Concluding Comments**

The codification of religious personal laws still affects the subcontinent today. In an attempt to homogenise a multi-religious, multicultural society, the British imposed its own 'unified' legal system on the Indian population. The process of codification took religious principles that were flexible and diverse in nature, and turned them into a conservative, rigid, and highly patriarchal system of law.<sup>260</sup> Moreover, in an attempt to avoid resistance from the local population, the principle of non-interference was introduced which held that colonial authority could not interfere in personal matters<sup>261</sup>. Hence matters pertaining to issues like child marriage were never truly addressed because they fell into the ambit of personal law. This notion is one of the reasons child marriage persists in India, Pakistan and Bangladesh

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<sup>253</sup> Varsha Chitnis and Danaya Wright, 'The Legacy of Colonialism: Law and Women's Rights in India' (2007) 64 Wash. & Lee L. Rev. 1315, 1327

<sup>254</sup> Age of Consent Act 1891

<sup>255</sup> *ibid*

<sup>256</sup> Varsha Chitnis and Danaya Wright, 'The Legacy of Colonialism: Law and Women's Rights in India' (2007) 64 Wash. & Lee L. Rev. 1315, 1329

<sup>257</sup> *ibid*

<sup>258</sup> *ibid*

<sup>259</sup> *ibid*

<sup>260</sup> Elisa Giunchi The Reinvention of 'Sharī'a' under the British Raj: In Search of Authenticity and Certainty' (2010) 69 The Journal of Asian Studies 1119, 1134

<sup>261</sup> *ibid*

today<sup>262</sup>. In Pakistan especially, the myth of a fixed Islamic law perpetuated by the British has influenced the way Muslims today perceive religious ideals and values<sup>263</sup>. Religious authorities such as the Council of Islamic Ideology (CII) have used Islamic law to justify the practice of child marriage<sup>264</sup>. Similarly, Islamic groups in Bangladesh and India claim that child marriage is permitted under Muslim personal law. Due to the existence of such laws, child marriage continues to persist<sup>265</sup>.

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<sup>262</sup> 'Child Marriage and Personal Laws in South Asia: International Standards Requiring Governments to End Human Rights Violations Based On Religious Norms' (CRR 2014) 6

<sup>263</sup> Elisa Giunchi The Reinvention of 'Shari'a' under the British Raj: In Search of Authenticity and Certainty' (2010) 69 The Journal of Asian Studies 1119 1135

<sup>264</sup> *ibid*

<sup>265</sup> *ibid*

## CHAPTER 4

### DRIVING FACTORS AND CONSEQUENCES OF CHILD MARRIAGE IN SOUTH ASIA

This chapter will focus on the causes and consequences of child marriage in South Asia. The four main factors that will be discussed are: gender inequality, poverty, restricted access to education, as well as religious and cultural norms. Furthermore, the consequences of child marriage on young girls and society shall be evaluated.

#### 4.1. Causes of Child Marriage

There is ample literature discussing the numerous reasons why child marriage persists today<sup>266</sup>. Most academics argue that gender inequality is the primary reason for the existence of child marriage, while others argue economic instability and lack of education plays an equally vital role<sup>267</sup>. Other bodies of work contend that child marriage is caused by an interplay of gender inequality, poverty, religious and social norms, as well as restricted education<sup>268</sup>. This seems to be the case in South Asia, which makes up nearly 25 percent of the world's population, accounts for the second largest share of the global poor<sup>269</sup>, and is home to almost 50 percent of the global illiterate population<sup>270</sup>. Mahbub ul Haq, a Pakistani economist, stated that 'South Asia is fast emerging as the poorest, most-illiterate, the most malnourished, the least gender-sensitive-indeed, the most deprived region in the world<sup>271</sup>.' Hence, it does not come as a surprise that the region has the highest rate of child marriage in the world<sup>272</sup>.

#### 4.2. Gender Inequality

Gender inequality still remains a prevalent issue in the world today. In South Asian societies power structures remain predominantly patriarchal<sup>273</sup>. In a society that systemically

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<sup>266</sup> Katie Hodgkinson 'Understanding and Addressing Child Marriage' (HER CHOICE Alliance 2016) 18

<sup>267</sup> *ibid*

<sup>268</sup> *ibid*

<sup>269</sup> Christopher Finnigan, 'Poverty In South Asia: The Long View' (*South Asia @ LSE*, 2019) <<https://blogs.lse.ac.uk/southasia/2019/04/09/poverty-in-south-asia-the-long-view/>> accessed 14 July 2020.

<sup>270</sup> 'Literacy Rates Rise From One Generation To Next, But Challenges Remain In Region' (*UNESCO Bangkok*, 2017) <<https://bangkok.unesco.org/content/literacy-rates-rise-one-generation-next-challenges-remain-region>> accessed 14 July 2020

<sup>271</sup> HY Sharada Prasad, 'Poverty In South Asia' (*Encyclopedia Britannica*, 1999) <<https://www.britannica.com/topic/poverty-556003>> accessed 14 July 2020

<sup>272</sup> 'Child Marriage' (*Unicef.org*, 2017) <<https://www.unicef.org/rosa/what-we-do/child-protection/child-marriage>> accessed 14 July 2020

<sup>273</sup> UNFPA and IPPF, 'Ending Child Marriage: A Guide for Global Policy Action' (2006) 18

discriminates against women, child marriages are regarded as a necessary way of reinforcing existing norms<sup>274</sup>.

#### **4.2.1 Female Sexuality and the Notion of Honour**

The practice of child marriage is traditionally considered necessary in order to control a girl's sexuality and reproduction<sup>275</sup>. Due to the cultural and religious norms of many South Asian societies, a girl's virginity is linked to the honour and status of the family or clan<sup>276</sup>. Hence, immense pressure is placed on parents, especially the father, to marry his daughters off early in order to minimise the risk of premarital sex and to preserve honour<sup>277</sup>. Due to this notion of 'honour', girls in rural communities are often withdrawn from school as soon as they attain puberty<sup>278</sup>.

In South Asia marriage is seen as a contract that sanctifies sex and reproduction<sup>279</sup>. For instance in India, the concept of 'blood purity' dictates that a girl must be married as soon as she reaches puberty. In the state of Bihar, within the Yadav caste, the younger the girl, the more respectable and holy it is to get her married, since her childlike innocence is seen as a symbol of her virginity<sup>280</sup>. This illustrates that societies still place great importance on the sexual purity of girls. Therefore, if there is a prolonged gap between the girl child attaining puberty and her marriage, her modesty and the way she carries herself is considered as an indicator of her virginity<sup>281</sup>. Hence, young women who escape child marriages face scrutiny by their family and society. They are forced to act in a chaste manner and avoid all forms of sexual relations outside marriage<sup>282</sup>.

Families also worry that since their daughters are unmarried, they are more susceptible to sexual violence<sup>283</sup>. However, their fear is not limited to forced sexual encounters - but also the notion that a girl may consensually engage in sexual activities<sup>284</sup>. For most families from lower castes, both forms of sexual relations, whether forced or consensual, brings dishonour

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<sup>274</sup> UNFPA and IPPF, 'Ending Child Marriage: A Guide for Global Policy Action' (2006) 18

<sup>275</sup> *ibid*

<sup>276</sup> *ibid*

<sup>277</sup> *ibid*

<sup>278</sup> *ibid*

<sup>279</sup> Nirantar Trust and American Jewish World Service, 'Early and Child Marriage. A Landscape Analysis' (2015) 36

<sup>280</sup> *ibid*

<sup>281</sup> *ibid* 37

<sup>282</sup> *ibid*

<sup>283</sup> *ibid*

<sup>284</sup> *ibid*

to the family<sup>285</sup>. This fear often causes parents to marry their daughters young, since it limits mobility and makes it easier for the family to exert control until marriage<sup>286</sup>. In a system that has such a strong desire to control female sexuality, recognising that girls can have sexual agency is considered a threat. This may be illustrated through a case in Bihar, India<sup>287</sup>.

In this case, a 16 year old boy and a 14 year old girl ran away from their village<sup>288</sup>. The girl's family filed a police report against the boy's parents and assembled a group of 300 people outside the boy's house, insisting that his family find the couple and bring them back<sup>289</sup>. The outrage in this case had little to do with the safety of the girl child, and more to do with the fact that she was an unmarried girl who ran away with a boy and may have engaged in sexual activities. As the girl symbolized the community's honour this would have brought shame to her family and the community<sup>290</sup>.

In an interview conducted by the Human Rights Watch (HRW) in Bangladesh, many girls revealed that they were married in order to prevent them from having romantic or sexual relationships before marriage<sup>291</sup>. For instance, Abida N married her eldest daughter at 15<sup>292</sup>. She told the HRW that she would prefer to have her younger daughter wait until she is 20 years old to marry. However, she also stated that if her daughter was going to engage in any sort of relationship with a boy, she would get her married in order to save herself<sup>293</sup>. Whereas in Pakistan, a 17 year old boy and a 16 year old girl in Karachi ran away together<sup>294</sup>. The couple was tracked down by members of the community, and accused of plotting to elope. Ultimately, the council of elders in their community ordered that the teenagers be

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<sup>285</sup> Nirantar Trust and American Jewish World Service, 'Early and Child Marriage. A Landscape Analysis' (2015) 36

<sup>286</sup> *ibid*

<sup>287</sup> *ibid* 38

<sup>288</sup> *ibid*

<sup>289</sup> *ibid*

<sup>290</sup> *ibid* 38

<sup>291</sup> 'Marry Before Your House Is Swept Away' (*Human Rights Watch*, 2015)

<https://www.hrw.org/report/2015/06/09/marry-your-house-swept-away/child-marriage-bangladesh> accessed 16 July 2020

<sup>292</sup> *ibid*

<sup>293</sup> *ibid*

<sup>294</sup> 'Teenage Lovers 'Electrocuted' To Death In Pakistan 'Honour Killing' (*The Independent*, 2017)

<https://www.independent.co.uk/news/world/asia/pakistan-honour-killing-teenage-couple-electrocuted-police-karachi-bakht-jan-rehman-a7947821.html> accessed 16 July 2020

executed by electrocution in the name of honour<sup>295</sup>. Similarly, in 2019, a 10 year old girl was stoned to death in Sindh, after being accused of planning to elope<sup>296</sup>.

As illustrated from the cases above, in countries such as India, Pakistan and Bangladesh, there is no room for acceptance of adolescent sexuality or desires without facing dire consequences<sup>297</sup>. Due to the social stigma attached to a female's sexual agency, young girls often do not consider sex before marriage as an option<sup>298</sup>. Thus, in some cases they choose to get married young to the person of their parents' choosing to satisfy their desires<sup>299</sup>. These norms create a stringent environment where parents who seek control and want to maintain family honour, as well as young girls who wish to exercise their sexual agency, both choose marriage as a way out<sup>300</sup>.

#### **4.2.2. Gender Norms Regarding Division of Labour**

Another factor that exacerbates the practice of child marriage are gender norms regarding the division of labour in the household<sup>301</sup>. The woman's role is limited to reproduction and domestic work, whereas the man is ascribed the role of the provider and leader of the family<sup>302</sup>. Due to these roles, biological factors such as puberty determine whether a girl is old enough to marry<sup>303</sup>. Conversely, whether a man is ready for marriage is determined by his social, economic, and educational standing, and his ability to provide for his family. This leads to girls getting married at a considerably younger age than boys<sup>304</sup>.

Additionally the gender norms surrounding the division of labour reaffirm male dominance within the family. These roles that are heavily entrenched in society, prescribe a submissive

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<sup>295</sup> 'Teenage Lovers 'Electrocuted' To Death In Pakistan 'Honour Killing' (*The Independent*, 2017) <<https://www.independent.co.uk/news/world/asia/pakistan-honour-killing-teenage-couple-electrocuted-police-karachi-bakht-jan-rehman-a7947821.html>> accessed 16 July 2020

<sup>296</sup> Imdad Ali Khushik, 'Gul Sama Rind Stoned To Death On Pretext Of Honour Killing Case: Police' (*Daily Times*, 2019) <<https://dailytimes.com.pk/511495/gul-sama-rind-stoned-to-death-on-pretext-of-honour-killing-case-police/>> accessed 16 July 2020

<sup>297</sup> Nirantar Trust and American Jewish World Service, 'Early and Child Marriage. A Landscape Analysis' (2015) 37

<sup>298</sup> *ibid*

<sup>299</sup> *ibid*

<sup>300</sup> *ibid*

<sup>301</sup> Katie Hodgkinson 'Understanding and Addressing Child Marriage' (HER CHOICE Alliance 2016) 19

<sup>302</sup> *ibid*

<sup>303</sup> *ibid*

<sup>304</sup> UNFPA, 'Marrying too Young: End Child Marriage' (2012) 36

role to women<sup>305</sup>. Moreover, as women from lower socio-economic backgrounds are confined to domestic duties, they are usually financially dependent on the male members of the family<sup>306</sup>. This allows men to control the activities and mobility of women<sup>307</sup>.

Furthermore, numerous reports in Pakistan and Bangladesh have highlighted that hierarchical gender norms coupled with the higher value placed on men also impacts the reason why men and women get married<sup>308</sup>. Men tend to get married in order to fulfil their sexual, reproductive, and familial needs<sup>309</sup>. Whereas girls are married off because they are seen as an economic burden to their family, and to preserve honour<sup>310</sup>.

### **4.3. Economic Factors**

Economic factors are considered to be the second largest contributing factors to the practice of child marriage<sup>311</sup>. Families in India, Pakistan and Bangladesh have cited economic reasons for marrying their daughters off early<sup>312</sup>. Parents often get their daughters married because they are considered an economic burden. Similarly, economic benefits through the marriage of a daughter may also act as an incentive for poor families<sup>313</sup>.

#### **4.3.1. Income Poverty**

Child marriage is more pervasive in poverty stricken communities. Research suggests that young girls from impoverished households are at a higher risk of becoming child brides<sup>314</sup>. In most villages in South Asia, women are discouraged from participating in the public sphere<sup>315</sup>. Thus, they can only contribute to society if they have been granted permission by their husbands. In addition to having a limited role in the public sphere, women remain confined to gender roles within the private sphere<sup>316</sup>. Many women have stated that they remain poor because they are ‘almost slaves’ who ‘depend on men’ and therefore cannot help their households since they do not have jobs. Some women also claimed that they would

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<sup>305</sup>Tazeen S Ali Gunilla Krantz Raisa Gul Nargis Asad Eva Johansson and Ingrid Mogren, ‘Gender roles and their influence on life prospects for women in urban Karachi, Pakistan: a qualitative study’ (2014) 4 Global Health Action 1, 2

<sup>306</sup> ibid

<sup>307</sup> Katie Hodgkinson ‘Understanding and Addressing Child Marriage’ (HER CHOICE Alliance 2016) 19

<sup>308</sup> UNFPA, ‘Marrying too Young: End Child Marriage’ (2012) 36

<sup>309</sup> ibid

<sup>310</sup> ibid

<sup>311</sup> ICRW ‘Too Young to Wed: Education and Action Towards Ending Child Marriage’ (2006) 2

<sup>312</sup> ibid

<sup>313</sup> ibid

<sup>314</sup> Renu Singh ‘A Statistical Analysis of Child Marriage in India Based on Census 2011’ (NCPCR 2017) 81

<sup>315</sup> Patti Petesch Lone Badstue, ‘Gender Norms and Poverty Dynamics in 32 Villages of South Asia’ (2019) Int. Journal of Com WB <<https://doi.org/10.1007/s42413-019-00047-5>> accessed 7 August 2020

<sup>316</sup> ibid

never work outside their home due to fear of tarnishing their reputation<sup>317</sup>. Despite evidence suggesting that communities thrive more when women are an active part of the labour force, most women never get the chance to work due to social and religious norms<sup>318</sup>. Thus, discriminatory gender roles, coupled with crippling poverty, lead families to marry their daughters off early in an attempt to reduce their financial burden while conforming to gender norms.

A child marriage report published in 2017 found that there is a clear correlation between wealth and the median age at first marriage<sup>319</sup>. The report stated that women from a higher socio-economic background were likely to get married more than four years later than women from a lower socio-economic background<sup>320</sup>. Poverty has forced numerous families from underprivileged communities to discontinue their daughters' education and get them married<sup>321</sup>. These families fail to realise that denying girls an education impedes the economic progress of the family as well as the community. Thus, the cycle of poverty continues<sup>322</sup>.

In Rajasthan, India, a girl married at the age of 18 told Nirantar Trust - a non-profit organisation, that her father had pulled her out of school and gotten her married in order to redirect household funds towards her brother's education, despite her aspirations to study further<sup>323</sup>. Similarly, in Bangladesh, poverty was considered one of the biggest reasons why families decided to get their girls married young<sup>324</sup>. The HRW revealed that some families were living in such extreme poverty that they did not have enough money to eat and were therefore forced to arrange marriages for their daughters<sup>325</sup>. These views have a strong nexus to the discriminatory gender norms that exist in South Asia, which result in parents who cannot afford to feed or educate their children, sacrificing their daughters' future first<sup>326</sup>. This

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<sup>317</sup> Patti Petesch Lone Badstue, 'Gender Norms and Poverty Dynamics in 32 Villages of South Asia' (2019) Int.Journal of Com WB <<https://doi.org/10.1007/s42413-019-00047-5>> accessed 7 August 2020

<sup>318</sup> *ibid* 12

<sup>319</sup> Renu Singh 'A Statistical Analysis of Child Marriage in India Based on Census 2011' (NCPCR 2017) 81

<sup>320</sup> *ibid*

<sup>321</sup> *ibid*

<sup>322</sup> *ibid*

<sup>323</sup> Nirantar Trust and American Jewish World Service, 'Early and Child Marriage. A Landscape Analysis' (2015) 35

<sup>324</sup> 'Marry Before Your House Is Swept Away' (*Human Rights Watch*, 2015) <<https://www.hrw.org/report/2015/06/09/marry-your-house-swept-away/child-marriage-bangladesh>> accessed 16 July 2020

<sup>325</sup> *ibid*

<sup>326</sup> *ibid*

may be illustrated through Shahana C who was married at the age of 14 against her will when her family could no longer feed her<sup>327</sup>.

The same pattern seems to exist in Pakistan<sup>328</sup>. A World Bank Knowledge Brief found that much like India and Bangladesh, child marriages in Pakistan are more likely to take place in rural areas, and between families from poorer socio-economic backgrounds<sup>329</sup>. The Brief revealed that the lowest measures of child marriage observed were in Islamabad, an urban city, and the highest measures observed were in the rural areas of Khyber Pakhtunkhwa and Balochistan<sup>330</sup>.

#### **4.3.2. Dowry/Bride Price**

Dowry has been defined as the money, goods, or estate that a woman brings to her husband or his family in marriage<sup>331</sup>. Despite being explicitly banned in many countries, the practice persists within South Asia, including in India, Pakistan and Bangladesh<sup>332</sup>. The practice of giving dowry creates an incentive for underprivileged families to marry their daughters off early. Young girls are considered more valuable because they are seen as a symbol of virginity<sup>333</sup>. Thus, families marry their daughters young, especially those who come from penurious households as the dowry payment is significantly lower<sup>334</sup>.

Parents also believe that child marriages ensure their daughter's economic security<sup>335</sup>. In this way, the dowry system and the way it operates reinforces the norm that early marriage provides protection for young women<sup>336</sup>. Shilpa A, who was married at 15, told HRW that

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<sup>327</sup> 'Marry Before Your House Is Swept Away' (*Human Rights Watch*, 2015)

<https://www.hrw.org/report/2015/06/09/marry-your-house-swept-away/child-marriage-bangladesh> accessed 16 July 2020

<sup>328</sup> Chata Malé and Quentin Wodon, 'Basic Profile Of Child Marriage In Pakistan' (World Bank, ICRW 2016) 3

<sup>329</sup> *ibid*

<sup>330</sup> *ibid*

<sup>331</sup> Katie Hodgkinson 'Understanding and Addressing Child Marriage' (HER CHOICE Alliance 2016) 21

<sup>332</sup> *ibid*

<sup>333</sup> 'Marry Before Your House Is Swept Away' (*Human Rights Watch*, 2015)

<https://www.hrw.org/report/2015/06/09/marry-your-house-swept-away/child-marriage-bangladesh> accessed 16 July 2020

<sup>334</sup> *ibid*

<sup>335</sup> *ibid*

<sup>336</sup> *ibid*

people should stop giving dowry. She claimed it was: ‘a vicious cycle that makes people want to marry their children young because the dowry goes up if they wait.’<sup>337</sup>

The tradition of dowry has been deemed by researchers as both a direct and indirect driver of child marriage<sup>338</sup>. It is considered a direct driver because it provides a logical economic incentive for child marriages, and an indirect driver because it objectifies women and reduces them to mere objects that can be bought and sold<sup>339</sup>.

#### **4.4. Restricted Access to Education**

There is a strong correlation between access to education and child marriage in South Asia. Many women who were married as children have claimed that they were married when their parents could no longer pay for their education<sup>340</sup>. South Asia has one of the lowest literacy rates in the world<sup>341</sup>. Although education is compulsory and mostly free for girls in countries such as India, Pakistan, and Bangladesh, societal pressures, and discriminatory gender norms force girls to drop out<sup>342</sup>. In Bangladesh, although the enrolment rate of girls for primary education is high (81 percent), the attendance rate drops significantly by secondary school (43 percent). The World Bank held in its report, ‘... the challenge is not just getting girls in school—it is keeping them there<sup>343</sup>.’ Similarly, in India, research suggests that while 97 percent of girls secure their admission until the 5th grade, the number drops exponentially to 67 percent by grade 9, and eventually to 41 percent, grade 10 onwards<sup>344</sup>. Pakistan has the lowest female literacy rate amongst the three countries and was described as ‘among the world’s worst performing countries in education,’ at the Oslo Summit on Education and

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<sup>337</sup> ‘Marry Before Your House Is Swept Away’ (*Human Rights Watch*, 2015)  
<<https://www.hrw.org/report/2015/06/09/marry-your-house-swept-away/child-marriage-bangladesh>> accessed 16 July 2020

<sup>338</sup> Elizabeth Yarrow, Kara Apland, Kirsten Anderson and Carolyn Hamilton ‘Getting the Evidence: Asia Child Marriage Initiative’ (Plan International 2015) 19

<sup>339</sup> *ibid*

<sup>340</sup> ‘Shall I Feed My Daughter, Or Educate Her?’ (*Human Rights Watch*, 2018)  
<<https://www.hrw.org/report/2018/11/12/shall-i-feed-my-daughter-or-educate-her/barriers-girls-education-pakistan>> accessed 17 July 2020

<sup>341</sup> *ibid*

<sup>342</sup> *ibid*

<sup>343</sup> ‘Marry Before Your House Is Swept Away’ (*Human Rights Watch*, 2015)  
<<https://www.hrw.org/report/2015/06/09/marry-your-house-swept-away/child-marriage-bangladesh>> accessed 17 July 2020

<sup>344</sup> Himanshu Kaushik, ‘Girl Students Drop Out: 57% Of Girl Students Drop Out Of Schools By Class XI: Report | Ahmedabad News - Times Of India’ (*The Times of India*, 2018)  
<<https://timesofindia.indiatimes.com/city/ahmedabad/57-of-girl-students-drop-out-of-schools-by-class-xi-report/articleshow/66900622.cms>> accessed 17 July 2020

Development<sup>345</sup>. Studies have suggested that almost 5 million children have not been enrolled in primary school, 62 percent of them being girls<sup>346</sup>. This number only increases in middle school, where the gender disparity continues to persist. In 2016, HRW found that 59 percent of middle school girls were out of school<sup>347</sup>. Furthermore, according to 2014 data, only 13 percent of girls are still enrolled in school by the 9th grade<sup>348</sup>.

Restricted access to education is both the cause and consequence of child marriage. Girls in South Asia, particularly those from rural areas, face serious obstacles when trying to attain an education<sup>349</sup>. These obstacles are rooted in strong patriarchal norms that undermine the value of a girl child's education<sup>350</sup>. Most families, especially those living below the poverty line, do not believe in investing in their daughters' education, since she is destined to get married and tend to another household<sup>351</sup>. Parents from rural areas, usually use their financial resources to educate their sons, so they may eventually provide for their families<sup>352</sup>. Zainab, a mother of four told HRW that she prioritized the education of her oldest son for this very reason<sup>353</sup>.

The lack of access to education in South Asia increases the risk of child marriage. A study conducted by Young Lives established that securing the education of a girl child is one of the most effective ways of preventing child marriage<sup>354</sup>. It also found that girls with no education are up to six times more likely to marry as children than girls who have received secondary education<sup>355</sup>.

#### **4.5. Cultural and Religious Norms**

Child marriage is often prevalent in communities with strong cultural and religious traditions<sup>356</sup>. The cultural and religious norms that exist are rarely distinct and often overlap. As previously discussed, young girls are often married to secure the family's honour and to

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<sup>345</sup> 'Shall I Feed My Daughter, Or Educate Her?' (*Human Rights Watch*, 2018)

<<https://www.hrw.org/report/2018/11/12/shall-i-feed-my-daughter-or-educate-her/barriers-girls-education-pakistan>> accessed 17 July 2020

<sup>346</sup> *ibid*

<sup>347</sup> *ibid*

<sup>348</sup> *ibid*

<sup>349</sup> *ibid*

<sup>350</sup> *ibid*

<sup>351</sup> *ibid*

<sup>352</sup> *ibid*

<sup>353</sup> *ibid*

<sup>354</sup> Renu Singh 'A Statistical Analysis of Child Marriage in India Based on Census 2011' (NCPCR 2017) 80

<sup>355</sup> *ibid*

<sup>356</sup> UNFPA and IPPF, 'Ending Child Marriage: A Guide for Global Policy Action' (2006) 20

ensure that she does not engage in premarital sexual activities<sup>357</sup>. Cultural norms also dictate the inferior role a female has within society. Traditions such as the payment of dowry which persists in India, Pakistan, and Bangladesh, give rise to practices such as child marriages<sup>358</sup>.

Other traditions such as Watta Satta (also known as Atta Satta) in India and Pakistan also play a significant role in child marriages. Watta Satta is defined as the exchange of brides between two families<sup>359</sup>. Traditionally, the daughter of one house is offered in return for a daughter of another, regardless of their consent<sup>360</sup>. In Pakistan a 12 year old girl was married in a Watta Satta marriage to a physically abusive 60 year old man<sup>361</sup>. This concept of bride exchange reinforce child marriages within society since many parents feel compelled to trade off their younger daughters if no other option exists<sup>362</sup>.

Another practice that perpetuates child marriages is the social custom of 'Vani', which predominantly takes place in Pakistan<sup>363</sup>. It is a cultural custom whereby young girls are forcibly married as compensation for a crime committed by their male relatives<sup>364</sup>. In most cases Vani marriages are awarded by an informal court led by tribal elders. Any form of resistance by the girls results in dire consequences for their family members<sup>365</sup>. Although Vani marriages are illegal in Pakistan, they are still widely practised within tribal communities. For instance, in Dera Ismail Khan, a 3 year old girl was given as Vani to a 45 year old man to settle a family dispute<sup>366</sup>. Similarly, in a village in Mianwali a man handed over his daughter and niece as Vani for committing murder<sup>367</sup>. Vani marriages not only reinforce the practice of child marriages but expose young girls to hostile and violent environments where they are susceptible to physical and sexual abuse<sup>368</sup>.

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<sup>357</sup> UNFPA and IPPF, 'Ending Child Marriage: A Guide for Global Policy Action' (2006) 20

<sup>358</sup> Katie Hodgkinson 'Understanding and Addressing Child Marriage' (HER CHOICE Alliance 2016) 21

<sup>359</sup> *ibid* 17

<sup>360</sup> Unaiza Tariq, 'The Watta Satta Way: A Bride For A Bride?! The Express Tribune' (*The Express Tribune*, 2014) <<https://tribune.com.pk/story/730670/the-vatta-satta-way-a-bride-for-a-bride>> accessed 17 July 2020

<sup>361</sup> *ibid*

<sup>362</sup> *ibid*

<sup>363</sup> Arshad Munir and Naseem Akhtar, 'A Social Custom 'Vani': Introduction and Critical Analysis' (2014) VFAST Transactions on Education and Social Sciences 11

<sup>364</sup> *ibid*

<sup>365</sup> *ibid*

<sup>366</sup> *ibid* 13

<sup>367</sup> *ibid*

<sup>368</sup> Katie Hodgkinson 'Understanding and Addressing Child Marriage' (HER CHOICE Alliance 2016) 17

Religion is also cited as one of the reasons parents choose to get their daughters married at a young age. In Pakistan and Bangladesh, which are predominantly Muslim countries, parents get their daughters married as soon as they attain puberty because they believe it is their Islamic duty<sup>369</sup>. Since the Quran does not stipulate a minimum age of marriage and has not categorically prohibited child marriage, religious leaders argue that child marriage is permitted<sup>370</sup>. Most religious leaders have political and social influence; hence their stance on child marriage often influences families to marry their children at an early age<sup>371</sup>. Furthermore, in Pakistan religious leaders have tried to block efforts made by the Pakistani government to amend its law regarding the minimum age of marriage<sup>372</sup>. In 2019, when the State Senate passed the Child Marriage Restraint (Amendment) Bill 2018, the CII warned the government that increasing the minimum age would not only lead to complications, but would also be un-Islamic<sup>373</sup>. Similarly in India, religious scriptures dictate that a girl can only be married with proper rites if she is a virgin<sup>374</sup>. Ancient Hindu scriptures have asserted that a girl child should ideally be married between the ages of 8 and 10<sup>375</sup>. Furthermore, certain Hindu sects also believe that unmarried girls are more prone to engaging in sexual relations, whether voluntary or involuntary. Hence, in an attempt to protect girls from engaging in pre-marital sex and pregnancy before marriage, parents marry them off<sup>376</sup>.

#### **4.6. Consequences of Child Marriage**

A substantial amount of evidence shows that child marriage has a profoundly negative impact on young girls and their communities<sup>377</sup>. These consequences include high mortality rates for young mothers as well as their children<sup>378</sup>. Research also suggests that girls who are married before the age of 18 are more likely to be subject to domestic violence<sup>379</sup>. Furthermore, child marriage perpetuates the cycle of poverty<sup>380</sup>.

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<sup>369</sup> Sofia Naveed and Khalid Manzoor Butt, 'Causes and Consequences of Child Marriage in South Asia: Pakistan's Perspective' (2015) 30 A Research Journal of South Asian Studies 161, 169

<sup>370</sup> *ibid*

<sup>371</sup> *ibid* 170

<sup>372</sup> Imran Ahsan Nyazee 'The Council of Islamic Ideology (CII) and Child Marriage' (2014) 1

<sup>373</sup> *ibid*

<sup>374</sup> Dr. Vadana 'Child Marriage Under Hindu Personal Law: Factum Valet or an Issue for Protection of Human Rights for Women' (2017) 1 ILI Law Review 175, 178

<sup>375</sup> Unicef 'Child Marriage and the Law' (2007) Programming Guidance Paper Series 1 23

<sup>376</sup> *ibid*

<sup>377</sup> Saranga Jain and Kathleen Kurz, 'New insights on preventing child marriage' (ICRW 2007) 7

<sup>378</sup> *ibid*

<sup>379</sup> *ibid*

<sup>380</sup> *ibid*

#### 4.6.1. Fertility and Population Growth

South Asia has the second highest fertility rate in the world. Recent statistical research revealed that Pakistan had the highest fertility rate in South Asia, at 3.3 children per woman, followed by India with 2.3 children per woman, and Bangladesh with 2 children per woman<sup>381</sup>. One may deduce that the countries with the highest national fertility rates are predominantly those countries with a higher prevalence of child marriage<sup>382</sup>. Women who are married young are more likely to have more children than those who marry after the age of 18, as child brides start having children at a younger age<sup>383</sup>. Evidence suggests that women who are married by the age of 13 may have 26.4 percent more live births than they would have had at the age of 18<sup>384</sup>. Even marrying a year earlier increases chances of reproductivity. For instance, in Bangladesh, girls who were married by the age of 17 were estimated to have 12.2 percent more children compared to those married at 18<sup>385</sup>. Furthermore, the power imbalances that exist within marriages make it harder for women to assert their needs, especially in relation to negotiating safe sexual intercourse and using contraceptives<sup>386</sup>. Research indicates that child marriage reduces the use of contraceptives, which leads to short intervals between births and increases the window for childbearing<sup>387</sup>.

At a domestic level, high fertility may negatively impact the child bride's family since increasing the size of the household limits the availability of funds to provide basic necessities<sup>388</sup>. Having more children also affects the woman's chances of engaging in paid work. At a national level, child marriages have an exponential impact on the overall population growth of a country<sup>389</sup>. High population growth may have profound economic consequences for young girls and their families. It also impacts the country as a whole by reducing GDP per capita and affecting national budgets, which are forced to grow to provide essential services to a larger population<sup>390</sup>.

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<sup>381</sup> Molly Moore, 'South Asia: Total Fertility Rates By Country 2018 | Statista' (*Statista*, 2019) <<https://www.statista.com/statistics/615679/total-fertility-rates-in-south-asia-2016-by-country/>> accessed 18 July 2020

<sup>382</sup> 'Economic Impacts of Child Marriage: Fertility and Population Growth Brief' (ICRW 2017) 1,3

<sup>383</sup> *ibid*

<sup>384</sup> *ibid*

<sup>385</sup> *ibid*

<sup>386</sup> *ibid* 4

<sup>387</sup> *ibid* 3

<sup>388</sup> *ibid*

<sup>389</sup> *ibid*

<sup>390</sup> *ibid*

#### **4.6.2. Impact on Maternal Health**

Studies have suggested that there is a strong connection between child marriage and early childbirth<sup>391</sup>. This is usually because young girls are forced to prove their fertility as soon as they get married. Furthermore, due to logistics and cultural norms, these girls have limited information on reproductive health and do not influence decisions regarding family planning<sup>392</sup>. Women who bear children at a young age are at a higher risk of having serious health issues. Young mothers, particularly between the ages of 15 and 19 are twice as likely to die from childbirth and pregnancy<sup>393</sup>. This makes pregnancy the leading cause of death in third world countries for this particular age group<sup>394</sup>.

Within South Asia, Bangladesh has the highest rate of pregnancy for women under the age of 18, at 40 percent. Furthermore, 31 percent of adolescents between the ages of 15 and 19 have already begun childbearing while another 6 percent are pregnant with their first child<sup>395</sup>. The maternal mortality of adolescents is double the national rate<sup>396</sup>. Due to their lack of physical development, young Bengali girls are exposed to complications such as obstetric fistula, which leads to serious infections<sup>397</sup>.

In 2013, the World Health Organisation named Pakistan as one of the 10 countries that made up 58 percent of global maternal deaths, with a national maternal mortality ratio of 276 deaths per 100,000 births<sup>398</sup>. The prevalence of child marriage contributes to the abysmal state of maternal health<sup>399</sup>. Furthermore, evidence suggests that girls under the age of 18 are 83 percent less likely to have access to health care facilities than women over the age of 18, due to financial dependence and struggling to find transportation<sup>400</sup>. As for India, although the number of deaths related to pregnancy and childbirth has dropped 55 percent, the coverage for health care interventions and practices is limited due to lack of resources as well as implementation gaps in policies<sup>401</sup>.

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<sup>391</sup> Saranga Jain and Kathleen Kurz, 'New insights on preventing child marriage' (ICRW 2007) 7

<sup>392</sup> *ibid*

<sup>393</sup> *ibid*

<sup>394</sup> *ibid*

<sup>395</sup> 'Ending Impunity For Child Marriage in Bangladesh: Normative and Implementation Gaps' (CRR 2018) 9

<sup>396</sup> *ibid*

<sup>397</sup> 'Ending Impunity For Child Marriage in Pakistan: Normative and Implementation Gaps' (CRR 2018) 10

<sup>398</sup> *ibid* 9

<sup>399</sup> *ibid*

<sup>400</sup> *ibid* 10

<sup>401</sup> 'Maternal Health' (*Unicef.org*) <<https://www.unicef.org/india/what-we-do/maternal-health>> accessed 19 July 2020.

### 4.6.3. Domestic Violence

Girls who are married young are often subjected to physical and sexual abuse since they lack power and status within their marriages<sup>402</sup>. A survey conducted on the well-being of adolescents in India, found that girls who were married before 18 were twice as likely to face some form of domestic abuse by their husbands compared to girls who married at a later age<sup>403</sup>. The survey also found that they were 3 times more likely to report being forced into sexual intercourse<sup>404</sup>.

Domestic violence is also widespread in Pakistan, where around 40 percent of married women have been reported to suffer from some form of physical violence<sup>405</sup>. Research dictates that Pakistani women who are married as children are more likely to face some sort of physical abuse at the hands of their husband or in-laws, compared to women who get married as adults<sup>406</sup>. Domestic violence is quite prevalent among child brides in Pakistan, with evidence indicating that every third woman between 15 and 24 has experienced some form of physical or sexual violence at the hands of her husband<sup>407</sup>. Similarly, in Bangladesh, a UN Special Rapporteur on violence against women found that approximately 60 percent of married women have experienced domestic abuse<sup>408</sup>.

### 4.6.4. Economic Impact

Child marriage acts as a serious barrier to a girl's education, and has an adverse impact on the economy<sup>409</sup>. Girls who get the opportunity to study often drop out before their marriage or immediately afterwards, when their domestic demands increase<sup>410</sup>. Their lack of education hinders their ability to earn a decent living. In impoverished households, a child bride's labour potential is usually bartered. The newly married girl eventually takes over domestic

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<sup>402</sup> 'Marry Before Your House Is Swept Away' (*Human Rights Watch*, 2015)  
<<https://www.hrw.org/report/2015/06/09/marry-your-house-swept-away/child-marriage-bangladesh>> accessed 19 July 2020

<sup>403</sup> 'Too Young to Wed: Education and Action Towards Ending Child Marriage' (ICRW 2007)

<sup>404</sup> *ibid*

<sup>405</sup> Muazzam Nasrullah, Rubeena Zakar, Muhammad Zakria Zakar, Safdar Abbas and Rabia Safdar 'Circumstances leading to intimate partner violence against women married as children: a qualitative study in Urban Slums of Lahore, Pakistan' (2015) 15 *BMC International Health and Human Rights* 1, 2

<sup>406</sup> *ibid*

<sup>407</sup> *ibid* 3

<sup>408</sup> 'Marry Before Your House Is Swept Away' (*Human Rights Watch*, 2015)  
<<https://www.hrw.org/report/2015/06/09/marry-your-house-swept-away/child-marriage-bangladesh>> accessed 19 July 2020

<sup>409</sup> Renu Singh 'A Statistical Analysis of Child Marriage in India Based on Census 2011' (NCPCR 2017) 94

<sup>410</sup> *ibid*

responsibilities while the older women work as wage labourers<sup>411</sup>. Such marriages impede the national development goals set out by governments to improve poverty and economic growth<sup>412</sup>.

New research suggests that child marriage not only negatively impacts the lives of over 15 million girls who are married each year, but also has a substantial impact on communities and countries as a whole<sup>413</sup>. Child marriage is estimated to cost economies 1.7 percent of their GDP, and also increases fertility rates by 17 percent<sup>414</sup>. As discussed earlier, high fertility rates force national governments to increase the annual budget. According to an article published by UC Berkeley, 'the associated cost to the global economy is trillions of dollars in purchasing power parity between now and 2030<sup>415</sup>.'

Child marriage hinders the accumulation of human capital since it forces young girls to drop out of school, and withdraw from labour markets<sup>416</sup>. Furthermore, it has an adverse impact on the health of young girls. It reinforces discriminatory gender roles which perpetuates poverty and inhibits economic growth<sup>417</sup>.

#### **4.7. Concluding Comments**

Child marriage in South Asia is predominantly driven by discriminatory gender norms, high poverty rates, as well as religious and cultural norms. The practice adversely impacts the girl child's education, as well as her physical and mental health. Furthermore, it exposes young girls to a life of domestic servitude, as well as physical and sexual abuse. Practices such as Watta Satta and Vani marriages not only dehumanise young girls, but can also put an end to their life. Discriminatory gender norms which are prevalent across India, Pakistan and Bangladesh, rob young girls of their right to bodily autonomy, which puts them at a risk of experiencing dangerous complications during pregnancy and childbirth. Furthermore, the girl child's lack of education restricts her economic opportunities, which not only adversely affects her future, but has negative implications for her family and the community as a whole.

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<sup>411</sup> Renu Singh 'A Statistical Analysis of Child Marriage in India Based on Census 2011' (NCPCR 2017) 95

<sup>412</sup> Lakshmi Sundaram Lakshmi Sundaram, 'Skoll | The Far-Reaching Economic Impacts Of Child Marriage' (Skoll.org, 2017) <<https://skoll.org/2017/08/25/far-reaching-economic-impacts-child-marriage/>> accessed 19 July 2020

<sup>413</sup> ibid

<sup>414</sup> ibid

<sup>415</sup> Parmita Das, 'The Economics Of Child Marriage' (*Berkeley Economic Review*, 2018) <<https://econreview.berkeley.edu/the-economics-of-child-marriage/>> accessed 19 July 2020

<sup>416</sup> ibid

<sup>417</sup> ibid

## CHAPTER 5

### THE LIMITATIONS OF CHILD MARRIAGE LAWS IN SOUTH ASIA

Chapter two discussed the national legislation of India, Pakistan, and Bangladesh with regard to child marriage. This chapter will analyse the limitations that exist within the domestic legal systems of these countries.

#### 5.1. India

Although India has made commendable steps towards eradicating child marriage, the Government has acknowledged that the PCMA 2006 has had a limited impact. Issues such as ambiguity in the legal framework, limited access to justice, and social norms hinder its implementation<sup>418</sup>.

##### 5.1.1. Ambiguity in the Law

The PCMA has faced serious criticism regarding its definition of a child<sup>419</sup>. The Act defines what constitutes a child based on gender and provides a lower age of majority for girls<sup>420</sup>. The definition of a child under the PCMA, directly contradicts the Juvenile Justice Act<sup>421</sup> (JJA) 2015, as well as the Majority Act, which both define a child as anyone below the age of 18, regardless of sex<sup>422</sup>. Legal scholars have argued that defining a child based on sex promotes discriminatory stereotypes against girls and perpetuates the myth that a woman's intellectual development is faster than a man's<sup>423</sup>. Furthermore, child marriages are not explicitly recognised as forced marriage. Section 12 of the Act stipulates that forced marriages will be considered void ab initio (legally void)<sup>424</sup>; whereas Section 3 provides that a child spouse has the ability to nullify the marriage within two years of attaining majority<sup>425</sup>. The Act fails to recognise that a minor cannot legally consent to marriage, and therefore child marriage should be categorically recognised as forced marriage, and thus legally void. Since the PCMA does not expressly declare that consent is a vital element of any valid marriage,

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<sup>418</sup> 'Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 16

<sup>419</sup> *ibid* 17

<sup>420</sup> Jaya Sagade, 'Child Marriage in India: Socio-Legal and Human Rights Dimensions' (Oxford University Press 2005) 47

<sup>421</sup> Juvenile Justice Act (Care and Protection Act) 2015

<sup>422</sup> Indian Majority Act 1875

<sup>423</sup> 'Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 17

<sup>424</sup> The Prohibition of Child Marriage Act 2006 s.12

<sup>425</sup> *ibid* s.3

child marriage may potentially be considered valid, unless the minor upon attaining puberty nullifies the marriage<sup>426</sup>.

India's judicial system has also contributed to the ambiguity of the law by providing inconsistent judgements in relation to the validity of child marriages<sup>427</sup>. Courts in India have made conflicting decisions regarding the status of child marriages by ruling it as either a void, voidable, or 'voidable but not valid' marriage, on a case by case basis<sup>428</sup>. Decisions were often based on factors such as a girl's age, personal laws, and whether she had explicitly or implicitly consented to the marriage<sup>429</sup>. Case law suggests that courts are generally reluctant to rule child marriages as void. For instance, in the case of *Delhi High Court v Union of India and Ors.*, a young girl was allegedly sold into marriage to a 40 year old man by her parents. Although the court ordered that the girl must be returned to her parents and cannot consummate her marriage until she turns 18, they failed to declare the marriage void, despite the fact that this right was guaranteed under the PCMA<sup>430</sup>.

Under the PCMA, girls who wish to make their marriages 'voidable' are required to initiate legal proceedings within two years of attaining majority<sup>431</sup>. Placing the onus of annulling a marriage on girls puts them at a serious disadvantage. Although young girls may be aware of their legal rights, other factors such as a lack of societal support, and financial constraints stop them from seeking annulment<sup>432</sup>. Furthermore, the statute of limitations placed on the annulment of a child marriage may pose additional challenges<sup>433</sup>.

### **5.1.2. National law vs Personal law**

In India, the laws pertaining to marriage are governed by national law which is applicable to the general population, as well as religious personal laws which apply to specific communities<sup>434</sup>. Therefore, there has been confusion as to whether the PCMA has supremacy over personal laws, which establish their own principles and policies concerning the

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<sup>426</sup> Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 17

<sup>427</sup> *ibid*

<sup>428</sup> *ibid*

<sup>429</sup> *ibid*

<sup>430</sup> Association for Social Justice & Research v Union of India & Ors. WP (CRL) 535 2010

<sup>431</sup> 'Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 18

<sup>432</sup> *ibid*

<sup>433</sup> *ibid*

<sup>434</sup> *ibid* 16

solemnisation and dissolution of marriage, which contradict the provisions established under the PCMA<sup>435</sup>.

Under the Hindu Marriage Act (HMA), the marriage between a boy and a girl under the age of 18 and 21 may be punishable with imprisonment which may extend to 15 days, or a fine which may extend to rs 1000 or both<sup>436</sup>. This proviso contradicts the penal sanction set out in the PCMA which states that the practice is punishable with 2 years imprisonment and a fine that may extend to rs 100,000<sup>437</sup>. Furthermore, only the contracting parties of the marriage are liable under the HMA, regardless of whether they consented<sup>438</sup>. The Act fails to provide a penalty for parents or guardians who arranged or solemnised the marriage<sup>439</sup>. Hindu personal law also dictates that child marriages may only be voidable if the girl child was under the age of 15 at the time of her marriage, and if she challenges the validity of her marriage before she turns 18<sup>440</sup>.

Although the HMA does not expressly stipulate that consent is required for a valid marriage, it does state that a marriage will be considered invalid if either party is incapable of giving consent due to an 'unsound mind' or suffers from a 'mental disorder.' Moreover, under Section 5 of the HMA, marriages are voidable where the 'consent of the petitioner... was obtained by force or by fraud<sup>441</sup>.' However, child marriage is not explicitly recognised as involving force or fraud. This is problematic, since the Act itself recognises the minimum age of marriage is 18 for girls. Hence, any marriage contracted where the parties are under the age of 18 should automatically be void as they cannot legally consent<sup>442</sup>. Therefore, the HMA should recognise that child marriages are predominantly forced marriages.

Muslim personal law, which remains uncodified in India, recognises marriage as a civil contract and deems it legally void if a girl is married without her consent<sup>443</sup>. It establishes that a girl may legally marry once she attains puberty - which is presumed to be the age of 15 -

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<sup>435</sup> 'Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 18

<sup>436</sup> Hindu Marriage Act 1955 s.18(3)

<sup>437</sup> Prohibition of Child Marriage Act 2006 s.10

<sup>438</sup> Hindu Marriage Act 1955 s.18(3)

<sup>439</sup> *ibid*

<sup>440</sup> *ibid*

<sup>441</sup> *ibid* s.5(ii)(b) and (c)

<sup>442</sup> Jaya Sagade, '*Child Marriage in India: Socio-Legal and Human Rights Dimensions*' (Oxford University Press 2005) 47

<sup>443</sup> 'Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 19

but also permits parents and guardians to arrange a marriage on the girl's behalf even if she has not yet attained puberty<sup>444</sup>. The only way a girl can render the marriage void is if she avails herself the 'option of puberty', which is a right given to women to repudiate their marriage on the grounds that they were married as minors<sup>445</sup>. However, this option is only available if the girl challenges the marriage before she turns 18 and if the marriage was not consummated<sup>446</sup>. This law makes it difficult for girls to nullify their marriage. Such laws do not take into consideration that since the girl was a minor, she may have been coerced into consummating the marriage, ensuring her dependence on her husband, and limiting her ability to declare the marriage void<sup>447</sup>.

Since the PCMA itself does not address the role of personal laws, there is ambiguity concerning which law prevails. This allows child marriage to persist legally under religious personal laws<sup>448</sup>. Courts across India have also given inconsistent judgements concerning the status of personal laws in relation to the PCMA<sup>449</sup>. Parents and guardians who want to marry their daughters off at an early age may do so through personal laws, without facing legal consequences<sup>450</sup>. In order for the PCMA to be effective, the government must assert its primacy over personal laws.

In a 2017 Supreme Court judgement, Justice Gupta held that the PCMA should have supremacy over personal laws<sup>451</sup>. He stated that: 'the PCMA is a secular Act applicable to all,' and would prevail over the HMA and the Muslim Marriages and Divorce Act 'in so far as children are concerned.' This decision, if implemented may harmonise child marriage laws across India and safeguard the rights of the girl child<sup>452</sup>.

### **5.1.3. Limited Access to Justice**

Although India has put forward legislative mechanisms to combat child marriage, the lack of access to justice has left young girls vulnerable<sup>453</sup>. The government's failure to establish accessible accountability mechanisms breaches its responsibility of providing legal remedies

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<sup>444</sup> 'Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 19

<sup>445</sup> Dissolution of Muslim Marriages Act No. 8 1939 s.2

<sup>446</sup> 'Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 19

<sup>447</sup> *ibid*

<sup>448</sup> *ibid* 18

<sup>449</sup> *ibid*

<sup>450</sup> *ibid*

<sup>451</sup> *Independent Thought v. Union of India & Anr.*, W.P.(C) 382 of 2013, S.C.C. India (Gupta J)

<sup>452</sup> *ibid*

<sup>453</sup> 'Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 43

for violations of human rights<sup>454</sup>. Along with the procedural barriers that exist within the PCMA, other issues such as structural and social barriers profoundly impact its effective implementation<sup>455</sup>. The lack of structural support is evident through the failure of Indian States to appoint fully trained CMPOs with clearly defined duties<sup>456</sup>. According to the Centre for Reproduction Rights, only 20 states and union territories out of 36, have appointed CMPOs<sup>457</sup>. Even states such as Punjab and Bihar that have appointed CMPOs have merely added the prevention of child marriage as a secondary duty<sup>458</sup>. Moreover, state governments have failed to provide data regarding the implementation of PCMA rules<sup>459</sup>.

Enforcement agencies such as the CMPOs, due to a lack of training are often unaware of the legal provisions and protections afforded by the PCMA<sup>460</sup>. Social barriers also make it difficult for CMPOs to report cases or file complaints on behalf of young girls and their families as they fear violent retaliation from members of the community<sup>461</sup>. A recent study also revealed that even in cases where authorities successfully stop child marriages, the girls whose marriages were prevented face ridicule and violence from members of their family and community<sup>462</sup>.

Furthermore, families from certain communities may marry their daughters off due to the pressure placed on them from Khap Panchayats<sup>463</sup>. Khap Panchayats are quasi-judicial bodies present in numerous villages that enforce caste structures and impose informal laws concerning marriage and other customs<sup>464</sup>. They play a huge role in promoting child marriages and have been notorious for ordering forced marriages, especially when adolescents are accused of being sexually active<sup>465</sup>. The group is also known for promoting child marriage as a protective measure<sup>466</sup>. For instance in 2012, amid outrage over a series of

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<sup>454</sup> Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 43

<sup>455</sup> *ibid*

<sup>456</sup> Prohibition of Child Marriage Act 2006 s.16

<sup>457</sup> 'Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 44

<sup>458</sup> *ibid*

<sup>459</sup> *ibid*

<sup>460</sup> 'Reducing Child Marriage in India' (unicef 2016) 37

<sup>461</sup> *ibid*

<sup>462</sup> *ibid*

<sup>463</sup> 'Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 45

<sup>464</sup> 'What Is Khap Panchayat?' (*India Today*, 2012) <<https://www.indiatoday.in/india/north/story/what-is-khap-panchayat-118365-2012-10-11>> accessed 28 July 2020.

<sup>465</sup> *ibid*

<sup>466</sup> *ibid*

rape cases in Haryana, Khap Panchayats argued that abolishing the minimum age of marriage would help eradicate rape and sexual assault<sup>467</sup>.

Moreover, even when cases of child marriages are successfully reported, only a few individuals are prosecuted. In the case of *Independent Thought v. Union of India & Anr.*, Justice Madan Lokur acknowledged that prosecutions for child marriages are 'abysmally low'<sup>468</sup>. In fact, between the years of 2014 and 2016 a total of 1,785 cases were registered across the country and 4,777 people were arrested. However, only 274 were convicted<sup>469</sup>. When asked about the poor conviction rate, police officers cited a lack of cooperation by the girl child's family. Another senior police officer stated that courts usually treat cases that are reported before the marriage is solemnised leniently<sup>470</sup>. The leniency shown by courts puts young girls in further danger. Since there are little to no consequences from the law, there is nothing stopping parents from trying to remarry their daughters as soon as the charges are dropped<sup>471</sup>.

#### **5.1.4. Limited Legal Remedies**

The Indian constitution guarantees legal remedies for victims of child marriage. However young girls are unable to avail these services due to a lack of financial and social autonomy, as well as a lack of support by government institutions<sup>472</sup>.

Many young girls do not possess the autonomy needed to seek legal remedies and get their marriages nullified. However, even if child brides wish to file a complaint, they are often financially dependent on their husbands, and most communities lack legal aid<sup>473</sup>. Despite the enactment of the Legal Services Act 1987<sup>474</sup>, which guarantees free legal service to women and children, legal aid is hard to access, especially when it comes to young girls.

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<sup>467</sup> 'Haryana Khap Panchayats Says Marry Them Young To Avoid Rape Cases' (*NDTV.com*, 2012) <<https://www.ndtv.com/india-news/haryana-khap-panchayats-says-marry-them-young-to-avoid-rape-cases-501147>> accessed 28 July 2020

<sup>468</sup> *Independent Thought v. Union of India & Anr.*, WP (C) 382 2013, SCC (Lokur J)

<sup>469</sup> Harish V Nair, 'Child Marriage Still Alive And Kicking; 1,785 Cases Registered In Last 3 Years' (*India Today*, 2017) <<https://www.indiatoday.in/mail-today/story/child-marriage-national-commission-for-the-protection-of-child-rights-ministry-of-women-and-child-development-1036790-2017-09-03>> accessed 29 July 2020.

<sup>470</sup> Rajiv Kalkod, 'Child Marriage Cases In Karnataka Spike In 6 Years, But Only 1 Conviction | Bengaluru News - Times Of India' (*The Times of India*, 2019) <<https://timesofindia.indiatimes.com/city/bengaluru/child-marriage-cases-in-karnataka-spike-in-6-years-but-only-1-conviction/articleshow/68028979.cms>> accessed 29 July 2020

<sup>471</sup> *ibid*

<sup>472</sup> 'Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 45

<sup>473</sup> *ibid*

<sup>474</sup> Legal Services Act 1987

Moreover, Section 4 of the PCMA guarantees the payment of maintenance for girls who declare their marriage void<sup>475</sup>, however, young girls often face difficulties in obtaining the money<sup>476</sup>. This is because the PCMA does not specify how to calculate maintenance, and instead states that maintenance should be given to the girl child according to her needs and lifestyle, and the means of income of the paying party<sup>477</sup>. Furthermore, the Act states that maintenance is only available in cases relating to voidable marriages, and not marriages that are void<sup>478</sup>. Hence, if a marriage is deemed void because it was contracted by force, the girl loses her right to maintenance<sup>479</sup>.

Moreover, though the PCMA gives the court the power to decide the residence of the girl child until she is remarried, it fails to provide what factors must be taken into account<sup>480</sup>. Consequently, courts have been inconsistent in their rulings regarding the girl's guardianship; granting custodial rights to parents or assigning the child to a State shelter<sup>481</sup>. Such rulings have proven to be counterproductive, since shelter homes in India are notorious for subjecting women and children to violence, and sexual exploitation<sup>482</sup>. According to India's National Crimes Record Bureaus (NCRB) Crime Report, 707 incidents of sexual harassment in shelter homes were reported in 2018<sup>483</sup>. As a result of the abuse, girls are often unwilling to live in shelter homes, and run away<sup>484</sup>. Furthermore, even girls who are returned to their parents are reluctant to live with them since they may be subjected to physical abuse for refusing to get married<sup>485</sup>.

## 5.2. Pakistan

Pakistan's national legal framework has proven to be the weakest among the three countries. The CMRA 1929 has been criticised as being vague as well as inconsistent with other

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<sup>475</sup> Prohibition of Child Marriage Act 2006 s.4

<sup>476</sup> 'Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 45

<sup>477</sup> Prohibition of Child Marriage Act 2006 s.4(2)

<sup>478</sup> *ibid*

<sup>479</sup> 'Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 45

<sup>480</sup> Prohibition of Child Marriage Act 2006 s.4

<sup>481</sup> *Pratapa Ram v State* CM 1154 2012, HC Raj

<sup>482</sup> 'Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 46

<sup>483</sup> Neeraj Chauhan, '30% Rise In Sexual Abuse Of Young Women In Shelter Homes: NCRB Annual Report' (*Hindustan Times*, 2020) <<https://www.hindustantimes.com/india-news/30-rise-in-sexual-abuse-of-young-women-in-shelter-homes-ncrb-annual-report/story-OApm3FPeP0ZUsha5IWdKuK.html>> accessed 29 July 2020.

<sup>484</sup> *ibid*

<sup>485</sup> 'Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 46

national laws<sup>486</sup>. Furthermore, its provisions regarding the protection of children and the age of marriage fail to meet international standards<sup>487</sup>. Issues such as legal loopholes and inconsistent court decisions play a significant role in why child marriage laws in Pakistan continue to suffer<sup>488</sup>.

### **5.2.1. Ambiguity in the law**

Pakistan's child marriage laws have numerous shortcomings. The CMRA remains silent on whether child marriages are considered void or voidable, and does not afford financial support to victims of child marriage<sup>489</sup>. Furthermore, its provisions seem to contradict other legislation within the country, such as the PPC and personal laws.<sup>490</sup> This gives rise to the question of whether the CMRA has primacy over other laws in Pakistan<sup>491</sup>.

The CMRA, much like India's' PCMA has been criticised for setting a higher minimum age of marriage for boys compared to girls<sup>492</sup>. Numerous international bodies, including the UN Committee on the Rights of the Child have advised Pakistan to harmonise its legislation so that a child is unanimously defined as anyone under the age of 18<sup>493</sup>. Additionally, under the CMRA, there is a one year statute of limitations for filing a complaint<sup>494</sup>. This limitation restricts the extent to which violations under the Act may be prosecuted<sup>495</sup>. Furthermore, other barriers such as access to justice and financial problems make it difficult for girls to challenge their marriages within a year<sup>496</sup>.

Unlike the PCMA, the CMRA does not provide financial maintenance for victims of child marriage<sup>497</sup>. Thus, their only option is to exercise their right to maintenance under the applicable personal law, which tends to be extremely limited<sup>498</sup>. Under Muslim personal law, women are only entitled to maintenance during the iddat period, which is observed for four

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<sup>486</sup> 'Ending Impunity for Child Marriage in Pakistan: Normative and Implementation Gaps' (CRR 2018) 19

<sup>487</sup> *ibid*

<sup>488</sup> *ibid*

<sup>489</sup> *ibid*

<sup>490</sup> *ibid* 21

<sup>491</sup> *ibid*

<sup>492</sup> *ibid*

<sup>493</sup> UN Committee on the Rights of the Child 'Concluding Observations on the 5th periodic report of Pakistan' (11 July 2016) UN Doc CRC/C/PAK/CO/5 para 17

<sup>494</sup> 'Ending Impunity for Child Marriage in Pakistan: Normative and Implementation Gaps' (CRR 2018) 21

<sup>495</sup> *ibid*

<sup>496</sup> *ibid*

<sup>497</sup> *ibid* 20

<sup>498</sup> *ibid*

months after the dissolution of the marriage<sup>499</sup>. The law does not specify the exact amount of maintenance that must be given to a woman, but courts have held that the amount should cover all 'reasonable expenses'<sup>500</sup>. This is decided on a case by case basis. Hindu child brides may not receive any maintenance, since the HMA does not provide that right upon the dissolution of a marriage.<sup>501</sup> The lack of financial support from governmental bodies may discourage girls from coming forward and reporting their marriages due to fear of not being able to support themselves<sup>502</sup>.

Although the CMRA authorises the courts to issue rulings against child marriages, and imposes punishments for solemnising, or for aiding child marriages, no provision within the Act explicitly states that a child marriage, once performed is considered invalid<sup>503</sup>. Furthermore, both the CMRA and SCMRA fail to address the voidability of child marriages<sup>504</sup>. Thus, young girls who wish to nullify their marriage must do so through personal laws<sup>505</sup>. However, this course of action is taxing and restrictive. For instance, the Dissolution of Muslim Marriages Act 1939 (DMMA), grants Muslim girls the right to petition a court to have their marriage dissolved only if they were married before the age of 16, and filed for dissolution before the age of 18<sup>506</sup>. This restriction makes it significantly harder for girls to approach the courts in order to annul their marriage as they have limited mobility, and lack financial independence<sup>507</sup>. Furthermore, the right to dissolution is only available if the marriage has not been consummated<sup>508</sup>. Hence, under the DMMA, Muslim girls who have been forced into sexual intercourse by their husbands cannot repudiate their marriage<sup>509</sup>. Conversely, Hindu girls may have their child marriage declared void by filing a petition under section 10 and 11 of the Hindu Marriage Act (2017)<sup>510</sup>.

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<sup>499</sup> 'Iddah - Oxford Islamic Studies Online' (*Oxfordislamicstudies.com*)

<<http://www.oxfordislamicstudies.com/article/opr/t125/e971>> accessed 31 July 2020

<sup>500</sup> 'Ending Impunity for Child Marriage in Pakistan: Normative and Implementation Gaps' (CRR 2018) 20

<sup>501</sup> *ibid*

<sup>502</sup> *ibid*

<sup>503</sup> *ibid* 19

<sup>504</sup> *ibid*

<sup>505</sup> *ibid*

<sup>506</sup> Dissolution Of Muslim Marriages Act s.2

<sup>507</sup> 'Ending Impunity for Child Marriage in Pakistan: Normative and Implementation Gaps' (CRR 2018) 19-20

<sup>508</sup> *ibid*

<sup>509</sup> *ibid*

<sup>510</sup> Hindu Marriage Act 2017 s.10, s.11

### **5.2.2. Inconsistencies between the CMRA and other Legislation**

Some provisions within the CMRA contradict other national legislation, such as the PPC<sup>511</sup>. The 2017 amendment to Section 498B of the PPC imposes higher penalties for child marriage than the CMRA<sup>512</sup>. Section 498B stipulates that an individual guilty of forcing a woman into marriage may face a prison term of 7 years, and must pay a fine of PKR 500,000 (2550 euro)<sup>513</sup>, whereas the CMRA only prescribes a 1 month prison sentence, and a fine of PKR 1000<sup>514</sup>. This contradiction is problematic and illustrates that the government has failed to recognise that child marriage should inherently be considered a forced marriage, and must be treated as such. Furthermore, this also gives rise to the question of which legal framework prevails. Courts in Pakistan have yet to address this issue<sup>515</sup>.

There have also been discrepancies between the CMRA and personal laws, especially in relation to Muslim personal law<sup>516</sup>. As previously mentioned Muslim personal law blatantly undermines the age limit set forth by the CMRA<sup>517</sup>. To make matters worse, courts in Pakistan have interpreted the CMRA in light of Muslim personal law and have adopted the position that a child marriage is valid as long as both parties have attained puberty<sup>518</sup>. For instance, in the case of *Allah Nawaz v Station House Officer and four others*, a 14 year old girl accused her husband of raping her, but declared to the Lahore High Court that she was still willing to remain married to him<sup>519</sup>. The High Court - referencing Islamic law - held that the girl could legally choose to stay in the marriage since medical evidence showed that she had attained puberty<sup>520</sup>. Furthermore, the court also argued that the marriage was valid because the CMRA does not explicitly state that courts must declare a marriage void on the basis of child marriage<sup>521</sup>.

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<sup>511</sup> Ending Impunity for Child Marriage in Pakistan: Normative and Implementation Gaps' (CRR 2018) 23

<sup>512</sup> *ibid*

<sup>513</sup> Pakistan Penal Code 1860 s.498B

<sup>514</sup> Child Marriage Restraint Act 1929 s.4

<sup>515</sup> Ending Impunity for Child Marriage in Pakistan: Normative and Implementation Gaps' (CRR 2018) 23

<sup>516</sup> *ibid* 24

<sup>517</sup> *ibid*

<sup>518</sup> *ibid*

<sup>519</sup> *Allah Nawaz v. Muzaffargarh* (2013) PLD Lah, 243

<sup>520</sup> *ibid*

<sup>521</sup> *ibid*

In a more recent case a 14 year old Catholic girl, Huma Younus was abducted, forcibly converted, and married off to a Muslim man in October of 2019<sup>522</sup>. Her parents filed a report to the police and took the matter to court. During the hearing, the parents argued that their daughter's marriage was invalid under the SCMRA, since she was under the age of 18. It was held that under sharia law, Huma's marriage to her alleged abductor was valid despite the fact that she was a minor, as she has already had her first menstrual cycle<sup>523</sup>.

The court's decision to declare the child marriages mentioned above as valid illustrates that when it comes to marriage, Muslim personal law holds primacy over the CMRA<sup>524</sup>. This severely undermines the Act's efficacy. Furthermore, the decision regarding Huma's case indicates that courts are willing to declare child marriages valid, even if the girl was abducted and forced into marriage<sup>525</sup>.

### **5.2.3. Limited Access to Justice**

The judicial process in Pakistan is notorious for being slow and expensive<sup>526</sup>. In 2019 it was reported that the country has over 1.9 million pending cases<sup>527</sup>. Additionally, victims are often hesitant to file a complaint to law enforcement authorities<sup>528</sup>. Much like women in India, Pakistani girls fear being ostracised by their family and the community for coming forward. Furthermore, the criminal justice system is dominated by men who usually lack the skills and empathy needed to help victims of child marriage. This leads to women being reluctant in exercising their rights under the law<sup>529</sup>.

Moreover, governmental authorities offer little support to girls who want to escape child marriage<sup>530</sup>. Unlike the PCMA, the CMRA lacks an explicit provision for the creation of mechanisms that provide economic assistance, legal aid, and counselling for victims of child marriage<sup>531</sup>. The lack of shelters provided by the government puts victims at greater risk, and

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<sup>522</sup> Pia Gralki and Catherine Caruso, 'Pakistan Law Allows Men To Marry Girls After Their First Period' (*Global Citizen*, 2020) <<https://www.globalcitizen.org/en/content/pakistan-court-allows-men-to-marry-underage-girls/>> accessed 1 August 2020

<sup>523</sup> *ibid*

<sup>524</sup> Ending Impunity for Child Marriage in Pakistan: Normative and Implementation Gaps' (CRR 2018) 19

<sup>525</sup> *ibid*

<sup>526</sup> *ibid* 34

<sup>527</sup> *ibid*

<sup>528</sup> *ibid*

<sup>529</sup> *ibid*

<sup>530</sup> *ibid*

<sup>531</sup> *ibid*

makes it more difficult for them to escape abusive households<sup>532</sup>. In an attempt to tackle this issue the Pakistani Ministry of Women Development established Shaheed Benazir Bhutto Centres for Women which provide up to 24 hours of shelter, emergency legal aid, medical treatment, as well as counselling<sup>533</sup>. However, these centres lack significant resources<sup>534</sup>. Moreover, local and provincial governments have also set up 200 shelter houses, however these houses have been compared to prison for their strict policies, and their restriction of female mobility<sup>535</sup>.

### **5.3. Bangladesh**

Although Bangladesh has afforded constitutionally guaranteed rights and legal protection to children, its legislative framework fails to address numerous issues that contribute to the practice of child marriage<sup>536</sup>. Despite introducing a new law regarding child marriage in 2017, Bangladesh still has one of the highest rates of child marriage in South Asia<sup>537</sup>. Much like India and Pakistan, issues such as inconsistencies in the law, limited access to justice, and lack of support hinders the implementation of the law<sup>538</sup>.

#### **5.3.1. Ambiguity in the law**

Bangladesh passed its new child marriage legislation in 2017<sup>539</sup>. Even though the Act has taken positive steps to combat child marriage, it is still subject to serious criticism by the international community, for instance for providing a lower age of majority for girls in comparison to boys<sup>540</sup>. To make matters worse, the minimum age of marriage set forth may be invalidated by personal laws since CMRA 2017 does not explicitly declare its primacy over them<sup>541</sup>. This prevents national laws from being effectively enforced.

Although child marriage is an indictable offence, the CMRA 2017 remains silent in relation to whether the marriages are void or voidable<sup>542</sup>. However, case law indicates that the marriage of a girl below the age of 18 does not automatically make the marriage invalid. Thus, women who wish to have their child marriages annulled must initiate proceedings

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<sup>532</sup> Ending Impunity for Child Marriage in Pakistan: Normative and Implementation Gaps' (CRR 2018) 19

<sup>533</sup> *ibid*

<sup>534</sup> *ibid*

<sup>535</sup> *ibid*

<sup>536</sup> Ending Impunity for Child Marriage in Bangladesh: Normative and Implementation Gaps' (CRR 2018) 15

<sup>537</sup> *ibid*

<sup>538</sup> *ibid*

<sup>539</sup> *ibid* 16

<sup>540</sup> *ibid*

<sup>541</sup> *ibid*

<sup>542</sup> *ibid* 17

under personal laws<sup>543</sup>. The Muslim personal law in Bangladesh is almost identical to the personal law in Pakistan. Under the DMMA, Bangladeshi girls may seek dissolution of their marriage only if they were married before the age of 18<sup>544</sup>. However, dissolution is only an option if the marriage is repudiated before the age of 19, and the marriage has not yet been consummated<sup>545</sup>. This gives girls a very short time period to have their marriage dissolved, making it nearly impossible for girls to escape their marriages<sup>546</sup>.

In Hindu personal law, marriage is considered a holy union that cannot be dissolved<sup>547</sup>. Hindu women can however, seek a court decree for a separate residence and may claim maintenance on limited grounds<sup>548</sup>. Women can claim a separate residence if her husband treats her with cruelty, abandons her, remarries, or converts to another religion<sup>549</sup>. However, this maintenance can only be acquired if the woman is chaste. If the woman has consummated the marriage, or if she fails to comply with a court decree for restitution of conjugal rights, she loses her right to maintenance<sup>550</sup>.

As mentioned before, courts in Bangladesh also seem to interpret the CMRA in line with personal laws when making a decision. For instance, in the case of *Mst. Bakshi v Bashir Ahmad*, the petitioner filed for restoration of custody of her daughter who had been married as a minor and lived with her husband<sup>551</sup>. The court held that although the practice of child marriage was prohibited, the marriage itself is not considered invalid. The court further stated that under Muslim personal law, the petitioner could not regain custody of her daughter since parental guardianship ceases to exist once a girl above the age of 15 is married<sup>552</sup>.

However, the courts came to a different conclusion in *Krishna Pada Dutta v. The Secretary of Home Affairs & Others*<sup>553</sup>. In this case the Supreme Court held that the married girl must be put in her parent's custody, even though the girl stated that she had married of her free will. The court concluded that under the Majority Act 1875, a girl must remain under the

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<sup>543</sup> Ending Impunity for Child Marriage in Bangladesh: Normative and Implementation Gaps' (CRR 2018) 15

<sup>544</sup> Dissolution of Muslim Marriages Act 1939, s.2(vii)

<sup>545</sup> *ibid*

<sup>546</sup> Ending Impunity for Child Marriage in Bangladesh: Normative and Implementation Gaps' (CRR 2018) 18

<sup>547</sup> *ibid* 25

<sup>548</sup> Hindu Married Women's Right to Separate Residence and Maintenance Act 1946, s.2

<sup>549</sup> *ibid*

<sup>550</sup> *ibid*

<sup>551</sup> *Mst. Bakhshi v. Bashir Ahmad & Anr*, 22 DLA (SC) 289 (1970)

<sup>552</sup> *ibid*

<sup>553</sup> *Krishana Pada Dutta v. Secretary of Home Affairs & Others*, 10 BLD 301 (1990)

guardianship of her parents until she reaches the age of 18. The Supreme Court however, failed to address whether the child marriage was invalid under the CMRA<sup>554</sup>.

As illustrated from the cases above, the courts have not yet established that a marriage which violates the minimum age provision is void<sup>555</sup>. Nor have they addressed whether a minor girl who enters into a child marriage should be allowed to live with her husband<sup>556</sup>. These inconsistent judicial decisions lead to ambiguity on how child marriage laws should be enforced<sup>557</sup>.

The CMRA 2017 has also been criticised for its ‘special cases’ exception under Section 19 which states that children can be legally married with the consent of their parents or guardian, provided it is in the best interest of the minor<sup>558</sup>. The provision essentially establishes that there is no minimum age of marriage. The ambiguous nature of the provision creates a legal loophole which parents may exploit<sup>559</sup>. Moreover, whether or not the exception applies is at the discretion of the court<sup>560</sup>. The Act does not take the consent or wishes of the minor into account. Hence one can argue that the CMRA 2017 fails to prioritise the well-being and bodily autonomy of a child.

Another provision that has caused concern is Section 10, which exempts the accused from punishment if he ‘submits, in the manner prescribed by rules, an affidavit or bond stating that he shall not be involved in a child marriage in future and take initiatives to prevent child marriage in his locality<sup>561</sup>.’ This Section undermines Section 9 of the CMRA 2017 which punishes anyone who conducts or solemnises a child marriage<sup>562</sup>. The exemption allows individuals to conduct or solemnise child marriages without facing any serious consequences. The Act does not recognise that young girls are subjected to unspeakable horrors in their marriages<sup>563</sup>. Marital rape and physical abuse are prevalent in child marriages, and the exemption under Section 10 allows individuals to partake in the practice with impunity<sup>564</sup>.

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<sup>554</sup> *Krishana Pada Dutta v. Secretary of Home Affairs & Others*, 10 BLD 301 (1990)

<sup>555</sup> Ending Impunity for Child Marriage in Bangladesh: Normative and Implementation Gaps’ (CRR 2018) 30

<sup>556</sup> *ibid*

<sup>557</sup> *ibid*

<sup>558</sup> Child Marriage Restraint Act 2017 s.19

<sup>559</sup> Ending Impunity for Child Marriage in Bangladesh: Normative and Implementation Gaps’ (CRR 2018) 16

<sup>560</sup> *ibid*

<sup>561</sup> Child Marriage Restraint Act 2017 s.10

<sup>562</sup> *ibid* s.9

<sup>563</sup> Ending Impunity for Child Marriage in Bangladesh: Normative and Implementation Gaps’ (CRR 2018) 16

<sup>564</sup> *ibid*

### **5.3.2. Limited Access to Justice**

Patriarchal and cultural norms that exist within society, especially within the police force, act as a barrier to justice for most women. Research suggests that law enforcement lack basic expertise and facilities to conduct investigations, particularly in relation sexual abuse<sup>565</sup>. In Bangladesh, the police consider matters of domestic violence to be social issues and not legal ones<sup>566</sup>. This culture of non-intervention creates an environment of impunity that prevents victims from seeking help<sup>567</sup>. Corruption has been another factor that prevents women from accessing justice<sup>568</sup>. Victims and their families have reported that they often have to bribe police officers or use political connections in order to have an investigation conducted. Perpetrators usually possess more power and influence than the victim which is often used to delay investigations and pressurise victims to drop charges<sup>569</sup>. The pervasiveness of corruption within law enforcement impedes the legal accountability of police to take the necessary action to combat child marriage<sup>570</sup>.

Another reason young girls struggle to report their marriage is due to the lack of services provided to them once they leave their husbands. There is no provision in the CMRA 2017 that guarantees care facilities for victims of child marriages<sup>571</sup>. Although victims may be granted protection, residence, and maintenance if they bring an action under the Domestic Violence Act, these protections are often temporary, and the shelters that these girls are relocated to are known for being abusive<sup>572</sup>. Furthermore, the court only grants such protection if there is concrete evidence of abuse<sup>573</sup>. Although the government has tried to fix these issues by setting up several protection mechanisms, including establishing a National Trauma Counselling Centre, shelters and a helpline, research indicates that these legislative provisions are extremely under utilised since victims hesitate to use these outlets due to social stigma<sup>574</sup>. Furthermore, a review done on NGO and government run shelters found that there was limited space in them, and the shelters were not specifically built for children, and hence

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<sup>565</sup> Ending Impunity for Child Marriage in Bangladesh: Normative and Implementation Gaps' (CRR 2018) 37

<sup>566</sup> *ibid*

<sup>567</sup> *ibid*

<sup>568</sup> *ibid* 37

<sup>569</sup> *ibid*

<sup>570</sup> *ibid*

<sup>571</sup> *ibid* 35

<sup>572</sup> Domestic Violence Act 2010

<sup>573</sup> Ending Impunity for Child Marriage in Bangladesh: Normative and Implementation Gaps' (CRR 2018) 35

<sup>574</sup> Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Thematic report on servile marriage (July 10 2012) UN Doc A/HRC/21/41

lacked the resources and facilities needed. This limited availability of shelters hinders the efficacy of protection services provided by the law<sup>575</sup>.

The biggest barrier that young girls face in accessing legal remedies is that legislation heavily relies on courts to prevent child marriages through injunctions<sup>576</sup>. It also places a huge burden on the victims to report cases of child marriage and domestic violence. Thus, the current legal framework does not take into account the power dynamics that exist within a child marriage, where girls do not have the support or resources necessary to seek legal help<sup>577</sup>. The government's failure to provide adequate legal outlets forces young girls to stay in their abusive marriages<sup>578</sup>.

#### **5.4. Concluding Comments**

There seems to be a pattern that exists in relation to the limitations of child marriage laws across India, Pakistan and Bangladesh. One of the biggest issues that plague all three countries is the existence of personal laws, which at times have primacy over national legislation. Furthermore, the legislation in all three countries fails to stipulate whether child marriages are void. This has forced numerous girls and women to seek some sort of relief from gender discriminatory personal laws. In addition to ambiguities in the law, young women in India, Pakistan and Bangladesh struggle to file reports due to delays in the justice system, societal pressure, and due to lack of support, both by family members and governmental bodies. This has left young girls vulnerable to a lifetime of abuse, with a scarce chance of ever receiving legal recourse, due to the fear of being homeless or at the mercy of a society that fails to empathise with young unmarried women.

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<sup>575</sup> Ending Impunity for Child Marriage in Bangladesh: Normative and Implementation Gaps' (CRR 2018) 36

<sup>576</sup> *ibid*

<sup>577</sup> *ibid*

<sup>578</sup> *ibid*

## CHAPTER 6

### CONCLUSION AND RECOMMENDATIONS

Child marriage is a dangerous social evil which continues to violate the rights of millions of young girls in South Asia<sup>579</sup>. This dissertation analysed the multiple reasons why child marriage exists in India, Pakistan and Bangladesh. It remains pervasive due to insufficient national legislation, limited access to justice and loopholes within the law, extreme poverty, limited access to education, as well as religious and cultural norms.

Child marriage has created a complex and unorthodox system of law which prescribes penal sanctions for solemnising or contracting a marriage, while simultaneously maintaining its validity under the law<sup>580</sup>. This has been illustrated by the national legislation of India, Pakistan, and Bangladesh. All three countries have enacted laws which penalise those who conduct or participate in child marriages, but fail to recognise these marriages as void. Pakistan's CMRA 1929 and Bangladesh's CMRA 2017 both remain silent on whether child marriages are considered void or voidable. Though India's PCMA stipulates that child marriages may be annulled within two years of attaining majority, it fails to recognise the marriage as automatically void.

Furthermore, case law suggests that courts are reluctant to deem child marriages invalid and have rather endorsed their validity through numerous judgements. The decisions made by the courts were predominantly influenced by religious personal laws. Since these personal laws establish inadequate and flawed legal standards regarding child marriages - specifically the minimum age of marriage and the right to dissolution - they have undermined the national legislation enacted to prohibit child marriage<sup>581</sup>.

Moreover, the national legislation in Bangladesh and Pakistan contain provisions that make young girls susceptible to child marriages. The minimum age of marriage set forth in the CMRA 1929 fails to meet international standards. The Act also fails to provide financial aid and shelter to victims, which prevents young girls from filing complaints. The CMRA 1929 is a toothless legislation that must be repealed and replaced with a more robust legislation that

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<sup>579</sup> Dr. Vadana 'Child Marriage Under Hindu Personal Law: Factum Valet or an Issue for Protection of Human Rights for Women' (2017) 1 ILI Law Review 175 194

<sup>580</sup> *ibid*

<sup>581</sup> *ibid* 195

safeguards the rights of children<sup>582</sup>. Despite the age of consent in Bangladesh being in line with international law, the ‘special cases’ provision essentially makes child marriage legal, as long as the parent or guardian of the child consents. This is alarming, since it is the child’s parents who often force their daughters to get married. What the governments of India, Pakistan, and Bangladesh fail to realise is that under international law no parent or guardian may consent on behalf of the child. Furthermore, numerous international documents and treaties, such as the CRC and CEDAW, have made it abundantly clear that the minimum age of marriage for both genders is 18<sup>583</sup>. Hence, no one under this age is legally capable of consenting to marriage.

Additionally, in these South Asian countries, child marriages are not categorically recognised as forced marriages<sup>584</sup>. This is one of the reasons why the penal sanctions for perpetrators are so low. The Penal Code in India, Pakistan and Bangladesh, all prescribe significant sanctions for crimes such as rape or forced marriage<sup>585</sup>. However, when it comes to child marriage, Pakistan only prescribes a prison term of one month<sup>586</sup>, whereas India<sup>587</sup> and Bangladesh prescribe a prison term of two years<sup>588</sup>. Governmental authorities fail to reconcile with the fact that minors who get married are more prone to domestic abuse and marital rape. Hence, when they place lenient sanctions on those who practice child marriage, they inadvertently allow men to engage in acts of sexual violence with little to no consequences, under the guise of marriage<sup>589</sup>. The failure to recognise that children are a vulnerable segment of society who are predominantly forced into marriage, further exacerbates the practise of child marriage<sup>590</sup>. India, Pakistan, and Bangladesh must acknowledge that child marriage is forced marriage.

Eradicating child marriage has been considerably difficult in South Asia. Not only are the laws insufficient and vague, but they are also difficult to implement. There are numerous legal barriers which prevent young girls from coming forward and filing a complaint<sup>591</sup>. Since the onus of challenging a child marriage is placed on the girl, few cases get reported. It is

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<sup>582</sup> Ending Impunity for Child Marriage in Pakistan: Normative and Implementation Gaps’ (CRR 2018) 37

<sup>583</sup> Unicef ‘Child Marriage and the Law’ (2007) Programming Guidance Paper Series 1 3

<sup>584</sup> Ending Impunity for Child Marriage in Pakistan: Normative and Implementation Gaps’ (CRR 2018) 35

<sup>585</sup> Ending Impunity for Child Marriage in India: Normative and Implementation Gaps’ (CRR 2018) 22

<sup>586</sup> Child Marriage Restraint Act 1929 Section 4

<sup>587</sup> Prohibition of Child Marriage Act 2006 Section 11

<sup>588</sup> Child Marriage Restraint Act 2017 Section 7

<sup>589</sup> ‘Child Brides, A Cover For Cultural Pedophilia - UCA News’ (*ucanews.com*, 2017)

<<https://www.ucanews.com/news/child-brides-a-cover-for-cultural-pedophilia/78815>> accessed 8 August 2020.

<sup>590</sup> *ibid*

<sup>591</sup> ICRW ‘Too Young to Wed: Education and Action Towards Ending Child Marriage’ (2006) 2

hard for victims to seek legal help due to their age and financial dependence on their husbands<sup>592</sup>. The statute of limitations further impedes their chances of escaping these marriages, because by the time they have the resources and freedom to bring a claim, they can no longer legally do so. Moreover, young girls who wish to report their marriages are ostracised by their communities, and may be afraid to return to their families<sup>593</sup>.

Additionally, national legislation also fails to guarantee the safety of those who come forward with claims. There is no sufficient governmental body that provides legal aid, financial assistance, shelter, or counselling for victims<sup>594</sup>. Although a few government funded facilities exist, they are predominantly under-resourced and have been accused of abusing women and young girls. This makes it nearly impossible for girls to come forward with cases of child marriage<sup>595</sup>. Having a law that prohibits child marriage is futile if governmental authorities fail to provide security to those victims who file a report. Unless proper protection mechanisms are not put in place, child marriage will continue to persist. It is unjust to ask girls to report cases of child marriage when they risk losing their home, their financial security, and may be exposing themselves to a lifetime of abuse at the hands of their parents and community.

In chapter 4 of this dissertation, it was established that there are numerous factors that contribute to the practice of child marriage in South Asia, namely: poverty, gender inequality, restricted access to education, as well as social and religious norms. Due to discriminatory gender norms, young girls are forbidden from participating in the public sphere are often deprived of an education<sup>596</sup>. This leads to them being seen as an economic burden and are thus married off by their parents. This limits young girls' chances of entering the workforce, and prevents them from generating an income, which negatively impacts the girl child and society as a whole<sup>597</sup>.

Child marriage has had an adverse impact on young girls in South Asia. It has led to serious health issues for girls, especially due to early pregnancies. Since young girls are not physically developed to bear children, they suffer from life threatening complications during

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<sup>592</sup> ICRW 'Too Young to Wed: Education and Action Towards Ending Child Marriage' (2006) 2

<sup>593</sup> *ibid*

<sup>594</sup> Ending Impunity for Child Marriage in Bangladesh: Normative and Implementation Gaps' (CRR 2018) 35

<sup>595</sup> *ibid*

<sup>596</sup> 'Economic Impacts of Child Marriage: Fertility and Population Growth Brief' (ICRW 2017) 14

<sup>597</sup> *ibid*

childbirth<sup>598</sup>. Furthermore, research has established that child marriage is directly linked to high fertility rates<sup>599</sup>. The power imbalance that exists in such marriages robs young girls of their bodily autonomy<sup>600</sup>. Due to the fear of being subjected to violence, child brides do not reject their husband's wishes, and frequently reproduce against their will<sup>601</sup>. High fertility rates not only have a devastating financial impact on individual families, but also significantly impact the country's GDP<sup>602</sup>.

India, Pakistan and Bangladesh are party to numerous international treaties that aim to protect the rights of the child. Despite being party to these international instruments, they have failed to offer adequate protection to their children, especially in relation to the girl child. Since these countries are party to the CEDAW and the CRC, they have a responsibility to take all requisite legislative, judicial, and administrative measures to secure the rights of young girls<sup>603</sup>. Furthermore, they also have an obligation to ensure that private actors cannot engage in discriminatory practices against women, including gender based violence, as well as actions that may harm the child's physical or mental development<sup>604</sup>. The steps these countries can take to minimise the threat of child marriage will be discussed below.

### **6.1. Recommendations**

Enacting laws to prohibit child marriage is not enough if the overall rights of children are not protected. Child marriage exists because children are deprived of their basic rights, such as the right to education<sup>605</sup>, the right to be treated equally regardless of sex<sup>606</sup>, the right to be protected from all forms of child labour<sup>607</sup> and sexual exploitation<sup>608</sup>, as well as the right to be protected from abuse or neglect<sup>609</sup>. In order to eradicate child marriage, India, Pakistan and Bangladesh must safeguard the rights afforded to children under international law.

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<sup>598</sup> Saranga Jain and Kathleen Kurz, 'New insights on preventing child marriage' (ICRW 2007) 7

<sup>599</sup> 'Economic Impacts of Child Marriage: Fertility and Population Growth Brief' (ICRW 2017) 1,3

<sup>600</sup> *ibid* 4

<sup>601</sup> *ibid*

<sup>602</sup> *ibid*

<sup>603</sup> 'Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 51

<sup>604</sup> *ibid*

<sup>605</sup> Convention on the Rights of the Child art 28

<sup>606</sup> *ibid* art 2

<sup>607</sup> *ibid* art 32

<sup>608</sup> *ibid* art 34

<sup>609</sup> *ibid* art 19

### **6.1.1. Access to Education**

Education is a fundamental right that must be granted to every child. Making education more accessible for girls offers them positive alternatives to child marriage that are generally considered acceptable within the family and community<sup>610</sup>. In order to increase access to education, governments must make education free and compulsory and schools must not discriminate against the girl child<sup>611</sup>. More specifically, school policies should not discriminate against or exclude married and pregnant girls<sup>612</sup>. Teachers must also be trained to offer guidance and support to girls who are at risk of dropping out of school by urging parents to continue their daughters' education. However, if this is not possible and the girl child is forced to drop out of formal schooling, alternative education programmes should be available, and must be modified to fit the girl's circumstances<sup>613</sup>. Many programmes have been successful in delaying child marriages by enrolling or re-enrolling girls in schools. Education helps young girls acquire skills and knowledge which eventually gives them the ability to make independent decisions regarding their life<sup>614</sup>.

### **6.1.2. Economic relief**

Since poverty is one of the main factors that contribute to child marriage, it is important to provide impoverished families with some form of financial incentive to keep their daughters in school<sup>615</sup>. There are numerous incentive based programmes that may be utilised to encourage families to postpone their daughter's marriage, and complete their education. Incentives usually include loans, scholarships, and conditional cash transfers<sup>616</sup>. Furthermore, increased employment opportunities through vocational training can create suitable alternatives to child marriage<sup>617</sup>. Once girls attain financial independence, they have a higher standing within their own families, which affords them more freedom. Moreover, direct cash transfers and income-generating activities also help ease the economic burden of the family<sup>618</sup>.

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<sup>610</sup> UNFPA 'Marrying Too Young: End Child Marriage' (2012) 10 51

<sup>611</sup> ibid

<sup>612</sup> ibid

<sup>613</sup> ibid 52

<sup>614</sup> ibid

<sup>615</sup> ibid 10 51

<sup>616</sup> ibid

<sup>617</sup> Equality Now 'Protecting the Girl Child: Using the law to end child, early and forced marriage and related human rights violations' (2014) 52

<sup>618</sup> Carol Olson, '16 Ways Of Preventing And Intervening In Child Marriages | The Pixel Project's "16 For 16" Campaign' (*16days.thepixelproject.net*, 2014) <<https://16days.thepixelproject.net/16-ways-of-preventing-and-intervening-in-child-marriages/>> accessed 7 August 2020

### **6.1.3. Mobilising Communities to Combat Child Marriage**

In South Asian countries, it is customary for families or community elders to dictate when it is appropriate for girls to get married. Therefore, it is imperative to work alongside parents and members of the community in order to change cultural and social norms that perpetuate the practice of child marriage<sup>619</sup>. The main objective is to create an environment where the education and empowerment of the girl child becomes more socially acceptable than child marriage<sup>620</sup>. Tactics that have successfully changed the attitudes of families and community members include community dialogue, as well as mass media messages that educate on the dangers of child marriage<sup>621</sup>. This method has been successfully implemented in Senegal. The Tostan's Community Empowerment Programme focused on educating local elders and religious leaders on the dangers of child marriage and its adverse effect on communities. Tostan also held educational sessions for the whole village<sup>622</sup>. This resulted in villages across Senegal outlawing child marriage<sup>623</sup>. However, it is important to note that community mobilisation is most effective in changing social norms when it is used alongside other interventions<sup>624</sup>.

### **6.1.4. Amending Legislative and Administrative Measures**

The governments of India, Pakistan and Bangladesh have an obligation to prevent and protect children from individuals that justify or actively participate in the practice of child marriage, through legislative and institutional mechanisms<sup>625</sup>. There are numerous ways this can be achieved. All three countries should pass legislation that recognises child marriage as void and clearly states its primacy over personal law<sup>626</sup>. Before this new law is implemented, it is imperative that the public, especially communities in rural areas, are aware of the legal change, so young girls are aware of their rights. Lastly, the government must ensure the protection of girls who are married under customary law, since they may be left vulnerable due to their marriage lacking legal status<sup>627</sup>.

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<sup>619</sup> UNFPA 'Marrying Too Young: End Child Marriage' (2012) 10 52

<sup>620</sup> *ibid*

<sup>621</sup> *ibid*

<sup>622</sup> Carol Olson, '16 Ways Of Preventing And Intervening In Child Marriages | The Pixel Project's "16 For 16" Campaign' (*16days.thepixelproject.net*, 2014) <<https://16days.thepixelproject.net/16-ways-of-preventing-and-intervening-in-child-marriages/>> accessed 7 August 2020

<sup>623</sup> *ibid*

<sup>624</sup> *ibid*

<sup>625</sup> Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 52

<sup>626</sup> Dr. Vadana 'Child Marriage Under Hindu Personal Law: Factum Valet or an Issue for Protection of Human Rights for Women' (2017) 1 ILI Law Review 175 194

<sup>627</sup> Ending Impunity for Child Marriage in India: Normative and Implementation Gaps' (CRR 2018) 54

India, Pakistan, and Bangladesh must also address the systemic barriers that prevent women and girls from accessing justice. This can be done by giving them access to information relating to their rights under the law, and the legal remedies they are entitled to<sup>628</sup>. Furthermore, young girls may be able to access legal aid if the government strengthens the capacity of lawyers to provide legal services to victims of child marriage. This can be achieved by connecting with NGOs and other non-profit organisations that provide legal services<sup>629</sup>. Furthermore, girls who wish to take legal action must also be afforded protection measures such as medical support, and the right to residence<sup>630</sup>. Additionally, the statute of limitations in all three child marriage legislations must be abolished<sup>631</sup>. Governments must also take steps to make registration of births and marriages mandatory through awareness campaigns. Furthermore, government ministries should work in partnership with NGOs to ensure free and universal birth registration<sup>632</sup>.

Pakistan and Bangladesh must also introduce administrative penalties for officials, including the police and magistrates, who fail to respond to complaints related to child marriages<sup>633</sup>. In relation to India, the government must ensure that trained CMPOs are appointed in all states. The government may also establish a system that tracks the responsiveness of local officials to complaints regarding child marriage. As with Pakistan and Bangladesh, strong administrative penalties must be prescribed to officials who fail to fulfil their statutory duties<sup>634</sup>.

Pakistan must amend the CMRA 1929 to ensure its legal age of marriage for girls is in line with international standards<sup>635</sup>. Furthermore, the government must resolve the inconsistency between the CMRA and Section 498B of the PCC concerning forced marriages and child marriages. This can be done by amending the CMRA to make child marriage a cognisable and non-bailable offence<sup>636</sup>. The CMRA must also offer protection to victims during court

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<sup>628</sup> Ending Impunity for Child Marriage in Pakistan: Normative and Implementation Gaps' (CRR 2018) 38

<sup>629</sup> *ibid*

<sup>630</sup> *ibid*

<sup>631</sup> 'Timely And Accessible Birth Registration' (*Unicef.org*) <<https://www.unicef.org/bangladesh/en/timely-and-accessible-birth-registration>> accessed 8 August 2020

<sup>632</sup> *ibid*

<sup>633</sup> 'Ending Impunity for Child Marriage in Pakistan: Normative and Implementation Gaps' (CRR 2018) 39

<sup>634</sup> *ibid*

<sup>635</sup> *ibid*

<sup>636</sup> *ibid*

proceedings by keeping the victim's name anonymous, and giving courts the power to issue orders for protective custody<sup>637</sup>.

Finally, Bangladesh must repeal its special exceptions provision under the CMRA 2017, as the current provision fails to take the child's well-being into consideration<sup>638</sup>. It is important for India, Pakistan, and Bangladesh to implement the recommendations mentioned above to eradicate child marriage. A collective effort needs to be made by every branch of the government to combat this practice. The implementation of strong child marriage laws, coupled with adequate security and protection mechanisms, as well as strong emphasis on female empowerment and education will significantly reduce the practice of child marriage.

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<sup>637</sup> Ending Impunity for Child Marriage in Bangladesh: Normative and Implementation Gaps' (CRR 2018) 39

<sup>638</sup> *ibid*

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# LLM Dissertation

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## GRADEMARK REPORT

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FINAL GRADE

70/100

GENERAL COMMENTS

### Instructor

A well-researched and structured work.

Considerable amount work was invested in the case studies and the legal comparisons against the yardstick of International legal standards.

The student also finishes off her dissertation by offering an interesting set of recommendations.

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