

## Chapter 5

# Child, Early and Forced Marriage

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### Objectives

The objectives of this chapter are to provide an overview of the issues of child, early and forced marriage in the target countries, i.e. the symptoms, causes and legal and other responses by state organs to address these issues. The aim is to enable and sensitise judges and other stakeholders to make informed and human rights compliant decisions when they are dealing with cases of child, early and forced marriages.

This chapter consists of four sections. Section 5.1 focuses on the issues of child and forced marriages in Cambodia, i.e. its symptoms, causes and legal and other responses by state organs to address these issues. Section 5.2 focuses on the issues of child and forced marriages in India, i.e. its symptoms, causes and legal and other responses by state organs to address these issues. Section 5.3 focuses on the issues of child and forced marriages in Pakistan, i.e. its symptoms, causes and legal and other responses by state organs to address these issues. Section 5.4 focuses on the issues of child and forced marriages in Thailand, i.e. its symptoms, causes and legal and other responses by state organs to address these issues.

## 5.1 Cambodia

### 5.1.1 Child and early marriage

Adolescents account for approximately 20 per cent of the total population in Cambodia, which roughly translates to 3,064,000 children.<sup>1</sup> Of those 3 million, 3 per cent of adolescent boys and 16 per cent of adolescent girls were married or living together in 2016.<sup>2</sup> In a recent survey of women aged 20 to 24 years, 2 per cent admitted to being married before 15 years while 19 per cent stated that they were married by 18 years of age.<sup>3</sup> Although the overall rate of early and child marriage has been decreasing since 2010,<sup>4</sup> early and child marriages continue to be common in certain communities in Cambodia.<sup>5</sup>

Child and early marriage: law

**Constitution of Cambodia 2008:** Cambodia has incorporated its international obligations in its Constitution under article 31 which ‘recognizes and respects

human rights as stipulated in the United Nations Charter, the Universal Declaration of Human Rights and the covenants and conventions related to human rights, women's rights and children's rights.<sup>6</sup>

Article 31(2) of the Constitution guarantees that all 'citizens shall be equal before the law, enjoying the same rights and freedoms and obligations regardless of race, colour, sex, language, religious belief, political tendency, national origin, social status, wealth or other status.'<sup>7</sup> Article 45 states that '[m]arriage shall be conducted according to law, based on the principle of mutual consent between one husband and one wife.'<sup>8</sup>

**Civil Code 2003:** Article 948 of the Civil Code of Cambodia sets out a minimum age and legal framework on marriage: 'Neither men nor women may marry until they have reached the age of 18. [H]owever, if one of the parties has attained the age of majority and the other party is a minor of at least 16 years of age, the parties may marry with the consent of the parental power holders or guardian of the minor.'<sup>9</sup>

Article 953 explains the process for obtaining consent in an early marriage. Under article 953(1) '[i]f one of the parties wishing to marry is a minor, the consent of parental power holders or guardians must be obtained.'<sup>10</sup> However, under article 953(2) '[i]f one of the parental power holders does not consent, the consent of the other parental power holder shall be sufficient.'<sup>11</sup> Under article 953(3) '[i]f the parental power holders or guardian unreasonably refuses consent, the minor wishing to marry may apply to the court for adjudication in place of consent.'<sup>12</sup> In other words, child marriage between two children under 18 years of age is not permitted; however, an adolescent of at least 16 years may marry an adult with the consent of a parent, guardian or the court.

Articles 958 to 964 set out a process of annulment. Article 960 speaks specifically to the issue of early or child marriage, '[e]ither party to a marriage, their parents or a public prosecutor may apply to the court for annulment of a marriage effected in contravention of Articles 948 (Marriageable age).'<sup>13</sup> Article 961 provides a prescription period for the right of annulment, '[n]o application may be made to annul a marriage effected in contravention of Article 948 (Marriageable age) once the under-age party attains the marriageable age.'<sup>14</sup> The bride and groom are, however, entitled to a three-month grace period upon reaching marriageable age to apply to the court for the annulment.<sup>15</sup>

**International obligations:** as a State party to CEDAW<sup>16</sup> Cambodia is obligated to 'take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.'<sup>17</sup> Under article 16(2) Cambodia must take specific measures to ensure that the 'betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum

age for marriage'.<sup>18</sup> The CEDAW Committee and the UN Committee on the Rights of the Child issued a joint general recommendation in which child marriage was defined as 'any marriage where at least one of the parties is under 18 years of age'.<sup>19</sup> They further noted that 'child marriage is considered to be a form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent'.<sup>20</sup> While there is a some allowance to permit adolescents under 18 years to exercise their evolving capacity to enter into early marriage, it is only 'allowed in exceptional circumstances, provided that the child is at least 16 years of age and that such decisions are made by a judge based on legitimate exceptional grounds defined by law'.<sup>21</sup>

Cambodian laws on child and early marriage comply with Cambodia's obligations under international law in setting the minimum age of marriage at 18 years. There are, however, some discrepancies and exceptions, which if interpreted too broadly could enable some forms of child marriage, and thus contravene Cambodia's obligations under international law.

The Civil Code of Cambodia complies with the joint recommendations of the Committee on the Rights of the Child and the Committee on CEDAW which call for '[a] minimum legal age of marriage for girls and boys ... at 18 years'.<sup>22</sup>

However, the Civil Code of Cambodia 2007 provides for exceptions, which enable marriages of adolescents below the age of 18 years. Under the Civil Code, adolescents may engage in child marriage, provided they receive approval from one of three sources: (a) both parents; (b) if not both parents, at least one parent; (c) if parental consent is not possible, then the child couple may apply to the court. Allowing exceptions for early marriage in cases of unintended pregnancy raise concerns of forced marriage, especially where the pregnancy is the result of rape or sexual violence. Relying on parents' consent for such exceptional marriage also goes against the Committee on CEDAW and the Committee on the Rights of the Child, which clearly stipulate that marriages involving children under 18 years should only be 'allowed in exceptional circumstances, provided that the child is at least 16 years of age and that such decisions are made by a judge based on legitimate exceptional grounds defined by law'.<sup>23</sup> On this basis, the exceptions for early marriage under the Civil Code of Cambodia could, if interpreted too broadly, tacitly enable early and child marriage, contravening Cambodia's obligations under international law.

#### Child and early marriage: Recommendations

The following guidelines are offered which may be helpful in bringing Cambodia into compliance with its obligations under international law:

- Interpret and apply the laws to prohibit any marriage between adolescents under 18 years of age, even with the consent of parents.

- Take measures to ensure a marriage is voluntary with both parties consenting to the union.
- Prohibit and rescind informal settlement agreements involving allegations of sexual abuse or rape which include the forced marriage of the perpetrator with the victim.

### 5.1.2 Forced marriage

It is not uncommon in some Asian countries such as Cambodia for forced marriages to occur as part of informal settlements in rape cases.<sup>24</sup> The act of forcing a victim to marry their perpetrator is seen as ‘rid[ding] history of the error.’<sup>25</sup> In most rape settlements involving forced marriage, the victim must also agree to withdraw any petition/criminal case against the accused. According to a Cambodian human rights lawyer, a rape settlement involving forced marriage is viewed as ‘restoring’ the social status of the victim.<sup>26</sup> Given the stigma attached to children born outside of marriage, forced marriages also occur when a woman becomes pregnant following pre-marital relations, or becomes pregnant as a result of rape and is forced to marry the father of the unborn child.<sup>27</sup>

A local human rights organisation, LICADHO, has monitored 282 rape cases since 2012 to analyse how rape allegations are handled within the justice system. Of those 282 cases, two cases involved forced marriage in an informal rape settlement.

In one case, a 12-year-old girl was raped three times by a 20-year-old man. The victim’s family initially reported the case to the Commune Police. The police then arranged for a negotiation with the alleged perpetrator’s family, in which the victim’s family agreed that the victim would marry the alleged perpetrator when she reached 16 years of age. In exchange, the police complaint was withdrawn. It is suspected that the police received some form of payment for negotiating the settlement.<sup>28</sup> The vast majority of rape cases involving settlements of forced marriage are not reported.

#### Forced marriage: law

All forms of forced marriage are prohibited by law. However, forced marriage after rape is not explicitly prohibited under the law. And although a process of annulment is available for any forced marriage, most victims of forced marriage have neither the opportunity nor the social status within their community to speak out against it.

Article 31 of the 2008 constitution has incorporated Cambodia’s international obligations. Article 31(2) of the Constitution further states that all ‘citizens shall be equal before the law, enjoying the same rights and freedoms and obligations regardless of race, colour, sex, language, religious belief, political

tendency, national origin, social status, wealth or other status.<sup>29</sup> Article 45 states that '[m]arriage shall be conducted according to law, based on the principle of mutual consent between one husband and one wife'.<sup>30</sup>

**Civil Code 2003:** Articles 958, 960 and 963 expressly set out conditions by which a marriage may be annulled.<sup>31</sup> Under article 958(a), '[a] marriage shall be treated as void only in the following cases: (a) [w]here there is no intention to marry common to the parties on account of mistake as to the identity of the other party, coercion or other cause'.<sup>32</sup> Article 963(1) states, '[a] person who has been induced by fraud or duress to effect a marriage may apply to the court for annulment of such marriage'.<sup>33</sup> Article 963(2) sets out a prescription period: '[t]he right of annulment described in paragraph (1) shall be extinguished if 3 months have elapsed since the party discovered the fraud or became free of duress, or if the party has ratified the marriage'.<sup>34</sup>

**International obligations:** As a State party to CEDAW, Cambodia is obligated to 'take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations'.<sup>35</sup> Under article 16(1) (b) Cambodia must take specific measures to ensure that women and girls have the 'same right freely to choose a spouse and to enter into marriage only with their free and full consent'.<sup>36</sup>

As noted in Chapter 3, the CEDAW Committee has expressly stated that women must have equal rights with men in respect of their right to freely choose a spouse and enter into marriage only with their free and full consent.<sup>37</sup> The committee made further observations that '[a] woman's right to choose a spouse and enter freely into marriage is central to her life and to her dignity and equality as a human being'.<sup>38</sup> In respect of early and child marriage, the CEDAW Committee and the CRC Committee have noted that 'child marriage is considered to be a form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent'.<sup>39</sup>

Cambodian domestic law on forced marriage complies with Cambodia's obligation under international law. However, implementation of the law remains problematic given the prevalence of informal settlements in rape and sexual violence cases, which often involve forced marriage.

#### Forced marriage: Recommendations

The following recommendations are offered which may be helpful in bringing Cambodia into compliance with its obligations under international law:

- Take measures where possible to enquire into any marriage to ensure each party is freely and voluntarily consenting to the union, in line with Cambodia's international obligations under article 16(1) (b) of CEDAW and article 23(3) of the ICCPR.

- Where the Court is made aware, rescind informal settlement agreements involving allegations of sexual abuse or rape which include the forced marriage of the perpetrator with the victim, in line with Cambodia's international obligations under article 16(1) (b) of CEDAW<sup>40</sup> and article 23(3)<sup>41</sup> of the ICCPR.

## 5.2 India

### 5.2.1 Child and early marriage

South Asia is home to almost half (42%) of all child brides worldwide. India alone accounts for one third of the global total,<sup>42</sup> with the highest number of child brides in the world. An estimated 47 per cent of girls in India are married before their 18th birthday.<sup>43</sup> Child marriage is more common in rural (56%) than urban (29%) areas.<sup>44</sup>

Gender inequality, poverty, lack of education, violence against women and girls and high rates of sex-selective abortion leading to fewer girls in some parts of India, are all contributory factors.<sup>45</sup>

#### Child and early marriage: law

The Constitution of India 1950 guarantees a range of fundamental rights relevant to the right to marry and to protection against child, early or forced marriage, including the rights to life,<sup>46</sup> freedom of expression and movement,<sup>47</sup> equality<sup>48</sup> and non-discrimination.<sup>49</sup> Article 14 prohibits the state from denying any person equality before the law or the equal protection of law. Article 15 prohibits discrimination against any person on the grounds of religion, race, caste, sex or place of birth.

**Prohibition of Child Marriage Act 2006:** This is the most relevant law that prohibits child marriage. This specifies that the legal age for marriage is 18 years for girls and 21 for boys.<sup>50</sup> Section 3 makes child marriages voidable at the option of the contracting party who was a child at the time of the marriage. It allows for a petition to be filed declaring the marriage void within two years of the child attaining their majority.<sup>51</sup> A woman is permitted to file a petition till she reaches the age of 20 and a man till he reaches the age of 23. Exceptionally, a child marriage may be declared void even before the child reaches the age of 18, when the child has been abducted, kidnapped, trafficked or compelled to marry under force, deceit, coercion or misrepresentation.<sup>52</sup>

A penalty of rigorous imprisonment of up to 2 years or a fine up to 1 lakh rupees or both may be imposed on any adult male who marries a child,<sup>53</sup> anyone who performs, conducts, directs or abets any child marriage,<sup>54</sup> and anyone who solemnises a child marriage including by promoting such a

marriage, permitting it to be solemnised or negligently failing to prevent the marriage.<sup>55</sup> All such offences are cognisable and non-bailable.<sup>56</sup> Injunctions may be sought to prohibit child marriages including *ex parte* interim injunctions. Any child marriage solemnised in contravention of an injunction order will be void.<sup>57</sup>

State Governments are authorised to appoint Child Marriage Prohibition Officers empowered to prevent and prosecute child marriages and to create public awareness on the issue.<sup>58</sup>

**Indian Penal Code 1860:** Section 375 of the penal code criminalises any sexual intercourse with a child under 15 years of age, whether or not she is married.<sup>59</sup>

**Hindu Marriage Act 1955:** Although this lays down the minimum age of marriage as 21 years for men and 18 years for women,<sup>60</sup> it does not expressly invalidate marriages by minors. A marriage where either party is below the prescribed minimum age is neither void nor voidable under the act though the persons concerned, i.e. the parents/guardians that gave permission for the minor to marry, any person who performed the marriage, and any male aged 21 and over who was party to the marriage, would be punishable under the act.<sup>61</sup>

**Indian Christian Marriage Act 1872 (ICMA):** Under section 19 if either party is a minor, the consent of their father, if living, or, the prior consent of their guardian or the mother, is essential to solemnise a marriage.<sup>62</sup> Such a marriage is voidable at the option of a contracting party who was a minor (aged 18–21 years) at the time of marriage.

**Other laws:** Other laws that may provide protection to a child bride include the Juvenile Justice (Care and Protection of Children) Act 2000, Protection of Women from Domestic Violence Act 2005, and the Protection of Children from Sexual Offences Act 2012.

Child and early marriage: key judgment

### **Seema v Ashwani Kumar [2006] INSC 74 (14 February 2006)**

**Key points:**

- Compulsory registration of marriage to prevent child marriages

[The Indian Supreme Court heard a petition where] it was noted with concern that in a large number of cases some unscrupulous persons are denying the existence of marriage taking advantage of the situation that in most of the States there is no official record of the marriage. [...].



### Case 5.1 Seema v Ashwani Kumar

Without exception, all the States and the Union Territories indicated their stand to the effect that registration of marriages is highly desirable.

It has been pointed out that compulsory registration of marriages would be a step in the right direction for the prevention of child marriages still prevalent in many parts of the country. In the Constitution of India, 1950 (in short the 'Constitution') List III (the Concurrent List) of the Seventh Schedule provides in Entries 5 and 30 as follows:

5. Marriage and divorce; infants and minors; adoption; wills, intestacy and succession; joint family and partition; all matters in respect of which parties in judicial proceedings were immediately before the commencement of this Constitution subject to their personal law.

30. Vital statistics including registration of births and deaths. It is to be noted that vital statistics including registration of deaths and births is covered by Entry 30. The registration of marriages would come within the ambit of the expression 'vital statistics'.

From the compilation of relevant legislations in respect of registration of marriages, it appears that there are four Statutes which provide for compulsory registration of marriages. They are: (1) The Bombay Registration of Marriages Act, 1953 (applicable to Maharashtra and Gujarat), (2) The Karnataka Marriages (Registration and Miscellaneous Provisions) Act, 1976 (3) The Himachal Pradesh Registration of Marriages Act, 1996, and (4) The Andhra Pradesh Compulsory Registration of Marriages Act, 2002. In five States provisions appear to have been made for voluntary registration of Muslim marriages. These are Assam, Bihar, West Bengal, Orissa and Meghalaya. The 'Assam Moslem Marriages and Divorce Registration Act, 1935', the 'Orissa Muhammadan Marriages and Divorce Registration Act, 1949' and the 'Bengal Muhammadan Marriages and Divorce Registration Act, 1876' are the relevant statutes. In Uttar Pradesh also it appears that the State Government has announced a policy providing for compulsory registration of marriages by the Panchayats and maintenance of its records relating to births and deaths. [...].

Accordingly, we are of the view that marriages of all persons who are citizens of India belonging to various religions should be made compulsorily registrable in their respective States, where the marriage is solemnized.

Accordingly, we direct the States and the Central Government to take the following steps:

- (i) The procedure for registration should be notified by respective States within three months from today. This can be done by amending the existing Rules, if any, or by framing new Rules. However, objections from members of the public shall be invited before bringing the said Rules into force. In this connection, due publicity shall be given by the States and the matter shall be kept open for objections for a period of one month from the date of advertisement inviting objections. On the expiry of the said period, the States shall issue appropriate notification bringing the Rules into force.
- (ii) The officer appointed under the said Rules of the States shall be duly authorized to register the marriages. The age, marital status (unmarried, divorcee) shall be clearly stated.

The consequence of non-registration of marriages or for filing false declaration shall also be provided for in the said Rules.

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Needless to add that the object of the said Rules shall be to carry out the directions of this Court.

- (iii) As and when the Central Government enacts a comprehensive statute, the same shall be placed before this Court for scrutiny.
- (iv) Learned counsel for various States and Union Territories shall ensure that the directions given herein are carried out immediately.

### 5.2.2 Forced marriage

#### Forced marriage: law

**Hindu Marriage Act 1955:** In India a Hindu marriage may take place anywhere subject to meeting the requirements prescribed in the Hindu Marriage Act 1955 (HMA). This includes the conduct of customary rites and ceremonies of either party.<sup>63</sup>

Under the HMA, to contract a valid marriage the parties must have capacity to marry and must have capacity to give consent (otherwise the marriage is voidable at the request of the other party).<sup>64</sup> A marriage entered into without valid consent may be voidable under the HMA if it can be established that the consent of either party to the marriage was obtained by fraud or force<sup>65</sup> and it may be annulled by a court.

**Indian Christian Marriage Act 1872 (ICMA):** This governs marriage under Christian law, and allows for solemnisation of marriages either in church or before a Marriage Registrar. Consent is an essential element of a valid Christian marriage, as the parties to the marriage have to make a written declaration of consent before the marriage can be solemnised<sup>66</sup> and registered. If either party's consent is obtained under duress, s/he may seek annulment of the marriage, under the Indian Divorce Act 1869.<sup>67</sup>

**Special Marriage Act 1954:** Many couples who marry of their own choice, including those in inter-religious or inter-caste relationships, opt to do so under this law. Such marriages are registered before the Marriage Officer, who is required to maintain registers of solemnised marriages in accordance with the procedure provided.<sup>68</sup> Each party must freely consent to the marriage, and is required to make a declaration that s/he takes the other as their lawful spouse.<sup>69</sup> A marriage may be voidable at the option of one party on grounds, *inter alia*, of non-consummation of marriage, or lack of consent resulting from coercion or fraud.<sup>70</sup>

**Muslim Personal Law:** Any Muslim male or female of sound mind, who has reached puberty, may enter into a contract of marriage. A person who is not of sound mind, or has not yet reached puberty, may also be married

if consent to the marriage is given by their respective guardian.<sup>71</sup> The two adult parties to a marriage must consent, or the marriage will be invalid.<sup>72</sup> It seems that all sects of Islam are unanimous that a contract of marriage is complete and binding only when there is mutual consent on behalf of both the parties, when the parties see one another, and of their own accord agree to bind themselves, both being of the capacity to do so.<sup>73</sup> If a Muslim woman is married off by her father or other guardian before reaching 15 years of age, she may repudiate the marriage before reaching 18, provided the marriage is not consummated.<sup>74</sup>

**Protection of Women from Domestic Violence Act 2005:** This act may be used to prevent child/forced marriages, as forced marriage is understood as a form of domestic violence.<sup>75</sup>

**The Indian Penal Code 1860:** This includes certain offences which may be invoked in case of forced marriage. For example, abduction is defined as ‘forcible compulsion or inducement by deceitful means of any person to go from any place.’<sup>76</sup> In cases of forced marriage involving an adult woman, where either of the parents, by deceitful means, induce their daughter to go to another place for the purpose of marriage, then they may be said to have abducted her. If a woman is either kidnapped or abducted with the intent that she may be compelled, or knowing it to be likely that she may be compelled, to marry any person against her will, then an offence would be committed under section 366 of the IPC. The maximum penalty is imprisonment for ten years and fine.

Section 503 of the IPC defines the offence of criminal intimidation which includes threat with any type of injury to cause her to consent to the marriage or to cause harm to her. This offence is punishable by up to two years’ imprisonment or a fine or both and is a non-cognisable offence.

Forced marriage: key judgment

### **Lata Singh v State of U.P. & another [2006] INSC 383 (7 July 2006)**

Key points:

- Inter-caste marriage and violence
- An adult male and female may marry who they want

The petitioner is a young woman now aged about 27 years who is a graduate and at the relevant time was pursuing her Masters course in Hindi in the Lucknow University.

[...].

It is alleged by the petitioner that on 2.11.2000 she left her brother’s house of her own free will and got married at Arya Samaj Mandir, Delhi to one Bramha

Nand Gupta who has business in Delhi and other places and they have a child out of this wedlock.

Thereafter on 4.11.2000, the petitioner's brother lodged a missing person report at Sarojini Nagar Police Station, Lucknow and consequently the police arrested two sisters of the petitioner's husband along with the husband of one of the sisters and the cousin of the petitioner's husband. [...].

It is further alleged that the petitioner's brothers Ajay Pratap Singh, Shashi Pratap Singh and Anand Pratap Singh were furious because the petitioner underwent an inter-caste marriage [...]. They also lodged a false police report alleging kidnapping of the petitioner against her husband and his relatives at Police Station Sarojini Nagar, Lucknow. [...].

A final report was submitted by the SHO, Police Station Sarojini Nagar, Lucknow before the learned Judicial Magistrate inter-alia mentioning that no offence was committed by any of the accused persons and consequently the learned Sessions Judge, Lucknow enlarged the accused on bail on furnishing a personal bond on 16.5.2001 by observing that neither was there any offence nor were the accused involved in any offence. [...].

### Case 5.2 Lata Singh v State of U.P. & another

This case reveals a shocking state of affairs. There is no dispute that the petitioner is a major and was at all relevant times a major. Hence she is free to marry anyone she likes or live with anyone she likes. There is no bar to an inter-caste marriage under the Hindu Marriage Act or any other law.

Hence, we cannot see what offence was committed by the petitioner, her husband or her husband's relatives.

We are of the opinion that no offence was committed by any of the accused and the whole criminal case in question is an abuse of the process of the Court as well as of the administrative machinery at the instance of the petitioner's brothers who were only furious because the petitioner married outside her caste. We are distressed to note that instead of taking action against the petitioner's brothers for their unlawful and high-handed acts (details of which have been set out above) the police has instead proceeded against the petitioner's husband and his relatives.

Since several such instances are coming to our knowledge of harassment, threats and violence against young men and women who marry outside their caste, we feel it necessary to make some general comments on the matter. The nation is passing through a crucial transitional period in our history, and this Court cannot remain silent in matters of great public concern, such as the present one.

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The caste system is a curse on the nation and the sooner it is destroyed the better. In fact, it is dividing the nation at a time when we have to be united to face the challenges before the nation unitedly. Hence, inter-caste marriages are in fact in the national interest as they will result in destroying the caste system. However, disturbing news are coming from several parts of the country that young men and women who undergo inter-caste marriage, are threatened with violence, or violence is actually committed on them. In our opinion, such acts of violence or threats or harassment are wholly illegal and those who commit them must be severely punished. This is a free and democratic country, and once a person becomes a major he or she can marry whosoever he/she likes. If the parents of the boy or girl do not approve of such inter-caste or inter-religious marriage the maximum they can do is that they can cut off social relations with the son or the daughter, but they cannot give threats or commit or instigate acts of violence and cannot harass the person who undergoes such inter-caste or inter-religious marriage. We, therefore, direct that the administration/police authorities throughout the country will see to it that if any boy or girl who is a major undergoes inter-caste or inter-religious marriage with a woman or man who is a major, the couple are not harassed by any one nor subjected to threats or acts of violence, and anyone who gives such threats or harasses or commits acts of violence either himself or at his instigation, is taken to task by instituting criminal proceedings by the police against such persons and further stern action is taken against such persons as provided by law.

We sometimes hear of 'honour' killings of such persons who undergo inter-caste or inter-religious marriage of their own free will. There is nothing honourable in such killings, and in fact they are nothing but barbaric and shameful acts of murder committed by brutal, feudal minded persons who deserve harsh punishment. Only in this way can we stamp out such acts of barbarism.

In the circumstances, the writ petition is allowed. [...].

The warrants against the accused are also quashed. The police at all the concerned places should ensure that neither the petitioner nor her husband nor any relatives of the petitioner's husband are harassed or threatened nor any acts of violence are committed against them. If anybody is found doing so, he should be proceeded against sternly in accordance with law, by the authorities concerned.

We further direct that in view of the allegations in the petition (set out above) criminal proceedings shall be instituted forthwith by the concerned authorities against the petitioner's brothers and others involved in accordance with law. Petition allowed.

## 5.3 Pakistan

### 5.3.1 Child and early marriage

It is estimated that 21 per cent of girls in Pakistan are married before the age of 18.<sup>77</sup> In Pakistan, as in other countries of South Asia, early marriage is more common in rural areas.<sup>78</sup> Child marriage in Pakistan is connected with tradition, culture, and harmful traditional practices.<sup>79</sup> It sometimes involves the transfer of money, settlement of debts<sup>80</sup> or exchange of daughters (Vani/Swara or Watta Satta) sanctioned by a Jirga or Panchayat (council of elders from the community).<sup>81</sup> Such practices include giving women in marriage to the Holy Qur'an.<sup>82</sup>

### Child and early marriage: law

**The Constitution of Pakistan:** Article 1973 guarantees the rights to equal protection of the law,<sup>83</sup> right to life and security of person<sup>84</sup> for citizens and non-citizens alike. In addition, it secures for citizens the rights to freedom of movement,<sup>85</sup> equality before the law and equal protection of the law, non-discrimination on the ground of sex and special measures for the protection of women and children.<sup>86</sup>

The Constitution of Pakistan also provides for Principles of state policy which, though not justiciable, may be taken into consideration by courts when interpreting the scope of fundamental rights. One such Principle provides for the State to protect ‘the marriage, the family, the mother and the child’, and has been cited in judgments upholding women’s right to marry without the consent of their parents.<sup>87</sup>

A writ petition may be filed before any High Court for enforcement of fundamental rights under Article 199 of the Constitution. The writ of habeas corpus is usually the most effective in cases relating to rights of entry into marriage. A habeas corpus petition enables the court to determine whether any person is being illegally or unlawfully confined or detained. Accordingly, it is frequently used in order to secure the liberty of individuals who may be confined or restrained in connection with the threat of or actual forced marriage. At the district level, section 100 of the Code of Criminal Procedure 1898 empowers a magistrate to make a similar order.

The laws concerning marriage of minors are contained in the Child Marriage Restraint Act 1929 (CMRA Pakistan) read with the Majority Act 1875 and other relevant personal status laws.

**Majority Act 1875:** The general rule is that every person domiciled in Pakistan is deemed to attain majority on reaching 18 years of age.<sup>88</sup> However, a lower age of majority is determined according to personal law for the purposes of, among other things, marriage.<sup>89</sup>

Traditionally, under the Muslim law of personal status, the age of majority for marriage was considered to be puberty, which was presumed at the age of 15 for girls.<sup>90</sup> Prior to reaching puberty, such persons could be married on the basis of consent given on their behalf by their guardians. Under general principles of the Muslim law of personal status, the guardian for marriage of a minor is the father, followed successively by paternal relations, including the grandfather, the brother and other male relations, and in default, the mother, or other maternal relations, such as the maternal uncle or aunt.<sup>91</sup>

**Child Marriage Restraint Act 1929:** The CMRA defines a child to mean a person who, if a male, is under 18 years of age, and if a female, is under 16

years of age.<sup>92</sup> Although the CMRA does not invalidate child marriages, it penalises those responsible for such marriages (where the groom is below 18 and the bride below 16 years) with a maximum sentence of one month imprisonment and a fine of Rs. 1,000 or both. The persons liable include the parent/guardian who does any act to promote a child marriage or permits it to be solemnised or negligently fails to prevent it being solemnised,<sup>93</sup> any male adult party to the marriage or any person who performs, conducts or directs the marriage.<sup>94</sup>

Prosecutions under the CMRA are rare, and given the very lenient penalty applicable have little potential deterrent effect. Thus, a Muslim female aged 16 years and a male aged 18, though still minors under the Majority Act 1875, would generally be considered by the courts to have capacity to contract a marriage of their own free will.<sup>95</sup>

**Dissolution of Muslim Marriages Act 1939:** If a girl is married off by her father or other guardian before she is 16, she may repudiate the marriage on turning 18, provided the marriage is not consummated.<sup>96</sup> Thus, unless and until repudiated, a marriage involving a minor may not be treated as invalid.

Marriage registration has implications for preventing child marriages and is compulsory for marriages solemnised under the Christian Marriage Act 1872 and the Special Marriages Act 1872. Any marriage contracted by a Pakistani Muslim must be registered in accordance with the terms of the Muslim Family Law Ordinance.<sup>97</sup> The Nikah (marriage) Registrar's duties before registering a marriage are to ensure the capacity of the parties to contract marriage, their ages and whether they are acting of their own free will, and he may proceed to register the marriage only after ensuring that its basic requirements have been fulfilled.<sup>98</sup>

Child and early marriage: key judgment

### **Issa Khan v Mst Ramza 1991 SCMR 2454**

Key points:

- Promise of marriage by relatives on behalf of a female child
- Circumstances leading to forced consent

Leave to appeal has been sought against the dismissal by the High Court of petitioner's Civil Revision. The respondent had filed a suit disputing the petitioner's claim that he had been betrothed with her for marriage. The suit was dismissed by the trial Court but in appeal it was decreed. The petitioner's Civil Revision in the High Court against the appellate order, having been dismissed he has now sought leave to appeal.

### Case 5.3 Issa Khan v Mst Ramza

[...].

2. [...] It is pertinent to mention here that Mst. Ramza is hardly eleven years of age as clearly indicated from her statement recorded in the Court. Obviously contract presupposes consent for consideration of dower in presence of two adult witnesses. This aspect is conspicuously missing in instant case. Petitioner's own case is of betrothal as disclosed from his statement and other evidence adduced by him.

[...].

4. It may be mentioned here that in most of the betrothal agreements in our society the parents or other elders do so on behalf of the two persons who are intended to be united in the wedlock of marriage in future. To bind a girl with such an agreement in the nature of betrothal in such a manner that she should be compelled to give her consent at the time of marriage or for that matter that a decree for conjugal rights or for a direction for marriage be passed against a female in the above circumstances is unimaginable. The whole fabric of Islamic Law and jurisprudence on this subject is against such a notion. The lady remains free to give or to withhold consent for marriage till the moment when marriage contract takes place. There should be no doubt about it. Coming to the observations made in the impugned judgment of the High Court that the betrothal agreement is generally customary and is also generally arrived at between the relations of the parties with a view to enter into future contract of marriage, therefore, it does not create any civil right, is correct in so far as the claim of the male (in the present case also) for forcing the female to enter into a marriage is concerned. He has no such right. However, his insistence that she is betrothed to him and making claim about, it (if denied by the respondent female) creates two civil, rights amongst others, in her favour. One that while she is entitled to be known as unattached lady, the claim of the petitioner would put her under a label of attached lady through a betrothal. Her chance, sphere and scope for absolutely free choice for marriage would be absolutely restricted. ... Therefore, the claim of the petitioner acts as a clog on the future opportunity of freedom of contract of marriage in so far as this opportunity and right belong to the respondent female, hence she could and did maintain rightly a suit for stopping the petitioner from making the claim of betrothal with the petitioner. The other right is a corollary from the first mentioned right to undiluted reputation. For example, if the betrothal is claimed to be with the consent of the female or in a more liberal context if it is claimed to be directly between the male and the female for future contract of marriage, she would suffer a reputation of having attached herself voluntarily with a male so as to enter into future marriage. Depending upon social conditions of the two sides it can cause harm to her reputation in some areas of our social sector immensely. Therefore; such a claim depending upon the circumstances of each case also affects right of the female respondent to normal good reputation in the context of her own social conditions. We, therefore, with respect do not agree with the learned Judge of the High Court that the respondent had no enforceable civil right.
5. With these remarks judgment of dismissal of petitioner's Civil Revision by the High Court is upheld and leave to appeal is refused.



**Forced marriage: law**

Although forced marriage is an offence under the laws of Pakistan (discussed below), it remains prevalent. In extreme cases, coercion or duress may be used to extract consent from a woman or girl at varying levels, from emotional pressure to confinement, to outright violence.<sup>99</sup> Formal laws operate in the context of the widespread prevalence of tribal or customary practices. Such violence against women in the name of ‘honour’ restricts rights regarding marriage, and continues to be condoned to a degree by the criminal justice system.<sup>100</sup>

Article 9 of the Constitution of Pakistan guarantees the right of every person to liberty, which arguably includes the rights to choose a spouse and to enter into marriage with full consent. Forced marriage involves the lack of free and full consent and is clearly a violation of Article 9.<sup>101</sup>

**Muslim Personal Law:** Under Muslim law as applicable in Pakistan, the requirements for validity of a marriage (nikah) include, among others, free and full consent of both parties if adults (but note that a guardian may give a minor in marriage).<sup>102</sup> A marriage in which an adult sane party does not consent, or where their consent is obtained under force or fraud, is no marriage in law.<sup>103</sup> It is a settled proposition of law that in Islam a sui juris woman can contract a nikah of her own free will and a nikah performed under coercion is no nikah in law.<sup>104</sup> The term ‘consent’ means a conscious expression of one’s desire without any external intimidation or coercion.<sup>105</sup>

**Pakistan Penal Code 1860:** Forced marriage is a crime under the Pakistan Penal Code 1860.<sup>106</sup> On the issue of choice in marriage, remedies may be invoked under various statutes and pursuant to judgments of the higher courts.<sup>107</sup> Cases of forced marriage may also give rise to the offences of kidnapping/abduction/inducing a woman to compel marriage as defined under Section 365B of the Pakistan Penal Code.

**Code of Criminal Procedure 1898:** In addition to prosecution for the above offences, remedies available under the Code of Criminal Procedure (CrPC) include those which would enable release of the victim from confinement, or provide her with compensation or enable action to be taken against any officials responsible such as: orders of habeas corpus,<sup>108</sup> search warrant,<sup>109</sup> orders for restoration of an abducted female,<sup>110</sup> and compensation.<sup>111</sup>

**Forced marriage: key judgment****Hafiz Abdul Waheed v Asma, Jehangir PLD 2004 SC 219****Key points:**

- A woman can marry without consent of wali/guardian/parents
- Free consent essential for a valid marriage

This is a key case on the issue of forced marriage. In this case leave to appeal was granted by the Supreme Court to examine as to whether consent of the ‘Wali’ [guardian] was essential to the validity of marriage of a sui juris Muslim girl. The Supreme Court held that:

*Consent of ‘Wali’ is not required and a sui juris Muslim female can enter into valid Nikah/marriage of her own free will. Marriage is not invalid on account of the alleged absence of consent of Wali.*

## 5.4 Thailand

### 5.4.1 Child and early marriage

Adolescents make up approximately 13 per cent of the population in Thailand, translating into roughly 8,604,000 young persons.<sup>112</sup> Of that 8.6 million, 16 per cent of adolescent girls reported being in a marriage or living in a union in 2016.<sup>113</sup> Another 4 per cent of women aged 20 to 24 years admitted to being married at 15 years of age while 22 per cent responded that they were married by 18 years of age.<sup>114</sup> Related to early marriage, Thailand has one of the highest rates of adolescent pregnancy in the world.<sup>115</sup> Between 1996 and 2011 the rates of adolescent pregnancy increased steadily, peaking in 2011.<sup>116</sup> Although adolescent pregnancy has decreased in recent years, it remains amongst the highest in the world. In 2016, 60 of every 1,000 births were to an adolescent mother,<sup>117</sup> amounting to roughly 13 per cent of all births.<sup>118</sup> Early marriage has been cited as both a cause and consequence of adolescent pregnancy.<sup>119</sup> It is not uncommon for adolescents in Thailand to get married to their partner after becoming pregnant to ‘save face’ or to avoid legal sanctions which could arise as a result of statutory rape provisions under section 277 of the Criminal Code.<sup>120</sup>

#### Child and early marriage: law

Thai law does not prohibit child marriage.<sup>121</sup> The minimum age to enter into a marriage is 17 years of age,<sup>122</sup> and the court may grant permission to adolescents younger than 16 years to be married.<sup>123</sup> It would seem that a child as young as 13 years of age can be married under Thai law with the permission of the court.<sup>124</sup> For example, an adolescent under the age of 18 years who has had sexual relations with another adolescent between 13 and 15 years of age can avoid criminal prosecution for the crime of statutory rape if the perpetrator marries the victim with the Court’s permission as per section 277, paragraph 5 of the Criminal Code.<sup>125</sup> A marriage entered into with a person under the minimum age of 17 years is not, on its own, a basis to annul or void the marriage.<sup>126</sup>

### Child and early marriage: recommendations

- Interpret and apply the Civil and Commercial Code to prohibit any adolescents under 18 years of age from betrothing or entering into marriage.
- Interpret and apply sections the Civil and Commercial Code to restrict adolescents and adolescents' parents from initiating a marriage unless the court can find exceptional reasons to justify the union, and prohibit in all circumstances any marriage involving adolescents under 16 years of age.
- Interpret and apply section 277 paragraph 5 of the Thai Criminal Code to prohibit without exception all marriages involving allegations of sexual abuse irrespective of the age of the perpetrator.

#### 5.4.2 Forced marriage

##### Forced marriage: law

There is no explicit prohibition against forced marriage under Thai law.<sup>127</sup> However, there is a requirement that each party must give their consent for a marriage to be valid. Under section 1455 of the Thai Civil and Commercial Code, each party to a marriage must give written and oral consent, witnessed by the two individuals to be married.<sup>128</sup> Section 1458 further states that marriage can be made only when a man and a woman agree to be husband and wife and they have to show their consent publicly so that the Registrar may record.<sup>129</sup> Moreover section 1495 states that a marriage without the consent of both parties (pursuant to section 1458) 'shall be void' under Thai law.<sup>130</sup>

**International obligations:** as a State party to CEDAW<sup>131</sup> Thailand is obligated under section 16 to 'take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations.'<sup>132</sup> Specifically, under article 16(1) (b) Thailand must take measures to ensure that women and men have an equal right to '[freely] choose a spouse and to enter into marriage only with their free and full consent'.<sup>133</sup> Under article 16(2) Thailand must take measures to ensure that the 'betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage'.<sup>134</sup> The CEDAW Committee and the UN Committee on the Rights of the Child issued a joint general recommendation in which child marriage was defined as 'any marriage where at least one of the parties is under 18 years of age'.<sup>135</sup> The CEDAW Committee and UN Committee noted that 'child marriage is considered to be a form of forced marriage, given that one and/or both parties have not expressed full, free and informed consent'.<sup>136</sup> While there is a some allowance to permit adolescents under 18 years to exercise their evolving capacity to enter into

early marriage, it is only 'allowed in exceptional circumstances, provided that the child is at least 16 years of age and that such decisions are made by a judge based on legitimate exceptional grounds defined by law'.<sup>137</sup>

Sections 1448, 1454 and 1436 of the Civil and Commercial Code contravene Thailand's obligations under article 16(2) of CEDAW in allowing children below 18 years of age (17 years) to be married with the permission of their parents. Thailand is in further violation of CEDAW in allowing children as young as 13 years of age to be married with the permission of the court.

Section 277(5) of the Criminal Code contravenes Thailand's obligations to prohibit forced marriage under Article 16(1) (b) of CEDAW and Article 23(3) of the International Covenant on Civil and Political Rights 1966.<sup>138</sup> It also contravenes Thailand's obligations under international law in permitting perpetrators (under 18 years) having sexual relations with children below the age of consent (15 years) to avoid criminal prosecution by marrying their victims (above 13 years of age) with the court's permission.

The UN Committee on the Rights of the Child in its 2012 Concluding Observations called on Thai Government to raise the minimum age of marriage to 18 years and remove any exceptions to the prosecution and punishment of perpetrators of sexual abuse and statutory rape of children.<sup>139</sup> In its 2016 Universal Periodic Review before the Human Rights Council, Thailand was again urged to raise 'the minimum age of marriage [to] 18 for both boys and girls'<sup>140</sup> and to remove any 'legal provision that states that the age limit of marriage could be lowered to 13 years old in cases where children were sexually abused'.<sup>141</sup>

#### Forced marriage: Recommendations

The following recommendations are offered which may be helpful in bringing Thailand into compliance with its obligations under international law:

- Interpret and apply sections 1448, 1435, 1436 and 1454 of the Civil and Commercial Code to prevent parents or guardians from granting permission to adolescents under 18 years of age and above 16 years from betrothing or entering into marriage;<sup>142</sup>
- Interpret and apply sections 1448, 1435, 1436 and 1454 to restrict the marriage of adolescents under 18 years unless the Court can find exceptional reasons to justify the union, and prohibit in all circumstances any marriage involving adolescents under 16 years of age in line with Thailand's obligations under article 16(2) of CEDAW;<sup>143</sup>
- Interpret and apply section 277 paragraph 5 of the Thai Criminal Code to prohibit without exception all marriages involving

allegations of sexual abuse and statutory rape irrespective of the age of the perpetrator, in line with Thailand's international obligations under article 16(1) (b) of CEDAW and article 23(3) of the ICCPR.<sup>144</sup>

## Notes

- 1 UNICEF, *The State of the World's Children 2016* (UNICEF, June 2016), page 158, [https://www.unicef.org/publications/files/UNICEF\\_SOWC\\_2016.pdf](https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf)
- 2 Ibid, page 150.
- 3 Ibid, page 150.
- 4 National Institution of Statistics, Directorate General for Health, and ICF Macro, 'Cambodia: Demographic Health Survey 2010' (Phnom Penh, Cambodia, September 2011), [dhsprogram.com/pubs/pdf/FR249/FR249.pdf](https://dhsprogram.com/pubs/pdf/FR249/FR249.pdf) accessed 8 December 2016.
- 5 Joseph J. Schatz, 'Cambodia's Child Grooms', *Al-Jazeera* (Phnom Penh, 6 May 2016), [projects.aljazeera.com/2015/05/child-marriage/cambodia.html](https://projects.aljazeera.com/2015/05/child-marriage/cambodia.html) accessed 9 December 2016.
- 6 Constitution of the Kingdom of Cambodia 2008, Article 31.
- 7 Ibid, Article 31, para 2.
- 8 Ibid, Article 45.
- 9 The Civil Code of Cambodia 2003, Chapter Three – Marriage, Section I – Formation of Marriage, Sub-Section I – Requirements for marriage, art 948, <https://cambodianbusinesscorner.files.wordpress.com/2013/01/civil-codeen.pdf> accessed 9 December 2016
- 10 Ibid, Article 953, para 1.
- 11 Ibid, Article 953, para 2.
- 12 Ibid, Article 953, para 3.
- 13 Ibid, Article 960.
- 14 Ibid, Article 961, para 1.
- 15 Ibid, Article 961, para 2.
- 16 Convention on the Elimination of All Forms of Discrimination against Women 1979.
- 17 Ibid, Article 16(1).
- 18 Ibid, Article 16(2).
- 19 Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child, 'Joint general recommendation No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices' (14 November 2014) UN Doc. CEDAW/C/GC/31-CRC/C/GC/18 [20].
- 20 Ibid.
- 21 Ibid.
- 22 Ibid, para 54(f).
- 23 Ibid.
- 24 Amnesty International 'Breaking the Silence – Sexual Violence in Cambodia' (March 2010), <https://www.amnesty.org/en/documents/ASA23/001/2010/en/> accessed 8 December 2016
- 25 Ibid.
- 26 Ibid.
- 27 'Report on Violence against Women: How Cambodian Laws Discriminate against Women' (CAMBOW, 2007), [https://www.licadho-cambodia.org/reports/files/112CAMBOWViolenceWomenReport2007\\_ENG.pdf](https://www.licadho-cambodia.org/reports/files/112CAMBOWViolenceWomenReport2007_ENG.pdf) accessed 9 November 2015.
- 28 Ibid, chapter 3.
- 29 Constitution of the Kingdom of Cambodia, Article 31 [2].
- 30 Ibid, Article 45.
- 31 The Civil Code of Cambodia, 2007 Chapter Three – Marriage, Section I – Formation of Marriage, Sub-Section I – Requirements for marriage, articles 958, 960 and 963.

- 32 Ibid, Article 958.
- 33 Ibid, Article 963(1).
- 34 Ibid, Article 963(2).
- 35 Ibid, Article 16(1).
- 36 Ibid, Article 16(1) (b).
- 37 See chapter 3, section 3.5.
- 38 CEDAW Committee, General recommendation No. 21, Equality in marriage and family relations', 1994 [16].
- 39 Ibid.
- 40 '[T]he marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage', art 16(2) CEDAW.
- 41 'No marriage shall be entered into without the free and full consent of the intending spouses.' International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976, Cambodia acceded 26 May 1992) 999 U.N.T.S. 171, art 23(2). (ICCPR).
- 42 UNICEF, *Ending Child Marriage: Progress and prospects* (2014), [http://www.unicef.org/media/files/Child\\_Marriage\\_Report\\_7\\_17\\_LR..pdf](http://www.unicef.org/media/files/Child_Marriage_Report_7_17_LR..pdf) accessed 19 October 2015.
- 43 Girls not Brides, 'Child Marriage around the World: India' (2015), <http://www.girlsnotbrides.org/child-marriage/india/> accessed 10 December 2015.
- 44 Ibid.
- 45 Equality Now, 'Protecting the Girl Child' (2014), [http://www.equalitynow.org/sites/default/files/Protecting\\_the\\_Girl\\_Child.pdf](http://www.equalitynow.org/sites/default/files/Protecting_the_Girl_Child.pdf) accessed 19 October 2015.
- 46 Article 21
- 47 Article 19.
- 48 Article 14.
- 49 Article 15.
- 50 Section 2 (a).
- 51 Section 3 (3).
- 52 Section 12.
- 53 Section 9.
- 54 Section 10.
- 55 Section 11.
- 56 Section 15.
- 57 Section 14.
- 58 Section 16.
- 59 Section 375.
- 60 Section 5(iii).
- 61 Section 18, HMA, 1955, and Sections 11(1) and (2), PCMA 2006.
- 62 Section 19.
- 63 Section 7.
- 64 Section 5 (ii).
- 65 Section 12 (1) (c).
- 66 Section 51.
- 67 Section 19.
- 68 Section 15.
- 69 Section 11.
- 70 Section 25.
- 71 D. F. Mulla, *Principles of Mohammedan Law* (20th edn, LexisNexis Butterworths Wadhwa Nagpur 2013), page 251.
- 72 In *Mohiuddin v. Khatijabi AIR 1939 Bom 489*, the Bombay High Court held that even under the Shafei School of Law, the marriage of an adult virgin is invalid if performed without her consent.
- 73 A. Basu and J. Kothari, 'Legal Remedies for Forced Marriage in India', in S. Hossain and L. Welchman (eds), *Remedies for Forced Marriage: A Handbook for Lawyers* (INTERIGHTS,

- 2011), <http://docplayer.net/41506107-Remedies-for-forced-marriage-a-handbook-for-lawyers.html> accessed 1 December 2017.
- 74 Section 2(vii) Dissolution of Muslim Marriages Act 1939.
- 75 Section 3(a).
- 76 Section 362.
- 77 Girls not Brides, 'Child Marriage around the World: India' (2015), <http://www.girlsnotbrides.org/child-marriage/india/> accessed 10 December 2015.
- 78 UNICEF, 'Early Marriage in South Asia: A Discussion Paper' (2001), [www.unicef.org/rosa/earlymarriage\(lastversion\).doc](http://www.unicef.org/rosa/earlymarriage(lastversion).doc) accessed 14 November 2015.
- 79 Girls not Brides, 'Child Marriage around the World: India' (2015), <http://www.girlsnotbrides.org/child-marriage/india/> accessed 10 December 2015.
- 80 This is now a punishable offence under Section 310-A of the Pakistan Penal Code where a woman is given or compelled into marriage in settlement of a criminal liability or a civil dispute.
- 81 'Child Marriage around the World: Pakistan' (Girls not Brides, 2015), <http://www.girlsnotbrides.org/child-marriage/pakistan/> accessed 10 December 2015.
- 82 This refers to certain practices of requiring a woman to forgo her right to marry, through taking an oath on the Holy Qur'an. This is now a punishable offence under section 498-C, PPC, punishable with imprisonment of three to seven years and a fine of Rs 500,000.
- 83 Article 4.
- 84 Article 9.
- 85 Article 15.
- 86 Article 25.
- 87 Article 35. See *Saima v State*, PLD 2003 Lahore 747 where the High Court relied on Article 35 of the constitution and Article 16 of CEDAW.
- 88 Section 3.
- 89 Section 2.
- 90 *Bakshi v Bashir Ahmed* PLD 1970 SC 323 at 324 para A and *Zafar Khan v Muhammad Ashraf Bhatti* PLD 1975 Lahore 234 [235].
- 91 The particular order may depend on the applicable school of law.
- 92 Section 2(a).
- 93 Section 6.
- 94 Sections 4 and 5.
- 95 *Usman v The State* 1984 PCr.LJ 2908 (where the Court determined the age of capacity for marriage by reference to the *Hudood Ordinance*).
- 96 Section 2 (vii).
- 97 Section 5.
- 98 *Shah Din v. State* PLD 1984 Lahore 137, *Farman Ali v Abid Ali* PLD 1995 Lahore 364 [376].
- 99 S. Warraich, 'Legal Remedies for Forced Marriage in Pakistan', in S. Hossain and L. Welchman (eds), *Remedies for Forced Marriage: A Handbook For Lawyers* (INTERRIGHTS, 2011), <https://www.scribd.com/doc/299544307/Remedies-for-Forced-Marriage-A-HANDBOOK-FOR-LAWYERS> accessed 1 December 2017.
- 100 *Ibid.*
- 101 *Ibid.*
- 102 *Humaira Mehmood v State* PLD 1999 Lahore 495 at paras 9 and 10, and *Muhammad Aslam v The State* 2012 PCr.LJ 11, para 9 at page 17.
- 103 *Matloob Hussain v Mst. Shahida & 2 others* PLD 2006 SC 489 at 496.
- 104 *Ibid.*
- 105 *Ibid.*
- 106 Section 498-B of the Pakistan Penal Code (PPC) inserted in December 2011. It carries a sentence of imprisonment of three to seven years and fine of Rs. 500,000. Section 310-A, PPC is also applicable where a woman is given or compelled in into marriage in



- settlement of a criminal liability or a civil dispute. It carries the same punishment as 498-B PPC.
- 107 S. Warraich, 'Legal Remedies for Forced Marriage in Pakistan', in S. Hossain and L. Welchman (eds), *Remedies for Forced Marriage: A Handbook For Lawyers* (INTERRIGHTS, 2011), <https://www.scribd.com/doc/299544307/Remedies-for-Forced-Marriage-A-HANDBOOK-FOR-LAWYERS> accessed 20 October 2015.
- 108 Section 491.
- 109 Section 100.
- 110 Section 552.
- 111 Section 544.
- 112 UNICEF, *The State of the World's Children*, [https://www.unicef.org/publications/files/UNICEF\\_SOWC\\_2016.pdf](https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf) accessed 17 January 2017, page 160.
- 113 Ibid.
- 114 Ibid, page 152; see also Girls not Brides, 'Child Marriage around the World: India' (2015), <http://www.girlsnotbrides.org/child-marriage/india/> accessed 10 December 2015.
- 115 Amy Sawitta Lefevre, 'Thailand struggles to curb high teen pregnancy rate' *Reuters* (Bangkok, 8 March 2013), <http://www.reuters.com/article/thailand-pregnancy-idUSL4N0BZ1EM20130308> accessed 6 December 2016
- 116 UNICEF, 'Situation Analysis of Adolescent Pregnancy in Thailand: Synthesis Report 2015' (UNICEF Thailand, 2015), [https://www.unicef.org/thailand/160614\\_SAAP\\_in\\_Thailand\\_report\\_EN.pdf](https://www.unicef.org/thailand/160614_SAAP_in_Thailand_report_EN.pdf) accessed 3 December 2016.
- 117 UNICEF, *The State of the World's Children*, [https://www.unicef.org/publications/files/UNICEF\\_SOWC\\_2016.pdf](https://www.unicef.org/publications/files/UNICEF_SOWC_2016.pdf) accessed 17 January 2017,160.
- 118 Ibid.
- 119 UNICEF (n 118).
- 120 Ibid.
- 121 'Child marriage, also referred to as early marriage is any marriage where at least one of the parties is under 18 years of age'; UN Committee on the Elimination of All Forms of Discrimination against Women and UN Committee on the Rights of the Child, 'Joint general recommendation/general comment No. 31 of the Committee on the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices', 4 November 2014, para 20.
- 122 The Civil and Commercial Code B.E. 2468 (1925), Book V – Family, Title I – Marriage, Chapter II – Conditions of Marriage, s 1448.
- 123 Ibid.
- 124 The Criminal Code B.E. 2499 (1956) As Amended until the Criminal Code (No. 21) B.E. 2551 (2008), Book II – Specific Offences, Title IX – Offence Relating to Sexuality, section 277, para 5.
- 125 Ibid.
- 126 The Civil and Commercial Code B.E. 2468 (1925), Book V – Family, Title I – Marriage, Chapter V – Void of Marriage, ss 1494 and 1495.
- 127 McMahan, 'Scoping Study – Women's Access to Justice: Perspectives from the ASEAN region' (n 1) 44.
- 128 The Thai Civil and Commercial Code, B.E. 2468 (1925), Book V – Family, Title I – Marriage, Chapter II – Conditions of Marriage, section 1455.
- 129 Ibid, section 1458.
- 130 The Thai Civil and Commercial Code, B.E. 2468 (1925), Book V – Family, Title I – Marriage, Chapter V – Void of Marriage, section 1495.
- 131 Convention on the Elimination of All Forms of Discrimination against Women 1979.
- 132 Ibid, Article 16(1).
- 133 Ibid, Article 16(1) (b).
- 134 Ibid, Article 16(2).
- 135 'Committee on the Elimination of Discrimination against Women and Committee on the Rights of the Child, 'Joint general recommendation No. 31 of the Committee on

the Elimination of Discrimination against Women and No. 18 of the Committee on the Rights of the Child on harmful practices' (14 November 2014) UN Doc. CEDAW/C/GC/31-CRC/C/GC/18 [20].

136 Ibid.

137 Ibid.

138 'No marriage shall be entered into without the free and full consent of the intending spouses'; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Article 23(3).

139 UN Committee on the Rights of the Child, Concluding Observations: Thailand, 17 February 2012 [31-32].

140 UNHRC, 'Report of the Working Group on the Universal Periodic Review – Thailand' (19 May 2016) UN Doc. A/HRC/WG.6/25/L.13, para 158.129.

141 Ibid, para 159.49.

142 See sections 4.3.1 and 4.3.2 of this book.

143 Ibid.

144 Ibid.