

Form No:HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT MULTAN BENCH,
MULTAN
JUDICIAL DEPARTMENT**

Case No

Writ Petition No.15567 of 2019

██████████

Versus SHO, etc.

S.No. of order/ proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of parties of counsel, where necessary.
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) 29.10.2019 Sh. Aamer Habib Siddiqui, Advocate for the petitioner.
Mr. Zulfiqar Ali Sidhu, AAG with M. Arshad Gopang, Director,
Local Government, Multan.

The petitioner, by means of instant Constitutional petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973 has made the following prayer:-

“In the light of above submissions, it is, respectfully prayed that the instant writ petition may very kindly be accepted by way of directing the respondent Nos.1 to 3 not to harass the petitioner, their family members and also not to interfere within the matrimonial lives of the petitioner at the instance of respondent No.4 to 11.

It is further humbly prayed that any other equitable relief, to which the humble petitioner may be found entitled to, be also granted”.

2. As per averments of the petition, the petitioner being major and sui-juris, while exercising her free-will entered into a matrimonial bond with one ██████████ on 07.08.2019 against the wishes and without the blessing of her parents. After the solemnization of marriage, respondents No.1 to 3/SHOs at the behest of private respondents started harassing, intimidating and compelling the petitioner to get divorce from her husband and in the wake of this drive, on 15.08.2019, respondents No.1 to 3 illegally conducted a raid

at her house. Upon raising hue and cry, the people of the locality attracted to the spot and rescued her from the clutches of said respondents. The petitioner has invoked the jurisdiction of this Court being aggrieved of the behaviour and conduct of the official respondents who in the aforementioned circumstances are illegally creating harassment to her.

3. Heard.

4. At the very outset, it is observed that during the judicial dispensation, it has oftenly been noticed that as a result of registration of criminal cases in respect of offences under Chapter XVI-A PPC while waging a plea of valid marriage having duly been registered under the Muslim Family Laws Ordinance, 1961 (hereinafter to be referred as 'the MFLO') by one of the parties to the *lis*, generally contested by the other side or even in absence of registration of criminal cases, the grievance of illegal and undue harassment to the breach of fundamental rights of the aggrieved persons claiming valid marriage, at the hands of police at the behest of the parents, guardians or other relatives of the bride, is found to be voiced and by filing such petitions either the relief of quashing of FIR or issuance of a writ in the nature of prohibition is usually prayed for. Even, in certain cases upon a cursory inquiry it divulges that despite clear legal provisions specifying the eligibility with regard to age limit of the parties to the marriage, the acclaimed marriage is found as having been contracted by violating the provisions of the Child Marriage Restraint Act, 1929 (hereinafter to be referred as "the Act 1929").

It has further been noticed that some of the *Nikah Khawans/Nikah Registrars* instead of requiring any proof of age from the parties to the marriage which should be in the shape of some authentic document either issued by the NADRA in the form of National Identity Card, B-Form or School leaving Certificate, medical certificate based on ossification test issued by the competent authority and the Birth Certificate validly issued by the Union Council etc, out of their petty temptations knowingly that one of the parties to the marriage is minor, proceed to rely upon a self-declaration of the concerned party in respect of his/their age at the time of registration of their marriage.

Similarly, it has also come on surface at **a number of occasions** that despite a clear legal requirement of filling in each column of the *Nikahnama* individually, with specific answer of the parties to the marriage, *the Nikah Registrar* proceeds to place a single long vertical line against all or some of the columns which amounts to an offence liable to be punished under the law. Such criminal lapse/acts of the Nikah Registrar or the parties, as the case may be, despite being a source of breach of rights of the parties to the marriage are randomly ignored. The unscrupulous elements while taking advantage of such omissions or lapses try to exploit the situation and create serious future complications for the others.

It has also been observed with concern that the relevant Authorities i.e. Director General Local Government & Community Development, Lahore or any other person authorized in this behalf have not bothered to issue specific S.O.Ps containing mechanism or guidelines to avoid such violations to the provisions of the Act 1929 and the MFLO.

5. During the hearing of even instant case, while perusing the documents appended with this petition, it has been noticed that the *Nikah Registrar* has either left some of the columns of the *Nikahnama* blank or has not accurately fill in the same with requisite/specific reply of bride or the bridegroom, thus, in view of this criminal negligence, a notice was issued to Director, Local Government, Multan vide order dated 15.10.2019, who when confronted with the above noted criminal negligence and failure on the part of Nikah Registrar, sought time for obtaining instructions from the Director General, LG & CD, Punjab, Lahore. Learned Law Officer was also directed to establish contact with the Secretary, LG & CD, Punjab Lahore and submit his report before this Court in this regard on 29.10.2019. The Director, LG & CD Department, Multan Division, Multan in view of his correspondence with the D.G. LG & CD, Punjab Lahore, under the subject of “***Issuance of Standard Operating Procedure (SOP) for taking punitive action against Nikah Registrars violating the basic law***” who, vide his letter No.LG & CD/AD(CD)13/19 (CRMS Complaints)/P-II dated Lahore, 23.10.2019 clarifying the legal position and providing guidelines approved by the competent authority on the subject matter to all the

Directors in the Punjab, the same has been made part of the record and shall be discussed and commented upon in the later part of the judgment.

6. Under the Muslim Law the competence of a girl to enter into a contract of marriage is dependent on the attainment of puberty. Puberty is presumed at the age of fifteen years. According to '*Fatawa Alamgiri*', Page-93 of Vol-V, the lowest age of puberty according to its natural signs, is 12 years in males and 9 years in females and if signs do not appear, both sexes are held to be adult on the completion of their age of 15 years. The principle which after copying out from *Fatawa Alamgiri* and *Hedaya* can be deduced is that a girl even having not attained puberty but possessing discretion and sufficient understanding **can** enter into a contract of marriage however for its operation it will be dependent on the consent of the guardian, if there is one, but in the absence of any guardian it will take effect on her attaining of majority and ratifying the contract. According to Paragraph-274 of Mahomedan Law, "when a marriage is contracted for a minor by any guardian other than the father or father's father, the minor has the option to repudiate the marriage on attaining the puberty. This is technically called the "**option of puberty**" (**Khyar-ul-bulugh**). The right of repudiation of the marriage is **lost**, in the case of a female, if after attaining puberty and after having been informed of the marriage and of her right to repudiate it, she does not repudiate without reasonable delay. The Dissolution of Muslim Marriages Act, 1939, however, gives her the right to repudiate the marriage before attaining the age of eighteen years, provided that the marriage has not been consummated. But in the case of a male the right continues until he has ratified the marriage either expressly or impliedly as by payment of dower or by cohabitation."

7. I feel it expedient to observe that unfortunately due to fissiparous and rival political, social and religious forces, the resultant anarchy besides other factors also paved the way for the colonization of Sub-Continent. Despite scathing criticism, for many valid reasons for the systemic loot and plunder, of the resources of Indian Sub-continent, which at the relevant time were comprised over 1/3rd wealth of the world, initially by the barrens running the Company Bahadar and thereafter by the British Government

itself. The society at the relevant time was also flowing many sordid traditions including child marriage because of certain socio-economic reasons and their education backwardness. It cannot be denied that the Indians of all colour and creed, had however benefited from the modern education system, innovative scientific research based technical knowledge which was introduced by their Colonial Masters. The modern education system brought a positive change in every sphere of life of the natives.

8. It may be necessary to express that the legislature despite being nicest one was comprised over forward looking men of wisdom. While adopting a progressive approach for relieving the society from the harmful effects of prevalent child marriage, it indeed undertook a commendable legislative business in the form of the Child Marriage Restraint Act, 1929 (Act XIX of 1929). It appears that without directly meddling with above described position discussed in para No.6 of this judgment regarding which age limit of marriage under the Muslim Personal Law, the provisions of Act 1929 have expediently and objectively been framed to hold male adult i.e. marriage contracting party about 18-years of age liable for punishment alongwith the other persons including the parents and guardians, who perform, arranged, conduct or direct any child marriage. A deterrence of punishment for violation of the provisions has been created. It is quite vivid that the act does not hold the minor responsible for violation of the provision of the Act 1929. It also does not invalidate the marriage itself. It only, as discussed above, holds certain categories of persons liable for the violations of the provisions of the Act 1929. Under Section 2(a) of Act 1929, child has been defined 'a person, if male, under 18 years of age and if female, under 16 years of age. In sum and substance, except the minor, the Act 1929, holds three persons accountable for violating its provisions i.e:-

- (i). Contracting party;
- (ii). Promoter of the marriage;
- (iii). Guardians

It is a matter of great concern that despite ninety years of the promulgation of the Act, 1929, its objectives could not have been achieved

satisfactorily due to certain lapses or loopholes in the mechanism for its enforcement. The children are still being lured by unscrupulous elements through deceitful means to abuse their innocent souls. It is also relevant to point out that although under The Majority Act, 1875 (Act XX of 1875) (hereinafter known as 'Majority Act') a person is said to attain majority at the age of eighteen years. However, in case of appointment of his guardian by the Court, the age of majority of such a Ward is twenty-one years. The application of the above provisions has however been excluded insofar as the operation of personal law in respect of marriage, divorce and dower is concerned. Every other person, subject to as aforesaid, domiciled in Pakistan shall be deemed to have attained his majority on completion of his age of eighteen years, and not before. A Muslim though under 18 years on attaining puberty, can bring a suit relating to marriage, dower and divorce without next friend.

Nothing is more precious in the world than human beings. Human resource is most important and valuable as compared to other sources in the universe. Child is the future asset of a family, a nation and the world at large, respectively.

9. Normally, the marriages in early age are likely to be higher in rural areas due to less development as compared to more developed urban areas. Lesser or fewer educational and economic opportunities reduce the female access to education and restrict their involvement in sales and services as compared to their urban counterparts. Poverty and cultural barriers put constraints on women from having their say regarding their marriage decisions specifically in the traditional and parochial societies. Early age marriages can have severe consequences to the life of a female and pose serious personal and social problems ranging from health issues to social mobility. Women who marry earlier in age are more likely to bear child at younger age and are more exposed to prolong domestic violence. **Similarly, women marrying at younger ages tend to have less education, less economic opportunities, lower level of social mobility and poor access to health services. The denial of opportunity for an adequate education would amount to denial of opportunity to succeed**

in life. Early marriage does not only restrict women from socio-economic opportunities, but also affects their reproductive health status such as forced sexual relations, early and complicated pregnancies, higher fertility rate and large family size formation.

There is almost a consensus that fertility and age at the time of marriage have an inverse relationship, lower the age at marriage, higher will be the fertility rate as lower age at marriage lengthens the reproductive span of a girl. **In general, early age marriage of females not only exacerbates the poor socio-economic development by depriving them of education, social freedom, good health, but also their personal development and well-being. While talking about the consequences of early age marriage at broader sense, it not only brings socio-economic underdevelopment at individual level but also hampers the development process of a region or a country. Therefore substantial part of human population, the women, remain uneducated or less educated, unemployed and underprivileged with poor health measures and no decision making power. It also increases the gender inequality and putting higher value on the boys than girls in the society.**

Early marriage ensues into numerous adverse health consequences. Physically, child bride has small pelvis and are not prepared for childbearing. It results in deliveries that are too early or late. This exposes them to different complications. High mortality rates are due to postpartum hemorrhage, sepsis, obstructed labor and HIV transmission. Besides that, they are also at risk of acquiring Sexually Transmitted Infection and Cervical Cancer. To prove their fertility, they go for high frequency and unsafe intercourse with their old age polygamous spouse. Conjointly, the adolescent mother produces less breast milk or colostrum, which makes their child susceptible to infection. After marriage, girls are brought to their husband's place, where they have to play the role of wife, domestic worker, and ultimately a mother. Their husband may also be polygamous due to which they end up in burdensome situation and feel isolated, rejected, and depressed. Literature suggests that age differences and the poor communication may

lead to divorce or separation. Also, their children are more likely to report a stressful life and notably more psychiatric disorders. Socially child brides are unable to look after their families because they have less authority and control over their kids, and have less capability to become decisive about their housing management, nutrition and health care. With that most of wives have never gone to school or left school early, making them dependent on their spouses in practical life .

After the above discussion, it will be beneficial to examine certain provisions of the Constitution of Islamic Republic of Pakistan, 1973 (hereinafter to be referred as ‘the Constitution’), which have a close nexus with the subject.

According to the preamble of the Constitution which inter alia says that **“Wherein shall be guaranteed fundamental rights, including equality of status, of opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality so that the people of Pakistan may prosper and attain their rightful and honoured place amongst the nations of the World and make their full contribution towards international peace and progress and happiness of humanity”**.

Now, therefore, we, the people of Pakistan,

Do hereby, through our representative in the National Assembly, adopt, enact and give to ourselves, this Constitution.

In the case reported as “Ismaeel vs. the State” (2010 SCMR 27), it has been observed as under:-

“It is settled law that preamble and object is always be kept in mind by interpreting the provisions of the Act on the well-known principle that preamble is key to understand the Act. According to the Chief Justice Dyer, preamble is the key to open the minds of the makers of the Act, and the mischief of which they intend to redress. See *Stowel v. Lord Zouch* (1965) I

Plowd.....It is settled principle of law that Act must be read as an organic whole while reading the Act in question as an organic whole then it casts heavy duty upon the Courts to examine the evidence on record and decide the cases keeping in view the object and mandate of the provision of the said Act. ...”

It may be proper to refer here Article 9 of the Constitution, which says that ‘*No person shall be deprived of life or liberty save in accordance with law*’ it has been interpreted by the Superior Courts in plethora of judgments while enlarging comprehensively the word ‘**life**’ with a variety of shades emphasized that the said Article does not merely protect the right to 'exist' or 'live' but it also encompasses the idea of leading of a meaningful and dignified life with a minimum standard of living. In *Ms. Shehla Zia and others v. WAPDA (PLD 1994 SC 693)* it has been held that:-

"The word 'life' has not been defined in the Constitution but it does not mean nor can it be restricted only to the vegetative or animal life or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country, is entitled to enjoy with dignity, legally and constitutionally. It is now well established that right to life as envisaged by Article 9 of the Constitution includes all those aspects of life which go to make a man's life meaningful, complete and worth living. In the case of *Employees of Pakistan Law Commission v. Ministry of Works (1994 SCMR 1584)*, it has been laid down that Article 9 of the Constitution which guarantees life and liberty according to law, is not to be construed in a restrictive manner. Life has larger concept which include the right of enjoyment of life, maintaining adequate level of living for full enjoyment of freedom and rights."

Article 25-A of the Constitution provides as under:-

Right to Education. *The State shall provide free and compulsory education to all children of the age of five to sixteen years in such manner as may be determined by law’.*

In case of *“Bushra Jabeen and 367 others vs. Province of Sindh through Chief Secretary and others” (2018 M L D 2007)*, the co-relation between Articles 9 & 25-A of the Constitution has beautifully been maintained in the following words:-

“-----It needs no reiteration that right to life includes right to education, therefore, it is one of the Fundamental Rights of every citizen of Pakistan, whereas, in terms of Article 25-A of the Constitution of Islamic Republic of Pakistan, 1973, it has now become the duty of the State, to be performed through Government(s), to provide free and compulsory education to all the children of the age of five to sixteen years in such a manner as may be determined by law.”

It will be relevant to mention that in terms of above Article, Punjab Free and Compulsory Education Act, 2014 (Act XXVI of 2014) has been promulgated.

Islam is the most progressive religion. It has laid more emphasis on the importance of learning and research than every other religion. Besides individual efforts, the atmospheric support is *sine-qua-non* for acquiring scholarship. The education enhances the consciousness and sharpens the vision of the humans. Being a substantial portion of population, women cannot be kept out of the main stream of the national life for the progress of any society and development of a country.

In case reported as “LIAQAT HUSSAIN and others vs. FEDERATION OF PAKISTAN through Secretary, Planning and Development Division, Islamabad and others” (PLD 2012 Supreme Court 224) it has been held as under:-

----Art. 25-A---Right to education---Education plays an important role in the successful life of an individual---Generally, education is considered to be the foundation of society which brings economic wealth, social prosperity, political stability and maintaining healthy population---Further progress of society is stopped in case of deficit of educated people---Educated people enjoy respect among their colleagues and can effectively contribute to the development of their country and society by inventing new devices and discoveries---Islam is a scientific religion emphasizing on the need of scientific inquiry---Need, purpose and kinds of education and as under the mandate of Quran and Ahadith, elucidated.

----Arts. 270AA(8), (9), 25-A, 29, 7, 37(a) & 184(3)---Constitutional petition---Right to

education---Duty of State---"State"---Definition---
 By virtue of Art.270AA(8)(9) of the Constitution [as substituted by Constitutional (Eighteenth Amendment) Act, 2010] the Concurrent Legislative List was omitted in pursuance whereof projects being run by the Federal Government in the Provinces, including Basic Education Community Schools were decided to be wound up---While assailing the proposal of such winding up prayer of the petitioners (fathers of students and employees of the Projects) was that the proposed action on the part the authorities of closing down "Establishment and Operation of Basic Education Community Schools" be declared to be without lawful authority and of no legal effect and be also declared to be in violation of Art.25-A of the Constitution and the proposed act of winding up of the National Commission of Human Resources may be held to be entirely unconstitutional and of no legal effect so as to allow the Commission to continue to perform the positive duty of providing basic human rights to the citizens of Pakistan, under Art.7 of the Constitution, and that the State including the Federal and the Provincial Governments, therefore, under Art.25-A of the Constitution, the Parliament, in view of the definition of the 'State' had not absolved the Federal Government from conferring the Fundamental Rights upon the children---State, in terms of Art.37(a) of the Constitution, shall form such policies on the basis of which State shall promote, with special care, the educational and economic interest of backward classes or areas---Held, under Art.29 read with Art.25-A of the Constitution the Fundamental Rights were required to be enforced by the State---Especially in view of Art.25-A of the Constitution, it had been made mandatory upon the State to provide the education to the children of the age of 5 to 16 years.”

No country can make progress without maintaining a nice balance between its population and resources. The august Supreme Court, in a **Human Rights Case NO. 17599 of 2018**, regarding alarming high population growth rate in the country, reported as **2019 SCMR 247**, has held as under:-

“As of 2017, Pakistan is ranked as the fifth most populous nation in the world, with a population of over 200 million. While all nations and economies rely on population growth and a creation of future younger

generations, such growth must be sustainable and proportionate to the resources available. Approximately 14,000 babies are born in Pakistan which is already struggling to feed, educate and provide employment for its existing population. Pakistan has experienced unchecked population growth since its creation in 1947. From 1998 (the previous comprehensive census) to 2017, Pakistan's population has increased by 57%, with the addition of approximately 76 million people to the population. Projected growth trends from the United Nations suggest that if this population growth rate does not slow considerably, Pakistan can expect to have its population increase by 50% resulting in an estimated 306 million people, surpassing the United States, Indonesia, Brazil, and Russia to become the world's third largest country in terms of population trailing behind India and China. The steadily increasing population rate in Pakistan is a ticking bomb which will certainly not wait till it is convenient for us to take note of it. What will follow this population explosion is starvation, famine and poverty, the likes of which are already visible in areas like Thar. Other indicators of overstretched resources and infrastructure are apparent in Pakistan's unemployment rate, maternal and child mortality rate, literacy and educational enrolment figures, and access to clean water and adequate food. A brief overview of the above figures reveals the extent of the resource and infrastructure shortcomings for an already large populace. Pakistan currently has a very high mortality rate for children under the ages of five years (75 deaths per 1000 live births), an above average maternal mortality rate (178 deaths per 10,000 births), and approximately 44% of the population lacks access to clean drinking water. Furthermore, Pakistan's literacy rate is 58% while over 22 million children are out-of-school. Future projections indicate the number of educational institutions to reduce in number. The above figures make it clear that Pakistan is not equipped to handle the addition of another 100 million people to its ranks.

10. Through a Proclamation on the conclusion of International Conference on Human Rights at Tehran in 1968, 'family planning' was recognized by the international community as both a right and a means of enabling other human rights. In this regard, paragraphs 16 and 17 of the Proclamation are relevant which read as under:-

"16. The protection of the family and of the child remains the concern of the international community. Parents have a basic human right to determine freely and responsibly the number and the spacing of their children;

17. The aspirations of the younger generation for a better world, in which human rights and fundamental freedoms are fully implemented, must be given the highest encouragement. It is imperative that youth participate in shaping the future of mankind;"

As obvious from the language of the above reproduced paragraphs, the right to freely and responsibly determine the number and spacing of children involves imparting sufficient information and means to the parents to control reproduction as well as providing them with adequate knowledge regarding the advantages and disadvantages of such determination. Also apparent from the above language is the interdependence of planned births with the right of the younger generation to be afforded all fundamental and human rights recognized by the international community. Thus, the right to well-informed and controlled pregnancies is a right that paves the path for enabling several other rights; for an overburdened economy cannot be expected to juggle with a growing population while struggling to provide a better facilities and opportunities for its progeny. This right, which forms part of the international commitments of Pakistan, originates from the right to life under Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973 (Constitution), and other fundamental rights such as the right to education, equality, speech, information and due process (Articles 4, 25, 25-A, 19, 19-A and 10-A of the Constitution respectively), which are in turn inevitably linked to the economic progress of the State expected to make such rights available to its people. Unfortunately, by failing to prioritize the provision of information and means of controlling unplanned and unwanted births, the country now faces a surplus of unskilled and unemployed manpower for whom basic human and fundamental rights are luxuries they can at best only hope for, but never attain.

11. It is maintained that in order to give effect to certain recommendations of the Commission on Marriage & Family Laws and to achieve the other objects, it has been made mandatory for the Muslim citizens of Pakistan solemnizing and contracting marriage to get their marriages registered in accordance with the provision of Section 5 of the MFLO and the Rules made thereunder i.e. West Pakistan Rules under the

Muslim Family Laws Ordinance, 1961.

12. For ease of reference and better comprehension of the issues highlighted, relevant provisions of law and rules made there-under, in their chronological order are reproduced:-

5. Registration of marriage;

- (1) Every marriage solemnized under Muslim Law shall be registered in accordance with the provisions of this Ordinance.
- (2) For the purpose of registration of marriage under this Ordinance, the Union Council shall grant licences to one or more persons, to be called Nikah Registrars, but in no case shall more than one Nikah Registrar be licensed for any one Ward.

Province of Punjab

For the purpose of registration of marriage under this Ordinance, the Union Council shall grant licences to one or more persons, to be called Nikah Registrars.

(2-A) The Nikah Registrar or the persons who solemnizes a Nikah shall accurately fill all the columns of the Nikahnama form with specific answers of the bride or the bridegroom.

- (3).
- (4).

Province of Punjab

(4) If a person contravenes the provision of:

(i) Sub section (2A), he shall be punished to simple imprisonment for a term which may extend to one Month and fine of twenty five thousand rupees; and

(ii) Subsection (3), he shall be punished to simple imprisonment for a term which may extend to three months and fine of one hundred thousand rupees.

- (5) The form of Nikahnama, the registers to be maintained by Nikah Registrars, the records to be preserved by Union Councils, the manner in which marriage shall be registered and copies of Nikahnama shall be supplied to the parties, and the fees to-be charged thereof, shall be such as may be prescribed.
- (6),

13. Rule 7 of the West Pakistan Rules under the Muslim Family Laws Ordinance, 1961, deals with the issuance of a licence to the person for registration of marriages, which reads as under:-

“7(1) Any person competent to solemnize a marriage under Muslim Law may apply to the Union Council for the grant of a licence to act as Nikah Registrar under section 5.

(2) If the Union Council, after making such enquiries as it may consider necessary, is satisfied that **the applicant is a fit and proper person for the grant of a licence**, it may, subject to the conditions specified therein, grant a licence to him in Form I.

(3) **A licence granted under this rule shall be permanent and shall be revocable only for the contravention of any of the conditions of a licence granted under this rule.**

(4) **If any person to whom a licence has been granted under this rule contravenes any of the conditions of such licence, he shall be punishable with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both.**

The license is issued on a prescribed form i.e. **Form-1** given in West Pakistan Rules.

“CONDITIONS”

1. The Licence is not transferable.
2. **The licence is revocable for breach of any of the provision of MFLO, 1961, or the rules made thereunder or of any condition of this licence.**
3.
4.
5. **Such other conditions, if any, as may be specified by the Provincial Government.**

On a combined reading of above provisions of MFLO and the Rules, the irresistible conclusion which can draw is that every marriage solemnized under Muslim Family Law is mandatorily registerable. The registration of the marriage shall be in accordance with the provisions of the Ordinance and the Rules. For registration of Nikah/marriage, the Union Council has been authorized to issue a license to one or more persons who are fit and proper to solemnize the Nikah, on his/their application who are called as Nikah Registrars. The Nikah Registrar is under obligation to fill in accurately every column of the Nikahnama individually with specific answers of the bride and the bridegroom. Any violation/contravention with the provisions of the Ordinance is punishable with simple imprisonment

and fine. The record of the marriage in respect of marriage registration is to be maintained by the Union Council. The copy of Nikahnama shall be supplied to the parties. It may be relevant to observe that in view of section 21 of the Pakistan Penal Code, 1898, Nikah Registrar is deemed to be a 'Public Servant' for criminal prosecution. The status of Nikah Registrar is that of a licensee. He does not fall within the definition of an employee as provided under Section 2(h) of the PEEDA (Punjab employees, efficiency and discipline) Act 2006, therefore, in case of any contravention with any of the provisions of law or violation of any of conditions of the licence, subject to notice, his licence can be revoked/ cancelled by the Union Council.

14. Except a child, let me reiterate that the persons of three categories i.e. contracting party, promoters of the marriage and the guardians including the parents are liable for arranging and contracting the marriage for violating the provisions of the Child Marriage Restraint Act, 1929. It appears that qua authorization of the Union Council [under Section 9 of the Act] to make a complaint to take cognizance of an offence by a family Court is an outcome of a pragmatic legislative intent to achieve the objectives behind the Act. If marriage of a child is found to have been solemnized, Union Council is under a legal obligation to file a formal complaint against the persons violating the provisions of the Act before the Court to punish them and in this way, the efforts if any, made by the offenders/parents/guardians for screening of the violation made by them can effectively be frustrated. The prosecution of violators shall create deterrence in the society against the practice of child marriage. The legislature has, therefore, objectively given this mandate to the Union Council. The office of Union Council is a public body, created under the law. Being a statutory body, Union Council is obliged to perform its functions strictly in accordance with law. It may also be pointed out that under Section **2(v) of The Punjab Local Government Act 2019**, the 'Council' comprises over the Convenor and other councilors of a local government. Both elected councilors of the council and a convenor [Section 2(W)] are covered by the definition of a Councilor. From the date

of its first meeting unless dissolved earlier **[under section 233 of this Act]**, the term of office of the council, head of the local government, convenor and councilors shall be for a period of four years. Before assuming their office, all heads of the Local Government, conveners and councilors are required **[under Section 114 of the Act]** to take oath of their offices in terms of seventh, eighth and ninth Schedule of the Act respectively. They pledge to perform their duties under the Punjab Local Government Act, 2019, Rules, Bye-laws and Regulations made thereunder **honestly, efficaciously and efficiently to the best of their ability**. It appears that these provisions have been legislated to inculcate in them a sense of responsibility. In case they make any breach or omission, in discharge of their functions/duties, they have been held accountable. The government is empowered **[under Section 121 of the Act]** to appoint administrators, on the dissolution of local governments or expiry of the term of a council **[under Section 113 of this Act]** or occurrence of a vacancy in the office of the head of the local government and pending the constitution of a new local government or a council, or appointment of a new head of the local government by way of elections. The Government by an order publish in the official gazette shall appoint any of its officers to perform such functions and exercise such powers and authority of the respective local government as may be specified in that order, which have duly been mentioned/enumerated in detail in the Act. Inter-alia, it is the duty of the Metropolitan Corporation, Town Committee and Tehsil Council to perform functions pertaining to **“births, deaths, marriages and divorce registration” as given in item No.(j) Part I, Third Schedule, item No.(j) Part I Fourth Schedule and item No.(i) Part I Fifth Schedule of the Act respectively**. It may be added that being settled proposition, even if, expression “misconduct” is not defined in the statute or the rules, yet when pointed out, it should be interpreted by the Courts narrowly in the sense of an infringement of binding rule of conduct applicable. Reliance in this regard is placed upon case titled “The Province of East Pakistan Vs. Muhammad Sajjad Ali Mazumdar” (P L D 1962 Supreme Court 71). However, a mechanism of accountability, oversight and responsiveness

has definitely been devised through various provisions of Punjab Local Government Act, 2019. **Any head of the Local Government, Convenor, Councilor, Officer or servant of the Local Government or any other person [under Section 220 of the Act] may be held guilty of misconduct if he violates any provision relating to code of conduct prescribed [under Section 219], derelicts from duty or shows gross negligence in performance of duties with manifest wrongful intent, knowingly vitiates any provision of this Act or lawful directions or orders of the government, involves in an act that results in wrongful gain to himself or to any other person, exercise powers or authority vested in him under this Act or any other law for the time being in force or fails to or refuses to exercise such powers or authority, for corrupt, unlawful or improper motives and attempts or abets any act which constitutes misconduct under this section.**

15. It will be relevant to observe that the trial of the offence under the provisions of the Child Marriage Restraint Act, 1929 is to be held by a Family Court exercising the powers of a Judicial Magistrate of the first class in accordance with the Provisions of Family Courts Act, 1964 (XXXV of 1964). In addition to what has been discussed in the preceding paragraph, it is observed that due to child marriage, the possibilities/chances/likelihood of infringement of fundamental rights of a child which have duly been guaranteed by the Constitution of Islamic Republic of Pakistan, 1973 are enhanced. As referred hereinabove, that the right of life is not a mere right to exist or live, it also encompasses the idea of leading a meaningful and dignified life. Offering of an opportunity to get education by the state is also a fundamental right of a minor, denial whereof would amount to denial to excel and progress in life. The education enlightens the soul of a human being. Besides shedding positive effects on his body, the education also refines human behavior. Examining this proposition while seeing it through the prism of rule "*loco parentis*" is observed that the paramount consideration before the Courts has always been the welfare and betterment of a minor. The Courts always act in *loco parentis* position while keeping in view a variety of considerations. A

formalistic approach commonly associated with the adjudication of adversarial civil disputes may not be conducive to the exercise of parental jurisdiction by this Court. A more proactive role shall have to be adopted so as to ensure the protection of the best interest of the minor. The expression welfare shall have to be construed in a way as to include in its compass all the dominant factors essential for determining the actual welfare of the minor/child with a progressive outlook enabling him to prove as a useful entity. Technicalities of law are not supposed to circumvent the exercise of jurisdiction and powers by the Courts in dealing with the matters pertaining to the minor/child. All courts are therefore, supposed to exercise their jurisdiction proactively to forestall any endeavor to cause a breach to the fundamental rights of the children, the protection/provision of which essentially is also in the welfare of the minor/child. Therefore, I feel it appropriate to hold that whenever it comes to the notice of a Court that prima facie a case of breach of fundamental rights of the minor is made out, the Court, in case of failure of the Union Council in moving a complaint before the Court, while adopting a proactive role in *“loco Parentis”* should, without any hesitation, pass an appropriate order directing the Union Council to send a requisite complaint before the competent Court that a marriage has been contracted in violation of the provisions of the Child Marriage Restraint Act, 1929.

16. As referred in Para-5 of the judgment, Director Local Government and Community Development, Multan in view of his correspondence with Director General Local Government and Community Development, Lahore has issued some Standard Operating Procedure for taking punitive action against the Nikah Registrar violating the basic law to the following effect:-

“i. That section 5(2A) of MFLO, 1961 states that at the time of solemnization of marriage, the Nikah Registrar or the person who solemnizes a Nikah shall accurately fill all columns of the Nikahnama form with specific answers of the bride or the bridegroom. And in case of contravention, a punishment is

prescribed under section 5(4)(i) of the said Ordinance i.e. if a person contravenes the provisions of subsection (2A), he shall be punished to simple imprisonment for a term which may extend to one month and fine of twenty five thousand rupees.

ii. *Further, under rule 21 of the West Pakistan Rules under Muslim Family Law Ordinance, 1965 (hereinafter 'rules'), no court shall take cognizance of any offence under the ordinance or the rules unless on a complaint in writing by the union council, stating the facts constituting the offence; therefore, ensure that every union council should lodge complaints soon after the receipt of Nikahnama forms columns of which are not accurately filled. Furthermore, prepare a report, on quarterly basis, containing the details about the complaints lodged during the quarter and furnish the same to DG office for information;*

iii. *That cancel/revoke, after giving show-cause notice, the license of Nikah Registrar who breaches any of the provisions of MFLO, 1961 or rules made thereunder or any of the condition of his license.[In view of condition No.5 of the Conditions of the License, these directions may be deemed to be part of the conditions of the license.]*

iv. *That ensure that no incomplete (not accurately filled) Nikahnama be registered in the UCs and if any Secretary UC or any other official registers the incomplete Nikahnama, he may, forthwith, be proceeded against under the PEEDA Act, 2006 and keep noted that no laxity in this regard shall be tolerated.*

In addition to above, the following further directions are being issued

- (1) All the Nikah Registrars or other persons, who solemnize marriages are under legal obligation

to scrutinize the credentials at the time of Nikah as to whether the marriage is solemnized with the free will of the parties and no child is exposed to marriage. Mere submission of oral entries for the purpose of age should not be accepted unless any proof of age from the parties to the marriage preferably which should be in the shape of some authentic document either issued by the NADRA in the form of National Identity Card, B-Form or School Leaving Certificate, Medical Certificate based on ossification test issued by the competent authority and the Birth Certificate validly issued by the Union Council, etc. is produced.

(2) Furthermore, after perusing the record in compliance with SOP (ii) mentioned in para 17, in case the Authority fails to take the requisite action, it will be deemed that he himself has willfully failed to perform his function/duty amounting to negligence rendering himself liable for initiation of disciplinary proceedings against him under the relevant law.

17. So far as the prayer of the petitioner as reproduced in Para-1 of the judgment is concerned, the same in view of Article 9, 14 and 35 of the Constitution of Islamic Republic of Pakistan, 1973, 'The State shall protect the marriage, the family, the mother and the child' the same is granted and the official respondents are hereby directed to remain within the four corners of law and restrain themselves from causing any illegal harassment to the petitioner in any manner whatsoever. Resultantly, the instant writ petition is allowed and respondents No.1 to 4 being public functionaries are directed to remain within the four corners of law and desist from causing any harassment to the petitioner.

18. Before parting with this order, it is observed that the Secretary Local Government, Punjab, Director General Local Government and

Community Development, Lahore and head of the Local Governments as mentioned in the Punjab Local Government Act, 2019 shall bring the existing SOPs in conformity with the directions issued hereinabove, copy whereof shall be submitted before this Court through Addl. Registrar (Judicial) of the Bench within two months, after receipt of copy of this order. Office is directed to transmit copy of this order to all concerned.

19. I also duly appreciate the assistance rendered by Mr. Muhammad Shafiq, Research Officer/Civil Judge 1st Class, Lahore High Court Multan Bench, Multan to deal with the issue discussed and dealt with hereinabove.

(Anwaarul Haq Pannun)
Judge

APPROVED FOR REPORTING.

Judge

Yasin/Siddique