



Group Development Pakistan

Child Marriage in Islam

2019

Acronyms

AKDN	Aga Khan Development Network
CAR	Central African Republic
EFM	Early and forced marriage
HDI	Human Development Index
HRC	Human Rights Council
INSS	Indonesia's National Socioeconomic Survey
LJCP	The Law and Justice Commission Pakistan
MEMRI	Middle East Media Research Institute
MICS	Multiple Indicator Cluster Survey
OIC	Organization of Islamic Countries
UNICEF	The United Nations International Children's Emergency Fund
UNFPA	United Nations Population Fund
UNDP	United Nation Development Programme Pakistan
UN	United Nation
PBUH	Peace Be Upon Him
SDGs	Sustainable Development Goals
UNCRC	United Nation Convention on Rights of Children
CEDAW	Convention on the Elimination on All Forms of Discrimination
UNDHR	Universal Declaration of Human Rights
WB	World Bank

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Executive Summary

Child marriage, defined as marrying before the age of 18, is a practice that affects both girls and boys is not only against basic human right but is also against the Islamic laws. UNICEF (2014) estimates that 140 million girls will marry early in the next decade or nearly 40,000 per day. Muslim countries, are no exception. Although Islam does not encourage child marriage, yet of the top ten countries with highest child marriage rates, seven are Islamic countries. In this backdrop, the study was commissioned to explore the Islamic perspective on child marriage. To meet the objectives of the study, qualitative research methodology based on secondary, data collected through extensive review of the available literature on child marriage in Islam, was used.

After the review of the literature it was found that Islamic law fundamentally opposes child marriage as a marriage without consent, or a marriage of minors, have no legal validity because it does not meet the Islamic criteria of marriage. Though no minimum age for marriage is stipulated in Quran, attaining puberty, having sound judgment and comprehensive maturity before entering into a marital contract – as well as having the capacity to understand and fulfil the rights and responsibilities of a spouse after marriage – are clear preconditions according to Quran. In Sura 4 verse 6 , states *“And test the orphans [in their abilities] until they reach marriageable age then, if you find them to be mature of mind/sound in judgment, hand over to them their possessions.”*(Qur’an, Surat An-Nisā', 4:6) Hence early marriages do not seem to be appropriate according to the Quran.

Similarly, there is consensus among Islamic scholars about the interpretation of this verse from Quran. According to them the verse is about the Quranic injunction of returning the property i.e the ownership of property, but it is quite clear from it that if the property is so important that it could not be given to mentally immature people, then how could it be possible to give some one’s life on the basis of only physical puberty. According to the Imam –e- Aazam Abu Hanifa, the age of puberty of child is 18.

Although few classical Islamic jurist give the example of messenger of God (PBUH) with that of Ayesha to support early marriage in Islam. According to Imam Bukhari, the age of Ayesha was six years old when her nikah was performed with Prophet Muhammad (PBUH) in Makkah, and nine years old when she moved in to live with her husband in Madina after Hijra (Al-Bukhari, 846) (Al-Nisapuri, 1086). However, prominent Islamic Scholars i.e. Hakim Ahmed Niaz, Allama Habib Urehman Sidiqqi, Javaid Ahmed Ghamdi, Umar Ahmed Usmani, Sayed Asghar Hussain etc and other historians have not only challenged the authenticity of the Ahadiths but have also proved that the age of Hazrat Aisha was more than 18 years when she was married to Prophet Muhammad by comparing her age with her elder sister Asma etc.

Moreover, the Sharia, as we find in the Qur’an and the traditions of the Prophet, enjoins a man who seeks to set up a family to focus his attention primarily on looking for a woman who is virtuous and of sound conduct (Al-Tusi, 1067). As Allah says in Quran;

“And Marry those among you who are single, [A man who has no wife and a women who has no husband] and [also marry] the salihun [pious, fit and capable ones] of your [male slaves and maid-servants]. If they be poor, Allah will enrich the Mout of his bounty. And Allah is all sufficient for his creatures”(Quran Al Nur, verse 32). In another verse of Quran states that; *“Hence marry those women who are good, nice and pious”*

According to Islamic scholars, in the first verse of Quran mentioned above, men are commanded to marry those women who are good and pious. And at his young age a child cannot judge the goodness and piety of a woman which illustrates that marriage is not possible in a very early age. Also the second verse points out very clearly that for marriage it is necessary that the partner is a ‘Woman’. Hence this verse very clearly and openly condemns the marriage in childhood. Similarly, the prophet (Peace Be Upon Him) also encouraged his followers to marry religiously pious and observant women.

“Acquire the woman who is religiously observant and you’ll succeed”(Al-Bukhari, 846).

Furthermore, in Islam marriage is considered as a contract between two human beings and consent is key to its validity; without consent, the contract is void. To this end, there are enough Quranic verses and Prophetic hadith (tradition or saying) insisting that females, virgin or non-virgin, must be consulted and given permission before marrying. Majority of the Islamic scholars agree that when forcing the adult women is forbidden then marrying minor girls is a highest degree of forcing them, for a minor girl is supposed to be unable to express or choose and consent and even if she expresses, it would be rendered unauthentic according to the Shariah, law and morality.

Besides, Islam requires parents to ensure protection and shepherd their children’s moral and religious development (*tarbiyyah*) from a young age, rather than resort to extreme measures – such as child marriages – to prevent early sexual transgression as child is neither physically nor psychologically ready for it. Statistics also shows that girls between the ages of 15 and 19 are twice as likely to die of pregnancy and childbirth complications as women between ages of 20 and 24 in South Asia.

Islam also empowers state to legislative laws for the betterment of the masses. According Ali Tantawi, Islam authorizes the ruler or state to introduce administrative laws and restrictions in the best interests of the people. This was allowed under the Shariah not only within the original, narrow window of public interest (Maslaha) but also because God orders Muslims to obey 'those in authority among you.' Therefore Muslim state have the authority to set a minimum age limit for marriage. In this backdrop on 21 June 2019, the deputy grand Imam of Al Azhar, Sheikh Dr. Salah Abbas issued fatwa against child marriage in a conference in Dakar Senegal. The office of the Imam of Al Azhar is considered the highest authority in Islamic law for Sunni Muslims, which account for around 75% to 90% of all Muslims globally. According to the fatwa, both girls and boys must be 18 years old to get married and any marriage at a younger age is forbidden. Prior to that in Cario and Khartum Declaration, all the member of organization of Islamic Countries (OIC) have agreed to set the minimum age limit for marriage at 18 years.

Marriage, in the Islamic worldview, is an important part of building healthy and protective relationships, families, and societies (Fathala). In order for an Islamic marriage to be valid, it has to meet certain criteria, which ensures the health, security and wellbeing of the couple, their families and their communities (Majlis ul Ulema, 2019) (Ali B. , 2012). In Muslim communities around the world, marriage takes on many local customs and cultural forms. Islam allows this cultural diversity as long as the practices do not cause harm – specifically, as long as they do not contradict the principles of Islamic law that seek to protect human beings.

Child marriages are practices that violate the God-given human rights of all, particularly women and children (Parson, 2015) (Wood, 2015), as well as the sanctity of marriage in Islam (Majlis ul Ulema, 2019). It is a serious threat to the purpose of marriage and the objectives of Islamic law, which include protection from harm and preserving life and health.

Islamic law fundamentally opposes child marriage as a marriage without consent, or a marriage of minors, having no legal validity because it does not meet the Islamic criteria of marriage. Islam gives every female the right to choose her marriage partner – and to annul any betrothal agreed on her behalf – upon reaching puberty and attaining comprehensive maturity. While no minimum age for marriage is stipulated in Islam, attaining puberty, having sound judgment and comprehensive maturity before entering into a marital contract – as well as having the capacity to understand and fulfil the rights and responsibilities of a spouse after marriage – are clear preconditions in Islam (Walker, 2015). Islam also requires its followers to adhere to the law of the land, many of which specify the minimum age for marriage as 18.

Nevertheless, the relative dearth of material explicitly addressing the legality of minor marriages within the primary sources (Qur'an and Hadith) never thwarted the practice from taking place in the Muslim world. Over time, the culmination of unjust results in Muslim-majority states stemming from minor marriages turned it into an increasingly objectionable one. Although some Muslim countries i.e. Jordan, Egypt and Syria for instance, the legal age for marriage is 18 years, in Libya it is 21 however, in Sudan it is only nine. Similarly, of the Sub Saharan African countries, where the issue of Child marriage is very high, seven countries have determined no minimum age while only three have determined 15 as the age limit for marriage.

According to the United Nations Population Fund (UNFPA) and The United Nations International Children's Emergency Fund (UNICEF) worldwide over 700 million women currently living got married while they were just children (Wold Vision, 2018). That number is set to rise to nearly 1 billion by 2030, if current trends continue (Wold Vision, 2018). The number of child marriages is specifically high in least develop and conflict stricken countries of the world. Of the top ten countries where child marriage is very prevalent, six are countries with Muslim majority population (Wold Vision, 2018). For instance, Niger, a Muslim majority countries top the list with highest rate of child marriage (76 % marry before the age of 18).

Chad and Bangladesh stood at third and fourth after the Central African Republic with 67 and 59 percent respectively (UNICEF, 2019).

Consequentially, the widespread contention and the heated global pressure paved the way for legislation abolishing or at least restricting minor marriages in these states by setting a minimum age of marriage. This then gave rise to the related controversy of whether such reforms had any justifiable Islamic legal basis or were merely adherent to 'western' norms.

1.1 Objectives of the Study

- The main objective of the study is to present an Islamic perspective on child marriage by reviewing the existing literature on child marriage in Islam.
- To explore the trends of child marriage in Muslim World.
- To analyze the policy steps taken Muslim countries to prevent child marriage.

1.2 Methodology

The study is qualitative in nature and is based on secondary data collected through intensive review of existing literature on child marriage. The different version of Quranic Tafsir (translations of Quran) written by prominent Islamic Scholars of both Sunni (Hanafi, Hanabali and Maliki) and Shia (Asna Ashri and Ismaili) were consulted to explore the Qaranic Perspective on child marriage.

Similarly, Ahadith Books (sayings by prophet) compiled by prominent Islamic scholars i.e. Sahih Muslim written by Muslim and Sahih Bukhari written by Muhammad Al-Bukhari etc were thoroughly reviewed to explain the phenomenon under research.

A part from Ahadith, the various different books written by scholars belonging to all the five sects of Islam were reviewed from child marriage perspective. Moreover, the Fatwas issued by prominent religious scholars i.e. and the declarations of Organization of Islamic Countries (OIC) about child marriage were consulted to explain the issue of child marriage in Islam.

Books and research articles published by Islamic scholars were also reviewed. Similarly, reports published by UN and other international organization on child marriage, were very useful in exploring the trends of child marriage in the Muslim world, their domestics laws and international commitments to combat child marriage in these countries.

2.1 What is Marriage in Islam?

Marriage and family institution occupies a very pivotal position in the legal system of Islam (Kyani). It can be judged from the fact that Muslim jurists regarded the protection of marriage among the five fundamental objectives of Shariah (Rushd, 2016) (Al-Tuwaij, 2000). The Arabic term '*zawaj*' ("marriage") stand for association and coming together. This term is used in the Holy Quran in the same sense of bringing together or of being together. Besides, the term '*nikah*' ("marriage") is defined as "a purposeful contract to obtain and possess an enjoyment." It also embodies the meaning of coming together or assembling. However, it generally signifies marriage. The term *zawj* is used in the Quran implying a pair or a mate (Ashur, 2012). The word: '*nikah*' is mentioned in alQuran in several places like in Surah al-Baqarah verse 221, 230, 232; Surah al-Nisa' verse 3, 22, 25; Surah an-Nur verse 3, 32, 33 and Surah al-Ahzab verse 49. (Ibrahim A. , 1997) (Al-Baqi, 1084) (Al-Tuwaij, 2000).

The Qur'an also describes marriage as "*mithaqanqhaliza*" (Al-Azhari, 1995). The phrase "*mithaqanqhaliza*" implies that marriage is sacred and sanctified contract, which is higher in status than ordinary civil contracts (Khan, 2017) (Riaz, 2013). Marriage in Islam is essentially a righteous act and an act of devotion (*'ibadah*) (Al-Tuwaij, 2000). Moreover, marriage is necessarily a civil contract; it has gained the same status as other contracts in society (Riaz, 2013). However, it is not only a civil contract but also a sacred covenant (*mithaq*), which is having the sanctity of Shariah and pleasure of God (Al-Tuwaij, 2000) (Munir M. , 2011). However, Muslim Jurists regard marriage to be both worldly affair (*mu'amlah*) and an act of worship (*ibadah*) at the same time (Khan, 2017) (Al-Baqi, 1084).

Marriage is a social institution as old as the human race itself (Riaz, 2013). It may be defined as a relation between a man and a woman which is recognised by custom or law and involves certain rights and duties, both in the case of the parties entering the Union, and in case of the children born of it (Kyani) (Al-Tuwaij, 2000). Marriage has thus two main functions to perform: it is the means adopted by human society for regulating relations between the sexes (Al-Tuwaij, 2000) (Ali B. , 2012); and it furnishes the mechanism by means of which the relations of a child to the community is determined (Riaz, 2013).

The rites and ceremonies of marriage have been different with different peoples and in different ages but these two functions mentioned above are common even where in marriage (Kyani). It always implies the right of sexual intercourse as allowed and recognised by society and the duties of the parents in bringing up children (Al-Tuwaij, 2000) (Riaz, 2013). According to Alama Ib Rushd, a Muslim Scholar, marriage is a religious duty, a moral safeguard and a social commitment (Rushd, 2016). He further argues that as religious duty that must be fulfilled; but like all other duties in Islam, it is enjoined only upon those who are capable of meeting the responsibilities involved (Rushd, 2016).

Marriage is traced to the creation of Adam and the creation of Hauwa as his companion. As the Quran states:

“And one of Allah’s signs is that He creates for you mates from yourselves, that you may dwell in tranquility with them, and has ordained between you love and mercy.” (Quran:)

According to Dr. Professor Dr. Abdurdureheem Imran, a prominent Muslim scholars, in his book titled, *“Islami Miras Ma Khandani Mansubabandi”* after marriage the husband and wife are supposed to live in peace, procreate and nurture children who will continue the human race and development of the society. The union of the man and his wife is traced to a common origin of equality because both are created from a single soul (Imran, 1994).

“And Allah has made for you mates from yourselves and made for you out of them, children and grandchildren.”

Similarly the Quran states:

“It is He who created you from a single soul “Nafs” and therefrom did he make his mate that he might dwell in tranquility with her.” (Quran:)

Muhammad bin Ibraheem in his book, titled *“The Book of Nikah”* has explained that the Islamic marriage is based on the need to achieve and maintain tranquility in society (Al-Tuwaij, 2000). Thus the family, which comes into being, as a result of this marriage is the basic foundation of society (Umar, 2018). According to Dr. Javid Ahmad Ghamdi, although, marriage is strongly enjoined and celibacy is discouraged in Islam, those who are not ready to undertake this solemn covenant and the responsibilities attached to it should postpone it (Ghamdi J. A., 2016).

Syed Iftikhar Hussain Naqvi in his book titled *“Qanoon-e-Mankahat”* considers marriage as not only the means of emotional and sexual gratification, as a mechanism of tension reduction, legitimate procreation and social placement; as an approach to interfamily alliance and group solidarity. Islamic marriage is also a social and religious institution (Naqvi, 2015). The Prophet is reportedly said; “He who marries completes half of his religion; it now rests with him to complete the other half by leading a virtuous life in constant fear of god”. “There is no mockery in Islam” “I keep fast and break it. I pray and I sleep and I am married so whoever inclines to any other way than my Sunnah, he is not of me”. “This is because marriage elevates the moral and spiritual standard of man. Nikah is my precept. Those who are unmarried, are the unworthy of the deed” (Riaz, 2013).

2.1.1 Legal Aspect of Islamic Marriage

Legally, marriage in Islam is considered as a contract; because the elements which constitute a marriage and the manner in which it is completed, is almost similar to that of a civil contract (Lowry, 2007). The contractual nature of a marriage is explained on the basis of the following elements: The nature of Islamic marriage is similar to that of a civil contract. But only on the basis of the above mentioned contractual elements, it is not correct to define it as purely a civil contract (Ibrahim A. , 1997) (Riaz, 2013).

2.1.2. Social Aspect of Islamic Marriage

Marriage or “*Nikah*” is a social institution by which a definite and dignified status has been conferred upon the women (Kyani). The Prophet of Islam brought about a reform in the society. According to Kecia Ali in his book titled “*Marriage and Slavery in Early Islam*”, no social reform was possible without giving equal status to the female. Therefore a definite institution or an established law was required to give equality and freedom to the females. With this object in mind, the Prophet of Islam introduced *Nikah* through which, the females could be placed on equal footing with males (Ali K. , 2010) (Kyani). It is therefore submitted that *Nikah* is a well-established social institution which gives to the women, a separate and dignified status in the society. (Ali K. , 2010). In civil contracts, the general rule is that, there is no liability to pay consideration if it has not been specified or referred in the contract (Engineer, 2004). But in Islamic marriage, even if the amount of dower has not been specified, the husband should pay proper dower to his wife as a mark of respect towards her (Kyani) (Ali K. , 2010).

2.1.3. Religious Aspect of Islamic of Marriage

Apart from the Legal and Social aspects, the holy Quran, which is the preeminent word of God, directs every Muslims to marry with a suitable woman of his choice (Al-Baqi, 1084). According to Imam Abu Abdullah Muhammad bin Ahmad bin Abubakar Qurtabi in his titled “*Tafseer Qurtabi Maruf b Aljamagh La Hukam Al Quran*”, marriage is a religious duty of every Muslim to contract a marriage according to the rules of Islam (Qurtabi, 2012). Similarly, Muhammad bin Ibraheem Al-Tuwaij, a Muslim scholar says that a person who remains bachelor without any reasonable excuse disobeys the words of God (Al-Tuwaij, 2000).

In his book titled “*Kitab ul Nikah u Talaq*”, Alam Ibn Rushd narrates that marriage is the tradition of the Prophet of Islam and is considered as ‘*Sunnat Muwakkidah*’ (Rushd, 2016). This means it is an act of such a nature that if a person does it, he gets religious benefits. If he abstains from doing it, then he commits sin (Al-Tuwaij, 2000). Prophet (PBUH) in a hadith said,

According to Dr. Muhammad Munir, Islamic scholar, in Islam, marriage is recognized as the basis of society (Munir M. , 2011). It is a contract but it is also a sacred covenant (Riaz, 2013). Mufti Menk, considers marriage as an institution leads to the uplift of man and is a means for the continuance of the human race (Menk, 2018). Explaining it further he argues that the main aim of the institution of marriage is to protect the society from foulness and unchastely (Menk, 2018). It has also been said that marriage is so holy a sacrament that in this world, it is an act of Ibadat or worship, for it preserves mankind free from pollution (ShkilAuj, 2014) (Al-Baqi, 1084) (Ali B. , 2012). The least focal aspect of marriage in Islam is the economic factor. The Prophet is reported to have said that a woman is ordinarily sought as wife for her wealth, for her beauty, for the nobility of her stock, or for religious qualities; but blessed and fortunate is he who chooses his mate for piety in preference to everything else (Al-Bukhari, 846) (Al-Nisapuri, 1086).

“Two rak’ats (cycles) prayed by a married person are better than the night-vigil and the fast of a single person” (Al-Bukhari, 846)

2.1.4. Significance of Marriage in Islam

The worth and significance of the institution of marriage is evident from the fact that it provides a healthy environment for the maintenance of cordial relations between the spouses and reciprocal love between them (Al-Baqi, 1084). Explaining further, Professor Dr. Abduraheem, notes that it also helps one to maintain his/her chastity and guard him/herself against committing the prohibited acts (Imran, 1994). In Surah Noor of Quran Almighty Allah says;

According to Muhammad bin Ibrahim, the above verse of Quran begins with the words *“Wa Ankehoo”* (And marry...). The imperative form of the word marriage or *‘nikah’* implies that either it is obligatory or highly recommended (Al-Tuwaij, 2000). According to scholars, though marriage is a highly recommended act, it becomes obligatory when there is a chance of falling into sin (Al-Tusi, 1067) (Ali B. , 2012). The Holy Prophet (P.B.U.H) has emphasized on marriage in a large number of ahadith. Prophet (P.B.U.H) said on one occasion, *“[m]arriage is my Sunnah, whoever turns away from my Sunnah, does not belong to me”* (Al-Bukhari, 846).

“And marry those among you who are single and those who are fit among your male slaves and your female slaves; if they are needy, Allah will make them free from want out of His grace; and Allah is Ample-giving, Knowing.” (Surah an-Nur, 24:32)

This Hadith highlights the importance of marriage contract. The Qur’ān calls marriage “a castle” as it is protection against dishonesty and immodesty. It has frequently used the word *muhsin* and *muhsanat* which come from the root word *hisn* i.e. castle and fort (ShkilAuj, 2014) (Al-Azhari, 1995). Marriage safeguards and protects chastity in the same way as fort protects the garrison within from a besieging army. Dr. Muhammed Munir described sanctity of marriage contract in following words:

“Allah has created deepest love and solace among the married men and women for each other. The word dwell in tranquility with them (as mentioned in Qur’ānic verse 30:21) connotes companionship and mutual love, which is distinct from mere sexual pleasure. Thus a wife in Islam is not handmaiden, but a lifelong companion of her husband, his consort” (Munir M. , 2011).

The Prophet (S) says,

“No house has been built in Islam more beloved in the sight of Allah than through marriage” (Al-Bukhari, 846).

On another occasion the Prophet (S) said,

“The best people of my nation (Ummat) are those who get married and have chosen their wives, and the worst people of my nation are those who have kept away from marriage and are passing their lives as bachelors.” (Al-Bukhari, 846) (Al-Nisapuri, 1086)

Imam ‘Ali (A.S.) exhorts, *“Marry, because marriage is the tradition of the Prophet (S)”* (ShkilAuj, 2014) The Prophet (S) also said, *“Whosoever likes to follow my tradition, then he should know that marriage is from my tradition”* (ShkilAuj, 2014) (Al-Nisapuri, 1086).

Likewise, it represents the best means of reproduction, multiplication and preservation of the family lineage. Therefore, Islamic law prescribes several requirements or conditions which are fundamental or essential for a valid Muslim marriage such as offer and acceptance (*ijab wa qabul*), wali or a guardian for marriage as well as *mahr* or *dowry* (Al-Baqi, 1084). Other than that Islam also enact various laws for instance to tolerate polygamy as an alternative to the sexual promiscuity, promote procreation and prohibits abortion, enact law for the obligations of spouses, prescribe the requirement of *iddah* for women, take care of the financial need of wife, children and other family members and the like. Islam also enacts rules and regulations that are conducive to the realization of the goal of Muslim marriage. (Sayed, 2013)

Furthermore, according to Muhammad Bin Ibrahim, by means of marriage human can fulfil his/her sexual needs free from related diseases, hence fulfilling his/her parental sense through having children. It also facilitates maintenance of the sense of security, self-content and chastity for both husband and wife (Al-Tuwaij, 2000). He further argues that men and women are created by Allah SWT as company for one another and to procreate and live in peace and tranquility in accordance with Allah's SWT guidance and His Messenger's directions (Al-Tuwaij, 2000).

According to Mufti Ismail Menk, a prominent religious scholar, in Islam, marriage is not restricted to a platonic relationship between husband and wife, nor is it solely for procreation. The Islamic term for marriage, "nikah" literally means sexual intercourse (Menk, 2018). Islam provided extensive rules and regulation regarding sex. This was because Islam has fully understood that sexual instincts cannot and must not be repressed (Al-Baqi, 1084). They can only be regulated for the wellbeing of human beings in this life and for their success in the hereafter (Al-Tuwaij, 2000). In Qur'an, Almighty All says;

Similarly, the Holy Prophet (S) and the Holy Imams (A.S.) also encouraged their followers to marry and to fulfill their sexual urges in lawful ways (Kyani) as can be seen from the following: The Prophet (S) said, "O you young men! I recommend marriage to you" (Al-Bukhari, 846).

"...when they [i.e., the wives] have cleansed themselves [after menstruation], you go into them as Allah has commanded..." (Surah al-Baqarah, 2:222)

Imam Reza (A.S.) said,

"Three things are from the traditions of the Messengers of God (A.S.): using perfume, removing the [excessive] hair and visiting one's wife" (Al-Nisapuri, 1086).

Likewise, it is also said that *'one day the wife of Uthman bin Maz'un [a close companion of the Prophet (S)] came to the Messenger of God and complained, "O Messenger of God (S)! 'Uthman fasts during the day and stands for prayers during the night" (Al-Bukhari, 846).* In other words, she meant to say that her husband was avoiding sexual relations during the night as well as the day. The Prophet (S) was angered. He did not even wait to put on his slippers. He went to 'Uthman's house and found him praying. When 'Uthman finished his prayers and turned towards the Prophet (S), he said, *"O 'Uthman! Allah did not send me for monasticism, rather He sent me with a simple and straight [Shariah]. I fast, pray and also*

have intimate relations with my wife. So whosoever likes my tradition, then he should follow it; and marriage is one of my traditions"(Al-Bukhari, 846).

Another hadith says that a woman came to the Prophet (S) and said that she had tried everything to attract her husband but in vain; he does not leave his meditation to pay any attention to her. The Prophet (S) told her to inform her husband about the reward of sexual intercourse which he described as follows:

According to Muhammad bin Ibn e Ibrahim, marriage is also a source of sustains. The Holy Prophet (S) remarked, *"Give spouses to your single ones, because Allah makes their morality better (improves it) (under the shadow of marriage) and expands their sustenance and increases their generosity (human values)"*(Al-Bukhari, 846).

It is stated in the Holy Qur'an that Allah PBUH has created man and woman as mates for one another so that they can live together and lead a peaceful life. This is a sight of greatness of Allah SWT. This is clear from the following Quranic verse:

"When a man approaches his wife, he is guarded by two angels and [at that moment in Allah's views] he is like a warrior fighting for the cause of Allah. When he has intercourse with her, his sins fall like the leaves of the tree [in fall season]. When he performs the major ablution, he is cleansed from sins" (Al-Nisapuri, 1086).

"And among His signs is that He created for you mates from among yourselves, that you may dwell in tranquility with them, and He has put love and mercy between your hearts. Undoubtedly in these are signs for those who reflect" (Qur'an, 30:21).

"And Allah has made for you your mates of your own nature, and made for you, out of them, sons and daughters and grandchildren, and provided for you sustenance of the best" (Qur'an, 16:72).

From the above mentioned verses it is clear that, marriage is one of the most virtuous and approved institutions. Other religion do not view marriage in the same manner, for they stress more on celibacy or monasticism and consider it as a great virtue and a means of deliverance. The prophet (PBUH) also stresses the significance of marriage remarkably saying:

"O you young men! Whoever of you is able to marry should marry, for it will help him lowering and not gazing at women hence, guarding his modesty"(Al-Bukhari, 846).

One can clearly understand the benefit of marriage, as mentioned in the forgoing saying of the prophet, to be the cherishing of modesty which is regarded as a great virtue by the Prophet. This is also supported with another saying of the prophet PBUH "Modesty is part of faith." (Muslim, n. d.) The institution of marriage is greatly emphasized in Islam and its importance is made crystal clear. This is evident from another tradition of the prophet in which he states "Marriage is my practice. Whosoever avoid it is not my follower/from me." (Sulaiman, 1987) Imam Ahmad also has reported that the Prophet PBUH said;

According to Shaik Abu Jafar Ibn Hassan, a renowned scholar of Shitte Islam, in the light of Qur'anic injunctions and the prophetic traditions it can be said that Islam holds the value and significance of marriage in a high esteem (Al-Tusi, 1067). Marriage

"The evils amongst you are those who stay single and mean are those who die in a state of staying single" (Al-Nisapuri, 1086) (Al-Bukhari, 846)

as understood in Islam embodies two different aspects of human life: aspect of *'ibadah* (worship) of Allah and aspect of *mu'amalah* (transactions between human beings) (Bough, 2017). Majlis ul Ulema Islam in book titled *"Marriage in Islam"* said that considering marriage as an act that pleases Allah SWT, it can be classified as *Ibadah*, for, the husband and wife love each other in accordance with Allah's SWT commandments and make efforts to continue the human race and rear and nurse their children to become true servants of Allah (Majlis ul Ulema, 2019). On the other hand, the *mu'amalah* aspect of marriage is evident from the fact of its being a lawful response to the human biological instinct and need to have sexual intercourse and to procreate children (Riaz, 2013). However, to regulate and control human sexual behavior, Islamic law has provided a set of detailed rules for rendering this response into a living human institution supported by a whole framework of rights and duties for the spouses and their offspring (Wood, 2015).

According to Muhammad bin Ibraheem Al-Tuwaij, marriage constitutes half of the faith of a Muslim for it protects him against adultery, fornication, homosexuality and other related crimes (Al-Tuwaij, 2000).

Similarly, Hakim Niaz Ahmed narrates that the purposes of Marriage in Islam has multiple purposes such as, spiritual calmness, cooperation and partnership in accomplishing the divine obligation (Ahmed H. N., 1972). Islam as a primordial state of human nature embodies all aspects of man ranging from physical, spiritual to intellectual and caters for them in a most balanced way (Riaz, 2013) (Al-Tuwaij, 2000). Although, marriage fulfills one's material needs in adequate and orderly manner, nevertheless, as mentioned earlier, tranquility and peace that is achieved through successful union is considered its primary objective (Ghamdi J. A., 2016). These aspects are beautifully articulated and explained in a tradition of the Prophet which is narrated by Anas that the prophet PBUH said, The Prophet (S);

"When a man marries, he has fulfilled half of his religion, so let him fear Allah regarding the remaining half" (Al-Bukhari, 846) (Ahmad, 2003). Explaining further, Muhammad Fu'ad Abd Al-Baqi said that a person who fulfills his sexual urges lawfully would rarely be distracted in spiritual pursuits (Al-Baqi, 1084).

According to Mulana Umar Ahmed Usmani, besides, tranquility and peace marriage results in a partnership between males and females by means of which they can achieve goodness and fulfill the divine mandate (Usmani, 1984). As Allah SWT has stated in the Quran:"

Based on the above premise the purposes of the marriage can be illustrated as follow; Union between Male and Female Marriage unites man and woman in a lofty and dignified manner. It is a divine law that nothing can ever carry out its obligation

"The believers, males and females, are partners of one another; they shall jointly enjoin all that is good and counsel against all that is evil" (Qur'an, 9:71).

independently. Allah SWT has created all things in a manner that they are dependent on one another of its kind.

2.2. Who is a Child?

According to the Covenant on Rights of Child in Islam, a child means every human being who, according to the law applicable him/her, has not attained maturity (Majlis ul Ulema, 2019). Although determining the age of maturity in boys and girls is one of the important and complex issues in fiqh and law as Quran does not specify specific age of childhood (Ahmed H. N., 1972) (Kyani) (Isfahani, 1913). However, in Sura 4 verse 6, explains maturity as the ability to make sound judgments.

Similarly, the UN Convention on the Rights of the Child (CRC) defines a child as “every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier” (UNOHC, 1989) (UNICEF, 2018). The expert body that monitors the Convention on the Elimination on All Forms of Discrimination against Women (CEDAW) in its General Recommendation 21, which explicitly deals with equality in marriage and family relations, also considered 18 years as the minimum age when young people attain full maturity and capacity to act (Brown, 2014) (Wood, 2015).

“And test the orphans [in their abilities] until they reach marriageable age then, if you find them to be mature of mind/sound in judgment, hand over to them their

According to Professor Dr. Muhammad Munir, Islam views childhood with hope and inspiration, as something to look forward to, that is sought after and that is longed for (Munir D. M., 2017) (Al-Azhari, 1995). When the long-awaited hope is achieved, the fruit reaped is happiness of the soul, delight of the heart and elation of the chest (Wood, 2015). According to the Qur’anic text, progeny is a gift from the Almighty Allah to His faithful servants; it is one of the bounties bestowed upon them by the Almighty Giver of Bounties, Be He Exalted (Al-Azhari, 1995). It is also a fulfilment of the hope that is longed for by sincere believing servants of Allah. The Almighty says:

“To Allah belongs the kingdom of the heaven sand the earth. He creates what he wills. He bestow female [offspring] upon whom he will and bestows male [offspring upon whom he wills. Or He bestows to both male and female, and her renders barren whom he wills. Verily, He is the all-knower and is able to do all things” (Quran; Ash-Shura, Verse 49-50)

Dr. Abduraheem, in his book titled *“Islami Miras Ma Khandani Mansubaband”* states that Islam pays special attention to child rights in its legislation and jurisprudential laws (Imran, 1994). Mufti Menk, a prominent Islamic scholar has further it and according to Mufti Menk it is possible to say that the issue of childhood constitutes one of the major objectives in Islamic legislation (Menk, 2018). Jurists and scholars in Islam agree that the Islamic Sharia is aimed at accomplishing five objectives or purposes for humanity (Huda, 2017) (Riaz, 2013). These are: the safeguarding of progeny, the safeguarding of life, the safeguarding of sanity, the safeguarding of property and the safeguarding of faith (Al-Tuwaij, 2000).

According to *Majlis ul Ulema*, a group of Islamic scholars, the issue of childhood is at the core of the first objective, namely, safeguarding children and immunizing them against dangers (Majlis ul Ulema, 2019). On this theme, Islam introduces bountiful and precise laws that are almost nonexistent in other religions or social systems (Bough, 2017). It would suffice to point to the rigorous legislation dealing with the child from the early days of formation in the womb of the mother, all the way until he or she attains the age of puberty (Huda, 2017). In between, there are the various stages of pregnancy, birth, breastfeeding, weaning, playfulness, discipline and education, friendliness and companionship, and finally independence and self-reliance (Al-Tusi, 1067). As Quran says:

According to Dr. Muhammad Munir, throughout these stages, the child is attended to by rules, laws and guidelines that together form a 'childhood jurisprudence'. This covers the child's upbringing and the rights that parents, the family and society need to protect (Munir D. M., 2017). He further argues that we must therefore care well for them and preserve them by implementing the teachings of Islam, and following what has been stated in the Noble Qur'an and what our Noble Prophet – Peace Be Upon Him – has guided us to be in his pure Prophetic tradition, where he says:

"(With the child), play for seven (years), discipline for seven (years), accompany for seven (years) and then let go" (Quran,)

"Each of you is a shepherd, and each of you is accountable for his or her flock" (Al-Bukhari, 846).

According to Javed Ahmed Ghamdi, a renowned Islamic Scholar, if we see a child lacking in care or attention, responsibility for that omission lies on the shoulders of his or her parents, family and society. This is so because the monotheistic Islamic religion exhorts providing good rearing and care for the child, and keeping him or her away from whatever may harm his or her health, psychological and social conditions, so the child can grow into a righteous citizen who has a sense of belonging to his or her people, society and homeland (Ghamdi J. A., 2016).

2.3. What is Child Marriage?

Child marriage, also known as early marriage, is defined as "Any marriage carried out below the age of 18 years, before the girl is physically, physiologically, and psychologically ready to shoulder the responsibilities of marriage and childbearing" (Parson, 2015) (Umar, 2018). Marriage is a formalized, binding partnership between consenting adults, which sanctions sexual relations and gives legitimacy to any offspring (Al-Baqi, 1084). It is still a respected and valued social institution throughout the world, and may take different forms in different cultures (Al-Tuwaij, 2000) (ShkilAuj, 2014).

Child marriage, on the other hand, involves either one or both spouses being children and may take place with or without formal registration, and under civil, religious or customary laws (Bough, 2017). The 1948 Universal Declaration of Human Rights states that marriage should be "entered only with the free and full consent of the intending spouses" (UNICEF, 2018). But, in the majority of child marriages, there is often an element of coercion involved: parents, guardians or families pressurize, collude or force children into marriage (Wood,

2015). However, where one of the parties in a marriage is under 18 years, consent to marry in such cases cannot always be assumed to be of 'free and full consent' and may also not always be in the best interest of the child (UNICEF, 2018) (Baktiar. L., 1996).

The expert body that monitors the Convention on the Elimination on All Forms of Discrimination against Women (CEDAW) in its General Recommendation 21, which explicitly deals with equality in marriage and family relations, outlaws child marriage, and stipulates 18 years as the minimum age for marriage for males and females. This is the minimum age when young people attain "full maturity and capacity to act" (UNICEF, 2018)

Chapter 03

Trends of Child Marriage and Commitments of Muslim World Countries to Prevent Child Marriage

According to the United Nations Population Fund (UNFPA) and The United Nations International Children's Emergency Fund (UNICEF) worldwide over 700 million women currently living got married while they were just children (Wold Vision, 2018). That number is set to rise to nearly 1 billion by 2030, if current trends continue (Wold Vision, 2018). The number of child marriages is specifically high in least develop and conflict stricken countries of the world. Of the top ten countries where child marriage is very prevalent, six are countries with Muslim majority population (Wold Vision, 2018). For instance, Niger, a Muslim majority countries top the list with highest rate of child marriage (76 % marry before the age of 18). Chad and Bangladesh stood at third and fourth after the Central African Republic with 67 and 59 percent respectively (UNICEF, 2019). The detail account of trends of child marriages in Muslim countries is given below

According to UNICEF of the top ten countries where child marriage rates are the highest seven are Muslim Majority countries

3.1 South and East Asia

3.1.1 Afghanistan

According to a report compiled by Australian Aid, steeped in centuries-old tribal tradition and exacerbated by poverty, child marriage is pervasive in Afghanistan and efforts to eradicate it should be a high priority on the government's development agenda (Australian Aid, 2016). The report notes that although Afghan civil law stipulates that a girl cannot legally marry until she is 16 unless her father chooses her to marry at 15. However, in practice, a girl is often married off when she is considered 'physically mature', which can occur at a much younger age. Similarly, according to UNICEF report, enforcing the rule of law in Afghanistan can be exceptionally challenging due to the ongoing security situation in the country, creating an environment for tribal traditions like child marriage to thrive (UNICEF, 2018).

Girls are largely viewed as an economic burden on the family, and parents are quick to marry off their daughters to receive a bride price. The figures are alarming: 57 percent of Afghan girls are married before they turn 16, and 60 to 80 percent of those girls were forced into

those unions by their families (Australian Aid, 2016). UNICEF report notes that while statistics may vary slightly across geographic and demographic samples, it is clear that girls from all regions are vulnerable to child marriage (UNICEF, 2018).

The Australian Aid report found that key causes are illiteracy and lack of access to schools in rural areas, low levels of awareness of both Sharia and state laws, and low levels of awareness of the harms and negative consequences of childhood marriage. Child marriage has adverse physical and psycho-social health, personal security and social effects on young and adolescent girls as well as their communities. Because the practice deprives girls of an education, they grow up ill-equipped to make safe and healthy choices as adults while remaining entrenched in poverty. As a result, they are also more likely to engage their own children in marriage at an early age (Australian Aid, 2016).

3.1.2 Bangladesh

The Child Marriage Restraint Act of 1929 passed during British rule is still applicable in Bangladesh, where the legal age for a girl to marry is 18 (Government of the People's Republic of Bangladesh, 2017). According to UNICEF report on ending child marriage in Bangladesh, unfortunately, enforcement efforts are weak, as is indicated by the extremely high rates of child marriage in the country (UNICEF, 2018). Similarly, according to a report published by Australian Aid, a national law passed in 2004 requires that all births are registered, which would help determine a girl's age when she marries (Australian Aid, 2016). At the grassroots level, newly formed village governments, or Gram Sarkars, have taken on the responsibility of combating child marriage. Article 34 of the Children's Act of 1974 specifically stipulates that penalties will be imposed for cruelty to children. Stronger enforcement of national child marriage and protection laws is clearly needed, and while great progress has been made in a short time period to increase birth registration, more vigilance is needed to push figures even higher (Australian Aid, 2016).

The report further notes that there has been a remarkable improvement between 2006 and 2009 in the proportion of children 5 years old and under, whose births were registered, with registered births increasing from just 9.8 percent to 53.6 percent (Australian Aid, 2016).

Despite the improvements, the prevalence of child marriage in Bangladesh is the highest in all of Southern Asia, and among the highest globally (UNICEF, 2018). The report further notes that while traditional beliefs like protecting a girl's 'honour' often push parents to marry their daughters at a young age, girls from poorer families are especially vulnerable. In fact, poverty is one of the most powerful drivers of the harmful practice in the country. Bangladesh is rated 136 out of 187 countries and territories on UNDP's 2017 Human Development Index (HDI) (UNDP, 2018).

Statistics reveal that in Bangladesh, that tipping point age is 15 years: It is estimated that 66 percent of girls in Bangladesh are married off before the age of 18, and 32 percent before the age of 15 (Australian Aid, 2016). The report further notes that and while the prevalence of child marriage is high in urban areas at 53 percent, it is even higher in rural areas where 70 percent of girls are married early. UNICEF also recently

reported that the largest number of very young brides can be found in the Western and Southern parts of Bangladesh that border India (UNICEF, 2018). The report further notes, wherever it occurs, the widespread practice of child marriage in Bangladesh is tremendously detrimental to the lives and futures of millions of Bangladeshi girls, their families and their communities, as it helps perpetuate a cycle of poverty and underdevelopment.

3.1.3 Iran

Child marriage law in Iran has changed many times over the last century. According to a report published by Australian Aid prior to the 1979 Iranian revolution, the legal age of marriage for boys and girls was 18 and 16, respectively. Shortly after the revolution, the age of marriage for girls was lowered to nine, however, in 2003, female parliamentarians successfully pushed through legislation that raised the legal age of marriage for girls to 13. The report further notes that although it is difficult to verify, it is believed that in 2010 the age was again raised back to 16 for girls and 18 for boys.

Similarly according to (Child Not Brides, 2018) available information, under state law, a man who marries a girl who is 13 or younger must serve a sentence ranging from two to three years.

Despite these policy measures according to a 2010 report, the number of child brides under the age of 10 in Iran had actually doubled over the previous three years (Australian Aid, 2016). The report also cited 2010 figures which showed that 42,000 marriages involved girls between the ages of 10 and 14. And the actual number of marriages for girls aged 10 to 15 could be even higher in reality, as only some 55 percent of child marriages are registered in cities and 45 percent in villages. Girls from varying economic backgrounds and geographic locations are affected to different degrees by child marriage in Iran (Child Not Brides, 2018). However, as in many other countries in the region and world where child marriage is common, girls in poorer, more rural areas of Iran like Sistan and Baluchistan Provinces are most likely to be married off before they reach adulthood (Australian Aid, 2016).

3.1.4 Maldives

The legal system in the Maldives is based on a mixture of Islamic law and English common law, with the latter being more influential in regulating commerce and other activities that fall outside of the social realm (UNICEF, 2016). In relation to personal status, Sharia law is more dominant, as adapted to the modern Maldivian judicial system. The Maldives acceded to CEDAW in 1993, with general reservations regarding any provisions contradictory to the government's interpretation of Sharia law or Maldivian tradition (Naveed, 2015).

According to Australian Aid report while the prevalence of child marriage in the Maldives is the lowest in the region, there is still a need to closely monitor, regulate and enforce the legal age of marriage for girls (Australian Aid, 2016). The report further notes that only 4 percent of women currently aged 20 to 24 have been officially reported to have first married before they turned 18. The official percentage of girls married by age 15 has decreased from 16 percent of women currently aged 45 to 49, to less

than 2 percent of women currently aged 25 to 29 (Australian Aid, 2016). However, according to the U.S. Department of State's 2010 Human Rights Report, many Maldivians travel to Pakistan or India to carry out illegal child marriages (US Department of State, 2010). Families also circumnavigate the law – the minimum age of 18 was instituted in 2001 – by failing to register marriages involving child brides. This means that the real figure is likely much higher. Parents may choose to marry their daughters young out of fear that they will disgrace their family if they become sexually active outside of marriage (Australian Aid, 2016).

3.1.5 Child Marriage in Pakistan

Child marriage is one of the most pressing development challenges in Pakistan today, with approximately 30 percent of girls in the country married off as child brides (Australian Aid, 2016). While the practice is widespread, the situation is worst in the interior of Sindh province (Pakistan Today, 2019) (WHO, 2012).

According to a report published by UNICEF, girls living in rural areas of Pakistan are hardest hit by child marriage, with a prevalence rate of 37 percent as opposed to 21 percent for girls from urban areas. A report published by UNICEF titled the key drivers of child marriage in south Asian countries states that child marriage in Pakistan is deeply rooted in poverty and in centuries-old patriarchal traditions, with devastating effects on girls that last a lifetime (UNICEF, 2018). Similarly according to Australian Aid report, child brides in Pakistan are at an elevated risk of sexual and physical abuse, reproductive health complications, and other adverse physiological and social outcomes (Australian Aid, 2016).

The law in Pakistan stipulates that the legal age for marriage is 16 and 18 for girls and boys, respectively, in accordance with the colonial-era Child Marriage Restraint Act of 1929 (Khan, 2017). Similarly, the punishment for a man 18 or older who violates the law is a fine of up to 1,000 rupees (about US\$10), or a maximum prison sentence of one month, or both. However, nullifying illegal child marriages is not mandatory under the current law (Australian Aid, 2016). In 2011, the Law and Justice Commission (LJCP) chair directed the secretariat to propose amendments that would lead to more stringent punishment for perpetrators of *vani* and *swara*, a tribal customary law that mandates the forced marriage of girls as compensation or currency to settle a dispute or debt.

3.1.6 Malaysia

Malaysia has a dual legal system, which means that the minimum age of marriage can be determined by either civil law or Sharia (Islamic) law. Non-Muslims may only marry from the age of 18, but girls can be married as early as 16 provided they or their parents have the permission of the State Chief Minister (Ibrahim A., 1997).

Likewise, Malaysia has committed to eliminate child, early and forced marriage by 2030 in line with target 5.3 of the Sustainable Development Goals (SDGs) (Australian Aid, 2016). Prior to that Malaysia acceded to the Convention on the Rights of the Child in 1995, which sets a minimum age of marriage of 18, and acceded to the Convention on the Elimination of All

Forms of Discrimination Against Women (CEDAW) in 1995, which obligates states to ensure free and full consent to marriage (Ibrahim A. , 1997).

Despite all these commitments child marriages are still taking place in Malaysia. There is not public figures available about child marriage in Malaysia, however, according to a report published by Australian Aid, in 2000, the census showed that child marriage affected 6,800 girls below the age of 15 as well as 4,600 boys in Malaysia (Australian Aid, 2016). The report further notes that of those girls, 2,450 were Malay, 1,550 indigenous, 1,600 Chinese, 600 Indians, and 600 others. Subsequent censuses did not collect such information so it is hard to gauge the true extent of the practice. Similarly, in 2010, over 82,000 married women in Malaysia were girls between the ages of 15 and 19 (UNICEF, 2018). The true scale of child marriage in Malaysia may, however, be even higher as many couples who take part in religious or customary weddings do not register their unions.

3.1.7 Indonesia

The Marriage Law 1974 permits women and men to marry at 21 but allows girls to marry at 16 and boys to marry at 19 with parental permission (Lindsey, 2008). Indonesia has also committed to eliminate child, early and forced marriage by 2030 in line with target 5.3 of the Sustainable Development Goals (Child Not Brides, 2018). Prior to that Indonesia ratified the Convention on the Rights of the Child in 1990, which sets a minimum age of marriage of 18, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1984, which obligates states to ensure free and full consent to marriage (Child Not Brides, 2018).

Despite all these policy measures and international commitments child marriages are still taking place in the country on regular basis. Statistics shows that 14% of girls in Indonesia are married before the age of 18 and 1% are married before their 15th birthday (Child Not Brides, 2018). Similarly, according to UNICEF, Indonesia has the eighth highest absolute number of child brides in the world – 1,459,000 (UNICEF, 2017). Similarly, data from Indonesia's 2010 Population Census and National Socioeconomic Survey shows that child marriage is most prevalent in West Sulawesi and South Kalimantan, and Central Java, East Java and South Kalimantan districts (Child Not Brides, 2018).

According to Indonesia's National Socioeconomic Survey (INSS), a national sample of about 200,000 households, marriage of girls under the age of 15 and 16 has shown the largest decline since 2008, whereas marriage among girls aged 16 and 17 has not changed significantly (Child Not Brides, 2018).

3.2 Central Asia

3.2.1 Kazakhstan

According to UNFPA, in Kazakhstan the statistics available do not allow for calculation of the frequency of child marriage in the country. Reliable statistical data are only available with regard to de jure marriage. However, child marriages tend to be de facto marriages, with the unions not officially registered (UNFPA, 2015). The report further notes that marriages contracted by religious ceremony, which are the most common form of registration of

marriage of minors, as well as cohabitation, are not registered by official marriage registration authorities (UNFPA, 2015).

The official data provided in the Youth of Kazakhstan statistical yearbook for 2010 indicate that the number of female child spouses that have contracted registered marriages is almost 20 times higher than the number of male child spouses (UNFPA, 2015). Regional indicators reveal a high number of marriages of minors in Almaty (6/145 boys/girls under 18), South Kazakhstan (2/86), and other economically vulnerable oblasts in Kazakhstan (Child Not Brides, 2018).

According to Asian Development Bank report on Gender in Kazakhstan, the problem of child marriage in Kazakhstan is not just linked to economic factors (ADB, 2018). The Report further notes that other important influences include social and cultural factors, as well as the educational attainment of the women and girls, and their residence in a rural area.

3.2.2 Uzbekistan

Uzbekistan has committed to eliminate child, early and forced marriage by 2030 in line with target 5.3 of the Sustainable Development Goals (Girls Not Brides, 2018). In 1994, Uzbekistan acceded to the Convention on the Rights of the Child, which sets a minimum age of marriage of 18, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1995, which obligates states to ensure free and full consent to marriage. During its 2015 review, the CEDAW Committee recommended that the government raise awareness on the importance of eliminating child marriage among traditional leaders, representatives of local mahalla committees and society at large (Girls Not Brides, 2018).

Similarly, the 1998 Family Code stipulates that men have the right to contract a marriage from the age of 18 and women from the age of 17 (Human Rights Watch, 2001). In exceptional circumstances, the khokim (mayor) of a district or town has the right to reduce the marriageable age, but not by more than a year, under Article 15. The code does not provide a precise list of such exceptional circumstances, leaving this to the discretion of the authorities (Girls Not Brides, 2018). To further strengthen laws to curb child marriage in May 2013, new provisions were introduced into the Administrative and Criminal Codes to increase punishment for officials, religious leaders and parents who allow child marriage to take place, including fines and imprisonment (Girls Not Brides, 2018).

Despite these measures, child marriages are still taking place in the country on regular basis. According to the most recent available data from 2006 to 2018, 7% of girls in Uzbekistan are married before their 18th birthday (Girls Not Brides, 2018). Child marriage is slightly more prevalent in the Eastern region of the country.

3.2.3 Tajikistan

According to UNFPA report on Child marriages, Tajikistan has committed to eliminate child, early and forced marriage by 2030 in line with target 5.3 of the Sustainable Development Goals (UNFPA, 2018). The report further notes that in 1993, Tajikistan acceded to the Convention on the Rights of the Child, which sets a minimum age of marriage of 18, and

acceded to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which obligates states to ensure free and full consent to marriage.

Despite all these commitments and policy measures, 12% of girls in Tajikistan are married before the age of 18 (Girls Not Brides, 2018).

3.2.4 Turkmenistan

Turkmenistan has committed to eliminate child, early and forced marriage by 2030 in line with target 5.3 of the Sustainable Development Goals (Girls Not Brides, 2018). Likewise, Turkmenistan co-sponsored the 2013 and 2014 UN General Assembly resolutions on child, early and forced marriage. It also acceded to the Convention on the Rights of the Child in 1993, which sets a minimum age of marriage of 18, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1997, which obligates states to ensure free and full consent to marriage (Ahmed R. , 2018) (UNFPA, 2018).

Furthermore, in 2012 the new Family Code of Turkmenistan came into force and the minimum legal age for marriage was raised to 18 years although individuals may still marry at 17 years in exceptional cases with consent of their parents or guardians (Asian Development Bank, 2012).

Despite all these policy measures, child marriages are still prevalent in the country. Statistics reveal that 6% of girls in Turkmenistan are married before the age of 18 in the year 2017. Child marriage is most prevalent in Lebap Velayat and lowest in Mary Velayat (Girls Not Brides, 2018).

3.2.5 Azerbaijan Republic

According to the Family Code of Azerbaijan Republic 2002 the legal age of marriage for men and women is 18 years (Ahmed R. , 2018). However, the minimum age of marriage can be reduced by one year with permission from the local executive power (Girls Not Brides, 2018). Similarly, Azerbaijan has committed to eliminate child, early and forced marriage by 2030 in line target 5.3 of the Sustainable Development Goals. During its Voluntary National Review at the 2017 High Level Political Forum, the government stated that the Family Code has been amended and the minimum age of marriage for girls has increased to 18. As a result, the number of child marriages has reportedly decreased from 5,138 in 2011 to 388 in 2015 (Ahmed R. , 2018).

Earlier, Azerbaijan acceded to the Convention on the Rights of the Child in 1992, which sets a minimum age of marriage of 18, and acceded to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1995, which obligates states to ensure free and full consent to marriage (Girls Not Brides, 2018).

Despite these steps, 11% of girls in Azerbaijan are married before the age of 18 and 2% are married before their 15th birthday. Rates of child marriage are highest in villages on the Absheron peninsula in the southern region (Lenkaran, Lerik, Yardimly, Masally), northern (Guba) regions, on the border with Iran, and in the Absheron, Sabunchu, Nardaran, Garadagh and Azizbekov districts of the country's capital, Baku (Girls Not Brides, 2018).

3.3 Middle East

3.3.1 Saudi Arabia

When Saudi Arabia's Shoura Council voted on January 11, 2019 to ban child marriage in the Kingdom, it joined a global movement seeking to end a practice that is harmful not just to girls' health — child brides are more likely to experience domestic violence and die in childbirth — but also to their future, as they are less likely to remain in school. The Shoura Council banned child marriages for both genders with the approval of two-thirds of its members. The members voted to approve regulations limiting marriages of those under 18 years of age and banning marriages involving children under 15 years of age (Kenndy, 2019).

Although there is dearth of data regarding child marriages in Saudi Arabia, the following are some examples of press reports from the recent year on cases in which little girls were married to men over 50 which clearly signifies the high prevalence rate of child marriages in the country. For instance, in July 2008, the Saudi daily Shams reported that residents in the city of Hail stopped the marriage of a 10-year-old girl to a man of 60, on the grounds that the girl's innocence was being violated and that her father was selling her to her future husband (MEMRI , 2009). In another such incidents in August 2008, the daily 'Okaz reported that a 70-year-old man had married a child of 10, and in the same month, a court in the 'Uneizah district rejected a plea to annul the marriage of an eight-year-old girl whose father had married her to a man of 58 (MEMRI , 2009).

Child marriages sometimes involve young bridegrooms as well. On March 18, 2008, Shams announced the betrothal of the youngest bridegroom in the Saudi kingdom: an 11-year-old boy who was to marry his 10-year-old cousin during the summer vacation (MEMRI , 2009).

3.3.2 Yemen

Yemen has committed to eliminate child, early and forced marriage by 2030 in line with target 5.3 of the Sustainable Development Goals (Ahmed R. , 2018). Prior to that Yemen ratified the Convention on the Rights of the Child in 1991, which sets a minimum age of marriage of 18, and acceded to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1984, which obligates states to ensure free and full consent to marriage (Ahmed R. , 2018). However, the situation of child marriage is Alarming in the country. According statistics, 32% of girls in Yemen are married before their 18th birthday and 9% are married before the age of 15. Child marriage is most common in Al-Jawf and Al-Baidha Governorates (Girls Not Bride, 2018) (UNICEF, 2018).

This rise in child marriages in Yemen is a visible indicator of the conflict's disproportionate impact on children (UNICEF, 2018). Child marriage has been used both as a coping mechanism to protect girls and sustain families, and has left child brides with nowhere to turn due to a break down in welfare services and schools (UNICEF, 2018).

3.3.3 Lebanon

Lebanon has committed to eliminate child, early and forced marriage by 2030 in line with target 5.3 of the Sustainable Development Goals. Likewise, Lebanon ratified the Convention

on the Rights of the Child in 1991, which sets a minimum age of marriage of 18, and acceded to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1997, which obligates states to ensure free and full consent to marriage (Girls Not Bride, 2019). However, child marriages is still take place in the country on regular basis. According to the latest available data from 2009-2018, 6% of Lebanese girls are married before their 18th birthday and 1% are married before the age of 15 (Girls Not Bride, 2019) (UNICEF, 2018).

3.3.4 Jordan

In Jordan the minimum legal age of marriage is 18 years. However exceptions mean individuals can marry at 15 years with judicial consent. Under newly introduced regulations in 2017, if an exception to the 18 year minimum age requirement for marriage is to be granted, there must be a maximum 15 year age difference between man and woman, the husband must have no other wives, and the marriage must not prevent a girl from continuing her education. Jordan has also ratified all the international conventions i.e. CEDAW etc but child marriage are still prevalent in the country. According to Girls Not Bride statistics, 8% of girls in Jordan are married before the age of 18 (Girls Not Bride, 2018).

3.3.5 Syria

Under the Syrian Personal Status Law the minimum legal age of marriage is 18 years for boys and 17 years for girls (Girls Not Brides, 2018). However girls are able to marry at 13 years and boys at 15 years with judicial consent. Moreover, Syria has committed to eliminate child, early and forced marriage by 2030 in line with target 5.3 of the Sustainable Development Goals and has also ratified the Convention on the Rights of the Child in 1993, which sets a minimum age of marriage of 18, and acceded to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 2003, which obligates states to ensure free and full consent to marriage. However, Child marriage still takes place in the country (Girls Not Brides, 2018).

According to the most recent available data from 2006 shows that 13% of Syrian girls are married before the age of 18 and 3% are married before their 15th birthday (Girls Not Brides, 2018). These prevalence rates may have changed significantly since conflict in the country began. Child marriage is a growing problem for Syrian girls in refugee communities in Jordan, Lebanon, Iraq and Turkey. In Jordan, for instance, figures show an increase over time. In 2011, 12% of registered marriages involved a girl under the age of 18. This figure rose to 18% in 2012, 25% in 2013 and 32% in early 2014 (UNICEF, 2014). In Lebanon today, 41 % of young displaced Syrian women were married before 18. Given that many marriages are unregistered, these figures may, in fact, be much higher (Girls Not Brides, 2018). Girls who were displaced inside Syria are likely facing similar problems. However, there is currently limited data about the situation in the country.

3.3.6 Iraq

According to the Personal Status Law and Amendments 1987 the minimum legal age of marriage is 18 years. However individuals can marry at 15 years with judicial consent. Article 41 of the Iraqi Permanent Constitution (2005) enables every sect and religious community

to follow its own religious teachings and laws regarding marriage, and affects attempts to standardise a legal age in line with international standards (Girls Not Brides, 2018).

Moreover, Iraq has committed to eliminate child, early and forced marriage by 2030 in line with target 5.3 of the Sustainable Development Goals. Iraq acceded to the Convention on the Rights of the Child in 1994, which sets a minimum age of marriage of 18, and acceded to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1986, which obligates states to ensure free and full consent to marriage. Despite all these policy measures, child marriage is a major issue in Iraq. Statistics reveal that 24% of girls in Iraq are married before the age of 18 and 5% are married before the age of 15. Child marriage is most prevalent in Al-Najaf (where 30% of women aged 20-49 were married before the age of 18), Al-Muthanna (29%), Thi-Qar (27%), Ninewa and Karbala (26%) (Girls Not Brides, 2018).

3.4 African Countries

3.4.1 Niger

Niger to the list of the top ten countries very child marriage rates are highest. According to statistics 76% of girls in Niger are married before their 18th birthday and 28% are married before the age of 15 (Child Not Brides, 2019). Similarly, according to UNICEF, Niger has the highest prevalence rate of child marriage in the world and the 14th highest absolute number of child brides – 676,000 (UNICEF, 2017). Similarly, a 2017 World Bank study suggests that ending child marriage in Niger could save the country more than USD25 billion by 2030 (World Bank, 2017).

3.4.2 Central African Republic

In Central African Republic, the child marriage rates are very high. Statistics reveal that 68% of girls in Central African Republic are married before the age of 18 and 29% are married before the age of 15 (Child Not Brides, 2018). Similarly, according to UNICEF, Central African Republic has the second highest prevalence rate of child marriage in the world.

Child marriage is most prevalent in Ouaka, Basse Kotto and Nana Mambéré and Kémo and among the Haoussa, Banda and Yakoma-Sango ethnic groups in Central African Republic (Child Not Brides, 2018). Interesting finding about the child marriage in CAR that unlike global trends, household wealth and level of education does not significantly affect child marriage rates in Central African Republic (Child Not Brides, 2018).

3.4.3 Chad

Chad is one of the top ten countries where child marriage rates are very high. In Chad, 67% of girls are married before the age of 18 and 30% are married before the age of 15 (Child Not Brides, 2018). According to UNICEF, Chad has the third highest prevalence rate of child marriage in the world. Child marriage is most common in Guéra, Lac, Chari Baguirmi, Sila and Mayo Kebbi Est.

Chad hosts 408,607 refugees from the Central African Republic (CAR), Nigeria and Sudan, as well as 96,000 returnees from CAR, which has strained local resources. Severe droughts and

Boko Haram's drive to gain territory in the Lake Chad Basin has led to further displacement and food insecurity, which may drive some girls to be married off as children (Child Not Brides, 2018).

3.4.4 Burkina Faso

Burkina Faso is also faced with the dilemma of high rates of child marriage. Statistics reveal that 52% of girls in Burkina Faso are married before their 18th birthday and 10% are married before the age of 15 (Child Not Brides, 2018). According to UNICEF, Burkina Faso has the fifth highest prevalence rate of child marriage in the world. The lowest median ages at first marriage are in Sahel and Est (UNICEF, 2017). Similarly, the report further shows that ending child marriage in Burkina Faso could generate \$179 million in earnings and productivity.

3.4.5 Mali

Mali is also one of the African country very child marriages rates are very high. Statistics reveal that 52% of girls in Mali are married before the age of 18 and 17% are married before their 15th birthday (Child Not Brides, 2018). According to UNICEF, Mali has the sixth highest prevalence rate of child marriage in the world (UNICEF, 2017).

Child marriage is most common in Kayes (where 66% of women aged 20-49 were married before the age of 18), Koulikoro (58%) and Gao (56%). A 2017 World Bank study estimates that ending child marriage in Mali could result in USD174.8 million productivity gains (World Bank, 2017).

3.4.6 Guinea

Child Marriages rates are also very high in Guinea. Over half of all girls in Guinea are married before their 18th birthday and 19% are married before the age of 15 (Girls Not Brides, 2018). According to UNICEF, Guinea has the eighth highest prevalence rate of child marriage in the world (UNICEF, 2017). The report further found that child marriage is most prevalent in Labé (where 76% of 20-49 year old women were married before the age of 18), Moyenne Guinée (72%), Kankan and Haute Guinée (69%), Mamou (68%) and Faranah (65%) (UNICEF, 2017).

3.4.7 Somalia

The most recent available data from 2006 shows that 45% of girls in Somalia are married before their 18th birthday and 8% are married before the age of 15 (Child Not Brides, 2018). According to UNICEF, Somalia has the tenth highest prevalence rate of child marriage in the world (UNICEF, 2017)

Similarly, decades of poverty, armed violence, displacement, political insecurity and natural disasters have exacerbated humanitarian needs in Somalia. As of April 2018, there are 2.1 million internally displaced people there and 2.7 million people are experiencing a food crisis (UNICEF, 2017)

3.4.8 Sierra Leone

In Sierra Leone, child marriages rates are also among the highest in the world. Statistics reveal that 39% of girls in Sierra Leone are married before their 18th birthday and 13% are married before the age of 15 (Child Not Brides, 2018).

Similarly, according to UNICEF, Sierra Leone has the 18th highest prevalence rate of child marriage in the world (UNICEF, 2017). The report further notes that child marriage is most common in Port Loko, Kenema, Kono and Tonkolili.

3.4.9 Mauritania

Child marriages rates are also very high in Mauritania. Statistics show that 37% of girls in Mauritania are married before the age of 18 and 18% are married before their 15th birthday (Child Not Brides, 2018). According to UNICEF, Mauritania has the 20th highest prevalence rate of child marriage in the world (UNICEF, 2017).

The report further found that child marriage is most prevalent in rural areas and Guidimagha (where 55% of women aged 20-49 were married before the age of 18), Assaba (44%) and Hodh Echargui (40%) (UNICEF, 2017)

3.4.10 Morocco

Under the Family Code 2004 the minimum legal age of marriage is 18 years. However legal loopholes mean that girls may marry before 18 years with judicial consent (Ahmed R. , 2018). In 2018 a new law on combatting violence against women was introduced, which marked a positive step forward in terms of defining and criminalising acts considered harassment, aggression, sexual exploitation and forced marriage of girls and women. However the law itself does not address child marriage or related issues of intimate partner violence that many child brides experience (Ahmed R. , 2018).

Despite these measures, child marriages are very prevalent in Morocco. Statistics show that The most recent available data from 2004 shows that 16% of girls in Morocco are married before their 18th birthday and 3% are married before the age of 15 (Child Not Brides, 2018).

Statistical information is inconsistent as many child marriages are not officially registered. According to UNICEF, the risk of girls marrying before the age of 18 in Morocco is less than half of what it was three decades ago (UNICEF, 2017).

3.4.11 Comoros

According to the Family Code 2005, 18 years is the legal minimum age of marriage. However, they can marry before the age of 18 with judicial consent (Ahmed R. , 2018). Comoros has committed to eliminate child, early and forced marriage by 2030 in line with target 5.3 of the Sustainable Development Goals. Earlier, Comoros had also ratified the Convention on the Rights of the Child in 1993, which sets a minimum age of marriage of 18, and acceded to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1994, which obligates states to ensure free and full consent to marriage (Girls Not Brides, 2018).

Despite these policy measures, the child marriage rates are high in Comoros. Statistics reveal that 32% of girls in Comoros are married before their 18th birthday and 10% are married before the age of 15 (Girls Not Brides, 2018).

3.4.12 Sudan

There is no legislation in Sudan to prohibit child marriage. The 2010 Child Act, for example, does not mention marriage in this context. Article 40 of the Muslim Personal Law 1991 cites that once a party is 10 years old, they may be married with the consent of their parent or guardian (Ahmed R. , 2018). Therefore, child marriages rates among the highest in the world. Statistics show that 34% of girls in Sudan are married before the age of 18 and 12% are married before their 15th birthday (Child Not Brides, 2018).

According to UNICEF, Sudan has the 16th highest absolute number of child brides in the world – 640,000. Child marriage is most prevalent in South and East Darfur (where 56% of women aged 20-49 were married before the age of 18), Central Darfur (55%), the Blue Nile (50%) and Gadarif (49%) (UNICEF, 2017).

3.4.13 Senegal

Under the Family Code 1989 the minimum legal age of marriage is 16 years for girls and 18 years for boys. However they may marry before this if the President of the Regional Court makes an exemption for serious reasons (Ahmed R. , 2018). If this occurs, the consent of the individual's parents will also be required. Likewise, Senegal has committed to eliminate child, early and forced marriage by 2030 in line with target 5.3 of the Sustainable Development Goals (Girls Not Brides, 2018). Prior to that Senegal ratified the Convention on the Rights of the Child in 1990, which sets a minimum age of marriage of 18, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1985, which obligates states to ensure free and full consent to marriage (Girls Not Brides, 2018).

Despite these policy measures, child marriages is major challenge for the country. Statistics reveal that 31% of girls in Senegal are married before their 18th birthday and 9% are married before the age of 15 (Girls Not Brides, 2018).

3.4.14 Egypt

Egypt has committed to eliminate child, early and forced marriage by 2030 in line with target 5.3 of the Sustainable Development Goals (Ahmed R. , 2018). Moreover, Egypt ratified the Convention on the Rights of the Child in 1990, which sets a minimum age of marriage of 18, and the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1981, which obligates states to ensure free and full consent to marriage (Girls Not Brides, 2018). Yet child marriage is a major issue in the country. Statistics show that 17% of girls in Egypt are married before their 18th birthday and 2% are married before the age of 15 (Girls Not Brides, 2018). Similarly, according to UNICEF, Egypt has the 13th highest absolute number of child brides in the world – 683,000 (UNICEF, 2019). A 2017 World Bank study shows that ending child marriage in Egypt could generate USD2893 million in earnings and productivity (Girls Not Brides, 2018).



Child marriage is one of the major problem facing the Muslim world (Wood, 2015) and is against the Islamic law (Ahmed H. N., 1972). According to Professor Dr. Abudurahim Imran, although the Problem of determining majority and its signs is one of the major issues in the field of fiqh and law and there is not a unique agreement among jurists and Islamic scholars in this regard. However, Islamic scholar unanimously agree that the proper time and age of marrying is when the individual reaches sexual as well as mental maturity (Imran, 1994). Mental maturity may mean the capability of establishing a cordial family life and the ability to fulfil rights of family members. According Dr. Ogr Oyesi some of the prominent early Islamic Scholars i.e. Ibn Shubruma (d. 144/761), 'Abū Bakr al-Asamm (d. 200/816), and 'Uthmān al-Battī (d. 143/760) are reported to have been categorically against the marriage of minor children. Ibn Ḥazm agrees with them (Oyesi, 2018). Similarly, Al-Sarakhsī (d. 483/1090), clarifies the Ḥanafī perspective on child marriage, sums up the arguments of Ibn Shubruma and al-'Asamm as follows:

Al-Sarakhsis states; "The natural purpose of marriage is obtaining sexual satisfaction. Also, its religio-legal [shar'ī] purpose is reproduction. Being a child, however, negates both purposes. ... A marriage contract made for perpetuity is intended to require its legal consequences only after puberty. Thus, nobody has right to confine children (to marriage) before their time (of majority), for there will be no guardianship authority over them after the

This acknowledges that, from a child rights and equity perspective in Islam, marriage should not be permissible before puberty and attaining mental maturity, which cannot be achieved before the 18 years of age. According to Javaid Ahmed Ghamdi, although an adolescent girl may attain sexual maturity early, she will often not be physically mature enough to conceive a child, nor will she be cognitively or psychologically mature enough for marriage and the related responsibilities of being a wife and mother (Ghamdi J. A., 2016). Similarly, on 21 June 2019, the deputy grand Imam of Al Azhar, Sheikh Dr. Salah Abbas issued fatwa against child marriage in a conference in Dakar Senegal. The office of the Imam of Al Azhar which is considered the highest authority in Islamic law for Sunni Muslims, who account for around 75% to 90% of all Muslims globally. According to the fatwa, both girls and boys must be 18 years old to get married; any marriage at a younger age is forbidden (The Guardian , 2019).

4.1. Marriageable Age in Islam

Many people mistakenly believe that the Qur'an, the Islamic Holy book, gives a certain age for marriage (Ahmed H. N., 1972) (Al-Azhari, 1995) (Khandalvi, 1997). However, that is not the case, the Qur'an does not specify a certain age for marriage. However, there are some references to marriage in the Holy Qur'an. In Sura 4 verse 6 , it states *"And test the orphans [in their abilities] until they reach marriageable age then, if you find them to be mature of mind/sound in judgment, hand over to them their possessions."*(Qur'an, Surat An-Nisā', 4:6)

In this verse, the word 'Nikkah' is used instead of 'Puberty' which shows that Nikkah presupposes puberty. Explaining the verse, Imam Abdullah Muhammad bin Ahmad bin Abubakar Qurtabi, in his book titled *"Tafseer Qurtabi Maruf b Aljamagh La Hukam Al Quran"*, states that obviously, the word

According to the Imam-e-Azam Abu Hanifa, the authority in Hanafi interpretation of Islam, the age of puberty or marriageable age in 18 years

nikāḥ or marriage here must be initially intended to mean the most-known, technical sense of it which is marriage, leaving out the lexical one, which is having sexual intercourse, bearing in mind that there is no such a premarital sexual intimacy allowed in Islam (Qurtabi, 2012). He further notes that also, the word "until" in the expression "and test the orphans [in their abilities] until they reach the age of nikāḥ (marriage)" puts the marriage as deadline for developing a mental maturity. In other words, there is an implication that only a marriage of somebody who has already gained a sound judgment is imaginable and permissible. Quoting the Imam -e- Aazam Abu Hanifa, Qurtabi explains that the age of puberty of a boy is 18 (Qurtabi, 2012). Hence early marriages do not seem to be appropriate according to the Quran.

Similarly, on June 21, 2019, the deputy grand Imam of Al Azhar, Sheikh Dr. Salah Abbas, the highest authority in Sunni Muslim, issued fatwa against child marriage in a conference in Dakar Senegal and set the age of marriage as 18 years (The Guardian , 2019). Prior to that in Cairo declaration on 23rd and 24th November 2009, all the Muslim countries committed to raise the minimum age marriage to 18 years. Similarly, in 3rd February 2009, all the Muslim countries agreed to eliminate all forms of harmful practices against children including child marriage.

Here it must be noted that only physical puberty is not enough for marriage but mental maturity is also necessary, as is mentioned with. *'And of you find mental maturity in them then give their property to them.'* In this sentence the age of Nikah has been referred along with reason (mental maturity). According to Javaid Ahmed Ghamdi, a prominent religious scholar, it is true that this verse is about the Quranic injunction of returning the property i.e the ownership of property, but it is quite clear from it that if the property is so important that it could not be given to mentally immature people, then how could it be possible to give some one's life on the basis of only physical puberty (Ghamdi J. A., 2014).

The notion of puberty according to classical school refers to signs of physical maturity such as the emission of semen or the onset of menstruation (Buchler, 2013). In the absence of such signs, the Hanafi school assumes that puberty will occur no later than at eighteen years for males and seventeen years for females (Baktiar. L., 1996). Besides, there are certain cases when physical changes do not appear even at the age of puberty also, then in such cases mental puberty (reason) is the only standard which could give the justification of Nikkah (Kyani) (Huda, 2017). Therefore it is a requirement of the Quran that the mental ability must be considered along with the physical, in exactly the same measure as is supposed to be in case of giving property (Al-Tuwaij, 2000). The secret of the strength and continuation, happiness and joy and mental compatibility in a married life actually lies in a balance between these two abilities and the absence of any one of them would change the ultimate joys and happiness of marital life into sorrow and hopelessness (Brown, 2014).

There is clearly a difference between attaining puberty and physical aptitude on the one hand, and maturity and the qualification to manage life on the other (Ali B. , 2012). Married life necessitates that both husband and wife are enlightened and sensible; it is not, therefore, served by the marriage of children (Kyani). Shah Kareem Al Hussaini (Aga Khan), the 49th hereditary Imam of the Shia Imami Muslims says;

"I want everyone of you (followers) who are present here and are in a marriageable age to remember that marriage is an important norm and you should only get married at a time when you think you can fulfil the responsibilities of this contract in the most effective manner"(Aga Khan, 1967)

In another occasion HH Aga Khan while addressing his followers states;

"I want my followers to know that selecting a husband or a wife is one of the most important issues of your life. I don't want my followers to take this responsibility without seriously and carefully thinking about it. When get married, you make a family. It is your responsibility that you should take care of your family so that your family can live a healthy and prosperous life.....Think of getting married only at that time when you think you can make a strong and prosperous family"(Aga Khan, 1968)

Similarly the Quran Says;

"Your women are tilth for you (to cultivate). Hence go to your tilths whenever you want, and send (something) ahead for you"(Quran).

In this verse wives are said to be the tilths for men. This resemblance very clearly and openly shows the puberty of women (Usmani, 1984) (Azam, 2015). Because the real purpose of intercourse (which is inevitable in Nikah) is to increase the race of human beings and obviously a minor girl is not able to serve as a tilth for cultivation therefore cannot be able to increase human race (Ahmed H. N., 1972).

Another verse concerning menstrual periods also clearly shows a reason for forbidding the marriage at in a minor age.

"And(they) question you about menstrual periods. Tell them this is harmful. Hence get away from your wives in the condition of menstruation but do not even get closer (for intercourse) to them, till they are cleared. When they bath very carefully then go near them (for intercourse), Just like your Allah has ordered you"(Quran)

"And those of your women who are hopeless of menstruation, if you doubt then their term is 3 months and who do not have menstruation (because of some disease, their term is also 3 month)"(Quran)

In the first part of this verse of Quran, the nature of the question seems to be about the intercourse during menstruation which we see from the answer. That is why (يَذَّأَبُو) points out intercourse and not menstruation, i.e. menstruation in itself is not harmful. However, intercourse in such condition is harmful for both, that is why it is forbidden. According to (ShkilAuj, 2014), a prominent Islamic Scholar and Dean of Faculty of Islamic Studies University of Karachi, the order of forbidding to go near the wives in menstrual condition

implies that those women are completely mature. It also shows that the Nikah of a woman in her minor age is not required in Islam (ShkilAuj, 2014).

Generally, Islamic Interpreters have taken the meaning of “*Lam Yizna*” (لَمْ يَزِنَا) as those girls who are minor (Al-Bukhari, 846) (Al-Nisapuri, 1086) and from this they have tried to prove ‘marriage in immaturity’ (Ghamdi J. A., 2014). But it must be noted that the issue of term (Iddat) becomes meaningful after intercourse. Therefore 3 months of Iddat in a minor age means that intercourse is possible with a girl also in her immaturity, because there is no Iddat without intercourse (ShkilAuj, 2014). Which according to Shaikh Jafar Muhammad Bin Ali al-Tusi, Head of Shitte Islam, is not only against the Sharia but also violates the basic rights of minors in Islam (Al-Tusi, 1067) (Azam, 2015).

According to Muhammad ShakilAuj, Islamic Scholar, it should be noted that just like the puberty of a man is determined by ‘Ehtelam’ (احتلام) or age, similarly the puberty of a woman is determined by menstruation or age. It means clearly that if a woman does not have menstruation it does not imply that she is a minor. Hence the women are supposed to be mature with respect to their age if not menstruation (ShkilAuj, 2014).

Similarly, according to Pir Mohammad Karam Shah Al-Azhari says: Those women who are still minor or those who do not have menstruation but mature according to age (Al-Azhari, 1995) Maulana Salahuddin Yousuf says: It should be clear that very rarely it happens that a woman reaches the age of puberty but does not have menstruation (Yousaf, 2012).

Above mentioned two interpreters have interpreted “*Lam Yizna*” in its second meaning as those women who are physically strong enough to be taken as mature but because of some reason their menstruation is not started (ShkilAuj, 2014). Therefore if such woman engaged in marriage with someone then they should not be supposed as ‘minor’ and marriage as well as intercourse with such women, who are physically strong and mature according to their age, would be quite legitimate (Al-Tusi, 1067) (Al-Tuwaij, 2000) (ShkilAuj, 2014). According to Maulana Hafiz Farman Ali (Shia’ Translator) with this, those women are not meant who are still not mature. Because there is no term (Iddat) for them, but those women are meant who have reached the age of menstruation but because of some reason menstruation blood does not come. Their term (Iddat) is 3 months (ShkilAuj, 2014)

It has been further clarified by Maulana Umer Ahmed Usmani with a very nice scholarly and analytical discussion about it. I would like to quote this discussion in his own words. Here it is:-

“It should be clear that in Arabic language only (لاَ and أَمْ) are used for simple negation while the word of ‘لَمْ’ is used for ‘نفي جدد’ negation. i.e. a negation which consists of denial, which means that for (لَمْ) it is necessary that in front of it there is really something or as a context, which has an opposite argument whose denial is required. The difference between (احضن اَمْ) and (لَمْ نُضِحِي) is that (احضن اَمْ) means they do not have menstruation. Where ever negation of menstruation is required you can say (احضن اَمْ) but (لَمْ نُضِحِي) can only be said when your addressee is claiming that menstruation has started but actually it is not. It is called a negation of denial and (احضن اَمْ) (احضن اَمْ) does not have such intensity as in (لَمْ نُضِحِي). Those girls who are mature, in that case it is requirement of their condition but even

that they have menstruation periods. Denial of this word cannot be done only with the word (ضَنَّ أَحَم) but (Arabic word) would be necessary for its denial and (جحد). On the contrary to this, for those girls who are young and minor, there is no claim or argument that they have menstrual periods and it is also not the requirement of their condition and implication. Therefore, to say (نُضِحَ نِيْم) for them is principally wrong and contrary to the explanation. For them (أَم ضَنَّح) would be appropriate to say. To apply (نُضِحَ مَرِي لَنْ يَؤُورَ وَال) on minor girls is semantically also wrong” (Usmani, 1984)

4.1.1. The Debate over Hazrat Syeda Aisha

The argument which is often given in favor of early marriage by the classical jurist is marriage of messenger of God (PBUH) with that of Ayesha. According to Imam Bukhari, the age of Ayesha was six years old when her nikah was performed with Prophet Muhammad (PBUH) in Makkah, and nine years old when she moved in to live with her husband in Madina after Hijra (Al-Bukhari, 846) (Al-Nisapuri, 1086).

This piece of misinformation has led to the wrong view that child marriage has the sanction of Islam (Khandalvi, 1997) (Hussain, 1968) (Usmani, 1984). It must be noted that establishing the authenticity of hadiths, the narrators' circumstances and the conditions at that time have to be correlated with historical facts (Khandalvi, 1997). According to Allama Habib uRehman Siddiqi there is only one hadith by Hisham which suggests the age of Hazrat Aisha as being nine when she came to live with her husband (Khandalvi, 1997). However, many authentic hadiths also show that Hisham's narration is incongruous with several historical facts about the Prophet's life, on which there is consensus (Usmani, 1984). Prominent Islamic Scholar, (Umar Ahmed Usmani, Hakim Niaz Ahmed and Habibur Rehman Kandhulvi), have argued in favour of the fact that Hazrat Aisha was at least 18 years old when her nikah was performed and at least 21 when she moved into the Prophet's house to live with him.

According to Umar Ahmed Usmani, in Surah Al-Nisa, it is said that the guardian of the orphans should keep testing them, until they reach the age of marriage, before returning their property (4:6). From this scholars have concluded that the Quran sets a minimum age of marriage which is at least puberty. Since the approval of the girl has a legal standing, she cannot be a minor. According to Aqqad, a renowned scholar of Sunni Islam, historical reports differ on Aisha's age, he explains, going on to argue that she was actually between thirteen and fifteen years old when her marriage was consummated. Such disparities are normal, he reminds the reader, with a people who had no written records at the time and who could be vague about exactly when they were born. Drawing on an early work of Sunni history and Hadith collection by the ninth-century scholar Ibn Sa'd, Aqqad explains how Aisha had already been engaged to another man before her marriage to the Prophet. Since the normal age of engagement was no younger than nine, he claims, and since historical reports agree on the passage of a few years between the marriage contract and its consummation, Aisha must have been in her early teens when her married life began.

Explaining the age of at time of marriage, Hakim Niaz Ahmed in his book noted that Hisham bin Urwah is the main narrator of this hadith. His life is divided into two periods: in 131A.H. the Madani period ended, and the Iraqi period started, when Hisham was 71 years old. Hafiz Zehbi has spoken about Hisham's loss of memory in his later period. His students in Madina,

Imam Malik and Imam Abu Hanifah, do not mention this hadith. Imam Malik and the people of Madina criticised him for his Iraqi hadiths (Ahmed H. N., 1972). Similarly, according to Allama Habib Siddiqi all the narrators of this hadith are Iraqis who had heard it from Hisham. Allama Kandhulvi says that the words spoken in connection with Hazrat Aisha's age were tissa ashara, meaning 19, when Hisham only heard (or remembered), tissa, meaning nine (Khandalvi, 1997). Maulana Usmani thinks this change was purposely and maliciously made later (Usmani, 1984).

While Hakim Niaz Ahmed in his book titled *"Tehqiq umer e Aisha Sidiqa"*, Historian Ibn Ishaq in his Sirat Rasul Allah has given a list of the people who accepted Islam in the first year of the proclamation of Islam, in which Hazrat Aisha's name is mentioned as Abu Bakr's "little daughter Aisha". If we accept Hisham's calculations, she was not even born at that time (Ahmed H. N., 1972).

According to some Islamic Jurist, sometime after the death of the Prophet's first wife, Hazrat Khadija, Khawla suggested to the Prophet that he get married again, to a bikrun, referring to Hazrat Aisha (Musnad Ahmed). In Arabic bikrun is used for an unmarried girl who has crossed the age of puberty and is of marriageable age. The word cannot be used for a six-year-old girl (ShkilAuj, 2014).

Some scholars think that Hazrat Aisha was married off so early because in Arabia girls mature at an early age (Ali B. , 2012). But this was not a common custom of the Arabs at that time (Ghamdi J. A., 2014). According to Allama Kandhulvi, there is no such case on record either before or after Islam. Neither has this ever been promoted as a Sunnah of the Prophet. The Prophet married off his daughters Fatima at 21 and Ruquyya at 23. Besides, Hazrat Abu Bakr, Aisha's father, married off his eldest daughter Asma at the age of 26 (Khandalvi, 1997).

According Imam Bukhari and Imam Muslim Hazrat Aisha herself narrates that she was present on the battlefield at the Battle of Badar (Al-Bukhari, 846) (Al-Nisapuri, 1086). Explaining Hazrat Ayesha presence in the battle field Hakim Niaz Ahmed notes that Hazrat Ayesha was not nine years old at that time because a nine years old could not have been taken on such a rough and risky military mission (Ahmed H. N., 1972). Another prominent Islamic while questioning the age of Hazrat Ayesha at the time of marriage with the messenger of God agrees with the argument of Hakim Niaz Ahmed. In 2 A.H, the Prophet refused to take boys of less than 15 years of age to the battle of Uhud. Would he have allowed a 10-year-old girl to accompany him? (Ghamdi J. A., 2014) But Anas reported that he saw Aisha and Umme Sulaim carrying goatskins full of water and serving it to the soldiers (Al-Bukhari, 846). Umme Sulaim and Umme Ammara, the other women present at Uhud, were both strong, mature women whose duties were the lifting of the dead and injured, treating their wounds, carrying water in heavy goatskins, supplying ammunition and even taking up the sword (ShkilAuj, 2014).

Similarly, according to Allama Habib u Rehman Siddiqim, Hazrat Aisha used the kunniat, the title derived from the name of a child, of Umme Abdullah after her nephew and adopted son. If she was six when her nikah was performed, she would have been only eight years his senior, hardly making him eligible for adoption. Also, a little girl could not have given up on

ever having her own child and used an adopted child's name for her kunniat (Khandalvi, 1997).

There is consensus that Hazrat Aisha was 10 years younger than her elder sister Asma, the elder daughter of Hazrat Abu Bakar whose age at the time of the hijrah, or migration to Madina, was about 28 (Ahmed H. N., 1972) (Ghamdi J. A., 2014). Therefore it can be said that Hazrat Aisha was about 18 years old at migration (Usmani, 1984) (Huda, 2017). On her moving to the Prophet's house, she was a young woman at 21 (Ahmed H. N., 1972) (Hussain, 1968). Hisham is the single narrator of the hadith whose authenticity is challenged, for it does not correlate with the many historical facts of the time.

4.2 Selecting a Pious Partner

The Sharia, as we find in the Qur'an and the traditions of the Prophet, enjoins a man who seeks to set up a family to focus his attention primarily on looking for a woman who is virtuous and of sound conduct (Al-Tusi, 1067). As Allah says in Quran;

"And Marry those among you who are single, [A man who has no wife and a women who has no husband] and [also marry] the salihun [pious, fit and capable ones] of your [male slaves and maid-servants]. If they be poor, Allah will enrich the Mout of his bounty. And Allah is all sufficient for his creatures" (Quran Al Nur, verse 32)

"Acquire the woman who is religiously observant and you'll succeed" (Al-Bukhari, 846)

Having acknowledged that men seeking marriage usually look for beauty, wealth, lineage status and religion, the Prophet, Peace Be Upon Him, recommended that priority should be given to looking for a woman who is religiously observant (Al-Tuwaij, 2000). He stressed that a wife who is of virtuous conduct and high morality is indeed a great accomplishment for any man (Ali B. , 2012). He said:

The recommendation regarding the choice of spouse is not exclusive to the man's choice of the woman who will share his life with him; it is a general recommendation applicable equally to both men and women (ShkilAuj, 2014) (Al-Tusi, 1067) (Huda, 2017). The Messenger of Allah, Peace Be Upon Him, is reported to have said:

"When you are approached for marriage by a man whose religiosity and manners are acceptable to you, then do accept his proposal and marry him;"(Al-Bukhari, 846) (Al-Nisapuri, 1086). According Javaid Ghamdi, the Prophet's warning against an engagement in marriage with other than a man who is religiously observant and righteous, and with other than a woman who is religiously observant and righteous, is understandable.

"Hence marry those women who are good, nice and pious"(Al-Bukhari, 846)

According to Mullana Habib u Rehman Siddiqi, first thing is that (**اِنَّ حَوَکَانَفِ ا**) is a commanding word, i.e. it is a lawful command and it could never address a person who does not understand it. Hence a child, because of his young age, is not an addressee of this command. Therefore he cannot marry (Khandalvi, 1997). Secondly, (**اِنَّکُمْ لَ اَبَا طَم**) shows that men are commanded to marry those women who are good and pious, and in his young age a child cannot judge the goodness and piety of a woman which also shows that Nikkah

is not possible in a very early age. Thirdly, the word (وَآلِ النَّسَاءِ) itself points out very clearly that for marriage it is necessary that the partner is a 'Woman'. Hence this verse very clearly and openly condemns the marriage in childhood (Khandalvi, 1997). This verse also argues about the condemnation of child marriages:-

It is also reported by Imam Muslim in his Sahih in Kitab Al-Rida' (Book of Breastfeeding), chapter *"Preference for choosing in marriage a woman who is religiously observant,"* (Al-Nisapuri, 1086)

Similarly, Al-Imam Al-Tirmidhi in his Sunan, Kitab Al-Nikah narrates,

"When you are approached for marriage by a man whose religiosity and manners are acceptable to you then do accept his proposal and marry him," (Al-Baqi, 1084).

Al-Bayhaqiy also reported it in his Al-Sunan Al-Kubra (The Grand Collection);

"Encouraging (women) to marry a man who is religious and of good moral conduct," (Al-Muzni) 7/82, narrated on the authority of Abu Hatim Al-Muzni, edition of Dar Al-Ma'arif publishers, Beirut.

4.3 Forced Marriage

Because marriage is a contract, consent is key to its validity; without consent, the contract is void (Al-Tuwajj, 2000). To this end, there are enough Quranic verses and Prophetic hadith (tradition or saying) insisting that females, virgin or non-virgin, must be consulted and give permission before marrying. In one of the verses of Quran, there is a clear reference for the condemnation of early and forced marriages:

"O" Believers! It is not legitimate for you to be the heirs of the women forcefully" (Quran).

There are several Hadiths where the prophet has opposed marriages against the will of the virgin boy and girl. For instance, during the life of the Prophet Muhammad (peace be upon him) one of his companions, Ibn Abbas, spoke to him about a female who reported that her father had forced her to marry without her consent. The Prophet (peace be upon him) then gave her a choice between accepting the marriage and invalidating it. In another narration of this hadith (saying of the Prophet) it states that she responded, *'Actually, I accept this marriage, but I wanted to let women know that parents have no right to force a husband on them'* (Al-Bukhari, 846) (Al-Nisapuri, 1086).

According to Dr. Muhammad Munir consent in marriage falls within a wider Islamic framework of protection for women that gives them the right to exercise choice in matters affecting their life (Munir M. , 2011). In a hadith recorded by Abu Huraira and validated by Muslim, the Prophet (peace be upon him) stated explicitly that a virgin should not be married until her consent is obtained (Al-Nisapuri, 1086).

Explaining the concept of forced and child marriage in Islam, Javaid Ahmed Ghamdi, a renowned Islamic Scholar during a lecture at Queen Mary University London, noted that there is no room for forced marriage in Islam. Parents can give their opinion and

"The widow and the divorced woman shall not be married until the order is obtained, and the virgin shall not be married until her consent is obtained" (Al-Nisapuri, 1086).

advice to their children but they cannot impose their decision on them (Ghamdi J. A., 2016) (Ghamdi J. A., 2014). Similarly, in another programme, while discussing the issue of child marriage from Islamic perspective, Ghamdi stated that when forcing the adult women is forbidden then marrying minor girls is a highest degree of forcing them, for a minor girl is supposed to be unable to express or choose and consent and even if she expresses, it would rendered unauthentic according to the Shariah, law and morality (Ghamdi J. A., 2016).

Mufti Menk, a prominent Islamic Scholar elaborating it further notes that, because expressing a choice is a different thing and being a partner in a contract is a totally different thing. Marriage (*Nikah*) is not the name of just an expression of likeness but practically making a contract (Mufti Menk, 2017). He notes that;

“Once approached with a marriage proposal, the girl has the option to accept or reject it. Her consent is a necessary prerequisite for a valid marital contract and guardian enjoys no liberty to force her to accept any proposal if she is unwilling”(Mufti Menk, 2017).

It means that in a pre-arranged marriage, it may be annulled if the girl so wishes. Imam Abu Hanifah holds that the guardian does not have an absolute authority to give away the child in marriage. In fact, all Sunni schools of thought are unanimous that forced marriages are strictly forbidden. The reason being Islamic marriages are primarily contracts between two consenting parties referred to as '*mithaq*' (Khan, 2017)

An important purpose of marriage is to attain psychological, emotional and spiritual companionship (Al-Baqi, 1084). This cannot be gained from forced marriage contract. Marriage helps men and women to lead a life of chastity; it secures them against immoral sexual indulgence and develops smooth relationship among a couple. In such cases, it is impossible to achieve the basic purpose of marriage contract i.e., peace and harmony.

Jamal Badawi, a world-renowned speaker and preacher on Islam, is clear in his articulation of Islam's position on forced marriage, *“The female has the right to accept or reject marriage proposals. Her consent is a prerequisite to the validity of the marriage contract... It follows that if an 'arranged marriage' means the marrying of a female without her consent, then such a marriage may be annulled if the female so wishes”*(Badawi, 2003).

To support his claim, Badawi cites a hadith from Ibn-Majah's collection, *“Ibn Abbas reported that a girl came to the Messenger of Allah, and she reported that her father had forced her to marry without her consent. The Messenger of God gave her the choice [...] (between accepting the marriage or invalidating it)”* (Majah 1952, hadith 1873). A virtually identical account is given in Sunan Abu-Dawud¹ and a whole chapter is devoted to the necessity of consent in Sahih Muslim (Al-Nisapuri, 1086).

Imam Abu Hanifah holds that the guardian does not have an absolute authority to give away the child in marriage. In fact, all Sunni schools of thought are unanimous that forced marriages are strictly forbidden. The reason being Islamic marriages are primarily contracts between two consenting parties referred to as '*mithaq*' (Munir D. M., 2017).

According to Dr. Muhammad Munir, *“A child, having no legal capacity, has no consent to give. If a child cannot properly give consent, then surely a child cannot be married”* (Munir D. M., 2017)

4.4 Basic Rights of Children

Child marriage also violates the basic rights of children which are guaranteed to a child in Islamic Law. The following principles in Islamic law make a clear case against early marriage:

4.4.1 The Protection of life and health

Islam establishes a legal framework, and embodies a code of ethics, designed to protect the rights of an individual including his or her right to live in a secure society (Ustarūshani, 1982) (Bough, 2017). The protection of life is one of the five essential maqasid, or goals, of the Shari’ah. According to Islamic Scholar, in Islam, the rights of the child have to be considered even before birth and with the choice of marriage partner. In addition to their basic right to be fed and clothed, children should be protected from physical violence and harm, have equal treatment regardless of gender, be protected from child labour, and their parents must provide for their security, including financial security. Islamic texts set very strong standards of protection of children. The Prophet (peace be upon him) said:

In another occasion the prophet (PBUH) is reported to have said; “Anyone who has no mercy on (Children) does not deserve any mercy (from Allah)” (Al-Bukhari, 846). Moreover, the prophet is also reported to have said; “He is not one of us who does not show tenderness to the young and who does not show respect to the elders” (Al-Nisapuri, 1086).

“There shall be no harm and no reciprocating harm. Whoever harms, Allah Will Harm him, and whoever makes things difficult [for others], Allah Will Make things difficult for

According to Dr. Muhammad Munir by failing to provide protection to child, parents are committing sin because the protection of child is the prime responsibility of parents according to Islamic law. The Prophet is report to have said;

“It is a major sin for one to neglect a person whom he is responsible for sustaining” (Al-Bukhari, 846)

According to Tahir ul Qadiri, a renowned Islamic Scholar, for children, security is of the utmost importance. The rights of a child begin even before birth; in fact they begin before conception (Qadiri, 2005)

Once a child is conceived, it has the right to life (Al-Bukhari, 846). The Quran also makes it very clear that all life is sacred (Al-Azhari, 1995). While explaining the importance of life, Mufti Ismail Menk, in his book states that it is never permissible to terminate a pregnancy because one fears being unable to financially support a child or another child. It is God, who is the Provider and Sustainer of all lif (Menk, 2018). As Quran says:

“...kill not your children because of poverty - We provide sustenance for you and for them”. (Quran 6:151)

Explaining it further, Tahir ul Qadir narrates that there are many people in the world today who are not able to have children, therefore when God blesses a family with one, it should be a cause for celebration and happiness (Qadiri, Reference). However, children are not toys or possessions. With them comes great responsibility.

Although Islamic law guarantees secure life to a children but child marriages exposes young girls to not only bodily harm but also make them vulnerable to various psychological problems. Professor Dr. Muhammad Munir, in his book titled, "Rights of the Child in Islam" while explaining it notes that child marriage results in early sexual activity due to which the chances of early childbearing among young girls. Since their bodies are not yet fully developed, these young adolescents are at risk of suffering life-threatening or debilitating conditions as a result of childbirth (Munir D. M., 2017).

The Quran and the authentic traditions of Prophet Muhammad, may the mercy and blessings of God be upon him, speak clearly about the responsibility that comes with raising a child (Usmani, 1984). It is an obligation upon the believers to raise and care for children by bringing them up as moral, righteous human beings. Secure in the knowledge that they are valued members of the human race, and their particular families. Neglecting this duty could potentially lead a person away from the path of righteousness and away from God (Al-Azhari, 1995). As it is stated in Quran;

Caring for and raising children in the proper manner is a duty on parents and it is not always easy. In fact, God reminds us in the Quran that children may even be a great trial for their parents. The triumphs and tribulations of life are a test and children are no exception. They can bring great joy and at times they can bring great sadness as well. God in His infinite wisdom never leaves a human being alone and unable to face all of life's trials.

"O you who believe! Ward off yourselves and your families against a Fire (Hell) whose fuel is men and stones, over which are (appointed) angels stern (and) severe, who disobey not, (from executing) the Commands they receive from God, but do that which they are

"Your wealth and your children are only a trial, whereas God, with Him is a great reward (Paradise)." (Quran 64:15)

Furthermore, one of the main purpose of marriage is to bear health children. Therefore, it is prime responsibility of the parents to ensure healthy life for the children. As stated in Quran;

"Each one of [you] is like a shepherd and each one of you is accountable [on the day of resurrection] for his flocks", (Quran).

Explaining this verse Dr. Muhammad Munir notes that it is religious duty of parents to ensure a healthy environment for their children. Islam requires parents to shepherd their children's moral and religious development (*tarbiyyah*) from a young age, rather than resort to extreme measures – such as child marriages – to prevent early sexual transgression (Munir D. M., 2017). He further states that sexual intercourse at young age, when the child is neither physically nor psychologically ready for it, results in harming the child physical and mentally. For instance, statistics shows that girls between the ages of 15 and

19 are twice as likely to die of pregnancy and childbirth complications as women between ages of 20 and 24 in South Asia according to UNICEF (UNICEF, 2017). Also, girls are more vulnerable to contracting life-threatening diseases as they are often given away in marriage to much older men who have an elevated chance of being HIV positive or having other sexually-transmitted infections because of prior sexual experience (World Bank, 2017).

Similarly, according to a report by Australian Aid, like girls everywhere who are married young, Iranian child brides are vulnerable to a variety of problems related to pregnancy and childbirth, including permanent, debilitating injury and death. One study shows that girls and women between the ages of 15 and 19 are twice as likely to die in childbirth as women in their 20s, and babies born to teenage mothers are more likely to have a low birth weight, at less than 2.5 kilos (Australian Aid, 2016). With the number of very young child brides again on the rise in Iran, the health risks are now even more severe

4.4.2 Right to Education

The correct Islamic advice for raising and rearing children covers all aspects of life (Ghamdi J. A., 2016). Just like Islam itself, it is holistic advice. Physical, emotional, and spiritual wellbeing are all of equal importance (Ahmed H. N., 1972). Therefore, Muslims are also obliged to pursue knowledge and education seen as an essential right

“Recite in the name of you Lord who created. Created man from a clot of congealed blood. Recite your Lord is Most Generous Who taught by the pen. Taught men what he did not know”, (Quran).

of the child according to Islam. According to Dr. Munir, a prominent Muslim scholar, one of the goals of Shari’ah is the protection of intellect which is achieved through the provision of basic education and healthy conditions for its growth (Munir D. M., 2017).

The importance of education can be grasped from the fact that it was the focus of first revelation to the prophet (PBUH)

In another verse Quran states; *“Are those equal to those who did not know?”* Quran. Similarly, according to another Quranic verse, *“Allah will to high ranks those of you who believe and are endowed with knowledge”* **(Quran)**

The prophet (PBUH) has also reported to have stated;

“Pursuing knowledge is obligatory upon every Muslim”. Similarly, the prophet is reported to have said in another report;

“Whoever travel to seek knowledge is in the way of God until he returns”.

Furthermore, in verse 66:6 of Quran Allah states;

“Believers guard yourself and your kindred against the fire whose fuel is human beings and stone” (Quran, 66:6)

Ibn Qaiyam who mention the interpretation of this verse by Imam Ali Abi Talib who is reported to have stressed the importance of education and discipline of children. Ibn Qaiyam Argues that;

“He who ignores the education of his children that is useful for him and leaves him unguided, inflicts upon his children the worst possible wrong. And most of those who go astray as children do so because of their parents, who neglect their children and do not educate them about their religious obligation and traditions so that they are lost during the childhood. They do not benefit themselves nor their parents at old age”(Munir D. M., 2017)

Sir Sultan Muhammad Shah Aga Khan, the 48th Imam of the Shia Imami Ismaili Muslims in his speech to his followers has emphasized on the importance of education of children. He argues that;

Explaining the significance of education to child, Imam Abu Hamid Al Ghazali, one of the great Sufi Jurist and Philosopher states that best time for child's education is childhood because education in childhood is like engraving on the stone. Al Ghazali divided education into two types: Knowledge through which a person knows God and knowledge which is necessary for running the affairs of world i.e. medicine, engineering etc.

“If you have two children. One boy and one girl and you have enough money to educate one of them. Then educate the girl” (Aga Khan)

Likewise, Prince Shah Kareem Al Hussaini (Aga Khan), the 49th Imam of the Shia Imami Ismaili Muslim in his speech at Osh Krgyz Republic in 2002 stated that

“On the basis of my experience with development as an observer and a practitioner - that now spans more than forty years - I have come to the conclusion that there is no greater form of preparation for change than education. I also think that there is no better investment that the individual, parents, and the nation can make than an investment in education of the highest possible quality”(AKDN, 2002).

According to Dr. Muhammad Munir, parents generally think that their responsibility is just to let their children marry. They show such quickness and keenness in fulfilling their responsibility that they do not even wait for their children to grow up and engage them with anyone, and then think for themselves that they have fulfilled their responsibility. He further notes that while the first and foremost responsibility of parents is to give good education and brought up, create the virtues in them and enable them to earn according to their abilities so that they can survive themselves. As far as marriage is concerned it is the right of their children and they should be given an opportunity to exercise their right, however they should be guided in this respect. Such kind of brought up creates a sense of responsibility in them which results in the prosperity and betterment of their married life in future (Munir D. M., 2017).

On contrary, marriage child marriage not only deprives the child of their basic education but her personal development is also stunted (Australian Aid, 2016). Often uneducated and unskilled, many child brides are completely dependent on their husbands and in-laws to survive. Likewise, Girls are often not yet mature or skilled enough to properly perform household tasks or care for their husbands and children. Child marriage also deprives

a girl of the valuable and necessary skills required to enter the labour market, therefore denying her the opportunity to help lift herself – and her family – out of poverty. In short, pulling girls out of school and forcing them into early marriage ensures that poverty will be handed down from a mother to her daughter, and family to family, for generations to come (UNICEF, 2018).

4.5 Authority of State to Frame Laws

In pursues of achieving a successful marriage, the government also plays a significant role by enacting law pertaining marriage contract and its procedures. According to Dr. Professor Munir, the protection of progeny and thereby family life and the institution of marriage, which are meant to produce good children for the continuation of human life on earth is one of the fundamental purpose of Islamic Law. He further argues that it is the duty of Muslim state to protect, preserve and promote it and take effective measures to safeguard it (Munir D. M., 2017). For example, Malaysia has enacted the Islamic Family Law Act which regulates the marriage contract in each state (UNICEF, 2018). Similarly, other countries have introduced laws pertaining to marriage contract, for instance, Pakistan has the Code of Muslim Personal law (Khan, 2017).

In a detailed research article titled *“Marriage Age in Islamic and Contemporary Muslim Family Laws”*, Andrea Buchler noted that efforts by Muslim intellectuals to bring about social, political and legal reform were particularly prevalent in the nineteenth century (Buchler, 2013). Adrea further argues that under the Ottoman Empire, many of these efforts were aimed at centralising and consolidating the state. Governments’ new powers to regulate coalesced with the traditional Islamic legal system, which, until then, had been the sole source of law (Buchler, 2013). Personal status law was the only area in which the dominance of classical Islamic law was left intact (Abu-Odeh, 2004). In a few countries, however, most notably Saudi Arabia, sharia is declared the relevant source of state law and statutory legislation was restricted to administrative matters.

In 1978, a former graduate and Rector of Al Azhar University Abd al-Halim Mahmud, in his capacity as a senior Islamic jurist for the Egyptian government, had issued a Shariah opinion supporting the minimum marriage age of sixteen for girls. He acknowledged that the Shariah tradition had never specified an exact age, requiring only that the bride be physically developed enough to engage in intercourse (Buchler, 2013). This did not mean, however, that administrative laws could not be put in place to encourage or protect family integrity. In light of the responsibilities that a wife must bear both in her marriage and as the mother of children, Mahmud felt that only a mature person should marry (Buchler, 2013).

According Adrea Buchler, following a course similar to its nominal Ottoman suzerain, the Egyptian parliament's 1923 decision to set the minimum marriage age for women at sixteen was justified Islamically through recourse to the right of the ruler's discretion in Shariah matters acknowledged by ulama like Nabulusi (Buchler, 2013). According to Ulama Nabulusi, Egypt's legislature was not denying God's sole right to dictate law or morals, supporters of the marriage law argued. Marriage contracts drawn up privately according to Shariah law were still valid in the eyes of God. The state was merely exercising its Shariah right in 'restricting judicial procedure' in its Shariah courts by only allowing women aged sixteen or

older to register their marriages and only allowing complaints regarding marriages to be heard in court if they had been properly registered. Presumably only a fool would allow his daughter to marry without the documented protection of the law (Buchler, 2013).

Similarly, it was acceptable, wrote Ali Tantawi, for the ruler or state to introduce administrative laws and restrictions in the best interests of the people. This was allowed under the Shariah not only within the original, narrow window of public interest (Maslaha) but also because God orders Muslims to obey 'those in authority among you.' He was thus content to preside over marriage after marriage in his Damascus courtroom while observing the age requirement of eighteen (Buchler, 2013).

4.6 International Law

Child marriage is not only against the international law but it also violates the basic human rights of the child (UNICEF, 2019). Child marriage is a violation of Article 16(2) of the Universal declaration of human rights, which states that “marriage shall be entered into only with the free and full consent of the intending spouses” (UNICEF, 2017). Similarly, Article 16 of the convention on the elimination of all forms of discrimination against Women (CEDW) states that women should have the same right as men to “freely choose a spouse and to enter into marriage only with their free and full consent”, and that the “betrothal and marriage of a child shall have no legal effect” (UNFPA, 2015). The convention on the rights of the child (CRC) sets out the human rights of children: the right to survive; the right to develop to their fullest; the right to protection from harmful practices, abuse and exploitation, and the right to participate fully in family, cultural and social life (UNICEF, 2019). In signing the convention, governments also committed to take “all effective and appropriate measures with a view to abolish traditional practices prejudicial to the health of the children,” which includes, among other practices, female genital mutilation/cutting and child marriage (UNICEF, 2017). Any departure from the obligations enshrined in these conventions is a violation of human rights. Similarly, the 2005 Council of Europe Parliamentary Assembly Resolution on Forced Marriages and Child Marriage also against child marriage (UNICEF, 2017).

By becoming party to these conventions, governments agree to hold themselves accountable for violations (Australian Aid, 2016). In a landmark international consensus, the Programme of action adopted by the international conference on Population and development (ICPD) in 1994, countries agreed on measures to eliminate child marriage as well as to “strictly enforce laws to ensure that marriage is entered into only with the free and full consent of the intending spouses” (UNICEF, 2017).

As stated earlier, Child marriage does not fit the definition of slavery in Article 1 of the 1926 Slavery Convention which defines slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.” However, child marriages are considered practices similar to slavery as defined by the UN Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery (UNICEF, 2018). The Slavery Convention calls on states to prescribe a minimum age and ensure consent and registration in an effort to eliminate servile marriage. It also defines as a practice similar to slavery “any institution or practice whereby a child or young person under the age of 18 years, is delivered by either or both of his natural parents or by

his guardian to another person, whether for reward or not, with a view to the exploitation of the child or young person or of his labour” (UNHR, 1926).

Child marriage is a violation of The 1956 Supplementary Convention (UNHR, 1957). All Arab States have signed on to the 1926 Slavery Convention but many have not signed The 1956 Supplementary Convention, which includes child marriage as practices similar to slavery (UNICEF, 2017). Many Arab States with the highest child marriage rate have not signed on to the Palermo Protocol of 2000, which included many new protections for women and children against human trafficking (United Nation , 2004). The 1956 Supplementary Convention is missing key countries that have high rates of child marriage (Yemen, Somalia) and that could be due to internal political pressure in order to sustain the practice of child marriage (UNICEF, 2017). A way of reducing the rate of child marriages is to entice countries that have not signed on to the 1956 Convention to become signatories or suffer some economic or international isolation by the international community (UNICEF, 2016).

Chapter 05 Conclusion and Recommendations

After thorough review of the existing literature, it can be concluded that Child Marriage is a practice that affects both girls and boys is not only against basic human right but is also against the Islamic laws. The Islamic law fundamentally opposes child marriage as a marriage without consent, or a marriage of minors, have no legal validity because it does not meet the Islamic criteria of marriage. While no minimum age for marriage is stipulated in Quran, attaining puberty, having sound judgment and comprehensive maturity before entering into a marital contract – as well as having the capacity to understand and fulfil the rights and responsibilities of a spouse after marriage – are clear preconditions according to Quran. According to the Imam –e- Aazam Abu Hanifa, the age of puberty of child is 18.

Similarly, on 21 June 2019, the deputy grand Imam of Al Azhar, Sheikh Dr. Salah Abbas issued fatwa against child marriage in a conference in Dakar Senegal. The office of the Imam of Al Azhar which is considered the highest authority in Islamic law for Sunni Muslims, who account for around 75% to 90% of all Muslims globally. According to the fatwa, both girls and boys must be 18 years old to get married; any marriage at a younger age is forbidden. Prior to that in Cairo and Khartoum Declaration, all the member of organization of Islamic Countries (OIC) have agreed to set the minimum age limit for marriage at 18 years.

Although few classical Islamic jurist give the example of messenger of God (PBUH) with that of Ayesha to support early marriage in Islam. However, prominent Islamic Scholars i.e. Hakim Ahmed Niaz, Allama Habib Urehman Sidiqqi, Javaid Ahmed Ghamdi, Umar Ahmed Usmani, Sayed Asghar Hussain etc and other historians have not only challenged the authenticity of the Ahadiths but have also proved that the age of Hazrat Aisha was more than 18 when she was married to Prophet Muhammad by comparing her age with her elder sister Asma etc.

Besides marriage is a contract, consent is key to its validity; without consent, the contract is void. To this end, there are enough Quranic verses and Prophetic hadith (tradition or saying)

insisting that females, virgin or non-virgin, must be consulted and give permission before marrying. Majority of the Islamic scholars agree that when forcing the adult women is forbidden then marrying minor girls is a highest degree of forcing them, for a minor girl is supposed to be unable to express or choose and consent and even if she expresses, it would be rendered unauthentic according to the Shariah, law and morality.

Islam also empowers state to legislative laws for the betterment of the masses. Therefore Muslim state have the authority to set a minimum age limit for marriage. It was found that majority of Muslim countries have not only ratified international conventions but have also taken policy measures at domestic level to prevent child marriage and raise the minimum age limit to 18 years for marriage.

5.1 Recommendations

A cohesive and meaningful change strategy for combating child marriage would need to rely on change in the following three overarching areas:

1. **Advocacy to sensitize masses about the Islamic teachings opposing child marriage.**

Child marriage is not only against basic human rights but it also violates Islamic Laws. Nevertheless, due to the misinterpretation of some of the Quranic verses and Ahadiths (Sayings of the Prophet Muhammad) related to marriage at early age, child marriage is highest in some of the Muslim majority countries. Therefore, advocacy and awareness campaigns should be launched to sensitize and create awareness among masses about the Islamic teachings opposing child marriage.

- Programmes regarding Islamic perspective opposing child marriage should be launched on prime time on TV and radio.
- With the help of Islamic scholars and doctors, seminars should be conducted to highlight the negative impact of early marriage and how it impacts the child health.
- Religious leaders and Islamic scholars should be engaged to organize international conference on Islamic perspective on child marriage, child protection and child rights.
- Social media (Facebook, WhatsApp etc) has emerged as major source of information and has been playing vital role in shaping public opinion. Therefore, social media should be used to propagate the Islamic perspective opposing child marriage, rights of child in Islam, responsibilities of parents in parenting their children, physical and psychological consequences of early marriage etc.
- Males mostly father are mostly involved in making decisions concerning their child marriages. Therefore, with the help of faith leaders and Islamic scholars awareness programs about the Islamic perspective opposing child marriage targeting the male heads of households should be organized to convince parents to not marry their children before 18 years of age.

- Religious scholars should be engaged for special talks/speech on Islamic perspective on child marriage, existing laws regarding the minimum legal age for marriage at 18 years, fatwas given by prominent religious scholars against child marriage and negative impacts of early age marriage on child health in different forums in schools, religious institutions, community centers etc.
- Pamphlets containing the messages of Islamic perspective opposing child marriage should be published and should be shared with all the relevant stakeholders, placed at major public libraries, madrassas, universities etc, and should also be provided to both print and electronic media.

2. Advocacy for promulgating legislation to set minimum age for marriage at 18 years.

Islam also empowers state to legislative laws for the betterment of the masses. Therefore Muslim state have the authority to set a minimum age limit for marriage. Advocacy campaigns should be launched to push government to legislate laws banning marriage before a set limit of 18 years.

- Consultative workshops should be organized with faith leaders, religious scholars, parliamentarians, journalists, and civil society activists on child protection and setting the minimum age for marriage at 18 years.
- Detailed research studies based on primary data (consultation with religious scholars, faith leaders, social activists, parliamentarians, case studies of those affected by child marriage etc) should be conducted to further explain the finding of current study and get the perspective of modern Islamic leaders
- Advocacy campaigns on print, electronic and social media should be launched to push for legislation to combat child marriage by setting the minimum age limit at 18 years.

3. Advocacy and awareness campaigns to ensure the proper implementation of existing legislatures on child marriage

- Consultative workshops should be organized for member of local administration at district level regarding the Child Marriage Restrained Act 1929 to ensure its proper implementation.
- A data base should be establish for monitoring of child marriage incidents at district level
- Training of religious and faith leaders to ensure proper implementation of the existing laws on child marriage.

- Enforcement of the law can be ensured by implementing harsh punishments to the parties, including the Nikkah registrars, Union Council members (who failed to report a child marriage) and witnesses, involved in carrying out a marriage of minor.

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