

POLICY BRIEF

Ending Impunity for Child Marriage in Pakistan:

NORMATIVE AND IMPLEMENTATION GAPS

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Center for Reproductive Rights

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TABLE OF CONTENTS

ACKNOWLEDGMENTS.....	4
GLOSSARY.....	5
INTRODUCTION AND OVERVIEW OF CHILD MARRIAGE IN PAKISTAN.....	7
PAKISTAN'S CURRENT LEGAL FRAMEWORK ON CHILD MARRIAGE.....	10
CHALLENGES TO ENDING IMPUNITY FOR CHILD MARRIAGE.....	33
CONCLUSIONS AND RECOMMENDATIONS.....	37

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GLOSSARY

ANTI-SLAVERY CONVENTION *Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery*

BOY A male under the age of 18

CEDAW *Convention on the Elimination of All Forms of Discrimination against Women*

CHILD A person under the age of 18

CHILD MARRIAGE A marriage in which one or more parties are under the age of 18

CMA *Christian Marriages Act 1872*

CMRA *Child Marriage Restraint Act 1929*

CONSTITUTION *Constitution of the Islamic Republic of Pakistan*

DIVORCE ACT *Divorce Act 1869*

DMMA *Dissolution of Muslim Marriages Act 1939*

DOWRY Money or property gifted to a bride, her husband and his family by the bride's parents upon marriage

FORCED LABOR Coercion of a person(s) to work under threat or by way of intimidation or violence

FORCED MARRIAGE A marriage in which one or more parties do not consent to the marriage

GIRL A female under the age of 18

HMA *Hindu Marriage Act 2017*

MFLO *Muslim Family Laws Ordinance 1961*

PKR Pakistani rupee

PPC *Pakistan Penal Code (Act XLV of 1860)*

SCMRA *Sindh Child Marriage Restraint Act 2013*

SEXUALITY EDUCATION The instruction and provision of information on the topic of human sexuality, including sexual activity, sexual autonomy, reproduction, consent, health, rights, and contraception

SMA *Special Marriages Act 1872*

UN United Nations

UNICEF United Nations International Children's Fund

USD United States dollar

VOIDABLE MARRIAGE A marriage with legal effect that can later be annulled by a court

VOID MARRIAGE A marriage that is not legally valid

INTRODUCTION AND OVERVIEW OF CHILD MARRIAGE IN PAKISTAN

Child marriage in Pakistan constitutes an ongoing human rights violation on a large scale. Pakistan ranks sixth in the world in terms of the highest absolute numbers of child marriage.¹ Twenty one percent of girls in Pakistan are married by the age of 18.² While child marriage affects both boys and girls in Pakistan, girls are disproportionately affected.³ According to the Pakistan Demographic and Health Survey 2012–2013, 13.9% of girls currently aged 15 to 19 are married, as opposed to 2.4% of boys in the same age group.⁴

The Child Marriage Restraint Act 1929 (CMRA), which is applicable in most provinces of Pakistan, prohibits the marriage of a boy under the age 18 and the marriage of a girl under the age of 16. In this way, the law does not prohibit all child marriages, as international law defines a child as anyone under the age of 18.⁵ In 2015, the province of Punjab passed a number of amendments to the CMRA but did not raise the age of marriage for boys or girls.⁶ So far, the only province in Pakistan with independent legislation on child marriage is Sindh, which passed the Sindh Child Marriage Restraint Act in 2013 (SCMRA). The SCMRA sets forth the uniform minimum age of marriage as 18 for both girls and boys. But in spite of these and other laws prohibiting child marriage, the practice remains widespread, with reports of girls as young as the age three being given away in marriage.⁷

Few child marriages are reported in Pakistan due to the absence of systems at the provincial and national levels for recording and monitoring the incidence of child marriage. In 2016, Sahil, a non-governmental organization, recorded 176 reported cases of child marriage.⁸ This was an increase from 103 cases reported in 2014 and 75 in 2012.⁹ A particularly steep increase in reporting was seen in the Sindh Province, with a 96% rise in cases reported between 2015 and 2016.¹⁰ This increase in reporting is a positive step in the wake of the passage of the SCMRA in 2013.¹¹ Encouragingly, there does seem to be a small increase in the percentage of cases reported to the police.¹²

Geographically, child marriage is most prevalent in rural areas of Pakistan.¹³ Such areas have limited access to education and health care services, which in turn causes girls to be less informed of the consequences of child marriage and more susceptible to health repercussions resulting from early pregnancy.¹⁴

Factors Contributing to Child Marriage

Various factors contribute to girls being at risk of child marriage in Pakistan, including stigma surrounding female sexuality and reproductive rights,¹⁵ perceptions of women and girls as property rather than rights bearers,¹⁶ barriers to education,¹⁷ and norms pertaining to economic and physical security.¹⁸

Parents' decision to marry their daughters as children is driven primarily by economic, social, and structural issues.¹⁹ In many parts of South Asia, including Pakistan, the payment of dowry by the bride's parents to the groom and his family at the time of marriage is a customary practice.²⁰ The younger the bride, the lower the amount expected to be paid.²¹ As a result, there is a presumption that parents benefit financially if they marry their daughters at a young age.²² The potential "benefits" also explain why parents sometimes refrain from investing in their daughter's education, as the daughters will likely leave the family home at a young age after marriage.²³ Moreover, if a daughter is not married at an early age in Pakistan, her parents may suffer public shunning by other families in their community.²⁴ Parents may also marry their daughters as children because they believe that marriage makes them less vulnerable to sexual harassment.²⁵

In addition, according to customs practiced in some parts of Pakistan, girls are often given away in marriage to settle disputes or debts.²⁶ Finally, the instability caused by civil conflicts in some parts of the country, such as Baluchistan and areas in Northwest Pakistan,²⁷ likely contribute to the pressures faced by parents to ensure that their daughters are married at a young age.

Continuum of Harms Suffered by Women and Girls as a Result of Child Marriage

Child marriage causes an array of social and reproductive and sexual health harms for women and girls in Pakistan.²⁸ While child marriage affects both boys and girls, the practice harms girls to a greater degree²⁹ because it adversely affects their reproductive health³⁰ and exposes them to domestic violence.³¹

Girls' rights to sexual health and reproductive independence are significantly compromised without adequate information on sex and marriage.³² Access to comprehensive sexuality education is limited for children and adolescents due to economic and cultural barriers.³³ Women and girls do not have ready access to or sufficient education about contraception.³⁴ The prevalence of contraceptive use among women is low, with only 35% of currently married Pakistani women using some method of contraception.³⁵ Furthermore, the

contraceptive needs of 20% of married women remain unmet.³⁶ Consequently, married girls are likely to lack sufficient reproductive control to determine the number and spacing of births they experience. This disempowerment increases the occurrence of unwanted pregnancies,³⁷ maternal mortality,³⁸ and sexually transmissible infections.³⁹

In 2013, the World Health Organization reported Pakistan as one of the ten countries that make up 58% of global maternal deaths,⁴⁰ with a national maternal mortality ratio of 276 maternal deaths per 100,000 births.⁴¹ According to the *Pakistan Demographic and Health Survey 2012–13*, this maternal mortality ratio demonstrates “the dire state of reproductive health care and women’s rights.”⁴² The high incidence of child marriage contributes to the poor state of maternal health in the country.⁴³ Girls under the age of 18 are 83% more likely than women over 18 to experience barriers to health care services, such as living a significant distance from health care facilities and struggling to find transportation.⁴⁴

Child marriage also affects educational attainment. Girls are more likely to drop out of school after getting married.⁴⁵ The absence of education further limits girls’ ability to lead empowered lives. Child marriage leads to a reduction in labor force participation for girls and for women who marry as girls, causing them to earn less than women who marry as adults.⁴⁶ In this way, child marriage gives rise to a continuum of harms that affect girls’ chances of fulfilling their rights for the rest of their lives.

Purpose of the Policy Brief

This policy brief seeks to inform policymakers, law enforcement officials, and human rights defenders of key legal issues and potential legal gaps contributing to the continuation of child marriage in Pakistan. This assessment highlights multiple challenges faced in the implementation of existing affirmative laws and makes linkages to other causes of systemic discrimination in law and practice. It also puts forward a set of recommendations for addressing these gaps and challenges in order to promote access to justice for victims of child marriage. The policy brief uses a broad definition of access to justice that includes “access by people, in particular from poor and disadvantaged groups, to fair, effective, and accountable mechanisms for the protection of rights, control of abuse of power, and resolution of conflicts. This includes the ability of people to seek and obtain a remedy through justice systems.”⁴⁷

PAKISTAN'S CURRENT LEGAL FRAMEWORK ON CHILD MARRIAGE

Child marriage results in a continuum of harms that violate the fundamental rights of women and girls protected by the Constitution of the Islamic Republic of Pakistan. The Constitution affirms that all citizens are equal before the law and are entitled to equal protection of the law⁴⁸ and that special measures may be enacted for the protection of women and children.⁴⁹ Further guarantees provided by the Constitution include the provision of “free and compulsory education” for all children up to age 16, the right to life, the prohibition of slavery and “all forms of forced labor and traffic in human beings,” and the right to dignity.⁵⁰ The Principles of Policy set forth in the Constitution, which lay out the “responsibility of each organ and authority of the State,”⁵¹ provide that women are entitled to full participation in all spheres of national life⁵² and that the state shall promote social justice.⁵³

The Constitution also states that all “existing laws shall be brought in conformity with the Injunctions of Islam as laid down in the Holy Quran and Sunnah, ... and no law shall be enacted which is repugnant to such Injunctions.”⁵⁴ Article 227(3) explicitly states that “[n]othing in this Part shall affect the personal laws of non-Muslim citizens or their status as citizens.”⁵⁵

In Pakistan, marriage, divorce, and inheritance are regulated according to religious personal laws. Pakistan is an Islamic country (approximately 96% of the population is Muslim), with minority Christian and Hindu populations, among others.⁵⁶ According to the West Pakistan⁵⁷ Muslim Personal Law (Shariat Act) 1962, “[N]otwithstanding any custom or usage, in all questions regarding succession (whether testate or intestate), special property of females, betrothal, marriage, divorce, dower, adoption, guardianship, minority, legitimacy or bastardy, family relations, wills, legacies, gifts, religious usages or institutions, ... the rule of decision, subject to the provisions of any enactment for the time being in force, shall be the Muslim Personal Law (Shariat) in case where the parties are Muslims.”⁵⁸ Therefore, questions pertaining to marriage, betrothal, and divorce are covered by Muslim personal law in relation to Muslims. In some cases, personal laws are codified. For example, the Muslim Family Law Ordinance 1961⁵⁹ regulates marriage and divorce for Muslims, while the Hindu Marriage Act 2017⁶⁰ regulates the same for Hindus.

In addition to codified law, uncodified principles of religious law are sometimes referred to by Pakistani courts when determining applicable personal laws for Muslims.

Relevant Laws

Child Marriage Legislation

The main federal legislative framework for addressing child marriage in Pakistan is the CMRA, a law originating from the British colonial era.⁶¹ This act sets the legal age of marriage at 18 for boys and 16 for girls,⁶² a minimum age that puts Pakistan out of step with most countries in South Asia.⁶³ The CMRA establishes light punishments for adult men who marry a child,⁶⁴ for anyone who performs a child marriage,⁶⁵ and for male parents who permit their child to be married.⁶⁶ The maximum punishment that can be prescribed for any of these offenses is a mere one month's imprisonment or a fine of PKR 1,000 (approximately USD 9).⁶⁷ The statute of limitations for filing a complaint under the CMRA is one year from the solemnization of the marriage.⁶⁸ The law is silent with respect to the validity of child marriages that are performed in violation of the CMRA. Further, the law contains no requirements concerning the provision of economic or legal support for girls who are victims of child marriage.

The Eighteenth Amendment to the Constitution, enacted in 2010, empowers provinces to pass their own versions of this legislation by removing marriage as an area of concurrent federal jurisdiction, making it the sole responsibility of the provinces.⁶⁹ Thus far, however, only one province—Sindh—has passed its own such legislation, while another province—Punjab—has passed a few amendments to the CMRA. Therefore, the CMRA continues to apply to federal territories and all provinces except for Punjab (where it applies with amendments) and Sindh.

On the other hand, the SCMRA was a significant and positive reform that made Sindh the only province of Pakistan to raise the minimum legal age of marriage to 18 years for either party to the marriage.⁷⁰ In addition, the Act adopts a harder line of policing and criminalization. Under the SCMRA, any man over the age of 18 who marries a girl below 18 contracts a child marriage; any person who performs, directs, or facilitates a child marriage; and any parent or guardian who allows or fails to prevent a child marriage are subject to up to three years' imprisonment, in addition to an unspecified fine.⁷¹ This legislation also removes the statute of limitations⁷² and, importantly, allows for the prosecution of police officers who do not take action to investigate a complaint.⁷³ There appears to have been an associated increase in prosecutions in Sindh following the passage of this landmark legislation.⁷⁴

The province of Punjab also passed an amendment to the CMRA in 2015—the Punjab Marriage Restraint (Amendment) Act 2015—increasing punishments for each of the offenses⁷⁵ by permitting up to six months' imprisonment and fines of up to PKR 50,000 (approximately USD 430).⁷⁶ It also removes the limitation period for filing a complaint.⁷⁷

There have also been some unsuccessful attempts to amend child marriage laws. A bill in Pakistan's Parliament proposing to raise the minimum age of marriage was withdrawn in 2016 following opposition from the Council of Islamic Ideology.⁷⁸ In 2017, a bill to increase the minimum age of marriage for girls was initially rejected by the Senate Standing Committee of Interior⁷⁹ but was then approved on reconsideration.⁸⁰ However, the Senate has not yet voted on the bill. A similar bill was presented in the province of Khyber Pakhtunkhwa but failed to pass.⁸¹

Pakistan Penal Code of 1860

In addition to the legislation discussed above, an amendment to the Pakistan Penal Code (PPC) passed in 2017 declares child marriage a non-bailable criminal offense, punishable by imprisonment of up to seven years.⁸² This amendment adds a proviso regarding child marriage to Section 498B, which pertains to forced marriages. According to Section 498B of the PPC, “[W]hoever coerces or in any manner whatsoever compels a woman to enter in marriage” shall be punished with imprisonment of up to seven years and liable for a fine of PKR 500,000 (approximately USD 4300). The proviso inserted through the 2017 amendment sets forth a higher punishment: “Provided that in case of a female child as defined in the Child Marriage Restraint Act 1929, or a non-Muslim woman, the accused shall be punished with imprisonment of either description for a term which may extend ten years but shall not be less than five years and shall also be liable to fine which may extend to one million rupees [approximately USD 8600].”⁸³ As explained in more detail in the *Gaps and Loopholes* subsection below, it is unclear whether the punishment for child marriage prescribed in the amended Section 498B of the PPC prevails over the penalties prescribed in the CMRA, the Punjab version of the CMRA, and the SCMRA.

In addition, Section 365B of the PPC criminalizes the kidnapping or abduction of a woman aimed at “compell[ing]” her to marry a person against her will or forcing her to have “illicit intercourse,” making the offense punishable by imprisonment for life.⁸⁴ Section 366A makes it a criminal offense to induce “any minor girl under the age of eighteen years” to participate in any act knowing that she will be “forced or seduced to illicit intercourse.”⁸⁵

Personal Laws

The CMRA, the Punjab version of the CMRA, and the SCMRA are silent with respect to the termination of a child marriage. Therefore, the rights of women and girls during and after the termination of marriage are governed by applicable personal religious laws,⁸⁶ which are summarized below.

Muslim personal law

Muslim marriages are solemnized through a *nikahnama*, which is a marriage contract entered into between two parties (i.e., husband and wife).⁸⁷ The consent of both parties, including the woman, is a prerequisite for a valid marriage.⁸⁸ The Muslim Family Law Ordinance 1961 (MFLO) regulates the solemnization and registration of Muslim marriages. The MFLO codifies *talaq*, which is the husband's right to dissolve his marriage by pronouncing to his wife that he no longer intends to be married to her.⁸⁹ However, a woman is entitled to divorce her husband by pronouncing *talaq* if the right has been delegated to her in the *nikahnama*.⁹⁰ The *nikahnama* requires a husband to pay his wife a mutually agreed-on sum of money (*mehr*, or dower) as consideration of the marriage contract. *Mehr* may be paid to the wife at the time the *nikahnama* is signed or deferred until an unspecified date.⁹¹

The Dissolution of Muslim Marriages Act 1939 (DMMA) clarifies the terms under which a Muslim woman may dissolve her marriage.⁹² A woman is entitled to dissolve her marriage if she is married before reaching the age of 16.⁹³ However, she must repudiate the marriage before turning 18, and she may not dissolve her marriage if it has already been consummated.⁹⁴ The DMMA also provides other grounds for the dissolution of marriage, including “cruelty” on the part of the husband and “any other ground that is recognized as valid for the dissolution of marriages under Muslim law.”⁹⁵

In addition, courts in Pakistan recognize *khula* as a ground for the dissolution of marriage. Dissolution on the basis of *khula* allows a woman to dissolve her marriage without having to prove any specific ground other than the fact that the marriage has irretrievably broken down and there is no possibility of her abiding by her conjugal duties.⁹⁶ In order to dissolve a marriage on the basis of *khula*, a woman must file a suit before a family court seeking a decree of dissolution. Before granting such a decree, the court must be convinced that no possibility of reconciliation between husband and wife is possible. This burden may be discharged by a statement from the woman to the effect that her attempts at reconciliation have failed and it is no longer possible to live with her husband.⁹⁷

DMMA does not govern the rights of Muslim women to maintenance after the dissolution of their marriages.⁹⁸ Maintenance therefore continues to be governed by Muslim personal law in Pakistan.⁹⁹

Under Muslim personal law, a wife is entitled only to the bridal gifts given prior to the marriage and may receive maintenance only during the period of *iddat* (the waiting period, usually three to nine months).¹⁰⁰ A woman who seeks dissolution and is awarded a decree of dissolution by a court must return to her husband any amount received as *mehr* in consideration of the marriage contract.¹⁰¹ In an amendment to the West Pakistan Family Courts Act 1964, passed in the province of Punjab and applicable only in Punjab, a woman is entitled to retain 50% of *mehr* that has been deferred and 75% of *mehr* paid promptly upon the decree of dissolution of the marriage.¹⁰²

Hindu personal law

In 2017, the Pakistani Parliament passed the Hindu Marriage Act 2017 (HMA), which regulates the solemnization of marriages by Hindu families.¹⁰³ Until this point, Hindu marriages were largely unregulated.¹⁰⁴ The HMA stipulates that in order for a Hindu marriage to be solemnized, both parties must be at least 18 years old.¹⁰⁵ If either party to the marriage is not of this age, the marriage may be annulled by a court.¹⁰⁶ The law is silent regarding who has standing to file a petition in court for annulment or whether the girl's consent is required before annulment.

Under the Hindu Married Women's Right to Separate Residence and Maintenance Act 1946, married Hindu women may petition in court for separate residence and maintenance.¹⁰⁷ Before a court will grant such a petition, the woman must demonstrate a "justifiable cause,"¹⁰⁸ such as "cruelty towards her"¹⁰⁹ or "desertion"¹¹⁰ or other specified grounds. However, this law does not provide Hindu women the right to maintenance or separate residence after the termination of marriage.

Christian personal law

The Christian Marriage Act 1872 (CMA) is another piece of legislation dating from the colonial era. It regulates the solemnization of marriage for Pakistani citizens professing the Christian religion.¹¹¹ Although it does not stipulate the legal age of marriage, the CMA requires parental consent for the marriage of minors,¹¹² with a minor defined as someone under 21 years of age (and who is not a widow or a widower).¹¹³ However, the CMA does not state whether child marriage is void or voidable.¹¹⁴

The Divorce Act 1869 (Divorce Act) sets out the circumstances in which a party to a Christian marriage is entitled to seek, and be granted, a divorce from their spouse.¹¹⁵ Prior to 1981, the Divorce Act contained Section 7, which provided that Christian spouses living in Pakistan were entitled to seek divorce or file for separation in accordance with British courts' directives on the matter.¹¹⁶

However, through the Federal Laws (Revision and Declaration) Ordinance 1981, this section was removed from the Divorce Act and replaced with Section 10, which provides that Christian spouses living in Pakistan may seek a divorce only on the grounds of adultery.¹¹⁷

In June 2017, the Lahore High Court declared that the removal of Section 7 from the Divorce Act was unconstitutional, as it severely limited the circumstances under which Christians could obtain a divorce. In this ruling, issued in the case of *Ameen Masih v. Federation of Pakistan* (PLD 2017 Lah. 610),¹¹⁸ the court restored Section 7, thereby permitting divorce on broader grounds. However, the applicability of this decision is currently limited to the Punjab Province and will not extend to the rest of the country unless affirmed by the Supreme Court or provincial high courts.

Christian marriages may also be declared null and void by a court.¹¹⁹ However, the grounds outlined in the Divorce Act do not include child marriage, instead mentioning reasons such as relations between the parties,¹²⁰ impotency,¹²¹ and evidence suggesting that one of the parties was a “lunatic or idiot” at the time of the marriage.¹²² Under the Act, the courts have the power to order a husband to pay alimony to a wife (provided that it is not more than one-fifth of the husband’s income)¹²³ and to order the settlement of property in a manner that the court sees fit.¹²⁴

Parsi personal law

The Parsi Marriage and Divorce Act 1936 (PMDA) applies to Parsis residing in Pakistan. The PMDA does not set a minimum age of marriage, instead providing that the marriage of persons under 21 years of age must take place with a guardian’s consent.¹²⁵ It further bars any suit for the enforcement of a marriage where the husband is under the age of 16 and the wife is under the age of 14.¹²⁶ The law provides a number of grounds for divorce, including “grievous hurt” caused by one of the parties.¹²⁷ The annulment and dissolution of marriage are also permitted, but they are not available on the grounds that one or both parties were under the age of 18 when married.¹²⁸ The PMDA also enables courts to issue a decree requiring that a husband pay his wife a monthly amount that the court deems fit as maintenance; however, this is contingent on the wife remaining “chaste.”¹²⁹

Special Marriages Act

The Special Marriages Act 1872 (SMA) regulates the solemnization of marriages for persons who do not where neither party professes to Christianity, Judaism, Hinduism, Islam, Parsism, Buddhism, or Sikhism, as well as the solemnization of marriages where each party professes to a different religion within the list of the following faiths: Hinduism, Buddhism, Sikhism, and Jainism.¹³⁰

Under the SMA, the minimum age of marriage is 14 for girls and 18 for boys.¹³¹ However, parental consent is required when one of the spouses is under 21 years of age (with consent required from the child's father or legal guardian, and not their mother).¹³²

The SMA provides a mechanism by which someone other than the parties to the marriage can object to the marriage during the period between the parties filing their notice of intended marriage and the solemnization of the marriage.¹³³ However, it appears that the objection must be on one of the limited grounds set out by the law, including the ground that the girl is under 14 years of age or the boy is under 21 years of age, as well as the ground that both parties are under 21 years of age and have not obtained parental consent.¹³⁴ The party filing the objection is entitled to commence a suit in a local civil court for a declaration that the marriage contravenes the SMA.¹³⁵ However, the SMA empowers the court to issue a fine to an objector (not exceeding 1,000 PKR, or approximately USD 9) if it believes that the objection was not *bona fide*.¹³⁶ The SMA further provides that the Divorce Act (discussed above) applies to all marriages solemnized under it.¹³⁷

Case Law

Courts in Pakistan have interpreted the CMRA in light of Muslim personal law and have adopted the position that a child marriage is valid provided that both parties have reached puberty, even if they have not met the minimum age requirements set forth in the CMRA. Under the generally accepted view on Islamic jurisprudence regarding child marriages—a view that is accepted by Pakistan's courts—a boy and girl may enter into marriage when they have reached puberty, which is presumed to be by the age of 15.¹³⁸ No court in Pakistan has found that the provisions in the CMRA setting the minimum age of marriage at 16 for girls and 18 for boys are repugnant to Islam. However, the Supreme Court of Pakistan and provincial high courts have declared that a marriage entered into by a boy or girl after he or she reaches puberty will not be considered void for being contrary to the CMRA, on the basis that such marriage is permitted under the principles of Muslim law. The Supreme Court and Lahore High Court have found child marriage void in circumstances where a girl marries under the age of 15. These judgments do not explicitly endorse or deviate from the position that the marriage of a girl and boy who have reached puberty will be deemed valid in spite of the minimum age provisions of the CMRA. Nor do the judgments consider issues related to the welfare of the minor or the capacity of the minor to consent to marriage.

Supreme Court

The Supreme Court has interpreted the CMRA in light of the generally accepted principle of Islamic jurisprudence that parties who have reached puberty may enter into marriage. This has led the Court to conclude that a marriage entered into by a boy or girl who is younger than the minimum legal age stipulated in the CMRA will be valid provided that both parties have reached puberty. Although the cases decided and reported by the Supreme Court appear to arise in the context of marriages initiated by the girls themselves, there is no analysis of whether girls who reach puberty have the capacity to exercise consent to marriage. Instead, the Court bases the validity of these marriages on Muslim personal law, and it does not deem the rights and welfare of the minor a prerequisite to that validity.

In the case of *Bakhshi v. Bashir Ahmed*, (PLD 1970 SC 323), a 15-year-old girl entered into a *nikahnama*, or marriage contract. The girl's mother filed a police complaint accusing her daughter's husband of kidnapping. After the police recovered the girl from her husband's home and handed her to her mother and stepfather, the girl's husband then filed a writ of habeas corpus to have the girl appear in court. The girl submitted to the court that she had married of her free will.¹³⁹ The provincial high court granted a writ of habeas corpus and ordered that the girl was free to go where she wished, and the Supreme Court affirmed.¹⁴⁰ In upholding the lower court's decision, the Supreme Court referred to principles of Muslim law and noted that a person is permitted to enter into marriage upon reaching puberty. As the Court stated, "It is true that the said Act does not permit the marriage of a girl below the age of 16 years, but if a girl below the age of 16 years marries in violation of that law, the marriage itself does not become invalid on that score, although an adult husband contracting the marriage or the persons who have solemnized the marriage may be held criminally liable."¹⁴¹

The facts in *Mauj Ali v. Safdar Syed Hussain Shah* (1970 SCMR 437) are similar to those of *Bakhshi v. Bashir Ahmed*. In this case, the husband of a girl who married when she was 15 years old filed a petition to remove the girl from her parents' custody. The girl informed the Supreme Court that she had entered into the marriage voluntarily.¹⁴² The Court found that the marriage was valid under Muslim personal law since the girl had attained puberty at the time she entered into the *nikahnama*, ruling that she should be allowed to leave her parents' house and go with her husband.¹⁴³

However, in the decision of *Allah Dad v. Bakhsh* (1985 SCMR 942), the Supreme Court declared a marriage void on the grounds that the girl was under the age of 16 when the marriage was contracted. The girl married when she was 14. Her parents filed a police complaint that the husband had kidnapped her. The Supreme Court upheld the decision

of the lower court that the girl should be handed over to her father since she was a minor.¹⁴⁴ In its brief judgment, the Supreme Court did not discuss whether the girl had reached puberty or whether the marriage could be considered valid on that account in light of Muslim personal law. Therefore, the Court did not explicitly deviate from the precedent set forth in *Bakhshi v. Bashir Ahmed*. Nor did it discuss the rights and welfare of the child, making the basis of its reasoning unclear.

Provincial high courts

The provincial high courts of Pakistan have also applied Muslim personal law when considering child marriage cases. The case of *Allah Nawaz v. Station House Officer and four others* (2013 PLD Lah. 243)¹⁴⁵ before the Lahore High Court involved a 14-year-old girl's allegations of rape against her husband. The girl made a declaration to the Lahore High Court confirming her willingness to be married to her husband despite having filed rape charges.¹⁴⁶ The Lahore High Court held that the girl was able to declare herself willing to marry because medical evidence showed that she had reached puberty. In forming its decision, the court referenced Islamic jurisprudence, which establishes that a girl must reach puberty before she can lawfully declare her willingness to marry.¹⁴⁷

In addition, it held that the marriage was valid because the CMRA does not expressly enable the courts to declare a marriage void on the basis of child marriage.¹⁴⁸

In *Ghulam Qadir v. Family Court Murree* (1988 CLC 113),¹⁴⁹ the Lahore High Court considered whether, under the DMMA, a girl who had married at the age of 14 could exercise her right to dissolve the marriage upon reaching puberty. The high court upheld the lower court's decision permitting the annulment.¹⁵⁰ It affirmed that a marriage contracted in violation of the provisions of the CMRA will not render a marriage invalid if the parties contracting the marriage have reached puberty.

In contrast, when considering the appeal of a person accused of forcible sexual intercourse with a minor, the same high court rejected the defense put forward by the accused that the victim had married him of her free will prior to the intercourse.¹⁵¹ In *Muhammad Nawaz & Others v. The State* (1984 P Cr. LJ 1416), the Lahore High Court found that since the girl was only 14 years old, her consent was "irrelevant," and upheld the conviction of the accused.¹⁵² In its judgment, the court did not consider whether the marriage was valid in light of Muslim personal laws.

In addition to the cases discussed above, it is also significant that the Supreme Court, by declaring that a guardian's consent is not an essential requirement for marriage under Muslim personal law, has

upheld a woman's right to choose her spouse. In *Hafiz Abdul Wahid v. Asma Jehangir* (2004 PLD SC 219),¹⁵³ the Supreme Court rejected the claim of a father that his adult daughter's marriage was not valid since he had not granted his permission. Although this case was not decided in the context of child marriage, it constitutes an important affirmation by the Supreme Court of a woman's right to choose her spouse.

The jurisprudence of the Supreme Court and provincial high courts with respect to the relationship between the CMRA and Muslim personal laws is confusing in light of some of the contradictory judgments discussed above. Further clarity from these courts is required to establish when a person may be considered capable of consenting to marriage and under what circumstances forced sex with a minor within a marriage is considered rape.

Gaps and Loopholes in Pakistan's Child Marriage Laws

The primary gaps in the child marriage laws in Pakistan are (1) silence in child marriage legislation concerning whether child marriages are void or voidable and (2) a lack of clarity regarding whether child marriage legislation prevails over inconsistent personal laws pertaining to the minimum age of marriage.

Legislation does not establish child marriage as void or voidable

While the CMRA enables courts to issue injunctions against child marriages and prescribes punishments for solemnizing and for aiding and abetting child marriages, it contains no provisions explicitly declaring child marriage to be *void ab initio* or having no legal effect. In other words, the law does not explicitly state that a child marriage, once performed, is invalid. Further, the CMRA is silent with respect to the voidability of child marriages. Similarly, the Punjab amendment to the CMRA lacks provisions on whether child marriages are void or voidable. The same holds true for the SCMRA. In the absence of provisions in Pakistan's child marriage laws regarding the voidability of marriage, a party wishing to have his or her child marriage declared void must follow the procedures set forth in the applicable personal law governing marriage,¹⁵⁴ which are often lengthy and costly.

Procedural obstacles for girls who seek to void child marriage

The DMMA allows Muslim girls to petition a court to have their child marriage dissolved. However, the conditions under which the DMMA permits such dissolution are severely restricted. Dissolution is possible only for those marriages entered into before the girl turns 16, and it must be requested before the girl turns 18.¹⁵⁵ Further, it is applicable only where a marriage has not been consummated. However, it is unlikely that a marriage will be unconsummated before a girl seeks

to void it, especially given the barriers girls face in accessing legal means to dissolve marriage. The DMMA therefore places a significant practical burden on girls to approach the courts before turning 18 to have a marriage declared void and girls who have been forced to have sex within child marriage cannot repudiate their marriage under the DMMA. Moreover, given delays in court proceedings in Pakistan, a suit for annulment is likely to be expensive and to stretch over several months, adding to the burden placed on girls who wish to dissolve their marriage.¹⁵⁶

Hindu women and girls may have their child marriage declared void by filing a petition in court under the HMA.¹⁵⁷ This court proceeding is similarly likely to be costly and time consuming. Finally, the CMA, which is applicable to Christians, does not contain any provisions for voiding a marriage, meaning that a person seeking to end a child marriage must file for divorce under the Divorce Act 1869, which permits divorce only if one of the parties has committed adultery and which allows annulment only on limited grounds.¹⁵⁸

Inadequate guarantees for maintenance and financial security

The CMRA, the Punjab version of the CMRA, and the SCMRA do not provide for financial maintenance or compensation for the victims of child marriage. Under the SCMRA, a court may order parents to pay maintenance for their child where the child has been admitted to a child protection institute.¹⁵⁹ However, there is no minimum amount of maintenance specified, and the court is required to take into “consideration the capacity of the parent or guardian to pay maintenance.”¹⁶⁰ Therefore, the maintenance to be provided to the child could be quite low.

In case a woman or girl wishes to terminate her child marriage, the options for maintenance available under the applicable personal laws are severely limited. This is particularly harmful for girls, who are less likely than adult women to secure the financial means to support themselves. In the absence of maintenance, girls are also far less likely to access education and health services, thereby becoming highly vulnerable to the continuum of harms resulting from child marriage. As noted earlier, the DMMA does not provide for maintenance, meaning that Muslim personal law is applied to such situations; under the latter, women are entitled to maintenance only during the *iddat* period, which is approximately four months after the termination of marriage. The basis for calculating the amount of maintenance is not specified in the law. Courts have held that the amount should cover the “reasonable” expenses of the woman, which is to be determined on a case-by-case basis.¹⁶¹ For Hindus, the HMA does not provide any right to maintenance upon the termination of a marriage.¹⁶² The Divorce Act 1869, which

is applicable to Christians, provides for the payment of alimony to a woman after the termination of marriage;¹⁶³ however, the permissible grounds for divorce are so limited that they severely undercut this benefit. Finally, the PMDA, which governs the marriage and divorce of Parsis, does not require the payment of maintenance to a woman or girl after the termination of marriage.

Insufficient statute of limitations under the CMRA

Under the CMRA, there is a one-year statute of limitations for filing a complaint regarding a violation under the Act. This extremely short time period limits the extent to which violations of the CMRA may be tried and punished, especially since young girls who have been forcibly married may not be in a position to challenge their marriages until they become adults. Furthermore, additional barriers to accessing justice, including procedural barriers and the lack of financial options, make it very difficult for girls to challenge their marriages within this time frame. The statute of limitations for filing a complaint under the CMRA is particularly restrictive compared to that for major crimes, such as murder and rape, which do not have a statutory limitation period under Pakistan's laws.

Differing ages of marriage for boys and girls

Under the CMRA, there is a disparity between the minimum age of marriage for boys (18 years) and that for girls (16 years). The CMRA not only fails to protect girls between the ages of 16 and 18 from marriage but is also discriminatory in setting a higher minimum age of marriage for boys. Internationally, child marriage is defined as any marriage that takes place when one or both parties are below the age of 18,¹⁶⁴ reflecting a concern that permitting marriage below that age exposes children, particularly girls, to a number of risks, including early childbearing, which is linked to higher mortality and morbidity.¹⁶⁵ International bodies, including the United Nations (UN) Committee on the Rights of the Child, have expressed concern over the differentiated minimum age of marriage for girls and have recommended that Pakistan harmonize its legislation so that “child” is consistently defined as anyone under the age of 18.¹⁶⁶ While the SCMRA sets 18 as the minimum age for both boys and girls, it is applicable to only one province.

Punishments under the CMRA, the Punjab version of the CMRA, and the SCMRA

CMRA	Imprisonment of up to one month and maximum fine of PKR 1000 (approximately USD 9)
Punjab version of CMRA	Imprisonment of up to six months and a maximum fine of PKR 50,000 (approximately USD 430)
SCMRA	Imprisonment of up to three years and an unspecified fine

As shown in the table above, under the CMRA, punishment for a male adult who contracts a child marriage, punishment for a parent or guardian who permits a child marriage to take place, and punishment for solemnizing a marriage is imprisonment of up to one month and a fine of up to PKR 1000 (approximately USD 9). Under the Punjab amendment to the CMRA, harsher punishments are prescribed. Punishment for an adult male who marries a child, punishment for a parent or guardian who permits a child marriage to take place, and punishment for solemnizing a child marriage is imprisonment of up to six months and a fine of PKR 50,000 (approximately USD 430).

While the move to increase criminal penalties for child marriage indicates the Sindh and Punjab legislatures' recognition of the severity of the harms of child marriage, it is also important that all government authorities recognize that the prosecution of child marriages must be sensitive to the rights and welfare of all persons—particularly girls, who are the most vulnerable. Legislation criminalizing child marriage must not be abused by law enforcement authorities to target minors, including adolescents who may be entering into marriage as their only means of entering consensual sexual relationships in conservative social and cultural contexts. Law enforcement authorities should also be sensitive to the use of these laws by parents for the purposes of preventing their women and adolescent daughters from entering into and maintaining consensual relationships. The application of criminal penalties for child marriage must respect and appreciate the specific contexts in which child marriage cases arise and ensure that the imposition of penalties does not have negative consequences on the rights and welfare of minors.

Inconsistency between the PPC and the CMRA

The 2017 amendment to Section 498B of the PPC prescribes significantly higher penalties for child marriage than the CMRA. This has given rise to the question of which provisions prevail, and courts have yet to resolve this issue.

The answer to this question depends on whether the proviso inserted through the 2017 amendment setting higher penalties for child marriage is interpreted to apply to all child marriages or whether it assumes a distinction between child marriages and forced marriages, thereby applying only to those child marriages that are forced. Under the principles of statutory interpretation adopted by Pakistan's courts, a special law prevails over a general law concerning the same subject.¹⁶⁷ Therefore, if the 2017 amendment is interpreted to apply to all child marriages (based on the assumption that all child marriages are forced marriages), as a general law, it would have to give way to the special law concerning the same subject matter, which is the CMRA. The lower penalties set forth in the CMRA are also likely to apply according to the principle of interpretation whereby in case of ambiguity regarding applicable criminal penalties, the lower penalty applies.¹⁶⁸

However, if the amended Section 498B of the PPC is interpreted to apply only to child marriages that are forced (implying that there is a distinction between forced marriage and child marriage), then there would be no conflict between the CMRA and this provision of the PPC, as the latter would apply only to forced child marriages and the former would apply to all other child marriages. When conceptualized in this way, there would be no question in determining which law prevails since the two laws would cover different subjects.

As mentioned above, it is unclear whether Section 498B of the PPC applies to all child marriages. The interpretation that it does is supported by the assumption that all child marriages are forced marriages, since a child is incapable of consenting to marriage. However, Pakistani courts and lawmakers have yet to resolve this ambiguity. Therefore, the impact of the 2017 amendment to Section 498B of the PPC remains unclear.

No clear recognition that forced sex within child marriage is non-consensual

Neither the CMRA nor the SCMRA specifically criminalizes forced sex with a minor within marriage. While Section 375 of the PPC states that a man is presumed to have committed rape if he has sex with a woman under the age of 16, there is no provision specifying that such intercourse within a marriage is considered rape. In India, the Supreme Court recently recognized that forced sex initiated by an adult with a girl under the age of 18 within marriage is rape,¹⁶⁹ declaring that “there can be no doubt that if a girl child is forced by

her husband into sexual intercourse against her will or without her consent, it would amount to a violation of her human right to liberty or dignity guaranteed by the Constitution.”¹⁷⁰ Pakistani courts have yet to make a similar determination.

Inconsistency between the CMRA and personal laws

Courts have read the CMRA in light of the uncodified principle in Muslim personal law that a boy and girl may enter into marriage provided that they have attained puberty. As noted above, Pakistan's Supreme Court and provincial high courts have found that the marriage of a girl under the age of 16 is valid in spite of the CMRA's age limits, given that Muslim personal law prescribes a lower age.¹⁷¹ This severely undercuts the efficacy of the minimum age provisions set forth in the CMRA.

The personal laws of religions other than Islam also establish different ages for marriage, although the courts have yet to resolve whether the provisions of the CMRA or of these personal laws prevail. The HMA prescribes a higher age of marriage than the CMRA. Meanwhile, the CMA does not stipulate a minimum age of marriage, while the SMA prescribes a minimum age of 14 for girls and 18 for boys.¹⁷²

Other Legal Issues Relevant to Child Marriage

In addition to laws pertaining to the age of marriage, several related laws affect women's and girls' access to alternatives to child marriage, such as education and employment, and legal remedies once married. This section outlines several areas of law where greater harmonization is necessary to respect, protect, and fulfill women's and girls' rights with regard to child marriage.

Rape

Upon being forced into marriage, girls often feel powerless to refuse sex.¹⁷³ Girls who are married to men who are significantly older are more likely to be trapped into sexual abuse and exploitation.¹⁷⁴ Forced intercourse poses health hazards for girls, exposing them to higher risks of maternal mortality and morbidity.¹⁷⁵ In 1979, Pakistan passed the Offence of Zina (Enforcement of Hudood) Ordinance (Zina Ordinance),¹⁷⁶ which repealed existing provisions in the PPC concerning rape and established a new offense of *zina bil jibr*. This new offense was defined as sexual intercourse without the consent of the victim, but it specifically excluded instances of sexual intercourse with one's spouse.¹⁷⁷ Therefore, the Zina Ordinance explicitly excluded marital rape as a criminal offense. In 2006, the *zina bil jibr* provision was repealed with the passing of the Protection of Women (Criminal Laws Amendment) Act,¹⁷⁸ which also inserted

Section 375 into the PPC.¹⁷⁹ Section 375 defines rape as sexual intercourse by a man with a woman against her “will” or “consent”; importantly, it does not explicitly exclude sexual intercourse with a person to whom the alleged offender is married.¹⁸⁰ The current law on rape as set forth in the PPC therefore does not expressly exclude marital rape from the definition of rape. However, the PPC does not expressly criminalize marital rape, either, and so the legal position remains unsettled.

Pursuant to Section 375(v) of the PPC, sexual intercourse with a female under the age of 16, regardless of whether the girl consents, is classified as rape.¹⁸¹ Rape is punishable by imprisonment of up to 25 years. However, given the ambiguity regarding whether the law prohibits marital rape, the law is unclear regarding whether sex with a girl under 16 within marriage would fall within the definition of rape. This unsettled legal position severely hinders legal redress for girls forced into sexual intercourse as a result of child marriage.

Dowry

The payment of dowry by a girl's parents upon marriage is a widespread cultural practice in Pakistan. The dowry custom creates a situation in which daughters are susceptible to being treated as financial burdens by their families.¹⁸² Families may consider it economical to give their girls away for marriage since child marriages often imply smaller dowry payments and relieve families of the additional cost of raising their daughters.¹⁸³ Furthermore, child marriages are economically beneficial for the husband's parents, as the husband's family will gain an individual who is less likely to resist the imposition of unpaid labor.¹⁸⁴ The Dowry and Bridal Gifts (Restriction) Act 1976 restricts the dowry amount to PKR 5,000 (approximately USD 50). However, this law is not implemented effectively, and illegal amounts of dowry continue to be demanded and paid,¹⁸⁵ exacerbating the continuation of the practice of child marriage.

Registration of births and marriages

The registration of births and marriages is not adequately maintained in Pakistan, making it difficult to establish the age of marriage in many instances and thus hindering the identification and prevention of child marriage.¹⁸⁶ Between 2005 and 2012, only 26.5% of births were registered.¹⁸⁷ While the Births, Deaths and Marriages Registration Act 1886 sets forth the procedure for registering births and marriages, it does not prescribe any penalties for the failure to do so. As a result, birth registration is often overlooked, especially in rural areas, which hinders girls' ability to prove that they were underage at the time of their marriage when later seeking legal assistance.¹⁸⁸ The MFLO requires that all marriages be registered with the Union Council (the local government authority) and establishes a penalty of up to three months'

imprisonment and a fine of PKR 1,000 (approximately USD 9) for the failure to do so.¹⁸⁹ However, this requirement is not adequately enforced. According to some estimates, up to 49.5% of marriages in Sindh are unregistered, and up to 95.5% marriages in Balouchistan are unregistered.¹⁹⁰ The non-registration of marriages hinders the detection of child marriages and severely limits the enforcement of child marriage legislation. Consistent and correct registration of births and marriages in Pakistan would provide women and girls the ability to seek legal remedies if they are subject to child marriage.¹⁹¹

The practices of *badl-e-sulh*, *wanni*, and *swara*

In Pakistan, girls are often exchanged in marriage to settle disputes or debts. This practice is referred to as *badl-e-sulh*, *wanni*, and *swara*¹⁹² and is typically presided over by a *jirga*, or tribal council of male elders of a community. The practice has been outlawed by the Criminal Law (Amendment) Act 2011 and is subject to punishment of up to seven years' imprisonment and a fine of PKR 500,000 (approximately USD 4,300).¹⁹³ However, it persists due to weak enforcement of the law.¹⁹⁴ For example, in 2014, an 11-year-old girl was married to a man three times her age as compensation for her uncle having raped a girl in Northwest Pakistan. The girl was married off to the brother of the girl who had been raped.¹⁹⁵

There are no official sources for the incidences of *badl-e-sulh*, *wanni*, and *swara*. However, a survey of newspaper reports in 2014 showed a large number of forced marriages that occurred to resolve disputes—and in the vast majority of cases, the girls being exchanged were minors.¹⁹⁶ Some girls were as young as three years old.¹⁹⁷

Forced marriages and conversions of girls belonging to minority religions

Girls from minority religions in Pakistan are especially vulnerable to forced conversion to Islam prior to a forced marriage.¹⁹⁸ The typical victims of this practice are low-income Christian and Hindu girls who are abducted by influential and wealthier Muslim men, forcibly converted to Islam, and then compelled to marry their kidnappers.¹⁹⁹ It is estimated that up to 700 Christian women and girls and 300 Hindu women and girls are subjected to forced conversion and marriage every year.²⁰⁰ Although accurate data regarding these cases is not available due to underreporting, compilations of such cases by at least one non-profit organization indicate that many of the victims are under the age of 18.²⁰¹ These cases continue to occur with impunity, as law enforcement authorities have failed to take measures to prevent and prosecute these crimes.²⁰²

Education

Child marriage is linked to the absence of education.²⁰³ Conversely, increased access to education leads to a reduction in child marriages.²⁰⁴ Access to education, especially at the secondary level, offers a practical alternative to child marriage.²⁰⁵ Research suggests that girls with secondary education are up to six times less likely to marry before the age of 18 than girls with no education.²⁰⁶ Article 25(a) of Pakistan's Constitution requires the state to provide compulsory education to all children (male and female) aged 5–16.²⁰⁷ In addition, several provinces have passed laws establishing compulsory education until the age of 16: Sindh has enacted the Sindh Right of Children to Free and Compulsory Education Act 2013, Punjab has enacted the Punjab Compulsory Education Act 2014, and Baluchistan has passed the Baluchistan Compulsory Education Act 2014. However, the implementation of these laws is very weak, as evidenced by the high percentage of children who do not attend school. According to a 2013 study conducted by UNICEF, 30.1% of children of lower secondary school age in Pakistan are not attending school.²⁰⁸ Girls are even less likely than boys to attain education, particularly secondary school education: 34.6% of boys attend secondary schools in Pakistan, compared to only 28.9% of girls.²⁰⁹

Child labor

Child brides are likely to be forced into a myriad of activities classified as child labor, including being forced to perform the majority of housework and to attend to the daily needs of their older husbands.²¹⁰ Child marriage may create conditions giving rise to “child servitude,” where child brides are forced into domestic or manual labor.²¹¹ The Employment of Children Act 1991 prohibits the employment of children in certain occupations, including construction and catering. The law also prohibits employing children to work overtime or to work between the hours of 7 p.m. and 8 a.m. However, it does not prohibit the employment of children entirely and defines a child as someone under the age of 14.²¹² The Anti-Slavery Convention, to which Pakistan is a signatory,²¹³ requires states to take all necessary action to abolish “any institution or practice whereby ... [a] woman, without the right to refuse, is promised or given in marriage on payment of a consideration in money or in kind to her parents, guardian, family or any other person or group.”²¹⁴ In other words, it prohibits the buying and selling of girls for child marriage.²¹⁵ Section 310A of the PPC also prohibits the exchange of girls to settle debts or disputes; nonetheless, the buying and selling of girls for child marriage still occurs.²¹⁶

Reproductive rights

There is no specific legislation in Pakistan guaranteeing and regulating the provision of reproductive health services for women. There is also an absence of uniform maternal health policies at the federal and

provincial levels. In 2005, the now abolished Ministry of Health issued the National Framework on Maternal, Newborn and Child Health, which expired in 2015 and has not been renewed. Due to the non-implementation of reproductive health policies, the state of maternal health in Pakistan is alarmingly poor. The maternal mortality ratio stands at 276 deaths per 100,000 births.²¹⁷ Married girls suffer disproportionately from the absence of good-quality and affordable maternal health services since they are more likely to face reproductive health harms due to their young age. Complications caused by pregnancy and childbirth are among the main causes of death among girls aged 15–19.²¹⁸ Early childbearing also increases the risk of obstetric fistula, a devastating pregnancy-related injury.²¹⁹ Obstetric fistula is more likely to affect girls since they have underdeveloped organs that are not physically prepared to support child bearing. It is estimated that up to 5,000 girls and women develop obstetric fistula annually in Pakistan.²²⁰

Legal assistance for child brides at the local level

Under Article 4 of the Constitution, all persons, including children, are entitled to the fundamental right of due process.²²¹ This provision includes access to justice through legal aid.²²² While non-governmental legal aid organizations provide assistance to children, practical and cultural barriers make it very difficult for girls to seek legal aid to challenge their child marriages. Therefore, support from the state, including the courts is necessary in order to prosecute child marriages and ensure that children escaping child marriages are provided social and economic protection.

At the provincial level, the Punjab Destitute and Neglected Children Act 2004 and the Sindh Child Protection Authority Act 2011 call for the appointment of child protection officers and the establishment of child protection institutions to care for destitute and neglected children. In addition, Khyber Pakhtunkhwa passed the Child Protection and Welfare Act in 2010, while Baluchistan enacted the Baluchistan Child Protection Act in 2016. However, none of these provincial laws contain specific provisions pertaining to the protection of victims of child marriage.

Domestic violence

Child brides are more likely to experience domestic violence than adult women due to their age and decreased ability to resist abuse.²²³ Thirty percent of ever-married girls between the ages of 15 and 19 report having experienced domestic violence.²²⁴ Fifty two percent of those who have experienced sexual violence report that they never sought help or told anyone about the violence they had experienced.²²⁵

Sindh enacted the Sindh Domestic Violence (Prevention and Protection) Act in 2013 (Sindh DV Act), which criminalizes domestic violence and defines domestic violence to include physical, psychological, and sexual abuse. The Sindh DV Act sets forth criminal penalties for domestic violence, including a minimum imprisonment of two years for sexual abuse²²⁶ and a maximum of ten years' imprisonment for causing physical damages.²²⁷ In addition, the Act provides a range of remedies to women experiencing or facing the threat of domestic violence, including protection orders, residence orders, and monetary compensation.²²⁸ However, the implementation of this law is very weak, and awareness among law enforcement officials of its existence is poor.²²⁹

In Punjab, the Punjab Protection of Women against Violence Act 2016 does not specifically criminalize domestic violence, but it does provide for range of civil remedies, including protection orders, monetary compensation, and residence orders. These are applicable in cases of child marriage.²³⁰ Similarly, the Domestic Violence (Prevention and Protection) Act 2012 (Federal Act), which is applicable only in the capital, Islamabad, criminalizes domestic violence, sets forth criminal penalties, and provides remedies.²³¹

Both the Sindh DV Act 2013 and the Federal Act cover violence within all “domestic relationships,” while the Punjab Protection of Women Against Violence Act defines “domestic violence” to include violence committed against a person to whom the perpetrator is married. Therefore, all three laws cover violence within a child marriage. All three laws also provide for the appointment of protection committees, which are responsible for offering legal and medical assistance to victims, as well as keeping official records of cases of domestic violence within their jurisdiction. If implemented, the laws could provide protection to married girls facing domestic abuse. However, girls will face barriers to accessing legal remedies in light of the obstacles discussed in the *International Legal Obligations and Commitments* section below.

Policy Commitments to End Child Marriage

Some provinces have approved youth policies containing commitments to address child marriage. However, the commitments are fairly vague and lack details regarding specific policy measures to end child marriages. Punjab approved the Punjab Youth Policy in 2012, which includes commitments to “take strict measures for implementing laws against forced and early marriage.”²³² This policy also contains a commitment to “involve religious scholars in the debates on early and forced marriages.” The Sindh Youth Policy, which was drafted in 2012 and approved in 2018,²³³ contains a commitment to implement laws prohibiting “forced and early marriages.”²³⁴ Meanwhile, Khyber Pakhtunkhwa approved a youth policy in 2016, which also includes a

promise to implement laws against forced and early marriages.²³⁵ Lastly, Balouchistan drafted a youth policy in 2015, which is yet to be approved. The draft policy provides for youth education programs on early age marriages but does not contain any commitments regarding the implementation of legislation or improvements to existing laws on child marriage.²³⁶

International Legal Obligations and Commitments

Pakistan has made a number of international commitments to end child marriage. The country is party to various international human rights treaties that condemn child marriage, including the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. International treaties are not directly justiciable in domestic courts and must be incorporated into Pakistan's laws through implementing legislation in order to be enforceable. However, courts in Pakistan have relied on international treaty commitments when making decisions enforcing fundamental human rights.²³⁷

Relevant international bodies such as the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women have commented on Pakistan's compliance with international standards concerning the appropriate age of marriage and have recommended that the country eliminate the practice.

Committee on the Rights of the Child

In 2016, the Committee on the Rights of the Child, in its concluding observations on the fifth periodic report of Pakistan, welcomed the Prevention of Anti-Women Practices (Criminal Law Amendment) Act 2011, which establishes stricter punishments for cultural practices that promote child marriage than had previously been the case.²³⁸ However, the Committee expressed concern over low public awareness of the law, particularly among families and children who are victims of child marriage, and noted that parallel judicial systems continue to facilitate child marriages.²³⁹ It urged Pakistan to enforce legislation prohibiting child marriage uniformly throughout the country, further investigate incidents where local tribal councils endorse harmful practices against children, and develop awareness-raising campaigns on the harmful effects of child marriage.²⁴⁰ The Committee recommended that such campaigns be targeted toward families, local authorities, religious and community leaders, legal practitioners, and the judiciary.²⁴¹

Further, the Committee urged Pakistan to take active measures to prevent child marriage.²⁴² It also expressed concern that the CMRA sets the minimum age of marriage at 16 for girls and recommended that Pakistan harmonize its legislation so that “child” is consistently defined as anyone under the age of 18.²⁴³

Committee on the Elimination of Discrimination against Women

In 2013, the Committee on the Elimination of Discrimination against Women issued its concluding observations on the fourth periodic report of Pakistan.²⁴⁴ The Committee expressed concern over the existence of multiple legal systems regulating marriage, the persistence of child and forced marriages, and the minimum age of marriage being set at 16 years old for girls under the CMRA.²⁴⁵ It also voiced concern over the abduction of girls belonging to religious minorities for the purpose of forced conversion and forced marriages²⁴⁶ and recommended that Pakistan amend relevant legislation to raise the minimum age of marriage for girls to 18.²⁴⁷ In addition, the Committee pointed to reports showing that girls are particularly vulnerable to domestic trafficking and consequently to child marriage and domestic servitude.²⁴⁸ Finally, it recommended that Pakistan conduct research on the abduction of girls for the purpose of forced conversion and forced marriages and engage a task force in order to investigate, prosecute, and punish perpetrators and support victims and their families.²⁴⁹

Human Rights Committee

In 2017, the Human Rights Committee issued its concluding observations on the initial report submitted by Pakistan.²⁵⁰ The Committee expressed concern regarding the minimum age of marriage for girls in Pakistan, as well as the disparity in the minimum age between boys and girls.²⁵¹ It also noted the low rate of birth registration in Pakistan and its harmful effects on the rights of children. The Committee was also particularly concerned about the low public awareness of child marriage laws throughout the country.²⁵²

Political Commitments

Pakistan has made political commitments at the international and regional levels to end child marriage. In 2014, Pakistan, along with other South Asian countries, adopted a Regional Action Plan to End Child Marriage in South Asia. The objective of the action plan is to delay the age of marriage for girls in at least four countries in South Asia by 2018.²⁵³ Also in 2014, jointly with other South Asian countries, Pakistan adopted the Kathmandu Call for Action to End Child Marriage in South Asia. The call for action enumerates concrete steps to end child marriage, including harmonizing national laws and policies on child marriage, establishing 18 as the uniform minimum age of marriage, and eliminating discriminatory provisions concerning child marriages in

all laws. The call for action strongly denounces child marriage as a human rights violation and calls on states to take urgent measures to end impunity for the practice.

At the Sustainable Development Summit in 2015, Pakistan, as a UN member state, adopted the 2030 Agenda for Sustainable Development, which includes 17 Sustainable Development Goals to fight poverty, inequality, and climate change.²⁵⁴ These goals establish the elimination of child marriage as part of the global agenda to “achieve gender equality and empowerment of all women and girls,” including through the elimination of “all harmful practices, such as child, early and forced marriage”²⁵⁵

CHALLENGES FOR ENDING IMPUNITY FOR CHILD MARRIAGE

In addition to procedural barriers to filing claims under the CMRA and the SCMRA, other structural, social, and cultural barriers impede the enforcement of the prohibition on child marriage. Poorly implemented laws, the lack of support mechanisms for girls trapped in child marriages, and the lack of clarity in the legal framework on child marriage enables the practice to continue with impunity.

Poor Monitoring of Child Marriages and Implementation of Child Marriage Legislation

There is no system in place by the federal government or any provincial government for recording and monitoring the incidence of child marriage. The CMRA does not set forth any obligations regarding the recording or monitoring of child marriages, and neither the federal government nor any provincial government has issued rules regarding the Act's implementation. According to the rules adopted under the SCMRA, provincial and district monitoring committees must be set up to monitor the implementation of the law, to conduct studies and investigations regarding child marriage, and to keep official records of incidents of child marriages.²⁵⁶ However, these monitoring committees are not yet functional. Therefore, there is little data available from primary or secondary sources concerning the number of cases brought against perpetrators of child marriage or cases as a result of a child marriage.

In the most recent annual report published by the Supreme Court of Pakistan, none of the “important cases” determined by the Court were in relation to child marriage.²⁵⁷ Further, none of the Supreme Court's human rights cases or important cases reported in the 2015–2016 annual report were connected with child marriage.²⁵⁸

The inadequate registration of births and marriages in Pakistan is another hurdle to determining the incidence of child marriage. Only 26.5% of all births were registered between 2005 and 2012. The prevention and prosecution of child marriages is challenging when the age of the child is uncertain due to the absence of birth registration. Moreover, the absence of official data regarding child marriage makes it difficult to monitor and ensure the effective implementation of child marriage laws.

Lack of Access to Law Enforcement Authorities and Courts

Accessing justice in Pakistan can be a slow and expensive process.²⁵⁹ Cases get tied up in courts for years.²⁶⁰ Women and girls face greater obstacles in approaching law enforcement authorities, since women in Pakistan are less likely than men to assert their rights in public places. Moreover, females of all ages in Pakistan generally fear law enforcement officials and are extremely hesitant to initiate any type of legal action due to the risk of “dishonoring” themselves and their families.²⁶¹ Most officials in the criminal justice system are men and often lack the skills and empathy needed to communicate with women and girls who are victims of violence.²⁶² These obstacles prevent women and girls from using the legal system to escape child marriage.

Lack of Support Mechanisms for Victims

There is little to no support provided by government authorities to girls who wish to escape child marriage. The CMRA lacks a specific provision for the creation of mechanisms to provide legal aid, counseling, and economic assistance to girls forced into child marriage. Under the rules to the SCMRA, the police may take into custody children who are about to enter or have already entered into a child marriage; such children are to be held in a child protection institution.²⁶³ The relevant child protection institutions, according to the rules, are those established under the Sindh Child Protection Authority Act 2011. However, this Act is yet to be implemented, and therefore there is no proper regulation or maintenance of child protection institutes and officers under the law.²⁶⁴ Furthermore, the district monitoring committees called for under the Sindh Child Marriage Restraint Rules 2016 in order to facilitate legal aid and medical treatment for victims, among other functions, have not yet been set up.²⁶⁵

The difficulties faced by women and girls in escaping child marriages are heightened by the insufficient number of shelters for women and girls who wish to escape abusive marriages. In September 2009, the Pakistani Ministry of Women Development established 25 Shaheed Benazir Bhutto Centers for Women.²⁶⁶ These centers provide up to 24 hours of shelter, as well as emergency legal aid, medical treatment, and psychological counseling to women who are victims of exploitation and violence.²⁶⁷ However, they are extremely under-resourced and have faced severe financial difficulties.²⁶⁸ In addition to the crisis centers, there are approximately 200 shelter houses known as Dar ul Amans across the country, which are funded by local and provincial governments.²⁶⁹ But these houses are generally perceived as being analogous to prisons due to their strict policies

on women's movement.²⁷⁰ Victims of child marriage face the additional hurdle whereby Dar ul Amans will not admit children directly, as they do not accept minors in the absence of a court order granting custody of the minor to the Dar ul Aman.²⁷¹

Limited public information regarding the availability of shelters severely undermines their utility. For example, there is no public directory of women shelters in Sindh. Neither the Women Development Department nor the Social Welfare Department keeps a directory of women shelters.²⁷² A study of women shelters in the province of Khyber Pakhtunkhwa also concluded that there is an insufficient number of shelters and that the ones that do exist face infrastructural and management problems due to a lack of oversight from the Social Welfare and Women Development Departments.²⁷³ Therefore, there is a severe shortage of safe spaces for girls who want to escape child marriages, and little support in the way of legal aid, counseling, and other assistance.

Procedural Gaps and Inconsistencies in the Law

Neither the CMRA nor the SCMRA specifies that a child marriage is void or voidable, as discussed in the section above on *Pakistan's Current Legal Framework on Child Marriage*. The laws are silent regarding how a child marriage may be voided by a party to the marriage, and any girl who wishes to have her child marriage declared void must do so under the procedures provided in the applicable personal laws. Therefore, the onus is on the girl who has been forced into a child marriage to approach the courts and request that her marriage be declared void. She will most likely have to retain a lawyer, and the legal process could take several months. This is particularly onerous for girls, especially due to the obstacles standing in the way of their access to justice and the lack of legal and social support available to them when they wish to escape a child marriage.

The inconsistency between personal laws and child marriage laws undermines the enforcement of the latter. Courts in Pakistan have not clearly declared which of these prevails in cases of inconsistency. In cases concerning Muslims, the Supreme Court has declared that a voluntary marriage will not be found invalid as long as both parties have reached puberty, regardless of the minimum age set forth in the CMRA. However, the Court has not found the minimum ages of marriage set forth in the CMRA to be inconsistent with Muslim personal law, either, and has not invalidated any provision of the CMRA on this account. Therefore, Supreme Court decisions concerning child marriage do not bar any legislation explicitly declaring that all marriages under the age of 18 are void or voidable. Nevertheless, the absence of clear legislation to this effect undermines enforcement of the prohibition against child marriage.

Opposition by Religious Authorities

Opposition by religious authorities has impeded attempts to reform child marriage laws in Pakistan. The Council of Islamic Ideology, a constitutional body set up to advise lawmakers on Islamic law, has opposed attempts by the federal legislature to amend the CMRA to increase the minimum age of marriage for girls from 16 to 18.²⁷⁴ For example, in 2016, a bill to amend the CMRA to this effect was withdrawn due to opposition from the Council of Islamic Ideology.²⁷⁵ In 2017, a similar bill was reintroduced but was rejected by the Senate Standing Committee of Interior on the basis that it was “un-Islamic.” However, the same standing committee later withdrew its objection.²⁷⁶

Cultural Practices That Sanction the Forced Marriages of Girls

Prevalent cultural practices such as *badl-e-sulh*, *wanni*, and *swara* sanction child marriage as a means to resolve disputes. Through these practices, tribal councils continue to order the marriage of girls as a form of compromise between parties or to settle debts. While such practices have been specifically outlawed, they persist due to the failure of the formal legal system to effectively prevent and punish them.²⁷⁷

CONCLUSIONS AND RECOMMENDATIONS

The government has an obligation to prevent, protect, prosecute, punish, and provide redress for child marriage through legislative and institutional mechanisms. Current gaps and inconsistencies in Pakistan's laws and policies that undermine the prevention and prosecution of child marriages must be addressed. The inconsistencies between the CMRA, the SCMRA, and personal laws; the silence of legislation on the voidability of child marriages; and discriminatory laws pertaining to divorce and maintenance after the termination of marriage severely undermine the enforcement of the prohibition on child marriage. Furthermore, the implementation of laws prohibiting child marriage and protecting children is weak. The federal and provincial governments must develop a strategy to implement laws prohibiting child marriage. More resources must be devoted to monitoring cases of child marriage, educating and training law enforcement authorities on the implementation of laws prohibiting child marriage, and providing legal, medical, and psychological support to girls and women facing human rights violations as a result of child marriage. A number of legal and institutional initiatives would help Pakistan eliminate the practice of child marriage, as outlined in the recommendations below.

Legislative Bodies

- Make the following substantive amendments to child marriage laws to ensure that they protect the constitutional and human rights of women and girls:
 - » Increase the legal age of marriage for girls from 16 to 18 in the CMRA and the Punjab version of the CMRA, in line with international human rights obligations, including the Kathmandu Call to Action, that seek to raise the minimum age of marriage to 18.
 - » Declare marriage below the minimum legal age as void and having no legal effect under any pretext, such as custom, religion, or traditional practices.
 - » Provide legislative guarantees ensuring that victims of child marriage have rights of maintenance and that any children born within child marriages have rights, including the right to inheritance, as well as access to shelter and to financial, legal, and psychological assistance.
 - » Introduce penalties for officials, including police and magistrates, who fail to take action on complaints of incidents of child marriage or to take measures to prevent child marriages.

- Resolve inconsistencies in prevailing laws on child marriage:
 - » Clarify that child marriage legislation—i.e., the CMRA, the SCMRA, and the Punjab version of the CMRA—prevails over personal laws with respect to the age of marriage.
 - » Resolve the inconsistency between child marriage legislation—specifically the CMRA and the SCMRA—and the provision in Section 498B of the PPC pertaining to child marriages and forced marriages.
- Make procedural amendments to child marriage laws to reduce barriers to access to justice:
 - » Review and revise the one-year statute of limitations in the CMRA to ensure that complaints can be filed at any time.
 - » Amend the CMRA to make child marriage a cognizable offense, for which the police can take action with or without a complaint, as well as a non-bailable offense, as has already been done in Sindh.²⁷⁸
 - » Ensure protections for victims during legal proceedings to prosecute child marriages, such as by not publishing their identities and allowing courts to issue orders for protective custody and to dispense with the victim’s presence.
 - » Impose a 90-day limit for the hearing and disposal of complaints under the CMRA and SCMRA.
- Explicitly criminalize marital rape and declare that forced sex with a minor within child marriage constitutes marital rape.
- Make birth registration compulsory in Pakistan and make the checking of age documentation by marriage officiants compulsory.
- Review and amend discriminatory laws against women in the area of divorce and maintenance, specifically the personal laws as set forth in the MFLO, CMA, and the HMA that impose serious procedural obstacles on women seeking to terminate a marriage and that fail to provide adequate financial security to women.

Provincial Women Development Departments

- Ensure that victims have access to support mechanisms, such as medical services, protection services, psychological and reproductive health services, rehabilitation, and compensation.
- Coordinate with child protection institutes to ensure that they offer shelter, counseling, and other services to victims of child marriage.
- Monitor women's and girls' access to justice for child marriage and develop and implement a mechanism for empirical data collection on cases filed for annulment, injunctions, and enforcement of the CMRA and SCMRA.
- Implement legislation prohibiting domestic violence, ensure that cases of domestic violence are monitored and recorded, and take steps to provide legal aid services to victims of domestic violence.
- Develop, in collaboration with other provincial departments and federal ministries (including the Ministry of Human Rights and Ministry of Law and Justice), a comprehensive curriculum for engaging the judiciary, police, and public prosecutors on the issue of child marriage and girls' rights under the CMRA, the SCMRA, and related laws.
- Work with local governments to ensure that they are equipped with the means to register births and marriages accurately and efficiently.

Ministry of Law and Justice

- Review discriminatory laws, including personal laws that fail to guarantee women economic rights and securities in marriage and divorce, and make recommendations to the federal and provincial governments to amend the laws to remove the discrimination.
- Advise the federal and provincial governments to propose legislation declaring that the prohibition on child marriage as set forth in the CMRA and SCMRA prevails over personal laws regarding the age of marriage.
- Advise the federal government to propose legislation clarifying the inconsistency between punishments for child marriage prescribed in child marriage legislation (the CMRA and SCMRA) and the punishments for forced and child marriages in Section 498B of the PPC.
- Advocate for legal aid and other policies that protect the interests of victims of child marriage.

Ministry of Human Rights

- Proactively monitor violations resulting from child marriage and recommend actions for government agencies to ensure accountability.
- Conduct inquiries into human rights violations resulting from child marriage and make recommendations on how the government can address them.
- Promote research on human rights violations and conduct campaigns on the issue of child marriage.
- Develop—in collaboration with the Ministry of Law and Justice, provincial women development departments, and judicial academies—training curricula for the judiciary, police, and prosecutors pertaining to the rights of girls as enshrined in legislation prohibiting child marriage.

Ministry of Federal Education and Professional Training

- Coordinate with provincial governments and non-governmental organizations to integrate information on the minimum age of marriage into school curricula.
- Coordinate with provincial governments and non-governmental organizations to run programs that train teachers to become advocates against child marriage in local communities.

Ministry of Information, Broadcasting and National Heritage

- Launch mass media initiatives to promote awareness of the legal age of marriage and punishments associated with the crime of child marriage.
- Address social barriers that impede women's and girls' access to legal remedies and launch targeted programs to raise awareness of available legal services and shelters, with a particular focus on communities where the practice of child marriage is most pervasive.
- Raise awareness of the harms of child marriage, particularly for girls and women, and the advantages of delaying marriage for individuals and communities.
- Raise awareness, particularly within communities where child marriage is rampant, of social barriers to the empowerment and protection of women and children in Pakistan.
- Raise awareness of the importance of birth and marriage registration and provide information pertaining to procedures for such registration.

Judicial Bodies

- Recognize child marriage as a fundamental rights violation and take *suo moto* action to address the poor enforcement of legal prohibitions.
- Hold government officials accountable for not taking action under the law to prevent and prosecute child marriages.
- Harmonize inconsistencies between child marriage laws and other laws to ensure that Pakistan's legal framework protects the rights of women and girls, and clarify the relationship between the CMRA and personal laws, as well as the provisions in the PPC pertaining to forced and child marriages.
- Establish a mechanism to systematically track the progress of child marriage cases in courts and the implementation of judicial rulings.

National and Provincial Human Rights Institutions

- Conduct an inquiry on the availability of legal remedies and social protection mechanisms for victims of child marriage and make recommendations to the federal and provincial governments on how to improve the availability of these remedies and other protections for women and girls.
- Engage in advocacy for the amendment and harmonization of laws relevant to child marriage in order to ensure that Pakistan's legal framework provides greater protection to those vulnerable to human rights violations arising from child marriages.
- Monitor the government's implementation of its obligations as highlighted in the concluding observations of UN treaty monitoring bodies and the Universal Periodic Review process.
- Initiate a national conversation on child marriage as a human rights concern with key actors from the government and the private sector, and include a discussion of the concerted efforts needed to end the practice.

Civil Society Organizations

- Lead community campaigns to raise awareness of the illegality of child marriage and the continuum of harms resulting from the practice.
- Support victims of child marriage in accessing protection mechanisms and legal remedies, such as by providing legal counseling, legal aid, and information on their rights and the procedures to claim those rights.
- Promote strategic litigation to hold authorities and officials at all levels accountable for the failure to prosecute, prevent, and investigate child marriage.

UN Agencies and International Non-Governmental Organizations

- Support the Pakistani government in strengthening legal mechanisms and procedures to eliminate child marriage and address human rights violations resulting from the practice.
- Promote accountability for child marriage, including by providing technical and other support to government agencies for the implementation of recommendations made by UN treaty monitoring bodies and during the Universal Periodic Review.

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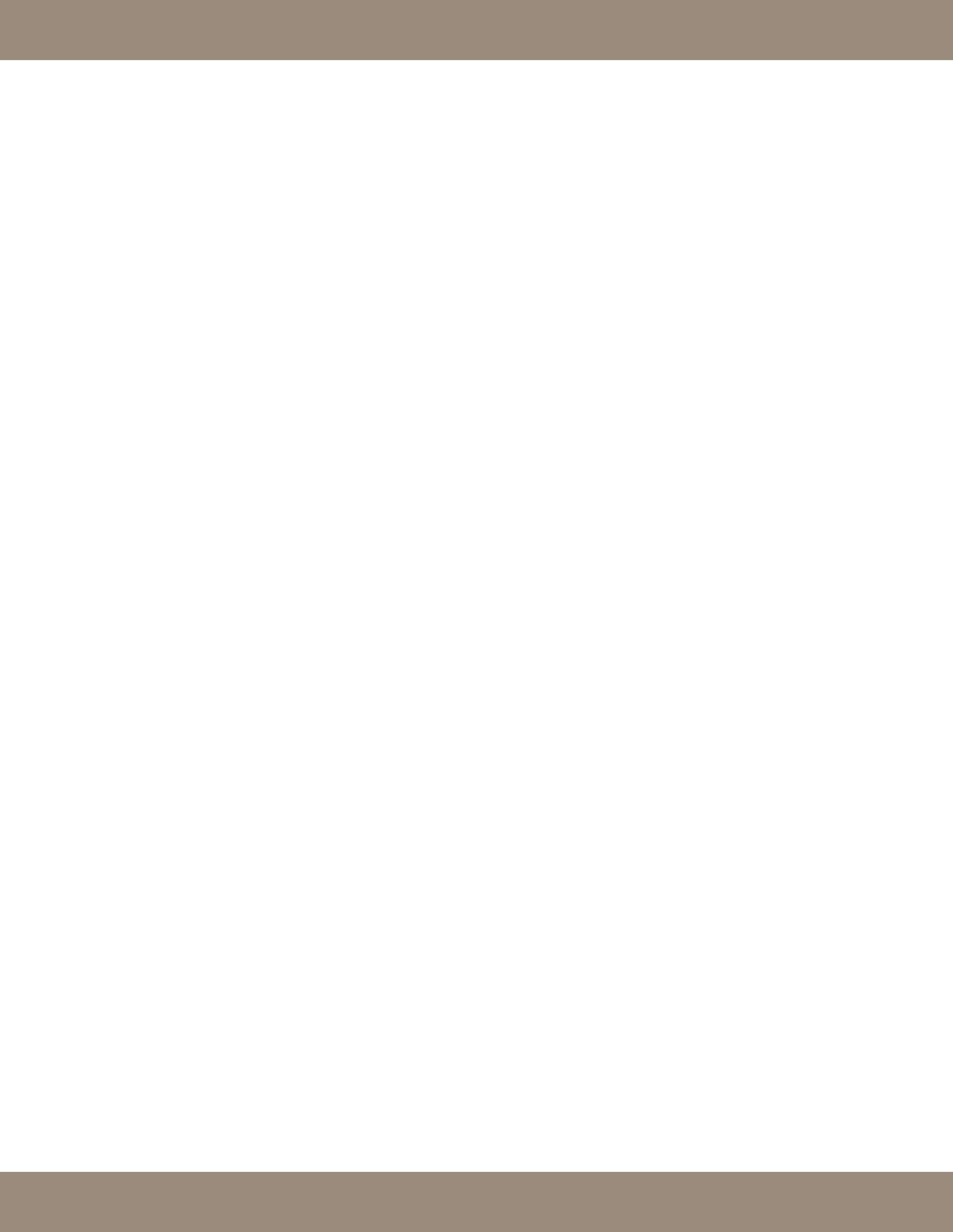
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Notes



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