

**THE recent judgement of the Lahore High Court in ‘Azka Wahid vs Province of Punjab’ has declared the arbitrary distinction in the legally prescribed minimum age of marriage in the Punjab Child Marriage Restraint Act, 1929 — 18 years for men and 16 years for women — as unconstitutional.**

Decades of lobbying and bona fide legislative attempts in the past to correct this differentiation in the law were almost always thwarted through forceful opposition that labelled such attempts as interference with the religiously prescribed standard to determine readiness of a person for marriage — puberty, which varies greatly between males and females.

However, the definition of a child in the 1929 Act is not premised on the onset of puberty, but on ages set by the legislature as per its wisdom to curtail the menace of child marriages. This non-puberty-based age prescription for marriage in the 1929 Act has on occasion been challenged before the Federal Shariat Court as un-Islamic. The FSC has, however, continued to recognise the state’s mandate to prescribe such minimum age for marriage as being in consonance with Sharia, and necessary to ensure that parties to a marriage attain the level of education, physical and intellectual development, mental maturity and economic stability important for a healthy and meaningful union.

It is important to note that the FSC has not once held the gendered differential in the prescribed minimum age of marriage as religiously required. Yet, such differential has continued to subsist in our law (excepting the province of Sindh) despite repeated calls and efforts for change.

The Lahore High Court’s judgement in the Azka Wahid case is then of great significance. The court has finally held that different ages prescribed for a male and female child in the 1929 Act are not based on any intelligible criterion, and violate the constitutional guarantee of equal treatment of the sexes under Article 25 of the Constitution. The court has accordingly directed the government of Punjab to issue a revised version of the law, prescribing a uniform minimum age of marriage for men and women.

Such uniform prescription will make marriage laws more consistent with the definition of the age of majority under the Majority Act, 1875, the definition of a child under international law, and the legal entitlement of a citizen to exercise certain civil and political rights, such as the rights to obtain an identity card, to vote, and to enter into a contract.

*Almost 19m girls in Pakistan are married before they turn 18.*

But will the increase in the permissible age for marriage of girls to 18 years serve as a necessary deterrent to child marriages?

The law already criminalises the act of marrying a minor, solemnising such marriage and, on the part of parent or guardian, permitting such marriage to take place. The criminal penalties imposed for such acts are of no deterrent import.

According to Unicef, 18.9 million girls in Pakistan are married before they attain the age of 18 years; 4.6m are wedded before they turn 16 — the legally prescribed age of marriage.

The real problem lies in the fact that judicial decisions on the capacity of a woman (or man) to marry adhere to the “puberty standard”, setting at naught the importance of the minimum age prescriptions in the 1929 Act. The courts have continued to hold that a marriage of a “pubert girl”, entered into with her free will, is valid notwithstanding that she is under 16 years of age. It is a legal conundrum that the criminal act of marriage to a minor has nonetheless been recognised in our law as valid.

In 2022, the Islamabad High Court rejected the puberty standard and questioned this contradiction in our law. The court observed that the “contract of marriage by its very definition is a contract whereby the parties agree to engage in sexual relations recognised by the State and society as legitimate...”

The court found it nonsensical to recognise a child marriage as a valid and legal contract, when the very acts of engaging in sexually explicit conduct or sexual intercourse with a minor, notwithstanding her/ his consent, amount to sexual abuse and statutory rape under Sections 377A and 375 of the Pakistan Penal Code — marriage being no exception to criminality under the said provisions. The court went on to reason that since the very object of a contract of marriage with a child is the performance of actions that are unlawful and forbidden by law, such contracts are void, ie, of no legal effect under Section 23 of the Contract Act, 1872.

It is hoped that our jurisprudence grows to adopt the holistic and coherent interpretation of the law articulated by the Islamabad High Court. Such jurisprudential shift, coupled with tougher penal prescriptions in the 1929 Act, are essential to tackle the menace of child marriages.

## Precis

### “Unconstitutional reality of child marriages”

The developments in the case of “Azka Wahid vs Province of Punjab” has proven that the relaxation given in Punjab child marriage act, 1929 is unlawful. In the past the efforts to mitigate this relaxation have been failed ~~due~~ on the grounds of puberty being labelled as standard age for marriage. But according to 1929 act, a child is not defined by the onset of puberty but by the legally standardized age. Shariah court has declared this violation of Islamic laws and acknowledged the mandate of state to provide a minimum age for marriage. Yet failed to provide it. Finally after Azka Wahid case, Lahore high court has declared the biasness in ages of male and female in 1929 act as a violation of fundamental rights. Court has demanded an updated version of this law from Government of Punjab. Marriage of an underage child is a crime and guardians of such child are subject to punishment. But these punishments are not threatening at all. Unfortunately the court has acknowledged wilful marriage of an underage pubescent girl who is not even 16 years

old. Islamabad court has rejected and questioned this contradiction of law. The court called it absurd to declare a child marriage valid when a minor sexual intercourse with and 375 of the Pakistan Penal Code according to section 377A is rape, and marriage is not an exception. According to court the very purpose of this marriage is to legitimize unlawful acts with a child and its not legally acceptable. Hopefully the uniform interpretation of the law as prescribed by Islamabad High Court will be adopted. Tougher punishment along with proper interpretation of law is the only way to fight child marriages.

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