

CHILD MARRIAGE: SOCIAL MARGINALISATION OF STATUTORY LAWS^{*}

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INTRODUCTION

The age at which a person is wed has important ramifications in the Bangladeshi legal and social context. This article deals with the law relating to the age of marriage in Bangladesh, a concept which affects the position of women vis-à-vis regards their rights both under personal-religious as well as civil-statutory laws of the country.

The age at which women are married is vital because of several factors. It affects the general health of the population. In addition, it has far-reaching repercussions upon the fertility of the woman and the population of the country. Thus, this age affects not only the women who are married as children, but the society in its entirety. A premature marriage locks a girl within a cycle of child-bearing and rearing as well as forcing her to deal with practical survival strategies without offering her an opportunity to realise her full potential which might have facilitated a better lifestyle for her entire family.

The law relating to the age of marriage is an important example of the plurality of laws that is a trait of personal laws in Bangladesh. There is a specific state law relating to the age of marriage, i.e., the Child Marriage Restraint Act, 1929 (with subsequent amendments in 1961 and 1984). Muslim law, on the other hand, lays down certain rules and prescriptions relating to the age of marriage, which sometimes come directly into

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conflict with statutory laws. Again, the society has its own customs and practices which cannot be ignored and which have their own enforcing mechanism through the opinion of the society.

Like many other social legislation, the Child Marriage Restraint Act, 1929 and subsequent amendments are *prima facie* beneficial to women. Whether in reality such statutory innovations have the intended results or not will be discussed later in the article.

Historically, the Act was, in a way, a by-product of the Age of Consent Act, 1891 which laid down a specific age under which sexual intercourse by anyone including the husband would be treated by the law as rape.

The enactment in 1891 of the Age of Consent Act brought to the forefront the delicate position of the British when they tried to legislate over matters in conformity to their own ideals of right and wrong; ideals which were the antithesis of the ideals of many in the colonised society which it sought to control. After the age of consent was specified in 1891, the need was felt for a law which would set down a minimum age of marriage. After thirty years came the Child Marriage Restraint Act, 1929 and the two are closely connected with each other.

The law relating to the age of marriage represents one of the major interventions by the British in the personal affairs of the Indian. Thus, the political implications of these laws were manifold. They also represent modern legislative intervention by the state in the personal lives of the people which replaces the rules laid down by religious laws. As such, it is an example of direct legislative action aiming at reform of certain social conditions.

The purpose of this article is to deal, in depth, with the history of the enacted law relating to the age of marriage, its relation to other legal orders; the actual enforcement of and obedience to the Act; and knowledge and perception of the law. It deals in stages with the Muslim law relating to child marriages, the various aspects of legislation relating to the former and culminates in an analysis of the practical situation, the last supported by empirical work.

AGE OF MARRIAGE UNDER MUSLIM LAW

When the parties to a marriage are legally competent, the contract of marriage is by way of offer or declaration by one party, and the acceptance by the other of the offer made. But when the parties are not competent to

enter into the contract, they may be contracted into marriage by their guardians. Under Muslim Law, in the case of legal incompetency, like minority or unsoundness of mind, the guardians may validly enter into a contract of marriage on behalf of their wards.¹

The capacity to be married must be distinguished from the competency to enter into a Muslim marriage contract.² Competence for a female to enter into a marriage contract *herself*, under the religious law, is acquired when, being of sound mind, she attains puberty.³

Capacity to marry, on the other hand, means, according to Tyabji, that there are no legal disabilities: "to have the rights and duties of a husband or wife conferred or imposed upon him or her."⁴ For example, in the case of a Muslim woman, she is legally unable to be married to more than one person at a time.

A minor who is otherwise capable of being married, upon whom there is no such bar, may be married by her guardian, although she does not have the competency to contract herself personally into marriage. The *Hedaya* states: "Infants may be contracted by their guardians."⁵

The logic behind granting the right to contract the minor's marriage to her guardian is that:

marriage is a point which involves in it many considerations, both civil and religious; and it is not perfect unless the parties be equal in degree according to the customary acceptation; and this equality is not always to be found; wherefore authority is vested in the father to contract his children during their minority, lest an opportunity of marrying them equally may be lost.⁶

The verse of the *Quran* which is said to deal with the age of marriage is part of *Surah al-Nisa*, the chapter dealing with women. This verse translated reads,

And test the orphans until they reach the age of marriage and the age of maturity of intellect, to make over to them their property, and consume it not extravagantly or hastily, against their growing up (Verse 4:6).⁷

¹ Fyzee, Asaf A.A., *Outlines of Muhammadan Law*, Oxford et al, 1964, at p.88.

² Tyabji, F. B. , *Muslim Law*, Bombay, 1968, at p.46.

³ *Ibid.*, at p.47.

⁴ *Ibid.*, at p.46.

⁵ Hamilton C., *The Hedaya* ,2nd edition, London, 1870, at p.36.

⁶ *Ibid.*

⁷ See Kanhaiya L.P. "Note" in *Encyclopaedia of Indian Women*, New Delhi, 1991,

Thus, the age of marriage and that of majority is synonymous as the word '*nikah*', in common language, means 'embracing or bonding' and in the legal sense 'a contract', which purports to legalise cohabitation. Its essentials, according to Abu Hanifa, are "puberty, freedom and the consent of the contracting parties."⁸ It is only when a man or a woman is capable of being able to exercise his or her choice 'in matters of sexual liking or disliking', at puberty, that assent of that person to the marriage contract can be given.⁹ Before this time, however, Muslim law recognises the right of the guardian to contract the marriage on behalf of his minor ward.

The verse of the *Quran*, quoted earlier, has also been translated to mean:

And keep a vigilant eye on the orphans until they reach the age of marriage, and if you find that they are capable of managing their affairs entrust them with the management of their property.¹⁰

The translator was of the opinion that the verse relates only to the age upon which orphans are to be entrusted with the management of their property and has no bearing on the age of marriage.¹¹ The clause: "if you find that they are capable of managing their own affairs" indicates not the age of puberty but instead the capability to manage their own affairs.¹²

Many authors are of the opinion that the age of marriage refers not only to the age of puberty, but also to the age at which the person attains the power to make decisions on his or her behalf. For instance, Sale in his translation of the above verse equates the age of marriage to 'the age of maturity'.¹³ According to the *Durr-ul-Mukhtar*, this age means that in addition to puberty, they must have attained:

the knowledge to judge good from bad, to understand religious matters, and to manage their property efficiently.¹⁴

Vol 1, at pp.202-231.

⁸ Ibid., at p.217.

⁹ Ali, Maulana M. *The Religion of Islam*, Lahore, 1973, at p.508.

¹⁰ Yakub, M. "Note" in *Encyclopaedia of Indian Women*, New Delhi, 1991, Vol.1 at p. 277.

¹¹ Ibid.

¹² Ibid.

¹³ Sale, G., *Translation of the Koran*, London et al, at p.54.

¹⁴ Trevelyan, E. J. *The Law relating to Minors in British India* 5th revised edition, London, 1916, at p.2.

Pickthall in his Meaning of the Glorious Qu'ran translates verse 4:6 as follows:

Prove orphans till they reach marriageable age; then, if ye find them of sound judgment, deliver over unto them their fortune, and devour it not by squandering and in haste lest they should grow up.¹⁵

Maulana Ehtishamul Huq interprets the relevant verse to mean that the guardians of orphans are enjoined upon, by the *Quran*, to make trial of orphans until they reach marriageable age, i.e., release the property of the orphans after they have reached that age, only if sound judgement is found in them. According to him, the age of marriage may be arrived at earlier while the ability to make sound judgement may be arrived at a later stage.¹⁶

According to the above, the *Quran*, or the *Hadith* for that matter, does not make any restrictions on pre-puberty marriages. There are others who opine that the *Quran* does mention puberty as a condition of marriage and they translate verse 4:6 into conditions precedent for the entrusting of property to the orphans and

the matter of marriage may be judged according to this instruction(,) as a contract of marriage is of infinitely greater importance than mere transfer of property.¹⁷

This would mean that, although there are no definite restrictions on child or pre-puberty marriages, Islam favours post-puberty marriages where the parties can use their own judgment.

Another verse of the *Quran* is often quoted in support of the right of the guardians to contract the minor's marriage. It speaks of the necessity, in the case of divorce, of waiting for a particular period of time before the woman can enter into another marriage. This is known as the period of *iddat*. The period of *iddat* varies in different cases. The following verse (65:4) of the *Quran* is deemed by some to refer to the period of *iddat* required in the case of a minor who has been married:

And those of your women who despair of menstruation, if you have a doubt, the prescribed time shall be three months, and of those too who have not had their.¹⁸

¹⁵ Pickthall M. M., The Meaning of the Glorious Qu'ran, London, 1930, at pp.79-80.

¹⁶ The Gazette of Pakistan, Extraordinary, August 30, 1956, at p.1578.

¹⁷ The Gazette of Pakistan, Extraordinary, Karachi, June 20, 1956 at p.1209.

¹⁸ Engineer, Asghar A., The Rights of Women in Islam, Selangor Darul Ehsan, Malaysia, 1992, at p.110.

Asghar Ali Engineer¹⁹ is of the view that there is actually no concept in the *Quran* of child marriage, because the concept of marriage or *nikha* is mentioned irrespective of age or status. He argues that the above verse has been wrongly interpreted to mean that those who have not reached the age of puberty, which means the age of menstruation, can also be married. The verse may, instead of referring to the minor girl who has not reached puberty, actually refer to those who cannot menstruate for any physiological reason.²⁰

A different interpretation of the above verse of the *Quran* makes it clearer that the *Quran* does refer to pre-puberty marriages, which reads as follows:

As to such of your wives as shall despair having their courses, by reason of their age; if ye be in doubt thereof, let their term be three months: and let the same be the term of those who have not yet had their courses.²¹

We may construe from the above that the first portion deals with the women who 'despair' of having their menstruation due to menopause or some other physiological cause. The latter part deals clearly with pre-puberty marriages since it refers to 'those who have not yet had their courses'. This means that the marriage of minors is valid since: "there can be no waiting period without there first being a valid marriage."²²

The rules relating to marriage guardians, the option of puberty (see later) granted to minors contracted into marriage and so forth also indicate that child marriages are allowed under traditional Muslim law.²³

The *Hadith* or tradition of the Prophet is also said to support the right of the guardian to give his minor ward into marriage;

Giving one's young children in marriage (is permissible) by virtue of the Statement of Allah.²⁴

¹⁹ Ibid.

²⁰ Ibid.

²¹ Khan, M. M. Y., Mahomedan Law relating to Marriage, Dower, Divorce, Legitimacy and Guardianship of Minors, according to the Soonees, Tagore Law Lectures, vol I, Allahabad, 1891-92, at p.64.

²² Alami, D. S. El, The Marriage Contract in Islamic Law, London, 1992, at p.51.

²³ Sampath B.N., "Marriageable Age, Consent and Soundness of Mind in Indian Matrimonial Law: A Plea for Rationalisation", 1&2 (1969) The Benaras Law Journal, pp.28-52, at pp.31-32.

²⁴ Bukhari, The Translation of Meaning of Sahih Al-Bukhari, Arabic to English, Vol.II, by Khan, M.M., Lahore, 1986, at p.49.

Again the Hadith states:

It is permissible for the father to give the hand of his daughter in marriage even when she is not fully grown up.²⁵

The marriage of the Prophet of Islam to Aisha when she was a minor is looked upon as justifying or sanctioning the marriage of a child:

Narrated Aisha that the Prophet married her when she was six years old and he consummated his marriage when she was nine years old, and then she remained with him for nine years (i.e., till his death).²⁶

Maulana Muhammad Ali²⁷ refutes the claim that the marriage of the Prophet and Aisha provides sufficient justification for the marriage of minors. According to him, the marriage took place before the "details of Islamic law were revealed to the Prophet" and, therefore, her marriage cannot be an "argument for the marriage of a minor". He goes on to say that there is no reliable tradition which shows that after the revelation of the fourth chapter of the *Quran* ('which identifies the age of marriage with the age of majority'), marriages of minors were contracted by their guardians in the time of the Prophet.²⁸

From the above, although it is clear that there are strong arguments in favour of the fact that both the *Quran* and the *Hadith* allow child marriage, but neither contains any specific provision which relates directly to the age of marriage or to the age of consummation.

Guardian with right to contract marriage

As to persons who are considered to be proper guardians in respect of contracting the marriage of a minor, the Prophet had declared that "marriage is commuted to the paternal kindred."²⁹ According to the *Hedaya*:

Relations stand in the same order in point of authority to contract marriage as they do in point of inheritance; but this authority, in the more distant relatives, is superseded by the existence of those of a nearer degree.³⁰

²⁵ Muslim, *Sahih Muslim*, translation of the Sahih Muslim, by Siddiqui. A. H., Vol.II, Lahore, 1972, at p.715.

²⁶ Supra note 24, at p.50.

²⁷ Supra note 9, at p.510.

²⁸ Ibid.

²⁹ Supra note 5, at p.36.

³⁰ Supra note 5, at p.37.

The guardian who has the power to contract the marriage is called the '*wali*'. The *wali* has the power, under Muslim law, to contract a minor daughter or son into marriage without his or her consent. The power of imposing the status of marriage on a minor is called '*jabr*' and the right of guardianship '*wilayat*'.³¹ This is recognised by all the schools of Muslim law, although there are disagreements on certain aspects relating to the guardianship right. According to Fyzee, the following persons are entitled, in order of priority, to act as *wali* or guardians in marriage:

- 1) father
- 2) father's father
- 3) the brother and other collaterals according to the priorities in the laws of inheritance
- 4) the mother and maternal relations, and finally
- 5) the ruling authority, that is the *Kazi* or the Court.³²

All the above persons have, as guardians, the power of compulsion over a female or male during minority.³³ The right of guardianship extends until the attainment of puberty by the minor concerned. The *wali* i.e., the marriage guardian must be Muslim, major, sane and of blameless character.³⁴ Although it is true that male relatives in order of priority have the right to give in marriage, the mother in the absence of prior guardians does have the right of guardianship.³⁵ Therefore a female can also be a *wali*.

In 1890, the Guardian and Wards Act, applicable to Muslims was enacted, but this Act did not in any way affect the rules of Muslim law relating to marriage-guardianship.³⁶ This means that a person appointed guardian for a minor under the Act was not necessarily her marriage guardian under Islamic law.

³¹ Supra note 1, at p.199.

³² Ibid.

³³ Baillie, Neil B.E., A Digest of Moohummudan Law, 2nd edition, London, 1875, at p 46.

³⁴ Supra note 1, at p.200.

³⁵ Supra note 1, at p.200; supra note 33, at p.46; and supra note 5, at p.38-39.

³⁶ Haq, Md. N. "Some Legal Aspects of Muslim Marriage in Indian sub-continent — A Review", 2 (1991) The Dhaka University Studies, Part F, pp.1-17, at p.5.

Age of minority and majority

Although all schools agree that a minor female may be married, without her consent, by her guardian, there is a difference of opinion regarding minority and majority i.e., the age at which majority is considered to be reached.

The *Hanafis* are of the opinion that the right of guardianship in the case of marriage terminates on the attainment of puberty. After attaining the age of puberty a female cannot be married without her consent by her guardian. Baillie,³⁷ based on the *Futawa Alamgiri*, holds that the lowest age of puberty, according to its natural signs, is 9 years in females and 12 years in males:

when the signs do not appear both sexes are held to be adult when they have completed their 15th year.³⁸

Under *Hanafi* law, therefore, minority ends upon the attainment of puberty, i.e., puberty and majority are considered synonymous. In the absence of specific proof, minority terminates at the age of 15.³⁹

Thus, to recapitulate, in the case of a female, puberty would be established after the age of 9 years if there are natural signs at any time before the age of 15. Puberty is therefore attained either:

- 1) on the completion of her 15th year or
- 2) on her attainment of the state of puberty at an earlier period.⁴⁰

Abu Haneefa was of the opinion that the puberty of a female is established by circumstances or upon her attaining the higher age of 17 years, unless signs of puberty are shown at an earlier age.⁴¹ However, the *Hedaya*⁴² reports that Imam Haneefa's two disciples, Imam Muhammad and Abu Yusuf maintained:

that upon either boy or girl completing the fifteenth year they are to be declared as adult; there is also one report of Haneefa to the same effect.

The opinion of the two disciples on this subject may be taken to be equal to, if not surpassing their master, so fifteen is the relevant age.

³⁷ Supra note 33, at p.4.

³⁸ Ibid. See also supra note 5, at p.530.

³⁹ Supra note 1, at p.199.

⁴⁰ Verma, B.R., Muslim Marriage, Dissolution and Maintenance; 2nd Edition, Allahabad, 1988, at p.134.

⁴¹ Supra note 5, at p.529.

⁴² Ibid.

Judicial Interpretation of what constitutes minority and majority

The age of 15 has therefore been agreed upon as the age of presumption of puberty, i.e., majority, and this has been upheld by various courts as being the age upon which, according to Muhammadan Law, a girl must be presumed to have reached puberty (*Nawab Bibi vs Allah Ditta*,⁴³ *Yusuf vs Mt. Zainab*⁴⁴). This presumption, i.e., as to the attainment of puberty, is rebuttable under the law (*Daulan vs Dosa*⁴⁵).

In *Mst. Atkia Begum vs Muhammad Ibrahim Rashid Nawah*⁴⁶ it was held:

For the purpose of marriage, according to Muhammadan law, a girl attains majority either (1) on the completion of her fifteenth year or (2) on her attainment of a state of puberty at an earlier period.

It must be mentioned briefly that the Majority Act of 1875 lays down 18 as the age of majority but section 2 specifically declares that the Act shall not affect the "the capacity of any person to act in the following matters (namely) marriage, dower, divorce, and adoption."⁴⁷

Option of Puberty

Although a *wali* or marriage guardian is entitled to contract into marriage a minor without his/her consent, he or she may upon the attainment of majority exercise what is known as the 'option of puberty'. The option of puberty is the right of ratifying or rescinding the marriage contracted during minority by her guardian.

According to the *Hanafi* school, in all cases except where the guardian giving them in marriage was the father or grandfather, minors have an option of repudiating such a marriage when they reach majority.⁴⁸ According to Baillie:

Where minors are contracted in marriage by a father or grandfather, they have no option on arriving at puberty; but when contracted by any one other than a father or grandfather, they have an option on arriving at puberty, and may either abide by the marriage or cancel it.⁴⁹

A minor's marriage is, therefore, voidable by virtue of the option

⁴³ 1924 AIR Lah 188.

⁴⁴ 1923 AIR Lah 102.

⁴⁵ 1956 PLD Lah 712.

⁴⁶ 1916 AIR (PC) 250.

⁴⁷ See also supra note 14, at p.8.

⁴⁸ Anderson, J.N.D., *Islamic Law in the Modern World*, Connecticut, 1975, at p.44.

⁴⁹ Supra note 33, at p.50.

vested in the minor i.e., the 'option of puberty'. The option must be exercised by the minor female immediately upon attaining majority or on her acquiring knowledge of the marriage. In *Maula Dad vs Mt. Fateh Bibi*,⁵⁰ the plaintiff, Mst. Fateh Bibi, was only about six years old at the time when she was given in marriage by her mother. After ten years Fateh Bibi instituted a suit against her husband and claimed that she had exercised her right of repudiating the marriage after attaining puberty. Counsel for Maula Dad, the husband, argued that strict interpretation of the Muslim law requires that the option, to be operative, should be exercised immediately upon attaining puberty. It was held that the 'option of puberty' continues until the wife is acquainted with the fact that she has been married.

The mere exercise of the option of repudiation does not operate as a dissolution of the marriage. The repudiation must be confirmed by the court. Until then the marriage subsists, and if either party to the marriage dies before the case is heard, the other will inherit from him or her as the case may be.⁵¹

In *Abdul Karim vs Aminabai*⁵² the plaintiff prayed for a declaration that the marriage between him and the defendant, to whom he was married when she was nine years old, was subsisting and for a decree against her to live with him and allow him all his conjugal rights. The wife claimed to have repudiated the marriage upon her attaining puberty. Justice Tyabji held that the option of repudiation given to the wife is based on principles repeatedly emphasised in the *Quran*. It is one of the safeguards by which Islam alleviates the incidence of pre-Islamic institutions pressing harshly against women and children.

It was held in the above case that the option is not determined unless she assents explicitly or by implication to the marriage. Tyabji J. further determined that the option of puberty exists even where there has been consummation of the marriage or consummation without the wife's consent.

⁵⁰ 1926 AIR Lah 545.

⁵¹ Hidayatullah M. and Hidayatullah, A. (eds), Mulla's Principles of Muhammadan Law; 19th Edition, Bombay, 1997, at p.299.

⁵² 1935 AIR Bom 308.

Option of puberty and Dissolution of Muslim Marriages Act of 1939

Under *Hanafi* law, the option of puberty could only be exercised if the minor had been contracted into marriage by any other than the father or the grandfather. The Dissolution of Muslim Marriages Act of 1939 (Act VII of 1939) abolished such restrictions imposed on the option of a woman. Under the above Act, the minor has the right to exercise the option of puberty without reference to the fact as to who contracted her marriage. Sec. 2 (vii) of the Act provides that 'a woman married under Muslim law shall be entitled to obtain a decree for the dissolution of her marriage' on the ground:

that she, having been given in marriage by her father or other guardian before she attained the age of eighteen years, repudiated the marriage before attaining the age of nineteen years: Provided that the marriage has not been consummated.

The Act not only allows repudiation where it was not allowed by the religious law, it also fixes a particular age limit without any mention of puberty. As shown above, under religious law the minor has the option of repudiation after she attains puberty, which was the same as the age of majority. Under the Act of 1939, however, she acquired the right to repudiate the marriage before the age of nineteen without any reference to the age of puberty; also the option arises if the marriage took place before she attained the age of eighteen. Section 2(vii) of the Dissolution of Muslim Marriages Act does not speak of puberty at all, but only of an age though in fact it deals with the option arising at puberty; the clause eliminates any dispute of evidence of puberty.⁵³

CIVIL LAW RELATING TO THE AGE OF MARRIAGE

The Child Marriage Restraint Act, 1929

The Child Marriage Restraint Act of 1929 represents one of the major legislative changes during British reign which substantially interfered with customary and religious practices of India. Although the motivations and the intentions behind the Act were suspect, it is true that the Act could be enacted at that time probably only due to the fact that the country was under foreign rule. An earlier attempt (in the first half of the 1880s) by some Indian social reformers to bring about laws

⁵³ *Daulan vs Dosa* PLD Lah 712.

prohibiting child marriages had failed.⁵⁴ It was only after the passing of the Age of Consent Act of 1891 which recognised the offense of rape within marriage that legislation restraining child marriages was considered seriously.

Child Marriages in the Sub-Continent before the Act

In undivided India, child marriages were practiced by both the Hindus and the Muslims. Both religions sanctioned pre-puberty and child marriages and it is difficult to trace which community played the greater part in making the practice widely acceptable.

Under Hindu law, which had a great influence on all the people of the sub-continent, child marriages are allowed; in fact they are commended:

Orthodox Hindus of all castes until recent times have insisted upon marrying off their daughters before the attainment of puberty, a practice that at times has been adhered to even to the detriment of the parties.⁵⁵

It was considered a sin for the parents to keep their daughters unmarried. Orthodox Hindus therefore greatly favoured child marriages and the practice was widely prevalent amongst the Hindus. However some authors⁵⁶ believe that it was from the early Christian era that marriages of children began to take place in India. In ancient India, child marriages were not the norm, it only became so from the early centuries of the Christian era; the Hindu religious texts of the period from 600 to 900 AD "advocated for the marriage of girls normally between the ages of 8 to 10 and certainly before the age of 12 years."⁵⁷ During the period of 800 to 1000 AD "this practice found greater and greater social respectability and came to be widely practiced."⁵⁸

⁵⁴ See Heimsath, C. H., "The Origin and Enactment of the Indian Age of Consent Bill, 1891," 21 (1961-62) *Journal of Asian Studies*, pp.491-504; and Engels, D., "The Age of Consent Act of 1891: Colonial Ideology in Bengal", 3:2 (1983) *South Asia Review*, pp.107-131, at p.108.

⁵⁵ Sampath, B.N., "Child Marriage: Revision of Marriageable Age and its Effective Implementation", 3 (1972) *LAWASIA*, pp.386-402, at p.388-389.

⁵⁶ See Goyal, R.P. *Marriage Age in India*, New Delhi, 1988, at pp.10-11 and Kapadia, K.M. *Marriage and Family in India*; Oxford et al. 1966, at pp.142-143.

⁵⁷ Goyal, supra note 56, at p.10.

⁵⁸ Ibid.

The practice of child marriages continued unabated until the 19th century and well into the 20th. The Muslim community, with the sanction of their religion as regards child marriages, also practiced it widely. Although sanctioned by religion, the Muslim custom of child marriage in India was said sometimes to have been borrowed from the Hindus. The majority of the people belonging to religions other than Hinduism in India, ('who are mainly descendants of converts from Hinduism') are alleged to have copied the custom of child marriage from the Hindus.⁵⁹

On the other hand, David and Vera Mace⁶⁰ say that the Mughal invasions of India have sometimes been blamed for the custom of child marriage. Sir William Hunter explained the phenomena of child marriages by saying that Muslim atrocities perpetrated on Hindu women drove the population to adopt child marriage as a measure of safety, because the Muslims were reluctant to violate any woman who was already married.⁶¹ Thus, some believe that child marriage, like *purdah*, became security against violation by Muslim invaders.

Whichever community was responsible for the phenomena initially, the practice of child marriage became equally prevalent amongst both:

Whether or not the Hindu custom was influenced by Muslim depredations, it soon became a Muslim practice.⁶²

The custom of *purdah* widely prevalent among the Muslims, signifying as it did the necessity of protecting the chastity of the daughters, meant that the earlier marriages could be arranged the better for all concerned.

In 1896 the female mean marriage age in India was 12.77 years.⁶³ It was in Bengal that the practice of early marriage was most prevalent. In fact it was because of the situation that prevailed in Bengal that in 1891 the age of consent was raised from 10 to 12 years. "In 1891, several cases of bodily injury, even of death, were reported in Bengal as a result of marital intercourse with child brides."⁶⁴ In 1921 in Bengal, in the age

⁵⁹ Agarwala, S.N. Age at Marriage at India, Allahabad, 1962, at p.4.

⁶⁰ Mace, D. and Vera, Marriage - East and West, London, 1960, at p.178.

⁶¹ Ibid.

⁶² Ibid.

⁶³ Supra note 59, at p.228.

⁶⁴ Supra note 60, at p.181.

group of 10-15, 59 Muslim girls out of 100 were married; in 1911 this number increased to 60% and in 1921 decreased to 52.5%.

The Census of 1921 reports

It can be assumed for all practical purposes that every woman is in a marital state at or immediately after puberty and that cohabitation, therefore, begins in every case with puberty.⁶⁵

It was extremely unlikely that making of sexual intercourse within marriage under a certain age illegal would have any effect in society. The relationship of husband and wife was considered sacred and the right of the husband to consummate the marriage was an inherent right. Therefore, the age of consent, even when it was raised to 14 for married girls in 1925, was not enforced:

It was often difficult to prove that injury or death had resulted directly from sexual intercourse. It was difficult also in many cases to establish the precise age of the girl. Relatives of the husband, who were normally the only persons likely to know the facts, were reluctant to disclose them. The submissive nature of the Indian girl led her to suffer in silence.⁶⁶

Early consummation and child birth led often to horrific injuries and death. The girl took on the role of wife and bore the responsibilities of motherhood when she herself needed the care and love of a mother. It led to severe mental as well as physical strain.

Background to the enactment of the Child Marriage Restraint Act, 1929

Before 1929 there is no mention of any cases which would come under the offense of rape in marital relationship as there is no prohibition on intercourse, whatever the age of the wife. There are claims, nevertheless, that under Muslim religious texts "consummation of marriage before the girl attained puberty was forbidden."⁶⁷

The Age of Consent Act, 1891

The Indian Penal Code, enacted by the British in 1860 brought the consummation of marriage, when the wife was below 10 years, within the offense of rape. In 1891 the age of consent was raised to 12 years

⁶⁵ Quoted by Mayo, K., Mother India, London, 1927, at p.51.

⁶⁶ *Supra* note 60, at p. 181.

⁶⁷ Encyclopedia of Indian, Vol 1, New Delhi, 1991, at p.9.

(from 10 years) in both marital and non-marital cases.⁶⁸ Sexual intercourse with girls below that age, whether married to the person or not, was treated as rape and punishable with ten years imprisonment to transportation for life.

The passing of this Act, raising the age of consent and the inclusion of the concept of marital rape, was preceded by fervent debate between divergent groups, while at the same time bringing certain groups together. Proponents for and against this Act were motivated in their views based on diverging ideals. Engels argues that the Age of Consent Act, 1891 "challenged male control over female sexuality in Bengal and was an attempt to display British moral superiority in India."⁶⁹

The case for raising the age of consent was based to a large extent on cases like that of *Rakmabai vs Dadaji*.⁷⁰ In 1884 Dadaji Bhikaji filed a suit for the restitution of conjugal rights against Rakmabai whom he had married when he was aged 20 but she was merely eleven years old. The marriage had never been consummated since Rakmabai reached puberty at her mother's house at a much later age. Since the question of consummation was generally considered crucial to the restitution of conjugal rights when the courts ruled that Rakmabai would have to face imprisonment if she refused to go back to her husband, even though the marriage had not been consummated, Rakmabai chose to suffer imprisonment rather than live with her husband. The Court's verdict was in recognition of the 'cultural laws' but for Indian women it was 'read as a devious alliance between the imperial and the Indian male'. Rakmabai drew upon her own and the experiences of other child wives to give graphic accounts of the practice of child marriages and the agonies suffered by young girls.⁷¹

For the British it was the right time to try and get rid of what they considered to be a practice particularly abhorrent to them, i.e., marriage and consummation at an early age. Allegedly what the British tried to do, more than social reform, was to transplant their ideas of right and

⁶⁸ Indian Criminal Law Amendment Act, 1891 (Act X of 1891).

⁶⁹ Kapadia, supra note 54, at p.107.

⁷⁰ 1886 ILR 10 Bom 301, 572-79.

⁷¹ Anagol McGinn, P., "The Age of Consent Act (1891) reconsidered: Women's Perspective and Participation in the Child-Marriage Controversy in India," 12 (1992) South Asia Research, pp.100-118, at pp.101.

wrong into colonised India as a way of legitimising their rule. The colonisers sought not so much to remove the fetters of early marriage and consummation, but rather to displace Indian patriarchal ideals with the British idea of male superiority. Although the British debate was based on the humanitarian concern for women and their health; yet

....at the heart of the matter was an antagonism between two gender systems, in both of which men held control of the processes of production and reproduction.⁷²

This interference into their personal matters caused the orthodox Indian population to react violently. In Bengal, public discussion soon changed “into mass agitation which questioned the character of British rule in India.”⁷³

Thus, a curious situation arose whereby the Indian male dominated society was pitched against the British male dominated society while the women of the two countries discovered common grounds for cooperation. One must bear in mind that at the time the raising of the age of consent became a contentious issue, the Britain rulers were the products of and under the control of the Victorian reign, characterised by its public picture of conventionality and austerity. The Age of Consent Act, 1891 was the perfect way for them to replace what appeared to them the barbaric practice of the Indians by their ‘genteel’ ideals of gender relations.

The debate relating to the Age of Consent Act is hailed as the starting point of nationalistic feelings in Indian society (i.e., male Indian society). Curiously enough, the Act is also deemed as the starting point of feminist struggles against oppression by the male and in this the Indian women were supported by the British feminists of those times. So by a quirk of social reaction, while the British and Indians were generally at loggerheads, Indian and British women — the colonised women and the women of the colonisers — came together briefly on what they considered to be grounds of common interest. The ‘age of consent’ agitation was, thus, as Engels describes it, “the result of an encounter between two types of male domination and female oppression.”⁷⁴

⁷² Engels, supra note 54, at p.107.

⁷³ Ibid., at p.114.

⁷⁴ Ibid., at p.114.

British feminists were, for the first time, united with Indian women. The uniting ground was the realisation that it was women that the age of consent issue affected and who were the crux of the debates, and not traditionalists and reformists; those for and against the raising of the age of consent.⁷⁵ The Act did receive the support of males who were “elites of progressive opinion” but they based their arguments on the ‘rejuvenation of race theories’.⁷⁶ Eventually, by the Act of 1891, 12 became the age of consent in both marital and non-marital cases. In 1925 a distinction between marital and non-marital rape was introduced and the age of consent in the former was fixed at 13 and the latter at 14 years.⁷⁷ M. Jung says that the raising of the age was in harmony with Muslim law, which lays down that the husband is not entitled to have recourse to his young wife of immature years without regard to the question of her safety.⁷⁸

On the 1st of February 1927, the Indian reformer Rai Sahib Harbilas Sarada introduced ‘the Sarada’ Bill to prohibit child marriages, thereby focusing attention on the real problem.⁷⁹ Although initially intended to confine its operations to Hindu marriages only, later, when a proposal was made to make child marriage a penal offence instead of merely a civil offence, the bill was made applicable to all, irrespective of religion.⁸⁰

In 1928 The Committee on the Age of Consent, popularly known as the Joshi Committee, was established to examine the existing situation and the necessity of prohibiting child marriages. The main purpose for which the Committee was appointed was ‘to examine the state of the law relating to the age of consent, as contained in the Penal Code, in order to ascertain whether the age should be raised from 12 to 14 in marital and 14 to 16 in extra marital cases’.⁸¹

⁷⁵ Supra note 71, at p.105.

⁷⁶ Ibid., at p.106.

⁷⁷ Vide Section 2 of the Indian Penal Code (Amendment) Act, 1925 (Act XXXIX of 1925), Bangladesh Code Vol.I, Dhaka, 1986

⁷⁸ Jung, M. U., A Digest of Anglo-Muslim Law, Allahabad, 1932, at p.4.

⁷⁹ Supra note 67, at p.181.

⁸⁰ Legislative Assembly Debates (Official Reports) Vol.II, 2nd Session of the 3rd Legislative Assembly, 1928, at p.1967.

⁸¹ Supra note 60, at pp. 1-2.

The Committee was not directly concerned with the question of prohibiting or penalising child marriages. It had to, among other things, consider how far the existing law of the age of consent, within the marital state, was effective in its operation and whether any remedy could be suggested to make it more effective. Most of those consulted by the Committee favoured the view that the mere law of age of consent was ineffectual to attain the goal of protecting "tender girls against early cohabitation and maternity"⁸² and that a minimum age of marriage ought to be fixed. During this period the prevention of early marriages came to be regarded as the remedy to the evils of early consummation.

The bill was circulated amongst various sections of the public in order to investigate the reactions and the opinion of the populace. As a result of the thorough investigations made by the committee they concluded:

Early maternity is an evil and an evil of great magnitude. It contributes very largely to maternal and infantile mortality, and in many cases wrecks the physical system of the girl and generally leads to degeneracy in the physique of the race.⁸³

There were many objections to a law setting down a minimum age for marriage. Objections were made on the grounds that matters of such personal nature should not be subject to legislation, especially legislation by a foreign Government who had no right to interfere with the religious rights of the people.⁸⁴ As M.K. Acharya, an orthodox Hindu member of the Legislative assembly and vehement opponent of the bill, declared:

The principle of the Bill is one to which I cannot agree, namely, interfering with the religious practices of the people, and making that a penal offence which people concerned regard as a religious rite. No Government has a right to do that.⁸⁵

The opposition of the Muslims was also particularly strong not because the practice of child marriage was primarily prevalent in that community, "but because social legislation challenges the validity of the *Sharia*, which is the social as well as the religious law."⁸⁶

⁸² Supra note 67, at p.8.

⁸³ Supra note 60, at p.181.

⁸⁴ See also supra note 60, at p.99.

⁸⁵ Supra note 67, at p.1972.

⁸⁶ Woodsmall, R. F., *Women in the Changing Islamic System*, Delhi, 1936, at p.99.

The bill to restrain child marriages evoked strong sentiments on both sides, both for and against it. Although it had many adversaries, the bill found many supporters also. Women, in general, as in 1891, favoured the setting down of a minimum age of marriage; in fact opposition to the bill came mainly from men.⁸⁷ However, many progressive men, both Hindus and Muslims, expressed strong support. Although the orthodox community saw the measures as interference by the British, many realised that practices such as child marriage provided justification for the British to remain in India. As Harbilas Sarda said (referring to Katherine Mayo, a scathing critic of Indian life and practices, and Mr. Churchill):

People in England and America are watching how we deal with this Bill. Writers like Miss. Mayo and politicians like Mr. Winston Churchill have declared that India cannot be granted self-government so long as she tolerates and commits acts of oppression against girls of tender age.⁸⁸

The Joshi Committee were of the opinion that even though the Act would not be supported unanimously, there was, nevertheless, support by a large majority who felt that legislation was necessary to prevent the evils of early marriage, consummation and child bearing. It was felt that legislation regarding the age of consent was not enough; what was required was a law relating to the age of marriage. The age of consent had been most ineffective in marital cases due to the fact that consummation within marriage, whatever the age of the wife, was thought to be the right of the husband and most people would shy away from making complaints regarding an offence of rape within marriage; neither was such an offence cognizable. The best way to prevent early consummation or of deferring it to a higher age was to penalise marriages below a certain age, since marriage was a public act.⁸⁹

The Enactment of the Child Marriage Restraint Act of 1929

Based on the recommendations made by the Committee, the Sarda Bill was amended and on October 1st, 1929; the Child Marriage

⁸⁷ Ibid., at p.98.

⁸⁸ Legislative Assembly Debates (Official Report) Vol.1, 4th Session of the 3rd Legislative Assembly, 1929, at p.196.

⁸⁹ Supra note 60, at p.174.

Restraint Act was passed by the Indian Parliament.⁹⁰ On the 20th of January 1930, the bill, after assent by the Governor General, was presented before the Third Legislative Assembly as the Child Marriage Restraint Act, 1929.⁹¹

At the time of the passing of the bill it was clear that since marriage was considered to be a highly meritorious act under Muslim law, any legislation declaring marriage below a certain age as invalid would be resented.⁹²

The Act made the marriage of a female below the age of fourteen and that of a male below eighteen punishable. However, the Act did not declare such marriages invalid, i.e., a marriage involving minors (according to the Act) could still be a valid marriage and all the consequences of a valid marriage would follow. When the Sarda Bill had been circulated for opinion it had been obvious that a considerable portion of the society was opposed to the "proposal to invalidate such marriages both on legal and religious grounds."⁹³

Due to the fact that declaring child marriages completely invalid or null and void would lead to social chaos (for instance as regards the legitimacy of any children) and would directly go against the religious prescriptions of both the Hindus and the Muslims, the Act, in the end, merely made child marriages punishable. Thus, it led to the strange situation where an act of an individual was illegal and made punishable but the end result of it, i.e., the marriage itself, would be valid.

By section 2(a) of the Act, any person who was, if female, under the age of 14 or if male, under the age of 18, was deemed to be a child.⁹⁴ Section 4 made the contracting of a child marriage punishable with simple imprisonment which may extend to one month, or with fine, which may extend to one thousand takas or both. Section 2(b) laid down that: "child marriage" means a marriage to which either of the parties is a child".

⁹⁰ Ibid., at 181 and supra note 78, at p.4.

⁹¹ 3rd Legislative Assembly (Official Report), 20th Jan. 1930, Vol.1, Govt. of India Press, at p.85.

⁹² Supra note 67, at p.181.

⁹³ Ibid., at p.15.

⁹⁴ The Child Marriage Restraint Act, 1929.

The following persons were deemed to be punishable under the Act:

- 1) Any adult male (being above the age of 18), if he contracts a child marriage (section 4);
- 2) Any person who solemnises, performs, conducts or directs any child marriage (section 5);
- 3) Any person having charge of the minor, whether as parent or guardian or in any capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnized or negligently fails to prevent it from being solemnized (section 6).⁹⁵

Therefore the celebration of the marriage of a child contravened the provisions of the Act although the marriage itself was not declared to be invalid by it, it merely imposed penalties on persons bringing about such marriages.⁹⁶ In *Munshi Ram vs Emperor*⁹⁷ it was held that the marriage of a 12-13 year old girl was valid; the Act simply deals with prevention and not with invalidity of child marriage. If solemnized under personal law, the validity of the marriage is not affected. The Act was enacted with the modest view of merely restraining child marriages and not prohibiting them.⁹⁸

Sections 3, 4 and 5 penalise persons responsible for the child marriage, while section 12 grants the Court the power to prohibit a child marriage 'which is arranged' or 'is about to be solemnized'. Once the marriage has taken place, the court has the power only to punish those who have acted in contravention of the Act, but not to declare the marriage invalid.⁹⁹ In the case of *Ram Baran Upadhiya vs Sital Pathan* it was held:

a distinction must be observed between the performance of the act and the act itself. The Child Marriage Restraint Act aims at the restraint of the solemnisation of child marriages. It does not affect the validity of the marriages after they have been performed.¹⁰⁰

⁹⁵ Ibid.

⁹⁶ *Moti vs. Beni* 1936 AIR All 852.

⁹⁷ 1936 AIR All 11.

⁹⁸ Diwan, P., *Law of Marriage and Divorce*, Allahabad, 1991, at p.109.

⁹⁹ Supra note 94.

¹⁰⁰ 1939 AIR All 340.

Amendments to the Child Marriage Restraint Act

The Muslim Family Laws Ordinance, 1961

On the 4th of August, 1955 a seven member Commission on Marriage and Family Laws was formed in order to examine the existing laws relating to marriage and family in Pakistan and to make suggestions for modifications and recommendations. As regards the age of marriage, the Commission raised two questions; first, as to whether child marriages should be prevented by legislating that no man under eighteen and no woman under sixteen shall enter into a contract of marriage; and secondly, whether the fixing of these age limits were in any way prohibited by the Holy *Qur'an* or any authoritative *Hadith*.¹⁰¹

All the members except one, were of the opinion:

that child marriages should be prevented by legislating, that no man under eighteen and no woman under sixteen shall enter into a contract of marriage. The Commission is of the opinion that such legislation will be in perfect conformity with the injunctions of the Holy Qur'an and Sunnah. The Holy Qur'an makes not only puberty but a definite stage in the development of intelligence as a condition precedent for entrusting property to the orphans. The question of marriage may be decided on the same footing because the entrusting of the life of marrying-partners to each other is an affair of greater importance than mere entrusting of property.¹⁰²

According to the Commission, child marriages were not categorically prohibited by any injunction because they might have been "comparatively harmless" in certain stages of social life. However, the time had come to enforce the original trend of Islam that the parties to a marriage should not only have reached puberty but must possess sufficient reason and intelligence.¹⁰³

In a note of dissent one member of the commission, Maulana Ehtisham-ul-Huq, objected strongly to any fixing of the age of marriage. He was of the opinion that "any restrictions on early or pre-puberty marriages amount to '*mudakhat fid-din*' or an interference with Faith."¹⁰⁴ According to him there may be various situations where it is

¹⁰¹ Supra note 17, at p.1209.

¹⁰² Ibid.

¹⁰³ Ibid.

¹⁰⁴ Supra note 16, at p.1580.

in the interests of the bride that *nikha* is performed without delay: for example, if a man is on his death bed and does not wish to leave his small daughter to the mercy of his relatives or neighbours. As the basis of his dissension he put forward the argument that the relevant verse of the *Quran* had been misinterpreted (see earlier).¹⁰⁵

Abdul Ala Maudoodi,¹⁰⁶ an orthodox Muslim and an expert on religious matters (although not a member of the Commission), also opined that there was no need to check child marriages through legislation. According to him:

The Islamic Shariah has refrained from creating artificial restraints because they are unreasonable and unnecessary. Instead of doing this, Islam has left it to the discretion of the people themselves to decide when they should marry and when they should not.¹⁰⁷

Like the others who opposed the Ordinance of 1961, Maudoodi was also of the opinion that abuses of the system of child marriage could be stopped through spread of education: thereby admitting the threat of such abuses.¹⁰⁸

Another vehement critic of the Ordinance, Amin Ahsan Islahi¹⁰⁹ thought that the result of prescribing a minimum age of marriage would mean that something that is permissible in the *Shariah* would become 'prohibited' and by doing so the result would be moral degeneracy amongst the youth of the nation. He also, quite rightly, pointed out that the law would fail to be enforced unless birth registers were strictly maintained.

In spite of the opposition, the minimum age for marriage of the female was raised to 16 (from 14 years), based on the recommendations made by the Commission in 1961, by section 12(1)(a) of the Muslim Family Laws Ordinance. Therefore, from 1961, the minimum age of marriage for girls became 16. Marriage of a girl below this age would however still not be void. In the case of *Bakshi vs Bashir Ahmed* it was held:

¹⁰⁵ Obid., at pp.1577-1578.

¹⁰⁶ Maudoodi, Maulana A. A. "The Family Law of Islam (The Questionnaire and its Reply)." Studies in the Family Law of Islam, Karachi, 1961, pp.13-34, at p.17.

¹⁰⁷ Id.

¹⁰⁸ Ibid, at p.18.

¹⁰⁹ Islahi, A. A. "A Critique of the Modernist Approach to the Family Law of Islam", Studies in the Family Law of Islam, Karachi, 1961, at pp.87-199, at p.143-150.

If a girl below the age of 16 years marries in violation of the Child Marriage Restraint Act, 1929 which imposes prohibition for marriage of [a] girl below the age of 16 years, such marriage by itself does not become invalid....¹¹⁰

The Child Marriage Restraint (Amendment) Ordinance, 1984¹¹¹

The Act of 1929 and the subsequent amendments, attempting as it did to curb what was recognised as the evils of early marriage, did not succeed in the manner intended. Some were of the opinion that due to its utter ineffectiveness it had a detrimental effect and created disrespect for law.¹¹² For example, according to Armindo Miranda,¹¹³ this failure was due largely to the fact that it came into conflict with the prejudices and the socio-economic realities that regulate the timing of marriage.

Nevertheless in 1976, in spite of the lack of success of the Act restraining child marriages, the Bangladesh Population Control and Family Planning Division felt it was appropriate to recommend a substantial raising in the level of marriage age to the range of 18 to 25 years for females.¹¹⁴ In 1980 a member of Parliament had proposed that the minimum age of marriage should be increased to 22 for women and 28 for men; the resolution was referred to a Select Committee for further scrutiny.¹¹⁵

In 1984 the Child Marriage Restraint Act was further amended by the Child Marriage Restraint (Amendment) Ordinance of 1984 (Ordinance No.XXXVIII of 1984) and the minimum age of marriage was increased, for females from 16 to 18 years and for males from 18 to 21 years.¹¹⁶

The Ordinance of 1984 amended section 4 of the Act and provided for the punishment of a male adult (above the age of 21 years), if he

¹¹⁰ 22 DLR 1970 290.

¹¹¹ Ordinance No. XXXVIII of 1984. The Bangladesh Gazette Extraordinary, June 4, 1984.

¹¹² Supra Note 86, at p.98

¹¹³ Miranda, A., "Nuptiality in Bangladesh," 9 (1980) The Journal of Social Studies, pp.58-98, at p.62.

¹¹⁴ Ibid, at p. 63.

¹¹⁵ Chaudhury, R. H. and Ahmed, N. R., Female Status in Bangladesh, Dhaka,1980, at p.32.

¹¹⁶ Supra note 111.

contracted a child marriage (that is a marriage with a female below the age of 18 years); and for a female adult being above the age of 18 years who contracts a marriage with a male below the age of 21 years. Previously, if a female adult married a minor boy she could not be punished, although an adult male marrying a minor girl could be. This means that now if the husband and wife are both 20, or if the wife is over 18 and the husband under 21, the wife may be punished for contracting a marriage with a child because the husband is below the minimum age for males. Lucy Carrol says that she finds it is beyond belief that in a socio-cultural context where girls are so disadvantaged and have little freedom in selecting their prospective husbands, the wife should be expected to bear a greater criminal liability than a man nearly three years her senior.¹¹⁷

There were other anomalies in the Act. B.N. Sampath¹¹⁸ offers an example of the curious situation that may be created due to the superimposition of the Child Marriage Restraint Act over Muslim personal law. If a Muslim boy of seventeen married, he could do so validly under his personal law without the 'concurrence of his parents' or even against their wishes. However, even if the parents were mere onlookers and would have no *locus standi* in such a marriage they could be punished under the Act for being mere participators in the marriage ceremony.¹¹⁹ Again under the Majority Act of 1895, a boy of 18 is considered to be a major and can, by law, enter into any contract but he may be punished for entering into a contract of marriage.

Child Marriage Restraint Act, 1929 and The Dissolution of Muslim Marriages Act, 1939

The age at which a girl could exercise her option of puberty was laid down in clause (vii) of section 2 of the Dissolution of Muslim Marriages Act, 1939 initially as 15 years. The probable consequences of the

¹¹⁷ Carroll, L. "Recent Bangladeshi Legislation Affecting Women: Child Marriage, Dowry and Cruelty to Women," 5:1 (1985) Islamic and Comparative Law Quarterly, pp.255-264, at p.257.

¹¹⁸ Sampath, B.N., "Marriageable Age, Consent and Soundness of Mind in Indian Matrimonial Law: A Plea for Rationalization", 5, 1-2 (1969) The Benaras Law Journal, pp.28-54, at p.32.

¹¹⁹ Ibid.

changes made were discussed by Justice Kaikaus in the case of *Mst. Daulan vs Dosa*.¹²⁰ First, a woman married before she attained puberty, but on the completion of fifteen years would be left entirely without remedy; secondly, a girl who attains puberty at the age of eleven or less but has already been married would be forced either to accept her husband or wait for four more years to exercise her option.

In 1961 the Muslim Family Laws Ordinance raised both the minimum legal age of marriage of females as well as the age after which the option of puberty could be exercised, to 16. When the age limit for females was raised to 18 years by the Child Marriage Restraint (Amendment) Ordinance, 1984, there was no simultaneous and appropriate amendment of the age at which a female could exercise her option of puberty. As a result, although by 1984 [vide the Child Marriage Restraint (Amendment) Ordinance] the marriage of a girl below the age of eighteen years was a criminal offence, the marriage was valid and could not be repudiated by the girl unless she was married below the age of sixteen (since this was the lower age in section 2(vii) of the Dissolution of Muslim Marriages Act as was applicable). It was only after two years i.e., in 1986 by virtue of The Dissolution of the Muslim Marriages (Amendment) Ordinance that the disparity of ages in these two Acts were removed.¹²¹

CHILD MARRIAGES IN BANGLADESH

The Child Marriage Restraint Act, 1929 made an attempt to restrain child marriages. The impact of the enactment, at first, was that it started a panic among parents who rushed to get their minor daughters and sons married off before it came into effect. When the 1931 Census was published it became obvious, as Eleanor Rathbone commented, that the Act had "been indirectly the occasion of a colossal increase in the evil it sought to remedy."¹²²

Two years after the Child Marriage Restraint Act had been enacted

¹²⁰ 1956 PLD (WP) Lah 712.

¹²¹ Vide Ordinance No.XXV of 1986: The Bangladesh Gazette, Extraordinary, 2nd April, 1986.

¹²² *Supra* note 60, at p.182.

(1931), the mean age of marriage for females was 12.6 years.¹²³ It was obvious that the goal of the Act had not been fulfilled. Two years after the Act had been enforced there had been, in all, 437 prosecutions, of which only 167 had been successful; of the successful cases only 17 persons had been sent to prison.¹²⁴

The situation improved slightly by 1941 when the official mean age of marriage for females became 13.7 years.¹²⁵ The age rose again to 15.38 in 1946 (i.e., there was an average rate of increase per decade of 0.52 years).¹²⁶ According to the Bangladesh Bureau of Statistics, during the period of 1951 to 1961 there was a decrease of the age of marriage from 14.4 to 13.9 years. In 1961 the minimum age limit was fixed at 16 years by the Muslim Family Laws Ordinance. Following this increase the mean age at marriage for females in the years 1965, 1974 and 1975 rose to 14.8, 15.9 and 16.6 respectively.¹²⁷

In the eighties the Child Marriage Restraint (Amendment) Ordinance of 1984 further increased the age limit for females to 18. The age of marriage officially continued to rise until the official statistics show that in the year 1989-90 the age of marriage reached the required minimum of 18 and in 1992 it became 18.2.¹²⁸

The question one is faced with is whether the reality corresponds with the statistics shown and whether there has been in fact such an increase in the marriage age. It must be noted that the statistical data produced by the Government relating to the age of marriage is, to an extent, unreliable. There is no practice, especially in the rural areas, of registration of births. The people themselves do not keep track of their ages, as a result of which they are mostly unaware of their own age, as well as the ages of the family members. Ellen Sattar in a study conducted in rural Bangladesh reported the 'unreliability of age reporting'. According to her, age seems quite unimportant and many

¹²³ Bangladesh Statistical Yearbook, Dhaka, 1991.

¹²⁴ *Supra* note 60, at p.183.

¹²⁵ *Supra* note 123.

¹²⁶ *Supra* note 42, at p.228.

¹²⁷ *Supra* note 123.

¹²⁸ Bangladesh Statistical Yearbook, Dhaka, 1993.

people do not know and often guess wildly.¹²⁹

One of the major disadvantages or problems one has to contend with when one is working in the field, therefore, is almost total indifference to age. It is impossible to find out the precise age of the interviewee without a long winded question and answer session trying to correlate dates with notable events. Since age is the crucial factor when one is dealing with the topic of this particular article, the lack of accurate information is a drawback not only for researchers but for the purpose of implementing any law relating to the age of marriage.

The data of the Government can only be obtained from the marriages that have been registered, and a large number of marriages are not registered. As for those that are registered, the parties often overstate their ages according to the legal requirement of minimum age - "Registrars are under no obligation to check whether the contracting parties to the marriage are in fact the ages they profess to be at the time of the ceremony."¹³⁰

A marriage REGISTRAR, who registers marriages in a rural area, in an interview frankly told me:

We ask the guardian of the bride to confirm that the she is not less than 18 years old, and they assure us of that. We have no way of knowing firsthand how old the girl really is, because although the groom is present before us, we have no way of seeing the bride to ascertain her true age.

Asked whether, when he is personally present at the solemnisation, and the bride looks like a child much younger than 18, he would refuse to register the marriage, the Registrar replied in the affirmative. The reason he gave was that he wishes to avoid getting entangled in any controversy or litigation.

There is a lack of coordination between the state authority and the social institutions. The village priest who solemnises marriages according to religious rules is unconcerned about the laws regarding minimum age. The *Munshi* who usually solemnizes marriages in a particular village said to me "we do not concern ourselves about the age of the parties — that is for the Registrar to find out", thereby absolving himself of responsibility.

Indeed, the *Ittefaq* newspaper on 6.9.92 and the *Sangbad* on 24.1.93

¹²⁹ Sattar, E., *Women in Bangladesh: A Village Study*, Dhaka, 1974, at p.24.

¹³⁰ Alamgir, S. F., *Profile of Bangladeshi Women*, Dhaka, 1977, at p.33.

reported that in several districts of Bangladesh child marriages are on the rise and that the ages of very small girls are being shown as 16 or 18 years in documents.

Marriages are required to be registered under the Muslim Marriages and Divorce Registration Act of 1974. Lack of registration, like underage marriage, does not effect the validity of the marriage. As mentioned earlier, a great number of marriages, especially in the rural areas, are not registered and, therefore, it is difficult to ascertain the actual age at which girls are being married, or the average age of marriage in Bangladesh. Although the age of marriage might have increased through the years, the question as to whether it actually corresponds with the age required under law needs to be thoroughly examined.

The number of prosecutions that have taken place under the Act is 'infinitesimal' when one compares the number of child marriages that took place in the years following the enactment of the Child Marriage Restraint Act in 1929.¹³¹ Even when marriages are registered there is no guarantee as to the parties complying with the minimum age requirement. The marriage REGISTRAR of another village described to me what the general procedure is:

If the parties are before the registrar he may ascertain their ages himself. This happens only rarely. Usually the guardians of the parties along with witnesses appear before the Registrar after a marriage has been solemnized. They attest to the fact that the parties are of age and that the girl has given her consent. 99% of the marriages which are registered, are registered afterwards in the Registrar's Office; only rarely is the Registrar present at the time of the marriage ceremony itself. Whatever the witnesses attest as the age of the parties is accepted by the Registrar. In the rural areas usually girls are married at an early age. We generally put down the girl's age as 18 even if she is much younger, even 12. If, however, a girl appears before me, and she is obviously much younger than 18, then I refuse to register the marriage because if any controversy arises I will be held responsible.

In the field study conducted, out of 560 respondents I recorded 238 respondents who were married below the age of puberty; 42.5% of the total number of respondents. The table of responses obtained is given below:

¹³¹ Supra note 118, at p. 51.

TABLE 1: Respondents' Age At Marriage.

	Frequency	Percent
Below puberty	238	42.5
Puberty to below 16	221	39.5
Puberty to below 18	35	6.3
18 and above	66	11.8
TOTAL	560	100.0

Bangladeshi authors do not deny that child marriages have and do take place. In fact the number of marriages in which both or one of the parties is a minor may be said to be greater if one considers the number of marriages which are not registered according to law. Coupled with that is the fact that in the absence of birth certificates or proper registration of birth, it is extremely easy to record a higher age on the marriage certificate.

The cause of early marriage is first and foremost religious. Child marriage facilitates the continuation of patriarchy since it augments the authority of the male family members to arbitrarily decide the future of their children. Through the institution of child marriage, like *purdah*, the parents seek to ensure the purity and chastity of the girl until she marries.

Again most marriages are arranged. The parents, with the male members having the greater say, consider themselves the best judges of what is good for their daughters. Marrying their daughters off at an early age ensures that the young girl can mould and adapt herself to her husband and in-laws. The new daughter-in-law would not have the "time to develop her own personality" and would be "still malleable".¹³² The high mortality rate may also be an inducement to early marriage "in order to produce more children to guard against the risk of death."¹³³

For a poor rural family the economic burden of an unmarried daughter who would not be a good investment for the future also means that girls are married as soon as possible. Therefore, economic considerations have an effect on the age of marriage. This can operate in

¹³² Abdullah, T. A. and Zeidenstein, S., Village Women of Bangladesh: Prospects for Change. Oxford et al, 1982, at p.96.

¹³³ *Supra* note 115, at p.14.

another manner. Weddings involve a great amount of expenditure for the bride's family which some families can ill afford; specially if they have a number of daughters. Marriages of daughters may be postponed due to the inability to pay for the wedding. The presence of an unmarried girl over the age of 16 is often a sign of poverty.¹³⁴

Parents of a daughter, unmarried beyond a certain age, often face the criticism and ridicule of society. This is true both for urban and rural areas although there may be differences as to what is considered the proper age. Tahrunnessa Abdullah and Sondra Zeidenstein in 1982 discovered that in a village the appropriate age for marriage was considered to be the onset of puberty at 12 or 13 (according to the Bangladesh Bureau of Statistics in 1982 the mean age at marriage was 17.7 years).¹³⁵ Although there were a number of unmarried women past that age in the village, which was a recent phenomena, 'these young women' were considered 'a social embarrassment' with no appropriate role for them.¹³⁶ According to Therese Blanchet:

Unmarried adolescent girls spell danger. They are hidden, marginalized and teased. This is especially pronounced in rural society where they are still an anomaly.¹³⁷

Although by tracing the statistics provided by the government, one might be deluded into the belief that the age of marriage has been increasing through the years so that now it has reached that point where all marriages take place above the minimum age required by the Act of 1929 (i.e. 18 years since the amendment of 1984), the real situation is somewhat different. As Adnan Shapan sees it, "by marrying off a daughter a peasant household loses an individual on the brink of her net reproductive stage" and this can be off-set or overcompensated by bringing in, if possible, a daughter-in-law "who serves both as a net producer and as a biological reproducer of the labour power of the future."¹³⁸ This means that there is likely to be a uniformly low marital

¹³⁴ Ellickson, J. "Women in Rural Bangladesh: Variations in Problems of Self-Perception" Paper to Women and Development Conference, Wellesley College, 1976, at p.23, cited in supra note 133, at p.75.

¹³⁵ Supra note 132, at p.96.

¹³⁶ Ibid.

¹³⁷ Blanchet, T., "A Plan of Action for Assistance to women in Bangladesh", mimeo, Dhaka, 1987, at p.5

¹³⁸ Adnan, S., "Class Structure and Fertility in Rural Bangladesh: Reflections on the

age for women which, according to Adnan,¹³⁹ was 13-15 in rural Bangladesh in 1978 (and according to the Bangladesh Bureau of Statistics of 1993, 16.4 years).

Natural Increase of age of Marriage

Even though still under the age required by law, there has been a definite trend towards an increase in the marital age of women. Whereas most girls were formerly married as children (whether before or after puberty), they are now being married at a later age. One of the causes for the increase in the age of marriage may be poverty and consequent malnutrition, leading to puberty at a later age. Widespread poverty is caused by scarcity of land and unemployment. This means that adult sons remain dependant on their "fathers who have, in their turn, no means to shoulder the additional burden of a daughter-in-law" and, therefore, discourage their sons from marrying.¹⁴⁰ Parents of daughters unable to afford dowries demanded by the bridegroom's family are also forced to postpone marriages.

There has been some change in the attitudes of the people although this change does not correspond with the minimum age set down by law. JAMILA was married below the age of puberty and says: "I was so miserable I used to cry a lot and not eat." JAMILA states very positively that girls should be married at a much later age. Her daughter was married in 1993 below the legal age of 18 but above puberty, which in itself appears to her to be a 'higher' age.

It cannot be claimed, after almost seventy odd years after the enactment of the Child Marriage Restraint Act in 1929, that child marriages have been abolished or that the number of marriages where the parties have reached the age of majority is far greater than where the parties are minors. The country where the majority of the population is rural based, child marriages (below the age prescribed by the Act) are still the rule rather than the exception.

Political Economy of Population Growth," Conference on Economic and Demographic Change: Issues for the 1980's, Helsinki, 1978 cited in supra note 101, at p.71

¹³⁹ Ibid.

¹⁴⁰ Islam, M., "Social Norms and Institutions" in Situation of Women in Bangladesh, Dhaka, 1979, pp.225-264, at pp.250-251.

Physical, Emotional and Intellectual Effects of Child marriage

Physical

Physiology has always been closely related to the age of marriage. Physically, early consummation and frequent childbearing affects a girl's health permanently. An UNICEF report of 1991 says:

given her early age at marriage and frequent pregnancies, in addition to being under-fed and overworked; by the mid-30s, the average Bangladeshi woman is drained and exhausted.¹⁴¹

The major criticism against child marriages is that it involves the woman in the role of wife and mother before she is ready for either. In a country where there is no widespread use of contraceptives, bearing a number of children takes a heavy toll on her health. Early marriage and early pregnancies add to debilitating health conditions for the Bangladeshi woman.¹⁴² Also, more than one out of five deaths among women in their child bearing years are related to pregnancy.¹⁴³

Emotional

Even though she might come from the poorest of households where she had to, from a very early age, help in the household tasks, yet the proximity, familiarity and affection of her parents, siblings, various aunts, uncles and grandparents gave her a sense of security. As soon as she is married the young bride is expected to move to her husband's home and at an early age this security is shattered: "A major factor in the lives of Asian brides is the degree to which they are cut off from the security and affection of their natal homes."¹⁴⁴

As many women recalled their own experiences, the trauma involved was apparent. WAZIFA was married in 1974 when she was below the age of puberty. She was very surprised by the question as to whether she had seen her husband before the wedding. She recalls:

I was very scared and I cried a lot when I came to my husband's village. I went back to my parents house after eight days, and used to come to my husband's home once every month or so."

¹⁴¹ UNICEF, Impressions of Women and Children in Bangladesh, Dhaka, 1991, at p.31.

¹⁴² Haider, R., A Perspective in Development -- Gender Focus, Dhaka, 1995, at p.79.

¹⁴³ *Ibid.*, at p.81.

¹⁴⁴ Whyte, R. and Whyte, P., The Women of Rural Asia, Boulder et al, 1982, at p.107.

MORIYOM got married at the age of seven in 1929. She remembers that it was the year when the age of marriage was fixed at fourteen by the government. She does not know how old her husband was at that time. Her birth village was several miles from Komolpur. She did not have a father, so her brothers arranged her marriage:

I did not want to go to my husband's house; I cried and screamed and they beat me. I went after one and a half years."

At the time of her marriage, SHAHANAZ from a village in Mymensing, was below puberty. Her husband was above the legal minimum being over 21. Although she herself was married at a young age, SHAHANAZ is aware of the fact that for girls the legal minimum age is 18. Asked about how she felt coming to an unknown house where she would have to spend the rest of her life she replied: "Of course I was scared. I did not know anyone, did not know what they were like."

SHAHANAZ feels she would be better off if she had been married at a later age and not as young as she was.

My health has suffered from having married so young. I would be much better physically if I had been married when I was older. I am going to make sure my daughter gets an education and is not married at such a young age.

A girl married as a child has to deal with various sorts of relationships which she is not equipped for, not the least of which is her relationship with her in-laws, most importantly her mother-in-law. Unlike her, the husband does not have to leave his familiar environs nor be separated from his family. The child bride has to deal alone with being a wife with all the consequences, physical and otherwise, of marriage. She is deprived from enjoying an untroubled childhood, even though poverty-stricken and to cope with the realities of life: "The process of adolescent development is normally incomplete at the time of marriage when a girl is transplanted into an unfamiliar, possibly hostile(,) environment."¹⁴⁵

At the most vulnerable stage of her life, a young girl is therefore thrust into the trauma of an alien environment. She is unable to make easily the many adjustments and accommodations required of her.

Since economic considerations play such a great part in marriages, most women are aware of the fact that once married they cannot go back and burden their parents, especially after the money spent on dowry and

¹⁴⁵ Supra note 144, at p.36.

other marriage expenses. The feeling of being isolated and helpless can cause great emotional strain on a young child, which only time and maybe the birth of her own children may remove. Whyte and Whyte describes the frightening effects of the extreme pressures of early marriage upon young Asian girls:

Something of the tensions suffered by young girls, uprooted from a loving family environment to one where, at best, they must be on their guard because their behaviour and performance of duties are being subject to critical scrutiny by all around them, is revealed in studies of suicide.¹⁴⁶

If the marriage ends in divorce the girls are rarely welcomed back into their paternal homes. Unable to put up with the various forms of torture they have to face at the homes of their husbands they are forced to escape and very often are forced into prostitution and other undesirable activities.

Intellectual

One of the major criticisms against child marriage is, as mentioned before, that it involves the women in the roles of wife and mother without giving her a chance to develop her potential to the full. She is deprived of education and the means of bettering her lot in life through gainful employment. Because of the responsibilities these young girls have to take on so early in life, their whole existence is centred around survival; so much so that it seems to deprive them of the ability to think for themselves or formulate opinions. When asked to give their opinion about something they are totally at a loss because from childhood they have had to struggle to fulfil the daily needs of their children and husband. As many researchers have experienced in the field, it is extremely difficult to get the women to express their individual opinions about anything.

One of the major causes of backwardness in education amongst women is the early age at which they are married off. Girls are married much earlier than boys. The age difference between the spouses is usually very wide.¹⁴⁷ Early age of the wives as well as the gap in the ages between the husband and wife, the husband being in almost all cases much older, "contribute to the lack of confidence and powerlessness experienced by

¹⁴⁶ Ibid., at p.83.

¹⁴⁷ Ahmed, A., Women and Fertility in Bangladesh, New Delhi, 1991, at p.66.

women.¹⁴⁸ Ellen Sattar reports in her study conducted in a village in Comilla district that the difference in ages varied between 6 to 42 years; a 20 years gap was quite common, especially among the older age groups.¹⁴⁹

Education and Child Marriage

There is an inverse relationship between education and age of marriage. There are a number of reasons responsible for this, but as Raana Haider says: “the principle factor remains the intrinsic non-valuation of her worth, beyond her role as wife and mother.”¹⁵⁰

The table below of the responses obtained through my field indicates the correlation between the age at marriage and education:

TABLE 2: Correlation between Respondents' Age at Marriage and Education

	BELOW PUBERTY		PUBERTY TO 16		16 TO BELOW 18		18 TO ABOVE 18	
Illiterate	201	50.4%	161	40.4%	17	4.3%	20	5.0%
Barely literate	14	53.8%	8	30.8%	2	7.7%	2	7.7%
Primary	18	30.5%	29	49.2%	8	13.6%	4	6.8%
Secondary	4	13.3%	20	66.7%	5	16.7%	1	3.3%
Graduate			2	6.5%	3	9.7%	26	83.9%
Post Graduate							13	100%
	237		220		35		66	

Girls are, as has been argued, less educated than boys in all levels of education. Less emphasis is put on the education of daughters since their primary role is perceived to be that of wife and mother for which formal education is not deemed to be necessary. One of the major reasons for backwardness of female education has been child marriage. It may be

¹⁴⁸ Ibid.

¹⁴⁹ Supra note 129, at p.24.

¹⁵⁰ Supra note 142, at p.121.

difficult to find a groom for the girl who is highly educated or more educated than her prospective husband. It is also believed that an educated girl is less amenable to control in her in-laws house.¹⁵¹ Parents of girls who remain in school way past puberty may find it difficult to face society. Tahrunnessa Abdullah and Sondra Zeidenstein found in the village which they were studying that the relatives of unmarried girls who were obviously 16/17 years old consistently reported their age to be 12 or 13:

If they go to school, their families will justify their being unmarried in the name of education, but in most cases will take them out of school if a good marriage offer comes along. Their families would probably welcome new strategies that would relieve the embarrassment connected with the later marriage and give them some positive justification for having their daughters still at home.¹⁵²

If the age of marriage can really be raised amongst all segments of society, and not just for the purpose of official statistics, there would be a positive impact on the education of women. This would, in turn, affect the age of marriage. Apart from the obvious effect of postponement of marriage due to an extended period of schooling, it may give the girl the chance to work outside the home and/or look for a husband of her own choice which may delay marriage.¹⁵³ In a survey carried out in 1975 on educated employed women in metropolitan Dhaka, Mahmuda Islam discovered that "educated girls are not usually married before they complete their education that is before 20-22 years."¹⁵⁴

From the above it is obvious that there is a direct correlation between education and age of marriage as well as between the employment, economic stability and the age of marriage.

If the women find gainful employment and if they succeed in breaking down the traditional and social barriers that exist in the case of female employment, this will postpone marriage for many, since marriage is perceived mainly as an economic, as well as a social and religious necessity. In a survey conducted in 1989 by Shelley Feldman and Florence

¹⁵¹ Sharifa, K., "Equal Educational Opportunity For Women: A Myth" in *Role of Women in Socio-Economic Development In Bangladesh*, Dhaka, 1977, pp.132-141, at p.136.

¹⁵² *Supra* note 132, at p.96.

¹⁵³ *Supra* note 115, at p.85.

¹⁵⁴ Islam, M., "Women at Work in Bangladesh", *Women for Women*, Dhaka, 1975, at p.98.

38 of the brides were underage; 17 between the ages of 8-12, 12 between the ages of 10-15 and the remaining 9 were 15-17 years old. In November 1992 (11.2.92) the Telegraph reported a similar rise of child marriages. The *Ittefaq* report of 6.9.92 stated that in 1991, 4000 underage girls had been married in the districts of Rajshahi, Jaipurhat, Bogra, Kishoreganj. Young girls had been given in marriage to men who were 60/70 years old.

In January 1993, the *Sangbad* published stories of several small girls who had been married as early as 4, 11 and 12 years. Twelve year old Budhi Khatoon was married to her brother-in-law after his wife, her sister, died, Dalim, aged 4, was married to 10 year old Nurul Islam, 11 year old Alfu was married to a man 24 years older than her; similarly 11 year old Nashpoti was married to 33 year old Lalan (the *Sangbad* 6.1.93). More than 50,000 child marriages were solemnised during the period of 1989-1992 in the districts of Bogra and Joipurhat; in Jamalpur district 1200 underage girls were married in 1990-1992 (the Telegraph 25.5.93). Most of these published reports have stated that with an increase of child marriages an increase is also noted in the number of divorces that have taken place.

Legal Awareness

In an investigative report on child marriages captioned 'where marriages take place at the age when they should be playing with dolls', the *Sangbad* reported that in Rangpur only about 5% of the child marriages do not end in divorce (*Sangbad* 24.1.93). The report informed that in one particular village of Rangpur district (Pairaband) 98% of the guardians were unaware that child marriages were punishable under the law.

In my own study, a startling 35.2% of women were unaware that child marriages are punishable or that there was a minimum age of marriage. 64.6% replied that they were aware of the existence of such law. Even more startling I found was the vagueness, even amongst those who claimed knowledge about the minimum age, as to the actual legal age of marriage.

For example, although villager JOSNA knows of the minimum age requirement, she is unsure about the minimum age fixed. She thinks the age might be over puberty. Both of RAZIYA's daughters (of the same village), were above puberty when they got married although below the legal minimum of 18. Asked whether she knew that there was such a legal minimum RAZIYA said she knew 20 to be that minimum. BATASHI, of

Komolpur, says with great confidence that the minimum age of marriage presently is 20 for girls and 25 for boys. All her daughters were married after puberty but before 16. She says she avoided early marriages for her daughters because of concern for their health and because it is no longer the done thing in the present social context. BATASHI is not unduly concerned, even though she has some knowledge about the law relating to the restraint of child marriage and about the fact that she is disregarding the law. A table is given below, showing the responses elicited in answer to the question as to what was the minimum age of marriage among females required by law.

TABLE 3: Respondents Knowledge of Age of Marriage

Knowledge of minimum age of marriage	Frequency	Percentage
Above puberty	29	8.0
13-15	30	8.3
16-below 18	13	3.6
18	146	40.3
18-20	64	17.7
above 20 -25	38	10.5
Do not know the age	5	1.4
Multi category	36	9.9
Missing	1	.3
Total	362	100.0

The same causes which resulted in an increase in the age of marriage may equally be blamed for the increase in child marriages. The same massive impoverishment which has caused many women to come out of their homes to take up gainful employment and thereby postpone marriage, may also force parents to give their daughters in marriage as early as possible in order to have one less mouth to feed. Poverty-stricken parents may be unable to find husbands for their daughters because they cannot afford their dowries. Girls may be married off at a very early age because the older the girls, the greater the amount of dowry demanded.

Early marriage is one of the tools in a patriarchal society which strengthens domination over women. This weapon finds support from

many women. RAHELA was below puberty (8/9 years old) when she got married. Her husband's home was in the village of Dhankhora, several miles away from her birth village. She does not remember much about her own wedding because she was so young. She only recalls that in the beginning she stayed at her in-laws for 2/3 days at a time, never more. She remembers that she was so young she was terrified. Although she thinks that girls should be older than she herself was, she still considers it better for a girl to be married young. Otherwise she said: "girls might elope or have affairs".

Even MORIYOM who was seven when she married in 1929 and confesses to crying, screaming and being beaten at the beginning, thinks that girls should be married at a young age so that they can adjust better and pay less dowry.

402 respondents who did not have married daughters were asked at what ages they would like their daughter/daughters to get married in future. Their responses are as follows.

TABLE 4: Respondents' Intended Age of Daughter(s) Marriage(s)

	Frequency	Percent
Below puberty	9	2.2
Just over puberty	34	8.5
14 to below 16	71	17.7
16 to below 18	42	10.4
18 years	86	21.4
18 to below 20	45	11.2
20 or above	65	16.2
Do not know	41	10.2
Missing	9	2.2
TOTAL	402	100

CONCLUSION

Although early marriage by itself cannot be said to be the cause of the backward position of women, it cannot be denied that such marriages are impediments to the proper development or utilisation of the potential of women. This is especially the case since upon marriage her role is primarily construed as being for the benefit of her husband, children and in-laws. On a larger scale, child marriages have an impact on the country

itself which in turn means that women, making up half the population, are affected in this way also.

There are numerous arguments against child marriages not least that it amounts to abuse against children — sexual and emotional. However, as in the case of child labour, the phenomena of early marriages cannot be seen in isolation and neither can reality be denied. Since generally there is no other option but marriage available to women, most parents believe in arranging early marriages. As discussed, there are other benefits involved including payment of less dowry.

Legally, the anomalous situation whereby child marriages are punishable but, nevertheless, valid continues; thereby making the effect of law determining the age of marriage marginal. State law which made child marriages punishable almost seventy years ago despite the permissive attitude of Islamic law, seems in the evidence of my field work as well as other authorities, to be a law which in the present economic and social context to be a law which simply cannot be enforced.

Any direct legislation must take account of the context of women's lives, as well as the changes occurring in rural society. I argue that the time has now come to take more positive steps — to make child marriages void. At the same time to take into account the reality of women's lives and recognise that 18 is an inappropriate minimum age and should be reduced to 16. Birth registration is also crucial if laws regarding age of marriage are to have any significance.

Apart from direct legislation, it is necessary to evolve a wider range of strategies to prevent child marriages. Above all, in order to change the behaviour patterns of the people, viable alternatives must be provided to early marriage, which correspond with legislation.