

CHILD MARRIAGE

Child marriage is a violation of children's human rights. Despite being prohibited by international human rights law and many national laws, child marriage continues to rob millions of girls around the world of their childhood. It forces them out of education and into a life of poor prospects, with increased risk of violence, abuse, ill health or early death. While boys are also married as children, child marriage affects girls in greater numbers and with consequences which can be devastating for their health and well-being.

Marriage before the age of 18 is a reality for many young women. In many parts of the world parents encourage the marriage of their daughters while they are still children in hopes that the marriage as a safety measure will benefit the girl both financially and socially. In actuality, child marriage is a violation of human rights, compromising the development of girl's interms of their education, increased rates of school drop outs, teenage pregnancy affecting reproductive health rights which could lead to still birth/infant mortality-. Early marriages also increase the vulnerability factor and the concerned child's protection rights leading to abuse, violence and exploitation within and outside the family circumstances.

The right to 'free and full' consent to a marriage is recognized in the Universal Declaration of Human Rights - with the recognition that consent cannot be 'free and full' when one of the parties involved is not sufficiently mature to make an informed decision about a life partner. The Convention on the Elimination of all Forms of Discrimination against Women mentions the right to protection from child marriage in article 16, which states: "The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage..."While marriage is not considered directly in the Convention on the Rights of the Child, child marriage is linked to other rights - such as the right to express their views freely, the right to protection from all forms of abuse, and the right to be protected from harmful traditional practices - and is frequently addressed by the Committee on the Rights of the Child. Child marriage was also identified by the Pan-African Forum against the Sexual Exploitation of Children as a type of commercial sexual exploitation of children¹.

Child marriage occurs when one or both of the spouses are below the age of 18. **Child marriage is a violation of article 16(2) of the Universal declaration of human rights, which states that "marriage shall be entered into only with the free and full consent of the intending spouses."** article 16 of the convention on the elimination of all Forms of discrimination against Women (CEDAW) states that women should have the same right as men to "freely choose a spouse and to enter into marriage only with their free and full consent", and that the "betrothal and marriage of a child shall have no legal effect".

The convention on the rights of the child (CRC) sets out the human rights of children: the right to survive; the right to develop to their fullest; the right to protection from harmful practices, abuse and exploitation, and the right to participate fully in family, cultural and social life. In signing the convention, governments also committed to take "all effective and appropriate measures with a view to abolish traditional practices prejudicial to the health of the children," which includes, among other practices, female genital mutilation/cutting and child marriage².

Child marriage can have a very degrading impact on the child especially on the girl child in the following aspects in the overall life cycle:

- ✓ Health & wellness
- ✓ More vulnerable to abuse especially sexual abuse
- ✓ Self-protection (from Abuse & exploitation)
- ✓ Education
- ✓ Poverty
- ✓ Human Rights & Justice

Child Marriage & Malaysia

Like many countries in the world Malaysia is not immune to the issue of child marriage and is backed with challenges in addressing the issue at the roots. Malaysia though have signed and ratified the CRC in 1995 the country is plagued with challenges in addressing child rights issues such as Child abuse, trafficking & child/early marriage and the issues are on the rising trend shown so obvious with the available statistics on the issue though there is no specific statistics on child marriage is available in the public domain.

According to a report published by The Star dated 9th October 2013 there is an increasing trend in the number of cases of child marriage in Malaysia. The report further quoted Datuk Rohani Abdul Karim, Minister of Women, family and Community development having said:

- Educating society is the key to tackling the issue of child marriages
- Society should be taught that child marriages posed a real danger to the young brides.
- “If they undergo the reproductive process at an early stage, it is not good for their health. They will be prone to various diseases and even death,”
- The ministry was concerned about the rising trend of child brides and would continue to educate Malaysians in a bid to reduce or stop such marriages. “If we follow the law, there shouldn’t be any child brides but we know that in certain circumstances such unions exist. We hope that through education, we can reduce their number. Under the Child Act 2001, anyone below 18 years of age is considered a child. “They are not adults yet. Marriage could affect their education and childhood. They still have many stages to go through before they can even think about marriage.

Child Marriage & Human Rights

Child marriage is a serious violation of human rights. It infringes the rights, enshrined in the Convention on the Rights of the Child (CRC), to:

- Survival, health and development;
- Protection from violence, abuse and exploitation;
- Education – with particularly devastating effect on girls’ schooling like dropout from school ; and
- Full participation in family, cultural and social life – including participating in decisions that affect them.

There is a longstanding legal framework of international conventions that prohibit child marriage. Both the Universal Declaration of Human Rights and CEDAW specifically stipulate that marriage should require free and full consent. CEDAW, which is ratified by 186 countries, explicitly states that “the betrothal and marriage of a child shall have no legal effect” (Article 16.2). A minimum age of marriage at 18 for girls and boys is recommended by the committees of both CEDAW and the CRC. The latter draws attention to the impacts of child marriage on the right to sexual and reproductive health in its General Comment No. 4. It has also stated its concern that children, who marry, especially girls, often have to leave their education and are marginalised from social activities. Of the 10 countries with the highest rates of child marriage, nine are in sub-Saharan Africa. All have either signed or ratified the African Charter on the Rights and Welfare of the Child, which clearly prohibits marriage of children under 18. There is growing recognition of child marriage as a human rights issue and of its role in hindering progress towards the Millennium Development Goals. This is reflected in a series of international initiatives that build on existing international human rights standards. Significantly, the UN chose child marriage as the theme for 11 October, the first ever International Day of the Girl Child, recognising it as a fundamental human rights violation that impacts all aspects of a girl’s life. The Special Representative of the UN Secretary-General (SRSG) on Violence against Children, Marta Santos Pais, has also drawn attention to child marriage as a harmful practice which particularly affects the most excluded groups in society and which makes girls especially vulnerable to violence and abuse. Her study, protecting children from harmful practices in plural legal systems, which was supported by Plan International, highlights key interventions necessary to protect children from harmful practices, including child marriage³.

Malaysia ratified CRC in 1995 affirming its strong commitment towards protecting the Rights of the children and to protect children from all forms of abuse, exploitation and harmful practices for the child. Malaysia has also ratified CEDAW.

Case study

February 2013, Sabah – The case of rape of a 13 year old girl child by a 40 year old Restaurant manager who later approached the Syariah Court seeking approval to marry the survivor. The Syariah court consecutively has mentioned that it had **No objection for the marriage** which irked strong responses from the civil society organizations, media, concerned adults and society at large⁴.

Case Study 1

2010: In March 2010, newspapers covered reports about the discovery of an 11 year old girl in a semi conscious state in a mosque near Batu Caves, Selangor. She had married a 41 year old man on 20 February 2010 after the man reportedly “convinced her father that there was nothing wrong with the marriage.” This marriage was later annulled by the Kelantan Syariah court; albeit not because of the age of the child, but because Syariah law was not complied with⁵.

Case Study 2

2012: 12 year-old Nur Fazira Saad and 19 year-old Fahmi Alias married last week in northern Kedah state after the girl's father agreed to the union stating and an Islamic court granted

permission. The father was quoted as saying “It is better for them to get married rather than doing something that *istak elok* (improper)”⁶

Few statistics

According to Malaysian Syariah Judiciary Department (JKSM)

In 2012, there were around 1,165 applications for marriage in which one party, usually the bride, is younger than the legal marrying age. The Syariah Courts approved 1,022 of them. This is an increase from the 2011 record, when some 900 marriages involving at least one Muslim minor were approved.

As of May 2013, JKSM received 600 marriage applications, of which 446 had been approved.

Recommendations with regard to Malaysia context

- Ensure steps to ratify the CRC to the fullest in protecting the children from all forms of abuse, exploitation and harmful cultural practices
- Enact uniform national legislation that raise the minimum age of marriage to 18 to all children without any special provisions under other legislations which could lead to misinterpretation.
- Initiate national level awareness programs on prevention of child marriage among different culture, race, religious and ethnic communities
- Incorporate age specific, culturally sensitive education programs for children on personal safety & Child Rights as part of school curriculum
- Speedy and strict enforcement of legislations on the violators
- Strengthen & build an effective, accessible, transparent and child friendly reporting mechanisms (Police, Social welfare, Childline and other stakeholders) to address the issues of children such as Child marriage in an effective and efficient manner and on the best interest of the child.

Articles relating to Child Marriage/early marriages in Malaysia as reflected by the local media:



'Ban child marriage now'.pdf



Rise in child marriages worrying -



Civil and Syariah laws should be review

References:

1. UNICEF Report on Early Marriage – A harmful traditional practice, 2005
2. UNFPA – Marrying too young – End child marriage report 2012

Child Marriage – Situation in Malaysia

Submission by: Protect & save the Children Association of Selangor & Kuala Lumpur

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www.psthechildren.org.my

3. Plan International - A girl's right to say no to marriage: Working to end Child marriage and keep girls in school report 2013
4. The Star, dated Feb 2013
5. The BBC news dated 23 December 2010 <http://www.bbc.co.uk/news/world-asia-pacific-12066910>
6. The Star, dated 23 Nov 2012
<http://www.thestar.com.my/story.aspx?file=%2f2012%2f11%2f23%2fnation%2f12361340&sec=nation>