

Amendment in the Child Marriage Restraint Act, 1929

Report No. 101

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AMENDMENT IN THE CHILD MARRIAGE RESTRAINT ACT, 1929

Justice (R) Mrs. Nasira Iqbal, Member, Law and Justice Commission of Pakistan, has desired in her letter dated 23-11-2006 that the Commission may examine certain laws including the Child Marriage Restraint Act, 1929. She has proposed that the punishment provided in the law for the violation of its provisions may be enhanced for making the law more effective.

The Child Marriage Restraint Act, 1929, hereinafter referred to as the said Act, is aimed to restrain the solemnization of child marriages. The said Act does not effect the validity of such marriages but imposes certain penalties on the person who contracts such marriage, or performs, conducts or directs any such marriage, or who having the charge of the minor as parent or guardian or any other capacity, does any act to promote any such marriage, or permits it to be solemnized, or negligently fails to prevent it from being solemnized.

In spite of the restraint of child marriages under the said Act by inflicting punishment on the persons responsible for such marriage, there are persistent complaints about the solemnization of child marriages across the country, especially in the rural areas, which indicates at some flaws in the law or its implementation. Therefore, the law needs to be reformed, especially the punishment of fine prescribed for violation of the provisions of the said Act needs to be enhanced, as also proposed by the learned member, with taking appropriate steps for the proper implementation of the said Act.

Under section 4 of the said Act, any male person above 18 years of age, who contracts a child marriage, is punishable with imprisonment up to one month, or fine up to one thousand rupees, or with both. The same punishment is prescribed under section 5 of the said Act, for the person who performs, conducts, or directs any such marriage. The same punishment is also prescribed under section 6 of the said Act, for any person having charge of the minor, whether as parent or guardian or any other capacity, who does any act to promote the marriage, or permits it to be solemnized, or negligently fails to prevent it from being solemnized. Similarly, under sub-section (5) of section 12 of the said Act, the person who disobeys an injunction issued by the court under sub-section (1) of section 12 for prohibiting such marriage is punishable with imprisonment up to three months, or with fine up to one thousand rupees, or with both.

The Law and Justice Commission of Pakistan has already proposed for the enhancement of punishment of fine provided in various Federal / Provincial laws as, due to devaluation of currency with the passage of time, they have lost its deterrence. The Commission has approved uniform slabs of enhancement of fine for the offences in statutes of different periods since the year 1850. As per the formula approved by the Commission four fold increase in the amount of fine provided in the aforementioned provisions of the said Act, has already been proposed by the Commission. However, the said punishment need to be further enhanced for making the same more deterrent.

It is, therefore, proposed that the punishment of imprisonment mentioned in sections 4, 5 and 6 *ibid* may be enhanced from one month up to three months and the punishment of imprisonment mentioned in sub-section (5) of section 12 of the said Act, from three months up to six months, whereas the punishment of fine in the above mentioned sections may be enhanced from one thousand rupees up to forty-five thousand rupees.

Furthermore, for the effective implementation of the law, certain administrative measures have already been proposed in a working paper under the title “Effective Implementation of the Child Marriage Restraint Act, 1929” for consideration of the Commission, which need to be implemented. The measures proposed are as under:-

1. To make the general public aware and conscious about restraint of child marriage, the law may be publicized in the print and electronic media after translating it in regional languages.
2. Under the law cognizance of any such offence can be taken by the Court only on a complaint by the Union Council of the area, or by any such authority, prescribed by the Provincial Government. Therefore, instructions may be issued to the Provincial Government, to the Union Councils, or the authority, where there is no Union Council, to discharge their lawful responsibility by making complaints to the court.
3. The Nikah registrars may be directed to verify the prescribed marriageable age of the parties contracting marriage from any of the following documents of the parties before solemnizing Nikah.
 - (i) school leaving certificate;
 - (ii) identity card;
 - (iii) passport/Nadra Form B; or
 - (iv) birth certificate.
4. The provisions of section 12 (**Power to issue injunction prohibiting marriage in contravention of this Act**) be made effective and practicable by issuing injunction by the Court on complaint of the Union Council or receiving information otherwise.

Comparative table for amendment in sections 4, 5, 6 and 12 of the Child Marriage Restraint Act, 1929, follows.

COMPARATIVE TABLE

Existing Provisions	Proposed Provisions
<p>Section 4. Punishment for male adult above twenty-one years of age marrying a child. – Whoever. Being a male above eighteen years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both.</p>	<p>Section 4. Punishment for male adult above twenty-one years of age marrying a child. – Whoever. Being a male above eighteen years of age, contracts a child marriage shall be punishable with simple imprisonment which may extend to three months, or with fine which may extend to forty five thousand rupees, or with both.</p>
<p>Section 5. Punishment for solemnizing a child marriage.- Whoever, performs conducts or direct any child marriage shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend to one thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.</p>	<p>Section 5. Punishment for solemnizing a child marriage.- Whoever, performs conducts or direct any child marriage shall be punishable with simple imprisonment which may extend to three months, or with fine which may extend to forty five thousand rupees, or with both, unless he proves that he had reason to believe that the marriage was not a child marriage.</p>
<p>Section 6 (1). Punishment for parent or guardian concerned in a child marriage. – Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permit it to be solemnized, or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to one month, or with fine which may extend one thousand rupees, or with both :</p> <p style="text-align: center;">Provided that no woman shall be punishable with imprisonment.</p> <p>(2).</p> <p>Section 12. Power to issue injunction prohibiting marriage in contravention of this Act. – (1...4)</p>	<p>Section 6 (1). Punishment for parent or guardian concerned in a child marriage. – Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permit it to be solemnized, or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to three months, or with fine which may extend to forty five thousand rupees, or with both :</p> <p style="text-align: center;">Provided that no woman shall be punishable with imprisonment.</p> <p>(2).</p> <p>Section 12. Power to issue injunction prohibiting marriage in contravention of this Act. – (1...4)</p>

<p>(5) Whoever, knowing that an injunction has been issued against him under sub-section (1) of this section disobeys such injunction shall be punished with imprisonment of either description of a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both :</p> <p>Provided that no woman shall be punishable with imprisonment.</p>	<p>(5) Whoever, knowing that an injunction has been issued against him under sub-section (1) of this section disobeys such injunction shall be punished with imprisonment of either description of a term which may extend to six months, or with fine which may extend to forty five thousand rupees, or with both :</p> <p>Provided that no woman shall be punishable with imprisonment.</p>
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Commission's deliberations

The working paper was considered by the Commission in its meeting held on 27.7.2007 and the following are the deliberations:-

The Commission considered the proposals of reform of Child Marriage Restraint Act, 1929 and observed that the existing punishment of imprisonment as well as of fine in Sections 4, 5 and 6 of the Act may be made more deterrent and a female guardian of minor child may also be made equally punishable, if she performs marriage of a minor child in her custody. The Commission therefore, approved that in Section 4, 5 and 6 (1) of the Act, the punishment of imprisonment may be enhanced from one month to three months and the fine from Rs. 1000/- to Rs. 25000/-. The proviso to Section 6 (1) be omitted. Sub-section (2) of Section 6 be suitable amended to remove the bar and enable any person eligible to file a complaint of the offence instead of taking cognizance by the court on complaint of Union Council or of an authority prescribed by the Provincial Government. The Commission also recommended enhancement of punishment of imprisonment from six months to one year and the fine from Rs.1000/- to Rs. 25000/- provided in subsection (5) of Section 6 of the Act on disobeying injunction issued by the court. The proviso to the Section 6 (5) exempting a woman from the punishment of imprisonment was also recommended to be omitted.