



# PROPOSED DRAFT

Amendment of Restraint Act 1929

Head Office  
E-26- Muslim Town, Officers Colony, Link Shabo Road Tadjak Abad Quetta, Baluchistan  
Pakistan  
Ph# +92 812832031, Fax# +92 812832031  
Email: [yadri@yahoo.com](mailto:yadri@yahoo.com),  
Website: [www.yad-pk.org](http://www.yad-pk.org)

## Propose Amendment Draft

### For The Baluchistan Province

#### The Child Marriage Prohibition/Restraint Act 2017

#### 1. Short Title and Commencement

(1) This Act may be called the Child Marriage Prohibition/Restraint Act, 2017.

(2) It extends to the whole of the Province of the Khyber Pakhtunkhwa/ Balochistan/ Azad Kashmir and applies to all persons who may be residing in the region of Khyber Pakhtunkhwa/ Balochistan/ Azad Kashmir at the relevant time. It shall apply to all the Khyber Pakhtunkhwa/ Balochistan/ Azad Kashmir domiciled citizens, irrespective of the place of marriage and religion.

(3) It shall come into force on such day as the Government may, by notification in the Official Gazette, appoint.

#### 2. Definitions; In this Act, unless there is anything repugnant in the subject or context,-

(a) “**Adult**” means a person of either sex who is above eighteen years of age;

(b) “**Child**” means a person of either sex who is under eighteen years of age.

**Explanation:** for the application of this Act the appearance of the person or the start of puberty shall be no ground to consider any person adult or child.

(c) “**Child marriage**” means a marriage to which both or either of the contracting parties is a child;

(d) “**Court**” means the Court of a Judicial Magistrate of First Class; or any other Court of Magistrate so notified in the official Gazette.

(e) “**Contracting party**” means either of the parties whose marriage is, or is about to be solemnized.

(f) “**Complainant**” means the child being married or any of the parents or guardian, neighbors, community member, teachers, members of local bodies, social workers, friends, imam mosque, Nikah Khawan, Nikah Registrar or any other person.

(g) “**Government**” means Khyber Pakhtunkhwa/ Balochistan/ Azad Kashmir government.

**3. Role of Media** Mass media campaign should be launched about the harmful effects of child marriages.

**4. Zarghoon Button** the Government should be stop the Zarghoon Button or Greeting Button. Punishment should be made applicable of Parents of groom and bride who marriage child before birth.

**5. Marriage with the Holy Quran.** A person found guilty of arranging, facilitating or compelling such marriage of a female can be imprisoned for a period extending to seven years but not less than three years and a fine of up to Rs 500,000.

**6. Promoting Girls Education** Girls education should be promoted and budget should be increase for constructing girls schools.

### **7. Requirement of Computerized National Identity Card for Registration of Marriage**

The Nikah Khawan, Nikah Registrar and Secretary of Union Council shall be bound to take a copy of Computerized National Identity Card of both parties to the marriage at the time of solemnisation and registration of Nikah. Any omission or negligence on part of Nikah Khawan, Nikah Registrar and Secretary of Union Council shall amount to criminal offence under this Act and shall be punishable with rigorous imprisonment which may extend up to one year but not less than six months and shall be liable to fine which may extend up to one hundred thousand rupees but not less than fifty thousand rupees.

### **8. Punishment For Male Adult Marrying A Child**

Whoever, being a male above eighteen years of age, contracts a child marriage shall be punishable with rigorous imprisonment which may extend up to three years but not less than two years and with fine which may extend up to two hundred thousand rupees but not less than one hundred thousand rupees.

Notwithstanding anything contained in section 25 of the General Clauses Act, 1897, or section 64 of the Pakistan Penal Code, a Court sentencing an offender shall not be competent to direct that, in default or nonpayment of the fine imposed, he shall not undergo any term of imprisonment but shall be recovered as arrears of Land Revenue.

### **9. Punishment For Solemnizing A Child Marriage**

Whoever performs, conducts, directs or abets any child marriage shall be punishable with rigorous imprisonment which may extend up to three years but not less than two years and with fine which may extend up to two hundred thousand rupees but not less than one hundred thousand rupees unless he proves that he had reasons to believe that the marriage was not a child marriage.

### **10. Punishment For Promoting Or Permitting Solemnization Of Child Marriages**

(1) Where a child contracts a child marriage, any person having charge of the child, whether as parent or guardian or any other person or in any other capacity, lawful or unlawful, including any member of an organisation or association of persons who does any act to promote the marriage or permits it to be solemnised, or negligently fails to prevent it from being solemnised, including attending or participating in a child marriage, shall be punishable with three years rigorous imprisonment which may extend up to three years but not less than two years and with fine which may extend up to two hundred thousand rupees but not less than one hundred thousand rupees.

(2) For the purposes of this section, it shall be presumed, unless and until the contrary is proved, that where a child has contracted a marriage, the person having charge of such child has negligently failed to prevent the marriage from being solemnized.

## **11. Power Of Court To Issue Injunction Prohibiting Child Marriages**

(1) Notwithstanding anything to the contrary contained in this Act, if, on an application or information of the Child Marriage is received through a complaint or otherwise from any person, and Court is satisfied that a child marriage in contravention of this Act has been arranged or is about to be solemnized, such Court shall issue an injunction against any person including a member of an organisation or an association of persons prohibiting such marriage.

(2) A complaint under sub-section (1) may be made by any person as define under this law.

(3) The magisterial Court shall also have additional powers to stop or prevent solemnisation of child marriages and for this purpose, he may take all appropriate measures and use the minimum force required.

(4) No injunction under sub-section (1) shall be issued against any person or member of any organisation or association of persons unless the Court has previously given notice to such person, members of the organisation or association of persons, as the case may be, and has offered him or them an opportunity to show cause against the issue of the injunction; provided that in the case of any urgency, the Court shall have the power to issue an interim injunction without giving any notice under this section.

(5) An injunction issued under sub-section (1) may be confirmed or vacated after giving notice and hearing the party against whom the injunction was issued.

(6) The Court may either on its own motion or on the application of any person aggrieved, rescind or alter an injunction issued under sub-section (1).

(7) Where an application is received under sub-section (1), the Court shall afford the applicant an early opportunity of appearing before it either in person or through counsel and if the Court, after hearing the applicant rejects the application wholly or in part, it shall record in writing its reasons for so doing. -

(8) Whoever knowing that an injunction has been issued under sub-section (1) against him disobeys such injunction shall be punished with three years rigorous imprisonment which may extend up to three years but not less than two years and with fine which may extend up to two hundred thousand rupees but not less than one hundred thousand rupees.

## **12. Child Marriages To Be Dissolved By The Court**

(1) When a child marriage is solemnized and the matter is reported to the police or a complaint is filed in the Court, the Court shall issue notices to the parties and after hearing the parties and its satisfaction that both or either of the party to the marriage is child at the time of hearing of the matter, the marriage shall be dissolved by the Court.

(2) The Court shall decide the matter within three months from date of petition or submission of challan and Court shall be responsible to held first hearing within 7 days of filing the petition or submission of challan.

Provided where both parties had attained the age of majority before filing of petition then marriage shall be dissolved at the option of female party.

(3) If at the time of filing a petition, the petitioner is a child, the petition may be filed by her/him through his or her guardian or next friend as defined under order XXXII of C.P.C 1908.

(4) While granting a decree of dissolution under this section, the Magistrate Court shall make an appropriate order directing both the parties to the marriage and their parents or their guardians to return to the other party, his or her parents or guardian, as the case may be, the money, valuables, ornaments and other gifts received on the occasion of the marriage by them from the other side, or an amount equal to the value of such valuables, ornaments, other gifts and money;

Provided that no order under this section shall be passed unless the concerned parties have been given notices to appear before the Magistrate Court and show cause why such order should not be passed.

### **13. Marriage Of A Child To Be Void Ab Initio In Certain Circumstances**

Marriage of a child shall be void ab initio if,

(a) Where a child is taken or enticed out of the keeping of the lawful guardian; or

(b) Where a child is by force compelled, or by any deceitful means induced to go from any place; or

(c) Where a child is sold for the purpose of marriage; and made to go through a form of marriage or if the child is married after which the child is sold or trafficked or used for immoral purposes, such marriage shall be null and void ab initio.

(d) Any child marriage solemnized in contravention of an injunction order issued under section 7 of this Act, whether interim or final, shall be void *ab initio*.

**Explanation:** The persons involved in such activities shall also be punished as provided in Chapter XVI-A of Pakistan Penal Code of 1860 (Act No. XLV of 1860).

### **14. Court To Which Petition Should Be Made**

For the purpose of grant of reliefs under sections of this Act, the Magistrate Court having jurisdiction shall include the Magistrate Court having jurisdiction over the place where the defendant or the child party to the marriage resides, or where the marriage was solemnized or where the parties last resided together or the petitioner is residing on the date of presentation of the petition.

### **15. Power Of Magistrate Court To Modify Orders Issued Under This Act**

The Magistrate Court shall have the power to add to, modify or revoke any order made under this Act, and if there is any change in the circumstances at any time during the pendency of the petition and even after the final disposal of the petition.

## **16. Act To Override All Other Law**

The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

## **17. Offences To Be Cognizable, Bailable And Non-Compoundable**

Notwithstanding anything contained in the Code of Criminal Procedure, 1898, an offence punishable under this Act shall be cognizable, bailable and non-compoundable.

## **18. Appeals**

Any person aggrieved by any judgment, decree, sentence or final order passed under this Act, may within thirty days of such judgment, decree, sentence or final order prefer any appeal to the Court of Sessions.

## **19. Power Of Government To Make Rules**

The Government shall, by notification in the Official Gazette, make rules for carrying out the provisions of this Act within six months of passing of this law.

## **20. Application Of The Code Of Criminal Procedure 1898 And Code Of Civil Procedure 1908**

(1) The Code of Criminal Procedure 1898 shall be fully applicable in the matters of trials, bails, sentences appeals etc.

(2) The Code of Civil Procedure 1908 shall be fully applicable in the matters of injunctions.

## **21. Removal Of Difficulties**

If any difficulty arises in giving effect to any of the provisions/ section of this Act the Government may, by the Notification in the official Gazette, make such provisions as it thinks fit for removing such difficulties.

## **22. Repeal And Saving**

(1) The Child Marriage Restraint Act, 1929 is hereby repealed to the extent of Khyber Pakhtunkhwa/ Balochistan/ Azad Kashmir.

(2) Notwithstanding such repeal, all cases and other proceedings pending or continued under the repealed Act at the commencement of this Act shall be continued and disposed of in accordance with the provisions of the repealed Act, as if this Act had not been passed.

(3) Notwithstanding the repeal of the Child Marriages Restraint Act, 1929, all orders made, decisions taken, judgment passed by any Court, shall be deemed to have been validly made, taken and passed under this Act.