



Child Marriage: Mahnaz Shujrah in conversation with Rana Asif Habib

Podcast Transcript

Mahnaz Shujrah (MS): We have with us today, Rana Asif Habib, who is a lawyer, Advocate of High Court, and an activist. He is one of the founding members of Child Rights Movement in Pakistan (CRM). So, can you please share your practice as it relates to child marriage, what type of cases have you witnessed and what are some resurfacing issues even after the passage of the law in Sindh?

Rana Asif Habib (RAH): This child marriage law was passed in 2013 in Sindh and the rules were passed in 2016. In Pakistan, there is still no crystal-clear legislation in cases of missing children, kidnapping, runaway and neglect of children. Such cases are usually registered under Sec 365 B PPC, in which they think their child (female) is kidnapped. Then when the age is determined, it sometimes turns out to be a case of early marriage, in fact the parents themselves are arranging the marriage and are satisfied that we are marrying off our daughter after puberty. So, we rarely see such cases, mostly the cases we see are those in which parents appeal in court for return of their daughters and such cases are tried under the child marriage law.

MS: Understood. So, what do you think even after the passage of this law why do these cases are registered under kidnapping and not under child marriage law?

RAH: It is because the stakeholders involved in it such as police, judiciary, prosecution, or public have not accepted the child marriage law yet. They think of this law as a foreign agenda that somehow deviates from our culture and thus, there is a huge issue of ownership of this law. This is exactly why if some case gets highlighted in the media, then all departments show interest otherwise there is not much role of this law in convictions. Even though this law is cognizable, non-compoundable and non-bailable, and these three things are the beauty of this law, yet the magistrates do not implement it as such. For example, in 2019 in a case dealing with a 13-year-old girl, the magistrate made the case compoundable (and let the girl go with her husband). During a recent follow-up, we found out that the girl is now working as a sex-worker, and her husband is a drug addict. At the time of their marriage the husband worked as a shoemaker, but the marriage didn't work out due to the age gap of 15 years and today the girl is forced to work to sustain her household and her three children, one of which she has given one away for adoption. These are the consequences of such marriages, but the judges think they are taking the decision in the girl's favor and adhering to the concept of puberty and Islam.

MS: You mentioned there was a difference of 15 years between the girl and her partner...

RAH: Yes, the husband's family was a tenant and the girl's family were the homeowners. The girl belonged to a very conservative/religious family, and she was not even allowed to sit on a motorbike (as a passenger) and go out; this case belongs to a lower income locality of Karachi. I found out about this girl when I was doing research about HIV/AIDS, but when I probed into the matter it turned out to be originally a case of early marriage. The girl's family isolated her and she was living alone with her husband (who was a drug addict with a history of three relapses)



and the girl was facing extreme difficulty to cover her expenses. The magistrate of this case will be posted in a different district today and making similar faulty decisions; they (judges) sit in their chambers with both parties and play the role of arbitrators over tea and biscuits.

MS: In the case you are mentioning, did the girl explicitly express her consent to the court?

RAH: Yes, she gave consent to the judge. But we cannot consider child's consent (as valid). Pakistan is signatory to UNCRC (United Nations Convention on the Rights of Child), Sec 3 of which talks about "in the best interest of the child". For example if a child consents to some irrational or absurd decision, we cannot allow it. UNCRC contains 40 articles consisting of rights of children, but there are also 14 articles emphasizing the role of duty bearers. It is important to see whether duty bearers in Pakistan can fulfill their role in the concept of child marriages and other laws.

MS: If you allow me to be the devil's advocate then there is another opinion that says that the age bracket of 16- to 18-year-old is such that there is some grey area, because it can be argued that children in our cultural context mature relatively sooner than their counter parts in other parts of the world. So perhaps consent should be a consideration...

RAH: Then the State will be in a conundrum and will have to rethink a lot of things. For example, the UNCRC official protocol of setting the bar at 18 years, why it is so? Why should it not be flexible? For example, as per the official protocol, no person below the age of 18 years can get an FIR registered under section 154 Crpc (Criminal Procedure Code). If that were the case, then children could register cases against their own families for crimes such as sexual abuse. So, if you are creating that consideration for consent for ages 16- 18 years in child marriage, then why not for other laws? Law cannot be implemented if it is not in equilibrium and consistent in practice. Lack of universality will defeat the purpose of the law. Similar hypocrisy is displayed is the ILO (International Labor Organization) convention (after a certain age, a working child is not considered child labor), and GSP+ countries recognition (that any person under 18 years in a child). The example of driving license (in Pakistan it cannot be issued under 18 years of age), then why not issue it below that age? So, if the age of maturity is to be reconsidered, it should be done so across the board and not specifically in the case of child marriage law. If a judge accepts a child marriage at the age of 13 years, why does he or she consider the same child a minor when their inheritance is under question. Such double standards are against the spirit of the law. You want to consider puberty as a factor in child marriage law, yet you do not do the same in other cases where your self interest lies, such as the basic right of identity is withheld until the age of 18 years old, only after which a CNIC (ID card) can be made in Pakistan. All rights which fall in childrens' favor is given post 18 years of age, such as right to property, right to privacy, etc. Law needs to be empirically generalized, it cannot be different for the prime minister and a common man.

MS: In Sindh, a marriage taking place under the age of 18 years is illegal, but it is not null and void, and the marriage stays. What do you think about this?

RAH: Yes, the institution of *Nikkah* (marriage contract in Islam) is maintained, but *rukhsati* (moving to husband's home) can be held up. There is a difference between *Nikkah* and *rukhsati*;



the former is a conceptual event while the latter is an operational event. Even if a conceptual event takes place, it is not required that the operation event follows immediately, it can be done after the age of 18 years as well, waiting two years will not be the end of the world.

MS: So, if this is implemented as you mentioned then it is fine, there is no need to declare the marriage null and void?

RAH: No, don't get me wrong, the age for the marriage contract, *Nikkah*, in the rest of world is still 18 years, and we should also have it at 18 years, because allowing it at an earlier age will give an excuse to those misusing the law and those investigating the cases. For instance, yesterday I got a call from an SHO (Station Head Officer- Police) saying a 13-year-old was being married in his area, but he said he could not register it under child marriage because it was a marriage between two tribes, and the tribes would break out into violence, and it could become a threat to law and order in the area. So, a lot of times because of tribal conflicts, child marriage cases are not brought to notice.

MS: So, you talked about international law and how it is uniform (at the age of 18 years). But the socio-economic reality of Pakistan is different; girls often have no access to education and no opportunity otherwise, and often marriage ends up being the only option for them and their families. Can you comment on this, keeping in mind social dynamics surrounding these cases?

RAH: Actually, one of the issues with children is, what we refer to as, allurements psychology, where children are attracted to things due to their curiosity and inquisitive nature. Sometimes when these girls are growing up in very conservative households, they think marriage is the path to get a bit of freedom, a way to be able to go out and about. For example, the case I was discussing earlier, the girl said she thought she would be able to go out after marriage, go to the cinema etc., since she was not allowed to do any of this. Little did she know her life would become hell. My point is, children at that age are naïve, they think they will get a sense of liberty, but instead the marriage leads to higher consequences day by day. Our society is still a close-minded society, a patriarchal mindset. The awareness about these things is still very surface level, we have not been able to put child marriage at the curriculum level.

MS: You've mentioned the issue of human trafficking, do you think this is an on-ground reality and a hype created by the media? What evidence do we have that gangs or mafias can be involved in such cases?

RAH: I believe they are involved at times and the way they go about it is that the boy who is undergoing the marriage is just a puppet, and the people who take the girl out of the country to work in a beauty parlor or brothel in Dubai, etc., is a separate team. However, this is not a simple or apparent formula. Yes, it can be said that in 30% - 40% cases, both families are ordinary people dealing with the case, but in other cases where bigger parties are involved, they know exactly how the case is to be managed, they know the legal and medical systems work, how prosecution works, and they come prepared. An ordinary person cannot manage all of this. Just take the example of the boy in Dua Zehra's case, he used to work as a gardener, then how did his family manage the fees for such reputed lawyers for so long? Dua Zehra's father managed the expenses of the case by selling personal belongings and assets, but how did the other party afford to take the girl and go around in multiple cities and afford living there? I believe this case should be a lesson for Pakistan, the way it manipulated the media and



everything. The law is not being implemented as intended and there are loopholes and lack of accountability at each stage, from police investigation to court's decision.

MS: In Rural settings, especially in feudal setups, there is a certain mindset and people argue that our girls are sexually abused, they are not safe, hence marrying them off is the only option, only way to protect them. So, in such a context where the girl is not safe, and the families feel helpless, how can the law be implemented? How can they be given protection?

RAH: For that you have certain laws in place in each province, for example there are Child Protection Authorities in Sindh. So, the directors heading these child protection units need to do their job and their needs to be a sense of accountability for them. So, protection under the law exists, it just isn't implemented. From what I have observed, this practice is more common for under in bonded Lahore, such as brick-making kilns where one person is responsible to provide for the family, and it is beneficial for them to marry off the children so that their responsibility is fulfilled, and he no longer has to provide for them. However, nowhere is it guaranteed that marrying off a girl will resolve her all protection issues; even after marriage she is at the risk of abuse, by her partner or others. For example, in the cases I have seen, that the girl is married off to a fellow worker, but she is sexually used and exploited by the feudal landlords and landed elite.

MS: For the last question I will say a statement and would like your comments on it, because some people might still make an argument opposing your stance. It can be argued that a reasonable, consensual marriage taking place at the age of 17 years, is still better than a forceful, manipulated marriage being arranged by the parents at 19 years of age, a marriage which may not be in the benefit of the child. What would you say about this, how can this argument be reconciled?

RAH: This is also a sort of myth, because these two situations don't have any correlation with each other. In our society, 90% of marriages are forced marriages, or arranged marriages, where the parents decide that this is going to be your partner. This is a common practice and happens no matter what the age. On the other hand, many early marriages are love marriages, where the minor decides, but there also exist some cases where the early child marriage is also forcefully arranged (for example the tribal case). So, we have two conflicting situations, one where the parents are forcing the girl to get married, and the other where the girl is a minor and she is risking her future to get married. She is taking a risk with her reproductive health, along with her safety, because she has no ID card or paperwork and is at high risk of sexual abuse or trafficking.

MS: So, you are arguing that these are two separate issues?

RAH: Yes. If you look at cultural marriages all around us, majority of them are forced marriages. If we dive a bit deeper and are a bit more progressive, it can be said majority of these marriages lead to marital rape. And people won't agree to this, our society is in a stage of denial. Parents think they are taking the best decision for their daughter, the most eligible partner, but there is no guarantee if he is a good person.



MS: This has been a very enlightening discussion. Thank you for taking out time and answering all the questions so patiently.

RAH: No problem. This topic is very close to my heart, as we are the ones who initially fought for this law and did advocacy despite the adversarial environment. We wanted to get this law passed, and I'm glad we did it back then because with the current context where political parties are trying to save themselves, there is hardly any room for dialogue on progressive legislation.