

Child Marriage: Its Relationship with Religion, Culture and Patriarchy

Building New Constituencies for Women's Sexual and Reproductive Health and Rights (SRHR): Religious Fundamentalism and SRHR

NATIONAL REPORT

Child Marriage: Its Relationship with Religion, Culture and Patriarchy

Sisters in Islam (SIS)
Asian-Pacific Resource and Research Centre for Women
(ARROW)

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LIST OF ACRONYMS

ARROW Asian-Pacific Resource and Research Centre for Women

CEDAW Convention on the Elimination of All Forms of Discrimination Against Women

CRC Convention on the Rights of the Child

GDP Gross Domestic Product

IAC Inter-African Committee

ICRW International Centre for Research on Women

IFLA Islamic Family Law (Federal Territory) Act 1984, Malaysia

IPPF International Planned Parenthood Federation

ISMA Ikatan Muslimin Malaysia (Malaysian Muslim Solidarity)

IWGIA Indigenous Work Group for International Affairs

JAIN Jabatan Agama Islam Negeri (Department of Islamic Religion), Malaysia

JKSM Jabatan Kehakiman Syariah Malaysia (Malaysian Syariah Judiciary Department Malaysia)

JAG Joint Action Group on Gender Equality

JPN Jabatan Pendaftaran Negara (Department of Registration)

KANITA Centre for Research on Women and Gender, Malaysia

KKWKK Kementerian Kebajikan, Wanita dan Kesejahteraan Komuniti (Ministry of Welfare, Women and Community Wellbeing), Malaysia

KPWKM Kementerian Pembangunan Wanita, Keluarga dan Masyarakat (Ministry of Women, Family and Community Development), Malaysia

LPPKN Lembaga Penduduk dan Pembangunan Keluarga Negara (National Population and Family Development Board), Malaysia

LRA Law Reform (Marriage and Divorce) Act 1976

MP Member of Parliament

NGO Non-Governmental Organisation

PAS Pan-Malaysian Islamic Party, Malaysia

PBUH Peace Be Upon Him

PLKN National Service Training Programme, Malaysia

PTIQ Institut Perguruan Tinggi Ilmu Al-Quran, Malaysia

SIS Sisters in Islam

SOP Standard Operating Procedure

LIST OF ACRONYMS (2)

SPM Sijil Pelajaran Malaysia

SRHR Sexual and Reproductive Health and Rights

SUHAKAM Human Rights Commission of Malaysia

UDHR Universal Declaration of Human Rights

UKM Universiti Kebangsaan Malaysia

USM Universiti Sains Malaysia

UMNO United Malays National Organisation

UN United Nations

UNDP United Nations Development Programme

UNESCO United Nations Educational, Scientific and Cultural Organization

UNFPA United Nations Population Fund

UNHCR United Nations High Commissioner for Refugees

UNICEF United Nations Children's Fund

WAO Women's Aid Organisation, Malaysia

WHO World Health Organization

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EXECUTIVE SUMMARY

Child marriage, according to international standards, is any form of union or marriage involving a party or parties below the age of 18. This practice, which is an affront to basic human rights for children and women alike, enjoys a status of legality with registration of marriages involving those below 18 sanctioned explicitly and given exceptions under Islamic and civil laws.

In Malaysia, there were 152,835 persons aged 15-19 in a marriage according to the 2010 Population and Housing Census.¹ A further breakdown in terms of gender shows that there were more females (80,195) than males (72,640); and the most affected were the Malay Muslim community.

Poverty, often cited as the main cause for child marriage in some countries where the practice is of much more prominence, may not be the main reason for it to enjoy its legal status here in Malaysia. The country is upper-middle income level and has its Gross National Income per capita ranked higher than India, Bangladesh and Nigeria in 2015. It is also a common belief that child marriage is the product of the inability of parents to financially provide for their daughters, including education. This is again an inaccurate analysis of the practice in Malaysia. The female youth literacy rate in 2015 is of 98%; the gross enrolment ratio in tertiary education of 32 (female) to 21 (male); and the Gender Parity Index of 1.53, debunk that belief.

It is found that the main driver for child marriage in Malaysia is instead, reasons of sexual impropriety and the shame it carries—regardless of whether it was a consensual act. Ultimately, it is the conservative culture and outlook that Malaysia wraps itself around on the topic of sex and sexuality that perpetuates the practice of child marriage as a

legitimate solution to the above. It is observed that although this conservative culture exists in every culture and religion in Malaysia, Islam is often perceived and promoted as the religion that sees no tolerance in such an issue. Premarital sex is further propagated and often emphasized in media as the number one sin in Islam to be avoided at all cost. In the course of advocating for a total ban on child marriage in Malaysia, these were the justifications for the necessity for such a practice that were brought up.

When questioned on the legitimacy of child marriage in Islamic law, long-accepted practices and interpretations with regards to the age of Aishah at the time of marriage to Prophet Muhammad (peace be upon him - pbuh) and the notion of puberty are used as proofs of its legality and adherence to Hukum Syarak. Despite evidence putting doubt on the credibility of hadiths on Aishah's (r.a.) young age and modern interpretations of the Holy Quran in regards to the notion of puberty in Islam, the archaic/narrow interpretation is still preferred and prioritised to justify the practice. Therefore, in this instance, Islam, was used as a justification and enabling factor for the sustenance of such practice and a hindrance to its total ban.

Digging deeper, the taboo on and fear of sex, is especially prominent for the female population with the policing of women's dress codes and the glorification of female virginity. Also, it is not hard to make the link between the adamant attitude of local Islamic clerics and scholars in embracing archaic interpretations of the Holy Quran and hadiths as mentioned above, and gender biases. These stem from patriarchal beliefs of female sexuality and sexuality as a whole whereby parents are often made to feel like the only way to avoid shame and for their daughters to lead a discrimination-

¹ We are referring to data in 2010 as later data are either incomplete or unavailable.

free post-pregnancy out of wedlock life, is to marry the boyfriend or father of the unborn, in order to legitimize the relationship and protect the future of the child bride

Therefore, child marriage in Malaysia not only has its roots in religious conservatism but also in the patriarchal structure of our society which embraces and opts for patriarchal beliefs and interpretations of religious texts. This is apparent in both Islamic and civil laws in relation to the minimum age of marriage whereby girls generally have a lower permissible age of marriage or have an exception to the minimum marriageable age where boys do not.

In the course of Sisters in Islam's (SIS) advocacy, in the effort to build relationships with other Islamic NGOs in calling for a legal ban on child marriage, SIS were generally met with reluctance in committing to the cause, and the main reason stems from the need to have child marriage as a solution for sexual improprieties among teenagers. Common issues brought up were that child marriage is needed as an option in the event that teenagers "slip up" by having premarital sex or getting pregnant out of wedlock. It was expressed that many parents and child brides themselves saw marriage as their only way out, partly in fear of the shame, and fear for their daughters' seemingly bleak future.

SIS calls for a total ban on child marriage with no exceptions. SIS however recognizes that it is essential to have a pragmatic approach in order to achieve a common ground with the conservatives and fundamentalists and therefore a softer stance aimed towards changing a society's views and beliefs on child marriage may require a national level campaign in the short and medium term. Going hand in hand with this effort must be education, awareness and empowerment of

the children, their parents, community leaders and the society at large. Gender-sensitisation and education focusing on raising awareness of the harmful impact of child marriage, and removing patriarchal beliefs among parents, religious leaders, policymakers and young girls themselves is one of the solutions. There is also an urgent need for a more comprehensive sexuality education in order to combat the issue of teenage pregnancy and ensure young people are better equipped to access and demand for their rights.

1. INTRODUCTION

Child marriage is defined as, “Any marriage carried out below the age of 18 years, before the girl is physically, physiologically, and psychologically ready to shoulder the responsibilities of marriage” (Inter-African Committee - IAC 1993) whereas the United Nations Children’s Fund (UNICEF) defines it as “a formal marriage or informal union before 18” (UNICEF 2011). Girls Not Brides² defines child marriage as “any formal marriage or informal union where one or both of the parties are under 18 years of age.” The coalition estimates that there is an average of 15 million girls being married before the age of 18 (Girls Not Brides n.d.).

Often, in countries with high rates of child marriage, poverty is cited as one of the main reasons (ICRW n.d.). However, Malaysia is perhaps not so straightforward in its motivations for child marriage. It is a country that has achieved significant economic progress as it is categorised as an upper-middle income country by the World Bank Group and ranked globally at 64 by the same in terms of its Gross National Income per capita (purchasing power parity) in 2016, faring better than other child marriage stricken countries such as India at 148, Bangladesh at 168 or Nigeria at 156 (World Bank Group 2017). Furthermore, the literacy rate in Malaysia is high. In particular, the female youth literacy rate in 2015 and its Gender Parity Index of 1.00 exhibits perfect contrary evidence to the notion that girls are often married off due to parents’ unwillingness or inability (driven by poverty) to provide education. In fact, according to the UNESCO Institute for Statistics, in 2015, the gross enrolment ratio in tertiary education shows that there were more females who were enrolled in a tertiary educational institution compared to males, with a gender parity index of 1.53 (UNESCO Institute for Statistics 2016).

A commissioned study by the United Nations Children’s Fund (UNICEF), United Nations Development Programme (UNDP) in Malaysia and the Centre of Research for Women and Gender (KANITA, Universiti Sains Malaysia) in 2011 showed that respondents to the qualitative study were mostly of lower economic status but they did not give poverty as a reason for entering into marriage. Most marry due to pregnancy or having had sexual relations. Poverty may be the circumstances surrounding the respondents but may not be the primary reason for entering into marriage.

Child marriage is not peculiar to Muslims. However, the most recent data shows that it is most prevalent in the Muslim community. In advocating for the reform of age of marriage laws, the conservative Muslim voice is the largest force of resistance. This resistance has been growing in size and strength, necessitating Sisters in Islam to focus greater attention on this area.

It is argued that in Islam, a girl is allowed to marry once she reaches puberty, thus no law that sets a minimum age of marriage can apply to Muslims. The Islamic Family Law (Federal Territory) Act 1984 (IFLA) sets this at 16 years for girls and 18 for boys. But exceptions are allowed with the permission of the Sharia Court.

The argument to alternative interpretations of the Quran is often vehemently opposed. Sisters in Islam (SIS) argues that while the Quran does not state a specific age as the age of marriage, Surah An-Nisa’ (4:6) requires that when orphans reach the “age of marriage” or “a marriageable age,” they can be tested for “sound judgment” or “maturity of mind.” This indicates that a marriageable age is linked to the ability and maturity to make sound judgment, which means puberty

² Girls Not Brides is a global partnership of more than 700 civil society organisations committed to ending child marriage and enabling girls to fulfil their potential.

³ Please refer to Chapter 3, under the sub-heading, “A Counter Narrative to the Drivers of and Justifications for Child Marriage: the Islamic Perspective.”

alone, is not sufficient to justify marriage at a young age. Another argument for those who support child marriage is the age of Aishah (r.a.), Prophet Muhammad's (pbuh) wife who was said to be nine years old at the age of consummation of marriage. However, there is new research³ based on prophetic traditions (hadith) and historical events in the life of the Prophet (pbuh) that questions the commonly held belief that the Prophet was betrothed to Aishah (r.a.) at the age of six and consummated the marriage at the age of nine. The age suggested by this new research is closer to 19. As expected, this new research is completely ignored in the arguments for law reform.

Thus, it seems that, for the Muslim community, there is a combination of religious dogmatism and moral shaming of sexual relations outside marriage that is the driving force behind the continued failure to institute law reform on the minimum age of marriage. Overarching these issues are the influences of patriarchal culture over women and girls in general.

This sets the context for SIS's continued advocacy on this issue.

Research Objectives

Whilst it is recognised that child marriage occurs in all cultures and religions in Malaysia, the research conducted looked specifically at the issue of child marriage within the Muslim community in Malaysia. In highlighting the disadvantageous situation for Muslims in Malaysia, a brief comparison was made with the laws that govern non-Muslims in this area.

This is based on the following objectives:

- To debunk the misguided understanding that Islam is a religion which promotes or condones child marriage;
- To determine the 'religious-based' motivations of child marriage in Malaysia; and
- To recommend viable strategies for advocacy that may be used as effective solutions to eradicate child marriage in Malaysia.

Research Questions

The research aimed to answer the following questions that will define the direction that will be taken in order to provide new insights to the topic of child marriages in Malaysia.

- How far does religion and culture play a role in causing/facilitating/enabling child marriage?
- What specific religious and cultural discourses are used to justify child marriage? What is the alternative narrative?
- Are legal, social, and education system supportive of young single mothers?
- What are the other contributing factors that lead to child marriage?

Research Methodology

(1) Desk Review

This study carried out a desk review, including materials from published reports and grey literature available both locally and internationally, as well as available statistics on child marriage. These included statistics released by religious and governmental authorities.

Secondary statistical data were also obtained through a desk review on secondary sources such as those revealed via parliamentary written or oral replies and other similar studies previously conducted by other organisations or universities.

Statistical data collected are primarily from 2000 to 2016. Various news reports have been cited to provide a temperature gauge on the attitudes and opinions of local policy makers and civil societies in an attempt to reflect the views of Malaysians on issues relating to child marriage.

(2) Collation of religious texts

In addition, various religious texts that have been used to justify the practice of child marriage are referred to, whilst providing alternative interpretations by Islamic scholars of other nations to counter the argument that child marriage is permissible in Islam according to the Holy Quran.

(3) Engagements with Conservative Muslim Counterparts

Several engagement sessions were conducted with Muslim political parties and non-governmental organisations (NGO). This gave us an insight into the critical issues in religion that needed to be unravelled in this debate on child marriage.

(4) Public Engagements on Child Marriage

SIS conducted a public forum in August 2016, which was very well-attended. The forum dealt with the intersection of religion and health, education, fundamentalist dogmatism, legal systems, and lived realities.

Limitations

In the process of collecting data, SIS encountered hurdles where recent and comprehensive data on this issue were not publicly and readily available. Attempts to approach

relevant governmental and religious departments responsible for Muslim, non-Muslim and indigenous marriage registrations were made, but requests returned declined. The only numbers available are given as collective figures over the course of several years with no reference to vital information such as the child brides' or grooms' ethnicity and place of residence. The lack of adequate data is a major setback in terms of obtaining a full grasp of the causes and magnitude of the problem.

2. MALAYSIA: A BRIEF PROFILE

A Profile: Malaysia

Constitution

Type of government	Constitutional monarchy operating under a parliamentary democratic system.
Religion	Islam as the official religion with no restriction to the practice of other religions.

Population & Demographics

Total population (2016)	31.7 million (2016)
Population of women (2016)	15.3 million (2016); 107 males per 100 females
Population of young people (2016)	8.7 million (0-14 years); 5.2 million (15-24 years).
Population growth rate (2015)	1.5%
Ethnic groupings (2016)	Bumiputera 68.6% (Malays, Natives, Aborigines); Chinese 23.4%; Indian 7.0%; and Others 1.0%.
Religious groupings (2014)	Islam 63.4%; Buddhism 18.6%; Christianity 9.9%; Hinduism 5.8%; and Others (includes Confucianism/Taoism/other traditional faiths of the Chinese, tribal/folk religions, atheism, and others) 2.3%.

Economy

Country Income Group	Upper-middle income
Gross National Income per capita (2015)	10, 570 US dollars
Rate of economic growth (GDP growth)	4.2% (2016); 5.6% (first quarter of 2017)
Poverty Headcount Ratio (2014)	0.6%

Education and Literacy

Literacy rate (2016)	Female	93%
	Male	96%
	Female-to-male ratio	0.97
Youth literacy for age group 15-24 (2015)	Literacy rate	98%
	Youth female	98%
	Youth male	98%
	Gender Parity Index	1.00
Adult literacy for age 15 and above (2015)	Literacy rate	95%
	Adult female	93%
	Adult male	96%
Enrolment in primary education (2014)	95 (female); 98 (male)	
Enrolment in secondary education (2014)	66 (female); 67 (male)	
Enrolment in tertiary education (2015)	Gross enrolment ratio	32 (female); 21 (male)
	Gender Parity Index	1.53

Sexual and Reproductive Health

Maternal mortality ratio (2015)	40 (per 100,000 live births)
Adolescent (15-19) fertility rate (2006-2015)	13 births per 1,000 women
Contraception prevalence rate for age group 15-49 (2016)	57 (any method); 42 (modern method)
Unmet need for family planning rate for age group 15-49 (2016)	15
Proportion of demand satisfied with modern methods for age group 15-49 (2016)	58

Sources: Federal Constitution of Malaysia, World Bank, United Nations, Department of Statistics Malaysia

Malaysia is a multi-religious, multi-cultural and multi-ethnic country with Islam as the “religion of the Federation,” but other religions may be practised in peace and harmony in any part of the Federation, as stated in Article 3 of the Federal Constitution of Malaysia. Malaysia is located in South East Asia and is geographically divided into Peninsular Malaysia and East Malaysia (the island of Borneo). It is, geopolitically, a federation of 13 states and three areas designated collectively as the Federal Territories. Eleven states⁴ are on the peninsular and two⁵ are in North Borneo. The Current Population Estimates 2014-2016 shows a

rise in the total population of Malaysia by 0.5 million over the previous year, with the 2016 population estimated at 31.7 million. The majority (89.7%) are Malaysian citizens, comprising of Bumiputera⁶ (68.6%); Chinese (23.4 %); Indians (7%); and Others (1%) (Department of Statistics 2016).

⁴ The 11 states are Perlis, Penang, Kedah, Kelantan, Terengganu, Pahang, Perak, Selangor, Negeri Sembilan, Malacca and Johor.

⁵ The two states are Sabah and Sarawak.

According to the 2010 Population and Housing Census, the largest population, who are also the majority in Malaysia, are the Malays, who make up 63.1% of the total population of citizens whereas the indigenous people stand at about 4.3% (Department of Statistics 2011).⁷

The Legal Framework on Child Marriage

Malaysia has a dual legal system which practices a civil legal system and an Islamic (Sharia) legal system. Article 121 (1A) of the Federal Constitution states that the civil courts have no jurisdiction over matters that are within the jurisdiction of the Sharia Courts. Thus, matters governed under Islamic laws are only to be administered through Sharia Courts. In East

⁶ Including Malays and the indigenous community in Peninsular and East Malaysia.

⁷ The indigenous community consists of mainly the aborigines in Peninsular Malaysia and natives in East Malaysia – both of which may be further divided into various tribes. There are three main tribal groups amongst the aborigines in Peninsular Malaysia, i.e. Semang (Negrito), Senoi and Proto Malay (Aboriginal Malay); the majority of them reside in Pahang and Perak (JHEOA 2006). As for the natives, in one of the two states in the East, Sarawak, the most populous tribal group, Iban, constituted 30.3% of citizens in Sarawak. In Sabah, the Kadazans who constitute the largest number of population made up 24.5% of the citizens in the said state (Department of Statistics 2011).

⁸ Article 74 (1) and Second List of the Ninth Schedule of the Federal Constitution.

Malaysia, there is also in existence Native Courts taking on the role as administrators of native and customary laws.

Unlike civil law, which is federal law, Islamic law is state-based.⁸ As such, Islamic laws may vary from state to state, although most hold similar to identical provisions on particular matters. Additionally, Islamic laws are currently only applicable to Muslims and are generally restricted to personal laws on marriage, divorce and inheritance. Certain criminal laws are also imposed via the Syariah Criminal Offences legislations of each state. Again, variations are evident from state to state, but in essence the offences and their resulting punishments remain largely consistent across the country. It consists of provisions such as a ban on alcohol consumption, suspiciously excessive close proximity with a member of the opposite sex (known as *khalwat*), premarital and extra-marital sexual activity (*zina*) and so on.

Muslim marriages must be contracted and regulated under the Islamic family laws of each of the states whilst marriages of non-Muslims are regulated under the Law Reform (Marriage and Divorce) Act 1976 (LRA) and related federal statutes. As laws on marriage, family, and ancillary matters are regulated under federal laws, the laws with regard to non-Muslims are uniform across the country.

Table 1: Comparison of the Legal Minimum Age of Marriage under Respective Legal Systems in Malaysia

Legal System	Minimum Age for Marriage (years)		Exception	
	Male	Female	Male	Female
Islamic Law	18 (Section 8 IFLA).	16 (Section 8 IFLA).	Sharia Courts may grant its written permission under certain circumstances. (Section 8 IFLA).	Sharia Courts may grant its written permission under certain circumstances. (Section 8 IFLA).
Civil Law	18 (parental consent required for those under 21) (Section 10 LRA).	18 (parental consent required for those under 21) (Section 10 LRA).	Nil.	The Chief Minister of various states may grant a licence to authorize the solemnisation of marriage for those between the ages of 16 and 18. (Section 10 LRA).
Customary Law	18 (Adat Iban 1993).	16 (Adat Iban 1993).	A parent or legal guardian may give their written consent for underage marriages. (Adat Iban 1993).	A parent or legal guardian may give their written consent for underage marriages. (Adat Iban 1993).

Source: IFLA, LRA and Adat Iban.

Section 8 of IFLA stipulates the minimum age of marriage for Muslims to be 18 years for boys and 16 years for girls.⁹ However, an exception is provided that allows a child under those ages to marry with the consent of the Sharia Court, for which there is no minimum age provided. There is no specific penalty provided if such an approval is not obtained. The marriage would be in contravention of the law; thus it cannot be registered. However, if it is in accordance with *Hukum Syarak*,¹⁰ then the marriage may be registered nonetheless.¹¹ Section 8 of IFLA provides that:

“No marriage may be solemnized under this Act where either the man is under the age of eighteen or the woman is under the age of sixteen except where the Sharia judge has granted his permission in writing in certain circumstances.”

The National Fatwa Council in 2014 has discouraged such practice, though it did not explicitly reject or label it as haram (prohibited). The Council’s fatwa declared that child marriage was not obligatory and that it was not a “healthy” practice. It is neither mandatory (wajib) nor encouraged (sunat). In the explanatory notes provided, it was stated that the factors to be taken into account in issuing the Fatwa were that: (i) the marriage of the Prophet (pbuh) to Aishah (r.a.) should not be used as an excuse to enable child marriage with ease; (ii) although the laws allow for child marriage, it should not be done lightly without considering the interests of the child; (iii) many child marriages occur as a result of sexual intercourse outside of marriage or teenage pregnancies and the need for family and communities to remove the shame of such immoral behaviours and maintain the dignity of the girl and her family; and lastly (iv) it is proven through research by medical practitioners that there are significant negative impacts of the physical and mental wellbeing of the child, in particular the child bride.

Significant observations with regards to the Islamic laws on child marriage:

⁹ Though each state has its own governing statute on marriage, the provisions on minimum age for marriage is uniform across the country. As such, throughout this report, IFLA will be primarily referred to.

¹⁰ Section 2 IFLA – “Hukum Syarak” means Islamic Law according to any recognized school of thought (Mazhab).

¹¹⁻¹² Section 12 IFLA.

(1) Exceptions

Under Islamic law, an exception is provided when the “Sharia Court grants its permission in writing, in certain circumstances.”¹²

One of the biggest concerns in terms of the exception is that no minimum age is provided—this means that there is no limitation as to how young a Muslim bride or groom may be. There have been reported cases of girls as young as 10 and 11 years being married off to adult males.

Another concern is that it has never been made clear as to what constitutes “certain circumstances.” The data shows that a majority of applications are approved. In 2012, it was reported that there was a total of 1,022 approvals out of 1,165 child marriage applications filed in the Sharia Courts, making the approval rate approximately 88% (The Star Online, 6 October 2013). Anecdotal evidence also suggests that there is no guidance for judges on process or grounds for rejection and approval. As such, there are circumstances where the child is not called in by the Court for an interview, and reliance is placed upon the word of the parent(s). Recently, we have seen cases when a marriage was approved where the husband was being prosecuted for the statutory rape of the wife. A research study conducted in 2014 by researchers at Universiti Sains Malaysia (USM), Centre for Research on Women and Gender (KANITA), found that getting permission from the Sharia Courts had not been difficult (Endut and Mohd Hashim 2014).

The Prime Minister’s Department claims that the Sharia Court is guided by a Standard Operating Procedure (SOP), which is not publicly available. However, consultation with a former Sharia Court judge revealed that this is inaccurate as, in practice, judges utilise their discretion in deciding on child marriage applications. A written and formal SOP does not seem to exist.

(2) Girls Have a Lower Limit for Minimum Age of Marriage

In all the legal systems operating in Malaysia, girls have a lower age of marriage than boys, underpinning the patriarchal nature of society in Malaysia. In a study conducted by KANITA, where all the female respondents were 15 and below, it was found that most were married to spouses at least five years older than them. (Endut and Mohd Hashim 2014)

“ No marriage may be solemnized under this Act where either the man is under the age of eighteen or the woman is under the age of sixteen except where the Sharia judge has granted his permission in writing in certain circumstances.”



(3) No Requirement of Consent of Child Brides or Grooms

Section 8 of the IFLA is silent on the issue of consent of the child. And in practice, the said consent is not necessarily requested in each case. In many cases, the parents' testimonies are accepted as sufficient.

(4) Interest of Children Not Required

Section 8 of the IFLA is silent on requiring the court to decide in the best interest of the child. Again, the absence of such a requirement allows judges to fully rely on their discretion to decide on child marriage applications without specific consideration of the best interest of the child.

Laws on Child Marriage Applicable to Non-Muslims

In contrast, section 10 of the LRA 1976 provides for a minimum age for marriage of 18 for both sexes and prospective brides and grooms below the age of 21 years require the consent of parents to marry. Girls between the ages of 16 and 18 years may marry with the permission of a Chief Minister but such permission cannot be given to persons below 16. The indigenous communities are governed under the following: (i) Muslims are governed under Islamic Family Laws; (ii) natives from Sabah, Sarawak and Peninsular are governed under two separate native customary laws; and (iii) where neither (i) nor (ii) applies as stated in section 3(4) of the LRA 1976, marriage takes place under the LRA 1976. Under customary laws, the minimum age for marriage is generally set at 18 for boys and 16 for girls whilst both may be permitted to marry below the said age with the written consent of the parent or legal guardian.

Sexual Intercourse with a Minor is Not Statutory Rape Where There is a Marriage

The lower age of 16 for girls to marry is premised upon the fact that any sexual relations with a girl under 16 can be prosecuted with statutory rape. Section 375 of the Penal Code provides that:

“A man is said to commit ‘rape’ who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the

following descriptions: (g) with or without her consent, when she is under sixteen years of age.”

An exception to this section is that sexual intercourse by a man with his own wife is not rape. An issue, which we will discuss later, is that of child marriage being used as a way out for perpetrators from being prosecuted under this law (even though at the time of the sexual intercourse, the two were not married).

Malaysia's International Obligations on Child Marriage

The main thrust of international human rights conventions is that *“early marriage is a violation of fundamental human rights and that both state and non-state actors must be held accountable under international treaty obligations to combat early child marriage. Locating child marriage as a human rights violation also helps to raise it as a grave public concern rather than a private matter between families. The human rights agenda helps to view child marriage through the lenses of both civil and political rights and economic, social and cultural rights covenants. Most of all, the human rights perspective helps to frame child marriage as a crime against women and the girl child,”* (UNICEF 2008).

As a United Nations member state, Malaysia has affirmed acceptance of the Universal Declaration of Human Rights (UDHR), whose provisions are broadly accepted to reflect customary international law. Article 16 of the UDHR states that:

“(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to form a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State” (UN n.d., Article 16).

The UDHR recognises a person's right to free and full consent to marriage to which it is also recognized that a "free and full" consent cannot be obtained when one of the parties involved is not sufficiently mature to make an informed decision about a life partner. Free and full consent must be assessed within the perspective of the options and choices of the child bride. Does she have other alternatives other than to marry at an early age? Is she allowed to exercise her option to not do so? Free and full consent can only be guaranteed and meaningful where a child bride has these alternative options to marriage and is in a position to exercise these options.

Malaysia is also signatory to the Convention on the Rights of the Child (CRC).¹³ The CRC does not explicitly deal with the issue of child marriage, but it does require certain rights to be guaranteed by signatory states—rights which are directly violated as a result of child marriage, such as the right to express their views freely. In fact, the legalisation of child marriage is a blatant offence to Article 3 and Article 24 which call for the best interests of children to be the primary consideration in any action by the authorities and the abolishment of traditional practices prejudicial to the health of children, respectively—given the plenty of empirical evidence which shows that child brides in particular are highly susceptible to abuse, poverty, and severe health issues.

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) was ratified by the Malaysian government in 1995, though with several reservations.¹⁴ In relation to its reservations, the Malaysian Government in its "Response to the Combined Third to Fifth Periodic Reports" (received by the CEDAW Committee on September 1, 2016) stated that:

"The Government therefore has to maintain its reservations . . . and understands that the principle of 'equality' as expounded in the said articles has to be considered within the realm of the Shari'a which guarantees to a spouse complementary rights and responsibilities in order to preserve the sacred bond of matrimony."

Article 16 (2) of CEDAW 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." Whilst the previous reservation on this Article was removed by the Government of Malaysia, it should be noted that legislative provisions on the age of marriage has remained unchanged. Whilst the Child Act 2001 defines a child as 18 and above, this definition is not applied to provisions on the minimum age of marriage for non-Muslims under the LRA or the Islamic family laws of the 13 States in Malaysia. An opportunity had arisen to start tackling this issue in 2016. The amendment to the Child Act 2001 was tabled for its second reading in Parliament in April 2016. Even after repeated attempts by women's rights groups, child rights agencies, human rights bodies, etc., the proposal to set the minimum age of marriage at 18 was rejected. The age limit, if legislated in the Child Act, would have resulted in a uniform application across Muslims and non-Muslims.

Related Islamic Laws: Motivators for Child Marriage

There are several provisions within the Islamic laws in Malaysia which inadvertently may necessitate the child bride or her parent to choose marriage rather than other alternatives.

(1) The first is the law on excessive and suspicious close proximity or *khalwat*. Section 27 of the Syariah Criminal Offences (Federal Territories) Act 1997 provides that: "Any-

(a) man, who is found together with one or more women, not being his wife or mahram; or

(b) woman, who is found together with one or more men, not being her husband or mahram,

in any secluded place or in a house or room under circumstances which may give rise to suspicion that they were engaged in immoral acts shall be guilty of an offence and shall on conviction be liable to a fine not exceeding three thousand ringgit or to imprisonment for a term not exceeding two years or to both."

This statute has a significant stigma and shame attached to it. In cases where a boy begins to show interest in a girl and vice

versa, the fear of illicit and improper behaviour by the couple is so strong that the parent may prefer to marry the children, or the children themselves may opt to marry in order to be able to have a relationship. In some cases, children caught in excessive and suspicious close proximity are given a choice of marrying or being prosecuted under this law. In recent years, religious authorities have stepped up their moral policing raids, such as forcible entry in order to “catch the couple unawares.” In many cases, the couple are also shamed publicly, with their photos posted in the newspapers, tabloids, magazines and television.

In 2009, a local newspaper reported: “A total of 197 students from secondary schools and higher learning institutions here were caught for khalwat (suspicious close proximity) in the first seven months of the year,” (The Star Online, 27 August 2009). In this particular case, the State Religious Department intensified checks, surveillance and raids to curtail khalwat cases in the State and expanded the scope of enforcement by the religious department covering hotels, chalets, entertainment centres and recreational parks. Also, according to JKSM (Malaysian Syariah Judiciary Department Malaysia), from 2010 to 2015, a total of 34,404 khalwat cases were recorded throughout Malaysia (Zubaidah Ismail 2016).

(2) Another offence that could indirectly motivate children to marry is sexual intercourse out of wedlock (*zina*). Under Section 23 of the Syariah Criminal Offences (Federal Territories) Act 1997:

“(1) Any man who performs sexual intercourse with a woman who is not his lawful wife shall be guilty of an

offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.

(2) Any woman who performs sexual intercourse with a man who is not her lawful husband shall be guilty of an offence and shall on conviction be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to whipping not exceeding six strokes or to any combination thereof.”

Sexual intercourse out of wedlock or *zina* is considered one of the most heinous crimes under Islam. Whilst the punishment above does not seem relatively severe, traditional Islamic laws impose severe punishment on the offence of *zina* such as 100 lashes, and in jurisdictions that enforce *hudud*¹⁵ laws, the offence can attract punishments such as stoning to death in public. More recently in Malaysia, there have been calls to legislate hudud laws, partly to remove immoral activities such as *zina* among Muslims (The Malay Mail Online, 16 June 2014). It is reported that the implementation of *hudud* laws has received significant support from Muslim population in Malaysia, evidencing the growing support for a more conservative imposition of Islamic rules in the country (The Malay Mail Online, 6 June 2016).

Thus again, in this situation, parents either marry children off where they have committed *zina* or have been suspected of committing it. This is evident when some of the married children interviewed in the KANITA study have chosen to marry in order to avoid *zina* (Endut and Mohd Hashim 2014). In some cases, the child is married off to the perpetrator,

¹³ There are 5 reservations on CRC which include Article 2 on protection of children from all forms of discrimination, Article 7 on name and nationality, Article 14 on freedom of thought, conscience and religion; Article 28(1)(a) on free and compulsory education at primary level; and Article 37 on freedom from torture and deprivation of liberty.

¹⁴ CEDAW also sees five reservations from the Malaysian government, namely, Article 9(2) on equal rights for women to pass their nationality to their children; Article 16(1)(a) on their equal rights to enter into marriage; Article 16(1)(c) on equal rights and responsibilities during marriage and at its dissolution; Article 16(1)(f) on equal rights and responsibilities with regard to guardianship, ward ship, trusteeship and adoption of children; and Article 16(1)(g) on equal personal rights in a marriage (including the rights to choose a family name, profession and occupation).

¹⁵ Hudud refers to the Islamic Penal Code.

¹⁶ Refer to Chapter 3: Understanding the Interlinkages, under sub-heading, “Child Marriage and Rape.”

¹⁷ This is from an edict issued by the National Fatwa Council in 2003, prescribing that:
(i) A child is illegitimate if born less than six months after marriage; and
(ii) Said child’s surname may not be of his/her father’s (Free Malaysia Today, 27 July 2017).

although she has been raped.¹⁶ To safeguard the dignity of parents, they would encourage underage marriage under such circumstances.

(3) Another significant legislation that has indirect impact towards child marriage is the ascription of legitimacy to babies born out of wedlock. Under Malaysian Islamic law,¹⁷ a child is considered born out of wedlock if he or she is born less than six months from the date of marriage. When a child is born out of wedlock, the custody and guardianship solely falls on the mother. The child also loses rights to inheritance from the father's estate. For economic reasons, a pregnant girl or her parents may feel it is more convenient to marry her off taking into account the welfare of the unborn baby. Later on, the child will have access to financial support from the father or the father's family.

The converse reaction where marriage is not possible also includes baby dumping. Baby dumping among young Muslim girls in dealing with the shame and stigma of unwanted pregnancies and not having a support system to carry them through this traumatic event has been increasing yearly.

The 2014 KANITA study cited the main reasons for child marriage as follows: (i) to avoid premarital sex, which is forbidden under Islam; (ii) to avoid being arrested for khalwat; (iii) coercion by family elders; and (iv) pregnancy (Endut and Mohd Hashim 2014). This again marks the uniqueness of the practice of child marriage in Malaysia. It is a conscious choice, sometimes by the children themselves and sometimes by their adult caregivers or other persons assuming authority over them. The crux of the issue is conformance with moral codes as prescribed under Islamic principles and laws.

It is observed that with greater exposure to other negative elements such as pornography, the average age of youth engaging (or wanting to engage) in sexual activity is getting younger. It was reported that the "Risk Factor and Protection for Youth Sexual and Reproductive Health Study 2013" conducted in Sabah and Sarawak, revealed that the minimum age for first-time sex among students in Sarawak was 15.3 years (Free Malaysia Today, 23 January 2017). Similarly, in a study of secondary school students in Negeri Sembilan, the mean age of male students who had their first sexual intercourse was 14.9 (Free Malaysia Today, 23 January 2017). Another local study in the Klang Valley reported that among

adolescents who experienced premarital sexual intercourse, 72% did not use any contraception during their first sexual encounter (Free Malaysia Today, 23 January 2017). Without acceptance from society of these changes taking place among young people, and a more compassionate, supportive and forgiving environment to manage these "moral sins," child marriage will continue to be seen as an easy and acceptable short-term solution.

Prevalence of Child Marriage in Malaysia: How Often Does It Happen and Who Does It Affect?

The 2000 Population and Housing Census revealed that there were 53,196 married women in Malaysia who were between ages 15 and 19 (Department of Statistics Malaysia 2001). It was also estimated that a total of 11,400 children below the age of 15 were married: 6,800 girls and 4,600 boys.

In the 2010 Population and Housing Census, it was shown that a total of 152,835 persons of the age group 15-19 were married (Department of Statistics Malaysia 2011). Of these, a total of 72,640 were males and 80,195 were females. As for the divorce rate for the same in 2010, about 229 were males and 828 were females.

Table 2: The Number of Married Girls and Boys in 2000 and 2010

Age Group	2000 Census		2010 Census	
	Girls	Boys	Girls	Boys
Under 15	6,800	4,334	Data not provided	Data not provided
15-19	53,196	11,833	68,668	72,640

Source: Department of Statistics Malaysia 2000, 2010.

Table 3: Ethnicity Distribution of Married Girls Under the Age of 15 in 2000

Ethnicity	Number of Married Girls Under Age of 15
Malay	2,450
Bumiputera (excluding Malays)	1,550
Chinese	1,600
Indian	600
Others	600
TOTAL	6,800

Source: Department of Statistics Malaysia 2001.

Table 4: Percentage of Married Persons between 15-19 by to Sex and Ethnicity in 2010

Ethnicity	Male (%)	Female (%)
Malay	4.22 (31,366)	4.68 (33,847)
Bumiputera (excluding Malays)	5.78 (10,589)	9.80 (17,755)
Chinese	6.00 (16,458)	4.66 (12,052)
Indian	4.82 (4,294)	4.86 (4,216)
Others	4.45 (501)	7.41 (798)

Source: Department of Statistics 2011

Note that the statistics for 2010 do not show the number of married girls and boys who were below 15. It is extremely worrisome that the data is being held back from public knowledge. In terms of the distribution of the above according to states, the state of Kelantan recorded the highest, with 5.40% of 15 to 19-year-olds being married. It is followed by Sabah at 4.34% Sarawak at 4.32%. Perak at 2.49%, Pahang at 2.43% and Johor at 2.04% also recorded a significant number of married persons in the same age group (Department of Statistics Malaysia 2011).

As stated before, official data in the area of child marriage is scarce. As such, information is sourced through statements in Parliament or statements by Ministers as reported in news articles, and research done by international organisations.

Some of the more significant information are:

- i. Then Deputy Minister of the Women, Family and Community Development Ministry (KPWKM) is reported to have stated that in 2010, there was a recorded estimation of 16,000 child marriages, but the figure refers only to those below the age of 15, with the majority of the cases coming from Sabah and Sarawak (MalaysiaKini, 29 April 2016).
- ii. According to the "State of World Population 2014," prepared by the UNFPA, it was estimated that more than 15,000 children were married before the age of 19 in Malaysia (UNFPA 2014).
- iii. In May 2016, KPWKM revealed that a total of 9,061 child marriages were recorded from 2010 to 2015, which includes both Muslim and non-Muslim marriages (The Star Online, 19 May 2016).

Table 5: Number of Married Teenage¹⁸ Muslim and Non-Muslim Girls

	UNFPA	Ministry Of Health		UNDP
2011	82,000 (15 to 19 years old). ¹⁹	10,766 (15 to 19 years old). ²⁰	40,500 (10 to 19 years old). ²¹	14,040 (10 to 19 years old). ²²
2012	-			
2013	-	-		-
2016	-	3,980 (age group undefined) ²³		-

Source: UNFPA, Ministry of Health, UNDP.

¹⁸ Note that this table refers to number of married teenagers instead of underage girls as the statistics refer to those 19 years of age and below.

¹⁹ The United Nations Population Fund (UNFPA) reported an estimated 82,000 married girls in Malaysia who were between the ages of 15 and 19 in the year 2011 (The Star Online, 11 October 2012).

²⁰ For 2011 and 2012, the Ministry of Health recorded that 84% of 12,817 pregnant teenagers reviewed were married, amounting to approximately 10,766 of married girl (15-19 years old) for those two years.

²¹ Dr Rose Lena Lazemi, secretary –general to KPWKM is reported to have said, "In fact, the Family Health Development Division of the Health Ministry also reported that 18,000 pregnant teenagers had received services at government health clinics a year from 2011 to 2013... As much as 25 per cent of those cases were unmarried..." Based on the statistics of 18,000 pregnant teenagers per year, the total number of pregnant teenagers would be at about 54,000 over the course of three years, i.e. from 2011 to 2013. Of these, 25 per cent were unmarried and this translates to 75 per cent of married cases. Therefore, 75 per cent of a total of 54,000 pregnant teenagers for these years is about 40,500 of married pregnant teenagers.

²² It was provided in the UNDP Malaysian report Millennium Development Goals Report 2015, that for years 2011 and 2012, about 78% of the 18,000 teenage mothers (aged 10 to 19) who made antenatal visits at public health facilities were recorded as married, translating the amount to about 14,040 married teenagers.

²³ Statistics of the Ministry of Health on teenage pregnancies in 2016 show that 28.8% of the 13,831 total number of pregnant teenagers of Muslim and non-Muslim pregnant teenagers are married.

Table 6: Number of Marriages Involving Underage Non-Muslim Girls from 2000 to 2015

Year	Source of Data	Number of Marriages Involving Underage Girls	Further Breakdown of Demographic
2000 - 2014	Ministry of Home Affairs ²⁴	7,719 (only girls 16 and above but below 18, excluding those married under customary laws)	(i) 1,424 married to men 21 years old and above (ii) 689 married to men between 18 and 21 (iii) 1,975 of them are from the indigenous community
2011 – September 2015	KPWKM ²⁵	2,104 (only girls 16 and above but below 18)	Data not available

Source: UNFPA, Ministry of Health, UNDP.

Table 7: Number of Marriages Involving Underage Non-Muslim Persons from 2010 to 2015

Year	Source of Data	Number of Marriages Involving Underage Persons (Boys and Girls)
2010 - 2015	KPWKM (The Star Online, 16 May 2016),	2,775
2015	KPWKM (The Malay Mail Online, 6 April 2016).	294 (marriages registered pursuant to customary laws only)

Source: The Star Online, The Malay Mail Online.

A table released by the Ministry of Home Affairs indicates that from 2000 to 2014, child marriages were most prevalent in the state of Sarawak with a total of 1,745 recorded, followed by Johor with 999, and Selangor with 687 (National Registration Department 2015).²⁶ Another table showed that the most affected ethnicity is Chinese (4,584), followed by Sarawakian natives (1,399) (National Registration Department 2015).

It is obvious that the data available is irregular, inconsistent, limited, and at times contradictory. This is a significant

barrier to effective advocacy on this issue because, to the average Malaysian, child marriage is not an issue plaguing this country.

Child Marriage for Muslims

According to the Ministry of Health statistics on premarital HIV screening in 2009, a procedural requirement for Muslim couples intending to get married, there were a total of 479 children below the age of 15 who underwent the said procedure. For those between the age of 15 and 19, the same

Table 8: Number of Persons Who Underwent HIV Premarital Screening in 2009 According to Age and Gender

Ages	Girls	Boys
Below 10 years old	32	-
10 – 14 years old	445	2
15 – 19 years old	6,815	1,911
Total	7,292	1,913

Source: Ministry of Health 2010

statistics showed a total of 8,726 of them undergoing the same screening.

As aforementioned, in May 2016, Deputy Minister of KPWKM, Datuk Azizah Mohd Dun, said that 9,061 child marriages were recorded over the last five years (The Star Online, 19 May 2016). Of the number, 6,286 are Muslim youths comprising boys below the age 18 and girls below the age of 16 who were married between 2010 and 2015 following approvals by the Sharia Court.

Again, statistics by the Ministry of Health on teenage pregnancies in 2016 show that 3,980 (28.8% of the 13,831 total number of pregnant teenagers) of Muslim and non-Muslim pregnant teenagers are married (The Malay Mail Online, 10 September 2016).

In the absence of credible and official data on marriage involving young children, secondary data such as these are

used as indicators of child marriage. Other than the fact that as many as 447 children, aged 10 to 14, were making applications for marriage, there was a significant number (32) of girls below the age of 10 also undergoing the premarital HIV screening test. Additionally, based on the table above, it is apparent that girls are the most affected sex by a large margin.

A more recent indication was provided in March 2016 whereby the KPWKM revealed that a total of 10,240 child marriage applications were recorded by the Sharia Court over the course of 10 years, from 2005 to 2015 (KPWKM 2016). A further breakdown was provided whereby there was an indication of a hike in child marriage applications as the average number of the same for 2005 to 2010 was 849, but rose to 1,029 for 2011 to 2015 (KPWKM 2016). In May 2016, the Deputy Minister of KPWKM also provided that a total of 6,286 applications were approved from 2010 to 2015 (The Star Online, 19 May 2016).

²⁴ This was revealed through a Parliamentary written reply to the MP of Pengerang.

²⁵ This was revealed through a March 2016 Parliamentary written reply to the MP of Batu Kawan.

²⁶ Revealed in a Parliamentary written reply, from Home Minister to the MP of Pengerang.

Table 9: Number of Approved Child Marriage Applications as Revealed by Different Sources

	KPWKM in March 2016 (via parliamentary written reply)	KPWKM in May 2016 (via parliamentary oral reply)	Department of Syariah Judiciary Malaysia (JKSM) in 2013 (as reported by The Star Online)
2011	-	1,045	900
2012	1,110	1,095	1022
2015	-	1,025	-

Source: Ministry of Health 2015

Note that girls who are 16 and above need not obtain the Sharia Court's consent to get married and therefore, the statistics above do not reflect the numbers of married Muslim girls below the age of 16.

In relation to the geographical demography of this issue, the study conducted by KANITA published statistics collected from respective states' Islamic Department (JAIN), indicated that from 2009 to 2011, Sarawak recorded the highest number of applications (average of 192 per year), followed closely by Kelantan (average of 177 per year), then Sabah (average of 131 per year) (Endut and Mohd Hashim 2014). When compared with the total number of Muslim marriages during that particular period, it is also shown that Sarawak (3.2%) has the highest percentage of child marriage followed by Sabah (1.53%), Perlis (1.3%), and Kelantan, which was the fourth highest at 1.2% (Endut and Mohd Hashim 2014).

3. UNDERSTANDING THE INTERLINKAGES

Child Marriage in Malaysia: The Findings

The International Centre for Research on Women (ICRW) attributes four main causes to the practice of child marriage across the globe i.e. poverty, lack of education and job opportunities, insecurity in the face of war and conflict, and the force of custom and tradition. Globally, forced child marriage is much more common in poorer countries and regions, and within those countries it tends to be concentrated among the poorest households. Little or no schooling strongly correlates with being married at a young age. In unsafe regions, parents may genuinely believe that marrying their daughters is the best way to protect them from dangers such as rape, abduction or being recruited by armed groups (ICRW 2010).

With regards to tradition, the association of the honour of a girl's chastity to the honour of the family, clan or community places parents under pressure to marry off their daughters as early as possible prior to her being sexually active. Marriage also elevates the status of women in many societies, thus parents ensure that they are married early where these are the social expectations (for fear of lack of marriage proposals if the girl is too old). It is also found in a study conducted by the ICRW that amongst Sub-Saharan African and certain South Asian countries, countries with low Gross Domestic Products (GDP) have higher prevalence of child marriages (ICRW 2006). It is estimated that one in every three girls will probably be married before they are 18 and one out of nine girls will be married before their 15th birthday (UNFPA 2012).

According to the Executive Director of the Asian-Pacific Resource and Research Centre for Women (ARROW), Ms. Sivananthi Thanenthiran, the problem is more pervasive and fundamental. It is the fact that women have always been held to hold a lower status socially and economically: *"It is important that we take away the lenses of culture, religion and tradition, and see the issue for what it is . . . the lower status accorded to women in our societies, often considered the property of men which could be stolen and dishonoured"* (ARROW 2015).

Renowned feminist writer Gloria Jeans Watkins (pen name Bell Hooks), described patriarchy as a *"... political-social system that insists that males are inherently dominating, superior to everything and everyone deemed weak, especially females, and endowed with the right to dominate and rule over the weak and to maintain that dominance through various forms of psychological terrorism and violence,"* in her essay "Understanding Patriarchy" (bell hooks n.d.). Patriarchy as a social system, she says, enforces patriarchal beliefs or values onto both genders of that particular society. These beliefs and values often surround gender stereotypes and gender norms; and anyone who defies such stereotypes or norms are often discriminated and pressured into conforming to such standards. The notions of masculinity and femininity play a significant role in regulating such stereotypes and norms. Patriarchal values are deeply rooted in the traditions, cultures and customs of Malaysian society regardless of ethnicity, cultural backgrounds, and religious beliefs. However, patriarchy might present itself in different forms amongst communities of different cultures and religious beliefs. In

fact, most of these patriarchal values are often hidden behind the guise of religion and culture²⁷—as to be discussed below under this same chapter—and there are various justifications for child marriage and some are often cited under the pretence of Islamic teachings.

In Malaysia, it is a confluence of all the factors above that contributes to the phenomenon of child marriage. In 2010, the indigenous communities of Peninsular Malaysia who are made up of 76.9% of families living below the poverty line, with 35.2% categorised as living in hard-core poverty, contribute to the prevalence of child marriage in the community (Department of Statistics Malaysia 2011). Limited access to education might also be relevant in explaining the driver of child marriage in indigenous communities. As they may not have easy access to schools nearby and the financial means to purchase schooling materials such as uniforms, their families would opt for the economically safer route of marrying them off. Families of the lower socioeconomic class seek marriage for their daughters as an economic coping strategy. Daughters may be regarded as an economic burden, unable to bring financial security to the family; as such, marriage may be perceived as a way to relieve their financial burden by having one mouth less to feed, to provide education and clothes. This motivator for early marriage for their daughters is also closely tied to the notion that girls have limited economic options as compared to boys, due to the social construct of the female role as homemaker. As a consequence, education for girls is not seen as a priority. This may be rhetorical, however. Statistics seems to show that education is widely available to girls, and the girls with economic options can contribute to the betterment of the family. For example, according to the Report on Education

and Social Characteristics of the Population 2010, the census found that 95.8% of males and 91.1% of females aged six and above had attended school, displaying a narrow gap between both genders (Department of Statistics Malaysia 2011).

From the statistics presented in section 2, it is obvious that Malaysia has achieved significant strides in terms of health, education and reduction of extreme poverty. Whilst these factors exist, it is not to the extreme that we see in some other countries where child marriage seems to be a desperate act of survival and/or safety. This was the main reason for the engagements and discussions that we conducted - to discover the main driving force behind child marriage that remains a significant issue in our society.

SIS notes, with concern, that the main reason for child marriage is culture, tradition, and a low tolerance for young children engaging with the opposite sex. Furthermore, religion remains the most significant stumbling block to law reform and building a good foundation towards societal change of mindset on this issue (as well as other issues affecting and impacting women) which requires action by public authorities such as discussion on safe abortion, contraception, sex education and so on.

The literal interpretations of Islam and Islamic texts, in Malaysia, have always been used as an authority to justify the practice of child marriage. It is therefore argued that religious fundamentalism is a major driver in the practice. This practice has not diminished even when the National Fatwa Council declared that such practice is unhealthy and is neither obligatory (*wajib*) nor encouraged (*sunat*).

At this point, SIS wishes to draw attention to the definition of religious fundamentalism. It is described as an approach to religion which requires its followers to: (i) embrace the early version of the said religion; (ii) view it as beyond criticism; and (iii) believe that it is worthy enough to be enforced upon oneself and others, without having to accommodate modern evidences or logical arguments against it (Kressel 2007). Certainly, religious fundamentalism is apparent in the Malay Muslim community whereby conservative interpretation of the Holy Quran and hadiths are pushed on a national level and transcribed as law. The Islamic administration in Malaysia is deeply entrenched in its conservative outlook. They issue

²⁷ For example, as patriarchal values are entrenched in Malaysia's legal system, consent is presumed to be present in a rape allegation, unless proven otherwise by the Prosecution and victim (Anti-Rape Task Force 2004). Rape victims are often questioned by police officers on their clothing and actions that could have misled or provoked the alleged rapists - victim blaming (Malaysian Digest, 19 April 2016). A woman's clothing, decision to go out at night, sexuality and so forth are deemed to be relevant evidence to prove consent, in the court of law (Malaysian Digest, 19 April 2016). Under Sharia law, when there is dispute as to the distribution of assets, faraid (inheritance) laws will be enforced and daughters are allowed to only inherit one-third of the father's estate - a significantly lower portion as compared to their brothers' two-thirds (Free Malaysia Today, 7 May 2014). And of course, the minimum age of marriage of a female is significantly lower than that of a male.

advice and edicts which change society's outlook towards how they practice their everyday life. In certain cases, these edicts are issued as "fatwa," and with the consent of the State ruler (and Gazette) these edicts become law and are enforceable. Most importantly, the Muslim society in Malaysia has become so captured by this type of Islam, that their everyday activities are dependent on what their imams²⁸ and religious teachers tell them is right or wrong. It is within this mindset that evidence showing harm caused to child brides as a result of early pregnancies, social ostracization, inability to complete education, depriving the child of economic independence and so on are seen as secondary and subservient to the practice of early marriage as it is considered part of the teachings of Islam.

Sisters in Islam's Advocacy on Child Marriage

Child marriage is not an issue that is new to SIS, having been part of its agenda for law reform as early as 1998. The table below gives an indication of SIS' advocacy through the years. Besides this, SIS has given talks, and attended engagements with public authorities and the government. Our law reform agenda in this area remains outstanding.

“ The main reason for child marriage is culture, tradition, and a low tolerance for young children engaging with the opposite sex. ”

²⁸ Leader of the Muslim community. Also used for the leader of a prayer congregation.

Table 10: SIS Press Statements and Articles on Child Marriage in Malaysia

Year Released	Title of Press Statements and Articles
12 March 2010	Sisters in Islam Calls for End to Child Marriage
4 August 2010	SIS expresses its deep concerns over the decision by the Malacca Islamic Religious Council to relax the conditions for Muslim girls under the age of 16 and Muslim boys under the age of 18 to marry with the permission of the Syariah court.
6 December 2010	SIS criticizes a 14-year-old girl married off to an adult man in the Putrajaya mosque.
23 November 2012	SIS expresses its disappointment at the failure of the Syariah Court in protecting Muslim girls when it allowed the marriage between a 19-year-old boy and 12-year-old girl.
13 May 2013	SIS condemns the decision of the Deputy Public Prosecutor to not object to the then alleged rapist's pending marriage application to his underage victim.
20 May 2013	SIS expresses its concerns with the Syariah Court's decision to expedite the marriage approval between a 40-year-old man and his 13-year-old rape victim.
2 October 2015	The Joint Action Group for Gender Equality (JAG) expresses its grave concern at the statement by the Prime Minister's wife, Datin Seri Rosmah Mansor, on the rarity of child marriages in Malaysia to the international audience she was addressing at the Ford Foundation breakfast meeting in New York, as reported in <i>The Star</i> on 1 October 2015.
2 December 2015	SIS again raises the issue of negative impacts of child marriage, and particularly on child brides, when it was revealed that a 35-year-old man raped his sister-in-law and the process of the crime was filmed by his 14-year-old wife.
2 January 2016	SIS condemns the suggestion by PAS MP, YB Khairuddin Aman, that the solution to the high percentage of underage rape, which is a shocking 52%, is marriage.
17 March 2017	JAG express its concern at the statement made by Syariah lawyer Faiz Fadzil in a recent article, suggesting that it is in the best interest of an underage girl to marry, if she has committed illicit sex and has become pregnant as a result, so long as both parties agree to the marriage.
5 April 2017	SIS is deeply concerned by the statement made by Tasek Gelugor MP, Datuk Shabudin Yahaya, that a rape survivor will have a better and secure future by marrying their rapist. It is a shocking and deplorable suggestion that undermines the severity and emotional trauma experienced by a rape survivor.

Source: *Sisters in Islam*.

Various memorandums on Islamic Family Law reform were submitted by SIS to Malaysia's federal government. Among the recommendations made, SIS proposed to insert a guideline as to what amounts to "certain circumstances" under Section 8 of IFLA 1984—the provision grants a Sharia Court judge power to allow for child marriage "under certain circumstances." It was proposed that the said circumstances be guided by the principle that judges are the first to be satisfied that the underaged party has reached the maturity for marriage and that such marriage is not forced by any other parties. Unfortunately, none of its recommendations made it to the amendment drafts proposed to the government.

As part of SIS' advocacy on the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), SIS, along with the Joint Action Group for Gender Equality (JAG), has also called for the minimum age of marriage to be raised to 18 in the 2005 Malaysian Non-Governmental Organisations Shadow Report: Reviewing the Government's Implementation of CEDAW (NGO Shadow Report Group 2005). The issue of child marriage was further emphasised in its subsequent alternative report in 2012, Malaysian Non-Government Organisations' Alternative Report: Assessing the Government's Progress in Implementing CEDAW (Malaysian NGO CEDAW Alternative Report Group 2012). In this alternative report, the government's compliance with CEDAW in relation to child marriage was examined and it was found that not only were the Malaysian laws on minimum age of marriage (both civil and Sharia law) in contravention of CEDAW, they were also grossly incompatible with international standards, such as the CRC (Malaysian NGO CEDAW Alternative Report Group 2012).

Since then, SIS have continuously released press statements, as seen in Table 10, condemning the practice of child marriage and calling for law reforms, with its latest dated 5 April 2017 (as of time of writing), titled, "Response to Tasek Gelugor MP,

Datuk Shabudin Yahaya on Rape Survivors Marrying Their Rapist," whereby SIS condemned remarks made by Member of Parliament (MP) of Tasek Gelugor in which he claimed that there was nothing wrong with rape victims marrying their rapists. SIS reiterated its call for the minimum age of marriage to be raised to 18, with no exception, and affirmed that marriage, in Islam, is one of love, compassion, mutual respect and mutual responsibility (SIS 2017).

Action by the Malaysian Government in Tackling Child Marriage

Child marriages in Malaysia became an area of interest for NGOs with the release of the 2000 Population Census which indicated a high number of marriages occurring below 18 and 16 years of age and even younger than that. With significant calls to end child marriage in Malaysia both from local bodies as well as the international community, the Malaysian government has continued to dampen the process of law reform in this area.

A press statement dated 3 October 2015 released by the KPWKM stated that child marriages will often affect the children's physical and mental health, often stemming from problems arising in their health, education and finance (KPWKM 2015). The ministry continued that if the children are not ready to carry the heavy responsibility of being a wife/husband or parent, it will lead to divorce and other unhealthy social ills at much younger ages. Furthermore, it stated that any activities that could potentially hinder a child's growth, especially in terms of education and health, must be stopped, and that children should be given chances to fully realize their potential.

According to the written parliamentary reply by the KPWKM Minister in 2016, a Task Force on Protection of Children was established on 31 May 2013 to tackle the issue of child marriage. The task force is made up of several governmental

agencies such as the Royal Malaysia Police (PDRM), the Ministry of Education, National Registration Department, Ministry of Health, academicians and child's rights activists. It was also revealed that suggestions to tackle child marriage include:

- Requirements for a medical examination report and a psychological assessment report to be submitted to the Sharia Court and Chief Ministers;
- Interventions at Court application stage by providing for more counselling;
- Interventions on children who are about to enter into marriage and still pursuing studies to ensure that they do not lag behind in terms of their education; and
- Monitoring couples who had made child marriage applications but refused leave and ensure that they do not get involved in unhealthy habits.

In the same reply, the Minister too cited counselling sessions prepared by the Department of Social Welfare, especially for child marriages involving rape victims marrying their rapists as one of its ongoing efforts in tackling the issue.

In order to mitigate the impact of child marriage, it was also revealed in the aforementioned press statement, dated 3 October 2015, that a pre-marriage course for brides-to-be, named as SMARTSTART, is used to raise awareness on reproductive health (KPWKM 2015). Additionally, a stand-alone sex education module, namely PEKERTI programme, launched by the KPWKM through its agency, the National Population and Family Development Board Malaysia (LPPKN), offers services to teenagers who need advice on reproductive health issues (The Malay Mail Online, 13 February 2014).²⁹ This PEKERTI programme can be found at ministry-established youth centres namely “kafe@TEEN”, the National Service Training Programme (PLKN) and selected schools. In 2016, another sex education module for teenage boys was announced—Male Teenagers’ Reproductive and Sexual Education Module—which includes topics on premarital

sex, “sex variations,”³⁰ teen pregnancies, sexual abuse, and sexually transmitted illnesses (The Malay Mail Online, 10 September 2016). This module was reported to be introduced in October 2016, in Selangor, Kuala Lumpur, Negeri Sembilan, Penang and Sabah, but it is unclear whether girls will receive the same.

The impact of these initiatives has not been significant thus far. Awareness of these programmes is limited. It is unclear how far these programmes reach, whether it is concentrated in some parts of the country or whether it is targeted to the most vulnerable communities. Whilst we look forward to government led initiatives, and we do not deny they are critical initiatives, we are of the view that given the underlying motivation of the practice of child marriage, what would be required is a nationwide campaign to completely remove this practice from our society. The government needs to involve the ministries in charge of health and education, social services and welfare, ministries in charge of low-income housing, and most importantly the ministries in charge of religion, including the State-level religious authorities and State-level government.

Child Marriage and Rape

There have been several instances where rape charges were withdrawn or not pursued as the victim “agreed” to marry the perpetrator. The table below shows some examples of this situation although it is not exhaustive. We suspect that there are many cases such as this that are unreported and dealt with through marriage to “settle” the issue.

²⁹ Prior to PEKERTI, sex education was provided through Reproductive and Social Health Education (PEERS), incorporated in various subjects such as health education (“Pendidikan Kesihatan”) and science.

³⁰ As quoted from the news article, “Ministry: Sex Education for Boys Starting in October.” The definition or meaning of “sex variation” is unclear / undefined.

Table 11: Cases of Marriage as a Consequence of Rape Reported by the Media

Case	Reported Year	Age of Victim at Time of Marriage	Age of Alleged Rapist at Time of Marriage
A	2012	12	19
B	2013	12	40
C	2016	15	28 (some news outlet reports it at 22)

Source: Ministry of Health 2016

In 2012, a 12-year-old girl was permitted to marry a 19-year-old boy, a union that the victim described as a marriage of love. It was revealed a year later, by the girl's father, that he permitted the said union as the 19-year-old had raped his daughter. No charges were made against the then husband as the father retracted the police report made (Astro Awani, 29 November 2013).

In 2013, a 40-year-old restaurant owner took a 12-year-old girl from an impoverished family as his second wife after he was charged for statutory rape, in the hopes of avoiding prosecution. This union, again, was given its approval by her father and the Sharia Court. The victim's father was reported to have said that, "It is best for her that they get married . . . What else can I do?" (The Guardian, 22 May 2013). Two days after the rape report was made by the victim's aunt, the victim lodged a second police report to withdraw the one made by her aunt, claiming that she was not raped or forced to have sex with the rapist. A sum of RM 5,000 was given to the victim, which she emphasised was meant to be her marriage dowry and not bribery.

Subsequently, the victim's father lodged another police report in favour of his daughter's alleged decision to withdraw the first report (Daily Express, 10 October 2013). As a result, the rapist was then discharged, not amounting to acquittal. Prosecution was initiated again after the outcries of various civil society organisations, and the rapist was convicted. He was also found guilty of bribery charges for paying a sum of money to the victim's father in order to obtain his consent to marry her and for the withdrawal of the report (The Star Online, 23 June 2013). In the charge read out to the rapist in Court, it was revealed that the rapist had a conversation with the victim's father and said, "Saya sanggup kahwin dengan anak kamu, asalkan kamu menarik repot polis rogol terhadap saya (I am willing to marry your daughter if you withdraw the rape police report against me)" (Daily Express, 24 June 2016).

On a more recent note, a 28-year-old man's marriage application to a 15-year-old girl was approved in 2016 (The Borneo Post, 28 July 2016). The former was accused of raping the latter, who was then only 14, two times in 2015 (The Borneo Post, 29 July 2016). Pursuant to the presentation of the said marriage certificate in court, the 28-year-old alleged

rapist was discharged, not amounting to acquittal, of statutory rape charges, with the presiding judge saying that, “there is no necessity to proceed further with this case” (The Borneo Post, 5 August 2016). However, later in the same year, a retrial was ordered (ABC News, 6 August 2016).

Developments 2016 – June 2017

Notwithstanding the initiatives above, the critical failure of the Malaysian government is its inaction to the harmful impact of child marriage and its negligence born out of its failure to consider, adopt, initiate or implement policies to mitigate the harm and to curb the practice, despite outcries from civil society. The lack of political will resulted in growing concerns of politicians trivializing the issue by making remarks portraying child marriage as a practice that is not as harmful as it is.

In 2016, policymakers from the Islamic political party, Pan-Malaysian Islamic Party (PAS), argued that the banning of child marriage would only lead youth to premarital casual sex as “teenagers would have sexual urges,” and this would lead to the act of adultery (zina) which was viewed as being more detrimental than child marriage (Malaysian Digest, 7 April 2016).

Also in the same year, during a parliamentary debate on 6 April 2016, upon being questioned by YB Teo Nie Ching, Member of Parliament for Kulai, the Deputy Minister of KPWKM answered that CEDAW is not legally binding despite Malaysia being a signatory party to it.

In March 2017, Faiz Fadzil, a Sharia lawyer and deputy chief of the youth wing of the National Trust Islamic Party (*Parti Amanah Negara*), a faith-based political party in Malaysia, commented that, if marriage does not take place whereby the girl is below the age of 16 and is pregnant as a result of “consensual sex,” the man who had sex with her will be

prosecuted for rape and he would then not want to take responsibility for the child (Free Malaysia Today, 12 March 2017). He justifies this statement by remarking that, “... it may be in the best interests of both the girl and the child for her to get married”.

In April 2017, Member of Parliament (MP) of United Malays National Organisation (UMNO), Datuk Shabudin Yahaya’s controversial statement during a Parliamentary debate went viral on social media and was reported by various local and international news outlets. He said that a child who has reached puberty, even those who are only nine-years-old, can be mature enough for marriage. He was quoted to have said, “In some instances, it is not impossible that they get married if they have reached puberty at the age of nine. A 12-year-old may have the body of an 18-year-old which means some girls are “physically and spiritually” ready for marriage” (The Star Online, 9 April 2017). He then further stated that, “Perhaps through marriage they can lead a healthier, better life. And the person who was raped does not necessarily have a bleak future. She will have a husband, at least, and this could serve as a remedy to growing social problems” (The Star Online, 4 April 2017).

The Human Rights Commission of Malaysia (SUHAKAM) shared similar worries in their Annual Report 2016. It was highlighted that child marriage being left unaddressed in the proposed amendment to Child Act 2001 was a subject of concern for the Commission and urged the government to bring about law reform and raise the minimum age of marriage to 18 for all.

SIS Advocacy in Collaboration with ARROW 2016-2017

Table 12: Advocacy Efforts by SIS

Date	Event
2016	
April / May 2016	Submission of proposed amendment on Child Act 2001 in Parliament.
18 August 2016	Dialogue Session with Organisation D.
19 August 2016	Dialogue Session with Organisations A and B.
30 September 2016	Dialogue Session with Organisations C.
8 October 2016	SIS Public Forum on Child Marriage.
2017	
16 March 2017	Dialogue Session with Organisation E.

Note: Organisation has been anonymised for confidentiality.

As a result of this rising ignorance, and after numerous studies indicating the urgency needed to prevent further harms of child marriage, SIS embarked on the advocacy phase to pursue legal reform. Part of its efforts include building connections with other NGOs and political parties, and seeking out allies; and this is done through dialogue sessions with the said bodies and parties. The NGOs and political parties were carefully selected based on a few criteria:

- Its influence on youth due to its large membership in its youth wing or because of their close ties with the youth of a specific community (e.g. as a result of community events or welfare centres that it runs);
- Its access to and influence on young Muslim girls;
- Its influence on and connection with the Islamic clerics and scholars; and
- Its respected status in the Muslim community as a whole.

The organisations are not named or specifically identified in this report. Because of the sensitive nature of the conversation. Anonymity was assured so as to be able to have a full and frank discussion on the issue.

Table 13: SIS Advocacy Efforts - List of Organisations Approached

Organisation	NGO/Political Party	Description of Organisations
A	NGO	(a) Youth-based organisation. (b) Membership of sixty thousand (60,000) in 2001. (c) Has relations with Islamic countries of Sunni and Shi'ite persuasion. (d) Popular among grassroots and tertiary educational institutions. (e) Runs rehabilitation centres for pregnant teenagers.
B	NGO	(a) Runs women's service centres whereby troubled women may seek counselling and legal advice in relation to the troubles faced in their marriages and rights under Sharia family law. These service centres also act as a temporary shelter for women until they are relocated. (b) Organizes tuitions and child day cares.
C	NGO	(a) Women's wing of an Islamic-based NGO. (b) Runs a shelter for teenage mothers. (c) Its principal party organizes a kindergarten for children, conducts camp sessions for youth, and religious activities/talks for the community. (d) Its principal party runs religious schools in the Federal Territories of Kuala Lumpur and 11 other states. (e) Its principal party provides humanitarian relief in Malaysia, the Southeast Asia Archipelago, and the Middle East through a non-profit organisation. (f) Its principal party has its own Ulama Councils.
D	Political Party	(a) An Islamic-based political party. (b) As of November 2015, organization D is reported to have a membership of 60,000 with 40% of them being youth. (c) Has non-Muslim and non-Malay members; estimated to be more than 2,000.
E	Political Party	(a) Women's youth wing of a Malay ³¹ political party. (b) Its principal party is reported to have a membership of approximately 3.53 million as at December 2015; whilst the women's youth wing has membership of 400,000 as of May 2017. (c) Organizes community outreach activities.

There was no lack of challenges in terms of gaining an ally willing to fully commit to the legal reform process. Reservations were often expressed despite their acknowledgment of the harmful impact of child marriage. The reservations that were communicated to SIS often resonate similar sentiments and reasoning, based on the similar question:

1. How do we legislate against it if the Quran allows it? It was the practice of the Prophet (pbuh) so how can we say (as believing Muslims) that it is un-Islamic?
2. She has reached the age of puberty. In Islam, she is considered of age to marry.

3. In the Malaysian context, is this not the best option for a pregnant teenager? At least she can "formalise" her sinful relationship. At least the child will not be illegitimate.
4. Is this not the best option where the young children have become sexually curious or sexually active? How can I as a parent allow my child to engage in sin? Marriage is always a better option to zina.

³¹ Many political parties in Malaysia are race based.

Table 14: Reservations on Child Marriage Legal Reform

Organisation	Reservations
A	<p>(a) A's rehabilitation centres had housed pregnant teenagers who were raped and communicated their beliefs that marriage was their best solution, although A does not advice for this to happen.</p> <p>(b) It was observed and opined that the pregnant teenagers will not have the ability to take care of their children after birth, based on A's observation that they do not take care of themselves even during pregnancies.</p> <p>(c) Concerns also stem from the fact that these pregnant teenagers are seen as social outcasts—even doctors are reluctant to provide them with medical assistance.</p> <p>(d) On the other hand, it was also expressed that in the event that the rapist is prosecuted, the unknown fate of the child is a worry as many of the pregnant teenagers are unsupported and rejected by their own parents and family members.</p> <p>(e) This may result in the pregnant teenager eventually pressured to abandon the baby.</p>
B	<p>(a) B opined that the focus of tackling child marriage is through prevention and not law reform; B was of the view that Sharia law confers sufficient protection for children applying for marriage as the Sharia Court's permission must first be obtained.</p> <p>(b) It was expressed that child marriage often takes place due to families' unwillingness to bear the financial burden of taking care of their daughters and therefore advocacy efforts ought to be on changing these families' mentality.</p> <p>(c) B also suggested that there must be an emphasis on the prevention of adultery (zina) among teenagers instead.</p> <p>(d) On the issue of health risks of pregnant teenagers/child brides, though B acknowledged that there have been many deaths that occurred during pregnancy and delivery, the problem lies with the fact that the former lack the necessary health knowledge to take proper care of their bodies during pregnancies.</p>
C	<p>(a) C's focal concern surrounds the seemingly increasing liberal attitude of both parents and teenagers towards premarital sexual relationships and emphasized that teenagers must learn how to be ashamed of it.</p> <p>(b) C specifically mentioned the feared trend of parents accepting their teenage daughters' pregnancies and assuming the responsibility and title as parents to the latter's children. According to them, this is a result of parents' neglect to educate their children about shying away from having premarital sex.</p> <p>(c) On the issue of exception for child marriage provided under Sharia law, C expressed that their concern is with the fact that only a small proportion of child brides and grooms would actually try to obtain consent from Sharia Courts, as many do not register their marriages.</p>
D	<p>(a) D's overall view is that child marriage can be allowed but with tighter exceptions spelled into the Sharia law provisions, such as providing a minimum age of marriage of 15, mandatory counselling, and mandating that the child bride continues her education until at least SPM³² (Malaysian Certificate of Education).</p> <p>(b) D's opinion as to how advocacy should be approached is that the public must first be educated on the issue, and that there must be sufficient public support for the age of marriage to be increased to 18 before the idea could be brought to the Parliament.</p> <p>(c) One representative also commented that women are mentally and physically more capable to marry at a young age in comparison to men due to the differences in growth rate and age of puberty.</p> <p>(d) It was also of the view of D that the total outlaw of child marriage will attract strong resistance as opposed to amending existing laws to strengthen protection conferred onto children such as requiring mandatory education until SPM.</p>
E	<p>E stated that their focus would be on child sexual abuse and advocating for a more comprehensive sex education, one that ought to be taught as early as preschool.</p>

³² SPM is a national examination at secondary level for fifth-year (final) students. It is equivalent to the O-Level and a completion of this examination is required before students may pursue further education through pre-university studies.

In general, most of the above organisations readily acknowledged the harmful impact of child marriage and were open to more discussions on this topic. For organisations that run shelters and have had personal experiences with the difficulties pregnant teenagers face, they were very appreciative of the issues that SIS has raised during the dialogue sessions and agreed that child marriage is extremely harmful towards young girls. However, they often expressed reservations when it comes to pregnant teenagers, even if the pregnancy was a result of rape. Ultimately, concerns often stem from the conservative view of sexuality and the stigma it surrounds unmarried pregnant girls. As this conservative view of sexuality and premarital sex are endorsed by local Islamic clerics, scholars and politicians alike, and is accepted as a norm and fundamental to Islam, they were unable to fully commit to the cause. This exhibits a clear linkage between the difficulties in tackling child marriage and religion—that religion is clearly a barrier in the law reform process on child marriage.

On another note, as aforementioned, SIS organised a Public Forum on Child Marriage titled, “Child Marriage: Love or Exploitation?” with a total attendees of 179. Attendees comprised members of the public as well as representatives of various women’s rights and children’s rights NGOs. During the forum, there were a total of eight panellists, which included representatives from various NGOs, the Bar Council, and a lecturer from the Institute of Qur’anic Sciences, a medical doctor, a former social worker for a women’s NGO and a former Sharia High Court judge. Various child marriage-related issues were brought up and discussed, including

the health and social impact on child brides, the legal aspect of it (civil, Islamic and international law) and Quranic interpretations of the issue. Some panellists also shared their former experiences dealing with child marriages and/or child brides. An attendee raised questions on sex education. While Malaysia currently does not have comprehensive sex education in the national education curriculum, Marianne Clark-Hattingh of UNICEF Malaysia noted that there are already age-appropriate modules that can be adopted from other countries. There were also questions about the appropriate minimum legal age for marriage. One participant brought up the argument that law should not “interfere with a child’s rights to decide for her own future, including the freedom to opt for marriage despite being under 18.” While different countries currently have different standards, the panellists believe the age of 18 is the youngest acceptable limit. Another participant also expressed that education should be the focus in tackling the issue instead of mere legal reform; the panel also agreed that education should be given much emphasis other than legal reform.

The forum then concluded, with the panellists collectively urging the government to raise the minimum age for marriage for Muslims and non-Muslims to 18.

Table 15: Discussion Highlights of SIS' Public Forum on Child Marriage

Panellist	Representing Organisation / Profession	Topic of Discussion	Discussion Highlights
Nik Elin Zurina Nik Abd Rashid	Kelab Warisan WIBAWA	Lived realities	Shared two individual cases of child marriage. Both women regret marrying young and would not encourage others to do so. One of the child brides in particular believes that children should get sufficient formal education, and understand the responsibilities involved before considering marriage.
Marianne Clark-Hattingh	UNICEF Malaysia	Harmful impacts of child marriage	Provided some grim figures: girls aged between 10 and 14 are more than five times likely to die in pregnancy and childbirth than women aged between 20 and 24. Complications from pregnancy and childbirth for girls aged 15-19 accounts for about 50,000 deaths a year.
Thulasi Munisamy	UNHCR ³³	Child marriage in refugee communities	Child brides are more likely to experience discrimination and violence. Child marriage also curbs children's right to education and are likely to perpetuate an intergenerational cycle of poverty. Child marriages also tend to have a higher divorce rate.
Dr. Nur Rofiah	Institut Perguruan Tinggi Ilmu Al-Quran (PTIQ), Jakarta	Child marriage in Indonesia	In Indonesia, the minimum legal age for marriage is 16 for girls and 19 for boys. However, underage marriage does happen but numbers are hard to track, as the marriages are not always registered. There are religious leaders that are for and against child marriage. Those who are for, believe it is permissible in Islam while those who are against, would emphasize on physical, economical and intellectual maturity. Meanwhile, elderly people interviewed considered child marriage as an acceptable norm but some are disappointed that the children are denied opportunities to pursue further education.

³³ United Nations High Commissioner for Refugees.

Table 15: Discussion Highlights of SIS' Public Forum on Child Marriage (2)

Panellist	Representing Organisation / Profession	Topic of Discussion	Discussion Highlights
Dr. Amilia Hazreena Hamidon	Family Medicine Specialist	Health impacts of child marriage on child brides	<p>According to the World Health Organisation (WHO), the pelvic bones of girls in their early teens (10-14) and mid-teens (14-17) are not sufficiently mature. As teenagers generally do not practice healthy diets, which could provide the needed nutrients to their bodies, pregnancies would lead to many complications as a result of such deficiency.</p> <p>According to statistics provided by WHO in 2014, 11% of child births involve teenagers of the age group 15 to 19. On a global scale, 16 million teenagers of the same age group give birth each year; one million below the age of 15 go into labour with 95% of such pregnancies happening in developing countries.</p> <p>Pregnancy and birth related complications account for the second UNDO cause of teenage deaths for the age group 15 to 19 globally. Prenatal deaths are twice as likely to occur to pregnant teens below the age of 20.</p> <p>Pregnant teens are at high risk of having high blood pressure (hypertension), seizures during pregnancy (eclampsia), anaemia and bleeding during pregnancy or labour. It is also noted that in 2008, in the aftermath of teenage pregnancies of the same age group, there were three million unsafe abortions performed.</p> <p>Pregnant teens are also at higher risk of developing postpartum depression (higher suicide rate), low self-esteem and emotional troubles such as problems with sleeping and eating. The above often leads to higher risks of babies being underweight, suffering from cognitive and developmental problems. They are also more likely to drown, be abused or neglected.</p>
Datuk Khutubul Zaman Bukhari	Bar Council (Head of Sharia Committee)	Legal framework of child marriage in Malaysia	<p>Malaysia has ratified the Convention on the Rights of the Child (CRC) in 1995 to which Article 3 was brought to attention. It was provided that the best interest of a child must be taken to mind while making a decision that would affect the rights of that child.</p> <p>Datuk pointed out that the “best interest” element is absent from our civil and Sharia laws and suggested the importation of such an element into our legislation. In the process of discussing the Islamic provisions in approving child marriage, Datuk brought up a case whereby a victim was permitted to marry her rapist, with the rape charge being dropped thereafter. Datuk expressed his strong distaste for such absurdity.</p>

Table 15: Discussion Highlights of SIS' Public Forum on Child Marriage (3)

Panellist	Representing Organisation / Profession	Topic of Discussion	Discussion Highlights
Nazlina Abd Ghani	Former social worker for Women's Aid Organisation	Domestic abuse of child brides	<p>She shared her experience in dealing with domestic abuse cases, a large number of them often involving child brides.</p> <p>In particular, she pointed out the reality for these child brides often feeling isolated from society. Nazlina told of a family friend who got married at the age of 15 and now regrets not getting a proper education, especially when she feels left behind, compared to her peers who have careers, cars and so forth.</p> <p>Another takeout from her experience as a social worker is the reality that parents, when faced with a pregnant teenage daughter, often chose marriage as a solution to safeguard the family's honour. She urged for better sex education so as to avoid such situations from happening.</p>
Dato' Ismail bin Yahya	Former Sharia High Court judge and state Mufti of Terengganu.	Islamic law perspective on child marriage.	<p>Dato' first explained that in Islam, marriage has its purposes as mentioned in Surah Ar-Ruum, verse 21. The purpose of marriage was said for them to be pleased at heart, to live happily together, to have love, to have mercy for each other and get mercy from Allah. These can be traced to the qualities that a husband and wife must have in a marriage, such as mutual respect, trust and tolerance. As most child marriages end up in divorce, it is clearly against the goals of a marriage and hence the wishes of Allah.</p> <p>On the issue of puberty, Dato' citing verse 6 of Surah al-Nisa' and a hadith in Al-Fiqh Al-Islamiwa-adillatuh, explained that there are a few indicators of puberty. They include: intelligence, ability to care for their own properties, wet dreams, growth of pubic hair, menstruation, ability to get pregnant and is at least 15 years old. It was however reminded that there are other hadiths which differ in terms of age, with some stating 17, some 18. Essentially, the question that must be asked is whether boys and girls below the age of 18 has sufficient wisdom, intelligence and financial means to provide for their family, to acquire assets, and avoid divorce.</p>

A Counter Narrative to the Drivers of and Justifications for Child Marriage: the Islamic Perspective

(1) The Marriage of Prophet Muhammad (pbuh) to Aishah (r.a.)

Aishah's (r.a.) marriage to Prophet Muhammad (pbuh) has been and is still one of the most globally cited justifications for child marriage in Islam. Very well-known scholars, including Maulana Syed Sulaiman Nadvi and Maulana Syed Abul Ala Maududi (authors of *Seerat* i.e. biography) have analysed and agree to the correctness of reports stating the age of Sayedah Aishah (r.a.) at six years at marriage (Nikah) and nine years at the consummation.

However, conflicting studies on the age of Aishah have surfaced more recently:

- In refuting the views of Maulana Muhammad Ali, whose view was that Aishah's age was closer to 15, Nadvi not only contradicts himself about the age of Hazrat 'Aishah, but provides supporting evidence to Muhammad Ali's views when, writing about the last days of the life of Hazrat 'Aishah, he writes at page 111 of the same '*Seerat-i-Aishah*': "Hazrat 'Aishah was a widow and she passed 40 years of her life as a widow." (Muslim Sahib n.d.). Further, at page 153 he writes: "The last days of Khilafat (Caliphate) of Amir Muawiyah were the last days of the life of Hazrat 'Aishah and her age at that time was 67 years," (Muslim Sahib n.d.). In such a case, Aishah would have been 27 years of age at the time of the passing away of the Holy Prophet and not 18 years as widely reported. Consequently, her age at the time of the marriage works out to 14-15 years and not six years, and Hazrat 'Aishah's (r.a.) age at the time of consummation of her marriage works out to 19-20 (Muslim Sahib n.d.).
- The well-known historian and scholar 'Allama 'Imad-ud-Deen Ibn Katheer writes in his "*Al-Badayah*" about Sayedah Asma' daughter of Hazrat Abu Bakr' (Allah be pleased with him) (and we hope Maulana Syed Abul Ala Maududi must have seen it as he referred to "*Al-Badayah*" in his article): Asma died in 73 A.H. at the age of 100 years. She was ten years older than her sister,

Aishah (r.a.) (Muslim Sahib n.d.). According to this report, 'Asma' would have been 27-28 years old at the time of Hijrah and since she was ten years older than Sayedah 'Aishah (r.a.), therefore the age of Sayedah 'Aishah (r.a.) would have been 17 or 18 years at the time of Hijrah. Accordingly, her birth falls about four or five years before the Call, and her age at the time of the consummation of marriage in 2 A.H. will work out to 19-20 years.

- In his book, "*Tahqiq Umar A'isha al-Siddiqah*" (Truth about the age of A'isha the Truthful), Karachi: Mashkur Academy, Hakim Niyaz Ahmad, a scholar from Pakistan has examined all the reports in almost all collections of hadith and has concluded that Aishah married the Prophet when she was 19 years old (Niyaz Ahmad n.d.).

Malaysia's National Fatwa Council issued an official stance regarding the purported marriage of Aishah to the Prophet at the age of six and consummation at nine (The Rakyat Post, 1 December 2014). The Council stated that the Prophet's marriage to Aishah was driven by the need to care for the children's welfare, given the war-stricken state that they were in at the time, and that Muslims are neither encouraged nor compelled to follow such practice. It was further expressed that there are no prophetic traditions (hadith) which indicate that child marriages are encouraged and that conversely, prophetic traditions coupled with Sharia teachings do encourage Muslims to avoid things which would cause harm. Nevertheless, though there was discouragement for such a practice in the name of Islam, there was also an apparent omission to label it as illegal (haram) given the harm (maslahah) that it causes especially to young girl-brides. And similar sentiments were observed in the aforementioned dialogue sessions with various CSOs whereby it was generally agreed that child marriage does more harm than good, but some had reservations about outlawing the practice.

Musawah, a global movement for equality and justice in the Muslim family, questions the seemingly deliberate choice of using the Prophet's marriage to Aishah as an exemplary model and overlooking his marriage with other wives who were widows, divorcees and much older in age (Musawah 2013). Hameed Agberemi in his paper "Violence Against

Girl-Children in a Rights Paradigm: Deconstructing Child Marriage from Islamic Perspectives” further pointed out that in comparison to Aishah’s marriage, other practices of the Prophet such as his consistent decline to numerous proposals to his daughter Fatimah as she was too young, and only giving her hand away for marriage when she was well into her teens (Agberemi n.d.). It was argued that the wilful ignorance of such examples may only have one explanation: patriarchy—where its interest is “better served by perpetuating the marriage of men to girls (instead of women)” (Agberemi n.d.). One argues that the hadith on Aishah’s age appears much later after the demise of the Prophet. In-depth studies by reliable scholars clearly expose the fact that Aishah was not less than 17 years old at the time of the marriage, and consummated it at about 20. So, Aishah was not below the age of puberty when consenting to the marriage.

In conclusion, it is obvious that there are several opinions, all from well-respected scholars, on the age of Aishah (r.a.). Thus, it is a non-conclusive issue and can be challenged. It should not be the sole reason why Muslims cannot support a reform agenda towards ensuring that the age limit of marriage is set at 18 and above.

(2) Concept of Maturity for Marriage in Islam: Notion of Puberty According to the Holy Quran.

According to Musawah, all traditional schools of law regard sexual maturity as at the point of onset of menstruation for girls. In relation to this, puberty is often cited as the benchmark for one’s (boy and girls) maturity (baligh). For boys, the number one indication of puberty is cited as having nocturnal emission (wet dreams) whilst girls it is upon the onset of menstruation, which could be as early as nine. It is observed that a child’s sexual and emotional maturity are often excluded from the topic, particularly in relation to girls. Local activists have condemned allowing the same as the sole benchmark for maturity when it clearly defies the teachings laid down in Surah An-Nisa’ 4:6. Feminist activist and writer Marina Mahathir in her essay “Puberty Hardly a Benchmark for Marriage” explained that the said verse requires an orphan who is of marriageable age to be tested for sound judgment or maturity of mind, thus establishing a clear nexus between the two (Malaysiakini, 12 March 2010). This argument has

also found support in former Sharia High Court judge and former Mufti of Terengganu, Dato’ Ismail bin Yahya who was a panellist at the Public Forum on Child Marriage organized by Sisters in Islam in 2016. He further cited Syrian Islamic scholar, Professor Dr. Wahbah who propounded that signs of puberty consists of wet dreams, growth of pubic hair, onset of menstruation, ability to conceive, and reaching the age of 15. It was highlighted that some even argued for a higher age of 17 and Imam Abu Hanifah was of the opinion that it ought to be at least 18. A combination of the above two factors should see criteria of a male or female being able to bear the responsibility of a husband or wife, including having sufficient capacity to hold assets—leading to a marriageable age of at least 18 for boys and 16 for girls.

In the aforementioned paper by Hameed Agberemi, he argued that it is “not Islamic to insist in the 21st century that the onset of menstruation . . . marks maturity or adulthood.” (Agberemi n.d., 1). This was based on the premise that available medical evidence has taught us that though one might possess the bodily ability to conceive upon the onset of menstruation, the same does not speak for her capacity to go through a safe delivery (which only comes many years after, as her pelvic bone would still be underdeveloped at the age of 10 or 11) (Agberemi n.d.). The Islamic scholars and clerics’ refusal to acknowledge and recognise scientific reasoning particularly pertaining to this, which led to the failure of change of the definition of maturity, Hameed Agberemi argues, constitutes violence against Muslims, and especially Muslim girls (Agberemi n.d.).

Al-Azhar University in co-operation with UNICEF issued a paper entitled “Children in Islam: their Care, Upbringing and Protection,” (UNICEF, Al-Azhar University 2005). On the issue of child marriage, it states:

“The international consensus that the procedural definition of childhood should apply to a humans up to the age of 18 years has not come from a void. This reflects a conviction that is based on scientific evidence. The definition is intended to make sure that the period of care and physical, psychological and social preparation of the child should last for a period that is no less, but could be more, than the age of 18 years, which is the age at which the young man or woman may

become able to shoulder the various responsibilities expected of him or her, and may be able to make right decisions that will have a prolonged effect on his or her present and future life, such as the decision to get married. This is perfectly compatible with what Islam enjoins. Islam has nothing to do with the custom of child marriage; reference to early marriages can be found nowhere in the Quran. Instead of an age limit, we find an unchangeable standard, which is the attainment of maturity. The fact remains that when custom encourages early marriage, the practice stems from nothing but the norms of the people. Sharia has nothing to do with it. Such a custom is not particular to Muslim societies, but has been known in many other cultures,” (UNICEF, Al-Azhar University 2005, 62).

(3) Sexual Impropriety

Malaysia is the one of two countries with *khalwat* (suspicious close proximity) laws provided under Section 27 of the Syariah Criminal Offences (Federal Territories) Act 1997. This is a Sharia law provision penalising Muslims who are found in “suspicious close proximity” with someone of the opposite sex (who is not their spouse and this includes non-Muslims). It is a law that is often rationalized and justified as essential in an effort of preserving the values of Islam, of our society as a whole, and also to prevent social illnesses such as pregnancy out of wedlock, premarital sex, baby-dumping, and so forth. In the case of *Pendakwa Syarie Pulau Pinang vs Muna Liyana Roslin*,³⁴ the Sharia Court was of the opinion that a heavy punishment was necessary as the female accused’s act had tarnished the image of Islam and Muslims and the punishment would deter others from committing the same offence. In the aforementioned study by KANITA, one particular respondent, who was 13-years-old at time of marriage, stated that the reason for marrying was that she was arrested for suspicious close proximity and thought that marriage would aid in mitigating the sentence.

Also, as discussed beforehand, in 2016, policymakers from PAS argued that banning of child marriage would only lead to

young people practising premarital casual sex as “teenagers would have sexual urge,” and this was more detrimental than child marriage (Malaysian Digest, 7 April 2016). In our engagements with various women Islamic NGOs and Islam-based political parties, they acknowledged that child marriage is a harmful practice and that efforts ought to be expanded to curb such practice. But in all our dialogues, there were consistent concerns raised on increasing premarital sexual activities amongst teenagers. One particular NGO even expressed that their primary focus would be to educate young people on abstinence in this respect. Where abstinence is not observed, it is in the interest of the child’s spiritual wellbeing that he or she be allowed to marry.

Undeniably, there is much taboo surrounding the topic of sexuality in Malaysian society, particularly in the Malay Muslim community. Parents are afraid that perceived sexual immoralities, acts such as premarital sex, would lead to the family’s name being tarnished.³⁵ This is clearly reflected in the Sharia Criminal law e.g. *khalwat* and in the attitudes of local religious leaders and policymakers. Female sexuality, in particular, is increasingly under scrutiny and manifests in various forms. Most obvious is the immense societal pressure in the Malay Muslim community for girls and women to don hijab (headscarf), otherwise risk derision, name calling, and other derogatory words and actions by their family, peers, colleagues, and so on.

Adultery is projected as a grave sin that is to be avoided at all costs, including using marriage as a solution. For example, in a study titled “Methods of Overcoming the Problem of Pregnancy among Unmarried Adolescents” published by the Faculty of Islamic Studies, Universiti Kebangsaan Malaysia

³⁴ 07500-143-0005-2008, Mahkamah Rendah Syariah Pulau Pinang.

³⁵ The taboo on sexuality and premarital sex is also apparent across all ethnic cultures in Malaysia. According to a survey done by the Pew Research Centre in 2014, Malaysia was one of the world’s most morally conservative countries (The Malay Mail Online, 18 April 2014). 87% of Malaysians found premarital sex as unacceptable whilst 40% of them were of the opinion that the use of contraceptives was also unacceptable.

(UKM), there was an overall emphasis on premarital sexual relations as a grave sin. In one of the survey questions on self-methods to avoid pregnancy out of wedlock, 60% (30 of the respondents) strongly agreed with marriage as the best option (Salasiah and Kusrin 2015). Researchers in the said study also agreed with this view and asserted that encouraging marriage fulfils Islamic teachings, particularly to avoid fornication—and citing the Prophet: “. . . marriage is my Sunnah, whoever hates my Sunnah is indeed not from me.” This is a rhetoric that has long been magnified by local religious and political nationalist leaders. This has also contributed to much shame and taboo surrounding sexuality that is visibly prevalent amongst the Malay Muslim community. And of course, the likes of khalwat laws reinforce such ideals.

In KANITA's study, it was expressed that “most of the respondents seem to feel that marriage is necessary to legitimise their relationships, especially, sexual relationships” (Endut and Mohd Hashim 2014). An inference was also drawn whereby child marriage in the Malay Muslim community could be attributed to the strict prohibition of premarital sex and any other form of sexual/physical relationships prior to marriage, resulting in the pressure to marry upon the discovery of their romantic relationship. This is further substantiated in another study conducted in 2012, titled “The Purpose of Marriage Among Single Malaysian Youth” where religion was cited as the main reason (Manap et al. 2012). It was reported that respondents were of the view that, “. . . marriage is seen as the only way to fulfil sexual desire . . . all of the respondents in this study agree that marriage will prevent them from crossing the boundaries between a man and a woman.”

In 2008, incidents of teenage pregnancy were at 18%, according to the Ministry of Health Malaysia (MOH 2008). On average, according to the Minister, Datuk Seri Dr. S. Subramaniam, about 18,000 of cases of teenage pregnancies are recorded each year with 1,500 cases of them occurring every month, making it about 50 per day throughout the

country (The Star Online, 29 October 2015). From 2011 to 2013, the MOH's Family Health Development Division recorded a total of 18,000 teenage girls receiving services at government health clinics with the states of Sabah (3,084) followed by Sarawak (2,910) and then Selangor (1,461) seeing the highest numbers (MOH 2013). The ratio of teenage pregnancies was 50 per 1,000 deliveries for those two years. The Fifth Malaysian Population and Family Survey 2014 too indicated that among the 15 to 19 years age group, 62.8% women have one child and 7.1% have two (LPPKN 2016).

Out of the top four cities which recorded the longest average time spent per visit on pornographic websites, Kuala Terengganu (in the state of Terengganu) and Kota Bharu (in the state of Kelantan) were the top two. These two cities are the capitals of some of the most religiously conservative states (Malaysian Digest, 7 January 2015).

Other sexual crimes have also seen a rise in numbers across the years. For instance, in a parliamentary reply to MP of Batu Kawan in 2015, it was reported that there were 37,263 rape cases reported between 2000 and 2015 (The Star Online, 9 February 2017). The majority of the cases involved minors aged 13 to 15 with 16,265 victims.

It is a struggle for parents, religious leaders and other community leaders to accept challenges youth and children face today. With the advancement of technology and easier access to information via the internet, the sexual initiation age amongst youth is growing younger. Efforts must be targeted to this issue to assist these children in managing these vulnerable years better. Punishment and shaming will not lead to the reduction of moral decay of the youth as evident in the growing numbers in the use of pornography, rape, incest and so on. Ignoring it or not acknowledging it or even worse, rejecting any discussion or conversation on it will be to the detriment of these children.

(4) Marriage as a Consequence of Rape

Cases relating to child marriages as a direct result of rape have been discussed in Chapter 3. Though there are no statistics on how often this occurs, it is believed to be more rampant than is shown on the media. The cases in Chapter 3 perfectly document the failure of our legal system to protect rape victims by allowing the marriage to take place and the rapists to escape prosecution. They also raise questions on the psyche of the fathers' approval of such unions. The Sarawak Ministry of Welfare, Women and Community Wellbeing (KKWKK) commented that one of the issues often faced in handling the issue of teenage pregnancy is that parents would usually refuse to press charges on the rapists for they do not want their daughters and grandchildren to go husbandless and un-fathered (The Borneo Post, 28 July 2016). This is also a fact that has been voiced during one of our aforementioned dialogue sessions where one of the NGOs that runs women's shelters often came across pregnant teenagers who opted to marry their rapists.

As discussed above, parents (and in some cases, the girls themselves) who opt for marriage instead of pressing charges often feel like marriage is the better and only way out. The advocacy officer for the Women's Aid Organisation (WAO) stated that, "Rape survivors report that they are often considered "dirty" by those who know what had happened to them" (Malaysian Digest, 19 April 2016). She further highlighted the double standards that our society imposes, "...excusing males for sexual indiscretion, and shaming females for having engaged in sexual activity (even when they were unwilling partners)."





4. CONCLUSION

This research intends to debunk the misconception that poverty is the main motivator of child marriage across all nations. In a prosperous country like Malaysia where opportunities for education, health, economic independence and social security are readily available for the majority of the population, laws and policies that protect the best interests of children have remained secondary. Whilst the country has advanced economically, its level of social responsibility remains backward. Thus, the crux of the issue with regards to child marriage involves a spectrum of interplay between responsible government, removal of policies detrimental to society at large, change in mindsets on the agency of children, and an acceptance of the moral issues impacting upon the youth of the country.

There is no doubt that child marriage happens more commonly within the female population. There is also clear evidence that child marriage causes debilitating harm to young girls due to the adverse health impact it has on them, with many cases leading to lifelong health problems and even death. However, the issue at hand is really a challenge on dogmatic beliefs on traditions and religious understanding. When one is weighed against the other, for Malaysia at least, the latter triumphs based on a fear of sin, shame and ostracisation.

This study shows that it is abundantly clear that this archaic law is able to subsist due to uncompromising conservative beliefs held and propagated by those that have the power to influence the masses. From our various engagements with Islamic NGOs and faith-based political parties, it is clear that the notions of sexuality and its accompanying conservative views on premarital sex and sex in general is largely justified and perpetuated utilizing religious texts and archaic interpretations, by local Islamic scholars and clerics. Whilst such notions would perhaps remain entrenched in the Muslim community, its approach to perpetuate harm, punish

and shame the “wrongdoers” is a solution that does not align to a healthy, progressive society. Efforts to encourage compassion, empathy and empowerment towards such transgressions are largely absent.

In conclusion, SIS calls for a strict legal ban on child marriage in Malaysia. A complete ban on this practice is essential to push the government to properly address it and implement relevant policies, including one to disallow our legal system from approving child marriage applications between rape victims and their rapists. SIS acknowledges that this is a battle of the mind, thus a more pragmatic approach may be required in the short to medium term, given the prevalence of religious conservatism in Malaysian society. Education is as important as changing the beliefs of the general public and policymakers is vital for any significant change. Education should be focused on gradually altering and removing patriarchal views and gender stereotypes, as they are the core to why child marriages occur, especially among young girls. Islam in the days of the Prophet (pbuh) was fraught with practices and norms which are now considered contrary to a civil society—slavery, infanticide and women being treated and traded as chattel, among many. SIS recognised the injustices of these practices and had the foresight to remove these practices from our society. A question that needs great reflection is why the issue of child marriage has not received the same level of consideration.

5. RECOMMENDATIONS

Legal Reform and Mandatory Marriage Registration as a Long-Term Solution

The ultimate solution must be a total ban on child marriage through reform of legislation. The minimum age of marriage must be raised to 18 for both genders, regardless of faith and ethnicity, with no exceptions. The criminalisation of child marriage can also be looked into as part of legal reform, and this has been implemented elsewhere in different forms in acknowledgement of the fact that very often the parties to the marriage are not the ones who are in control of the situation.³⁶

Government initiation of a process towards legal reform is essential. A national level advocacy programme needs to be put in place to raise awareness and educate and convince relevant parties, particularly religious leaders, that this is in the interest of healthy social and cultural development. It must be a constant feature as a critical issue on their political and religious agenda. Given the extreme and conservative attitudes of local policymakers, religious leaders and the public in general, this is a battle of mindsets, traditions, and cultural norms.

Having said that, we do understand that as a pragmatic approach, to achieve a common ground with all communities within Malaysia, we must approach this issue in stages. Most importantly, this is a campaign to change harmful tradition and practice, thus would require widespread awareness and appreciation of the reasons behind it and make it illegal. But it is not impossible. We have seen Muslim countries such as Algeria, Bangladesh, Morocco and Turkey³⁷ promulgate such legislation. Loopholes³⁸ must not be allowed to ensure proper implementation of the law. We fully appreciate that this is a long-term effort. However, with the support of law and policy makers, religious leaders and community leaders, this is a change that can be achieved successfully.

Formal discussions with policymakers in this issue have been very limited. However, from our dialogues, we appreciate

that a softer stance may be necessary in the immediate term so as to be more palatable to the religious leaders and policymakers in the country. Until a total ban takes place, we propose that the minimum age of marriage to be raised to 18 for both genders of all faiths but with strict exceptions, which are clearly stated in the law and must be considered by the Courts prior to granting permission to marriage. Moreover, interest of the child must be the highest priority of the Court, whether or not it is a situation where the child himself or herself desires the marriage.

Concurrently, a separate provision must be enacted to prohibit Sharia Court judges from approving child marriage applications where there have been allegations of the prospective groom raping the child bride applicant.

Education: Raising Awareness, Changing Public Perception and Dismantling of Patriarchy

Education to raise awareness, empower girls, and dismantle patriarchal beliefs may be done through various means such as community and school programmes. Social media should be effectively and creatively utilized and exploited to spread awareness.

Thus, engagement between all stakeholders is necessary to address this issue. Where children cross the boundaries of intimacy, solutions that are in the best interest of the child

³⁶ E.g. in Tanzania whereby men who marry or impregnate underage girls face imprisonment (BBC, 2016).

³⁷ Reforms in these countries were introduced in the early 2000s. Algeria – minimum age of marriage is 19, exceptions on the grounds of benefit or necessity; Bangladesh - minimum age of marriage is 18 for females and 21 for males, exceptions not permitted; Morocco - minimum age of marriage is 18, exceptions with the assistance of medical expertise or after conducting a social enquiry; Turkey - minimum age of marriage is 18 for females, exception to lower to 16 years with Court's permission.

³⁸ For example, where marriage is done by religious or traditional rites. We suspect that in the case for non-Muslims, early marriages do exist except that it is unregistered.

should remain. Marriage, whilst seeming an acceptable outcome for the child at that point, has consequences over the child's future, and the following generation.

(1) Empowering Girls

As girls are the ultimate victims of patriarchy, empowering girls to speak out for their rights would be the vital first step. It is safe to say that many girls in Malaysia are themselves unaware of patriarchal oppression; to this effect, gender sensitive education should be given. Using human rights as a framework, this not only trains them to be a better advocate for themselves, it also trains them to be more confident in expressing their views and unwillingness to marry. We may also empower girls by educating them on: (i) communication and negotiation skills; (ii) knowledge on sexual and reproductive health and rights; and (iii) ways to earn and manage money.

The above may be achieved through various community programmes, information campaigns, teachers at school, parents at home, and even religious leaders of a particular community.

(2) Sex Education and Family Planning

The government and its relevant ministerial departments must provide more comprehensive sex education for the youth.³⁹ Comprehensive sex education is defined as an “age-appropriate, culturally relevant approach to teaching about sexuality and relationships by providing scientifically accurate, realistic, non-judgmental information” (UNESCO 2015).

The reality now is that the children require comprehensive and age-appropriate sex education and pointers on how to manage peer pressure to have sexual relationships at a young age. Boys must also be taught the importance of respecting

girls and their boundaries. Counsellors and religious teachers must also be readily available to provide appropriate guidance and advice on relationships and physical intimacy. These types of information will arm the children when these pressures bear down on them. Sex education is not only about teaching children about their reproductive systems. It also needs to provide the children with information on safe sex and more importantly, their right to exercise their personal choices on whether or not to have sex. Proper sex education will teach them how to respect each other and to identify signs of sexual abuse. Sex education is not about consent or encouraging sexual activity at an early age.

It would be a significant effort to incorporate sex education within our education system. Teachers must first be properly trained in terms of how to appropriately approach the topic and educate students in an effective way. In a study titled, “Analysis on Sex Education in Schools Across Malaysia,” researchers reported that teachers are often embarrassed by the topic and would teach students using metaphors without directly addressing the core issue (Talib et al. 2011, 344). Some would even skip the topic altogether (Talib et al 2011, 347). This amounted to extremely ineffective sex education with 95% (361) of the student respondents interviewed thinking that sex education was not at all provided in their schools; and even if it was, that they were only being taught in a casual manner (Talib et al. 2011, 344).

(3) Create Awareness on the Causes and Harmful Impact of Child Marriage

Targeted audience should include: (i) parents; (ii) teachers; (iii) religious leaders; (iv) policymakers; (v) Sharia Court judges; and (vi) community leaders and etc. These are the people who wield the power of decision whether to allow a girl or boy to get married.

By exposing the reality of the harm that child marriage entails, parents would see it as a much less viable solution to avoid shame. Also, religious leaders are vital players as their opinions are regarded highly by Muslims in Malaysia; hence, having religious leaders reject or speak out against such practice will have a bigger effect on changing public perception on child marriage. On the other hand, Sharia Court

³⁹ Sex education ought to be made as a standalone subject as it may provide opportunities for specialized teacher training and it will also be easier to monitor (UNESCO 2015). As an alternative, it may also be integrated across relevant subjects within the curriculum, to avoid burdening school children and teens with an overcrowded timetable (UNESCO 2015). It is also important that the outreach covers all youths, including those in rural areas.

judges must be provided with formal training, specifically on how to process such applications in court, and serve the interest of the child.

Awareness may be created via public forums, dialogue sessions and information campaigns directed towards the above stakeholders and related actors. The roles of journalists, writers and editors to spread awareness must also not be forgotten.

(4) Gender Sensitisation: Engaging Boys and Men

Patriarchal values and beliefs which prompt gender inequality through gender stereotyping and forced gender norms, are core reasons why child marriage is still practised. To dismantle the patriarchy, not only are allies from men and boys needed, but there must be continuous effort to eliminate patriarchal oppression of both girls and boys. Due to the fact that the latter often face societal pressure stemming from the gender stereotype that “a real man” is driven by rational reasoning and not an emotional one (as opposed to women who are stereotyped as hyper-emotional). It has been found that this leads to risky sexual behaviours, violence and neglect of care work (Greene et al. 2015, 9). As a result of changed perception, we could see them respecting their wives' rights to sexual and reproductive health, insisting on them continuing their education, and allowing them an equal decision-making power in the household. There will also be less gender-based violence and less forceful dominance of the household, which in turn will lead to a healthier marriage.

Efforts could be made via education through various community programmes. For example, the Save the Children's “Choices” curriculum in Nepal is proven to have produced fruitful results in changing young boys' and girls' (aged 10 to 14) views on gender roles and norms (Greene et al. 2015, 9). More participants believe that girls and boys deserve equal educational opportunities, and parents of the participants have reported their sons wanting equality for their sisters (Greene et.al. 2015, 10).

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7. APPENDICES

Appendix 1: Glossary and Working Definitions

Sexual and Reproductive Health

Amnesty USA described this as “. . .an essential component of the universal right to the highest attainable standard of physical and mental health, enshrined in the Universal Declaration of Human Rights and in other international human rights conventions, declarations and consensus agreements. Human rights standards require states to respect, protect, and fulfil the right to sexual and reproductive health, and states must also ensure that individuals have the opportunity to actively participate in the development of health care policy and in individual care decisions –including determining whether and when to have children and in protecting the rights of others to sexual and reproductive health, including through ensuring violence-free relationships and homes and in seeking information, education, and care for one's children.”

Sexual Health

World Health Organization (WHO) defined this as “. . . a state of physical, emotional, mental and social well-being in relation to sexuality; it is not merely the absence of disease, dysfunction or infirmity. Sexual health requires a positive and respectful approach to sexuality and sexual relationships, as well as the possibility of having pleasurable and safe sexual experiences, free of coercion, discrimination and violence.”

Reproductive Health

World Health Organization (WHO) stated that reproductive health “. . . implies that people are able to have a responsible, satisfying and safe sex life and that they have the capability to reproduce and the freedom to decide if, when and how often to do so.”

This research is an initiative of a regional partnership working on building the interlinkages of religion (fundamentalisms and extremisms) on Women's Sexual and Reproductive Health and Rights (SRHR). The ten partners are from India, Sri Lanka, Pakistan, Bangladesh, the Maldives, Indonesia, the Philippines, Malaysia, Morocco and Egypt. The regional partnership generates evidence on the interlinkages and the effects on wellbeing and human rights as part of national and international processes to achieve sustainable development and the realisation of human rights. The research for partners from India, Sri Lanka, Pakistan, Bangladesh, the Maldives, Indonesia, and the Philippines was supported by the European Union as part of the action "Strengthening the Networking, Knowledge Management and Advocacy Capacities of an Asian-Pacific Network on SRHR" and the Swedish International Development Cooperation Agency (Sida). The research for Malaysia, Morocco and Egypt was supported by the Norwegian Agency for Development Cooperation (Norad).

ARROW is a regional and non-profit women's NGO based in Kuala Lumpur, Malaysia, and has consultative status with the Economic and Social Council of the United Nations. Since it was established in 1993, it has been working to advance women's health, affirmative sexuality and rights, and to empower women through information and knowledge, evidence generation, advocacy, capacity building, partnership building, and organizational development.

Sisters in Islam (SIS) is a civil society organisation which believes that Islam upholds Equality, Justice, Freedom, and Dignity. SIS is made up of Muslim women and men who take a rights-based approach to Islam. We focus on women's rights within the frameworks of Islam and universal human rights. Since its official establishment in 1998, SIS has successfully created a public voice and a public space that enable Muslims to engage with their faith in the struggle for justice, human rights, and democracy in the twenty-first century.

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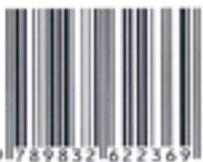
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