

# CHILD MARRIAGE IN MALAYSIA: WHOSE RIGHTS ARE BEING VIOLATED?

Noraine Bahari<sup>1</sup>, Yarina Ahmad<sup>2\*</sup>, & Nor Azira Ayob<sup>3</sup>

<sup>1,3</sup> Faculty of Administrative Science and Policy Studies, Universiti Teknologi MARA (UiTM), Malaysia

<sup>2</sup>Institute for Biodiversity and Sustainable Development, Universiti Teknologi MARA (UiTM), Malaysia

\*E-mail: [yarina@uitm.edu.my](mailto:yarina@uitm.edu.my)

## 1. INTRODUCTION

Globally, the United Nations Children's Fund (UNICEF) in 2006 revealed child marriage cases will significantly increase by 71% by the year 2030. A few years ago, the news of an 11-year-old girl married to a 41-year-old man at Gua Musang, Kelantan made headlines in Malaysian media. This news had shocked the nation as child marriage is an issue that requires careful discussion. Parents that agree on arranging child marriage for their child is primarily to avoid social stigma and believe that marriage is the best solution to solve social problems. This study uses a literature review. This paper will analyse and provide insights on child rights and the factors that led to child marriage. This paper reveals that child marriage is seen as a solution to social problems such as pre-marital sex out of wedlock pregnancy, and poverty. Nonetheless, this contradicted with the principle of prevailing the best interests of the child. Briefly, child marriage is a human right violation that takes away the childhood of a child. Thus, respective government agencies and communities need to take action to ensure that children specifically are being protected.

## 2. METHODOLOGY

This study is based on the literature review by analyzing primary and secondary sources such as state enactments, academic journals, and articles.

## 3. RESULTS AND DISCUSSION

### 3.1 Factors of Child Marriage

The review of literature posits two main factors that led to Child Marriage, which are 1) premarital sex and out-of-wedlock pregnancy, and 2) family poverty. These factors are influenced by the geographical area, religion, and culture of the society. These two factors are discussed further in Table 1.

**Table 1: Factors of Child Marriage**

Factor	Description
Premarital Sex and Out of Wedlock Pregnancy	Losing one's virginity or having a child before marriage or unwed is seen as a source of shame in the family. Parents have been forced to marry off their daughters early because of this scenario.
Family Poverty	As a means of securing the child's future and reducing the financial burden of the parents, and as a survival strategy.

### 3.1.1 Premarital Sex and Out of Wedlock Pregnancy

This factor has been highlighted as a major factor contributing to Child Marriage in Asia. Onyido et al. (2018) and Kohno et al. (2019) posit that premarital sex and out-of-wedlock pregnancy cause the family to dishonour the child, with marriage being manipulated as a solution to avoid the social stigma shame. This was supported by Women Refugee Commission (2016) who claimed that parents encounter difficulties in monitoring their daughter's interactions and movements when they are outside. Therefore, to secure the 'purity' of their daughter, some parents claim that early marriage is seen as means to control premarital sex, which is taboo in many societies. Thus, the phenomenon of Child Marriage is influenced by the means to protecting the dignity of the girls and family.

### 3.1.2 Family Poverty

Marriage is often the preferred solution for girls to be away from their hardship life. This was supported by several studies who found the same empirical findings which determine marriage as a way out to offer a better life to the girls; therefore, marriage is used as a so-called "*Survival Strategy*" to girls who are from a poor household (Stark, 2017; Rembe et al., 2018). Stark (2017) posit that poor financial condition has forced the girls to be extra independent to self-support because they are unable to depend on their parents or guardian. Therefore, marriage is seen for a better life as for basics needs such as home, clothes, and food. However, Stark (2017) reveals that only 5% to 20% of the girls live a better life by marriage, the rest face divorce or abandonment. Thus, as stated by Kohno et al. (2019), when girls are married, they will leave their family house which will reduce the number of family members and reduce the financial burden of the parents. Thus, marriage becomes a solution in reducing the financial burden of their parents.

## 3.2 Child Marriage is a Violations of the Child Rights

Three main aspects of Child Rights were identified to contradict the phenomenon of Child Marriage, which are 1) The right to the enjoyment of the highest attainable standard of health, 2) The right of the child to education, and 3) The right to freely enter marriage only with free and null consent. These three aspects of Child Rights are discussed in Table 2.

**Table 2: Child Marriage is a Violations of the Child Rights**

Child Rights	Description
The right to the enjoyment of the highest attainable standard of health	Child Marriage exposes the girls to the risk of physical and mental health as well as the physical health of the infant.
The right of the child to education	Girls are reported to discontinue schooling after marriage because of early pregnancy and are responsible for taking care of the household.

The right to freely enter marriage only with their free and null consent	Children cannot give consent because it requires cognitive and psychosocial maturity which enables an individual in making a reasonable decision
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### 3.2.1 The Right to the Enjoyment of the Highest Attainable Standard of Health

Based on Article 24 in the Convention on the Rights of the Child (CRC), children have the right to the enjoyment of the highest attainable standard of health. However, the practices of Child Marriage were found to create more harm to the health of the children. **Physical health to the mother** - According to Paul and Moses (2016), girls aged between 15 to 19 years old have two times the risk and complications during pregnancy or childbirth. The reproduction organ such as the small size of the uterus and cervix may cause a tear and severe bleeding during childbirth. **Physical health to the infant** - The mother, who is under the age of 20 years old is 50% more likely to experience infant mortality (Mayor, 2004). The infant is also exposed to premature birth and lack of nutrition which increase the risk of 'under-five stunting' whereby the height of the child is stunted due to chronic malnutrition and 'under-five mortality; the probability of the infant not surviving during birth to five years old (Raj et al., 2010). **Mental health** - In many cultures, it is normal for girls to follow her husband after getting married. Rembe et al. (2018) mention that the situation of the girl being separated from their own family and friends and staying in a new environment leads to feeling sad in adapting to the changes. As a wife and mother, the girl needs to be emotionally mature in overcoming an emotional problem such as depression. Thus, this indicates that Child Marriage is a repression of the children to obtain the right to be healthy.

### 3.2.2 The Right of the Child to Education

Article 28 in the Convention on the Rights of the Child (CRC) claimed that each state parties need to recognize the right of the child to education. It means every child must have the right to access education. Unfortunately, many researchers discover that early marriage denies the right of education to the girls after marriage due to early pregnancy and taking care of the babies (Rembe et al., 2018). Wodon et al. (2017) found that 78% of children are found to discontinue schooling after marriage. This will directly affect their employment opportunity, which will affect income in the future to survive due to the high cost of living (Hin, 2017). This phenomenon also often indirectly continues the cycle of poverty faced by the poor. Therefore, having a right to access education is essential whereby it allows an individual to gain the required skills. However, child marriage practice has violated these rights.

### 3.2.3 The Right to Freely Enter into Marriage only with their Free and Null Consent

As highlighted by the Universal Declaration of Human Rights (UDHR) stated in Article 16; the Right of Marriage and Family; Marriage shall be entered into only with the free and full consent of the intending spouses. According to Erulkar (2013), children cannot give consent because it requires cognitive and psychosocial maturity which enables individuals to make a reasonable decision without any interference or supervision. In deciding on marriage, a girl needs to have the capacity to understand the cause and consequences of each action. Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) also reported that children are 'incapable of making a judgment. Furthermore, in deciding on marriage, children should entitle to receive direction and guidance from parents. Therefore, as

children do not possess the capability in making a sound decision by themselves, thus, the right to enter the marriage with free and null consent can be questioned.

#### 4. CONCLUSION

As a conclusion, based on the synthesis of past literature reviews, it can be highlighted that young girls choose to be married because of premarital sex and family poverty. These two factors need to be addressed by the government and respective authorities from the root cause. This is to ensure the objective of marriage which is to build a harmonious family and to educate their children can be conducted with full responsibility. The development of family institutions is vital because good and mature parenting is important in the process of educating children with good social skills and sound behavior. The literature review reveals that Child Marriage has brought a long-term negative impact to children which violates their rights as a child especially in terms of health and education. However, there is a lack of empirical evidence on the impact of Child Marriage in Malaysia that necessitates future studies.

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