

CHILD MARRIAGES IN MALAYSIA – A MYTH OR PHENOMENON

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Abstract

This is a conceptual paper to unveil the issues of child marriage in Malaysia whereby the current dual legal system, related to marriage are either dealt with in the Civil courts (non-Muslims) or the Syariah courts (Muslims). In Malaysia, the legal age to marry is different for non-Muslims and Muslims. According to the general rule, Section 10 the Law Reform (Marriage and Divorce) Act 1976), the legal age to marry for non-Muslims is 18. However, for a female who has completed her sixteenth year (16), the solemnization of such marriage can be authorized by a license granted by the Chief Minister under subsection 21(2). Following the Islamic Law, according to Section 8 of the Islamic Family Law (Kelantan) Enactment 2002, no marriage may be solemnized where the man is under eighteen (18) years old, or the woman is under sixteen (16) years old except where the Syariah Judge grants his permission in certain circumstances.

This study reviews literature on the history of the current laws in Malaysia which provides that it is possible for two individuals below the age of 18 to get married. This is a loophole because Section 2 of the Age of Majority Act 1971 states that 18 is the age of majority but Section 4(a) of the Act states that it does not affect the capacity of a person to marry. It aims to evaluate the crucial elements of the laws in Malaysia which is confusing since the Civil courts follow Section 2, that the age of majority to consent to a marriage is 18, whereas the Syariah courts are more inclined towards

Section 4(2) which states that even persons below the age of 18 are able to give consent in marriage related matters.

This study provides an overview of the perplexing nature of child marriages and the various concerns that have surrounded the topic leading to its recognition. Hence in Malaysia, there is no specific law which governs the provisions for child marriages which leads to escalating numbers of sexual offences. The study reviews the existing case laws and literature on the historical development of the elements revolving around child marriages.

Keywords: *child marriage, Civil law, Syariah Law, Malaysia.*

I. Introduction

“Child Marriage is a practice that robs millions of girls of their childhood, their rights and their dignity.”^[1]

–Archbishop Desmond Tutu.

Every three seconds, in some part of the world, a girl under the age of eighteen (18) is getting married. If this keeps continuing at this pace, a hundred million (100 million) girls will be getting married over the next decade. Which means every day twenty-five thousand (25,000) girls will become child brides.^[2] Child marriage takes place in almost every region of the world and it is most common in regions such as South Asia, the Middle East, Africa, Latin America and the Caribbean.^[3] In spite of being prohibited by international human rights law^[4] and many domestic laws, child marriage continues to violate children’s human rights by forcing them out of their primary education rights, increasing their exposure to the risk of domestic violence, severe mental and health risks, and early death.

This paper focuses on the issue of child marriages within the Malaysian perspective, taking into account the position of both the Civil courts (Non-

Muslim) and the Syariah courts (Muslim) in dealing with child marriages. The Committee on the Rights of the Child (CRC) terms “*child marriage*” as any marriage where either one (or both) partners are below 18 years of age. One of the main goals of the CRC is to make sure that all countries set the minimum age for marriage for both men and women (with or without parental consent) at 18 years. The United Nations Population Fund (UNFPA) and the United Nations Children’s Fund (UNICEF) outlines child marriage as “*a formal marriage or informal union before age 18*”.^[5] Despite the fact that the CRC terms “*child*” as any human being under 18 years of age, in Malaysia the definition of “*child*” differs not only according to specific legislation but also within civil, criminal and Islamic law.

The main objective of this study is to explore the current laws in Malaysia which permit two individuals below the age of eighteen (18) to get married. Various legal and policy bottlenecks hamper the effectiveness of the system to control child marriages in Malaysia. Within the Malaysian legal system - which comprises the civil law, Syariah law and customary laws; it is observed that the term “*child*” is not interpreted in a consistent manner. For instance, civil law specifies that eighteen (18) is the legal age of marriage for non-Muslims (albeit females aged 16 to 18 may marry with the consent of their state Chief Minister or Menteri Besar).^[6] On the other hand, Syariah law which regulates Malaysia’s Muslim-majority population, stipulates that while girls may marry at 16 and boys at 18, the Syariah Court may grant permission to marry below those ages.

There seems to be a loophole within the civil law as well as Section 2 of the Age of Majority Act 1971^[7] which states that 18 is the age of majority but Section 4(a) of the Act^[8] states that it does not affect the capacity of a person to marry. This means that a boy or girl can get married without attaining the age of majority. Therefore, the aim is to evaluate the crucial elements of the laws in Malaysia which is confusing since the Civil courts follow Section 2, that the age of majority to consent to a marriage is 18,

while the Syariah courts are more inclined towards Section 4(2) which states that even persons below the age of 18 are able to give consent in marriage related matters. The establishment of a clear minimum age for marriage at 18 in line with international standards that applies to all existing legal frameworks is therefore an essential first step towards ending child marriage in Malaysia.

Factors and Negative Implications of Child Marriage

There are several co-related factors which creates a conducive environment for child marriage; some of which are discussed below to get a better understanding of this issue:

- **Gender discrimination:** this happens to be one of the most critical factors which is deeply rooted in various societies. Societies where patriarchy prevails, women are considered to be the property of their father and husband, and they are given no freedom to choose whom/when they want to get married.^[9] Gender inequality shapes the social expectations that encourage the practice of child marriage.
- **Religious practices:** the significance of religious beliefs in Muslim villages and cities play a vital role in child marriage as it contributes to the continuance of customary practices.^[10] Religious influencers significantly encourage the decision of parents to marry off their girls at an early age.^[11] The issue of child marriage becomes more and more complex each day because of different interpretations of religious beliefs.^[12]
- **Ineffective implementation of law and policies:** non-existent or poor enforcement of laws and policies can contribute to the practice of child marriage. For example, in India, where the law requires all marriages to be registered, the governments of some states (such as Bihar) have chosen not to make marriage

registration compulsory,^[13] while in Bangladesh, laws that address the minimum legal age are often ignored.^[14] In Malaysia, notwithstanding the minimum age of marriage being already set at 18 in law, the solemnization of marriage of a female who has completed her sixteenth year can be authorized by a license granted by the Chief Minister.

There are several negative implications which derives from child marriage; young girls suffer from severe health and psychological problems such as complications during and after pregnancy, physical abuse, domestic violence, loss of education and employment opportunities etc. The International Centre for Research on Women has found that girls below 15 years of age are five times more likely to die during pregnancy and childbirth than women in their 20s. This is mainly because girls at such a young age have not reached physical maturity, and their reproductive organs are not yet fully developed. Early pregnancies within child marriage are also consistently associated with miscarriage, stillbirth and abortion.^[15] Child marriage disrupts the emotional and psychological development of a young girl, leaving them feeling isolated and depressed at a very young age. Thus, it is very important to understand these interrelated factors and negative implications which contribute to the practice of child marriage; the governmental bodies and the Non-Governmental Organizations (NGOs) need to cooperate extensively with one another to generate awareness and end the practice of child marriage.^[16]

II. Background and Rationale

In Malaysia, there are various co-related factors as discussed previously which allows the practice of child marriage. This includes complex legal system-interpretation of the term “*child*” being unclear in the context of child marriage, lack of sexual and reproductive health education, social norms, religious belief, poor economic conditions and lack of political interest in observing the international human right laws.^[17] Child marriage

is a controversial subject in Malaysia, and it has gathered the attention of various concerned parties. For instance, the Joint Group of Gender Equality (JAG) referred to statistics that an estimated 16,000 girls were married before the age of fifteen (15) as of October 2010. Furthermore, in 2016, Mohd Nadri Abd Rahman, the senior director of the Department of Syariah Judiciary (JKSM) stated that, between the year 2005-2015 there were 10,240 child marriage applications, emphasizing the fact that “irresponsible parents” were the ones who manipulate the legal system in order to marry off their daughters to cover up, for instance, rape within the family.^[18]

Malaysia is a dual-track legal system which consists of both the Civil courts operating parallel with the Islamic Syariah courts. Following the civil law, non-Muslims fall under the Law Reform (Marriage and Divorce) Act 1976 (LRA) which stipulates that the minimum age of marriage is 18 years for men and a full and complete 16 years for women, and all individuals below 21 years must obtain parental consent. However, females between the ages of 16-18 must acquire special permission from the Chief Minister of their state followed by an application made to the Registrar of Marriage under the LRA. Any marriage solemnized between persons below the required age is void. In brief, for non-Muslims, there are three legally recognized ways to marry under Sections 22 to 26 of the LRA: solemnization by the Registrar of Marriage, marriage by license granted by the Chief Minister of a state, and marriage by custom and religion other than Islam (where the marriage celebrant acts as a district Assistant Registrar of Marriage). There is no hearing in this application and the Chief Minister has absolute discretion in deciding whether to allow the parties to marry. In the view of the Attorney General’s Chamber (AGC), Malaysia being party to the CRC, the minimum standard age of marriage should be 18. Moreover, the minimum marriageable age before adulthood has never been amended and has been approved by the National Fatwa Council.^[19]

Now considering the Syariah law position, the minimum legal age of marriage is 18 for men and 16 for women. Nonetheless, individuals below the standard age can still get married if they acquire the consent of a Syariah judge. For example, Section 8 of the Islamic Family Law (Kelantan) Enactment 2002 states: “*no marriage may be solemnized where the man is under eighteen years old, or the woman is under sixteen years old except where the Syariah Judge grants his permission in certain circumstances.*” Hence, as Muslims are not subject to the LRA, there is no written absolute minimum age to marry for them. There is no legal definition on the term “*certain circumstances*” and no guidelines provided to the judges as to what it actually means. The Syariah Court primarily does not have an issue with child marriage applications. The factors considered by the judges while determining whether the application should be approved or not depends on the best interests (*maslahah*) of the child, along with environmental and physical issues. As stated by the Selangor Syariah Chief Judge, child marriage concerning a Muslim child is bound by the Islamic Family Enactment. Cases related to child marriages are decided by the learned judges and when deciding they take into consideration the medical reports, counselling reports, and the repercussion of their decisions.^[20]

Another issue concerning Muslim underage marriages is Sections 11 & 12 of the Islamic Family Law (Federal Territories) Act 1984 (IFLA). Section 11 provides that “*a marriage shall be void unless all conditions necessary, according to Hukum Syarak, ... are satisfied*” whilst Section 12 states that “*a marriage which has been solemnized contrary [to the Act] but is otherwise valid according to Hukum Syarak may be registered under this Act with an order from the Court*”. Therefore, it can be said from both provisions that even if a marriage was solemnized against the provisions of the IFLA, as long as it is recognized under Hukum Syarak, the said marriage is still valid and can be registered under the Act.

In brief, it can be observed that child marriage is currently legal for both non-Muslims and Muslims in Malaysia. Within the civil law context, even though the Malaysian government is working to ensure protection of children’s rights, the intention is not fully manifested in the form of any statutory provision which can empower conventional rights to have legal effect and be enforceable in a court of law as well.^[21] In the case of the Syariah courts, the judges do not follow a unified standard procedure to determine the child marriage applications. There were some red flags observed in recent controversial cases of child marriage and this particular subject matter raised many eyebrows with pleas to end the practice of child marriage in Malaysia.

The Legal System	Minimum Age Requirement(s)		Exception(s)	
	Male	Female	Male	Female
Civil Law	<p>Eighteen (18)</p> <p>Section 10 of Law Reform (Marriage and Divorce) Act-1976 (LRA-1976)</p> <p>(Parental consent required for those under the age of 21)</p>	<p>Eighteen (18)</p> <p>Section 10 of Law Reform (Marriage and Divorce) Act-1976 (LRA-1976)</p> <p>(Parental consent required for those under the age of 21)</p>	No Exception	<p>Section 10 of LRA-1976:</p> <p>A female who has completed her sixteenth year (16), the solemnization of such marriage can be authorized by a license granted by the Chief Minister under subsection 21(2).</p>

Islamic Law	Eighteen (18) Section 8 of Islamic Family Law (Federal Territory) Act-1984 (IFLA-1984)	Sixteen (16) Section 8 of Islamic Family Law (Federal Territory) Act-1984 (IFLA-1984)	Section 8 of IFLA-1984: Except where the Syariah Judge has granted his permission in writing in certain circumstances.	Section 8 of IFLA-1984: Except where the Syariah Judge has granted his permission in writing in certain circumstances.
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Table 1: Minimum Age Requirement for Marriage in Islamic law & Civil law

Case Study

A controversial marriage of an eleven-year-old girl with a forty-one-year-old Kelantan man sparked outrage in Malaysia. Malaysians were alarmed and showed great concern towards the incident, resulting in demands from many quarters to set the minimum age of marriage to eighteen (18). This request is especially pertinent in light of *Pakatan Harapan*'s pledge in its manifesto for the 14th General Election, which was to “ensure the legal system protects women’s rights and dignity”, comprising “introducing a law that sets 18 as the minimum age of marriage”. The National Human Rights Society (HAKAM) has been pushing the Minister for Women, Family & Community Development to make effective laws to criminalize and ban child marriages in Malaysia.^[22] As stated by Prof Datuk Gurdial Singh Nijar, the president of HAKAM, “There must be laws put in place to eliminate and prohibit child marriage, as such early marriages are a violation of human rights and the Convention on the Rights of a Child especially when Malaysia is a party to the convention”.^[23]

In February 2013, a forty-year-old restaurant manager who raped a thirteen-year-old girl child requested the Syariah Court to approve

permission to marry the victim.^[24] Consecutively, the court has stated that it had “*No objection for the marriage*” which received loud responses from the media, society at large and civil society organizations. In November 2012, in the state of northern Kedah, a twelve-year-old girl was married to a nineteen-year-old boy after the girl's father approved the union followed by an Islamic court granting permission.^[25] The girl's father explained “*It is better for them to get married rather than doing something that is tak elok*” (inappropriate).^[26]

In international treaties,^[27] it is advised that a child is incapable of giving full consent to enter any kind of contractual obligations,^[28] as a result, children are not encouraged to enter a marriage union. Following the general rule, a contract entered by a child is void due to incapacity. On the other hand, Malaysian courts dealt with this issue in a different manner. In the case of *Rajeswary v. Balakrishnan*,^[29] the court held that contracts to marry entered by a minor are distinguishable from other classes of contracts. Section 4(a) of the Age of Majority Act 1971 recognizes that a child is regarded as competent in the following cases; namely, marriage, divorce, dower, and adoption.

UNICEF Malaysia has conducted some research to examine child marriage in Malaysia (Muslim, non-Muslim and indigenous and refugee communities). According to their study it was apprehended that child marriage has not been well researched all over Malaysia. Therefore, it is essential to conduct more research to get a clear understanding of the factors which permits child marriages in Malaysia. For UNICEF, it is a global priority to end child marriage by construing institutional improvements to gender equality. One of the five strategic goals of its Gender Action Plan 2018-2021 is to ensure the protection of children from violence and exploitation, including from child marriage.^[30]

III. Purpose and Aim

The main objective of this paper is to evaluate the crucial elements of the laws in Malaysia which is unclear since the Civil courts follow the view of Section 2 of the Age of Majority Act 1971, that the age of majority to consent to a marriage is 18, whereas the Syariah courts are more inclined towards Section 4(2) of the Age of Majority Act 1971 which states that even persons below the age of 18 are able to give consent in marriage related matters. The aim is to bridge that gap by suggesting that Malaysia can ratify the United Nations Convention on the Rights of the Child (CRC) and Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) fully without any reservations to protect children from all forms of abuse and severe cultural practices. Similarly, setting a standard minimum age (18) for all children (both girls and boys) without any exceptions or special provision in all legal frameworks is also strongly recommended to abolish child marriage in Malaysia. The research also explores the Malaysian government survey data, reports and case studies to identify the pertaining problem and understand the severity of the issue.

The doctrinal method is selected to conduct this study. The study is library and internet based. This method seems to be most suitable because the doctrinal method involves a problem structure with various steps comprising gathering facts, identifying the legal issues, analyzing the problems with an outlook to search the law, undertaking background reading and then locating primary material, synthesizing all the subject matter in context, and coming up with a tentative conclusion.^[31] Hence, this paper identifies the pertaining legal issues concerning child marriage within Malaysia and analyses the problem with an outlook to put an end to it by some strong recommendations.

IV. Findings

Malaysia acceded to both the CRC and CEDAW in the year 1995, however, it attached a host of reservations to both the treaties - which drew many

criticisms regarding the Malaysian government's responsibility towards child protection and gender equality. To be precise, Malaysia made a reservation to Article 9 of CEDAW^[32] which relates to the equality of men and women with respect to the nationality of their children. At the same time, they maintained reservations to Article 16^[33] which deals with prohibition of child marriage; stating that “*under the Syariah law and the laws of Malaysia the minimum age of marriage is 16 for girls and 18 for boys*”. Nevertheless, many organizations and activists have taken into account the fact that this age limit is often disregarded, as families are allowed to seek written permission from the Syariah courts in most jurisdictions. Additionally, Malaysia upholds numerous reservations to its implementation, including reservations relating to nationality and citizenship (Article 7), compulsory primary education (Article 28) and non-discrimination (Article 2).

The Malaysian government's own survey data shows that the prevalence of child marriage is growing in the country.^[34] From the year 2013 till 2017, a total of 5362 applications were registered in the Syariah courts for authorization to proceed with Muslim child marriages.^[35] According to the statistical analysis provided by the Malaysia Department of Welfare (JKSM), the approval rate in the year 2015 was about 81%. And it does not differ much from the approval rates in 2011 (86.1%), 2012 (87.7%) and 2014 (74%) respectively. As a result, it can be observed that on average, the Syariah court has approved eight out of ten child marriage applications. In the year 2012 according to the Malaysian Syariah Judiciary Department (JKSM), “*there were around 1,165 applications for marriage in which one party, usually the bride, younger than the legal marrying age*”. The Islamic Courts permitted 1,022 of them.^[36] In the state of Kedah itself, the number of marriage applications in which a girl was underage increased by more than a third in two years, and over 90 percent of those applications involved girls under the age of sixteen.^[37]

The current statistical analysis is gathered from the Working Paper prepared by Prof Dato' Noor Aziah Mohd Awal and Mohd Al Adib Samuri (Universiti Kebangsaan Malaysia) on Child Marriage in Malaysia for UNICEF Malaysia. The number of cases concerning Muslim children (female) documented from 2011 to 2016 across all states was 3,618. The data indicates that child marriage was highest among Kelantanese Muslim girls. As for the non-Muslim child marriage (female), data was gathered by researchers from the National Population and Family Development Board. The total number of child marriages among non-Muslim female children (16 to 18 years old) from 2005 to October 2015 was 5,215. Sarawak reported the highest number of cases with 1,609 cases, followed by Johor (845 cases) and Selangor (449 cases).^[38]

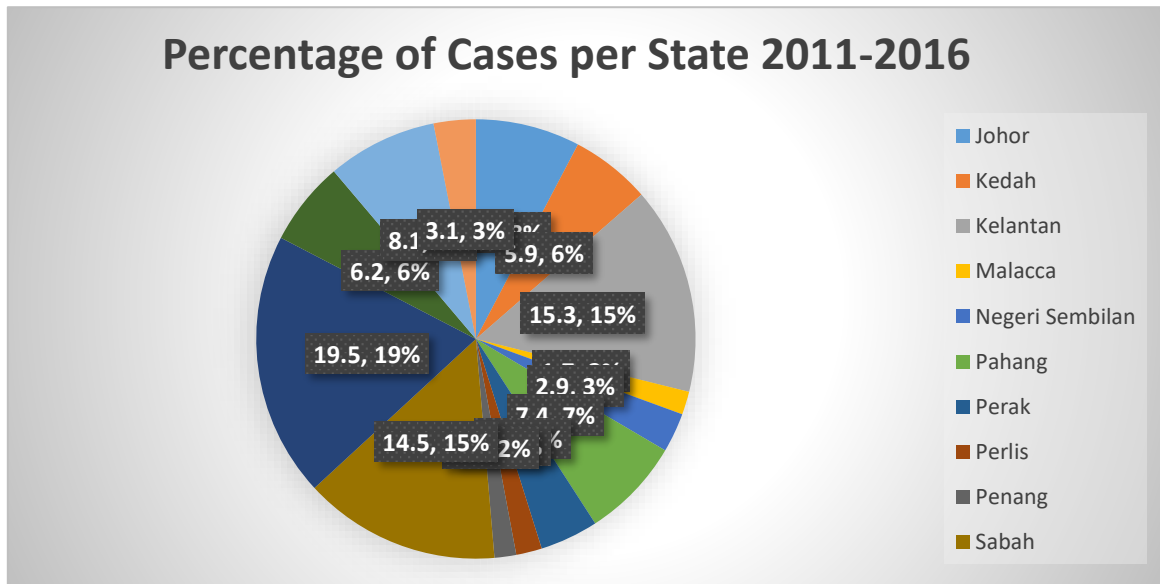
Child Marriage Statistics in Malaysia

Muslim Children

From 2013-20185, the Department of Syariah Judiciary received 5,823 applications to marry affecting underage Muslim children. The highest percentage of applications came from the state of Sarawak (16.7% or 974 applications) followed by the states of Kelantan and Sabah with 15% (877 applications) and 14.6% (848 applications) respectively, while the states of Malacca and Penang recorded the lowest number of applications at 98 (1.7%) and 91 (1.6%) applications respectively.^[39]

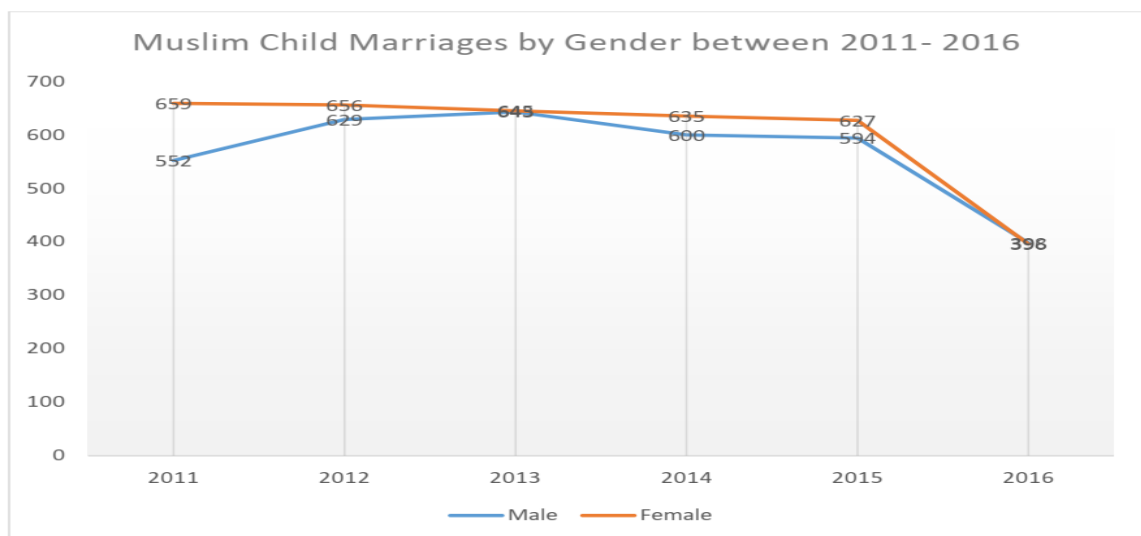
In the period between 2011 and 2016, there were 6584 cases of underage marriages recorded involving Muslim children in Malaysia.^[40] The highest number of cases was recorded in 2013 comprising 1,192 cases while the lowest number of cases occurred in 2016 with 797 cases. The state of Sarawak recorded the highest number of cases with 1,284 cases (19.5%) compared to the state of Penang with only 104 cases (1.58%). Kelantan has the second highest number of cases followed by the state of Sabah with 1,010 and 955 cases respectively. The table below lists down the number cases according to State between the years 2011-2016:^[41]

State	2011	2012	2013	2014	2015	2016
Federal Territories	30	36	41	36	37	22
Johor	56	90	111	84	90	76
Kedah	43	62	38	76	105	64
Kelantan	182	189	195	182	155	107
Malacca	23	20	19	17	22	10
Negeri Sembilan	46	25	36	25	37	21
Pahang	110	91	75	73	66	69
Penang	17	20	23	13	10	21
Perak	47	41	42	64	54	37
Perlis	24	24	19	13	27	18
Sabah	159	151	180	178	151	136
Sarawak	229	284	245	213	207	106
Selangor	64	55	72	68	91	57
Terengganu	107	94	96	89	93	53



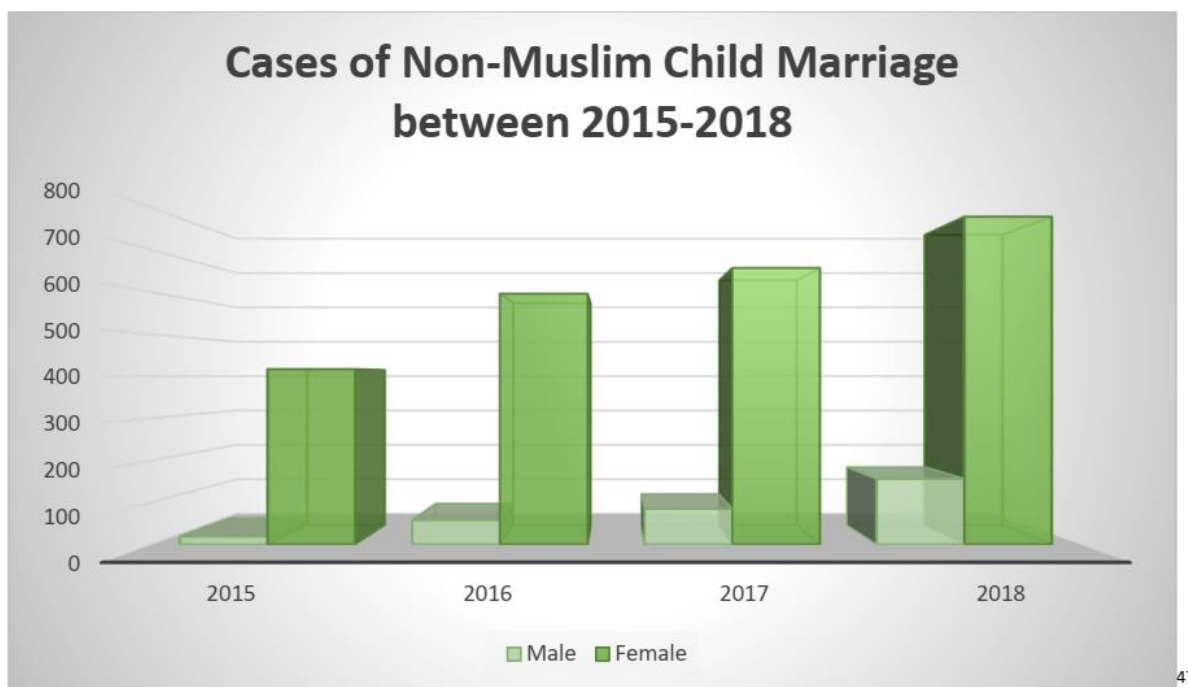
Next, we will look at the statistics by gender for the period between 2011-2016. The highest number of marriages involving male children was recorded in 2013 with 643 cases out of 3416 cases, whilst 2016 had the lowest number at 398 cases. As for female child marriages, 659 cases was reported in 2011, making it the highest number of cases compared to 396 cases in 2016.

In 2020, the Department recorded 692 registered child marriages compared to 785 and 1,144 cases in 2019 and 2015 respectively.^[42] In the end 65.17% of the marriage applications were allowed.



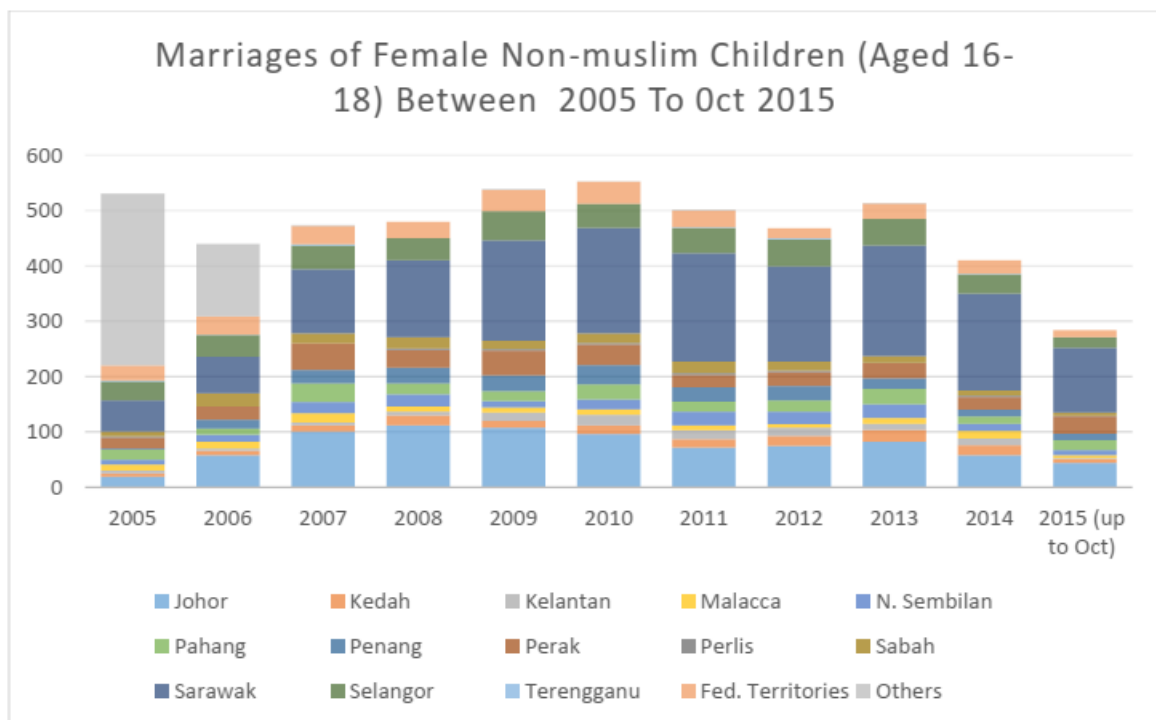
Non-Muslim Children (not including the aborigines of Peninsular Malaysia)

Under the Law Reform (Marriage and Divorce) Act 1976 (LRA), the minimum age to marry is 18, unless for a female who has attained the age of 16 years, her marriage was authorised by a license granted by the Chief Minister.^[44] As a result, the number of cases involving non-Muslim female children is higher compared to males. There were 2,761 cases of non-Muslim child marriages in Malaysia between the years 2015-2018^[45] The numbers seem to be rising as there were only 436 cases reported in 2015 compared to 930 cases in 2018. The number of cases by gender also seem to be on the rise with the cases involving female non-Muslims standing at 2449 between 2015-2018, compared to 312 cases comprising of males in the same time period.^[46]



In a separate study conducted by Prof Dato’ Noor Aziah Mohd Awal and Mohd Al Adib Samuri,^[48] between 2005-October 2015, there were 5,215 cases of female child marriages (involving those aged 16-18) in the whole of Malaysia, 1,609 or 30.9% of which was in Sarawak. The state of Johor

recorded 845 cases (16.2%) followed by Selangor with 449 cases (8.6%). On the other hand, with only 0.2% (9) cases, Terengganu recorded the lowest number of underaged marriages involving non-Muslim females in Malaysia followed by the state of Perlis with 22 cases or 0.4%.



The aborigines of Peninsular Malaysia

There are not many records on the aborigine’s marriage registration. One of the main reasons, presumably, is that they marry according to their customary laws, which does not require a formal registration. Also, registration of aborigine marriages for the Orang Asli in Peninsular Malaysia is not a requirement under the LRA, unless the Orang Asli elect to marry under the LRA, the Christian Marriage Ordinance or the Church and Civil Marriage Ordinance.^[50] However, in a census conducted by the Department of Orang Asli Development (JAKOA) in 2010, there were 196 child marriages amongst the 63,883 Orang Asli marriages recorded.^[51] Out of the 196 child marriages registered, 33 cases (0.05%) were marriages

where both spouses were children, while 163 cases (0.26%) were instances when a child was married to an adult spouse.

The best interest of the child may differ from one era to another according to the resources, the developmental level, and the culture of the country in which the child lives. In a particular culture, one might consider that it is more important for a child, especially the female ones, to learn how to manage the household rather than to receive an education.^[52] Malaysia has forgone this traditional culture a long time ago. While it is true that women are more inclined toward the family rather than self-fulfilment, research has shown that women who are educated are healthier, participate more in the formal labor market, earn more income, have fewer children, and provide better healthcare and education to their children compared to women with little or no education.^[53] The benefits of education transmit across generations as well as to communities at large. Where girls have greater educational and economic opportunities, they are more likely to pursue those opportunities than to have children in their teenage years. The essence of the rights to education and to health is that they facilitate and ensure the effective enjoyment of other human rights. Lack of education is both the factor and outcome of an early marriage.^[54] It was reported that low household income, lack of parenting support interventions, lack of access to education and lack of access to sexual and reproductive health education were among the factors of early marriages in Malaysia.^[55] Muslims tend to enter child marriages because of rape, voluntary sexual intercourse or unwanted pregnancy.

The fear of public humiliation, protecting the dignity of children born out-of-wedlock or simply religious purposes are the normal justifications for permitting child marriage (UNICEF, 2015) (World Health Organization, 2011). As a result, the child could suffer either physical or mental abuse, receive harsh treatment from in-laws, and face resentment from the husband especially when the husband himself is a young man or divorced.^[56] Apart from the child's 'willingness' to get married, many

parents were reported to marry off their girls due to financial constraints (Bernama, 2016) as well as to ensure their daughters' financial security.^[57] Gender inequality in the family or simply because parents cannot afford to bear the cost any longer, marrying off a daughter would allow them to reduce family expenses by ensuring they have one less person to feed, clothe and educate, or they may consider investing in their son's education a more worthwhile investment. In some cases, marriage of a daughter is a way to repay debts, manage disputes, or settle social, economic and political alliances (International Center for Research on Women (ICRW), 2016).

IV. Final Thoughts

In view of the circumstances, child marriage happens to be a complex and controversial issue within the legal framework of Malaysia. With regard to civil law, no domestic law has been passed in order to implement CEDAW. There remains reservation on several CRC and CEDAW articles. Similarly, the Malaysian judicial system is not prepared to apply international conventions directly within the Malaysian law without authorization from Parliament in the form of new legislation. The study also suggests that the main weakness lies within the Syariah court system; the executive, legislative and judiciary bodies of the government have expressed apprehensions about the manipulation of the system as the Syariah court judges play no discretionary role in protecting the best interest of a minor. SUHAKAM (the Malaysian Human Rights Commission) has taken a firm stand against child marriages. The former chairman of SUHAKAM, Tan Sri Hasmy Agam, has opined that a child's future should not be jeopardized by the continuous practice of traditional and social beliefs. They have urged the government to raise the legal age of marriage to eighteen (18) years for both girls and boys in all domestic law which follows the Child Act definition. The organization, Sisters in Islam (SIS) has spoken along the same lines. They have shown great concern specifically because there have been cases where young girls were forced to marry their rapists.^[58]

The Malaysian government has embarked on a comprehensive five-year *National Strategy Plan* to put an end to child marriage.^[59] The plan involves sixty-one agencies in stages, including the Federal government agencies, state government agencies, non-governmental organizations and international organizations from the year 2020 till 2025.^[60] As stated by the Deputy Prime Minister (DPM), Datuk Seri Dr. Wan Azizah Wan Ismail, (as she then was) who was also the Women, Family and Community Development Minister, “*not many are aware of the negative effects of child marriage on children. Children should be given the opportunity to realize their potential for a bright future, in line with the country's obligations to the Convention on the Rights of the Child*”. The plan encompasses Muslim marriages under the Syariah courts as well as non-Muslim and traditional or adat marriages involving the Orang Asli in the peninsula and the natives in Sabah and Sarawak. The DPM also added that the main aim of the plan is to change perceptions, raise awareness and social stigmas relating to child marriage in Malaysia. The interrelated factors contributing to child marriage shall be addressed through legislative improvements and policy changes as well.

The former Deputy Prime Minister also emphasized on the issue of Muslim marriages, “*The Syariah Judicial Department of Malaysia has also developed a standard operating procedure for marriage applications involving minors that will be used as a benchmark for Muslim cases nationwide*”.^[61] The high statistical analysis of child marriage^[62] prompted the Prime Minister at that time to issue an order to all state governments on 20th October 2019, to raise the legal marriageable age to 18 for both Muslims and non-Muslims. So far, only Selangor has amended its enactment on family Islamic law, while the Federal Territories are in the process of amending the marriageable age. At the same time, Attorney General, Tan Sri Tommy Thomas, (as he then was) stated that the government is studying a proposal to raise the minimum marriage age for Muslims from 16 to 18.^[63] Therefore, it can be suggested that the National Strategy Plan shall act as the light at the end of the tunnel to put an end to

the unpleasant consequences of child marriage. In light of Malaysia's international and national commitments, a minimum age of marriage (18) without any exceptions for girls and boys must be set in all legal frameworks (for Muslims, non-Muslims, Bumiputera of Sabah and Sarawak and the Orang Asli of Peninsular Malaysia). Also, considering the above mentioned co-related factors which contribute to child marriage is of utmost importance, to raise awareness and change perceptions within the society. Future research needs to be conducted on child marriage, especially on case studies to indicate the seriousness and brutality involving child marriage all over Malaysia.

[i]-[ii] Taylor's University. Any remaining errors or omissions rest solely with the author(s) of this paper.

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Endnotes:

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[⁷] Section 2 of the Age of Majority Act 1971 states that “subject to section 4, the minority of all males and females shall cease and determine within Malaysia at the age of eighteen years and every such male and female attaining that age shall be of the age of majority”.

[⁸] Section 4(a) of the Age of Majority Act states that “Nothing in this Act shall affect the capacity of any person to act in the following matters, namely, marriage, divorce, dower and adoption”.

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