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# Application Of Child Marriage Restraint Act 1929 In Bangladesh: An Evaluation

Authored By - Md. Ziaul Karim

## **Abstract**

The Child Marriage (Restraint) Act 1929, which is primarily responsible for controlling child marriages in Bangladesh, is frequently interpreted (by non-experts, documentarians, and campaigners) as prohibiting child marriage. This, however, is simply wrong as the Act itself declares that it is "an Act to prohibit the solemnization of child weddings" and solely establishes minimum marriage ages for both sexes (21 for men and 18 for women). It accomplishes this by outlining penalties for all types of individuals who may take part in the child marriage procedure. This includes any [adult] who marries a juvenile, anybody who "conducts" a child marriage, and any parent or guardian, whether legal or illegal, who allows the child marriage to happen or "negligently fails to prevent it.". These provisions are indeed quite far-reaching, especially for parents and guardians, since they have both a positive and negative obligation under this Act. Bangladesh is a Muslim-majority society with more than 163 million people. Most Bangladeshis hold the ideals of Islamic norms and values which is manifest in all sorts of socio-cultural behaviour. In reference to such values, the tradition of legitimizing child marriage in Bangladesh is the issue that needs to be addressed in a holistic yet rigorous approach. Currently Bangladesh ranks 4th in the world and 1st in Asia in terms of child marriage. Recently the Child Marriage Restraint Act 1929 has been abolished and it has been replaced. In the West intimate relationships including extra-marital cohabitation before reaching 18 years of age are culturally accepted. In contrast, such extra-marital and intimate relationships are strictly prohibited in Muslim-majority societies, which are dearly adhered in Bangladeshi Muslim culture. This study examines how the religious cultural and socio-economic realities influence child marriage practice in Bangladesh. Along with secondary documents, we interviewed 22 individuals including the Deputy Commissioner, the District marriage successfully.

**Key-words:** Child Marriage, Muslim, Culture, Bangladesh, CMRA

## Introduction

Bangladesh continues to have one of the highest rates of child marriage and marriages involving girls under 15 in the world. 71% of women between the ages of 20 and 49 are married by the age of 18. The typical age at which Bangladeshi women first married has decreased gradually over the past three decades, from 15.2 years for those in their early 20s to 17.2 years for those in their mid- to late-40s. Despite the advancements, it is clear from the facts that child marriage still happens often in Bangladesh and that it frequently leads to abuses of women's and girls' human rights. A number of regulations in Bangladesh regulate child marriage. The Child Marriage Restraint Act of 1929 was repealed by the more contemporary Child Marriage Restraint Act of 2017 (2017 CMRA), which was first passed during the colonial era (1929 CMRA). According to the 2017 CMRA, males and females must be at least 21 years old to get married. In addition to the 2017 CMRA, there are other personal laws based on religion that impose various conditions and requirements when determining children's, especially girls', rights in connection to marriage. Despite being prohibited by law, child marriage nonetheless occurs in Bangladesh due to legislative flaws and operational challenges that are further examined below. There are a number of reasons why child marriage is so common in Bangladesh, including, but not limited to, its use to establish or maintain family ties and relationships, the persistence of gender inequality and adherence to discriminatory and patriarchal attitudes regarding the preservation of virginity for family honor, poverty and the lack of economic opportunities for women, the demand for more dowry as a girl ages, fear of sexual assault, and non-enforcing laws.

One major contributing factor to the incidence of child marriage is gender-based preconceptions. Girls are sometimes seen as financial responsibilities that need to be transferred from their families to those of their husbands or are married off to preserve their "honor" and chastity. As a result, parents frequently plan their daughters' weddings because they believe it to be obligatory and inevitable. A man's family will frequently arrange a child marriage, or both families will work together to do so. 9 Gender inequality and societal pressures make it impossible for girls to provide their full, free, and informed consent before being married. Further legalizing gender-based discrimination and child marriage in Bangladesh are these detrimental, sexist viewpoints that are also ingrained in the country's Islamic personal laws.

Additionally, the rate of child marriage in Bangladesh is influenced by poverty and a lack of education. Due to the dowry system and the idea that investing in girls' education is a waste of money, girls from lower-income and less-educated households are more likely to be coerced into child marriages. Poorer families are also more likely to find it difficult to raise daughters or invest in their education, leaving marriage as a more financially viable option.

## The global context of child marriage

The act of child marriage is profoundly gendered<sup>1</sup> and negates the major basic liberties of children.<sup>2</sup> The training lopsidedly hurts the young lady child, who is presented to an expanded danger of untimely pregnancy, maternal mortality, added instructive drawbacks, and an existence of home-grown and sexual subservience.<sup>3</sup> The effect of child marriage likewise propagates a pattern of destitution for the young lady's family and local area and undermines the advancement of a useful, gifted labor force, with an immediate bearing on the strength of an economy.<sup>4</sup> Despite the fact that there is a widespread underwriting of the obligation to end child marriage, the all-out number of young ladies wedded in youth actually remains at 12 million each year.<sup>5</sup> As UNICEF projects, progress should be significantly sped up to end the training by 2030 – the objective set out in the Sustainable Development Goals. Minus any additional speed increase, in excess of 120 million extra young ladies will wed before their

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<sup>1</sup> Megan Arthur et.al, Child Marriage Laws around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities, *Journal of Women, Politics & Policy* 2018, VOL. 39, NO. 1, 51–74

<sup>2</sup>Girls not brides, Available at: <https://www.girlsnotbrides.org/about-child-marriage/> last accessed: 10/12/2022

<sup>3</sup> Arthur van Coller, Child marriage - acceptance by association, *International Journal of Law, Policy and The Family*, 2017, 31, 363–376.

<sup>4</sup> UNFPA, Against my will: State of World Population 2020 Report, available at: <https://www.unfpa.org/swop>

<sup>5</sup> UNFPA, Impact of the COVID-19 Pandemic on Family Planning and Ending Gender-based Violence, Female Genital Mutilation and Child Marriage, 27 April 2020, available at <https://www.unfpa.org/resources/impact-covid-19-pandemic-family-planning-and-ending-gender-based-violence-female-genital>, last accessed: 10/12/2022

eighteenth birthday celebration by 2030.<sup>6</sup> Besides, in the midst of the episode of the current COVID-19 emergency, the danger of an expansion in child marriage is much higher. An investigation by UNFPA on the expected outcomes of pandemic-related disturbances extends that the complete impact of the COVID-19 pandemic might bring about 13 million extra child relationships because of postponement in mediations and financial downturn.<sup>7</sup> As such the worldwide and public level efforts to forestall and dispense with the training without a doubt should be additionally fortified to limit the effect.

As indicated by pre-pandemic information, the pervasiveness of child marriage, notwithstanding, was diminishing internationally, with the most advanced in the previous decade found in South Asia, where a young lady's danger of wedding in adolescence has dropped by in excess of a third, from almost 50% to simply under 30 for each cent.<sup>8</sup> Across the globe, levels of child marriage are most elevated in sub-Saharan Africa, where 35% of young ladies were hitched before age 18, trailed by South Asia, where almost 30% were hitched before age 18. Lower levels of child marriage are found in Latin America and the Caribbean (24%), the Middle East and North Africa (17%), and Eastern Europe and Central Asia (12 for each cent).<sup>9</sup>

## Legal framework

### Child Marriage and The Law

Child marriage is defined as any conventional marriage or casual relationship between a child younger than 18 and a grown-up, or another child.<sup>10</sup> Although Child marriage viewpoints the two young ladies and young men; it isn't unexpected the aftereffect of dug in sex imbalance, making young ladies excessively acted by the practice.<sup>11</sup>

The marriage of child s under 18 is generally perceived in worldwide common freedoms

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<sup>6</sup> Female Genital Mutilation and Child Marriage, 27 April 2020, available at <https://www.unfpa.org/re> , last accessed: 10/12/2022

<sup>7</sup>Supra 5

<sup>8</sup> UNICEF for every child, available at: [://data.unicef.org/topic/child-protection/child-marriage](https://data.unicef.org/topic/child-protection/child-marriage), last accessed: 10/12/2022

<sup>9</sup> Ibid

<sup>10</sup> Ibid

<sup>11</sup> SUPRA 8

arrangements as an unsafe, prejudicial worldwide practice.<sup>12</sup> The broad repercussions of child marriage disregard the global and sacred commitments of states to secure child s' privileges and oppressively meddle with ladies' and young ladies' capacity to partake in an expansive scope of human rights.<sup>13</sup> International administrative, scholastic, and promotion partners have called for nations to set up authoritative systems that disallow child marriage and close lawful provisos that license marriage beneath the period of 18.<sup>14</sup> Among the many variables that cooperate to put a child in danger of marriage (for example neediness, accepted practices, absence of federal retirement aide, standard or strict laws), a deficient administrative system is one critical factor.<sup>15</sup> Although child marriage is disallowed under numerous public laws, such laws regularly neglect to satisfactorily ensure child s in danger and are ineffectively upheld.

There is likewise, a developing collection of exploration that proposes there is a relationship between defensive laws and lower paces of child marriage just as decreases in paces of juvenile fertility.<sup>16</sup> It is valid anyway that the objective of finishing child marriage requires work across all areas and at all levels<sup>17</sup> and enactment alone can't accomplish the ideal objective. In spite of the law related techniques alone being lacking to address child marriage, legitimate rules, in any case, do assist with bringing issues to light and make clear benchmarks, norms, and solutions for address child marriage.<sup>18</sup>

All things considered, in any efforts to kill child marriage it is critical to assess the lawful system that is set up and to really take a look at its similarity with the global lawful guidelines and standards. It is similarly fundamental to evaluate the requirement of such laws and distinguish holes, which impede the electiveness of such laws.

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<sup>12</sup> Megan Arthur et.al, Child Marriage Laws around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities, Journal of Women, Politics & Policy 2018, VOL. 39, NO. 1, 51–74

<sup>13</sup> Centre for Reproductive Rights, 'Child marriage in South Asia: International and constitutional legal standards and jurisprudence for promoting accountability and change' 2013, available at [https://www.ohchr.org/Documents/Issues/Women/WRGS/Earlyforcedmarriage/NGOs\\_Individuals/CRR2.pdf](https://www.ohchr.org/Documents/Issues/Women/WRGS/Earlyforcedmarriage/NGOs_Individuals/CRR2.pdf), last accessed: 10/12/2022

<sup>14</sup> Megan Arthur et.al, Child Marriage Laws around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities, Journal of Women, Politics & Policy 2018, VOL. 39, NO. 1, 51–74

<sup>15</sup> Supra 11

<sup>16</sup> SUPRA 14

<sup>17</sup> UNICEF 2007, available at [https://www.unicef.org/french/les/Child\\_Marriage\\_and\\_the\\_Law.p](https://www.unicef.org/french/les/Child_Marriage_and_the_Law.p) last accessed:10/12/2023

<sup>18</sup> Rangita de Silva de Alwis, Child Marriage and the LAW: Legislative Reform Initiative Paper Series, UNICEF 2007, available at [https://www.unicef.org/french/les/Child\\_Marriage\\_and\\_the\\_Law.pd](https://www.unicef.org/french/les/Child_Marriage_and_the_Law.pd) last accessed:10/12/2023

## Current Child marriage context in Bangladesh

In accordance with SDG 5.3's aim of eradicating child, early, and forced marriage by 2030, Bangladesh has made this commitment.<sup>19</sup> At the 2014 Girl Summit,<sup>20</sup> The government committed to ending child marriage by 2020 when it signed a charter at the 2014 Girl Summit<sup>21</sup>. Though Bangladesh has one of the highest rates of child marriage in the area, the situation there is frightening.<sup>22</sup> More than half of Bangladeshi girls today (52.3%) are married before they turn 18 years old, despite several signs of progress in recent decades (increasing enrollment in primary school, achieving gender parity in primary and secondary education, reducing under-five mortality rate and communicable diseases, and improving access to safe drinking water).<sup>23</sup> Thus, child marriage continues to be a frequent practice in Bangladesh, which has a substantial negative impact on people, society, and the economy.<sup>24</sup>

Although the legal age of marriage is 18, nearly half of all marriages occurred before that age, according to 2015 research by the Bangladesh Bureau of Statistics (BBS), making Bangladeshi women's median age at marriage the lowest in South Asia at 15.5 years. The study also found a number of factors that contributed to the incidence of child marriage, including the fact that Muslim women from Bengal were more likely to marry as youngsters than educated women. 58.9% of women between the ages of 20 and 24 who were married before turning 18 did so, according to the 2017–18 Bangladesh Demographic and Health Survey. The research also noted that among women aged 20 to 49, the median age at first marriage increased from 15.3 years in 2007 to 16.3 years (in 2017).<sup>25</sup> According to UNICEF's 2019 statistics, the nation has

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<sup>19</sup>Child marriage in Bangladesh, available at: <https://www.girlsnotbrides.org/child-marriage/bangladesh/>, last accessed:10/12/2023

<sup>20</sup> SUPRA 14

<sup>21</sup> SUPRA 8

<sup>22</sup> Megan Arthur et.al, Child Marriage Laws around the World: Minimum Marriage Age, Legal Exceptions,

<sup>23</sup> <https://www.girlsnotbrides.org/how-can-we-end-child-marriage/> 24 Rangita de Silva de Alwis, Child Marriage and the LAW: Legislative Reform Initiative Paper Series last accessed:10/12/2023

<sup>24</sup> Rangita de Silva de Alwis, Child Marriage and the LAW: Legislative Reform Initiative Paper Series, UNICEF 2007, available at [https://www.unicef.org/french/les/Child\\_Marriage\\_and\\_the\\_Law.pdf](https://www.unicef.org/french/les/Child_Marriage_and_the_Law.pdf) last accessed:10/12/2023

<sup>25</sup> Interim Response from the Government of the People's Republic of Bangladesh on Recommendations 14, 20, and 22 of Concluding Observations of the Human Rights Committee Regarding Bangladesh's Initial Report on ICCPR available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexter-](https://tbinternet.ohchr.org/_layouts/15/treatybodyexter-) last accessed: 10/12/2022

made only little progress in reducing child marriage. According to the survey, child marriage is still commonly acceptable, with 15.5% of women under the age of 15 and 51.4% of women aged 20 to 24 getting married for the first time before turning 18.

## **The prevailing legal framework of child marriage in Bangladesh**

According to the Bangladeshi Constitution, nothing should prevent the government from taking reformative measures in favor of children.<sup>26</sup> To further secure the protection of children and other people, the Constitution also enshrined all other rights, such as the right to equality, protection of life and liberty, protection from forced labor, and the right to be free from exploitation.

As previously indicated, the present legislation that deals with prevention and protection The Child Marriage Restraint Act of 2017 forbade child marriage and revoked the earlier Child Marriage Restraint Act of 1929. The former law established a comparable minimum age for marriage and also provided for criminal penalties for contracting or solemnizing minor marriages.

However, the new law significantly increased the penalty for the offenses and added a number of clauses aimed at preventing child marriage.

In addition to its domestic legal framework, Bangladesh is required by a number of international human rights treaties to take concrete steps to end child marriage and ensure that marriages are solemnized with the parties' free and informed agreement.

The legal frameworks for child marriage at the national and international levels that apply to Bangladesh are thoroughly discussed in the sections that follow.

## **International obligations of Bangladesh concerning child marriage**

1. International Covenant on Civil and Political Rights
2. Convention on the Elimination of All Forms of Discrimination against Women
3. International Convention on the Economic Social and Cultural Rights
4. Convention on Consent to Marriage,

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<sup>26</sup> Article 28(4)

## Gaps in CMRA and the Rules

In spite of having embraced another law to forestall child marriage along with an broad authoritative structure that tends to issues pertinent to ladies and young ladies, there are a few provisos and ambiguities that stay in the current legitimate structure. This segment examines the critical deficiencies of the laws tending to the anticipation of child marriage.

### Legal irregularity in deciding the base period of marriage:

Albeit, the Child Marriage Restraint Act, 2017 (CMRA) i 18 for females and 21 for guys as the base eligible age; in effect, this age limit is just to endorse discipline for contracting child marriage. The Act doesn't proclaim a marriage beneath this age limit as invalid or unlawful, albeit the gatherings engaged with contracting such marriage will confront criminal authorizations. The justification behind such quiet in resolving the issue of the legitimacy of marriage underneath the base age limit - is the lawful pluralism that exists in the overall set of laws in Bangladesh.

In spite of the fact that laws are pertinent to all residents regardless of religion, family law is the one special case for such principles. Upon autonomy in 1971 the majority of the British provincial time rules that were in power in Pakistan till 1971 kept on leftover in power in Bangladesh. Simultaneously, the individual law rules overseeing the family matters, which were not codified by the British rulers - and which kept on being represented by the strict laws during the Pakistan time frame, proceeded as such in free Bangladesh.<sup>27</sup>

Generally separated from present day lawful turns of events, the conventional individual law rules are regularly contrary with worldwide and public common freedoms principles particularly with regards to privileges of ladies in marriage and property.<sup>28</sup> This is pivotal for the laws limiting child marriage specifically. All together for a union with legitimately exist under global and public principles, an individual should meet the lawful age necessities and should uninhibitedly agree to the marriage.<sup>29</sup> However, all the pertinent individual laws in

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<sup>27</sup> Although in all other matters the traditional religious rules applicable in British India were replaced by codified statutes imported from English common law, e.g. the Penal Code, 1890 and Code of Criminal Procedure, 1898 had replaced the un-codified criminal laws that were largely governed by the Muslim law principles

<sup>28</sup> Ohchr, available at: <https://www.ohchr.org/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/WomenAndJusticeFellow5.pdf>, last accessed: 10/12/2022

<sup>29</sup> Ibid

Bangladesh believe marriage under 18 years to be legitimate and assent can likewise be given by a gatekeeper in the interest of a minor. The laws identifying with the base time of and agree to marriage accordingly give a significant illustration of the lawful paradox that for the most part goes with the commands of individual laws in Bangladesh.<sup>30</sup>

As talked about over, the entirety of the strict individual law rules, permit child marriage at different ages. For example, as indicated by the Muslim law standards, an individual is skilled to go into a marriage when she/he achieves puberty which can be as ahead of schedule as 9 years for females and 12 years for guys relying upon the noticeable indications of pubescence. Without such obvious indicators 'both genders are viewed as grown-ups at the point when they have finished their fifteenth year'. Nonetheless, all schools of Muslim law concur that a minor female might be hitched o by her gatekeeper even before she achieves adolescence without her consent. according to the Hindu standard law as appropriate in Bangladesh, there is no base age for marriage and indeed, even a baby's marriage is a finished and lawful one. Again, relationships among Christians are administered by the Christian Marriage Act 1872 which allows the marriage of a 'minor' (defined as an individual under 21 years of age), with the assent of the minor's dad or without the dad, by her/his guardian. During the British Colonial time frame, when the Child Marriage Restraint Act 1929 (CMRA 1929) was first sanctioned making child marriage under 14 years for young ladies a culpable Offence , the law was considered as one of the major authoritative changes which considerably meddled with standard and strict acts of India.<sup>31</sup> As child marriage was both an acknowledged and generally rehearsed custom in British India the Act was confronted with extreme hatred from the Indian Hindu and Muslim comminute. Anticipating that proclaiming child relationships totally invalid, would prompt social mayhem, the Act made child relationships just culpable without scrutinizing its legitimacy.

Hence, the CMRA 1929 prompted the conflicting legitimate position where an individual can be rebuffed for the illicit demonstration of contracting child marriage, yet the aftereffect of such unlawful action, for example the marriage, would remain valid. In various cases ensuing to the CMRA 1929, the prevalent courts in India additionally have pronounced relationships of young ladies underneath the Act's recommended least age to be valid. For the situation of

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<sup>30</sup> Shahnaz Huda, Child Marriage: Social Marginalization of Statutory Laws, Bangladesh Journal of Law, Volume 1, No. 2, December 1997, p. 138

<sup>31</sup> Ibid

Ram **Baram Upadhiya versus Sital Pathan** it was noticed "a qualification should be seen between the presentation of the demonstration and the actual demonstration. The child Marriage Restraint Act focuses on the restriction of the solemnisation of child relationships. It doesn't affect the legitimacy of the relationships after they have been performed." Albeit the provincial law has been supplanted as of late by the CMRA 2017 in Bangladesh, the dread of policymakers with respect to social disdain against any interventions in the conventional individual law standards proceeded. Accordingly, the 2017 Act too decided to stay quiet with regards to the legitimacy of a marriage of a young lady under 18. Without clear arrangements in the CMRA 2017 discrediting child relationships, the authority is given to strict individual laws accordingly brings about child relationships being legitimately perceived regardless of the reformatory authorizations relegated to the individuals who work with the marriage.<sup>32</sup>

### **Discriminatory marriageable age**

As talked about over, the base period of marriage as given in the CMRA is different for guys and females, which is 21 and 18 individually. The accessible writing on the authoritative history of the CMRA 1929 uncovers that the law was sanctioned with regards to confining the generally acknowledged act of wedding minor young ladies in the then British India. There were instances of serious injury prompting the passing of ladies as youthful as 10 years old because of marriage culmination that impelled the British government to acquaint changes with the common social condition through legislation.<sup>33</sup> Not just the time of legally defined sexual assault was expanded in the criminal law, yet child relationships were moreover made culpable for the first time through the CMRA 1929.

The CMRA 1929 had initially saved the base period of marriage for females to 14 furthermore, guys to 18, and marriage underneath such age was proclaimed culpable. Albeit the drafting history of the CMRA has a significant centre around the discussions over fixing the least age for young ladies, there is by all accounts no conflict in the accessible writing over the base age fixed for the males. Under the then overall laws, 18 years was the period of majority, and in that capacity, considering the normal social act of an grown-up man wedding a minor lady, it was viewed as normal that the base age for a male would need to be his lawful time of greater part. In the Pakistan time frame, a change was brought through the Muslim Family Law

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<sup>32</sup> Sultana Kamal, (April 2010) Laws for Muslim Women in Bangladesh, available at <https://unstats.un.org/unsd/vitalstatkb/KnowledgebaseArticle50366.aspx>. last accessed:10/12/2023

<sup>33</sup> SUPRA 30

Ordinance, 1961 (MFLO) which corrected the CMRA 1929 by expanding the eligible age for young ladies just to 16 years, without changing the base age for guys. The MFLO was one of the major authoritative changes to Muslim individual law, the reason for which was to 'secure and upgrade the privileges of the ladies' inside the family law matters. As such the change to the CMRA 1929 was again thought of just from the part of a young lady in a marriage. In 1984, in autonomous Bangladesh, the CMRA 1929 was additionally corrected and the base age was expanded from 16 to 18 a long time for females and 21 years for guys. Once more, the setting of this change was the boundless commonness of marriage of minor young ladies and this increment was an endeavour to control such relationships. In any case, the justification behind expanding the eligible age of a male to 21 years was not satisfactory from the accessible writing. The just unsurprising justification behind such an increment of the male eligible age could be maybe the age-old sexual orientation one-sided thought which directs that the man is the predominant accomplice, what's more, as such must be more established than the lady's age. Consequently as the female's eligible age was expanded from 16 to 18, the eligible age of the male maybe must be expanded to keep up with the 'standard age hole' between the life partners. This thought of the spouse being more seasoned than the wife is, indeed, a result of the socio-social practice of child marriage itself, the avoidance of which was the actual motivation behind the alteration. Such disparity in the period of marriage negates the worldwide common liberties law commands. The UN Human Rights Committee a rms in its General Comment No. 28, the commitment of governments to treat people similarly as to marriage. CEDAW General Comment No. 21 on the right to marriage repeats men's furthermore, ladies' equivalent right to go into marriage, adapted on their free and full consent. This inconsistent eligible age among guys and females isn't as it were unfair; it makes some significant legitimate abnormalities in the authorization of the CMRA. For instance, if a grown-up lady of 18 years weds a man of 20 years, it will in any case be considered as 'child marriage', and the lady would be exposed to punitive sanctions appropriate for a grown-up contracting party under the CMRA. It is past any sensible thought that in a socio-social setting where ladies are so disadvantage and have little opportunity in choosing their forthcoming spouse, the wife ought normal to bear a more noteworthy criminal obligation than a grown-up man. Again, under the Majority Act, 1895 a child of 18 is viewed as a significant and can by any law go into any agreement yet he might be rebuffed for going into an agreement of marriage. This again is beyond reconciliation with any strong lawful translations.

## **No choice for dissolution of the marriage**

The 2017 CMRA is quiet as for the dissolution of a child marriage as voidable at the choice of the minor. A minor survivor of child marriage would need to follow the systems recommended under relevant individual laws for disintegration of the marriage, without getting the marriage being pronounced as void. In any case, the individual law rules for the disintegration of relationships are frequently oppressive and can be very religion to access, particularly for young ladies who have restricted ability to benefit lawful procedures. Under Muslim individual law, a young lady might look for the disintegration of marriage went into when she was younger than 18; nonetheless, the disintegration of marriage on this premise is conceivable just where the marriage has not culminated and the marriage should be renounced by the time of 19. This alternative gives an extremely short window to a young lady to have her child marriage broken down, and thusly is probably going to be for all intents and purposes inaccessible to many.

Also, this isn't comparable to the cancellation of a marriage, which announces the union to be void from the start as though it never occurred. It is fairly a method of dissolving the marriage and such an announcement of disintegration would need to again go through the customary phases of talaq system including the notification period. Also, for Hindu wedded ladies in Bangladesh, the position is much more unfair, as the disintegration of a Hindu marriage isn't perceived under the Hindu individual law and there has not been any authoritative change to present an instrument for divorce.

Accordingly, under the current legitimate system, if a child marriage happens, even in a most convincing circumstance (for example constrained marriage or marriage with the supposed attacker), the minor young lady would need to acknowledge the marriage as a legitimate agreement and need to seek after her restricted choices to look for separate under the appropriate family law. Aside from the stops up in the individual law rules in regards to separate, thinking about the social disgrace that is by and large joined to a separation, a survivor of child marriage may likewise incline toward an alternative to revoke her marriage than dissolving it as indicated by the individual law methods.

## **The Recent "Unique Provision" permitting marriage**

## under 18 years

Following the authorization of the CMRA keeping the uncommon arrangement, there was clear disappointment among many rights gatherings and activists. A portion of the interviewees of the review communicated that along with such disdain there was likewise some expectation expanding on the chance of limiting the wide extent of the extraordinary arrangement through planning severe standards for its application. As talked about in the past area, the Rules to the CMRA was –finally distributed in 2018. The interviewee of the concentrate in any case shared their failure in regards to the drafting system of the CMRA Rules. Not many common society associations were welcome to the drafting panel for finalizing the Rules and ideas were advanced by them, on the conceivable defending of the maltreatment of the uncommon arrangement through the Rules. Details of such proposals proposed by the common society individuals couldn't be assembled for incorporation in the review from the accessible documents. However, the interviewees communicated that the guidelines –finalized as such didn't completely re effect the recommendations proposed by them and the discussion gatherings held were additionally generally 'ornamental'. The Rules without a doubt neglected to give any lucidity to the current ambiguities in the extraordinary arrangement. Neither could it propose e effective measures that could defend the wide extent of maltreatment of power that stayed in such arrangement Section 19 of the 2017 CMRA peruses: In any case anything contained in some other arrangement of this Act, if a marriage is solemnized in such way and under such exceptional conditions as might be recommended by rules to the greatest advantage of the minor, at the bearings of the court and with the assent of the guardians or the gatekeeper of the minor, all things considered, it will not be considered to be an offence under this Act. One of the most discussed issues of the exceptional arrangement, aside from making an exception to the base age necessity, was the shortfall of any prerequisite to get the assent of the concerned minor. Many nations have taken a cognizant position not to permit any outsider, be it guardians or the court to take a basic long lasting choice for the benefit of the young lady.

In the social setting of Bangladesh, more contemplations should be given on ways in which a young lady's without full, educated and non-pressured assent can be ensured. It was, thusly, critical to indicate the necessity of getting full educated assent regarding the minor engaged with the expected marriage. The Act in area 19 and furthermore the Rules of 2018 doesn't specify the prerequisite or the method for getting the assent of the minor in an application looking for exclusion under the uncommon arrangement. Furthermore, albeit the Act and the Rules notice about 'wellbeing of the child ' to survey the application under the unique

arrangement, the Rules doesn't give any detail or far-reaching standards for the 'evaluation advisory group' (set up under the Rules) or the court to decide the wellbeing of the child. Not just a point by point, non-thorough models to decide wellbeing was missing, the Rules additionally don't give subtleties of the examination system that the individuals from the appraisal council are needed to embrace (for example remembering for individual examination/request to equitably investigate the exceptional circumstance of the minor). Without such specification of how awesome interest of the child will be evaluated the Rules stay indistinct and leave scope for maltreatment of power and wrong findings. The most pivotal ailing in the extraordinary arrangement is the inability to determine any base age limit underneath which the court won't give the authorization. The Rules too stayed quiet on such least age. As it remains as of now, it is upon the attentiveness of the court to permit authorization for a minor young lady of all ages limit. Besides, as of now, the evaluation council under the exceptional arrangement is generally contained neighbourhood authoritative officials and neighbourhood government agents. While, in evaluating the government assistance of a child, it was essential to remember individuals with aptitude for sexual orientation and rights-related issues. Significantly, in spite of the fact that part 19 notices about the 'uncommon conditions' and expressed that such unique conditions will be recommended by Rules, the relating Rule 17(1) doesn't define or determine the 'exceptional conditions' dependent upon which, any application can be made under area 19. Maybe, the Rules simply specifies that such applications under area 19 can be made in 'cases as pertinent'. To be sure, the phrasing of the Rule changes the authoritative purpose behind area 19 and broadens the ambit of permitting the gatherings to move toward the court in any circumstance. This efficiently makes the prerequisite of 'extraordinary conditions' repetitive. The plain and normal means of segment 19 was that just in 'exceptional conditions', the court would continue to do the evaluation when the wide range of various conditions had been satisfied. The aim of the part, as it shows up from a plain perusing, was not to make a conventional well-being special case subject to court and parental assent, rather it was to continue just if uncommon conditions would emerge. Something else, a dad who is wedding o his minor little girl due to a limited –financial emergency (for instance) can likewise be a substantial ground to move toward the court under the unique arrangement. While, the inability to give essential requirements or absence of federal retirement aid, and so on are to be ascribed to the state and such disappointment of the State can't be a reason for compromising a child to a marriage. The unique condition and the guidelines, in any case, have kept this choice open.

## **Non-criminalization of Marital assault**

The current lawful system that defense and banishes assault and other sexual offences, comprises for the most part of two enactments - the Penal Code of 1860 instituted during the British frontier system, and the Women and Children Repression Prevention Act 2000 ('WCRPA'), an extraordinary resolution authorized as a reaction to the expanding viciousness against ladies and children. The definition of 'assault' given by the Penal Code in segment 375 is one, which was formed, back in the provincial time ,and till now our criminal equity framework has defined assault as such absent a lot of changes. The new law, WCRPA of 2000, takes on the same definition given in the Penal Code, despite the fact that it endorses severe disciplines up to capital punishment for assault followed by murder, custodial assault, and Gang rape.

One of the most difficult holes in the current definition of assault is simply coercive intercourse with a young lady child who is 13 years or above, has not been condemned as assault at the point when the child is hitched to the perpetrator Albeit the WCRPA gives 16 years as the age for legal rape this has been 'seriously debilitated by the Penal Code's position'. The WCRPA didn't endeavour to ban the pilgrim conjugal assault arrangement in the Penal Code, it rather supports the Punitive Code's definition by unmistakably indicating in area 9 that the long term's age limit, underneath which any sex would be considered as assault (regardless of assent), won't make a difference to situations where Under segment 18 of the CMRA the culprit is in a conjugal connection with the young lady.

This position is especially difficult as it is implicitly permitting child marriage leaving no legitimate review for a potential child survivor of assault. This is opposing to Bangladesh's global obligation to expert

## **Gaps in the enforcement of the laws addressing child marriage**

The execution of the legislation for the prevention and prohibition of child marriage is hampered by numerous institutional, social, and cultural obstacles. Aside from the laws' shortcomings in providing enough protection, other elements include a lack of knowledge about the laws and processes, the ineffectiveness of preventive measures, and the absence of support and protection structures that enable the practice of child marriage to continue. The

CMRA 2017 and the Rules 2018 are two pieces of legislation that have enforcement gaps that are highlighted in this section.

## **Lack of legal awareness**

One of the main obstacles to the law's execution is believed to be a lack of awareness and comprehension of the full scope of the legislation relating to child marriage prevention and prohibition. Although there is little information available about the level of legal knowledge among community members, a Plan Bangladesh study reveals that there is "widespread awareness" of the legal marriage age (18 years) and the fact that child marriages are punishable among community members, including both children and adults. However, nothing is known about the specific punishments and those who may be subject to punishment under the new rule. Given that the CMRA as it stands currently is relatively new, new findings evaluating the degree of knowledge about legislation pertaining to child marriage are crucial. Additionally, the government's enforcement agencies and authorities are insufficiently knowledgeable about the CMRA and its Rules. According to a recent study, district commissioners, local government officials, kazis (marriage registrars), police officers, and even concerned local administrators are unaware of the terms of the new law and its specific sections.

## **The inefficiency of the duty bearers**

Many of the people who participated in the study's interviews suggested that ineffective and corrupt local administration, law enforcement, and government officials were to blame for the poor enforcement of the legislation.

It seems that child weddings might be tightly monitored and managed in places where local administration officials were aggressive in preventing them.

However, the government organizations who are supposed to take action to stop child weddings frequently do nothing, which eventually results in the laws not being put into effect. The necessity to avoid child marriages among responsibility bearers is not understood or addressed sensitively enough. Child weddings have a negative socioeconomic impact.

## **Weak implementation of the birth registration system**

Improving the birth registration situation is essential for the effective application of regulations related to child marriage. Despite advancements, there is still a significant disparity between the service for birth registration in Bangladesh's availability and use. According to UNICEF

data, just 37% of children under the age of five are registered. Therefore, 10 million Bangladeshi children under the age of six are not recognized by the government.

The knowledge of how to register a kid is still lacking, particularly among women and teenage moms who also do not have access to this information. Only three out of every five moms of unregistered children report knowing about the service, according to UNICEF.

## **Lack of consequences for providing forged birth certificate**

Many sources voiced concern about local government employees giving fraudulent birth certificates in exchange for kickbacks from parties looking to arrange child marriages.

Numerous other researchers have also produced results that were similar. The absence of a system to rigorously monitor abnormalities and take strong punitive action against the issuance of fake certifications is another factor. All such malpractices must be stopped nationwide in order for child marriage prevention initiatives to be effective.

## **The practice of marriage by affidavit**

the practice of a "court marriage," in which a notary public issues a davit stating that a marriage has been contracted. This is an illegal technique that was created to get around the law's requirement that marriages between minors be registered. According to research, the parties to the marriage frequently think that this is a valid alternative to registering the union through a Kazi. The Governance Innovation Unit of the Prime Minister's Office had issued a directive in 2015 ordering all notaries public to stop issuing affidavits in such an unlawful manner.

### **Limited Prosecution of Child Marriage**

There is limited data regarding the prosecution of persons pursuant to the 1929 CMRA. A survey of the available case law indicated that the 1929 CMRA is rarely enforced with the prosecution. However, there had been occasional news reports (although very rarely) about prosecution under the CMRA 1929. Some of the KII respondents also recalled that over the years there had been few prosecutions under the CMRA 1929. With respect to the prosecution

status under the CMRA 2017, although it is early to assess, some of the interviewees who were involved in local community-based organisations had shared the view that in recent years, prosecutions did take place occasionally under the CMRA 2017 mainly by the Executive Magistrates acting under the Mobile Courts Act.

There is also a lack of data on the number of prosecutions of persons under the 1929 CMRA, creating a significant cant barrier to assessing the impact of the legislation and efficacy of the government efforts in addressing the problems of child marriage under the previous law. However, under the current Rules of 2018, specific information is required to be recorded by all enforcing agencies including the relevant courts with regard to interventions and cases under the CMRA 2017. The status of such record-keeping is however yet to be evaluated.

### **Lack of efficiency in intervening in a child marriage**

The CMRA 2017 authorizes a number of government officials and local government representatives to intervene in a child marriage that is about to take place. Some of the interviewees of the study had expressed that there are some localities where because of the proactive local administrative officers child marriages are commonly stopped by successful interventions. However, the interviewees also highlighted some crucial challenges to such actions to stop imminent child marriage. A former Upazila Nirbahi Officers (UNO) interviewed for the study shared that in such interventions usually it appeared that the bride's family was extremely poor and marrying of the child was the last resort of survival. In such cases, the intervening o-cers often had to personally provide financial help to the family to convince them to stop the marriage.

The interviewee also shared that in her Union Parishad she had personally established a small fund with help from the local community members to help the children who are vulnerable to child marriages or whose marriages had been stopped by the local administration. Another interviewee from an NGO, who had also personally joined in several interventions with the local administration officials shared that the matter often becomes crucially sensitive. The child herself might have been willing to contract the marriage and the intervening team might have to deal with threats to committing suicide by the child (for reason being either, the marriage was the result of a love affair or anticipating the social humiliation attached with a broken marriage). As such in most cases, the local administrative Officers

would prefer a women officer or a woman member of an NGO to accompany such interventions so that the minor (and her family) can be convinced through counselling to refrain from contracting the marriage. Essentially, not always such options are available and there is also a lack of resource allocation for such elaborate interventions. Moreover, the team members often decide the protocols for such interventions on an ad-hoc basis, as there are no specific instructions as to how the interventions are to be operated.

### **Lack of support for victims**

The support mechanisms available for victims of violence against women and girls are inadequate. A review of government-run and NGO shelters also indicates that there are limited availability and space in them. Further, these shelters are not specifically intended for married girls and so do not necessarily have the facilities and counselling services that would be required by children. The limited availability and underutilization of safe shelters clearly limit the efficacy of protection and support services offered by the law. There is also a lack of legal aid and services for victims of child marriage. Although there is a Legal Aid Fund established under the Legal Aid Services Act 2000 for persons in need, there are concerns that it is still largely inaccessible for girls and women without sufficient means

### **Suggested Changes in The Former Act incorporated in the New One**

Albeit following quite a few years, the CMRA 1929 was revoked to offer way to a new legitimate system, the current lawful structure tending to child marriage is as yet stopped up with a few ambiguities. The holes in the authorization of the laws likewise remain similarly testing. By the by, the CMRA 2017 and its Rules have presented various new arrangements with a more noteworthy spotlight on the counteraction of child relationships and more grounded arrangements to make severe moves against people starting child relationships. Counteraction advisory groups are set up at different levels of organization and the public authority has detailed an exhaustive public activity intend to forestall child relationships. Notwithstanding, in request to accomplish the ideal objective for disposing of child marriage, it is certain that the lawful structure ought to be skilled to complete the desires and objectives set out in the activity plan.

Simultaneously, presenting changes in enactment and figuring new arrangements and systems will not succeed except if the guarantees made in the letters of law are authorized effectively truly. Additionally imperative to take note of that changing the laws and strategies and reinforcing their execution is one of the few parts that are needed to be tended to in a complete component for effective anticipation of child marriage. Parts like schooling, wellbeing, financial freedom and strengthening, government managed retirement, breaking the man centric cycle, solid political will, and so on, are altogether fundamental for a fruitful and strong avoidance effort against child marriage. The difficulties towards taking out the profound established socio-social act of child marriage are as such disaffection and requesting. Added to this, is the remarkable emergency that the current pandemic has brought about. There are a few examination and study that underwrite the danger of a meaningful expansion in destructive practices, for example, child marriage in the midst of difficulty and crisis. While numerous efforts have been made over the course of the years to end child marriage, it is obvious that proceeded with activities and contribute arguments are critically needed with regards to COVID-19<sup>34</sup>.

## **Proposals to change the current law limiting child marriage**

Even while the study only aims to suggest modifications to the CMRA and the Rules, some of the proposals are also informed by the gaps in the authorisation of the laws as shown in the review findings.

1. The recommended amendments are made in light of the legal evaluation. All types of people should have a base marriage length of 18 years.
2. The CMRA should prevent the minor party structure from suffering consequences for entering into child marriages. Overall, the Rules may, in appropriate circumstances, provide procedures for securing the minor in the local child marriage anticipation linked efforts and moreover ensure psychological directing.

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<sup>34</sup> Ibid

3. The CMRA should state that a child marriage can be annulled at the discretion of minor.
4. In light of the foregoing, if a child marriage occurs in spite of the law, the minor party should be given the option to apply to the appropriate court (to be expressly specified in the Rules) in order to obtain a declaration that the marriage is null and void. The CMRA should clearly provide that, with each such cancellation notification, the court must award the minor a fair compensation to be paid by the adult party to the marriage. The CMRA should decide that this type of dissolution option is permissible at any time from the marriage's start date until the minor party reaches a certain age after the majority of the parties (ideally till 22 years).
5. Section 19 of the CMRA should explicitly state that in order to apply for a "extraordinary arrangement," the juvenile applicant must give their free and informed consent.
6. The Rules should specify the method and approach for obtaining such assent and include evaluation models to determine that the assent is obtained without undue pressure or influence.
7. The "unique arrangement" under Section 19 of the CMRA should specify a minimum age (preferably 16) below which a court cannot grant permission in some arbitrary circumstances.
8. The CMRA should state that the court's authorisation granted under Section 19 would not be applicable until it received additional written approval from the court. The Rules ought to indicate that there ought to be an equivalent number of ladies individuals in the evaluation advisory group.
9. Bangladesh's High Court. It is important to keep in mind the Rules while planning a method for obtaining such a written endorsement after seeking appropriate advice from the Registrar General of the Supreme Court.
10. When the application under Section 19 is denied (either because the minor is under the required minimum age or because other conditions of the agreements are not satisfied),

the Rules should list the alternative decisions that a court may make to protect the interests of the relevant minor.

11. Under Rule 17, a detailed, non-comprehensive measure should be included to determine the "well-being of a child" (compare to section 19 of CMRA). To determine the child's wellness, the "assessment board" described in Rule 17 should use point-by-point procedures of examination. Such a strategy of investigation should be kept in mind for individual visits to the child's house and talks with the child.

## Conclusion

Instead of being more subdued versions of adults, children are completely different beings with a range of perceptions. Keeping this in mind, protective legislation and its effective execution through a compelling child-friendly overall set of rules based on reality can defend children's rights. Even though there is a law against it, child marriage is very common in Bangladesh, especially in rural areas. The hidden causes include necessity and a lack of mindfulness. A little more than 17% of all relationships are with young women under the age of 16. The minimum legal age for marriage for females in Bangladesh is 18 years old, in accordance with the Child Marriage Restraint Act. In Bangladesh, the minimum age for marriage should be 18. Because most relationships in rural Bangladesh are unregistered, using the consent law might be challenging. The situation is made worse by the fact that birth enrolment is too infrequent, making it possible that the age of marriage is unknown. Although the Constitution and several laws passed at various times have guaranteed the rights of Bangladeshi children, the effective implementation of the laws and plans is what would actually improve the situation for all children. Additionally, if mindfulness were to occur, we would all need to work together resolutely to deal with the rights issues and ensure that children would receive justice.