

Why child marriage persists in Bangladesh

It's not only about a lack of legal enforcement

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Bangladesh is a signatory to the UN Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages. This convention requires member governments to set a legal minimum age for marriage and to need agreement from both parties before entering into a marriage. According to a UNICEF report, Bangladesh is among the 10 nations with the highest rates of child marriage worldwide, and has the highest frequency of such in South Asia. According to the survey, 51% of young women in Bangladesh were married off as children, of the 38 million girls and women in the nation who get married before the age of 18, 13 million are married before the age of 15.

Being a signatory to numerous international conventions and treaties and having ratified some of them, Bangladesh has a responsibility to modify its legal system to better safeguard children but, up to this point, it has consistently failed -- or rather ignored -- that responsibility.

Child marriage in Bangladesh stands on obscure legal grounds. A nation that takes pride in its constitution has not been able to express its position on a matter that transgresses the fundamental principles of a child's human rights. In 1985, Bangladesh joined the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which declared unequivocally that "the marriage of a child must have no legal consequence." Nonetheless, 38 years later, the practice is still in place and is supported by a tradition-based defense under numerous personal laws as well as a nebulous, inefficient legislative framework.

Out with the old

The Child marriage Restraint Act 2017 (CMRA), which replaced a previous British statute from 1929, is the country's current law addressing child marriage. According to the act, males must be 21 years old and females must be 18 years old before they can get married. A "child marriage" may not be contracted for, permitted, or solemnized under the CMRA.

The Child Marriage Restraint Rules were also developed in 2018 and provide information on the creation and duties of the Child Marriage Prevention Committees, among other functional elements. Sections 7, 8, and 9 of the CMRA lay down punishments for the offense of being part of a child marriage. Thus, even though it is classified as a criminal activity, it still recognizes the validity of a marriage.

The CMRA neither addresses the question of the validity of child marriages nor includes any clause to render them "voidable" at the option

of either contracting minor party. CMRA does not include any provision to make those child marriages null and void if the minor child is abducted, kidnapped, or trafficked. Unlike India's act, the CMRA does not provide for any Child Marriage Prohibition Officer with significant powers to stop a child marriage. Moreover, the offenses are made bailable, which again makes them of lesser gravity. The main danger of the Act comes with Section 19. It states that adolescents of any age can get married legally by getting consent from their parents or guardians and seeking permission from the courts under "special circumstances" for securing the best interests of the bride and the groom.

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The "special provision" contains several significant uncertainties that the accompanying CMRA Rules have not addressed. Among these ambiguities are the absence of a clause for evaluating the minor's free and informed consent, the lack of any detailed standards or guidelines for conducting investigations to determine the child's best interests, and the lack of a clause outlining "special circumstances." Both the individuals who may be covered by the "special provision" and the process by which they would be covered should be made explicit. Otherwise, unscrupulous parents stand to profit by getting their children married off at young ages and promoting child marriage all over the nation.

What is allowed

The act also allows for judicial injunctions to be issued. But neither the act nor the rules make it clear which court would have the authority to grant such an injunction. Inconsistencies exist in the law as well regarding the Mobile Courts' ability to intervene in child marriages.

The 2017 act maintains the previous legal situation by setting the marriageable age at 18 for girls and 21 for boys. But in addition to being discriminatory, having different marriageable ages for men and women leads to some substantial legal inconsistencies in how the legislation is applied. For instance, if an adult woman of 18 years marries a man of



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20, it will still be regarded as a "child marriage" (as one party is under the legal marriageable age), and the woman will be subject to penalties under the act that apply to an adult contracting party -- which is, to put it mildly, unreasonable.

The rule that permits the rape of a girl child who is 13 years old if the child is wedded to the perpetrator is one of the most difficult loopholes with regard to child marriage. This is in accordance with the definition and penalties for rape under Section 375 of the Penal Code of 1860. The Penal Code's definition is still relevant today. Despite the fact that we had passed separate legislation in 2000 for the prosecution of crimes involving violence against women and children, the law opted to be silent on such a dated clause.

The [Child Marriage Restraint Act] and its rules are not being enforced to their fullest potential

The issue of the rape of a child bride is not addressed by the 2017 act either. This directly runs counter to Bangladesh's international commitment to safeguard girls from sexual exploitation and could promote the practise of forcing victims of child rape to marry the perpetrator. The legal inconsistency also includes conflicting statutory and personal law rules regarding the minimum age of marriage and the lack of social and legal support for victims.

In addition to the shortcomings in the

laws prohibiting child marriage, the CMRA and its rules are not being enforced to their fullest potential. Inadequate enforcement of preventive measures, ineffective implementation of the marriage and birth registration system, restricted prosecution of child marriage, absence of victim support and protection systems, etc. are a few instances of these gaps. The execution of the obligations outlined in the Convention on Consent, Minimum Age, and Registration of Marriages would be an effective strategy to reduce child marriages.

There should be necessary changes made to the CMRA and the Rule, such as making the minimum legal age of marriage the same for both sexes, maintaining the "special provision"'s minimum age requirement, making child marriages voidable at the minor's discretion, defining the court's jurisdiction, and defining the circumstances under which the court will not grant an application under the "special provision."

One important suggestion is to get a formal certification from Bangladesh's Supreme Court before any lower court approval of a child marriage can take effect in order to prevent the misuse of the term "special provision." Additionally, the CMRA ought to include provisions allowing for the creation of a separate fund for the victims of child marriage for their rescue, rehabilitation, legal defence, medical care, psychosocial counselling, etc. It's long past time to repeal the colonial clause in the Penal Code of 1860 that permits marital rape of a minor girl who is 13 years old or older.

To achieve a workable compromise between the "religious" perspective and the "international" code of ethics, the government should as soon as possible alter the current Child Marriage Restraint Act. ●

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