

**A REVIEW OF THE EFFECTIVENESS  
OF THE NEW LEGAL REGIME TO PREVENT  
CHILD MARRIAGES IN BANGLADESH:**

# **CALL FOR LAW REFORM**

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A joint Initiative by **Plan International Bangladesh** and **Girls Not Bride Bangladesh**  
September 2020

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**“INCLUSION OF A ‘SPECIAL PROVISION’  
(UNDER SECTION 19 OF CMRA) ALLOWING  
MARRIAGE BELOW 18 YEARS HAD FACED  
SERIOUS CRITICISMS.”**

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# EXECUTIVE SUMMARY

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The current law in Bangladesh that addresses child marriage is the Child Marriage Restraint Act, 2017 (CMRA) repealing the earlier British law of 1929. The Act sets the minimum age of marriage for a male as 21 years and for a female as 18 years. CMRA criminalizes contracting, allowing, or solemnising of a child marriage. In 2018 the Child Marriage Restraint Rules (the Rules) had been also formulated providing details of the formation and responsibilities of the Child Marriage Prevention Committees, along with other functional details.

Although the stringent provisions in the new law, including its focus on preventive measures, have been well appreciated by the key stakeholders, there had also been disagreements over certain aspects of the law. Inclusion of a 'special provision' (under section 19 of CMRA) allowing marriage below 18 years had faced serious criticisms. Moreover, as both the Act and the Rules were newly enacted, there was a need among the civil society members to effectively understand and act on the new legal regime set up for restraining child marriages. It was felt necessary that a thorough analysis of the new law would provide an opportunity to identify areas that needs greater attention both in terms of law reform and of advocacy strategies for stronger implementation. As such the present study analyses the CMRA and the Rules, and attempts to identify gaps and inconsistencies in the new legal regime. Based on the legal analysis, the study also proposes reforms in the current law and identifies key areas of advocacy to influence law and policy reform for upcoming years.




The analysis begins by contextually analyzing the child marriage situation both globally and at the national level. After briefly discussing the international and national legal framework relevant for addressing child marriage in Bangladesh, the study then critically reviews the key provisions of the CMRA and its corresponding rules. Other than the 'Special Provision' allowing marriage below 18 years, the key findings relating to legislative gaps include - legal inconsistency resulting from conflicting statutory and personal law rules in determining the minimum age of marriage, discriminatory marriageable age between male and female, absence of an option for annulment of the marriage, lack of clarity in the jurisdiction of courts under various provisions, the provision allowing the release of accused on bond/affidavit, etc. In addition, factors such as introducing a penalty for minors involved in the marriage, lack of provision for social and legal assistance for victims, and non-criminalization of marital rape are also discussed elaborately in reviewing the applicable laws.

In analyzing the much-debated 'special provision', the study highlighted some crucial ambiguities in the provision, which have been left unanswered by the corresponding CMRA Rules. Absence of provision for determining free and full consent of the minor, absence of providing any comprehensive criteria and investigation guideline for determining the best interest of the child, and absence of specifying the 'special circumstances' are highlighted amongst such ambiguities.

Apart from the inadequacies in the laws relating to child marriage, the study also focuses on certain other lacunas in the enforcement of the CMRA and its Rules. Such gaps include lack of awareness about the laws and procedures, poor functioning of the preventive mechanisms, weak implementation of the marriage and birth registration system, limited prosecution of child marriage, absence of protection and support systems for victims, etc. These findings regarding barriers in implementing the laws were largely informed by the responses of the interviewees of the study, as well as by the relevant literature review.

The study concludes by recommending a concise proposal for specific reforms in the CMRA and its Rules. The recommendations for law reforms were based mainly on the analysis of the gaps identified in the CMRA and the Rules. Some of the key proposals include - making the minimum legal age of marriage equal for both genders, keeping a minimum age requirement in the 'special provision', making a child marriage voidable at the option of the minor, specifying the jurisdiction of the courts, specifying events on the happening of which the court will not allow an application under the 'special provision', amongst others. A key recommendation that the study has proposed in order to curb the potential misuse of the 'special provision' is regarding obtaining a written confirmation from the Supreme Court of Bangladesh before any approval of a child marriage by the lower court can become operative. The recommendations also proposed the CMRA to make provision for establishing an independent fund for rescue, rehabilitation, legal aid, medical treatment, psychosocial counseling, etc. of the victims of child marriage. With regard to the criminalization of marital rape, the study recommended removing the colonial provision in the Penal Code 1860 that allows marital rape of a minor girl aged 13 years and above.



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# 1. BACKGROUND

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## 1.1 Rationale of the Study

Bangladesh has one of the highest rates of child marriage in the world.<sup>1</sup> Bangladesh's high rate of child marriage has multifaceted causes and consequences. Parents of girls are usually motivated to marry their daughters off at an early age because of concerns for the girls' sexual safety and security, the need to conform to traditional societal expectations, and the need to avoid higher costs associated with later marriage and dowry demands that rise with age.<sup>2</sup> Although laws are in place to restrain and criminalize child marriage in Bangladesh, the general situation of enforcement of laws has also been relatively poor.<sup>3</sup>

The current law that addresses child marriage is the Child Marriage Restraint Act, 2017 (CMRA) repealing the earlier British law of 1929.<sup>4</sup> The Act sets the minimum age of marriage for a male as 21 years and for a female as 18 years. CMRA criminalizes contracting, allowing, or solemnising of a child marriage. In 2018 the Child Marriage Restraint Rules (the Rules) had been also formulated providing details of the formation and responsibilities of the Child Marriage Prevention Committees, along with other functional details.

Although the stringent provisions in the new law, including its focus on preventive measures, have been well appreciated by the key stakeholders, there had also been disagreements over certain aspects of the law. Inclusion of a special provision allowing marriage below 18 years had faced serious criticisms.<sup>5</sup> Discontent was also evident over the drafting process of CMRA and the Rules without wider inclusion of the civil society members' recommendations.<sup>6</sup> Moreover, as both the Act and the Rules were newly enacted, there was a need among the civil society members to effectively understand and act on the new legal regime set up for restraining child marriages. It was felt necessary that a thorough analysis of the new law would provide an opportunity to identify areas that needs greater attention both in terms of law reform and of advocacy strategies for stronger implementation.

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<sup>1</sup> <https://www.unicef.org/bangladesh/en/ending-child-marriage>

<sup>2</sup> Population Council, Accelerating Action to End Child Marriage in Bangladesh.

<sup>3</sup> <https://www.girlsnotbrides.org/bangladesh-child-marriage-restraint-act-2016-recap/>; <https://plan-international.org/news/2017-02-06-bangladesh-child-marriage-law-could-violate-girls-rights>

<sup>4</sup> The Child Marriage Restraint Act, 1929.

<sup>5</sup> <https://www.girlsnotbrides.org/press-release-marriage-special-cases-bangladesh-girlsnotbrides/>

<sup>6</sup> Annual Report of Girls Not Brides Bangladesh, 2017.

In this context, as a part of the initiative of Girls Not Brides Partnership Bangladesh (GNB), Plan International Bangladesh (as the secretariat of GNB), has commissioned the present study to review the CMRA and its Rules. The study is undertaken thus to assist the overall national effort to eliminate child marriage by providing positive input as to the national legal framework that addresses child marriage. The study acknowledges that the call for law reform should persist so long as the legal framework ensures maximum protection to the children whose best interest should be at the center of all discourses that relate to the elimination of child marriage.

## 1.2 Methodology

The study combined a number of primary and secondary data and is primarily a qualitative analysis. The following methods are used to complete the analysis

**a. Primary and secondary document analysis:** The study has analysed the relevant statutes and policies relating to child marriage, case-laws, news reports, reports, or studies conducted by national/international organisations, relevant scholarly articles, and books relevant to child marriage related issues.

**b. Key informant interviews (KII):** Using a semi-structured questionnaire the study has conducted a total number of 18 KIIs within Dhaka. Primarily the interviewees were selected from relevant sectors of stakeholders upon consultation with Plan International Bangladesh team. The KII included persons from civil society organisations advocating for child rights, Representatives from the Ministry of Women and Children Affairs, Parliamentarians, Representatives from the relevant UN agency, Lawyers, District Court Judges, Youth Activists, and Government Administrative Officials. Due to the on-going COVID-19 crisis, all of the interviews were conducted over the telephone.

## 1.3 Limitation

Although the study has extensively analysed the relevant documentary sources on the subject, it is essentially a legal analysis of the CMRA and its Rules. As such, the study is limited in scope as it deliberately excludes other crucial components that influence the effective implementation of child marriage laws. Although the study was commissioned before the COVID-19 outbreak, it was formally initiated during the outbreak of the crisis. As such, all the KIIs had to be conducted over the telephone. Further, the study had originally planned to hold a consultation workshop with the relevant stakeholders, which however could not take place due to the social distancing protocols and difficulties in ensuring the availability of the participants. However, the primary findings of the study have been validated by an online consultation meeting with all the members of the GNB.



## 1.4 The global context of child marriage

The practice of child marriage is deeply gendered<sup>7</sup> and contradicts the fundamental human rights of children.<sup>8</sup> The practice disproportionately harms the girl child, who is exposed to an increased risk of premature pregnancy, maternal mortality, added educational disadvantages, and a life of domestic and sexual subservience.<sup>9</sup> The impact of child marriage also perpetuates a cycle of poverty for the girl's family and community and undercuts the development of a productive, skilled workforce, with a direct bearing on the health of an economy.<sup>10</sup>

Although there is a universal endorsement of the commitment to end child marriage, the total number of girls married in childhood still stands at 12 million per year.<sup>11</sup> As UNICEF projects, progress must be significantly accelerated in order to end the practice by 2030 – the target set out in the Sustainable Development Goals. Without further acceleration, more than 120 million additional girls will marry before their 18th birthday by 2030.<sup>12</sup> Besides, amidst the outbreak of the current COVID-19 crisis, the risk of an increase in child marriage is even higher. An analysis by UNFPA on the potential consequences of pandemic-related disruptions projects that the total effect of the COVID-19 pandemic may result in 13 million additional child marriages due to delay in interventions and economic downturn.<sup>13</sup> As such the global and national level efforts to prevent and eliminate the practice undoubtedly need to be further strengthened to minimize the impact.

According to pre-pandemic data, the prevalence of child marriage, however, was decreasing globally, with the most progress in the past decade seen in South Asia, where a girl's risk of marrying in childhood has dropped by more than a third, from nearly 50 per cent to just below 30 per cent.<sup>14</sup> Across the globe, levels of child marriage are highest in sub-Saharan Africa, where 35 per cent of young women were married before age 18, followed by South Asia, where nearly 30 per cent were married before age 18. Lower levels of child marriage are found in Latin America and Caribbean (24 per cent), the Middle East and North Africa (17 per cent), and Eastern Europe and Central Asia (12 per cent).<sup>15</sup>

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<sup>7</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>8</sup> <https://www.girlsnotbrides.org/wp-content/uploads/2015/02/GNB-Child-marriage-human-rights-infographic-1200px.jpg>

<sup>9</sup> Arthur van Collier, Child marriage - acceptance by association, *International Journal of Law, Policy and The Family*, 2017, 31, 363–376.

<sup>10</sup> UNFPA, *Against my will: State of World Population 2020 Report*, available at: <https://www.unfpa.org/swop>

<sup>11</sup> <https://data.unicef.org/topic/child-protection/child-marriage/>

<sup>12</sup> <https://data.unicef.org/topic/child-protection/child-marriage/>

<sup>13</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-fami-](https://www.unfpa.org/resources/impact-covid-19-pandemic-family-planning-and-ending-gender-based-violence-female-genital)

[ly-planning-and-ending-gender-based-violence-female-genital](https://www.unfpa.org/resources/impact-covid-19-pandemic-family-planning-and-ending-gender-based-violence-female-genital)

<sup>14</sup> <https://data.unicef.org/topic/child-protection/child-marriage/>

<sup>15</sup> *ibid*

## 1.5 Child marriage and the law

Child marriage is defined as any formal marriage or informal union between a child under the age of 18 and an adult, or another child.<sup>16</sup> Although Child marriage affects both girls and boys; it is often the result of entrenched gender inequality, making girls disproportionately affected by the practice.<sup>17</sup>

The marriage of children below 18 is widely recognized in international human rights agreements as a harmful, discriminatory global practice.<sup>18</sup> The extensive repercussions of child marriage violate the international and constitutional obligations of states to protect children's rights and discriminatorily interfere with women's and girls' ability to enjoy a broad range of human rights.<sup>19</sup> International governmental, academic, and advocacy stakeholders have called for countries to establish legislative frameworks that prohibit child marriage and close legal loopholes that permit marriage below the age of 18.<sup>20</sup> Among the many factors that interact to place a child at risk of marriage (e.g. poverty, social norms, lack of social security, customary or religious laws), an inadequate legislative framework is one crucial factor.<sup>21</sup> Although child marriage is prohibited under many national laws, such laws often fail to adequately protect children at risk and are poorly enforced.

There is also, a growing body of research that suggests there is an association between protective laws and lower rates of child marriage as well as declines in rates of adolescent fertility.<sup>22</sup> It is true however that the goal of ending child marriage requires work across all sectors and at all levels<sup>23</sup> and legislation alone cannot achieve the desired goal. Despite the law related strategies alone being inadequate to address child marriage, legal guidelines, however, do help to raise awareness and create clear benchmarks, standards, and remedies to address child marriage.<sup>24</sup>

As such, in any effort to eliminate child marriage it is crucial to evaluate the legal framework that is in place and to check its compatibility with the international legal standards and principles. It is equally essential to assess the enforcement of such laws and identify gaps, which hinder the effectiveness of such laws

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<sup>16</sup> <https://www.unicef.org/protection/child-marriage>

<sup>17</sup> *ibid*

<sup>18</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>19</sup> Center 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)

<sup>20</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>21</sup> <https://data.unicef.org/topic/child-protection/child-marriage/>

<sup>22</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>23</sup> <https://www.girlsnotbrides.org/how-can-we-end-child-marriage/>

<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/files/Child\\_Marriage\\_and\\_the\\_Law.pdf](https://www.unicef.org/french/files/Child_Marriage_and_the_Law.pdf)



## 1.6 Child marriage context in Bangladesh

Bangladesh has committed to eliminating child, early, and forced marriage by 2030 in line with target 5.3 of the Sustainable Development Goals.<sup>25</sup> At the 2014 Girl Summit,<sup>26</sup> the government signed a charter committing to end child marriage by 2020.<sup>27</sup> However, the child marriage situation in Bangladesh is alarming having one of the highest prevalence of child marriage in the region.<sup>28</sup> Despite several signs of progress in recent decades (increasing enrollment in primary schooling, achieving gender parity in primary and secondary education, reducing under-five mortality rate and communicable diseases, and improving access to safe drinking water), more than half of Bangladeshi girls today (52.3 per cent) are married before they reach their 18th birthday.<sup>29</sup> Child marriage thus remains a common practice in Bangladesh, with significant costs to individuals, society, and the economy alike.<sup>30</sup>

A 2015 report by the Bangladesh Bureau of Statistics (BBS) had found that the median age of marriage for Bangladeshi women was the lowest in South Asia at 15.5 years and although the legal age of marriage is 18 years, almost half of all marriages took place before the legal age.<sup>31</sup> The study also identified various determinants for the prevalence of child marriage, finding that child marriage was more common in Bengali, the Muslim population; and women with no education were more likely to be married as children.<sup>32</sup>

According to the 2017-18 Bangladesh Demographic and Health Survey, 58.9% of women aged 20-24 were married before 18 years of age.<sup>33</sup> The report also identified that the median age at first marriage among women aged 20-49 rose from 15.3 years (in 2007) to 16.3 years (in 2017).<sup>34</sup> As per UNICEF's 2019 reports, national progress in decreasing child marriage has been slow.<sup>35</sup> As per the report, Child marriage remains widely accepted with 51.4 per cent of women aged 20-24 years first married before their 18th birthday, and 15.5 per cent of women first married before their 15th birthday.<sup>36</sup>

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<sup>25</sup> <https://www.girlsnotbrides.org/child-marriage/bangladesh/>

<sup>26</sup> <https://www.gov.uk/government/topical-events/girl-summit-2014>

<sup>27</sup> <https://www.girlsnotbrides.org/child-marriage/bangladesh/>

<sup>28</sup> <https://bangladesh.unfpa.org/en/news/unfpa-population-report-highlights-need-urgent-accelerated-action-stop-child-marriage-and-son>

<sup>29</sup> UNICEF, Scoping Analysis for National Budget Allocation for Ending Child Marriage in Bangladesh, February 2018, available at [https://www.unicef.org/bangladesh/sites/unicef.org.bangladesh/files/2018-06/ECM%20Report\\_v9\\_c\\_0.pdf](https://www.unicef.org/bangladesh/sites/unicef.org.bangladesh/files/2018-06/ECM%20Report_v9_c_0.pdf)

<sup>30</sup> *ibid*

<sup>31</sup> *ibid.*


<sup>32</sup> *ibid*

<sup>33</sup> Bangladesh Demographic and Health Survey 2017-2018 Key Indicators available at: <https://dhsprogram.com/pubs/pdf/PR104/PR104.pdf>.

<sup>34</sup> Bangladesh Demographic and Health Survey 2017-2018 Key Indicators available at: <https://dhsprogram.com/pubs/pdf/PR104/PR104.pdf>.

<sup>35</sup> *ibid.*

<sup>36</sup> *ibid.*



**“BANGLADESH IS A SIGNATORY TO  
THE UN CONVENTION ON CONSENT  
TO MARRIAGE, MINIMUM AGE FOR  
MARRIAGE AND REGISTRATION OF  
MARRIAGES, 1964.”**

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## 2. THE LEGAL FRAMEWORK OF CHILD MARRIAGE IN BANGLADESH

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The Constitution of Bangladesh states that nothing shall bar the state to take affirmative actions in favor of the children.<sup>37</sup> Additionally, all other rights, for instance, the right to equality, protection of life, liberty, protection from forced labor, and right to be free from exploitation are enshrined in the Constitution, to ensure further protection to the children, among other citizens.

As mentioned earlier, the current law that addresses prevention and protection against child marriage is the Child Marriage Restraint Act, 2017 which has repealed the earlier Child Marriage Restraint Act, 1929. The earlier law has also prescribed penal sanctions for contracting or solemnising child marriage and had a similar minimum age of marriage. However, the new law substantively increased the penalties for the offences and had also created several provisions focusing on the preventive aspect of child marriage efforts.

Apart from the domestic legal framework, Bangladesh is also committed under various international human rights treaties to undertake effective actions against eliminating child marriage and ensuring solemnisation of marriage with free and full consent of the parties.

The following sections elaborately discuss the international and national legal framework relating to child marriage as applicable in Bangladesh.

### 2.1 International obligations of Bangladesh concerning child marriage

The right to free and full consent to marriage was acknowledged in the Universal Declaration of Human Rights and many subsequent human rights instruments. Bangladesh is a signatory to the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964, which states that no marriage shall be legally entered into without the full and free consent of both parties. The right to free consent to marriage has also been reiterated in the Convention on the Elimination of All Forms of Discrimination against Women, 1979. Under the UN Convention on the Rights of the Child, 1989 Bangladesh undertakes the pledge that the best interests of the child shall be a primary consideration in all actions concerning children. The UN Committee against Torture also recognizes that child marriage may constitute cruel, inhuman, or degrading treatment, particularly where governments have failed to establish a minimum age of marriage that complies with international standards.<sup>38</sup>

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<sup>37</sup> Article 28(4)

<sup>38</sup> See the concluding observations of the Committee against Torture on Bulgaria (CAT/C/BGR/CO/4 5) and on Yemen (CAT/C/YEM/CO/2/Rev.1).

### 2.1.1 International Covenant on Civil and Political Rights

Article 23(3) of the International Covenant on Civil and Political Rights (ICCPR) states that ‘no marriage shall be entered into without the free and full consent of the intending spouses.’<sup>39</sup> Further, Article 23(4) states that parties are obligated to ensure equality of rights of spouses in marriage.<sup>40</sup> The UN Human Rights Committee in general comment no. 19 indicates that the minimum age for marriage should be such as to enable each spouse to give her/his free and full personal consent under conditions prescribed by law,<sup>41</sup> and that States should ensure that the minimum legal age of marriage in domestic legal framework complies with international standards and undertake active measures to prevent the early marriage of girls.<sup>42</sup>

Bangladesh submitted its initial state party reports to the Committee in 2017 at its 3339th and 3340th meetings. The Committee, in its concluding observations,<sup>43</sup> expressed concerns regarding the provision of marriage in ‘special circumstances’ in the draft Child Marriage Restraint Bill and concluded that the state should amend the bill and ‘maintain the legal minimum age of marriage for girls at 18 years, in accordance with international norms, without any exceptions’. In its interim response to the concluding observations, the government stated that reducing child marriage is a top priority and that a National Action Plan has been undertaken and Child Marriage Restraint Rules 2018 has been formulated for the effective implementation of the Act.<sup>44</sup> It reiterated its goal of eradicating child marriage by 2041.

### 2.1.2 The UN Child Rights Convention

The UN Child Rights Convention (CRC) links child marriage to a host of other rights such as the right to equality and non-discrimination,<sup>45</sup> the right to express his/her views freely in all matters affecting him/her,<sup>46</sup> the right to equal opportunity in education,<sup>47</sup> right to health and protection from harmful traditional practices,<sup>48</sup> right to protection from exploitation,<sup>49</sup> etc.

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<sup>39</sup> International Covenant on Civil and Political Rights, art. 23(3).

<sup>40</sup> International Covenant on Civil and Political Rights, art. 23(4).

<sup>41</sup> Human Rights Committee general comment No. 19 (1990) on protection of the family, the right to marriage and equality of the spouses, para. 4. See also general comment No. 28 (2000) on equality of rights between men and women, para. 23.

<sup>42</sup> Concluding observations of the Human Rights Council on Uruguay (CCPR/C/URY/CO/5), Kuwait (CCPR/C/KWT/CO/2), Yemen (CCPR/CO/75/YEM), United Republic of Tanzania (CCPR/C/TZA/CO/4/Add.1), Islamic Republic of Iran (CCPR/C/IRN/CO/3).

<sup>43</sup> Human Rights Committee, Concluding Observations to Bangladesh’s initial state party report (CCPR/C/BGD/CO/1) available at: [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBGD%2fCO%2f1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBGD%2fCO%2f1&Lang=en).

<sup>44</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/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBGD%2fCO%2f1%2fAdd.1&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBGD%2fCO%2f1%2fAdd.1&Lang=en).

<sup>45</sup> United Nations Convention on the Rights of the Child, art. 1.

<sup>46</sup> United Nations Convention on the Rights of the Child, art. 12.

<sup>47</sup> United Nations Convention on the Rights of the Child, art. 28, 29.

<sup>48</sup> United Nations Convention on the Rights of the Child, art. 24.

<sup>49</sup> United Nations Convention on the Rights of the Child, art. 19.



Child marriage affects girls disproportionately and has a discriminatory effect on them. It often results in early pregnancy causing great risk to a girl child's health and obstructs their opportunity to pursue education and attain development. In its concluding observations to Bangladesh's fifth periodic report submitted in October 2015,<sup>50</sup> the Committee appreciated the definition of children under the Children Act 2013 but expressed concerns regarding the draft child marriage bill which granted judges the discretion to marry children below 18 years. The Committee urged the state to 'refrain from undertaking any legislative measure likely to reduce the age of 18 as the minimum age of marriage' and to punish those who falsify documents proving age.

The committee also expressed concerns regarding the negative cultural practices and stereotypes regarding the role of girls in society, which contribute to child marriages. The Committee further urged the state to establish 18 years as the minimum legal age of marriage as per Children Act 2013 and to develop a protection scheme for the victims of child marriage that file complaints.

### **2.1.3 Convention on the Elimination of All Forms of Discrimination against Women**

Article 16 of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) obliges the states to ensure, on the basis of equality of men and women, the same right to enter into marriage only with free and full consent of the parties involved.<sup>51</sup> Article 16, paragraph 2, of the CEDAW, further provides that 'the betrothal and the marriage of a child shall have no legal effect.'<sup>52</sup> Bangladesh has no reservations about either of the provisions.

The CEDAW Committee in its general comment states that the minimum age for marriage should be 18 years for both men and women considering the importance of responsibilities undertaken in marriage and states that marriage should not be permitted before they have attained full maturity and capacity to act.<sup>53</sup>

The Committee, in its concluding observations to the eighth periodic report of Bangladesh to CEDAW,<sup>54</sup> noted with concern the high rates of child marriage and the proposed law which then aimed at allowing the marriage of girls aged 16 with parental consent. The Committee recommended taking measures for removing harmful practices relating to child marriage and removing all exceptions to the legal age of marriage at 18.

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<sup>50</sup> Committee on the Rights of the Child Concluding observations on the fifth periodic report of Bangladesh available at: <https://www.ecoi.net/en/document/1246854.html>.

<sup>51</sup> Convention on the Elimination of all forms of Discrimination Against Women, art. 16(1).

<sup>52</sup> Convention on the Elimination of all forms of Discrimination Against Women, art. 16(20).

<sup>53</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 21: Equality in Marriage and Family Relations, 1994, available at: <https://www.refworld.org/docid/48abd52c0.html> [accessed 28 July 2020]

<sup>54</sup> UN Committee on the Elimination of Discrimination Against Women (CEDAW), Concluding observations on the eighth periodic report of Bangladesh, 18 November 2016, CEDAW/C/BGD/CO/8, available at: <https://www.refworld.org/docid/583864444.html> [accessed 28 July 2020]

#### 2.1.4 International Convention on the Economic Social and Cultural Rights

Article 10(1) of the Covenant states that ‘Marriage must be entered into with the free consent of the intending spouses.’<sup>55</sup> The Covenant envisages that the legal age of marriage for men and women should be the same.<sup>56</sup> In identifying the effects of child marriage, the Committee on Economic, Social, and Cultural Rights has recommended increasing the minimum age for marriage equally for boys and girls.<sup>57</sup>

In the 2018 concluding observations to Bangladesh’s initial state party report, the Committee on Economic, Social, and Cultural Rights expressed concerns that the personal laws relating to marriage are largely discriminatory to women and recommended that the State party adopt a unified family law providing equal rights in marriage.<sup>58</sup> The committee also recommended strengthening the birth and death registration framework because a low registration rate undermines the laws on child marriage.<sup>59</sup> With regard to the 2017 law, the committee expresses concern regarding the provision of ‘special provision’ and the lack of clarity regarding primacy over personal laws.<sup>60</sup> It recommends that the law be amended repealing the exceptions and declaring child marriage void, and directs the state to ensure that the victims of child marriage get access to protection and health services and that the facilitators of child marriage are punished.<sup>61</sup>

#### 2.1.5 Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages

Bangladesh acceded to the Convention in 1998, but it made reservations as to the provisions of Articles 1 and 2. Article 1 of the Convention states that ‘No marriage shall be entered into without the full and free consent of both parties.’<sup>62</sup> Bangladesh’s declaration states that it reserves the right to ‘apply the provisions of articles 1 and 2 in so far as they relate to the question of legal validity of child marriage, in accordance with the Personal Laws of different religious communities of the country.’<sup>63</sup>

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<sup>55</sup> International Covenant on Economic, Social and Cultural Rights, art. 10(1).

<sup>56</sup> UN Committee on Economic, Social and Cultural Rights, General Comment No. 16, The equal right of men and women to the enjoyment of all economic, social and cultural rights (Article 3), (thirty-fourth session, 2005), para. 27.

<sup>57</sup> See the concluding observations of the Committee on Economic, Social and Cultural Rights, on Mexico (E/C.12/MEX/CO/4); the concluding observations of the Committee on the Rights of the Child on Georgia (CRC/C/15/Add.124), South Africa (CRC/C/15/Add.122) and Costa Rica (CRC/C/CRI/CO/4).

<sup>58</sup> Committee on Economic, Social and Cultural Rights Concluding observations on the initial report of Bangladesh, available at: [https://www.ecoi.net/en/file/local/1436748/1930\\_1530182553\\_g1811368.pdf](https://www.ecoi.net/en/file/local/1436748/1930_1530182553_g1811368.pdf).

<sup>59</sup> *ibid*

<sup>60</sup> *ibid*

<sup>61</sup> *ibid*

<sup>62</sup> Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, art. 1(1).

<sup>63</sup> [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVI-3&chapter=16&lang=en#10](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVI-3&chapter=16&lang=en#10)





# CALL FOR LAW REFORM

**“THE ACT DEFINES A ‘MINOR’ AS A FEMALE WHO HAS NOT COMPLETED 18 YEARS OF AGE AND A MALE WHO HAS NOT COMPLETED 21 YEARS OF AGE.”**

## **2.2 National Legal Framework: Child Marriage Restraint Act 2017 and the Rules of 2018**

### **2.2.1 Definition of child marriage**

Section 2 of the Child Marriage Restraint Act defines ‘child marriage’ as any marriage where either one party or both parties are minors as defined under this Act. The Act defines a ‘minor’ as a female who has not completed 18 years of age and a male who has not completed 21 years of age. Proof of age of any male or female who wants to get married is to be determined as per their birth registration certificate, National ID Card, passport, or academic certificates such as JSC, SSC, HSC, or their equivalent certificates.

### **2.2.2 General Powers of preventing child marriage**

As per Section 4 of the Act, the Upazila Nirbahi Officer, the Executive Magistrate, the Upazila Women Affairs Officer, the Upazila Social Welfare Officer, the Upazila Primary or Secondary Education Officer, the Officer in Charge of Police Station or the representatives of Local Government can act upon receipt of any information regarding child marriage and take necessary actions to prevent it.

According to Rule 15, the concerned officials can file a complaint before the court. If a complaint is filed as such, the concerned official shall send the written information to the Upazila committee who shall record it in the prescribed format.

Under section 5 of the Act, the Court, upon receiving its complaint or on its own motion, may issue an injunction against solemnisation of child marriage; it may rescind the same upon application or on its own accord. The violation of such injunction is punishable with up to six months of imprisonment and/or fine up to Ten Thousand Taka, and added imprisonment for default of payment of fine.

The punishment for filing a false complaint is imprisonment up to six months and/or a fine of thirty thousand taka and added imprisonment for default of payment of the fine.

### **2.2.3 Punishment for contracting, solemnizing, and registering child marriage**

As per section 14 of the Act, offences under this Act are cognizable, bailable, and non-compoundable. But cognizance cannot be taken after two years from the date of commission of the offence. The Act provides for punishment for contracting child marriage for both adults and minors under Section 7. An adult who contracts marriage with a minor shall be punished with imprisonment for up to two years and/or fine for up to one lakh taka. A minor can be punished for contracting child marriage as well - with a fine up to 50 thousand taka and/or detention up to a month. This is applicable to both males and females.

However, in case of minors contracting child marriage, if it is found that the parent or guardian had promoted or negligently failed to prevent the marriage, such parent and guardian are to be punished under section 8 with imprisonment from 6 months up to 2 years and/or fine for up to 50 thousand taka. Any person solemnising a child marriage shall be punished with imprisonment of at least 6 months or up to two years and/or a fine of 50 thousand taka under Section 9.

Any Marriage registrar who registered a child marriage shall be punished with imprisonment from 6 months up to 2 years and/or a fine up to 50 thousand taka and with additional imprisonment for default of payment of fine under section 11.

Trial under this Act shall be conducted as a summary procedure under the applicable provisions of the Code of Criminal Procedure 1898, and mobile courts can impose penalties under this Act. The money received as fine except under section 7(2), shall be paid to the aggrieved party, i.e, the minor contracted in marriage.

#### **2.2.4 Exemption on condition to stop/prevent child marriage**

When a child marriage is initiated but not solemnised, if the accused submits to take necessary measures to stop the marriage and prevent child marriage in his/her community, the court may exempt the accused from charges. The person shall sign a bond in the prescribed format as per rule 16, and upon breach of the bond, shall be punished under section 8 of the Act. A bond issued in this manner shall be sent to the Upazila Committee whose member-secretary shall preserve it in a registration book.

#### **2.2.5 Special provision**

Under section 19, a child marriage solemnised under ‘special circumstances’ with the consent of the parents and the direction of the court shall not be an offence. As per Rule 17, the parties to the marriage or their parents and legal guardians may file an application to the appropriate court along with the necessary legal documents, upon which an investigation committee shall submit a report within 15 days. The investigation committee will comprise of the Upazila Nirbahi Officer, a medical officer selected by the Upazila Health and Family Planning officer, Upazila Social Service Officer, Chairman of the concerned Union Parishad, two youths selected by the UNO, and the Upazila Women Affairs officer.

#### **2.2.6 Formation of child marriage prevention committees**

As per Section 3 of the Act, child marriage prevention committees may be formed at national, district, upazila, and union levels comprising various stakeholders from the relevant government agencies, people’s representatives, NGO representatives, etc. The functions and formation of these Committees have been laid out in the Child Marriage Restraint Rules 2018.

## **National Child Marriage Prevention Committee**

A national-level child marriage prevention committee is to be formed in accordance with Rules 3, 4, and 5. The Committee shall provide directions for the proper implementation of the Child Marriage Restraint Act 2017, identify the challenges in preventing child marriage and recommend necessary actions to eradicate the challenges, provide strategic directions for building social awareness against child marriage, undertake necessary policy measures and integrate them into national action plans and policies. The Committee shall also prepare a yearly report of child marriage prevention activities and shall supervise the activities of the district level child marriage prevention committee.

The National Committee shall meet at least once a year and shall be headed by the Minister for Women and Child Affairs. Other members of the Committee shall include a female member of parliament selected by the speaker, the Chair of Jatiya Mohila Sangstha, Director General of Government Innovation Institute, Director General of Department of Women Affairs, Secretary of National Human Rights Commission, Country Director of UNICEF, two representatives of government-elected NGOs who conduct child marriage prevention activities at district and upazila levels (one of who must be female), etc.

## **District Child Marriage Prevention Committee**

A District Committee shall be formed in each district under Rules 6, 7, 8 whose responsibilities shall include realising the recommendations and directions of the National Committee and overseeing, evaluating, and investigating into the activities of the Upazila committees and providing necessary directions. The district committee shall publicise the harms of child marriage and create social awareness through print, digital and cultural media including cable network, billboards, posters, leaflets, documentaries, workshops, and social media.

The district committee shall be headed by the District Administrator and shall consist of other members including the civil surgeon, Pourashava mayor, district child affairs officer, district education officer, district primary education officer, chairman of Jatiya Mohila Sangstha district committee, public prosecutor, district legal aid officer, a Nikah registrar, etc. The Committee shall meet at least once every month and shall prepare a monthly report of its activities in a prescribed manner to be submitted to the Ministry of Child and Women Affairs. The Committee shall prepare an action plan at the beginning of every year.

## **Upazila Child Marriage Prevention Committee**

An Upazila Committee shall be established in each upazila in accordance with rules 9, 10, 11 whose duties shall include the realisation of the recommendations and directions provided by the District Committee and supervising, evaluating, and guiding the Union Committee. The Committee shall publicise the harms of child marriage and create social awareness through print, digital and cultural media including cable network, billboards, posters, leaflets, documentaries, workshops, and social media. It shall identify the challenges in preventing child marriage and report the same to the Upazila Committee and shall compile data relating to the Mobile Court cases relating to child marriage in a prescribed format. The Committee shall meet at least once every month and shall prepare a monthly report of its activities in a prescribed manner to be submitted to the District Committee. The Committee shall prepare an action plan at the beginning of every year.

The Upazila committee shall be headed by the Union Nirbahi Officer and shall include other members such as the Vice-Chairs of Upazila Parishads, Upazila Education Officer, Upazila Social Service Officer, Chair of Jatiya Mohila Sangstha's upazila committee, two representatives of NGOs that work with child marriage or women and child rights, and selected representatives of educational institutions of the upazilas, etc.

## **Union Child Marriage Prevention Committee**

The Union committee shall be headed by the Chairman of Union Parishad and shall comprise of all ward members, Nikah registrar and upon selection by the Chairman, a Headmaster/Headmistress from primary and secondary schools, an advisor or principal of Madrasa, and two representatives of NGOs that work with child marriage or women and child rights.

The Committee shall meet at least once a month and submit a monthly report of its activities to the Upazila district. It shall identify challenges in preventing child marriage and make recommendations to the Upazila committee and shall prepare an action plan at the beginning of each year.



# CALL FOR LAW REFORM



**“THE SPECIAL  
PROVISION FAILS  
TO SPECIFY ANY  
MINIMUM AGE  
LIMIT BELOW  
WHICH THE  
COURT WILL NOT  
GRANT THE  
PERMISSION.”**



## 3. GAPS IN CMRA AND THE RULES

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Despite having adopted a new law to prevent child marriage together with an extensive legislative framework that addresses issues relevant to women and girls, there are several loopholes and ambiguities that remain in the existing legal framework. This section discusses the key shortcomings of the laws addressing the prevention of child marriage.

### 3.1 Legal inconsistency in determining the minimum age of marriage:

Although, the Child Marriage Restraint Act, 2017 (CMRA) prescribes 18 for females and 21 for males as the minimum marriageable age; in effect, this age limit is merely to prescribe punishment for contracting child marriage. The Act does not declare a marriage below this age limit as invalid or illegal, although the parties involved in contracting such marriage will face criminal sanctions. The reason for such silence in addressing the issue of the validity of marriage below the minimum age limit - is the legal pluralism that exists in the legal system in Bangladesh.

Although laws are applicable to all citizens irrespective of religion, family law is the one exception to such rules. Upon independence in 1971 most of the British colonial time statutes that were in force in Pakistan till 1971 continued to remain in force in Bangladesh. At the same time, the personal law rules governing the family matters, which were not codified by the British rulers - and which continued to be governed by the religious laws during the Pakistan period, continued as such in independent Bangladesh.<sup>64</sup>

Mostly detached from modern legal developments, the traditional personal law rules are often incompatible with international and national human rights standards especially when it comes to rights of women in marriage and property.<sup>65</sup> This is crucial for the laws restraining child marriage in particular. In order for a marriage to lawfully exist under international and national standards, a person must meet the legal age requirements and must freely consent to the marriage.<sup>66</sup> However, all the applicable personal laws in Bangladesh consider marriage below 18 years to be valid and consent can also be given by a guardian on behalf of a minor. The laws relating to the minimum age of and consent to marriage thus provide an important example of the legal paradox that generally accompanies the mandates of personal laws in Bangladesh.<sup>67</sup>

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<sup>64</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>65</sup> <https://www.ohchr.org/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/WomenAndJusticeFellow5.pdf>

<sup>66</sup> Ibid

<sup>67</sup> Shahnaz Huda, Child Marriage: Social Marginalization of Statutory Laws, Bangladesh Journal of Law, Volume 1, No. 2, December 1997, p. 138

As discussed above, all of the religious personal law rules, allow child marriage at different ages. For instance, according to the Muslim law principles, a person is competent to enter into a marriage when she/he attains puberty<sup>68</sup> which can be as early as 9 years for females and 12 years for males depending on the visible signs of puberty. In the absence of such clear signs 'both sexes are considered to be adults when they have completed their 15th year'.<sup>69</sup>

However, all schools of Muslim law agree that a minor female may be married off by her guardian even before she attains puberty without her consent.<sup>70</sup> As per the Hindu customary law as applicable in Bangladesh, there is no minimum age for marriage and even an infant's marriage is a complete and legal one.<sup>71</sup> Again, marriages among Christians are governed by the Christian Marriage Act 1872 which permits the marriage of a 'minor' (defined as a person under 21 years of age),<sup>72</sup> with the consent of the minor's father or in the absence of the father, by her/his guardian.<sup>73</sup>

During the British Colonial period, when the Child Marriage Restraint Act 1929 (CMRA 1929) was first enacted making child marriage below 14 years<sup>74</sup> for girls a punishable offence, the law was considered as one of the major legislative changes which substantially interfered with customary and religious practices of India.<sup>75</sup> As child marriage was both an accepted and widely practiced custom in British India<sup>76</sup> the Act was faced with severe resentment from the Indian Hindu and Muslim communities.<sup>77</sup> Predicting that declaring child marriages completely invalid, would lead to social chaos, the Act made child marriages only punishable without questioning its validity.

Thus, the CMRA 1929 led to the conflicting legal position where a person can be punished for the illegal act of contracting child marriage, but the result of such illegal activity, i.e. the marriage, would remain valid.<sup>78</sup> In a number of cases subsequent to the CMRA 1929, the superior courts in India also have declared marriages of girls below the Act's prescribed minimum age to be valid.<sup>79</sup> In the case of *Ram Baram Upadhiya vs. Sital Pathan*<sup>80</sup> it was observed:

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<sup>68</sup> Tayabji, F.B. Muslim Law, Bombay 1968, p. 46

<sup>69</sup> Fyzee Asaf A.A., Outlines of Muhammadan Law, Oxford 1964, p.88

<sup>70</sup> Hamilton C., The Hedaya, 2nd ed. London 1870, p.36.

<sup>71</sup> Mahua Zahur (2014), The Hindu Marriage System in Bangladesh: Addressing Discrimination, Commonwealth Law Bulletin, Vol. 40:4, 613.

<sup>72</sup> Section 3 of the Christian Marriage Act 1872

<sup>73</sup> Section 19 of the Christian Marriage Act 1872

<sup>74</sup> The minimum age was later amended and increased to 16 in 1961 and again to 18 in 1986.

<sup>75</sup> Shahnaz Huda, Child Marriage: Social Marginalization of Statutory Laws, Bangladesh Journal of Law, Volume 1, No. 2, December 1997, p. 138.

<sup>76</sup> See for further reading, Tanika Sarkar, (2020) Intimate Violence in Colonial Bengal: A Death, a Trial and a Law, 1889–1891, Law and History Review, Vol. 38, No. 1.

<sup>77</sup> Sampath B. N., Child Marriage: Revision of Marriageable Age and its Effective Implementation, 1972, 3 Lawasia, pp. 386-402.

<sup>78</sup> Shahnaz Huda, Child Marriage: Social Marginalization of Statutory Laws, Bangladesh Journal of Law, Volume 1, No. 2, December 1997, p. 138.

<sup>79</sup> Munshi Ram vs. Emperor 1936, AIR All 11; Moti vs. Beni, 1936, AIR All 852; Bakshi vs. Bashir Ahmed, 22 DLR 1970 290.

<sup>80</sup> 1939, AIR All 340.

*“a distinction must be observed between the performance of the act and the act itself. The Child Marriage Restraint Act aims at the restraint of the solemnisation of child marriages. It does not affect the validity of the marriages after they have been performed.”*

Although the colonial law has been replaced only recently by the CMRA 2017 in Bangladesh, the fear of policymakers regarding social resentment against any interventions in the traditional personal law norms continued. As a result, the 2017 Act also chose to remain silent about the validity of a marriage of a girl below 18. Without clear provisions in the CMRA 2017 invalidating child marriages, the authority is given to religious personal laws thus results in child marriages being legally recognized despite the penal sanctions assigned to those who facilitate the marriage.<sup>81</sup>

### 3.2 Discriminatory marriageable age

As discussed above, the minimum age of marriage as given in the CMRA is different for males and females, which is 21 and 18 respectively. The available literature on the legislative history of the CMRA 1929 reveals that the law was enacted in the context of restricting the widely accepted practice of marrying minor girls in the then British India.<sup>82</sup> There were cases of severe injury leading to the death of brides as young as 10 years of age due to marriage consummation that propelled the British government to introduce changes to the prevailing social condition through legislation.<sup>83</sup> Not only the age of statutory rape was increased in the criminal law, but child marriages were also made punishable for the first time through the CMRA 1929.

The CMRA 1929 had originally kept the minimum age of marriage for females to 14 and males to 18, and marriage below such age was declared punishable. Although the drafting history of the CMRA has a significant focus on the debates over fixing the minimum age for girls, there seems to be no disagreement in the available literature over the minimum age fixed for the males.<sup>84</sup> Under the then prevailing laws, 18 years was the age of majority,<sup>85</sup> and as such, considering the common social practice of an adult man marrying a minor bride, it was considered natural that the minimum age for a male would have to be his legal age of majority. In the Pakistan period, a reform was brought through the Muslim Family Law Ordinance, 1961 (MFLO) which amended the CMRA 1929 by increasing the marriageable age for girls only to 16 years, without changing the minimum age for males.

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<sup>81</sup> Sultana Kamal, (April 2010) Laws for Muslim Women in Bangladesh, available at <https://unstats.un.org/unsd/vitalstatkb/KnowledgebaseArticle50366.aspx>.

<sup>82</sup> Shahnaz Huda, Child Marriage: Social Marginalization of Statutory Laws, Bangladesh Journal of Law, Volume 1, No. 2, December 1997, p. 138.

<sup>83</sup> Tanika Sarkar, (2020) Intimate Violence in Colonial Bengal: A Death, a Trial and a Law, 1889–1891, Law and History Review, Vol. 38, No. 1.

<sup>84</sup> See for instance, B.N. Sampath, Child Marriage: Revision of Marriageable Age and its Effective Implementation, 1972, 3 Lawasia, pp. 386-402; C. H. Heimsath, (1983) The origin and enactment of the Indian Age of Consent Bill, 1891: Colonial ideology in Bengal, 3:2 South Asia Reviewi, pp. 107-131; Shahnaz Huda, Child Marriage: Social Marginalization of Statutory Laws, Bangladesh Journal of Law, Volume 1, No. 2, December 1997, p. 138;

<sup>85</sup> under the Majority Act of 1875, which is still in force in Bangladesh.

The MFLO was one of the major legislative reforms to Muslim personal law, the purpose of which was to 'protect and enhance the rights of the women' within the family law matters.<sup>86</sup> As such the amendment to the CMRA 1929 was again considered only from the aspect of a girl in a marriage. In 1984, in independent Bangladesh, the CMRA 1929 was further amended and the minimum age was increased from 16 to 18 years for females and 21 years for males. Again, the context of this reform was the widespread prevalence of marriage of minor girls and this increase was an attempt to restrain such marriages. However, the reason for increasing the marriageable age of a male to 21 years was not clear from the available literature. The only predictable reason for such an increase of the male marriageable age could be perhaps the age-old gender-biased notion which dictates that the man is the dominant partner, and as such has to be older than the bride's age. Thus as the female's marriageable age was increased from 16 to 18, the marriageable age of the male perhaps had to be increased to maintain the 'standard age gap' between the spouses. This notion of the husband being older than the wife is, in fact, a by-product of the socio-cultural practice of child marriage itself, the prevention of which was the very purpose of the amendment.

Such inequality in the age of marriage contradicts the international human rights law mandates. The UN Human Rights Committee affirms in its General Comment No. 28, the obligation of governments to treat men and women equally with regard to marriage.<sup>87</sup> CEDAW General Comment No. 21 on the right to marriage reiterates men's and women's equal right to enter into marriage, conditioned on their free and full consent.<sup>88</sup> This unequal marriageable age between males and females is not only discriminatory; it creates some significant legal anomalies in the enforcement of the CMRA. For example, if an adult woman of 18 years marries a man of 20 years, it will still be considered as 'child marriage', and the woman would be subjected to penal sanctions applicable for an adult contracting party under the CMRA. It is beyond any reasonable contemplation that in a socio-cultural context where women are so disadvantaged and have little freedom in selecting their prospective husband, the wife should be expected to bear a greater criminal liability than an adult man.<sup>89</sup> Again, under the Majority Act, 1895 a boy of 18 is considered to be a major and can by any law enter into any contract but he may be punished for entering into a contract of marriage.<sup>90</sup> This again is irreconcilable with any sound legal interpretations.

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<sup>86</sup> Lucy Carroll, *The Muslim Family Law Ordinance 1961: Provisions and Procedures*- a reference paper for current research, 1979 *Contributions to Indian Sociology*, Vol. 13 No. 1, p. 117

<sup>87</sup> General Comment No. 16 of the Committee on Economic, Social and Cultural Rights, which oversees implementation of the ICESCR, para. 27, sets out obligations of governments to "ensure that men and women have an equal right to choose if, whom, and when to marry." Available at [https://adsdata-base.ohchr.org/IssueLibrary/HRC\\_General%20comment%20No28%20Article%203%20\(The%20Equality%20of%20rights%20between%20men%20and%20women\).pdf](https://adsdata-base.ohchr.org/IssueLibrary/HRC_General%20comment%20No28%20Article%203%20(The%20Equality%20of%20rights%20between%20men%20and%20women).pdf)

<sup>88</sup> CEDAW Committee, General Recommendation No. 21, Equality in Marriage and Family Relations, (Thirteenth Session, 1994), *Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies*, UN Doc. HRI/GEN/1/Rev. 1 (2004), paras. 16, 1 (a) and (b).

<sup>89</sup> Lucy Carroll, "Recent Bangladeshi Legislation Affecting Women: Child marriage, Dowry and Cruelty to Women, 1985, *Islamic and Comparative Law Quarterly*, 5:1, pp. 225-264.

<sup>90</sup> Shahnaz Huda, *Child Marriage: Social Marginalization of Statutory Laws*, *Bangladesh Journal of Law*, Volume 1, No. 2, December 1997, p. 138.



**“UNDER MUSLIM PERSONAL LAW, A GIRL MAY  
SEEK DISSOLUTION OF A MARRIAGE ENTERED  
INTO WHEN SHE WAS UNDER THE AGE OF 18.”**

**CALL  
FOR  
LAW  
REFORM**



### 3.3 No option for annulment of the marriage

The 2017 CMRA is silent with respect to the annulment of a child marriage as voidable at the option of the minor. A minor victim of child marriage would have to follow the procedures prescribed under applicable personal laws for dissolution of the marriage, without getting the marriage being declared as void. However, the personal law rules for the dissolution of marriages are often discriminatory and can be quite difficult to access, especially for girls who have limited capacity to avail legal procedures.<sup>91</sup> Under Muslim personal law, a girl may seek dissolution of a marriage entered into when she was under the age of 18; however, the dissolution of marriage on this basis is possible only where the marriage has not been consummated and the marriage must be repudiated by the age of 19.<sup>92</sup> This option provides a very short window for a girl to have her child marriage dissolved, and therefore is likely to be practically unavailable to many.<sup>93</sup>

Moreover, this is not equivalent to the annulment of a marriage, which declares the marriage to be void from the beginning as if it never took place. It is rather a mode of dissolving the marriage and such decree of dissolution would have to again go through the ordinary stages of talaq procedure including the notice period.<sup>94</sup> Also, for Hindu married women in Bangladesh, the position is even more discriminatory, as the dissolution of a Hindu marriage is not recognized under the Hindu personal law and there has not been any legislative reform to introduce a mechanism for divorce.<sup>95</sup>

Therefore, under the current legal regime, if a child marriage does take place, even in a most compelling situation (i.e. forced marriage<sup>96</sup> or marriage with the alleged rapist), the minor girl would have to accept the marriage as a valid contract and have to pursue her limited options to seek divorce under the applicable family law.<sup>97</sup>

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<sup>91</sup> Center for Reproductive Rights, 'Ending Impunity for Child Marriage in Bangladesh' Policy Brief (2018) available at [https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/64829505\\_ending\\_impunity\\_for\\_child\\_marriage\\_bangladesh\\_2018\\_final-web.pdf](https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/64829505_ending_impunity_for_child_marriage_bangladesh_2018_final-web.pdf).

<sup>92</sup> The Dissolution of Muslim Marriages Act 1939, Section 2(vii)

<sup>93</sup> Center for Reproductive Rights, 'Ending Impunity for Child Marriage in Bangladesh' Policy Brief (2018) available at [https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/64829505\\_ending\\_impunity\\_for\\_child\\_marriage\\_bangladesh\\_2018\\_final-web.pdf](https://www.reproductiverights.org/sites/crr.civicactions.net/files/documents/64829505_ending_impunity_for_child_marriage_bangladesh_2018_final-web.pdf).

<sup>94</sup> Under section 23 of the Family Courts Ordinance 1985

<sup>95</sup> Unpublished Study Report, Taslima Yasmin (2020), 'Analysis of the discriminatory laws in Bangladesh from a gender perspective', Study Commissioned by UN Women Bangladesh.

<sup>96</sup> Shabina Begum, 'Ending Early and Forced Marriage: Bangladesh and UK Perspective' 5-6 (2016), available at [http://www.ohchr.org/Documents/Issues/Women/WRGS/Earlyforcedmarriage/NGOs\\_Individuals/ShabinaBegum.pdf](http://www.ohchr.org/Documents/Issues/Women/WRGS/Earlyforcedmarriage/NGOs_Individuals/ShabinaBegum.pdf).

<sup>97</sup> Forced marriage, however can be criminalized in Bangladesh under particular circumstances which can be regarded as kidnapping or abducting of a child. Kidnapping is punishable both under the Penal Code 1890 (section 363) and the Women and Children Repression Prevention Act, 2000 (section 7). Also the act of confining, harboring, deporting, transferring, etc. of a child for the purpose of sexual exploitation also falls within the offence of 'human trafficking' and is criminalized under the Prevention and Suppression of Human Trafficking Act 2012 (section 3,6,7,8).



Apart from the clogs in the personal law rules regarding divorce, considering the social stigma that is generally attached to a divorce, a victim of child marriage may also prefer an option to annul her marriage<sup>98</sup> than dissolving it according to the personal law procedures.

### 3.4 The “Special Provision” allowing marriage below 18 years

Following the enactment of the CMRA keeping the special provision, there was obvious dissatisfaction among many rights groups and activists. Some of the interviewees of the study expressed that together with such resentment there was also some hope building on the possibility of restricting the wide scope of the special provision through formulating strict rules for its application. As discussed in the previous section, the Rules to the CMRA was finally published in 2018. The interviewee of the study nevertheless shared their disappointment regarding the drafting process of the CMRA Rules. Few civil society organisations were invited to the drafting committee for finalizing the Rules and suggestions were put forward by them, on the possible safeguarding of the abuse of the special provision through the Rules.<sup>99</sup> Details of such recommendations proposed by the civil society members could not be gathered for inclusion in the study from the available documents.<sup>100</sup> However, the interviewees expressed that the rules finalized as such did not fully reflect the recommendations proposed by them and the consultation meetings held were also largely ‘ornamental’.<sup>101</sup> The Rules indeed failed to provide any clarity to the existing ambiguities in the special provision. Neither could it suggest effective measures that could safeguard the wide scope of abuse of authority that remained in such provision.

Section 19 of the 2017 CMRA reads:

*Notwithstanding anything contained in any other provision of this Act, if a marriage is solemnised in such manner and under such special circumstances as may be prescribed by rules in the best interests of the minor, at the directions of the court and with the consent of the parents or the guardian of the minor, as the case may be, it shall not be deemed to be an offence under this Act.*

One of the most debated issues of the special provision, apart from creating an exception to the minimum age requirement, was the absence of any requirement to obtain the consent of the concerned minor.<sup>102</sup> Many countries have taken a conscious position not to allow any third party, be it parents or the court to take a critical lifelong decision on behalf of the girl.<sup>103</sup>

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<sup>98</sup> Shahnaz Huda, The Concept of Consent In Muslim Marriage Contracts: Implications for Women in Bangladesh, 2005, The Dhaka University Studies, Part-F Vol. XVI (2): 41-70.

<sup>99</sup> Responses from the KILs representing civil society organisations.

<sup>100</sup> The Annual Report of the Girls Not Brides Bangladesh of 2017, indicated some broad areas where recommendations were suggested during the drafting of the Rules. However, details of those proposals could not be gathered from the available sources.

<sup>101</sup> Responses from the KILs representing civil society organisations

<sup>102</sup> As expressed by the KIL participants representing an INGO and legal service organisation.

<sup>103</sup> Care Bangladesh, Analysis of Laws on Child Marriage in South Asian Countries, available at [https://carebangladesh.org/Final\\_Brief.pdf](https://carebangladesh.org/Final_Brief.pdf).

In the cultural context of Bangladesh, more considerations ought to be given on ways in which a girl's full, free, informed and non-coerced consent can be ensured.<sup>104</sup> It was, as such, important to specify the requirement of obtaining full informed consent of the minor involved in the potential marriage. The Act in section 19 and also the Rules of 2018 does not mention the requirement or the procedure for obtaining the consent of the minor in an application seeking exemption under the special provision.

Secondly, although the Act and the Rules mention about 'best interest of the child' to assess the application under the special provision, the Rules does not give any detail or comprehensive criteria for the 'assessment committee' (set up under the Rules) or the court to determine the best interest of the child. Not only a detailed, non-exhaustive criteria to determine best interest was absent, the Rules also do not provide details of the investigation procedure that the members of the assessment committee are required to undertake (i.e. including in-person investigation/inquiry to objectively analyse the special situation of the minor). Without such specification of how the best interest of the child will be assessed the Rules remain unclear and leave scope for abuse of authority and erroneous findings.

The most crucial lacking in the special provision is the failure to specify any minimum age limit below which the court will not grant the permission. The Rules also remained silent on such minimum age. As it stands at present, it is upon the discretion of the court to allow permission for a minor girl of any age limit. Moreover, at present, the assessment committee under the special provision is mostly comprised of local administrative officials and local government representatives. Whereas, in assessing the welfare of a child, it was crucial to include members with expertise on gender and rights-related issues.

Importantly, although section 19 mentions about the 'special circumstances' and stated that such special circumstances will be prescribed by Rules, the corresponding Rule 17(1) does not define or specify the 'special circumstances' subject to which, any application can be made under section 19. Rather, the Rules merely mentions that such applications under section 19 can be made in 'cases as applicable'. Indeed, the wording of the Rule alters the legislative intent behind section 19 and extends the ambit of allowing the parties to approach the court in any situation. This effectively makes the requirement of 'special circumstances' redundant. The plain and ordinary meaning of section 19 was that only in 'special circumstances', court would proceed to do the assessment when all the other conditions had been satisfied. The intention of the section, as it appears from a plain reading, was not to create a generic best interest exception subject to court and parental consent, rather it was to proceed only if special circumstances would arise. Otherwise, a father who is marrying off his minor daughter because of an extreme financial crisis (as an example) can also be a valid ground to approach the court under the special provision. Whereas, failure to provide basic needs or lack of social security, etc. are to be attributed to the state and such failure of the State cannot be an excuse in compromising a child to a marriage. The special clause and the rules, however, have kept this option open.

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<sup>104</sup> *ibid*

The proviso contained in Rule 17(3)(c), however, provides a list of three events where the assessment committee should recommend the court to reject the application under section 19. This is rather a list of events describing when not to permit the application, rather than mentioning the specific events on the happening of which such application can be allowed. The approach taken in the Rule is completely against the express words used in the Act leaving the scope for application expansive rather than restrictive. Moreover, some of the wordings of the three events given in Rule 17(3)(c) are such that it contemplates marriages that had already taken place. However, section 19 is clear in terms of covering only applications that seek permission prior to contracting the marriage without being subjected to criminal sanctions. The use of such contradictory wordings may lead to applications being sent for assessment after the marriage has already taken place. This would make the entire provision superfluous and create scope for legal validation of unauthorized marriages.

Under section 19, not only the 'special circumstances' are required to be prescribed by the Rules, the detailed procedures of solemnisation of a marriage that has been approved by the court also need to be prescribed. However, the Rules do not provide any such procedure and as such it does leave the special provision practically inoperative in the absence of such rules.<sup>105</sup>

Additionally, where a party seeks permission under the special provision for solemnising a child marriage, the assessment committee is required under Rule 17 to recommend against such marriage if there is an allegation of rape, force, or kidnapping. However, such recommendations are not to be 'mandatorily' considered by the court in coming to a decision under the special provision, and even if a case is ongoing regarding rape, etc., the court has the discretion to allow the child marriage.

### **3.5 'Court' is undefined in the CMRA and Rules**

The CMRA criminalizes various persons engaging in a child marriage under various provisions. The Act provides that such offences are cognizable, bailable, and non-compoundable<sup>106</sup> and trial of the offences would be under Chapter XXII of the Code of Criminal Procedure 1898 (CrPC) which describes the procedure for summary trials.<sup>107</sup> Thus as per the CrPC, the offences under the Act are triable by the Courts of Magistrates.<sup>108</sup>

However, the Act envisages two roles by the courts, which are not within the power of magistrates under the CrPC. Firstly, section 5 contemplates that a court may issue an injunction against a child marriage; without specifically mentioning which 'court' would have the jurisdiction to issue such injunction. The Rules are also silent on the issue. An injunction is an equitable relief, which has its statutory basis under section 5 and 52 of the Specific Relief Act 1877.

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<sup>105</sup> KII response of the Supreme Court lawyer

<sup>106</sup> Section 14 of the CMRA

<sup>107</sup> Section 15 of the CMRA

<sup>108</sup> Vide section 29, 260 and Schedule II of the CrPC.



# CALL FOR LAW REFORM

A young woman with dark hair, wearing a vibrant red headscarf with a lace-like pattern at the top, is looking out from a wooden frame. Her hands are resting on the wooden ledge. The background is a dark, industrial-looking structure with wooden beams and corrugated metal.

“THE INJUNCTIVE  
RELIEF CONTEMPLATED  
BY BOTH THE 1929, AND  
THE 2017 CMRA HAD  
ALMOST NEVER BEEN  
UTILIZED.”



The Specific Relief Act enjoins that injunction can be granted only in a civil suit, and the procedure in the matter of granting the temporary injunction is regulated by the Code of Civil Procedure 1908 (CPC). A court of magistrate exercising criminal jurisdiction under the CrPC is thus not competent to issue an injunction, unless there is express authorization in the Act.

A plain reading of the CMRA does not lead to the conclusion that a magistrate adjudicating under CrPC can assume the powers of civil court in issuing injunction and thus creates confusion among the lawyers and judges in terms of how the relief should be granted. The judicial magistrates interviewed for the study had also focused on this crucial loophole. The judges had also shared their view that it was extremely uncommon to receive any complaint under the provision where the court is authorized to issue an injunction against a child marriage. Lack of accessibility to formal courts together with less knowledge about this relief (among the lawyers, judges, and litigants) had been pointed out by another interviewee as the reason for such low usage of the provision.<sup>109</sup> Thus the general assumption of some of the interviewees was that - the injunctive relief contemplated by both the 1929, and the 2017 CMRA had almost never been utilized.<sup>110</sup> However, there is also no accessible data or case record, which can validate this assumption.

The same confusion arises with regard to section 19 of the CMRA (the special provision) that contemplates that a 'court' would assess the best interest of the child in order to allow a child marriage. The general role that the court is expected under the provision is to assess the best interest of the child upon scrutinizing the report of the assessment committee. In general, such a role is uncommon for a court, exercising jurisdiction over criminal matters, and the absence of specifying the jurisdiction again creates a legal vacuum. One of the District Court Judges interviewed for the purpose of this study, had in fact highlighted this confusion created in the CMRA. He shared that there were two instances in the past one year where he had advised some of the Family Court judges<sup>111</sup> to accept a petition under section 19 of the CMRA on being approached by parties. The interviewee was of the view that since there was no express exclusion, civil courts might assume jurisdiction of a matter, which is purely civil in nature. However, such a crucial aspect of the provision cannot remain open for interpretation on an ad-hoc basis.

### **3.6 Lack of clarity in the jurisdiction exercised by the Mobile Courts**

Another such procedural issue is the exercise of jurisdiction by the Mobile Courts<sup>112</sup> contemplated in section 17 of the CMRA. Mobile courts are meant to immediately take cognizance of certain offences on the spot and award limited penal sanction including fine and imprisonment. Under the Mobile Court Act, executive magistrates can run the mobile court drives. Section 17 of the CMRA reads as follows:

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<sup>109</sup> KII response from participant representing an NGO.

<sup>110</sup> KII responses from NGO representative, Judicial Magistrates and lawyers.

<sup>111</sup> all Assistant Judges preside over the Family Courts via Family Courts Ordinance 1985

<sup>112</sup> Under the Mobile Court Act, 2009

*Notwithstanding anything contained in any other law for the time being in force, the Mobile Court may impose a penalty for the offences committed under this Act, subject to inclusion of this Act in the Schedule of the Mobile Court Act, 2009 (Act No. LIX of 2009).*

As the wordings of section 17 of CMRA clearly state, the Mobile Courts can impose a penalty for the offences committed under the CMRA. However, the Schedule to the Mobile Court Act includes some specific provisions of the CMRA within its jurisdiction, which are sections 5, 6, 7, 8, 9, and 11.<sup>113</sup> As such section 5 of the CMRA, which empowers courts to issue an injunction against child marriage, also becomes applicable for Mobile Courts. However, as discussed above, it is unclear as to what procedure the mobile courts would follow in terms of issuing an injunction, which is different from awarding penal sanctions to convicted persons.

Moreover, the Schedule of the Mobile Court Act does not include section 10 of the CMRA, which allows exemption of an accused from the offence upon signing of a bond or an affidavit. As per several interviewees, this is a practice that is exercised by the executive magistrates relatively commonly while operating Mobile Court under the CMRA.<sup>114</sup> Additionally, the prescribed forms attached to the Child Marriage Restraint Rules 2018, (to be used for recording case information by child marriage prevention committees at various levels), also include a column requiring to record 'the number of cases that have been disposed of by the Mobile Courts, by way of accepting bonds or affidavit from the accused'.<sup>115</sup> This is again an anomaly where the Mobile Courts are expected to exercise a role that is not within their given jurisdiction under the law.

### **3.7 Accused can be released on bond**

As discussed above, under section 10 of the CMRA, an accused person may submit an affidavit or bond (before the solemnisation of the marriage) stating that he shall not be involved in a child marriage in the future and shall take initiatives to prevent child marriage in his locality - in which case the court may exempt him from the charge. Although the Rules 2018 had provided some details about this provision<sup>116</sup> and had prescribed a form to collect information about such bonds,<sup>117</sup> the Rules do not provide any details as to how his participation in child marriage preventive initiatives can be monitored to ensure accountability for future violations.

Moreover, since the release on bond is allowed as an alternative to penal sanction, some amount of compensation or fine could've been incorporated to discourage the practice. In addition, the bond or affidavit does not include conditions for the return of any valuables that the accused might have received in connection to the proposed marriage. Thus, the law's ability to deter solemnisation of child marriages through

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<sup>113</sup> As per clause 17 of the Schedule to the Mobile Court Act, 2009,

<sup>114</sup> KII response of the NGO representative, UNO, youth activist and a Judicial Magistrate.

<sup>115</sup> See for example, Form -B of Schedule I to the Child Marriage Restraint Rules 2018.

<sup>116</sup> Rule 16 of the Rules 2018.

<sup>117</sup> Schedule 4,5 of the Rules 2018

criminal prosecutions may be undermined by this provision.<sup>118</sup>

### **3.8 Issuance of injunction is discretionary**

As discussed previously, under section 5 of the CMRA, courts are empowered to issue injunctions against child marriages. However, the provision makes it discretionary and not mandatory. Thus the court may reject an application seeking an injunction under this section, even on being satisfied that a child marriage is going to be solemnised. Given that the CMRA already provides an exception under section 19 where parties can apply for a permission of a child marriage in special circumstances, the issuing of injunctions could be made mandatory for stricter implementation of the law. Also, there is no such provision in the CMRA, which gives authority to the court with regard to ordering the return of any valuables, which may have been given by way of gift from the aggrieved party to the convicted party in connection to the marriage.

### **3.9 Penalty for minors involved in the marriage**

The Act in section 7(2) imposes a penalty for minors for contracting child marriage. It prescribes for detention for the minors, which may extend to one month and a fine, which may extend to fifty thousand Taka. However, in several places in CMRA and its 2018 Rules, the law refers to the minor involved in a child marriage, as a 'victim' or 'aggrieved person'. Thus the law creates contradictions by imposing criminal sanctions upon the victims whose interests it wished to protect. Considering that this law is aimed at securing the best interest of a child, a penal provision for minor victims of child marriages is against the spirit of the law.

### **3.10 Inadequate period of limitations**

Under section 18 of the CMRA, A complaint of an offence must be made within two years from the date on which it is alleged to have been committed. This is too short a time limitation, since in many instances girls may not be able to bring a complaint to the police or court within two years of the offence due to obstacles in accessing justice.<sup>119</sup> The short time frame provided to bring a complaint is likely to mean that many violations of the law will go unpunished.<sup>120</sup>

### **3.11 Lack of procedure for the realisation of compensation**

The CMRA in section 13 makes provision for payment of compensation to the aggrieved minor from the fine realized from the offender under the Act. However, the Rules did not make further provisions regarding the details of the mode of payment of compensation to the victim. Besides, it is not clear as to what would be the position in terms of compensation when the minor her/himself is punished under section 7(2).

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<sup>118</sup> Center 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)

<sup>119</sup> *ibid*

<sup>120</sup> *ibid*

### 3.12 Absence of provisions protecting persons acting in good faith

The CMRA also does not adequately address provisions with regard to ensuring protection from legal proceedings for persons acting in good faith under the law. For instance, in Section 6 of the CMRA, punishment up to 6 months imprisonment is prescribed for making a false complaint. However, this provision does not include protection for persons making the complaint in good faith. Also, there is no such mention in the provision that a case having been disproved would not necessarily lead to the conclusion of the falsity of the complaints. Such penal sanction and lack of safeguards from legal proceedings may deter a good Samaritan from taking actions to prevent child marriage. Similarly, government officials or the local government representatives empowered to take actions under section 4 of the Act are not given any safeguard from legal proceedings for actions taken in good faith.

### 3.13 Lack of provision for social and legal assistance for victims

The CMRA and the Rules are largely focused on the prevention of child marriage through prosecution, injunction, and interventions. However, there is a lack of attention on services or alternative care facilities for girls attempting to leave a child marriage, nor does it refer to the availability of counseling and medical services for victims.<sup>121</sup> Further, there are no provisions in the CMRA that provide for services to build the livelihood skills of victims of child marriage or domestic violence.<sup>122</sup>

### 3.14 Non-criminalization of Marital rape

The current legal regime that defines and proscribes rape and other sexual offences, consists mainly of two legislations - the Penal Code of 1860 enacted during the British colonial regime, and the Women and Children Repression Prevention Act 2000 ('WCRPA'),<sup>123</sup> a special statute enacted as a response to the increasing violence against women and children.<sup>124</sup>

The definition of 'rape' given by the Penal Code in section 375 is one, which was formulated, back in the colonial time and till now our criminal justice system has defined rape as such without much changes. The new law, WCRPA of 2000, adopts the same definition given in the Penal Code,<sup>125</sup> although it prescribes stringent punishments up to the death penalty for rape followed by murder, custodial rape, and gang rape.<sup>126</sup>

One of the most challenging gaps in the existing definition of rape is that forcible intercourse with a girl child who is 13 years or above, has not been criminalized as rape when the child is married to the perpetrator.

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<sup>121</sup> ibid

<sup>122</sup> ibid

<sup>123</sup> Nari-o-Shishu Nirjatan Daman Ain, 2000 (in Bengali).

<sup>124</sup> Domestic Violence (Prevention and Protection) Act, 2010, section 2.

<sup>125</sup> Section 2 of WCRPA.

<sup>126</sup> WCRPA section 9.



Although the WCRPA provides 16 years as the age for statutory rape<sup>127</sup> this has been 'severely weakened by the Penal Code's position'.<sup>128</sup> The WCRPA did not attempt to outlaw the colonial marital rape provision in the Penal Code, it rather reinforces the Penal Code's definition by clearly specifying in section 9 that the 16 year's age limit, below which any sexual intercourse would be considered as rape (irrespective of consent), will not apply to cases where Under section 18 of the CMRA the perpetrator is in a marital relation with the girl.

This position is particularly challenging as it is tacitly allowing child marriage leaving no legal redress for a potential child victim of rape. This is contradictory to Bangladesh's international commitment to protect the girl child from sexual exploitation, particularly its obligations to ensure the best interest of the child under the UN Child Rights Convention.<sup>129</sup> Such a provision also encourages the culture of forced marriage of a child rape victim with her perpetrator in order that the perpetrator can get away with the crime easily.<sup>130</sup>

### 3.15 Marriage registration is not legally mandatory for all

A functional system for marriage registration is an important tool for preventing child marriages. The marriage registration system in Bangladesh remains unreliable, in part due to the fact that legal mandates for marriage registration are not required for all religious communities.<sup>131</sup> The Muslim Marriages and Divorces (Registration) Act, 1974 requires registration of every marriage solemnised under Muslim law<sup>132</sup> and makes it a punishable offence to contravene the procedure for registration.<sup>133</sup> However, marriages are not invalidated by reason of failure to register the marriage.<sup>134</sup> Christians are also required to register their marriages under the Christian Marriage Act 1872, but like Muslim marriages, failure to register a marriage does not invalidate it.<sup>135</sup> The Hindu Marriage Registration Act 2012 also makes provision for registration of a Hindu marriage. However, such a requirement for registration is not mandatory as the Act declares that non-registration will not affect the validity of the marriage solemnised under Hindu customary laws.<sup>136</sup>

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<sup>127</sup> The age below which the act of sexual intercourse would amount to rape with or without consent of the minor.

<sup>128</sup> Lyal S. Sunga and Kawser Ahmed, A Critical Appraisal of Laws Relating to Sexual Offences in Bangladesh: A Study Commissioned by the National Human Rights Commission Bangladesh, (2015) pp.19-20.

<sup>129</sup> Taslima Yasmin (2017), Sexual Violence in Bangladesh: Addressing gaps in the Legal Framework Dhaka University Law Journal, Vol. 28, p.109.

<sup>130</sup> Shabina Begum, Ending Early and Forced Marriage: Bangladesh and UK Perspective (2016) <http://www.ohchr.org/Documents/Issues/Women/WRGS/Earlyforcedmarriage/SG/ShabinaBegum.pdf>.

<sup>131</sup> Avon Global Centre for Women and Justice (2013), Child Marriage in Bangladesh: Causes, Consequences and Legal Frameworks, 7-12, available at <https://www.ohchr.org/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/WomenAndJusticeFellow5.pdf>

<sup>132</sup> Section 3 of the Muslim Marriages and Divorces (Registration) Act 1974.

<sup>133</sup> Section 5 (4) of the Muslim Marriages and Divorces (Registration) Act 1974.

<sup>134</sup> Avon Global Centre for Women and Justice (2013), Child Marriage in Bangladesh: Causes, Consequences and Legal Frameworks, 7-12, available at <https://www.ohchr.org/Documents/Issues/Women/WRGS/ForcedMarriage/NGO/WomenAndJusticeFellow5.pdf>

<sup>135</sup> *ibid*

<sup>136</sup> Section 3 of The Hindu Marriage Registration Act 2012.

**“THERE IS NEGLIGIBLE  
KNOWLEDGE ABOUT  
THE DETAILED  
PENALTIES AND THE  
PERSONS WHO CAN  
BE PENALISED UNDER  
THE NEW LAW.”**

**CALL  
FOR  
LAW  
REFORM**



## 4. GAPS IN THE ENFORCEMENT OF THE LAWS ADDRESSING CHILD MARRIAGE

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Various structural, social, and cultural barriers impede the enforcement of the laws on prevention and prohibition of child marriage.<sup>137</sup> Apart from the inadequacies in the laws in ensuring effective protection, factors such as lack of awareness about the laws and procedures, poor functioning of the preventive mechanisms, absence of protection and support systems, allow the practice of child marriage to persist. This section highlights some of these gaps in the enforcement of laws - in particular of the CMRA 2017 and the Rules 2018. The findings are largely informed by the responses of the interviewees of the study, as well as by the relevant literature.

### 4.1 Lack of legal awareness

Lack of knowledge and understanding about the full scheme of child marriage prevention and prohibition related laws is considered to be one of the major barriers in the implementation of the law.<sup>138</sup> Although there is limited data regarding the level of knowledge about the laws among the community members, a Plan Bangladesh research finds that among the community members, including both children and adults, there is 'widespread awareness about the legal age of marriage' (i.e 18 years) and about the fact that child marriages can be penalised.<sup>139</sup> However, there is negligible knowledge about the detailed penalties and the persons who can be penalised under the new law.<sup>140</sup> Given the fact the current CMRA is relatively new, new findings are essential measuring the level of knowledge about child marriage related laws.

The government authorities and enforcement agencies also lack sufficient knowledge regarding the CMRA and its Rules.<sup>141</sup> A recent study concluded that local government officers, concerned local administrators, kazis (marriage registrars), police officers, and even district commissioners lack knowledge about provisions offered by the new law and its specific sections.<sup>142</sup>

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<sup>137</sup> Center 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)

<sup>138</sup> KII response from Judges, lawyers, local administration officials and NGO.

<sup>139</sup> Plan Bangladesh (June 2013) Child Marriage In Bangladesh, available at <https://plan-international.org/publications/child-marriage-in-bangladesh>

<sup>140</sup> Ibid

<sup>141</sup> Majority of KII participants expressed their concern over this issue.

<sup>142</sup> Oxfam, Preventing Child, Early and Forced Marriage in Bangladesh: Understanding socio-economic drivers and legislative gaps, available at <https://oxfamilibrary.openrepository.com/handle/10546/620881>

## 4.2 Inefficiency of the duty bearers

Inefficiency and corruption on the part of local government representatives, local administrative officials, and law enforcement authorities had been suggested by a number of interviewees of the study, as a reason for poor enforcement of the law.<sup>143</sup> In areas where the local administrative officers were proactive in preventing child marriages, it appeared that child marriages could be strictly monitored and controlled. However, in many cases, the government agencies that are expected to take action to prevent child marriages remain inactive which ultimately leads to the non-implementation of the laws. There is a lack of understanding and sensitivity around the harmful socio-economic impact of child marriages and the need to prevent such practices among the duty bearers. One of the KII respondents<sup>144</sup> was of the view that social acceptance of child marriage as a norm also contributes to discouraging the local government and law enforcement agencies from taking action against such practice.<sup>145</sup>

## 4.3 Weak implementation of the birth registration system

Improving the birth registration scenario is crucial to the successful implementation of child marriage related laws. Despite progress in this area,<sup>146</sup> there is a large gap between access and utilization of the service for birth registration in Bangladesh.<sup>147</sup> Data from UNICEF says only 37 per cent of children below age five are registered. As a result, 10 million Bangladeshi children below the age of five do not exist officially.<sup>148</sup> There is still a lack of knowledge on how to register a child especially among women and adolescent mothers who also lack access to such information.<sup>149</sup> According to UNICEF, Only three out of five mothers of unregistered children report being aware of the service.<sup>150</sup>

## 4.4 Lack of consequences for providing forged birth certificate

A number of interviewees had expressed their concern over the issuing of fake birth certificates by the local government officials in return for bribes offered by parties intending to contract a child marriage.<sup>151</sup>

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<sup>143</sup> KII participant from NGO, academic and lawyers

<sup>144</sup> KII participant representing an NGO

<sup>145</sup> Oxfam, Preventing Child, Early and Forced Marriage in Bangladesh: Understanding socio-economic drivers and legislative gaps, available at <https://oxfamilibrary.openrepository.com/handle/10546/620881>

<sup>146</sup> Plan Bangladesh (June 2013) Child Marriage In Bangladesh, available at <https://plan-international.org/publications/child-marriage-in-bangladesh>

<sup>147</sup> <https://www.unicef.org/bangladesh/en/timely-and-accessible-birth-registration>

<sup>148</sup> *ibid*

<sup>149</sup> KII responses from participants representing UN agencies; also see, <https://www.unicef.org/bangladesh/en/timely-and-accessible-birth-registration>

<sup>150</sup> <https://www.unicef.org/bangladesh/en/timely-and-accessible-birth-registration>

<sup>151</sup> KII response from UN agency and NGO



There had also been a number of studies showing similar findings.<sup>152</sup> Added to this, is the lack of a mechanism to strictly monitor the irregularities and take effective punitive action against the issuing of forged certificates. For the child marriage prevention efforts to be successful, it is essential that all such malpractices be curbed nationwide.

#### 4.5 The practice of marriage by affidavit

A number of interviewees of the study had highlighted particularly this practice of a 'court marriage' where an affidavit is issued by a notary public to the effect that a marriage has been contracted. This is an illegal practice developed to circumvent the legal requirement of registration of marriage when either party is a minor. Research highlights that the parties to the marriage often believe this to be a legal alternative of registering the marriage through a Kazi.<sup>153</sup> In 2015, the Governance Innovation Unit of the Prime Minister's Office had issued a circular directing all notary public to refrain from such illegal issuance of affidavits. The circular had also directed all concerned district judges, deputy commissioners, and local bar associations to take effective steps to prevent such practices.<sup>154</sup>

#### 4.6 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.<sup>155</sup> However, there had been occasional news reports (although very rarely) about prosecution under the CMRA 1929.<sup>156</sup> Some of the KII respondents also recalled that over the years there had been few prosecutions under the CMRA 1929.

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<sup>152</sup> Shabina Begum, 'Ending Early and Forced Marriage: Bangladesh and UK Perspective' 5-6 (2016), available at [http://www.ohchr.org/Documents/Issues/Women/WRGS/Earlyforced-marriage/NGOs\\_Individuals/ShabinaBegum.pdf](http://www.ohchr.org/Documents/Issues/Women/WRGS/Earlyforced-marriage/NGOs_Individuals/ShabinaBegum.pdf) ; Human Rights Watch, *Marry Before Your House is Swept Away: Child Marriage in Bangladesh*, 2015; available at <https://www.hrw.org/report/2015/06/09/marry-your-house-swept-away/child-marriage-bangladesh>; om/handle/10546/620881

<sup>153</sup> Human Rights Watch, *Marry Before Your House is Swept Away: Child Marriage in Bangladesh*, 2015; available at <https://www.hrw.org/report/2015/06/09/marry-your-house-swept-away/child-marriage-bangladesh>;

<sup>154</sup> the circular is attached in Annexure- ...

<sup>155</sup> Centre for Reproductive Rights, Submission to Committee on the Rights of the Child Re: Supplementary information on Bangladesh, scheduled for review by the Committee on the Rights of the Child during its Pre-sessional working group, 4 (2014); cited in Center 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)

<sup>156</sup> Three girls rescued from potential child marriages, parents sentenced under the CMRA. [They Were Saved From Child Marriage], THE DAILY PROTHOM ALO (August 26, 2016), available at <http://www.prothom-alo.com/bangladesh/article/958480/> evj"weevn-t\_#K-i¶v-tcj-Zviv

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.<sup>157</sup>

There is also a lack of data on the number of prosecution of persons under the 1929 CMRA, creating a significant barrier for assessing the impact of the legislation and efficacy of the government efforts in addressing the problems of child marriage under the previous law.<sup>158</sup> 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.

#### **4.7 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 Officer (UNO) interviewed for the study shared that in such interventions usually it appeared that the bride's family was extremely poor and marrying off the child was the last resort of survival. In such cases, the intervening officers 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).

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<sup>157</sup> The child marriage of a young footballer has been stopped by the Deputy Commissioner of Faridpur District; Published in Tarunner Barta, on June 29 2020, available at [https://www.tarunnerbarta.com/2020/06/blog-post\\_29.html?m=1](https://www.tarunnerbarta.com/2020/06/blog-post_29.html?m=1)

<sup>158</sup> Center for Reproductive Rights, Supplementary information on the Bangladesh, scheduled for review by the Committee on the Elimination of Discrimination against Women during its 65th session October 3, 2016, available at [https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BGD/INT\\_CEDAW\\_NGO\\_BGD\\_25422\\_E.pdf](https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BGD/INT_CEDAW_NGO_BGD_25422_E.pdf)

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 counseling 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.

#### **4.8 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.<sup>159</sup> Further, these shelters are not specifically intended for married girls and so do not necessarily have the facilities and counseling 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.<sup>160</sup>

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.<sup>161</sup>

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<sup>159</sup> Special Rapporteur on contemporary forms of slavery, including its causes and consequences, Thematic report on servile marriage, para. 14-17, U.N. Doc. A/HRC/21/41 (July 10, 2012); cited in Center 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)

<sup>160</sup> *ibid.*

<sup>161</sup> CEDAW Committee, Concluding Observations: Bangladesh, para. 12, U.N. Doc. CEDAW/C/BGD/CO/8 (2016).



# CALL FOR LAW REFORM

**“THE CMRA SHOULD CLEARLY SPECIFY THAT WITH EVERY SUCH DECREE OF ANNULMENT, THE COURT SHOULD AWARD AN ADEQUATE COMPENSATION TO THE MINOR, TO BE PAID BY THE ADULT PARTY OF THE MARRIAGE.”**



## 5. CONCLUSION AND RECOMMENDATIONS

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Although after several decades, the CMRA 1929 was repealed to give way to a new legal regime, the current legal framework addressing child marriage is still clogged with several ambiguities. The gaps in the enforcement of the laws also remain equally challenging. Nevertheless, the CMRA 2017 and its Rules have introduced a number of new provisions with a greater focus on the prevention of child marriages and stronger provisions to take strict actions against persons initiating child marriages. Prevention committees are set up at different levels of administration and the government has formulated a thorough national action plan to prevent child marriages. However, in order to achieve the desired goal for eliminating child marriage, it is undeniable that the legal framework should be capable to carry out the ambitions and goals set out in the action plan.

At the same time, introducing reforms in legislation and formulating new policies and strategies will not suffice unless the promises made in the letters of law are enforced effectively in reality. Also important to note that reforming the laws and policies and strengthening their implementation is one of the several components that are required to be addressed in a comprehensive mechanism for effective prevention of child marriage. Components such as education, health, economic opportunity and empowerment, social security, breaking the patriarchal cycle, strong political will, etc., are all essential for a successful and cohesive prevention effort against child marriage.

The challenges towards eliminating the deep-rooted socio-cultural practice of child marriage are as such difficult and demanding. Added to this, is the unprecedented crisis that the current pandemic has given rise to. There are several research and study findings that endorse the risk of a substantive increase in harmful practices such as child marriage in times of hardship and crisis.<sup>162</sup> While many efforts have been made over the years to end child marriage, it is evident that continued actions and investments are urgently required in the context of COVID-19.<sup>163</sup>

In light of the above comprehensive analysis reviewing the CMRA 2017 and its Rules 2018, the following section proposes a number of key recommendations to reform the current law restraining child marriage. Although the study aims at proposing recommendations to bring changes in CMRA and the Rules only, some of the recommendations are also informed by the lacunas in the enforcement of the laws as revealed in the study findings.

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<sup>162</sup> <https://bangladesh.unfpa.org/en/news/unfpa-population-report-highlights-need-urgent-accelerated-action-stop-child-marriage-and-son>

<sup>163</sup> *ibid*

## 5.1 PROPOSAL FOR REFORMS IN THE CMRA AND THE RULES

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Based on the legal analysis, the following reforms are proposed-

- ✓ The minimum age of marriage for both men and women should be made 18 years.
- ✓ The CMRA should exclude the minor party from being penalised for contracting child marriage. Instead, the Rules may, in appropriate cases provide provisions for engaging the minor in the local child marriage prevention-related initiatives and also ensure psychosocial counseling.
- ✓ The CMRA should include that a child marriage is voidable at the option of the minor. Thus, when despite the law, any child marriage does take place; the minor party should be given an option to apply to the appropriate court (to be clearly specified in the Rules) to get a decree of annulment of the marriage. The CMRA should clearly specify that with every such decree of annulment, the court should award an adequate compensation to the minor, to be paid by the adult party of the marriage. The CMRA should specify that such an option of annulment could be exercised anytime from the date of marriage until the minor party reaches a certain age after the majority (preferably till 22 years). The Rules should include a non-exhaustive list of considerations, which the court would take into account in determining the amount of compensation, together with other procedural details for such an application.
- ✓ Section 19 of the CMRA should clearly specify the requirement to obtain free and full consent of the minor concerned when applying under the 'special provision'. The Rules should specify the mode and procedure for obtaining such consent and include assessment criteria to determine that the consent is obtained without any coercion or undue influence.
- ✓ The 'special provision' under section 19 of the CMRA should specify a minimum age (preferably 16) below which a court cannot grant permission in any given circumstances.
- ✓ The CMRA should include that permission granted by the court under section 19 would not be operative, unless it receives a further written confirmation from the Supreme Court of Bangladesh. Procedure for obtaining such written approval can be formulated after due consultation with the Registrar General of the Supreme Court and should be included in the Rules.
- ✓ The Rules should provide a list of alternative orders that a court can issue to protect the interest of the concerned minor when the application under section 19 gets rejected (either on the ground of the minor being below the specified minimum age or because the other conditions of the provisions are not fulfilled).

- ✓ Under Rule 17 (corresponding to section 19 of CMRA), a comprehensive, non-exhaustive criteria should be included to determine the 'best interest of a child'. The Rules should include detailed procedures of investigation for the 'assessment committee' under Rule 17, to determine the best interest of the child. Such an investigation procedure should include in-person visits to the child's place of residence and interviews with the family members, neighbors, local influential persons of the community, and the minor's school authority.
- ✓ The formation of the Assessment Committee under Rule 17(3) should be restructured to include representatives of local NGOs working in the area of child rights and any other individual having expertise in child rights, child psychology, gender studies, etc. The Rules should specify that there should be an equal number of women members in the assessment committee.
- ✓ The Rules should specify clearly the 'special circumstances' in the occurrence of which applications seeking to allow child marriage may be made to the court. Circumstances such as economic insolvency of the father, or lack of options for subsistence for an orphan minor or lack of accommodation or social security, etc. cannot be made a ground to allow the application under section 19. In such cases, the Rules should mention what alternative welfare orders a court may issue to protect the minor's interest.
- ✓ All wordings in the Rules that may indicate that a child marriage that is already solemnised can come within the purview of the 'special provision', should be amended. The wordings should be such that clearly indicate that the Rules are only meant to be applied for applications that are seeking permission to solemnise a marriage under the special provision.
- ✓ The Rules should provide a detailed procedure of how a marriage will be solemnised once the application under section 19 has been allowed.
- ✓ The CMRA should specify particular events (including the allegation of rape, sexual assault, sexual harassment, kidnapping, force, etc.) on the presence of which the court will not grant permission under section 19 at any circumstances.
- ✓ The CMRA and the Rules should specify which court should have the jurisdiction to receive an application under section 19, as well as the procedure for disposing of such application. Considering the nature of the application, it is preferable that the Family Courts are given jurisdiction to receive such application.
- ✓ The CMRA should specify which 'court' would have jurisdiction to issue an injunction under section 5 and the procedure to be followed.
- ✓ The CMRA should clarify the jurisdiction of the Mobile Courts in exercising authority under the Act. The Rules should specify the procedure for the Mobile Courts in exercising authority under the CMRA.

- ✓ The provision allowing the release of an accused on bond or affidavit, as provided in section 10 of the CMRA, is recommended to be deleted. Alternatively, if the provision is not omitted, the CMRA should clearly specify that the bond has to be accompanied by payment of compensation which will be made available to the minor party of the child marriage. Also, provision has to be made in the CMRA and in the Rules regarding the return of any money or valuables that may have been obtained by the accused in connection with the proposed marriage. The Rules should also provide procedures that would ensure monitoring and follow-up of the accused so released and of the conditions in the bond based on which the accused was released.
- ✓ The issuance of an injunction under section 5 of the CMRA should be made mandatory once the court is satisfied that a child marriage is about to be solemnised.
- ✓ The Rules should specify the detailed protocol for intervening in a child marriage by the local administration officials, police, or local government representatives.
- ✓ The CMRA should make provision with regard to establishing an independent fund for rescue, rehabilitation, legal aid, medical treatment, psychosocial counseling, etc. of the victims of child marriage. The fund should also include expenditures associated with intervening child marriages.
- ✓ Under section 18, the limitation period for filing a case under the CMRA should be increased to 6 years.
- ✓ The Rules should specify procedures for the realisation of the compensation awarded under section 13 of the CMRA.
- ✓ The CMRA should make specific provisions for shelter and protection home for victims of child marriage or for victims escaping child marriage.
- ✓ The Penal Code should be amended to remove the provision that allows the rape of a minor girl by her husband. Any minor under 18 years of age should be allowed to bring charges of rape under the Women and Children Repression Prevention Tribunal.



## 5.2 Impact of COVID-19 on the enforcement efforts of the CMRA and proposal for a national strategy to mitigate the risk of an increase in child marriage during the pandemic

Several of the interviewees had expressed deep concern over the lack of focus on the existing protection and referral systems for women and children victims of violence during the ongoing crisis. One of the interviewees mentioned that the national emergency response plans and strategies of the government do not pay attention to the risk of increased violence and harmful practices caused by the pandemic. It was also shared in one of the KII responses that lack of attention on women and children issues during the pandemic is evident from the fact that the inter-ministerial national level committee that had been set up to respond to the crisis does not include the Ministry of Women And Children Affairs.<sup>164</sup> A number of civil society representatives expressed the view that the government and law enforcement agencies assigned for child marriage related preventive actions remained largely inactive throughout the period of the crisis. The majority of the interviewees also agreed that it is mostly the civil society organisations alone that are raising voices against the increased risk of violence against girls and women during the crisis. There is also an absence of publicly accessible data as to the number of victims who have tried to reach the available referral systems during the crisis period. At the same time, because of crisis-related restrictions, the civil society organisations that usually provide services, including shelter and legal protection to victims of violence, have to limit their engagement as well.<sup>165</sup> As such, there is an apparent lack of initiatives at the national level to address the increased risk of violence and harmful practices against women and children during the crisis.

In the context of the COVID-19 crisis, it is crucial to initiate a large-scale consultation at the national level including all relevant ministries, civil society members, women and child rights groups, donors, and development partners to assess the risk of an increase in child marriages in Bangladesh. Such consultation may lead to assisting the government to draw a brief national strategy for various agencies for prevention and response to child marriage incidents during the crisis. At the same time, civil society organisations, networks, and rights groups may form a coalition to voice concerns relating to the lack of effective actions against child marriage during the pandemic and may act as a pressure group for the inclusion of focus on child marriage in the national COVID-19 related response strategies.

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<sup>164</sup> Also mentioned in Taslima Yasmin, [the fear of taking ten steps backward] published in the Daily Prothom Alo (15 July, 2020), available at <https://www.prothomalo.com/opinion/article/1669115/%E0%A6%E0%A7%81%E0%A6%87-%E0%A6%95%E0%A6%A6%E0%A6%AE-%E0%A6%8F%E0%A6%97%E0%A6%BF%E0%A7%9F%E0%A7%87-%E0%A6%A6%E0%A6%B6-%E0%A6%95%E0%A6%A6%E0%A6%AE-%E0%A6%AA%E0%A6%BF%E0%A6%9B%E0%A6%BF%E0%A7%9F%E0%A7%87-%E0%A6%AA%E0%A6%A1%E0%A6%BC%E0%A6%BE%E0%A6%B0-%E0%A6%86%E0%A6%B6%E0%A6%99%E0%A7%8D%E0%A6%95%E0%A6%BE>

<sup>165</sup> Taslima Yasmin, "Violence Against Women During Covid-19: Accepting the threat as 'real' is paramount" published in the Daily Star (July 25, 2020) available at <https://www.thedailystar.net/opinion/news/violence-against-women-during-covid-19-accepting-the-threat-real-paramount-1935633>

**“THE RULES SHOULD  
PROVIDE A DETAILED  
PROCEDURE OF HOW A  
MARRIAGE WILL BE  
SOLEMNISED ONCE THE  
APPLICATION UNDER  
SECTION 19 HAS BEEN  
ALLOWED.”**

**CALL  
FOR  
LAW  
REFORM**



# ANNEX-I

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## Questionnaire Guideline

1. Do you think the 2017 Child Marriage Restraint Act is an effective step towards preventing and eliminating child marriage from Bangladesh? If not then what in your views are the major drawbacks?
2. Please share your experience in engaging with the process of drafting the Act or its Rules. How far the Act and the Rules have met the expectation of the advocacy groups?
3. What in your opinion needs to be done to strengthen the implementation of the 2017 law and its Rules?
4. From your organisational experience, have you noticed any significant trend in child marriage issues during the current pandemic situation?
5. Do you think the referral services for preventing child marriages are functional during the pandemic? If not then what can be done to give greater access to services for vulnerable minor girls facing threat of child marriage?
6. Do you think the law or the rules, if implemented properly, could prove to be useful tools to mitigate the risk of child marriage during the pandemic?
7. What in your views are the major barriers in effective implementation of the laws addressing child marriage in Bangladesh? What can be done to overcome those barriers?
8. In lights of international law standards, what gaps do you see in the 2017 Act and its Rules? Do you think demanding law reform is a viable or effective advocacy option at this stage?

# ANNEX-II

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## List of Klls

1. Sara Hossain –Bangladesh Legal Aid and Services Trust
2. Nasima Akter Joly - National Girls Child Advocacy Forum
3. Habibur Rahman, Former coordinator for GNB Bangladesh
4. Laura Criado- Plan International Bangladesh.
5. Kashfia Feroz – Plan International Bangladesh
6. Shabnaaz Zahreen - UNICEF Bangladesh
7. Dr. Abul Hossain – Multi Sectoral Program on Violence Against Women, MoWCA
8. Aroma Dutta – Honorable Member of the Parliament
9. Rokeya Kabir – Bangladesh Nari Progati Shangha
10. Sohanur Rahman - grass root activist working against child marriage in the local community.
11. Judge, Nari o Shishu Nirjaton Daman Tribunal – (identity undisclosed)
12. Judicial Magistrates (identity undisclosed)
13. Deputy Joint District Judge, (identity undisclosed)
14. Imtiaz Farooq – Advocate, Supreme Court of Bangladesh
15. Sheikh Muhammad Morshed, Senior Advocate, Supreme Court of Bangladesh
16. Farida Yesmin, Former UNO, Barhatta, Netrokona
17. Sipra Goswami- Panel lawyer, Bangladesh Legal Aid and Services Trust, Faridpur
18. Nazrul Islam Chowdhury – Plan International Bangladesh



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Plan International Bangladesh  
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