



## The Risk of Legitimizing Early Marriage: Legal Loopholes in Bangladesh's Child Marriage Restraint Act 2017

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### ABSTRACTS

**Introduction:** The paper examines the threat of legitimizing child marriage by creating legal loopholes in the Child Marriage Restraint Act of 2017 in Bangladesh. The Act preserves the minimum legal age of marriage (18 years old in the case of girls, and 21 years old in the case of boys) as well as the exigency of punishment of child marriage, but rather controversially allows exceptions in unspecified special circumstances, with the consent of the parents and the court. **Method:** Based on secondary sources, policy analysis, and reports of NGOs, the present paper demonstrates that instead of preventing child marriage, the 2017 Act conforms to patriarchal values and increases gender inequality. **Result:** This paper stresses the view that the ambiguity has unintentionally opened among the forms of legitimization of underage marriage, especially with regard to girls who already encounter systemic disadvantages in health, education, and control. The absence of regulatory definitions, enforcement methods, and defense of the informants has resulted in a free-for-all situation in the rural areas. **Conclusion:** The paper suggests legislative revisions, increased monitoring, and community-based interventions so that legal loopholes can be sealed to prevent the early marriage of girls.

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## **1. INTRODUCTION**

Child marriage in the context of Bangladesh continues to be a prevalent and highly entrenched issue, which carries dire consequences on gender equality and universal health, along with inequities in socioeconomic development. Even though the government of Bangladesh has taken several decades building and enacting laws in the effort to minimize the vice, the practice stands as one of the highest in the world, with girls as the major target and the village and far-flung communities as the most affected in terms of child marriages (Kabir et al. 2019). The rate of child brides was close to 54 percent among the women in Bangladesh in the age group 20-24, who lived in towns, whereas the rate of child brides among rural women is found to be around 71 percent in Bangladesh (Mim 2017). According to various conventions, treaties, and international agreements, including the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women, the Universal Declaration of Human Rights, and recent resolutions of the UN Human Rights Council, child marriage is defined as any legal or customary union involving a boy or girl below the age of 18 (Parsons et al. 2015). In case somebody is obliged to marry under 18, this will be seen as a violation of human rights. The marriage age across the civilisations is different; however, in Bangladesh, both women and men can marry since the age of 18 and 21, respectively (Jisun 2016). In spite of an age of marriage set by law on both men and women, child marriage is still dominant in Bangladesh, particularly for women. Available literature finding shows that the rate of child marriage in Bangladesh is the highest in Southern Asia and one of the highest in the world (Chowdhury and Morium 2018). According to a UNICEF report, Bangladesh still has one of the highest proportions of child marriages (52 percent) in the world and the highest proportion of child marriages in girls under 15 (18 percent) (Lassi et al. 2016). The Demographic and Health Survey in 2014 estimated that Bangladesh had the fourth highest rate of the percentage of young women who were married below 18 years after Niger, the Central African Republic, and Chad. Furthermore, a quarter of younger Bangladesh women who are 20-24 years old had already been married prior to 15 years old (Akter et al. 2022). The prevalence of marriage of girls aged less than fifteen is the highest in Bangladesh (Akter et al. 2022). Child marriage in Bangladesh is a higher trend in the rural population, where 71 percent of girls marry before 18 years of age, whereas in 54 percent of urban areas (Chowdhury and Morium 2018). In another survey

of the rural Noakhali district, the prevalence of early marriage was above 80%, and one in five of them gave birth before they reached the age of 18 years (Kabir et al. 2019). Consequently, there was a need to bring the Child Marriage Restraint Act in Bangladesh so as to stop this vicious cycle.

The Child Marriage Restraint Act was introduced in 2017 by the Bangladeshi government in response to the national and international pressure to end underage marriage. This Act, however, has a controversial clause known as special circumstances during which the marriage of children is acceptable with the assent of parents and judges. This exception has also raised controversy in the sense that, rather than restraining child marriage, the law has inadvertently created a legal loophole favouring child marriage. With this situation, a question then comes to light: what effect does the Child Marriage Restraint Act 2017 have on the risk of legitimisation of child marriage in Bangladesh?

The study is unique not only in considering the abstract implications of a legislative framework, but also in the manner in which it questions the way legal ambiguity and socio-cultural norms combine to reproduce structural inequities in the case of girls in Bangladesh. The research not only critically evaluates the provision of the 2017 Act to assess whether the Act has helped reduce child marriage or has encouraged the same through a new nomenclature disguised in legality, but also does so through a detailed review of scholarly materials, legal documents, and NGO reports. The gist of the argument is that legislation on its own cannot substantially undermine the systemic conditions that precondition child marriage in the absence of enriched enforcement practices, clear definitions, and social and cultural restructuring. Rather, poorly framed laws may inadvertently perpetuate the very practices they are intended to eradicate. By so doing, this research helps to inform the wider discourse in the context of gender justice, legal reform, and also implementation of policies in Bangladesh. It emphasizes the idea that well-intended policies cannot be appropriately executed when it is framed outside of local contexts. This research hypothesizes that the Child Marriage Restraint Act (2017) has unintentionally created a legal loophole that legitimizes child marriage under the guise of "special circumstances." The absence of clear definitions and enforcement mechanisms has allowed families and local authorities to exploit this

provision, justifying underage marriages based on economic hardship, social pressure, or concerns about a girl's future.

## **2. METHODS**

This study adopted a qualitative secondary literature review approach to assess the effects of the Child Marriage Restraint Act (2017) in Bangladesh. A total of 10 scholarly sources were selected for in-depth review. These included peer-reviewed journal articles, policy briefs, government reports, and publications from national and international non-governmental organizations actively engaged in child marriage prevention. The selection process was guided by relevance, credibility, and recent publication dates (mainly between 2017 and 2024). The literature search was conducted using academic databases such as Google Scholar and JSTOR, as well as official websites of organizations working in this field.

## **3. RESULTS AND DISCUSSION**

### **3.1. Results**

### **3.2. The Counterproductive Impact of CMRA 2017**

The first attempt that the government of Bangladesh made to lower the rate of child marriage was during the British Colonial rule, when the Child Marriage Restraint Act of 1929 was introduced and the legal age of marriage was set to 18 years old in the case of a girl and 21 years old in the case of a boy. Under this act, imprisonment is offered as a penalty for child marriage, and the one imprisoned serves one month or a monetary reward of up to taka 1000 or a combination of the two (Jisun 2016). However, child marriage continued in the major areas of the nation in Bangladesh due to the absence of successful methods of enforcement (Datta and Hassan 2022). Having established high incidences of child marriage, particularly in rural and impoverished communities, the government aimed to beef up its legal system by proposing the Child Marriage Restraint Act of 2017. In the 2017 Act, the minimum legal marriage age of 18 years old for girls and 21 years old for boys was kept. Under the act, whoever is a party to the contract of child marriage will have to be subject to imprisonment that can go up to 2 (two) Years, or fine of up to 1 (one) Lakh Taka, or both, or, in case of failure to pay the specified fine amount, a maximum of 3 (three) Months imprisonment (The Child Marriage Restraint Act, 2017). This was a big step in terms of legal reaction, as it reflected a stronger governmental move toward the fight against child marriage. Nevertheless, the

inclusion of a so-called special provision, Section 19, in the Act has raised great controversy and criticism among activists, scholars, and child rights organizations. In this section, an important controversial clause granting exceptions to cases under special circumstances upon parental and judicial permission was also added (Biswas 2021). The 2017 act states that when a minor marriage is in the best interest or is deemed the best solution, then the case will be deemed legal. Yet, the legislation does not imply the definition of what is understood to be the best interest of the minor or to have a minimum age by which such a marriage can be allowed. Moreover, it establishes punishments for false reporting, which could also discourage individuals from reporting to the local authorities on the incidence of child marriages prior to their solemnization (Datta and Hassan 2022). This shift in law highlights an important paradox in child marriage policy in Bangladesh: the need to strike a balance between law enforcement and socio-cultural practice, and whether notions of the law that are unclear in their implementation are more accurately thought of as supporting the status quo of gender inequality that they are meant to enable in its destruction.

### **3.3. Discussion**

Despite the implementation of the Child Marriage Restraint Act 2017 to minimize the number of child marriages, research reveals that this policy did not work as intended. The primary cause of such failure is the so-called special case, which could not circumscribe the legal age of marriage. According to a study, child marriage does not decline when the new law is introduced in the sample group of 16-year-old girls (Datta and Hassan 2022). According to another study conducted recently, the number of child marriages in the country increased after the CMRA 2017 was adopted (Tumpa 2019). Research on child marriage causes reveals that increasing poverty, dowry system, and the issue of female chastity are the key factors that are impacting early marriage choice. As a Muslim majority country, there is also the idea that marriage is seen mainly as a method of gaining control of the bodily complexion of a daughter, establishing the future of the girl, and avoiding economic pressures. Moreover, the gender culture still limits the educational and economic prospects of girls at a young age, which cements the view that girls are better served by marriage. This has resulted in the loophole of the undefined special circumstances, which has enabled families to endorse child marriages regardless of defining them illegal due to the laws, and the cycle of gender-based discrimination is perpetuated, thus continuing to limit the freedom of girls (Arnab and Siraj

2020). A survey (conducted on parents/guardians of young daughters) showed that over 70 per cent of the field survey respondents thought that the special provision would rather enhance child marriage in the country as opposed to reducing it. One of the respondents in the research claimed that since no specific definition regarding the above-mentioned act is found in the current one, the poor individuals will simply find it easy to access the benefits in facilitating the legal marriages of their adolescent children by giving them an early start (Arnab and Siraj 2020, p. 31). In another study, conducted by Amrit Amirapu, M. Niaz Asadullah, and Zaki Wahhaj (2020), it was alluded to the fact that such a clause as special provision (Section 19) of the Child Marriage Restraint Act 2017 might have brought the law closer to the current patriarchal norms. This is consistent with the patriarchal practices and can justify these so-called cultural practices under the excuse that they are within the law, and this will reduce its radicalism of the law.

### **3.4 From Prevention to Permission: The Controversy Surrounding CMRA 2017**

Different scholarly and affluent individuals of Bangladesh have raised their concerns about this legal loophole. According to the Chairman of the National Human Rights Commission of Bangladesh, this act is mainly below standard since he says, "We all had begged that it would avoid child marriage, but now there are clauses to give away a ten-year-old boy in marital union" (Biswas 2017). In addition, this special provision of the CMRA 2017 has been criticized by various legal scholars, declaring that it does not align with international treaties and conventions regarding the promotion of the rights of women and children and other laws of Bangladesh (Shaon 2017). Biswas (2017, p. 126) observes an increment in child marriages in most parts of Bangladesh within the six months since the enactment of the CMRA 2017. The ambiguity has allowed the communities to disregard the legality of the law and hence embrace early marriage into the societal standards. Although it had initially aimed at reducing child marriages, ambiguity within the law has allowed communities to accept child marriages as an important component of their society. The 2017 Act has the potential to legalize child marriage by putting it under the guise of legality, as it lacks well-articulated parameters and well-reinforced mechanisms that guide it. Meanwhile, this special design provides mixed signals on the intentions of the state in safeguarding the rights of women.

### **3.5 The Enduring Risks of Child Marriage and the Undermining Effect of Legal Loopholes**

Past literature indicates that child marriage has the capacity to augment various forms of risks to the life of women, such as maternal and child mortality, conjugal assault, and financial reliance, and results in reinforcement of places of poverty and gender subjection. The loophole in the 2017 CMRA is going to make this situation more complex. Girls who get married at an early age tend to have low mobility, low authority to make choices, and increased susceptibility to intimate partner violence. The majority of the teen girls become pregnant right after their wedding, and death related to pregnancy is nearly doubled in women aged 15-19 compared to women aged 20-24 in Bangladesh (Zisun 2016). Child marriage is harmful to the physical health of young women and their children. The risk of sexually transmitted diseases (STDs), cervical cancer, malaria, and obstetric fistulas has increased (Nour 2006). Moreover, child marriage shortens the educational aspirations of women and, therefore, the level of literacy and employment chances of women declines. The extended social impacts are the poor economic growth, high rates of fertility, and vulnerability to the social support systems (Patoari 2020, p 167). Besides being an abuse of human rights, child marriage is a factor that diminishes the development of girls into adulthood, access to education, sound health, love relations with individuals of their age group, maturity, and eventually choose their life mates (Chowdhury and Morium 2018). Loss of school, friends, and workplace threatens to cut off their access to social support, which is key to their emotional well-being and restricts access to social capital and networks that can multiply their earning potential and productive utilization of earnings (Duflo 2011; Darmawati, 2024). Research shows that the major causes of child marriage in Bangladesh are poverty, lack of education, lack of awareness, economic and social status, and poor religious knowledge (Patoari 2020, p. 163). Even though the government is already doing much in terms of interventions, the exception given by the 2017 Act to child marriage under special circumstances defeats the aim of addressing the practice and exposes girls to the threats they are trying to avert, including health-related complications, loss of education, and gender-based violence. This exception practically makes early marriage acceptable, which only promotes the chain of poverty and gender inequality in Bangladesh.

### **3.6 Policy Recommendations**

In order to address child marriage in Bangladesh, the need to reform is imperative in terms of legal loopholes, structural factors, and cultural aspects that are deeply ingrained. The Child Marriage Restraint Act (2017) is to be amended so that the ambiguous clause of special circumstances would be clarified, and an absolute minimum age for any marriage would be introduced. In its absence, the legislation can continue to be exploited, especially by the families trying to justify early marriages with unclear reasons (Shukrana 2020). It is also vital to boost punishment systems. Marriage registrations must be done under the eye of independent monitoring bodies, especially in those places that clash frequently, such as in rural areas. The law enforcers and local representatives need to be provided with special training, and whistleblower protection needs to be established to stimulate the safe reporting of instances of child marriage (Arnab and Siraj 2020).

At the same time, the economic and social factors influencing the push factors of early marriage in families should be discussed. Giving awareness to the communities on the dangers of child marriage and the importance of girls' education can be done through schools, media, and religious leaders. The provision of financial support, including school stipends, scholarships, and vocational training, should be scaled up to decrease the financial reliance of parents on early marriage of their daughters (Patoari 2020, p. 170). Nevertheless, changes in laws and structure are not enough until one addresses cultural anticipations. Some societies also treat a girl as a family burden or a source of shame when she does not get married at a particular age. In order to change these norms, there is a need to employ elders, religious leaders, teachers, and the youth in community-based discussions. Replacing alternative role models and encouraging a positive idea of the feeling of independence in girls can change over time. For instance, Ethiopia's Berhane Hewan program successfully reduced child marriage by 90% in target areas by combining conditional cash transfers for girls' education with community dialogue—a replicable strategy for Bangladesh (Erulkar and Muthengi, 2009).

#### **4. CONCLUSION**

Not only has the legal loophole of CMRA 2017 been contributing to the growth in child marriage, but it has also put gender inequality, financial dependency, and weak health and education prospects at risk for girls as well. There needs to be a corrective amendment to the

Child Marriage Restraint Act (2017) to eliminate an illustrative clause of such ambiguity, as it anchors the awkward corner of the clause regarding exceptional circumstances, which allows a person to become marriageable without any levy. Even though this loophole has been critical in augmenting child marriage in Bangladesh, there has been no study on how the judicial authorities understand and apply the special circumstances exception, especially in the rural-based courts, where there is less legal literacy. To understand the implications of the law, it is important to have a closer look at how the communities and policymakers perceive and interact with the law. Meanwhile, it is also essential to explore this contradiction and work on it, as without changing the culture and structure of law, it is not possible to achieve sustainable outcomes. The implications of the present paper may also be extended into the general study of social policy, specifically on attempted reforms to gender-discriminatory legislation in other Global South countries where such cultural logics are present. It also advises on policy formulation on areas such as education, health, and social protection, and emphasizes the importance of the multi-faceted approach that entails a combination of legal transformation with economic empowerment and gender norm change. In addition, more studies can be performed on how the local community will interpret and react to legal texts in protective legislation.

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