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Ramifications and Solutions for Existing Child Marriage Law in Bangladesh

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ABSTRACT

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Bangladesh has recently reformed the law related to child marriage from the previous Child Marriage Restraint Act (1929) to the new Child Marriage Restraint Act (2017). Even though the 1929 provision for the legal age of marriage at 18 years for females and 21 years for males has been retained, a new provision has been inserted in the new Act permitting child marriage beneath the legal age of marriage under special circumstances with the consent of parents and with the permission of court. In contrast to the 1929 law which criminalized marriage of minors, the reformed law allows a child to be married off by their parents or guardians with the permission of the court at any age without safeguards or special circumstances ensuring the protection of the child. The new existing law is clearly a step backwards from the old law. The government of Bangladesh has argued that it had no alternative but to keep the special provision considering the socio-economic reality, especially in rural areas, where children are married at a young age. However, such an argument has no specific illustration in the Act as to when it can be justified. This paper will argue that the deviation in the new law has legal ramifications in the light of the Bangladesh Constitution, some relevant national laws, and international human rights standards. In particular the new law is in conflict with many human rights standards found in these other laws. Additionally, the paper provides solutions for mitigating such adverse consequences.

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Introduction

Bangladesh recently reformed the law related to child marriage and the old law, the Child Marriage Restraint Act 1929, has been substituted by the new Child Marriage Restraint Act 2017. According to the new law, even though the old provision for legal age of marriage which was 18 years for females and 21 years for male has been retained (in Section 2 [1]), a new provision has been inserted in the Act which permits child marriage even beneath the legal age of marriage under special circumstances (in Section 19). According to the new reform, under special circumstances, with the consent of parents and with the permission of court, a female child beneath 18 years old and a male child under 21 years old can be married if the parent's or court's consent can be attained in special circumstances. The special circumstances with parental or guardian's consent and with permission from the courts is deemed to be in the "best interest of the underage female or male" (Section 19). Therefore, in sharp contrast to the old law in 1929 which criminalized marriage of minors, the new law allows a child to be married off at any age. Because the special circumstances scenarios are not defined in the new Act and there is no minimum age for such special circumstances to be justified, the new law is clearly both a deviation and a step backwards even from the old colonial law. The government of Bangladesh has argued that it had no alternative but to keep the special provision considering the socio-economic reality, especially in rural areas (Sattar & Barry, 2017). The socio economic reality argued by the government has no specific illustration in the Act as to when it can be justified to decrease of minimum age of marriage. This paper will argue that the deviation in the new law accompanies certain legal ramifications in the light of the Bangladesh Constitution, some relevant national laws, and international human rights standards. Additionally, this paper will attempt to provide solutions for mitigating such adverse consequences. For the purposes of this paper, although the male children also falls within the scope of the Act, only marriage of Bangladeshi female children will be discussed. Therefore, the ramifications and solutions provided are essentially centered on the girl child.

Legal Context

Child marriage is can be understood as a formal or customary union where at least one of the parties is less than eighteen years of age. This definition has been accepted both by the new Act and by UNICEF (United Nations Children's Fund [UNICEF], 2013). Since child marriage has been an ancient tradition in Bangladesh (then part of sub-continent and known as India), the 1929 law relating to child marriage for the first time criminalized child marriage in an attempt to reduce it (Nehru, 2004). However, irrespective of the extremely high proportion of child marriages in Bangladesh, the existing law which decriminalizing some cases of child marriages was brought into force from 14 December 2017 by abolishing the old law. Paradoxically, in the same year UNICEF released a report showing that 59% of Bangladeshi girls are married off before completion of 18 years and 22% of them are married off before the completion of 15 years (United Nations Children's Fund [UNICEF] & United Nations Population Fund [UNFPA], 2017). Bangladesh has the fourth highest prevalence rate of child marriage in the world (Girls not Brides, 2019). Before exploring the legal ramifications and considering solutions of child marriage, it is relevant to ponder the root causes for such high prevalence of child marriage.

By reforming the old yet progressive law of 1929 in 2017, Bangladesh has committed a historical wrong. Such a drastic and sudden reform is a hindrance to the progressive developments which Bangladesh embarked on in relation to the protection of children rights. If we reflect the colonial history regarding the enactment of the Child Marriage Restraint Act 1929, it could be found that the law was passed as a result of social reform movement in the sub-continent. The law of 1929 is still prevailing in both India and Pakistan. In fact, India has taken a step further by striking down the legal clause which previously allowed marital sex with child bride beneath 18 years of age. This issue was established in the court case of *Independent Thought v. Union of India*² by the Supreme Court of India in 2017. This case was brought forward to challenge the legality of Prohibition of Marriage Act 2006 (hereinafter PCMA) which provided an exception to rape as mentioned in Section 375 of Indian Penal Code by providing impunity to husbands of brides who are under 15 years of age. It is noteworthy that

² W.P (C) 382 of 2013, S.C.C. 11 October, 2017.

although the age of consent is 18 years for females in PCMA, a loophole was allowed that girls up to 15 years can be married off and subsequently the age of consent was minimized further by allowing another exception to marriages of girls who are even younger than 15 years. Thus the Act provided impunity for marital rape and this was challenged. In the final verdict on 11 October 2017 the Indian Supreme Court held that sex with child bride under any circumstances is a rape and the exception provided in the Act in question is unconstitutional and also breaches international human rights obligations. Also the Court held that tradition cannot justify rape through child marriage. Furthermore, the Court called for harmonizing the conflicting provisions regarding age of consent in different statutes in light of the judgment with a view to advance the prevention of child marriage in India.

Despite the fact that the Indian context of child marriage is similar to Bangladesh, India has moved forward by being consistent with the social reform envisioned in 1929. On the contrary, while the Indian Judiciary was protecting its children against child marriage, in 2017 Bangladesh has aligned with the wrong side of history. Irrespective of the high prevalence of child marriage in India, the Indian Judiciary has guaranteed a protection mechanism for the best interest of the children. Pursuant to the same colonial history, and the similar lacunas regarding ambiguities of age of consent in the existing Bangladeshi legal framework which will be discussed later in this paper, Bangladesh must draw a reference to the landmark judgment of *Independent Thought v. Union of India* case and harmonise and reform the conflicting provisions of *Child Marriage Restraint Act 2017*.

Child Marriage in Bangladesh

One of the prime arguments provided by government for justifying child marriage in 2017 is that girls getting pregnant out of wedlock face social exclusion and cruelty from the rural population (Sattar & Barry, 2017). The new law was enforced with special consideration to safeguard the honour of small number of pregnant teenagers in rural communities in the case of accidental or unlawful pregnancy. However, there is no data to justify this decision. NGO reports have found that fewer than 1.5% of marriages occurred because of pregnancy (Sattar &

Barry, 2017). From my five years experience as a Judicial Magistrate in a rural area of Bangladesh I found that only a small number of minor girls have run away with their boyfriends and only a few of them did get pregnant out of wedlock. It is noteworthy that prime minister of Bangladesh, Sheikh Hasina, and Rebecca Momin who is the chief of Parliamentary Standing Committee of Women and Children Affairs, have both supported the revised Act. Yet, in spite of having influential female policy makers in the parliament, and no evidence to back up the amendment, the new law was enacted. Consequently, the government implemented this law in 2017 while overlooking the evidence and in particular the interest of the majority of rural girl children. Although the government has provided an explanation for enacting the new law, the number of unmarried pregnant teenagers is not strikingly high enough that it should immediately put all children in risk of being married off before reaching 18 years of age. The primary justification provided by the government to support the new law is flawed since the law now applies to all young girls in general in lieu of few unwed pregnant teenagers. The fact that government has prioritised the need of a negligible number of unmarried pregnant teenagers over majority of the females is perhaps attributed to the concept of honour and circumscribed sexual relations of females.

The concept of female honour and circumscribed sexual relations of females can be linked to the predominance of child marriage in Bangladesh. This is evident with the support of the new Act by Mahfuzul Haque who is the chief of the Dhaka Chapter of the Islamic group *Hefazat e Islam* (a conservative religious group). In an interview he said that this new law is the correct decision in the viewpoint of religion (Sattar & Barry, 2017), and the group *Hefazat e Islam* is known to promote textbook changes to promote the idea of women's modesty (Griffin, 2019).

It is thus clear that the government's intention to enact the new legislation aligns with the perspective of conservative Bangladeshis which is founded on protecting honour of females by means of early marriage. It is pertinent to mention that by linking the concept of honour and marriage in the 21st century, the government has provided a strong weapon at the hands of religious extremist groups like *Hefazat e Islam* which threaten to create adverse

impacts on a woman's education, health, reproductive choice, economic development and security (as discussed in the next section). This influence of religious groups over the marriage laws is not new. The original religious laws regarding child marriage were adapted and reformed in the legal system of the sub-continent through the law passed on 28 September 1929. The secular law that was established opposed to the religious laws practised by communities at the time, and was a significant social reform in the colonial era by criminalizing child marriage (Nehru, 2004). Even in 1929, religious conservatives opposed the law. However, contrary to that colonial legal reform, the current government has aligned with the orthodox religious groups in a change of direction from previous support of this law.

Another significant cause for child marriage is poverty in the rural areas. Often girls are considered burdens on families and they are married off at a young age hoping that this will alleviate poverty (UNICEF, 2007, p. 31). The practice of dowry is also still common; therefore, girls are encouraged to be married off early in rural communities as this attracts a lower dowry (Onduru, 2019). In addition to these factors, natural disasters play a role in encouraging child marriage as Bangladesh frequently witnesses natural disasters and many families are pushed into further poverty. As a result, families tend to marry off their young daughters in the wake of a natural disaster (Human Rights Watch [HRW], 2015). Even though poverty is considered to be eliminated by encouraging child marriage, often it brings about a reverse impact in relation to income, health, sustainable development, and education of the child bride (UNICEF, 2007, p. 35). Consequently, impoverishment increases. In addition to dowry and poverty, the social taboo of unmarried older women is also a factor promoting child marriage (Human Rights Watch [HRW], 2017). In a country where 59% of females are married off before 18, the stigma of unmarried older women in their 20s and 30s is prominent. These factors are further triggered by lack of education and gender discrimination (UNICEF & UNFPA, 2017). There is a nexus between lack of education equal participation of a woman in marriage, and sexual and reproductive choices. Although the new law allows child marriage of both males and females, traditionally the number of girl brides is higher than males, with 5% of boys married, compared to 51% of girls (UNICEF, 2007, p. 51). Generally, male members of the families

decide whether to marry off the females, and owing to the beliefs of upholding a girl's honour and the lack of equal participation of girls in the choices regarding marriage, child marriage of females is high in Bangladesh. It is noteworthy that not only rural communities but also families of higher socio economic standing tend to support early marriage of female children (UNICEF, 2007). As previously mentioned this belief is also firmly held by the leaders of Islamic groups who hold patriarchal notion of females holding the honour of the family.

That nearly six in ten Bangladeshi girls marry before 18 can be attributed to the conventional notion of protecting honour of female children, lack of enforcement of law, the absence of education, rampant poverty, and gender discrimination. Although there exists a girl child's right to health, education, economic development, choice in reproduction, and her free consent to marry, often these are overlooked. In the next section, a detailed view in relation to the ramifications of child marriage will be discussed. Also solutions to eradicate such adverse impacts will be provided.

The Consequences of Child Marriage

By deviating from the old law, Bangladesh has ignored the criminalization of child marriage. Previously due to the penal section of the old law, some NGOs have been able to work to prevent child marriage in rural Bangladesh. As an example, the International Non-Government Organization (INGO) Plan International has stopped 2,000 child marriages from 2013-2016 through a joint action with government, local communities and unwilling child brides (Gebregziabher, 2016). Because of such joint prevention, child marriage had decreased by 7% in 2017 in comparison to the year 2000 when the prevalence rate was 65% (Gouha, 2017). Even in 2014, Prime Minister Sheikh Hasina had pledged that the government of Bangladesh will end child marriage before the age of 18 by the year 2041 in consonance with the sustainable development goal of Bangladesh (HRW, 2017). As a result, a significant proportion of child marriages has been prevented through collaboration of government and the victims. One of the most prominent accomplishments of such activism is perhaps the case of 15-year-old female Bangladeshi archer *Eti Khatun*. She won 3 gold medals in 2019 South Asian Games

after escaping child marriage at the age of 12 and successfully pursued her dream of being an international archer at age 15 (Hoque, 2019). However, the new law threatens these developments. The penal provision and the legal protection of the girl child may become void. In special circumstances, and without any specific guidelines, allowing child marriage at any age is currently legal with the consent of parents and with the approval of court. Besides, this exemption overpowers the existing provision of punishment under the new law. According to Section 6 of the new law, there is a provision for 2 years imprisonments or fine up to around \$USD1100 for contracting a child marriage where no such special circumstance exists. However, in presence of an exemption and without any specific guideline to justify special circumstances the penal section potentially will not be operative. Moreover, there is no direction provided to the judges in relation to intervening the child marriage which does not warrant special circumstances, despite *suo-moto* injunction power granted in Section 5 of the new law. Furthermore, no minimum age has been set in the new law. Thus the old protection of criminalization of any child marriage under 18 years of age is ineffective and the new piece of legislation will deeply threaten a child's safety. NGOs and the unwilling minor brides would no longer be able to collaborate with the government for preventing thousands of child marriages as evident in the report of Plan Bangladesh (Gebregziabher, 2016).

A state should be empowering its children's education so as to create a sustainable future. Child marriage was widespread in the pre-colonial era where young girls were married off at a young age. As a result, the right to education was almost exclusive to males and considered an optional choice for females, and then only in rare cases. Child marriages were so common during that time that it was addressed in the original Child Marriage Restraint Act (1929). Legal protection was offered by criminalizing child marriage with a view to advance women's socio-economic rights. But almost after a century, in a country which has had female prime ministers, Bangladesh replaced the old law with a weaker legal protection for young girls whose constitutional right to education has been put into serious risk. In modern era, education is no longer an ornament but a necessity, and a necessity that has been established by the 1972 Bangladesh Constitution. Later, by ratifying international human rights conventions

such as the Convention on Rights on Child (CRC), and Convention on Elimination of All Forms of Discrimination against Women (CEDAW), and by introducing free and compulsory primary education for all, Bangladesh had been moving forward to ensure education for all girls. Thus a significant ramification of the new law is the deviation from Bangladesh's constitutional standards and not in consonance with the aspiration drawn from international human rights norms that addresses child marriage. The right to education is a constitutional right of a child in Bangladesh (found in Article 15 of the Bangladeshi Constitution). Child marriage is an impediment to education even though primary school education is both free and compulsory, and at secondary school education is free for girls. Besides as the Constitution, Bangladesh ratified CRC, in which the right to education based on equal opportunity is guaranteed under Articles 28 and 29. It is noteworthy that Bangladesh was one of the first states which ratified CRC in 1990. In sharp contrast to that aspiration, and findings of countless studies by UNICEF that early marriage hinders high level of education and increases dropouts from school, Bangladesh has embarked on a detrimental reform.

Besides the CRC, Bangladesh also ratified CEDAW, although it has made reservations to Article 2 (equality clause) and Article 16(1) (C) (equality in dissolution of marriage). CEDAW obliges states to promote education among females. Throughout the years, the CEDAW Committee in its concluding comments has asked States to remove girls' disadvantages in school and to lower female students' dropout rates.³ Besides the CEDAW Committee, the CRC Committee has also emphasized in its concluding comments for States to ban traditional practices which prevent girls from going to school on account of marriage or pregnancy.⁴ Although each time such concerns expressed by both CEDAW and CRC Committees have been country specific, these reports can be taken as a point of reference to combat child marriage in Bangladesh. As the report to Mozambique highlights, lack of education denies girls' right to personal development as after marriage young girls' access to formal, and even non formal, education is restricted. The committee notes "some practices, such as excessive domestic

³ As an example, CEDAW has requested this in response to Mexico's fifth periodic report in 2002 (CEDAW/W/C/SR.569).

⁴ As an example, this can be found in response to Mozambique initial report in April 2002 to the Child Rights Committee (CRC/C/15/Add.172). Importantly, there are many other cases of similar this made by the Committee.

work required of girls early marriage and early pregnancy, contribute to limiting girls' access to education" (Committee on the Rights of the Child [CRC], 2002, p. 56 (e)). Therefore, Bangladesh government's vision to ensure free and compulsory education for every child is not availed if, as noted above, 22% of girls are married off before the age of 15. The lack of education has also serious implication in employment opportunities when the young brides become adults and are expected to share economic burden of the family. Moreover, if these young brides become widowed or divorced and as a result, their misery is aggravated by an inability to find decent employment without any practical skill or basic education. They are forced to do menial jobs with minimum wages which is insufficient to support them and their children. For this reason, the CEDAW committee in its General Recommendation 21 on Equality in Marriage and Family Relations has expressed that child marriages not only affect women personally but also hinder the "development of their skills and independence and reduce access to employment, thereby negatively affecting their families and communities" (Convention on Elimination of All Forms of Discrimination against Women [CEDAW], 1994, para 37).

By not providing minimum age of marriage in the new law, Bangladesh has further violated the notion of free consent in marriage. Almost 90% of Bangladeshis are Muslims. Muslim marriages are half contract and half sacrament as there is an essential element of consent inherent to the concept of marriage. According to Contract Act 1872, the age of majority is on completion of 18 years of age. By providing no minimum age of marriage, Bangladesh has deviated from the minimum age standard which is the crux of any contract under Bangladeshi law. This deviation is also a violation of Article 23 of International Covenant on Civil and Political Rights (ICCPR) which Bangladesh has ratified in 2000. Article 23 of the Covenant provides that no marriage shall be entered into without the free and full consent of the intending spouse. In concluding comments to Zimbabwe the Committee has stated that "Early marriage and the statutory difference in the minimum age of girls and boys for marriage should be prohibited by law" (Covenant on Civil and Political Rights [CCPR], 1998, para 214). Although this recommendation was aimed at Zimbabwe, the recommendation does

relate to Bangladesh, because of its high prevalence of child marriage. Interestingly, before ratifying ICCPR, Bangladesh ratified International Covenant on Economic Social and Cultural Rights (ICESCR) in 1998. Article 10 of ICESCR provides that marriage must be entered into with the free consent of the intending spouse. Because of Bangladesh's ratification of both ICCPR and ICESCR respectively in 2000 and 1998, Bangladesh has a commitment not to overlook its previous aspirations for preventing child marriage, but by enacting the new law in 2017, Bangladesh has sadly moved backwards from its prior commitments.

In situations of such unequal and discriminatory cultural dynamics, a girl often has to endure physical and psychological abuse in troubled marriages. Thus, in a study conducted in six Bangladeshi villages of lower socio-economic status over the period of 12 years from 1990 to 2002, it was found that 60% women have endured physical abuse in marriages (Johnson & Naved, 2008). Needless to say, the number of Bangladeshi women facing violence is still prevalent. By allowing child marriage, the state has put young girls in risk of being physically and psychologically abused. A testament to such risk is perhaps the issue of trafficking which is likely to be increased by means of child marriage. The nexus between child marriage and trafficking is inevitable. In 2019, a report was published which interviewed 400 Bangladeshi victims of trafficking in rehabilitation centers. The report states that almost 52% of these victims have been reported to be married before the age of 18 (Redfern 2019). Another finding of the report was that these girls were sold into trafficking cycle either by their husbands or by 3rd party while these young brides attempted to run away from abusive husbands. It is noteworthy that Bangladesh has been assigned to the Tier 2 Watch List status for trafficking in June 2019 (U.S. Department of State, 2019). Therefore, Bangladeshi child brides are at high risk of being trafficked because these young girls can be sold into brothels without their consent and without being able to free themselves from the forced prostitution. Thus the nexus between trafficking and marriage is inevitable in the present context of Bangladesh. Although there is a strong trafficking law in the Prevention and Suppression of Human Trafficking Act (2012), which in Section 10 penalizes kidnapping, stealing, or confining any human for the intention of trafficking with rigorous imprisonment up to 10 years and with minimum

imprisonment of 5 years and approximately \$USD 235 fine, and there is provision to include child victims of trafficking in the law (Section 3), Bangladesh remains on the tier 2 watch list. Owing to the nexus between trafficking and child marriage, it is suggested that the de-criminalising of child marriage will further worsen the trafficking of Bangladeshi girls.

Besides the trafficking, the right to health of a child regarding mental and physical wellbeing is significantly compromised by means of child marriage. Article 18 (1) of the Bangladesh Constitution says that a fundamental principle of state policy is for the government to raise standards of public health and nutrition. Thus right to health is not a fundamental right in Bangladesh, rather a fundamental principle. For this reason, Bangladeshi citizens cannot claim free medical care from government. Given the fact that child marriages mostly occur in rural communities and government has decriminalized child marriage for considering the welfare of pregnant and unmarried rural teenagers, the lack of the right to health in the constitution is paradoxical. Article 24 of the CRC calls for the right to enjoy of the highest attainable standard of health, though this has still not been ensured for Bangladeshi children. In addition to having an insignificant public health service, children have suffered a plethora of medical conditions associated with child marriage. Firstly, after entering into marriage, the brides are socially expected to be the primary care giver for her husband's family. Traditionally, in most rural households, the daughter in law has the tasks of cooking for the whole family. Moreover, brides are expected to carry on reproduction after marriage. As a result, a child goes through stress in order to carry on domestic chores and also has to undertake the task of giving birth and bringing up their own children while being a child herself. These expectations have been found to have a profound impact on mental wellbeing (Nour, 2009, p. 51). Secondly, research suggests that after marriage, a child bride suffers from depression and isolation owing to complexities involved in marital responsibilities towards husband and his family (Nour, 2009, p. 56).

Apart from mental health, the child's physical health is also affected by marriage. UNICEF suggested that malnutrition, low life expectancy of women, and an inter-generational cycle of girl child abuse are by products of child marriage (UNICEF, 2007). By marrying young,

the girl child's body is not been fully developed. They are forced to continue sexual relations with an older man and this eventually takes a toll in their physical and mental health. Bangladesh falls behind in securing a young mother and her child's right health right irrespective of the success in decreasing child mortality. Recently, Bangladesh succeeded in declining child mortality rate by 3.94% a year (Macrotrends, 2020). However, given the implementation of recent law, a newborn child of a child bride is put at risk. Further, if the mother has not yet fully developed physiology to give birth she is likely to suffer from hemorrhaging, sepsis, pre eclampsia, eclampsia, and obstructed labour, and there is a high risk of cervical cancer among these mothers (Nour, 2009). The success of a decreasing child mortality rate will be threatened with an increase in child marriage. It can be argued that while Bangladesh government pledges welfare of rural teenagers for enacting the new law to justify child marriage, it has overlooked a child's basic right to health as enshrined in the Constitution and CRC. Consequently, amidst extremely limited public health care, lack of sex education and reproductive rights, restricted choices in reproduction, and patriarchal culture, female children are being denied of their basic health right even though promoting welfare of children was widely argued by the government as a reason to decriminalize child marriage. Clearly in light of the above discussion, it can be argued that the welfare of the majority of the children is actually being over shadowed the new marriage law.

The Failure to Protect Child Brides

It is noteworthy that at present the Bangladeshi law regarding age of consent is not harmonized. As per the Penal Code 1860 (Section 375), sexual intercourse with a wife is not rape unless the bride is less than 13 years of age. Again in the Prevention of Oppression Against Women and Children 2003 Act, a female under 16 years of age is considered a minor and any sexual intercourse with such minor girl shall be considered rape irrespective of consent under Section 2 of the Act. Therefore, by enacting the new law legalizing child marriage, minimum age of consent standards which earlier offered a safeguard against marital rape of children have effectively become void. This is further intensified by not harmonizing a minimum age

of marriage within the laws that have various ages of consent. In summary, the age of consent is 16 years in Section 2 of Prevention of Oppression Against Women and Children (2003); 13 years in Section 375 of the Penal Code, and 18 years in Section 21 of *Child Marriage Restraint Act* 2017. As a result, the Bangladesh Judiciary is no longer able to protect marital rape of children. Also, Bangladesh must embark on legislative reforms in order to ensure the legal protection of children, since one of the key loopholes of the current legal system to prevent child marriage is lack of harmonization for age of consent due to conflicting provisions in different laws. The current 2017 law on child marriage law has a penal clause for child marriage with the punishment of up to 2 years of imprisonment and quite a high fine of around \$USD1100. Irrespective of the strict penal provision for underage marriage, the exception found in Section 19 which allows for underage marriage results in a clash between these two contrasting sections. A reform is necessary to harmonize these conflicting sections.

Poverty is one of the key factors of child marriage. A special consideration has to be put for providing financial aid by means of government welfare to the poorest of the state especially those who have suffered natural calamities. Plus people will have to be educated about the adverse consequences of child marriage which further increases impoverishment. Besides, prevailing sexual offences like rape, sexual harassment, and acid violence which have been shown to increase in child marriage must be punished strictly by means of speedy trial. The option of marrying off the victim with the perpetrator must be prevented. In order to establish the protection mechanisms for enforcing legal standards to prevent child marriage, Bangladesh must ensure an independent judiciary. Because of the current reform in 2017, the protection provided by the court which was present in earlier law of 1929 has been taken away. Moreover, a judge has been made an accomplice in legalising the process since in special circumstances judges can validate child marriage. Furthermore, due to the lack of harmonisation of laws as discussed above, the existing penal provision in the new law is ineffective. Then again, there are no specific directions in the substantive portion of the law as to what warrants such special circumstances which the judge can follow to implement the law. This will certainly give rise to anomalous precedents where a judge may prevent child

marriage in one situation but other judge may deviate from such prevention. Thus, in the presence of an ambiguous law and lack of directions, there is a concern that the Bangladesh Judiciary may not work independently to prevent child marriage.

The Supreme Court of Bangladesh has also not demonstrated judicial activism like the Indian Supreme Court. Ideally the Bangladesh Judiciary would establish a precedent to prevent child marriage and by setting some restrictions in minimum age of marriage by taking guidelines from the Indian Judiciary. The judicial activities to prevent child marriage can further be integrated by issuing directions to the government for implementing fundamental principles of state policy by the Supreme Court of Bangladesh which is the guardian of Constitution. The right to education, right to health, and right to development are fundamental principles of state policy. Although the state cannot be enforced to comply with these provisions for citizens, directives can be issued by the Supreme Court in these matters.

Apart from implementing legislative reforms and a stronger role of Bangladesh Judiciary, the mindset of Bangladeshis should be changed to prevent child marriage. The Bangladeshi Prime Minister herself is a woman, yet the child marriage law was reformed in detriment to young girls for preventing an insignificant number of teenage pregnancies. Therefore, despite the presence of a female Prime Minister and 71 female members of Parliament, the law was passed in 2017. Consequently, the deep-rooted patriarchal culture which collaborates with religious conservatives was able to succeed in Bangladesh despite the presence of strong female representation in the present government. For this reason, to prevent child marriage a change of mind set is as important as reforming the law.

Conclusion

Considering the repercussions which are associated closely with the present child marriage as discussed throughout the essay, it is time to align with the right side of history and reform the current law. The current law is obviously in sharp contrast to the aspiration of the historical social reform embarked in colonial era, and to the obligations of the Bangladesh Constitution and Human Rights Conventions which Bangladesh ratified. If urgent reform is not undertaken

in the new child marriage law immediately, future Bangladeshi children will be deprived of securing any legal protection to prevent child marriage. This will be evidently detrimental to their basic human and constitutional rights as a child. This wrongful and unfair deprivation must be prevented and Bangladesh must reform the child marriage law by providing and harmonizing minimum age of marriage, and by inserting specific directions as to what precisely are the special circumstances allowing a child to marriage legally.

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