

Review

Child marriage in Bangladesh: Socio-legal analysis

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Child marriage is a strong social custom, particularly for girls in Bangladesh. There are many reasons for child marriage. But most vital reasons among them are poverty, superstition, lack of social security and lack of awareness. According to UNICEF report, 'the State of the World's Children, 2009', "Early marriage is pervasive in Bangladesh, with 64 percent of girls married before age 18. Early pregnancy often results from child marriage; one-third of girls aged 15 to 19 in Bangladesh are currently either mothers or pregnant." Although child marriage is prohibited legally, but occurrences of child marriage are still happening in rural areas of Bangladesh. According to *the Child Marriage Restraint Act, 1929* the minimum legal age for marriage is 18 years for females in Bangladesh. Along with this Act child marriage is punishable by law. The right to free and full consent to a marriage is recognized in the 1948 Universal Declaration of Human Rights (UDHR) and in many subsequent human rights instruments – consent that cannot be 'free and full' when at least one partner is very immature. Bangladesh also acceded to the *UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages* on 5 October, 1998. These laws, however, have little impact on the frequency of child marriage in Bangladesh. Laws should be enforced to discourage child marriage; however, legal actors alone are insufficient. Social awareness programmes may also be effective in deterring child marriage. To prevent child marriage, a wide range of individuals and organizations need to create awareness among people, particularly the poor. Especially, parents and government can play main role in reducing child marriage. An environment should be ensured where children get proper care and facility to grow up completely and properly. This paper attempts to present the socio-economic and physical consequences of girl child marriage and its legal protection with awareness level of parents in rural Bangladesh.

Key words: Child marriage, consequence, law, awareness.

INTRODUCTION

Children are the weakest and most unprotected segment of the society. They are dependent upon parents and others for growing up. They need the support of the family, community and the state as a whole. In Bangladesh, a large number of children are deprived of their basic human rights due to unacceptable health, nutrition and education as well as social conditions. In addition, child marriage represents a major threat to children well being in Bangladesh. At present, early marriage is one of the important demographic determinates of girl child in

Bangladesh (Badrud, 1990). Parents encourage marriage of their daughters while they are still children in hope that this marriage will benefit them both financially and socially. Young girls are often regarded as an economic burden to their families; marrying them off at a very early age is seen as reducing the financial burden of the family. Parents encourage early marriage with a fear that their dowry price will increase as their daughters age. Apart from these, poverty is one of the most frequently cited factors behind child marriage in rural Bangladesh.

Statistics provided by Bangladesh Demographic Health Survey (BDHS-2005) show Bangladesh tops the world when it comes to early marriage. Early marriage is one of the reasons for increased populations in Bangladesh. There are many reasons for early marriage, but most vital reasons among them are: poverty, superstition and lack of awareness.

While the practice affects both girls and boys, the most fundamental rights of a child bride to survive and to develop are undermined. In most rural families, girls are never consulted on their marriage. The parents and the senior family choose the groom, fix the date and manage the wedding ceremony. They encourage early marriage out of fear that the dowry price will increase as their daughters age (www.irinnews.org/report/asp). Most of the time, the law on legal minimum age for marriage is ignored; the inadequacy of birth registration systems reinforces early marriage in Bangladesh. Apart from these, thousands of marriages go unregistered in our country. As a result, a large number of girls are deprived of their rights. One major consequence of early marriage is health problems associated with early pregnancy.

However, early marriage for boys and girls has serious physical, intellectual, psychological and emotional impacts. It also cuts off educational opportunity and hampers personal growth (Afroza, 1999). Though as per the *Child Marriage Restraint Act, 1929* the legal marriage age in Bangladesh is 21 for boys, 18 for girls; but findings from the Bangladesh Demographic and Health Survey (BDHS) indicate that the median age for marriage of girls is 16.4 years. The *Child Marriage Restraint Act, 1929* provides punishment to men who marry children, those who solemnize child marriage, and parents or guardians who permit child marriage. But underage marriages are, however, still considered by the rural people in the country (Mizanur, 1999). The causes and implications of child marriage are complex and interconnected; thus there is no simple solution for eradicating child marriage. But this will require a social awareness along with supportive legislation in society, which is better for the country in all respects. Unless measures are taken to address early marriage, it will continue to be a major stumbling block to the achievement of child rights.

CORE REASONS OF CHILD MARRIAGE IN BANGLADESH

Child marriage can arise due to a number of reasons in rural Bangladesh. Such as,

Poverty

Poverty is one of the most frequently cited factors behind child marriage in Bangladesh. Where poverty is acute, a young girl may be regarded as an economic burden. In

Bangladesh, poverty-stricken parents are persuaded to part with daughters through promises of marriage, or by false marriages, which are used to lure the girls into prostitution abroad.

Economic and social status

Girls are often regarded as an economic burden to their families. So the parents want to get marry their girl child at a very early age. Parents may genuinely feel that their daughter will be better off and safer with a regular male guardian. Some communities regard their girl children as a burden and think of getting rid of them by marrying them off early in a male-controlled society. Besides these, sometimes there are pressures from older members of the family and community.

Lack of education

In Bangladesh, most of the girls are drop-out from school, especially, in cultural settings where girls are raised for a lifetime confined to household occupations and are expected to marry very young.

Social barrier

Most of the family think marriage is a way to ensure that their daughters are 'protected', as parents feel their daughters will be better off financially and safer from sexual abuse or illicit sexual contact if they are married.

THE CONSEQUENCES OF CHILD MARRIAGE

Child marriages violate the rights of the child in many ways. The major consequences of child marriage are the denial of childhood, the restriction of personal freedom and the lack of educational opportunity to develop a full sense of human being. Child marriage is harmful to the families and society as a whole. There are both physical and social consequences of child marriages.

Loss of personal development

Early marriage of girls and boys impairs the realization and enjoyment of virtually all of their rights. Most girls who are unhappy in an imposed marriage are very isolated. They lose their freedom as well as personal development. They are subjected to the atrocities of domestic violence and abandonment.

Denial of education

Child marriage is repeatedly cited as a significant factor

impeding the realization of the right to education. With early marriage, many girls drop out of school. They take away their right to education which undermines their self-confidence, decision-making power and denies them the opportunity to become economically independent. Girls who marry as adolescents attain lower schooling levels; have lower social status in their husband's families and suffer various problems. These consequences are reinforced by the fact that the children of young and illiterate mothers tend to face the same cycle of childhood deprivation and damage experienced by their mothers.

Health problems

With early marriage comes early pregnancy. Child marriage and early childbirth are linked to high rates of pregnancy-related complications or risk to the life of the newborn. After marriage, girl children undergo severe health problems like pregnancy and childbirth. The risks of early pregnancy and childbirth are well documented: increased risk of dying, increased risk of premature labour, complications during delivery, low birth-weight, and a higher chance that the newborn will not survive. Pregnancy-related deaths are the leading cause of mortality for 15-19 year-old girls.

Expand population

Child marriage extends a woman's reproductive span, thereby contributing to larger family sizes, especially in the absence of contraception.

LEGAL PROTECTION OF CHILD MARRIAGE

National Legislation

The child marriage restraint Act, 1929

In Bangladesh, the *Child Marriage Restraint Act of 1929* is the main law for controlling early marriage. According to the Act the minimum legal age for marriage is 18 years for females. Along with this Act early marriage is punishable by law. Section 3 states the punishment for male adult below twenty-one years of age marrying a child. This section states that

"Whoever, being a male above eighteen years of age and below twenty-one, contracts a child marriage shall be punishable with simple imprisonment which may extend to fifteen days, or with fine which may extend to one thousand rupees, or with both."

Moreover, section 5 of the said Act stipulates the punishment for solemnizing a child marriage. According to this section, "Whoever performs, conducts or directs any child marriage shall be punishable with simple imprisonment

which may extend to three months and shall also be liable to fine, unless he proves that he has reason to believe that the marriage is not a child marriage."

Section 6 mentions the following punishment for parent or guardian connected with child marriage:

"(1) Where a minor contracts a child marriage, any person in charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permit it to be solemnized, or negligently fails to prevent it from being solemnized, shall be punishable with simple imprisonment which may extend to three months and shall also be liable to fine. It provides that no woman shall be punishable with imprisonment.

(2) For the purpose of this section, it shall be presumed, unless and until the contrary is proved, that where a minor has contracted a child marriage, the person in charge of such minor has negligently failed to prevent the marriage from being solemnized."

Although early marriage is prohibited legally, occurrences of early marriage are still happening in rural areas of the country. There are laws against it in the country but they are not executed properly. The *Child Marriage Restraint Act, 1929* stemmed from a campaign that helped reposition women, family life, and childbearing within modern India. While the Act did not declare child marriages invalid, it helped pave the way for change.

THE BIRTH AND DEATH REGISTRATION ACT, 2004

The situation of early marriage is increased by the fact that most births go unregistered. The Law and Local Government Ministry is putting the representation of the *Birth and Death Registration Act, 2004* in force since 2006. The Act requires birth certificate as proof of age for a number of essential services such as marriage registration, obtaining a passport, and enrollment in school. But in Bangladesh, birth registration is itself a typical problem. In spite of the law against child marriage, early marriage of girls, especially in rural, is widely prevalent. Enforcement of the relevant law is constrained mainly due to fact that the birth registration system is not implemented fully for which actual age of girls cannot be ascertained definitively.

The children Act, 1974

Article 34 of the *Children Act, 1974* specifically stipulates the penalty to be imposed for cruelty to children. According to section 34 of the said Act,

"If any person over the age of sixteen years, who has the custody, charge or care of any child assaults, ill-treats,

neglects, abandons or exposes such child or causes such child to be assaulted, ill-treated, neglected, abandoned or exposed in a manner likely to cause such child unnecessary suffering or injury to his health, including loss of sight or hearing or injury to limb or organ of the body and any mental derangement, such person shall be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to Taka one thousand or with both.”

Appropriately, early marriage is taking place at random showing slight respect to the law. Human-right protesters and social workers say that according to the law early marriage is a punishable offence, but it is not banned. Besides, people do not follow the law because there is hardly any campaign to make the people aware about it, let alone solving the social problems.

Regional Instruments

The SAARC convention on preventing and combating trafficking in women and children for prostitution

Article 1(5) of the *Convention* states that “Persons subjected to trafficking” means women and children victimized or forced into prostitution by the traffickers by deception, threat, coercion, kidnapping, sale, fraudulent marriage, child marriage, or any other unlawful means;...”

The SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia

Article 4 of the *Convention* states that “States Parties shall make civil registration of births, marriages and deaths, in an official registry, compulsory in order to facilitate the effective enforcement of national laws, including the minimum age for employment and marriage.”

International instruments

The right to free and full consent to marriage was recognized in the Universal Declaration of Human Rights of 1948 and many subsequent human rights instruments. A number of human rights instruments lay down norms to be applied to marriage, covering issues of age, consent, equality within marriage, and the personal and property rights of women. The key instruments and articles are as follows:

THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948

Article 16 of the *Universal Declaration of Human Rights*

(*UDHR*) 1948 states:

“(1) Men and women of full age ... have the right to marry and found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending parties.”

Similar provisions are included in the 1966 International Covenant on Economic, Social and Cultural Rights and the 1966 International Covenant on Civil and Political Rights.

The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964

Articles 1, 2, and 3 of the *Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964* state:

“(1) No marriage shall be legally entered into without the full and free consent of both parties, such consent to be expressed by them in person ... as prescribed by law.

(2) States Parties to the present Convention shall ... specify a minimum age for marriage (“not less than 15 years” according to the nonbinding recommendation accompanying this Convention). No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interests of the intending spouses ...

(3) All marriages shall be registered ... by the competent authority.”

The Convention on the Elimination of All Forms of Discrimination against Women, 1979

Article 16.1 of the *Convention on the Elimination of All Forms of Discrimination against Women, 1979* prescribes equally for men and women: “(a) The same right to enter into marriage; (b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent; ...

Article 16.2 states: The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage.”

The African Charter on the Rights and Welfare of the Child, 1990

Article XXI of the *African Charter on the Rights and Welfare of the Child, 1990* states: “Child marriage and the betrothal of girls and boys shall be prohibited and

effective action, including legislation, shall be taken to specify the minimum age for marriage to be eighteen years.”

The Convention on the Rights of the Child (CRC), 1989

The *Convention on the Rights of the Child (CRC), 1989* has been ratified by all countries in the world. Marriage is not considered directly in the CRC. One must look then to other rights (health, education, survival...) or principles (best interests of the child, development, respect for the views of the child ...) for guidance on the position of the CRC for early marriage. Despite this, it is clear that the Committee places a great deal of importance in ensuring that marriage should not be concluded too early and that the minimum age for marriage should be equal for boys and girls. Among the most pertinent, however, are the followings:

Article 1: A child means every human being below the age of eighteen years unless, under the law applicable to the child, majority is attained earlier.

Article 2: Freedom from discrimination on any grounds, including sex, religion, ethnic or social origin, birth or other status.

Article 3: In all actions concerning children ... the best interests of the child shall be a primary consideration.

Article 6: Maximum support for survival and development.

Article 12: The right to express his or her views freely in all matters affecting the child, in accordance with age and maturity.

Article 19: The right to protection from all forms of physical or mental violence, injury or abuse, maltreatment or exploitation, including sexual abuse, while in the care of parents, guardian, or any other person.

Article 24: The right to health and to access to health services; and to be protected from harmful traditional practices.

Articles 28 and 29: The right to education on the basis of equal opportunity.

Article 34: The right to protection from all forms of sexual exploitation and sexual abuse.

Article 35: The right to protection from abduction, sales or trafficking.

Article 36: The right to protection from all forms of exploitation prejudicial to any aspect of the child's welfare.

Thus, the *CRC* states in Article 1, that a child is anyone under 18 years of age, and in Article 16 of the Universal Declaration of Human Rights it states that persons must be at “full age” at the time of marriage, which must be entered into “freely” and with “full consent.” The *CEDAW* requires minimum age for marriage to be specified by states, and declares child marriages as illegal, under Article 16. In keeping with the spirit of the *CRC*, an

increasing number of laws fix the minimum age at 18 years – the standard also set by the *African Charter on the Rights and Welfare of the Child, 1990*.

RECOMMENDATION FOR AWARENESS OF CONSEQUENCES OF CHILD MARRIAGE

Marriage is regarded as a private, even sensitive subject. It is time to raise consciousness about the comprehensiveness of child marriage and its negative impacts. Government should make new laws to control child marriage and establish nonviolent places for girls to gather and socialize to upsurge access to economic skills and resources. It is needed to create awareness among people, particularly the marginal groups.

Government initiatives

The government will take necessary steps to eliminate child marriage from the society with a bid to slash the maternal mortality rate in the country. Bangladesh's school program provides free cost of school fees and books for girls in school. So for eliminating child marriage from the society with a bid to slash the maternal mortality rate in the country the government should establish secondary school registration program with parent's commitment about not to marry their daughters until they reach age 18.

Disseminate information among people by education

To prevent child marriage, all people need to work together to stop early marriage. At first inform parents and young people about the negative implications of child marriage. Education is the key in this process. Persuading parents to keep their daughters in school is critical for the overall development of girls and postponement of marriage. We shall have to give priority to girls' education.

Importance of birth certificate

Birth certificate should be issued for all children. It is regarded as original age certificate of a child. It should be mandatory in Bangladesh that when a child is born, his or her birth certificate has to be done. So, in future when there is a matter of marriage, there will be no confusion.

Marriage should be registered

Marriage registration is mandatory in Bangladesh and every marriage should be registered. Based on the law,

marriage certificate is an official document which regulates the rights and responsibilities of a wife, husband and children. Article 61 of the *Civil Code* states: "marriage is recorded in the marriage certificate in three copies by the authorities; the original is maintained by the government institution and each party is granted a copy of this document. The marriage certificate is submitted to the records department after it has been registered in the special offices."

Formulated legal mechanism for international instruments

Bangladesh is one of the signatories of CRC and committed to respect the CRC to establish the rights of children. But there is no mechanism in the legal system of Bangladesh to incorporate directly the principles of international conventions and rules at national levels. Though the international conventions set certain responsibilities for the ratifying states, there is no formal obligation to implement the provisions of the conventions. In this context, the state parties should develop enabling mechanism for implementation of the international standards. To make the CRC effective, it has to be a part of the domestic law as well.

Initiative of NGOs and civil society

To prevent child marriage a wide range of individuals and organizations, from community leaders to international bodies, must take action. We need to create awareness among people, particularly the poor. And also we should give our helping hands to them. NGOs and civil society have a critical role to play in the control of child marriage. It should be raise awareness of the health and rights implications of large spousal age differences and inter-generational sex. Efforts should be taken to support married teenage girls by decreasing their economic vulnerability, offering schooling, civic participation, and livelihoods opportunities, developing intervention.

Awareness through Media

Media (radio, television etc.) plays a vital role in broadcasting different programs about the adverse effect of early marriages that rural people can understand since most of them are illiterate. Media can convince them through different programs against early marriage.

Changing attitudes

Changing attitudes is the strategy that underpins all other efforts to end early marriage. Real progress will come from introducing and promoting initiatives to change

attitudes towards the gender roles of girls and boys in general, and towards the practice of early marriage in particular. There is need to work to change attitudes in families and in societies at large, extend opportunities for childhood learning and education, offer appropriate support to families and children, and seek to have all children – girls and boys – recognized as valuable members of society rather than economic burdens.

Conclusion

Children are not smaller versions of adults but are completely different human beings with different sensibilities. Keeping this in mind, protective legislations and their proper implementation through an effective child-friendly legal system based on reality can safeguard the rights of children. In Bangladesh, child marriage is widespread, particularly in rural areas; although there is a law against it the underlying reasons are poverty and lack of awareness. About 17% of all marriages are to girls who are under the age of 16 years. According to the *Child Marriage Restraint Act*, the minimum legal age for marriage is 18 years for females in Bangladesh. 18 years is supposed to be the minimum age for marriage in Bangladesh. One difficulty in application of the age of consent law is that in rural Bangladesh most marriages are unregistered. The situation is intensified by the fact that birth registration is so irregular that age for marriage may not be known. Although the rights of children of Bangladesh have been protected by the *Constitution* and the various laws formulated at different time, the actual improvement of the overall child rights situation depends on the effective implementation of the laws and policies. Moreover in case of awareness, all of us need to work together relentlessly, utilizing an interdisciplinary approach to the rights construct, to ensure justice for children.

REFERENCES

- Afroza S (1999). Obstetric Related Residual Morbidities among the Women in Bangladesh. JOPSOM. pp.22-29.
- Badrud DM (1990). South Asia Study of Population Policy and Programme: Bangladesh. UNFPA pp.11-12.
- Kumari, Ved. The Juvenile Justice in India: From Welfare to Rights. New Delhi: Oxford University Press, First Edition, 2004. p.266.
- Mizanur M (1999). "Female Adolescent Marriage among the Slum Dwellers of Dhaka City". JOPSOM. pp. 6-10.
- The Child Marriage Restraint Act, 1929.
- The Birth and Death Registration Act, 2004.
- The Children Act, 1974.
- The Universal Declaration of Human Rights, 1948.
- The Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964.
- The African Charter on the Rights and Welfare of the Child, 1990.
- The Convention on the Rights of the Child (CRC), 1989.
- The Constitution of the People's Republic of Bangladesh, 1972, Article 145A. This Article was inserted by the Second Proclamation (Fifteen Amendment) Order, 1978 (Second Proclamation Order No. IV of 1978).

United Nations Children's Fund (2001). Early marriage: child spouses. Florence: UNICEF Innocent Research Centre, 2001. (Innocent digest no. 7) p.28.

UN Reports of Ad Hoc Committee of Whole of the Twenty-seventh Special of General Assembly, General Assembly, Official Records, Twenty-seven special session Supplement No. 3, 2002, p.27.

www.wikipediafoundation.org (accessed on 25 January, 2011).
www.irinnews.org/report/asp(accessed on 27 January, 2011).