

## Definition of rape must be changed

*The narrow definition of rape and archaic provisions lead to low conviction rate*

WHILE rape in reality constitutes many forms of violent actions, the definition of rape in our laws, unfortunately, is limited to only a certain form. As unbelievable as it might seem in this time and age, rape is still defined only as penile-vaginal penetration in our laws. Section 375 of the Penal Code 1860 defines rape as sexual intercourse with a woman against her will, without her consent, and adds that penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape. And that’s all. While the punishment of rape was modified in the Women and Children Repression Prevention Act in 2000, it did not touch upon the substantive definition of rape.

The archaic definition we presently have prevents many of the rape survivors from seeking justice for the crimes committed against them. Not only the definition but other archaic provisions in laws relating to rape also result in a low conviction rate—a 2019 study found that only three percent of the rape cases end in conviction. Procedures such as medical tests to find semen, character evidence against rape complainants in court, etc. further add to the trauma and scrutiny of the survivors. The narrow definition of “sexual intercourse with a woman” also makes it difficult to prosecute child rape, male rape or the rape of transgender individuals. Furthermore, the law also fails to criminalise marital rape.

Therefore, reforming the rape laws by providing death sentence to the rapists—as announced by the law minister in the wake of nationwide protests against rape—would hardly help in increasing the conviction rate, if other far more crucial changes are not made to the law. In modern rape laws around the world, penetration with objects or other body parts and penile penetration are equally punishable offences and deserve an equal degree of punishment. We also need to ensure that our rape laws are compatible with global standards. The brutality of being raped with a stick, or hands, or the violence exhibited in the video of the gang-rape of a woman in Noakhali, is in no way less in proportion than a penile-vaginal rape.

It is time we rethought and reformed the definition of rape in our laws to ensure justice for the rape survivors.

## Mental healthcare is grossly neglected

*More investment in increasing capacity of hospitals is needed*

A recent report in this daily reveals the activities of a nexus of brokers harassing families of patients with mental illness seeking treatment at Pabna Mental Hospital. Getting an appointment with a doctor has become a difficult task with the already understaffed hospital operating with fewer resources due to the Covid-19 outbreak. This has given a field day for brokers to demand money from the families of patients to “manage” an appointment with a doctor inside the hospital or lure them to privately-run clinics, the credentials of which are unknown. The result is increasing suffering for the patients and their families.

This is not surprising. Unfortunately, mental health facilities are grossly inadequate in our country despite the growing number of people with mental health issues. And this has been the case long before the pandemic. The Pabna Mental Hospital is the main public hospital in the country where the majority of patients from all over the country seek treatment. It has only 500 beds and has always been understaffed. Out of the 25 allotted posts for doctors, 13 remain vacant. The hospital management has repeatedly sent letters to the higher authorities requesting that the posts be filled, but so far nothing has happened.

The Daily Star report, published on the World Mental Health Day, gives a grim picture of how far behind we are in providing proper care to the mental health patients. The theme of this year’s Day is increased investment in mental health programmes—which is obviously the need of the hour for Bangladesh.

While the immediate step to take would be to identify the brokers and take action against them, the long-term problem of understaffing and lack of facilities has to be addressed on an urgent basis. Apart from filling the vacant posts, the capacity of the hospital needs to be increased by hiring more qualified doctors and nurses and improving the existing facilities. The mental health wards of other public hospitals need to be evaluated with the gaps in staffing and facilities identified and filled. There needs to be more investment in improving the quality of mental healthcare in all these hospitals.

According to the National Mental Health Survey in Bangladesh from 2018-19, around 17 percent of Bangladeshi adults are undergoing mental health problems like depression, anxiety, stress and obsessive-compulsive disorders. Isolation and loss of income during this pandemic has resulted in more people experiencing various mental health issues. Mental healthcare must be made affordable to all people and be part of primary health care. The pandemic has exposed the neglect with which this crucial area of healthcare has been treated, and should prompt the government to make the investments needed to improve existing facilities and increase the number of medical graduates who will become therapists and psychiatrists and be recruited to mental health hospitals and wards.

## INTERNATIONAL DAY OF THE GIRL CHILD

# How effective is the law restraining child marriage?



TASLIMA YASMIN

THE demand of girls worldwide to live free from the harmful practice of child marriage is one of the key focuses of this year’s International Day of the Girl Child. Bangladesh has committed to eliminating child marriage by 2030 in line with the Sustainable Development Goals (SDGs). However, despite some signs of progress in recent decades, the child marriage situation in the country remains alarming, with Bangladesh having one of the highest prevalence of child marriage in the region.

Although many factors interact to place a child at risk of marriage, an inadequate legislative framework plays a crucial role in perpetuating the practice and decelerating the progress of policy efforts. Bangladesh set up a new legal regime by enacting the Child Marriage Restraint Act 2017 and its corresponding Rules in 2018, replacing the old Act of 1929. The new Act, no doubt, introduced certain effective provisions which, if properly implemented, can positively contribute to the prevention of child marriage in Bangladesh. Nevertheless, there are several areas where the law lacks clarity, and the Rules also does not address those loopholes.

Retaining the previous legal position, the 2017 Act prescribes 18 for girls and 21 for boys as the marriageable age. However, such unequal marriageable age between males and females is not only discriminatory, it also creates some significant legal anomalies in the enforcement of the law. For example, if an adult woman of 18 years marries a man of 20 years, it will still be considered as “child marriage” (as one party is below the marriageable age), and the woman will have to face penal sanctions applicable for an adult contracting party under the Act—which is unreasonable, to say the least.

Discontent among the civil society actors was quite evident when the law retained the much-debated “special provision” allowing child marriage with courts’ permission. It was expected that the Rules adopted in 2018 would substantially restrict the scope of application of the special provision; it nevertheless failed to do so. The Act

and the Rules do not mention anything about the requirement for obtaining consent of the minor in an application under the special provision, neither does the Act provide any guideline or criteria to the courts in order to determine a child’s “best interest”. There is also no minimum age mentioned for allowing the exemption under the special provision.

Another significant problematic area in the 2017 Act is that although the law

provision of release of an accused person upon signing of an affidavit or bond stating simply that he will not be involved in child marriage in the future and will take initiatives to prevent child marriage in his locality. The Rules does not provide any details as to how the accused’s participation in child marriage preventive initiatives can be monitored to ensure accountability against future violations. Thus the presence of such a provision

perpetrator. This is as per section 375 of the Penal Code of 1860 which defines and punishes rape. The definition given in the Penal Code is still applicable. Although we had enacted a separate law in 2000 for prosecuting violence against women and children related cases, the law chose to remain silent on such an archaic provision. The 2017 Act also does not address the issue of rape of a child bride. This is clearly contradictory to



PHOTO: AP

**To stop child marriage, it is critical to address loopholes in the relevant law and to introduce effective monitoring over its implementation at all levels.**

refers to the minor involved in a child marriage as a “victim” or “aggrieved person”, it imposes penalty on minors for contracting child marriage (up to one month’s detention and a fine of Tk 50 thousand). The law thus clearly creates contradictions by imposing criminal sanctions upon the victims whose interests it aimed to protect.

The 2017 Act is also silent about giving an option of annulment of the marriage if the minor so wishes. A victim of child marriage would have to follow the procedures prescribed under applicable personal laws for dissolution of the marriage, which are often discriminatory in application and can be quite difficult to access for a minor victim of child marriage.

Besides, the 2017 Act introduced a new

may undermine the purpose of the law to deter child marriages by imposing criminal sanctions.

The Act also makes provision for issuance of injunction by the court. However, neither the Act nor the Rules clarifies which court would be able to issue such injunction. Similarly, for the application of the special provision, the law is silent regarding the court that may have jurisdiction to hear such application for special permission. There are also inconsistencies in the law in terms of exercise of jurisdiction by the Mobile Courts in intervening in a child marriage.

Other than the 2017 Act, one of the most challenging gaps with regard to child marriage is the law that allows rape of a girl child who is 13 years or above, if the child is married to the

Bangladesh’s international commitment to protect a girl child from sexual exploitation and could encourage the culture of forced marriage of a child rape victim with the offender.

The new legal regime for eliminating child marriage, thus, needs to be reviewed extensively. Keeping in mind that Bangladesh is committed to ending child marriage, it is critical to address the gaps in the new law and to introduce effective monitoring over its implementation at all levels. Strengthening the laws would create clear benchmarks to address child marriage and would ultimately enable the policy efforts to succeed in preventing child marriage.

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## We must do more to end child marriage



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FROM the char of Lalmonirhat to a slum in Khulna, I have met many adolescent girls across Bangladesh who are united in their resolve to continue education, who make extraordinary efforts to go to schools. For example, a girl in Khulna has been collecting and selling scrap papers in order to earn money to pay for her tuition fees and related costs. She persuaded her mother to go to the local councillor to explore if any funding is available to purchase educational materials. I can share many stories like that. But most of the girls are also afraid of dropping out of schools, as their parents may arrange their marriage—a fate many of their classmates already had to accept.

I am reminded of all these girls as we observe the International Day of the Girl Child today with the theme: “My voice, our equal future”. What is the future of our girls, especially against the backdrop of a time when we are facing a global pandemic?

According to “Ending Child Marriage: A Profile of Progress in Bangladesh” (a report launched by Unicef on October 7, 2020), Bangladesh has the highest prevalence of child marriage in South Asia and ranks among 10 countries in the world with the highest incidents. The prevalence of child marriage in Bangladesh has dropped from over 90 percent in 1970. Still, the rate remains very high. About 51 percent of women who are currently aged 20-24 were married while they were still children.

Child marriage is a serious violation of children’s rights. It’s a problem that the Sustainable Development Goal (SDG) target 5.3 aims to eliminate by 2030. In addition, child marriage has an impact on the realisation of other SDGs related to education, health and well-being. Child marriage is one of the most significant reasons for school drop-out of girls, essentially marking the end of childhood for them. It also increases the risk of domestic violence for the girl children. Married adolescents are also not able to participate in the decision-making

process of families. Adolescent mothers are more likely to suffer from birth-related complications than adult women.

In Bangladesh, a girl’s risk of child marriage is aggravated by certain factors. Girls living in rural areas and poorer households are more vulnerable. This is also linked to girls’ education. The rate of child marriage begins to decline only among those with at least 10 years of schooling, and prevalence falls below 50

countries of the world. Children are at an increased risk of sexual violence and exploitation, trafficking, child labour, etc. There are heightened risks of child marriage while children and families cope with school closures, loss of income, and increased pressure in the home. Girls face an unequal burden of unpaid care and domestic work, which will increase as they stay at home. Many may not be able to return to schools due to caregiving



PHOTO: AFP

**File photo of children forming a human chain in Dhaka protesting against child marriage.**

percent among those with at least 12 years of schooling. Moreover, lack of social safety for adolescent girls, natural disasters, and weak enforcement of laws are some of the reasons contributing to child marriage. Our patriarchal society places a disproportionate emphasis on girls’ and women’s caregiving and reproductive roles. As a result, there is a high level of social acceptance of child marriage, which is a significant barrier to ending this practice.

Covid-19 has hit men and women, and boys and girls differently. Girls, especially those belonging to marginalised groups, are being particularly affected by the secondary impacts of the outbreak. This is due to harmful social norms and discrimination based on age and gender.

There has been an increase in domestic violence during Covid-19 in different

responsibilities and the decline in family income. That is what happened in West Africa after the Ebola crisis.

Some NGOs are already reporting an increase in incidents of child marriage following the outbreak of Covid-19 in Bangladesh. According to the Building Better Future for Girls project of Plan International Bangladesh, there were 291 child marriages in Kurigram alone between January and August this year. There are reports of increasing sexual harassment in different parts of the country, as many returned to their villages. Some parents are arranging the marriage of girls due to safety concerns.

Are we really serious about achieving the SDG target to end child marriage by 2030, and the national target to end child marriage by 2041? If yes, progress must be made at least 8 times faster than the rate of

the past decade to meet the national target, and 17 times faster to meet the SDG target.

In addition to strict enforcement of the relevant law against child marriage, proper birth and marriage registration must be ensured. The government should also prioritise the safe re-opening of schools, as the longer girls stay out of school, the higher the risk of child marriage.

In addition, there should be more investment in girls. The government should develop and implement fully-costed, multisectoral national action plans with strict accountability mechanisms. This should involve not just the Ministry of Women and Children Affairs, but also the ministries of health, education, justice, and finance.

Targeted measures should be taken to protect and support incomes of families with girl children, including social protection. Specific attention should be given to the unequal distribution of unpaid care and domestic work during this time so that it does not hinder girls’ return to schools.

For a wider impact, government and non-government actors must also ensure the engagement of communities, parents, and particularly girls and women to address the harmful gender norms and build support to end child marriage.

We are celebrating the International Day of the Girl Child at a time when the nation is seething with anger against the rise in incidents of rape and sexual violence against women and girls. In addition to bringing the perpetrators to justice, we need a movement to create a society where girls and women really feel safe and get treated as equal citizens. We must ensure an environment where girls can grow up to be empowered women—economically, socially and politically—and contribute to our society in meaningful ways. Child marriage hinders the possibility of girls in realising their full potential.

The ongoing Covid-19 pandemic threatens to roll back progress on ending child marriage. We cannot let that happen. All of us—government, NGOs, media, parents, communities—must do more and be more effective. The question is, are we doing enough?

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