

**LAW ANALYSIS**

# Draft Rules on the Child Marriage Restraint Act 2016 Protector or predator?

**PSYME WADUD**  
**U**NDER the delusional conception of decreasing child marriages with the aid of the controversial 'exceptional clause', draft Rules have already been prepared for the implementation of the Child Marriage Restraint Act 2016 (The Daily Prothom Alo, 13 March 2017). The exceptional clause allows marrying off girls under 18 in special circumstances. The Rules attempt at spelling out such 'special circumstances' under which, with judicial

The Rules have always been taken resort to for interpreting the law or for substantiating the interpretation thereof. The draft Rules, however, have created room for further interpretation of themselves. 'Romantic relationships' (even though it cannot be taken to be the exact translation of the words appearing in Bangla in the Rules) is subject to further substantiation. Whether or not such words can get a place in a piece of legislation, as Hon'ble Justice Krishna Debnath has opined recently, is an uncomfortably

Keeping the extra-legal discourse aside, legally speaking, the draft Rules do not comply with the international standard as well. Bangladesh has ratified the United Nations Convention on the Rights of the Child. In accordance with Article 6.2 of the Convention, states are obliged to ensure the survival and development of the child to the maximum extent possible. Moreover, Article 24 stresses upon issues like diminishing child mortality and post-natal death rate. Marrying off a child under the age of

There is no provision for obtaining the consent of the child concerned. Article 12 of the Convention goes on to say that states are under an obligation to assure to the child, who is capable of forming own views, the right to express those views freely in all matters affecting the child. In the present case, one of the most significant decisions of one's life is legally supposed to be taken by the parents and the court.

One might argue that judicial consent includes listening to the views and opinions of the child concerned. However, in the absence of any express requirement as such, the aforementioned argument will be of little persuasive value. Another clarification of 'special circumstances' under the draft Rules is the absence of close relations of a minor.

On one hand, the country is trying to keep pace with the world in terms of empowering women and making them economically solvent. On the other hand the same country is paving ways for getting the girls dependent on others at any age, from zero to seventeen.

The Constitution portrays Bangladesh as a developmental welfare state. The ever-present struggle for thriving as a welfare state does not only appear in the Constitution as any stale or flowery epithet. That being said, whether a welfare state or one that is trying or striving to be one, can shift its liability of maintaining a kinless child, is subject to critical perusal.

Article 19 of the Convention urges the states to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence. Being oblivious of the facts related to the high rate of domestic violence, the law already created rooms for exploitation of the under-aged girls. And the Rules have only added more to it. Working relentlessly for a socioeconomic reconstruction and for controlling social evils are two major aspects of a welfare state. And our legislature is only moving backward in the wrong direction.

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THE WRITER IS A STUDENT OF LAW, UNIVERSITY OF DHAKA.

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and parental consent and no penalties whatsoever, child marriages have been made permissible.

Keeping the rules regarding legal translation in mind, a possible linguistic rendition for the words used therein would be such: due to involvement in romantic relationships, if the girl becomes pregnant or becomes the mother of a child, the court can consider giving permission of marrying the girl off to the other person involved or if the minor girl doesn't have any close kindred in order to maintain her, in that case too, the exception clause will come to play.

different discourse.

However, without precision and specificity, based on an alleged 'liaison' or 'romantic relationship' followed by the girl's pregnancy, marrying off a minor girl will give birth to unimaginably dreadful consequences. Such a wide expression thus can bring non-consensual and coercive sexual relationships within its purview too. Considering the abstraction and psycho-physiological nature of human relations and the inherent intricacies associated with non-consensual sex and/or rape, the use of such a wide, vague terminology, is questionable.

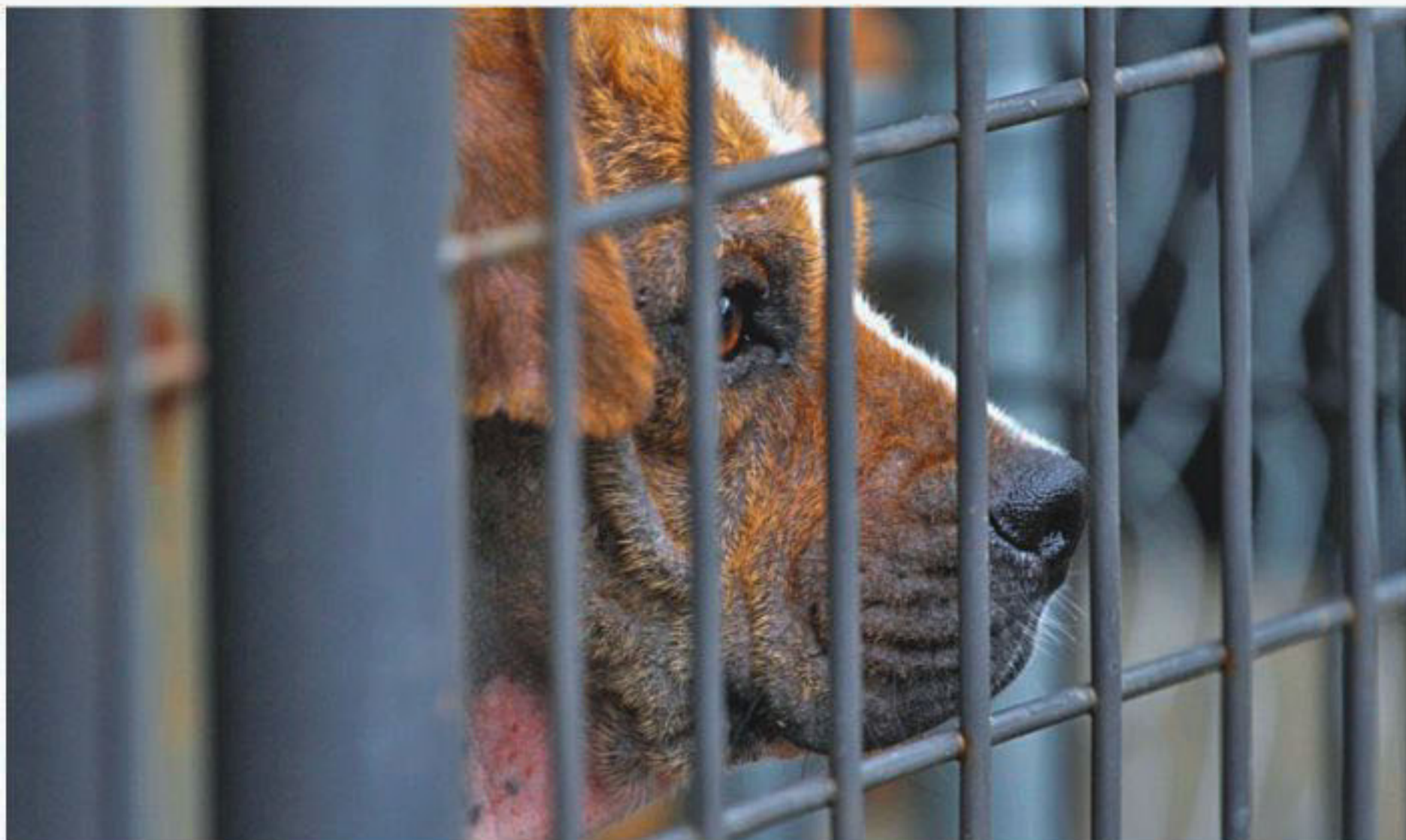
18, for however compelling the reasons might be, is detrimental to the development of the child. As far the survival of a child is concerned, the same will be put at risk by realising the exceptional clause. Maternal mortality rate in our country has declined reportedly over the last few decades. Now we can only helplessly wait for the same to rise up.

The Act along with the draft Rules advocate in favour of preserving the best interest of the child concerned. And in furtherance of protecting that, obtaining parental and judicial consent is necessary.

**LAW LETTER**

Family, companion and sometimes shadow, these are the various positions that these four legged furry animals hold in our hearts. When night falls in the lake side park of Rabindra Shorobor, a re-enactment of the famous folklore Pied Piper of Hemelin comes into life. The only difference being that here the Pied Piper is

dog culling drive made by the Chittagong City Corporation (CCC) which resulted in the death of numerous street dogs. On further investigation, after the photos of such cruelty went viral on social media, it was revealed that, dog culling never really stopped although the local authorities banned such activities back in the year of



a homeless kid riding his rusty bi-cycle and is being playfully followed by a bunch of stray dogs. This bond that the vagrant beings share with these animals recites an untold story of love, loyalty and reliability.

Nevertheless, our society has a rather radical view regarding stray dogs which threaten the very existence of this species. And, this is further exhibited in the recent

2012. The CCC has been secretly carrying out these drives upon demand by the locals owing to their fear of being bitten by dogs and many other unreasonable excuses. This revolting revelation brought animal lovers to the street demanding the stop of dog culling in the country.

The torture that we are talking about here ranges from poisoning, kicking,

beating, and breaking the neck of the animals. And, it doesn't stop there because these homeless animals are mistreated by the pedestrians even when they don't pose any risk to them.

It is to note that, the CCC carried out these drives in violation of the rule pronounced by the Hon'ble High Court Division in the year of 2014 which banned the culling of stray dogs, bull fighting and cock fighting among other inhumane practices, owing to the efforts made by the Animal Welfare Foundations, Obhoyaranno. In addition, section 4 of the Cruelty to Animals Act 1920 specifically states that overdrives, cruelty or unnecessarily beats, or otherwise ill-treatment of any animal is an offence punishable with imprisonment and fine. In spite of such laws being in place and protests by the animal welfare foundations, the end of such callous behaviour against the street animals is yet to see the light of day.

This brings us to the question whether it's time to reevaluate and revisit the anachronistic laws surrounding animal welfare. The 1920 Act subjects the offenders of such heinous crimes to fines as less as fifty to hundred taka and jail time of not more than three months. Needless to say, such an offence deserves higher fines and longer duration of jail time. It is praiseworthy to note that the Cabinet recently approves a draft Animal Welfare Law containing jail term of six months or a fine of Tk 10,000 or both for anyone convicted of animal cruelty. In

addition, it must be considered that the fear of rabies can be eradicated if the animals are properly vaccinated and sterilised. However, such a large population of street dogs cannot be vaccinated or sterilised if measures are not taken by the Government.

In an article named 'Awareness of rabies and response to dog bites in a Bangladesh community' co-authored by S. Ghosh and others, it has been suggested that 'additional education and awareness programme and better availability for the provision of post-exposure prophylaxis in Bangladesh' will help in achieving the shift in the society's overall behaviour towards stray animals. This brings us to the suggestion that the government should endeavor to conduct nation-wide campaigns prohibiting the barbarous behavior by locals and authorities towards these animals.

Furthermore, the enactment of laws and articulation of campaigns will be of no use if further stance is not taken to implement them. In this generation, it is unacceptable that lack of proper knowledge is subjecting these innocent animals to such inhumane behaviour. We have to change our attitude not only to better our environment but also to give voices to the unheard. We have to instill the lost empathy and compassion on a mass level, that many of us share with these innocent beings.  
**Sheikh Amena Jahan**  
*Student of law, University of London International Programmes*

## Standing by the unheard

## Seminar on law making process

**LAW EVENT**

**NISHAT SUBAH MALIHA**  
**O**RGANISED by Bangladesh Law Digest (BDLD), a seminar on 'Law Making Process of Bangladesh' was held on 4 April 2017 at the Department of Law, University of Dhaka. Prof. Dr. Borhan Uddin Khan, Chairman at Department of Law, University of Dhaka, spoke as the keynote speaker of the program. The seminar was moderated by Mohammad Golam Sarwar, Lecturer in Law of the University of Dhaka.

In the lecture, Prof. Khan introduced the participants with different sources of law; from divine to modern age with step by step reformations, exclusions and inclusions of laws practised in this subcontinent. He also discussed in detail the enactment procedures of Act, Order, Ordinance, Rules, Regulations, etc. Being the editor of 28 volumes of 'Bangladesh Code', Prof. Khan shared his experiences and struggles while collecting

all the laws and also depicted the methods of codification of laws in Bangladesh.

In his closing speech, Mohammad Golam Sarwar focussed on the loopholes in law making process in Bangladesh and lacking of check and balance in existing legal mechanisms. He also emphasised on making laws befitting the time.

The seminar was participated by law students of around twenty universities. Besides them, law practitioners, social workers, teachers and government officials also attended the seminar. This was the second event of BDLD's Seminar Series. BDLD is an online law magazine introduced by some law students of Dhaka University. It aims at keeping the legal minds in touch with the current legal realm of the country.

THE EVENT IS COVERED BY NISHAT SUBAH MALIHA, A STUDENT OF LLM AT THE UNIVERSITY OF DHAKA.



**LAW WATCH**

## Biopic and new film policy

**RAIHAN RAHMAN RAFID**

**F**ILM is often defined as a form of language. It is a form of language which is an essence of inspiration to some and to some it is a medium of expression. For regulating the production, circulation and exhibition of films some laws have been introduced in Bangladesh over the years. According to the Cinematograph Act of 1918, exhibiting any film without the permission of the Censor Board is a punishable offence. Bangladesh Film Development Corporation (BFDC) issues a No Objection Certificate (NOC) to a film. The Board based on the Censorship of Films Act of 1963 possesses the power to order or suggest removal of scenes from the film that may seem inappropriate and can issue a NOC to a banned film once the film has been edited as per instruction. Moreover, this BFDC can ban a film on the ground of containing obscenity or defamatory materials according to the Censorship of Films (Amendment) Act 2006.

The new National Film Policy 2017 is planned to implement a ratings-based certification system replacing the word 'censorship' which bears a negative connotation. Approved on 3 April 2017, this policy may shun any crime scene from a film that may allure people to get involved in such actions. The policy bars rape scenes from being shown on screen.

The much anticipated film, Doob - No Bed of Roses, produced jointly as a Bangladesh-India venture directed by Mostafa Sarwar Farooki resulted in a controversial debate regarding its possibility of getting banned in Bangladesh. The release of the film is on halt for now, as the NOC issued was revoked and it has been claimed that it presents many events concerning life of the revered late writer Humayun Ahmed which may mislead the viewers. The filmmaker refused the allegations and said that 'It is not a Biopic' albeit not denying the fact that it may have been inspired from the life of Humayun Ahmed.

In the case of film Doob, the government seems



to have exercised its jurisdiction over the Censor Board through its ICT Division. Whether the film has been halted on grounds of preventing defamation is still a vague assumption as the Board is yet to state anything officially. However, since it is a joint venture film, laws of both the countries are concerned here and a green signal in the other country would allow the film to be legally exhibited in India.

In a film, liability for defamation applies only if the statement involved was false and a number of cases can be referred to where films figuratively presented defamatory events. Citing from Gately's Libel and Slander (8th ed.), Kerala High Court in *V. Subair v P.K. Sudhakaran* (1987) CriLJ 736 observed that if the description is such that a reasonable person will understand it as a reference to a particular person, it would suffice - even without specific or explicit reference - to constitute defamation. By innuendo, defamation can also arise by reference to initial letter, to fictitious or fanciful names, even where there was no pointer for identification in the words complained of.

The Social Network, a film associated with life of the founder of Facebook, faced no legal restriction despite Mark Zuckerberg found the film 'hurtful'. Dramatised television movie based on real events known as 'docudramas' have been recognised by the US courts in *Seale v Gramercy Pictures* (1997) 964 F.Supp. 918. Docudrama has been defined as a 'motion picture presenting a dramatic recreation or adaptation of actual events'. But even in a docudrama, right to privacy (ensuring one's privacy), rights of publicity (restrictions on using one's name), false light (invasion of privacy) are criterion that need to be considered carefully. In Bangladesh, such legal observations or interpretations are yet to be found and these foreign references thus may be persuasive in similar scenarios in our courts.

What can be positively denoted in the new film policy is its encouragement in joint venture films and historical events (i.e. liberation war, life of ideal persons). As a form of expression, laws on films should be treated and applied ascertaining the constitutional rights of a person more specifically of the film makers.

THE WRITER IS A FILM ACTIVIST AND A CONTRIBUTOR OF THE LAW DESK.