

# Rape of a child bride: Laws locked in a time warp



TASLIMA YASMIN

**I**N the year 1890 during the British colonial regime Hari Mohan Maiti, an adult man aged 35, was charged in the Calcutta High Court with causing the death of his bride Phulmonee who was just about 11-years-old. Phulmonee was still living in her parents' house where her husband had visited a couple of times. During one such visit Phulmonee's mother heard her groaning in pain and found her on Hari's bed, "weltering" in blood. Phulmonee died in excruciating suffering some hours later. The autopsy reports conclusively established that Phulmonee died as a result of being brutally raped by her husband. Medical evidence showed that the body of Phulmonee was wholly unfit for sexual intercourse due to her young age and the forceful cohabitation with a full-grown man, caused the haemorrhage resulting in her painful and agonising death.

In the 1860 Penal Code, the age of consent to sexual intercourse was 10 years for both married and unmarried girls; which meant after reaching 10 years, a married child could not complain of rape against her husband as she was presumed to have given consent to sex upon marriage. In cases when the child was below 10-years-old and was not married to the accused, any sexual intercourse was deemed to be rape with or without consent. As such, Hari Mohan was exempted from both murder and rape of Phulmonee as she was 11-years-old at the time. He was

eventually sentenced for causing death "inadvertently" through a "rash and negligent act" under section 304A of the Penal Code.

The apparent injustice in Phulmonee's death created a compelling narrative in British India to increase the age of consent. Eventually, the Age of Consent Act was passed in 1891, a year after Phulmonee's death, increasing the age of consent from 10 to 12 years in section 375 of the Penal Code. As contemporary historians had commented, while most of India had shown little interest in the legislation increasing the age of consent, in Bengal the Bill was furiously opposed considering it to be an undue interference in the Hindu personal law norms by the British Rulers (Dagmer Engels, 1983). Surprisingly though, the available literature on the legislative debates and political discourses prior to the enactment of the 1891 Act, did not indicate any similar opposition by the Muslim leaders. Rather, when the British lawmakers approached Indian doctors and officials about the increase of the age of consent—with few exceptions—the Muslim respondents supported the Bill holding that under Islamic law, girl's presumed consent does not matter if there is a criminal attack against her person, and if she is underage (Law and History Review, February 2020, Tanika Sarkar). Shocked by the viciousness of the effects of premature cohabitation on girls, many Indian doctors at that time had even demanded to increase the age of consent to 16 at one point (Tanika Sarkar, 2020).

In 1925, while voices of women leaders and activists were getting stronger in favour of abolishing the harmful practice of child marriage, the age of consent was further increased. This time for unmarried girls it



was increased to 14 and for married girls to 13. The clause reads: "Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape."

Inheriting the same Penal Code from the British regime, India had further increased this marital rape exception to 15 years of age. Later, by the Protection of Children from Sexual Offences Act (POSCO) 2012, any sexual activity with a child below 18 was criminalised, essentially increasing the age of consent even for married girls to 18. In Pakistan, this marital exemption clause was simply removed from the text of section 375 in 2006, although there seems to be rarely any reported complaint of marital rape since the removal. As far as the modern British laws are concerned, the immunity from marital

rape has long been abolished.

Let us now reflect on the "Phulmonee" of our times—the helpless child Nurnahar of age 14 who died as a result of premature cohabitation by her husband—Rajib, of age 34. Before succumbing to her injuries, Nurnahar told her Grandfather at the hospital: "Although I begged for my life, cried and told my husband that I was bleeding and struggling to breathe, he still did not leave me alone..." (Dhaka Tribune, November 3, 2020).

It was 1890, when the laws failed to prosecute rape and consequent death of Phulmonee. 130 years later, we still could not charge the husband of Nurnahar with rape or culpable homicide, and the case was filed under the same section with which Hari Maiti was charged with—section 304A of the Penal

Code, for causing death by rash or negligent act not amounting to culpable homicide. The maximum punishment under the section is only five years of imprisonment. We could not prosecute Nurnahar's husband for rape because unlike reforms in sexual offence related laws that took place in our colonial counterparts and in many other countries around the world, we remained faithful to the colonial legal ideas that provided immunity for marital rape of child brides.

The move to increase the age of consent in the British colonial period was rather driven by the physical incapacity of young girls forced into cohabitation with grown men resulting in severe injuries and loss of lives. In an overtly patriarchal context of the nineteenth century British India, where child marriage was sweepingly endorsed by cultural norms and religious sanctions, increasing the age of consent to 13 for married girls was probably the best that could've been done at that time. What is surprising is that even in 2020, when we had already endorsed several international instruments pledging to protect rights of children and had made abundant commitments at various global platforms to end child marriages entirely—we failed to find a right opportunity to alter this antiquated and openly suppressive law against girl children.

It seems like we are forever locked in a time warp where lives and choices of young girls do not matter—while oppressive traditional and cultural norms continue to remain without being questioned.

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## Is development for the World Bank mainly doing business?

ANIS CHOWDHURY and JOMO KWAME SUNDARAM

**T**HE World Bank has finally given up defending its controversial, but influential Doing Business Report (DBR). In August, the Bank "paused" publication of the DBR due to a "number of irregularities" after its much criticised ranking system was exposed as fraudulent.

Apparently, data from four countries—China, Azerbaijan, the UAE and Saudi Arabia—was "inappropriately altered", according to the *Wall Street Journal*. Exposure of these irregularities was the final straw: now, it is uncertain whether the DBR will return after its suspension.

### Exposing the lie

After Chief Economist Paul Romer told the *Wall Street Journal* two years ago that he had lost faith in the "integrity" of the DBR, and apologised to Chile for possibly politically motivated data manipulation, he was forced to resign. *The Economist* commented then, "His resignation may not end the controversy".

Romer later received the so-called Economics Nobel Prize subsequent to his resignation. Almost two decades ago, Joseph Stiglitz also received the prize after being forced to resign following differences with US Treasury Secretary Larry Summers in the wake of the 1997-1998 Asian financial crisis.

When Justin Sandefur and Divyanshi Wadhwa of the Center for Global Development (CGD) exposed how ostensibly methodological tweaking changed Chile's and India's DBR rankings to bolster "market-friendly" Piñera and Modi vis-à-vis their more centrist opponents. Simeon Djankov, founder of the Bank's Doing Business index, dismissed the CGD and the two authors as "reformed Marxist".

### Doing Business vs SDGs

Djankov insisted that the DBR is about the costs of doing business, not "the benefits of running a society". He contemptuously told those who criticised the DBR for failing to consider social or environmental impacts, to create their own "index that says the benefits of... regulation".

For the DBR, it did not matter if reducing

regulations harmed the environment or employment conditions, or if lowering taxes constrained governmental capacity to fund public investment and provide decent public health or social protection as long as such "reforms" lowered the costs of doing business.

Singlehandedly, Djankov exposed the shallowness of the Bank's commitment to the Sustainable Development Goals (SDGs). By undermining social and environmental dimensions, Djankov exposed the Bank's actual attitude to sustainable development.

Hence, the Bank had little choice but to ditch the DBR, which has already done enormous damage to development by

**Ditching the DBR may be a good start, but is far from enough. The Bank must also end other similar "ideologically driven" exercises, such as its Enabling the Business of Agriculture (EBA) and Investing Across Borders (IAB) indicators, which prioritise FDI, typically at the expense of some SDGs.**

encouraging harmful tax competition and "races to the bottom" with regard to the protection of the environment and labour rights.

**Racing to the bottom for nothing** Governments seek improvements in their country's DBR ranking believing that it will increase growth via increased investment, especially foreign direct investment (FDI). However, the evidence has been disappointing.

For example, a World Bank Policy Research Working Paper found that, "on average, countries that undertake large-scale reforms relative to other countries do not necessarily attract greater [foreign direct investment] inflows". For developing countries, it found an insignificant statistical relationship.

Another study concluded, "the various studies do not provide guidance on which of the wide range of possible [investment climate (IC)] reforms are most strongly correlated with increased growth".

Such ranking competition has encouraged debilitating investor-friendly government behaviour. The index has become a tool for governments to formulate, evaluate and legitimise their economic policies. Some now game the system to notch up their countries' ranking with essentially cosmetic reforms.

Indonesia's recent "Omnibus Bill" ostensibly for job creation includes many market-friendly reforms that would most certainly boost Indonesia's DBR ranking.

The bill, from a government increasingly influenced by the Bank, is now widely criticised for heavily favouring powerful business interests at the expense of workers, human rights and the environment.

**Agrarian counter-revolution** Ditching the DBR may be a good start, but is far from enough. The Bank must also end other similar "ideologically driven" exercises, such as its Enabling the Business of Agriculture (EBA) and Investing Across Borders (IAB) indicators, which prioritise FDI, typically at the expense of some SDGs.

The Bank's EBA indicators project is an extension of its Benchmarking the Business of Agriculture (BBA) programme, first launched in 2013. BBA, partly based on the DBI methodology, was created after the G8

asked the Bank in 2012 to develop such an index for the G8's controversial New Alliance for Food Security and Nutrition programme.

The Bank claimed, "The indicators provide a tangible measure of progress and identify regulatory obstacles to market integration and entrepreneurship in agriculture", leading to a more modern commercial agriculture sector. Private agribusiness investors will be the main beneficiaries of its proposed land policies and environmental protection deregulation.

But the Bank does not bother to explain how farmers, especially smallholder or peasant farmers, will benefit from the proposed reforms or from large-scale commercial agriculture. Our Land; Our Business highlighted that the EBA will encourage corporate land grabs and undermine smallholder farmers who produce 80 percent of food consumed in the developing world.

In January 2017, over 158 organisations and academics from around the world denounced the EBA to the WB president and its five western donors (USAID, DFID, DANIDA, the Netherlands, and the Gates Foundation), demanding its immediate end.

In response, the Bank made some cosmetic changes and dropped its controversial land indicator. However, its latest (2019) EBA still reflects its strong bias for commercial agricultural inputs and mono-cropping, undermining food security, sustainability as well as customary land holdings.

### Favouring foreign direct investment

The Bank's International Finance Corporation (IFC) introduced its Investing Across Borders (IAB) indicators in 2010. Heavily influenced by Hernando de Soto, the IAB indicators were designed to complement the EBA's DB indicators.

The IAB indicators claim to help accelerate economic growth by giving primacy to FDI as a driver for job creation, technology transfer, upgrading skills, fostering competition and fiscal consolidation. In fact, IAB indicators encourage frameworks that limit benefits for host countries besides enhancing the harmful effects of cross-border investment deals.

The indicators also violate the letter and

spirit of the IFC's Performance Standards for Environmental and Social Sustainability; Principles for Responsible Agricultural Investment respecting rights, livelihoods and resources; Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests; and various other international instruments.

### One size never fits all

The rise and fall of the DBR expose the dangers of using and exaggerating the significance of standardised rankings for very different countries and business environments. An IC is typically complex and difficult to reduce to a few key indicators, let alone a meaningful composite index.

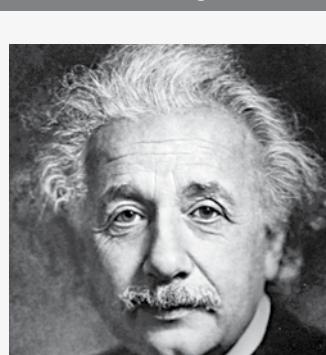
Reforming only certain aspects of business regulation because of the influence of Doing Business cannot possibly be optimal, especially when government capacity is constrained. Academic literature reviews conclude, "while there is empirical evidence that institutional reform can promote growth, it is less clear which reforms matter most, how to prioritise possible IC reforms, and what kinds of institutional frameworks and functions are needed".

Growth drivers and constraints are very context specific, so reform priorities should also be context specific. Therefore, a one-size-fits-all approach to measuring and understanding complex investment environment issues is very problematic, especially one based on the interests and priorities of particular institutions and powers.

The Bank should stop doing harm by concentrating on its original mandate of intermediating finance at the lowest possible cost for sustainable development, relief and recovery in our extraordinary times. It should stop misleading the world, especially developing countries, with its highly biased supposed knowledge products.

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### QUOTEABLE Quote



ALBERT EINSTEIN  
(1879-1955)  
German-American physicist.

*The only thing more dangerous than ignorance is arrogance.*

### CROSSWORD BY THOMAS JOSEPH

ACROSS	28	Campaign goal	6	Floor cover	7	8	9
1	Early carmaker	31	Nights before	7	Roma's nation		
5	Holds tight	32	Supermarket	8	Mass leader		
10	Looks for	sections		9	Taste and smell		
12	Bizarre	34	Rep.'s rival	11	"Streetcar"		
13	Amount of	35	Reunion group	name			
17	appreciation,	36	Debate side	14	Futile		
18	maybe	37	Downpour	19	Actor Lew		
19	"Do – say!"	40	Road curves	20	Work breaks		
20	North Pole	41	Writer Sontag	24	Events		
21	worker	42	Bird abodes	25	Blush		
22	French article	43	"Holy –!"	26	Opposed (to)		
23	Remember	44		27	Lax		
24	Ascend	45		29	Rio Grande city		
25	Pens for tablets	46		30	Continuing		
26	Has dinner	47		31	Boxer Liston		
27	South African	48		32	Smooth		
28	coins	49		33	Horze healer		
29	Quite	50		34	Mai tai base		
30	uncommon			35			
DOWN							
1	Film prize	21		28			
2	Rent	22		29			
3	agreements	23		30			
4	Show	24		31			
5	Enjoy the slopes	25		32			
6	Course activity	26		33			

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A SALUTE TO  
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MORT WALKER  
SEPTEMBER 3, 1923  
TO  
JANUARY 27, 2018



### BABY BLUES

