

RIGHTS ADVOCACY

# Necessity to reform the Child Marriage Restraint Act

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Child marriage is a major issue in Bangladesh, and reforming the Child Marriage Restraint Act is essential to addressing the problems associated with this practice. Bangladesh has Asia's highest rate of child marriage and one of the world's highest rates. Females in Bangladesh marry at a rate of 52 percent before the age of 18, and 18 percent before the age of 15. Child marriage devastates the lives of married girls and their families; it forces girls out of school, traps them in poverty, increases the likelihood of domestic abuse, and raises significant health problems for girls and their unborn children due to early pregnancy.

The Child Marriage Restraint Act of Bangladesh was enacted in 1929 and later amended in 1984, setting the legal age for marriage at 18 years for females and 21 years for males. At present, the main legislation regarding child marriage is the



involve providing adequate resources, training, and support to law enforcement agencies, as well as promoting awareness among communities about the legal consequences and harmful effects of child marriage.

Sixthly, the lack of education is a significant factor contributing to child marriage. Reforming the law should be coupled with efforts to improve access to quality education, specially for girls. Education empowers children with knowledge, skills, and opportunities, enabling them to make informed decisions about their lives and delay marriage.

Seventhly, the Act could include provisions for establishing comprehensive support systems for individuals affected by child marriage. This might involve setting up helplines, counseling services, and safe houses to aid, protection, and rehabilitation for child brides and their families.

Eighthly, the Act could consider imposing stricter penalties for those involved in child marriages, including parents, guardians, and any other parties facilitating such marriages. It could also establish mechanisms to hold individuals accountable for violating the provisions of the Act.

Ninthly, child marriage is deeply rooted in social and cultural norms in Bangladesh. To effectively combat this issue, legal reforms should be accompanied by comprehensive strategies that challenge these norms and promote gender equality, education, and women's empowerment. Engaging with religious leaders, community influencers, and civil society organisations is vital in this regard.

It is important to note that legal reforms alone may not be sufficient to eradicate child marriage entirely. Addressing this complex issue requires a multi-faceted approach involving government commitment, community engagement, awareness campaigns, education, and economic empowerment initiatives.

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specific circumstances, which ultimately shows the ways for the parties to child marriage with the court's authorisation. These provisions undermine the intended purpose of the law and provide room for exploitation. Reforming the law can help eliminate or tighten these loopholes.

Secondly, if we look closely at the law, we can see that all the offences are bailable, which ultimately inspires the parties to allow child marriage. When an offence becomes bailable, the accused has the right to seek bail from the court. As a result, it cannot have significant consequences in society for this offence.

Thirdly, this Act, in addition to penal provisions, gives the court the option of imposing a fine on the accused person. Another legal issue that must be addressed concerns the fine and payment of the fine. The fine which is imposed in the Act is so low according to today's socioeconomic situation and sometimes the people are not afraid of this kind of fine. Again, because different legal procedures are involved, realising the fine is extremely difficult and complicated. This ultimately undermines

the fundamental penal provisions.

Fourthly, if we look at the administrative approach of this Act, it has provisions for the formation of administrative committees to raise awareness in society about the negative effects of child marriage. The functions of these committees must be more specific. The government has specialised officers for women and children in various administrative units, though their functions and powers are somewhat limited. As a result, even though they receive information about child marriage, those officers are unable to properly enforce their powers in their jurisdiction. To prevent child marriage, they must rely on the wishes of other administrative units. As a result, if we truly want to prevent child marriage, specialised departments should be entrusted with the task of enforcing this Act. Otherwise, it must rely on administrative units that are overburdened with their own work to enforce this Act.

Fifthly, there could be a focus on improving the implementation and enforcement of the Act. This may

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Child Marriage Restraint Act, 2017 which replaced the previous Act of 1929. Despite these legal provisions, child marriage remains prevalent due to various social, cultural, and economic factors.

Here are some reasons why the reform of the Child Marriage Restraint Act is necessary in Bangladesh:

First and foremost, the current law has several exceptions and loopholes that allow for child marriages in certain circumstances, such as parental consent or special circumstances. Section 19 of this Act authorises child marriage under

LAW IN-DEPTH

## Consent of existing wife in polygamous marriage: A myth or statutory requirement?



**David Pearl and Werner Menski remark that in view of South Asian social and religious dynamics, the complete interdiction of polygamy remains elusive.**

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A myth persists among the mainstream population that consent of the existing wife is a mandatory statutory requirement for the remarriage of the husband. Whereas, the concerned legislation Muslim Family Law Ordinance (MFLO), 1961 states otherwise. The legislation does not make the consent of one of the main stakeholders in such marriages, i.e. existing wives – a compulsory prerequisite.

Section 6(1) of the MFLO embodies the basic law on polygamy, which lays down that no man shall contract polygamous marriage without the previous written permission of the Arbitration Council. It also bars registration of a polygamous marriage solemnised without the approval of the Council. Section 6(2) divulges about submission of an application to the Chairman for getting permission. The application shall

contain the reason behind such marriage, and whether the existing wife or wives has/ have granted consent.

The power of granting such permission is a discretionary power of the Council. Section 6(3) embodies that permission will be granted only if the proposed marriage is “necessary and just.” Against the decision of the Council, an appeal in the form of revision shall lie to the concerned Assistant Judge and his decision shall be final. Rule 15 of the Muslim Family Rules, 1961 mentions laying down a concise statement of the grounds on which the new marriage is alleged to be “just and necessary.” Rule 14 sketches out a guideline for gauging the justification of such marriage. Some mentionable factors are fertility, physical infirmity, physical incapability for conjugal relations, insanity, and so on. In contravention to the statutory procedures, any dower whether prompt or deferred needs to be paid immediately to the existing wives. Further criminal sanctions are also mentioned in section 6(5). However, non-compliance with the aforesaid statutory requirements does not impact the validity of marriage.

In *Abul Basher v Nurun Nabi* 39 DLR (1987) 333, a question arose whether the existing wife's consent was a prerequisite for solemnising a second marriage. The court held that the legislative intent of section 6 was to curb the practice of polygamy and to condone it in reasonable scenarios. Section 6(5)(b) penalises polygamous marriage without the previous written approbation of the Arbitration Council but remains silent about the consent of the existing wife. Hence, the legal provisions and judicial precedents make it clear that the consent of the first wife is not a *sine qua non* for the husband to solemnise remarriage.

It is pertinent to mention that the approval of existing wife might expedite the permission granting procedure from the Council. But the nuances behind such consent should be scrutinised. In assessing the consent given by the existing wife, patriarchal connotations should be taken into consideration. Societal forces and dynamics are too overwhelming for most

women in Bangladesh to deter polygamy and many women succumb to the polygamous marriage for the fear of becoming destitute.

Given the narrow ambit of the existing wife's role in such marriages, very few redress exists for women. Nikahnama is a potent weapon in such a situation. Since Shariah allows polygamy, a wife cannot insert stipulations prohibiting her husband from contracting another marriage. Such a stipulation is rendered void and does not fall under the purview of special conditions (clause 17 of Nikahnama). But she can definitely resort to Talaq-e-Tafweez under clause 18. At the time of marriage, the wife can insert a clause that in the event of a remarriage, she can divorce her husband. Delegation of such right may check the imbalance of power in marriage to a little extent. Moreover, Section 2(VIII)(f) the Dissolution of Muslim Marriage Act, 1939 puts forth the remarriage of the husband as a valid ground for the wife to seek divorce.

The High Court Division in *Jesmin Sultana v Mohammad Elias* 17 BLD (1997) 4 recommended the deletion of section 6 and substitution of a section prohibiting polygamy. The Court referred to the Quranic precondition of “to be able to deal justly” among wives for polygamy as incapable of fulfillment in present socio-economic scenario. However, the Appellate Division declared the judgment impugned.

Polygamy has always been an issue of debate between fundamentalists and modernists. The provisions of section 6 is essentially a compromise between both the views. David Pearl and Werner Menski remark that in view of South Asian social and religious dynamics, the complete interdiction of polygamy remains elusive. But it is high time to include the major stakeholders in the picture. It is imperative to make the existing wife a necessary party in the arbitration proceedings. Mere acquiescence of the existing wife in this patriarchal society with deep-rooted stigma of Talaq should not be drawn out as consent.

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RIGHTS WATCH

## Protection of diplomats under the Vienna Convention on Diplomatic Relations

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The Ministry of Foreign Affairs recently announced that the ambassadors and high commissioners in Bangladesh representing the United States, United Kingdom, India, Saudi Arabia, Australia, and Japan would no longer receive the previously provided “extra security” measures, which were issued following the 2016 Holey Artisan attack in Dhaka. The Ministry, however, provided the option to hire escorts from the Ansar battalion, should they deem it necessary for their personal protection. This decision has sparked varied reactions, with different groups presenting contrasting perspectives, which may pose risks to Bangladesh's international relationships.

An earlier incident in December 2022, when the US ambassador to Bangladesh encountered security concerns while meeting with families affected by enforced disappearance, severely underscored the significance of ensuring robust security arrangements for diplomats residing in the country. Hence, despite the government's assurances of adequate security measures and the arrangement to hire added security forces, these circumstances surrounding the protection of foreign diplomats stationed in Bangladesh have raised considerable debate about the adherence to diplomatic protocols under international standards and the Vienna Convention on Diplomatic Relations.

The Vienna Convention on Diplomatic Relations (VCDR), considered the cornerstone for the conduct of diplomatic relations worldwide, designates the foreign ministry of each signatory country, including Bangladesh, as the primary authority responsible for managing diplomatic



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missions within the host nation. It is built upon the fundamental principle of ensuring the inviolability and security of diplomatic missions and their personnel.

Article 22 of the VCDR addresses the protection of diplomatic premises and states that the premises of a diplomatic mission, including the buildings, the land they occupy, and other property, are inviolable. It entrusts the host country with the duty to protect these premises from any intrusion, damage, or disturbance in order to prevent any interference with the mission's peaceful functioning and the diplomats' ability to carry out their duties. Such protection extends not only to the physical integrity of the premises but also to the mission's archives, documents, and correspondence (article 27). Similarly, article 30 provides inviolability and protection of the private residence of a diplomatic agent, which, too, include property, papers, and correspondence.

Article 25 obligates the host state to provide diplomatic officials with complete facilities necessary for the effective performance of their functions. The “functions of the diplomatic mission,” as articulated in article 3, include diplomatic negotiations, representing the sending state's interests, promoting diplomatic dialogue, and other related functions. The receiving state is obligated to assist the mission in accomplishing these functions by offering the necessary resources, support, and security.

Article 26 addresses the freedom of movement and travel of members of diplomatic missions in the host state, with considerations for national security. The provision recognises that the receiving state has a legitimate interest in safeguarding its national security and may need to control access to certain areas to protect sensitive locations, installations, or information. While diplomats should have the necessary mobility to perform their official functions, it is also crucial to respect the host country's security concerns. Similarly, the host state has the responsibility to ensure that any limitations on the freedom of movement imposed for reasons of national security are reasonable, non-discriminatory, and do not unduly hinder the mission's operations.

Article 29 provides inviolability as to any form of arrest or detention in the host country. The host country is responsible to ensure respectful treatment and to take all appropriate steps to prevent any attack on an official's person, freedom, or dignity.

The VCDR further extends the protections and immunities granted to diplomatic agents to their non-national family members, ensuring their security and well being in article 37.

Finally, article 41 highlights the importance of upholding diplomatic protocols, respecting the sovereignty of the host country, and maintaining the integrity and security of diplomatic missions by emphasising the duty of individuals enjoying diplomatic privileges and immunities to respect the laws and regulations of the host country, refraining from interfering in its internal affairs and prohibits the use of diplomatic mission premises in any manner incompatible with the mission's functions.

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