

## Child Marriage in Bangladesh: Policy and Ethics

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**Abstract:** Bangladesh is a Muslim-majority society with more than 163 million people. Most Bangladeshis hold the ideals of Islamic norms and values which is manifest in all sorts of socio-cultural behaviour. In reference to such values, the tradition of legitimizing child marriage in Bangladesh is the issue that needs to be addressed in a holistic yet rigorous approach. Currently Bangladesh ranks 4<sup>th</sup> in the world and 1<sup>st</sup> in Asia in terms of child marriage. Recently the Child Marriage Restraint Act 1929 has been abolished and it has been replaced by the Act of 2017 preserving article 2 of the previous statute, the legal age for marriage for a boy 21 and for a girl 18. This Act adds article 19 which legalizes minors (below 18 years of age) to be married off with the consent of the parents/guardians at the presence of a magistrate under “special circumstances” deemed with securing the best interest for them. The law artfully coincides with the Muslim Marriage Law which allows participants of 15 years and above to get legally married and as such contradicts the international law and the Act of 2017 itself. In the West intimate relationships including extra-marital cohabitation before reaching 18 years of age are culturally accepted. In contrast, such extra-marital and intimate relationships are strictly prohibited in Muslim-majority societies, which are dearly adhered in Bangladeshi Muslim culture. This study examines how the religious cultural and socio-economic realities influence child marriage practice in Bangladesh. Along with secondary documents, we interviewed 22 individuals including the Deputy Commissioner, the District Women and Children Affairs Officer, elected Union Parishad Chairman and Members, Social Workers, married couples and their parents/guardians at Manikganj district. In addition, we also conducted a mass survey with 62 randomly selected participants, and a voluntary online survey where the opinion of another 53 young students were collected to find broad opinion. We also collected stories of how marriages take place at the rural, urban and sub-urban areas in Bangladesh. The study has revealed that Bangladeshis does not support marriage at early ages but socio-economic reality often pushes poor into getting their children married at early ages. Many view that the *special provision* may encourage child marriage in the country. This study suggests that the government of Bangladesh should redefine public policy in regard to finding a middle ground between Islamic ethics and international values by exploring *isomorphic mimicry* and other socio-culturally accepted measures with a view to abolishing child marriage successfully.

**Key-words:** Child Marriage, Muslim, Culture, Bangladesh.

**Introduction:** Bangladesh is a South Asian Muslim-majority society where 90% of the inhabitants are Muslims, 9% Hindus and the rest 1% belong to Christianity, Buddhism and other religious

groups<sup>1</sup>. Thus, it is obvious that Muslim values and ethics occupy the largest share in mainstream Bangladeshi culture. It is a breeding zone for multiple socio-political paradoxes. Such an alarming issue in the

statecraft is its policies regarding early marriage, and how instead of reducing cases of *child marriage* for which the policies were designed in the first place, it is being subtly encouraged. The legal practice of child marriage has been prevalent in Bangladesh since the Child Marriage Restraint Act adopted in 1929. Section 2 of this Act states that the legal age for marriage for a boy is 21 and for a girl 18. The present child marriage rate in Bangladesh is the highest in Asia, with 52 percent of girls getting married before 18 years of age, and 18 percent married before turning 15<sup>2</sup>. It ranks 4<sup>th</sup> in the world, second only to India in numbers, the three other countries where the child marriage rate is higher than Bangladesh are backward African countries<sup>3</sup>. Studies have rooted out the eminent causes of child marriage in Bangladesh, which primarily include poverty, lack of education and social barriers, such as- the thought of ensuring the protection of the daughter by getting her married off at a young age<sup>4</sup>. A 2018 report<sup>5</sup> shows various socio-economic reasons which provoke the practice of child marriage. These include safety issues, perceived lower value of the girl child, unequal education and livelihood opportunities, gendered norms and harmful practices, and heightened vulnerabilities due to natural disasters. According to a 2017 UNICEF report<sup>6</sup>, among the countries with the highest rates of child marriage before age 18 (counted among women now 20 to 24), Bangladesh ranks 4<sup>th</sup> globally. Its position remains just behind that of 3 African countries, namely- Chad, Central African Republic and Niger (see Chart 1).

Lately, the 1929 Act has been abolished and a new law called the Child Marriage Restraint Act 2017 has been passed keeping article 2 of the 1929 Act, which contains the legal age for marriage in Bangladesh, unchanged. The new law adds a new provision in article 19 that describes: “...under such special circumstances as may be prescribed by rules in the best interests of the minor, at the directions of the court and with consent of the parents or the guardian of the minor, as the case may be, it shall not be deemed to be an offence under this Act”. This means that adolescents at any age can get married legally by taking the consent from their parents/guardians and seeking permission from the courts under “special circumstances” for securing the best interests of the bride and the groom. But the provision does not specifically explain the term “special circumstance” or what

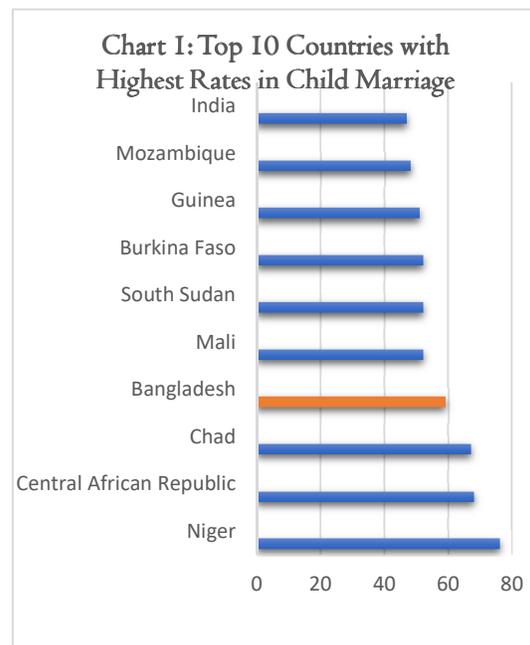


Chart 1 shows the position of Bangladesh among the countries with the highest rates in child marriage.

kind of “interests” it would serve for the participants. So, a set of question relevantly arises including who will get benefitted from the law? And how could it help in decreasing current child marriage rate in the country?

The Muslim law keeps the minimum age for marriage at 15 years or the age when puberty begins, since Islam encourages early marriage to prevent extra-marital relationships. In the case for formal marriages, the Muslim law differs to a great extent from the international law which is currently being followed in the state. The internationally recognized laws state that the minimum age for a person to get married is 18 years. UNICEF deems the act of marrying off a person before 18, or a minor, to be a violation of human rights. It states that “...marriage before the age of 18 is a fundamental violation of human rights. Many factors interact to place a child at risk of marriage, including poverty, the perception that marriage will provide ‘protection’, family honor, social norms, customary or religious laws that condone the practice, an inadequate legislative framework and the state of a country’s civil registration system. While the practice is more common among girls than boys, it is a violation of rights regardless of sex”<sup>7</sup>. The reason for selecting 18 as the ‘age of adulthood’ does not have a particular scientific basis. Rather it is linked mostly to the age of universal suffrage or voting rights. This universal bar of 18 years is therefore championed by the developed western societies, without paying heed to the geographic, psychological or socio-cultural attributes of distinctive nations. Research works are yet being conducted to find out the age at which the psychological

growth of a human being attains a minimum threshold. The age of maturity and the minimum age for marriage are not to be entangled here, since there is a lack of proper scientific documentation in determining either of the two.

The Western communities have fixed 18 years as the age of maturity for *consent*. But one can easily find infinite cases of premarital sexual contacts, pregnancies and live-in relationships (where the partners cohabit without formal wedding procedures) globally, before the participants turn 18. And these practices are taking place with the consent of the people involved. So, is *consent* only required when two people want to be formally engaged in a marital relationship? Since it is an established fact that when a person reaches puberty, s/he develops sexual cravings and thus stepping towards the path of fulfilling those desires is very natural and evidential. This biological fact is thoroughly reflected in the culture of the West, which is different from the Muslim culture. The important thing is that the western secular culture, upon which the international laws regarding marriage and human rights are based on, approves premarital sexual relationships and cohabitation. Besides, only in recent years, the neurobiological underpinnings of “maturity” are being researched for legal institutions – where primarily the growth of the “frontal cortex” of human brains are argued as signs of maturity<sup>8</sup>. Like other majority Muslim societies such as Bangladesh, an act which is called “Zina” or fornication, is considered outrageous, extra-religious, and is strictly prohibited. There are two fundamental sources in Muslim laws – the Holy Qur’an (the verbatim words of Almighty Allah) and

the Hadith (the sayings, actions and practices of Prophet Muhammad and his companions). These offer references for the prohibition of extra-marital relationships as follows: “do not go near adultery, surely it is an indecency, and an evil way [of fulfilling sexual urge]” (Qur’an, 17:32); “the believers are... those who protect their sexual organs except from their spouses... Therefore, whosoever seeks more beyond that [in sexual gratification], then they are the transgressors” (Qur’an, 23:5-6). The Hadith also states “receive teaching from me, receive teaching from me. Allah has ordained a way for those women. When an unmarried male commits adultery with an unmarried female, they should receive one hundred lashes and banishment for one year. And in case of married male committing adultery with a married female, they shall receive one hundred lashes and be stoned to death” (Sahih Muslim, 17:4191). Muslims in Bangladesh often see it as their religious duty to have their children married off before reaching puberty as it may ensure psychological and physical wellbeing of their children. However, socio-economic realities often push poor people towards child marriage in order to ensure their social security and lift themselves out of poverty.

As Bangladesh is a poverty-ridden society in which more than 20% people still live below the poverty line<sup>9</sup>. Millions of people cannot afford healthy food, shelter, clean water, medication and energy. Millions more live in the streets. A large chunk of 60% of the population live in the rural areas<sup>10</sup>, and are accustomed to social superstitions, such as “dowry system”. In order to avoid the burden of giving higher dowry rates, the poor, illiterate and

unaware parents/guardians often marry their daughters off at comparatively younger age. Henceforth, these are the people who may certainly take advantage of the existing laws and ultimately instead of decreasing, child marriage will inevitably increase. It will adversely affect the health of the under-age married children, and will hinder the socio-economic development of the country.

In Iran, the legal age for marriage at 18 according to the “Convention on the Rights of the Child” (1994). But it still reserves some ambiguity in situations where the law may contradict the Shariah Law. It allows girls below 13 and boys below 15 to get married, since the “age of majority” is calculated based on lunar years<sup>11</sup>. Turkey became a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) in 1985 and set its legal age for marriage at 18 according to the Convention on the Rights of the Child,<sup>12</sup> yet its Directorate of Religious Affairs suggested in 2018 that children as young as 9 could marry under Islamic Law<sup>13</sup>. In Pakistan, for example, the traditions of *swara* (marrying off girls to resolve conflict), *addo baddo* (marriage within families or tribes), *watta satta* (exchange of wives) or *pait likkhi* (getting girls married often before their birth) – are still in practice<sup>14</sup>. Pakistan still follows the Child Marriage Restraint Act of 1929, setting the legal age for marriage of boys at 18 and girls at 16 – which Bangladesh abolished in its reformed act of 2017.

On the contrary, in Malaysia for example, although the state laws require for women to be 18 to marry, yet through consent or shariah courts, a woman can marry off if she reaches 16 years of age<sup>15</sup>. Thus, we

can see that, although there is a narrow deviation from international standards, yet the age-limit is specified: not below 16, unlike that in the “special provision” (Section 19, Child Marriage Restraint Act 2017) in Bangladesh. In the case for Bangladesh, similar actions can be undertaken through the neo-institutionalist approach called *isomorphic mimicry*, which implies: “different organisms evolving to look similar without actually being related. In particular, isomorphic mimicry is the process by which one organism mimics another to gain an evolutionary advantage”<sup>16</sup>. Hence, the notion of isomorphic-mimicry is to transfer the “plausible infrastructural bases” from a socio-culturally similar society and ‘improvise’ it accordingly in order to practically use it in the host society. In Bangladesh, such a strategy could possibly put a greater impact on the early marriage issue, by defining the core pillars of marriage clearly and altering the social institutions in a controlled manner-through proper statutory laws and their implementation.

Moreover, this study addresses the following relevant policy and ethical questions: (1) Should Bangladeshis follow Western secular and autonomy-oriented marriage law in regard to child marriage? (2) How have the Islamic cultural factors and socio-economic realities shaped the marriage law in Bangladesh? (3) What extent of policy reform is necessary for such cases? And (4) how should public policies be ethically and socially justified in the country? By analysing the views and perceptions of the interviewees, this study attempts to explore the necessary reforms which are ethically sound, morally defensible and socio-economically

adjustable in the context of Bangladesh, and which may help in decreasing child marriage that will ensure better outcome for the country.

**Research Methodology:** In addition to the review of secondary literature, we collected the primary data in two phases. In the *first* phase, we purposively interviewed 22 individuals including the Deputy Commissioner, the District Women and Children Affairs Officer, elected Union Parishad Chairman and Members, Social Workers, married couples and their parents/guardians at Manikganj District in March 2017. We asked interviewees the following questions: What are the causes of child marriage in Bangladesh? How could Bangladeshis refrain from the practice of child marriage? Do you consider that the current law can abolish child marriage rate Bangladesh? Is it ethically permissible to allow adolescents into getting legally married at any age, under ‘special circumstances’? We also collected stories from parents/guardians of married couples regarding how marriages take place in the rural and urban areas of Bangladesh. The views and perceptions were collected in Bengali as Bangladeshis love to express themselves in their native language, *Bengali*. The data were then transcribed into English. We coded and analyzed them using content and thematic analysis. In the *second* phase, we also conducted a mass survey with randomly selected 62 participants in urban areas of Dhaka and sub-urban regions of Chittagong to find broad opinion. The majority of the respondents are male because the survey was conducted in the streets of the respective districts and people do not usually want to allow unknown people

inside home due to security reasons. The sample represents are the public and private service holders, academics, businessmen, students, farmers and day-laborers. In order to capture the thoughts of the young adults, we have also conducted a voluntary online survey where the opinion of another 53 respondents was recorded in early December 2019. This sample mostly involves the students of public and private universities. Some of the major questions asked to the respondents of both the surveys were: Do you know about the Child Marriage Restraint Act 2017? Do you support the 'special provision' in article 19 of the Act? Do you think the current child marriage restraint policy will increase rather decrease child marriage in Bangladesh?

**Findings from the Field:** Traditionally, Bangladesh is a collective society with a patriarchal structure in which a father/guardian is always positioned at the center of stage and is always respected by all the family members. Although decisions are usually made by the family members discussing together in families but the father/guardian plays important role in making decisions, especially decisions regarding the marriage of their daughters. In Bangladesh, daughters born in poorer households are often considered as a burden by their families. Marrying the daughter off to a man at an early age is therefore considered as a survival strategy for many Bangladeshi families, especially the poor ones. As Bangladesh is a rural-based society, people who live in rural areas are prone to poverty and poor people are somehow forced to get their daughters married at early ages. A parent, Rahman whose age was 55, said that "I was married at the age of 22 and my wife was 14. I am

a fisherman and live in the Jamuna riverside. Every day, I catch fish in Jamuna River and sell them out in local markets. The money I earn by selling fish in markets is generally used to bear the expenses of our daily lives. We have three daughters and two of them were married off at early ages. I went to the Union Parishad Office and was issued age certificates of my daughters and got them married at their early ages as because I was unable to secure the life of my daughters socially and even unable to feed them regularly. I searched for husbands for my daughters so as to the girls can depend". A social service worker also said that the local representative is often convinced by poor parents and issues 18+ age certificate that is required for the legal marriage systems. The representative is sympathized and issues age certificates when they see that the poor parents live in vulnerable conditions with many of their daughters. The poverty is the underpinning factor that makes poor people more vulnerable in living their daily lives. It pushes poor families towards making decisions into getting their daughters married at early ages.

A vast majority people in Bangladesh still live in rural areas and the prevalence rate of child marriage in the rural people tends always to be higher than the urban people. A question was asked to interviewees regarding the causes and consequences of early marriages in Bangladesh. For example, an elected Union Parishad Chairman who took few minutes and replied that "rural people feel happy when they see that they can get married their daughters at early ages. Because marrying off daughters at early ages ensures financial and social security. These

securities are manifested as follows: firstly, parents don't need to pay much dowry if their daughters get married at early ages. What I see is that a young girl is mostly liked by the potential brides, which surmounts to lesser dowry. Secondly, poor people, especially rural, are prone to have more children as poverty drives them to produce more children, for economic and awareness issues". An elected Union Parishad Member added a few lines with a view that "poor parents who have more daughters are always eager to get their daughters married at early ages as they feel secure socially. Because marrying off daughters at early ages is beneficial for poor parents/guardians who usually have more daughters". Parents/guardian always want to get their daughters married at early ages when they see that they are unable to secure their daughters, unable to provide the cost of their basic necessities i.e. food, shelter, cloth, education and healthcare. These reasons gear to increase the prevalence rate of child marriage higher in rural areas, as UNICEF reports.(17) A social worker, who works for the development issues, said that the consequences are mostly negative as many whose daughters are marrying off at early ages. He opined that "girls who are married at early ages often tend to bear children and manage household activities. As a result, they have to quit their education at early ages. It is not only associated with poor social outcomes but also it is adversely affected on adolescent's physical health". He also added that "adolescents who have pregnancies at early ages usually have an increased risk of death during childbirth and malaria, and have poor child health outcomes such as the incensement of infant mortality rates, loss of weights and

diarrhea diseases". Studies found that pregnancies as a result of early marriages cause negative health outcomes for girls and her offspring's<sup>18</sup>.

Most Bangladeshis get their children married at early ages as because it helps them to prevent doing their daughters pre-marital physical relationships. Parents who have unmarried adolescent daughters at home are worrying about the fear of their daughters getting involved in pre-marital sexual relationships. Thus, parents want to have their adolescent daughters get married at their early ages. A father of a newly married adolescent girl narrated his opinion in a line that "as we are Muslims, we have to follow the rules and instructions offered by the Quran and Hadith. Pre-marital-physical relationships are strictly prohibited in Islam and we must have to get our daughters married when they are at the stage of their puberty. If our daughters do wrong things with others, we have to be punished for our wrong deeds in the day of the *final judgment*. For this reason, I got my daughter married before she turned 16. As I am a Muslim, I believe that marrying off my daughter at early age ensures my daughters physical safety and it also protects my family prestige and honor." Muslim marriage law sharply contradicts with the internationally accepted law that is prescribed by the Bangladesh government. As pre-marital relationship is socio-culturally prohibited in Bangladesh, the contradiction between the Muslim marriage law and statutory law often encourages Muslims into getting their children married at early ages in order to preserve sexual and family honor.

The following Chart 2 and Chart 3 reveal the answers to seven of the major questions asked from the questionnaire to the respondents in the mass survey and the online survey. The questions are:

- 1) Do you think it is appropriate for a minor (>18) to get married?
- 2) Are you aware of the Child Marriage Restraint Act 2017?
- 3) Do you support Article 19 of the Child Marriage Restraint Act 2017?
- 4) Do you think females are more victims of child marriage than males?
- 5) Is it appropriate for a child to get married at 15 or less as per the Muslim Marriage Law?
- 6) Do you think the current Act will encourage not decrease child marriage in Bangladesh?
- 7) Should the act be further revised?

Majority (60%) of the randomly surveyed people was against getting their children married off at early ages; nearly 40% people and 60% of young adults are aware about the child marriage restraint act. Although their view was supportive to the special provisions in relation to child marriage but vast majority of them such as 80% and 90% opined that such provisions

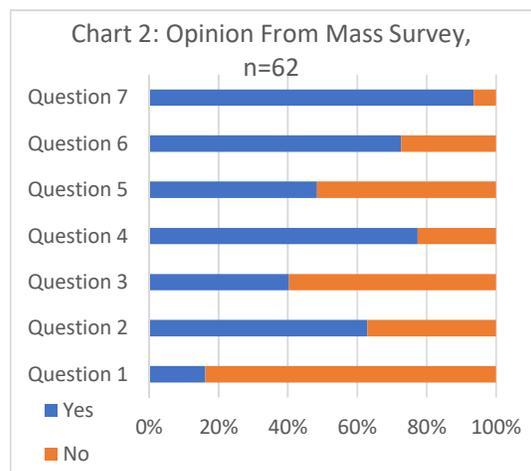


Chart 2 is a representation of the mass survey (n=62) based on the questions 1-7.

will negatively affect in the rate of child marriage in the country. Randomly surveyed people, adult and young, were supportive in regard to adding *special provision* in the act since they mostly believed that the law tacitly legalizes marriage at early an age. Pertaining to a strong sense of religious duty, the respondents, both in offline and online surveys, opted *in support* for a child to get married before 15 if their religion permits it. However, about 95% and 83% (questions 7 in Chart 2 & 3) of the respondents believed that the Act of 2017

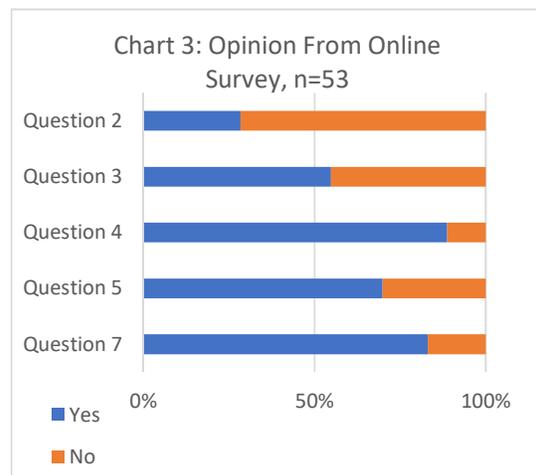


Chart 3 is a representation of the online survey (n=53) based on the questions 2, 3, 4, 5, 7.

needs to be further revised. Furthermore, more than 70% of the respondents in the field

survey opined that this special provision would rather *increase* child marriage in the country instead of decreasing it. This ambiguity in the responses may have lead from the inclusion of the *special provision* and the inability of the Act to find a balance between the religious sentiments

and socio-ethical boundaries of the people of Bangladesh.

Apart from the *special circumstances* provision, the current state law of Bangladesh strictly prohibits early marriages in the country as it is prescribed as illegal before turning the age of a girl 18 and a boy 21. A DC whom we consulted said that “although poor people want to get their daughters married at early ages but the administration always follows the stipulations of the Child Marriage Restraint Act, 2017. Once we are informed that an early marriage has taken place anywhere at my administrative areas, I promptly recommend my officials to stop such a marriage, and a vast number of such illegal marriages have been postponed with the help of local representatives and mass people”. A DWAO at the Ministry of Women and Children Affairs (MOWCA) also added that as Bangladesh socio-economically develops and people are aware about the negative consequence of early marriage, the rate of child marriage decreases day by day. She also said that the administration is stricter than that of previous days to stop early marriage in the country.

Many viewed that the *special provision* added in the new law (Child Marriage Restraint Act, 2017) in article 19 will help increasing, not decreasing- child/early marriage in the country. A guardian of a newly married girl said that “as the current act does not specifically define about the provision 19 titled as *special circumstances*, poor people will easily take the benefits in getting their adolescent children legally married at early ages. Thus, child marriage will be increased in the country. Critics and experts have

opined that as nothing is defined in this provision, it will surely increase the prevalence of child marriage rate in the country and this provision will necessarily be used for many people for gaining their unethical benefits<sup>19</sup>.

In terms of punishment for violating the injunctions specified in the Act of 2017, there are notable differences with the preceding Act of 1929. The latter is stricter in terms of imprisonment and fines, but at certain places there are rooms for *going easy* on the violator, through certain legal loopholes. Mostly, the tenure of imprisonment (for the parent/guardian/conductor) has been increased, for example, from 3 months (1929) with or without fines to 2 years (not less than 6 months) or a fine of Tk. 50,000, or both (2017). Failure to pay the fines may also result in 3 months of extended imprisonment, as of 2017. The new law has also added a provision to penalize the *marriage registrar* convicted of registering a case of child marriage with similar punishment as mentioned earlier. It has also added a counter-intuitive provision of *exemption from accusation*, which would dismiss the charges against a violator (initiator, before the crime has taken place) if s/he submits an affidavit or bond stating to refrain from such activities in the future.

In terms of the ethical issues, child marriage is globally declared as an unethical practice. It is condemned in advanced societies, in spite of some inclinations in the poorer countries. The practice is not deliberately promoted in religious scripture, but the ambiguity in the verses often lead religious spokespersons to the path of misinterpretation. The foremost issue, as mentioned earlier, is

neurological and physiological. The effects of child marriage can lead a child towards premature death or economic inefficiencies. Overall, the ethical implications can fuel socio-economic turbulence within families and societies and often cause obstructions in establishing international parameters, such as Sustainable Development Goals [Goal 5.3], The Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) and other anti-discriminatory and progressive global regulations.

**Concluding Remark:** We have deduced that socio-economic factors such as poverty act as a prime mover in increasing the rate of child marriage in Bangladesh. The study has found that the poor people are always more prone to get their children married off at early their ages. In addition, the *special provision* added in the article 19 of 2017 child marriage restraint act will encourage not decrease child marriage in Bangladesh. The study has discovered that poor people will tacitly take the opportunity of the article 19 as defines as ‘*special provision*’ which legalizes minors to be married off with the consent of the parents/guardians at the presence of a magistrate. Since there is no definition for identifying those who will be included under the ‘special provision’, the study has revealed that poor people will mostly take such opportunity in the name of poverty. As more than 20% Bangladeshis still remain below the poverty line<sup>9</sup>. It will encourage child marriage throughout the country. We conclude that the government should revise the current child marriage restraint act to find a plausible middle-ground between the ‘religious’ perspective and the ‘international’ code of ethics.

Besides the legal age for marriage for a boy and a girl being 21 and 18 respectively, the government should define article *special provision* and set the minimum age for marriage that is both morally permissible and justifiable in the socio-cultural environment of Bangladeshi.

**Recommendations:** If the following recommendations are considered it will help the government decreasing child marriage rate in Bangladesh:

1. According to the Child Marriage Restraint Act 2017, section 2 states that the legal age for marriage for a boy is 21 and for a girl it is 18. The law adds a new provision in article 19 that describes that adolescents at any age can get married legally by taking the consent from their parents/guardians and seeking permission from the courts under “special circumstances” for securing the best interests of the bride and the groom. But the provision does not specifically explain the term “special circumstances” or what kind of “interests” it would serve for the participants. This study recommends that the legal age for marriage for a boy (21) and a girl (18) should always be encouraged but the article 19 that adds ‘special provision’ must be clearly defined. The people who may be included under the ‘special provision’ and the procedure through which they will be included – should also be clearly defined. Otherwise, bad people will get the benefits getting their children married off at early ages.

2. The government should also undertake the comprehensive policy strategies to reduce poverty among the people of the country. As the COVID-19 pandemic hits the economy worldwide, people in the low-and middle-income countries would be especially more vulnerable in that situation. Without taking appropriate policy strategy, it would be impossible for the government to reduce the rate of child marriage for the country.
3. The government should properly implement the stipulations of the child marriage restraint act. Proper implementation of this act may decrease child marriage in the country. Accountability and transparency mechanisms should also be properly ensured to implement this act.

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