

**ADOPTING A CONSTRUCTIVE APPROACH TOWARDS BANGLADESH CHILD  
MARRIAGE RESTRAINT ACT 2017: AN ANALYTICAL STUDY  
FROM ISLAMIC PERSPECTIVE**

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**Abstract**

*This study analyzes Section 19 of the Child Marriage Restraint Act, 2017 (Act No. 6 of 2017) of Bangladesh in the light of an Islamic perspective. This new law allows child marriage under special circumstances with the consent of their parents and the permission of the court, which removes the inconsistency between the current law and Islamic law on child marriage. Bangladesh is a country in which around 90% of the people belong to the Muslim faith. Consequently, this law has been widely praised by practicing Muslims, although several women and human rights activists strongly opposed it. The Islamic Shari'ah does not explicitly explain the minimum or maximum age limit for marriage, as well as, it does not strongly encourage child marriage except for the child's benefits in specific circumstances. Hence, age determination for marriage is permissible in Islam as it is not contradictory with Islamic Shari'ah, as well as, marriage in special circumstances before reaching the determined age is also permissible in Islam, if there are benefits for the groom and bride. Besides the analysis of this particular Act (Section 19, 2017), according to an Islamic perspective, this research paper explains in a logical manner how it brings more benefits (maslahah) both religiously and socially than abolishing child marriage altogether in Bangladesh. The study uses a qualitative research approach and examines both primary and secondary data sources that are most relevant to the topic. In addition, the study provides a set of recommendations to implement this new provision of flexibility according to requirements. Finally, the study finds that, given the context of the socio-economic conditions in Bangladesh, this new law of flexibility will deliver greater benefits than banning child marriage entirely.*

*Keywords: Bangladesh, Child, Marriage, Restraint Act 2017, Islamic.*

**INTRODUCTION**

Child marriage can be divided into two main categories; firstly, the marriage of a girl (who has not yet reached puberty) to adult men of twenty, thirty, forty years or older, with the consent of the guardian, secondly, the marriage of both girl and boy before reaching the age of marriage or reaching adulthood (Prodhana A. A. Salam, 2019). Bangladesh is a country that has been suffering from both the above categories of child marriage. United Nations International Children's Emergency Fund (UNICEF) has reported that the current trend of child marriage in Bangladesh has ranked highest in South Asia, and ranked among the top ten countries in the world. Very recent statistics show that among women aged 20-24, 51% were married in their infancy. Hence, Bangladesh has become a country where 38 million

child girls have been married before the age of 18, and 13 million child girls have been married before 15 (UNB, 2020).

The Bangladesh government passed the Bangladesh Child Marriage Restraint Act, 2017 in order to curb this destructive trend and defend children's rights. The Act contains (see appendix) several provisions to prevent child marriage, however, section 19 stands out as a specific provision that needs more scrutiny. This section contains a special provision that allows marriage in special circumstances such as when a child is pregnant. However, this new provision has sparked tremendous controversy and debate in the country. Critics contend that Section 19 contradicts the Act's ultimate goal by allowing an exemption that may possibly increase child marriage instead of hindering it. Conversely, it has been accepted by practicing Muslims of Bangladesh, in fact, they believe that there are many benefits to be gained both religiously and socially, which will be discussed in this paper in the light of Islamic perspective.

A very few numbers of studies have been conducted on this new Act of 2017 (Islam, M., 2018; Tumpa, F. K., 2019), particularly, according to the religious perspective and there are some research gaps that need to be fulfilled by further study. Therefore, this study will analyse the 'special provision' which is stated in section 19 of the Child Marriage Restraint Act 2107, from an Islamic perspective. In addition, this paper will provide some more logical explanations of 'special provision' that will prove that this new law of 2017 is more effective and beneficial both religiously and socially than the law of 1929.

#### **AN OVERVIEW OF THE CHILD MARRIAGE RESTRAIN ACT, 2017**

The British government fixed the age of marriage for boys and girls of all religions (21 for boys, 18 for girls) in the Indian subcontinent in 1929, known as the Child Marriage Restraint Act, 1929. The first constitution of independent Bangladesh was passed by the Jatiya Sangsad (National Assembly) on 16 December 1972, and the Child Marriage Act (1929) was re-enacted in that constitution. However, after the law came into force, there was no strictness in obeying the law (Prodhan A. A. Salam, 2019). Thereafter, the Child Marriage Restraint Act of 1929 was repealed by the new Act of 2017 in the Parliament of Bangladesh, on 24 November 2017. This new act of 2017 has not changed article 2 of the past statute and has kept the determined age of marriage unchanged, 21 for boys and 18 for girls (Arnab, A. T., & Siraj, M. S., 2020). However, an article (No. 19) has been included in the new law which has legalized marriage for minors (male has not completed 21 and female has not completed 18) under special provisions. As stated in section no.19:

*"Notwithstanding anything contained in any other provision of this Act, if a marriage is solemnized in such manner and under such special circumstances as may be prescribed by rules in the best interests of the minor,<sup>1</sup> at the directions of the court and with the consent of the parents or the guardian of the minor, as the case may be, it shall not be deemed to be an offense under this Act" (MWCA, 2017).*

In fact, this new law is compatible with Islamic marriage law that allows girls and boys of 15 years of age or above to marry. Conversely, it contradicts international law as it does not allow the marriage of children before 18. Hence, many women and human rights activists have strongly opposed the new law. Khan, N. commented on the law: "There is a fear of a kind of judicial sanction for rape" He added: "This law will take us backward". Karim, F. noted that the new law would hamper the achievement of Sustainable Development Goals (SDGs) and encourage child marriage instead of controlling it. As she said: "If we want to achieve the Sustainable Development Goals (SDGs), we must abolish child marriage altogether. But the new law will encourage child marriage" (Shopon, H. R., 2017).

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<sup>1</sup> Best interest refers to the overall welfare of the minor, including safety, health, and mental well-being.

Chowdhury, E. H. chairman of the Bangladesh Child Rights Forum (BSAF), said: "This special provision has ruined all opportunities for children" (Prothom Alo, 2017).

Contrarily, the State Minister Meher Afroz said in the parliament: "Not everyone will get this special provision. It is only in the case of any untoward incident, with the consent of the parents or legal guardian and court. No one can marry anyone without the permission of the court". She also said in Parliament: "The current government is a women-friendly government. We have kept this clause for the protection of daughters". On the question of what kind of protection will be given by this new Act? She has repeatedly said: "the fear of establishing a relationship before marriage and getting pregnant" (Islam, U., 2017).

Actually, she emphasizes on the fact that this new act will protect people from establishing illegal relationships before marriage and getting pregnant. Thus, the claim made by the Bangladesh Child Rights Forum (BSAF) that the Child Marriage Restraint Act, 2017 would limit minor's opportunities lacks a sound rational basis. Instead, it serves as a safeguard, guaranteeing that in the rare circumstances where marriage is required, it is done with due regard for the well-being of the minor. In compliance with the Shariah perspective, this special act seeks to protect the rights and best interests of the minor. It does not actually limit chances, however, it offers a legal structure for responsible and rare cases, ensuring children's overall welfare.

### **A BRIEF OVERVIEW OF AGE OF MARRIAGE IN ISLAM**

The Almighty Allah has used the word '*ashuddah*' in many verses of the Holy Quran to distinguish between children and growing humans who have reached their full strength, and to indicate the age of development of wisdom and knowledge. As the Holy Quran states in several verses: "*We bring you out as babes, then (foster you) that ye may reach your age of full strength*" (al-Quran. al-Hajj:5); "*then does he get you out (into the light) as a child: then lets you (grow and) reach your age of full strength*" (al-Quran. Ghafir: 67); "*until he attains the age of full strength*" (al-Quran. al-An'am: 152); "*until he attains the age of full strength*" (al-Quran. al-Isra': 34); "*when he reaches the age of full strength*" (al-Quran. al-Ahqaf: 15); "*When Joseph attained His full manhood*" (al-Quran. Yusuf:22); "*When he reached full age*, (al-Quran. al-Qasas :14). According to many eminent interpreters of the Holy Quran such as; al-Tabari, Tantawi, al-Zuhayli, and many more, the word '*ashuddah*' means full strength and perfection of intellect (al-Tabari, A. J., 2002; Tantawi, M. S., 1998; Al-Zuhaili, W. B. M., 1418H).

In another noble verse, Allah has distinguished between children and teenagers using the word '*hulum*' (come of age). As He says: "*But when the children among you come of age*" (al-Quran. al-Nur: 59). According to the interpretation of Tantawi, '*hulum*' refers to the 'age of wet dreams and puberty which is fit for marriage' (Tantawi, M. S., 1998). Hence, all the above verses clearly show the difference between children and teenagers, and all of these Quranic verses emphasize that when a child reaches '*ashuddah*' and '*hulum*', gets mature physically and mentally as well as they reach the age which is fit for marriage.

Besides, another noble verse of the Quran states regarding "*reaching the age of marriage*": "*And test the orphans until they reach the age of marriage. Then if you perceive in them sound judgment, release their property to them*" (al-Quran. al-Nisa: 6). A number of prominent commentators (*mufasssirun*) of the Holy Quran such as; Ibn Kathir, al-Qurtubi, al-Fayruzabadi, al-Maraghiy, and al-Mahalli have interpreted that "*the age of marriage*" refers to the age of puberty (Ibn Kathir, I. I. U., 1999; Qurtubi, M. I. A., 2002; al-Fayruzabadi, M. I. Y., 2008; al-Maraghiy, A. M., 2001; al-Mahalli, J. M. I. A., 2008). With regard to "*sound judgment*", the interpretations of Ibn Kathir, al-Fayruzabadi, and al-Mahalli show that it actually refers to righteousness in the matter of religion and wisdom in the matter of property and fortune (Ibn Kathir, I. I. U., 1999; al-Fayruzabadi, M. I. Y., 2008; al-Mahalli, J. M. I. A., 2008).

Islamic jurists differ on the minimum age of puberty. Abu Yusuf and Muhammad opined that the minimum age of puberty is twelve years for a boy and nine years for a girl. Alternatively, according to Imam Abu Hanifah, the age of puberty refers to the completion

of eighteen years for males and seventeen for females. Imam Malik states that if the natural evidence does not appear in a man or woman, they attain puberty at the age of eighteen. According to the Shafi'i school of thought, a child reaches puberty when he or she turns fifteen. Hanbali jurists also held the same opinion as Shafi'i jurists (Al-Zuhayli., n.d.).

Thus, it can be concluded that the three schools of thought (Hanafi, Shafi'i, and Hanbali) agree that the age of puberty for both a boy and a girl is fifteen years, while according to the Maliki school of thought it is eighteen years. Nevertheless, all four schools agree on the fact that a child is not considered to have attained puberty before the age of nine (Al-Nawawi, 2005) regardless of any physical development of the body (Mohd, A., & Kadir, N. A. 2019). It is worth mentioning that the age of puberty is not the same for everyone because there are different elements in human physiology that may differ from country to country and race to race. As, Abdul-Hamid Siddiqi states in his commentary on Sahih Muslim: *"Islam has laid down no age limit for puberty for it varies with countries and races due to the climate, hereditary, physical and social conditions. Those who live in cold regions attain puberty at a much later age as compared with those living in hot regions where both male and female attain it at a quite early age"* (Siddiqui, A. H., 2008). On the basis of the above discussion, it could be stated that Islam does not restrict child's early marriage after he or she has reached puberty and got fully developed physically, mentally and intellectually. Admittedly, in the early period of Islam, minor marriages was very frequent and widely practiced in society without any controversy. Similarly to earlier Prophets' marriages to young girls. This practice was socially accepted during that period, even during the lifetime of Prophet Muhammad (PBUH) (Ibn Abi Shayba, 1988).

Islam as a faith does not specifically forbid child marriage before puberty since it focuses more emphasis on concepts like consent and adulthood. However early marriage tradition varied throughout diverse Muslim-majority countries and communities, frequently being shaped more by cultural and social norms than by Islamic teachings. To safeguard the rights and welfare of children, many nations with a majority of Muslims countries have imposed legal bans on child marriage (Ebetürk, I., 2021). The significance of consent and moral concerns in any marriage based on Islamic teachings must be emphasized.

However, there is a Quranic verse that legalizes marriage under the age of puberty. As stated in the Qur'an: *"And those who no longer expect menstruation among your women - if you doubt, then their period is three months, and [also for] those who have not menstruated"* (al-Quran. at-Talaq: 4). Ibn Kathir, al-Tabari, Tantawi, and al-Zuhaili have interpreted that *"those who have not menstruated"* refers to the young children (girls) who have not yet reached the age of menstruation (Ibn Kathir, I. I. U., 1999; al-Tabari, A. J., 2002; Tantawi, M. S., 1998; Al-Zuhaili, W. B. M., 1418H). This noble verse shows that marriage below the age of puberty is permissible in Islam. Because this verse basically talks about the 'iddah (period of waiting) of divorced young girls who have not yet reached puberty, and obviously divorce occurs after marriage not before. Based on this verse, some Muslim jurists also opine that it is permissible for those who have not yet attained the maturity to be legally married as long as they fulfill the conditions of marriage (Dar al-Iftaa Al-Missriyyah, 2018).

Furthermore, this verse validates the Prophet's hadith which does not prevent a minor from marrying, as narrated by 'A'ishah (RA): *"The Prophet (PBUH) wrote the marriage contract with her when she was six years old and he consummated his marriage when she was nine years old, and then she remained with him for nine years (i.e. till his death)"* (Hadith. al-Bukhari, *Bab Man Bana Bi Imra'atin Wahiya Bint Tis'a Sinin*. 5133; Muslim, *Bab Tazwij al-Ab al-Bikra al-Sagira*. 3480).

Generally, proponents of this view take this hadith as legal authority for allowing the marriage of minors because it does not specifically prohibit marriage to a minor, similar to the above-mentioned Quranic verse regarding the 'iddah period for a girl who has not menstruated after divorce. However, it is worth noting that the majority of Muslims are of the opinion that the marriage of a young girl before puberty is permissible only if it is contracted on her behalf by her father or grandfather in her best interest (which refers to

the overall welfare of the minor, including safety, health, and mental well-being) (Mohd, A., & Kadir, N. A., 2019). Therefore, it could be stated that Islam also allows marriage before reaching the puberty with conditions (best favor for bride and groom), however, such matters should be justified by the court so that no parent can abuse this special option.

Regarding the matter of ruling of determining the age of marriage in Islam, the Jurists have basically two completely different opinions. Sheikh Muhammad ibn al-Uthaymeen, Abdul Mohsen Al-Obeikan, Yusuf al-Qaradawi, and many others agreed on the permissibility of fixing the age of marriage and limiting it to a certain age (Mohd, A., & Kadir, N. A., 2019). They provide evidence to support their opinion based on a noble verse: *"until they reach marriageable age"* (al-Quran. al-Nisa': 6), which refers to the full ability of both husband and wife for marriage and the capability of bearing their responsibilities (Baidawi, 1418AH). They also cite a hadith as evidence: *"A virgin should not be married till she is asked for her consent..."* (Hadith. al-Bukhari. *Bab la Yunkah al-Ab Wa Ghayrah al-Bikr wa al-Thayib Ila Biridaha*. 15). Based on this hadith, it is not permissible to marry a minor girl who has not completed fifteen years of age. She must be an adult in order to obtain her consent and advice and this does not apply to children under fifteen years of age (al-Sayed, J., n.d.). They emphasize that it is quite reasonable to allow fixing the age of marriage as Islamic Shari'ah is only found to bring benefits and protect from evil.

Besides, the purpose of determining the age of marriage is to bring more benefits for the husband and the wife, because with that they may reach an age where they are aware of the aims and objectives of marriage as well as its responsibilities and consequences (Al-Qaisi, & Suha Y. A., 2010). On the contrary, Sheikh Abdul Aziz ibn Baz, D. Ahmed al-Asaal, Dr. Mustafa al-Siba'i, and others disagreed on the permissibility of fixing the age of marriage and limiting it to a certain age. Basically, they are of this opinion based on a noble verse: *"Instruction has 'already' been revealed in the Book concerning the orphan women you deprive of their due rights but still wish to marry"* (al-Quran. al-Nisa': 127), which urges and allures marriage without fixing a certain age (Baz, I., n.d.; al-Qaisi & Suha Y.A., 2010). They also cite a hadith as evidence: *"The Prophet (PBUH) married her when she was six years old..."* (Hadith. al-Bukhari. *Bab Man Bana bi Imra'atin Wahiya bintu Tis'a Sinin*. 5133), which proves that the Prophet (PBUH) married Ayesha when she was under fifteen.

Thus, the marriage of minors is permissible without fixing a specific age. And his doing is legislation for his ummah (Al-Qaisi, & Suha Y. A., 2010). They assert that restricting marriage to a certain age is something that is not acceptable according to Sharia law and reason. Because the age of puberty differs from girl to girl due to varying environmental conditions. Hence, fixing a certain age for marriage is unregulated, unstable, and unreliable (al-Sayed, J., n.d.; Al-Qaisi, & Suha, Y. A., 2010).

Since Islam does not clearly define a minimum or maximum age limit for marriage for both men and women and there is room for both permissibility and impermissibility in determining the age of marriage in Islam subject to conditions, instead of focusing on which of the two views is stronger, we should focus on the ultimate purpose of the proponents of the two views. Ultimately, both the proponents focus on the maximum favor of the bride and groom. Indeed, such favorable circumstances are likely to arise at any time due to various environmental, social, and economic factors. Thus, both opinions should be admissible as the situation demands, subject to conditions.

## DISCUSSION

Marriage as a religious contract is based on many essential requirements and conditions. Indeed, the age factor is not one of the requirements for a valid marriage under Islamic law, as neither the Qur'an nor the Sunnah sets a specific age for marriage that would affect its validity. Thus it is quite justifiable to state that there is no fixed age for marriage in Islamic law. This is why Islam encourages marriage at the age of puberty or maturity (*baligh*) and sound judgment (*rushdah*) when one understands the nature of the marriage contract so that the goals of marriage are achieved. It is worth mentioning that the age of puberty and sound judgment is not the same for all because there are different elements in human

physiology that may vary from country to country and race to race. As Abdul-Hamid Siddiqi stated in this regard in his commentary on Sahih Muslim: *"Islam does not prescribe any age limit for puberty as it varies from country to country and race due to climatic, hereditary, physical, and social conditions. Those who live in cold regions reach puberty much later, as do both males and females at a much younger age than those who live in hot regions"* (Siddiqi, A. H., 2008).

Hence, Islam does not inhibit a child's early marriage after he/she has reached puberty and got fully developed physically, mentally, and intellectually. However, since there is room for both permissibility and impermissibility in determining the age of marriage in Islam subject to conditions, one country can set a specific age for marriage based on its social, environmental, and economic conditions in order to achieve the best interests of the groom and bride. Alternatively, there should be a provision of flexibility to deal with unwanted complex situations that lead to early marriage in special circumstances caused by the country's social and economic problems. In fact, this new provision of the flexibility of the Bangladesh Child Marriage Restraint Act, 2017 establishes a middle ground between conventional law and Islamic Shari'ah, as it sets a certain age limit in order to ensure the best interests of bride and groom according to both Islamic and conventional law, along with it allows marriage below this certain age limit under the special provision to ascertain the best interests of the bride and groom, which is also in line with Islamic Shari'ah. Moreover, this new law ensures more benefits than banning child marriage altogether, especially for the people in the rural areas of the country. Because, if it is completely banned, people will face challenges in dealing with complex situations that lead to early marriage in special circumstances caused by social and economic problems in Bangladesh.

It's worth bearing in mind that Islamic law sets the age of marriage when puberty begins because Islam encourages early marriage to prevent pre-marital affairs. Regarding formal marriage, Islamic law differs significantly from international law which is currently being followed in Bangladesh. It is acknowledged that intimate relationships, including cohabitation outside of marriage, before the age of 18 are culturally acceptable in the West. Contrarily, such pre-marital and intimate relations are stringently forbidden in the majority Muslim community, which is followed very fondly in Bangladeshi Muslim culture. Being a Muslim-majority society with a population of over 163 million, most of the people of Bangladesh adhere to the ideals of Islamic norms and values that are manifested in all kinds of social and cultural behavior. Unfortunately, the cases of premarital sexual contact, pregnancies and live-in relationships have been in an alarming situation (Hossen, M. A., & Quddus, A. H. G., 2021; Yesmen, N., & Nahid, M. M. H., 2020) that often lead to early marriage. In the Bangladeshi context, parents usually prefer early marriage believing that marriage can prevent their young daughters from getting pregnant out of wedlock which would lead to a life of dishonor and humiliation. Eventually, both parents and children choose marriage as the best solution to cover up their shame.

Clarifying the circumstances of early marriage under this special provision, the State Minister Meher Afroz (who proposed this special law in the Parliament) stated that it includes circumstances where boys and girls themselves get married due to a love relationship and the girl becomes pregnant or becomes a mother of a child (Islam, U., 2017; Huda, S., 2017). However, although in Islamic Shari'ah it is permissible for an adulterer to marry the woman with whom he committed adultery after sincere repentance and after ending the pregnancy if pregnancy happens (Mustarsidin, A., & Khisni, A., 2018; Islam Question and Answer, 2011), still, adultery is a violation of human existence and a major sin condemned by Allah and it is never desirable to start a sacred relationship like marriage by committing this sin, especially when Islam provides a complete guidance for marriage. Therefore, Muslim parents should look after their teenagers very carefully by imparting proper education on Islamic values and ethics. Most importantly, they should marry their children if they notice that they are heading towards illicit relationships.

In concluding the discussion, it is believed that this new law of flexibility has created a fair chance to overcome the challenges and social barriers to early marriage (before 21 for boys, 18 for girls) in many unwanted circumstances caused by social and economic problems in Bangladesh.

### **RECOMMENDATIONS**

Considering the social and economic context of Bangladesh, it is highly recommended to allow marriage before fixed age under this special provision in the following circumstances:

1. Parents notice that their son or daughter has matured physically and mentally for marriage before the age prescribed by law, along with the deterioration of character daily. Hence, if they don't marry their children as soon as possible, they may indulge in illicit relationships and even commit heinous sins like adultery.
2. A poor person is in the condition that he has no hope of a long life because of illness. In this predicament, he has a daughter of 15 or 16 years of age and is mature enough both physically and mentally for marriage, he has no heir except this daughter, or he has heirs but they are not very faithful or responsible to show full kindness to this daughter. Hence, if this father finds any eligible boy for his daughter, he should be allowed to marry his daughter with this candidate. Otherwise, this girl may stumble from one door to another after her father's death, not only that, but she may fall prey to the lusts of bad people or she may choose the wrong path. Such an issue is not a mythical phenomenon but it happens constantly in our country.
3. A village farmer has a young daughter, who is not yet 18 years old. He observes day and night that his daughter may fall prey to the lust of his evil landlord or employees. He worries that if he keeps his daughter for too long, he won't be able to protect her. Therefore, under this special provision, he should be allowed to marry his daughter as soon as possible.

Such other circumstances should be considered under this special provision. However, there are certain circumstances that should not be kept under this special provision, as follows:

1. A poor person is in the condition that he has no hope of a long life because of illness. In this predicament, he has a daughter of 10 or 12 years of age, he has no heir except this daughter, or he has heirs but they are not very faithful or responsible to show full kindness to this daughter. Notwithstanding this condition, he shall not be allowed to marry off his daughter under this special provision. Because she is not mature enough physically and mentally for marriage, as a result, it will do more harm than bring benefits. But, some possible solutions can be found for such girls which will keep them safe until they are mature enough for marriage, like getting them admitted to a good orphanage, adopted by worthy parents, etc.
2. The parents have a young daughter who is not yet 18. They want to get her married off by showing that she is deteriorating in character but she is not. In fact, they do it only for their own interest, not for the girl. Such incidents constantly happen in our country. It is known that if the groom is financially strong, the bride's parents force her to marry him only because of their greed. Even if the parents have given permission, such a situation will not be considered under this special provision because of the fear of great harm to the daughter.

Such other similar situations should not be considered under this special provision. However, the court has to justify all these proposed circumstances mentioned above before placing them under this special provision, so that one cannot go against the law by cheating. Additionally, since Bangladesh is one of the largest Muslim majority countries and this particular law of flexibility is in line with Islamic Shariah, government lawmakers should

adopt a comprehensive policy strategy in collaboration with Islamic Shariah experts to clarify and implement this law on a large scale.

## CONCLUSION

The study attempts to shed light on the fact that this new provision of the flexibility of the Bangladesh Child Marriage Restraint Act, 2017 creates a balance between conventional law and Islamic Shari'ah based on two particular aspects. Firstly, it determines a specific age limit to make sure the maximum benefit of the bride and groom in accordance with both Islamic and conventional law. Secondly, it allows marriage below this certain age limit under the special provision to ascertain the best interests of the bride and groom, which is also in line with Islamic Shari'ah.

Besides, the study examines that this new law of flexibility provides more benefits than banning child marriage altogether, especially for those living in rural areas of the country. If it is completely illegal, people will struggle to deal with the complex situation that leads to child marriage in particular situations that arise due to the country's economic and social crises.

Additionally, taking into account Bangladesh's social and economic context, the study offers two kinds of recommendations. Some of these call for allowing marriage before a fixed age under this special provision in some particular circumstances. On the contrary, some of these call for not keeping some circumstances under this special provision and not allowing marriage before a fixed age in those circumstances.

Undoubtedly, early marriage is permissible in Islam. It wouldn't be declared null and void. However, due to changes in time and circumstances, countries have the authority to adjust the legal age for marriage to a particular age. It is not incompatible with Shari'ah principles.

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## APPENDIX: THE CHILD MARRIAGE RESTRAIN ACT, 2017

রেজিস্টার্ড নং ডি এ-১

বাংলাদেশ  গেজেট

অতিরিক্ত সংখ্যা  
কর্তৃপক্ষ কর্তৃক প্রকাশিত

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বৃহস্পতিবার, ডিসেম্বর ১৪, ২০১৭

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Government of the People's Republic of Bangladesh  
Ministry of Women and Child Affairs

**NOTIFICATION**

**Date : 26 Augrahayana 1424 BE/10 December 2017 AD**

**S.R.O. No. 344-Law/2017.**—In exercise of the powers conferred by section 22 of the Child Marriage Restraint Act, 2017, the Government is pleased to publish the following English translation of the Act to be called the Authentic English Text of the Act, and it shall be effective from the date on which the Act comes into force under sub-section (2) of section 1 of the Act :

**THE CHILD MARRIAGE RESTRAINT ACT, 2017**  
(Act No. VI of 2017)

**An Act to make afresh a time-befitting law by repealing the Child Marriage Restraint Act, 1929**

WHEREAS it is expedient and necessary to make afresh a time-befitting law by repealing the Child Marriage Restraint Act, 1929 (Act No.XIX of 1929);

THEREFORE it is hereby enacted as follows :—

**1. Short title and commencement.**—(1) This Act may be called the Child Marriage Restraint Act, 2017.  
(2) It shall come into force at once.

**2. Definitions.**—In this Act, unless there is anything repugnant in the subject or context—

(1) “minor” means, in case of marriage, a person who, if a male, has not completed 21 (twenty-one) years of age, and if a female, has not completed 18 (eighteen) years of age;

(2) “guardian” means a person who has been appointed or declared to be a guardian, under the Guardians and Wards Act, 1890 (Act No. VIII of 1890) and shall also include the person who bears the maintenance cost of a minor;

(3) “adult” means, in case of marriage, a person who, if a male, has completed 21 (twenty-one) years of age, and if a female, has completed 18 (eighteen) years of age;

(4) “child marriage” means a marriage to which either or both of the contracting parties are minor; and

(5) “rules” means rules made under this Act.

**3. Formation of Child Marriage Prevention Committees.**—For the prevention of child marriage, the Government may, in such manner as may be prescribed by rules, form Child Marriage Prevention Committees at national, district, upazila and union levels comprising government officials, local people's representatives, non-government officials and respectable persons at local level and determine the functions of the committees.

**4. General powers of certain government officials and local government representatives to prevent child marriage.**—Without prejudice to the generality of the provisions of section 5, the Upazila Nirbahi Officer, the Executive Magistrate, the Upazila Women Affairs Officer, the Upazila Social Welfare Officer, the Upazila Primary or Secondary Education Officer, the Officer in Charge of Police Station or the representatives of Local Government shall, upon receiving information about child marriage through a written or oral application made by a person or through any other means, stop the child marriage or may take necessary measures in such manner as may be prescribed by rules to proceed with legal action against such marriage.

**5. Injunction against a child marriage and punishment for contravening the injunction.—**(1) The Court may, if satisfied, suo-moto or on the basis of a complaint made by a person or on the basis of any information received through any other means, that a child marriage has been arranged or is about to be solemnized, issue an injunction against solemnization of the child marriage.

(2) The Court may, either on its own motion or on the basis of the complainant's application, rescind any order issued under sub-section (1).

(3) Whoever violates the injunction issued under sub-section (1) shall be punished with imprisonment which may extend to 6 (six) months, or with fine which may extend to 10 (ten) thousand Taka, or with both and, in default of payment of the fine, shall be punished with imprisonment which may extend to 1 (one) month.

**6. Punishment for making a false complaint.—**If any person makes a false complaint under section 5, it shall be an offence, and for making such complaint, he shall be punished with imprisonment which may extend to 6 (six) months, or with fine which may extend to 30 (thirty) thousand Taka, or with both, and in default of payment of the fine, shall be punished with imprisonment which may extend to 1 (one) month.

**7. Punishment for contracting a child marriage.—**(1) If any adult, male or female, contracts a child marriage, it shall be an offence, and for this, he shall be punished with imprisonment which may extend to 2 (two) years, or with fine which may extend to 1 (one) lakh Taka, or with both, and in default of payment of the fine, shall be punished with imprisonment which may extend to 3 (three) months.

(2) If any minor, male or female, contracts a child marriage, he shall be punished with detention which may extend to 1 (one) month, or with fine which may extend to 50 (fifty) thousand Taka, or with both :

Provided that if any case is filed against, or penalty imposed upon, a person under section 8, no punishment shall be imposed upon the aforesaid minor, whether male or female.

(3) In case of trial and punishment under sub-section (2), the provisions of the children Act, 2013 (Act No. XXIV of 2013) shall be applicable.

**8. Punishment for parent or others concerned in a child marriage.—**Where a minor contracts a child marriage, any person having charge of the minor, whether as parent or guardian or in any other capacity, lawful or unlawful, who does any act to promote the marriage or permits it to be solemnized, or negligently fails to prevent it from being solemnized, shall commit an offence, and for this, be punished with imprisonment which may extend to 2 (two) years but not less than 6 (six) months, or with fine which may extend to 50 (fifty) thousand Taka, or with both, and in default of payment of the fine, shall be punished with imprisonment which may extend to 3 (three) months.

**9. Punishment for solemnizing or conducting a child marriage.—**If any person solemnizes or conducts a child marriage, it shall be an offence, and for this, he shall be punished with imprisonment which may extend to 2 (two) years but not less than 6 (six) months, or with fine which may extend to 50 (fifty) thousand Taka, or with both, and in default of payment of fine, shall be punished with imprisonment which may extend to 3 (three) months.

**10. Exemption from accusation on condition of initiatives to stop child marriage.—**Notwithstanding anything contained in any other provision of this Act, where a child marriage is initiated but not solemnized, and the accused submits, in the manner prescribed by rules, an affidavit or bond stating that he shall not be involved in a child marriage in future and take initiatives to prevent child marriage in his locality, then the court, if it thinks to be fit, may exempt him from the charge framed against him.

**11. Punishment of Marriage Registrar for registering a child marriage, cancellation of license.—**If any Marriage Registrar registers a child marriage, it shall be an offence, and for this, he shall be punished with imprisonment which may extend to 2 (two) years but not less than 6 (six) months, or with

fine which may extend to 50 (fifty) thousand Taka, or with both, and in default of payment of the fine, shall be punished with imprisonment which may extend to 3 (Three) months, and his license or appointment shall be cancelled.

**Explanation :** For the purpose of this section, "Marriage Registrar" means a Nikah Registrar licensed under the Muslim Marriages and Divorces (Registration) Act, 1974 (Act No LII of 1974) and a Marriage Registrar appointed under the Christian Marriage Act, 1872 (Act No. XV of 1872), the Special Marriage Act, 1872 (Act No. III of 1872) and the Hindu Marriage Registration Act, 2012 (Act No. XL of 2012).

**12. Documents to prove age.—**For the purpose of proving age of a male or female who is in marriage or intends to contract a marriage, the birth certificate, national identity card, secondary school certificate or an equivalent certificate, junior school certificate or an equivalent certificate, primary school certificate or an equivalent certificate or passport shall be considered as a legal document.

**13. Payment of compensation.—**(1) Money realized under this Act from imposition of fine shall be paid as compensation to the aggrieved party.

**Explanation :** For the purpose of sub-section (1), "aggrieved party" means the party of a child marriage who is a minor.

(2) Notwithstanding anything contained in sub-section (1), fine realized under sub-section (2) of section 7 shall be deposited to the government treasury.

**14. Offences to be cognizable, bailable and non-compoundable.—**The offences committed under this Act shall be cognizable, bailable and non-compoundable.

**15. Procedure of trial.—**Trial of an offence under this Act shall be conducted in a summary way and in this behalf, the procedure laid down in Chapter XXII of the Code of Criminal Procedure, 1898 (Act No. V of 1898) shall be applicable.

**16. Local inquiry.—**Notwithstanding anything contained in any other law for the time being in force, the court may, in case of disposal of a complaint or any proceedings, make local inquiry of its own to ascertain the truth of the incidence, or may direct any government official or any representative of local government or any other person to make such inquiry, and such an inquiry shall have to be completed within 30 (thirty) working days :

Provided that if such an inquiry can not be completed within the aforesaid time limit on reasonable grounds, the inquiry shall be completed within an additional period of 15 (fifteen) working days for reasons to be recorded in writing and the court shall be informed thereof in writing.

**17. Applicability of Mobile Court Act, 2009.—**Notwithstanding anything contained in any other law for the time being in force, the Mobile Court may impose penalty for the offences committed under this Act, subject to inclusion of this Act in the Schedule of the Mobile Court Act, 2009 (Act No. LIX of 2009).

**18. Mode of taking cognizance of offences.—**No court shall take cognizance of an offence under this Act after the expiry of 2 (two) years from the date on which the offence is alleged to have been committed.

**19. Special provision.—**Notwithstanding anything contained in any other provision of this Act, if a marriage is solemnized in such manner and 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.

**20. Power to make rules.—**For the purposes of this Act, the Government may, by notification in the official Gazette, make rules.

**21. Repeal and savings.—**(1) The Child Marriage Restraint Act, 1929 (Act No. XIX of 1929), hereinafter referred to as the said Act, is hereby repealed.

(2) Notwithstanding such repeal under sub-section (1),—

(a) any act done or action taken under the said Act shall be deemed to have been done or taken under this Act;

(b) any case filed or any proceedings pending with a court under the said Act shall be disposed of in such manner as if the said Act had not been repealed.

**22. Publication of authentic English text.**—(1) After the commencement of this Act, the Government shall, by notification in the official Gazette, publish an authentic English text of the Bangla text of this Act.

(2) In the event of conflict between the Bangla and the English text, the Bangla text shall prevail.

Source: (BD Laws, 2019).

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