

Analysis of Laws on Child Marriage in South Asian Countries

**Brief Report
CARE Bangladesh**

Context

Child marriages continue to be the norm. As elsewhere in the world, the drivers of child marriage include deeply entrenched cultural norms and religious beliefs. Worries about family reputation and opinion of others in the community, dowry, poverty, parents desires to secure safety and securing economic well-being of daughters all lead to perpetuating the practice of child marriage. Transformation of such entrenched beliefs demands change in mindsets of all sections of people in society along with laws that incentivizes positive practices and deters harmful practices.

In view of the potentials of legal instruments to accelerate change in society to transform such social norms, CARE Bangladesh commissioned a study to understand ways in which countries with similar socio-cultural realities to Bangladesh have addressed child marriage in their legal instruments. The study focused mainly on laws of South Asian countries. In doing so, to understand issues better it also tried to draw learning from other African countries.

Highlights of the findings:

Minimum Legal Age of Marriage

The International Legal Framework¹ relating to child marriage emphasize on the best interest of the child and therefore addresses minimum age for marriage, consent from both parties, protection from prejudicial traditional practices and so forth. In 2013, the Provincial Assembly of Pakistan passed the Sindh Child Marriage Restraint Act fixing the minimum age of marriage for both male and female at 18 and declared the offences under the Act as cognizable, non-bailable and non-compoundable. India repealed the 1929's old law and introduced a new law "Prohibition of Child Marriage Act of 2006" setting the minimum age of marriage for women at 18 and at 21 for men. This new law made offences under the Act cognizable and non-bailable and punishable

¹ Universal Declaration of Human Rights and Covenants such as the Child Rights Convention of 1989, the Convention on the Elimination of All Forms of Discrimination Against Women of 1979 and the Convention on the Consent to Marriage, Minimum Age for Marriage and Registration of Marriage 1962

with rigorous imprisonments. Bhutan and Nepal also set the minimum age for marriage. In Bhutan the minimum age for marriage for both men and women is 18 and no exception is allowed. The Constitution of Nepal explicitly prohibits child marriage and provides for compensation to the victims of child marriage from the perpetrators. The 2002 Eleventh Amendment to the *Muluki Ain* set the legal age of marriage as 20 years for both men and women and initially allowed exception clause allowing to marry at 18 with parental consent. This exception was withdrawn in 2015. Apart from these South Asian countries, other countries in other parts of the world with comparable economic, socio-cultural backgrounds and problems have also in recent years increased the minimum age of marriage for girls. In Tanzania for example, the High Court ruled in favor of protecting girls from the harms of early marriage. The court ruled unconstitutional sections 13 and 17 of the Tanzania Law of Marriage Act, which allow girls to marry at age 15 with parental permission and at age 14 with the permission of a court.² It may be mentioned that one-third of the population of Tanzania are Muslim. Turkmenistan, which is 89% Muslim, in 2012 also increased the age of marriage to 18 from 16. Chad, which has the third highest rate of child marriages in the world, in 2015, promulgated an ordinance increasing the age of marriage from 15 to 18. Also in 2015, the National Assembly of Ecuador³ approved a reform of the Civil Code and raised the legal minimum age from 12 for girls and 14 for boys, to 18 for both without exceptions. All these countries have high percentages of child marriages with similar if not the same problems as Bangladesh, such as gender inequality, poverty, traditions and insecurity.

Legal Provisions of Exemptions to Minimum Age of Marriage:

India, Pakistan, Nepal and Bhutan do not allow any exception. Apart from these South Asian countries, other countries in other parts of the world with comparable economic, socio-cultural backgrounds and problems have also in recent years increased the minimum age of marriage for girls and disallowed any exemptions. Regarding exceptions within the law restraining or preventing underage marriage, reference may also be made to Jordan. The definition of 18 as

the legal age for marriage in Jordan is undermined by an acceptance that special permission – very dependent on the interpretation/discretion of individual judges and reportedly not difficult to obtain – may be given for children as young as 15 to marry. The Jordanian Personal Status Law No. 60 for 1976 sets the age for marriage at 18 but allows marriage between the ages of 15 to 17 with permission from the *Shari'a* court judge based on certain directives issued by the Department of the Chief Justice.

Penalties and Compensation:

The constitution of Nepal explicitly prohibits child marriage and provides compensations to the victims of child marriage. Child marriage in the legal system of Nepal is an offense and therefore obligates the state to initiate investigation and prosecution. Either party to the marriage can seek legal recourse to officially have the marriage declared void within three months of turning 20 years of age if the couple does not have any children. The Punjab provincial Assembly in 2015 increased the penalties for parents and clerics who assisted in marriages between children though the law allows girls to marry at the age of 16. However, there is no provision of exception under this law. The Indian law penalizes persons who perform, arrange and participate in such marriages. A marriage where either or both parties are underage is voidable which means that the party to marriage who was a child at the time of marriage can access the court to have the marriage declared void or cancelled.

Lessons to be drawn for Bangladesh:

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- a. The legal system of Bangladesh must take into cognizance that most countries who share similar socio-cultural characteristics to Bangladesh has moved towards increasing the minimum age without leaving any room for exceptions.
 - b. All the countries in their attempt to modernize the laws related to child marriage have looked into the laws of marital rapes closely and made both these laws consistent in order to ensure justice for women and girls.
 - c. Countries allowing exemptions may lead to greater risks where the exception becomes a general role and approval process may just become a formality.
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- d. Countries which have legislations on child marriage attempted to reinforce principles of best interest of the child and consent of girls by trying to address the barriers of applying such principles in their context. Therefore, there is a need to look at the barriers girls face in asserting their choices in relation to marriage.
 - e. Several countries attempted to make the marriages void as the strictest deterrent to the practice of child marriage by duly recognizing that child marriage is the biggest threat to a girl's right to development.
 - f. Many countries have taken a conscious position not to allow any third party be it parent or the court to take a critical lifelong decision on behalf of the girl. In the cultural context of Bangladesh more considerations ought to be given on ways in which a girl's full, free, informed and non-coerced consent can be ensured.
 - g. For the purpose of statistics/research/studies relating to child marriages, underage marriages which have taken place before the legal age of 18 should be considered as 'child marriage'.
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