

**DISSERTATION**

**ON**

**Child Marriage: Disagreements among Sharia Law, National Laws  
and International Framework**

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### Consent Form

The dissertation titled is **Child Marriage: Disagreements among Sharia Law, National Laws and International Framework** prepared by Mirja Tahmina Akter ,ID 2017-2-66-049 submitted to Nadia Rahaman, Lecturer, Department of Law, East West University for the fulfillment of the requirements of Course 406 (Supervised Dissertation) for L.L.B. ( Hons.) degree offered by the Department of Law, East West University is approved for submission.

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Signature of the Supervisor

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## **DECLARATION**

I, Mirja Tahmina Akte, hereby solemnly certify and declare that this research paper is original and entirely my own work and has not been copied from anywhere or anyone's views. The purpose of this research is to complete my undergraduate degree as it is a course. A bibliography is included to maintain the citation materials.

**Child Marriage: Disagreements among Sharia Law, National Laws  
and International Framework**

## CONTENTS

<b>Abstract.....</b>	<b>08</b>
<b>List of Abbreviations.....</b>	<b>09</b>
<b>Chapter One:</b>	
1.1 Introduction .....	10
1.2 Literature Review .....	10-11
1.3 Objectives of The Studies.....	11
1.4 Methodology .....	11
1.5 Research Questions.....	11-12
1.6 Scope and Limitations .....	12
<b>Chapter Two:</b>	
2.1 Legalization of Child Marriage in Muslim Laws .....	13-16
2.2 The Practice of Child Marriage under Muslim personal law in Bangladesh .....	16-17
<b>Chapter Three</b>	
<b>Disagreements between Muslim personal law and National Laws of Bangladesh.....</b>	<b>18</b>
3.1 Aspects of the constitution .....	18-19
3.2 Current laws in Bangladesh about Child Marriage .....	19
3.2.1 Child Marriage Restraint Act, 2017.....	20-22
3.2.2 The Children Act 2013.....	22-23
<b>Chapter Four</b>	
<b>Disagreement between Muslim personal law and International framework.....</b>	<b>24</b>
4.1 Convention on the Rights of the Child (CRC).....	24-26
4.2 The Universal Declaration of Human Rights, 1948.....	26
4.3 The Convention on the Elimination of All forms of Discrimination against Women (CEDAW).....	26-27

4.4 The Consent, Minimum Age and Marriage Registration Convention 1962.....27

**Chapter Five:**

5.1 Findings of the Research .....28

5.2 Recommendations .....29

**Conclusion .....29-30**

**Bibliography .....31-33**

## **ABSTRACT**

Child marriage is a gross violation of the rights of the child because it takes place against their will. Bangladesh has a number of child marriage prohibition laws and the purpose of that laws is to prevent child marriage. In some parts of these laws there is some disagreement with the Muslim personal law about child marriage because Muslim personal law directly and indirectly allows child marriage. These laws have some gaps in themselves. For example, the child marriage restraint act 2017.It contains a special provision child marriage is permitted under special circumstances with the consent of the legal guardian and the court for the welfare of the child. However, this section does not define what these specifics are circumstances and does not provide a standard for measuring the best interests of the child. It appears that this passage indirectly encourages child marriage rather than taking place prevent it. There are also some disagreements between Muslim personal law and some international convention. various international conventions are working to protect the interests of the child. Child marriage provides various barriers to the protection of the child's interests. based on primary and secondary information, this is qualitative research. This research paper analyzes the rationale for legalizing child marriage in Muslim personal law and also and analyzes where Muslim national law differs from Bangladesh's national law and international conventions. This research examines the international responsibility of Bangladesh in the light of child marriage.



## **LIST OF ABBREVIATIONS**

CMRA	CHILD MARRIAGE RESTRAINT ACT
CEDAW	CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION OF WOMEN
CRC	CONVENTION ON THE RIGHTS OF THE CHILD
UDHR	THE UNIVERSAL DECLARATION OF HUMAN RIGHTS
CMAMRC	THE CONCENT, MINIMUM AGE and MARRIAGE REGISTRATION CONVENTION
ILO	INTERNATIONAL LABOUR ORGANIZATION
MFLO	MUSLIM FAMILLY LAW ORDINANCE

## Chapter One

### 1.1 Introduction

Child is a person under the age of 18<sup>1</sup> who lacks the legal capacity to consent to marriage. If a child lacks the mental capacity to give her permission, she cannot marry. Child marriage is defined as a marriage between two people who are under the age of 18. Child marriage is a human rights violation since it is performed without the permission of children. Child marriage is illegal under national law in many nations like Bangladesh. 'A society's true character is revealed in how it treats its children,' Nelson Mandela stated. Child marriage jeopardizes a child's future because it has negative consequences for their health, education, development, and well-being.<sup>2</sup> On the other hand, Bangladesh has some laws to prevent child marriage. Some parts of these laws disagree with Muslim personal law because Muslim private law has legalized child marriage. Not only that, there are some gaps in these laws which barrier to prevent child marriage. In 2017, Bangladesh, on the other hand, enacted a new law repealing the previous Act of Child Marriage to prevent child marriage in Bangladesh, including section-19, which enables child marriage in rare circumstances with the approval of parents and the court for the best interests of children. Following the passage of this law, the government drew widespread criticism because, according to a UNICEF report (2017), Bangladesh has the fourth highest rate of child marriage, with 59 percent of girls married before the age of 18 and 22 percent married before the age of 15. 5Some international conventions are working to protect the interests of the child. But child marriage hinders the protection of the child's interests in various ways. Since Muslim private law legitimizes child marriage, there is disagreement in some parts of international conventions with this law.

### 1.2 Literature review

There are many authors who have written about the problem of child marriage and they have found many reasons behind the occurrence of child marriage and also tried to find out the information of marriage under Muslim personal law in many books, journal, articles and online sources. There is a lot of research paper on child marriage prevention laws and their remedies and i found lots of articles, books, online basis materials. I could not find any articles, books, online materials about

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<sup>1</sup> The Convention of the Rights of the Child 1989, Article- 1

<sup>2</sup> Quentin Wondon , ' Ending Child Marriage Laws and their limitations' (2017) CL 2.Chad, Costa Rica, Ecuador, Guatemala, Malawi, Mexico, Nepal, Panama and Zimbabwe repeal this special provision from their law

how Muslim personal law is legalize child marriage and what are the differences between the Muslim personal law and the national law of Bangladesh and the international conventions about child marriage. For this reason, I decided to do research on this topic.

### **1.3 Objectives of the Study:**

- 1.The main purpose of this study is to show what are the laws regarding child marriage in Muslim personal law and how these laws legalize child marriage.
- 2.To exhibit how child marriage is practiced in the light of Muslim personal law in the context of Bangladesh.
- 3.To display how to challenges the constitutionality of Child Marriage under Muslim personal law.
4. To indicate how some of the laws that are in place to prevent child marriage in the light of the current national laws in Bangladesh are in disagree with Muslim personal law.
- 5.To reveal how child marriage under Muslim personal law disagrees with various international conventions on the fundamental rights of children.
- 6.To show Bangladesh's failure to take international responsibility for the end of the child Marriage from Bangladesh4. To show how some of the laws that are in place to prevent child marriage in the light of the current.

### **1.4 Methodology**

This study is mostly a qualitative investigation using primary and secondary sources. The analytical research method was used in this investigation. I mostly used primary sources to obtain data from Bangladesh's Constitution, legislation, personal laws, and case decisions. This study also relies on secondary sources, such as searching through various books. Newspapers, publications, online journals, website and various blogs, among other things.

### **1.5 Research Questions**

A number of questions can be formulated on this research topic. However, this research was limited to the following questions.

1. Whether there is any disagreement about child marriage among Muslim law, national law of Bangladesh and International convention?

2. If there is any disagreement then how can these disagreement be resolved?

### **1.6 Scope and Limitations**

This research paper based on the rationale of Muslim personal law regarding child marriage and although there are many other reasons behind the occurrence of child marriage, how the practice of child marriage under Muslim personal law is being discussed in the context of Bangladesh has also been discussed.

Time and resource constraints are further limitations of our study. While conducting this research, I discovered that there was insufficient published material on this topic. I base my research on the Constitution, statutory laws, personal laws, the International Convention, articles, newspapers, and online journals.

## Chapter 2

### Child Marriage in Muslim Law

Over time, the majority of religions have stressed a girl's sexual development as the legal age of marriage.<sup>3</sup> There is no particular marriageable age in Islam. Some classical Islamic scholars believe that marriageable age is determined by the sexual maturity of girl's as young as nine, eleven or fifteen years old.<sup>4</sup> This chapter discusses how Muslim personal law supports child marriage and discussion have also been held on how child marriage is being practiced in Bangladesh under religious perspective.

#### 2.1 Legalization of Child Marriage in Muslim law

Sharia law does not stipulate an age limit for marriage. However, some ancient religious experts emphasize sexual maturity is only criterion for marriage claiming that the age of maturity for girl's is below 16, based on science and practical experience. The majority of scholars are focusing on the prophet Muhammad's marriage to Aisha as an example. According to Islamic history, Aisha was six years old when she was engaged and nine years old when the marriage was consummated.<sup>5</sup> Discussing this hadith shows that, a girl attains sexual maturity at the age of nine and sexual maturity is a criterion for marriage.

According to Sunna, marrying a 9-year-old girl is legal if she has achieved puberty.<sup>6</sup>

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<sup>3</sup> Women Living Under Muslim Laws (WLUML), 'Knowing Our Rights : Women, Family, Laws and Customs in the Muslim World', ( Published by Russell Press, Nottingham, UK,2006), 29.  
[http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor\\_2006\\_en.pdf](http://www.wluml.org/sites/wluml.org/files/import/english/pubs/pdf/knowning%20our%20rights/kor_2006_en.pdf) accessed on 10 April 2022

<sup>4</sup> Zafar Khan, ' Are Child Marriage Allowed in Islam?' Available at :  
<http://www.islamawareness.net/Marriage/Child/childmarriages.html> Accessed on 10 April 2022

<sup>5</sup> Pamela Cross, ' Violence Against Women , Health and Justice for Canadian Muslim Women' , ( Published by CCMW, 20 September 2014 ) , 17 Available at : [http://ccmw.com/wp-ontent/uoloads/2013/07-EN-VAW\\_web.pdf](http://ccmw.com/wp-ontent/uoloads/2013/07-EN-VAW_web.pdf) accessed on 10 April 2022

<sup>6</sup> Shaykh Muhammad S Al-Munajjid, 'Child marriage in Islam is subject to the condition that it serve a clear and real interest', (Islamic Question and Answer, web article) <http://islamqa.info/en/178318> accessed on 10 April 2022.

It is illegal to marry a girl before she reaches puberty under Muslim personal law. Muslim jurists have differing viewpoints on the age of puberty, including: Imam Abu Hanifa of the Hanafi school of thought considers a boy to be an adolescent when he turns 18 years old in the lack of any signs of maturity, semen emission, or any other sign of puberty. Similarly, in the lack of any indication of maturity, such as the onset of menstruation or any other evidence of puberty, a girl is regarded an adolescent when she reaches the age of 16. In the lack of any indication of puberty, the Maliki school of thought established 17 years as the age of puberty for both girls and boys. Both Shafi'i and Hanbali schools of thought consider 15 years of age to be the age of puberty for both boys and girls in the absence of any indication of puberty. Both Imams, Imam Abu Yusuf and Imam Muhammad Al-Shabani, were pupils of Imam Abu Hanifa. Both Imams believe that a boy and a girl are deemed mature once they have reached the age of 15. That is to say, discussing the opinion of different scholars, it can be seen that, all the age limit for attaining puberty of a boy and a girl are below 18 years old.

It is said in a verses of the Quran that expressly pertain to the age of marriage: "the orphans attain the age of marriage and are found to be able for self judgement, their property shall be handed over to them before they get married." <sup>7</sup> This Qur'anic verse demonstrates that marriage requires significant judgment and intellectual development. Analyzing this it is understood that in the light of Islamic law, when a person attains maturity, that is, qualifies to take care of his own property, then it is time for him to get married. Nonetheless, the classical scholars as well as practically all Islamic schools of thought, emphasize baligh or balaghat as the only precondition for marriageable stage. <sup>8</sup> According to Hanafi School, a boy will reach maturity at the age of 18 and a girl will reach maturity at the age of 16. <sup>9</sup> Anyone who achieves the age of "full responsibility," such as maturity, puberty, or adulthood, is referred to as a Baligh in Islamic legal terminology.<sup>10</sup> However, intellectual maturity is not included in this entire responsibility. Rashid refers to both girls and

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<sup>7</sup> Surah an Nisa 4:6

<sup>8</sup> Sayyed Muhammed Hussein Fadlallah, 'The Islamic Perspective on Adolescence', (Bayyanat, The website of Religious Authorities), <<http://english.bayynat.org.lb/WorldofYouth/themesII-1.htm>> accessed 4 May 2014.

<sup>9</sup> Ibid

<sup>10</sup> Ibid

boys' intellectual maturity in Islamic terminology. <sup>11</sup>Rashid's age of full responsibility has been set at 18 years old.<sup>12</sup>

If they are virgins, they can consent by smiling or keeping silent, as the Hadith states: "If a virgin ] is silent, that means assent." <sup>13</sup> Women, on the other hand, must express their agreement to distant guardians more clearly, as silence can suggest shyness. <sup>14</sup> Nonvirgins must also express their assent; according to the Hadith, "siyeebas must be consulted." <sup>15</sup> These three schools give the right of ijbar to the guardian, who in Maliki law is the father, while in the other four schools it is the father and grandfather, who can force a virgin to marry. Because of their lack of experience in marriage, a virgin lady is on par with an infant when it comes to marriage.<sup>16</sup> Guardians can contract marriage for non-bulugh females and force them to marry based on the right of ijbar under the laws of all schools. The Shafi'i school and the other four schools, respectively, use virginity and minority to legitimize these privileges. That is to say, an analysis of all these hadiths shows that under personal law, a Muslim can force his child to marry a non-parent child under personal law because that child is not old enough to make a proper decision about marriage.

Nowhere in the Muslim personal law is it directly stated that this law is legalizing child marriage. But considering the minimum age for marriage under this law, the minimum age for expression of opinion, it can be seen that this law has given legitimacy to child marriage.

Islam has supported underage marriage, according to Fadlallah, an Iranian Shia scholar. He cited a hadith that states that parents are responsible for their offspring.

"Leave him free for seven years punish him for seven and be his friend for seven," the hadith said. The focus of Fadlallah's analysis is on the social component of the Islamic role in family life. He determined that the ages of for adolescent boys and girls, the years 14–20 are a difficult time in their lives. As a result, engagement and marriage between the ages of fourteen and twenty is a good alternative for young people who want to avoid non-Islamic relationships. Many Islamic

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<sup>11</sup> Ibid

<sup>12</sup> Ibid

<sup>13</sup> Mohammed Subhan Hussain Sheikh, 'Islamic Law on Child Marriage' Available at: [https://www.researchgate.net/publication/324672937\\_Islamic\\_Law\\_on\\_Child\\_Marriage](https://www.researchgate.net/publication/324672937_Islamic_Law_on_Child_Marriage) accessed on 21 April 2022

<sup>14</sup> Ibid

<sup>15</sup> Ibid

<sup>16</sup> Ibid

countries in the Middle East, Southern Asia, and North Africa require females to marry at a young age with the agreement of their parents, particularly the girl's father or grandfather.

Relationships Morality and public behavior of women are regarded as critical to one's reputation and honor. Many traditional societies have a large number of families. In Muslim cultures, family honor is highly prized. Male family members should be in charge of regulating and controlling women's behavior.<sup>17</sup>

Girls' virginity and sexual integrity prior to marriage are seen as important aspects of family honor in the Philippines. Traditional Muslim culture, Sexual trespass is not only wrong, but it can also be damaging to a girl's health, her whole family. Marriage of girl children is considered as a "final protective measure against sexualism morality" in most of these orthodox countries, such as Afghanistan and Yemen. Early marriage of girl children, according to certain Islamic conservative clerics, can assure parents that their daughters are properly set up in a household, that they are under the care of a man, and that they are officially married. Traditional cultures' prospects have clearly shown a male-dominated future. Women's rights and liberties are regulated and infringed in the areas where they are managed. the name of "honour" and "values"<sup>18</sup>

The beliefs of conservative researchers focus solely on the concepts of girls' sexual and physical maturity as a prerequisite for marriage. Classical Islamic thinkers have not emphasized the basic rights of girl children, such as the right to education, personal development, and well-being. Stages

in a girl's life that are crucial for her future endeavors. Traditionalist interpretations of the Quran and Sunna, on the other hand, emphasize men's superiority. on women in various parts of their lives.<sup>19</sup>

**2.2 The practice of child marriage under Muslim personal law in Bangladesh:** Most Bangladeshis marry their children at a young age in order to keep their daughters from having premarital physical encounters. Parents with unmarried adolescent daughters are concerned about the possibility of their daughters engaging in premarital sexual encounters. As a result, parents desire their adolescent daughters to marry when they are young. "As Muslims, we have to obey

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<sup>17</sup> WLUML, 'Child, Early and Forced Marriage: A Multi-Country Study', 13.

<sup>18</sup> WLUML, "Knowing Our Rights: Women, Family, Laws and Customs in the Muslim World", 18.

<sup>19</sup>Fadlallah, 'The Islamic Perspective on Adolescence', 228 Yahyaoui Krivenko,58.



the norms and guidelines set by the Quran and Hadith," a parent of a recently married adolescent girl said in a line. Premarital physical connections are definitely forbidden in Islam, thus we must marry our daughters when they reach puberty. If our daughters do evil things with others, we must be punished on the day of the final judgment for our wrongdoings. As a result, I married my daughter before she turned 16. As a Muslim, I think that marrying off my daughter at a young age assures her physical safety as well as the status and honor of my family."<sup>20</sup> The Islamic marriage legislation is in direct conflict with the Bangladesh government's globally acknowledged marriage law. Because pre-marital relationships are socially and culturally outlawed in Bangladesh, the conflict between Muslim marriage law and statute law frequently pushes Muslims to marry their children at a young age in order to maintain sexual and familial honor.

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<sup>20</sup> Available at : [https://www.researchgate.net/publication/234672937\\_Islamic\\_Law\\_on\\_Child\\_Marriages](https://www.researchgate.net/publication/234672937_Islamic_Law_on_Child_Marriages) Accessed on 21 April 2022

## Chapter 3

### 3. Disagreements between Muslim personal law and National Laws of Bangladesh

A number of laws have been enacted to prevent child marriage in Bangladesh. There are several contradictions between the Muslim personal law and the national laws in Bangladesh on child marriage. This chapter discusses all of these laws and also discusses the issues that are in disagreement with itself and Muslim personal law. The Constitution of Bangladesh has guaranteed the fundamental rights of children and these rights have also been highlighted in this chapter and how these rights disagreement with Muslim personal law has been discussed in this chapter.

#### 3.1 Aspects of the constitution:

Since Bangladesh's independence, the People's Republic of Bangladesh's Constitution has prioritized children's rights in its fundamental concept of State policy in Article 17 and fundamental rights in Articles 31, 32, and 34. According to Article 17(a) of the Constitution, the state must take effective steps for the purpose of free and obligatory education.<sup>21</sup> This article seeks to ensure that an important fundamental right such as education is ensured for all children. On the other hand, there is no specific age limitation in Islam. Sunna claims that marrying a 9-year-old girl is legal as long as she has reached puberty<sup>22</sup>. Our Prophet's wife, Aishah was six years old when she married.<sup>23</sup> According to Islamic law and Islamic history, if a girl gets married at the age of 6 or 9, it will definitely affect her education. Then that child will no longer get a conducive environment for study. As a result, he/she will be deprived of his right to education. Although it is not a fundamental right and it is not enforceable, the government has made education compulsory and provided free education to ensure children's right to education. The government's intention will then fail. Thus, it is seen that the rights of children which are guaranteed by the constitution of Bangladesh are being curtailed for the sake of Islamic law. There is a disagreement here. Articles

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<sup>21</sup> The Constitution of the People Republic of Bangladesh, Art – 17(a)

<sup>22</sup> Shaykh Muhammad S Al Munajjid, 'Child Marriage in Islam is subject to the condition that it serve a clear and real interest', (Islamic Question and Answer, web article) <http://islamqa.info/en/178318> accessed on 21 April 2022

<sup>23</sup> Irini Ibrahim, Farida Hussain and Norazlina Abdul Aziz, "The Child Bride: Rights Under the Civil and Shariah Law" 2022, Available at : [https://www.researchgate.net/publication/324672937\\_Islamic\\_Law\\_on\\_Child\\_Marriage](https://www.researchgate.net/publication/324672937_Islamic_Law_on_Child_Marriage) accessed 21 April 2022

31 of the Constitution provide that all people are equal before the law, and that in order to enjoy the protection of the law, no action shall be conducted that is harmful to any person's life or liberty.<sup>24</sup> Article 32 of the Constitution, according to the Constitution, the state is responsible for ensuring a person's right to life and personal liberty.<sup>25</sup> This two article guarantees the right to life and liberty. Many children die prematurely because of early marriage and childbirth. Thus, due to child marriage, her right to life is curtailed. The second chapter discusses in detail the importance of expressing one's opinion as a child in the case of Muslim personal law and how one can express one's opinion for his / her marriage and there is information that there is no place for child marriage to express the views of a virgin child. Thus his/her right to express of opinion is curtailed. As a result, his/her right to liberty became uncertain. So, there is a disagreement between the constitution and the Muslim personal law. All types of forced labour are outlawed under article 34(1) of the Constitution.<sup>26</sup> Forced labour means that, a person is forced to do the work or that person does not do the work voluntarily.<sup>27</sup> On the other hand, we can see that , as a result of child marriage, a child is forced to work because he/she does not have the age and maturity to do any work voluntarily. So, the work that the child has to do as a result of child marriage. At the age when a child is supposed to be busy with studies or sports, he/she had to take the helm of a family at that age because of child marriage. This is how his right is being curtailed. Since child marriage is allowed in Muslim personal law and child marriage is reduced to the rights mentioned above. These rights are guaranteed by the constitution. So, there is a disagreement here too.

### **3.2 Current laws in Bangladesh about Child Marriage**

Bangladesh, like most South Asian countries, has national laws against child marriage; nevertheless, such laws frequently contradict with customary and religious rules and practices, making them difficult to execute or enforce.<sup>28</sup> There are some disagreements between the current laws of Bangladesh and the Muslim personal law.

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<sup>24</sup> The constitution of the people Republic of Bangladesh, 1972 Article-31

<sup>25</sup> Ibid Article-32

<sup>26</sup> Ibid Article-34(1)

<sup>27</sup> Forced Labour Convention 1930 (No. 29)

<sup>28</sup> . United Nations Children's Fund (UNICEF), Early Marriage in South Asia: A Discussion Paper, 17 (2008); (This brief details the experiences of females 15 years of age and older – International Center for Research on Women,

### 3.2.1 Child Marriage Restraint Act, 2017

This law sets the minimum age for marriage at 18 for girls and 21 for boys. It is a punishable offense under this law to marry a girl under the age of 18 and a boy under the age of 21. On the other hand, according to Islamic law, different scholars have set different ages for marriage and under 16 years of age at each of their prescribed age which is already discusses in detail in chapter two. So, here is a disagreement between Muslim personal law and this act in determining the age of marriage. Despite the fact that, child marriage is a criminal offence, it is not void from the start under the Child Marriage Restraint Act ,2017. This act contains no clause stating that under marriage is illegal.

Section 7 of the Act states that if an adult woman or man enters into a marriage contract, it is a punishable offense and for this offense he/she is liable to imprisonment for a term not exceeding two years or a maximum of tk.1 lakh or both and if one lakh. Failure to do so will result in a maximum imprisonment of 3 months. If a minor woman or man enters into a child marriage contract, it will be a punishable offense and he will be detained for a maximum of one month or a maximum fine of tk. 50,000.<sup>29</sup> On the other hand, if an adult woman or adult man is involved in marriage with a child, there is no penalty in Muslim personal law rather Muslim private law encourages child marriage. So, here also a disagreement between the Muslim personal law and this act.

Therefore, according to section 2(1) of this act, in the event of marriage, "minor" refers to a person who has not reached the age of 21 years for a male and 18 years for a female.<sup>30</sup> On the other hand, A hadith states that when a person reaches the age of marriage and is self-sufficient, his property will be transferred to him before marriage.<sup>31</sup> Analysing this hadith, it is understood that in the light of Islamic law, when a person attains maturity, that is, qualifies to take care of his own property, then it is time for him to get married. A child can be considered a minor until he or she has matured

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Too Young to Wed: The Lives, Health, and Rights of Young Married Girls (2003), available at:

<http://www.icrw.org/publications/too-young-wed-0>).

<sup>29</sup> Act The Child Marriage Restraint 2017, Section-7

<sup>30</sup> Ibid Section -2(1)

<sup>31</sup> Shaykh Muhammad S Al Munajjid,' Child Marriage in Islam is subject to the condition that it serve a clear and real interest ', (Islamic Question and Answer, web article) <http://islamqa.info/en/178318> accessed on 21 April 2022

enough to take care the property according to Islamic history. The second chapter also discusses the different ages of achieving maturity according to Islamic law, all of which are below 18 years. So, here also a disagreement in determining the maturity age for marriage between Muslim personal law and this act.

Section 8 of this act stated that, It is a punishable offense if a parents or guardian is involved in a child marriage or assists in child marriage or attends a child marriage ceremony. Not only that, if a parent or guardian does not prevent child marriage, it will be a punishable offense for them and this can be punished with imprisonment extend to two years, but not less than six months, or with a fine which may extend to fifty thousand taka or both and default Payment of the fine is punishable by imprisonment, which can be extended up to three months.<sup>32</sup> As can be seen from the discussion in the second chapter, parents or guardians are in charge of marriage of a virgin girl .It has been narrated in a hadith that girls who are virgins will get married with the consent of their father or grandfather .Where this act says to punish a parent or guardian for being involved in child marriage, Islamic law places the parent or guardian in charge of the marriage and makes the marriage illegal without the consent of the parent or guardian. Islamic law emphasizes the involvement of parents or guardians in marriage. So, there is another disagreement with this act.

According to section 19 of this act, under the Special Circumstances, child marriage will not be considered a crime if it is arranged in the best interests of the child with the consent of the parents and the direction of the court.<sup>33</sup>The purpose of this law is to prevent child marriage but for this<sup>34</sup>section the purpose of this law fails somewhat. However, this part of the law does not specify under what circumstances child marriage is permitted. Child marriage would be permitted under certain conditions in the case of an accidental or illegal pregnancy of any unmarried girl under the age of 18 years, according to the legislators of this Act. A female could not terminate her child because abortion of an unborn kid is illegal in Bangladesh under section-312 of the penal code.<sup>35</sup>According to the legislators, society does not want to accept an unmarried girl and her

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<sup>32</sup> The Child Marriage Restraint 2017, Section-8

<sup>33</sup> Ibid Section-19

<sup>34</sup> Star Online Report, ‘ Nothing to be worried about child marriage ‘ The Daily Star (Dhaka 7 December 2016)  
Available at : <http://www.thedailystar.net/country/nothing-be-worried-about-child-marriage-law-pm-1326595>  
accessed on 24 April 2022

<sup>35</sup> The Penal Code 1860, Section-312

illegitimate child, and it will be impossible for an illegitimate child to be accepted into any educational institution.<sup>36</sup> Bangladesh has legalized child marriage to avoid this scenario. The Prevention of Oppression Against Women and Children Act stated that if a child is born as a result of rape, the government will carry the child's maintenance and may collect it from the rapist, and the kid will be identified by the identity of his or her father or mother or both.<sup>37</sup>

Another circumstance that would allow child marriage in Bangladesh is if the minor's parents or relatives (brother/sister, grandmother/grandfather) are no longer alive and it is difficult to ensure the minor's security and maintenance. In this case, child marriage would be permitted to ensure the minor's security.<sup>38</sup>

Allowing child marriage in exceptional circumstances does not transform a child into an adult; the youngster would continue to be a child after marriage. On the other hand, no such provision has been made under Muslim personal law.

### **3.2.2 The Children Act 2013**

Section 4 said that all person up to 18 years of age will be treated as child. So, if anyone is married under the age of 18 then it will be considered as a child marriage under this section and of course it is a offence. But already we see in the second chapter that, how Muslim personal law legalize any marriage under 18 years of age. So, here also a disagreement created between Muslim law and this law.

Section 70 of the Children Act of 2013, specifies the penalty for cruelty to children.

"Any person over the age of sixteen who has custody, charge, or care of any child assaults, illtreats, neglects, abandons, or exposes such child, or causes such child to be assaulted, illtreated, or exposed, neglected, abandoned, or exposed in a way that is likely to cause undue suffering to such a child injury to his health, such as loss of vision or hearing, or injury to a body limb or organ, or

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<sup>36</sup> Star Online Report, ' Nothing to be worried about child marriage' The Daily Star ( Dhaka 7 December 2016) Available at : <http://www.thedailystar.net/country/nothing-be-worried-about-child-marriage-law-pm-1326595> accessed on 24 April 2022

<sup>37</sup>Prevention of Oppression against Women and Children Act 2000, Section-13

<sup>38</sup>Shahana Huda , ' Child Marriage Restraint Act 2017: Things that need to be clarified' The Daily Star ( Dhaka, 9 March 2017) Available at : <http://www.thedailystar.net/bangla/> accessed on 25 April 2022

such a person is liable for any mental illness.<sup>39</sup> Analysing this article, it is understood that there is a provision of severe punishment for misbehaving, abusing, neglecting a child and severe punishment for physically injuring a child. Not only this, with the help of fire you can do welding. On the other hand, in the second chapter we see that Muslim law encourages child marriage. Under Muslim law, we have already seen that girls are often neglected in marriage, not even taking into account their views. Not only that, as a result of child marriage, a girl is emotionally injured in various ways. Here, there is a conflict between Muslim law and this law.

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<sup>39</sup> The Child Act 1974, Article 34

## Chapter Four

### Disagreement between Muslim personal law and International framework.

Child marriage is a sort of human rights violation that occurs in many places of the world. There are, however, a number of human rights documents that address the issue of early marriage. This chapter discusses how international conventions play a role in preventing child marriage and the areas where these conventions disagree with Muslim personal law.

#### 4.1 Convention on the Rights of the Child (CRC)

It also plays a critical part in the global protection of children's rights. Although the CRC does not specifically address the problem of child marriage, it does contain many clauses that safeguard children from being married too young. Article 1 of the treaty defines a child as "any human being under the age of 18 years unless the majority is acquired earlier by the law applicable to the child."<sup>40</sup> This means that a person will be considered a child until the age of 18 and the age of majority is 18 years which is totally disagree with the Muslim personal law because according to Muslim personal law, Marriage of a child before the age of 18 is considered legal and considered the age of majority is under 18.

All state parties are obligated under Article 6 of the convention to ensure each child's right to life and development.<sup>41</sup> On the other hand, in the second chapter we learn that child marriage is allowed by Muslim personal law. Child marriage is a major source of violations of children's rights. The majority of young brides become pregnant soon after their marriage as a result of her husband's family's demand. In order to meet such demands and uphold family values, child brides are exposed to a variety of health hazards and serious diseases, which can lead to death.<sup>42</sup> As a result, state parties have a responsibility to prevent child marriages in order to meet the requirements of mental abuse, as well as to provide them with a suitable quality of living.

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<sup>40</sup>convention on the Rights of the Child (CRC), Article-1

<sup>41</sup> Ibid, Article-6

<sup>42</sup>Nazir Ullah, " Child Marriages: International Laws and Islamic Laws Perspective" Availabl at:

[https://www.researchgate.net/publication/324672937\\_islamic\\_Law\\_on\\_Child\\_Marriage\\_Accessed\\_on\\_21\\_April\\_2022](https://www.researchgate.net/publication/324672937_islamic_Law_on_Child_Marriage_Accessed_on_21_April_2022)



Article 10 of the Convention states that the state must take legislative and administrative steps to protect this article. Several clauses of the agreement require states to protect children from physical and interests of the child.<sup>43</sup> But on the other hand, according to Islamic law, child marriage has been allowed and child marriage is also practiced in Bangladesh under the pretext of religion. Through chapters 2 and 3, we already know how child marriage can be a barrier to protecting a child's interests. In a country where child marriage has been legalized under religious law, it is almost impossible for the state to take the necessary steps to protect the interests of the child.

Article 12 of the Convention states that all children have the right to express their views on all matters based on her or his age and maturity.<sup>44</sup> On the other hand, we have already learned that according to Islamic law, in the case of marriage, opinions are not always taken independently from their children because Islamic law states that the silence of a virgin girl is considered consent.<sup>45</sup> This means that they are being deprived of the opportunity to express their views freely. Islamic law also states that in the case of marriage, parents or guardians can force their child.<sup>46</sup> This picture shows that their opinion is not acceptable or their opportunity to express their opinion has been curtailed here as well. Some hadiths say that if the child get married without the consent of the parents, then the marriage will not be valid. That is, even here their own opinion is not accepted. So, it is clear from these discussions that there is a conflict between this convention and Muslim law. Articles 19 and 34 of the Convention state that the state must protect its citizens from physical and mental harm.<sup>47</sup> Child marriage harms a child both physically and emotionally including sexual absorption. Since child marriage is allowed in Muslim law, it can be said that there is a disagreement between Muslim law and these two articles of this convention.

Bangladesh adopted the National Children Policy in 2011. According to the policy, children have the right to be protected from violence. Article 28 of the convention outlines the right to education, which requires all state parties to offer "right to education" to every child<sup>48</sup> which is disagreement

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<sup>43</sup> Convention on the Rights of the Child (CRC), Article-10

<sup>44</sup> Ibid, Article-12

<sup>45</sup> Muhammad Subhan Hussain Sheikh, "Islamic Law on Child Marriage" Available at:

[https://www.researchgate.net/publication/324672937\\_Islamic\\_Law\\_on\\_Child\\_Marriage\\_Accessed\\_21\\_April\\_2022](https://www.researchgate.net/publication/324672937_Islamic_Law_on_Child_Marriage_Accessed_21_April_2022)

<sup>46</sup> Ibid

<sup>47</sup> Convention on the Rights of the Child (CRC), Article-19,34

<sup>48</sup> Ibid,28

with Muslim personal law indirectly because marrying at a young age prevents spouses from receiving a suitable education. Boys are responsible for feeding their families, while girls are obligated to work at home as housewives. As a result, both are denied an education.

#### **4.2 The Universal Declaration of Human Rights, 1948**

Men and women of full age, without regard to race, nationality, or religion, have the right to marry and start a family, according to Articles 16 (1) and (2) of the UDHR.<sup>49</sup> The term full age means legal maturity of a person. It is also said that a person above 18 years of age can be considered as a full age person. So, it can be said that, a person above the age of 18 has the right to marry and start a family. But in the second chapter we see that, marriage under the 18 is legal under Muslim law. So, here also a disagreement is created.

According to article 16(2), only with the free and full consent of the spouse may a marriage be entered into.<sup>50</sup> As already discussed in Chapters 2 and 3, the silence of virgin girls is considered as consent in Muslim personal law when it comes to marriage. The UDHR's drafters aimed to prevent underage marriage but according to Muslim law, their purpose is failing.

#### **4.3 The Convention on the Elimination of All forms of Discrimination against Women (CEDAW)**

Adequate measures to provide Bangladesh joined CEDAW in 1984 and is an active member of the organization. States must take equal rights to the parties to enter into marriage and freely choose a spouse with their free and complete agreement according to provision 16(1) of this convention. On the other hand, hadith says that if you get married without the consent of your parents or guardians then that marriage will be considered illegal.<sup>51</sup> Therefore, according to Islamic law, girls are not given any right to choose their husbands. Not only that, all the girls who are

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<sup>49</sup> THE UNIVERSAL DECLARATION OF HUMAN RIGHTS 1948, Article 16(1) , (2)

<sup>50</sup> THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948,Article 16(2) <sup>50</sup>THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948,Article 16 (1) ,(2)

<sup>51</sup> The Convention on the Elimination of All forms of Discrimination against Women (CEDAW),Article 16(1)

virgins consider their silence as their consent according to Islamic law. That is, their opinions are not given much importance. So, a disagreement has been created with this article an

#### **4.4 The Consent, Minimum Age and Marriage Registration Convention 1962**

The 1962 Convention, which focuses solely on marital rules and situations, was presented for ratification on November 7, 1962, and went into effect on December 9, 1964, after all needed states had ratified it.

The convention cites article 16 of the Universal Declaration of Human Rights, which provides that men and women of full age who give their free and informed consent without discrimination have the right to marry.<sup>52</sup> So, this article means unequivocally that full consent of both spouses is required for marriage. On the other hand, we already learned from chapter two that, Muslims have legalized private child marriage. So, a youngster lacks the understanding of marriage and its duties to make informed decisions or consent to such crucial life links. The ability to make an important decision like marriage is not usually made by a child. There is different of opinion between Muslim personal law and this convention.

Article 2 specifies that the minimum age for marriage for girls is 18 years.<sup>53</sup> The convention is in disagreement with Muslim personal law regarding the age of marriage, which has already been discussed several times in Chapter Two.

An analysis of the articles mentioned in the above mentioned conventions shows that each article speaks of protecting the interests of the child. But how child marriage hinders the interests of the child has already been discussed in every chapter. Since these child marriages are viewed from the perspective of Muslim personal law, it is clear that these international conventions disagree with Muslim personal law.

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52 THE UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948, Article 16

53 The Consent, Minimum Age and Marriage Registration Convention 1962, Article 2

## Chapter Five

In this chapter, I have illustrated the findings from the previous research and then suggested some potential remedies for the researcher conclusion as well as a concluding remark.

### 5.1 Findings of the Research

The main purpose of this research paper is to find out if Muslim law really allow child marriage and to find out the disagreements between Muslim personal law and national law of Bangladesh and international convention. It is discovered that,

There is a difference between the Muslim personal law and the national law of Bangladesh in determining the age of marriage.

Although there are many reasons behind child marriage in the context of Bangladesh, one of the major reasons is religious perspective. Most of parent teaches their children from an early age in the light of various hadiths that from a religious point of view it is a good thing to get married at a young age.

Various articles of the constitution emphasize the need to ensure the rights of children, such as the right to education, the right to freedom of expression, right to life etc. Child marriage is in direct disagreement with these rights.

Not only in determining the age of marriage, but also in determining the age of expression of opinion for marriage, there is a disagreement between Islamic law and CMRA. Under CMRA, there is talk of punishment if there is any involvement of the parents in the child marriage. Islamic law says that parents can force their child to have child marriage which is disagrees with this law. The CA 2013 which is talk of several punishment under this act if a child is treated cruelly. Since Muslim personal law also allows child marriage and consequently fails the purpose of this law, it can be said that this law disagrees with Muslim personal law.

Many International Convention is working to protect the rights of children. These convention is working against the physical and mental harm including sexual exploitation of children and has taken various steps to protect the best interests of a child which is completely contradict with child marriage.

## **5.2 Recommendations**

The main argument of this paper is whether Muslim personal law really allows child marriage and what is the disagreements between Muslim personal law and the national law of Bangladesh regarding child marriage. As a result, there are some recommendations based on the research findings for ensuring children's rights.

1. The punishment of parents or guardians under section 8 of CMRA is so low that they are not afraid to give child marriage to their child. Under this section, the punishment of parents or guardians for giving child marriage to a child should be increased.

2. More severe punishment should be provided for non-registration.

3. Every child should have a birth certificate. It is considered as a child's original age certificate. When a kid is born in Bangladesh, it should be required to complete his or her birth certificate. As a result, there will be no uncertainty in the future when it comes to marriage. The birth registration system is not fully implemented which makes it impossible to know the actual age of the girls and makes it almost impossible to prevent child marriage. Therefore, the government needs to be more aware of the implementation of the Birth and Death Registration Act 2004.

4. Although it is illegal to marry off a kid under statutory law, it does not invalidate child marriages undertaken under personal law. To address the issue of child marriage, the Bangladeshi government must resolve the contradiction created by its overlapping but incompatible legal systems, as well as put its personal laws in line with national and international human rights norms.

5. In order to prevent child marriage, need to increase the publicity of all the laws that exist in the Bangladesh so that people can be aware of child marriage and raise awareness among them.

## **Conclusion**

Child marriage is permitted under Muslim personal law. The narration of several hadiths demonstrates that child marriage is legal under Muslim personal law. Different scholars have mandated different age groups for marriage, all of which are under the age of 18 and allude to child marriage. Several sections of Bangladesh's existing national laws are in disagree with Muslim law. In exceptional instances, child marriage does not transform a child into an adult; it remains a

child marriage. It infringes on children's fundamental rights, which are protected by the Constitution. Marriage at a young age violates several fundamental rights of young spouses, including education, the right to a consensual marriage, the right to use the best healthcare facilities and, the right to protection from physical and psychological violence such as sexual exploitation, rape, assault, and injury, the right to adequate care and attention from family. The UDHR, the CRC, the CEDAW, and other international convention all recognize these rights. So, here is some disagreement between Muslim personal law, national law of Bangladesh and international convention which is interruption to prevent child marriage.

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