ENDING EARLY AND FORCED MARRIAGE: BANGLADESH¹ AND UK PERSPECTIVE

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¹ The findings in this report are based on interviews conducted in Bangladesh between October – December 2015 and supplemented by the reports stated in the literature review.

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BACKGROUND:

In recent years there has been a focus globally to reduce early and forced marriage. In many countries this problem manifests in different ways and as a result the response to the problem is also varied. In July 2014 the UK Government and UNICEF hosted the Girls Summit in London, with a view to build partnerships and galvanise the global movements to end Female Genital Mutilation/Cutting (FGM/C) and early and forced marriage². This event was attended by approximately 500 delegates from 50 countries and numerous countries made a pledge to end early and forced marriage in their respective countries. Bangladesh's Prime Minister Shiekh Hasina was amongst those who pledged and she committed to end early and forced marriage by 2041 in Bangladesh. Bangladesh remains in the top 5 countries with the highest number of child marriages in the world³ where 66% of girls are married by the time they turn 18 with 32% marrying before the age of 15.⁴

Notably the risk of an early and forced marriage amongst the British Bangladeshi Diaspora also remains a prevalent issue, the table below demonstrates the figures between 2012 – 2014.

Year	Reported Cases	Percentage of cases from
		Bangladesh
2012	1485	(11%)
2013	1302	(9.8%)
2014	1267	(7.1%)

These statistics demonstrate the number of reported forced marriage cases in the UK and involve cases of both children and adult victims thus indicating both early and forced marriages. Although the statistics⁵ suggest that the cases of early and forced marriages may have decreased in the UK, anecdotal evidence suggests that the prevalence and risk of early and forced marriage continues to exist whilst the act of reporting such cases has decreased.

This report will set out the position of early and forced marriages in Bangladesh and the UK; the way the issue is dealt with in the respective countries; the progress each country has made since the Girls Summit and also recommendations will be provided on what steps should be taken by Bangladesh and UK to reduce the numbers of early and forced marriage.

² http://www.girlsummit2014.org/Commitment/Show

³ http://www.icrw.org/child-marriage-facts-and-figures

⁴ http://www.girlsnotbrides.org/child-brides-in-bangladesh-a-photo-essay/

⁵ https://www.gov.uk/guidance/forced-marriage (Statistics on Forced Marriage collected by FMU)

Section 1: Bangladesh

In Bangladesh there is no minimum legal age of marriage, however under the Child Marriage Restraint Act it is illegal for any female under the age of 18 and for any male under the age of 21 to enter a marriage.

It should be noted that there are several existing personal laws which are not congruous to this definition. The Special Marriage Act 1872 sets the age of a girl for marriage at 14 years, the Muslim Family Laws Ordinance 1961 (while amending the Child Marriage Restraint Act, 1929) sets the age of marriage of a girl at 16 years, the Christian Marriage Act 1872 refers to any person under the age of 21 years as a minor and the Hindu Marriage Registration Act 2012 is silent about the minimum age of marriage. The inconsistency between these legislations on the age of marriage is one of the reasons why it has been practically difficult to curtail the practice of child marriage in Bangladesh.

There is currently a requirement at the point of registering a marriage for parents to produce a girl's birth certificate in order to confirm that she is over the age of 18. In many cases parents usually will purchase a fake birth certificate, which costs approximately 100 Taka (88p/\$1), to falsely claim the legal age of marriage. Based on such presented documentation the marriage will be conducted, therefore these rules need to be tightened, to prevent early and forced marriages.

Child marriages occur for various reasons. Below are some of the identified common motivations for parents and guardians to marry off young girls:

- Financial security
- To protect girls from sexual harassment
- To protect family honour
- Dowry (the younger the girl, the less dowry to be paid)
- Poverty (girls do not usually have their own earning capacity, therefore it is expensive for parents to financially maintain girls) and;
- Young children who find themselves 'in love' take it upon themselves to create their own fake birth certificates in order to get married.

1.1: The Child Marriage Restraint Act

Under the Child Marriage Restraint Act 1929 if a girl is subjected to or is at risk of a child marriage, there is provision to protect the girl by making an application for an injunction to prevent this marriage from taking place.

Section 12 (1) of the Act states the following:

'Notwithstanding anything to the contrary contained in this Act, the Court may, if satisfied from information laid before it through a complaint or otherwise that a child marriage in contravention of this Act has been arranged or is about to be solemnized, [the court can] issue an injunction ... prohibiting such marriage.'

An injunction can be obtained against the following people:

- A male adult above twenty-one years of age
- A female adult above eighteen years of age marrying a child
- Qazi/Marriage Registrar
- Parents/Guardian of the child

If contrary to this legislation any of the above individuals effect a child marriage, it is possible to bring legal action against the following individuals under the same Act on the following basis:

- If the male is over 21 and he knew that the bride was under the age of 18;
- If the female is over 18 and she knew that the groom was under 21;
- The Qazi/marriage registrar or person who solemnised the marriage, can prove and had reason to believe that the marriage was not a child marriage.
- The parents or guardian, who negligently failed to prevent the marriage or promoted it.

The punishment shall be one month imprisonment or 1 thousand taka (£8/\$13) fine or both. If however any of the above individuals conduct or undertake a child marriage in breach of an injunction under this Act, then the term of the prison sentence can be a extended to three months. The current sentences clearly do not reflect the severity of the crime and this allows the perpetrators to continue this crime without fear of any real reprisal.

1.2: Bangladeshi Government's Pledge

Bangladesh recognises that child marriage is an issue in the country and in effect the Prime Minister made the following pledges at the Girls Summit to actively reduce and eventually end child marriages in Bangladesh:⁶

National Plan of Action	By the end of 2014
Revision of 'Child Marriage Restraint Act 1929'	By 2015
No marriage taking place below the age of 15	By 2021
The number of girls getting married between 15 and 18 will be reduced by	By 2021
more than one third	
End child marriage	By 2041
Enabling Environment for Child Rights Project under the Ministry of	Ongoing
Women and Children Affairs has been implementing intervention on the	
provision of conditional cash transfer and stipend to continue education	
and to delay child marriage before 18	
National Forum for Social Norm Change down to the community level	Ongoing
Actively engage the civil society, media, communities, young people,	Ongoing
businesses and other actors in a Social Responsibility Compact	

⁶ http://girlsummit2014.org/Commitment/Show

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1.3: Practical Gaps

Following the Girls Summit, the Bangladeshi government has taken action in accordance to the pledges, however due to practical gaps the progress has not been fully effective. In September 2014 the government approved the final draft of the Child Marriage Restraint Act 2014, which sets out the following amendments:

- The punishment for effecting a child marriage has been increased to 2 years imprisonment and 50tk (£444/\$632) fine.
- The procedure of complaint was also amended, the draft states that the victim and also a third party can now complain directly about the offence of a child marriage, previously it was only the elected representative of the local government who could bring an action.
- The age of marriage remains at 18, but the legislation states that a girl can be married at the age of 16 in exceptional circumstances, but the exceptional circumstance are not specified.

The draft legislation has not yet been implemented. However the fact that the proposed draft states that 'in exceptional circumstances a girl can be married at the age of 16'; has caused much controversy amongst the legal professionals, activists and NGO workers in the sector. All such activists recommend that the stated age of marriage in the Act should remain at 18 with no added caveat, as if the age is reduced it will be detrimental for three main reasons:

- 1. It will contradict existing child specific legislation, as the Majority Act 1875 recognises that everyone under 18 is a minor and the Children Act 2013 also states anyone under the age of 18 is a child.
- 2. Marriage under Mohammedan Law is a civil contract. Under the civil law a minor cannot give consent or enter into a contract, but this incapacity is not applicable to marriage. where personal law prevails, as provided by the Majority Act. Therefore this will open up a risk of parents consenting to a child being married at the age of 16. (A distinction here needs to be made on the issue of child and forced marriage, as section 251(3) provides that "[a] marriage of a Mahomedan who is of sound mind and has attained puberty, is void, if it is brought about without his consent." The explanation provides "[p]uberty is presumed, in the absence of evidence, on completion of the age of fifteen years." Thus, any girl or boy below 15 who has reached puberty or is above 15 and is forced by the parents/guardian to marry (i.e. without consent) such marriage will be void.)
- 3. This will also defeat the purpose of the Millennium Development Goals and Sustainable Development Goals, both of which place female empowerment as a goal. By reducing the age of marriage, this will disempower young girls, who will be

placed under far greater pressure to marry consequently being removed of the choice to study freely, develop or be empowered to make informed decisions.

Although the proposals made by the Prime Minster demonstrate a willingness to move forward in Bangladesh, one of the key oversights in the suggestions is to review the internal structure within Bangladesh's services. The current social structure does not allow a girl to leave a potential early and forced marriage situation. The society still holds the family structure to be of paramount importance to that of the individual. Therefore if a victim were to seek assistance from services such as the police she would be viewed as betraying the family, bringing shame on the family name and be further ostracised by her community.

There are many organisations and charities that are committed to campaigning for an end to child marriage. The government should consider strengthening the work of these organisations so that potential victims can be better supported. Population Council have a great initiative called the BALIKA (Bangladeshi Association for Life Skills, Income, and Knowledge for Adolescents) project.⁷ The aim of this project is to prevent child marriage, by equipping young girls with life skills, so that they are encouraged to complete their education and also pursue some form of employment. Thus allowing the girls to have an independent source of income and as a result reducing the risk of girls being married at a young age due to economic pressures. This is one example of an effective project. Other charities such as Bangladesh Legal Aid and Services Trust⁸ and BRAC⁹ also continue to actively campaign against the issue and it is important to support these organisations.

1.4: Child Marriage in Sylhet

A closer look at the statistics on child marriage around Bangladesh indicates how wide spread the issue is and which regions in particular are mostly affected by the practice.

'While child marriage is very common in Bangladesh, prevalence is highest in west Bangladesh, specifically, Khulna Region (75%), Rajshahi Region (73%), and Barisal Region (72%), followed by Dhaka Region (66%), Chittagong Region (58%), and Sylhet Region (48%). Child marriage prevalence in Bangladesh is much higher than the regional average for South Asia (46%).' Within these statistics, the Sylhet region is the most unique for two reasons: it records the lowest number of cases and contains the prevalence of the Diaspora community from the UK.

In cases where British Bangladeshis in Bangladesh allege they are being forced into a marriage the British High Commission can assist to repatriate the victim and ensure they return to England. The victim can either stay in a safe house in Dhaka or at times they also make their own arrangements for temporary accommodation until they have to leave

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⁷ http://www.popcouncil.org/research/balika-bangladeshi-association-for-life-skills-income-and-knowledge-for-ado

⁸ http://www.blast.org.bd/whatwedo/ourprojects/shokhi

http://www.brac.net/gender?view=page

¹⁰ UNFPA Child Marriage Profiles, 2007

Bangladesh. These measures of providing a form of refuge and escape for victims may be a factor in helping to reduce the number of forced marriages in the region. The role of the state actors or in this instance the British High Commission may also be operating as a deterrent for the perpetrators of child marriage as the movement towards the individual begins to become paramount. If a similar method were adopted by other regions then perhaps the number of early and forced marriage could be reduced nationally.

Section 2: United Kingdom¹¹

In England and Wales the minimum age at which a person is able to consent to a marriage is 18 years old; a person between the age of 16 - 17 can marry but they will require parental consent. If a marriage is conducted of a child under the age of 16 this will not be considered a valid marriage, that rationale behind this is set out in Pugh [1951] 2 All ER 680. IN this case Pearce J stated that "it is considered socially and morally wrong that persons of an age, at which we now believe them to be immature and provide for their education, should have the stresses, responsibilities and sexual freedom of marriage and the physical strain of childbirth."

The age of risk of a British Bangladeshi girl being forced into a marriage occurs between 15 – 16, this is because the compulsory age of education is 16 and after this the presence of authorities in a girl's life is less prevalent. Essentially child marriages are used as a tool to control children, when they are young and impressionable. In England and Wales some of the common reasons why British Bangladeshi parents will subject their children to child marriages are set out below:

- Protect children from promiscuity;
- Children performing badly in school;
- They use the threat of marriage to encourage children to behave; and
- A form of punishment if parents find out that the girl has a boyfriend.

In some areas of England and Wales the practice of forcing a girl into a marriage abroad is changing as British Bangladeshi parents are starting to recognise the value of higher education and therefore girls are passing the age of risk of early and forced marriage. However the risk for vulnerable adults being taken abroad for the purpose of a forced marriage still remains.

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¹¹ The discussion on the legislation will focus on England and Wales

2.1: Forced Marriage (Civil Protection) Act 2007

In England and Wales forced marriages will be dealt with under the Forced Marriage (Civil Protection) Act 2007. Under section 63A (1) of this legislation it is possible to obtain a Forced Marriage Protection Order, to either prevent a forced marriage from taking place or to protect someone who has already been forced into a marriage.

Section 63A (4) further states ' [f]or the purposes of this Part a person ("A") is forced into a marriage if another person ("B") forces A to enter into a marriage (whether with B or another person) without A's free and full consent. The Act also states that "force" includes coerce by threats or other psychological means'.

The UK government elaborates on this definition of forced marriage and states that '[t]he pressure put on people to marry against their will can be physical (including threats, actual physical violence and sexual violence) or emotional and psychological (for example, when someone is made to feel like they're bringing shame on their family). Financial abuse (taking your wages or not giving you any money) can also be a factor. In some case people may be taken abroad without knowing that they are to be married. When they arrive in that country, their passport(s)/travel documents may be taken to try to stop them from returning to the UK.'12

2.2: The Senior Courts Act 1981

In England and Wales it is recognised that children under the age of 16 and also vulnerable adults may require additional protection, if they are at risk of being subjected to a forced marriage. Therefore in order to protect minors or vulnerable adults it is possible to make an application to make the child or vulnerable adult a Ward of the High Court under section 41 of the Senior Courts Act 1981. The High Court can make the victim a Ward of the court and make ancillary orders, such as passport orders, which can order the removal of the victim's passport to prevent them from being removed from the jurisdiction of England and Wales.

If however the victim has already been taken outside of the jurisdiction of England and Wales then the High Court can order the return of the minor or vulnerable adult under its inherent jurisdiction. The High Court can also direct that a port alert to be put into place, so that the minor or vulnerable adult cannot leave England and Wales from any port.

2.3: Care Proceedings:

If a child is at risk or has already been forced into a marriage and is aged 17 or under and they come to the attention of the Local Authority (Social Services) then it is possible to obtain orders under the Children Act 1989, namely a Care or Supervision Order under section 31 or make an application for an Emergency Protection Order under section 44 of the Act. If the child comes to the attention of the Police, and the latter has reasonable cause to believe

^{12 &#}x27;What is Forced Marriage', HM Government report, 2013

that the child would suffer significant harm unless protected, they can exercise their power to take the child under a Police Protection Order: Section 46 of Children Act 1989.

Furthermore if the protected person is under 17, or potentially if the forced marriage is proved and there are younger siblings then care proceedings can be commenced to protect the younger siblings from risk of harm if it can be proved that they are more likely than not to suffer a similar fate.

2.4: UK Government's Response to Early and Forced Marriage:

In June 2014 forced marriage was criminalized in England and Wales and the maximum penalty for this offence is now seven years imprisonment. By taking such a firm stance the government gave a strong message of low tolerance against such a grave act. This appeared to be *prima facie* a very positive mechanism to tackle the issue of early and forced marriage, but in reality it created an added burden upon the victim who had to decide whether they wanted to criminalise a family member, as the nature of this crime meant it would usually be a family member who would be the perpetrator.

2.5: Practical Gaps:

Although positive steps appear to have been taken by England and Wales in this campaign it is concerning that there are no readily available statistics for the number of early and forced marriages reported in 2015. Therefore it is difficult to determine whether the general statistics have increased or decreased since the Girls Summit in 2014.

Furthermore it is notable that anecdotal evidence suggests that the practice does still exist amongst the British Bangladeshi Diaspora, but there appears to be a low reporting culture amongst the community. This could be linked to a number of reasons such as the fact that the community is still close knit and therefore deal with these issues internally. Furthermore there is a general mistrust towards authorities and now there is an added burden where Muslim communities, which includes the Bangladeshi community, feel targeted by the authorities and therefore they are less likely to come forward to ask for help from authorities.

Section 3: Bangladesh Recommendations

In Bangladesh the practice of early and forced marriage has been ongoing for a very long time. There is currently no efficient reporting system in place; furthermore, if a victim reports the matter the social structure does not provide the relevant support to allow a victim to escape the situation. Therefore the following recommendations are made in order to improve the current system. These recommendations are broken down into three categories:

- 1. Legal reforms and policies related to this matter
- 2. Gaps in research and implementation
- 3. Best practice for programmes aimed at ending the practice and supporting already married women and girls.

3.1: Legal reforms and policies related to this matter

A closer look at the existing legislation shows that it will be very difficult to stop the practice of child marriage as the existing legislations contain contradicting position in relation to the minimum age of marriage. Therefore the government needs to review the existing legislation and take all necessary steps to eliminate all legal inconsistencies in relation to the legal age of marriage. As child marriage is prohibited under the Child Marriage Restraint Act in which the marriage of a girl under the age of 18 is regarded a child marriage, the government should consider reconciling the inconsistencies in the existing legislation so that this legislation can be effectively implemented.

Those campaigning against child marriage are currently in a state of turmoil since the government has suggested in the draft Child Marriage Restraint Act 2014, that a girl can be married at the age of 16 in exceptional circumstances. Those 'exceptional circumstances' have not been defined and have opened up mistrust between the current NGO workers and the people of the community since the draft has been circulated. This change of legislation will statistically reduce the number of child marriages on paper as it will mean that marriages of children between the ages 16 - 18 will no longer be considered child marriages. However in practice this will only conceal the numbers but perpetuate the problem, for this reasons the government should not amend the legislation to include a reduction of the age of marriage in any circumstances in the mentioned Act.

3.2: Gaps in research and implementation

The current practice is that a marriage can be registered after a birth certificate is produced as an ID document. As it is easy to purchase a fake birth certificate the government should make it a mandatory requirement to produce a person's national identification card at the point of marriage registration. As this card will usually state the correct date of birth, therefore there will be no doubt about the age of that child.

Although many of the solutions focus on the girl remaining in the family home, there are some circumstances where the only option for the girl is to escape the situation. Therefore the government should consider investing additional resources in the current shelters which exist in Bangladesh. As in circumstances where a girl has no choice but to leave home to prevent the extreme cases of violence or homicide, the girl should be able to feel that she has an exit plan to a safe place.

In Bangladesh there is no distinction between child and forced marriage, as a lot of the work conducted is to prevent child marriages, however the issue of forced marriage is not independently explored. A forced marriage scenario can occur amongst vulnerable adults where parents exert their desire to control their choice of a life partner. A majority of the time it will be the rights of adult females that are being curtailed. Therefore as a research issue it would be useful to explore the dynamics of early marriage amongst children and forced marriage amongst adults. As the level of emotional pressure and coercion which is applied to

an adult is perhaps no different to that applied to a child being subjected to an early marriage. This research will be useful to determine whether parallel work can be done to break the cycle of the pressure applied upon young girls and on women.

3.3: Best practice for programmes aimed at ending the practice and supporting already married women and girls.

There are currently many NGOs carrying out programmes which are aimed at best practices to end child marriage and to also support those who have been subjected to a child marriage. As part of the awareness raising programmes under the Ministry of Women and Child Affairs the government should consider awareness raising programmes in the health and education sector, as so far these are proving to be effective. As part of the National forum for social change the government should engage all community actors such as medical services (hospitals, clinics, mobile clinics), marriage registrars, imams, mosques, NGOs and local support services. Suggested programmes are outlined below.

Education:

- Awareness raising programmes should be created at all education establishments, starting from primary level, this is to educate girls and boys from a young age about the dangers and negative impact of early marriage. As part of the programme there should be an element which empowers young girls to speak to their parents to be able to raise their objections and discuss their current and future aspirations.
- There also needs to be separate awareness raising programmes on the issue of forced marriage, aimed at professionals, students in university and college. This will educate them on the dynamics of this type of abuse, reinforce to individuals that they have the right to choose their life partner and this will also change the mind frame about marriage so that future generations will not perpetuate the issue.
- In addition to providing conditional cash transfers and stipends to girls to continue education and to delay child marriage before 18, the government should consider investing in providing practical incentives to young girls to attend school. A majority of girls stop studying at grade 10 (this is the end of the compulsory secondary education). In order to study grade 11 and 12 they must travel out of the vicinity of their village/town (as this is the equivalent of a girl going to college), however parents do not often consent to girls travelling alone for security reasons such as sexual harassment, therefore they opt to get them married. In India, following an academic research project, the local government of Bihar implemented a programme to tackle this accessibility issue by providing bicycles for young girls who reached grade 9, allowing girls to stay in school for longer. This incentive programme observed

the rise in girls continuing education and as a result reduced the number of School drop outs. The government of Bangladesh should review this programme and consider piloting this in regions affected by early and forced marriage. Whilst it may be a means of provision and access to education, security against sexual harassment is yet to be determined. If this programme is rolled out region by region, cultural adaptability and acceptance for girls to be further educated and to travel alone may become more acceptable.

Medical awareness:

• Further support needs to be provided to already married girls through medical services. Many young girls who are forced into marriage are physically still under developed and their bodies cannot cope with engaging in sexual intercourse, they do not understand the concept of marital rape and at times many of them will have children at a very young age and this can lead to maternal deaths. Therefore medical services should produce more awareness and literature for young girls and their parents on the physical consequences of child marriage. The medical professionals should also work closely with marriage registrars, so that the marriage registrars encourage the girls and their families to seek medical advice prior to any marriage taking place.

Section 4: England and Wales Recommendations

In England and Wales the focus needs to be on awareness raising programmes on early and forced marriage in local communities where there is a high volume of British Bangladeshis. The nature of this work would be threefold:

- 1. Working with parents to make them understand the actual consequences of their actions and the potential harm that the children could face. This can be achieved by running awareness raising sessions in existing community centres, events held by local charities and the Friday sermon in mosques.
- 2. Working with young children so that they are aware of their options in terms of escaping any potential risk of early and forced marriages. This can be done as part of PSHE sessions with the children.
- 3. General awareness raising sessions with British Bangladeshis who provide the highest financial contribution into Sylhet and in effect they are in a strong position to change the mind-frame of the local community in Sylhet. The British Bangladeshis need to challenge the views of their relatives in Bangladesh and emphasise to them that early and forced marriages are not acceptable. This form of awareness raising should be targeted at the men of the community and the best way to reach them is through the Friday sermon at mosques.

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¹³ http://today.uconn.edu/2012/05/the-bike-path-to-secondary-education/

Section 5: Conclusion

In conclusion this report has sought to outline the legal and social responsibility for both the government of Bangladesh and the UK to implement measures to combat early and forced marriage. It has found a number of service provisions which should prevent this practice through legal reform by criminalising those who perpetrate this practice as well as other social services such as health and education to better equip and inform communities of both the dangers of this practice and the opportunities to empower girls from it. There are also options to explore the role of the Diaspora community in the UK to be a part of the education process to prevent this practice from occurring in the UK and in Bangladesh. It is only by changing the state of the mind of the people that it will be possible to envisage a future where early and child marriages are no longer a reality.

Literature Review:

UNFPA Child Marriage Profiles, 2007

What is Forced Marriage, HM Government report, 2013

Study on Legal Gaps of Child Marriage, 2014

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