

**LEGAL FRAMEWORK ON**

**SRHR**

**IN BANGLADESH**

**Ipas** Partners for  
Reproductive Justice  
BANGLADESH



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Taqbir Huda

**Ipas** Partners for  
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## Foreword

Sexual and Reproductive Health Rights (SRHR) are a fundamental aspect of human rights, encompassing a wide range of issues such as reproductive health and justice, gender equity, access to comprehensive healthcare services, the autonomy to make informed choices about one's body and sexuality. In Bangladesh, like many other countries, the legal framework surrounding SRHR plays a critical role in shaping policies, safeguarding rights, and creating an enabling environment for individuals to exercise their reproductive autonomy.

Ipas Bangladesh supports and design programs which help thousands of women across Bangladesh to receive modern contraceptive methods, MR services and postabortion care services. Our work is also helping to improve women's knowledge of and ability to obtain MR/safe abortion service. Ipas Bangladesh also work to reduce the stigma around SRHR in general, and safe abortion/MR. We work with a wide range of actors at national, divisional, and local levels to strengthening women and g girls' access to SRHR services.

Ipas Bangladesh does advocacy and works with government and stakeholders to ensure supportive policies for women and girls particularly to ensure their reproductive rights and justice. Ipas Bangladesh has taken a momentous step to review the legal framework related to women and girls' SRHR in Bangladesh and to identify and create linkage with key stakeholders (such as individual lawyers, law institutions, legal service organizations etc.) working in this field. The review includes a review of international laws and commitments, national legislation and policy and regulatory framework related to women's SRHR in Bangladesh.

I extend my heartfelt appreciation to Taqbir Huda, Consultant, Ipas Bangladesh, whose dedication, and commitment have made this legal review on SRHR possible. I am hopeful that our endeavour will not only enhance awareness of limitations of age-old legal framework but also contribute to the broader realization of needs for changes in policy and laws around SRHR and thus help ensuring rights of women and girls in Bangladesh.

**Dr Sayed Rubayet**  
Country Director  
Ipas Bangladesh

## Executive Summary

The Constitution of Bangladesh guarantees access to healthcare and equality, but there are gaps in the legal framework regarding sexual and reproductive health and rights (SRHR). The national laws protect against various forms of sexual violence, but there is an exception for marital rape unless the wife is under thirteen. This is a significant flaw in the legal frame considering the prevalence of child marriage in the country. However, victims of marital rape can still seek civil remedies under the Domestic Violence Act of 2010.

Most national laws in Bangladesh focus primarily on criminal liability for sexual offences and lack provisions for civil remedies for survivors. However, these laws do mandate duty doctors in hospitals to provide immediate services and issue a free medical certificate to survivors seeking treatment. Failure to comply may lead to disciplinary action against the doctor. This is the only legally enforceable right to receive healthcare services related to sexual and reproductive health, specifically for women and children who have experienced sexual violence.

Another significant legal obstacle to SRHR in Bangladesh is the ban on abortion. The Penal Code criminalizes abortion, except when it is necessary to save the life of the mother. Although menstrual regulation (MR) is recognized as an exception to this ban, it does not challenge the broader abortion ban. A legal challenge to the anti-abortion clauses is currently ongoing in the Supreme Court, which could potentially lead to reform in this area.

The government of Bangladesh has reported its achievements and challenges in advancing sexual and reproductive health and rights (SRHR) as part of its international human rights obligations. However, the discussion of important SRHR issues, such as the provision of menstrual regulation (MR) services, was noticeably minimal. Despite the government's obligation under international laws to ensure access to safe abortion options, MR was only mentioned in one report to the Committee on Economic, Social and Cultural Rights and was not addressed in other reports to various UN treaty bodies.

National policies in Bangladesh related to SRHR often lack specific objectives and timeframes. However, the National Population Policy 2012 includes two interventions-the Behaviour Change Communication Program and adolescent Welfare Program-to disseminate information about reproductive health, family planning and influence social attitudes. The policy also outlines eight strategies for women's empowerment, primarily focusing on family planning, ending child marriage, and promoting reproductive health. Recognizing the importance of reproductive health education for adolescents, the National Children Policy 2011 acknowledges the need for such education in secondary schools. The national Adolescent Health Strategy 2017-2030 goes further by aiming to integrate comprehensive sexuality education programs in academic and training institutions.

Overall, while Bangladesh has made some progress in advancing SRHR, there are still significant gaps and challenges that need to be addressed to fully realize these rights.



## 1. Introduction

Despite the emerging global significance of Sexual and Reproductive Health and Rights (SRHR), the legal framework on SRHR in Bangladesh remains an understudied area of law. SRHR is an umbrella term that encapsulates a wide range of separate yet intertwined rights and protections as presented in Box 1, which quotes the integrated definition of SRHR provided by Starrs et al in 2018.<sup>1</sup>

### **Box 1: Integrated Definition of SRHR by Starrs et. al (2018)**

Sexual and reproductive health is a state of physical, emotional, mental, and social wellbeing in relation to all aspects of sexuality and reproduction, not merely the absence of disease, dysfunction, or infirmity. Therefore, a positive approach to sexuality and reproduction should recognise the part played by pleasurable sexual relationships, trust, and communication in the promotion of self-esteem and overall wellbeing.

All individuals have a right to make decisions governing their bodies and to access services that support that right. Achievement of sexual and reproductive health relies on the realisation of sexual and reproductive rights, which are based on the human rights of all individuals to:

- have their bodily integrity, privacy, and personal autonomy respected;
- freely define their own sexuality, including sexual orientation and gender identity and expression;
- decide whether and when to be sexually active;
- choose their sexual partners;
- have safe and pleasurable sexual experiences;
- decide whether, when, and whom to marry;
- decide whether, when, and by what means to have a child or children, and how many children to have;
- have access over their lifetimes to the information, resources, services, and support necessary to achieve all the above, free from discrimination, coercion, exploitation, and violence.

Essential sexual and reproductive health services must meet public health and human rights standards, including the “Availability, Accessibility, Acceptability, and Quality” framework of the right to health. The services should include:

- accurate information and counselling on sexual and reproductive health, including evidence-based, comprehensive sexuality education;
- information, counselling, and care related to sexual function and satisfaction;

<sup>1</sup> Ann M Starrs et. al, Accelerate progress—sexual and reproductive health and rights for all: report of the Guttmacher–Lancet Commission, *The Lancet Commissions* Vol. 391 (2018), 2646 (Panel 3), [https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(18\)30293-9.pdf](https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(18)30293-9.pdf)

- prevention, detection, and management of sexual and gender-based violence and coercion;
- a choice of safe and effective contraceptive methods;
- safe and effective antenatal, childbirth, and postnatal care;
- safe and effective abortion services and care;
- prevention, management, and treatment of infertility;
- prevention, detection, and treatment of sexually transmitted infections, including HIV, and of reproductive tract infections; and
- prevention, detection, and treatment of reproductive cancer

It is in this context that this report presents analysis of the extent to which SRHR is recognised in international laws and commitments and in the national law and policy framework of Bangladesh. It also provides an analysis on how these laws and frameworks create either impediments to, or an enabling environment for women's and girls' SRHR in Bangladesh.

The second chapter sets out the methodology applied in researching for this report. The third chapter covers the national legal framework on SRHR in Bangladesh. It first covers the constitutional guarantees related to SRHR, followed by the legal protections on various forms of sexual violence and then moves on to the legal status of abortion, and child marriage. Special emphasis is placed on the legal status of abortion, and the use of menstrual regulation as an exception, due to Ipas's focus in this area. The fourth chapter sets out the strategies related to SRHR in the various national policies in place. Finally, the fifth chapter highlights Bangladesh's obligations under international human rights law to ensure SRHR, and the GOB has reported on the fulfilment of these obligations.

## 2. Methodology

This report draws on a desk review of national laws and policies, while also analysing Bangladesh's international legal commitments under several key international laws. In order to contextualise the application of these laws, the report also presents, where necessary, relevant secondary literature on SRHR in Bangladesh.

Chapter 3 analyses SRHR related provisions in ten laws: Constitution of Bangladesh, Penal Code 1860, Suppression of Violence against Women and Children Act 2000, Acid Offence Control Act 2002, Domestic Violence (Prevention and Protection) Act 2010, Prevention and Suppression of Human Trafficking Act 2012, Children Act 2013, Persons with Disabilities (Rights and Protection) Act 2013, Child Marriage (Restraint) Act 2017, Mental Health Act 2017 and Child Marriage (Restraint) Rules 2018. In certain sections, where necessary, it also analyses Supreme Court judgments sourced from BDLex Database, which compiles Supreme Court of Bangladesh judgments from six leading law reports: Dhaka Law Reports (DLR), Bangladesh Legal Decisions (BLD), Bangladesh Law Chronicles (BLC), Appellate Division Cases (ADC), Bangladesh Law Times (BLT) and Counsel Law Reports (CLR).

Chapter 4 analyses SRHR related provisions in the National Education Policy 2010, National Health Policy 2011, National Policy for Women's Advancement 2011, National Population Policy 2012, National Children Policy 2013, Multi-sectoral Programme on Violence against Women 2000-2021, National Plan on Violence Against Women 2013-2025 and National Strategy for Adolescent Health 2017.

For Chapter 5, key provisions on SRHR in eight key international human rights instruments were reviewed: Universal Declaration of Human Rights, 1948, International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic, Social and Cultural Rights (ICESCR), Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), Convention on the Rights of the Child (CRC) and Convention on the Rights of Persons with Disabilities (CRPD). It also highlights key findings related to SRHR from a review of Bangladesh country reports to: The Human Rights Committee (HRC) (for compliance with ICCPR), The Committee on Economic, Social, and Cultural Rights (CESCR), The Committee

on the Elimination of Discrimination against Women (CEDAW Committee), The Committee Against Torture (CAT Committee), The Committee on the Rights of the Child (CRC Committee), Universal Periodic Review (UPR) and Sustainable Development Goals (SDG) Committee.

## 3. National Legal Framework on SRHR

### 3.1 Guarantees under the Constitution of Bangladesh

The Constitution is the most supreme law of the land. Although SRHR is not explicitly recognised in the Constitution, the second and third chapters of the Constitution have specific relevance in this regard as they guarantee certain fundamental principles of state policy and fundamental rights respectively.

#### 3.1.1 Healthcare as a Fundamental Principle of State Policy

Part II of the Constitution establishes nineteen fundamental principles of state policy which are considered to be fundamental to the governance of Bangladesh.<sup>2</sup> The state is bound to apply these nineteen principles in the enactment of laws and these must be viewed as a guide to the interpretation of the Constitution and of any other national laws.<sup>3</sup> Therefore, these principles ‘form the basis of the work of the State and of its citizens’.<sup>4</sup>

Four out of these nineteen principles have particular significance for the advancement of SRHR in Bangladesh. Firstly, provision of basic necessities is considered a fundamental responsibility of the state, and this includes the provision of medical care.<sup>5</sup> In the modern world of today, the provision of medical care would arguably extend to provision of SRHR services. Secondly, the State must remove the disparity in the standards of living between the urban and the rural areas through the improvement of education, communications and public health in those areas.<sup>6</sup> Thirdly, the state must regard the improvement of public health as one of its primary duties. It is required to adopt effective measures to prevent the consumption of drugs which are considered injurious to health, except for medical purposes or for any other purposes prescribed by law.<sup>7</sup> In the context of SRHR, this would mean that the state has

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<sup>2</sup> Constitution of Bangladesh, Article 8(2).

<sup>3</sup> Ibid.

<sup>4</sup> Ibid.

<sup>5</sup> Constitution of Bangladesh, Article 15(a).

<sup>6</sup> Constitution of Bangladesh, Article 16.

<sup>7</sup> Constitution of Bangladesh, Article 18. This duty of prevention also extends to alcoholic and other intoxicating drinks.

a duty to prevent women and girls from being fed harmful and unscientific drugs, such as Oradeox, a weight gain drug that sex workers are reportedly forced to take.<sup>8</sup> Further, this could also mean the state has a duty to prevent the unsafe abortion practice of women and girls consuming or being forced to consume drugs not scientifically prescribed for abortions, as this can be injurious to their health. Finally, the state must also endeavour to ensure equality of opportunity and participation of women in all spheres of national life as a matter of fundamental principle of state policy.<sup>9</sup>

Crucially, however, these nineteen fundamental principles of state policy are not judicially enforceable. Nevertheless, it has an indirect legal effect since the judiciary views them as a guide to interpretation of the Constitution and of the other laws of the country.<sup>10</sup> For instance, the Supreme Court of Bangladesh has observed that the fundamental principles of state policy cast an obligation upon the GOB to act on them.<sup>11</sup>

### 3.1.2 Equality and Non-Discrimination as Fundamental Rights

Part III of the Constitution guarantees seventeen fundamental rights. These constitutionally guaranteed fundamental rights are mostly civil and political in nature, in contrast to socio-economic entitlements (which are covered by the fundamental principles of state policy). Unlike the fundamental principles of state policy, the fundamental rights guaranteed under Part III are judicially enforceable, meaning that a citizen can petition the High Court Division of the Supreme Court of Bangladesh to enforce any of these rights, or seek a remedy if there has been a breach of any of these rights.<sup>12</sup> Crucially, the right to enforce all fundamental rights under Part III is in itself a fundamental right.<sup>13</sup> In the context of SRHR there are three specific fundamental rights which are of particular relevance.

Firstly, Article 27 of the Constitution establishes equality before law, by stating that not only

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<sup>8</sup> See for example: Mark Dummet, Bangladesh's dark brothel steroid secret, BBC News, 30 May 2010 <https://www.bbc.co.uk/news/10173115>

<sup>9</sup> Constitution of Bangladesh, Article 19(3).

<sup>10</sup> This was reiterated by the GOB in their initial (and last) report to the UN Committee on Economic, Social and Cultural Rights (E/C.12/BGD/1), para 22.

<sup>11</sup> *Wahab v. Secretary, Ministry of Land* 1 MLR 338 (1996)

<sup>12</sup> Constitution of Bangladesh, Article 102.

<sup>13</sup> Constitution of Bangladesh, Article 44.

are all citizens equal before the law but are also entitled to equal protection of law. Secondly, Article 28 of the Constitution enshrines the principle of equality and non-discrimination further, guaranteeing that women 'shall have equal rights with men in all spheres of the State and of public life'.<sup>14</sup> It prohibits the state from discriminating against any citizen on the grounds of religion, race, caste, sex or place of birth.<sup>15</sup> Article 28 is also cognizant of the fact that mere declaration of equality is not enough and therefore it also stipulates for positive discrimination towards women and other vulnerable groups of citizens.<sup>16</sup> Article 32 guarantees the right to life and personal liberty so no 'person can be deprived of life or personal liberty save in accordance with law'. Therefore, anything that threatens the life or liberty of a person, without legal sanction, would be considered to be a violation of this fundamental right.

### 3.2 Legal protections against sexual violence

In Bangladesh, there are a range of sexual offences spread across different laws, from rape to sexual harassment and assault to sexual exploitation and sexual abuse within the family. Additionally, there are also legal protections against acid violence which injure sexual organs, as well as pornography related offences. This section discusses each of the six types of sexual offences.

#### 3.2.1 Rape

The legal definition of rape still in force is a colonial era, gender specific and discriminatory definition of rape under Section 375 of the Penal Code 1860, where only a woman can be raped by a man who is not her husband. Marital rape is only criminalised if the wife is under the age of thirteen. This archaic definition of rape was slightly broadened by Section 9 of the Suppression of Violence against Women and Children Act 2000 ('VAW Act 2000'), to include children as possible victims of rape. Since the VAW Act 2000 has a gender neutral definition of child, meaning any person below the age of sixteen, this means that rape of non-female children, such as boys and hijras under the age of sixteen is covered by the law. Rape is

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<sup>14</sup> Constitution of Bangladesh, Article 28(2).

<sup>15</sup> Constitution of Bangladesh, Article 28(1).

<sup>16</sup> Constitution of Bangladesh, Article 28(4).

currently punishable by two of the severest penalties in law: life imprisonment and the death penalty, and fine. However, a recent study found that the conviction rate in rape cases filed in the three VAW Tribunals in Dhaka over a period of 15 years was less than three percent on average, showing that justice for rape remains ever elusive.<sup>17</sup>

### *3.2.1.1 Statutory age of consent*

The statutory age of consent is set by the VAW Act to be sixteen. Therefore, any sexual intercourse with a person below this age, would amount to rape under the law irrespective of consent. This is because the law treats a person below the age of sixteen to be incapable of consenting to sexual intercourse. Notably, however, since marital rape is only criminalised where the wife is below the age of thirteen, the law prescribes a lower statutory age of consent for spousal intercourse when compared to non-spousal intercourse.<sup>18</sup> This discrepancy is discriminatory, and has also been a ground of challenge in the writ petition challenging the legality of marital rape under the Penal Code 1860.<sup>19</sup>

### *3.2.2.2 Pregnancy and evidence of rape*

Generally, the sole testimony of a rape complainant is considered sufficient proof of rape, if it is found to be reliable in the eyes of the Court. However, Section 155(4) of the Evidence Act 1872 allows defence lawyers to raise questions about a rape complainant's character in order to show she is of a 'generally immoral character', and therefore undermine the reliability of her testimony in the eyes of the judge.<sup>20</sup> Conversely, Section 45 of the Evidence Act 1872 states that when the Court has to decide on certain questions, including those relating to science, the opinion of experts (such as doctors) would be treated as facts. As a result, in practice, medical evidence by way of medical opinion of doctors who examine the rape

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<sup>17</sup> Qurratul Ain Tahminn & Pronab Bhowmik, *Shaja Matro 3 Shotangsho: Dhakar Nari O Shishu Nirjaton Doman Tribunal* (Punishment Only 3 Percent: Dhaka's Suppression of Violence Against Women and Children Tribunals), (Dhaka: Prothoma, 2018)

<sup>18</sup> Penal Code 1860, Section 375 read with VAW Act, Section 9. For a detailed discussion see: Taqbir Huda, 'Marital rape killed a child in our country. Why is still legal?', The Daily Star; Taqbir Huda, 'Why is marital rape still legal in Bangladesh?', The Daily Star

<sup>19</sup> *BLAST and others vs. Bangladesh* (Writ Petition No 7758 of 2020).

<sup>20</sup> See: Taqbir Huda, *Between 'Virtue' and 'Immorality': Why Character Evidence Must Be Prohibited in Rape Cases* (BLAST and UN Women 2019).

complainant is often given more probative value than the testimony of the complainant herself.<sup>21</sup>

Therefore, if a rape survivor becomes pregnant as a result of the rape, it is not necessary for them to carry the child to term in order to prove rape. However, in cases where proof of pregnancy can be used as supportive evidence in a rape case, even if it is not an essential component of proving rape. Whether or not proof of pregnancy will help the prosecution to prove the rape depends on the circumstances of the case and how the proof is presented. For instance, if the rape complainant in question is under the statutory age of consent, any evidence of sexual intercourse will automatically be considered to be evidence of rape as any act of sexual intercourse with a girl aged below sixteen would be considered rape according to the law. Therefore, in cases where a girl under sixteen becomes pregnant after rape, proof of pregnancy can be strong proof of rape, especially if coupled with paternity tests which show that the accused rapist is the father of the child. However, in the case of women and girls aged over sixteen, proof of pregnancy is merely proof of sexual intercourse, and not necessarily proof of rape. For instance, in *Sohel Rana vs State*<sup>22</sup>, it was argued by the prosecution that a woman had been raped by her neighbour, and that she had also become pregnant as a result of the rape. The doctor who held the ultra-sonogram exam of the complainant testified in court saying that the complainant was found to be about '8 weeks of viable single pregnancy'.<sup>23</sup> However, the defence argued that the woman had become pregnant as a result of having illicit sexual intercourse with her own brother in law, and later filed a false rape case against the defendant to compel him to marry her. While the VAW Tribunal convicted the man of rape, on appeal the High Court Division found that there was no proof of rape and therefore acquitted the man. The Court noted that the victim was not forced to have sexual intercourse against her will or through fraud, and that her age at the time was also above the statutory age of consent (which was fourteen at the time).<sup>24</sup> As a result it concluded:<sup>25</sup>

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<sup>21</sup> Ishita Dutta, 'Medico-Legal Evidence in Rape Prosecutions in Bangladesh: Legal and Policy Reform to End Impunity' in Hameeda Hossain and Amena Mohsin (eds) *Of the Nation Born: The Bangladesh Papers* (Zubaan 2015).

<sup>22</sup> 57 DLR (HCD) (2005) 591.

<sup>23</sup> *Ibid*, para 14.

<sup>24</sup> *Ibid*, para 27.

<sup>25</sup> *Ibid*.

“She kept the matter of sexual intercourse secret to her parents. She did not disclose the fact of her becoming pregnant till before 3 months when the jail appellant allegedly refused to marry her. The parents of the jail appellant came to know about the occurrence only the day before the shalish (informal, community based mediation) was held. Such a conduct on the part of the victim does not appear to be one of a virtuous girl, eager and anxious to protect her virtue. We have found from our discussion above that the prosecution failed to prove the ingredients of the offence of rape in terms of section 9(1) of the Ain, 2000. The birth of a child was the result of an immoral act for which the victim was equally responsible. It was not any result of rape within the meaning of section 9(1) of the Ain, 2000.”

Therefore, proof of pregnancy in this case did not help the rape complainant prove her rape complaint. Instead, it was viewed as evidence of ‘immoral act’ by the Court. Nevertheless, if a rape complainant end up carrying a child to term, under Section 13 of the VAW Act, she is entitled to receive maintenance for the child from the state. For male children, the maintenance will be payable until he attains the age of 21, and for female children it will be payable until she is twenty one and until she is married after attaining that age.

### 3.2.2 Sexual harassment and assault

Section 509 of the Penal Code 1860 criminalises acts, words and gestures intended to “outrage the modesty of a woman” with up to one year imprisonment and fine. The focus on a woman’s modesty being outraged is likely to invite sexist biases and unwarranted discussions, thereby re-victimising the complainant rather than offering protection.

Section 10 of the VAW Act introduced an offence termed “sexual oppression” which criminalises the act of a man who touches a woman or child (with any part of their body or with an object) or “violates a woman’s modesty” in order to “illegally satisfy their sexual desires.” Therefore, Section 10 regurgitates the problematic focus on womanly modesty present in the colonial era Section 509 of the Penal Code 1860. Section 10 increases the punishment to imprisonment which may range from two to ten years.

### 3.2.2.1 The Supreme Court Directives on Preventing Sexual Harassment at the Workplace

More significantly in 2009, the Supreme Court issued 11-point directives on the prevention of and redress for sexual harassment at the workplace and educational institutions, after a writ petition was filed by the Bangladesh National Women Lawyers Association (BNWLA).<sup>26</sup> BNWLA challenged the widespread prevalence of sexual harassment of women in university campuses and office spaces, arguing that the lack of institutional response to it was a breach of women and girls' constitutionally guaranteed fundamental rights.

When formulating these guidelines, the Court emphasised Bangladesh's obligations under the Convention on the Elimination of Discrimination against Women (CEDAW) and the fundamental rights to equality, non-discrimination and women's advancement in the Constitution.

It extensively defined sexual harassment by outlining 11 different circumstances that would constitute acts of sexual harassment, ranging from unwanted physical contact to coerced sexual relations through abuse of power to unsolicited sexual remarks, advances and gestures be they in person, in writing or through telephone, etc (Box 2).<sup>27</sup>

#### **Box 2: Definition of sexual harassment in the Supreme Court Directives on Preventing Sexual Harassment at the Workplace**

- a. Unwelcome **sexually determined behaviour** (whether directly or by implication) as physical contact and advances;
- b. Attempts or efforts to establish physical relation having **sexual implication** by **abuse** of administrative, authoritative or professional **powers**;
- c. **Sexually** coloured **verbal** representation;
- d. Demand or request for **sexual favours**;
- e. Showing **pornography**;
- f. **Sexually** coloured remark or **gesture**;
- g. Indecent gesture, teasing through abusive language, **stalking**, joking having **sexual implication**.

<sup>26</sup> 29 BLD (HCD) (2009) 415.

<sup>27</sup> Ibid, paras 49-52.

- h. Insult through letters, telephone calls, cell phone calls, SMS, pottering, notice, cartoon, writing on bench, chair, table, notice boards, walls of office, factory, classroom, washroom having **sexual implication**.
- i. Taking still or video photographs for the purpose of blackmailing and **character assassination**;
- j. Preventing participation in sports, cultural, organizational and academic activities on the **ground of sex** and/or for the purpose of **sexual harassment**;
- k. Making love **proposal** and exerting pressure or posing **threats** in case of refusal to love proposal;
- l. Attempt to establish **sexual relation** by intimidation, deception or false assurance.

The directives also obligated all institutions to form Sexual Harassment Complaint Committees which will register and investigate sexual harassment complaints filed by women and then take the appropriate disciplinary action against the perpetrator if allegations are found to be true. Therefore, while Section 509 and Section 10 impose criminal liability on individuals for their acts of sexual harassment (and would therefore extend to sexual harassment of women in both public and private spaces), the Supreme Court directives focus on institutional responsibility to prevent sexual harassment at the workplace and educational settings, and provide redress to survivors. Although it has been twelve years since these directives were passed, GOB is yet to enact legislation in compliance with these directives. Nevertheless, the Supreme Court noted that the enactment of legislation is likely to be time consuming and directed all workplaces and educational institutions to comply with the directives until 'adequate and effective legislation is made in this field'.<sup>28</sup>

#### *3.2.2.2 Tort liability for sexual harassment*

Unlike individual criminal liability for sexual harassment under the VAW Act, tort liability would extend to third parties who owe a duty of care to a person being subjected to a wrongful conduct, such as sexual harassment.<sup>29</sup> Criminal liability focuses on punishing the wrongdoer, while tort liability focuses on redressing the victim of a wrong. While tort liability

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<sup>28</sup> Ibid, para 49.

<sup>29</sup> See: Taqbir Huda, 'Beyond Criminal Justice: Towards Tort Liability for Sexual Violence against Women' 17 Bangladesh Journal of Law (2017).

has mostly remained underdeveloped in Bangladesh, especially in relation to GBV, there is one case that has proved to be an exception. In *Begum Shamsun Nahar vs. British American Tobacco Bangladesh (BATB)*<sup>30</sup> a female employee sued her employer organisation for its failure to prevent the sexual harassment she routinely faced from two company managers, and their subsequent failure to respond to her complaints. Instead, the employer had terminated her employment while the alleged perpetrators faced no action whatsoever. She sought over 40 million BDT as compensation from BATB for the harm suffered. Although this case was filed in 2004, the trial is still pending due to the various technical grounds on which BATB has appealed to the Supreme Court utilising the Code of Civil Procedure to their advantage and arguing for the case to be struck out. During one of these instances when BATB petitioned the Supreme Court arguing that the case was non-maintainable due to lack of any cause of action, the Court rebuked the argument and recognised that sexual harassment faced by a female employee at the workplace definitely gives rise to tort liability on part of the employer. This ongoing case has the potential to set a landmark precedent which recognises the right of employees to receive damages from their employers for sexual harassment faced at the workplace.

### 3.2.3 Trafficking for prostitution and sexual exploitation

The Prevention and Suppression of Human Trafficking Act 2012 ('Human Trafficking Act 2012') criminalises various acts associated with human trafficking, including those for the purposes of prostitution or sexual exploitation. It criminalises the act of human trafficking and establishes a penalty ranging from five years imprisonment to life imprisonment and a fine of minimum 50,000 BDT.<sup>31</sup> Additionally, if someone brings any person into Bangladesh, or transports them within Bangladesh with a view to engaging in prostitution or any other form of sexual exploitation by means of force or fraud or seduction, that person will be punished with imprisonment ranging between five to seven years and a fine of minimum 50,000 BDT.<sup>32</sup>

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<sup>30</sup> 66 DLR (2014) (AD) 80.

<sup>31</sup> Prevention and Suppression of Human Trafficking Act 2012, Section 6.

<sup>32</sup> Prevention and Suppression of Human Trafficking Act 2012, Section 11.

Prostitution is defined as ‘the sexual exploitation or abuse of any person for commercial purpose or for consideration in money or kind’.<sup>33</sup> The Act also introduces a penalty for those soliciting for the purpose of prostitution which can be imprisonment for up to three years or a maximum fine of 20,000 BDT or both.<sup>34</sup> Such solicitation is criminalised if it conducted in any street or public place or from within any house or building, through words, gestures, or indecent personal exposure which attracts the attention of any other person.<sup>35</sup>

The Act also stipulates for the establishment of an Anti-Human Trafficking Offence Tribunals for speedy trial of offences under it.<sup>36</sup> Additionally it includes provisions seeking to ensure protection, rehabilitation and assistance of victims and witnesses of human trafficking offences, such as the establishment of protective homes and rehabilitation centres throughout the country.<sup>37</sup>

#### 3.2.4 Sexual abuse within family

The Domestic Violence (Prevention and Protection) Act 2010 is the first Act to specifically deal with the issue of domestic violence. Previously, domestic violence offences could only come within the purview of the VAW Act 2000 if such violence was connected to dowry demands.<sup>38</sup> The Act defines domestic violence as “any act of physical abuse, psychological abuse, sexual abuse or economic harm by a person against a woman or child with whom he has a family relationship.”<sup>39</sup> Sexual abuse is defined as ‘any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the victim’.<sup>40</sup> Therefore, while victims of marital rape who are aged above thirteen are unable to seek recourse under the VAW Act (or rape legislation more broadly), they may seek remedies under the Domestic Violence Act 2010 for sexual abuse. The Court is empowered under this Act to issue numerous remedies (which are civil in nature) such as orders of protection, compensation, residence and custody. Crucially, however, the Act does not criminalise domestic violence. It is only

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<sup>33</sup> Prevention and Suppression of Human Trafficking Act 2012, Section 2(8).

<sup>34</sup> Prevention and Suppression of Human Trafficking Act 2012, Section 13.

<sup>35</sup> Ibid.

<sup>36</sup> Prevention and Suppression of Human Trafficking Act 2012, Section 21.

<sup>37</sup> Prevention and Suppression of Human Trafficking Act 2012, Section 35.

<sup>38</sup> Shahnaz Huda, Five Years since Domestic Violence (Prevention and Protection) Act 2010: Is It Helping Survivors? (2016), Plan International at p. 32, <https://www.planusa.org/docs/phr-domestic-violence-2016.pdf>

<sup>39</sup> Domestic Violence Act 2010, Section 3.

<sup>40</sup> Domestic Violence Act 2010, Section 3(c).

when orders are breached that punishment may be attracted. For instance, a breach of a protection order is an offence punishable by up to six months imprisonment or with a fine up to 10,000 Taka or both.<sup>41</sup> Therefore, while domestic violence is not a criminal offence under the Domestic Violence Act 2010, the breach of a court order relating to domestic violence, is a criminal offence. However, it is important to note that acts of domestic violence may still lead to criminal liability being incurred, even if domestic violence is not specifically criminalised in the Domestic Violence Act 2010 or elsewhere. For instance, there are a range of offences under the Penal Code 1860, which deal with ‘voluntarily causing hurt’ and ‘voluntarily causing grievous hurt’ which can theoretically cover acts of domestic violence, even if there is no known evidence of such use.<sup>42</sup> The salient feature of the Domestic Violence Act 2010 is its amalgamation of principles of criminal and civil justice and reconciliatory, rehabilitative and corrective measures, which seek to redress victims of domestic violence and reprimand its perpetrators while also seeking to preserve the institution of family.<sup>43</sup> However, according to a recent report, the Domestic Violence Act 2010 remains under-enforced due to lack of awareness among potential victims of domestic violence and law enforcement agencies, and there was no evidence of any case being filed under the Act in the past ten years.<sup>44</sup>

### 3.2.5 Acid violence injuring sexual organs

The Acid Offence Control Act 2002 was enacted with the purpose of “controlling acid crimes by imposing stringent punishments; controlling the import, production, transportation, hoarding, sale and use of acid; and ensuring provisions for treatment, rehabilitation and legal support to victims of acid violence”. Section 5 of the Act deals with the offence of causing hurt by acid. If a person attacks another person with acid as a result of which their breast or sexual organ is defaced or destroyed, then such person will be punished with the death penalty or life imprisonment and a fine which may extend to 100,000 BDT. The same penalty

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<sup>41</sup> Domestic Violence Act 2010, Section 30.

<sup>42</sup> See: Penal Code 1860, Sections 319-326.

<sup>43</sup>Shahnaz Huda, ive Years since Domestic Violence (Prevention and Protection) Act 2010: Is It Helping Survivors? (2016), Plan International, at pp. 33-34, <https://www.planusa.org/docs/phr-domestic-violence-2016.pdf>

<sup>44</sup> No cases filed under the Domestic Violence Act in 10 years, Dhaka Tribune (2 December 2020), <https://www.dhakatribune.com/bangladesh/2020/12/02/no-cases-filed-under-the-domestic-violence-act-in-10-years>

applies for acid attacks which injure the face, hearing senses or eye sight. The punishment for hurting other organs or body parts is lesser, with imprisonment ranging from seven to fourteen years and fine of up to 50,000 BDT.

### 3.2.6 Pornography

The Pornography Control Act 2012 criminalises various actions relating to pornography. The Act defines pornography as ‘any obscene dialogue, acting, gesture, nude or half-naked dance that is sexually arousing, which is captured and displayed in movies, video images, audio visual images, still images, graphics or any other means and which has no artistic or educational value’.<sup>45</sup> The definition also includes any ‘pornographic books, periodicals, sculptures, statues, cartoons or leaflets that cause sexual arousal’.<sup>46</sup> If someone forces another person, such as a woman or child, to participate in the production of pornography they will be punished with imprisonment for up to seven years and a fine of up to 200,000 BDT.<sup>47</sup> It also penalises harming a person’s social status, blackmailing or inflicting emotional abuse on a person by means of extortion through the use of pornography and imposes a maximum penalty of five years imprisonment and a fine of up to 200,000 BDT.<sup>48</sup> Notably, it is immaterial whether the pornographic material in question was collected with or without the consent of the person being subject to extortion or blackmail.<sup>49</sup> Interestingly, while the Act criminalises various aspects of distributing, selling, producing or screening pornography, it does not appear to expressly criminalise the act of agreeing to participate in the production of pornographic content. The sweeping definition of pornography allows for it to be used in a wide range of circumstances, even where the production of pornographic content may not have been the intention. This was illustrated by the recent arrest of a film director under the Act for directing a scene which showed a rape complainant being asked degrading questions by the police.<sup>50</sup>

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<sup>45</sup> Pornography Control Act 2012, Section 2(c).

<sup>46</sup> Ibid.

<sup>47</sup> Pornography Control Act 2012, Section 8(1). See also: Legal Action on Cyber Violence Against Women, BLAST (2018), <https://www.blast.org.bd/content/publications/Cyber-violence.pdf>

<sup>48</sup> Pornography Control Act 2012, Section 8(2).

<sup>49</sup> Pornography Control Act 2012, Section 8(2).

<sup>50</sup> Pallavi Pundir, Bangladesh Police Invoked Anti-Porn Law to Crack Down on a Film About Gender Violence, <https://www.vice.com/en/article/g5bwpw/bangladesh-police-invoked-anti-porn-law-to-crack-down-on-a-film-about-gender-violence>

### 3.2.7 Sexual violence survivor's right to medical treatment

Survivors of sexual violence have right to be provided with immediate medical examination under various laws, depending on the kind of sexual violence that has been committed. Under the VAW Act 2000, whenever any survivor of rape or sexual oppression seeks treatment at a public hospital or a private hospital,<sup>51</sup> the doctor on duty must expedite their medical examination and issue a medical certificate. The doctor is also under a statutory obligation to inform the local police station about the occurrence of such offence, and the Act makes no reference to any need to obtain the consent of the survivor of the offence before doing so.<sup>52</sup> If the hospital authority, Magistrate, VAW Tribunal or any other concerned authority concludes that a doctor failed to complete the medical examination within a reasonable period of time, this failure must be recorded as incompetence and misconduct on part of the doctor in their annual confidential report. In appropriate cases, legal or disciplinary action may be taken against the doctor in accordance with their service rules and the VAW Tribunal may direct the employer hospital or any other appropriate authority to take action against the concerned doctor for negligence of duty.<sup>53</sup>

A similar obligation exists for doctors and hospitals towards acid violence survivors under the Acid Offence Control Act 2002.<sup>54</sup> When an acid violence survivor seeks treatment at a hospital or health centre, the duty doctor must immediately complete their medical test and provide the survivor with a medical certificate.<sup>55</sup> The Acid Offence Control Tribunal may direct the doctor's appointing authority or any other proper authority, to take necessary action against the concerned doctor for negligence of duty if they fail to conduct the medical test or produce the medical certificate.<sup>56</sup>

Similarly, under the Domestic Violence Act 2010, if a domestic violence survivor requests treatment from a medical facility, hospital, clinic or medical centre, they have a statutory

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<sup>51</sup> A private hospital which is recognised by the government for the purposes of providing treatment to victims of offences covered by the VAW Act 2000. See: VAW Act, Section 32.

<sup>52</sup> VAW Act, Section 32.

<sup>53</sup> Ibid.

<sup>54</sup> Acid Offence Control Act 2002, Section 29.

<sup>55</sup> Ibid.

<sup>56</sup> Acid Offence Control Act 2002, Section 29(3).

obligation to provide medical aid to the survivor.<sup>57</sup> However, unlike the obligation of the doctor under VAW Act to inform the local police station, no such obligation to inform law enforcement agencies about occurrences of domestic violence exists under the Domestic Violence Act 2010, when a survivor seeks medical treatment from a hospital. This could be explained by the fact that while VAW Act 2010 primarily deals with gender based criminal offences against women and children, Domestic Violence Act 2010 deals with civil remedies for acts of domestic violence. This divergence of the Domestic Violence Act 2010 from the VAW Act could therefore mean if a woman became pregnant as a result of marital rape and sought medical treatment in the form of MR, then the doctor is under no legal obligation to inform the police station about the occurrence of marital rape as they would have been had a survivor of non-spousal rape sought treatment under the VAW Act. Notably, however, if a domestic violence survivor seeks medical aid (or other support services, such as legal aid) from NGOs (who are referred to as ‘service-providers’ under the Act), then such NGOs would have a three-tier statutory obligation.<sup>58</sup> Firstly, they must record the incident in a prescribed reporting form if the survivor so desires and forward a copy of it to the Court and the concerned Enforcement Officer. Secondly, they must refer the survivor for medical examination and forward a copy of the medical report to the Enforcement Officer and the local police station. Thirdly, if required, they must also refer the survivor to a shelter home and forward a report containing information about the survivor’s lodging in the concerned shelter home to the local police station. Under the Human Trafficking Act 2012, a survivor of human trafficking must, after being rescued, be returned to their family, and if this is not possible then they must be sent to any government or non-government protective home or rehabilitation centre, if the survivor so consents.<sup>59</sup> The survivor residing in such a protective home or rehabilitation centre is entitled to receive medical treatment and legal and psychological counselling services including sustainable rehabilitation and social integration facilities.<sup>60</sup>

Under the Persons with Disabilities (Rights and Protection) Act 2013, every person with a disability has the right to access to the highest quality of healthcare, subject to availability and

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<sup>57</sup> Domestic Violence Act 2010, Section 9.

<sup>58</sup> Domestic Violence Act 2010, Section 7.

<sup>59</sup> Human Trafficking Act 2012, Section 36.

<sup>60</sup> Ibid.

access to support services and rehabilitation facilities which would help strengthen their physical, mental and technical capacity.<sup>61</sup> All individuals, institutions, authorities and bodies (such as medical professionals and hospitals) are prohibited from discriminating against any person with disability when they seek treatment.<sup>62</sup>

The Mental Health Act 2017 states the health, property, dignity, education and other rights of a person suffering from mental illness shall be ensured, which would include a survivor of sexual violence who is suffering from any mental illness as a result of the sexual violence.

### 3.3 Legal status of abortion

Abortion is not expressly covered by Bangladeshi laws. However, there are abortion related offences, which although do not mention abortion, still have the effect of making acts of abortion punishable. Only when the abortion is conducted in good faith to save the life of the mother will liability under these offences not be applicable. In order to counter the almost blanket legal ban on abortion under the Penal Code 1860, the GOB has devised a number of policies allowing abortion at the early stages of pregnancy through MR. This section analyses each of these legal dimensions relating to abortion in turn.

#### 3.3.1 Abortion related offences

There are five separate offences under the colonial era Penal Code 1860 that relate to causing or intending to cause miscarriage, and therefore would cover acts of abortion. Three out of these five offences pertain to causing the death of a foetus (Sections 312, 313 and 316), one relates to causing death of a newly born child or preventing a livebirth (Section 315) and one relates to causing death of a pregnant woman when attempting to cause miscarriage (Section 314). The only exemption from liability under these offences is where the miscarriage (or abortion) was conducted in good faith to save the life of the mother.

##### 3.3.1.1 Causing miscarriage

Firstly, Section 312 deals with the offence of 'Causing miscarriage' whereby anyone who voluntarily causes a pregnant woman to miscarry will be punished with up to three years

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<sup>61</sup> Persons with Disabilities (Rights and Protection) Act 2013, Section 16.

<sup>62</sup> Ibid.

imprisonment or fine or both. If the miscarriage is caused when the woman is 'quick with child' i.e. at a stage of pregnancy when movements of the foetus have been felt, then the punishment increases to imprisonment of up to seven years and fine. In the latter case, therefore, imprisonment becomes mandatory and punishment cannot just be fine. The only exception to this offence is if the miscarriage was caused 'in good faith for the purpose of saving the life of the woman'.<sup>63</sup> Notably, Section 312 specifically explains that even where a woman causes the miscarriage herself, she would be liable, by stating: 'A woman who causes herself to miscarry, is within the meaning of this section'.<sup>64</sup>

### *3.3.1.2 Causing miscarriage without women's consent*

Secondly, Section 313 deals with the offence of causing a miscarriage without a woman's consent (in contrast to Section 312 where a woman's consent is presumed to be present). Any person who causes a miscarriage (as described in Section 312) but does so without the consent of the woman (irrespective of the stage of pregnancy) will be punished with imprisonment for life or with up to ten years imprisonment and also fine. Therefore, while a woman's consent to miscarriage does not legalise the act (outside the aforesaid exception), causing a miscarriage against the woman's consent increases the applicable penalty.

### *3.3.1.3 Death of pregnant woman when causing miscarriage*

Section 314 covers the offence of committing an act with intent to cause miscarriage which results in the death of the pregnant woman. The punishment is imprisonment for up to ten years and fine. If such an act is done without the woman's consent, the punishment may be increased to life imprisonment by the judge. Crucially, an offender under this section does not need to necessarily know that the act which caused the death of the pregnant woman was in fact likely to cause death. Therefore, even if the risk of causing death to the pregnant woman was not foreseen, but an intent to cause a miscarriage was present, a person (such as a doctor administering an abortion), would still be liable.

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<sup>63</sup> Penal Code 1860, Section 312.

<sup>64</sup> Ibid.

### **Case Study: Mother and husband convicted for causing death of woman through miscarriage**

In *Raqib Sheikh (Md) vs. State*<sup>65</sup> a woman's husband and mother were convicted under Section 314 of the Penal Code 1860 for causing her death, and sentenced to life imprisonment by the Additional Sessions Judge, 4th Court, Khulna. The husband obtained a piece of root of plant (which was also produced before the Court by the prosecution) which was placed in the uterus of the woman by her mother. This resulted in profuse bleeding from her private parts and miscarriage. The day after, the husband admitted his wife into Terakhada Upazila Health Complex where she died the next day due to haemorrhage. Dr. Muniruzzaman, a medical officer of the hospital, informed the local police station about the unnatural death of the woman in the hospital. Thereafter the police ordered a post mortem examination to ascertain the cause of her death and the autopsy declared that the death of was due to haemorrhage resulting from the abortion. The concerned investigating officer then filed a case with the police station, on the basis of which the prosecution of the husband and mother took place, resulting in their conviction. When the husband appealed the trial court's sentence before the Supreme Court, the sentence was reduced to five years imprisonment and fine of 1000 BDT, as the Court found that the abortion was not done without the consent of the woman and therefore the lower penalty was applicable. The mother had been absconding throughout the trial process and also at the time of the Supreme Court judgment.

#### *3.3.1.4 Preventing live birth or causing death after birth*

Section 315 deals with the offence of committing any act with the intention and effect of preventing an unborn child from being born alive or causing it to die after its birth. The punishment for this offence is imprisonment for up to ten years or fine or both. Like Section 312, the only exception to this offence is when the act is done in good faith to save the life of the mother.

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<sup>65</sup> 57 DLR (2005) (HCD) 568.

### 3.3.1.5 Causing death of quick unborn child

Section 316 covers the offence of killing a 'quick' unborn child (i.e. at a stage of pregnancy when movements of the foetus have been felt) through an act which was intended to kill the pregnant woman (but only injures her). The punishment is up to ten years imprisonment and fine. A case illustration provided in the law is worth quoting:<sup>66</sup>

*A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured but does not die; but the death of an unborn quick child with which she is pregnant thereby caused. A is guilty of the offence defined in this section.*

So while Section 314 deals with cases where the intention was to kill the unborn child but results in the death of the pregnant woman, Section 316 deals with cases where the reverse is true i.e. where the intention was to kill the pregnant woman but the unborn child is killed instead. The crucial difference between the two sections is that while Section 314 does not require the offender to know that the act was likely to cause death of the pregnant woman, Section 316 requires an intent to kill or cause bodily injury that is likely to cause death, or knowledge that the act is likely to cause death.<sup>67</sup> Therefore, while a service provider may be liable under Section 314 for unintentionally causing the death of a pregnant woman in the course of an abortion, they have no liability under Section 316 unless they intend to cause the death of the woman, or do an act knowing it is likely to cause her death.

### 3.3.2 Legal challenge against 'anti-abortion' clauses

In August 2020, a Supreme Court lawyer filed a writ petition challenging the legality of the five 'anti-abortion' clauses i.e. Section 312, 313, 314, 315 and 316 of the Penal Code 1860.<sup>68</sup>

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<sup>66</sup> Penal Code 1860, Section 316.

<sup>67</sup> This is because Section 316 links the offence to culpable homicide, which is defined in this manner. See: Penal Code 1860, Section 299.

<sup>68</sup> Information presented about this case in this review is based on two news-reports, since a copy of the petition is not in the public domain. See: Mizanur Rahman, High Court issues ruling on abortion laws, Dhaka Tribune (19 August 2020), <https://www.dhakatribune.com/bangladesh/court/2020/08/19/high-court-issues-ruling-on-abortion-laws>; High Court asks why five 'anti-abortion clauses' in penal code should not be revoked, The Business Standard (18 August 2020), <https://www.tbsnews.net/bangladesh/court/high-court-asks-why-five-anti-abortion-clauses-penal-code-should-not-be-revoked>; Rock Ronald Rozario, The right to life: Court ruling triggers abortion debate, Union of Catholic Asian News (24 August 2020), <https://www.ucanews.com/news/the-right-to-life-court-ruling-triggers-abortion-debate/89258#>

The petition posited that these legal provisions are discriminatory and therefore contrary to six of the constitutionally guaranteed fundamental rights i.e. Article 27 (Equality before law), Article 29 (Equality of opportunity in public employment), Article 31 (Right to protection of law), Article 32 (Protection of right to life and personal liberty), Article 38 (Freedom of association) and Article 42 (Rights to property).

The petition appeared to make three main arguments to support its case. Firstly, it argued that despite the formal legal ban on abortion (i.e. causing miscarriage), abortion facilities still exist and are used, given that the use of birth control remains low and rate of illiteracy remains high. However, since abortion is illegal, women seeking termination of their pregnancy often have to resort to ‘incompetent doctors and nurses’ in abortion facilities which operate illegally (and therefore escape regulation).<sup>69</sup> As a result, the unsafe abortions may cause health complications to the woman later in life, or even death. Secondly, it argued that there are many instances of rape which lead to pregnancy, the rape survivor should be able to abort the ‘unwanted foetus’, since giving birth to their rapist’s child would substantially alter their lives. Finally, it argued that motherhood should be the role choice of the woman and the law should not coerce women to become mothers from unwanted pregnancies by keeping abortion illegal.

The respondents to the writ included Secretary of the Ministry of Law, Justice and Parliamentary Affairs and the Registrar General of the Supreme Court. On 18 August 2020, the High Court Division of the Supreme Court of Bangladesh asked the governmental respondents to explain why these five sections in the Penal Code 1860 should not be declared void as it is contradictory with fundamental rights guaranteed in Bangladesh Constitution. It is important to note that this is merely a *rule nisi* i.e. a preliminary show-cause rule which asks the respondents to respond to arguments made by a petitioner. Therefore, it has no legal effect on the ‘anti-abortion’ provisions in the Penal Code being challenged, and they remain fully in force. If and when the government respondents respond to the *rule nisi*, the Court may direct it to take steps to amend these provisions if it accepts the arguments of the

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<sup>69</sup> Rock Ronald Rozario, The right to life: Court ruling triggers abortion debate, Union of Catholic Asian News (24 August 2020), <https://www.ucanews.com/news/the-right-to-life-court-ruling-triggers-abortion-debate/89258#>

petitioner. On the other hand, the Court may also agree with counter-arguments posed by the respondents, in which case it may not provide any such direction. Therefore, it is too early to tell whether this legal challenge will in fact cause any legal reform in the five 'anti-abortion' provisions of the Penal Code 1860.

### 3.3.3 Menstrual Regulation

Despite the formal legal ban on abortion in the Penal Code 1860 (with only one exception), Bangladesh has developed a second exception to the ban without formal legal ban. This second and more expansive exception, is done through Menstrual Regulation (MR) to terminate early pregnancies. MR is defined by WHO as:<sup>70</sup>

*uterine evacuation without laboratory or ultrasound confirmation of pregnancy for women who report recent delayed menses.*

#### 3.3.3.1 The legal status and basis of MR

MR services began in the country in 1974 and was formally recognised in 1979 as "one of the methods of the official family planning programme" by a memorandum of the GOB's Population Control and Family Planning Division.<sup>71</sup> Prior to this memo in 1978, the Population Control and Family Planning Division commissioned Bangladesh Institute of Law and International Affairs (BILIA), the country's oldest civil society think tank, to produce a report identifying the legal framework on family planning, and suggest necessary reforms.<sup>72</sup> In 1979, the Population Control and Family Planning Division then issued a memo to all deputy directors of Family Planning citing a legal interpretation provided by the Bangladesh Institute

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<sup>70</sup> Safe Abortion: Technical and Policy Guidance for Health Systems (2nd edn), WHO (2012), iv, [https://www.ncbi.nlm.nih.gov/books/NBK138196/pdf/Bookshelf\\_NBK138196.pdf](https://www.ncbi.nlm.nih.gov/books/NBK138196/pdf/Bookshelf_NBK138196.pdf)

<sup>71</sup> Bangladesh National Menstrual Regulation Services Guidelines, Directorate General Family Planning, Kingdom of Netherlands and World Health Organisation, 5, <https://abortion-policies.srhr.org/documents/countries/05-BANGLADESH-NATIONAL-MENSTRUAL-REGULATION-SERVICES-GUIDELINES.pdf>. For a comprehensive historical account of how MR was introduced and sustained in Bangladesh, see: Gabrielle Catherine Ross, Sustaining menstrual regulation policy: a case study of the policy process in Bangladesh. PhD thesis, London School of Hygiene & Tropical Medicine (2002) <https://researchonline.lshtm.ac.uk/id/eprint/1742272/1/271432.pdf>

<sup>72</sup> Mohammad Sohrab Ali, M Zahir, and K M Hasan, 'Report on Legal Aspects of Population Planning in Bangladesh' Bangladesh Institute of Law and International Affairs (1978), i. See also: Ross (cited above), 102-105.

of Law and International Affairs (BILIA) to "dispel the prevailing doubts about the legality of the procedure" which read as follows:<sup>73</sup>

*Many Family Planning Clinics are carrying out the post-conceptive method of "Menstrual Regulation" as a means of birth control which does not come under Section 312 of the Penal Code. Under statutory [sic] scheme, pregnancy is an essential element of the crime of abortion, but the use of menstrual regulations makes it virtually impossible for the prosecutor to meet the required proof. In our country menstrual regulation (M.R.) is being carried out till the tenth week following a missed menstrual period, and after that patients are referred as abortion cases. M.R. is now recognised as an interim method of establishing non-pregnancy for the women [sic] who is at risk of being pregnant. Whether or not she is, in fact, pregnant is no longer an issue.*

The BILIA report argued that because menstrual regulation "makes it virtually impossible for the prosecutor to meet the required proof" that the "crime of abortion" had occurred, MR does not come under the Penal Code.<sup>74</sup> As no pregnancy test was conducted or uterine contents examined after MR is performed, this 'legal grey area concerning pregnancy status was used by Bangladesh to make MR widely and legally available'.<sup>75</sup> Since MR was promoted for contraceptive failure, policy-makers avoided mandating second-trimester abortion in the MR Programme and thereby avoided the likely public backlash from conservative segments of society.<sup>76</sup> Due to the MR Programme being able to bypass the formal legal ban on abortion, at least for early pregnancies, it existed side by side with the anti-abortion provisions in the Penal Code 1860.<sup>77</sup> In 2011, Bangladesh requested technical assistance from HRP to revise their national menstrual regulation guidance in line with WHO safe abortion guidance.<sup>78</sup> In

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<sup>73</sup> Population Control and Family Planning Division. 1979. Memo No. 5-14/MCH-FP Trg 79 M.R. Program. Dhaka: Government of the People's Republic of Bangladesh, 1-3. This extract of the memo has been sourced from Ross (cited above), 104.

<sup>74</sup> Mohammad Sohrab Ali, M Zahir, and K M Hasan, 'Report on Legal Aspects of Population Planning in Bangladesh' Bangladesh Institute of Law and International Affairs (1978), 31.

<sup>75</sup> Affette McCaw-Binns & Jasneeth Mullings, 'Evidence generation and synthesis to improve family planning, prevent unsafe abortion and prevent and control sexually transmitted and reproductive tract infections' in External evaluation 2008-2012, UNDP/UNFPA/ UNICEF/ WHO/World Bank Special Programme of Research, Development and Research Training in Human Reproduction (HRP) 128, [https://apps.who.int/iris/bitstream/handle/10665/85331/WHO\\_RHR\\_HRP\\_13.07\\_eng.pdf](https://apps.who.int/iris/bitstream/handle/10665/85331/WHO_RHR_HRP_13.07_eng.pdf)

<sup>76</sup> Ibid, 131

<sup>77</sup> Ibid, 131.

<sup>78</sup> Ibid, 128.

2012, Bangladesh's Directorate General of Family Planning published the National Menstrual Regulation Services Guidelines ('MR Guidelines').<sup>79</sup>

### *3.3.3.2 Legal time limit for MR*

As the definition by NIPORT notes, MR may be conducted up to ten weeks from the last menstrual period (LMP), while the National MR Guidelines also reiterate these limits. However, in the 62<sup>nd</sup> National Technical Committee Meeting (one of the key regulatory bodies of the National MR Programme) held on 30 June 2014, it was decided that the LMP MR services can be provided by trained Family Welfare Visitors, paramedics or nurses, midwives for up to ten weeks from LMP, while trained doctors can perform MR services from tenth to the twelfth week from LMP.<sup>80</sup>

### *3.3.3.3 Legal Consent for MR*

The MR Guidelines stress the necessity of obtaining the legal and informed consent of the pregnant woman in writing prior to MR being conducted to 'ensure that the woman's decision is voluntary and that she is informed of the procedure, choices and consequences of MR.'<sup>81</sup> For 'mentally handicapped' or those of younger age', the signature of the guardian, relative or husband must also be obtained.<sup>82</sup> The MR Guidelines do not specify, however, which age group is considered to be of 'younger age'. This lack of clarity may cause problems in practice as it would then be unclear which age group of women and girl are in fact able to obtain MR without the consent of their guardian, relative or husband. For instance, an earlier study from 2010 (before the MR Guidelines were published) found that about 26% of women seeking MR services each year are turned away by facilities due to various reasons, not only because the pregnant woman's LMP limit exceeded the legal time limit for MR, but also because of provider bias against women who have not yet had a child and those considered too young

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<sup>79</sup> Bangladesh National Menstrual Regulation Services Guidelines, Directorate General Family Planning, Kingdom of Netherlands and World Health Organisation, <https://abortion-policies.srhr.org/documents/countries/05-BANGLADESH-NATIONAL-MENSTRUAL-REGULATION-SERVICES-GUIDELINES.pdf>

<sup>80</sup> Proceedings of the 62<sup>nd</sup> meeting of the NTC held on 30 June, 2014, Memo No. DGEP/MCH-S/NTC-4/138/95 (Part-05)/831, MCH, DGFP, GOB, 2.

<sup>81</sup> Ibid, 5.

<sup>82</sup> Ibid.

or those do not have their husband's consent.<sup>83</sup> However, the draft National Guideline for Comprehensive Menstrual Regulation and Post-Abortion Care Services to be published by the Ministry of Health and Family Welfare brings some important changes. Firstly, it clarifies that the consent of someone other than the woman seeking abortion should be obtained in 'special cases', i.e. where the woman is 'mentally handicapped' or below 18 years of age.<sup>84</sup> In such cases, the signature of the guardian, relative or husband must be obtained. Secondly, it instructs service providers to involve the husband or accompanying person 'if the client agrees and is comfortable'.<sup>85</sup> Therefore, service providers must first ask the client whether she wants to involve any other person involved in the consent process.

The MR Guidelines allow for 'conscientious objection' on the part of providers (who may refuse to conduct MR due to their personal convictions or deficiency of skills) but they must refer the client to another service provider within adequate time.<sup>86</sup> Other than the legal time limit within which MR must be conducted, conscientious objection appears to be the only other ground on which service providers can deny to provide a woman or girl with MR services. However, in cases where MR is needed 'immediately to protect the life or health of woman seeking service', the service provider must perform it without objection.<sup>87</sup>

#### *3.3.3.4 Right to Confidentiality*

The MR Guidelines also oblige service providers to respect a woman's right to privacy by guaranteeing discretion and client confidentiality. They should reassure the woman that her decision to undergo MR 'will not be revealed to any other person, including her parents, husband, relatives, community, religious members, law-enforcement agents without her prior consent'.<sup>88</sup> Nevertheless, providers are also reminded of the need to inform the client of 'the few exceptions to confidentiality under the law' such as in 'cases of violence' and instructed to uphold such laws. Here again, there is a lack of clarity as there is no further

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<sup>83</sup> Singh S et al., The incidence of menstrual regulation procedures and abortion in Bangladesh, 2010. *International Perspectives on Sexual and Reproductive Health*, 2012, 38(3):122–132

<sup>84</sup> National Guideline for Comprehensive Menstrual Regulation and Post-Abortion Care Services (Final Draft), Ministry of Health and Family Welfare, Section 3.10.

<sup>85</sup> *Ibid*, 26.

<sup>86</sup> National MR Guidelines, 7.

<sup>87</sup> *Ibid*.

<sup>88</sup> *Ibid*.

discussion on what these legal exceptions are. It is unclear, for instance, whether ‘cases of violence’ includes rape and therefore extends the statutory obligation of duty doctors under the VAW Act to inform the local police station when a rape survivor seeks treatment from a doctor providing MR services. This may be especially unclear in situations where the rape survivor has already undergone medical treatment and been provided a medical certificate as per the VAW Act by another doctor in a non-MR facility prior to seeking MR. The MR Guidelines only mention cases of rape once, in relation to the need to provide special support and counselling to women who have undergone MR due to foetal anomalies or have conceived after rape.<sup>89</sup> However, the draft National Guideline for Comprehensive Menstrual Regulation and Post-Abortion Care Services makes no mention of MR in the context of rape survivors. The service providers, there must have a standard approach towards a client seeking MR/PAC care, to ensure confidentiality, dignity, privacy, and designed to enhance her ability to make autonomous, informed decisions. The draft Guideline also reiterate the need for service providers to respect a woman’s right to confidentiality and privacy, meaning that her ‘discretion and confidentiality are guaranteed’.<sup>90</sup> Like the MR Guidelines it mentions that service providers ‘should know the few exceptions to confidentiality under the law and inform women of these exceptions, such as in cases of violence, and uphold such laws’ without clarifying what these exceptions are.<sup>91</sup> Greater clarity must be provided in relation to what exceptions service providers are required to make to the woman’s right to confidentiality.

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<sup>89</sup> Ibid, 36.

<sup>90</sup> <sup>90</sup> National Guideline for Comprehensive Menstrual Regulation and Post-Abortion Care Services (Final Draft), Ministry of Health and Family Welfare, Section 3.11A.

<sup>91</sup> Ibid.

### 3.4 Legal status of child marriage

The Child Marriage Restraint Act 2017 sets the minimum age of marriage to be 18 years for females and 21 years for males.<sup>92</sup> Contrary to popular belief, the Act criminalises the act of facilitating and engaging in a child marriage but does not invalidate the child marriage contract itself. Thus while parents or guardians may be sentenced to six months imprisonment and fine if they facilitate the marriage of their minor girl, the marriage contract to which a child is a party remains perfectly valid. Therefore it is important to bear in mind that the Act does not outlaw the institution of child marriage rather it seeks to restrain the practice by criminalising acts which facilitate and engage in child marriage. In August 2019, 14 people were arrested by police in an anti-child marriage drive by Shibganj police station.<sup>93</sup>

Section 19 of the Act notoriously created 'special exceptions' whereby child marriages can take place with judicial and parental consent without attracting criminal liability, as long as the marriage is deemed to be "in the best interests of the child". Many rights activists had feared that this vaguely termed 'special circumstances' clause would cover situations where parents force a minor girl to marry her rapist, especially where it has resulted in a pregnancy.<sup>94</sup> However, the subsequent Child Marriage Restraint Rules 2018 specified the circumstances in which child marriages would be allowed under Section 19, and specifically stated that applications must be rejected if there is a pending rape or abduction case between the parties proposed to be married.<sup>95</sup>

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<sup>92</sup>Section 2, Child Marriage (Restraint) Act 2017.

<sup>93</sup> <https://unb.com.bd/category/Bangladesh/3-girls-spared-burden-of-child-marriage-14-arrested/26708>

<sup>94</sup> Bangladesh law allowing child brides may legitimize rape: charities, Thomson Reuters Foundation (1 March 2017), <https://www.reuters.com/article/us-bangladesh-child-marriage-idUSKBN16855I>

<sup>95</sup> Child Marriage Restraint Rules, Rule 18. See: Taqbir Huda, 'Prioritise prevention and protection, not criminalisation: Revisiting child marriage laws in Bangladesh' in Promote Prevention, Question Criminalisation: Reframing responses to child marriage, Feminist Inquiries into Rights and Equality (FIRE) (2020), [https://www.academia.edu/44731809/Promote\\_Prevention\\_Question\\_Criminalisation](https://www.academia.edu/44731809/Promote_Prevention_Question_Criminalisation)

## 4. National Policy Framework on SRHR

### 4.1 National Education Policy 2010

The National Education Policy 2010 was adopted by the GOB to help guide the advancement and planning of education across the country.<sup>96</sup> One of the broad objectives of the policy is to:<sup>97</sup>

*[R]emove socio-economic discrimination irrespective of race, religion and creed and to eradicate gender disparity; to develop non-communalism, friendliness, global fraternity, fellow-feeling and respect for human rights.*

It has a specific chapter on ‘Women’s Education’. One of the fourteen strategies to advance women’s education in this chapter relates to ensuring strict adherence to ‘regulations for punishment relating to sexual harassment and repression on women’ within the educational institutions.<sup>98</sup> The chapter (nor the policy) does not, however, mention the institutional obligation to establish Sexual Harassment Prevention Committees within educational institutions, in accordance with the Supreme Court Directives on the Prevention of Sexual Harassment (See: Section 3.2.2.1, above). Notably, the National Education Policy makes no mention of comprehensive sex education. However, one of the strategies in the chapter on Women’s Education is to include ‘gender studies and issues of reproductive health’ in the secondary level curriculum of last two years.

### 4.2 National Health Policy 2011

The National Health Policy recognises ‘Equality based services’ as one of the challenges in the provision of health services in the country.<sup>99</sup> It identifies pregnant and breastfeeding women, as two of the disadvantaged groups in relation to access to healthcare. It notes that although

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<sup>96</sup> National Education Policy 2010, 1.

<sup>97</sup> National Education Policy 2010, 1.

<sup>98</sup> National Education Policy 2010, 41.

<sup>99</sup> National Health Policy, 12.

there are various programs targeted towards ensuring their access to healthcare, these have by and large failed to 'enter the social and cultural sphere'. The policy also recognises the need to introduce programs that resolve issues faced by women within society and the family, and also reduce violence against women.<sup>100</sup>

### 4.3 National Women's Development Policy 2011

The National Women's Development Policy was finally adopted by GOB in 2011 after first being drafted in 1997. The main objective of the policy is to promote the cause of women in society who have 'suffered abuse and neglect for ages' and to ensure 'women empowerment, equal rights and opportunities'.<sup>101</sup> The policy recognises the prevalence of VAW and lists 'prevention of abuse of women' as one of its main aims.<sup>102</sup> Section 7 is titled 'Women and the Law' and it discusses the existing laws in place that criminalise various forms of VAW. Of these, it notes that Executive Magistrates were given power to take steps by linking Section 509 of the Bangladesh Penal Code 1860 (which deals with the offence of 'outraging the modesty of a woman', see: Section 3.2.2 above) under the Mobile Court Act 2009 to "resist and prevent eve teasing and sexual harassment of the girls and women".<sup>103</sup> Section 18 is titled 'Development of Female Child', it lists eight strategies to achieve this objective, of which three are of particular relevance to women and girl's SRHR. Firstly, it emphasises the stern enforcement of laws against child marriage, rape of female children, abuse, repression and trafficking. Secondly, it aims to ensure discrimination free treatment of female children and put special emphasis in meeting their socio-economic needs, such as, nutrition, health, education, and vocational training etc. Thirdly, it aims to ensure necessary measures are in place so female children are not subjected to sexual harassment, pornography, physical or mental abuse in any situation, be it at the educational institutions or in the streets.

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<sup>101</sup> Women's Development Policy 2011, 3.

<sup>102</sup> National Women's Development Policy, Ministry of Women and Children Affairs, Government of Bangladesh at p. 9.

<sup>103</sup> National Women's Development Policy, 9.

Section 19 titled 'Elimination of All forms of Abuse against Women' which lists eleven ambitious objectives and strategies to combat VAW, including sexual offences against women and girls, such as rape, sexual harassment and trafficking (Box 3).<sup>104</sup>

**Box 3: VAW Elimination Strategies in the National Women's Development Policy 2011**

19.1. Elimination of all forms of violence to women including physical and mental abuse and **sexual harassment, rape**, dowry, family abuse and acid throwing in family, society and in the workplace.

19.2. To amend and if necessary legislate new laws to make the conventional laws concerning prevention of abuse of women making them adapted to the age and circumstances.

19.3. To extend **legal support** to women victim of abuse.

19.4. To stop trafficking of women and rehabilitation of the affected ones.

19.5. Elimination of abuse of women and to make enforcement of justice in these cases ensuring participation of women at levels in increasing manner in the Police force.

19.6. To train the judiciary and the police department in the matter of legislations pertaining to women and to make these departments **gender sensitized**.

19.7. To simplify the adjudication procedure to complete trial of offense relating to women, female children and their trafficking.

19.8. To give necessary support and assistance through the **one-stop crisis centres (OCC)** at the divisional towns and through women support centres in prevention of abuse of women and to take necessary steps to expand OCC at the district level. To increase activity of **National Trauma Counselling Centres** to give the women victim of abuse mental support and assistance. To extend necessary assistance through the Ministry of Women and Children Affairs, National Women Organization and Department of Women Affairs.

19.9. To raise widespread awareness in prevention of abuse of women in all the levels of the society through integrated initiative with the NGOs and take appropriate initiatives in bringing about changes the male dominated thought process.

19.10. To create widespread public awareness in the mass media in prevention of abuse of women.

19.11. Involving male and youths in building up mass awareness in prevention of abuse of women.

<sup>104</sup> National Women's Development Policy, 15-16.

Section 34 deals with 'Health and Nutrition' and has eleven strategies, of which eight are extremely pertinent to the advancement of women's SRHR (Box 4).

**Box 4: Health and Nutrition Strategies in National Women's Development Policy 2011**

34.1 To ensure rights to nutrition and to have physical and mental **health of highest standard** all through the life cycle of women i.e. in the childhood, adolescence, **during pregnancy** and in old age.

34.2. To strengthen **primary health care** for the women.

34.3. To reduce **maternal** and child **death rates**.

34.4. To conduct research to combat the fatal diseases of **AIDs** and health of women during their **pregnancy** in particular and publicize **health information** and raise awareness.

34.5. To educate and train in nutrition.

34.6. To keep in view the matter of **reproductive health** of the women and **reproductive rights** in planning population and its implementation.

34.7. To give particular importance to the need of women concerning safe drinking water and sewerage system.

34.8. To ensure participation of women in all the aforesaid services planning, distribution and preservation.

34.9. To ensure **equal gender rights** in making decisions as to **family planning** and taking baby.

34.10 To take appropriate actions in favour of the benefits of breast milk for also ensuring health of the women, physical and mental growth of the child, assistance in **birth control** and increasing mother's capacity to work at her workplace.

34.11 To legislate and implement law to allow mothers to enjoy a leave for **6 months** after the delivery of the child to ensure that the new born has it right to mother's breast milk (only six months for breast milk) and to arrange necessary **maternity leave**.

Section 34.9 is of particular significance as it aims to ensure equal gender rights in family planning and the choice to have a child, while Section 34.10 aims to provide assistance to women to access birth control. Section 34.9 may pose some risk to the provision of MR services, if it is seen as one of the methods of family planning where equal gender rights must be ensured for the purposes of this policy. As discussed, currently the consent of a woman alone is sufficient for MR to be conducted, where the decision of the male sexual partner (e.g.

husband) is not deemed necessary. Therefore, if the objective of this policy was to ensure women have sufficient autonomy in relation to family planning services and the decision to take children, then it would have been more useful if the section stated that the policy seeks to ensure women's rights in that regard, instead of 'equal gender rights'. Section 34.6 requires GOB to keep factor in women's reproductive health and rights when conducting and implementing population planning. Notably, however, improving access to safe MR is not specifically mentioned.

#### 4.4 National Children Policy 2011

The National Children Policy 2011 updates the earlier National Children Policy 1994, to reflect the contemporary needs of and challenges faced by children and in line with the recommendations of the UN Child Rights Committee.<sup>105</sup> It pledges that initiatives shall be undertaken to ensure a safe family environment for children and necessary legislative amendments shall be made to materialise child rights.<sup>106</sup> Section 6.3 deals with 'Child Health' and includes seven strategies to advance it, of which four pertain to reproductive health and rights (Box 5).

##### **Box 5: Child Health Strategies relating to SRHR in National Children Policy**

6.3.1. The programs including Expanded Program of Immunization [EPI], integrated management of Child Illness [IMCI], New-born health [NBH]. **Reproductive Health, Sexually Transmitted diseases**, HIV/AIDS and other timely programs shall be undertaken and implemented as preventive measures.

6.3.2. **Safe Child birth** shall be ensured through raising efficiency via **training** of the Health and **Family Planning workers**, nurses and physicians and by increasing number of the efficient and trained Birth Attendants.

6.3.3. Necessary measures shall be taken to include **basic information** on health, nutrition and **reproductive health**, competitiveness, physical and mental health in the **school syllabus**.

6.3.4. Regular awareness Program shall be conducted all over the country at the grass-root levels about the ways and means of upholding child rights and **Mother & Child Health (MCH)**.

<sup>105</sup> National Children Policy 2011, 3.

<sup>106</sup> National Children Policy, Ministry of Women and Children Affairs, Government of Bangladesh (2011).

In addition to Section 6.3, reproductive health is also covered by Section 7.3 which states that necessary steps shall be taken to provide adolescents with education on reproductive health while taking into consideration the physiological and emotional issues of the adolescents. The policy also has a specific strategy for 'development of the girl children' which includes broadly and ambitious sounding objectives (e.g. 'all discriminatory behaviour towards female child shall be eliminated and gender equality in the family be ensured') without specifying concrete initiatives to realise these objectives.<sup>107</sup>

Various sections of the policy seek to protect children from sexual offences, but fall short of specifying measures to fulfil such an objective. Section 6.7.1 states that steps shall be taken to ensure security and safety of the children against all forms of violence, including sexual abuses, with the use of 'effective public awareness program'. Section 7.4 aims to protect adolescents from child marriage, trafficking and sexual exploitation.<sup>108</sup> Section 8.4 states that 'necessary arrangements' will be taken to ensure female children do not fall victim to sexual harassment, pornography and physical and mental abuse in the streets or educational institutions but do not state what these 'necessary arrangements' shall be.<sup>109</sup> Section 9.6 states that it has to be made sure that the children employed in various establishments do not victimized to any kind of physical, mental or sexual assault, but it does not say how this will be ensured.

#### 4.5 National Population Policy 2012

The National Population Policy 2012 updates the earlier National Population Policy 2004, which had aimed to achieve Net Reproduction Rate (NRR) = 1 by the year 2010.<sup>110</sup> However, this target could not be achieved due to the 'prevalence of early marriages and pregnancies, and a persistent lack of interest in using long-term and permanent family planning methods'.<sup>111</sup> At the time the population was being drafted, the population of Bangladesh was

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<sup>107</sup> Ibid at p 12.

<sup>108</sup> Ibid at p.11.

<sup>109</sup> Ibid.

<sup>110</sup> National Population Policy 2012, Section 2.

<sup>111</sup> Ibid.

found to be increasing by approximately 18-20 lakhs every year.<sup>112</sup> Therefore the GOB felt the need to update the population policy and its strategies 'in order to keep the population of the country within tolerable limits'.<sup>113</sup> It aimed to lower the Total Fertility Rate (TFR) to 2.1 by increasing the rate of prevalence of contraceptive users to 72%, and achieve NRR = 1 by the year 2015.<sup>114</sup> The policy has three major programs that have direct bearing on SRHR, which are discussed below in turn.

Section 5.4 envisions a Behaviour Change Communication (BCC) Program that undertakes various informative, educational and motivational interventions under the Population, Nutrition and Health program to influence behavioural change (Box 6).

**Box 6: BCC Program in the National Population Policy 2012**

- (a) Make all-out efforts to popularize and establish the slogan 'No more than two children, but one is better';
- (b) Provide information on the reduction of maternal and child mortality and different family planning methods and their advantages and disadvantages; and augment publicity for building social movement through apprising of the far-reaching impact and importance of economic solvency, education, health and social security;
- (c) Undertake behaviour change communication (BCC) programs to encourage the seeking of prenatal, natal and postnatal services;
- (d) Assist in promotion of behavioural change program to prevent all contagious diseases including infection of the reproductive tract, sexually transmitted diseases, HIV/AIDS etc.;
- (e) Ensure regular dissemination of multidimensional and attractive important messages regarding population, family planning, maternal and child health etc. through government and non-government radio, television and print media, and other available mass media platforms;
- (f) Assist in behaviour change through analysis and utilization of gender-based information;
- (g) Organize dissemination meetings on specific subjects selected for groups of public representatives, religious leaders, different social organizations, non-government organizations, development partners, women leaders, newly married couples etc. from grass-roots to district levels;
- (h) Take necessary steps to develop and disseminate messages on family planning, and maternal and child health issues based on regional languages and cultures. In such cases,

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<sup>112</sup> Ibid.

<sup>113</sup> Ibid.

<sup>114</sup> Ibid, Section 4.

ensure delivery of aforesaid messages through entertainment programs with the help of local cultural groups;

(i) Facilitate dissemination of specific information on **family planning** issues by different public and private organizations in their **advertisements**. Especially, facilitate publicity on **family planning** issues on private **radio and television** channels as a part of their corporate social responsibility;

(j) Initiate necessary steps to incorporate issues related to **family planning**, and maternal and child health in **educational curriculum** and text books.

Section 5.5 envisions an Adolescent Welfare Program with an aim to reducing the prevalence of child marriage, since two-thirds of the adolescents are married off before they are 18. This program aims to provide information and advice about late marriage, reproductive health and family planning (Box 7).

**Box 7: Adolescent Welfare Program in the National Population Policy 2012**

a) Ensure providing information and advice in favour of **late marriage** and having children with adequate **birth intervals**;

b) Create employment opportunities for the unmarried women in the rural areas; assist in developing their skills through loan facilities and technical training;

c) Organize dissemination workshops, essay writing and debating competition etc. for adolescents in schools and colleges regarding **maternal** and child **health**, **reproductive health** and **family planning** issues;

d) Educate the adolescents in health issues and life skills, and increase awareness of their parents, teachers and service providers for orientating the adolescents regarding **adolescent health**;

e) Undertake special programs for the adolescents to transform them into skilled manpower.

Section 5.7 enlists eight strategies to advance women empowerment and bridge the inequality between men and women. It notes that a number of deep-rooted social and cultural barriers perpetuate discriminatory behaviour and therefore gender inequality. As a result, the policy adopts the eight strategies in order to advance gender equality, six of which relate directly to family planning, reproductive health and gender sensitisation.

### **Box: Strategies for Women Empowerment in the National Population Policy 2012**

Section 5.7, National Population Policy:

- a) Formulate **gender sensitive strategies** for both men and women in all government and non-government activities;
- b) Women's skills development through imparting appropriate education and vocational training, and ensure their participation in economic activities;
- c) Establish necessary child care facilities including day care centres in both urban and rural work areas;
- d) Encourage institutions/organizations involved in women's development to **participate in activities** pertaining to **family planning** and **reproductive health**;
- e) Incorporate **family planning** issues in all **social welfare activities** and various **credit programs** run by different government and non-government organizations;
- f) Eliminate women and child **trafficking** and all types of oppression and **sexual abuse**.
- g) Undertake awareness campaign to make **men more responsible** regarding women's needs and requirements for **family planning** and **reproductive health services**;
- h) Create **gender equality** among boys and girls in terms of **access to health services**, nutrition, education and employment

Section 5.1(g) also seeks to ensure the availability of essential information and services related to sexually transmitted infections (STIs), reproductive tract infections (RTIs) and HIV/AIDs for all, especially for communities at high risk.

#### 4.6 Multi-Sectoral Programme on VAW 2000-2021 (MSPVAW)

The MSPVAW has been jointly implemented by the Government of Bangladesh and Government of Denmark under the Ministry of Women and Children Affairs (MOWCA) and in collaboration with ten other ministries, since its pilot phase in May 2000 and first phase commencing in 2004.<sup>115</sup> The program is currently in its fourth face which will run until June 2021. One of the landmark and novel achievements of this programme in support of VAW survivors has been the establishment of One-Stop Crisis Centres (OCC) in major cities to provide rehabilitation, legal support and psycho-social counselling, National DNA

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<sup>115</sup> See: <http://www.mspvaw.gov.bd/>

Laboratories to facilitate smooth medico-legal examination and a National Trauma Counselling Centre to provide mental health support. It has also established a National Centre on Gender Based Violence and a 24 hour National Helpline Centre for VAW which has received a total of 4,798,753 calls since 2012 to May 2021.<sup>116</sup> Additionally, it is in the process of developing a National Database on VAW.

#### 4.7 National Action Plan on VAW (2013-2025)

The National Action Plan on VAW was formulated as part of the MSPVAW to “provide a blueprint for change” by coordinating, prioritising and strategizing the most effective forms of action in the short, mid and long term while also evaluating progress.<sup>117</sup> The plan has focused itself in seven main areas: “(i) legal arrangements, (ii) social awareness and mental transformation, (iii) advancement of women’s socio-economic status, (iv) protective services, (v) curative and rehabilitation services, (vi) inter-sectoral cooperation and (vii) community involvement.”<sup>118</sup> It plans to establish Women and Children Repression Prevention Tribunals in three more districts (Rangamati, Khagrachori and Bandarban) and additional Tribunals in eighteen more districts.<sup>119</sup> Commendably it also states the need to ensure these tribunals are made “disabled-friendly”.<sup>120</sup> There is also long term plans to establish at least one “Child Court” in every district and special cells for legal support at upazila level.<sup>121</sup> Other plans include preparation of training manual on gender and disability sensitivity for lawyers of district bar councils and the planned legal support cells.<sup>122</sup>

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<sup>116</sup> ‘National Helpline Centre for Violence Against Women and Children Services up to May 2021’, Multi-Sectoral Programme on Violence Against Women, Ministry of Women and Children Affairs, Government of Bangladesh, <http://mbspvaw.gov.bd/contain/28>

<sup>117</sup> ‘National Action Plan on VAW’, Multi-Sectoral Programme on Violence Against Women, Ministry of Women and Children Affairs, Government of Bangladesh, [http://www.mbspvaw.manikganjpourashava.gov.bd/index.php?option=com\\_content&view=article&id=225&Itemid=143&act\\_id=0&cmp=1](http://www.mbspvaw.manikganjpourashava.gov.bd/index.php?option=com_content&view=article&id=225&Itemid=143&act_id=0&cmp=1)

<sup>118</sup> Ibid.

<sup>119</sup> National Action Plan on VAW (2013-2025), Ministry of Women and Children Affairs, Government of Bangladesh, 31.

<sup>120</sup> Ibid.

<sup>121</sup> Ibid, 35.

<sup>122</sup> Ibid.

## 4.8 National Adolescent Health Strategy 2017-2030

The National Adolescent Health Strategy 2017-2030 identified four priority thematic areas of intervention, called Strategic Directions (SD), which are all relevant to the advancement of SRHR: adolescent sexual and reproductive health, violence against adolescents, adolescent nutrition and mental health of adolescents.<sup>123</sup> The incorporation of SRH into the current strategy as a ‘key component’ was a major addition compared to the previous strategy which ‘would not have effectively captured the varied health needs of adolescents in the present context’.<sup>124</sup> Section 3.4 sets the Guiding Principles for the strategy, which are based on human rights principles, and highlights the right of all adolescents (defined as those between the ages of 10 and 19) ‘to attain the highest standard of health’. The human rights principles that will guide the implementation of this strategy: universality and inalienability, indivisibility, interdependence, equality and non-discrimination, participation and inclusion and capacity development and leadership. The policy lists three objectives and four strategies to achieve SD 1, which is the advancement of adolescent SRH (Box 8).<sup>125</sup> Notably, this is the first policy to expressly recognise the need to incorporate comprehensive sexuality education into educational and training institutions.

### **Box 8: Strategic objectives and key strategies of advancing SRH of adolescents in the National Adolescent Health Strategy 2017-2030**

#### ***Strategic Objectives***

1. To create an enabling environment at all levels – national and local – by strengthening **legislation**, policy development and implementation;
2. To integrate and strengthen age appropriate **comprehensive sexuality education** programmes at all academic and training institutions;
3. To improve the **sexual and reproductive health** status of adolescents by engaging a range of

#### ***Key Strategies***

1. Enable evidence based advocacy for comprehensive policy and programme development, investments and implementation;
2. Promote age appropriate **comprehensive sexuality education**, which are on par with international standards, through all **academic and training institutions**;
3. Build capacity for the delivery of age and **gender sensitive sexual and reproductive health**

<sup>123</sup> National Adolescent Health Strategy, iii and 5.

<sup>124</sup> Ibid.

<sup>125</sup> Ibid, 11.

evidence based and effective interventions.

services which includes HIV/STI prevention, treatment and care;

4. Create a robust system for data collection/analysis on the sexual and reproductive health of adolescents, including unmarried adolescents, to inform policy and programming.

In addition to the four SD, the policy also has two Cross Cutting Issues (CCI): the first is Social and Behaviour Change Communication and the second is Health Systems Strengthening. One of the key strategies of developing leadership and governance under CCI 2, is to provide leadership in mainstreaming adolescent SRH services at all levels of service provision according to the ESP.<sup>126</sup> A key strategy of ensuring healthcare financing under CCI 2 is the generation of evidence based advocacy to increase budgetary allocation to provide SRH information and services at national, district and sub-district level to adolescents.<sup>127</sup>

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<sup>126</sup> Ibid, 21.

<sup>127</sup> Ibid, 22.

## 5. International Legal Framework on SRHR

This chapter provides an overview of Bangladesh's commitment to ensure SRHR under various international human rights mechanisms and how the GOB has reported on these obligations. It is important to note that the enforceability of international law before international courts is much more limited than the enforceability of national law before national courts. This is because the two international courts which primarily have jurisdiction over Bangladesh or nationals of Bangladesh are the International Criminal Court (ICC) and International Court of Justice (ICJ).

Under the Rome Statute which establishes the ICC, it only has the jurisdiction to investigate and try individuals charged with four of the gravest crimes under international law: genocide, war crimes, crimes against humanity and the crime of aggression.<sup>128</sup> Therefore, the jurisdiction of the ICC in relation to breaches relating to SRHR in Bangladesh is likely to only be met in relation to the perpetuation of sexual violence during warfare or as a means of committing genocide.<sup>129</sup>

The ICJ is the 'principal judicial organ' of the UN', having been established in June 1945 by the Charter of the United Nations.<sup>130</sup> In contrast to the ICC (which focuses on individual criminal responsibility of persons within the territory of member states), the ICJ resolves disputes between member states. Therefore, breaches of SRHR occurring inside a member state, such as Bangladesh, can only be litigated before the ICJ if another member state filed a case against Bangladesh before the ICJ. However, this is only likely to happen if the breaches of SRHR were tantamount to crimes against humanity, such as use of rape as a weapon of war in a wider genocidal campaign by an army against a local population, as has been the case with Myanmar

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<sup>128</sup> See: <https://www.icc-cpi.int/about>. See also: <https://www.icc-cpi.int/about/how-the-court-works>

<sup>129</sup> See: Rosemary Grey, *Prosecuting Sexual and Gender-Based Crimes at the International Criminal Court Practice, Progress and Potential* (Cambridge University Press 2019). See also: Colleen Duggan & Ruth Jacobson. 'Reparation of Sexual and Reproductive Violence: Moving from Codification to Implementation' in Ruth Rubio-Marin (ed.) *The Gender of Reparations Unsettling Sexual Hierarchies while Redressing Human Rights Violations* (Cambridge University Press 2009).

<sup>130</sup> See: <https://www.icj-cij.org/en/court>. See also: <https://www.icj-cij.org/en/how-the-court-works>

army's perpetuation of sexual violence against Rohingya women and girls. This led to The Gambia filing a case against Myanmar before the ICJ.<sup>131</sup>

Therefore, Bangladesh's obligation under international legal instruments discussed in this section, which are most relevant to the SRHR of women and girls, is not designed to be enforceable through an international court. Rather, the state obligation is to submit periodic reports to specialised treaty bodies which are comprised of independent experts to monitor and evaluate the progress made by states who ratified the treaty. For instance, Bangladesh's obligations under Convention on Elimination of Discrimination against Women (CEDAW) is monitored by the Committee on Elimination of Discrimination against Women (CEDAW Committee).

### 5.1 Universal Declaration of Human Rights (UDHR)

The UDHR guarantees everyone the right to a standard of living that is adequate for the health and well-being of the person, which includes but is not limited to medical care and social services.<sup>132</sup> Everyone also has the right to share in scientific advancement and its benefits,<sup>133</sup> which in the context of SRHR would mean the right to benefit from most modern scientific methods and processes that guarantee sexual and reproductive health.

### 5.2 International Covenant on Civil and Political Rights (ICCPR)

Under Article 23(3) of the ICCPR, GOB has a duty to ensure that no marriage takes place without the free and full consent of the intending spouses. This would therefore extend to protecting women and girls from early, forced and child marriage, where they either have not consented willingly, or where they have not yet developed the capacity to consent. Under Article 24(1) of the ICCPR, GOB must ensure that every child has the right to measures of protection which required due to their minor age from their family, society and the State, without any discrimination as to race, colour, sex, language, religion, national or social origin,

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<sup>131</sup> See: <https://www.icj-cij.org/en/case/178>

<sup>132</sup> Article 25, UDHR.

<sup>133</sup> Article 27, UDHR.

property or birth. In the context of SRHR, this would require GOB to ensure that female children are not subjected discriminatory practices, such as deprivation of education or forced marriage etc., from their families, communities and state.

### 5.3 International Covenant on Economic, Social and Cultural Rights (ICESCR)

Article 12 of the ICESCR has emerged as the central provision which obliges State parties to recognize the right of every person to ‘the enjoyment of the highest attainable standard of physical and mental health’. Although the Article originally made no specific reference to sexual or reproductive health, the Committee on Economic, Social and Cultural Rights (CESCR) in its General Comment No. 14 established that:

*The right to health is not to be understood as a right to be healthy. The right to health contains both **freedoms and entitlements**. The freedoms include the right to control one’s health and body, including **sexual and reproductive freedom**, and the right to be free from interference, such as the right to be free from torture, **non-consensual medical treatment and experimentation**. By contrast, the entitlements include the right to a system of health protection which provides **equality of opportunity for people to enjoy the highest attainable level of health**.*

One can clearly argue that the restrictions placed on a woman or girl’s reproductive freedom by dint of the abortion related offences in the Penal Code 1860 is at odds with the GOB’s obligations under Article 12 of the ICESCR, especially in light of the clarification of the scope of the Article provided in General Comment No. 14 by the Committee. General Comment No. 14 also made specific reference to certain legal obligations that state parties have in relation to ensuring SRHR:

*In particular, States are under the obligation to **respect** the right to health by, inter alia, refraining from denying or limiting equal access for all persons, including prisoners or detainees, minorities, **asylum-seekers** and illegal immigrants, to preventive, curative and palliative health services; abstaining from enforcing **discriminatory practices** as a State policy... In addition, States should **refrain** from **limiting access to contraceptives** and other means of maintaining **sexual and reproductive health**, from censoring, withholding or intentionally misrepresenting*

*health-related information, including **sexual education** and information, as well as from preventing people's participation in health-related matters.*

Importantly, the Committee went further to specifically lay out the obligations states have to realise SRHR under Article 12 in General Comment No.22 in 2016.<sup>134</sup> In relation to abortion, the Committee observed:<sup>135</sup>

*Preventing unintended pregnancies and unsafe abortions requires States to adopt legal and policy measures to guarantee all individuals access to affordable, safe and effective contraceptives and **comprehensive sexuality education**, including for adolescents; to **liberalize restrictive abortion laws**; to guarantee women and girls access to safe abortion services and quality post-abortion care, including by training health-care providers; and to respect the right of women to make **autonomous decisions** about their sexual and reproductive health.*

It further observed that states are required to repeal, and refrain from enacting, laws and policies that impede access to SRH services, which includes 'third-party authorisation requirements, such as parental, spousal and judicial authorization requirements for access to sexual and reproductive health services and information, including for abortion and contraception'.<sup>136</sup> It cites criminalisation of women undergoing abortions as an example of states violating their obligation to respect under Article 12.<sup>137</sup> Most importantly, the Committee laid out core obligations states have in relation to ensuring 'minimum essential levels of satisfaction of the right to sexual and reproductive health', which include at least eight components (Box 9).<sup>138</sup>

**Box 9: Core obligations relating to SRHR under Article 12 of the ICESCR**

(a) To repeal or eliminate laws, policies and practices that criminalize, obstruct or undermine access by individuals or a particular group to sexual and reproductive health facilities, services, goods and information;

<sup>134</sup> Committee on Economic, Social and Cultural Rights, General comment No. 22 (2016) on the right to sexual and reproductive health (article 12 of the International Covenant on Economic, Social and Cultural Rights) E/C.12/GC/22, <https://digitallibrary.un.org/record/832961?ln=en>

<sup>135</sup> Ibid, para 28.

<sup>136</sup> Ibid, para 41.

<sup>137</sup> Ibid, para 57.

<sup>138</sup> Ibid, para 49.

(b) To adopt and implement a national strategy and action plan, with adequate budget allocation, on sexual and reproductive health, which is devised, periodically reviewed and monitored through a participatory and transparent process, disaggregated by prohibited ground of discrimination;

(c) To guarantee universal and equitable access to affordable, acceptable and quality sexual and reproductive health services, goods and facilities, in particular for women and disadvantaged and marginalized groups;

(d) To enact and enforce the legal prohibition of harmful practices and gender-based violence, including female genital mutilation, child and forced marriage and domestic and sexual violence, including marital rape, while ensuring privacy, confidentiality and free, informed and responsible decision-making, without coercion, discrimination or fear of violence, in relation to the sexual and reproductive needs and behaviours of individuals;

(e) To take measures to prevent unsafe abortions and to provide post-abortion care and counselling for those in need;

(f) To ensure all individuals and groups have access to comprehensive education and information on sexual and reproductive health that are non-discriminatory, non-biased, evidence-based, and that take into account the evolving capacities of children and adolescents;

(g) To provide medicines, equipment and technologies essential to sexual and reproductive health, including based on the WHO Model List of Essential Medicines;

(h) To ensure access to effective and transparent remedies and redress, including administrative and judicial ones, for violations of the right to sexual and reproductive health.

In its initial (and latest) report to the CESCR in 2017, GOB noted its success in meeting its obligation to create access to primary health care under Article 12, with only two specific reference to strides made in ensuring sexual and reproductive health. Firstly, it noted that in the Health and Population Sector Programme (HPSP), certain services were remodelled as the Essential Service Package (ESP) with prioritisation of some of primary health care activities. One of the services included child health care, safe motherhood, family planning, MR, post abortion care, and management of sexually transmitted infections.<sup>139</sup> Secondly it noted that 13,622 full-time community healthcare providers (CHCPs) were recruited to run the Community Clinics (CC). About 1008 CCs conduct normal delivery and during 2009-2015, a

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<sup>139</sup> GOB, State party report to CESCR, E/C.12/BGD/1, para 227.

total of 23,837 normal deliveries were conducted in CCs without any mortality of the mother or the new born.<sup>140</sup>

#### 5.4 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

Under Article 10 of CEDAW, GOB has a duty to take all appropriate measures to eliminate discrimination against women, which includes ensuring access to specific educational information and advice on family planning.<sup>141</sup> Article 11(1) obliges GOB to eliminate discrimination against women at the workplace, by for instance, ensuring safe working conditions which includes ‘safeguarding of the function of reproduction’. Article 11(2) obliges GOB to prohibit dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status. The duty also extends to providing special protection to women during pregnancy in types of work proved to be harmful to them. Under Article 12 of CEDAW, GOB must take all appropriate measures to eliminate discrimination against women in the field of healthcare, and ensure equal access to healthcare services, including those related to family planning. Article 14 casts an obligation on GOB to take special measures to address the additional challenges faced by rural women, which includes ensuring they have the right to access information, counselling and services in family planning.

In GOB’s latest report to CEDAW in 2015, it highlighted a number of achievements in advancing SRHR. It noted that at the time about 3,500 Union Health and Family Welfare Centres and 407 Maternal Child Health-Family Planning units were operating and during 2009–12, a total of 2,722 Upazila Health Complexes were upgraded.<sup>142</sup> It also highlighted that primary healthcare facilities including reproductive healthcare services had been expanded for the low income urban communities and that maternal and tertiary health care service facilities had been expanded in collaboration with private sector. GOB did not, however, specify how these were done or provide any empirical evidence or examples.

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<sup>140</sup> Ibid, para 229.

<sup>141</sup> CEDAW, Article 10(h).

<sup>142</sup> Eighth periodic report of GOB to CEDAW Committee (2015), para 90.

It also noted that contraceptive use increased from 56% in 2007 to 61% in 2011 against a target of 72% by 2016.<sup>143</sup> However, 12 percent of currently married women have an unmet need for family planning services and which GOB targeted to reduce to 9 percent by 2016.<sup>144</sup> When reporting its progress under Article 12 of CEDAW to eliminate discrimination against women in access to health care and family planning, it noted a number of challenges relating to SRHR, which are worth quoting in full:

*174. The proportion of women marrying before age 18 decreased slightly but **child marriage** and **adolescent motherhood** rates are very high posing serious of **high maternal mortality** and the risk of the child being significantly undernourished and sick. **Contraceptive prevalence** rate has increased but **unmet demand** exists and door to door services could not be ensured.*

*175. As of 2014, a total of **3,241 persons** were registered as **HIV/AIDS infected** though estimated number was 9,500 of whom **3,300 were women** aged 15+. Women face social stigma. A total of twenty healthcare facilities for HIV testing and counselling and providing free ARV are being established. Prevention services are given to all types of **sex workers**. About **35,400 female sex workers** are covered by Global Fund for health and educational services. HIV positive pregnant women are treated in 3 tertiary level government hospitals. Also Anti-Retroviral Therapy (ART) and treatment support is given to them.*

*176. **Challenges:** Preference to male child, Ignorance, **child marriage, child pregnancy** is threats to women's **reproductive health**. The widespread stigma and **discrimination** against patients with **HIV/AIDs** and the **sex workers** hinder their access to services.*

In November 2016, the Committee issued its concluding observations in relation to the eight periodic reporting cycle of Bangladesh and it issued a number of recommendations to GOB, including the need to fully criminalise marital rape, in paragraph 19(a):<sup>145</sup>

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<sup>143</sup> Ibid, para 94.

<sup>144</sup> Ibid.

<sup>145</sup> Committee on the Elimination of Discrimination against Women Concluding observations on the eighth periodic report of Bangladesh, CEDAW/C/BGD/CO/8, para 19(a).

*Adopt, without delay, legislation criminalizing all forms of violence against women and girls, including marital rape irrespective of the age of the victim, domestic violence and all forms of sexual abuse, and ensure that the perpetrators are prosecuted and adequately punished and that the victims have access to immediate protection, rehabilitation and means of redress, including compensation;*

The Committee had requested GOB to send a written explanation on its progress in achieving these recommendations within two years. In July 2020, GOB submitted a report to the Committee explaining progress in relation to the Committee's concluding observations. However, when reporting progress under paragraph 19(a) of the Committee's concluding observations, GOB did not make any mention of marital rape.

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

Article 24 of the CRC draws on Article 12 of ICESCR and obliges GOB to ensure the right of all children to the enjoyment of the 'highest attainable standard of health' and to facilities for the treatment of illness and rehabilitation of health. In order to fulfil this right, GOB must take certain appropriate measures, two of which are specifically pertinent to SRHR. Firstly, it must ensure appropriate pre-natal and post-natal health care for mothers.<sup>146</sup> Secondly, it must develop family planning education and services for parents.<sup>147</sup>

In its latest report to CRC Committee, GOB noted a number of successes in advancing SRHR, of which two are noteworthy. Firstly, it highlighted that since 2009 MOWCA has been running day-care centres across the country to provide services to vulnerable children deprived of a family environment.<sup>148</sup> At the time of reporting there were 42 day-care centres, of which 33 were for lower income groups and 9 for middle income groups, from which more than 4,000 children and 4,000 mothers have benefited. The day-care centres host monthly mothers' meetings to educate mothers on child health, family planning and early marriage, among other social issues. Secondly, it highlighted the establishment of 379 adolescent clubs at the upazila level in seven districts by the Department of Women Affairs as part of its programme

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<sup>146</sup> CRC, Article 24(2)(d).

<sup>147</sup> CRC, Article 24(2)(f).

<sup>148</sup> GOB's 5<sup>th</sup> periodic state report to CRC Committee, para 190.

titled “Empowering Adolescent Girls and Boys”.<sup>149</sup> These clubs provide life skill-based training on various issues, such as child rights, gender, child marriage and reproductive health. It also engages children with different social welfare interventions such prevention of child marriage and so that adolescents can become ‘active agents for positive social change’.<sup>150</sup>

## 5.6 Convention on the Rights of Persons with Disabilities (CRPD)

Article 25 of the CRPD draws on state obligations to ensure the right to health under Article 12 of CESC, and right to health of children under Article 24 of CRC, and amplifies its significance with specific reference to persons with disabilities. GOB is obligated to ensure persons with disabilities can exercise their right to highest attainable standard of health without discrimination on the basis of their disability. GOB must take all appropriate measures to ensure access for persons with disabilities to health services that are gender-sensitive. This includes two specific measures related to SRHR of persons with disabilities. Firstly, GOB must provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of sexual and reproductive health.<sup>151</sup> Secondly, GOB must require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of free and informed consent.<sup>152</sup> In the context of SRHR, this would mean, for instance, that GOB must ensure doctors and medical officers performing MR receive specialised training on how consent can be freely obtained from those with disabilities who may not be able to sign the existing MR form. Notably, however, in its initial (and latest) report to the CRPD Committee, GOB stated that:<sup>153</sup>

*In general, there are hardly any cases of pregnancies arising outside of wedlock, particularly for women with disabilities. Bangladesh has made very good progress in controlling its population growth through a planned and effective country-wide family planning program. However, there is not practice of forced sterilizations.*

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<sup>149</sup> Ibid, para 235.

<sup>150</sup> Ibid.

<sup>151</sup> Article 25(a).

<sup>152</sup> Article 25(d).

<sup>153</sup> GOB’s initial state report to CRPD Committee (2017) CRPD/C/BGD/1, para 90.

While GOB has highlighted some of its achievements and challenges in advancing SRHR as part of its reporting obligations under various international human rights instruments, discussion of pressing SRHR issues, such as the provision of MR services was noticeably minimal. Other than the singular mention in its report to the CESCR, MR was not discussed by the GOB in any of the other reports to various UN treaty bodies despite its clear obligation under these international laws to ensure women and girls have access to safe abortion options, as this chapter has shown.

## Annex 1: Relevant National Legislation

**Note:** provisions of certain laws included in this annex, the titles of which have been marked with an asterisk (\*), are unofficial translations of the original legislation which were enacted in Bangla, as no official English translation of these laws have yet been produced.

<b>Constitution of Bangladesh</b>	
<b>Article 8. Fundamental principles</b>	<p>(1) The principles of nationalism, socialism, democracy and secularism, together with the principles derived from those as set out in this Part, shall constitute the fundamental principles of state policy.</p> <p>(2) The principles set out in this Part shall be fundamental to the governance of Bangladesh, shall be applied by the State in the making of laws, shall be a guide to the interpretation of the Constitution and of the other laws of Bangladesh, and shall form the basis of the work of the State and of its citizens, but shall not be judicially enforceable.</p>
<b>Article 15. Provision of basic necessities</b>	<p>It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens –</p> <p>(a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care;</p> <p>(b) the right to work, that is the right to guaranteed employment at a reasonable wage having regard to the quantity and quality of work</p> <p>(c) the right to reasonable rest, recreation and leisure; and</p> <p>(d) the right to social security, that is to say, to public assistance in cases of undeserved want arising from unemployment, illness or disablement, or suffered by widows or orphans or in old age, or in other such cases.</p>
<b>Article 16. Rural development and agricultural revolution</b>	<p>The State shall adopt effective measures to bring about a radical transformation in the rural areas through the promotion of an agricultural revolution, the provision of rural electrification, the development of cottage and other industries, and the improvement of education, communications and <b>public health</b>, in those areas, so as progressively to <b>remove the disparity</b> in the standards of living between the urban and the rural areas.</p>
<b>Article 18. Public health and morality</b>	<p>(1) The State shall regard the raising of the level of nutrition and the <b>improvement of public health</b> as among its <b>primary duties</b>, and in particular shall adopt effective measures to prevent the consumption, except for <b>medical purposes</b> or for such other purposes as may be prescribed by law, of alcoholic and other intoxicating drinks and of <b>drugs</b> which are <b>injurious to health</b>.</p> <p>(2) The State shall adopt effective measures to prevent prostitution and gambling.</p>

<b>Article 19. Equality of opportunity</b>	<p>(1) The State shall endeavour to ensure equality of opportunity to all citizens.</p> <p>(2) The State shall adopt effective measures to remove social and economic inequality between man and man and to ensure the equitable distribution of wealth among citizens, and of opportunities in order to attain a uniform level of economic development throughout the Republic.</p> <p>(3) The State Shall endeavour to ensure equality of opportunity and participation of women in all spheres of national life.</p>
<b>Article 27. Equality before law</b>	All citizens are <b>equal</b> before law and are entitled to equal protection of law.
<b>Article 28. Discrimination on grounds of religion, etc.</b>	<p>(1) The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.</p> <p>(2) Women shall have equal rights with men in all spheres of the State and of public life.</p> <p>(3) No citizen shall, on grounds only of religion, race, caste, sex or place of birth be subjected to any disability, liability, restriction or condition with regard to access to any place of public entertainment or resort, or admission to any educational institution.</p> <p>(4) Nothing in this article shall prevent the State from making special provision in favour of women or children or for the advancement of any backward section of citizens.</p>
<b>Article 32. Protection of right to life and personal liberty</b>	No person shall be deprived of life or personal liberty save in accordance with law.
<b>Article 44. Enforcement of fundamental rights</b>	<p>(1) The right to move the High Court Division in accordance with clause (1) of article 102, for the enforcement of the rights conferred by this Part is guaranteed.</p> <p>(2) Without prejudice to the powers of the High Court Division under article 102, Parliament may by law empower any other court, within the local limits of its jurisdiction, to exercise all or any of those powers.</p>
<b>Penal Code 1860</b>	
<b>Chapter II: General Explanations</b>	
<b>Section 10. "Man" "Woman"</b>	The word "man" denotes a male human being of any age: the word "woman" denotes a female human being of any age.
<b>Section 45. Life</b>	The word "life" denotes the life of a human being, unless the contrary appears from the context.
<b>Section 46. Death</b>	The word "death" denotes the death of a human being, unless the contrary appears from the context.

<b>Section 52. Good faith</b>	Nothing is said to be done or believed in "good faith" which is done or believed without due care and attention.
<b>Section 299. Culpable homicide</b>	Whoever causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death, commits the offence of culpable homicide.
<b>Chapter XVI: Of Offences Affecting The Human Body</b>	
<i>Of the causing of Miscarriage, of Injuries to unborn Children, of the Exposure of Infants, and of the Concealment of Births.</i>	
<b>Section 312. Causing miscarriage</b>	Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.  Explanation.-A woman who causes herself to miscarry, is within the meaning of this section.
<b>Section 313. Causing miscarriage without women's consent</b>	Whoever commits the offence defined in the last preceding section without the consent of the woman, whether the woman is quick with child or not, shall be punished with 105[imprisonment] for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.
<b>Section 314. Death caused by act done with intent to cause miscarriage</b>	Whoever, with intent to cause the miscarriage of a woman with child, does any act which causes the death of such woman, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine,  <b>If act done without women's consent:</b> and if the act is done without the consent of the woman, shall be punished either with 106[imprisonment] for life, or with the punishment above-mentioned.  <b>Explanation.</b> It is not essential to this offence that the offender should know that the act is likely to cause death.
<b>Section 315. Act done with intent to prevent child being born alive or to cause it to die after birth</b>	Whoever before the birth of any child does any act with the intention of thereby preventing that child from being born alive or causing it to die after its birth, and does by such act prevent that child from being born alive, or causes it to die after its birth, shall, if such act be not caused in good faith for the purpose of saving the life of the mother, be punished with imprisonment of either description for a term which may extend to ten years, or with fine, or with both.
<b>Section 316. Causing death of quick unborn child by act amounting</b>	Whoever does any act under such circumstances, that if he thereby caused death he would be guilty of culpable homicide, and does by such act cause the death of a quick unborn child, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

<b>to culpable homicide</b>	<p><i>Illustration</i></p> <p>A, knowing that he is likely to cause the death of a pregnant woman, does an act which, if it caused the death of the woman, would amount to culpable homicide. The woman is injured but does not die; but the death of an unborn quick child with which she is pregnant thereby caused. A is guilty of the offence defined in this section</p>
<b>Of Rape</b>	
<b>Section 375. Rape</b>	<p>A man is said to commit "rape" who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions:</p> <p>Firstly. Against her will.</p> <p>Secondly. Without her consent.</p> <p>Thirdly. With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.</p> <p>Fourthly. With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.</p> <p>Fifthly. With or without her consent, when she is under fourteen years of age.</p> <p>Explanation. Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.</p> <p>Exception. Sexual intercourse by a man with his own wife, the wife not being under thirteen years of age, is not rape.</p>
<b>CHAPTER XXII: Of Criminal Intimidation, Insult, Prejudicial Act and Annoyance</b>	
<b>Section 509. Word, gesture or act intended to insult the modesty of a woman</b>	<p>Whoever, intending to insult the modesty of any woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen, by such woman, or intrudes upon the privacy of such woman, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.</p>
<b>Evidence Act 1872</b>	
<b>Section 45. Opinions of experts</b>	<p>When the Court has to form an opinion upon a point of foreign law, or of science, or art, or as to identity of hand writing or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts.</p> <p>Such persons are called experts.</p> <p>Illustrations</p> <p>(a) The question is, whether the death of A was caused by poison.</p>

	<p>The opinion of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.</p> <p>(b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the act, or that he was doing what was either wrong or contrary to law.</p> <p>The opinions of experts upon the question whether the symptoms exhibited by A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.</p> <p>(c) The question is whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.</p> <p>The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant.</p>
<p><b>Section 155.</b> <b>Impeaching credit of witness</b></p>	<p>155. The credit of a witness may be impeached in the following ways by the adverse party, or, with the consent of the Court, by the party who calls him:</p> <p>(1) by the evidence of persons who testify that they, from their knowledge of the witness, believe him to be unworthy of credit;</p> <p>(2) by proof that the witness has been bribed, or has accepted the offer of a bribe, or has received any other corrupt inducement to give his evidence;</p> <p>(3) by proof of former statements inconsistent with any part of his evidence which is liable to be contradicted;</p> <p>(4) when a man is prosecuted for rape or an attempt to ravish, it may be shown that the prosecutrix was of generally immoral character.</p> <p>Explanation.—A witness declaring another witness to be unworthy of credit may not, upon his examination-in-chief, give reasons for his belief, but he may be asked his reasons in cross-examination, and the answers which he gives cannot be contradicted, though, if they are false, he may afterwards be charged with giving false evidence.</p> <p>Illustrations</p> <p>(a) A sues B for the price of goods sold and delivered to B. C says that A delivered the goods to B.</p> <p>Evidence is offered to show that, on a previous occasion, he said that he had not delivered the goods to B.</p> <p>The evidence is admissible.</p> <p>(b) A is indicted for the murder of B.</p> <p>C says that B, when dying, declared that A had given B the wound of which he died.</p>

	Evidence is offered to show that, on a previous occasion, C said that the wound was not given by A or in his presence. The evidence is admissible.
<b>Code of Criminal Procedure 1908</b>	
<b>Section 509A. Report of post-mortem examination</b>	Where in any inquiry, trial or other proceeding under this Code the report of a post-mortem examination is required to be used as evidence, and the Civil Surgeon or other medical officer who made the report is dead or is incapable of giving evidence or is beyond the limits of Bangladesh and his attendance cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable, such report may be used as evidence.
<b>Suppression of Violence against Women and Children Act (Nari o Shishu Nirjaton Doman Ain) 2000*</b>	
<b>Section 9. Punishment for rape, death caused by rape, etc.</b>	<p>(1) If a man rapes a woman or a child, he is liable to [death penalty or rigorous life imprisonment] and shall also be liable to fine.</p> <p>Explanation- If a man has sexual intercourse with a woman without marital relation over the age of 16 [sixteen years] without her consent, or by intimidation or fraudulently obtaining her consent, or with a woman under the age of 16 [sixteen years] with her consent or without consent, if so, he will be considered to have raped the woman.</p> <p>(2) If a woman or child [victim of rape] dies as a result of being raped by a person or any other activity after that rape, in that case the person shall be punishable with death or rigorous life imprisonment and shall also be liable to a fine not less than one lakh taka.</p> <p>(3) If more than one person gang rapes a woman or child and the woman or child dies as a result of the rape or is injured, then each of such person of the group shall be punished with death or rigorous life imprisonment and shall also be liable to a fine not less than one lakh taka.</p> <p>(4) If any person causes any woman or children-</p> <p>a. Attempts to cause death or injury by rape may be punishable with death or rigorous life imprisonment and shall also be liable to fine;</p> <p>b. Attempts to rape, the person shall be punishable with imprisonment for a term not exceeding ten years but not less than five years and shall also be liable to fine.</p> <p>(5) If a woman [becomes a victim of rape] while in police custody, the person or persons in whose custody the rape took place, unless proven otherwise, such person or persons who were directly [in charge] for the custody of such [victim of rape], for failure of custody shall be punishable with imprisonment for a term not exceeding ten years, but not less than five years, and shall also be liable to a fine not less than ten thousand taka.</p>
<b>Section 10. Punishment for</b>	If a person unlawfully touches the sexual organs of a woman or a child or any other part with his body or any other object for the purpose of satisfying his sexual desire, the act will be sexual harassment and for that the person shall be punished with

<p><b>sexual oppression, etc.</b></p>	<p>rigorous imprisonment for a term not exceeding ten years but not less than three years and shall also be liable to fine.</p>
<p><b><u>Section 13:</u></b> <b><u>Provisions</u></b> <b><u>regarding children</u></b> <b><u>born as a result of</u></b> <b><u>rape</u></b></p>	<ol style="list-style-type: none"> <li>1. Notwithstanding anything contained in any other laws if a child is born as a result of rape- <ol style="list-style-type: none"> <li>a. The child may be placed in the care of his mother or his maternal relatives;</li> <li>b. The child shall be entitled to be identified with the identity of his father or mother, or both;</li> <li>c. The maintenance of the child shall be borne by the State;</li> <li>d. The maintenance of the child shall be payable till he attains the age of twenty one years, however, in the case of a girl child over the age of twenty one, until she gets married and in the case of a crippled child, it shall be paid until he is qualified to support himself.</li> </ol> </li> <li>2. The Government shall, in the manner prescribed by Rules, determine the amount to be paid for the maintenance of the child referred to in subsection (1).</li> <li>3. The government may recover from the rapist the maintenance amount payable to any child under this section and if it is not possible to recover the money from the existing assets of the rapist, it will be recoverable from the assets that he will own in the future.</li> </ol>
<p><b>Section 23.</b> <b>Testimony of</b> <b>chemical, blood</b> <b>examiner, etc.:</b></p>	<p>If it is necessary that the testimony of a government-appointed physician, chemical examiner, assistant chemical examiner, blood examiner, handwriting specialist, fingerprint expert or firearm expert is required to be taken at trial after a report has been submitted by the expert after examining and analysing certain matter relevant to an offence committed under this Act, but if he has died or he is unable to testify or cannot be traced or attempts to bring him before the Tribunal will be a matter of delay, expense or inconvenience which may not be desirable according to the circumstances, his signed examination report may be accepted as evidence at trial under this Act. : Provided that, the Tribunal cannot convict the accused solely on the basis of the report only.</p>
<p><b>Section 32.</b> <b>Medical</b> <b>examination of the</b> <b>accused of the</b> <b>crime and the</b> <b>victim of a crime</b></p>	<ol style="list-style-type: none"> <li>(1) The medical examination of the [accused of crime committed under this Act and the victim of the crime] may be carried out in a government hospital or in a private hospital recognised by the government for this purpose by using the latest technology.</li> <li>(2) If a victim of an offence, committed under this Act, is brought to a hospital referred to in subsection (1) for treatment, the doctor on duty at that hospital shall expedite his/her medical examination and issue a certificate of medical examination to the person concerned and inform the local police station of the occurrence of such offence.</li> <li>(3) In case of non-completion of any medical examination within a reasonable period of time under this section, after reviewing the report containing explanations, if the controlling officer or, as the case may be, the authority ordering the medical</li> </ol>

	examination or the officer, Magistrate, Tribunal or any other concerned authority concludes that the doctor concerned is responsible for not completing the medical examination within reasonable time, such shall be considered as incompetence and misconduct of the responsible person and such incompetence and misconduct shall be recorded in his annual confidential report and in appropriate cases action may be taken against him in accordance with the rules of service, the Tribunal may direct the employing authority or, as the case may be, the appropriate authority to take action against the concerned doctor for negligence of duty.]
<b>Section 32A. Deoxyribonucleic Acid (DNA) examination of the accused and the victim of the crime</b>	Deoxyribonucleic Acid (DNA) examination of the accused person and the victim of crimes under this Act shall be done under the Deoxyribonucleic Acid (DNA) Act 2014 (Act No. 10 of 2014) beside the medical examination prescribed under section 32 of the Act whether the person agrees or not.
<b>Acid Offences Control Act 2002</b>	
<b>Section 5. Punishment for causing hurt by acid.</b>	<p>If any person causes hurt to any other person in such a way that his–</p> <p>(a) eye sight or hearing power is lost fully or partially or face, <b>breast or sexual organ</b> is defaced or destroyed, such person shall be punished with death or rigorous imprisonment for life and in addition to that shall also be liable to fine not exceeding Taka one lac;</p> <p>(b) any other organ, ligament or part of the body is deformed or destroyed or any part of the body is injured, such person shall be punished with rigorous imprisonment for not more than fourteen years but not less than seven years and in addition to that shall be liable to fine not exceeding Taka fifty thousand.</p>
<b>Section 20. Evidence of Chemical examiner blood examiner, etc.</b>	<p>If the evidence of any doctor, chemical examiner, assistant chemical examiner, blood examiner, hand writing expert, finger print expert or arms expert appointed by the government who submits any report by examining or analysing any matter at the time of proceeding any offence under this Act, is required in trial, but is dead or unable to depose or is not possible to find out him or the endeavour to produce him before the Tribunal shall cause such late, expenditure or disadvantage that is not expected for the situation, then the examination report signed by him shall be accepted as evidence at the time of trial under this Act:</p> <p>Provided that, the Tribunal shall not award conviction to the accused person only on the basis of such report.</p>
<b>Section 29. Medical test</b>	<p>(1) The medical test of any person who is victim of any offence committed under this Act, shall be done in any government hospital or in any private hospital or in any health centre run by any non- government voluntary association recognized by the government for this purpose.</p> <p>(2) If any person who is victim of any offence committed under this Act is produced in any hospital or in any health centre mentioned under sub-section (1), the duty doctor of that hospital or health centre shall rapidly complete his medical test and give a certificate of the medical test to the concerned person.</p>

	(3) The Tribunal may direct the appointing authority or, as the case may be, the proper controlling authority to take necessary action for negligence of duty against the concerned doctor if the medical test is not done or certificate is not given under sub-section (2).
<b>Bangladesh Labour Act 2006</b>	
<b>Section 22. Discharge from service</b>	<p>(1) A worker may be discharged from service for reasons of physical or mental incapacity or continued ill-health certified by a registered medical practitioner.</p> <p>(2) If a discharged worker completes not less than one year of continuous service he shall be paid by the employer, as compensation, 30 (thirty) days' wages for his every year of service, or gratuity, if payable, whichever is higher.</p>
<b>Section 45. Prohibition of engagement of women worker in work in certain cases</b>	<p>(1) No employer shall knowingly engage a woman in his establishment during the 8 (eight) weeks immediately following the day of her delivery.</p> <p>(2) No woman shall work in any establishment during the 8 (eight) weeks immediately following the day of her delivery.</p> <p>(3) No employer shall employ any woman for doing any work which is of an arduous nature or which involves long hours of standing or which is likely to adversely affect her health, if</p> <p>(a) he has reason to believe or if the woman has informed him that she is likely to deliver a child within 10 (ten) weeks;</p> <p>(b) to the knowledge of the employer the woman has delivered a child within the preceding 10 (ten) weeks:</p> <p>Provided that in the case of tea plantation worker, a woman worker may do work of a light nature if and for so long as the medical practitioner of the concerned tea estate certifies that she is physically fit to do so; and, for the days that she does such work, she shall be paid for such work wages at the rate prescribed under the existing law, and such wages shall be payable in addition to the maternity benefit.</p>
<b>Section 46. Right to maternity benefit and liability for its payment</b>	<p>(1) Every woman worker shall be entitled to maternity benefit from her employer for the period of 8 (eight) weeks<sup>1</sup> preceding the expected day of her delivery and 8 (eight) weeks immediately following the day of her delivery, and her employer shall be bound to give her this benefit:</p> <p>Provided that a woman shall not be entitled to such benefit unless she has worked under her employer for a period of not less than 6 (six) months immediately preceding</p>

	<p>the day of her delivery.</p> <p>(2) No such benefit shall be payable to a woman if at the time of her delivery she has 2 (two) or more surviving children, but in that case she may enjoy any leave which is due to her.</p>
<b>Section 50. Restrictions on termination of employment of a woman in certain cases</b>	<p>If any notice or order of discharge, dismissal, removal or otherwise termination of employment is given by the employer to a woman worker within a period of 6 (six) months before and 8 (eight) weeks after her delivery and such notice or order is given without sufficient cause, she shall not be deprived of any maternity benefit to which she would be entitled under this Chapter if such notice or order has not been given.</p>
<b>Section 59. Toilets and washrooms</b>	<p>In every establishment,</p> <p>(a) sufficient number of sanitary toilets and washrooms of the type prescribed by rules shall be provided at the suitable places so that the workers employed therein at the time of work may use easily;</p> <p>(b) such toilets and washrooms shall be provided separately for male and female workers;</p> <p>(c) toilets and washrooms shall be adequately lighted and ventilated and water shall be provided at all times; and</p> <p>(d) such toilets and washrooms shall be maintained in a clean and sanitary condition at all times with suitable detergents and disinfectants 6[at employer's cost.</p>
<b>Section 206. Functions of the participation committee</b>	<p>(1) The main function of the participation committee shall be to inculcate and develop sense of belonging to the establishment among the workers and employers and to aware the workers of their commitments and responsibilities to the establishment, and, in particular</p> <p>(a) to endeavour to promote mutual trust and faith, understanding and co-operation between the employers and the workers;</p> <p>(b) to ensure the application of labour laws;</p> <p>(c) to foster a sense of discipline and to improve and maintain safety, occupational health and working condition;</p> <p>(d) to encourage vocational training, workers' education and family welfare training;</p> <p>(e) to adopt measures for improvement of welfare services for the workers and their families; and</p> <p>(f) to fulfil production target, increase productivity, reduce production cost, prevent wastage and raise quality of products.</p>
<b>Domestic Violence (Prevention and Protection) Act 2010</b>	

<p><b>3. Domestic violence</b></p>	<p>For the purpose of this Act, domestic violence means physical abuse, psychological abuse, sexual abuse or economic abuse against a woman or a child of a family by any other person of that family with whom victim is, or has been, in family relationship.</p> <p>..</p> <p>(c) "<b>Sexual abuse</b>"- that is, any conduct of a sexual nature that abuses, humiliates, degrades or otherwise violates the dignity of the victim;</p>
<p><b>Section 4. Duties and responsibilities of Police Officer</b></p>	<p>A Police Officer, who has received a complaint of domestic violence or is otherwise present at the place of an incident of domestic violence or when the incident of domestic violence is reported to him or her, shall inform the victim-</p> <p>(a) of her right to make an application for obtaining a relief by way of any orders under this Act;</p> <p>(b) of the availability of medical services;</p> <p>(c) of the availability of services of the Enforcement Officers;</p> <p>(d) where applicable, of her right to free legal services under the Legal Aid Act, 2000 (Act 6 of 2000);</p> <p>(e) of her right to file a complaint under any other existing law; and</p> <p>(f) other duties and responsibilities prescribed by the government in this behalf.</p>
<p><b>Section 5. Appointment of Enforcement Officer</b></p>	<p>(1) For the purpose of this Act, the Government shall, by notification in the official gazette, appoint one or more Enforcement Officers in each upazila, thana, district or in a metropolitan area and shall also notify the area or areas within which an Enforcement Officer shall exercise the powers and functions conferred on him or her by or under this Act.</p> <p>(2) The terms and conditions of service of the Enforcement Officer shall be such as may be prescribed rule.</p>
<p><b>Section 7. Service provider and their duties and responsibilities</b></p>	<p>(1) Subject to the provisions of this Act and rules framed under it, any voluntary association registered under the Societies Registration Act, 1860 (Act XXI of 1860), or the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961( Ordinance XLVI of 1961) or a non-profit company or organization registered under the Companies Act, 1994 (Act 18 of 1994), or any non- profit organization or institution registered at NGO Affairs Bureau under Foreign Donations (Voluntary Activities) Regulation Ordinance,1978 (Ordinance XLVI of 1978),any other organization approved by the Government under any other law for the time being in force with the objective of <i>inter alia</i> protecting the human rights especially the rights and interests of women and children by any lawful means including providing of legal aid, medical, financial or other assistance shall be treated as a service provider for the purposes of this Act.</p> <p>(2) Duties and responsibilities of a service provider shall be as follows:-</p> <p>(a) record the domestic incident report in the prescribed form if the victim so desires and forward a copy thereof to the Court and the Enforcement Officer having jurisdiction in the area where the domestic violence took place;</p>

	<p>(b) refer the victim for medical examination and forward a copy of the medical report to the Enforcement Officer and the police station within the local limits of which the domestic violence took place;</p> <p>(c) refer the victim to a shelter home, if she so requires and forward a report of the lodging of the victim in the shelter home to the police station within the local limits of which the domestic violence took place.</p> <p>(d) perform such other duties and responsibilities as may be prescribed by rules.</p>
<b>Section 9. Duties of medical service provider</b>	On request by a victim or on her behalf, a police officer, an Enforcement Officer, a service provider or any other person, the person in charge of the medical facility in the hospital, clinic or medical centre shall provide medical aid to the victim.
<b>Section 34. Accountability of Enforcement Officer</b>	If any Enforcement Officer fails or refuses to discharge his or her duties as directed by the Court without any sufficient reason, he or she shall be liable for departmental proceeding
<b>Prevention and Suppression of Human Trafficking Act 2012</b>	
<b>Section 2. Definitions</b>	<p>(8) "Prostitution" means the sexual exploitation or abuse of any person for commercial purpose or for consideration in money or kind:</p> <p>...</p> <p>(9) "brothel" means any house, place or structure used for the purpose of prostitution:</p> <p>...</p> <p>(15) "exploitation" or "oppression" means but shall not be limited to the following actions done against any person with or without his or her consent:</p> <p>(a) exploitation or oppression of any person through prostitution or sexual exploitation or oppression:</p> <p>(b) taking benefits from any person engaging the person in the prostitution or production or distribution of pornographic materials:</p> <p>(c) receiving forced labour or service:</p> <p>(d) debt-bondage, slavery or servitude, practices similar to slavery, or servitude in household:</p> <p>(e) exploitation or oppression through fraudulent marriage:</p> <p>(f) forcibly engaging any person in the amusement trade:</p> <p>(g) forcibly engaging any person in begging: and</p> <p>(h) maiming any person or the removal of organs for the purpose of trade</p> <p>...</p>

	(17) “consent” means the consent of a person which is given freely and consciously and is not influenced by his or her weak position arising out of his or her age, sex and socio-economic backwardness:
<b>Section 3. Human Trafficking</b>	<p>(1) “human trafficking” means the selling or buying, recruiting or receiving, deporting or transferring, sending or confining or harbouring either inside or outside of the territory of Bangladesh of any person for the purpose of <b>sexual exploitation</b> or oppression, labour exploitation or any other form of exploitation or oppression by means of—</p> <p>(a) threat or use of force: or</p> <p>(b) deception, or abuse of his or her socio-economic or environmental or other types of vulnerability: or</p> <p>(c) giving or receiving money or benefit to procure the consent of a person having control over him or her.</p> <p>(2) If the victim of trafficking is a child, it shall be immaterial whether any of the means of committing the offence mentioned in clause (a) to (c) of subsection (1) is used or not.</p>
<b>Section 11. Penalty for importing or transferring for prostitution or any other form of sexual exploitation or oppression</b>	If any person brings any other person into Bangladesh or transfers the person inside the territory of Bangladesh with a view to engaging in prostitution or any other form of sexual exploitation or oppression by means of force of fraud or seduction, he shall be deemed to have committed an offence and shall for the offence be punished with rigorous imprisonment for a term not exceeding 7 (seven) years but not less than 5 (five) years and with fine not less than taka 50 (fifty) thousand.
<b>Section 13. Penalty for soliciting for the purpose of prostitution</b>	If any person in any street or public place or from within any house or building. by words, gestures, or indecent personal exposure attracts the attention of any other person for the purpose of prostitution he shall be deemed to have committed an offence and shall, for the offence, be punished with rigorous imprisonment for a term not exceeding 3 (three) years or with fine not exceeding taka 20 (twenty) thousand or with both.
<b>Section 35. Establishment of protective homes and rehabilitation centre</b>	<p>(1) With a view to facilitating physical and psychological treatment, rehabilitation and family reconciliation of the victims of trafficking, the Government shall establish adequate numbers of protective home and rehabilitation centre throughout the country</p> <p>(2) After the commencement of this Act, every person or organization willing to establish any such protective home or rehabilitation centre shall not conduct any activities without obtaining the license or temporary permission from the Government by such manner and under such conditions as may be prescribed by rules.</p> <p>Provided that any protective home or rehabilitation centre already established, shall</p>

	obtain such license or permit within 6 (six) months from the commencement of this Act.
<b>Section 36. Protection, rehabilitation and social integration</b>	<p>(1) The victim of human trafficking shall, upon being rescued if not returned to his own family be sent to any government or non-government protective home or rehabilitation centre and all information relating thereto shall be sent at once to the Government or to the competent authority.</p> <p>(2) Every victim of human trafficking residing in a protective home or rehabilitation centre shall be entitled to give consent to the concerned matter and to get medical treatment and legal and psychological counselling service including sustainable rehabilitation and social integration facilities.</p>
<b>Persons with Disabilities (Rights and Protection) Act 2013*</b>	
<b>Section 16. Rights of persons with disabilities</b>	<p>(1) Every person with a disability shall have the following rights, namely, according to the type of disability, without infringing upon the totality of the provisions of any other law or document in force of law for the time being in force.</p> <p>(F) accessibility;</p> <p>(K) protection from oppression and the benefits of a safe and healthy environment;</p> <p>(L) access to the highest quality of healthcare, subject to availability;</p> <p>(6) access to support services and rehabilitation facilities with the aim of becoming fully integrated in all spheres of social life by acquiring physical, mental and technical capacity;</p> <p>(O) as far as possible, safe housing and rehabilitation if the disabled person is dependent on his parents or family and is separated from his parents or family or does not have adequate accommodation and sustenance;</p> <p>(2) No person, institution, authority or body may discriminate or discriminate against any person with disability in relation to the rights referred to in sub-section (1).</p>
<b>Pornography Control Act 2012*</b>	
<b>Section 2. Definition</b>	<p>(c) "Pornography" means:</p> <p>(i) any obscene dialogue, acting, gesture, nude or half-naked dance that is sexually arousing, which is captured and displayed in movies, video images, audio visual images, still images, graphics or any other means and which has no artistic or educational value;</p> <p>(ii) pornographic books, periodicals, sculptures, statues, cartoons or leaflets that cause sexual arousal;</p>

<p><b>Section 8. Penalty</b></p>	<p>(1) If a person produces or contracts participants to produce pornography, or forces a woman, man or child to participate, or tempts a woman, man or child to participate and captures a still image, video or film with or without their knowledge, he will be deemed to have committed an offense and for such offense he will be punished with rigorous imprisonment up to a maximum of 7 (seven) years and a fine of up to Tk. 200,000 (two lakh).</p> <p>(2) A person shall be deemed to have committed a crime if he harms the social or personal status of another person through pornography or extorts money or any other benefit through intimidation or mentally abuses that [other] person through any pornographic collected without or without that [other] person's knowledge. He will be sentenced to a maximum of 5 (five) years rigorous imprisonment and a fine of up to Tk. 200,000 (two lakh).</p> <p>(3) A person who provides pornography through the internet or a website or a mobile phone or any other electronic device shall be deemed to have committed a crime and shall be liable to a maximum of 5 (five) years rigorous imprisonment and a fine of 200,000 (two lakhs).</p> <p>(4) A person who causes public nuisance by displaying pornography shall be deemed to have committed a crime and shall be liable to a maximum of 2 (two) years rigorous imprisonment and a fine up to Tk. 1,00,000 (one lakh) for such offense.</p> <p>(5) Any person, who:</p> <p>(a) sells, rents, distributes, supplies, publicly displays or otherwise promotes pornography or prepares, produces, transports or stores it for any or all of those purposes; or</p> <p>(b) advertises any type of pornographic place; or</p> <p>(c) has taken the initiative to commit any offense identified as an offense under this sub-section;</p> <p>He shall be deemed to have committed an offense and for such offense he shall be punished with a maximum of 2 (two) years rigorous imprisonment and a fine up to Tk. 1,00,000 (one lakh).</p> <p>(6) Any person using a child to produce, distribute, print and publish pornography or to sell, supply or display child pornography or to advertise any child pornography shall be deemed to have committed a crime and shall be liable to such offense for a term not exceeding 10 (ten) years. Will be sentenced to rigorous imprisonment and a fine of up to Rs. 500,000 (five lakhs).</p> <p>(7) Everyone who is directly involved in or aids in any crime under this Act shall be punished with the same punishment.</p>
<p><b>Child Marriage Restraint Act 2017</b></p>	
<p><b>Section 3. Formation of Child Marriage</b></p>	<p>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</p>

<b>Prevention Committees</b>	representatives, non-government officials and respectable persons at local level and determine the functions of the committees.
<b>Section 4. General powers of certain government officials and local government representatives to prevent child marriage</b>	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.
<b>Section 19. Special provision</b>	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.
<b>Mental Health Act 2017*</b>	
<b>Section 6. The right of a person suffering from mental illness</b>	(1) Matters of health, property, dignity, education and other rights of a person suffering from mental illness shall be ensured.  (2) Matters relating to the rights of a person suffering from mental illness referred to in sub-section (1) shall be governed by rules.
<b>Section 18. Rehabilitation of a person suffering from mental illness.</b>	(1) After the recovery of a person suffering from mental illness without a guardian or relative or without an address, the concerned mental hospital shall transfer the person to the concerned district or nearest social service institution or rehabilitation centre with his or her recovery certificate.  (2) The mental hospital concerned shall provide follow-up treatment after the recovery of the person mentioned in sub-section (1).  (3) If the person in charge of running the institution or centre referred to in sub-section (1) is aggrieved about the treatment of the patient, he may apply to the Mental Health Review and Monitoring Committee for remedy.
<b>Section 19. Establishment and management of rehabilitation centres for persons suffering from mental illness</b>	(1) Notwithstanding anything contained in any other law for the time being in force, a rehabilitation centre may be established and operated subject to the prior permission of the Government to ensure the right of rehabilitation of a person suffering from mental illness.  (2) Matters relating to the establishment and operation of rehabilitation centres referred to in sub-section (1) shall be governed by rules.
<b>Child Marriage Restraint Rules 2018*</b>	

<p><b>Rule 17. Special provisions of marriage</b></p>	<p>In case of applying special provisions of marriage, the following procedure shall be followed, namely:</p> <p>(1) if the marriage is required before the age set out in section 2(1) for the best interest of the child then the parents or legal guardian of the minor and other party of the marriage; or the parties of the marriage shall jointly submit an application with documentary evidence before the Court. To investigate the genuineness of the application the court will send the application to the verification committee under Rule 17(3)(a) of these Rules.</p> <p>(2) The verification committee shall submit the report before the Court within a period of not more than fifteen days.</p> <p>(3) Verification committee:</p> <p>(a) the committee will be formed with the member mentioned below to investigate the best interest of the minor:</p> <p>(i) The Executive Officer of the Upazila shall be the President of the Committee.  (ii) A medical officer nominated by the Upazila Health and Family Planning Officer  (iii) Upazila Social Services Officer  (iv) Chairman of the concerned Union Parishad  (v) Reserved female member of the concerned ward of the Union Parishad  (vi) Two adolescent (one male and one female) appointed by the Executive Officer of the Upazila.  (vii) The Upazila Women's Affairs Officer shall be the Member Secretary of the Committee.</p> <p>(b) The quorum shall be completed in the presence of two-thirds of the members of the verification committee described in paragraph (a).</p> <p>(c) Upon receipt of the application under special provisions described in section 19 , if the verification committee is satisfied that the marriage is occurring before the prescribed age in the best interest of the minor and the last option for the minor under sec 17(2) (a). then the committee shall submit the report before the Court with clear opinion.</p> <p>However, Provided that</p> <p>(i) if marriages intended to took place by force;  (ii) when the marriage takes place because of rape, abduction, forcible sexual relations, etc.;</p> <p>(iii) When any case related to rape, abduction, forcible sexual relations is going between the parties involved in the marriage;</p> <p>The Verification Committee shall submit a report to the court giving an opinion on not to perform the marriage before the prescribed age.</p> <p>(4) After receiving the report of the committee, it appears to the court that in the best interest of the minor, it may be permissible to perform the marriage under special provision. The court may grant permission. Or if necessary then the Court can order further investigation / repetition to settle the matter.</p> <p>(5) The verification committee shall send the written report to the court in a sealed envelope. If necessary the Court may issue an order for the committee to appear in court.</p>
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## Annex 2: Relevant Provisions from International Legal Instruments

<b>Universal Declaration of Human Rights (UDHR)</b>	
<b>Article 25</b>	1. Everyone has the right to a standard of living adequate for the <b>health</b> and well-being of himself and of his family, including food, clothing, housing and <b>medical care</b> and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
<b>Article 27</b>	1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
<b>International Covenant on Civil and Political Rights (ICCPR)</b>	
<b>Article 1</b>	<p>1. All peoples have the right of <b>self-determination</b>. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.</p> <p>2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.</p> <p>3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the <b>realization of the right of self-determination</b>, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.</p>
<b>Article 23</b>	<p>1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.</p> <p>2. The right of men and women of <b>marriageable age</b> to marry and to found a family shall be recognized.</p> <p>3. No marriage shall be entered into without the free and full <b>consent</b> of the intending spouses.</p> <p>4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.</p>
<b>Article 24</b>	1. Every child shall have, without any <b>discrimination</b> as to race, colour, <b>sex</b> , language, religion, national or social origin, property or birth, the right to such <b>measures of protection</b> as are required by his status as a <b>minor</b> , on the part of his family, society and the State.
<b>International Covenant on Economic, Social and Cultural Rights (ICESCR)</b>	
<b>Article 12</b>	1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

	<p>2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:</p> <p>(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;</p> <p>(b) The improvement of all aspects of environmental and industrial hygiene;</p> <p>(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;</p> <p>(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.</p>
<p><b>Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)</b></p>	
<p><b>Article 10</b></p>	<p>States Parties shall take all appropriate measures to <b>eliminate discrimination</b> against women in order to ensure to them equal rights with men in the field of <b>education</b> and in particular to ensure, on a basis of equality of men and women:</p> <p>(a) The same conditions for career and vocational guidance, for access to studies and for the achievement of diplomas in educational establishments of all categories in rural as well as in urban areas; this equality shall be ensured in pre-school, general, technical, professional and higher technical education, as well as in all types of vocational training;</p> <p>(b) Access to the same curricula, the same examinations, teaching staff with qualifications of the same standard and school premises and equipment of the same quality;</p> <p>(c) The elimination of any stereotyped concept of the roles of men and women at all levels and in all forms of education by encouraging coeducation and other types of education which will help to achieve this aim and, in particular, by the revision of textbooks and school programmes and the adaptation of teaching methods;</p> <p>(d) The same opportunities to benefit from scholarships and other study grants;</p> <p>(e) The same opportunities for access to programmes of continuing education, including adult and functional literacy programmes, particularly those aimed at reducing, at the earliest possible time, any gap in education existing between men and women;</p> <p>(f) The reduction of female student drop-out rates and the organization of programmes for girls and women who have left school prematurely;</p> <p>(g) The same Opportunities to participate actively in sports and physical education;</p> <p>(h) Access to specific educational information to help to ensure the health and well-being of families, including information and advice on <b>family planning</b>.</p>
<p><b>Article 11</b></p>	<p>1. States Parties shall take all appropriate measures to <b>eliminate discrimination</b> against women in the field of <b>employment</b> in order to ensure, on a basis of equality of men and women, the same rights, in particular:</p>

	<p>(a) The right to work as an inalienable right of all human beings;</p> <p>(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;</p> <p>(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;</p> <p>(d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;</p> <p>(e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;</p> <p>(f) The right to <b>protection of health</b> and to safety in working conditions, including the safeguarding of the <b>function of reproduction</b>.</p> <p>2. In order to prevent <b>discrimination</b> against women on the grounds of marriage or <b>maternity</b> and to ensure their effective right to work, States Parties shall take appropriate measures:</p> <p>(a) To prohibit, subject to the imposition of sanctions, <b>dismissal</b> on the grounds of <b>pregnancy</b> or of maternity leave and discrimination in dismissals on the basis of marital status;</p> <p>(b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;</p> <p>(c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;</p> <p>(d) To provide <b>special protection</b> to women during <b>pregnancy</b> in types of work proved to be harmful to them.</p> <p>3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.</p>
<b>Article 12</b>	<p>1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of <b>health care</b> in order to ensure, on a basis of equality of men and women, access to health care services, including those related to <b>family planning</b>.</p> <p>2. Notwithstanding the provisions of paragraph 1 of this article, States Parties shall ensure to women appropriate services in connection with pregnancy, confinement and the post-natal period, granting free services where necessary, as well as adequate nutrition during pregnancy and lactation.</p>
<b>Article 14</b>	<p>1. States Parties shall take into account the particular problems faced by <b>rural women</b> and the significant roles which rural women play in the economic survival of their families, including their work in the non-monetized sectors of the economy, and shall take all appropriate measures to ensure the application of the provisions of the present Convention to women in rural areas.</p>

	<p>2. States Parties shall take all appropriate measures to eliminate discrimination against women in rural areas in order to ensure, on a basis of equality of men and women, that they participate in and benefit from rural development and, in particular, shall ensure to such women the right:</p> <p>(a) To participate in the elaboration and implementation of development planning at all levels;</p> <p>(b) To have access to adequate health care facilities, including information, counselling and services in <b>family planning</b>;</p> <p>(c) To benefit directly from social security programmes;</p> <p>(d) To obtain all types of training and education, formal and non-formal, including that relating to functional literacy, as well as, inter alia, the benefit of all community and extension services, in order to increase their technical proficiency;</p> <p>(e) To organize self-help groups and co-operatives in order to obtain equal access to economic opportunities through employment or self-employment;</p> <p>(f) To participate in all community activities;</p> <p>(g) To have access to agricultural credit and loans, marketing facilities, appropriate technology and equal treatment in land and agrarian reform as well as in land resettlement schemes;</p> <p>(h) To enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.</p>
<p><b>Article 16</b></p>	<p>1. States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women:</p> <p>(a) The same right to enter into marriage;</p> <p>(b) The same right freely to choose a spouse and to enter into marriage only with their free and full consent;</p> <p>(c) The same rights and responsibilities during marriage and at its dissolution;</p> <p>(d) The same rights and responsibilities as parents, irrespective of their marital status, in matters relating to their children; in all cases the interests of the children shall be paramount;</p> <p>(e) The same rights to decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights;</p> <p>(f) The same rights and responsibilities with regard to guardianship, wardship, trusteeship and adoption of children, or similar institutions where these concepts exist in national legislation; in all cases the interests of the children shall be paramount;</p> <p>(g) The same personal rights as husband and wife, including the right to choose a family name, a profession and an occupation;</p> <p>(h) The same rights for both spouses in respect of the ownership, acquisition, management, administration, enjoyment and disposition of property, whether free of charge or for a valuable consideration.</p> <p>2. The betrothal and the marriage of a child shall have no legal effect, and all necessary action, including legislation, shall be taken to specify a minimum age for marriage and to make the registration of marriages in an official registry compulsory.</p>

<b>Article 28</b>	<p>1. The Secretary-General of the United Nations shall receive and circulate to all States the text of reservations made by States at the time of ratification or accession.</p> <p>2. A reservation incompatible with the object and purpose of the present Convention shall not be permitted.</p> <p>3. Reservations may be withdrawn at any time by notification to this effect addressed to the Secretary-General of the United Nations, who shall then inform all States thereof. Such notification shall take effect on the date on which it is received.</p>
<b>Article 29</b>	<p>1. Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.</p> <p>2. Each State Party may at the time of signature or ratification of the present Convention or accession thereto declare that it does not consider itself bound by paragraph 1 of this article. The other States Parties shall not be bound by that paragraph with respect to any State Party which has made such a reservation.</p> <p>3. Any State Party which has made a reservation in accordance with paragraph 2 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations</p>
<b>Convention against Torture</b>	
<b>Article 1</b>	<p>1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.</p> <p>2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application</p>
<b>Article 2</b>	<p>1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.</p> <p>2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.</p> <p>3. An order from a superior officer or a public authority may not be invoked as a justification of torture.</p>
<b>Convention on the Rights of the Child (CRC)</b>	
<b>Article 3</b>	<p>1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.</p>

	<p>2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.</p> <p>3. States Parties shall ensure that the institutions, <b>services and facilities</b> responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, <b>health</b>, in the number and suitability of their staff, as well as competent supervision</p>
<b>Article 17</b>	<p>States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.</p> <p>To this end, States Parties shall:</p> <p>(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;</p> <p>(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;</p> <p>(c) Encourage the production and dissemination of children's books;</p> <p>(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;</p> <p>(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.</p>
<b>Article 24</b>	<p>1. States Parties recognize the right of the child to the enjoyment of the <b>highest attainable standard of health</b> and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.</p> <p>2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:</p> <p>(a) To diminish infant and child mortality;</p> <p>(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;</p> <p>(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;</p> <p>(d) To ensure appropriate <b>pre-natal and post-natal</b> health care for mothers;</p> <p>(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;</p>

	<p>(f) To develop preventive health care, guidance for parents and <b>family planning education and services</b>.</p> <p>3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.</p> <p>4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.</p>
<p><b>Convention on the Rights of Persons with Disabilities (CRPD)</b></p>	
<p><b>Article 25 - Health</b></p>	<p>States Parties recognize that persons with disabilities have the right to the enjoyment of the <b>highest attainable standard of health</b> without discrimination on the basis of disability. States Parties shall take all appropriate measures to ensure access for persons with disabilities to health services that are <b>gender-sensitive</b>, including health-related rehabilitation. In particular, States Parties shall:</p> <p>(a) Provide persons with disabilities with the same range, quality and standard of free or affordable health care and programmes as provided to other persons, including in the area of <b>sexual and reproductive health</b> and population-based public health programmes;</p> <p>(b) Provide those health services needed by persons with disabilities specifically because of their disabilities, including early identification and intervention as appropriate, and services designed to minimize and prevent further disabilities, including among children and older persons;</p> <p>(c) Provide these health services as close as possible to people's own communities, including in rural areas;</p> <p>(d) Require health professionals to provide care of the same quality to persons with disabilities as to others, including on the basis of <b>free and informed consent</b> by, inter alia, raising awareness of the human rights, dignity, autonomy and needs of persons with disabilities through training and the promulgation of ethical standards for public and private health care;</p> <p>(e) Prohibit discrimination against persons with disabilities in the provision of health insurance, and life insurance where such insurance is permitted by national law, which shall be provided in a fair and reasonable manner;</p> <p>(f) Prevent discriminatory denial of health care or health services or food and fluids on the basis of disability.</p>