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Safeguarding the best interest of the child in global context: International law and the child marriage

Abstract:

Child marriage is a menace of the humanity that has been prevailing since pre-historic times and prevails today in the present modern days of progress and advancement in science, technology and even ethics. Further it seems that there are no chances that this nuisance be eradicated from the world in near future as it is estimated that by 2030 at least 150 million girl children will be married before celebrating their 18th birthday. The modern nations have devised laws to combat this trouble and have prescribed multiple types of punishments who cause or get engaged in child marriages. Along with national legislation, the international Law, mostly under the umbrella of United Nations, has strictly forbidden the underage marriages but this does not look like that it will be put to an end in near future. This paper analysis some major human rights instruments at international level that have been agreed upon the nations of the world.

Keywords: Marriage, child, child marriage, forced marriage, underage marriage, ability to consent, international law, CEDAW, UNCRC, Convention on the Rights of the Child.

Introduction

In every known human society whether present or past the marriage has been a fundamental and important institution and has existed in any form. In the contemporary era, every complex society that is governed by law, the marriage is not merely a religious rite, only a way of procreation or a private romantic declaration but it prevails as a public legal act.⁶ If put in the practical, pragmatic, viable universal human scheme the marriage is for continuing the human generation and regulating the procreation, reproduction and breeding of children, and synchronizing the families and society as well, but the ways, methods or systems of marriage may differ across different societies. The marriage being public sexual union along with a civic contract causes sharing of resources and kinship obligations among the children, women and men that come in that bondage or are

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⁶ Although prior to the clear separation of church and state, church law interpreted by ecclesiastical courts governed in most parts of Europe. See, e.g., Lloyd Bonfield, Developments in European Family Law, in David I. Kertzer & Marzio Barbagli (eds.), *Family Life in Early Modern Times 1500-1789*, 2001, p. 87; Jeffrey R. Watt, The Impact of the Reformation and Counter-Reformation, in David I. Kertzer & Marzio Barbagli (eds.), *Family Life in Early Modern Times 1500-1789*, 2001, p. 125-54

produced by that public sexual combination.⁷ Marriage can truly be said, a social contract between two beings (either homo or hetero as the case may be as in many societies the same-sex marriages are made legal as well) which bands together their lives emotionally, economically, legally and spiritually⁸. It is a communal, interpersonal or civil relationship that acquires social, governmental and/or religious recognition⁹. Many experts have tried to define the term “marriage” but we cannot say that any one among them is complete, exhaustive or comprehensive definition of marriage.

But here, the question before us is whether the child marriages are compatible with the best interest of the child principle and in the case of either answer, but to what extent?

Child Marriage

As the definition of adulthood varies across cultures, regions and even religions, the child marriage can be any marriage that takes place or is caused before adulthood or coming of age of one or both spouses. However, here the subject is under the auspices of the UNCRC i.e. Convention on the Rights of the Child. So a child marriage is “a marriage of a person under 18 either male or female in the light of UNCRC 1989¹⁰ and CEDAW (Convention on the Elimination of All Forms of Discrimination against Women)¹¹. The monitoring committee that monitors the application of CEDAW and acts as watch dog has provided that the age to get married for both boys and girls should always be 18 years or above when “they have attained the capacity to act, the capacity to say yes or not and the full maturity as a being”.¹²

The early and child marriages are often the traditional practices, dictated by religious and customary laws along with the national laws which provide guiding provisions for a minimum age of marriage. The child marriage is often a result of “use of force, coercion, undue influence or threat of violence”. The marriage conducted without free and full consent, could be defined as forced marriage¹³, because it is against the wills of one or both spouses. The young brides are mostly not asked about even their wishes, even if they have any wish, it is bypassed by the wishes of the parents¹⁴.

The child marriage or early age marriage can be said as forced and involuntary marriage, because a child can neither marry nor be married legally. Making a child to get married by use of force, coercion and threat of violence constitute child abuse. Child marriage is an infringement and violation of children’s rights notwithstanding either it happens to a boy or a girl. Nonetheless the child marriage constitutes perhaps the most universally and extensive prevalent form of exploitation and sexual abuse of girls¹⁵. The harmful and catastrophic consequences of the child marriages inter alia, include separation from friends and family, impaired participation in community activities, lack and imperfect freedom to interact with peers, decreased or limited opportunities for education¹⁶ and more importantly the curtailment of their self-development. Child marriage can also lead or result in enslavement or bonded labor, physical and psychological violence, commercial sexual

⁷ Maggie Gallagher, What is Marriage For? The Public Purposes of Marriage Law, *Louisiana Law Review*, 2002, vol. 62(3), pp. 773-91

⁸ Donna Jones, *Marriage Consider the Rose*, Bloomington USA, 2011, p. 1

⁹ Abu Sadik Maruf, *Forced Marriage: A study on British Bangladeshi Community*, Authorhouse Bloomington USA, 2012, p. 5

¹⁰ UNCRC 1989, Art. 1.

¹¹ Plan France, *Mariage d'enfant et education: Faire reculer le mariage précoce par l'éducation des filles*, Rapport sur l'éducation des filles, 2013, p. 5.

¹² UN, General Recommendations Made by the Committee on the Elimination of Discrimination against Women, 1994, General Recommendation No. 21, 13th Session.

¹³ Naana Otoo-Oryortey and Sonita Pobi, Early Marriage and Poverty: Exploring links and key policy issues, *Gender and Development*, 2003, vol.11 (2), pp. 42-51.

¹⁴ Early Marriage: Whose Right to Choose? A report by Child Rights International Network (CRIN) 2001, available at : <http://www.crin.org/en/library/publications/early-marriage-whose-right-choose>

¹⁵ Mariam Ouattara, Purna Sen and Marilyn Thomson, Forced Marriage, Forced Sex: the Perils of Childhood for Girls, *Gender and Development Oxfam*, 1998, vol.6 (3), pp. 27-33.

¹⁶ Robert Jenson and Rebecca Thornton, Early female marriage in the developing world, *Gender and Development*, 2003, vol. 11(2), pp 9-19

exploitation of the children¹⁷, because the children are unable to resist and stop the tort-feasors and to convince or insist for safe sex i.e. over the use of a condom. Child brides or child spouses are at high risk to be exposed to extreme, serious and health issues for example, premature pregnancies, sexually transmitted diseases such as HIV/AIDS¹⁸, cervical cancer, and complications in abortions¹⁹. The early and child marriages are mostly the arranged marriages with the consent and approval of the parents or elders of the family, and usually fail or malfunction to ensure best interests and welfare of the child. Arranged marriages are often among cousins or close relatives, perhaps this is the reason that Pakistan has one of the preeminent and highest rates of consanguineous (cousin) marriage in the world²⁰. The poor or needy parents may consent to get their child married out due to social pressure, economic necessity or other cultural and religious instructions. The parents think that the marriage of their child will provide male guardianship for their daughters²¹, avoid pregnancy outside marriage, protect them from sexual assault, to protect the virginity of the girl, to protect the “honor” of the family, extend and prolong their child bearing span in terms of years and/or to ensure obedience to the husband and husband’s family²².

The girls are forced against their wills. They are placed and even accustomed under the full control firstly of their fathers, then of their husbands, sometime being much older and experienced person. The girls, after marriage, are not only under the control of their husbands but the under the control of husbands’ families as well, where they face unrestricted, extensive and widespread emotional, intuitive and physical abuse and perversion. The child brides are made to give birth and then bear and bring up the children before they themselves are physically and mentally ready to become mothers²³, resulting thereby health problems and complications. Child marriages are the violations of many human rights of the children but the countries of South Asia and Africa, where the child and early age marriages are frequent; are under the influence of deep-rooted patriarchal norms and take human rights as Eurocentric²⁴.

Child Marriage, the World and International Law

Child marriage is not a big problem only of Pakistan, but the menace exists all over the world. This misfortune of the children even exists in developed countries, i.e. in Europe and USA as well.

If seen in the perspective of prevalence of child marriage at international level, more than 36% of the women/girls in the age group of 20-24 years, around the globe, married or were caused to get marry or went into a union before reaching 18th year of their age.²⁵ There are credible estimates and researches which show that 14 million teenagers of the age group 15 years-19 years give birth to their own children each year. The research shows that the girls in above said age group i.e. 15-19 years are two times more at risk to die during their own

¹⁷ Susanne Louis B. Mikhail, Child marriage and child prostitution: Two forms of sexual exploitation, *Gender and Development*, 2002, vol. 10(1), pp 43-49

¹⁸ Plan France, *Mariage d'enfant et education*, op. Cit. p. 3.

¹⁹ Gauri Bhattacharya, Socio-cultural and Behavioral Contexts of Condom Use in Heterosexual Married Couples in India: Challenges to HIV prevention programmes, *Health Education & Behavior*, 2004, vol. 31 (1), pp 101-117; Shelley Clark, Early marriage and HIV risks in sub-Saharan Africa, *Studies in Family Planning*, 2005, vol. 35 (3), pp. 44-45.

²⁰ Gavin W. Jones, Changing Marriage Patterns in Asia, *Asian Research Institute Working Paper*, 2010, No. 131, p.9. See also, Mohammad Afzal, S. Mubashir Ali, H. B. Siyal and Abdul Hakim, Consanguineous Marriages in Pakistan, *The Pakistan Development Review*, 1994, vol. 33(4), pp. 663-676; M Sajjada, A A Khattaka, J E G Bunna and I Mackenzie, Causes of childhood deafness in Pukhtoonkhwa Province of Pakistan and the role of consanguinity, *The Journal of Laryngology & Otology*, 2008, vol. 122(10) pp. 1057-1063.

²¹ Naana Otoo-Oryortey and Sonita Pobi, Early Marriage and Poverty: Exploring links and key policy issues, *Gender and Development*, 2003, vol.11 (2), pp. 42-51.

²² C.P. Prakasam and R.B. Upadhyay, Socio-economic variables influencing mean age at marriage in Karnataka and Kerala, *Janasamkhyas*, 1985, vol. 31 (1-2), pp 81-90.

²³ Elizabeth Warner, Behind the Wedding Veil: Child Marriage as a Form of Trafficking in Girls, *Journal of Gender, Social Policy and The Law*, 2004, vol. 12(2), pp .233-271.

²⁴ Anbreem Ajaib, *Understanding Pakistan: Early Marriages-An invisible sword of patriarchy*, A Comparative Study of the Issue in Pakistan, Bangladesh and India in relation to National and International Laws, SPO Discussion Paper Series, 2013, p. 6.

²⁵ UNICEF, *The State of the World's Children 2005*, New York , 2006, p 131

pregnancies or childbirths as compared to the women who get pregnant and give birth which in their 20s.²⁶ In 2010-2011, the 10 Million girl children were married before reaching marriageable age under international law i.e. 18 years, which means 25,000 child girls were being married every day. The statistics show that 650 million women who are alive and are present in this world today, were married before reaching the age of 18 years. Presently every year more than 12 million girl children are being married in their childhood. It is estimated, alarmingly, that by 2030 more than 150 million girls will get marry or will be forced and compelled to marry before reaching the age of 18 years.²⁷

The statistics show that in developing countries 1 out of 9 girl children are married before they reach their 15th birthday. Similarly further in developing countries, 1 out of 3 girls are married with consent or forced, before they reached their 18th birthday²⁸. However, now 15 Million or even more girls are being married every year that means, 41,000 child marriages per day, 28 per every minutes and 1 girl is being made child bride in every 2 seconds²⁹. Over-and-above 720 million women who were alive in 2015 were married while they were a child and if this rate continues, it is estimated that more than 1.2 Billion girls will marry or will be caused to marry as a child by 2050³⁰.

Currently each day, more than 25,000 girls who are less than eighteen years, are being married. If this rate continues, in upcoming 10 years, it is estimated that hundred (100) million or even more girls, almost 10 million every year, will be married to become child brides.³¹ If we talk about the continent of Africa, where the situation is worse than rest of the world, the statistics show that more than 42% of girls having age between the age group 15-24, were married before reaching 18 years of age, however the figure rises to 48% in the region of Southern Asia.³² In developing countries 1 girl in 7, marries before reaching the age of 15³³ and 38% are married before 18³⁴ and 1/4th of the girls to one-half of the girls in all developing countries of the world become mothers before reaching 18³⁵. The prevalence of child marriage in developing countries varies widely, as very high at seventy percent (70%) in South Asia and low at thirty present (30%) in South Asia and East Asia³⁶. The prevalence of child marriage is not widely practised in South Asia, East Asia and Sub-Saharan Africa, but it is practised widely in Europe as well. For example, in Georgia 17%, Turkey 14% and even in the UK, Ukraine and France almost about 10% of marriages, which are being celebrated before reaching at the age of 18 years.³⁷

International Law and Legal Instruments over Child Marriage and Ability to Consent for Marriage

²⁶ United Nations Population Fund, State of World Population 2005: *The promise of equality: Gender equity, reproductive health and the Millennium Development Goals*, UNFPA, New York, 2005, p. 50

²⁷ Ending Child Marriage, Available at; <https://plan-uk.org/about/our-work/child-marriage>, site visited on 03/06/2020.

²⁸ Baroness Jenny Tonge *et al*, A Childhood Lost, Report on Child Marriage in the UK and the Developing World from the UK All-Party Parliamentary Group on Population, *Development and Reproductive Health*, 2012, p. 13.

²⁹ Plan UK, Early and forced marriage - facts and figures, available at; <http://www.plan-uk.org/early-and-forced-marriage> / site visited on 03/06/2020.

³⁰ *Ibid*.

³¹ The elders, "Child marriage" available at; <http://www.theelders.org/womens-initiatives/child-marriage> site visited 25/10/2018

³² ICRW, *New Insights on Preventing Child Marriage: A Global Analysis of Factors and Programs*, International Center for Research on Women, April 2007.

³³ Population Council, "Transitions to Adulthood: Child Marriage/Married Adolescents," <http://www.popcouncil.org/ta/mar.html> updated May 13, 2008.

³⁴ Cynthia B. Lloyd, *et al.* (eds.), *Growing Up Global: The Changing Transitions to Adulthood in Developing Countries*, Washington, D.C. National Academies Press, 2005, p. 142.

³⁵ United Nations Population Fund, State of World Population 2005

³⁶ Robert Jensen and Rebecca Thornton, Early Female Marriage in the Developing World, *Gender and Development*, 2003, vol. 11(2), pp. 9-19.

³⁷ Plan France, *Mariage d'enfant et education: Faire reculer le mariage précoce par l'éducation des filles*, Rapport sur l'éducation des filles, 2013, p. 28.

International law (IL) plays an effective and significant role in standards-setting and campaign against the child and forced marriages, because it priorities and emphasis the severity and gravity of the problem³⁸. Earlier this domain has been neglected thoroughly by the international community³⁹ and Human right activists but with the invent of Universal Declaration of Human Rights 1948, a little bit attention was paid towards this neglected domain of child rights to protect the children. The Universal Declaration of Human Rights 1948 under its article 16(1) provides that all women and men (and persons belonging to third gender as well) of *full age* have the right to marry and to found family without any limitation and restriction based on race, religion or nationality. On the contrary, the Convention did not specify what that “full age” was. Furthermore one of the basic document of International Bill of Human Rights i.e. ICCPR (International Covenant on Civil and Political Rights) 1966⁴⁰, the ECHR (European Convention of Human Rights) 1953⁴¹, and the ACHR (the American Convention on Human Rights) 1969⁴² all of them give the right to marry to every citizen (men, women and persons of third gender), but of marriageable age⁴³.

The Arab Charter on Human Rights 2004 under its Article 33(1), also stipulates some similar provisions that every man and woman having marriageable age have the right to marry and found family⁴⁴. The United Nations Supplementary Convention on the Abolition of Slavery, the slave trade and institution and practices similar to Slavery 1957 under its Article 1(c)⁴⁵ also postulates a similar provision as above. Aforementioned Convention make states parties dutiful that they shall take all necessary and practical legislative measures to make their national legislation compatible with international norms and standards. The states are required to take measures whereby all the institutions or practices be abolished which lead to giving-off girls into a marriage bond in return of consideration to guardian, parents, family elders or clan or group without giving girls their right to say “no”.⁴⁶ In addition, the Article 2 of the above Convention requires states parties to fix and specify reasonable and ‘suitable minimum age of marriage’. The states parties are further directed that they should encourage the use of facilities and all other contrivances through which the consent and assent of both individuals intending to contract marriage may be freely and fully expressed and exercised in the presence of competent religious or civil authority, so that the practice mentioned in Article 1(c) be eradicated. By including this kind of provision, the United Nations seems to consider and believe the early marriage as slavery⁴⁷, the most-discouraged human right violation in the contemporary era.

The Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Form of Child Labor (ILO Convention 182) specifies the age of majority as 18 years⁴⁸. The aforementioned Convention also desires and requires that all jurisdictions should take all necessary and imperative measures to stop and further prevent and preclude all practices similar to slavery along with all forms of slavery.⁴⁹ Along with slavery, the child marriage can be said, as bonded labor, torture, cruel and inhuman treatment, because child brides come very rightly under all the above-said categories in any aspect. For example, The Convention against

³⁸ Ruth Gaffney-Rhys, International Law as an Instrument to combat Child Marriage, *the International Journal of Human Rights*, 2011, vol. 15(3), pp. 359-373.

³⁹ Annie Bunting, Stages of Development: Marriage of Girls and Teens as an International Human Rights Issue, *Social & Legal Studies*, 2005, vol. 14(1) pp. 17-38.

⁴⁰ ICCPR 1966, Art. 23(2)

⁴¹ ECHR 1953, Art. 12

⁴² ACHR 1969, Art. 17(2)

⁴³ The “marriageable age” is not prescribed by these international Law instruments. It may vary from country to country according to their domestic law, customs and values. For Pakistan marriage age is 18 for male and 16 for female (Child Marriage Restraint Act 1929) and in France the marriageable age is 18 for both genders. But in the case of UK, it also varies. In Scotland the age of marriage is 16, in Northern Ireland, England and Wales, the age of marriage is 18 but the children above 16 and under 18 can get married with prior parental consent.

⁴⁴ The Arab Charter on Human Rights 2004, Art. 33(1).

⁴⁵ UN Supplementary Convention on the abolition of slavery, the slave trade and institution and practices similar to Slavery 1957.

⁴⁶ Ruth Gaffney-Rhys, International Law as an Instrument to combat Child Marriage, *the International Journal of Human Rights*, 2011, vol. 15(3), pp. 359-373.

⁴⁷ *Ibid*

⁴⁸ Art. 2

⁴⁹ Art. 3

Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984 defines torture⁵⁰ and gives its multidimensional aspects. According to the definition of torture under the CAT 1984, the forced marriage comes under the umbrella of torture. During the genocidal rampages of Rwanda in 1994 the forced marriages were also put in the definition of torture.⁵¹

The Convention on the Elimination of all Forms of Discrimination against Women 1979⁵² under its Article 16(2) says that both child marriages along with betrothal shall not have any legal effect. CEDAW 1979 further obligates contracting states parties that they should take all necessary actions, measures and steps, including the adoption of new laws and policies which must fix and specify a minimum age for marriage. Convention further envisaged that the states parties must take measures for compulsory registration of marriages in an authorized and official registry. On similar footings, article 21 of the African Charter on the Rights and Welfare of the Child 1990 gives that betrothal of boys and girls and child marriage shall be prohibited. The Charter envisaged that an effective and adequate action should be taken including administrative and legislative whereby the minimum age of marriage shall be fixed and specified to be 18 years. Further the compulsory registration of marriage in an official diary or register to be made sure.⁵³ Likewise, the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa 2003, Article 6(2) prescribes the minimum age for a woman shall not be lower than 18⁵⁴.

The United Nations Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages 1962, under its Article 2 postulates that all contracting states must adopt adequate legislation whereby the minimum age of marriage be fixed and specified, and any marriage contracted against this age limit shall have no effect in law at all. However the law gives here leniency and provides that if the competent authority grants dispensation in respect of age for serious and genuine reasons for the welfare and in the best interest of the child (intending spouses), then the nullity of such marriage may not be upheld.⁵⁵ Although most of the preceding conventions did not prescribe the minimum age limit, only directed to states parties to specify it but General Assembly of UNO passed a resolution in 1965, proclaiming that for marriage, the minimum must not be less than 15 years, and any marriage contracted below this age should be declared void, provided done or celebrated in the best interests of intending spouses (children) and serious reasons given by the competent authorities, depending upon given circumstances.⁵⁶

The Human Rights Committee has also emphasized that states are under duty and are accountable for the protection of enjoyment of individuals' right to marry on the basis of free and full consent. The committee made states dutiful to create a linkage between minimum age limit and marriage to be consensual. The Committee also stressed that the states should fix and specify the age for men and women on the basis of equal criteria,⁵⁷ as in many jurisdictions of the world; the marriageable age varies and is different for females and males. Normally the marriageable age for males is higher than females. Although USA is not a party to the UN Convention, but

⁵⁰ Art. 1, "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"

⁵¹ Monika Satya Kalra, Forced Marriage: Rwanda's Secret Revealed, U.C. Davis Journal of International Law & Policy, 2001, pp. 197-221.

⁵² UNCEDAW 1979 Art. 16(2)

⁵³ African Charter on the Rights and Welfare of the Child, Art. 21(2) OAU Doc. CAB/LEG/24.9/49 (1990), entered into force Nov. 29, 1999.

⁵⁴ The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, Art. 6(2).

⁵⁵ United Nations Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages 1962, Art. 2

⁵⁶ United Nations General Assembly Resolution 2018 (XX). Principle 2, "Recommendation On Consent To Marriage, Minimum Age For Marriage And Registration Of Marriages" Nov. 1, 1965

⁵⁷ General Comment No. 28, Paragraph No. 23, Equality of rights between men and women (Article 3), 29/03/2000. CCPR/C/21/Rev.1/Add.10, General Comment No. 28.

she is trying to abolish the child marriages in third world countries, as a Bill by a Congress member Betty McCollum⁵⁸ was passed by the US Congress aimed primarily at prevention of child marriages to protect girls in developing countries.⁵⁹

The other aspect of marriage is that for contracting a valid marriage, there always must be free and full consent of each of contracting/intending spouses. But when anyone among the contracting spouses, would have less than 18, how he/she will be able or capable to give free and full consent. If he/she cannot enter into another ordinary contract before 18, how it is possible or in his/her best interest to give him/her into the others hand for life. That's why the children are not sufficiently mentally mature so that they may give 'informed consent'. The states where the marriageable age is less than 18 years and let children to get marry; in fact violate the provisions of international law which require that both parties must be competent to give consent. These states do also contravene the ethical codes as well. Article 16(2) of UDHR1948, article 10(1) of ICSECR 1966, article 23(3) of ICCPR 1966, Article 16(1)(b) of CEDAW 1975, Article 1 of the UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1962, Article 17(3) of the American Convention on Human Rights (ACHR) 1969 and Article 33 of the Arab Charter on Human Rights 2004 all abovementioned human rights treaties require states parties that there must be fixed and specified age of marriage and further for marriage there must also be free, full and informed consent to enter into contract of marriage. The organization FORWARD, is also of the opinion that forced marriage also includes child marriage and child marriage constitutes the same, thus it contravenes the international law because under said law any individual, who has not yet attained the age of 18 years, cannot give free, full and informed consent, so cannot make fully informed choice.⁶⁰ On the other hand, for the deprived, vulnerable and indigenous people, the concept of universal human rights and international human rights law is no more than a myth⁶¹.

The UDHR 1948⁶² also recognizes and affirms the right of all individuals of free and full consent to a marriage with the view that if one of the intending/ marrying individual is not sufficiently and adequately mature to make an informed and intelligent choice about his/her life partner, his/her consent cannot be said as 'free and full consent'. Article 16 of CEDAW 1979 enshrines that marriage of a child and betrothal of boys and girls shall have no legal effect. Moreover, all the member states should make their best endeavours and take all necessary and possible actions including adoption of new legislation whereby the minimum age of marriage be fixed and specified. The 18 years of age for marriage was also recommended by the Committee on the Elimination of Discrimination against Women.⁶³

However, it is really strange and miserable to state that even the first comprehensive Convention of UNO, which is directly and specifically directed on the rights of child i.e. UNCRC that too does not deals child marriage directly and does not mention age limit for marriage, the most widely violated child right all over the world.

However if CRC is interpreted positively the menace of child is addressed with many other issues of the children rights. The child marriage is linked to other rights of the children such as the protection of a child from all forms of abuse, rights of the children to be protected from harmful and destructive traditional practices, right of the child to verbalize his views freely u/Art. 12 and the best interest and wellbeing of the child to be the primary and paramount consideration in all matters concerning him u/Art. 3. The problem of child marriage also has been frequently addressed in its multiples reports by the Committee on the Rights of the Child.

There are many other documents and human rights treaties at international and regional level that directly or indirectly deal with the issue of the child marriage. Some of them are; the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages 1962⁶⁴, The African Charter on the Rights and

⁵⁸ Betty Louise McCollum (born July 12, 1954) is United States Representative for Minnesota's 4th congressional district, serving since 2001. She is a member of Democratic, former Labour Party.

⁵⁹ International Protecting Girls by Preventing Child Marriage Act of 2009.

⁶⁰ Ruth Gaffney-Rhys, International Law as an Instrument to combat Child Marriage, *op. Cit.*

⁶¹ Ulf Johansson Dahre, There are no such things as universal human rights – on the predicament of indigenous peoples, *The International Journal of Human Rights*, 2010, vol. 14(5), pp. 641-657; see also, Chris Brown, Universal human rights: A critique, *The International Journal of Human Rights*, 1997, vol. 1(2), pp.41-65.

⁶² UNDHR, Art. 16

⁶³ The Committee considered the combined in initial, second and third periodic report of Pakistan (CEDAW/C/PAK/1-3) at its 783rd and 784th meetings, on 22th May 2007.

⁶⁴ 1962, 521 U.N.T.S. 231; United Nations Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, G.A. Res. 2018 (XX), 20 U.N. GAOR Supp. (No. 14) at 36, U.N. Doc.

Welfare of the Child (ACRWC) 1990 and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa. Child marriage comes under the definition torture and on the same footings it was held by the Pan-African Forum against the Sexual Exploitation of Children that early age marriage or child marriage is commercial and remunerative sexual crime and exploitation of children and young people.⁶⁵

To cut the story short, it can be concluded that the existence of a law does not matter but the observance and rule of law matters. First of all, the nations of the modern world should have targeted and directed legislation over the child and forced marriage and the tort-feasors be punished severely. Secondly the international law be respected too and the nations who are signatories and have ratified international human rights treaties must fulfill their obligations under above-said treaties regarding this menace of child marriage. Thirdly the monitoring mechanism be devised or be updated and strengthened. The most important thing that may cause revolution is the training the education to masses especially girls. Moreover the religious law that permits child marriage to be revisited and reinterpreted and be brought up to the standards, demands and needs of the contemporary times. The healthy mothers give birth to healthy children that make a nation. The poor parents think that by getting married their daughters in their childhood may lessen their financial burden, but it causes more problems when there are premature births, or children giving births to children.

A/6014 1965); Hague Convention relating to the settlement of the conflict of the laws concerning marriage 1902; Hague Convention relating to the settlement of the conflict of laws as regards divorce and separation 1902; Hague Convention relating to conflicts of laws with regard to the effects of marriage on the rights and duties of the spouses in their personal relationship and with regard to their estates of 1905; The Hague Convention on the Recognition of Divorces and Legal Separations 1970; the Hague Convention on the Law Applicable to Matrimonial Property Regimes 1978.

⁶⁵ Susanne Louis B. Mikhail, Child marriage and child prostitution: Two forms of sexual exploitation, *Gender and Development*, 2002, vol. 10 (1), pp 43-49.