

CHILD MARRIAGE AS A VIOLATION OF HUMAN RIGHTS AND CHALLENGES IN ITS LEGAL REGULATION

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The article focuses on the problem of child marriage in today's world. Child marriage is seen as a violation of basic human rights of children from both developing and developed countries. Present statistics show constant reduction of the cases of child marriages worldwide. Nevertheless, complete eradication of such practice is impossible without further action, which underlines the importance of the consideration of this issue. The main questions addressed in the article are the present statistics of child marriage, its negative consequences for girls, international legal provisions against child marriage, problems with child marriage legal regulation, and their possible solutions.

Key words: child marriage; child protection; human rights; rights of the child; discrimination against the girl child.

1. Child marriage: definition, history, statistics. As defined by UNICEF, child marriage is a formal marriage or informal union before the age of eighteen [1]. Although the definition seems to be clear, the concept of child marriage raises controversial issues, partly because of the misunderstanding of the words «marriage», «child», «union».

Historically child marriage was common practice. While the average life expectancy did not exceed fifty years old, it was reasonable to enter into marriage at or even before puberty. Moreover, it contributed to remaining and expanding existing population. On the contrary, there are opinions that child marriage was only spread among high society due to the complexity of international relations, which had a strong connection with and were practically based on royal marriages. Such practice began to be questioned during the 20th century with many countries increasing the minimum age of marriage.

Nowadays child marriage is considered to be a violation of human rights and a form of discrimination against girls. According to statistics, even though child marriages affect children of both sexes, girls are often disproportionately more affected. For instance, in Niger the number of women aged 20 to 49 who were married before the age of 18 equals to 77 per cent, while the number of men in the same age group is only 5 per cent. Such tendencies are also found in the countries where child marriage is less common. For example, in the Republic of Moldova, the corresponding percentage of women is 15 per cent in contrast to not more than 2 per cent of men. This is the main reason why the problem is usually discussed from the girls' perspective. Thus, an estimated 720 million women worldwide who have already reached 18

years of age got married under the age of 18, while the number of men of such a group does not exceed 156 million. UNICEF provides data that almost half of child marriages happen in South Asia and 1 in 3 child brides live in India [2].

2. Negative consequences of child marriage for girls and their future offspring. The situation of children affected by child marriage leads to grave consequences for children themselves and their future offspring. The biggest loss that children involved in this practice face is the deprivation of rights to healthcare, education and communication. In some cases, they are literally isolated with households making decisions on their lives and prospects. Child brides are usually unable to negotiate safe sexual practices and therefore are more likely to receive sexually transmitted infections such as HIV. Girls under 15 are more likely to die in childbirth than those in their 20s and children of the former face higher risk of dying during their first year of life than those of the latter.

3. Legal protection against child marriage: international and regional instruments. Child marriages are a concern of not only individual States that try to avoid them by enforcing laws that limit the age of marriage or declare child marriages illegal but also international community as a whole. Thus, child marriages contradict several international agreements, both regional ones that are only in force in regions where child marriages are mostly spread (such as Africa or Latin America) and fundamental documents such as the Universal Declaration of Human Rights.

The Universal Declaration of Human Rights in its Article 16 states that «men and women of full age ... have the right to marry and to found a family» and «marriage shall be entered into only with the free and full consent of the intending spouses» [3]. Article 16 of the Convention on the Elimination of All Forms of Discrimination Against Women proclaims that «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» [4]. Article 2 of the Convention on Consent to Marriage, Minimum Age for Marriage, and Registration of Marriages stipulates the following: «States Parties to the present Convention shall take legislative action to specify a minimum age for marriage. No marriage shall be legally entered into by any person under this age, except where a competent authority has granted a dispensation as to age, for serious reasons, in the interest of the intending spouses» [5].

Among other legal documents are the Convention on the Rights of the Child (CRC), the Protocol on the Rights of Women in Africa to the African Charter on Human and Peoples' Rights (also known as «The Maputo Proto-

col»), the African Charter on the Rights and the Welfare of the Child, the Inter-American Convention on Human Rights, etc. The analysis of the provisions of these documents shows that on international level the emphasis is put on free and full consent to marriage together with the importance of the unification of the minimum age of marriage [6].

The issue of child marriage seems to be effectively regulated on international level, but the truth is that problems usually arise on domestic level. Nowadays most countries have adopted 18 years old as the minimum age of marriage, but some set it lower. Even when there is the minimum age of 18 years, it often can be reduced with parental or judicial consent. Globally, when considering exceptions for the age of marriage with parental or judicial consent, close to 100 million girls are not effectively legally protected against child marriage [6].

4. Problems with child marriage laws and possible solutions. Existing age exceptions are not the only problem arising in the regulation of child marriages. Due to the fact that child marriages are mostly spread in developing countries, traditional societies themselves create conditions which do not allow to eliminate the existence of child marriages. Among them, poverty, gender inequality and prevailing religious traditions are the main causes of such situation.

The first problem is connected with the absence of uniformity in the definition of child marriage and, thus, impossibility to set a uniform minimum age of marriage. The solution can be to define child as an individual under the age of 18 with no exceptions because in this case child marriage will be a suitable term to describe marriages of both boys and girls under 18.

The second problem concerns implementation of legal norms in traditional societies. Mostly, child marriages happen outside the law, sometimes because of people's unawareness. Therefore, it can be helpful to work with religious leaders and groups to raise their knowledge of existing laws and harmful effects and consequences that child marriages create.

Moreover, implementation of laws is even more complicated in the rural areas with the lack of resources. A good solution would be to train local authorities and create strong child protection systems.

Issues with marriage and birth registration constitute the third problem. Often such procedures are weak and insufficient or even non-existent and do not allow to control and count all the cases of law violation. Making marriage and birth registration mandatory and low cost (or even free) can contribute to more effective regulation.

Another problem arises when law meets religion. Religious views on child marriages are sometimes misinterpreted or misunderstood but at the same

time are more likely to be applied by religious groups than law if they contradict each other. The only solution that can be found here is to create space for dialogue with religious groups to promote alternative interpretation of religious provisions which would not lean towards appropriateness of child marriage.

The last problem is that victims of child marriages are often unable to take their cases to the court, the reasons for this being, again, their age or lack of knowledge or resources. Actions must be taken to make access to legal services easier for them together with the training of law enforcement agencies to react to child marriages.

Conclusion. Due to improving socioeconomic conditions and demographic change, child marriage is declining in many parts of the world, but the pace of this change should be much faster. More active and concerted efforts are needed to help girls who are still at risk of child marriage and to mitigate the negative consequences.

References

1. Child protection from violence, exploitation and abuse. Child marriage [Electronic resource]. URL: https://www.unicef.org/protection/57929_58008.html (date of access: 28.04.2018).
2. United Nations Children's Fund, Ending Child Marriage: Progress and prospects [Electronic resource] : UNICEF. New York, 2014. URL: https://data.unicef.org/wp-content/uploads/2015/12/Child-Marriage-Brochure-HR_164.pdf (date of access: 27.04.2018).
3. Universal Declaration of Human Rights (1948) [Electronic resource]. RL: <http://www.un.org/en/universal-declaration-human-rights/> (date of access: 13.04.2018).
4. Convention on the Elimination of All Forms of Discrimination against Women (1979) [Electronic resource]. URL <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm> (date of access: 26.04.2018).
5. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages [Electronic resource] : UN. General Assembly (17th sess. : 1962). URL: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/MinimumAgeForMarriage.aspx> (date of access: 26.04.2018).
6. Ending Child Marriage: Legal Age for Marriage, Illegal Child Marriages, and the Need for Interventions [Electronic resource] / Q. Wodon [et al.]. London and Washington, DC : Save the Children and The World Bank, 2017. URL: <https://www.girlsnotbrides.org/wp-content/uploads/2017/11/2017-10-ending-child-marriage.compressed.pdf> (date of access: 27.04.2018).