

COMMENTS

Why Domestic Institutions Are Failing Child Brides: A Comparative Analysis of India's and the United States' Legal Approaches to the Institution of Child Marriage

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I.	INTRODUCTION	151
II.	INTERNATIONAL LAW ADDRESSING CHILD MARRIAGE	154
	A. <i>The Convention on the Rights of the Child</i>	156
	B. <i>The Convention on the Elimination of All Forms of Discrimination Against Women</i>	157
	C. <i>International Covenant on Civil and Political Rights</i>	157
III.	INDIA'S APPROACH TO CHILD MARRIAGE.....	158
	A. <i>Indian Domestic Law</i>	159
	B. <i>Indian Incorporation of International Conventions</i>	162
IV.	UNITED STATES	164
	A. <i>U.S. Domestic Legislation</i>	165
	1. Remedies for U.S. Citizens	166
	2. Remedies for Noncitizens.....	168
	B. <i>U.S. Incorporation of International Conventions</i>	171
V.	PROPOSED SOLUTIONS	172
VI.	CONCLUSION	175

I. INTRODUCTION

Marriage is typically associated with joy—a dream come true for two consenting adults who decide to embark on life's journey together. However, for the millions of child brides who go from playing in the yard with their siblings one day to living in the house of a complete stranger

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the next, marriage can be nothing short of a living nightmare. According to the United Nations, child marriage refers to marriage where at least one of the parties is under the age of eighteen.¹ While there are some instances of young boys engaging in child marriage, this practice disproportionately affects young girls.² Economic gain and cultural and religious values contribute to the prevalence of child marriage.³ Whatever the different reasons may be behind its practice, the result of these unions is the same—detrimental effects on the mental, social, and physical health of the child bride.⁴ A major consequence of child marriage is a high maternal death rate, because many child brides are not physically ready for pregnancy.⁵ As a result, complications associated with childbirth and pregnancy are the leading causes of death for young women between the ages of fifteen and nineteen.⁶ One of the United Nations Millennium Development Goals is to reduce maternal deaths, a goal that will not be met unless international legal practices change and domestic lawmakers revise their approach to eradicating child marriage.⁷

While the majority of child brides reside in South Asia, the practice is certainly not limited to developing nations, because many countries in the Western world allow marriages with parties who are under the age of eighteen.⁸ This spans from Australia, where child brides are typically taken overseas for the marriage before returning to their homeland, to the United Kingdom, where the government estimates that thousands of minors are forced into marriages every year.⁹ Even in the United States, illegal child marriages are still occurring, primarily in radical religious

1. Anju Malhotra, Ann Warner, Allison McGonagle & Susan Lee-Rife, *Solutions To End Child Marriage: What the Evidence Shows*, INT'L CENTER FOR RESEARCH ON WOMEN 2, <http://www.icrw.org/files/publications/Solutions-to-End-Child-Marriage.pdf> (last visited Nov. 4, 2014).

2. *Id.*

3. *Id.* at 2, 4, 6.

4. *Id.* at 4.

5. *Id.*

6. *Child Marriages: 39,000 Every Day—More than 140 Million Girls Will Marry Between 2011 and 2020*, UN WOMEN (Mar. 7, 2013), <http://www.unwomen.org/en/news/stories/2013/3/child-marriages-39000-every-day-more-than-140-million-girls-will-marry-between-2011-and-2020>.

7. *Id.*

8. Elizabeth Warner, *Behind the Wedding Veil: Child Marriage as a Form of Trafficking in Girls*, 12 AM. U. J. GENDER SOC. POL'Y & L. 233, 245 (2004).

9. Sarah Millar, *Girls as Young as Ten Being Forced into Child Marriage; 14 Million Child Brides Married Every Year*, NEWS.COM.AU (July 14, 2014), <http://www.news.com.au/lifestyle/relationships/girls-as-young-as-ten-being-forced-into-marriage-14-million-child-brides-married-every-year/story-fnet09y4-1226987689946>; *Child Marriage Happens in the UK Too, Warn British MPs*, GIRLS NOT BRIDES (Dec. 5, 2012), <http://www.girlsnotbrides.org/a-childhood-lost-uk-parliamentarians-launch-new-report-on-child-marriage>.

sects. Despite being one of the 158 countries with domestic legislation specifically banning the practice of child marriage, India has the highest number of child brides in the world.¹⁰ For many of these countries with a high prevalence of child marriage, social and cultural values hold more weight in the community than state-enacted law; thus, domestic legislation banning child marriage is weakly enforced.¹¹

In addition to domestic legislation banning the practice, the international community has employed several legal mechanisms, particularly in the form of international treaties, to eradicate child marriage. The primary international conventions that address child marriage, either directly or indirectly, are the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the International Covenant on Civil and Political Rights (ICCPR).¹² Each of these conventions has a committee charged with the task of overseeing the member states' implementation of the treaty's provisions. While international treaties may certainly serve as a vital tool in child marriage prevention, they are certainly not above reproach, and they are often criticized for vagueness in their provisions as well as inconsistencies in their domestic implementation.¹³

Based on an analysis of the legal mechanisms employed both domestically and internationally, this Comment will conclude that the practice of child marriage requires an international solution, specifically achieved through the identification and preservation of provisions that best serve the object and purpose of related international conventions. Part II will evaluate the efficacy of the primary international treaties that prohibit child marriage. Then Parts III and IV will present a comparative analysis of the domestic legislations of India and the United States to illustrate how domestic institutions, in both developed and developing nations alike, are not effectively protecting child brides. In addition, both of the aforementioned countries' domestic incorporation, or lack thereof, of the CRC, CEDAW, and the ICCPR will be evaluated in Parts III and

10. *India: Child Marriage Around the World*, GIRLS NOT BRIDES, <http://www.girlsnotbrides.org/child-marriage/india> (last visited Nov. 4, 2014); *Child Marriages: 39,000 Every Day—More than 140 Million Girls Will Marry Between 2011-2020*, *supra* note 6.

11. *Child Marriages: 39,000 Every Day—More than 140 Million Girls Will Marry Between 2011-2020*, *supra* note 6.

12. JAYA SAGADE, *CHILD MARRIAGE IN INDIA: SOCIO-LEGAL AND HUMAN RIGHTS DIMENSIONS* 111-12 (2005).

13. Ladan Askari, *The Convention on the Rights of the Child: The Necessity of Adding a Provision To Ban Child Marriages*, 5 *ILSA J. INT'L & COMP. L.* 123, 128, 134 (1998); Ruth Gaffney-Rhys, *International Law as an Instrument To Combat Child Marriage*, 15 *INT'L J. HUM. RTS.* 359, 359 (2011).

IV to further demonstrate why the implementation process of international conventions must be revised in order to make them more competent tools in the eradication of child marriage. Finally, in Part V, this Comment will propose that the eradication of child marriage requires a revision in the application of international treaties, specifically as it pertains to the utilization of revisions to provisions that protect children from forced marriages.

II. INTERNATIONAL LAW ADDRESSING CHILD MARRIAGE

The international community has not turned a deaf ear to the concerns regarding child marriage. Because treaties have the potential to create both domestic and international legal obligations, they are arguably the most important source of international laws.¹⁴ An analysis of each of these treaties demonstrates international law's pivotal, yet imperfect, role in the fight to end child marriage. Modifications or reservations that countries make to these treaties before ratifying them constitute a major source in the treaties' ineffectiveness. A reservation is a statement made by a country that modifies the legal effect of certain provisions of the international agreement in their application to the country.¹⁵ Although their employment arguably encourages wider acceptance of international treaties, critics assert that reservations limit treaty obligations and hamper the potential domestic application of the provisions.¹⁶ Article 19(c) of the Vienna Convention on the Law of Treaties (VCLT) prohibits the use of reservations that are deemed incompatible with the object and purpose of the treaty.¹⁷ However, determining which provisions most support the object and purpose of a treaty, and thus should not accept reservations, has proven to be a task easier said than done.¹⁸ One solution for this dilemma is to require the committees who monitor the implementation of the treaty's provisions to also determine which of these provisions are most vital to the object and purpose of the treaty. Consequently, such committees cannot allow countries to make reservations to those specific provisions.

As the only method of changing party members' rights and duties after the authentication of the text of a treaty, reservations were created to

14. BARRY E. CARTER & ALLEN S. WEINER, INTERNATIONAL LAW 85-86 (Vicki Been et al. eds., 6th ed. 2011).

15. *Id.* at 100.

16. Askari, *supra* note 13, at 134.

17. LIESBETH LIJNZAAD, RESERVATIONS TO UN-HUMAN RIGHTS TREATIES: RATIFY OR RUIN? 124 (1995).

18. *Id.* at 82-83.

solve the dilemma of establishing rules acceptable to all parties in international agreements.¹⁹ Reservations promote wider acceptance of international treaties by allowing a country to be a party to an agreement without binding itself to certain substantive points that may be in tension with its interests.²⁰ Furthermore, a party may make a reservation in order to ensure that its treaty obligations align with the idiosyncrasies of its local law.²¹ In relation to human rights treaties, many developing nations employ reservations because they lack the financial means necessary to meet the standards of a specific provision in the treaty.²² While these are just a few of the benefits associated with the use of reservations in international agreements, there are opponents to this practice who claim that reservations enable partial commitment by limiting treaty obligations and, consequently, hampering the domestic effect of the treaty.²³

When addressing the concern that reservations have a detrimental effect on the implementation of treaties, it must be noted that there are safeguards employed by the international community intended to alleviate such concerns. The VCLT prescribes the process of making reservations and details their implications.²⁴ The process of accepting or objecting to a reservation is discussed in article 20, while article 21 addresses the legal effects of reservations and of objections to reservations.²⁵ Once a state makes reservations to a multilateral treaty, the other parties are given the chance to evaluate the reservations to determine if they agree with the proposed modifications.²⁶ Objections are made if they parties believe that the reservation is not in conformity with the goals of the treaty.²⁷ Article 19(c) of the VCLT provides support for the use of objections by stating that reservations are acceptable unless “the reservation is incompatible with the object and purpose of the treaty.”²⁸ In theory, this provision adequately prevents countries from making reservations that undermine the treaty’s mission. However, in practice, it is difficult to determine the precise object and purpose of a

19. CARTER & WEINER, *supra* note 14, at 100.

20. *Id.*

21. *Id.*

22. *Id.* at 78.

23. Askari, *supra* note 13, at 123, 134.

24. CARTER & WEINER, *supra* note 14, at 101.

25. *Id.* at 101-02.

26. Mark Sachleben, *Human Rights Treaties: Considering Patterns of Participation, 1948-2000*, in *STUDIES IN INTERNATIONAL RELATIONS* 140 (Charles MacDonald ed., 2006).

27. *Id.*

28. Vienna Convention on the Law of Treaties art. 19(c), May 23, 1969, 1155 U.N.T.S. 331.

given treaty.²⁹ As a result, due to the lack of a general consensus on how to define the object and purpose of an agreement, many reservations are accepted that perhaps should not have been allowed.

A. *The Convention on the Rights of the Child*

With nearly universal ratification, the CRC is considered by many to be the most successful international document in history.³⁰ The CRC is labeled as a comprehensive treaty.³¹ This identification stems from the convention's regard given not only to civil and political rights, like freedom of religion and expression, but also to economic and social rights, such as the right to education, healthcare, and a decent standard of living.³² Essentially, the CRC's purpose is to protect the welfare of children.³³

Notwithstanding its comprehensiveness, the CRC does not directly address the issue of child marriage.³⁴ While there is no explicit provision prohibiting child marriage, its practice violates several of the convention's articles that are intended to protect children.³⁵ For example, article 34 of the CRC affords children a right to be free from sexual abuse.³⁶ However, because child marriage is essentially sanctioned sexual abuse, its practice is in direct violation of the CRC.³⁷ Furthermore, it is established that young wives are more prone to experiencing abuse at the hands of their typically much older husbands, which contravenes article 19's proscription of physical and mental violence.³⁸ Early marriage also violates article 28(1) of the CRC, which grants children a right to education.³⁹ Once a child is married, her schooling is usually terminated because her domestic obligations to her husband and his family become the priority.⁴⁰ The practice of child marriage violates not

29. LUNZAAD, *supra* note 17, at 82-83.

30. Lynne Marie Kohm, *Suffer the Little Children: How the United Nations Convention on the Rights of the Child Has Not Supported Children*, 22 N.Y. INT'L L. REV. 57, 58 (2009).

31. Askari, *supra* note 13, at 123.

32. *Id.*

33. Kohm, *supra* note 30, at 59-60.

34. Laura Davids, Note, *Female Subordination Starts at Home: Consequences of Young Marriages and Proposed Solutions*, 5 REGENT J. INT'L L. 299, 314 (2007).

35. Gaffney-Rhys, *supra* note 13, at 366.

36. *Id.*

37. Kohm, *supra* note 30, at 72-73. Child marriage involves the transport of a child from the one set of adults to another. Due to this transfer of control, the child bride is likely subject to sexual abuse and exploitation. Warner, *supra* note 8, at 266.

38. United Nations Convention on the Rights of the Child, Nov. 20, 1989, 28 I.L.M. 1457; Gaffney-Rhys, *supra* note 13, at 366.

39. United Nations Convention on the Rights of the Child, *supra* note 38.

40. Malhotra, *supra* note 1, at 4.

only the aforementioned articles, but several other provisions in the CRC—thus making this treaty highly relevant to the prohibition of child marriage.⁴¹

B. The Convention on the Elimination of All Forms of Discrimination Against Women

The United Nations Commission on the Status of Women has created a culmination of declarations and conventions with the purpose of advancing women's rights, and CEDAW is the central and most comprehensive document of its kind.⁴² Because CEDAW is one of the few international human rights treaties that focuses specifically on protecting the rights of the female population, it is often considered an international bill of rights for women.⁴³ Unlike the CRC, CEDAW does include a provision that directly addresses the practice of child marriage: article 16(2) provides, "The betrothal and the marriage of a child shall have no legal effect."⁴⁴ Consequently, it would appear that child marriages in countries that have ratified CEDAW are not only in violation of the treaty, but are also deemed to be void.⁴⁵ However, it must be noted that article 16(2) goes on to say that "all necessary action, including legislation, shall be taken to specify a minimum age for marriage."⁴⁶ Thus, CEDAW prohibits child marriage, but it does not define a child, nor does it prescribe a minimum age appropriate for marriage.⁴⁷

C. International Covenant on Civil and Political Rights

While many United Nations treaties target a specific portion of the population or address a particular social ill, the ICCPR is arguably the most thorough human rights document.⁴⁸ The Human Rights Committee

41. Davids, *supra* note 34, at 315.

42. *Convention on the Elimination of All Forms of Discrimination Against Women New York, 18 December 1979*, UNITED NATIONS HUM. RTS., <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CEDAW.aspx> (last visited Nov. 4, 2014).

43. *Id.*

44. United Nations Convention on the Elimination of All Forms of Discrimination Against Women, Dec. 18, 1979, 1249 U.N.T.S. 13.

45. Askari, *supra* note 13, at 133.

46. United Nations Convention on the Elimination of All Forms of Discrimination Against Women, *supra* note 44.

47. Gaffney-Rhys, *supra* note 13, at 364.

48. *Id.*

monitors the domestic implementation of the treaty's provisions.⁴⁹ Like the CRC, the ICCPR indirectly addresses the issue of child marriage.⁵⁰ For example, article 23(3) states, "No marriage shall be entered into without the free and full consent of the intending spouses."⁵¹ According to the Universal Declaration of Human Rights, consent cannot be "free and full" in instances where one of the parties involved is not mature enough to make an informed decision about choosing a life partner.⁵² Furthermore, it must also be noted that due to parental and cultural pressures, a child bride can easily be manipulated or intimidated into giving consent.⁵³ Article 2(1) of the ICCPR also extends protection to child brides as it prohibits discrimination on the grounds of sex.⁵⁴ Because child marriage typically involves young girls as opposed to young boys, its practice can reasonably be deemed discriminatory and, consequently, a violation of the ICCPR.⁵⁵

III. INDIA'S APPROACH TO CHILD MARRIAGE

Despite domestic legislation explicitly prohibiting the practice of child marriage, India is home to the highest number of child brides in the world.⁵⁶ In addition to implementing state law banning the institution, India has also ratified the aforementioned international treaties as well as several others that consider child marriage to be a violation of international law.⁵⁷ Statistics demonstrating an overall decline in the number of child brides in the country might suggest that the ratification of international treaties and the enactment of state law have been effective in combating child marriage.⁵⁸ For example, the percentage of women aged 20-24 married before the legal age has declined, decreasing

49. *Human Rights Committee: Monitoring Civil and Political Rights*, UNITED NATIONS HUM. RTS., <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/CCPRIndex.aspx> (last visited Nov. 4, 2014).

50. SAGADE, *supra* note 12, at 138.

51. United Nations International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

52. *Law Requires Free and Full Consent of Parties to a Marriage*, MEASURE FAMILY PRH, http://www.cpc.unc.edu/measure/prh/rh_indicators/crosscutting/wgsc/law-requires-free-and-full-consent-of-parties-to-a (last visited Nov. 4, 2014).

53. Askari, *supra* note 13, at 136.

54. United Nations International Covenant on Civil and Political Rights, *supra* note 51.

55. Gaffney-Rhys, *supra* note 13, at 366; Malhotra, *supra* note 1.

56. Jacqueline Mercier, *Eliminating Child Marriage in India: A Backdoor Approach To Alleviating Human Rights*, 26 B.C. THIRD WORLD L.J. 377, 378 (2006); *Child Marriage Around the World*, *supra* note 10.

57. SAGADE, *supra* note 12, at 143.

58. Patralekha Chatterjee, *India Grapples with Its Child Marriage Challenge*, LANCET (2011), [http://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(11\)61860-6/fulltext](http://www.thelancet.com/journals/lancet/article/PIIS0140-6736(11)61860-6/fulltext).

from 54.2% in 1992-93 to 44.5% in 2005-06.⁵⁹ However, even with a decline of roughly 1% per year, nearly half of Indian women are forced into marriage before they reach adulthood, a figure indicating that these laws' effectiveness remains questionable.⁶⁰

A. *Indian Domestic Law*

Since its inception in 1929, domestic legislation in India aimed at preventing child marriage has experienced minimal, if any, success as cultural and social norms reign supreme over weakly enforced state-enacted law.⁶¹ Indian family law's extremely pluralist nature is undoubtedly a factor adding to the complexity behind enforcing domestic legislation.⁶² Pluralism is when a group of people of various social classes, religions, or races coexist in a society but maintain their different sets of rules and traditions.⁶³ Each group of people has a distinctive culture and follows a unique legal order that is typically based on religious ideals.⁶⁴ A few prominent legal orders with a wide following in India include Hindu law, Islamic law, Buddhist law, and tribal laws.⁶⁵ To further complicate the issue, each legal order contains a plurality within itself.⁶⁶ Hindu law, for example, includes a collection of different microlegal systems.⁶⁷ Unfortunately, many of these legal orders celebrate child marriages, and in northern India specifically, hundreds of child marriages occur every spring in extravagant public ceremonies similar in nature to festivals.⁶⁸ There is a myriad of personal "religious based laws" pertaining to marriage in India, with each group prescribing for itself the age of marriage for the bride and bridegroom.⁶⁹ These personal laws tend to carry greater weight among Indian citizens than state-enacted law.⁷⁰ Consequently, India's pluralist nature creates extreme barriers for

59. *Id.*

60. Michele Goodwin, *When Institutions Fail: The Case of Underage Marriage in India*, 62 DEPAUL L. REV. 357, 359 (2013); *Child Marriage*, BUS. INSIGHTS: ESSENTIALS (Dec. 28, 2013), http://bi.galegroup.com/essentials/article/GALE%7CA354935933/88ecea98c18ac749d739e3128c29672b?u=tulane_rbw (subscription required) (originally published in *Economic & Political Weekly*).

61. *Child Marriage*, *supra* note 60.

62. Domenico Francavilla, *Interacting Legal Orders and Child Marriages in India*, 19 AM. U. J. GENDER SOC. POL'Y & L. 529, 532 (2009).

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.* at 533.

67. *Id.*

68. Goodwin, *supra* note 60, at 360, 387.

69. SAGADE, *supra* note 12, at 73.

70. *Id.*

enforcement of domestic legislation, and child marriages exist as an unfortunate example of this conflict between traditional cultural laws and modern state laws.⁷¹

In acknowledgement of its pluralist society, India enacted the Child Marriage Restraint Act of 1929 (CMRA) prohibiting the practice of child marriage regardless of the parties' religious, societal, or cultural affiliation.⁷² Anyone who marries a child, performs a child marriage, or promotes or fails to prevent his or her own child's marriage is in violation of the act.⁷³ Amended several times since its enactment, the act's definition of a "child" was raised from fourteen for girls and eighteen for boys in 1929 to eighteen for girls and twenty-one for boys in 1978.⁷⁴ A child marriage consists of a marriage in which either of the contracting parties has not reached the age of majority as prescribed by the act.⁷⁵ The term "contracting parties to a marriage" is defined as "either of the parties whose marriage is or is about to be solemnized."⁷⁶

With the existence of a specific, direct law prohibiting its practice, why does child marriage remain so prevalent throughout much of India? Aside from the country's plurality producing an array of ideals regarding the legality of child brides, lenient punishments contribute substantially to the institution's ineffective regulation.⁷⁷ Although the purpose behind prescribing punishment for violating its provisions was to deter people from arranging child marriages, the CMRA's mild repercussions did not demonstrate a serious commitment to fulfilling this mission.⁷⁸ In 1929, a violation of the act led to a fine of 1,000 rupees and/or imprisonment for one month.⁷⁹ By 1949, the severity of punishment only increased slightly with an imprisonment of three months and/or a fine for an unspecified amount.⁸⁰ No changes concerning punishment were made to the CMRA after 1949, suggesting that state officials were apathetic in regards to eradicating child marriage.⁸¹

However, in an attempt to rectify the inefficiency of the CMRA, the Indian government passed the Prohibition of Child Marriage Act in 2006

71. Francavilla, *supra* note 62, at 546.

72. SAGADE, *supra* note 12, at 43.

73. The Child Marriage Restraint Act, 1929, ST. LEGAL SERVICES AUTHORITY, http://chdlsa.gov.in/right_menu/act/pdf/childmarriage.pdf (last visited Nov. 4, 2014).

74. SAGADE, *supra* note 12, at 44.

75. *Id.* at 43.

76. *Id.*

77. Davids, *supra* note 34, at 319.

78. SAGADE, *supra* note 12, at 47.

79. *Id.* at 49.

80. *Id.*

81. *Id.* at 47.

(PCMA).⁸² The idea behind the PCMA is identical to that of its preceding legislation: to prevent marriages in which one or both parties are not of legal age and to punish anyone who participates in creating such a union.⁸³ In comparison to the CMRA, the PCMA takes a much more serious approach to child marriage, both in terms of prevention and punishment.⁸⁴ Regarding prevention, the law appoints child marriage protection officers to every state to deter child marriage, provides protection of victims, and brings offenders to justice.⁸⁵ Punishment differs based upon the sex of the offender, with male offenders subject to two years imprisonment, while females in violation of the act are only fined.⁸⁶

Enacted to address the shortcomings of the poorly effective CMRA, proponents of the PCMA were hopeful about its ability to improve the plight against child marriage.⁸⁷ Unfortunately, statistics gathered in 2010 paint a dismal portrayal of its performance: 43% of Indian women aged 20-24 were married before the age of eighteen.⁸⁸ Furthermore, current estimates indicate that there are 23 million child brides in India—a figure that constitutes 40% of child brides worldwide.⁸⁹

If enacting new legislation with more comprehensive provisions did not sufficiently improve the problem, then there must be another aspect in need of revision.⁹⁰ Enforcement of legislation plays a critical role in the regulation of child marriage.⁹¹ To illustrate the necessity of proper enforcement as a means to end child marriage, it must be noted that enacting a law prescribing the punishment for offenders is a moot point if cases regarding said offenders are rarely brought to court.⁹² Furthermore, child marriage cases often do not render a guilty verdict due to corruption among state officials, such as the judges, who are often in violation of this law themselves.⁹³ Consequently, many Indian citizens are aware that despite the enactment of legislation, they can engage in the practice of child marriage with relative impunity because the laws are not

82. *Handbook on the Prohibition of Child Marriage Act, 2006*, UNICEF 8, http://www.unicef.org/india/Child_Marriage_handbook.pdf (last visited Nov. 5, 2014).

83. *Id.* at 10.

84. *Id.*

85. *Id.*

86. *Id.* at 12, 15.

87. *Id.* at 12.

88. *Child Marriage*, *supra* note 60.

89. *Id.*

90. *Id.*

91. Davids, *supra* note 34, at 319.

92. *Id.*

93. Goodwin, *supra* note 60, at 359.

strictly enforced.⁹⁴ Proper enforcement is what translates domestic legislation from words into action, and without it, child marriage will continue to plague Indian citizens.⁹⁵

B. Indian Incorporation of International Conventions

India has ratified each of the three most prevalent international treaties pertaining to child marriage—the CRC, CEDAW, and the ICCPR—suggesting it shares the general consensus of the international community that the practice of child marriage is a human rights violation.⁹⁶ Ratification of a treaty demonstrates a country's intent to apply the principles of the treaty to its domestic laws.⁹⁷ Many conventions, and all three of those mentioned in this comment, are equipped with committees whose sole purpose is to evaluate each ratifying nation's progress in implementing the convention's provisions.⁹⁸ While a convention may be widely ratified, the true test of its effectiveness is in how the ratifying body applies its provisions domestically.⁹⁹ An analysis of India's domestic application of the CRC, CEDAW, and the ICCPR will provide insight into these conventions' impact on eradicating child marriage.

The CRC does not include language expressly prohibiting child marriage, but its provisions do impose an obligation upon ratifying states to act in the best interests of children.¹⁰⁰ Specifically, when parents force a young girl into marriage, they are not acting in her best interests, and the CRC charges state officials with the task of intervening on the child's behalf in such instances.¹⁰¹ Due to its pluralist society of conflicting laws and customs, combined with its weak enforcement of state law, India has not historically excelled in fulfilling this obligation.¹⁰² To monitor domestic implementation of the CRC effectively, the Committee on the Rights of the Child requires member states to submit an initial report two years after joining the CRC, and then periodic reports every five years.¹⁰³ Based on these reports, the Committee provides each country with a list

94. *Id.*

95. *Id.*

96. *Id.*; SAGADE, *supra* note 12, at 111-12.

97. SARAH JOSEPH ET AL., THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS: CASES, MATERIALS, AND COMMENTARY 9 (2000).

98. SAGADE, *supra* note 12, at 112.

99. *Id.*

100. *Id.* at 123.

101. *Id.*

102. Francavilla, *supra* note 62, at 532; Davids, *supra* note 34, at 319.

103. *Human Rights Committee: Monitoring Civil and Political Rights*, *supra* note 49.

of issues, if any, that need to be resolved in order for the country's practices to align with the convention's purpose properly.¹⁰⁴ In response to India's most recent periodic report, child marriage was the very first issue for which the Committee requested improvement.¹⁰⁵ In a report distributed November 25, 2013, the Committee gave India until March 1, 2014, to "provide updated information on measures taken to guarantee the implementation of the PCMA in all states of the State party."¹⁰⁶ Clearly, India still needs to make significant improvements before its domestic obligation reflects the practices of the CRC.

Although it includes a provision banning child marriage, CEDAW fails to set a minimum age for marriage, which, in turn, allows signatories to engage in the practice of child marriage without necessarily violating the convention.¹⁰⁷ However, the Committee on the Elimination of Discrimination Against Women, which analyzes domestic application of CEDAW, recommended eighteen years as the minimum age for marriage.¹⁰⁸ Understanding the prevalence of child marriage in India, the Committee addressed the practice when responding to India's most recent periodic report detailing its progress in abiding by CEDAW's provisions.¹⁰⁹ The report submitted to India indicated that the National Commission of Women conducted studies on the efficiency of legislation banning harmful practices against women and girls, such as child marriage.¹¹⁰ The Committee requested that India submit information on these studies' results and provide specific examples of such legislation as well as other methods taken and results attained to eradicate harmful practices against women and girls.¹¹¹ The report also instructs India to provide evidence of measures implemented to modify cultural beliefs and stereotypes that suggest women must serve in a subordinate role in society.¹¹² The last instruction indirectly addresses child marriage, because young girls are typically forced into marriages where they are

104. *Id.*

105. Comm. on the Rights of the Child, List of Issues in Relation to the Combined Third & Fourth Periodic Reports of India, 66th Sess., May 6-June 13, 2014, U.N. Doc. CRC/C/IND/Q/3-4 (Nov. 25, 2013) [hereinafter Third & Fourth Periodic Reports of India].

106. *Id.*

107. Askari, *supra* note 13, at 133.

108. SAGADE, *supra* note 12, at 44.

109. Comm. on the Elimination of Discrimination Against Women, List of Issues & Questions in Relations in Relation to the Combined Fourth & Fifth Periodic Reports of India, U.N. Doc. CEDAW/C/IND/Q/4-5 (Oct. 28, 2013) [hereinafter Fourth & Fifth Periodic Reports of India].

110. *Id.*

111. *Id.*

112. *Id.*

subordinate to their typically much older husbands.¹¹³ The Committee's instructions demonstrate that India still needs to make significant improvements in order to fulfill its obligations as a member of CEDAW.

Due to the multitude of human rights protected by the ICCPR, it would be nearly impossible for a member state to engage in child marriage without violating the ICCPR even though the ICCPR does not expressly prohibit this practice. The ICCPR is so comprehensive that even India's attempt at preventing child marriage, the PCMA, violates the ICCPR because it prescribes different minimum marriage ages for men and women.¹¹⁴ By establishing eighteen as the minimum age for women and twenty-one for men, the act is in violation of article 2(1) of the ICCPR, which prohibits discrimination on the grounds of sex.¹¹⁵ The Human Rights Committee, which monitors domestic implementation of the ICCPR, has emphasized the importance of member states setting the same minimum age for marriage for women and men.¹¹⁶ When addressing India's report detailing its progress in implementing the rights prescribed by the ICCPR, the Committee expressed grave concern regarding the inefficiency of legislative measures taken to prevent child marriage.¹¹⁷ Furthermore, the Committee was dissatisfied with the measures intended to modify the attitudes that foster the continuation of this practice.¹¹⁸ The preferential treatment of male children, the leniency of punishment for marital rape, and the inequality of rights enjoyed by women and men were all noted.¹¹⁹ The Committee recommended that India implement further measures to rectify these issues and protect women from all discriminatory practices.¹²⁰ Based on these concerns expressed by the Human Rights Committee, India's current domestic legislation is not up to par to the demands upon it as a member of the ICCPR.

IV. UNITED STATES

While many citizens of Western nations might be appalled by the idea of child brides, the practice of child marriage is certainly not limited

113. *Id.*

114. Gaffney-Rhys, *supra* note 13, at 366; *Handbook on the Prohibition of Child Marriage Act, 2006*, *supra* note 82, at 10.

115. *Id.*

116. *Id.*

117. Human Rights Comm., Concluding Observations of the Human Rights Comm.: India, U.N. Doc. CCPR/C/79/Add.81 (Aug. 4, 1997) [hereinafter Human Rights Comm., India].

118. *Id.*

119. *Id.*

120. *Id.*

to developing nations.¹²¹ In fact, there are several states in the United States where the minimum age for marriage is as low as thirteen years.¹²² In a survey conducted between 2001 and 2002, more than one in ten of all U.S. women had married before the age of eighteen, with approximately 9.4 million having married when they were sixteen years of age or younger.¹²³ In the United States, the law will allow parties to marry before reaching the age of majority if they have parental consent or court approval.¹²⁴ While the majority of these marriages were within the perimeters of domestic legislation, there are undoubtedly incidences in which marriages involving minors were illegally performed.¹²⁵ Like India, the United States has a multicultural society consisting of people from varying social and religious backgrounds, and some of these groups actually promote the practice of child marriage.¹²⁶ Of the three primary international conventions addressing child marriage, the United States is only a member of the ICCPR.¹²⁷ In 2010, Secretary of State Hilary Rodham Clinton labeled all cases of child marriage as child abuse, indicating the United States' firm stance against this practice.¹²⁸ However, with millions of women living in the United States who are married before the age of eighteen, the effectiveness of the nation's domestic legislation as well as its compliance with international standards is debatable.

A. *U.S. Domestic Legislation*

In legal matters pertaining to children, U.S. jurisprudence has set a legally enforceable standard that serves the best interests of the child.¹²⁹ This standard creates a protective framework that protects parental rights, but also places an obligation on adults to act in the best interests of the child.¹³⁰ As this relates to child marriage, the law strictly regulates marriages involving minors, requiring parental or judicial consent for

121. Warner, *supra* note 8, at 245.

122. Mercier, *supra* note 56, at 378.

123. Vivian E. Hamilton, *The Age of Marital Capacity: Reconsidering Civil Recognition of Adolescent Marriage*, 92 B.U.L. REV. 1817, 1819 (2012).

124. *Id.* at 1832.

125. Rosanne Piatt, *Overcorrecting the Purported Problem of Taking Child Brides in Polygamist Marriages: The Texas Legislature Unconstitutionally Voids All Marriages by Texans Younger Than Sixteen and Criminalizes Parental Consent*, 37 ST. MARY'S L.J. 753, 754-55 (2006).

126. *Id.* at 756-57.

127. SAGADE, *supra* note 12, at 112; CARTER & WEINER, *supra* note 14, at 62.

128. Hamilton, *supra* note 123, at 1819.

129. Kohm, *supra* note 30, at 93.

130. *Id.* at 91, 96.

such instances.¹³¹ Individuals who violate these requirements are subject to severe punishment, such as imprisonment.¹³² These laws were established to protect U.S. citizens; however, with an ever-growing immigrant population, many of whom are undocumented, what duty does the U.S. government have to protect child brides trafficked into the country? Fulfilling its obligation to protect all vulnerable children within its borders, the United States does provide legal remedies for victims of illegal child marriage regardless of the parties' citizenship.¹³³

1. Remedies for U.S. Citizens

Although domestic legislation prescribes eighteen as the minimum age for marriage, the United States, unlike India, allows individual states to determine at what age minors can marry with parental or judicial consent.¹³⁴ The majority of states allow minors who are either sixteen or seventeen years old to get married granted they obtain approval from a parent or the court.¹³⁵ Minors who are fifteen years old or younger require both parental and judicial approval, and this dual consent is only granted in exceptional cases, typically when the girl is pregnant.¹³⁶ The younger the minor, the more likely the state is to be skeptical of the parent's judgment in the matter; thus, consent of both the court and the parent is required for minors who are fifteen years of age or younger.¹³⁷ While there is no specific age agreed upon by all fifty states, at some point the threshold of propriety is breached, and a very young minor seeking to enter marriage could insinuate a case of child abuse.¹³⁸ For example, in New Jersey, parents who requested the court's approval to allow their thirteen-year-old daughter to marry her nineteen-year-old boyfriend were convicted of child abuse for acquiescing to their thirteen-year-old daughter's sexual relationship.¹³⁹

While India's pluralist society sometimes hampers the efficacy of domestic legislation, conflicting rules on age requirements for marriage among U.S. states also create barriers for enforcing state-enacted laws

131. DOUGLAS E. ABRAMS ET AL., *CONTEMPORARY FAMILY LAW* 152 (3d ed. 2012).

132. *See id.*

133. Jenna Mark, *Married at Eight Years Old: How United States Current Legal Remedies are Inadequate To Protect the Victims of Child Marriage*, 18 *NEW ENG. J. INT'L & COMP. L.* 411, 430 (2012).

134. ABRAMS ET AL., *supra* note 131, at 152.

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.* at 152-53.

139. *Id.*

aimed at protecting child brides.¹⁴⁰ A case illustrative of this point involved a pregnant fourteen-year-old Nebraska girl who traveled to Kansas to marry her twenty-two-year-old boyfriend. Kansas, at the time, allowed minors as young as twelve years old to marry without parental consent.¹⁴¹ However, their marriage did not alter the husband's liability for statutory rape under Nebraska state law, and he eventually pled guilty to first-degree sexual assault.¹⁴² Due to the national publicity sparked by the case, Kansas increased the minimum age for marriage to fifteen and required judicial consent that the marriage is in the minor's best interest.¹⁴³

Additionally, just as Indian society consists of various cultural and social groups, the United States also includes some distinct religious groups whose practices may not necessarily align with the principles embodied in domestic legislation.¹⁴⁴ Radically religious groups that celebrate child marriage may not be as pronounced in the United States as they are in India, but their presence is well documented and their reasoning is the same: younger brides are likely to produce more offspring and are easily trained to suit the needs of their husbands.¹⁴⁵ Specifically, the Church of Jesus Christ of Latter-Day Saints, also known as the Mormon Church, has a documented history of promoting polygyny, or the marriage of one man to multiple women.¹⁴⁶ While the Mormon Church officially denounced this practice more than 100 years ago, polygamy, which is illegal in the United States, is still practiced by breakaway sects that often encourage the use of young girls as child brides in these polygamous unions.¹⁴⁷ Like India, the United States recognizes that the ideals of some cultural groups conflict with the principles of state-enacted law.¹⁴⁸ In *Reynolds v. United States*, the United States Supreme Court addressed this conflict by rejecting the claim that the criminalization of polygamy violates the First Amendment by punishing religious conduct.¹⁴⁹

In many of these instances, the parties may be aware that these marriages, particularly the ones involving young girls, will not be

140. *Id.* at 153.

141. *Id.*

142. *Id.*

143. *Id.*

144. Piatt, *supra* note 125, at 755-56.

145. *Id.* at 759.

146. *Id.* at 756.

147. ABRAMS ET AL., *supra* note 131.

148. Francavilla, *supra* note 62, at 546; ABRAMS ET AL., *supra* note 131, at 128-29.

149. *Reynolds v. United States*, 98 U.S. 145, 166 (1879).

recognized as legally valid.¹⁵⁰ For example, in *State v. Holm*, Rodney Holm, who was legally married to Suzie Stubbs, participated in a religious marriage ceremony with Stubbs' then-sixteen-year-old sister, Ruth Stubbs.¹⁵¹ All members of the Fundamentalist Church of Jesus Christ of Latter-Day Saints, the parties claimed that although they knew the marriage was not a legal civil marriage, they still believed they were married.¹⁵² At trial, Ruth Stubbs testified that she wore a traditional white dress to the wedding, moved in with Holm, and engaged in regular sexual intercourse with him.¹⁵³ Despite the illegality of the marriage, Holm was convicted of bigamy and unlawful sexual conduct with a minor.¹⁵⁴

While the United States and India face similar challenges in regulating child marriage, albeit to different extremes, their enforcement methods differ. With the exception of the marriages conducted secretly by radical religious sects, most marriages are well documented in the United States due to legal requirements, such as marriage registrations.¹⁵⁵ Because India does not strictly enforce the production of birth certificates and marriage registrations, they are at a disadvantage for prosecuting child marriages.¹⁵⁶ The United States, on the other hand, does require such documentation and, therefore, is more easily able to identify an illegal child marriage and prosecute offenders for crimes such as child abuse, statutory rape, or child rape.

2. Remedies for Noncitizens

The United States, dubbed a "melting pot" of people from a variety of cultural backgrounds, undoubtedly attracts immigrants who have engaged in the practice of child marriage prior to moving to the United States.¹⁵⁷ In some instances, a man who marries a young girl before moving to the United States will claim his child bride as his own child for visa purposes.¹⁵⁸ Aware of this method of trafficking in child brides, the United States has established three legal remedies that are available to young girls who are in the United States but were forced into child marriages in a foreign country. These remedies, however, are highly

150. See *State v. Holm*, 137 P.3d 726, 746-47 (Utah 2006).

151. *Id.* at 730.

152. *Id.* at 731.

153. *Id.*

154. *Id.* at 752.

155. ABRAMS ET AL., *supra* note 131, at 162.

156. SAGADE, *supra* note 12, at 59-60.

157. Mark, *supra* note 133, at 411.

158. *Id.*

dependent on the girl's participation in the prosecution of her "husband."¹⁵⁹

One method available to victims of child marriage is filing for a T visa under the Victim of Trafficking and Violence Protection Act (TVPA), which provides visas for victims of trafficking.¹⁶⁰ The sale of a young girl by her parents to a man who essentially treats her as a domestic and sexual slave under the guise of marriage is considered both human and sex trafficking.¹⁶¹ The criteria required to apply for a T visa is extensive and competitive; the United States only grants 5,000 T visa applications per year.¹⁶² To demonstrate eligibility, the applicant must prove that she was a victim of a severe form of trafficking in which she was "threatened, forced or coerced into performing commercial sex acts, debt bondage or involuntary servitude."¹⁶³ Since most, if not all, child brides are forced into marriage, any sexual acts that occur lack consent and should be deemed forced sexual acts.¹⁶⁴ While commercial sex is usually associated with prostitution, the definition of a commercial sex act is "any sex act on account of which anything of value is given to or received by any person."¹⁶⁵ A child bride could argue that the sale of her body, specifically her virginity, is a transaction that equals a commercial sex act because she is giving up something valuable, sex, in return for the protection that having a husband provides.¹⁶⁶ The applicant must also show that she would suffer "extreme hardship involving unusual and severe harm" if removed from the United States.¹⁶⁷ A child bride would claim that if sent back to her home and to the parents who sold her, she would likely be beaten and sent back to her husband. Victims over the age of fifteen are required to assist in the investigation and prosecution of her trafficker—a task that many child brides are too traumatized to complete.¹⁶⁸ Critics of this remedy argue that a victim's cooperation with the investigation should not be mandatory in order for her to obtain relief.¹⁶⁹

159. *Id.* at 412, 429.

160. *Id.* at 412.

161. *Id.*

162. *Id.* at 417.

163. *Id.* at 419.

164. *Id.*

165. Victims of Trafficking and Violence Protection Act of 2000, § 103(3), 114 Stat. 1464, 1469 (current version at Pub. L. No. 113-4, 127 Stat. 54 (2013)).

166. Mark, *supra* note 133, at 421.

167. *Id.* at 429.

168. *Id.*

169. *Id.* at 422.

The ability for a child bride to prove that she is a refugee or asylee within the meaning of the Immigration and Nationality Act (INA) affords her another avenue for relief.¹⁷⁰ The victim is required to prove that she “(1) has a *well-founded fear of persecution* in the future on account of the applicant’s race, religion, nationality, membership in a particular group or political opinion or (2) the applicant has suffered persecution on account of at least one of the above grounds, thereby establishing a presumption of well-founded fear.”¹⁷¹ The child bride must also prove that her native country’s government will not protect her.¹⁷² The claim must be filed within the first year of arriving in the United States, and if asylum is granted, the applicant will be eligible for lawful permanent residency after one year.¹⁷³ Like the TVPA, this remedy requires cooperation on behalf of the victim, who may be expected to testify against her trafficker.¹⁷⁴ One potential problem with this remedy is that it requires that the victim prove the intent of the persecutor—a charge that reduces the number of applicants eligible for asylum.¹⁷⁵

Addressed by the Trafficking Victim’s Protection Reauthorization Act of 2008, the Special Immigration Juvenile (SIJ) status provides the most satisfactory remedy for child brides because it affords them an array of benefits.¹⁷⁶ Minors who have been abused, abandoned, or neglected are granted visas, are eligible for foster care, and are protected from having to continuously detail their horrifying stories during the application process.¹⁷⁷ However, to obtain SIJ status the victim must be under twenty-one years of age, unmarried, able to show that family reunification is not an option due to abuse or neglect, and a judicial or administrative proceeding must determine that it is not in the victim’s best interest to return to her home country.¹⁷⁸ A child bride could argue that family reunification is impossible because she would likely suffer further abuse as punishment for her rebellion.¹⁷⁹ A child bride should easily be able to demonstrate to the court that she is unmarried because as a minor her marriage is invalid in both her country, depending upon

170. *Id.* at 412.

171. *Id.* at 417 (quoting CHARLES GORDON ET AL., IMMIGRATION LAW AND PROCEDURE § 35.09[3][a] (Matthew Bender rev. ed., 2010) (emphasis added)).

172. *Id.* at 412.

173. *Id.*

174. *Id.* at 423.

175. *Id.* at 423-24.

176. *Id.* at 413, 426.

177. *Id.* at 413.

178. *Id.* at 418.

179. *Id.* at 428.

the country, and the United States.¹⁸⁰ However, the risk remains that the court may not accept this argument, and, therefore, removing the eligibility requirement of marriage would enable this remedy to better protect victims of child marriage.¹⁸¹

B. U.S. Incorporation of International Conventions

As one of a few countries who have not ratified the widely accepted international treaties such as the CRC and CEDAW, the United States has received considerable backlash for its refusal to join these conventions.¹⁸² The United States' decision against ratifying the CRC, in particular, has brought much ill will to the country as it is the only United Nations member country that has opted out of ratification, with the exception of Somalia—a country whose lack of a recognized government precludes it from ratifying any international agreement.¹⁸³ Although the United States initially showed support for the CRC, it changed its position shortly before it was to ratify the treaty.¹⁸⁴ Two prevalent theories attempting to explain why the United States has not ratified the CRC include fear of a usurpation of U.S. sovereignty in addition to inconsistency between domestic laws and some of the treaty's provisions.¹⁸⁵ Regardless of the reasoning, many members of the international community find it hypocritical for the government to promote children's rights around the world without having signed the most comprehensive children's civil rights document in history.¹⁸⁶

Failure to ratify CEDAW has also sparked some criticism directed at the U.S. government.¹⁸⁷ Opponents of the treaty claim that CEDAW does not thoroughly reflect U.S. values, while proponents of the treaty suggest that the convention is attempting to translate U.S. principles of equality and women's rights into global norms.¹⁸⁸ As a former world leader in the promotion of women's rights, the United States' failure to

180. *Id.* at 419.

181. *Id.* at 413, 428.

182. Lisa Baldez, *US Drops the Ball on Women's Rights*, CNN (Mar. 8, 2013), <http://www.cnn.com/2013/03/08/opinion/baldez-womens-equality-treaty/>.

183. *Convention on the Rights of the Child: Protect Children's Human Rights*, AMNESTY INT'L, <http://www.amnestyusa.org/our-work/issues/children-s-rights/convention-on-the-rights-of-the-child> (last visited Nov. 13, 2014); *Convention on the Rights of the Child: Frequently Asked Questions*, UNICEF, http://www.unicef.org/crc/index_30229.html (last visited Nov. 13, 2014).

184. *Why Won't America Ratify the UN Convention on the Children's Rights?*, ECONOMIST (Oct. 6, 2013), <http://www.economist.com/blogs/economist-explains/2013/10/economist-explains-2>.

185. *Id.*

186. *Id.*

187. Baldez, *supra* note 182.

188. *Id.*

ratify CEDAW leads some to question its stance regarding women's rights.¹⁸⁹

However, the United States' ratification of the ICCPR demonstrates its commitment to promoting human rights.¹⁹⁰ Unlike India, the United States abides by the ICCPR's provisions banning discrimination on the grounds of sex in that it prescribes the same legal age for marriage for both men and women.¹⁹¹ While the Human Rights Committee did raise some issues to the U.S. government regarding its domestic implementation of the ICCPR principles, the issue of child marriage was not highlighted as a concern, suggesting the U.S. government has satisfactorily met international standards in that regard.¹⁹²

V. PROPOSED SOLUTIONS

In both developed and developing nations, the domestic regulation of child marriage has proved insufficient. Consequently, a revision in the application of international conventions must serve as the catalyst for the eradication of this gross violation of human rights. In order to be effective agents of change, international human rights laws must be more than soft laws with virtually no assurance of enforcement.¹⁹³ If properly enforced, international treaties have the potential to be powerful tools in the fight against child marriage due to their ability to create domestic law.¹⁹⁴ However, lack of clarity in the wording of some international conventions undeniably impedes their efficacy.¹⁹⁵ Aside from the ambiguous language found in many provisions of international treaties, the overuse of reservations, or modifications to specific provisions of the treaty, can be a major culprit behind treaties' inefficiency. In order to eliminate confusion, international human rights treaties should clearly define which provisions most directly promote the object and purpose of the treaty and, consequently, prevent countries from making reservations to those provisions if they join the convention. Specifically, the committees charged with the domestic implementation of the CRC, CEDAW, and the ICCPR should prevent signatory countries from

189. *Id.*

190. CARTER & WEINER, *supra* note 14, at 162.

191. ABRAMS ET AL., *supra* note 131, at 153.

192. *See generally* Human Rights Comm., List of Issues in Relation to the Fourth Periodic Report of the U.S., U.N. Doc. CCPR/C/USA/Q/4 (Apr. 29, 2013).

193. Nona Atoyán, *The Ineffective Protections and Guarantees of Human Rights Conventions of Women and Children*, 12 WHITTIER J. CHILD & FAM. ADVOC. 105 (2012).

194. JOSEPH ET AL., *supra* note 97, at 9.

195. Atoyán, *supra* note 193, at 114.

making reservations to provisions that most directly impact the eradication of child marriage.

While there is undeniably a great deal of uncertainty pertaining to the rules applicable to reservations of human rights treaties, some conventions minimize this confusion by including reservation clauses that detail what is and what is not acceptable.¹⁹⁶ For example, article 28(2) of CEDAW explicitly states that reservations incompatible with the object and purpose shall not be permitted.¹⁹⁷ On the other hand, treaties such as the ICCPR and the CRC do not include an explicit rule on reservations.¹⁹⁸ Even absent direct language addressing reservations, there remains an accepted rule in the international community that parties should not make reservations that are contrary to the object and purpose of the treaty.¹⁹⁹

With or without a reservation clause, defining the object and purpose of a treaty is a difficult task, which is made evident by the fact that despite CEDAW's inclusion of a reservation clause, it has the highest rate of reservations of any human rights treaty.²⁰⁰ Many countries, including India, have made reservations to provisions in CEDAW that pertain to marriage and family relations, specifically article 16(2) forbidding child marriage and making registration of marriage compulsory.²⁰¹ Article 16(2) clearly affects child marriage; consequently, CEDAW Committee should not allow countries to make reservations to this treaty if the convention is earnest in its attempts to reduce the number of child brides. Due to its high rate of reservations, CEDAW's competency as an international law treaty and its effectiveness as a human rights instrument have been called into question.²⁰² Designed as an international bill of rights for women that prohibits discrimination based on sex, one could argue that each and every provision promotes the goal of the treaty, and thus is an important part of the "object and purpose."²⁰³ However, this would lead to a total ban on the making of reservations, and, consequently, deter countries from becoming members of conventions that contain any provision with which they did not agree.²⁰⁴ While some reservations may indeed lessen the effectiveness of

196. LIJZAAD, *supra* note 17, at 408.

197. *Id.* at 300.

198. *Id.* at 185-86.

199. *Id.* at 408.

200. Askari, *supra* note 13, at 134.

201. *Id.* at 133; SAGADE, *supra* note 12, at 145.

202. Askari, *supra* note 13, at 134.

203. *Id.* at 135; LIJZAAD, *supra* note 17, at 83.

204. *See* LIJZAAD, *supra* note 17, at 402.

international treaties, the conventions' efficacy would also be undermined if they are not widely ratified. Therefore, an appropriate solution would be to distinguish core obligations, those that are essential to achieving the goal of the treaty, from other obligations.²⁰⁵

Because the Human Rights Committee could not agree on a reservation clause due to the ICCPR's far-reaching and detailed provisions, it is accepted that the "object and purpose" rule of article 19(c) would apply to the treaty.²⁰⁶ Protecting civil and political rights is a rather general concept, and like the CEDAW, it is difficult to discern the precise object and purpose of the ICCPR.²⁰⁷ With dozens of vaguely worded rights, countries, like the United States, tend to make reservations to the ICCPR in efforts to ensure they will not be bound to reservations that conflict with domestic legislation.²⁰⁸ Some nations experience backlash for making reservations that allow them to become members of international conventions without taking on the obligations that come with membership.²⁰⁹ The United States, for example, has been accused of obtaining the benefits of participating in the convention, most notably having a position on the Human Rights Committee, without taking on any of the burdens.²¹⁰ Again, establishing which provisions directly address the object and purpose of the treaty and not allowing reservations to be made in regards to those provisions would ensure that no country receives a "free ride" into conventions without taking on any responsibility. In applying this general solution to child marriage, the Human Rights Committee, as well as the CRC Committee, should not allow countries to make reservations that are in contrast with the object and purpose of eliminating child marriage.

One possible negative ramification of this division of provisions would be that it suggests a hierarchy of human rights norms.²¹¹ Human rights norms are typically viewed as a coherent set of rules in which all rules are of equal importance.²¹² However, by proscribing the allowance of reservations that go against the object and purpose of the treaty, article 19(c) of the VCLT indirectly acknowledges that it is acceptable to make reservations to some provisions but not to others.²¹³ Thus, this distinction

205. *Id.* at 408-09; *see* Vienna Convention on the Law of Treaties, *supra* note 28, art. 19.

206. *Id.* at 186.

207. LUNZAAD, *supra* note 17, at 408.

208. CARTER & WEINER, *supra* note 14, at 773.

209. *Id.* at 776.

210. *Id.*

211. LUNZAAD, *supra* note 17, at 83.

212. *Id.*

213. *Id.* at 408-09; *see* Vienna Convention on the Law of Treaties, *supra* note 28, art. 19.

is acceptable and necessary for preserving the integrity of the treaty's mission.

While it is easy to state that a reservation goes against the object and purpose of the treaty, substantiating that claim is a difficult task, but discerning core obligations from other obligations provide clarity to this issue.²¹⁴ Detecting core obligations is a matter of interpretation rather than an exact science, and because there are no rules detailing how to accomplish this goal, it should be up to the each convention's committee to determine into which category each provision falls. The same authority charged with overseeing party members' application of the convention's provisions should also decide which provisions can be subjected to reservations and which provisions are so essential to the goal of the treaty that they cannot be modified.²¹⁵ In order to eradicate social injustices such as child marriage, preventing the existence of incompatible reservations that hamper implementation of human rights treaties must be given a high priority among committee members.²¹⁶ Because a convention's success is often determined by its acceptance or ratification rate within the international community, reservations are often seen as a tool to encourage ratification and, consequently, make the treaty more successful. However, it is contradictory and highly inefficient for a country to express consent to be bound to a treaty while at the same time making reservations that are incompatible with the treaty's object and purpose.²¹⁷ Determining which provisions are most important in achieving the object and purpose of the treaty is a complicated task that would be best achieved by each convention's committee through the distinction of core obligations from other obligations.

VI. CONCLUSION

The practice of child marriage is an international problem that requires an international solution. While domestic legislation banning child marriage is imperative, the fact that such legislation exists in many of the countries where child marriage is most prevalent demonstrates the extreme fallacies of the system. Child marriage is found in developing and developed nations alike, albeit to varying extremes, and the international community must come to a general consensus on the most effective legal mechanisms to address this issue. Because treaties are one

214. LUNZAAD, *supra* note 17, at 408.

215. *Id.* at 408-09.

216. *Id.* at 408.

217. *Id.*

of the most important sources of international law, their proper employment could serve as the catalyst for eradicating child marriage.²¹⁸ By not allowing countries to make reservations to provisions that conventions' committees determine most supportive of the object and purpose of the treaty, the implementation of international treaties will be more efficient in its efforts to prevent child marriage. Despite the possibility of creating a hierarchy among human rights norms, this division among provisions is necessary in order to abide by article 19(c) of the VCLT that prohibits the use of reservations that are incompatible with the object and purpose of the treaty.²¹⁹ While child marriage is undeniably a complex social and cultural issue that will take years to resolve, revising the implementation process of international conventions prohibiting this heinous practice is a step in the right direction in the long road ahead.

218. CARTER & WEINER, *supra* note 14, at 85.

219. *Id.* at 83, 405.