Child Marriage of Girls in Afghanistan: Addressing the Legal Gap Between National and International Human Rights Law

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Contents

Abstract.....vi
CHAPTER I 1
INTRODUCTION..... 1
A. Background..... 1
B. Problem formulation..... 3
C. Research Objective 4
D. The benefits of my research..... 4
1. Theoretical benefits..... 4
2. Practical benefits..... 4
E. Originality of the Research..... 4
F. Theoretical framework..... 14
1. Human Rights Theory 14
2. Compliance theory 15
3. Feminist Legal Theory..... 16
G. Definition of terms 17
H. Literature review 17
1. The concept of child marriage 18
2. International Human Rights Principles on Child Marriage..... 18
3. Afghan National Laws on Child Marriage 19
I. Research method 21
1. Type of Research 21
2. Description of Research Focus..... 21
3. Method of Approach 21
4. Sources and Types of Legal Material 22
5. Data Collection Techniques..... 23
6. Data Analysis Techniques..... 23
J. Writing framework..... 23
CHAPTER II..... 24

Theoretical framework 24
A. Human Rights Theory **24**
1. The Intellectual Origins of Human Rights Theory **24**
2. Dignity as the Core Principle of Human Rights **26**
3. The Universality **27**
4. Jack Donnelly's Perspective on Human Rights **28**
5. Henry Shue's Perspective on Human Rights **29**
B. Compliance Theory **30**
1. The Realist Perspective **31**
2. Managerial Model of Compliance **31**
3. Thomas Franck's Legitimacy Theory **34**
4. Compliance in international law **35**
5. The criticism of compliance theory **36**
C. Feminist theory **37**
1. The emergence and development of Feminist legal theory **37**
2. The Critique of Legal Neutrality **39**
3. Formal equality and Substantive equality **40**
4. patriarchy and legal structures **40**
5. Catharine A. MacKinnon's Perspective **42**
6. Martha Albertson Fineman's Perspective **42**
7. Kimberlé Crenshaw's Perspective **43**
CHAPTER III 45
Comparative assessment of the National and International Human Rights Principles on Child Marriage 45
A. International Human Rights Standards on Child Marriage **46**
1. The concept of child marriage in international human rights principles **46**
2. The Minimum Age of Marriage under international human rights principles **47**
B. State Obligations to protect children from early marriage under international human rights law **51**
1. State Obligations under the Convention on the Rights of the Child (CRC) **51**

2. State responsibilities under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) 53

3. State Obligation under the International Covenant on Civil and Political Rights (ICCPR) 55

C. Afghanistan's national legal system on child marriage before and after 2021 56

1. The Constitution of Afghanistan (2004) 56

2. The Civil Code of Afghanistan 58

3. Law on the Elimination of Violence Against Women (EVAW) 62

4. Shiie Persoanl law 64

D. Comparative Analysis of Afghan National Law and International Human Rights Law on Child Marriage 64

1. Contradiction in the Minimum age of marriage 65

2. Inconsistency Regarding Free and Full Consent to Marriage 66

3. Inconsistency in the legal protection mechanism 67

4. Inconsistency in the Guardianship principle 68

F. Theoretical Analysis of the Legal Inconsistencies 71

G. Afghanistan's legal situation after 2021 74

1. The Collapse of the Previous Legal System 74

2. Taliban Decree No. 18 on Marriage 75

H. Continuity of the Afghan Government and Continuing Treaty Commitments 77

I. Legal reforms 78

1. Reforming the Minimum Age of Marriage 79

2. Reforming the Principle of Free and Full Consent 80

3. Reforming Guardianship Rules 80

CHAPTER VII 82

A. Conclusion 82

B. Recommendations 83

Bibliography 84

Abstract

The practice of child marriage remains a human rights concern in Afghanistan despite several legal frameworks intended to protect girls from harmful practices, including underage marriage. This thesis examines underage marriage of girls in Afghanistan to identify the legal gap between domestic and international human rights standards. The main purpose of this research is to examine the inconsistencies between national laws, particularly the 1977 Civil Code, and its binding obligation under international human rights principles, both before and after the Taliban's return to power in 2021. This thesis applied a normative (doctrinal) legal research method, combining three approaches. The legal approach is used to study the 1977 Civil Code, the 2004 Constitution, the 2009 Law on the Elimination of Violence Against Women (EVAW), and the Shiia Personal Status Law alongside international human rights standards, including the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the International Covenant on Civil and Political Rights (ICCPR), and the Universal Declaration of Human Rights (UDHR). The conceptual approach clarifies key legal terms, such as child marriage, free and full consent, and guardianship, and the comparative approach applies a vertical method that assesses the same legal questions — minimum age, consent, guardianship, and legal protection across different layers of normative authority, from international treaty obligations to Afghanistan's domestic statutory framework. The finding illustrates that Afghanistan's pre-2021 legal frameworks related to marriage were inconsistent with international standards across four key indicators. First, Article 70 of the Civil Code set the minimum marriage age at 16 for girls and 18 for boys, falling below the internationally recognized threshold of 18 for both sexes. Second, Article 71(1) permitted a father or competent court to conclude a marriage contract on behalf of an underage girl without requiring her own consent, directly conflicting with the principle of free and full consent in Article 16(1)(b) of CEDAW, Article 23(3) of the ICCPR, and Article 16(2) of the UDHR. Third, this guardianship mechanism substituted the girl's personal legal agency with the exclusive authority of male guardians. Fourth, the EVAW Law's criminal protection under Article 28, while a positive step, remained dependent on the Civil Code's own permissive threshold, leaving girls married between the ages of 15 and 16 without meaningful legal protection. Since the Taliban's takeover, this gap has significantly widened. The collapse of the Islamic Republic's legal system and the promulgation of Decree No. 18, the "Code on Judicial Separation of Spouses," in May 2026 abolished the minimum age of marriage entirely, replacing it with a puberty-based standard that lacks any fixed numerical threshold. The Decree further permits a girl's silence upon reaching puberty to be interpreted as consent to marriage and grants parents unrestricted authority to arrange their daughters' marriages without regard to the child's best interests. Despite the change in government, this thesis establishes, based on the customary international law principle of state continuity as reflected in the Vienna Convention on the Law of Treaties, that Afghanistan remains bound by its pre-existing treaty obligations under the CRC, CEDAW, and the ICCPR, regardless of which authority exercises effective control over its territory.

Keywords: Child marriage, minimum age of marriage, Afghanistan, Civil Code, guardianship, Decree No. 18, CRC/CEDAW/I

CHAPTER I

INTRODUCTION

A. Background

Marriage of underage girls refers to any formal or informal union in which the girl is under the age of 18. The organization *Girls Not Brides* defines child marriage as a marriage in which one or both parties are below 18 years of age. Similarly, UNICEF defines child marriage as "a formal marriage or informal union before the age of 18" and recognizes it as a violation of human rights. The inclusion of both "formal" and "informal" unions broadens the definition to cover situations in which a marital relationship exists without formal legal recognition under statutory law, custom, or tradition. Despite international efforts to combat the practice, child marriage remains a major social and human rights concern, particularly in developing countries, including Afghanistan.[1]

On July 10, 2025, a man in Helmand Province, Afghanistan, forced his six-year-old daughter into marriage with a 45-year-old man in exchange for money. The groom already had two wives. The marriage was scheduled to be formalized with the girl's transfer to her husband's home, but Taliban authorities intervened and temporarily halted the process. Instead of prosecuting the groom, the Taliban ordered him to wait until the girl turned nine before taking her home. When photos of the ceremony circulated on social media, they sparked widespread backlash and condemnation from national and international human rights organizations. Observers expressed concern about the prevalence of child marriage in Afghanistan, where economic conditions sometimes override moral and legal considerations.[2]

This case shows the continuation of underage marriage in Afghanistan despite the existence of legal frameworks at the national and international levels. International human rights instruments

[1] UNICEF, "Fast Facts: 10 Facts Illustrating Why We Must #EndChildMarriage," February 11, 2019, https://www.unicef.org/eca/press-releases/fast-facts-10-facts-illustrating-why-we-must-endchildmarriage?utm_source=chatgpt.com.Accessed November 5, 2025.

[2] Ahmad Azizi, "Six-Year-Old Girl Married to 45-Year-Old Man in Helmand," *Amu TV*, June 27, 2025, https://amu.tv/183096/.Accessed November 5, 2025.

related to marriage include the Convention on the Rights of the Child (CRC), 1989. [3]The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979/2003, and Optional Protocol to the CRC on the involvement of children in armed conflict – *Acceded on 24 September 2003* International Covenant on Civil and Political Rights (ICCPR), 1966 the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), impose obligations on states to protect children from harmful practices such as child marriage. [4]At the national level, Afghanistan's marriage laws contain provisions that allow marriage under the age of 16 with parental or judicial consent.[5] The coexistence of these national provisions with international standards raises important questions about the effectiveness and coherence of the legal framework governing child marriage in Afghanistan.

Similarly, on 12 November 2021, a UNICEF report was published on the rise of child marriage in Afghanistan. Between 2018 and 2019, 183 child marriages and 10 cases of girls being sold into marriage were documented in Herat and Badghis provinces alone.[6] The ages of these girls ranged from 6 months to 17 years. UNICEF estimated that around 28% of Afghan women were married before the age of 18. Factors such as poverty, food insecurity, and restrictions on girls' education have pushed many families into desperate situations, increasing reliance on early marriage, which is associated with poor mental health, domestic violence, and early pregnancy. In such contexts, early marriage is often closely linked to the economic pressures families face.[7]

In addition, a national study by Dadras et al. (2023) found that approximately 67.7% of births to women aged 15–24 were to mothers who had married before age 18.[8] The majority of these

[3] United Nations General Assembly, "Convention on the Rights of the Child," United Nations, November 20, 1989, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child.

[4] United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women," Office of the United Nations High Commissioner for Human Rights (OHCHR), December 18, 1979, https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women.

[5] Afghanistan_civil-Code_1977__2005, Pub. L. No. 353, Civil Code (1355), https://www.refworld.org/docid/3ae6b4ed4.html.

[6] UNICEF, "Girls Increasingly at Risk of Child Marriage in Afghanistan," November 12, 2021, https://www.unicef.org/press-releases/girls-increasingly-risk-child-marriage-afghanistan?

[7] MoLSAMD & UNICEF, *Child Marriage in Afghanistan | UNICEF Afghanistan* (MoLSAMD & UNICEF, 2018), 84 pages, https://flyktning.net/sites/default/files/media/child-marriage-in-afghanistan-changing-the-narrative.pdf?

[8] Omid Dadras et al., "The Association of Child Marriage with Morbidities and Mortality among Children under 5 Years in Afghanistan: Findings from a National Survey," *BMC Public Health* 23, no. 1 (2023): 32, https://doi.org/10.1186/s12889-023-14977-5.

women lived in rural areas, where poverty and limited educational opportunities are widespread. The study also highlighted that children born to mothers married before 18 faced numerous challenges and a higher risk of neonatal mortality compared to those whose mothers married as adults. This case highlights the widespread nature of underage marriage in Afghanistan and its severe physical and psychological consequences for young girls. Although several legal frameworks exist to address the underage marriage of girls, the continued prevalence of the practice raises questions about their effectiveness in protecting women and girls.[9]

These examples situate child marriage in Afghanistan within a broader socio-economic and legal context, particularly in rural areas where poverty, food insecurity, and limited access to education influence family decisions. [10]Afghanistan has adopted legal frameworks at both the national and international levels to regulate marriage and protect children from early and forced unions, including obligations under international human rights law. At the same time, statutory marriage laws operate alongside religious and customary practices that continue to play a central role in family matters, especially in rural communities. [11]This situation reveals a significant gap between Afghanistan's national marriage laws and international human rights standards, raising critical questions about legal consistency, effectiveness, and compliance. Accordingly, this research seeks to examine these legal inconsistencies and identify reforms necessary to strengthen the protection of girls from child marriage in Afghanistan.

B. **Problem formulation**

1. What are the inconsistencies between Afghanistan's national marriage laws and international human rights standards regarding the protection of girls from child marriage?

2. What legal reforms are needed in Afghanistan's marriage laws to ensure compliance with international human rights standards and strengthen the protection of girls from child marriage?

[9] Dadras et al., "The Association of Child Marriage with Morbidities and Mortality among Children under 5 Years in Afghanistan."

[10] MoLSAMD & UNICEF, *Child Marriage in Afghanistan | UNICEF Afghanistan*.

[11] Anju Malhotra, and Shatha Elnakib, *Child-Marriage-Evidence-Report-2021* (United Nations Population Fund (UNFPA) & United Nations Children's Fund (UNICEF), 2021), 108, https://www.unfpa.org/sites/default/files/resource-pdf/Child-marriage-evidence-report-2021.pdf.

C. Research Objective

1. To examine the inconsistencies and gaps between Afghanistan's domestic marriage laws and international human rights principles.

2. To identify and recommend legal reforms in Afghanistan's marriage laws that would ensure compliance with international human rights instruments and enhance the protection of girls from underage marriage.

D. The benefits of my research

The benefits of this research can be viewed from both theoretical and practical perspectives, as follows:

1. Theoretical benefits

a. Contribute to the development of legal scholarship by examining the gaps between Afghanistan's national marriage laws and international human rights principles regarding underage marriage.

b. Serve as a valuable reference for future research on legal reforms, gender- based rights violations, and international human rights compliance in similar contexts.

2. Practical benefits

a. For the author: Fulfill the academic requirement for obtaining a Master's degree while conducting an in-depth analysis of legal gaps affecting girls' protection.

b. For the state and policymakers: provide comprehensive insights and legal recommendations for reforming national marriage laws to align with international human rights principles and reinforce legal protection for girls.

c. Support programs, including advocacy campaigns and strategies aimed at promoting and protecting girls from harmful practices, such as child marriage.

E. Originality of the Research

This thesis is original because of its particular focus on the legal gaps and inconsistencies between Afghan national laws and international human rights standards in relation to child marriage. Many studies have been conducted on the causes and consequences of child marriage in Afghanistan. There are limited academic studies that highlight the inconsistency of national and

international human rights norms. By reviewing previous academic works and highlighting differences in conceptual frameworks, this dissertation avoids repetition and provides new insights into how legal reforms can support and protect girls against child marriage in Afghanistan.

Firstly, Nurjannah, Al Munawar, and Aslati (2025) researched "*Legal Protection of Children's Rights in Early Marriage*" in Indonesia. This work studies the legal protection of children's rights in early marriage within the context of Islamic law and Indonesian positive law. The findings show that Islamic law allows marriage for prospective brides and grooms who have or have not reached puberty, provided the conditions and pillars of marriage are fulfilled, and the principle of benefit is considered. In Indonesian positive law, the minimum marriage age is 19 for both men and women, although under certain circumstances, marriages below this age are permitted with court dispensation based on urgent reasons and supporting evidence. The research also highlights legal protections for children in early marriage, including protections for education, monitoring of violence, physical and mental preparation, and consent, and emphasizes that such measures can help protect the rights of children in early marriage. However, this thesis represents a comparative analysis of Afghanistan's marriage Laws and international human rights standards to assess legal inconsistencies and identify necessary legal reforms for strengthening the protection of girls from child marriage.

Secondly, Mohammad Yahya (2014) studied child marriage in his LL.M. thesis, "*Child marriage: Comparative Studies in the Context of Afghanistan, India, and international human rights instruments*," examining a comparative analysis of child marriage as a harmful practice within the context of Afghanistan, India, and international human rights principles. This study highlighted that child marriage is a harmful practice that violates the rights of girls, including the right to education, health, and full consent in marriage. In addition, the study examined the causes of child marriage in Afghanistan and India and showed that in developing countries, a significant number of girls marry before the age of 18 due to various factors, including economic problems, lack of education, harmful traditional and cultural norms, and weak government commitment. However, the present thesis adopts a human rights-based legal approach that highlights the inconsistencies of Afghanistan's domestic laws and human rights frameworks and intends to identify legal reforms to strengthen the protection of girls from child marriage in the Afghan context.

Thirdly, Samim and Ayoubi (2025), in their article *"Violence Against Women in Afghanistan: A Human Rights Perspective and the Role of Domestic Law,"* it studied the forms of violence against women in Afghanistan through legal analysis of domestic laws, including the Elimination of Violence against Women Act (EVAW), the 2017 Penal Code, and international human rights frameworks, such as the UDHR, ICCPR, and CEDAW. The study criminalized child marriage under the EVAW and provided an overall human rights analysis of gender-based violence in Afghanistan. In contrast, the present thesis focuses on legal gaps between national marriage laws and international human rights frameworks to propose legal reforms.

Fourthly, Dadras, Khampaya, and Nakayama (2022) examined "*Child Marriage, Reproductive Outcomes, and Service Utilization among Young Afghan Women: Findings from a Nationally Representative Survey in Afghanistan*," which conducted empirical research through a national survey on the prevalence of child marriage and its consequences. The findings showed that 52% of Afghan women aged 20-24 were married before the age of 18; Therefore, girls who marry early have serious health problems, including premature pregnancy, poor medical care, and unsafe childbirth. Therefore, it emphasized stronger enforcement of international legal standards. This research focuses on how the inconsistency between national marriage laws and international human rights undermines the protection of girls from early marriage, and proposes legal reforms.

Fifthly, while Jafari et al. (2025) studied "*The Impact of Afghanistan's Policies on Early Child Marriage and Girls' Education: Current Trends and Future Consequences*," They examined current government policies and restrictions on women and girls, pointing to restrictions on women's and girls' lives, including education and unemployment, that have led to an increase in child marriage in Afghanistan. In addition, the research highlighted the negative consequences of child marriage, such as infant mortality, teenage pregnancy, and poor health. This highlighted the urgent need for national and international action to protect women and girls from harmful practices. In contrast, this research analyzes the gaps between national marriage laws and international human rights instruments to recommend legal reforms.

Sixthly, while Dadras et al. (2023) studied "*The Association of Child Marriage with Morbidities and Mortality among Children under 5 Years in Afghanistan: Findings from a National Survey*," they examined the health and survival outcomes of children born to mothers who married before 18, using data from the 2015 Afghanistan Demographic Health Survey. The study pointed

out that child marriage is common, especially among rural, uneducated, and poor households, and is associated with higher risks of neonatal and infant mortality as well as child morbidities. This highlighted the importance of providing adequate maternal care and addressing gender and social inequalities to protect children's health. In contrast, this research analyzes the gaps between Afghanistan's national marriage laws and international human rights standards to recommend legal reforms.

Seventhly, while Mohammadi (2021) studied "*The Minor Marriages from the Perspective of Islamic Jurisprudence and Afghan Effective Laws,"* This research examined the issue of child marriage through national laws and Islamic principles. The study found that historically, Islamic scholars approved of underage marriage and emphasized how the law supported child marriage. It highlighted that balancing religious principles with national laws is essential to promote and protect girls' rights. In contrast, this dissertation points to the inconsistency between marriage laws and international human rights standards and offers legal recommendations.

Eighthly, Duarsa and Yazid (2025) examined "*The crucial role of international institutions to tackle child marriage issue*." The study assessed child marriage cases in Indonesia and Nigeria and highlighted that child marriage violates international human rights, including the CRC and CEDAW. In addition, this research explained the drivers of child marriage, such as economic problems and social and cultural norms. Moreover, it studied the role of international organizations, including UNICEF and OHCHR, in formulating potential policies, regulations and leading stakeholders to effective measurement. However, the current thesis examines the inconsistency of national marriage and human rights laws and identifies legal reforms in the context of Afghanistan.

Ninthly, while Ilaridou (2024) researched "*Forced Child Marriage in Armed Conflict*," This dissertation explained the causes, effects, and dynamics of forced marriage in conflict zones globally. The thesis assessed how armed conflict puts children at risk of harm, such as early and forced marriage, and emphasized effective measures to protect children, especially during armed conflict. Furthermore, it highlighted how cultural and social norms affect the prevalence of child marriage. On the other hand, it highlighted the important role of local and international institutions in implementing policy and strategies that protect children from harm, especially during armed conflicts. However, the present thesis assesses the inconsistency between Afghan national laws

and international human rights standards and how such gaps undermine the protection of girls from child marriage and proposes legal reforms.

Tenthly, Plesons et al. (2021) researched "*Updated Research Gaps on Ending Child Marriage and Supporting Married Girls for 2020–3030."* The research reviews global research on child marriage and identifies updated research gaps for 2020 – 3030. The finding represents that despite progress having been made on understanding child marriage, around 12 million girls across the globe are married before the age of 18 per year. Moreover, the research highlighted the prevalence, causes, and consequences of child marriage as well as strategies and policies at national and international levels to protect the rights of women and girls. Furthermore, taking effective measures to protect them from harmful practices. In contrast, the present study explores the gaps between national marriage laws and international human rights standards and recommends legal reforms to protect girls from child marriage.

No	Title	Problem formulation	Similarities	Differences
1.	Nurjannah, Said Agil Husin Al Munawar & Aslati, (2025). *Legal Protection of Children's Rights in Early Marriage.*	How do Islamic law and Indonesian positive law regulate early marriage, particularly regarding the minimum age of marriage, marriage dispensation, and legal protection of children's rights, and how effective are these legal mechanisms in safeguarding children involved in early marriage?	Both studies focus on child marriage and examine legal frameworks related to child protection, including international human rights standards.	The previous study examined early marriage through Islamic law and Indonesian positive law. This thesis will focus on the context of Afghanistan and examine the inconsistency between the Afghan national marriage laws and International human rights standards.

2.	Mohammad Yahya(2014). *Comparative Studies in the Context of Afghanistan, India, and International Human Rights Instruments*	How does the practice of child marriage in Afghanistan and India conflict with international human rights instruments, and how do harmful traditional practices undermine girls' rights to education, health, consent, and personal development?	Both theses explore the context of child marriage in Afghanistan and study international human rights principles related to child protection.	The previous thesis used a comparative approach between Afghanistan and India and studied the cultural and traditional factors of child marriage, while this thesis will focus exclusively on Afghanistan and highlight legal gaps and state obligations under international human rights laws.
3.	Yaqub Jan Samim & Fazal Rahman Ayoubi,(2025). *Violence Against Women in Afghanistan: A Human Rights Perspective and the Role of Domestic Law*	How does violence against women in Afghanistan, including practices such as child marriage and forced marriage, violate international human rights obligations, and to what extent does Afghanistan's domestic legal framework address and enforce protections against such violations?	Both studies examine Afghanistan's obligations under international human rights law and identify gaps between international standards and domestic legal frameworks	The previous work broadly analyzed violence against women, while the present research will specifically examine child marriage of girls.
4.	Dadras, Khampaya, and Nakayama (2022). *Child Marriage, Reproductive*	What is the prevalence of child marriage among young Afghan women, and how does early marriage affect reproductive health	Both research focus on child marriage in Afghanistan and recognize early marriage as a serious violation of girls'	The previous research adopts an empirical, public health–based approach using survey data

	Outcomes, and Service Utilization among Young Afghan Women: Findings from a Nationally Representative Survey in Afghanistan	outcomes and access to health services?	rights. Both highlight the role of international human rights standards in addressing child marriage and emphasize the need for stronger protection mechanisms for girls.	to examine health outcomes of child marriage, while the present research employs a legal and normative analysis. focuses on inconsistencies between Afghanistan's national marriage laws and international human rights standards and proposes legal reforms to strengthen the protection of girls from child marriage.
5.	Anonymous et al (2025). *The Impact of Afghanistan's Policies on Early Child Marriage and Girls' Education: Current Trends and Future Consequences*	How do recent policies and restrictions in Afghanistan affect early child marriage and girls' access to education, and what are the consequences of these policies for women's health, education, and well-being?	Both works focus on child marriage in Afghanistan and recognize it as a violation of girls' human rights. Both engage with international human rights standards and highlight how state policies and legal frameworks influence the protection of girls from early marriage.	This study primarily adopts a public health and policy-oriented perspective, emphasizing the impact of education restrictions on health outcomes and child marriage. In contrast, the present research will conduct a

				legal analysis of the inconsistencies between Afghanistan's national marriage laws and international human rights standards.
6.	Dadras et al (2023). *The Association of Child Marriage with Morbidities and Mortality among Children under 5 Years in Afghanistan: Findings from a National Survey*	Is child marriage among Afghan women associated with increased morbidity and mortality outcomes among children under five years of age, and how do sociodemographic and healthcare factors influence this relationship?	Both research focus on child marriage in Afghanistan and acknowledge the relevance of international standards and global advocacy in addressing child marriage	The previous work applied a quantitative public health approach, using demographic survey data, while the present thesis will adopt a legal and human rights analysis.
7.	Duarsa & Yazid (2025). *The Crucial Role of International Institutions in Tackling the Child Marriage Issue*	Why have international institutions been unable to effectively eliminate child marriage, and how does the absence of strict international policies and norm diffusion hinder the formation of global and domestic standards against child marriage?	Both studies address child marriage as a violation of international human rights and engage with international legal instruments such as CEDAW and the CRC.	The previous work focused on the role of international institutions and isomorphism theory rather than domestic legal analysis. In contrast, the present study will assess inconsistencies between national marriage laws and international human rights standards in the

				context of Afghanistan.
8.	Mohammadi (2021). *The Minor Marriages from the Perspective of Islamic Jurisprudence and Afghan Effective Laws*	What is the legal and jurisprudential basis of underage marriage in Islam, and to what extent can Afghan laws limit or regulate such marriages in light of their social consequences?	Both research analyses child marriage in the Afghan context and acknowledge underage marriage as a harmful practice, and the role of legal frameworks in regulating marriage, and emphasize the need for stronger legal protections.	The previous study primarily analyzes child marriage through Islamic jurisprudence and Afghan domestic laws, and religious interpretation. The present study will analyze inconsistencies and gaps between Afghanistan's national marriage laws and international human rights instruments.
9.	Ilaridou (2024). *Forced Child Marriage in Armed Conflict*	How does armed conflict increase the vulnerability of children to forced marriage, and what social, economic, and security-related factors drive this practice in conflict-affected settings?	Both studies address child marriage as a serious violation of children's and girls' human rights and engage with international human rights frameworks.	The thesis examined forced child marriage primarily within the context of armed conflict. It emphasizes social, cultural, and conflict-related drivers rather than domestic legal inconsistencies. In contrast, the present thesis will gaps and

				inconsistencies between Afghan national marriage laws and international human rights standards.
10.	Plesons et al. (2021) *Updated Research Gaps on Ending Child Marriage and Supporting Married Girls for 2020–2030,*		Both works emphasize the need for strengthened responses to meet international goals, including improved accountability and implementation. Identify that existing policies are insufficient to end child marriage.	The previous study focused on global research gaps and future research priorities, while the present study will focus on legal gaps.

Although several normative and empirical studies have examined child marriage in Afghanistan and globally, most of these studies have focused on the causes of child marriage – such as poverty, cultural and social norms, lack of education, and unemployment – and its negative consequences, including domestic violence, adverse outcomes, and poverty. Only a limited number of studies have analyzed the protection of women and children through international human rights principles. While previous research provides valuable insights into child marriage, a comprehensive legal analysis of the gaps between Afghan national marriage laws and international human rights standards remains largely unaddressed.

Therefore, this study aims to critically examine the inconsistencies between Afghanistan's national marriage laws and international human rights standards and assess how such legal gaps undermine the effective protection of girls from child marriage. It also proposes legal reforms to increase compliance with international human rights obligations and strengthen protection for girls in Afghanistan.

F. Theoretical framework

This thesis relies on three theoretical frameworks to analyze the legal gaps between Afghan domestic laws related to marriage and international human rights instruments concerning child marriage of girls: Human Rights Theory, compliance theory, and Feminist Legal Theory. These frameworks provide an analytical basis for examining how child marriage violates fundamental human rights and for assessing Afghanistan's compliance with its international legal obligations.

1. Human Rights Theory

This thesis uses human rights theory as a legal analytical tool to examine Afghanistan's domestic marriage laws in the light of binding international human rights obligations. The theory treats international human rights instruments as a set of legal standards against national laws that must be evaluated, especially when addressing the protection of vulnerable groups, including women and children. The concept of child marriage has been explicitly and implicitly outlawed by many international human rights instruments, such as Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), International Covenant on Economic Social and Cultural Rights (ICESCR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriage. These instruments establish a clear legal framework for the protection of children and impose binding obligations on states, including the establishment of an appropriate minimum age for marriage, the requirement of free and full consent, and the prohibition of harmful practices. Therefore, this study examines domestic marriage laws in comparison with international human rights standards to determine whether they offer adequate protection.[12]

Through a doctrinal legal analysis, the theory of Human Rights guides the writer to understand the interpretation of legal texts by highlighting rights-based principles, including state responsibility and non-discrimination. This approach allows research to analyze the wording, scope, and legal effects of domestic regulations on the age of marriage, parental consent, and judicial exceptions. Furthermore, human rights theory supports the distinction of gaps and

[12] Megan Arthur et al., "Child Marriage Laws around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities," *Journal of Women, Politics & Policy* 39, no. 1 (2018): 51–74, https://doi.org/10.1080/1554477X.2017.1375786.accessed December 27, 2025.

violations by highlighting areas where Afghanistan's marriage laws fall below international human rights standards. This theory makes it possible to show how such inconsistencies undermine legal protection, undermine girls' rights, and create loopholes that enable the persistence of child marriage. By revealing these discrepancies, the theory provides a legal basis for proposing reforms aimed at harmonizing domestic law with international human rights obligations.[13]

2. Compliance theory

Additionally, this thesis applies Compliance Theory as a legal analytical framework to study whether Afghan national laws related to marriage comply with its international human rights obligations about the protection of children and prohibiting harmful practices, including child marriage. This theory focuses more on the relationship between international obligations and the application of national law and examines whether domestic laws are aligned with international legal frameworks adopted by states. Compliance theory treats international treaties as binding obligations that require states to adopt appropriate measures, including legislative, administrative, and judicial measures, to ensure their effective implementation. [14]In the context of child and women's protection, Afghanistan adopted several binding human rights standards, such as the CRC, CEDAW, and ICCPR, which obligate the government to comply with regulations and align national laws with international standards.

The compliance theory guides the writer to analyze whether Afghanistan's marriage laws reflect these international obligations in practice. This approach allows research to analyze inconsistencies between treaty obligations and domestic legal provisions, such as exceptions based on parental or judicial consent, allowing underage marriage. Compliance theory also supports an assessment of enforcement mechanisms, which identifies whether legal institutions are effectively implementing existing rules.[15]

Furthermore, compliance theory helps identify structural and legal gaps that contribute to non-compliance, including fragmented legislation, ambiguous legal standards, and reliance on

[13] Anne F. Bayefsky, "Office of the United Nations High Commissioner for Human Rights," in *The UN Human Rights Treaty System in the 21 Century*, ed. Anne Bayefsky (Brill | Nijhoff, 2000), https://doi.org/10.1163/9789004502758_044.pg 27, accessed December 27, 2025.

[14] Silvia Patillo, "Why Do Nations Obey International Law?," *Taylor & Francis* 39, no. 1 (2018): 51–74, https://doi.org/10.1080/1554477X.2017.1375786. Accessed December 27, 2025.

[15] Bayefsky, "Office of the United Nations High Commissioner for Human Rights."

customary practices that conflict with international human rights law. By highlighting these deficiencies, the theory provides a framework for understanding why child marriage persists despite Afghanistan's formal international commitments. Finally, compliance theory strengthens the analysis by providing a legal basis for proposing reforms aimed at improving harmony between national laws and international human rights standards and increasing government accountability to protect girls from child marriage.[16]

3. Feminist Legal Theory

Furthermore, this thesis applies Feminist Legal Theory as a supporting analytical framework to examine the gender-specific impact of marriage laws on girls and to inform the reform-oriented analysis of child marriage in Afghanistan. The theory is used to assess how legal provisions governing marriage age, consent, and guardianship may reflect and reinforce unequal gender power relations within family and marriage law. Specifically, Feminist Legal Theory is applied to analyze provisions that allow parental or guardian consent, judicial discretion, or exceptions to the minimum marriage age. Specifically, Feminist Legal Theory is applied to analyze provisions that allow parental or guardian consent, judicial discretion, or exceptions to the minimum marriage age. Through this lens, the study evaluates whether such legal mechanisms undermine girls' autonomy and prevent them from exercising free and full consent to marriage. [17]

The theory enables the analysis to move beyond formal legal equality and examine whether domestic marriage laws provide substantive equality by genuinely protecting girls' dignity, bodily autonomy, and decision-making capacity.[18] Moreover, Feminist Legal Theory is used to critically assess whether Afghanistan's marriage laws disproportionately affect girls in comparison to boys and whether they adequately address the structural vulnerabilities faced by female children. In the reform section, this theory guides the evaluation of proposed legal changes by assessing whether they meaningfully challenge patriarchal assumptions embedded in marriage law and strengthen gender-responsive legal protection against child marriage. By applying Feminist Legal Theory, the thesis ensures that legal reform recommendations are not only aligned with international human

[16] Patillo, "Why Do Nations Obey International Law?" pp 18- 24, accessed December 27, 2025.
[17] Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989), https://www.hup.harvard.edu/books/9780674895354
[18] Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989), https://www.hup.harvard.edu/books/9780674895354

rights standards but also responsive to the lived legal realities of girls, thereby enhancing the effectiveness of legal protection against child marriage.[19]

G. Definition of terms

The aim of defining the terms is to prevent any misunderstandings and discrepancies in interpretation associated with the terms used in the proposal's title. In line with the research title, "Child Marriage of Girls in Afghanistan: Addressing the Gap Between National and International Human Rights Law". The terms that require explanation are as follows:

1. Child marriage

Child marriage refers to any formal or informal union in which one or both parties are under the age of 18.[20]

2. Girls

In this thesis, the term girls refers to female persons under the age of 18, in accordance with the definition of a child under international human rights law, particularly Article 1 of the Convention on the Rights of the Child.[21]

H. Literature review

Child marriage is a global issue that affects millions of girls worldwide, especially in developing countries, due to various factors.[22] This social norm has raised many concerns about the protection of girls' rights and highlights the need for effective legal safeguards, both domestically and internationally. This issue motivated scholars and international organizations to examine child marriage from international legal frameworks.[23]

[19] Committee on the Elimination of Discrimination against Women (CEDAW), *General Recommendation No. 25 on Temporary Special Measures* (2004), https://www.un.org/womenwatch/daw/cedaw/recommendations/General%20recommendation%2025%20(2004).pdf.

[20] Ann M. Starrs et al., "Accelerate Progress—Sexual and Reproductive Health and Rights for All: Report of the Guttmacher– Lancet Commission," *The Lancet* 391, no. 10140 (2018): 2642–92, https://doi.org/10.1016/S0140-6736(18)30293-9. accessed December 27, 2025

[21] Child." Art 1.

[22] UNICEF, "Child Marriage," July 2023, https://www.unicef.org/protection/child-marriage.

[23] Marina Plesons et al., "Updated Research Gaps on Ending Child Marriage and Supporting Married Girls for 2020–2030," *Reproductive Health* 18, no. 1 (2021): 152, https://doi.org/10.1186/s12978-021-01176-x.accessed December 24, 2025

1. The concept of child marriage

Many studies have been conducted about child marriage at both national and international levels, and have provided insightful information about the concept of child marriage. In this regard, UNICEF defines child marriage as a formal marriage or informal union occurring before the age of 18, and highlights that such acts constitute a violation of human rights. Similarly, the organization Girls Not Brides defines child marriage as a marriage in which one or both parties are under the age of 18.[24] Although child marriage may be justified in some contexts by traditional and cultural norms, international human rights law considers it a harmful act and a violation of children's rights. According to UNICEF (2019) findings, the practice of child marriage remains widespread and a global concern, with approximately 12 million girls married each year before the age of 18. Despite its recognition as a human rights violation, the practice continues widely.[25]

2. International Human Rights Principles on Child Marriage

Underage marriage is widely recognized as a harmful practice that violates the basic rights of children. International human rights standards prohibit child marriage and impose an obligation on states to protect the rights of children. Furthermore, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is another binding human rights instrument that establishes that child marriages are legally void. States have the obligation to set a minimum age for marriage, ensure the free, full consent of both parties, and ensure compulsory marriage registration as a means of preventing early and forced marriages.[26]

Although the 1989 Convention on the Rights of the Child (CRC) does not explicitly refer to child marriage, it establishes a strong legal foundation for its prohibition. Article 1 of the CRC defines a child as any person under the age of 18; any marriage that happens before the age of 18 is considered a child marriage. Article 12 further obliges States Parties to ensure that children who are capable of forming their own views have the right to express those views freely in all matters affecting them, with due weight given in accordance with their age and maturity—a right that is frequently denied in cases of early and forced marriage. In addition, Article 24(3) requires States

[24] Starrs et al., "Accelerate Progress—Sexual and Reproductive Health and Rights for All." accessed December 24, 2025

[25] UNICEF, "Fast Facts: 10 Facts Illustrating Why We Must #EndChildMarriage."Accessed. Accessed December 24, 2025.

[26] United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women, New York, 18 December 1979 _ OHCHR."Art 16 (2), accessed December 24, 2025.

Parties to take all effective and appropriate measures to abolish traditional practices that are harmful to the health of children.[27]

Universal Declaration of Human Rights (UDHR), although not a legally binding instrument, establishes fundamental principles that have been further developed and made binding through subsequent treaties.[28] Such as the International Covenant on Civil and Political Rights (ICCPR). Article 23 recognizes the family as the natural and fundamental unit of society and affirms its entitlement to protection by both society and the State. Furthermore, it emphasizes the requirement of free and full consent and an appropriate age for marriage, thereby obligating States Parties to ensure equality of rights and responsibilities between spouses during marriage and at its dissolution, with special protection for children. Therefore, these instruments recognize the protection of children as a legal responsibility of states under international human rights law.[29]

3. Afghan National Laws on Child Marriage

Many studies have been conducted to analyze Afghanistan's national laws related to marriage. The Afghan Civil Code is the primary legal framework that governs family issues, including marriage. It sets a minimum age for marriage. Article 70 indicates that boys attain legal capacity for marriage at 18 years and girls at 16 years.[30] However, Article 71(1) provides that if a girl has not reached the age specified in Article 70, marriage may be conducted through parental consent or court authorization, while prohibiting marriage for girls under the age of 15.[31] A report by UNICEF (2021) highlights that although Afghanistan's Civil Code sets a minimum age of marriage, the allowance of court and parental consent leads to early marriage, creating a legal loophole that weakens the protection of girls from early marriage. [32]

[27] United Nations General Assembly, "Convention on the Rights of the Child." Art 1, 12, 24(3), accessed December 24, 2025.

[28] United Nations General Assembly, "Universal Declaration of Human Rights," United Nations, December 10, 1948, https://www.un.org/en/about-us/universal-declaration-of-human-rights.Accessed December 25, 2025.

[29] United Nations General Assembly, "International Covenant on Civil and Political Rights.," United Nations Treaty Series, December 19, 1966, https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf.Art 23, accessed December 25, 2025.

[30] Barmaki, *Civil-Code-of-Afghanistan-ALEP-Translation*, Vol. 4, art 71.

[31] Barmaki, *Civil-Code-of-Afghanistan-ALEP-Translation*, vol. 4, art71 (1).

[32] UNICEF, "Girls Increasingly at Risk of Child Marriage in Afghanistan."

Moreover, the Law on the Elimination of Violence Against Women (EVAW) criminalizes child and forced marriage, along with other harmful practices against women and girls.[33] However, studies by the United Nations Assistance Mission in Afghanistan (UNAMA)indicate that, despite this formal criminalization, relevant state institutions have failed to apply the law. UNAMA (2020) reports highlight that only a limited number of registered cases have been prosecuted under the EVAW Law. due to several factors, including the enactment of legislation through a presidential decree rather than parliamentary approval, lack of institutional capacity, and continued reliance on customary and informal justice mechanisms. As a result, the protective intent of the EVAW Act has not translated into effective legal protections for girls at risk of child marriage.[34]

A study conducted by Shafiq and Rahim (2024) examines the gap between the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and Afghanistan's civil law. The authors highlight that despite Afghanistan's ratification of several binding international human rights instruments, including CEDAW and the Convention on the Rights of the Child (CRC), as well as ratification of the Universal Declaration of Human Rights, national legal frameworks remain at odds with these international obligations. In particular, the study identified conflicts between domestic laws, especially civil law provisions on the minimum age of marriage, and international human rights standards. Therefore, these inconsistencies undermined the effective implementation of domestic and international obligations and undermined efforts to protect children from harmful practices such as child marriage. Furthermore, the study points out that although governments are legally obliged to adopt effective legal and administrative measures to prevent early and forced marriage, Afghanistan has shown limited effectiveness in aligning national laws with international human rights norms and in implementing measurable protections for its women and children.[35]

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[33] - Law on the Elimination of Violence against woman, 91 (2009), https://www.refworld.org/docid/5486d1a34.html —.

[34] UN Assistance Mission in Afghanistan (UNAMA), *In_search_of_justice_for_crimes_of_violence_against_women_and_girls* (UNAMA and OHCHR, 2020), https://unama.unmissions.org/sites/default/files/in_search_of_justice_for_crimes_of_violence_against_women_and_girls.pdf?utm_source=chatgpt.com.

[35] Shafiq Khatol and Rahim Safia, "View of Harmonizing Legal Frameworks_ Bridging the Gap between CEDAW and the Afghan Civil Code in Pursuit of Gender Equality," *Sprin Journal of Arts, Humanities and Social Sciences* 3, no. 5 (2024): 9–12, https://doi.org/10.55559/sjahss.v3i5.272.Pg 10, 11, accessed December 25, 2025.

Overall, the current studies highlight that child marriage of girls is criminalized under Afghan domestic law and is recognized as a harmful practice that violates the rights of children under international human rights instruments. Despite these legal prohibitions, child marriage remains a widespread practice in Afghanistan, particularly in rural areas. Most of the existing literature has focused on the causes, prevalence, and social and health consequences of child marriage in Afghanistan. However, based on data, there is a noticeable lack of comprehensive legal research that examines the gap between Afghanistan's national marriage laws and international human rights standards. This thesis seeks to address this gap through analyzing Afghan national laws in light of international human rights law and offering legal recommendations relevant to future scholars and policymakers.

I. Research method

1. Type of Research

This research uses a normative (doctrinal) legal research method, analyzing official sources of national and international law, including constitutions, statutes, international conventions, treaties, and relevant customary law. It also examines legal doctrines and principles of international human rights law. The study focuses on identifying inconsistencies between Afghanistan's national laws on child marriage and international human rights standards, intending to propose legal reforms to address these gaps and strengthen the protection of girls from this harmful practice.[36]

2. Description of Research Focus

The focus of the research is on examining two main axes:

a. What are the inconsistencies and gaps between Afghanistan's national marriage laws and international human rights standards?
b. What legal reforms are required to align Afghanistan's marriage laws with international human rights standards and strengthen the protection of girls?

3. Method of Approach

In this research, the writer uses two main approaches:

[36] Terry Hutchinson and Nigel Duncan, "Defining and Describing What We Do: Doctrinal Legal Research," *Deakin Law Review* 17, no. 1 (2012): 83, https://doi.org/10.21153/dlr2012vol17no1art70. accessed December25, 2025.

a. Legal approach

This thesis examines Afghan national laws, particularly the Civil Code and other related laws, as well as international human rights instruments concerning child marriage, to assess their consistency and compliance with international standards.

b. Conceptual Approach

This study examines core legal concepts, including child marriage, and state obligations under international human rights law to clarify the legal implications.

c. Comparative Approach

This thesis assesses and compares national law, including the Civil Code, EVAW, and the 2004 Afghanistan constitution, with international Human rights principles, particularly the CRC, CEDAW, and ICCPR, using a vertical approach that assesses the same legal questions across different layers of normative authority, from international to domestic law.

4. Sources and Types of Legal Material

a. Primary sources:

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

International Covenant on Civil and Political Rights (ICCPR)

Convention on the Rights of the Child (CRC)

National laws, including the Civil Law, 2004 Constitution, and EVAW.

b. Secondary resources:

The secondary legal material includes the Universal Declaration of Human Rights (UDHR, 1948), Books, journals, Articles, Dissertations, and Expert Analyses.

c. Tertiary Legal Resources:

The thesis also draws on tertiary legal materials that provide guidance, explanations, and reviews of primary and secondary legal sources related to child marriage. This includes legal dictionaries such as The Dictionary and reports from international organizations.

5. Data Collection Techniques

The data for this research were collected through a library-based method by reviewing books, documents, reports, academic journals, and publications from various organizations that focus on child protection and children's rights. This approach allows for a comprehensive analysis of both legal frameworks related to child marriage.

6. Data Analysis Techniques

This research uses qualitative descriptive legal analysis. It examines international human rights instruments on child protection and applies them to Afghanistan's legal and social context, and evaluates the effectiveness of laws and institutions in preventing child marriage.

J. Writing framework

I. Chapter I Introduction

This chapter provides the introduction to the research, including background, problem statement, research questions, originality, theoretical framework, literature review, methodology, and the structure of the dissertation.

ii. Chapter II: Theoretical Frameworks

This chapter presents the Theoretical Frameworks, including the Human Rights Theory, Compliance Theory, and feminist theory, and assesses how each contributes to the analysis developed in this thesis.

iii. Chapter III

This chapter explores the gaps and inconsistencies between Afghanistan's national marriage laws and international human rights standards. It recommends that reforms are needed in Afghanistan's marriage laws to ensure compliance with international human rights standards.

iv. Chapter IV

This last chapter contains conclusions and recommendations.

CHAPTER II

Theoretical framework

A theoretical framework plays a significant role in legal research by providing a structured analytical foundation for analysing legal research and interpreting legal norms. It allows researchers to critically analyse how legal frameworks and instruments operate in practice and whether they achieve their main objectives effectively. In normative legal research, theories are considered significant tools that guide the evaluation of legal instruments, the interpretation of legal texts, and the formation of legal arguments. As a result, the use of appropriate theoretical frameworks is vital for ensuring coherent and systematic analysis of the research problem.

This thesis assesses the issue of child marriage of girls in Afghanistan through the lens of three complementary theoretical approaches: Human Rights Theory, Compliance Theory, and Feminist Legal Theory. These theories provide a comprehensive analytical and conceptual basis for assessing the relationship between Afghanistan's national laws, particularly the Civil Code, and international human rights principles designed to protect girls from child marriage.

A. Human Rights Theory

The human rights theory is founded on the principle that all human beings possess inherent rights and freedoms by virtue of their humanity, regardless of their gender, religion, ethnicity, and social status. Human rights are generally considered universal and indivisible rights that must be protected and respected by actors and states. This theory has been developed by political, legal, and philosophical traditions throughout the centuries and eventually contributed to the establishment of international human rights systems.[37]

1. The Intellectual Origins of Human Rights Theory

The intellectual origins of human rights theory can be traced to the doctrine of natural law. Natural law theories argued that certain rights belong inherently to each individual and exist

[37] Bas De Gaay Fortman and M. A. Mohamed Salih, "Human Rights Matter: A Reassertion of the UN Charter and UDHR Core Values in Turbulent Times," *Journal of Global Ethics* 20, no. 3 (2024): 343–53, https://doi.org/10.1080/17449626.2024.2413484.

independently of legal enactment. Early philosophers such as Aristotle and the Stoics introduced the idea that universal principles of justice govern human conduct. Later, natural law thinkers including Thomas Aquinas developed the concept further by asserting that human beings possess fundamental rights derived from reason and moral principles. During the seventeenth and eighteenth centuries, philosophers such as John Locke emphasized the existence of natural rights, including the rights to life, liberty, and property. Locke's ideas significantly influenced later political and legal developments and laid the foundation for modern human rights discourse.[38]

The development of human rights gained further momentum during the Enlightenment period, when ideas concerning individual liberty, equality, and limitations on governmental power became increasingly influential. [39]These principles were reflected in important political documents such as the Declaration of Independence of the United States (1776) and the French Declaration of the Rights of Man and of the Citizen (1789). Although these instruments primarily focused on civil and political rights within national contexts, they contributed significantly to the recognition that individuals possess fundamental rights that should be protected against arbitrary state interference.[40]

The atrocities committed during the Second World War, including genocide, war crimes, and crimes against humanity, illustrated the inadequacy of relying solely on domestic legal systems to protect individuals from abuse. Following the end of the war, international communities recognized the necessity of establishing universal standards for the protection of human rights. This led to the creation of the United Nations in 1945 and the adoption of the Universal Declaration of Human Rights (UDHR) in 1948. The UDHR marked a historic milestone in the development of human rights theory by highlighting that all human beings are born free and equal in dignity and rights.[41]

International human rights law expanded through the adoption of legally binding treaties and conventions. Key instruments include the International Covenant on Civil and Political Rights

[38] Nsama Jonathan Simuziya, "Universal Human Rights vs Cultural & Religious Variations: An African Perspective," *Cogent Arts & Humanities* 8, no. 1 (2021): 146-158., https://doi.org/10.1080/23311983.2021.1988385.

[39] Ginna M. Pennance-Acevedo, "St. Thomas Aquinas and John Locke on Natural Law," *Studia Gilsoniana* 6, no. 2 (2017): 221, http://gilsonsociety.com/files/221-248-Pennance-Acevedo.pdf.pp.34-39.

[40] United Nations if OHCHR, *Fact Sheet No. 2 (Rev.1): The International Bill of Human Rights*, 2 (Rev.1) (United Nations, 1996), https://www.ohchr.org/sites/default/files/Documents/Publications/FactSheet2Rev.1en.pdf.

[41] United Nations General Assembly, "UDHR."

(ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both adopted in 1966. Together with the UDHR, these instruments form the International Bill of Human Rights. In addition, specialized treaties such as the Convention on the Rights of the Child (CRC) and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) strengthened the protection of vulnerable groups by establishing specific legal obligations for states.[42]

Human rights theory serves as a fundamental framework for understanding the relationship between individuals and the state. It highlights that governments have the responsibility to protect, respect, and fulfil the rights of their residents under their jurisdiction. The theory plays a significant role in addressing practices that affect vulnerable groups, including women and girls.[43] Therefore, Human Rights theory provides a considerable foundation for assessing issues like child marriage and evaluating whether legal frameworks protect the rights and dignity of girls in accordance with international human rights standards.[44]

2. Dignity as the Core Principle of Human Rights

Human dignity is widely recognized as the most significant and core principle of human rights theory. This theory argues that human beings possess inherent value and worth regardless of their religion, social status, gender, age, and nationality. [45]The principle is explicitly recognized in the Preamble of the Universal Declaration of Human Rights (UDHR), which affirms the inherent dignity and equal rights of all members of the human family. Respect for human dignity requires states to protect, respect, and fulfil their residents' rights. Therefore, principles and policies should

[42] Fortman and Salih, "Human Rights Matter." Rahmatina Rahmatina et al., "The Evolution of Natural Law from Thomas Aquinas to Modern Rationalist Thought," *Devotion : Journal of Research and Community Service* 6 (December 2025): 1–13, https://doi.org/10.59188/devotion.v6i12.25603.pp.8-9.

[43] David Jason Karp, "What Is the Responsibility to Respect Human Rights? Reconsidering the 'Respect, Protect, and Fulfill' Framework," *International Theory* 12, no. 1 (2020): 83–108, https://doi.org/10.1017/S1752971919000198.p.90.

[44] Hoko Horii, "A Blind Spot in International Human Rights Framework: A Space between Tradition and Modernity within the Child Marriage Discourse," *The International Journal of Human Rights* 24, no. 8 (2020): 1057–79, https://doi.org/10.1080/13642987.2019.1690468.pp.1065-1068.

[45] Antonio Autiero, *Human Dignity in an Ethical Sense: Basic Considerations*, July 2, 2020, https://doi.org/10.30965/23642807-00601002.pp.12-13.

promote circumstances that allow individuals to enjoy living with security, freedom, and respect. [46]

The principle of equality is another essential element of human rights theory. Based on this principle, all individuals must be treated equally before the law and enjoy equal protection of their rights, free from discrimination. [47]Moreover, this principle requires that individuals in similar circumstances be treated equally and fairly, and that vulnerable groups have access to appropriate protections when necessary. In international human law, equality is a core principle that ensures individuals are protected and have access to justice against unequal treatment and discrimination.[48]

The non- discrimination forbidden any distinction, exclusion, or restriction that undermines the fundamental rights of human beings. International human rights principles prohibit discrimination based on religion, race, sex, ethnicity, nationality, and other statuses. This principle highlights that certain groups often experience structural disadvantages that prevent them from fully enjoying their rights. States have a responsibility not only to avoid discriminatory practices but also to adopt measures to promote and protect equality. This principle is especially important in protecting vulnerable groups like women and children, who often face social and legal inequalities in many societies.[49]

3. The Universality

The universality of human rights highlights that human rights belong to all individuals without any exception. This principle refers to the belief that all human beings possess equal moral worth and protection under international legal systems. The universality of human rights is affirmed in the Universal Declaration of Human Rights, a core feature of the international human rights system. This principle ensures that states must protect, respect, and fulfil their citizens' rights so that individuals can enjoy their basic rights freely regardless of their circumstances.[50]

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[46] Paweł Łuków, "A Difficult Legacy: Human Dignity as the Founding Value of Human Rights," *Human Rights Review* 19, no. 3 (2018): 313–29, https://doi.org/10.1007/s12142-018-0500-z.

[47] Autiero, *Human Dignity in an Ethical Sense*.p.11.

[48] Łuków, "A Difficult Legacy."

[49] Sandra Fredman, "Substantive Equality Revisited," *International Journal of Constitutional Law* 14, no. 3 (2016): 712–38, https://doi.org/10.1093/icon/mow043.

[50] Fredman, "Substantive Equality Revisited," 2016. Ángeles Solanes Corella, "THE POLITICAL, LEGAL AND MORAL SCOPE OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: PENDING ISSUES," *The Age of Human Rights Journal*, no. 11 (December 2018): 1–23, https://doi.org/10.17561/tahrj.n11.1.pp.17-18.

Collectively, the principles of human dignity, equality, non- discrimination, and universality form the normative foundation of Human Rights Theory. These principles guide the interpretation of international human rights standards and establish the legal framework through which individuals' rights are understood and protected.[51]

The development of human rights theory has been significantly influenced by various scholars who have explained the purpose, nature, and implementation of human rights. Among the most influential contemporary scholars are Jack Donnelly and Henry Shue, whose works provided vital insights into the existence of human rights, state responsibility, and the protection of vulnerable groups. Their perspectives contribute to a deeper understanding of the normative foundations of human rights and their relevance within modern legal systems.[52]

4. Jack Donnelly's Perspective on Human Rights

Jack Donnelly is widely recognized as one of the leading scholars in human rights studies. From the viewpoint of Donnelly, human rights are basic rights that human beings possess because they are human beings. He believes that human rights are universal and belong equally to all individuals regardless of their religion, gender, ethnicity, and social status. Based on his perspective, the concept of human rights is rooted in the principle of human dignity, which operates as a core foundation of individuals against abuse. [53]

Donnelly argues that the main purpose of human rights is protecting individuals' rights from abuse and threats posed by various actors such as states or other powerful stakeholders. Therefore, states not only have the obligation to protect, respect, and fulfil, but also to create circumstances in which individuals can enjoy their rights and freedoms. Moreover, he argues that states must provide equal protection for all individuals without any discrimination. [54]Donnelly's perspective is significantly linked to the protection of vulnerable groups, such as women and children. He also highlights that human rights law is a key mechanism for protecting those susceptible to exclusion,

[51] Solanes Corella, "THE POLITICAL, LEGAL AND MORAL SCOPE OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS," December 2018.p.20.

[52] Jack Donnelly, Universal Human Rights in Theory and Practice (3rd edn, Cornell University Press 2013) e-book.

[53] Jack Donnelly, *Universal Human Rights in Theory and Practice*, with Internet Archive (Ithaca, N.Y. : Cornell University Press, 2003), http://archive.org/details/universalhumanri0000donn.pp 80-85.

[54] Donnelly, *Universal Human Rights in Theory and Practice*. pp 34-39.

exploitation, and discrimination. Through this approach, human rights act as a powerful tool for promoting and protecting individuals' rights from violation.[55]

5. Henry Shue's Perspective on Human Rights

Henry Shue is another influential scholar in terms of human rights; he focuses on the practical, essential fundamental rights and the corresponding duties they impose on states. In his seminal work *Basic Rights*, Shue argues that certain rights are fundamental because they are significant for the enjoyment of all other rights, particularly security rights and subsistence rights considered fundamental rights and must be protected. [56]

According to Shue's perspective, states have the responsibility to provide positive conditions to ensure that each individual can effectively enjoy their rights. He argues that fundamental rights generate three duties, including the duty to prevent depriving human individuals of their basic rights, the duty to protect individuals whose rights are deprived by powerful actors, and the duty to support individuals whose rights are threatened. As a result, states have an active obligation to introduce practical mechanisms that safeguard human rights. [57]

Shue's thought highlights particularly the protection of vulnerable groups like women and children who often face several challenges due to limited access to protection mechanisms and unequal power relations. States have the obligation to adopt significant policies and measures to prohibit harm and ensure that each individual enjoys and exercises their rights freely without discrimination.[58]

The perspectives of both scholars provide a practical and comprehensive knowledge of human rights theory. While Donnelly highlights the universality of human rights and a dignity-based foundation, Shue focuses on the practical responsibility that states must protect, respect, and fulfil their resident's rights. Together, their insights provide a comprehensive set of principles and

[55] Donnelly, *Universal Human Rights in Theory and Practice*.p.38.

[56] Daniel Bregman, "Subsistence as a Basic Human Right: A Defence of Henry Shue," *British Journal of Undergraduate Philosophy* 8, no. 1 (2014): 1–99, https://britishundergraduatereview.org/wp-content/uploads/2020/06/bjup_2014_issue_8_1.pdf.p.10.

[57] Bregman, "Subsistence as a Basic Human Right: A Defence of Henry Shue."p.24.

[58] Bregman, "Subsistence as a Basic Human Right: A Defence of Henry Shue."p.26.

instruments for understanding the significance of states' and other stakeholders' obligations and the protection of vulnerable groups within the human rights system.[59]

B. Compliance Theory

Compliance theory focuses on the extent to which states implement and comply with their legal commitment under international law. As Afghanistan is a party to several human rights instruments related to the protection of women and children, compliance theory provides a vital principle for assessing the relationship between international legal frameworks and domestic laws. This theory analyzes whether national laws, particularly the Civil Code of Afghanistan, reflect international standards and whether legal and institutional mechanisms effectively support the implementation of those obligations. [60]

Compliance theory in terms of international relations and international law refers to the set of explanations that seek to analyze whether states comply with or violate their international legal obligations. This theory provides a comprehensive approach to conditions under which states follow international law in practice. Its core purpose is to assess the gap between states' commitments in terms of customary norms, treaties, and conventions and how these instruments are implemented in practice both at the national and international level.[61]

In simpler terms, compliance theory assesses the extent to which states comply with their international obligations and analyzes the factors that influence compliance or non-compliance. Similarly, compliance theory exists when states act in accordance with their legal commitments, whereas non-compliance arises when their actions fail to meet the obligations imposed by international rules or agreements.[62] Compliance Theory therefore asks a central question: what makes states obey international law when there is no global government with direct enforcement power? This question has led scholars to develop different perspectives to explain compliance, emphasizing factors such as state interests, institutional mechanisms, domestic political structures,

[59] Donnelly, *Universal Human Rights in Theory and Practice*. Bregman, "Subsistence as a Basic Human Right: A Defence of Henry Shue."

[60] Patillo, "Why Do Nations Obey International Law?"

[61] Carmela Lutmar et al., "Formal Commitments and States' Interests: Compliance in International Relations," *International Interactions* 42, no. 4 (2016): 559–64, https://doi.org/10.1080/03050629.2016.1187144.p.560.

[62] Beth A. Simmons, "COMPLIANCE WITH INTERNATIONAL AGREEMENTS," *Annual Review of Political Science* 1, no. 1 (1998): 75–93, https://doi.org/10.1146/annurev.polisci.1.1.75.pp70-75.

and normative considerations. These approaches provide different explanations for the extent to which states adhere to international law and are discussed in the following sections.[63]

1. The Realist Perspective

From a realist perspective, states' behavior in international relations is mainly influenced by considerations of national interest and power rather than legal obligations. Realist practitioners believe that international agreements and treaties have limited influence on states' behavior because states and actors follow international agreements when compliance serves their national, security, and political interests. From this viewpoint, states' behavior is not determined mainly by international rules; instead, power structures and national interest are shaped state's behavior. Therefore, states may often violate international obligations and commitments when they believe that violating such commitments serves significant benefits for their interests.[64]

From the perspective of realists, the decentralized nature of international legal frameworks limits the contribution and effectiveness of international law. The absence of central power and actors to implement international commitments means states have considerable authority to interpret and implement international agreements. [65]Therefore, strategic interests and political circumstances significantly affect compliance rather than legal requirements. Realist practitioners also argue that powerful states and actors often are unwilling to comply with international commitments, particularly when their national interests are not aligned with those obligations.[66]

2. Managerial Model of Compliance

On the other hand, scholars Abram Chayes and Antonia Handler Chase argued different insights related to the managerial model of compliance. [67]In contrast to the realist view, which focuses on national interests and power, according to this approach, countries generally tend to follow international rules, and non-compliance occurs due to practical challenges rather than

[63] Lutmar et al., "Formal Commitments and States' Interests."p.560.

[64] Simmons, "COMPLIANCE WITH INTERNATIONAL AGREEMENTS." Rawa M. Mahmood, "Power in International Relations: Insights from Realist and Liberal Theories," *European Scientific Journal, ESJ* 21, no. 8 (2025): 27, https://doi.org/10.19044/esj.2025.v21n8p27. Pp.38-39.

[65] Ángeles Solanes Corella, "THE POLITICAL, LEGAL AND MORAL SCOPE OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS: PENDING ISSUES," *The Age of Human Rights Journal*, no. 11 (December 2018): 1–23, https://doi.org/10.17561/tahrj.n11.1.pp.14- 16.

[66] Simmons, "COMPLIANCE WITH INTERNATIONAL AGREEMENTS."

[67] Ellycia Harrould-Kolieb et al., "Opening the Black Box of Transparency: An Analytical Framework for Exploring Causal Pathways from Reporting and Review to State Behavior Change," *International Studies Review* 25, no. 4 (2023): 1–19, https://doi.org/10.1093/isr/viad038.

deliberate violations that prevent the actors themselves from fulfilling their international obligations.[68] Both scholars believe that the main drivers of non-compliance are various factors such as uncertainty in treaty provisions, resource constraints, lack of technical expertise, and lack of administrative capacity, which make it difficult for states to fulfill their international obligations despite their intention to follow these rules.[69]

In terms of the managerial model, problem-solving and collaborative measures play an important role in promoting compliance rather than enforcement mechanisms. International stakeholders contribute by providing transparency, technical support, promoting discourse among actors, and introducing effective monitoring and reporting systems. This approach not only enables actors to better understand international commitments and obligations but also encourages them to develop the capacity to implement those obligations.[70]

From the perspective of the managerial model, the contribution of communication and collaboration among stakeholders is essential to the compliance process rather than enforcement mechanisms. This approach emphasizes that international institutions play a vital role in supporting states in fulfilling their obligations and reinforces the effectiveness of international law.[71]

The work of Abram Chayes and Antonia Handler Chayes offers a comprehensive approach to compliance theory. They argue that states generally tend to follow international agreements because these instruments are accepted widely.[72] Unlike the realist approach, which interprets compliance as a function of state power and interest.[73] Based on this approach, states follow international agreements when it benefits its politic and national interests. On the other hand, when the costs of complying with international agreements outweigh their benefits, states may choose

[68] Simmons, "COMPLIANCE WITH INTERNATIONAL AGREEMENTS."pp.13-14.
[69] Harrould-Kolieb et al., "Opening the Black Box of Transparency."p.15.
[70] Simmons, "COMPLIANCE WITH INTERNATIONAL AGREEMENTS."pp.13-14.
[71] Malgosia Fitzmaurice, "Environmental Compliance Control," *Wroclaw Review of Law, Administration & Economics* 8, no. 2 (2018): 372–94, https://doi.org/10.1515/wrlae-2018-0054.pp.40 -45.
[72] Andrew T. Guzman and Andrew T. Guzman, *How International Law Works: A Rational Choice Theory* (Oxford University Press, 2010).pp. 150-152.
[73] Abram Chayes and Antonia Handler Chayes, "On Compliance," *International Organization* 47, no. 2 (1993): 175–205, https://doi.org/10.1017/S0020818300027910.pp.175-176. P.2.

to violate these obligations. Aspects like enforcement mechanisms and reputation concerns influence the actor's behavior.[74]

In addition, the contribution of international actors and monitoring mechanisms to compliance theory is essential. International institutions can support governments through various approaches to encourage them to adopt their actions, policies, and measures over time. Through this approach, international principles become more commonplace, motivating states to adopt these frameworks as part of their legal systems.[75]

Another significant approach within compliance theory is Harold Hongju Koh's theory of Transnational Legal Process (TLP). Based on his perspective, compliance is the result of interactions among stakeholders both at national and international levels. Through this approach, actors follow international treaties because these instruments become aligned and incorporated into domestic legal systems not due to external practical supports and pressure. [76]Koh explains that compliance theory developed through three steps, including interaction, internalization, and interpretation. First, interaction involves the contribution of stakeholders such as governments, international institutions, and civil society, who are engaged through regular communication and cooperation related to international law. In this approach, actors gain a better understanding of international obligations and are encouraged to promote greater compliance with them.[77]

Secondly, through interpretation, actors engage actively in a process of interpretation to determine the scope and content of international obligations. International treaties and conventions include broad principles that cause different interpretations.[78] Therefore, dialogue among stakeholders allows them to contribute effectively through diplomatic discourse, official reports, recommendations, and guidelines to gain a better understanding of how international legal rules should be applied in practice. In addition, this approach assists actors in having a comprehensive clarification and also reduces the ambiguity and uncertainty regarding international obligations.[79] Through this approach, states understand the purpose and intention of international treaties, which

[74] Control. 373- 374
[75] Simmons, "COMPLIANCE WITH INTERNATIONAL AGREEMENTS."pp.19-21.
[76] Patillo, "Why Do Nations Obey International Law?"
[77] Patillo, "Why Do Nations Obey International Law?"pp.2607- 2611.
[78] Patillo, "Why Do Nations Obey International Law?"pp.2607-2011.
[79] Harrould-Kolieb et al., "Opening the Black Box of Transparency."

also enables them to adopt their domestic regulations and policies according to international norms. Moreover, interpretation plays a significant role in terms of compliance by providing a clear understanding of legal obligations and reducing confusion about the implementation of treaties and conventions. [80]

The third stage is internalization; After going through the process of interaction and interpretation, they are incorporated into the legal systems of the states. Principles contained in international conventions and treaties gradually become part of the laws, policies, and practices of national institutions.[81] At this stage, actors are willing to adopt and introduce international standards into their national legal systems, and this happens through legislation, policy reforms, judicial decisions, and the introduction of regulations. Domestic stakeholders have a key role in translating international commitments into national practices. [82]The concept of internalization highlights that states comply with international law because these standards are accepted as legitimate and incorporated into domestic norms. Actors at the national level, such as policymakers, courts, and institutional offices, implement them as part of their decision-making process.[83]

Overall, Koh's main view is that the internalization of international norms is a key aspect in compliance theory. When international law is integrated into national regulations and practices, states are likely to consistently comply with international obligations without the assistance of external enforcement mechanisms.[84]

3. Thomas Franck's Legitimacy Theory

Thomas Franck's legitimacy theory is another important contribution to compliance theory. Frank argues that states follow international standards when they accept these norms as legitimate. Through this approach, the legitimacy of international law matters and encourages compliance. Consequently, states follow international legal frameworks because of their appropriateness, respect, and authority.[85] Franck also emphasizes that legitimacy is associated with the

[80] Patillo, "Why Do Nations Obey International Law?"pp.2607-2611.
[81] Patillo, "Why Do Nations Obey International Law?"pp.2607-2611.
[82] Patillo, "Why Do Nations Obey International Law?"pp.2607-2611.
[83] Harrould-Kolieb et al., "Opening the Black Box of Transparency."p.19.
[84] Patillo, "Why Do Nations Obey International Law?"pp.2607-2611.
[85] Thomas M. Franck, "Legitimacy in the International System," American Journal of International Law 82, no. 4 (1988): 705–759, https://doi.org/10.2307/2203510.pp.705–709.

establishment of international norms. States are more inclined to comply with international standards that are established through valid legal procedure and are coherent and clear. Therefore, actors are willing to follow these standards without any external pressure and enforcement mechanisms.[86]

The relationship between legitimacy and clarity is crucial in compliance theory. The clarity of international instruments reduces confusion and uncertainty related to obligations. Furthermore, international legal systems are strengthened when there is consistency in the international application and interpretation of these principles. When states recognize that laws are applied equally and fairly, they are more likely to follow and enforce them. According to this perspective, explicit legitimacy plays an important role in the effectiveness and stability of international legal orders and in strengthening cooperation between actors.[87]

4. Compliance in international law

Since the international community lacks enforcement mechanisms and centralized authority, unlike domestic legal systems where states apply comprehensive enforcement mechanisms, the international legal order mainly relies on the cooperation of states. Various factors such as cooperation, transparency, and supervisory systems have been developed for international legal frameworks.[88] Monitoring systems are one of the ways through which states regularly provide information on actions being taken to implement their obligations. International experts review these reports and assess progress and make recommendations for improvements. [89]

International law relies on international institutions and oversight systems to control the implementation of conventions and treaties. However, these institutions do not have direct enforcement mechanisms; They help by facilitating dialogue, accountability, and clarifying legal standards.[90] Moreover, international institutions play a key role in providing opportunities where states can discuss problems arising from the interpretation of treaties and exchange insights.

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[86] Thomas M. Franck, "Legitimacy in the International System," *American Journal of International Law* 82, no. 4 (1988): 705–759, https://doi.org/10.2307/2203510.pp.705–709.

[87] Shavonne Farrell, "Compliance in International Law: The Role of Legitimacy and Effect on States' Material Power," *Bellarmine Law Society Review* 11, no. 1 (2020): 1–25, https://ejournals.bc.edu/index.php/blsr/article/view/12319.pp.8-9.

[88] Harrould-Kolieb et al., "Opening the Black Box of Transparency."pp.1-2.

[89] Farrell, "Compliance in International Law: The Role of Legitimacy and Effect on States' Material Power."

[90] Harrould-Kolieb et al., "Opening the Black Box of Transparency."pp.7-8.

Consequently, by providing legal advice, guidance, and common ground, these institutions effectively help to reduce ambiguity and promote a shared understanding of their obligations.[91]

In addition, diplomatic engagement and peer pressure often encourage compliance in international legal systems. Governments at the international level strive to maintain their reputation and play the role of responsible actors to comply with international law. When governments fail to live up to their commitments, they may face criticism from actors such as international organizations and other governments, which may damage their diplomatic relations. [92]Therefore, maintaining an effective relationship and international reputation with international communities creates an important incentive for states to comply with international standards, even in the absence of enforcement mechanisms.[93]

5. The criticism of compliance theory

Although this theory contributes significantly to the understanding of state behavior, it has been subject to several criticisms. One of the criticisms is that scholars argue that this theory focuses more on states and legal institutions while providing less emphasis on non- state actors and global power. [94]In addition, another limitation of this theory is that it does not offer fully explanation for persistent violations of international law rules. Through this approach, some states often violate their international legal obligations despite the existence of enforcement mechanisms, legitimacy, and cooperation among actors. This suggests that national interests and political considerations may influence states' behavior rather than legal factors.[95] Scholars also believe that compliance theory underestimates the unequal distribution of power among powerful and less powerful states. On the one hand, some powerful states may have more capacity and freedom to follow or violate international obligations. On the other hand, less powerful countries may face diplomatic and political pressures to comply with international rules. [96]

[91] Harrould-Kolieb et al., "Opening the Black Box of Transparency."pp.8-9.
[92] Harrould-Kolieb et al., "Opening the Black Box of Transparency."pp.12-13.
[93] Harrould-Kolieb et al., "Opening the Black Box of Transparency."pp.12-13.
[94] Farrell, "Compliance in International Law: The Role of Legitimacy and Effect on States' Material Power."p.20.
[95] Farrell, "Compliance in International Law: The Role of Legitimacy and Effect on States' Material Power."pp.20-22.
[96] Liaquat A. Siddiqui, "Compliance with International Law: Theoretical Perspectives," *Dhaka University Law Journal* 31, no. 1 (2021): 15–28, https://doi.org/10.3329/dulj.v31i1.57007.pp.19-23.

Overall, compliance theory offers comprehensive knowledge regarding why states follow international obligations and violate them. The various approaches that were discussed above illustrate that compliance is influenced by different aspects, such as political, legal, and institutional factors. [97]While scholars such as Chayes and Chayes highlight capacity building and cooperation, Harold Koh focuses on internalization of international laws, and Thomas Frank highlights the contribution of legitimacy in compliance. Despite certain limitations, compliance theory plays a significant role in the effectiveness and implementation of international norms. [98]

C. Feminist theory

1. The emergence and development of Feminist legal theory

Feminist legal theory provides significant approaches to the study of law. This theory was developed from the feminist movement, which challenges the view that law is objective and neutral. Feminist theory believes that laws may be influenced by a male perspective and often fail to represent women's insights and interests. This theory highlights the contribution of different factors, such as institutions, legal systems, and practices, in maintaining gender inequality. The feminist theory arose particularly during the nineteenth and twentieth centuries, especially when women were fighting for their political and legal rights.[99] This led scholars to study and examine whether laws treated men and women equally and challenge legal norms that maintain unequal power. Early feminist theory fought for legal rights, including the right to work, education, property ownership, and voting.[100] Over time, authoritative institutions recognized these rights through legislative reform. Many feminist experts argued that equal legal rights do not eliminate the social and cultural challenges women face. Therefore, legal equality alone cannot solve inequality; Instead, it requires changes that tackle the root causes of gender inequality.[101]

The development of feminist legal theory is closely linked to the second-wave feminist movement of the 1960s and 1970s, when the relationship between laws and gender inequality was

[97] Siddiqui, "Compliance with International Law."pp.37-39

[98] Siddiqui, "Compliance with International Law."pp.35-39

[99] Joanne Conaghan, *Law and Gender*, 1st ed. (Oxford University Press, 2013), https://openlibrary.org/books/OL28494237M/Law_and_Gender.pp.23-24.

[100] Naeesha Halai, "Legal Theory from the Feminist Perspective," *International Journal of Law Management & Humanities* 4, no. 6 (n.d.): 1076–82, accessed June 17, 2026, https://ijlmh.com/paper/legal-theory-from-the-feminist-perspective/?pdf=1.pp.1076-1078.

[101] Conaghan, *Law and Gender*.pp.23-25.

established. Throughout this period, several practitioners and scholars challenged legal systems that were assumed to be impartial and also raised questions about whether legal systems considerably and effectively reflected women's experiences.[102] Supporters of this view argued that several branches of law were developed and shaped by a masculine perspective, especially family, labor, criminal, and institutional laws that reinforce traditional gender roles. Thus, these legal systems often failed to provide protections for women. Feminist practitioners seek to examine not only legal systems but also highlight the role of legal institutions and laws that reinforce gender inequalities.[103]

Feminist theory holds that laws cannot be separated from the cultural, political, and social contexts in which they operate. According to this theory, rules and norms are not created independently; Instead, they are influenced by different stakeholders in society. Therefore, legal actors may perpetuate existing inequalities as a common practice due to social and cultural patterns. Feminist experts critically examine laws to reveal whether they naturally promote and protect equality or provide the appearance of equal treatment.[104]

Feminist theory was developed in the same period as international human rights law developed after the Second World War. International human rights principles offered a new approach to promoting equality, dignity, and non-discrimination, which provided new legal support for feminist scholars to address inequalities in national and international legal systems. Furthermore, feminist practitioners took the opportunity to effectively contribute to the realization that discrimination should not be seen as a cultural and familial issue. Rather, it should be considered a human rights issue and legal concern that requires justice and protection.[105] Consequently, feminist theory introduced a new approach for scholars and legislators, emphasizing that equality requires more than equal treatment under the law; Legal systems must address social and institutional practices that cause inequality and discrimination against women. Through

[102] Conaghan, *Law and Gender*.p.23.

[103] Marcelo Ramos, "Feminist and Queer Legal Theories: Gender and Sexuality as Useful Categories for the Critique of Law," *Revista Direito e Práxis* 12, no. 3 (2021): 1679–710, https://doi.org/10.1590/2179-8966/2020/50776.

[104] Conaghan, *Law and Gender*.p.23.

[105] Hilary Charlesworth et al., "Feminist Approaches to International Law," *The American Journal of International Law* 85, no. 4 (1991): 613–45, https://doi.org/10.2307/2203269.pp. 625-638.

feminist theory, an important framework for understanding how legal systems challenge as well as maintain existing patterns of inequality has been developed.[106]

2. The Critique of Legal Neutrality

Feminist legal theory is based on many interrelated principles that challenge the prevalent assumptions about the function and purpose of the law.[107] Unlike traditional legal theory, which views laws as neutral, objective, and applicable equally to all individuals. According to the feminist perspective, legal systems are created by cultural, political, and social conditions in which they operate. Therefore, laws are influenced by structural power and inequality. Among different perspectives developed within feminist theory, three core principles are considered significant: the critique of neutrality, the difference between formal and substantive equality, and the relationship between patriarchy and legal structures. [108]

In traditional legal thought, the concept of legal impartiality is assumed to be a fundamental aspect. Based on this school of thought, laws are impartial and objective and apply to all human beings equally, regardless of race, religion, or gender. According to this approach, laws are understood as neutral and promote and protect justice and equality. [109]

Feminist legal theory, on the other hand, challenges traditional thought by arguing that legal systems are influenced by social factors, including politics, economics, and power, which are generally shaped by men's interests and perspectives while failing to reflect women's experiences. The critique of legal neutrality does not claim that laws deliberately and intentionally harm women. [110]Instead, it argues that laws are designed to create inequality even without purpose. They treat all individuals as if they are equal, but in reality they reflect different circumstances. Therefore, feminist theory argues that true justice requires more than just legal application of laws. [111]

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[106] Cochav Elkayam-Levy, "A Path to Transformation: Asking 'The Woman Question' in International Law," *Michigan Journal of International Law* 42, no. 3 (2021): 429, https://doi.org/10.36642/mjil.42.3.path.p.44.

[107] Charlesworth et al., "Feminist Approaches to International Law."pp.625-638.

[108] Conaghan, *Law and Gender*. Leslie Francis, "Feminist Philosophy of Law," in *The Stanford Encyclopedia of Philosophy*, Spring 2026, ed. Edward N. Zalta and Uri Nodelman (Metaphysics Research Lab, Stanford University, 2026), https://plato.stanford.edu/archives/spr2026/entries/feminism-law/.

[109] Conaghan, *Law and Gender*. Naeesha Halai, "Legal Theory from the Feminist Perspective," n.d.p.35.

[110] Francis, "Feminist Philosophy of Law."

[111] Conaghan, *Law and Gender*.pp.35-39.

3. Formal equality and Substantive equality

Another significant principle of feminist theory is the difference between formal equality and substantive equality. Formal equality highlights that law should treat all individuals equally without any discrimination. This approach seeks to remove any legal distinction based on gender and ensure that all individuals enjoy all opportunities equally. [112]

The principle of formal equality has made an effective contribution to the development of women's legal rights. Feminist scholars believe that this approach is insufficient to eliminate all forms of inequality. Treating all individuals equally does not always lead to equal outcomes due to different circumstances, such as historical discrimination, cultural bias, and unequal resources within a society. [113]Legal systems often fail to distinguish the structural discrimination and disadvantages that women and other vulnerable communities face when implementing norms.[114]

However, substantive equity focuses more on achieving equality in outcomes. Based on this approach, individuals face a variety of structural challenges, including disadvantage in resources, social exclusion, and historical discrimination.[115] Therefore, access to real equality requires significant practices and measures to tackle these disadvantages. Similarly, this approach emphasizes how laws treat people in practice rather than in theory. This highlights that legal systems must take into account the actual situations of individuals and ensure that all individuals effectively enjoy and exercise their rights in practice.[116]

4. patriarchy and legal structures

Another essential element of feminist theory is the concept of patriarchy. Feminist theory argues that the concept of patriarchy refers to institutional and social systems in which power has been concentrated in the hands of men. This system significantly influenced political, institutional, and social norms. Feminist scholars believe that laws are separated from these realities and

[112] Sandra Fredman FBA KC, *Discrimination Law*, 3rd ed. (Oxford University Press, 2022), https://doi.org/10.1093/oso/9780198854081.001.0001.p.14.

[113] Sandra Fredman, "Substantive Equality Revisited," *International Journal of Constitutional Law* 14, no. 3 (2016): 712–38, https://doi.org/10.1093/icon/mow043.p.719.

[114] Sandra Fredman, "Substantive Equality Revisited," *International Journal of Constitutional Law* 14, no. 3 (2016): 712–38, https://doi.org/10.1093/icon/mow043.pp.720-725.

[115] Fredman, "Substantive Equality Revisited," 2016.p.723.

[116] Fredman FBA KC, *Discrimination Law*.

conditions. Thus, legal systems are designed and implemented through patriarchal communities; they often unintentionally reflect inequalities in practice for women. [117]

Furthermore, this approach argues that legal frameworks are not neutral and that they effectively maintain the distribution of power and values in society. Legal doctrines, judicial practices, and institutional arrangements may reproduce traditional assumptions about gender roles and social responsibilities, even where legal rules appear to be impartial on their face. [118]For example, legal concepts and interpretations may reflect long-standing social expectations about the roles of men and women in public and private life, which can influence how laws are applied in practice. In this way, inequality may persist not necessarily through explicit discrimination, but through structures and interpretations that appear neutral but have unequal effects.[119]

Thus, feminist theory studies not only legal rules but also the relationship between social power and legal systems. It argues that to understand whether legal systems reinforce or challenge patterns of inequality, it is necessary to examine not only the laws written but also how society and institutions contribute to how the laws function.[120]

Similarly, another application of this principle is that gender inequality is the result of structural conditions. Proponents of this approach believe that gender inequality is deeply rooted within a society and that it has been normalized within legal practices and systems over time. Thus, one of the major goals of feminist theory is to study how inequality is maintained by legal systems. Together, these principles challenge the traditional thinking that the law applies equally to all individuals, regardless of their gender. Moreover, it examines the contribution of legal systems and institutions to dismantling patterns of inequality and social structures.[121]

Several scholars have shared significant perspectives on the relationship between legal systems, power, and gender. While most scholars have shared insights into gender inequality and

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[117] Catharine A. MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press, 1989).p.157.

[118] Abigail C. Saguy et al., "Reassessing Gender Neutrality," *Law & Society Review* 54, no. 1 (2020): 7–32, https://doi.org/10.1111/lasr.12454.pp.7-9.

[119] Ruth Rubio-Marín and Helen Irving, "Introduction: Women as Constitution-Makers: The Promises and the Challenges of Participation," in *Women as Constitution-Makers: Case Studies from the New Democratic Era*, ed. Helen Irving and Ruth Rubio-Marín (Cambridge University Press, 2019), https://doi.org/10.1017/9781108686358.001.pp.57-59.

[120] Fredman, "Substantive Equality Revisited," 2016.

[121] Fredman, "Substantive Equality Revisited," 2016.pp.712-713.

the assumptions of the traditional legal system, they have offered various analytical and theoretical approaches. [122]This section will discuss the perspectives of three influential feminist legal theory scholars.

5. Catharine A. MacKinnon's Perspective

Catharine A. MacKinnon is considered a significant scholar in feminist legal theory. From her perspective, laws are shaped by male interests and by dominance within social and institutional structures.[123] MacKinnon argues that traditional legal norms reflect male interests and experiences, especially in relation to power, social control, and sexuality. Therefore, legal systems maintain gender inequality. Furthermore, based on her argument, formal legal norms alone are not sufficient to address gender inequality. Although the theory of legal systems assumes impartiality, in practice women are disadvantaged by social and institutional power.[124] MacKinnon also argues that gender discrimination is not alone an issue of individuals but a structural matter that is created within norms and society. Consequently, she believes that legal norms should be critically evaluated to determine how laws produce and reinforce gender inequality.[125]

6. Martha Albertson Fineman's Perspective

Martha Albertson Fineman provides a different approach that examines the universal condition of human vulnerability. Fineman argues that all individuals are naturally vulnerable due to different aspects, such as social structure, personal condition, and physical dependency. Based on his view, resources and support systems in a society are unequally distributed, resulting in inequalities.[126]

Furthermore, she argues that governments and other actors have a responsibility to design more practical and inclusive policies that address inequality and provide opportunities equally for all individuals. She critiques legal systems that excessively highlight formal equality and individuals' autonomy; such an approach is based on the assumption that all individuals are self-

[122] Rubio-Marín and Irving, "Introduction."p.78.

[123] Francis, "Feminist Philosophy of Law."

[124] Naeesha Halai, *Legal Theory from the Feminist Perspective*, 4, no. 6 (2021): 1076–82, https://ijlmh.com/paper/legal-theory-from-the-feminist-perspective/?pdf=1.p.1077.

[125] MacKinnon, *Toward a Feminist Theory of the State*.p.83.

[126] Martha Albertson Fineman, ed., "The Vulnerable Subject: Anchoring Equality in the Human Condition," in *Transcending the Boundaries of Law*, 0 ed. (Routledge-Cavendish, 2010), https://doi.org/10.4324/9780203848531-26.pp.8-15.

sufficient and independent and are equally able to exercise their rights. [127]From this perspective, all individuals are treated equally before the law and legal rights are available to everyone. While Fineman believes that individuals have different conditions and circumstances within a society and may experience different levels of dependence on social and institutional support.[128]

According to Fineman's argument, dependency is a universal condition of human life, as humans often experience periods of vulnerability such as disability, illness, economic hardship, and childhood. Legal systems are primarily focused on the autonomy of individuals and assume that individuals can protect their interests without being protected. Therefore, such legal norms ignore the actual situation of individuals.[129]

To address this issue, Fineman offered new insights into more responsive states, where the different needs of individuals are recognized in legal and institutional systems. Based on her approach, states make an important contribution to ensuring that people have equal access to resources, opportunities, and supports. Through this approach, states are responsible for introducing measures that eliminate discrimination and barriers and also addressing social and institutional inequalities. [130]

7. Kimberlé Crenshaw's Perspective

Kimberlé Crenshaw is known for developing the concept of intersectionality. Intersectionality refers to the idea that individuals often experience multiple forms of discrimination based on different factors, like social status, gender, race, and religion. Based on this approach, all these aspects interact to result in a complex effect. [131]Crenshaw argues that traditional legal frameworks often treat discrimination as a single-axis issue, meaning that they focus on one ground of inequality at a time, such as either gender discrimination or racial discrimination, but not both simultaneously. In such approaches, legal analysis tends to isolate one category of identity and evaluate discrimination within that limited framework. As a result, individuals who experience

[127] Martha Fineman, "The Vulnerable Subject and the Responsive State," *Emory Law Journal* 60, no. 2 (2010): 251, https://scholarlycommons.law.emory.edu/elj/vol60/iss2/1.pp.19-23.

[128] Fineman, "The Vulnerable Subject."pp.19-22.

[129] Dolores Morondo, "A New Paradigm for Equality? Vulnerability as a Human Condition and as a State of Defencelessness"," *Cuadernos Electrónicos de Filosofía Del Derecho*, December 15, 2016, 205–21, https://doi.org/10.7203/CEFD.34.8916.

[130] Fineman, "The Vulnerable Subject."p.16.

[131] Kimberle Crenshaw, "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color," *Stanford Law Review* 43, no. 6 (1991): 1241–99, https://doi.org/10.2307/1229039.pp.1241-1244.

multiple forms of disadvantage at the same time may not be fully recognized or adequately protected within legal processes.[132]

Therefore, intersectionality provides a critical and analytical approach to how various forms of discrimination operate in practice. It developed the idea of feminist theory by highlighting that discrimination has multiple dimensions and cannot be understood through a single approach. This approach encourages legal systems to adopt more practical and inclusive mechanisms that recognize the complexity of lived experiences within legal systems of equality. [133]

Overall, feminist legal theory provides a practical and analytical approach for understanding the relationship between legal rules, power, and gender by challenging the traditional perspectives that argued law is neutral and applied equally. This theory argues that legal systems are influenced and shaped by institutional and social structures that reinforce gender inequality. Through its core principles, such as the critique of legal neutrality, the distinction between formal and substantive equality, and the analysis of patriarchy within legal structures, it highlights that individuals may experience law differently due to differences in social status and access to resources. Scholars like MacKinnon, Martha Albertson Fineman, and Kimberlé Crenshaw further demonstrate the diversity of feminist legal thought, yet collectively reinforce the idea that law is deeply connected to social power and that gender inequality often operates in structural and intersecting forms within society.[134]

[132] Kimberle Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics," *University of Chicago Legal Forum* 1989, no. 1 (1989), https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1052&context=uclf.p.140.

[133] Crenshaw, "Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics."pp.166-167.

[134] Conaghan, *Law and Gender*. Ramos, "Teorias Feministas e Teorias Queer Do Direito"; Fredman FBA KC, *Discrimination Law*. Marcelo Maciel Ramos, "Feminist Theories and Queer Theories of Law: gender and sexuality as useful categories for legal criticism," *Revista Direito e Práxis* 12 (2021): 1679–710, https://doi.org/https://doi.org/10.1590/2179-8966/2020/50776.pp. 1685–1691.

CHAPTER III

Comparative assessment of the National and International Human Rights Principles on Child Marriage

This chapter explores the legal principles governing child marriage under Afghan national law, particularly the Civil Code, and other related frameworks and international human rights instruments related to the protection of children. The main objective of this chapter is to critically analyze the inconsistencies between the Civil Code and international human rights instruments. In addition, it highlights how the practice of child marriage remained a common practice despite the existence of several legal frameworks.

This chapter studies international human rights principles related to the protection of children, particularly the Convention on the Rights of the Child (CRC), the Universal Declaration of Human Rights UDHR), and the related provisions of the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) and the International Covenant on Civil and Political Rights- ICCPR). These legal frameworks provide comprehensive knowledge regarding the minimum age of marriage, free and full consent, and non- discrimination also protection of girls from harmful practices.[135]

Moreover, this chapter assesses the provisions of the Civil Code regarding marriage age, guardianship, and consent. It examines whether these principles comply with international human rights instruments and highlights the legal inconsistencies that affect girls. Through a comparative approach to national marriage law with international human rights principles, this chapter aims to identify the gaps between the Civil Code and other related laws of Afghanistan and international human rights principles and to evaluate their application for the protection of girls' rights. [136]

[135] United Nations General Assembly, "Convention on the Rights of the Child." United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women." Fredman, "Substantive Equality Revisited," 2016; United Nations General Assembly / Office of the High Commissioner for Human Rights (OHCHR), "International Covenant on Civil and Political Rights," 1966, https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-civil-and-political-rights.

[136] Afghan Civil Code.

A. International Human Rights Standards on Child Marriage

1. The concept of child marriage in international human rights principles

Child marriage remains a major social and human rights concern, particularly in developing countries, including Afghanistan.[137] Although international human rights principles do not offer a single universal definition of child marriage, it is considered a harmful practice and a violation of human rights across the world. UNICEF defines child marriage as a formal and informal union in which both parties are under the age of 18.[138] This definition is linked to the definition of a child under international human rights law, particularly the Convention on the Rights of the Child (CRC), which governs the protection of children.[139] Article one of the Convention on the Rights of the Child (CRC) defines "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier". [140] Based on this definition, any marriage involving a person under 18 years old is regarded as incompatible with the objectives and principles of child protection recognized under international human rights instruments.[141]

Under international human rights law, the term "child marriage" refers to boys and girls under the age of 18 who are involved in marriage. According to international studies, girls are significantly affected by this practice. This thesis particularly focuses on the early marriage of girls and its implications for the protection of girls. [142]According to international human rights standards, child marriage is recognized as a harmful practice that weakens fundamental rights, including rights to education, health, participation in social life, and personal development. Furthermore, early marriage often exposes children, particularly girls, to dependency and vulnerability that affect and limit their ability to exercise their rights more effectively.[143]

The international community emphasizes that childhood should be a period devoted to personal growth, education, and preparation for adulthood. Therefore, international human rights

[137] UNICEF, "Fast Facts: 10 Facts Illustrating Why We Must #EndChildMarriage."
[138] UNICEF, "Fast Facts: 10 Facts Illustrating Why We Must #EndChildMarriage."
[139] United Nations General Assembly, "Convention on the Rights of the Child."art.1.
[140] United Nations General Assembly, "Convention on the Rights of the Child."art.1.
[141] United Nations General Assembly, "Convention on the Rights of the Child."art.1.
[142] Marina Plesons et al., "Updated Research Gaps on Ending Child Marriage and Supporting Married Girls for 2020–2030," *Reproductive Health* 18, no. 1 (2021): 152, https://doi.org/10.1186/s12978-021-01176-x.
[143] UNICEF, *The Power of Education to End Child Marriage* (UNICEF, 2022), https://data.unicef.org/resources/child-marriage-and-education-data-brief/.

instruments highlight the substantial protection of children against harmful practices. Through this approach, child marriage is considered a human rights issue that requires legal support and actor intervention. In addition, to protect girls from early marriage, legal systems must prioritize and establish measures to ensure that children can fully enjoy their fundamental rights. International communities have recognized the prohibition of child marriage as an important issue for the protection of children's rights.[144]

2. The Minimum Age of Marriage under international human rights principles

Setting the minimum age of marriage is a significant component under international human rights principles and consistently highlights that marriage should not happen before the age of eighteen years old, because before this age individuals are unable to make informed decisions. Although the minimum age of marriage is not explicitly set by the CRC, Article 1 of the Convention defines a child as any individual under 18 years of age.[145] This definition is generally interpreted by the international community and treaty bodies to mean that any marriage under the age of 18 is recognized as child marriage.[146]

In 1979, the United Nations General Assembly adopted the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and, entering into force in 1981, its principles are committed to the protection and promotion of women's rights. The Convention's purpose is to eliminate all forms of discrimination, including in health, education, employment, family relations, and political participation. However, CEDAW has not explicitly used the term child marriage; several its provisions address harmful practices, such as early marriage, and create regulations for their protection.[147] Afghanistan joined CEDAW in March 2003; therefore, as a

[144] Office of the United Nations High Commissioner for Human Rights (OHCHR), *Preventing and Eliminating Child, Early and Forced Marriage*, A/HRC/26/22 (Geneva, 2014), https://doi.org/10.1163/2210-7975_HRD-9970-2016149.

[145] United Nations General Assembly, "Convention on the Rights of the Child."art.1.

[146] United Nations Population Fund (UNFPA), *Child Marriage - Frequently Asked Questions* (UNFPA, 2025), https://www.unfpa.org/resources/child-marriage-frequently-asked-questions. UNICEF and UNFPA, *Child Marriage and the Law: Technical Note for the Global Programme to End Child Marriage*, Global Programme to End Child Marriage (UNICEF and UNFPA, 2020), https://www.unicef.org/media/86311/file/Child-marriage-the-law-2020.pdf.

[147] United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women."

Member State, it accepted the legally binding obligation under international law to ensure that its national laws and practices are consistent with international instruments.[148]

Accordingly, Article 16 of the Convention states that State members have an obligation and responsibility to take effective measures to eliminate discrimination against women and to ensure that persons enjoy equal rights when entering into marriage. Based on Article 16 (1) of CEDAW, which guarantees the right to choose a spouse freely and to marry with free and full consent.[149] This article is closely related to child marriage, as children may lack the autonomy and maturity that is significant to give informed consent. Any marriage occur without free and full consent should be considered a violation of human rights law.[150] Moreover, Article 16(2) explicitly highlights that child marriage has no legal effect and requires states to establish a minimum age for marriage, and registration of marriage shall be mandatory.[151]

The Committee on the Elimination of Discrimination Against Women further clarified these obligations in General Recommendation No. 21 on Equality in Marriage and Family Relations. The Committee emphasizes that 18 years should be recognized as the minimum age for marriage for both parties because at a certain age, individuals meet the capacity and maturity regarding the rights and responsibilities associated with marriage. Through this article, child marriage is recognized as a harmful practice that undermines girls' autonomy, equality, and fundamental rights. It also imposes responsibilities to eliminate harmful practices.[152]

The Universal Declaration of Human Rights (UDHR), adopted by the United Nations General Assembly in 1948, is a seminal document in the history of international human rights. Although the UDHR is not a legally binding treaty under international law, it serves as an important global moral standard that has helped establish key human rights norms and shaped subsequent

[148] United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee), "Concluding Observations on Afghanistan (2020)," 2020, https://digitallibrary.un.org/record/3856672?ln=en&v=pdf.art.16.

[149] United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women."art.16.

[150] United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women."

[151] United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women, art16(2)."

[152] Committee on the Elimination of Discrimination against Women, "General Recommendations Made by the Committee on the Elimination of Discrimination against Women," accessed June 22, 2026, https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm.

international norms and domestic legal systems.[153] Afghanistan voted in favor of the UDHR as a member of the United Nations in 1948. [154]Although the UDHR is not a binding treaty, it contains significant provisions under Article 16 that are related to marriage. According to Article 16(1), men and women of "full age" have the right to marry and found a family without any limitation based on race, religion, or nationality. The term "full age" refers to individuals who have reached legal adulthood and have the capacity to enter into marriage. [155]

Similarly, Article 16(2) of the UDHR states that marriage shall be entered into with free and full consent; this term requires individuals to be able to understand the consequences of marriage and also highlights that marriage is a voluntary decision. [156]In the context of child marriage, this principle is essential because children are not able to provide informed and independent consent due to their age and developmental stage. Therefore, child marriage is incompatible with the UDHR's consent requirement. However, Article 16 of the UDHR has not directly discussed child marriage; the terms such as "full marriage" and "free and full consent" within this article amount to an implicit prohibition of early and forced marriage, due to children's lack of capacity to provide free and full consent.[157] Under international human rights law, harmful practices, including child marriage and forced marriage, violate children's rights.[158]

Another significant binding human rights instrument that addresses the minimum age of marriage is the International Covenant on Civil and Political Rights (ICCPR), adopted by the United Nations General Assembly in 1966 and entering into force in 1976.[159] On 24 January 1983, Afghanistan became a state party to the ICCPR. As a result, Afghanistan is bound by the provisions of the Treaty and is obliged to ensure that its national principles and practices are consistent with the provisions of the Treaty. As the ICCPR is a legally binding treaty that establishes legal obligations for member states, to harmonize domestic laws with the terms of the treaty, as well as

[153] United Nations General Assembly, "UDHR."

[154] Khatol Shafiq and Safia Rahim, "Harmonizing Legal Frameworks: Bridging the Gap between CEDAW and the Afghan Civil Code in Pursuit of Gender Equality," *Sprin Journal of Arts, Humanities and Social Sciences* 3, no. 5 (2024): 09–12, https://doi.org/10.55559/sjahss.v3i5.272.pp.10- 11.

[155] United Nations General Assembly, "UDHR."art.16.

[156] United Nations General Assembly, "UDHR."art.16 (2).

[157] United Nations General Assembly, "UDHR."art.16 (2).

[158] Shafiq and Rahim, "Harmonizing Legal Frameworks," 2024.pp.10-12.

[159] United Nations General Assembly / Office of the High Commissioner for Human Rights (OHCHR), "International Covenant on Civil and Political Rights."

to report to the Human Rights Committee the measures taken on the implementation of the treaty.[160]

Article 23(2) of the ICCPR states, "The right of men and women of marriageable age to marry and to found a family shall be recognized."[161] Similarly, Article 23 (3) states, "No marriage shall be entered into without the free and full consent of the intending spouses."[162] Although the Covenant has not explicitly defined the term marriageable age, the Human Rights Committee, in its General Comment No. 19, states that parties have legal obligations to set up a minimum age for marriage and ensure both parties have the capacity and freedom to consent. In addition, national laws should provide measures and practices to prevent early and forced marriage. These obligations are significantly relevant in the context where guardianship arrangements, cultural norms, and economic hardship override personal consent.[163] Furthermore, the Committee highlights that marriage is permissible with full maturity and capacity. Through this interpretation, marriage under 18 is a violation of human rights.[164]

Moreover, the CRC and its General Comment No. 4 on Adolescent Health and Development called on state parties to reform and review national laws and establish 18 years as the minimum age of marriage for both boys and girls, without exception. The Committee also underlines that any marriage below 18 years is incompatible with international human rights instruments. Therefore, setting up 18 years as the minimum age of marriage is essential for protecting children, especially girls, from the negative consequences of early marriage. Taken together, international human rights instruments provide a normative basis for child marriage.

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[160] United Nations Committee on the Elimination of Discrimination against Women (CEDAW Committee), "Concluding Observations on Afghanistan (2020)."

[161] United Nations General Assembly / Office of the High Commissioner for Human Rights (OHCHR), "International Covenant on Civil and Political Rights." art. 23(2).

[162] United Nations General Assembly / Office of the High Commissioner for Human Rights (OHCHR), "International Covenant on Civil and Political Rights." art. 23 (3).

[163] Human Rights Committee (UN), "General Comment No. 19: Protection of the Family, the Right to Marriage and Equality of Spouses," 1990, https://www.equalrightstrust.org/sites/default/files/ertdocs/general%20comment%2019.pdf.

[164] UN Women (United Nations Entity for Gender Equality and the Empowerment of Women), *Legislating and Enforcing the Minimum Age of Marriage: A Comparative Study of Experiences and Lessons Learned in Ending the Legalization of Child Marriage* (United States, 2023), https://www.unwomen.org/en/digital-library/publications/2023/09/legislating-and-enforcing-the-minimum-age-of-marriage. UN Women (United Nations Entity for Gender Equality and the Empowerment of Women), *Legislating and Enforcing the Minimum Age of Marriage: A Comparative Study of Experiences and Lessons Learned in Ending the Legalization of Child Marriage*; UNICEF, "Child Marriage."

B. State Obligations to protect children from early marriage under international human rights law

International human rights principles are legal obligations for member states to protect children from harmful practices, including early and forced marriage. Binding obligations require member states to establish measures and mechanisms to end early and child marriages and provide effective redress for victims. Several human rights documents defined the content and scope of these binding obligations, as well as described them through recommendations, general comments, and observations. [165]

One of the major international treaties that provided a comprehensive basis for the protection of children is the CRC. Many provisions of the CRC establish obligations on state parties in this regard. Articles 2, 3, 4, 12, 19, and 24(3) together require states to take concrete measures and practices to guarantee children's rights and eliminate discriminatory practices against children. Taken together, these regulations provide a basis for government obligations and require member states to take effective measures to eliminate harmful practices, including child marriage, through enforcement mechanisms, domestic laws, and reforms.[166]

1. State Obligations under the Convention on the Rights of the Child (CRC)

Article 2 of the CRC created the principle of non- discrimination as a significant right of children. It requires States Members to recognize, respect, and protect all rights in the Convention for children within their jurisdiction and sovereignty without any discrimination, regardless of color, religion, nationality, language, race, sex, ethnic status, or other status.[167] Furthermore, it requires States to take concrete measures and mechanisms to protect children from discrimination by their parents and legal guardians. Therefore, the main objective of this article is to guarantee dignity, equality, and access to equal rights for all children. According to the principle of non-discrimination, all children should be protected under the domestic legal system, and no legal norm should allow any harmful action against girls based on their gender. Consequently, any domestic

[165] Shafiq and Rahim, "Harmonizing Legal Frameworks," 2024.p.10.
[166] United Nations General Assembly, "Convention on the Rights of the Child," Arts. 2, 3, 4, 12, 19, 24(3).
[167] United Nations General Assembly, "Convention on the Rights of the Child."art.2.

law that establishes a lower age of marriage for girls rather than boys constitutes a breach of the obligation under Article 2 of the CRC.[168]

Similarly, regarding state obligations, Article 3 of the CRC establishes significant responsibilities for state parties to protect children. First, members have an obligation to ensure the protection and well-being of every child, including the adoption of effective measures and mechanisms for protection in terms of mental, physical, emotional, and social development. In addition, this Article requires States Parties to guarantee that all stakeholders for the protection of children comply with principles established by competent authorities. These standards include health, safety, and effective supervision. The purpose of the obligation to ensure that all children have access to equal care and protection. [169]

Article 19 of the CRC also highlights the responsibilities of Member States. It creates an obligation for Member States to protect children from all forms of violence, abuse, neglect, and exploitation. According to Article 19, children are vulnerable to harm; Therefore, States have an obligation to take concrete legislative, social, administrative, and educational measures to protect every child from all forms of violence, including harm, sexual abuse, maltreatment, and exploitation, while they are in the care of their parents or legal guardians.[170] Second, Member States have a responsibility to put in place considerable measures and enforcement mechanisms to respond to cases of abuse and exploitation. These measures cover specific topics, including procedures for eliminating child maltreatment, identifying children at risk, reporting suspected cases, and referring victims to effective support systems. In addition, Member States are responsible for ensuring that cases of abuse are properly investigated and that child victims have effective access to medical, psychological and social support.[171]

Article 24 CRC also highlights the state's obligation, particularly regarding access to health care services. This Article imposes plenty of significant obligations on States, such as ensuring

[168] United Nations General Assembly, "Convention on the Rights of the Child, art 2. " Megan Arthur et al., "Child Marriage Laws around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities," *Journal of Women, Politics & Policy* 39, no. 1 (2018): 51–74, https://doi.org/10.1080/1554477X.2017.1375786.p.55.

[169] United Nations General Assembly, "Convention on the Rights of the Child."art.3.

[170] Christian Whalen, "Article 19: The Right to Protection from All Forms of Violence," in *Monitoring State Compliance with the UN Convention on the Rights of the Child: An Analysis of Attributes*, ed. Ziba Vaghri et al. (Springer International Publishing, 2022), https://doi.org/10.1007/978-3-030-84647-3_30.p.293.

[171] United Nations General Assembly, "Convention on the Rights of the Child."art.19.

that all children have equal access to medical assistance and healthcare services. [172]This includes reducing infant and child mortality, combating disease and malnutrition, providing adequate nutrition and clean drinking water, and ensuring appropriate prenatal and postnatal care for mothers. Moreover, States Parties have a responsibility to promote health education by ensuring that every child, parents, and societies have access to information related to child health, nutrition, breastfeeding, hygiene, environmental sanitation, and accident prevention. Furthermore, States Parties should design practical and inclusive policies and measures to eliminate traditional practices that harm children's health. Finally, this Article emphasizes the significance of international cooperation in realizing children's right to health.[173]

Finally, States Parties are encouraged to promote international cooperation, particularly in support of developing countries, to achieve the full realization of children's right to health. This provision intends to make sure that all children, regardless of their economic challenges, can effectively enjoy their rights, particularly health care services. [174]

2. State responsibilities under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)

The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) is another important legal standard that has placed binding obligations on states to protect women and girls from harmful practices.[175] As a Member State, Afghanistan has a legal obligation to ensure that its domestic norms and practices are consistent with the international principles laid down by CEDAW and to eliminate all forms of discrimination against women and girls.[176]

Article 2 of CEDAW requires States Parties to promote gender equality and eliminate all forms of discrimination against women. Furthermore, it calls on Member States to provide legal protection of women's rights on an equal footing with men and to take effective measures to

[172] United Nations General Assembly, "Convention on the Rights of the Child."art.24.
[173] United Nations General Assembly, "Convention on the Rights of the Child." Art.24. Whalen, "Article 19."
[174] United Nations General Assembly, "Convention on the Rights of the Child."art.24.
[175] United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women."
[176] United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women." Khatol Shafiq and Safia Rahim, "Harmonizing Legal Frameworks: Bridging the Gap between CEDAW and the Afghan Civil Code in Pursuit of Gender Equality," *Sprin Journal of Arts, Humanities and Social Sciences* 3, no. 5 (2024): 09–12, https://doi.org/10.55559/sjahss.v3i5.272.p.10.

eliminate discriminatory cultural norms, regulations, and practices against women. [177]The article also obliges governments to ensure that public institutions, courts, and tribunals protect women from discriminatory acts. Afghanistan, as a member state, therefore has a binding obligation to amend and revise its domestic laws that permit harmful practices, including child marriage. [178]

Article 5 of CEDAW also requires States to address the cultural and social roots of discrimination against women through the development of effective measures and practices to correct discriminatory cultural and social norms based on assumptions related to the superiority of men over women.[179] The article highlights that discriminatory treatment of women is rooted in traditional practices, beliefs, and customs. Consequently, achieving basic gender equality requires addressing the root causes of cultural attitudes. In addition, states have a responsibility to ensure that family education promotes a proper understanding of childbearing as a social duty and recognizes the shared responsibility of men and women in the rearing and development of their children. The article also emphasizes that the interests of children should be given priority in all matters, including family and marriage.[180]

Article 16 of CEDAW is a significant provision for family issues that directly addresses child marriage. [181]Firstly, States Parties are required to provide equal rights between women and men in all matters, such as marriage, and to ensure equal rights in entering marriage, particularly women's rights to choose their spouse freely and marry with free and full consent. Moreover, it highlights the equality between spouses during marriage and focuses on equal rights and responsibilities within marriage. [182]

All States Parties, including Afghanistan, are required under international law to prevent early and forced marriage by setting the minimum age for marriage, guaranteeing the full and free

[177] United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women."art.2.

[178] United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women, art 2." Shafiq and Rahim, "Harmonizing Legal Frameworks," 2024.p.10.

[179] United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women."art.5.

[180] Rangita de Silva de Alwis, "Addressing the Evolving Concept of Gender and Intersectional Stereotypes in International Norm Creation: Directions for a New CEDAW General Recommendation," SSRN Scholarly Paper no. 4466168 (Social Science Research Network, May 29, 2023), https://papers.ssrn.com/abstract=4466168.

[181] United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women."art.16.

[182] Shafiq and Rahim, "Harmonizing Legal Frameworks," 2024.p.10.

consent and official registration of marriage, and protecting the best interests of children in all matters. [183]

3. State Obligation under the International Covenant on Civil and Political Rights (ICCPR)

The Covenant on Civil and Political Rights (ICCPR) established a legal obligation on State Parties. According to article 23(4), State Parties have a legal obligation to guarantee the equality, responsibility, and rights between spouses in all aspects of marriage, and also to ensure that both men and women enjoy equal rights and status within marriage and family relations.[184] Therefore, State Parties should take considerable and effective measures to remove any discrimination. Through this provision, all States Members have legal responsibility to promote gender equality within marriage and provide protection for children in family issues. [185]

In addition, Article 24(1) of the ICCPR obligates States to protect children through adopting legislative and institutional practices to protect girls from early marriage. This provision treats child marriage as a violation of children's rights that needs State intervention. [186]Together, these provisions create a legal positive obligation for Afghanistan as a State Party to prevent early and forced marriage through creating enforcement mechanisms, reforming domestic law, setting the minimum age for marriage, and adopting protection policies for children, particularly girls. [187]

In general, international human rights law requires Member States to protect children against all forms of discrimination and harmful practices. Through the CRC, CEDAW, and the ICCPR, states have a legal obligation to ensure that children are protected from abuse and discrimination and to respect children's rights to education, health, and development. [188]The standards also require states to establish effective legislative, educational, and administrative measures, such as setting a minimum age for marriage, affirming free and full consent to marriage, and registering marriage. As a State Party, Afghanistan has a binding obligation under international

[183] Shafiq and Rahim, "Harmonizing Legal Frameworks," 2024.pp.9-11.
[184] United Nations General Assembly, "Convention on the Rights of the Child."art.24(3).
[185] United Nations General Assembly, "ICCPR."art. 24.
[186] United Nations General Assembly, "ICCPR."art.24(1).
[187] United Nations General Assembly, "ICCPR."art.24 (1).
[188] Sebghatullah Qazi Zada and Mohd Ziaolhaq Qazi Zada, "The Taliban and Women's Human Rights in Afghanistan: The Way Forward," *The International Journal of Human Rights* 28, no. 10 (2024): 1687–722, https://doi.org/10.1080/13642987.2024.2369584.pp.1688-1690.

law to align its national legal system with these obligations and to take effective steps to eliminate all forms of discrimination and harmful practices, including child marriage. [189]

C. Afghanistan's national legal system on child marriage before and after 2021

Before 2021, under the Afghanistan legal system, frameworks governed the protection of children: the 1977 Civil Code, the 2004 Afghan Constitution, the 2009 Elimination of Violence Against Women (EVAW), and the Shia Personal Status Law SPSL). These legal frameworks address the features of marriage, particularly the minimum age for marriage, consent, and the protection of children from discrimination and violations.[190]

1. The Constitution of Afghanistan (2004)

On 26 January 2004, Afghanistan officially ratified its Constitution through the Constitutional Loya Jirga, and it is recognized as the foundation of Afghanistan's political and legal system. The main objectives of the Constitution were to promote democracy, national unity, the rule of law, and the protection of individuals' rights. However, the Constitution does not directly contain any particular provision that addresses child marriage; many of its provisions are closely related to the protection of girls from early marriage. [191]The Constitution emphasizes equality before the law, the elimination of discriminatory practices, the protection of human dignity, and the obligation of the state to protect the family as a significant unit of society. As a result, numerous provisions of it provide a comprehensive basis for protecting children against harmful practices and oblige the government to establish effective measures and practical policies to protect children's rights.[192]

According to Article 22 of the Afghan Constitution, which recognizes the principle of dignity and non-discrimination as a fundamental constitutional value.[193] This expressly prevents any discriminatory acts against Afghan citizens and ensures that all persons enjoy equal rights before

[189] United Nations General Assembly, "UDHR." United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women." United Nations General Assembly, "ICCPR." Qazi Zada and Qazi Zada, "The Taliban and Women's Human Rights in Afghanistan."pp.1688- 1689.

[190] Afghan Civil Code. Constitution of the Islamic Republic of Afghanistan (2004), https://www.constituteproject.org/constitution/Afghanistan_2004. - Law on the Elimination of Violence against woman, vol. 91. Constitution of the Islamic Republic of Afghanistan.

[191] Mir Hermatullah Sadat, *The Implementation of Constitutional Human Rights in Afghanistan*, 11, no. 2 (2004): 48–50, https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1379&context=hrbrief.pp.48-49.

[192] Constitution of the Islamic Republic of Afghanistan.

[193] Constitution of the Islamic Republic of Afghanistan.art.22.

the law. This provision requires State bodies to guarantee equal protection and rights for all men and women, regardless of their religion, gender, language, or social status. [194]Therefore, Article 22 provides an important legal basis for addressing any discriminatory practices and protecting the rights of individuals. This article recognizes a constitutional guarantee of gender equality that is relevant to early marriage and establishes legal obligations on the State to eliminate any discrimination and harmful practices that undermine their dignity and fundamental rights.[195]

In addition, Article 24 is another vital provision in relation to the family, as it recognizes the family as the basic pillar of society and creates an obligation on the state to protect it. In the first place, through this provision, the family is considered a fundamental unit of society; Therefore, the government has a legal responsibility to adopt effective measures and practices to protect the family. [196]Moreover, the article also obliges the state to promote the spiritual and physical well-being of family members, especially mothers and children, due to their vulnerability in society. According to this article, the state has a legal responsibility to eliminate any harmful traditional practices, including early marriage, that affect the spiritual and physical well-being of children. [197]

Furthermore , Article 7 of the 2004 Constitution is an important provision regarding Afghanistan's commitment to the international community and compliance with international treaties and conventions to which Afghanistan has gained membership, as well as the Universal Declaration of Human Rights.[198] Afghanistan has ratified numerous binding international human rights treaties, such as the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), the Covenant on Civil and Political Rights (ICCPR), and supported the Universal Declaration of Human Rights (UDHR). Therefore, Article 7 establishes a constitutional obligation on Afghanistan to comply with these international

[194] Sadat, *The Implementation of Constitutional Human Rights in Afghanistan*.pp.48-50.

[195] Constitution of the Islamic Republic of Afghanistan, art 22. , p.49.

[196] Constitution of the Islamic Republic of Afghanistan.art.24. Sadat, *The Implementation of Constitutional Human Rights in Afghanistan*.pp.48-50.

[197] Humaira Rasuli et al., *Afghanistan: Overview of Muslim Family Laws and Practices* (Musawah, 2022), 1–46, https://campaignforjustice.musawah.org/wp-content/uploads/2023/05/Afghanistan-Overview-Table-2022-1.pdf.

[198] Constitution of the Islamic Republic of Afghanistan, art 7. Sadat, *The Implementation of Constitutional Human Rights in Afghanistan*.pp.48-50.

instruments and its commitment under international law, by providing a foundation for the implementation of international human rights treaties within the domestic legal system.[199]

In relation to early marriage, this article is of considerable importance to the issue of early and forced marriage, as it obliges Afghanistan as a State Party to harmonize its domestic norms with international human rights standards, in particular to protect children from harmful practices that are recognized as violations of human rights law.[200] As a result, Article 7 of the 2004 Constitution serves as a significant legal bridge between international human rights standards and domestic norms in examining Afghanistan's legal response to early and forced marriage.[201]

2. The Civil Code of Afghanistan

The Afghan Civil Code was officially adopted in 1977 and officially published in Gazette No. 353, representing the main legal instrument governing family and private matters in Afghanistan. It incorporates family issues, including marriage, divorce, and inheritance, and family relationships, and is grounded in Islamic principles (fiqh).[202] The Civil Law is the main legal source within Afghanistan's domestic legal system, especially the law governing marital relations. In addition, civil law provides comprehensive knowledge of family issues; Several of its articles are directly relevant and address important aspects of marriage, including the minimum age of marriage, the need for consent, and guardianship in marriage, making it a key and important principle in assessing the regulation of early marriage under Afghanistan's domestic legal system.[203]

In this regard, Articles 60, 70, 71, and 78 of the Civil Code constitute the most important provisions of this thesis. Article 60 focuses on the legal definition of marriage within Afghanistan's domestic laws, while Articles 70 and 71 address issues related to the minimum age of marriage and the legal exception that permits marriage under the legal age. Similarly, Article 78 of the Civil

[199] Shafiq and Rahim, "Harmonizing Legal Frameworks," 2024. P.10.

[200] UN Committee on the Rights of the Child, "Afghanistan: Silence Is Not Consent to Child Marriage, UN Committee Condemns," OHCHR, accessed June 25, 2026, https://www.ohchr.org/en/press-releases/2026/06/afghanistan-silence-not-consent-child-marriage-un-committee-condemns.

[201] Constitution of the Islamic Republic of Afghanistan. Sadat, *The Implementation of Constitutional Human Rights in Afghanistan*. Pp.48-49.

[202] Afghan Civil Code.

[203] Kabeh Rastin-Tehrani and Nadjma Yassari, *Max Planck Manual on Family Law in Afghanistan*, Amended 2nd Edition, vol. 74 (Max Planck Institute for Comparative Public Law and International Law, 2012), https://doi.org/10.1628/003372510791696498.pp320.

Code strengthens the mechanism recognized in Article 71 (1). Based on this provision, the judge shall be the guardian of a person without a guardian. Through this approach, the court has authority over guardianship where the father is unavailable. [204]This part of the research assesses these principles in detail and identifies the legal contradiction between civil law provisions and international human rights instruments on the protection of children against harmful practices.[205]

a. Definition of marriage under Article 60 of the Civil Law

Article 60 of the Civil Code provides a legal definition of marriage: "Marriage is a contract that legalizes the relationship between a man and a woman to form a family and establishes the rights and duties of the parties."[206] This definition demonstrates many significant characteristics of marriage. At first, marriage is defined as a contract that represents the deep influence of Islamic principles, particularly the Hanafi school. Under Islamic principles, the marriage contract is regarded as a legal agreement between men and women, and it creates legal rights and duties for both parties.[207]

According to Afghan scholars, marriage is valid when both parties are of effective maturity, mental capacity, and consent. These conditions are necessary in the context of early and forced marriage because children lack these requirements.[208] On the other hand, a critical observation related to this definition is that it did not refer to the minimum age of marriage and free and full consent. Through this interpretation, the basic concept of marriage under this ruling does not exclude child marriage, as civil rights are rooted in the Hanafi school of Islamic jurisprudence. Therefore, the absence of age and the need for consent within the definition of marriage results in a significant legal loophole that permits child marriage through the legal system. [209]

In addition, the definition highlights that marriage creates rights and duties for both parties. Hanafi school: both parties, men and women, have legal rights and duties; the men's duties include the payment of Mahr (dower) and Nafaqa (financial maintenance) that covers food and shelter, and

[204] Afghan Civil Code. Art. 78.

[205] Afghan Civil Code. arts. 60,70,71, and 79.

[206] Afghan Civil Code. art.60.

[207] Rasuli et al., *Afghanistan: Overview of Muslim Family Laws and Practices*.

[208] LegalClarity Team, "Afghanistan's Age of Consent: Marriage Laws and Penalties," LegalClarity, May 30, 2026, https://legalclarity.org/afghanistans-age-of-consent-marriage-laws-and-penalties/.

[209] Office of the Commissioner General for Refugees and Stateless Persons (CGRS), *POLICY PAPER AFGHANISTAN* (CGRS, 2022), 1–3, https://www.cgrs.be/en/country-information/kindhuwelijken.

the obligation of just and equitable treatment to the wife.[210] On the other hand, the wife's duties under Afghan civil law and Hanafi jurisprudence include obedience to the husband within lawful boundaries, residing in the marital home, and maintaining the household. Scholars in this regard highlighted that the main purpose of rights and duties is protection, stability, and welfare within the family unit. [211]

b. The Minimum Age of Marriage under Civil Law

Article 70 of the Civil Code provides comprehensive knowledge regarding the age of marriage for both parties. Under this provision, "Capacity to marry shall be complete when males attain 18 and females 16 years."[212] The article sets different ages of marriage for both parties: 18 for boys and 16 for girls, reflecting gender inequality and gender roles influenced by tradition and culture in Afghanistan. Moreover, the age of 16 for girls is directly incompatible with international human rights standards that recognize 18 years.[213] Article 71 of the Civil Code has two sub-articles that regulate the conditions under which girls are allowed to marry even if they have not completed the age of 16, which is highlighted in Article 70 of the Civil Code, and it also regulates the limitation and scope of legal early marriage under the domestic legal system.[214]

Article 71(1) states, "Marriage contract of a girl who has not attained the age mentioned in Article (70) of this Law may only be concluded by her competent father or competent court." [215]This provision recognizes an exception to the minimum age of marriage under Article 70 of the Civil Code. This principle allows Girls who have not completed 16 years to enter into marriage only with the consent of their fathers or a court. This article aims to address underage marriage of girls by placing the decision under a legal guardian or judicial authority. Furthermore, the provision establishes a legal mechanism through which early marriage of girls may occur. Under Hanafi

[210] Tobias Scheunchen, "Lost in Translation," *Journal of Islamic Law* 2, no. 1 (2021): 33–108, https://doi.org/10.53484/jil.v2.scheunchen,pp 46- 50.

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[211] Septiyani Eliyana et al., *Fulfillment of Wife's Financial Support by Husband with Prisoner Status at Pangkalan Bun Class IIB Prison*, 10, no. 1 (2026): 17–32, http://dx.doi.org/10.30863/al-bayyinah.v10i1.10728. Ali Al Malih Al Fazari et al., "Governing Regulations of Spousal Rights Dowry (Mahr)-Financial Support (Nafaqah)-Custody (Al-Hadanah) in Islamic Jurisprudence and UAE Law-Comparative Study," *International Journal of Academic Research in Business and Social Sciences* 14, no. 12 (2024): Pages 3496-3508, https://doi.org/10.6007/IJARBSS/v14-i12/23463.

[212] Afghan Civil Code, art. 70.

[213] Arthur et al., "Child Marriage Laws around the World," 2018. pp.60-64.

[214] Afghan Civil Code. Art.70.

[215] Afghan Civil Code.art.71(1).

jurisprudence, the authority is granted to the father. Article 71(1) derives from the Islamic concept of *wilayah* — guardianship over a minor in matters of personal status. [216]Scholars have traditionally interpreted guardianship as a protective mechanism intended to safeguard the best interests of the child, based on the assumption that the father is best positioned to make decisions concerning his daughter's welfare in matters of marriage.[217] However, this assumption has been challenged by several legal practitioners and scholars, who argue that, in practice, fathers' decisions may be influenced by factors such as economic hardship, cultural norms, traditional practices, and broader family interests rather than the best interests and wishes of the daughter. Consequently, concerns have been raised regarding whether the exercise of guardianship always serves its intended protective function, particularly in cases involving child marriage.[218]

The term "court of competent jurisdiction in Article 71(1) refers to a judicial mechanism as an alternative to guardianship. Under this article, when the father is not present, the court instead has jurisdiction to conclude the marriage contract on behalf of the girl. [219]However, critics argue that allowing a father or a court to contract the marriage of an underage girl may violate the principle of free and full consent. From a children's rights perspective, children lack the maturity and autonomy necessary in a marriage contract. Consequently, this article is incompatible with international human rights instruments, in particular with the concept of free and full consent to marriage and the elimination of harmful practices against children. [220]

Article 71(2) of the Civil Code states, "Marriage contracts of minor girls under 15 years old are not permissible by any means." [221]This article establishes an absolute legal prohibition on the marriage of girls under the age of 15. It explicitly provides that neither parental consent nor judicial

[216] Afghan Civil Code. Art.71 (1).

[217] Muhammad Tang and Nilfatri, *The Law of Guardianship in Marriage According to Madhhab Scholars*, 2, no. 1 (2025), https://doi.org/10.61233/zijis.v2i1.12.pp.44-46.

[218] Ali Mohammad Sabawoon, "Living in a Collapsed Economy (4): The desperation and guilt of giving a young daughter in marriage," *Afghanistan Analysts Network - English*, 2022, https://www.afghanistan-analysts.org/en/reports/economy-development-environment/living-in-a-collapsed-economy-4-the-desperation-and-guilt-of-giving-a-young-daughter-in-marriage/.

[219] Afghan Civil Code. Art. 71(1).

[220] Sabawoon, "Living in a Collapsed Economy (4)"; Potter Lilly, "Criteria for Women and Girls to Marry: Capacity and Consent in Islamic Law," *William & Mary Law School*, 2023, https://law.wm.edu/academics/intellectuallife/researchcenters/postconflictjustice/student-programs/student-international-papers/papers/potter-women-and-girls.pdf.

[221] Afghan Civil Code. Art.71 (2).

authorization may validate a marriage involving a girl below this age threshold.[222] While the provision offers an important level of legal protection against the marriage of very young girls, it does not completely prohibit child marriage, as marriages involving girls between the ages of 15 and 16 may still be authorized under specific conditions. Consequently, the article reflects both the protective and the permissive aspects of the Afghan legal framework governing child marriage.[223]

3. Law on the Elimination of Violence Against Women (EVAW)

The Law on the Elimination of Violence Against Women (EVAW) 2009. The Law on the Elimination of Violence Against Women (EVAW) was enacted by Presidential Decree No. 91 on 20 July 2009 and officially published in the Official Gazette of Afghanistan, Extraordinary Issue No. 989, on 1 August 2009. [224]The EVAW law was the first comprehensive legal framework within the legal system of Afghanistan, which was designed to protect women and criminalize violence against women and girls, such as forced and child marriage. The main purpose of the law on the elimination of violence against women was to criminalize various forms of violence against women and to protect women and girls from harmful acts. On the early marriage of girls, many of its provisions provide a legal pathway to address the early marriage of girls, including Articles 27 and 28, which address early marriage.[225]

Article 27 of the EVAW law states, "If a person prohibits a woman from marriage or deprives her of choosing her spouse, taking into account the circumstances, the offender shall be sentenced to short-term imprisonment." [226]This article is an important basis for protecting the rights of women and girls in marriage contracts and focuses on the freedom to marry and choose one's spouse under domestic laws. The criminalization of any action that prevents women and girls from exercising this right is a criminal offense under the law on the elimination of violence against women. [227]

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[222] Rasuli et al., *Afghanistan: Overview of Muslim Family Laws and Practices*. pp.4-5.

[223] Girls Not Brides, "Afghanistan," Girls Not Brides, May 23, 2025, https://www.girlsnotbrides.org/en/learning-resources/child-marriage-atlas/regions-and-countries/afghanistan/.

[224] - Law on the Elimination of Violence against Women, vol. 91.

[225] UN Women (United Nations Entity for Gender Equality and the Empowerment of Women), *Legislating and Enforcing the Minimum Age of Marriage: A Comparative Study of Experiences and Lessons Learned in Ending the Legalization of Child Marriage*.

[226] - Law on the Elimination of Violence against Women, vol. 91, art 27.

[227] UNAMA and OHCHR, *A Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan* (UNAMA and OHCHR, 2011), 35,

In addition, Article 28 of the EVAW law is another considerable instrument that directly addresses the early marriage of girls. As it states, "If a person marries a woman who has not attained the legal age of marriage without considering Article 71 of the Civil Code, the offender, considering the circumstances, shall be sentenced to medium imprisonment of not less than 2 years, and based on the request of the victim, the marriage shall be revoked in accordance with the provision of law."[228] This provision criminalized the act of marrying a girl who has not reached the minimum age of marriage under Article 71(1) of the Civil Code. [229]Through this approach, early marriage of girls is recognized as a harmful practice that violates children's rights, particularly girls. Moreover, this provision imposes a sentence of medium imprisonment of not less than two years, which highlights that underage marriage constitutes a criminal act rather than a private and family issue.

Furthermore, the provision establishes a legal mechanism through which the victim may seek the annulment of the marriage in accordance with the law. [230]This aspect of Article 28 is particularly significant because it recognizes girls subjected to underage marriage as victims whose rights have been violated. By granting them the right to challenge and revoke such marriages, the law acknowledges their legal interests, autonomy, and protection needs. Moreover, it places a corresponding obligation on the state to ensure access to effective legal remedies and judicial protection for girls who have been subjected to child marriage.[231]

In Conclusion, the EVAW Law illustrates a considerable foundation in Afghanistan's domestic legal system for the protection of women and girls from harmful practices. Through Articles 27 and 28, women and girls have legal rights to choose their spouses freely, and these provisions also criminalize any acts that undermine this right. By imposing criminal sanctions on offenders and providing victims with the right to seek the annulment of unlawful marriages, the

https://unama.unmissions.org/sites/default/files/november_23_unama-ohchr-joint-report-on-implementation-of-evaw-law_eng_1.pdf?utm_source=chatgpt.com.p.6.

[228] - Law on the Elimination of Violence against woman, vol. 91, art 28.

[229] Afghan Civil Code.art.71(1).

[230] - Law on the Elimination of Violence against woman, vol. 91.

[231] - Law on the Elimination of Violence against woman, vol. 91.

law adopted protective measures to address child marriage. These articles also require the States to take effective measures to protect girls from early and forced marriage.[232]

4. Shiie Persoanl law

The Shia Personal Status Law was enacted as a separate legal framework governing family matters, such as marriage. The law was drafted in collaboration with Shia religious leaders and approved by both houses of the National Assembly before being signed by President Hamid Karzai and published in the Official Gazette, Serial No. 988, in 1388 (2009). According to Article 94, the minimum age of marriage under this provision is 16 solar years for girls and 18 for boys. This article also permits marriage below this age with the approval of a competent court, upon a guardian's proof of the child's puberty, capacity, and the interest of the marriage.[233]

The Shiie Personal Law is, in substance, nearly identical to that of the Civil Code of Afghanistan. Both legal instruments set 16 years for girls and 18 years for boys, and both allow marriage below 16 years for girls through guardianship and court mechanisms. In this respect, both frameworks replicate the same permissive age and the same guardian-based pathway around it, thereby reproducing the same underlying inconsistency with international standards identified elsewhere in this chapter.[234]

The SPSL's exception mechanism may be structurally more permissive than its Civil Code counterpart. The Civil Code imposes an absolute prohibition on marriage under the age of fifteen, with no guardian or court exception available below that floor (Article 71(2)). Article 94 of the SPSL, by contrast, is worded broadly around proof of puberty, capacity, and interest, without specifying an equivalent minimum age below which no exception can be granted.[235]

D. Comparative Analysis of Afghan National Law and International Human Rights Law on Child Marriage

By analyzing Afghanistan's domestic legal norms, including the Civil Code, the Constitution, and the Law on Elimination of Violence against Women on Early Marriage in the previous section, it is clear that several legal documents have been created within the framework

[232] - Law on the Elimination of Violence against woman, vol. 91. UNAMA and OHCHR, *A Long Way to Go: Implementation of the Elimination of Violence against Women Law in Afghanistan*.

[233] Shia Personal Status Law, 988 279 (2009). Art. 94.

[234] Shia Personal Status Law, vol. 988.

[235] Shia Personal Status Law, vol. 988. Art. 94.

of domestic legal systems to address early and forced marriage of girls. In this context, an important question arises regarding the compatibility of these legal instruments with Afghanistan's binding obligation under international human rights standards. Comparing both Afghanistan's national and international human rights laws on early marriage, it is evident that there is an inconsistency, particularly regarding the minimum age of marriage, the need for consent, guardianship provisions, and legal protection mechanisms.[236] This section is a critical study with a view to directly answering the first research question of this thesis. It examines the extent to which Afghanistan's domestic legal norms align with its binding obligations under international human rights standards regarding the early marriage of girls.

1. Contradiction in the Minimum age of marriage

Based on international human rights instruments, including Article One of the CRC, which defines a child as any person below 18 years. [237] Article 16 (2) of the CEDAW, which highlights that child marriage has no legal effect, to which Afghanistan is a state party.[238] In contrast, Afghanistan's domestic legal framework, particularly the civil law, which is the main instrument governing private and family matters, including marriage, sets a minimum age for marriage. Article 70 of the Civil Law recognizes the minimum age of marriage for boys as 18 years old and 16 for girls, while Article 71 (1) allows the marriage of girls between 15 and 16 years old through paternal and court authority. Thus, two years of legal inconsistency associated with the minimum age of marriage under domestic laws is identified with international human rights standards.[239]

Afghanistan's domestic norms have recognized 15 and 16 years as the minimum age of marriage, which directly contradicts Afghanistan's legal obligation under international human rights standards, particularly under the CRC and CEDAW. As Afghanistan has ratified both Conventions, it has a legal obligation to follow its international responsibilities and comply with its domestic norms, in accordance with international principles. First, setting 16 as the minimum age of marriage for girls and 18 for boys represents legal discrimination that violates Afghanistan's responsibility under Article 2 of CEDAW, which requires all States Parties to promote gender

[236] Siavash Rahbari, "From Normative Pluralism to a Unified Legal System in Afghanistan?," *Asian Journal of Law and Society* 5, no. 2 (2018): 289–314, https://doi.org/10.1017/als.2018.30.pp. 293–294.

[237] Child. Art 1.

[238] Women, art 16 (2).

[239] Afghan Civil Code. Art 70 (1).

equality and promote all forms of discrimination against women, and to take substantial steps to eliminate harmful social practices. Consequently, Afghanistan's Civil Law is directly incompatible with the minimum age standard recognized under international human rights law. [240]

In addition, the inconsistency between Afghan civil law and international standards on the age of marriage, the requirement for free and full consent, is another important aspect that is not in line with international documents. The principle of free and full consent is recognized as a valid and fundamental condition in marriage under international human rights standards, while Afghanistan's domestic laws, particularly civil law provisions, allow guardians to exercise authority over the marriage of minors, raising concerns about compliance with international human rights instruments.[241]

2. Inconsistency Regarding Free and Full Consent to Marriage

Article 16(1)(b) of CEDAW recognizes the principle of free and full consent and emphasizes that marriage shall be entered into only when both the man and the woman are free to consent to the union. Thus, the principle of free and full consent is not only considered a significant element of marriage but also, under international human rights standards, a fundamental legal protection against early and forced marriage.[242] Similarly, the principle of free and full consent was recognized as a fundamental condition in the marriage contract under Article 23 (3) of the ICCPR, which served as an important tool against early marriage. [243]Finally, Article 12(1) of the CRC guaranteed the right of children to participate in decisions that affect their lives by ensuring that children capable of forming their own views have the right to freely express their thoughts. Through this article, children are regarded as rights holders and are guaranteed that their views should be meaningfully considered in decision-making processes.[244] On the other hand, Article 71(1) of the Civil Law of Afghanistan legally permits paternal and judicial consent that represents a huge legal gap with international human rights instruments.[245]

[240] Afghan Civil Code. Art 70 and 71. United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women." Art 2.

[241] Afghan Civil Code.

[242] United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women." Art 16 (1) (b).

[243] United Nations General Assembly, "ICCPR," Art. 23 (3).

[244] United Nations General Assembly, "Convention on the Rights of the Child." Art 12(1).

[245] Afghan Civil Code.

Furthermore, the interpretation of the Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child in Joint General Recommendation No. 31/General Comment No. 18 highlights that early and forced marriage is completely incompatible with the conditions of free and full consent because children may not be aware enough to be self-sufficient and self-determined. Therefore, civil law provisions authorizing early marriage violate several provisions of human rights standards, including the CRC, CEDAW, and the ICCPR, and these inconsistencies undermine the protection of children from harmful practices, including early marriage.[246]

3. Inconsistency in the legal protection mechanism

International human rights instruments establish a legal obligation on the State Parties to introduce considerable and effective measures and mechanisms to protect children from harmful acts, such as early marriage, and offer accessible remedies for victims, and make sure accountability for violations. Articles 4 and 19 of the CRC require States to establish essential mechanisms to protect children from all discriminatory practices; Article 2 of CEDAW obligates State Members to adopt effective policies and regulations to eliminate harmful practices against women and children. [247]In addition, Article 24(1) of the ICCPR requires the adoption of protection measures and practices for children without any discrimination. Through the legal system of Afghanistan, there are two significant legal instruments, including the Civil Law, particularly Articles 70 and 71, addresses legal protection against early and forced marriage, and the EVAW Law of 2009, which criminalizes underage marriage. Therefore, the legal inconsistency lies in the contrast between the enforceable protections against underage marriage required by international human rights principles and the domestic legal system of Afghanistan, which remains inconsistent.[248]

Examining the legal protection mechanisms in Afghanistan reveals many primitive gaps relative to international human rights standards. Initially, there is an internal contradiction between Articles 71(1) and 71(2) of the Afghan Civil Code. While Article 71 (1) permits the marriage of

[246] Megan Arthur et al., "Child Marriage Laws around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities," *Journal of Women, Politics & Policy* 39, no. 1 (2018): 51–74, https://doi.org/10.1080/1554477X.2017.1375786. Yaqub Samim and Fazal Ayoubi, "Violence Against Women in Afghanistan: A Human Rights Perspective and the Role of Domestic Law," *Integrated Journal for Research in Arts and Humanities* 5 (September 2025): 34–40, https://doi.org/10.55544/ijrah.5.5.7.

[247] United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women."Art.2.

[248] Afghan Civil Code; Samim and Ayoubi, "Violence Against Women in Afghanistan, p.38.

girls between the ages of 15 and 16 through paternal and judicial permission, Article 71 (2) establishes an absolute legal prohibition on the marriage of girls under the age of 15.[249] As a result, such an inconsistency directly contradicts the unconditional prohibition of early marriage required under international human rights standards, particularly CEDAW Article 16(2), which highlights that child marriage has no legal effect.[250]

Secondly, Article 28 of the EVAW Law demonstrates legal protection through criminalizing underage marriage of girls and offers legal remedies for the victim of early marriage.[251] A critical analysis shows that this article is directly dependent on the Civil Code, especially Article 71, which itself contains a contradiction related to the minimum age of marriage. Article 28 of the Law on the Prohibition of Violence Against Women applies only to marriages contracted contrary to civil law. Therefore, this criminal protection does not apply to marriages involving girls between the ages of 15 and 16, even though such marriages constitute underage marriage.[252]

4. Inconsistency in the Guardianship principle

Under international human rights law, guardianship cannot substitute for personal consent in matters of marriage. CEDAW directly addresses child marriage. Article 16 (1) (b) highlights that women have the right to choose their spouse freely and to contract marriage with free and full consent;[253] Similarly, Article 16 (2) of CEDAW clearly indicates that the marriage of a child does not have legal effect regardless of parental or judicial consent.[254] According to the CEDAW Committee and the CRC Committee, the right to consent to marriage exclusively belongs to individuals and cannot be exercised by a third party.[255] On the other hand, Article 71 (1) of the Civil Code allows the father and a competent court to conclude the marriage of underage girls without the requirement of the girl's consent and agreement. One of the major inconsistencies identified here is the complete replacement of the daughter's personal legal agency in her own

[249] Afghan Civil Code.

[250] United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women."Art. 16 (2).

[251] - Law on the Elimination of Violence against woman, vol. 91.

[252] Afghan Civil Code.

[253] United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women." Art. 16 (1) (b).

[254] United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women," Art. 16 (2).

[255] Shafiq and Rahim, "Harmonizing Legal Frameworks," 2024.

marriage with the exclusive authority of male guardians, a legal instrument directly incompatible with the principle of free and full consent under international humanitarian standards.[256]

Through a critical analysis of the guardianship instrument under the domestic legal framework, specifically Article 71 (1), there is a considerable inconsistency with international human principles that may undermine the protection of girls from early and forced marriage. Article 71(1) permits the marriage of girls between the ages of 15 and 16 only with a competent father or a competent court. Thus, under this provision, girls are not treated as right holders whose consent is necessary for a marriage but as objects whose marriage is formally determined by the male guardian. This analysis demonstrates that the provision is directly inconsistent with Article 23(3) of the ICCPR, which guarantees the right to free and full consent to marriage, as well as Article 16(1)(b) of CEDAW, which guarantees women the right to freely choose their spouse and to enter into marriage only with their free and full consent. Therefore, as Afghanistan has ratified these international legal instruments without any conditions, there is a conflict between civil law and these international standards. [257]

In conclusion, a critical analysis of the guardianship legal system created under Article71(1) of the Civil Code of Afghanistan, as a State Party, violates many basic obligations under its binding international human rights instruments. Afghanistan violates Article 16 (1) (b) of CEDAW, that guarantee the right to enter into a marriage contract with full and free consent. In addition, Afghanistan violates Article 16(2) of CEDAW by permitting underage marriage through a male guardian.[258] Finally, Afghanistan violates the CRC, particularly Article 3, which focuses on the interests of children as the primary consideration in decisions concerning marriage, instead preferring the interests of fathers and male guardians over the girl's rights and well- being. [259]

[256] Sebghatullah Qazi Zada, "Legislative, Institutional and Policy Reforms to Combat Violence against Women in Afghanistan," *Indian Journal of International Law* 59, no. 1 (2021): 257–83, https://doi.org/10.1007/s40901-020-00116-x.p. 22.

[257] Shafiq and Rahim, "Harmonizing Legal Frameworks," 2024.

[258] United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women," Arts. 16(1) (b) and (2).

[259] United Nations General Assembly, "Convention on the Rights of the Child." Art. 3.

Identifying the legal inconsistencies between domestic legal frameworks and international standards across the areas of consent, the age of marriage, guardianship, and legal mechanisms for protection, this section now combines these findings into a table.

Indicator	**International Human Rights standards**	**Afghan domestic Law**	**Finding**
1. Minimum age of marriage	Marriage under 18 constitutes child marriage; CRC Art. 1, CEDAW Art. 16(2), ICCPR Art. 23(2), and Gen. Rec. No. 21.	18 years for boys and 16 years for girls. Marriage between 15 and 16 years is permitted with the consent of a guardian and authorization from the competent court (Civil Code, Arts. 70 and 71(1)). Post-2021: No fixed minimum age; marriage linked to puberty instead (Decree No. 18)	Inconsistent – girls can marry two years earlier than boys, that fall below the international requirement.
2. Free and Full Consent	Free and full consent is required for a valid marriage (UDHR Art. 16 (2), CEDAW Art. 16 (1) (b), and ICCPR Art. 23(3)).	Father or a competent court can arrange a girl's marriage, without requiring her own consent (Civil Code Art. 71(1)). A girl's silence upon reaching puberty may be interpreted as consent to marriage (UNAMA, Statement on Decree No. 18.	Inconsistent- a guardian's decision replaces the girl's own agreement.

3. Guardianship principle	The right to consent to marriage is personal, and it cannot be exercised by a third party. (CEDAW Art. 16(1)(b) and Art. 16(2); CRC Art. 12(1), as Interpreted in CEDAW Committee, Gen. Rec. No. 31).	Only the father, or a competent court in his absence, may arrange the marriage of an underage girl (Civil Code, Art. 71(1)).	The girl's own legal agency is replaced by the exclusive decision-making authority of her father or a court.
4. Legal protection mechanism	State Members should establish significant measures and remedies to protect children from harmful practices, such as child marriage (CRC Arts. 4, 19; CEDAW Art. 2; ICCPR Art. 24(1)).	EVAW Art. 28 penalizes marriage breaching Civil Code Art. 71, with a minimum of 2 years' imprisonment and annulment at the victim's request. Post-2021: No criminal prohibition on underage marriage exists; the EVAW Law is no longer in effect	Criminal protection exists, but only for marriages that breach Art. 71(1) of the Civil Code; therefore, girls married at 15–16, which the Civil Code itself permits, remain unprotected.

F. Theoretical Analysis of the Legal Inconsistencies

The inconsistency between civil law and the law on elimination of violence against women indicates the structural failure of Afghanistan's domestic legal system to meet the standards set under international human rights laws such as the CRC, CEDAW, and ICCPR.

First, Article 70 of the Civil Code recognizes 16 years old as the minimum age of marriage, and Article 71 (1) also declines this threshold to 15 years through a male guardian. This two-year legal gap between the Civil Code and international instruments legitimizes child marriage for girls between 15 and 16 years within recognized legal norms and embeds discrimination against girls.

Furthermore, the provision in the Civil Code does not include any requirement for free and full consent for underage marriage. Article 71(1) permits marriage between 15 and 16 years with the consent of a guardian or the court. The exclusion of the personal consent requirement directly violates Afghanistan's obligations under several international standards, all of which recognize the principle of free and full consent.[260]

Second, the guardianship regulation recognized under the provision of the Civil Law allows a father and court to conclude a marriage contract on behalf of girls with no legal requirement for personal participation. This approach reinforces male guardianship, which is completely contradictory to international standards that guarantee protection from all discriminatory practices, such as early and forced marriage.[261]

Third, Afghanistan's domestic legal protection mechanisms are fundamentally incomplete, internally contradictory, and effectively dismantled. The internal contradiction between Articles 71(1) and 71(2) of the Civil Code leaves girls between 15 and 16 years without legal protection against child marriage, while Article 28 of the EVAW Law — which cross-references Article 71 of the Civil Code as the legal standard — inherits the same limitations.[262]

After identifying the significant legal gap. This part of the research now applies the theoretical frameworks discussed in Chapter I to assess the role of these inconsistencies for the protection of children from harmful acts in Afghanistan. These theories are not applied here to explain what they are but to assess and interpret the legal analysis conducted. [263]

Human rights theory is discussed in the first chapter. This theory sees international human rights norms as the normative benchmark against which national legal systems should establish a positive responsibility for the state to align its domestic laws with international standards. As a state party to major international conventions, especially on child protection, Afghanistan has

[260] Samim and Ayoubi, "Violence Against Women in Afghanistan."

[261] "Afghanistan's Age of Consent: Marriage Laws and Penalties," *LegalClarity*, May 30, 2026, https://legalclarity.org/afghanistans-age-of-consent-marriage-laws-and-penalties/.

[262] Mehdi Hakimi, "Elusive Justice: Reflections on the Tenth Anniversary of Afghanistan's Law on Elimination of Violence Against Women," *Northwestern Journal of Human Rights* 18, no. 1 (2020): 52, https://scholarlycommons.law.northwestern.edu/njihr/vol18/iss1/2.

[263] Simuziya, "Universal Human Rights vs Cultural & Religious Variations." Muhammad Budiana, "Human Rights and International Politics: From Universalism to Relativism," *Journal of Law, Social Science and Humanities* 1, no. 2 (2024): 188–203, https://myjournal.or.id/index.php/JLSSH/article/view/251.

failed to meet the normative standard under its binding responsibility in four major areas, including minimum age, free and full consent, guardianship, and legal protection mechanisms.[264]

From the perspective of human rights theory, the Member State cannot justify its failures due to social, traditional, and religious considerations, as international standards are unimpeachable and universal obligations that override national law. Therefore, the domestic legal system of Afghanistan violates its positive responsibility under international human rights principles.[265]

As assessed in Chapter One, compliance theory assesses the extent to which members of international treaties translate their binding responsibilities into concrete national legislative actions and assesses the locus of compliance and non-compliance with international standards.

Applying this framework to the legal gap identified in this chapter, Afghanistan has ratified several international conventions, particularly the CRC, CEDAW and the ICCPR without any condition, which establishes legal obligations regarding the protection of children to introduce 18 years as the minimum age of marriage, guarantee the principle of free and full consent, and take concrete measures to protect girls from all discriminatory practices. Across all these issues, Afghanistan has failed to translate its responsibility into national legislation. As a result, this failure considerably undermines the protection of girls from early and forced marriage in Afghanistan. [266]

Feminist Legal Theory studies how legal systems reflect gender inequality through family issues and examines whether national provisions guarantee equal rights for women and girls' dignity and decision-making capacity. Applying these theories to the gap identified in this chapter, the Civil Law of Afghanistan illustrates systematic and structural patriarchal power relations at tis provisions related to marriage, like the absent personal consent requirement, allowing a male guardian to conclude the marriage on behalf of the girls. This legal system treats girls not as independent right holders but as objects of male authority whose roles are significant in marriage contracts. [267]

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[264] Simuziya, "Universal Human Rights vs Cultural & Religious Variations."p.9.

[265] Budiana, "Human Rights and International Politics."p.9.

[266] UN Women (United Nations Entity for Gender Equality and the Empowerment of Women), *Legislating and Enforcing the Minimum Age of Marriage: A Comparative Study of Experiences and Lessons Learned in Ending the Legalization of Child Marriage*.

[267] Qazi Zada and Qazi Zada, "The Taliban and Women's Human Rights in Afghanistan."

Overall assessment and theoretical analysis conducted in this section offer a comprehensive answer to the first research question of this research. The Afghan legal system regarding the protection of children and the marriage issue is inconsistent with international standards related to the protection of children from underage and forced marriage in four areas: setting the minimum age of marriage at 16 years old for girls falls under international standards of 18 years for both male and female, allowing girls free and full consent with the authority of a male guardian, vesting exclusive marriage decision-making power in male relatives through a patriarchal guardianship framework, and not adopting its domestic law that directly contradict with international standards. These legal inconsistencies weaken the protection of girls from underage and forced marriage in Afghanistan.

G. Afghanistan's legal situation after 2021

In August 2021, the Taliban returned to power for the second time. Afghanistan's formal legal system collapsed completely under Taliban rule. This section assesses whether the new regime created any new legal frameworks and tools to address underage marriage, as well as reviews Afghanistan's international obligations despite regime change.[268]

1. The Collapse of the Previous Legal System

Since the Taliban took power in Afghanistan, the entire domestic legal system of the Islamic Republic of Afghanistan has been rejected, justifying that the 2004 Constitution and its associated norms represent a "liberal world order" that is not in line with the interpretation of Islamic principles. In 2022, Sheikh Abdul Karim Haider, the deputy minister of justice, announced that all previous laws would be abolished and replaced by the Holy Quran, hadiths, and the Hanafi school as the main legal systems. Furthermore, the Taliban established strict measures and policies regarding women and girls, such as girls being banned from attending school beyond the sixth grade, university, restrictions on the freedom of movement, limitations on women's work, and

[268] Qazi Zada and Qazi Zada, "The Taliban and Women's Human Rights in Afghanistan." M. Yakub Aiyub Kadir and Siti Nurhaliza, "State Responsibility of Afghanistan Under Taliban Regime," *Jurnal Media Hukum* 30, no. 1 (2023): 1–20, https://doi.org/10.18196/jmh.v30i1.16020.

prohibition from public spaces. A report from the United Nations illustrates that more than 100 decrees have been introduced affecting women's and girls' rights.[269]

2. Taliban Decree No. 18 on Marriage

a. Assessment of Decree No. 18 under International Human Rights Law

The Taliban authority established two regulations related to women's and girls' rights; the first decree was issued in December 2021, which directly banned forced marriage and highlighted that women should not be treated as property and guaranteed the rights of widows. The second regulation was Decree No 18, the "Code on Judicial Separation of Spouses," by the Taliban Ministry of Justice on 14 May 2026. This document contains provisions governing marriage and eliminates the minimum age for marriage and also the concept of free and full consent.[270] This regulation creates the circumstances under which women and girls seek separation from marriage, especially marriages arranged in childhood. [271]

On 21 May 2026, UNAMA stated that Decree No. 18, which affects women's and girls' rights, permits a girl's silence upon reaching puberty to be interpreted as her consent to marriage, directly undermining the principle of free and full consent. Moreover, this Decree allows parents to have full authority to contract any marriage on behalf of their daughters and does not recognize any particular age as the minimum age for marriage. UNAMA stated that Afghanistan, as a state party to several binding international treaties, has a legal obligation to align its policies, laws, and practices to protect the rights of individuals.[272]

Moreover, Decree No. 18 guarantees a consent principle that demonstrates a significant departure from both the pre 2021 Civil Law and the requirements of international human rights instruments. This decree introduces a presumption that the silence of a girl is effective evidence of

[269] Emilia Justyna Powell and Joshua Paldino, "The Taliban, Afghan Constitutionalism and Modern Islamic Law States: Renegotiating the Balance of Religious and Secular Law," *Global Constitutionalism* 14, no. 3 (2025): 596–623, https://doi.org/10.1017/S2045381725000048.

[270] "Afghanistan: New Code Enabling Child Marriage Compounds Dismal Situation for Women's and Girls' Rights," *Amnesty International*, June 10, 2026, https://www.amnesty.org/en/latest/news/2026/06/afghanistan-new-code-enabling-child-marriage-compounds-dismal-situation-for-womens-and-girls-rights/.

[271] "UNAMA Statement on Afghanistan's De Facto Authorities' Decree No. 18 'Code on Judicial Separation of Spouses,'" UNAMA, United Nations Peace Operations, accessed August 11, 2026, https://unama.unmissions.org/en/news/unama-statement-on-afghanistans-de-facto-authorities-decree-no-18-code-on-judicial.

[272] United Nations Peace Operations, "UNAMA Statement on Afghanistan's De Facto Authorities' Decree No. 18 'Code on Judicial Separation of Spouses.'"

her marriage agreement rather than requiring informed and free consent.[273] Therefore, it undermines the vulnerability of marriage by permitting silence to substitute for an affirmative expression of consent; from this standpoint of view, the concept of consent exists until girls directly object. This provision ignores several aspects that may affect girls' decisions, such as social and family issues and cultural pressures. [274]

Furthermore, the ordinance does not set any age as the minimum age for marriage for girls; Instead, it relates to the onset of puberty, which is a biological state that may vary among individuals and cannot be identified with the same decree. The concept of maturity reflects the traditional Hanafi school of thought, which generally treated physical maturity as an indicator of readiness for marriage. This practice undermines the protection of children, especially girls who are victims of early and forced marriage, as it creates legal uncertainty and may allow underage marriage of girls.[275]

The decree introduced a legal pathway of separation for girls involved in marriage before reaching puberty. The UNAMA report shows that under this approach, underage marriage of girls is legally permissible because the decree presumes such marriage to be valid. From the perspective of international human rights instruments, this approach is of great concern because of its inconsistency with the responsibility to protect children from early and forced marriage.[276]

Overall, Decree No. 18 represents a significant inconsistency with core human rights principles, particularly the CRC, CEDAW, and ICCPR, which have been examined through this chapter. Decree No. 18 expressly abolishes the minimum age of marriage, which is inconsistent with the minimum age recognized under Article 1 of the CRC, Article 16(2) of CEDAW, and Article 23(2). Furthermore, viewing girls' silence as consent to marriage directly violates the

[273] "'Silence of Virgin Girl Counts as Consent': Taliban Formally Recognises Child Marriage," Wion, accessed July 23, 2026, https://www.wionews.com/world/-silence-of-virgin-girl-counts-as-consent-taliban-formally-recognises-child-marriage-1779047427905.

[274] Sonja Dahlmans, *Her Silence Is Her Consent: The Theological Influence on Child Marriage in Islam* (2025), https://www.academia.edu/144237576/Her_Silence_is_her_Consent_The_Theological_Influence_on_Child_Marriage_in_Islam.

[275] Dörthe Engelcke et al., *Underage Marriage: Legal and Social Practice in Muslim Jurisdictions*, March 26, 2025, https://doi.org/10.1163/15730255-bja10184,p.21.

[276] "UNAMA Statement on Afghanistan's De Facto Authorities' Decree No. 18 'Code on Judicial Separation of Spouses,'" UNAMA, United Nations Peace Operations, accessed July 23, 2026, https://unama.unmissions.org/en/news/unama-statement-on-afghanistans-de-facto-authorities-decree-no-18-code-on-judicial.

principles of free and full consent under international standards. Finally, allowing legal authority to male guardians and fathers violates the principle of the best interests of children under Article 3 of the CRC. Taken together, Decree No. 18 highlights that Afghanistan, as a state party, directly violates human rights instruments.[277]

H. Continuity of the Afghan Government and Continuing Treaty Commitments

Although the regime in Afghanistan has changed since 2021, Afghanistan remains a state party to many international human rights principles, including the CRC, CEDAW, and the ICCPR. Afghanistan's obligation stems from the customary international law principle of continuity of state, reflected in the 1969 Vienna Convention, which recognizes the bindingness of treaties on states as continuous legal entities rather than any particular authority. Through this principle, a change in government, even an authority not recognized by international communities, cannot suspend treaty obligations. Therefore, Afghanistan, as a member state, has a binding obligation because it has effective control over its population and jurisdiction, regardless of whether that authority may be the Taliban or another state.[278]

This binding obligation under international treaties includes protecting children and women from all forms of discrimination, including against women and children, such as child marriage, guaranteeing equal rights for all individuals before the law, and taking effective legislative and policy measures to eliminate any harmful practices affecting women and children.[279] Any change in government or other authority cannot suspend Afghanistan's legal responsibilities and commitments. As a result, the Taliban, as the de facto authorities, have effective control and function as the active government in Afghanistan and are responsible for respecting and implementing treaty obligations in practice. [280]

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[277] United Nations Peace Operations, "UNAMA Statement on Afghanistan's De Facto Authorities' Decree No. 18 'Code on Judicial Separation of Spouses.'" United Nations General Assembly, "Convention on the Rights of the Child." United Nations General Assembly, "Convention on the Elimination of All Forms of Discrimination against Women."

[278] Kadir and Nurhaliza, "State Responsibility of Afghanistan Under Taliban Regime," 2023. United Nations, "Vienna Convention on the Law of Treaties (1969)," Treaty, United Nations, 1969, https://treaties.un.org/doc/Treaties/1969/05/19690523%2007-11%20PM/Ch_XXIII_01.pdf.

[279] Kadir and Nurhaliza, "State Responsibility of Afghanistan Under Taliban Regime," 2023.

[280] "'Recognition' and the Taliban's International Legal Status," International Centre for Counter-Terrorism - ICCT, accessed July 23, 2026, https://icct.nl/publication/recognition-and-talibans-international-legal-status.

Decree No. 18 does not specify a specific age as the minimum age for marriage, and girls' silence is interpreted as consent to marriage, which is in direct conflict with Afghanistan's commitment under international human rights standards. These commitments remained binding on the Afghan government regardless of the change in governance. Thus, the Taliban's regulations on marriage directly violate treaty principles that guarantee children's rights, such as free and full consent in marriage.[281]

As analyzed in this chapter, Afghanistan's legal system before and after 2021 represents a significant inconsistency with international human rights standards, particularly the Taliban's failure not only to guarantee children's rights but also to normalize child marriage by removing the minimum age of marriage, treating girls' silence as consent to marriage. [282]

As a state party to several human rights instruments, Afghanistan has failed to fulfill its binding obligations under international treaties. Thus, Afghanistan's domestic marriage laws both before 2021 and post-2021 are significantly at odds with international human rights principles on the protection of girls from harmful practices.[283]

I. Legal reforms

As fundamental gaps were identified through Chapter Three between Afghanistan's national laws, civil law, and Taliban Decree No. 18 and international human rights principles, this section addresses the second research question. How Afghanistan, as a state party to several human rights instruments, can align its domestic legal frameworks with international human rights standards and strengthen support for girls against early marriage.[284]

As the regime in Afghanistan changed in 2021, the country's legal system underwent a fundamental transformation, resulting in the replacement of the 2004 Constitution, the Civil Code, and the Law on the Elimination of Violence against Women (EVAW). Nevertheless, Afghanistan remains bound by its obligations under international treaties, regardless of the change in

[281] United Nations Peace Operations, "UNAMA Statement on Afghanistan's De Facto Authorities' Decree No. 18 'Code on Judicial Separation of Spouses.'"

[282] Shafiq and Rahim, "Harmonizing Legal Frameworks," 2024.

[283] Khatol Shafiq and Safia Rahim, "Harmonizing Legal Frameworks: Bridging the Gap between CEDAW and the Afghan Civil Code in Pursuit of Gender Equality," *Sprin Journal of Arts, Humanities and Social Sciences* 3, no. 5 (2024): 09–12, https://doi.org/10.55559/sjahss.v3i5.272.

[284] Kadir and Nurhaliza, "State Responsibility of Afghanistan Under Taliban Regime," 2023.

government, in accordance with the Vienna Convention on the Law of Treaties. Therefore, Decree No. 18 of the Taliban is directly inconsistent with international human rights standards. Given the current legal context, recommendations for reforming Afghanistan's pre-2021 legal framework are no longer practical or effective. Accordingly, the recommendations in this study focus on the existing legal framework, particularly Decree No. 18 governing marriage contracts, and propose the legal reforms and measures necessary to align Afghanistan's current marriage laws with its binding obligations under international human rights law.[285]

As Decree No. 18 does not establish a specific minimum age for marriage, it instead adopts a maturity-based criterion. Under this approach, a child may marry upon reaching maturity, which varies from one individual to another. From the perspective of classical Hanafi jurisprudence, puberty may be recognized from approximately nine lunar years if physical signs appear and, in the absence of such signs, is presumed to occur at around fifteen lunar years. Consequently, the current legal principle does not provide specific protection against early marriage.[286]

1. Reforming the Minimum Age of Marriage

Decree No. 18, which is in direct conflict with Afghanistan's binding obligations under international standards. Article 1 of the CRC defines a child as any individual under the age of 18, while Article 16 (2) of CEDAW highlights that child marriage has no legal effect. By not recognizing a specific age as the minimum age for marriage and allowing marriage based on puberty, Decree No. 18 does not guarantee any legal protection for girls against harmful practices. Decree No. 18 should be amended to guarantee 18 years as the minimum age of marriage for both men and women to be in line with international standards. Such reforms can effectively implement the protection of children, especially girls, from harmful practices and help bring Afghanistan's national marriage law closer to its obligations under international human rights instruments.[287]

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[285] Emilia Justyna Powell and Joshua Paldino, "The Taliban, Afghan Constitutionalism and Modern Islamic Law States: Renegotiating the Balance of Religious and Secular Law," *Global Constitutionalism* 14, no. 3 (2025): 596–623, https://doi.org/10.1017/S2045381725000048.

[286] United Nations Peace Operations, "UNAMA Statement on Afghanistan's De Facto Authorities' Decree No. 18 'Code on Judicial Separation of Spouses.'"

[287] Megan Arthur et al., "Child Marriage Laws around the World: Minimum Marriage Age, Legal Exceptions, and Gender Disparities," *Journal of Women, Politics & Policy* 39, no. 1 (2018): 51–74, https://doi.org/10.1080/1554477X.2017.1375786. "UNAMA Statement on Afghanistan's De Facto Authorities' Decree No. 18 'Code on Judicial Separation of Spouses,'" UNAMA, United Nations Peace Operations, accessed July 23, 2026, https://unama.unmissions.org/en/news/unama-statement-on-afghanistans-de-facto-authorities-decree-no-18-code-on-judicial.

The UN Committee on the Rights of the Child has said that linking puberty to marriage, rather than a certain age, is directly contrary to international principles. Under the principle of continuity of state, the Taliban have effective control over Afghan territory, and the commitment to the treaty cannot be suspended by national laws.[288]

2. Reforming the Principle of Free and Full Consent

On the principle of free and complete consent, Decree No. 18 recognizes the silence of girls as their consent and reaching the age of majority, which directly violates the principle of free and complete consent under international law standards. [289]To ensure compliance with international human rights instruments, the current legal framework should remove any provision that treats girls' silence as an accepted agreement to marry. The law should ensure that both parties have the opportunity to express their views freely without any pressure. These reforms can significantly protect children, especially girls, from underage and forced marriages. The implementation of these reforms could bring Afghanistan's marriage norms in line with its obligations under international principles, in particular the CRC, Article 16 (1) (b) of CEDAW and Article 23(2) of the ICCPR, all of which guarantee the principle of free and full consent and the interests of children in marriage contracts.[290] Moreover, under the Vienna Convention on the Law of Treaties, de facto Taliban officials still have legal treaty obligations regardless of regime change. [291]

3. Reforming Guardianship Rules

Article 5 of Decree No. 18 allows parents to contract the marriage on behalf of their daughters without any legal obligation to consider the interests of girls. This provision is inconsistent with international instruments, particularly with Article 3 of the CRC and Article 16 (1) (b) CEDAW that guarantee the rights to choose a spouse freely. Therefore, Decree No. 18 must be amended to limit the scope of guardians in marriage contracts and ensure that girls express their consent freely without any pressure. As the Taliban justified puberty from the framework of Islamic

[288] Jacques Hartmann and Reem Alhasawi, *Coming of Age: The Adoption of 18 as the Legal Minimum Age of Marriage*, 2025, https://ohrh.law.ox.ac.uk/wp-content/uploads/2025/09/U-of-OxHRH-J-Coming-of-Age.pdf,pp.7-9.

[289] Putra Pandu Dinata Nurdiansyah and Jamilah Jamilah, "Forced Marriage as Sexual Violence: An Analytical Study under Indonesian Law and the Shafi'i School of Thought," *Suhuf* 38, no. 1 (2026): 1–17, https://doi.org/10.23917/suhuf.v38i1.13406.

[290] Shafiq and Rahim, "Harmonizing Legal Frameworks," 2024,p.11.

[291] United Nations, "Vienna Convention on the Law of Treaties (1969)."

jurisprudence, however, many Islamic scholars argue that child marriage has no legal effect because children lack capacity and maturity.[292]

In the previous Afghan legal system, especially in Article 28 of the Law on Elimination of Violence against Women, child marriage was considered a crime; However, as of 2021, under the current regime, there is no legal prohibition on underage marriage. The lack of criminal prohibition, concrete measures, and enforcement mechanisms contributed to the increase in underage marriages in Afghanistan. As a result, it is recommended that the de facto Taliban authorities enact new laws or regulations to criminalize underage marriage by defining any marriage involving a person under the age of 18 as a criminal offence. The law should establish specific measures and mechanisms to punish the conduct of any individual promoting and facilitating underage marriage, including parents or other parties. In addition, the law should guarantee the right to access protection and treatment for all children without any exceptions.[293]

Through such reforms, Afghanistan can meet its binding obligations under international standards, particularly Articles 19 and 24(3) of the CRC and Article 2 of CEDAW, which require States to establish effective measures and practices to protect children from harmful acts and to take substantial legislative measures to eliminate discrimination against women and girls. As the de facto authority, the Taliban have a legal obligation to ensure that national law meets international standards.[294]

Overall, the recommended reforms in this section are based on the Taliban's current legal system until the pre-2021 framework. As a state party to several binding international conventions, Afghanistan has binding obligations.[295] The recommendations call on the de facto Taliban authorities to set 18 as the minimum age of marriage, eliminate the concept of silence as consent to marriage, limit guardianship authority, and establish a criminal ban on underage marriage.

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[292] M. Yakub Aiyub Kadir and Siti Nurhaliza, "State Responsibility of Afghanistan Under Taliban Regime," *Jurnal Media Hukum* 30, no. 1 (2023): 1–20, https://doi.org/10.18196/jmh.v30i1.16020.

[293] "Afghans Increasingly Marrying Off Young Daughters To Avoid Forced Unions With Taliban," accessed July 23, 2026, https://www.rferl.org/a/afghanistan-early-marriage-avoid-taliban/32157525.html. Mehdi Hakimi, "Elusive Justice: Reflections on the Tenth Anniversary of Afghanistan's Law on Elimination of Violence Against Women," *Northwestern Journal of Human Rights* 18, no. 1 (2020): 52, https://scholarlycommons.law.northwestern.edu/njihr/vol18/iss1/2.

[294] Kadir and Nurhaliza, "State Responsibility of Afghanistan Under Taliban Regime," 2023.

[295] Kadir and Nurhaliza, "State Responsibility of Afghanistan Under Taliban Regime," 2023.

CHAPTER VII

A. Conclusion

1. Afghanistan's national legal system conflicts with its binding obligation under international human rights instruments on underage marriage. As before 2021, Article 70 of the Civil Code recognized 16 years as the minimum age of marriage for girls and 18 years for boys. Moreover, Article 71 (1) of the Civil Code allows the marriage of girls under 16 years of age through judicial and paternal consent. Since 2021, the Taliban regime enacted a new Decree Code on Judicial Separation of Spouses; this document contains provisions governing marriage and eliminates the minimum age for marriage and also the concept of free and full consent. Replace it with a puberty-based approach that treats girls' silence as evidence of consent, and allows male guardians to contract marriage on behalf of their daughters. Based on the principle of state continuity, Afghanistan, as a State Party to several international human rights instruments, including 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), has legal obligations under these international standards. As a result, several provisions of its domestic laws are in direct conflict with these standards. Therefore, Afghanistan has violated several international human rights obligations both before and after 2021.

2. Based on the legal gap between Afghanistan's domestic laws and international human rights instruments, this research recommends four main reforms to the current legal system governing marriage. First, the Decree No. 18 must be amended to set 18 years as the minimum age of marriage for both parties, to comply with Article 1 of the CRC and Article 16 of the CEDAW. Furthermore, the Decree should remove any provision that treats a girl's silence as consent to marriage and should establish conditions for free and full consent for both parties to comply with Article 16 (1) (b) of CEDAW and Article 23 (3) of the ICCPR. In addition, the current authorities should enact laws to criminalize underage and forced marriage of girls. Collectively, these legal reforms will enable Afghanistan as a state party to several binding international human rights treaties to align with and fulfill its ongoing binding obligations to protect girls from harmful practices, including underage marriage.

B. Recommendations

Firstly, the recent legal framework of the Taliban authorities must be reformed to establish 18 years as the minimum age of marriage for both boys and girls without any exception. According to Decree No 18, which does not establish a fixed age as the minimum age for marriage, instead, it adopts a maturity-based approach tied to the onset of puberty, which is a biological condition that varies significantly among individuals and carries no fixed age thresholdThis reform is essential in accordance with Article 1 of the CRC, which defines a child as any individual under 18 years of age, and Article 16(2) of CEDAW, which confirms that child marriage has no legal effect.

Secondly, international human rights treaty bodies, including the Committee on the Rights of the Child and the Committee on the Elimination of Discrimination against Women, should reinforce monitoring systems to follow whether Afghanistan, as a state member of many international treaties, complies with its legal obligations under international law regarding child marriage and issue recommendations based on the principle of state continuity, to protect girls from early marriage.

Third, UN agencies and other organizations working in the field of child protection should continuously document cases of underage marriage inside Afghanistan and report regularly to international human rights committees. These stakeholders should introduce initiatives aimed at protecting girls from harmful practices, such as providing educational and work opportunities, and public awareness programs to promote children's rights and raise awareness about the negative consequences of early marriage of girls and encourage local communities to reject early and forced marriage of girls.

Fourth, given the continued closure of secondary schools and universities for girls, stakeholders must identify effective approaches to protect girls from underage marriage, through promoting online educational pathways, documenting barriers to education, and designing more practical solutions for the protection of children.

Fifth, the international bodies should encourage the Taliban authorities through diplomatic engagement and accountability to bring Afghanistan's national laws and policies into conformity with its commitment under international human instruments. international community can promote

girls' rights in all diplomatic engagements with the Taliban authorities, support resolutions through the United Nations Human Rights Council and General Assembly, and strengthen legal protections against underage marriage.

Overall, to address underage marriage in Afghanistan and ensure substantial protection of children's rights, Afghanistan's domestic national law must align with its obligations under international human rights law. Continued international monitoring, diplomatic engagement, and support for child education and protection initiatives are essential to promote compliance with international human rights standards and advance the eradication of child marriage in Afghanistan.

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