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Child Marriage in the United States

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I. Introduction

At the age of fifteen, Sara Tasneem’s father told her that she was to be married.¹ Her father was a member of a deeply conservative Muslim sect, and the Shiekh was going to choose Sara’s husband.² Sara met the twenty-eight-year-old man who had been selected for her a few weeks later at a religious conference.³ That same day, Sara’s father consented to the marriage on her behalf, and Sara was handed over to her new husband, a complete stranger.⁴ She remembers asking, “where am I going to sleep tonight?” but no one would give her an answer.⁵

Sara grew up in California, where her religious marriage occurred.⁶ When she was sixteen and pregnant with her second child, she and her husband drove to Nevada, where sixteen-year-olds can marry with a notarized statement of parental consent.⁷ After presenting her “permission slip” to the court clerk, Sara’s marriage was completely legal.⁸

Though most Americans are unaware, child marriage remains a pervasive problem in the United States.⁹ While we condemn child marriage abroad, all fifty states have laws that allow minors to marry.¹⁰ This paper will argue that marriage under eighteen should be banned. Part II will discuss the prevalence of child marriage in the United States from our founding to modern times. Part III will discuss the different types of child marriage in both mainstream and minority cultures. Part IV will discuss the harms that child marriage inflicts on its victims. Part V will

¹ Charlotte Alter, *Child Marriage Survivor: I Was Introduced to Him in the Morning and Handed Over That Night*, TIME (June 6, 2017), <http://time.com/4807611/us-child-marriage-survivor-story/>.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Anjali Tsui, *Married Young: The Fight Over Child Marriage in America*, FRONTLINE PBS (Sept. 14, 2017), <https://www.pbs.org/wgbh/frontline/article/married-young-the-fight-over-child-marriage-in-america/>.

¹⁰ *Id.*

discuss current law and why it is inadequate. Part VI will examine public reactions to banning child marriage. Part VII will offer a solution to the problem, proposing a ban on marriage under eighteen and spreading awareness of the harms of marrying too young. Additionally, Part VII will discuss constitutional concerns raised by opponents of a child marriage ban and argue that a ban would be constitutional. Finally, Part VIII will reiterate and conclude that children need to be protected from being forced into marriage.

II. Prevalence of Child Marriage in the United States

Child marriage has always existed in the United States, and laws governing marriage have been a product of social norms.¹¹ Though many Americans are unaware, child marriage is still prevalent today. Section A will discuss the history of child marriage within the United States. Section B will provide statistics and information about child marriage today.

A. History

Child marriage does not occur exclusively within arranged marriages, and it does not occur exclusively in non-Western cultures. English common law established that girls as young as twelve and boys as young as fourteen could legally marry.¹² Some American colonies later set the minimum age of marriage at eighteen for girls and twenty-one for boys.¹³ However, minors of any age could marry with parental consent.¹⁴ Because the general concern of the time was maintaining parental control over children and their inheritance, parents wanted a say in who their children married.¹⁵

¹¹ *Id.*

¹² *Id.* (citing Henry Swinburne, *A Treatise of Spousals, or Matrimonial Contracts*, 1686.).

¹³ Tsui, *supra* note 9.

¹⁴ *Id.*

¹⁵ *Id.*

Gradual reform of marriage age laws did not begin until the 1930s, and has since been predominantly motivated by changing social norms.¹⁶ In 1937, in rural Tennessee, nine-year-old Eunice Winstead married her twenty-two year old neighbor, a six-foot tall tobacco farmer.¹⁷ The story garnered national attention after *LIFE* Magazine published a photo essay entitled “The Case of the Child Bride,” featuring images of little Eunice holding the doll her husband had given her as a wedding gift.¹⁸ Tennessee was nationally embarrassed, and just two weeks later the legislature passed a law setting the minimum marriage age at fourteen.¹⁹ However, Charlie and Eunice remained married and went on to have seven children.²⁰ Despite the outrage that Charlie and Eunice’s case caused, Section B will show that child marriage remains pervasive today.

B. Statistics Today

Though most Americans do not think of child marriage as a prevalent problem, between 2000 and 2015, at least 207,468 minors²¹ were married in the United States.²² Because many religious marriages are only made legal once the child is old enough, the real statistics are likely higher.²³ Although child marriage occurs throughout the country, it is generally more common in

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Life on the American Newsfront: The Case of the Child Bride*, LIFE MAGAZINE (Feb. 15, 1937), 15, https://books.google.ca/books?id=WFEAAAAMBAAJ&pg=PA15&dq=%22child+bride%22&hl=en&sa=X&ei=GTvtT_TPC-GM2gWTrPSFAG#v=onepage&q=%22child%20bride%22&f=false.

¹⁹ *Id.*

²⁰ *9-Year-Old Bride, Husband Well Off After 20 Years*, THE SPOKESMAN REVIEW (Feb. 18, 1957), 11, <https://news.google.com/newspapers?nid=1314&dat=19570218&id=xYRWAAAIAIBAJ&sjid=mOYDAAAIAIBAJ&pg=7363,5969463&hl=en>.

²¹ In the referenced source and for the remainder of this paper, a minor is less than eighteen years old.

²² Anjali Tsui, Dan Nolan, and Chris Amico, *CHILD MARRIAGE IN AMERICA: By the Numbers*, FRONTLINE PBS (July 6, 2017), <http://apps.frontline.org/child-marriage-by-the-numbers/>.

²³ *Id.*

the south.²⁴ West Virginia had the highest rate of married children.²⁵ For every 1000 fifteen- to seventeen-year-olds in West Virginia, 7.1 of them are married.²⁶ Alaska had the lowest rate of 1.8.²⁷ The preceding statistics include boys, but Texas had the highest number of married fifteen- to seventeen year-old girls, at nine married for every 1000 of those girls.²⁸ Nationally, eighty-seven percent of the children married were girls.²⁹ Statistics show that child marriage remains a pervasive issue within the United States.

While the majority of children who marry are seventeen, states have allowed much younger children to marry.³⁰ Charlie and Eunice were viewed as an absurd case in 1937, yet the youngest children to marry between 2000 and 2015 were three ten-year old girls in Tennessee.³¹ The girls married men aged twenty-four, twenty-five, and thirty-one in 2010.³² The youngest boy to marry was eleven, and he married a twenty-six-year-old woman in Tennessee in 2006.³³ Between 2000 and 2015, children as young as twelve were granted marriage licenses in Alaska, Louisiana, South Carolina, and Tennessee.³⁴ Children as young as thirteen were allowed to wed in Alabama, Florida, Idaho, Kentucky, Louisiana, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, South Carolina, Tennessee, Texas, and Washington.³⁵ While fourteen

²⁴ Why child marriage is more common in the south is unclear, but it could be because that area of the country tends to be more religious and more conservative. States with high rates of child marriage also tend to have higher rates of teen pregnancy. See *U.S. Adolescent Pregnancy Rates by State, 2013*, GUTTMACHER INSTITUTE (Sept. 7, 2017), <https://www.guttmacher.org/infographic/2017/us-adolescent-pregnancy-rates-state-2013>.

²⁵ David McClendon and Aleksandra Sandstrom, *Child marriage is rare in the U.S., though this varies by state*, PEW RESEARCH CENTER (Nov. 1, 2016), <http://www.pewresearch.org/fact-tank/2016/11/01/child-marriage-is-rare-in-the-u-s-though-this-varies-by-state/>.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

²⁹ Tsui, *supra* note 22. Why child marriage predominantly victimizes girls is a complex question, but it likely stems from their historical subordination and continued vulnerability, particularly because of their ability to get pregnant. See Lynn D. Wardle, *Rethinking Marital Age Restrictions*, 22 J. FAM. L. 1, 4-5 (1983).

³⁰ Tsui, *supra* note 22.

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

percent of the minors in these states married other minors, eighty-six percent married adults.³⁶

Even the marriage of a very young child to an adult is legal in most states. Part III will examine the different types of child marriage to explain why these marriages happen.

III. Types of Child Marriages

In order to understand child marriage, it is important to understand the contexts within which it occurs. Section A will examine the type of child marriage common in mainstream American society: teen marriage because of pregnancy, or simply wanting to get married. Section B will discuss arranged marriages spurred by religious and cultural practices. In both of these contexts it may be possible for a child to consent to marriage, but Section C will address the factors that can make marriage involuntary by reducing or removing a child's capacity to fully consent.

A. Voluntary Teen Marriage

In the United States, teens may choose to marry for a variety of reasons. Their religion or culture may encourage them to marry young. They may be dealing with an unexpected pregnancy. State lawmakers have maintained that pregnant teens should be able to get married.³⁷ Some state statutes explicitly lower the minimum age requirement in the case of pregnancy.³⁸

In fact, the idea that marriage can “fix” a child's pregnancy remains pervasive in the United States, particularly in more religious regions.³⁹ For example, Heather Strawn, from Idaho,

³⁶ *Id.*

³⁷ *Understanding State Statutes on Minimum Marriage Age and Exceptions*, TAHIRIH JUSTICE CENTER FORCED MARRIAGE INITIATIVE (Nov. 2016), <https://www.tahirih.org/wp-content/uploads/2016/11/FINAL-State-Marriage-Age-Requirements-Statutory-Compilation-PDF.pdf>, (hereinafter referenced as “Tahirih Justice Center”).

³⁸ *See, e.g.* Ark. Code Ann. § 9-11-103; Fla. Stat. § 741.0405; Ind. Code § 31-11-1-6; Ky. Rev. Stat. § 402.020; Md. Fam. Law Code Ann. § 2-301; N.M. Code § 40-1-6; N.C. Gen. Stat. § 51-2.1; Ohio Rules of Juvenile Procedure, Rule 42; Okla. Stat. Ann. Tit. 43, § 3; S.C. Code § 20-1-300.

³⁹ Tahirih Justice Center, *supra* note 37.

was fourteen when she became pregnant.⁴⁰ She had been drinking with her twenty-four-year-old boyfriend Aaron Seaton, but had no memory of having sex with him.⁴¹ Her mother called the police and filed statutory rape charges, for which the maximum sentence was life in prison.⁴² Heather insisted that she cared for Seaton, so without his ex-wife's knowledge, Heather's father Keith Strawn drove his daughter and Seaton seventeen hours to Missouri on the eve of Heather's fifteenth birthday.⁴³ Missouri's laws allow fifteen-year-olds to marry with the consent of just one custodial parent.⁴⁴ Strawn reasoned that if the couple married, the relationship would be legal and the baby would be born within wedlock.⁴⁵

Heather's mother was furious when she found out about the marriage, and alerted Idaho police.⁴⁶ Although Heather and Aaron would have been legally allowed to have sex as a married couple, Aaron was arrested and charged with statutory rape because Heather's pregnancy proved that they had had sex before marriage.⁴⁷ Keith Strawn was arrested and charged with two counts of injury to a child and one count of accessory to rape.⁴⁸ By the time their cases went to trial, the marriage had been annulled and Heather had miscarried.⁴⁹ In April of 2016, Seaton pled guilty to statutory rape.⁵⁰ He was later sentenced to fifteen years in prison and would have to register as a sex offender.⁵¹ Keith Strawn pled guilty to felony injury to a child, and received four years imprisonment.⁵² However, the judge found that Strawn had not actually forced his daughter into

⁴⁰ Eric Adler, *Hundreds of Missouri's 15-year-old brides may have married their rapists*, THE KANSAS CITY STAR, March 11, 2018, <http://www.kansascity.com/news/state/missouri/article204292464.html>.

⁴¹ Tsui, *supra* note 9.

⁴² *Id.*

⁴³ Adler, *supra* note 40.

⁴⁴ MO. REV. STAT. § 451.090.

⁴⁵ Adler, *supra* note 40.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Tsui, *supra* note 9.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² Adler, *supra* note 40.

the marriage, so his sentence was reduced to 120 days in jail.⁵³ Marriage did not fix the pregnancy; it forced Heather in an unstable marriage with her rapist, and sent her boyfriend and father to jail. Yet, the perception remains that if a teenager gets pregnant, the best course of action is to get married.

B. Arranged Marriages

Arranged marriages are less main stream, but they have existed throughout history, and are still prevalent in certain parts of the world.⁵⁴ While the concept seems strange to Westerners, in other cultures parents believe that naturally immature and impulsive children are in no position to choose a spouse.⁵⁵ With more wisdom and experience, loving parents truly believe that they are doing what is best for their children by arranging a marriage.⁵⁶ Westerners have a generally poor attitude toward arranged marriages, but arranged marriages can certainly be successful when they involve two consenting adults.⁵⁷ Children often cooperate because in many non-Western cultures, their responsibility is not to themselves, but to their parents, ancestors, and community.⁵⁸ Section C will address how any type of marriage involving a child can become a forced marriage.

C. Forced Marriages

Without the capacity of both parties to consent, an arranged marriage or a teen marriage becomes a forced marriage.⁵⁹ While Heather Strawn agreed to her marriage, she did so because

⁵³ *Id.*

⁵⁴ Jefferson M. Fish, *Arranged Marriages*, PSYCHOLOGY TODAY (April 27, 2010), <https://www.psychologytoday.com/us/blog/looking-in-the-cultural-mirror/201004/arranged-marriages>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ Utpal Dholakia, *Why Are So Many Indian Arranged Marriages Successful?*, PSYCHOLOGY TODAY (Nov. 24, 2015), <https://www.psychologytoday.com/us/blog/the-science-behind-behavior/201511/why-are-so-many-indian-arranged-marriages-successful>.

⁵⁸ *Id.*

⁵⁹ *About Arranged/Forced Marriage*, UNCHAINED AT LAST (2017), <http://www.unchainedatlast.org/about-arranged-forced-marriage/>.

her father and family convinced her that it was the best course of action.⁶⁰ State laws that allow children to get married with parental consent overlook the fact that children may face tremendous pressure from their parents to agree to the marriage.⁶¹ They might be rushed into making a decision, or tricked or bribed into agreeing to the union.⁶² Even if a child has the option to say no, they might face ostracism or threats of harm, from their family or their larger social and religious communities, if they do not consent to the marriage.⁶³ A child who ignores their parents' wishes and marries for love, or even a child who leaves an abusive marriage, could continue to face shame and ostracism for the rest of their lives.⁶⁴

Fraidy Reiss faced tremendous pressure from her parents and community growing up in an Orthodox Jewish community in Brooklyn.⁶⁵ At the age of nineteen, she was set up by a matchmaker with a man from her community.⁶⁶ She was given a choice between two men, but remembers fearing that she would become a spinster if she was not married by age twenty.⁶⁷ She also feared that her family and community would ostracize her if she did not agree to the marriage that had been "set up" for her.⁶⁸ A week after her wedding, her husband punched a hole through the wall of their apartment in a violent rage.⁶⁹ Over the course of her fifteen-year marriage, Fraidy endured constant emotional abuse and threats against her life.⁷⁰ While Fraidy was not a minor and technically had a choice of who she married, family and community

⁶⁰ Tsui, *supra* note 9.

⁶¹ *Id.*

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ *An Orthodox Jewish Woman's Journey From Chained Wife to Advocate*, HAARETZ (Feb. 14, 2013), <https://www.haaretz.com/jewish/from-chained-wife-to-women-s-advocate-1.5229825>.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

pressure forced her into a marriage she did not want.⁷¹ Even when Fraidy finally fled her husband, her family cut off all contact.⁷² Fraidy heard years later that her family had actually sat shiva⁷³ for her, as if she had died.⁷⁴

Whether a child consents to a marriage because it has been arranged or because it seems convenient, they are subject to the influence of their family, community, and religious leaders. This pressure, particularly from adults who are supposed to be protecting the child, makes it unlikely that a naturally vulnerable child will have the capacity or resources to make a fully consensual decision. Part IV will address the harms of child marriage, many of which stem from a child's vulnerability.

IV. Harms of Child Marriage

The combination of marriage and the inherent nature of children and teens creates a unique set of challenges, many of which have long-term effects.⁷⁵ An older partner can easily control a child's finances, education, employment, and child-bearing decisions.⁷⁶ Teenagers also have a unique desire to be free of their parents, but lack emotional maturity and decision-making skills, leading to impulsiveness.⁷⁷ Section A will address the emotional and psychological harms that victims of child marriage suffer. Section B will discuss the physical harms, and Section C will address the societal harms.

A. Emotional and Psychological Harms

⁷¹ *Id.*

⁷² Debra Rubin, 'Unchained' woman forms group to help others, NEW JERSEY JEWISH NEWS (Jan. 26, 2015), <http://njewishnews.com/article/26002/unchained-woman-forms-group-to-help-others#.WtDVUVWnHIU>.

⁷³ Sitting shiva is a Jewish funeral custom.

⁷⁴ *Id.*

⁷⁵ Erin K. Jackson, *Article: Addressing the Inconsistency Between Statutory Rape Laws and Underage Marriage: Abolishing Early Marriage and Removing the Spousal Exemption to Statutory Rape*, 85 UMKC L. REV. 343, 368 (2017).

⁷⁶ *Id.*

⁷⁷ U.S. PUB. HEALTH SERV., MENTAL HEALTH: A REPORT OF THE SURGEON GENERAL, 162 (1999), <https://profiles.nlm.nih.gov/ps/access/NNBBHS.pdf>.

Statistics show that teen girls are particularly emotionally fragile and impressionable.⁷⁸ Between fifteen and nineteen years old, girls have disproportionately high rates of depression and anxiety, and experience considerably higher rates of eating disorders than the rest of the population.⁷⁹ Teen girls attempt suicide at twice the rate of teen boys.⁸⁰

The emotional volatility of teen girls makes them ill-equipped to handle romantic relationships, never mind marriage.⁸¹ A 2011 study concluded that women who married as children were significantly more likely to receive treatment for a psychiatric disorder than women who married as adults.⁸² The increase in mental illness is present even among different socioeconomic groups of teen wives.⁸³ Moreover, women who marry young have higher rates of mental illness throughout their lives.⁸⁴ Major depression, bipolar disorder, anxiety disorders, psychotic disorders, and anti-social personality disorder are all more prevalent among women who married as children.⁸⁵ Child marriage has tangible, scarring effects on the emotions and psyche of a teen girl.⁸⁶

B. Physical Harms

In addition to emotional harms, child marriage subjects victims to the risk of physical harm.⁸⁷ Girls who marry before they turn eighteen are more likely to experience domestic

⁷⁸ *Id.* This section will focus on the psyche of girls because they are overwhelmingly more likely to be victimized by child marriage.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ Jackson, *supra* note 75.

⁸² Yann Le Strat et al., *Child Marriage in the United States and Its Association with Mental Health in Women*, 128 *PEDIATRICS* 524, 527. (2011), <http://pediatrics.aappublications.org/content/128/3/524.full.pdf+html>

⁸³ *Id.* at 524.

⁸⁴ *Id.* at 527.

⁸⁵ *Id.* at 528, tbl. 2

⁸⁶ U.S. PUB. HEALTH SERV., *supra* note 77.

⁸⁷ Jackson, *supra* note 75.

violence.⁸⁸ Victims of child marriage are also more likely to experience sexual violence.⁸⁹ Teenagers generally have very little knowledge, if any, of sexual relationships.⁹⁰ They tend to be unfamiliar and uncomfortable with using birth control, and could thus be easily influenced by older partners to not use birth control at all.⁹¹ Worldwide, child marriage is associated with higher rates of sexually transmitted diseases including HIV/AIDS, cervical cancer, unwanted pregnancies, abortions⁹², death caused by childbirth, and malnutrition in children.⁹³ Nicotine dependence, alcohol dependence, drug dependence, and pathological gambling have also been shown to be more prevalent among this group.⁹⁴ Child marriage subjects its victims to significant risk of physical harm.

C. Societal Harms

Beyond harming a victim, child marriage also harms society.⁹⁵ Emotional immaturity and impulsiveness means that teenage relationships tend to be unstable, likely accounting for the high rates of domestic violence and emotional abuse in teenage relationships.⁹⁶ Because of the instability, teenage relationships often lead to divorce.⁹⁷ The emotional and financial burden of divorce is likely one of the reasons that teen pregnancy and marriage are high predictors of future

⁸⁸ *Child marriage is a violation of human rights, but is all too common*, UNICEF (March 2018), <http://data.unicef.org/topic/child-protection/child-marriage/>.

⁸⁹ *Id.*

⁹⁰ Jackson, *supra* note 75.

⁹¹ *Id.*

⁹² Anita Raj, Niranjana Saggurti, Donta Balaiah, Jay G. Silverman, *Prevalence of Child Marriage and its Impact on the Fertility and Fertility Control Behaviors of Young Women in India*, NATIONAL INSTITUTE OF HEALTH (May 30, 2009), 7, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2759702/>.

⁹³ *Id.*

⁹⁴ Le Strat et. al. *supra* note 82 at 528, tbl. 2

⁹⁵ Quentin Wodon, *Child marriage and education: impacts, costs, and benefits*, Global Partnership for Education (June 29, 2017), <https://www.globalpartnership.org/blog/child-marriage-and-education-impacts-costs-and-benefits>.

⁹⁶ Le Strat et. al. *supra* note 82.

⁹⁷ Wodon *supra* note 95.

poverty.⁹⁸ Worldwide, child marriage has been identified as the root of cyclical poverty.⁹⁹ Girls who marry young are more likely to drop out of school.¹⁰⁰ On an even more basic level, girls who marry young have more children, reducing the ability of households to meet basic survival needs.¹⁰¹

Proponents of child marriage argue that teens should be able to marry because the government has an interest in lowering the number of children born out of wedlock, and because young unwed mothers often end up on welfare or other social assistance programs.¹⁰² Current research suggests otherwise.¹⁰³ One in ten American women marry at age twenty-one or younger, and those who do experience worse mental and physical health, obtain less education, and earn lower wages than women who marry later in life.¹⁰⁴ In addition, one's age at marriage is the strongest predictor of marital failure, and the likelihood of divorce for couples who marry at age fifteen or sixteen is almost eighty percent.¹⁰⁵ The divorce rate drops drastically to thirty percent for couples who postpone marriage by just a few years, and marry in their mid-twenties.¹⁰⁶

Child marriage places its victims at risk of emotional and physical harm, and it also harms the stability of society. Despite these well-documented harms, Part V will show that current state laws allow child marriage to flourish.

V. Current Law

⁹⁸ Gordon B. Dahl, *Early Teen Marriage and Future Poverty*, DEMOGRAPHY, 2010 Aug; 47(3): 689–718, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3000061/>.

⁹⁹ Wodon, *supra* note 95.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Vivian E. Hamilton, *Article: The Age of Marital Capacity: Reconsidering Civil Recognition of Adolescent Marriage*, 92 B.U.L. REV. 1817 (2012).

¹⁰³ *Id.* at 1817.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.* at 1821.

¹⁰⁶ *Id.*

While the minimum age to marry in all states is eighteen, all states have statutory exceptions for marriage under the age of eighteen.¹⁰⁷ Section A will explain that the majority of states do not have a marriage age floor. Section B will discuss some of the particularly lenient marital laws in various states. Section C will explore the lack of grounds for prosecuting those who facilitate child marriage in most states. Finally, Section D will examine the statutory rape loophole created by allowing marriage under eighteen.

A. No Minimum Age to Marry

Today, twenty-five states do not have any minimum age requirement for marriage if the child has parental permission.¹⁰⁸ Of the states that do have age floors, most set the age limit at fourteen, fifteen or sixteen.¹⁰⁹ New Hampshire has the lowest age floor, allowing girls to marry at thirteen, and boys to marry at fourteen.¹¹⁰ Only three states¹¹¹ set the age floor at seventeen.¹¹²

Even New Jersey, a state as progressive as it gets, does not have any minimum age requirement for a child to get married so long as they have judicial approval.¹¹³ New Jersey allows sixteen- and seventeen-year-olds to obtain marriage licenses with parental permission, and allows children under sixteen to marry with a judge's permission.¹¹⁴ There are no minimum age guidelines for judges, and no provision barring relationships that would otherwise be statutory rape.¹¹⁵ Between 1995 and 2012, 3,500 marriages involving at least one partner under

¹⁰⁷ Tahirih Justice Center, *supra* note 37.

¹⁰⁸ Tsui *supra* note 22.

¹⁰⁹ Tahirih Justice Center, *supra* note 37.

¹¹⁰ *Id.*

¹¹¹ The states include Oregon, Nebraska, and New York. Florida's legislature just passed a bill banning marriage under seventeen but it has not yet been signed by the governor. *Id.* See Ellen Wulforst, *Florida approves limit, but not ban, on child marriage*, REUTERS (March 10, 2018), <https://www.reuters.com/article/us-usa-childmarriage-florida/florida-approves-limit-but-not-ban-on-child-marriage->

¹¹² Tahirih Justice Center *supra* note 37.

¹¹³ N.J. STAT. § 37:1-6.

¹¹⁴ N.J. STAT. § 37:1-6.

¹¹⁵ *Child Marriage in New Jersey*, UNCHAINED AT LAST (2017), <http://www.unchainedatlast.org/child-marriage-in-new-jersey/>.

the age of eighteen took place in New Jersey.¹¹⁶ Of those marriages, 163 involved at least one spouse who was fifteen or younger.¹¹⁷ New Jersey is just one of many states that allow very young children to marry because they do not have a marriage age floor.

B. Lenient Marriage Exceptions

Many states have very lenient exceptions allowing minors to marry.¹¹⁸ All Missouri requires for a fifteen-year-old to marry is the consent of one parent and a court clerk's signature.¹¹⁹ At the age of fifteen, Ashley Duncan was pregnant and pressured into marrying her eighteen-year-old boyfriend.¹²⁰ Her family mistakenly believed he could be found guilty of statutory rape and sent to jail.¹²¹ Because Missouri only requires a court clerk's approval, there was no judge to explain that statutory rape had not occurred under Missouri law, and Ashley's boyfriend would not have gone to jail.¹²² The couple only stayed together for two years before separating, Ashley dropped out of high school during her freshman year, and now faces the economic burden of paying for a divorce.¹²³ Lenient marriage laws ensure that minors do not have government protection from being forced into an unwanted marriage.

C. Lack of Grounds for Prosecution

Surprisingly, forcing someone into a marriage is not actually a crime in most states.¹²⁴ Only ten states have statutes explicitly criminalizing forced marriage, and no forced marriage

¹¹⁶ Matt Friedman, *Ban on child marriages conditionally vetoed by Christie*, POLITICO (May 11, 2017), <https://www.politico.com/states/new-jersey/story/2017/05/11/ban-on-child-marriages-conditionally-vetoed-by-christie-111987>.

¹¹⁷ *Id.*

¹¹⁸ Tahirih Justice Center *supra* note 37.

¹¹⁹ MO. REV. STAT. § 451.090

¹²⁰ Adler, *supra* note 40.

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ Tahirih Justice Center, *supra* note 37.

prosecutions have ever been brought under those laws.¹²⁵ In 2010, Michigan actually repealed its criminal statute¹²⁶ on “taking a woman and compelling her to marry”.¹²⁷ The Prosecuting Attorneys Association of Michigan supported repealing the outdated law because the crime could be prosecuted as other offenses, without the additional burden of having to prove the element of marriage.¹²⁸ Within the states that do criminalize forced marriage, some of the statutes are written so that they only protect women, or that parents who force marriage on their children cannot be prosecuted.¹²⁹ While other prosecutorial grounds like rape or assault may be adequate in certain situations of forced marriage, the next section will show that state statutes are not fully addressing the issues surrounding child marriage.

D. Child Marriage as a Loophole for Statutory Rape

In many states, the minimum marriage age is lower than the age of consent, and statutory rape laws only apply to unmarried couples.¹³⁰ As mentioned above, Missouri has a particularly lenient statutory scheme that attracts people from all over the country trying to make a rape legal.¹³¹ While Missouri defines statutory rape as anyone twenty-one or older having sexual intercourse with anyone seventeen or younger,¹³² the statute provides that marriage is an affirmative defense to statutory rape.¹³³

¹²⁵ *Id.*

¹²⁶ Former M.I. STAT. 750.11.

¹²⁷ *Repeal Various Criminal Offenses S.B. 760-767: Analysis as Reported From Committee*, MI Sen. Judic. Comm. (Oct. 2009), <http://www.legislature.mi.gov/documents/2009-2010/billanalysis/Senate/htm/2009-SFA-0760-A.htm>.

¹²⁸ *Id.*

¹²⁹ MINN. STAT. ANN. § 609.265; MISS. CODE ANN. § 97-3-1; OKLA. STAT. TIT. 21 § 1117, §1118, and §1119; 14 V.I. CODE ANN. § 1301

¹³⁰ Tahirih Justice Center *supra* note 37.

¹³¹ Adler, *supra* note 40.

¹³² MO. REV. STAT. § 566.034.

¹³³ MO. REV. STAT. § 566.023.

As discussed previously, Heather Strawn’s father and boyfriend tried to take advantage of the statutory rape loophole.¹³⁴ The strategy was not without practical merit, because even in states where prosecution for statutory rape within a marriage is possible, marriage makes prosecution much less likely.¹³⁵ Charges are most likely to be pursued when the male offender impregnates a female victim and then leaves her.¹³⁶ Heather Strawn’s case was most likely pursued because her mother was against the marriage and supported the criminal charges.¹³⁷

Statutory rape laws have been enacted in response to the idea that when a child is too young or with a much older partner, unequal power dynamics leave a child particularly vulnerable, thus that child will never be able to effectuate valid consent to sexual acts.¹³⁸ Statutory rape laws became necessary to deal with situations where a victim may have “consented”, thus taking the case outside of traditional rape law, but the reasons for consenting were problematic.¹³⁹ Teenage girls are particularly susceptible to sexual abuse by older men for a number of reasons, including the vulnerability of adolescence, the diminished self-esteem inherent during puberty, and the lack of confidence to assert themselves.¹⁴⁰ Fear, manipulation, or simply the desire to be accepted by their peers and by men are all factors that can all lead teenage girls into sexual situations that are less than consensual.¹⁴¹

¹³⁴ Adler, *supra* note 40.

¹³⁵ Jodi Wilgoren, *Rape Charge Follows Marriage to a 14-Year-Old*, The New York Times (Aug. 30, 2005), <https://www.nytimes.com/2005/08/30/us/rape-charge-follows-marriage-to-a-14yearold.html>.

¹³⁶ *Id.*

¹³⁷ Adler, *supra* note 40.

¹³⁸ Michelle Oberman *SYMPOSIUM ON URBAN GIRLS: LEGAL ISSUES FACING ADOLESCENTS AND TEENS: ARTICLE: Regulating Consensual Sex with Minors: Defining a Role for Statutory Rape*, 48 BUFFALO L. REV. 703, 704 (2000).

¹³⁹ *Id.* at 713.

¹⁴⁰ *Id.* at 709.

¹⁴¹ *Id.*

In *State v. Chaney*¹⁴² the Utah Court of Appeals had to entertain a father’s argument that getting his daughter married had “fixed” the intercourse that in any other context would be legally rape. A state statute mandated that certain sexual offenses did not apply to “consensual conduct between persons married to each other.”¹⁴³ Thus the defendant father, appealing his conviction of rape of a child as an accomplice, argued that his thirteen-year old daughter could not have been raped by her forty-eight year old husband because they were married.¹⁴⁴ The court’s analysis and conclusion that the “husband” committed rape of a child had to rest on the fact that Utah prohibited marriage under the age of fourteen and the marriage was void *ab initio*.¹⁴⁵ In any of the twenty-five states without a marriage floor, provided the couple had met that state’s requirements, the marriage could have been legal.¹⁴⁶ By allowing marriage before the statutory age of consent, states create a convenient loophole for statutory rape.

Despite the inadequacy of current law, states have been reluctant to make changes. Part VI will examine public response to reforming child marriage laws.

VI. Public Response

While Americans generally agree that children should not be forced into marriage, there has been a marked reluctance to completely ban marriage under eighteen. Section A will examine opposition on both sides of the political spectrum, and Section B will examine state legislative response to the divide.

A. Opposition on the Right and Left

¹⁴² 989 P.2d 1091 (UT App. Ct. 1999).

¹⁴³ UTAH CODE ANN. § 76-5-407(1) (1995)

¹⁴⁴ 989 P.2d 1091, 1093 (UT App. Ct. 1999).

¹⁴⁵ *Id.* at 1096.

¹⁴⁶ Tsui, *supra* note 22.

Opposition against banning child marriage has come from both sides of the aisle. While the concern exists largely over the rights of the parents, some unexpected opponents have arisen for other reasons. Planned Parenthood opposes banning child marriage because it believes that an age requirement would be a burden on a minor's right to consent in other circumstances (particularly to consent to an abortion).¹⁴⁷ Recently in response to California's proposition of a child marriage ban, the ACLU expressed concern that such a ban would violate the right to marry.¹⁴⁸ Bans on child marriage have also received opposition from libertarian politicians, who favor an unrestricted society, and abortion opponents, who believe that forbidding pregnant teens from marrying will increase abortion rates.¹⁴⁹ Opposition to banning child marriage has presented legitimate concerns and Section B will explain that legislators have taken these concerns seriously.

B. Reluctance for Reform

The concerns raised by opposition have left legislators reluctant to ban child marriage. In May 2017, former Governor Christie vetoed a bill that would have banned outright all marriage under the age of eighteen in New Jersey.¹⁵⁰ Christie stated that he believed such a ban was unnecessary and would place a burden on certain religions, but countered with a proposal to ban marriage under the age of sixteen, and require judicial approval for sixteen and seventeen-year-olds to marry.¹⁵¹

A few states have been more willing to restrict the marriage of minors. In March of 2018, Florida legislators passed a bill that will ban marriage under the age of seventeen if the governor

¹⁴⁷ Taryn Luna, *Under-18 marriage ban weakened after ACLU opposes*, THE SACRAMENTO BEE (May 9, 2017), <http://www.sacbee.com/news/politics-government/capitol-alert/article149610849.html>.

¹⁴⁸ *Id.*

¹⁴⁹ Anjali Tsui, *In Fight Over Child Marriage Laws, States Resist Calls for a Total Ban*, FRONTLINE (July 6, 2017), <https://www.pbs.org/wgbh/frontline/article/in-fight-over-child-marriage-laws-states-resist-calls-for-a-total-ban/>.

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

signs it into law.¹⁵² The bill was actually the result of a compromise, after a bill that would have banned marriage under the age of eighteen failed to gain support.¹⁵³ The bill has not yet been signed by the governor, but his spokesmen have said that he will support it.¹⁵⁴ Under the bill, teens can marry at seventeen, but only with parental consent.¹⁵⁵ Additionally, seventeen-year olds are required to take a pre-marital preparation course, and cannot marry anyone more than two years older.¹⁵⁶ Under Florida's current law, children as young as sixteen can marry with parental consent and judges can allow marriages of younger children in cases of pregnancy.¹⁵⁷

Almost simultaneously to Florida, at the end of March, 2018, Kentucky passed a law that bans marriage under seventeen.¹⁵⁸ The law contains a very narrow exception for seventeen-year-olds to marry an individual no more than four years older, and only with the consent of a judge through a special judicial proceeding.¹⁵⁹ The judicial proceeding simultaneously grants the minor adult rights and status to help her protect herself in case of abuse.¹⁶⁰

Banning child marriage has garnered some unexpected opposition. Even states that have moved toward reformation of their child marriage laws have been diligent in maintaining exceptions for minors to marry, which is why child marriage remains a pervasive problem.

VII. Proposal

This paper proposes a statutory ban on marriage under the age of eighteen and argues that such a ban would be constitutional. Additionally, this paper proposes state-sponsored education

¹⁵² Wulfhorst *supra* note 111.

¹⁵³ *Id.*

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ FLA. STAT. § 741.0405.

¹⁵⁸ *Kentucky Governor Signs Landmark Child Marriage Reform Bill Into Law*, TAHIRIH JUSTICE CENTER (March 29, 2018), <http://www.tahirih.org/news/kentucky-governor-signs-landmark-child-marriage-reform-bill-into-law/>.

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

and raising of awareness to dispel the pervasive idea that there are any benefits to child marriage. Given the reluctance of state legislatures to enact such a ban, this paper argues alternatively that at the very least, states should set a minimum marriage age and a limiting provision to ban statutory rape marriages. Section A will propose necessary legal reform, and Section B will propose that education is also necessary to reduce the prevalence and acceptance of child marriage. Section C will outline the constitutional issues that have been raised and argue that a ban on child marriage would be constitutional.

A. Legal Reform

States have a *parens patriae*¹⁶¹ duty to protect children, and that duty requires states to ban marriage under the age of eighteen. States need to enact comprehensive statutory schemes to prevent child marriage including (i) banning marriage under eighteen, (ii) a statutory rape provision, should states choose to retain exceptions for the marriage of minors, and (iii) grounds for prosecution for parents and religious leaders who facilitate child marriages.

i. Minimum Marriage Age

Marriage under the age of eighteen should be banned because individuals under the age of eighteen lack necessary legal rights to protect themselves upon entering a marriage. Children do not have full legal rights to advocate for themselves. Children under eighteen generally cannot form any binding contract. In most states, they cannot file a restraining order on their own, enter a women's shelter, or retain a lawyer to file for divorce¹⁶². Most states require that legal guardians of children are at least eighteen so a child marriage survivor could be forced to

¹⁶¹ The state has the power to act as the legal protector and guardian of citizens unable to protect themselves.

¹⁶² Oishimaya Sen Nag, *Child Marriage – Rationale, Historical Views, and Consequences*, WORLDATLAS (April 25, 2017), <https://www.worldatlas.com/articles/child-marriage-rationale-historical-views-and-consequences.html>.

leave her children with her abuser.¹⁶³ Some child marriage victims may even be under the minimum age to work.

While the marriage could be eventually voidable, it does not undue the trauma that has already occurred, and voiding the marriage or getting a divorce is often an additional hurdle for victims. Sara Tasneem was eventually able to leave her husband, but he had prohibited her from finishing high school and given her two children to support.¹⁶⁴ Fraidy Reiss secretly enrolled in college and saved up almost \$40,000 before leaving her husband.¹⁶⁵ She hid the money in the one place she knew he would not look, a cereal box in the pantry.¹⁶⁶ It took her fifteen years to escape the marriage.¹⁶⁷ Neither woman should have had to endure such suffering.

ii. Close the Statutory Rape Loophole

If states are going to allow children under eighteen to enter into marriage contracts, the minimum age should at the very least be the age of consent. A person who is not legally able to consent to sexual intercourse should not be able to marry. While *Chaney* had a favorable outcome, the fact that the court afforded as much attention as it did to the father's claim of marriage as a fix-all is disappointing.¹⁶⁸ The age of consent in Utah is sixteen¹⁶⁹; there should never be any debate over a thirteen-year old girl's ability to consent. The father argued that he believed the daughter's husband would wait until she was old enough to have sex with her¹⁷⁰, but the state should never be putting children into the hands of a person who has so much potential and ability to abuse them. The risk is especially salient when a child and adult have an age gap

¹⁶³ *Id.*

¹⁶⁴ Alter, *supra* note 1.

¹⁶⁵ Rubin, *supra* note 72.

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

¹⁶⁸ 989 P.2d 1091 (UT App. Ct. 1999).

¹⁶⁹ UTAH CODE ANN. § 76-5-401.2.

¹⁷⁰ 989 P.2d 1091, 1094 (UT App. Ct. 1999).

wide enough that any sexual relations they had would constitute statutory rape. If two people cannot legally have sex, they should not be legally able to get married. Rapists should never be protected by marriage, and states should not provide any incentive for a child to be forced into marrying her rapist. The idea that forcing a child to marry her rapist could ever create a stable union and a better future for her is simply absurd.

iii. Ensure Adequate Grounds for Prosecution

States must provide grounds for prosecution for parents and religious leaders who facilitate child marriages. Adults who enter into a marriage with a child must be prosecuted. While prosecutors have had some success with rape charges and accomplice liability, the illegal marriage should provide grounds for prosecution on its own. Whether state statutes explicitly criminalize forced marriage or attack it through other means, the statutes need to be modernized with the intent and goal of diligently prosecuting cases of child marriage.

B. Education

Child marriage occurs because of religious arranged marriages in minority cultures, but it also occurs in mainstream American culture. The government has a legitimate interest in creating and maintaining a stable society, and at the root of a stable society are stable family units. Child marriage creates inherently unstable family units. Going forward, education and raising awareness is essential in both mainstream and minority cultures. Child marriage is not a solution to an inconvenient pregnancy; it sets up children to fail. Marrying too young creates unstable marriages and imposes an immense economic burden on children that impedes their success in life. As taboo as extra-marital pregnancy may be in some parts of the country, society needs to move away from the idea that marriage is the ultimate solution and always means “happily ever after.” Mainstream culture could be reached by including education in schools, perhaps as part of

health class curriculum. Guidance counselors and teachers could receive training on the risks of child marriage and how to discuss the issue with children. With proper training, school officials can provide resources for children who are facing pressure to marry.

In highly religious cultures with arranged marriages, the reasons for child marriage are different, but education is also necessary. Unless religious institutions receive federal funding, it seems unlikely that the federal government would have any grounds for mandating education. It may also be harder to reach children if they attend private schools or are homeschooled. However, perhaps the federal government could require training for religious leaders as a condition that the marriages they performed would be legally valid. Additionally, states can require marriage counseling for minors and their potential spouses as a condition of marrying. Where education fails, the enforcement of statutory prohibitions is essential for deterrence.

C. Addressing Constitutional Issues

This section will discuss the constitutional concerns that opponents of banning child marriage have raised, and argue that banning marriage under eighteen is necessary and constitutional. Banning child marriage is reasonably related to a legitimate State objective because of the harm that child marriage causes. Therefore, a ban on marriage under eighteen would not impinge on (i) parental rights, (ii) religious freedoms, or (iii) the right to marry.

i. Parental Rights

The primary constitutional concern is that a child marriage ban would violate parents' Fourteenth Amendment Right to raise their children as they wish. Such a right was established in *Meyer v. Nebraska*, which invalidated a Nebraska statute that prohibited teaching children languages other than English before they had passed the eighth grade.¹⁷¹ The Court held that the

¹⁷¹ 262 U.S. 390 (1923).

statute violated the “liberty” protected by the due process clause of the Fourteenth Amendment.¹⁷² The Court evaluated the case based on whether the regulation of the liberty was reasonably related to a proper state objective, and found that the legislature’s goals of promoting assimilation and “civic development” were not adequate to justify interfering with the parents’ liberty to educate their children as they saw fit.¹⁷³ Parents have a right to influence their children with education, culture, and religion.

Attitudes toward marriage are often a critical part of a child’s upbringing. However, a parent’s right to raise their child as they wish should never give them the ability to force a child into a marriage. Forcing marriage on a child is very different from overseeing a child’s education. The liberty interest of the child in avoiding a forced marriage outweighs the interests of the parent. Unfortunately, children often face tremendous pressure from their parents to enter into a marriage, if not ostracism or threats. Because parents are supposed to protect their children from harm, it becomes imperative for the State to step in and protect children from the coercion of their parents. Parents who force their children into marriage have failed to protect their children and should be subject to criminal liability.

ii. Religious Freedom

In the context of religious arranged marriages, another constitutional concern is that banning child marriage would violate parents’ and children’s rights under the Free Exercise Clause of the First Amendment. The Court’s jurisprudence begins with *Prince v. Massachusetts*.¹⁷⁴ In *Prince*, a Massachusetts statute provided that no minor could sell merchandise on the street or in public places, and made it unlawful for any parents or guardian to

¹⁷² *Id.* at 399.

¹⁷³ *Id.* at 402.

¹⁷⁴ 321 U.S. 158 (1944).

allow a minor to work in violation of the law.¹⁷⁵ The defendant in the case was an aunt with guardianship of her niece, and she allowed her niece to sell religious pamphlets in the street.¹⁷⁶ Both the aunt and her niece were Jehovah's Witnesses.¹⁷⁷ The aunt claimed that the statute violated the religious freedom of her and her niece under the Free Exercise Clause of the First Amendment, and that the statute violated the aunt's parental rights to raise her niece as she wished under the Fourteenth Amendment.¹⁷⁸ The Court noted that "neither rights of religion nor rights of parenthood are beyond limitation" and held that the statute was constitutional.¹⁷⁹ The Court noted that when acting in the child's best interest, the State can restrict the parent's control by requiring school attendance, regulating child labor, and in other ways.¹⁸⁰ "The right to practice religion freely does not include the liberty to expose the...child...to ill health or death."¹⁸¹

Prince has remained as guidance in upholding State statutes that are necessary for the protection of children, and invalidating those regulations that do not serve a compelling state interest. Children are not required to salute the flag or say the pledge of allegiance if it violates their religious beliefs.¹⁸² In *Wisconsin v. Yoder*, the Court held that compelling Amish children to attend school past the eighth grade violated the Free Exercise Clause, reasoning that the children were educated at home, and an additional two years of compulsory education would not make enough of a difference to justify burdening their religious practices.¹⁸³ *Yoder* set forth a type of

¹⁷⁵ *Id.* at 161.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ *Id.* at 166.

¹⁸⁰ *Id.*

¹⁸¹ *Id.* at 166-67.

¹⁸² *W. Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943).

¹⁸³ *Wisconsin v. Yoder*, 406 U.S. 205, 214 (1972).

strict scrutiny test.¹⁸⁴ State regulation of religious parenting will only be upheld where “it appears that parental decisions will jeopardize the health or safety of the child, or have a potential for significant social burdens.”¹⁸⁵ However, a State could argue that a ban on child marriage did not target or disproportionately affect any religion and thus should be examined under rational basis review.

While the Supreme Court has invalidated unnecessarily burdensome statutes, in the case of child welfare, other courts have consistently recognized state power to protect children from harm. A New York family court in *In re Christine M.* held a father guilty of medical neglect when he refused to give his four-year-old daughter the measles vaccine in the midst of an epidemic.¹⁸⁶ Though the father claimed religious exemption, the court found that his church did not forbid vaccinations so he could not claim exemption.¹⁸⁷ In *Boone v. Boozman*, the Arkansas Eastern District Court upheld mandatory Hepatitis B vaccinations for school children, even against the mother’s religious objection.¹⁸⁸ The court held that “immunization of school children against Hepatitis B has a real and substantial relation to the protection of the public health and the public safety. The Court therefore finds that requiring schoolchildren to be immunized against Hepatitis B is a reasonable exercise of the State’s police power and is constitutionally permissible even though it affects plaintiff’s religious practice.”¹⁸⁹

The balance of religious freedom requires states to justify restrictive actions, and banning child marriage will require showing that it is necessary to protect the health and safety of children. The international community’s condemnation of child marriage suggests that States

¹⁸⁴ *Id.* at 233-34.

¹⁸⁵ *Id.*

¹⁸⁶ *In re Christine M.*, 595 N.Y.S.2d 606 (Fam. Ct. 1992).

¹⁸⁷ *Id.* at 611.

¹⁸⁸ *Boone v. Boozman*, 217 F. Supp. 2d 938 (E.D. Ark. 2002)

¹⁸⁹ *Id.* at 944.

could show a compelling government interest in prohibiting marriage under eighteen. Numerous international documents condemn child marriage and forced marriage as a human rights violation.¹⁹⁰ The Universal Declaration of Human Rights provides that “men and women *of full age* have the right to marry” (emphasis added).¹⁹¹ Additionally, “marriage shall be entered into only with the free and full consent of the intending spouses”.¹⁹² American children currently face what the international community has deemed a human rights violation, and they deserve to be protected. This need for protections suggests that a ban on child marriage would survive strict scrutiny.

iii. Marital Rights

The Supreme Court has also consistently upheld the right to marry.¹⁹³ In *Loving v. Virginia*, invalidating Virginia’s miscegenation laws, the court called marriage one of the “vital personal rights essential to the orderly pursuit of happiness by free men.”¹⁹⁴ Most recently in *Obergefell v. Hodges*, Justice Kennedy cemented the fundamental nature of the right to marry.¹⁹⁵ Thus, opponents of a child marriage ban worry that prohibiting marriage before a certain age would be unconstitutional.¹⁹⁶

Based on similar jurisprudence supporting the right to marry, opponents of a child marriage ban also argue that the Supreme Court’s jurisprudence has created a freedom of

¹⁹⁰ *Universal Declaration of Human Rights*, General Assembly Resolution 217 A (III), 1948; U.N. Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), 1979; *General Recommendation 21: Equality in marriage and family relations*, Committee on the Elimination of Discrimination against Women, 1994; *Minimum Age for Marriage and Registration of Marriages*, Convention on Consent to Marriage, 1964. *Convention on the Rights of the Child*, 1989.

¹⁹¹ Universal Declaration of Human Rights, General Assembly Resolution 217 A (III), Article 16(1), 1948.

¹⁹² *Id.* at Article 16(2).

¹⁹³ *Maynard v. Hill*, 125 U.S. 190 (1888); *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942); *Griswold v. Connecticut*, 381 U.S. 479 (1965).

¹⁹⁴ 388 U.S. 1, 12 (1967).

¹⁹⁵ 135 S. Ct. 2584 (2015).

¹⁹⁶ Luna, *supra* note 147.

intimate association through the First and Fourteenth Amendment.¹⁹⁷ Some feminists argue similarly that teen girls have a right to sexual autonomy and the government should not be regulating their sex lives.¹⁹⁸ The argument stems from a long line a case law, beginning with *Griswold v. Connecticut*,¹⁹⁹ which held that the right to privacy extended to a married couple's use of birth control, to *Lawrence v. Texas*, which held that private, consenting sexual conduct could not be criminalized.²⁰⁰ The right to marry and the right to privacy of intimate conduct are deeply intertwined, and raise legitimate issues for states trying to regulate marriage.

While Supreme Court has long recognized that marriage is a fundamental right, banning marriage below a certain age merely postpones the right to marry; it does not remove it. All states already restrict the right to marry.²⁰¹ All states ban marriage under the age of eighteen unless the minor meets certain requirements, generally parental consent or emancipation.²⁰² Many states require judicial approval for an individual under sixteen to marry.²⁰³ While an all-out ban cuts out grounds for exceptions, in reality it only delays marriage for a few years, at most.

The right to marry necessarily involves the right to consent to marriage. Marriage is not a command, it is a choice. A forced marriage infringes on the victim's liberty interests, and the victim's right to choose whether or not to marry. While it is not uncommon for teens to insist that they want to get married, this paper has explained that teens do not have the emotional maturity to consent to a marriage, are highly manipulable, and face tremendous consequences as

¹⁹⁷ Nancy Catherine Marcus, *The Freedom of Intimate Association in the Twenty First Century*, 16 GEO. MASON U. CIV. RTS. L.J. 269, 269 (2006).

¹⁹⁸ Frances Olsen, *Statutory Rape: A Feminist Critique of Rights Analysis*, 63 TEX. L. REV. 387, 390 (1984).

¹⁹⁹ 381 U.S. 479 (1965).

²⁰⁰ 539 U.S. 558 (2003).

²⁰¹ Tahirih Justice Center, *supra* note 37.

²⁰² *Id.*

²⁰³ *Id.*

a result of early marriage. Because of the damage caused by marrying too young, the benefit to children of having their marriage postponed vastly outweighs any infringement on their right to marry, and supports the States' legitimate interest in postponing that right.

In cases recognizing the privacy of intimate association like *Griswold* and *Lawrence*, the court dealt entirely with consenting adults.²⁰⁴ Statutory rape laws already restrict intimate association because society recognizes that below a certain age, a child is not mentally and emotionally capable of consenting to sexual acts. Statutory rape laws are not “paternalistic,”²⁰⁵ they are a response to the abuses of paternalism which historically encouraged young girls to marry much older men.²⁰⁶ The argument that a right to intimate association exists also supports the idea that children have the right to be protected from intimate association to which they cannot legally or emotionally consent. Child marriage is not like birth control or consenting adult sexual relationships, where no one is being harmed. Children who are victims of child marriage face tangible, life-long trauma. The most fundamental right of a child is to be protected from the victimization of child marriage.

VIII. Conclusion

Child marriage poses a particular threat in the United States because so many people are unaware of its occurrence. We condemn child marriage internationally, but we are not able to protect our own children. Until States take measures to enact proper laws, prosecute criminals, and educate the population, child marriage will remain a problem. Sara Tasneem is now pursuing her master's degree in public administration.²⁰⁷ Fraydi Reiss' non-profit, Unchained At Last, has

²⁰⁴ *Griswold*, 381 U.S. 479 (1965); *Lawrence*, 539 U.S. 558 (2003).

²⁰⁵ Olsen, *supra* note 198, at 390.

²⁰⁶ Sen Nag *supra* note 162.

²⁰⁷ Alter, *supra* note 1.

helped hundreds of child and forced marriage survivors.²⁰⁸ Yet, these women's triumphs remain bittersweet, because their victimization should never have occurred in the first place.

²⁰⁸ Rubin, *supra* note 72.