Child marriage, only for some

- An argumentation analysis of the arguments regarding child marriage in the Swedish political arena

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Abstract

This thesis deals with a sensitive and very relevant topic, child marriage with focus on the girl. To be exact, I study arguments concerning child marriage put forward in Swedish public debate over the past decade, arguments made in public commissions, by the government, by political parties and occasionally by non-governmental organisations. I analyse these arguments by using argumentation analysis, highlighting pro and con arguments and their baring and relevance by establish normative statements and arguments supported by empirical evidence. On the results of the analysis theories by Martha Nussbaum and Moller Okin are applied in order to clarify some of the normative arguments. My conclusion of this thesis is that the normative arguments are more often used than empirical arguments. Leaving me to think that further research on this topic is needed.

Key words:

Child marriage, children’s rights, international obligation, culture, equality
1. Introduction ......................................................................................................................... 4
  1.1 Purpose and research question......................................................................................... 5
  1.2 Theory & Method ............................................................................................................. 6
  1.3 Relevance for Human Rights .......................................................................................... 6
  1.4 Delimitations .................................................................................................................. 7
  1.5 Definitions ....................................................................................................................... 8
  1.6 Chapter Outline .............................................................................................................. 10
2. Method and Theory ............................................................................................................ 11
  2.1 Method ........................................................................................................................... 11
  2.2 Theory ........................................................................................................................... 12
    2.2.1 Feminist Internationalism ......................................................................................... 13
    2.2.2 Women & Multiculturalism .................................................................................... 14
3. Material ........................................................................................................................... 16
  3.1 Primary material ............................................................................................................ 16
  3.2 Secondary material ........................................................................................................ 17
  3.3 Previous researches ....................................................................................................... 17
4. Background ....................................................................................................................... 19
  4.1 Child marriage ............................................................................................................... 19
  4.2 International regulations ................................................................................................ 20
  4.3 Swedish regulations ...................................................................................................... 22
5. Analysis of the SOU 2012:35 .......................................................................................... 24
  5.1 Pro and con arguments ................................................................................................. 24
  5.2 Government Bill ............................................................................................................ 28
  5.3 Parliament debate ......................................................................................................... 30
  5.4 Normative arguments ................................................................................................. 32
  5.5 Empirical arguments ................................................................................................. 35
6. Analysis of the SOU 2017:96 .......................................................................................... 37
  6.1 Pro and con arguments ................................................................................................. 37
  6.2 Letters of comments ..................................................................................................... 40
  6.3 Parliament debate ......................................................................................................... 41
  6.4 Normative arguments ................................................................................................. 43
  6.5 Empirical arguments ................................................................................................. 43
7. Concluding analysis ......................................................................................................... 46
8. Summary .......................................................................................................................... 50
9. References ........................................................................................................................ 52
1. Introduction

12 million girls around the globe get married every year. Child marriage is a globally known problem, which many NGO’s and countries are trying to abolish\(^1\). The Agenda 2030, adopted by the United Nations, includes the goal to abolish all harmful practices which include child marriages. There are no international instruments today which strictly forbid marriages for people under the age of 18. They merely suggest that the age limit should be 18\(^2\).

According to the Swedish Migration Office, Sweden received more refugees than anticipated during 2015, which authorities were not prepared for\(^3\). In this wave, many young girls arrived with their older husbands seeking asylum in Sweden. In 2016 the Migration Office reported 132 cases of child marriages among the asylum seeking people: 3 cases involving young boys and 129 cases involved young girls. This was a problem the Swedish authorities needed to handle. The debate in Sweden today is whether the existing loopholes should be completely eliminated\(^4\).

It seems that all children within Swedish jurisdiction do not enjoy the same rights. While children with some form of connection to Sweden have no right to enter a marriage before the age of 18, children with no prior connection to Sweden can still be legally married in the country. The dilemma has been hard on politicians when trying to decide upon what rules and laws should be enforced on this matter. Shall all children in Sweden enjoy and be protected by the same rights and laws or are there reasons to manage some arrangements differently?

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1 UNICEF. (2018) *12 miljoner flickor gifts bort som barn varje år*.  
4 Ibid
1.1 Purpose and research question

The purpose of this thesis is to firstly analyse arguments put forward in two SOU inquiries from 2012 and 2017 and secondly the comments and argumentation put forwards from letters of comments, parliamentary debates and a governmental bill. The thesis will therefore focus on the inquiries, which are conducted by a committee summoned by a government decision and responsible to investigate matters in need of a political standpoint. The arguments from the public commission, political debates and the governmental bill are arguments and statements addressing the inquiry in question. My reason to focus on these groups are their importance in the making of law reforms. The inquiry is the first step to investigate the matter and possible changes. Letters of comments from organisations, in relevant areas to the matter, have often a deep knowledge in how the society works since they often work with individuals on a personal level. Political debates are where politicians put forward their arguments regarding the inquiry and by analysing the arguments it will reveal whether they focus on normative arguments or if they use empirical arguments. The reason for using two different inquiries and conducting two analyses is to look in to whether the arguments are the same or if it changed over the years.

This thesis covers both SOU arguments and Government arguments. This is relevant since SOU arguments are very fact based, driven by outcome from inquiries by several authorities, international organisations and more. Government arguments, however, becomes political due to the fact that the reports derived from SOU inquires gets “politically translated” to support each political party’s current standpoint and political program. It is necessary to cover SOU arguments and Government arguments since they both affect the processing of law reforms.

In order to achieve the purpose of this thesis I have conducted two research question. The thesis will be addressing:

- How does the argumentation regarding child marriage look concerning the inquiries SOU 2012:35 and SOU 2017:96?
- What normative bases and empirical evidence are found in the argumentations?

With this thesis, I believe that I can contribute to future students and perhaps politicians´ further knowledge concerning the Swedish government's way of forwarding normative and
empirical arguments regarding child marriage, human- and cultural rights and international law.

**1.2 Theory & Method**

The method for this thesis is an argumentation analysis, where I will analyse the argumentation regarding the handling and recognition of child marriages in the Swedish political arena. Further reading on method can be found in 2.1. In the final analysis I connect the two different analyses, I will also highlight arguments from a feminist theory, this can be further read in 2.2.

**1.3 Relevance for Human Rights**

Human rights should protect people from mistreatment, both from other people and governments. People have a right to privacy and to a family life without interference from the state. This can be seen as both positive and negative, as we all should be able to live our lives in whatever way we want. Still, in some parts of the world, this right can be used to ensure that young children get mistreated or sold as a bride to a stranger.

There are challenging contradictions in how child marriages are being debated in the frame of human rights. Child marriage is neither a right nor prohibited according to several international instruments. Children have according to CRC the right to education, health, and a family. Children often get deprived of these rights when they get married. Especially girls as they are often supposed to take care of their husband and his family. While in the European Convention on Human Rights (ECHR) states that all people have a right to a family and home. This article does not however specify age of the right holder and have by Swedish politicians already been referred to as an obstruction to the ban of child marriages.

There are several arguments that speak for a total ban of child marriage in Sweden. One of the major arguments focuses on the different treatment of children. While Swedish children have

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5 UNICEF 2018
a full protection against being married young, foreign children are entitled to other rights, that is suppose to ensure their right to practice their own culture. However, what can be used as a counter-argument is the child’s opinion. Studies have shown that when married children arrive in Sweden seeking asylum, many of them have not wanted to be separated from their husband’s. CRC states that a child’s opinion must be taken into consideration if they are affected by the decision. So the question, and the conflict, is whether a state’s opinion on what is best for the child weigh heavier than a child’s opinion about her own good.

The arising conflicts in how human rights is being referred to has become more urgent and relevant recently due to the increasing inflow of refugees into Europe. Sweden, as many European countries, are currently sharpening their handling of laws for immigrants including the respect of human rights.

1.4 Delimitations

Child marriage and forced marriage are often linked together as many of the marriages that include a child entail, some kind of encouragement or force from families or other people. I believe that it would become too broad if both the terms child marriage and forced marriage were included in this thesis. Therefore, I will only focus on the term ‘child marriage’, as there are marriages where children enter willingly as well. The second delimitation for this thesis will be on gender. It is well known that young boys marry as well. However, in the vast majority of the witnessed cases, the child is often a girl. The young girls are often considered easy to control and there are many studies which show how these marriages affects a girls’ health and future. I will therefore focus on girls in this thesis.

I have chosen to focus on the inquiry of SOU 2017:96 for its relevancy of today as it is the current inquiry which is used for the proposed law reform of 2018. The second inquiry I chose to analyse is SOU 2012:35. My reason for choosing that inquiry is that it was the last inquiry conducted before the law reform of 2014. That law reform of 2014 is also an important milestone since it made it impossible for children to get legally married in Sweden. I believe that these two inquiries go well hand in hand since the one from 2012 focus on marriages within Sweden's jurisdiction while the inquiry from 2017 focus on children arriving

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to Sweden being already married. I chose not to look in to previous inquiries as I believe it would make my thesis to broad and difficult to connect arguments to different statements.

The thesis also includes three selected letters of comments regarding SOU 2017:96. These have been selected to cover a broad variety of influencing authorities and organisations and is explained in more detailed in the material chapter; 3.1.

1.5 Definitions

**Special reason** *(for recognising a marriage involving an under aged person)*: An exception for allowing a marriage involving an under aged person if the marriage was entered in a country where the parties have residency or citizenship and deemed legal in the country and if neither of the parties have any connection to Sweden regarding residency or citizenship. This regulation could be addressed as long both parties attended the marriage ceremony and entered the marriage willingly. This regulation was a result of the law reform of 2004. In 2015 there were 132 cases of child marriages where this regulation was addressed.

**Extraordinary reason** *(for recognising a marriage involving an under aged person)*:

This regulation is today being augmented to replace the Special reason regulation because of the current work in restricting foreign child marriages in Sweden. The purpose for this regulation is to still be able to recognise some child marriages when extraordinary situations occur. There are no clear examples on such extraordinary situations stated in the SOU 2017:96 besides that there shall be obvious and strong reasons. Having a joint child is not reason enough to recognize a foreign marriage. If a denial of the marriage, on the other hand, would cause serious consequences for the parties, and their child, extraordinary reasons can be claimed.

**NGO**: Non-Governmental Organisation

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8 Migrationsverket. (2016) *År du gift?* p.2
9 Ibid p.62
10 BusinessDictionary.com, 2018
IÅL: International regulation regarding marriage rules – Lag om vissa internationella rättsförhållanden rörande äktenskap och förmyndarskap. IÅL describes the laws regarding international conducted marriages within the Swedish jurisdiction.\textsuperscript{11}

CRC: Convention of the Right of the Child\textsuperscript{12}

CEDAW: Convention on the Elimination of all Discrimination and Violence against Women\textsuperscript{13}

ECHR: European Convention on Human Rights\textsuperscript{14}

SOU: Swedish public commissions – Statens offentliga utredningar\textsuperscript{15}

EU: European Union\textsuperscript{16}

UN: United Nation\textsuperscript{17}

\textsuperscript{11} SFS 2014:913, Lag om vissa internationella rättsförhållanden rörande äktenskap och förmyndarskap 1904:26, Stockholm: Justitiedepartementet


\textsuperscript{13} Convention on the Elimination of all Forms of Discrimination against Women, (1979), New York: United Nations

\textsuperscript{14} European Convention on Human Rights (1950), Rome

\textsuperscript{15} Sou.gov.se, n.d

\textsuperscript{16} Europeiska Unionen, n.d.

\textsuperscript{17} Un.org, n.d.
1.6 Chapter Outline

**Chapter 4**, information can be found regarding the background of child marriage. What it is, who does it involve, and consequences of it. In the same chapter, I describe international regulations and what different international instrument say about child marriage. The chapter ends with Swedish regulations. In this part I bring up important changes regarding marriage in Sweden through time, and how the law is formed today and consequences with it. The Swedish law, however is hard to find in English. So the laws I am mentioning in my thesis is translated by myself. And I would like to reserve myself for minor errors.

**Chapter 5**, is the chapter where the first analysis occurs. In this chapter, I analyse the SOU 2012:35 by finding theses and pro and contra arguments. Following with an analysis of a political debate and the government bill. At the end of this analysis and chapter, I look at what normative basis and empirical arguments can be found in the material used for the analysis.

**Chapter 6**, is where I analyse SOU 2017:96. Similar to chapter 5, I start by finding theses and pro and contra arguments. Arguments from parliamentary debates are analysed as well, followed by letters of comments as SOU 2017:96 is still under investigation and debate. The chapter concludes with a normative basis and empirical arguments to see whether the arguments put out in the inquiry have any support.

**Chapter 7**, includes the final analysis where I analyse the arguments presented in chapter five and six as well as looking at how my chosen theories would argue with these types of arguments.

**Chapter 8**, Summary of the thesis and covers if my research questions are answered.
2. Method and Theory

2.1 Method

For this thesis, I will be using an argumentation analysis method. In my primary sources, which will be the governmental inquiries, political debates, and letters of comments. I will locate different theses and look at pro et contra arguments. These arguments will highlight what the investigator of the inquiry deem to be important. For this type of method, I will be using the book; “Argumentationsanalys – Färdigheter för kritiskt tänkande” written by Gunnar Björnsson, Ulrik Kihlbom and Anders Ullholm, as a guideline. The pro and contra is a way of structuring argumentations. The method is mainly used to structure up to the arguments which are seen in the primary material. The arguments will circle around the conflict which exist between Swedish law, international and private law and moral and ethical perspectives regarding the arguments of child marriage in Sweden. This method has been chosen because of its relevance to this type of thesis as it is both clear and concrete. To begin my thesis, I read through my material to get an overview of the situation and argumentation and then I select the three theses for each analysis, which further will be written as (T). The theses for the first analyses, where SOU 2012:35 is analysed were chosen due to their big impact on the law reform 2014 (The marriage dispensation should be removed, Child marriage should be criminal and The exception for special reasons should remain) and inquiry SOU 2017:96 (The exception rule for extraordinary reasons should be removed, Foreign child marriages shall not be recognised if one of the parties were under the age of 18 when arriving in Sweden and An overall non-recognition, no matter connection, and age at the time of arrival in Sweden).

After choosing my theses I analysed pro and con arguments for each thesis, leaving it with a conclusion of the investigator’s opinion. The pro arguments will be used to highlight the arguments which suggests a total ban of child marriage while the contra arguments will be used to highlight arguments which suggest that a vent allowing some marriages to be recognised.

Example of an argument in the 'Marriage dispensation should be removed' theses:

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Pro: ‘By having the dispensation rule children can be pressured into marriages’.
Contra: ‘An absolute ban against child marriages can be seen as a ban to live in accordance to its cultural and its values’.

After analysing the pro and contra arguments of the thesis I located the normative arguments which did not have any support from other researches and empirical arguments which was supported by different researches, from my primary material and analysed the evidence and verification of them. Normative arguments are used to describe what is desirable, or what something ought to be. Any argumentation pro or contra, whether they are normative or empirical, are driven by individual perceptions.
To ensure the verification of the normative argument can be to critically investigate how the argument is compatible with other normative thoughts. To do this, one can look into if an argument contravenes a general moral norm or if it is supported by a similar norm e.g. ‘child marriages would disappear if all children got an education’. In this thesis, the normative arguments will be about how Sweden should work with the matter of child marriage, and what the best outcome would be when deciding new laws and work methods with child marriage. Normative arguments do not need to be supported by facts or evidence, unlike empirical arguments. Empirical arguments are based on facts and evidence, that a matter has occurred, is occurring or will occur. However, empirical arguments can be used to disprove a thesis. The relevance of the argument depends on which background support are sustainable i.e. ‘the majority of child marriages involves underage girls’.

2.2 Theory

In order to answer my research question, I conclude my thesis in chapter seven by applying Martha Nussbaum's theory of feminist internationalism and Susan Moller Okin’s theory of multiculturalism. I chose feminist internationalism because of its focus on cross-cultural differences. I believe that by applying this theory I get a better understanding about the cultural differences when analysing the material regarding child marriage in Sweden, as majority of the children who is today registered as married in Sweden is from different countries and cultures.

19 Ibid.
My reasons for choosing the second theory of multiculturalism is because of its focus on individuals within groups and gender inequality. While the first theory is more broad, this goes more in to depth in cultures, and looks at inequalities which helps me to interpret some of the normative arguments presented in the analysis. I chose to combine these theories, because of their relevance to children’s rights and women’s position in societies, which is a central theme in this thesis. Both theories contribute to a greater understanding of the normative arguments that are presented in chapter four and five.

The purpose for my use of these theories is to see how the normative arguments in chapter five and six are described in relation to culture, rights and children and women’s position in societies.

2.2.1 Feminist Internationalism

Martha Nussbaum’s theory explores the approach to international development and how it should be assessed to recognise the problems women face in most of the worlds nations. The aim of the theory is to provide basic constitutional principles that should be implemented and respected by the worlds governments and by measuring cross-cultural quality. The principles focused on, is human capabilities, that is, what people are able to be and do. Meaning, that people should treat each other as an end and not as a tool to someone else’s end. The capability list contains ten capabilities which includes all sorts of dimensions, such as, health, senses, bodily integrity and relation to other species e.g. animals. An example of Nussbaum’s ten capabilities, are – bodily integrity i.e. one’s body should be secured from all forms of assault, including child sexual abuse\textsuperscript{20}. Women have and are often treated as tools of someone else’s end, rather as and ends in their own right. Women and young girls are often seen as housewives, forced to take care of their house, children and obey to their husbands needs.

The capability approach is universal, meaning, they are important for all citizens, in every nation. Meaning that all people should be equal to the law no matter citizenship i.e. if child marriages is deemed illegal in Sweden, it should be illegal to all. An important argument in the current political debate regarding preserving the possibility for only some people to stay married would go against Nussbaum’s theory about equal treatment.

\textsuperscript{20} Nussbaum, Martha (2000), \textit{Women and human development}, University of Chicago, p.77
In this theory, Nussbaum studies inter-cultural groups, how rights differ and what responsibilities governments have to protect its residents. By using an international feminist theory, I can analyse and get a greater understanding of how arguments can be made regarding preserving or abolishing cultural practices. Nussbaum does, however not believe that all traditional practices are worth preserving, just because they are old and have existed through generations. But, at the same time, she argues that women should have the right to continue practicing its culture as long as she chooses it herself. Nussbaum stresses the need to determine whether a practice is worth preserving or not. In order to do that, a set of criteria is in need of development to determine if the contribution weigh more than the harm it causes\(^{21}\). Nussbaum describes children as captives in the family. She points out the difficulty to know whether anything children do in the family can be considered ‘voluntary’. She advocates laws that are protecting marital consent and laws that ban child marriage and believes it as appropriate expressions of state concern for people within a state’s jurisdiction\(^{22}\). In the current political debate Sweden’s international obligation receives a big attention. It might be plausible to believe that Nussbaum would advocate Sweden to disregard its international obligation in order to protect children from marriages and other harmful practices which might be legal in the child’s country of origin.

### 2.2.2 Women & Multiculturalism

Susan Moller Okin theory present an interesting insight regarding women and multiculturalism. Okin sees an issue surfacing, cultural claims clashes with the norm of gender equality that is endorsed by liberal states\(^{23}\). Okin describe feminism as the belief that women should not be disadvantaged by their gender. They should have the same human dignity as men, and they should have the same right as men to live their lives as freely as men do. This does not necessarily mean that Okin would be against child marriages, as long as the girl have the same rights as the husband and can live as freely as he does. I.e. if he studies she should be able to study if she desires it.

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\(^{21}\) Ibid p.51  
\(^{22}\) Ibid p.278  
Multiculturalism is described as that minority cultures or ways of life are not adequately protected by the practice of ensuring the individuals rights of their members, and because of that, these groups should also be protected by special group rights or privileges\textsuperscript{24}.

Okin writes in her book ‘Is multiculturalism bad for women?’ that there is a tension between multiculturalism and feminism i.e. their commitment to group rights for minority cultures. Group rights should be based on the rights of individuals. Group rights advocates tend to focus more on differences between groups rather than differences within groups and barely pay any attention to the private sphere, leaving many women vulnerable. Her primary concern is that states will fail to protect women and children from minority cultures if they are granted group rights. If group rights are granted to a minority to ensure their survival by not being subjected to external restrictions, it is plausible to think that internal restriction is enforced on members meaning that by granting rights to a group as a collective rather than individual rights, would violate women’s rights and an equal protection of the law\textsuperscript{25}.

Okin stresses the need to look into inequalities between genders in groups, as these problems are less likely to surface to the public. Policies developed to respond to the needs of cultural minorities must provide an adequate representation for the less powerful members, to ensure those members well-being. Unless women are fully represented in negotiations regarding group rights, their interests might be harmed rather than promoted\textsuperscript{26}. From this argument it would be plausible to think that Okin would be against child marriage, as children is often dependent on their family, and are shaped by the families believes, it might teach the child that being abused and less valued than men are normal.

\textsuperscript{24} Ibid. p.10
\textsuperscript{25} Ibid p.20
\textsuperscript{26} Ibid p.24
3. Material

3.1 Primary material

The primary material for this thesis consist of legal material such as inquiries from the Swedish public commissions (SOU) SOU 2012:35 and SOU 2017:96 and political materials such as letters of comments. Legal texts are unbiased to political desires as the SOU’s are, while political texts describe the desires the writers want. The SOU’s is a committee put together by a government decision. The committee examine how the situation regarding child marriage look like today in Sweden. The current national law is examined, the inquiry looks at what the international instruments such as CRC, CEDAW and ECHR say, as well as looking at other countries legislation regarding child marriage. Law reforms are suggested and analysed in the inquiries, consequences for both parties involved and for Sweden’s international obligation are analysed. After the inquiry is finalized it will be sent out to several authorities at the national and local level, NGO’s and relevant firms for feedback. These feedbacks are called letters of comments. The comments are political in their nature where the feedback is formed by the authors political point of view.

In the SOU 2017:96 analysis I will look at letters of comments regarding SOU 2017:96. I will not use all letters of comments but will select three. The letter of comments that I have chosen are written by the Ombudsman of Children, the Swedish Women Lobby and the Swedish refugee agency. The reason for this selection is because of the variety. One is a governmental authority, one is an NGO and on is a legal firm. Letters of comment will only be used in the analysis of SOU 2017:96 as it is still under debate whether if a law reform will take place or not. For the analysis of SOU 2012:35, I will use the governmental bill for the law change of 2014 instead. I do not believe that it will make much difference when using different material in the analysis as many of the argumentation that is found in the government bill was used in several of the letters of comments as well. Another type of material I will be using for both analyses is parliament debates. Using political debates is a great way to find out about what

\[\text{SOU 2012:35. } \text{Stärkt skydd mot tvångsäktenskap och barnäktenskap. Stockholm: Regeringskansliet}\]
\[\text{SOU 2017:96. } \text{Utvidgat hinder mot erkännande av utländska barnäktenskap. Stockholm: Regeringskansliet}\]
\[\text{PROP 2013/14:208, } \text{Stärkt skydd mot tvångsäktenskap och barnäktenskap samt tillträde till Europarådets konvention om våld mot kvinnor. Stockholm: Justitieutskottet.}\]
position the political parties takes in this matter. With this material, I will outline the arguments of the political parties and investigate further if they have any empirical evidence of their arguments.

3.2 Secondary material

Throughout this thesis, I will be focusing mostly on the primary material and use a secondary material to complement and verify the arguments from my primary material in the analyses. The secondary material I use is journal articles to give some background information on the topic of child marriage and books to describe the theories. I also use international legal documents which are shortly mentioned in the SOU to show how other countries handle child marriages in regards to article 8 in ECHR and how this can be used as empirical evidence when arguing about Sweden’s international obligations. The court decision used in the thesis is from the European Court of Human Rights - CASE OF Z.H. AND R.H. v. SWITZERLAND. Legal documents are usually seen as primary sources. But since my mission is to find out the bearing of the empirical arguments, I will consider the legal documents as secondary material in this thesis.

Even though international aspects are not in scope of this thesis, they are still reasonable to be included. SOU 2017:96 involve in large extent foreign child marriages in Sweden.

3.3 Previous researches

There are many types of research that can be found on the topic of child marriage. Most research focuses on child marriages in developing countries where women have a lower status than men, what explains the practice and what is done to change it. Keywords throughout the majority of the researches are health, education, law, and human rights. In an article

31 Sabbe, Temmerman, Brems & Leye 2014, p.175
32 Mutyaba 2011, p.351
34 Welbourne & Dixon 2016, p.834
written by Megan Arthur discusses “Child marriage laws around the world” and the problematic about it. She critiques the UN and EU for not formulating the articles in the convention enough. For example, article 16 in United Nation Declaration of Human Rights states that “men and women of marriageable age shall have the right to marry and found a family, according to national laws governing the exercise of this right.” Meaning that states have the right to decide what marriageable age will be. Leaving a window for states to set a lower age than the recommended age, which is 18. Arthur points out that even though some states’ set the recommended age limit, children can still get dispensation to get married if they get a parents’ permission. The problematic with this according to Arthur is that it is often the parents who want their child to get married. There are several types of research about how to stop child marriages with a focus in the developing world. Ruth Gaffney-Rhys is another scholar how researched how to abolish child marriage around the world. She means that by incorporating compulsory education can reduce child marriages. By giving children a free education will help them to become educated, independent and a future provider. This will not only help the children from being married at a young age but also a country's economy as educated people often tend to get a job which will help to provide for the family which will reduce poverty. As mentioned above many of the researches focuses on developing countries, and not much on developed countries like Sweden and the problems when it come to child marriage. For this reason, I decided to look closer into how Sweden handles the matter of child marriage, more exactly how the government and the political arena forwards their arguments when debating over a new law.

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4. Background

4.1 Child marriage

Child marriage is a global problem and is practiced in most parts of the world. The definition of child marriage is when a person under the age of 18 is married, either formal or informal. In the majority of the child marriages, there is a young girl who is married to a boy or an older man. Today there are around 650 million women around the world who got married as minor girls. Approximately a third of them became married before the age of 15.38

Some of the marriages are forced upon the children, which means that the child will be separated from family and friends. If it is a girl, she will move in with her husband’s family. After the marriage has been completed the girl is expected to become a woman who takes care of the house by cleaning and cooking instead of studying and playing, like the child she should be. Often the girl bride has to leave school, in order to take care of her husband’s needs. By leaving school, she is also more likely to be subjected to domestic violence and early pregnancies which can cause complication. The girls’ bodies are still evolving and are usually not ready to give birth at such a young age. They are usually not mentally prepared and not equipped to become mothers. They are at risk to get more severe health problems during the pregnancy and the childbirth, due to poor healthcare which can reduce the chance for the mother and the babies’ survival39.

By becoming married at a young age, the girls are being deprived the chance to learn, grow and recognize their own potential to be independent. Having to depend on others for their entire life, the girls are being disempowered and not being able to support for themselves or their family40.

Many countries have the age limit of 18 for marriage. However, there are often loopholes where parents, or a judge, can consent a marriage. The majority of the marriages happens in developing and poor countries. For example in, African, or in Asian countries.41

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38 International Centre for Research on Women, ‘Facts and Figures’.
39 UNICEF (2018)
41 Ibid.
4.2 International regulations

There are many international instruments that address the issue of child marriage, both formal and informal. In 1948 the United Nation (UN) adopted the Universal Declaration of Human Rights which states in article 16(1) that “men and women of full age have the right to marry”\(^\text{42}\). In the International Convention of Civil and Political Rights and the European Convention on Human Rights (ECHR) regulate the right to marriage to “men and women of marriageable age”. This has been discussed by scholars throughout the years as this is a vague description, leaving countries to decide for themselves whether marriageable age or full age, mean when a person reach a legal age or when the person reach sexual maturity\(^\text{43}\).

In article 16(2) in the Convention on the Elimination of all Forms of Discrimination against Women (1979) it is stated that “the betrothal and the marriage of a child shall have no legal effect”\(^\text{44}\). Yet, it is not clarified the definition of a child. Which also does not give a clear guidance in which marriages should be forbidden\(^\text{45}\). In 1962 the UN adopted the Convention on Consent to Marriage, Minimum Age of Marriage and Registration of Marriages. Article 2 in this convention states that contracting states “must take a legislative action to specify a minimum age for marriage”\(^\text{46}\). Although contracting states are obliged to determine a minimum age for marriage they do not mention a suggested minimum age. In 1966, the United Nation General Assembly made a recommendation that a minimum age of marriage “should not be less than fifteen”\(^\text{47}\) and that “no marriage shall be legally entered into by any person under the age except where a competent authority has granted dispensation … for serious reasons”\(^\text{48}\). Laws in most of the UN member states comply with the recommendation, as very few of the member states have specified a minimum age of marriage below the age of fifteen. However, there are still state’s that allows children below the age of fifteen with the consent of the parents or a competent authority to get married. In 1989, the United Nation

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\(^{43}\) Gaffney, (2010), p.365

\(^{44}\) Convention on the Elimination of all Forms of Discrimination against Women, (1979), New York: United Nations. article.16.2

\(^{45}\) Ibid.

\(^{46}\) Consent to Marriage, Minimum Age of Marriage and Registration of Marriages (1964), New York: United Nations article. 2


\(^{48}\) Ibid.
adopted the Convention on the Rights of the Child. Article 1, describes that “a child is defined as a person under the age of 18, unless under the law applicable to be the child, maturity is attained earlier”\(^{49}\). UN organisations like UNFPA and UNICEF define child marriage, which involves a person under the age of eighteen.

Paragraph 23 of General Comment 28 shows that “the minimum age of marriage should enable the individual ‘to make an informed and unforced decision”\(^{50}\). However, given those young children are not adequately mature to provide an informed consent, jurisdictions that permit children to marry thus violates the international instruments that require consent from both parties to agree to a marriage\(^{51}\).

Several international instruments require parties to a marriage to provide their ‘free and full consent’. CEDAW expresses that “all discrimination towards women should be eliminated”. Including matters relating to marriage, which could include a minimum age\(^{52}\).

Article 34 in CRC, provides the right to protection from sexual exploitation and sexual abuse. This can be argued because usually after a marriage, the girl is subordinated to her husbands needs, which usually includes rape\(^{53}\). Article 24, bring up the right to health and protection from harmful and traditional practices. Sexual intercourse can be a danger for a young girls’ health\(^{54}\). Article 19 forbids all types of physical or mental violence, injury, abuse, maltreatment or exploitation\(^{55}\). Article 28(1) can also be seen as something that can protect girls from being married at a young age. The article provides the right to education\(^{56}\). As mentioned above, not all girls are being sent to school since their parents might not afford it or it is seen as something unnecessary as the girl is bound to be a housewife and will not need to know how to read or write. Article 7(1) bring up the importance of, and the need for, every child being registered immediately after birth. As explained in the background, not many states’ have a functioning system for registering births and marriages, which makes it easier for children to be married at a young age\(^{57}\).

\(^{50}\) Human Rights Committee, (2000) General Comment no.28, Equality of rights between men and women, 23§
\(^{51}\) Gaffney, (2010), p.365
\(^{52}\) CEDAW, (1979)
\(^{53}\) CRC, (1989), article. 34
\(^{54}\) Ibid. article.34
\(^{55}\) Ibid. article.19
\(^{56}\) Ibid. article.28.1
\(^{57}\) Ibid. article.7.1
4.3 Swedish regulations

Until 2004 there were no explicit laws about the material conditions for the acknowledgment of a foreign marriage. The law became stricter in 2004 in chapter 1. 8 a§ IÄL. The law states that marriages that have been entered after May 1st 2004, and that “a marriage that have been entered according to foreign law will not be recognised in Sweden if there, at the time of the marriage, was a hinder to it according to Swedish law – for example, if one of the spouses was a minor, if at least one of the spouses was a Swedish citizen or had permanent residency in Sweden”\(^58\). But, an exception was introduced on special grounds. Causes for exceptions could, for example, be that spouses might have a weak connection to Sweden and that the recognition of the marriage in Sweden might happen after the spouses have been married for a while. And by not acknowledging the marriage may result in serious consequences for the spouses. Nevertheless, there might be children in the marriage that need to be taken into consideration\(^59\). Recognising a foreign conducted marriage in Sweden entails all the legal effects that come with a marriage. If the marriage is not recognised in Sweden the spouses will no longer be married within the Swedish jurisdiction. However, the same couple whose marriage is not recognised in Sweden can still be married in another country, i.e. limping marriage\(^60\). In 2009 a change was made in Chapter 1. 8§ which made it harder to legitimate marriages that were conducted abroad where one of the spouses had either a citizenship or a permanent residency in Sweden or if there was any hindrance to the marriage according to Swedish law\(^61\).

A denied marriage can affect the process when it comes to family reunification according to the Alien act\(^62\). It can also come into conflict with Sweden’s international obligations, which is in the national legal system regulating the legal problem with a connection to a foreign country. It governs which countries civil laws will be applied by a Swedish court when a legal case has a connection to one or more countries.\(^63\). In 2014, the parliament made stricter laws

\(^{58}\) Ibid.
\(^{59}\) SOU 2017:96, p.61
\(^{60}\) Ibid. chapter 1.7§
\(^{61}\) Ibid. chapter 1.8§
\(^{62}\) SFS 2018:1294, Utlänningslagen, 2005:716, Stockholm: Justitiedepartementet
\(^{63}\) SOU 2017:96, p.66
to protect people against forced marriages and child marriages. It had been made clear that the previous laws had loopholes which made it harder to fight the marriages. For example, the possibility for children to get dispensation by an authority was abolished. The abolishing of dispensation had as a purpose to hinder children to be pressured by others to get married before reaching legal age\textsuperscript{64}. As well as the laws around foreign conducted marriages were tightened. Two new criminal acts were added as well in chapter 4. 4c§ forced marriage\textsuperscript{65} and 4 d§ misleading to forced marriage trip\textsuperscript{66}.

\textsuperscript{64} Ibid. p.14
\textsuperscript{66} Brottsbalken, chapter 4.4d§
5. Analysis of the SOU 2012:35

The SOU 2012:35 inquiry was decided at a government meeting 20th of May 2010. According to the government, an inquiry was needed to strengthen the protection against child marriages and forced marriages. The scope of the inquiry was to gather information about these types of marriages and find out who is affected, the background of why child marriages occur and the scope of the problem. With the collected information the inquiry shall propose remedies to counteract child marriages. The proposal should include relevant criminal, civil and international private law as well as suggestions for constitutional changes that are needed for a stronger protection against child marriages. The inquiry was submitted in May 201267. The inquiry commission suggests that child marriage, as well as illegal marital relations, shall be criminalised. These are called ‘informal marriages’, and have no legal effect in Sweden, they are only married in their own eyes and their culture or religion. The possibility to get dispensation to enter a marriage under the age of 18 should be removed68. The inquiry does however not want to put any restriction regarding Sweden’s recognition of foreign marriages, which are considered legal in the country where it was conducted. The suggestion for the removal of the dispensation rule was supported by the government bill69.

5.1 Pro and con arguments

(T) The exception for special reasons should remain.

Con: If the rule for dispensation for minors will be removed, it can also be argued for a removal of the exception rule regarding foreign conducted marriages with a minor in chapter 1. 8 a § IÄL. Why should someone get dispensation for a marriage which was conducted in another country, even if there is a connection to Sweden if one cannot get it for a marriage with minors in Sweden? In 2012 a dispensation could be given after a marriage was

67 SOU 2012:35. p.1
68 Ibid.
conducted if a child could not marry in Sweden. It is plausible that a child, which was denied dispensation in Sweden, can travel to another country to get married and then return to Sweden and gets the marriage recognised according to the exception rule in chapter 1. 8 a § in IÄL.\textsuperscript{70} What is noteworthy is that the trial for dispensation and the trial regarding the special reason for recognising a foreign marriage, do not have to look at the same circumstances. When the recognition is actualized, the situation can be different than it was when the dispensation was submitted\textsuperscript{71}.

\textbf{Pro:} Removing the exception for ‘special reason’ can give some serious consequences if there is no valve that allows a recognition in some cases, even if the main rule is that marriages should not be recognised. Especially when it comes to marriages who has lasted for some time and the parties have children together as well as a common household. A non-recognition in Sweden can cause a negative change in the partners private- and family life, for example, they lose all marriage rights in Sweden i.e. inheritance\textsuperscript{72}.

With consideration to the regulation in the ECHR, which is included in the Swedish law, the exception rule should remain. A ban against the exception rule can lead to certain effects which in some cases may contradict the ECHR regulation about the right to private- and family life (article 8). Authorities can only infringe on the enjoyment of this right in cases of national security, public safety or when otherwise supported by the law. The right of children to marry cannot be derived from the European regulation. However, married children can have started a family, which is protected by article 8. There will be cases where an exception is necessary for Sweden to not risk making us guilty of infringing article 8, the right to family life\textsuperscript{73}. One example can be marriages that have existed for a long time and the parties have children together.

\textit{(T) Child marriage should be criminal}

In 2012, child marriage was not criminal. An inquiry of trafficking suggested in 2008 that there should be criminal charges for legal guardians that allow their children, under the age of

\textsuperscript{70} IÄL. 1.8a§
\textsuperscript{71} SOU 2012:35, p.235
\textsuperscript{72} Ibid p.230
\textsuperscript{73} Ibid p.236
18, to enter a marriage. The suggestion was denied. When it comes to child marriages in Sweden, it should not be happening at all. The law will be strengthened if the dispensation rule will be removed. There will still exist challenges as all children, within the Swedish jurisdiction, shall be protected by the Swedish law, despite having its background in another country, and/or risk being married by its parents or other relatives in their country of origin. Other relevant problems are that some marriages entered in a religious or traditional form which does not consider legal in Sweden. However, they might still be married “in their mind”. The suggestion is that criminalization, of some sort, should be incorporated in the Criminal Act\textsuperscript{74} regarding forced marriage and child marriage.

**Pro:** Criminalization of child marriages can help families who need assistance to resist pressure from others to marry an underage family member. In many cases, people outside the core family are active in the planning of a child marriage. By criminalizing child marriages, the family can point out that it would be criminal to be involved in marrying an underage person. According to the investigator, this can entail that marriages with children, where one of the parties have a connection to Sweden, will decrease.

Criminalizing child marriage can have a positive effect in relation to various authorities and NGO’s, who strive to get in contact with individuals involved in the problem. The investigator has found that in some cases children have been married without the authorities have intervened or even reacted. By a criminalization, it can lead to bigger awareness, which hopefully would make the society act.

However, for under the age of 15, there should not be any objections against a criminalization even though a child enters a marriage willingly. In Sweden, children below 15 cannot give consent to sexual activities. There are strong reasons for a child, who cannot give consent to sexual activities, to not be able to give consent to a marriage. Especially as most marriages assume to include some forms of sexual activities.

Children under the age of 18 do not always have the right to decide in certain questions. Children are therefore dependent on their parents or guardians who are responsible for the children’s care and upbringing. For these reasons, child marriage should be a criminal act\textsuperscript{75}.

\textsuperscript{74} Ibid. p.29
\textsuperscript{75} Ibid. p.336
**Con:** Criminalizing child marriage is far more complex than the pro argument suggests. Especially when children are in their upper teens. What if a 17-year-old marries an 18-year-old by free will? It seems unreasonable to punish the 18-year-old. At the same time, the parents’ responsibility, to make sure that their child does not get married before turning 18 years, need to be highlighted. Even though it is believed that many of the child marriages include some kind of force, we should not forget that there actually are children who enter marriages willingly\(^\text{76}\).

Another argument against the criminalization of child marriage is that it can lead to that some children, which are worried about being married, will be less prone to seek help. The risk of its family members being reported to the police and punished can lead to that vulnerable children refrain from asking for help. This can get a reversed effect, resulting in a child marriage, which could have been hindered, instead will be concluded. It can also result in children, about to be married in other countries, facing the risk in not being allowed to return to Sweden since the parents or others who are involved in the marriage can be punished.

Informal marriages can be hard to criminalize. Because of this the perpetrator can refrain from a legal marriage and conduct a religious or traditional ceremony. These marriages might not have a legal effect and status in the society but for their surrounding, it can be as binding as a legal marriage. As a consequence of this, authorities will lose insight of marriages including children. The perpetrators will be walk free and unpunished\(^\text{77}\).

**(T)** The marriage dispensation should be removed

**Pro:** By having the dispensation rule children can be pressured into marriage. A benefit with the abolishing is that children who do not want to get married, or parents who want to refrain from pressure from others to marry their children, will be given better possibilities to make their will heard\(^\text{78}\).

The possibility for dispensation means in practice that the legislation does not give the same protection to children from different religious, cultural or ethnic minorities as to children within the majority population. All children should be given the same protection by the law. It can occur that parents want their daughters to marry someone of their choice, that the girls are

\[^{76}\text{Ibid p.109}\]
\[^{77}\text{Ibid. p.208}\]
\[^{78}\text{Ibid p.205}\]
pressed into pregnancies, which increases the chances for dispensation. Early parenthood increases the risk for negative consequences. For example, lower educations and alienation\textsuperscript{79}.

**Con:** By removing the dispensation, the Swedish society can be regarded as excluding people as there are many people that belong to other ethnic or religious groups than the majority. There are minorities in Sweden where early marriages are a norm, or where the sexual life only can be practiced within a marriage. An absolute ban against child marriages can be seen as a ban to live in accordance with its culture and its values\textsuperscript{80}. Young persons in their social settings can be in a tough position, for example, getting pregnant. This speaks for the dispensation to remain. There are cultures that focus on honour or religion which can restrict children from living her own life. A girl who gets pregnant or discovers having a sexual relationship with someone without being married can be a problem. Marriage may be their only option to avoid being subjected to judgment, threats, violence or alienation from its culture or religion\textsuperscript{81}. By removing the dispensation rule there are chances that young people will travel to another country, willingly or unwillingly, to enter a marriage. Following risks can be that by not allowing young people to enter a marriage may drive them to undergo a religious or traditional ceremony, which does not have a legal validity. This would mean that they still consider themselves being married according to their culture and/or religion. Removing the dispensation rule would not decrease the number of minors entering marriages, but the Swedish authorities would lose some insight. These informal marriages also entail that the parties can after not many years of cohabiting enact the Marriage Act’s rules about the cohabitation and alimony\textsuperscript{82}.

**5.2 Government Bill**

In 27\textsuperscript{th} March 2014, the Swedish government submitted a bill to the parliament regarding ‘Strict protection against forced marriages and child marriages as well as the access to the ECHR regarding violence against women’. In the bill, the government proposes civil and

\textsuperscript{79} Ibid p.28
\textsuperscript{80} Ibid p.206
\textsuperscript{81} Ibid p.207
\textsuperscript{82} Ibid p.208
criminal law changes to strengthen the protection against forced marriages and child marriages. It is proposed that children will no longer be able to get dispensation to get married and the ability to recognise foreign child marriages should be stricter. It is also suggested to incorporate a law that would criminalise child marriage. This was however ruled out in the bill\textsuperscript{83}.

It could already be stated by the law reform in 2004, that relatively few dispensations were given out for marriages. An\textsuperscript{2} investigation shows that since 2000, applications for dispensation have been cut down by more than a half. The government states that there are fewer girls and boys that apply for dispensation and very few of those applications are granted. According to the government, this gives support for the idea that it is no longer motivated to keep the possibility to apply for dispensation. It is neither considered a good thing that dispensation can be granted depending on where in the country the person lives. Both these cases speak, according to the government, for a complete abolition of the possibility for people under the age of 18 to enter a marriage\textsuperscript{84}.

A foreign child marriage is generally not recognised in Sweden unless any of the parties was a Swedish citizen or had residency in Sweden at the time when the marriage was entered. The purpose of this rule was to prevent that someone would avoid the marital hinder in the Swedish legal system. It can, however, be argued that the urgency to protect children against early marriages motivates that the connection requirement for child marriages to be removed. The government argues that there is a reason to strengthen the restriction for child marriages for children with a connection to Sweden\textsuperscript{85}.

One of the reasons to deviate from the main rule of a non-recognition has been if the couple has children together. When the rules were incorporated in 2004 it was not considered compatible with the child’s best to exclude children in the relationship as a reason for an exception for the non-recognition. The dilemma was between protecting the young ones from early marriages or to accommodate the need of a home staying child with continuity in the relationship. The children’s’ best is central in the Swedish law system. It is however uncertain if this principle demands that considerations toward a couples’ common child solely will make out a reason to deviate from the main rule regarding non-recognition of a foreign child marriage. The effect of a non-recognised foreign marriage in Sweden does not necessarily

\textsuperscript{83} PROP 2013/14:208, p. 1.
\textsuperscript{84} Ibid. p.23
\textsuperscript{85} Ibid p.27
lead to that the family breaks up. The parents will instead be considered as domestic partner. In Swedish law, children are protected through rules which do not depend on whether the child is born inside a marriage or not.\(^{86}\)

The inquiry suggested that in chapter seven in the criminal act a new crime called “child marriage crime” to be incorporated. The punishment scale should be fines or imprisonment for up to two years. A person should be sentenced if he/she impels a child to enter a marriage or someone who takes initiative or arranges a child marriage and the crime should include both legally binding marriage and marital relations. Possibilities for a discharge are suggested for the one participating in the crime by marrying the child, either in case both parties are children or if the age difference between the parties is little. It is however said that the law against forced marriages can protect children in the most severe marriages, especially if the child did not enter the marriage willingly. In the proposition, it is said that it is not certain that the child marriage crime, that the inquiry proposed, is the best way to battle child marriages. According to the governments’ judgement, the proposed measures will be efficient to battle child marriages even without a child marriage crime incorporates.\(^{87}\)

5.3 Parliament debate

In May 26\(^{th}\) 2014 a debate was held in parliament regarding a stronger protection against forced marriages and child marriages as well as the entrance to the European Commission’s Convention concerning violence against women. Foreign child marriages will only be recognised if there are extraordinary reasons, i.e. very strong and clear reasons.

The political parties that agreed to the proposal were, the Social Democrats, the Moderates, the Green party, the People’s Party (now called – Liberals), the Swedish Democrats and the Centre party. The only party who did not agree to the proposal was the Left party.

With the support of the proposal the law became active in 1\(^{st}\) July 2014.\(^{88}\)

The opening statement of the debate was given by the Social Democrats: “Children have to be protected from entering a marriage before the age of 18”.\(^{89}\) In the government bill, it was

\(^{86}\) Ibid p.28-29

\(^{87}\) Ibid p.69-70


\(^{89}\) Ibid.
suggested that an amendment in the civil and criminal law was needed to strengthen the protection against child marriage. This is supported by the Social Democrats, Moderates, Centre Party, Green Party, Christian Party, and People Party. The majority seem to agree with the proposal that a marriage including an underage person with citizenship or residency in Sweden should never be recognised in Sweden. The Social Democrats argue that marriages should neither be recognised even if the parties been together for a long time nor if they have common children or are expecting. At present time there are many girls who are pressured into pregnancies to get their marriage recognised.90

What speaks for leaving a valve regarding recognising foreign marriages are that consequences can exist where one of the parties’ risks of not be granted asylum in Sweden since this can further cause serious consequences for the parties or their children.

The Centre Party agreed with the Social democrats supporting the argument that a marriage that has been entered legally in Sweden is supposed to be legal in other countries. As should marriages, which are deemed legal in other countries, be considered legal in Sweden. It would not make sense to make people remarry if they move to another country. However, the law is still in a need to be strengthened – changing special reasons for extraordinary reasons. Keep a valve for child marriages to be approved in Sweden at a later point. For example, minors getting married in a country and move to Sweden after a few decades. If one of the parties dies and it is discovered that the marriages were entered before the legal age, the marriages should not be deemed legal. By not recognising this marriage there will be some serious consequences regarding the inheritance rule. The moderate party agrees with the statement of the Centre party arguing that extraordinary reasons should only be practiced if in an individual case the non-recognition can get serious consequences for one of the parties. The Moderate party state that in the cases of the couple arriving in Sweden after decades of being married, it would be unreasonable if the marriage does not get recognised according to Swedish law.91

The Left party is in general positive to the government proposal but states that it is not enough. There should be no valve. Represents from the Left Party argues that “the Swedish law should work as a protection for people risking to get their human rights violated. It is our job to stand up for the most vulnerable people, which are in majority children and women”92.

Child marriage is a violation of basic human rights. In article 12 in the ECHR, it is stated that

90 Ibid.
91 Ibid.
92 Ibid.
“Grown men and women of marriageable age have the right to get married\textsuperscript{93}”. The UN also stated that child marriage should not have legal effects and all type of action and legal work should be taken. Which international instrument should Sweden follow? The exception rule should be completely removed\textsuperscript{94}.

The effects of a non-recognition are not well written as well as the exception rule. Consequences regarding family and inheritance laws can be problematic as well as the right to family reunification according to foreign law. Several parties suggested a further inquiry where consequences of the proposal are being evaluated\textsuperscript{95}.

### 5.4 Normative arguments

In this section, I address the normative arguments made in the inquiry and in parliamentary debates. Doing so involves looking at the moral basis for arguments and consistency in the arguments.

The legislator should not endorse or condone discriminatory norms. If the dispensation rule remains in the purpose of protecting girls that become pregnant against the dissatisfaction of her culture, would mean that the society would neglect its obligation to treat everyone with equality. It would rather support the norm that out-of-wedlock sexuality and pregnancies are shameful and forbidden. It is reasonable to say that the Swedish society should refrain from this viewpoint. Forced parenthood should as well be discouraged, as early parenthood increases the risk of negative consequences for the young one, such as lost education possibilities and alienation\textsuperscript{96}. The risk of children getting pressured into early parenthood and pregnancies speaks for a removal or stronger restriction of the exception rule. Why should someone get dispensation for a child marriage conducted in another country, even if there is a connection to Sweden if someone cannot get dispensation for a marriage in Sweden? The law has a more restrictive position that Swedish authorities participate in the upcoming of a marriage than to some cases recognise already entered marriages. The most important

\textsuperscript{93} Ibid.
\textsuperscript{94} Ibid.
\textsuperscript{96} SOU 2012:35, p.28
argument for the exception rule is that there can get unreasonable consequences if there is no window that can allow marriages in certain cases when the main rule is that child marriages should in general not be recognised. Especially if the marriage has lasted for a long time, the parties have children together and established a common household. Not recognising a foreign marriage can entail an extreme change in the parties’ private- and family life and the legal effect of the marriage are left out. Especially when a small child is involved. Then it is no longer just about the minor party. It is also about the small child’s right to both parents. A reason for dispensation should not be when the minor belong to a group which advocates other norms than the law points out. Because of this, the one wanting to get married, or that the family expresses the wish to follow the families’ tradition within a culture or religion, is not reason enough to get a permit. However, all applications should investigate the circumstances in the individual cases and it can occur that the minor is in a tough position in a social context, for example, being pregnant. Problems can be drawn to the values of the group which the minor belongs to. With consideration to the individual, the government can in certain cases argue that a permission should be granted. A strong standpoint in the legal framework should be that all children shall enjoy the same protection from the society. By allowing some children to stay married and not allow some children to get married seem to contradict.

One of the difficult question throughout the inquiry is whether ‘informal’ marriages should be included in the Criminal Act. The investigator argues that this should be included in the Criminal Act even though there are delimitation difficulties. What speaks for this is that there are children and young people which are in a huge need for a protection from the legal system. It can be argued that informal marriages are a religious and traditional concern which belong to the private sphere, something that the societies should not interfere with. Informal marriages can have practical consequences for the involved and entail the same vulnerabilities as a legal marriage entered by children.

There is no convention stated definition of what a child marriage is. Countries around the world have set their own laws regarding which age a person should reach before reaching a maturity which entails that a person can make a vital decision, and in this case, deciding to get

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97 Ibid p.235  
98 Ibid p.403  
99 Ibid p.199  
100 Ibid. p.28  
101 Ibid p.81-82
married. However, the majority of the countries have 18 as a minimum age. There are still countries where exceptions can be made. Nevertheless, eighteen is assumed to be used when talking about child marriage, and that it also has been attempting to make countries more around the world to set this age limit for marriages. The committee for CEDAW has expressed that a minimum age for marriage should be 18, as you reach full maturity at that age and are capable to act. The European committee has commented this matter as well, recommending all member states to set the age limit for marriage at 18 years for both men and women.

As an addition to the maturity demand, there should be a special permission to be required when there are special circumstances which speaks for an exception from the age limit. An exception for an early marriage should only be possible if and when considerations of the negative consequences have been fully covered. The start point for all considerations should be that the young ones best shall be defined in the decision.

The inquiry suggests a discharge for someone who participates in a crime by marrying a child. Partly in the case when both of the parties are children. Partly because the age gap should be small between the parties, and with consideration to the circumstances, in general, they should not be sentenced to responsibility.

A criminal rule should lead to an increased awareness and have to be followed by action from the society. It is to the investigator’s knowledge that it happens that children marry without any authorities intervene or even reacts. Child marriage should in principle be criminal. Especially when children under the age of 15 are involved. The arguments for it is the need to protect children as well as the aspiration for equality between men and women.

The society has a responsibility to protect children, and can therefore not put this obligation aside because of the respect for other cultures, then the majority culture. All children according to Swedish law should be protected by the penalty regulation.

A penalty for a child marriage crime should be enforced on the person who impels a child to enter a marriage or someone who takes initiative to or organise a child marriage.

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103 SOU 2012:35 p.78
104 Ibid p.199
105 Ibid p.325
106 Ibid p.330
107 Ibid p.338
108 Ibid p.350
5.5 Empirical arguments

The right to choose a partner does not seem to be a right that is exercised by all in Sweden. The inquiry gives many reasons in why the dispensation for marriage for under aged persons should be removed as described in chapter 5.1. There are many references to a mapping made by Ungdomsstyrelsen called ‘Married against the will’. A national survey was made involving 6000 youths between ages 16-25. From this survey, it prevailed that about 5 percent felt that their parents, religion or culture stopped them from choosing their own partner. It could further be calculated that approximately 70 000 youths in those ages felt worried about not being able to choose their own partner.109

As mentioned in chapter 4.3 when the possibility to get married as an under aged person was removed in 2004, a new paragraph was added to the chapter 1.8a§ in IÄL. The second paragraph where a marriage can be allowed and recognised for special reasons. The paragraph has been heavily criticised as many children are believed to get pressured into pregnancies, to get the marriage permission. According to the inquiry, experts who for a long time have been working with and met several young girls have witnessed their fear of being pressed into pregnancies.110

The Migration Board has noticed an increase in cases where young girls are pregnant, or that the partners have common children when arriving in Sweden. There have been cases where a couple have been denied residency and returned a year later giving pregnancy as a reason to stay. In the inquiry, they refer to the correlation between IÄL and the Aliens act regarding family immigration. The inquiry mentions Sweden’s obligation to family reunion. The family reunion directive contains the rules for non-European citizen and their right to family reunion. The directives’ purpose is to protect families from separation and that includes married spouses as well. Sweden, together with all other member states in the EU except the UK and Denmark, are obliged to reunite families. Except in certain cases, e.g. polygamy marriages, forced marriages and fake marriages.112 It does not, however, point out why UK and Denmark are not obliged to follow these obligations.

The migration office has also seen an increase in cases where applicants are afraid of what their families will say if they found out that they told the authorities that they do not want to

110 SOU 2012:35 p.211
111 Ibid p.234
112 Ibid p.337-338
get married. According to the migration office, wishes of not letting a spouse into Sweden are quite common\textsuperscript{113}.

\textsuperscript{113} Ibid p.167
6. Analysis of the SOU 2017:96

In March 2017, the Swedish government gave Mari Heidenborg an assignment to investigate if there is a need to widen the protection against child marriage, forced marriages and honour crimes in Sweden. The inquiry shall include an analysis and a standpoint of the international dimension of forced marriages and genital mutilation. The first part of the inquiry was submitted in December 2017, where the investigator analyses and take a standpoint on possibilities whether recognising foreign child marriage further can be limited. The final inquiry shall be submitted September 1st, 2018 at the latest\textsuperscript{114}.

6.1 Pro and con arguments

\textbf{(T)} The exception rule for extraordinary reasons should be removed.

\textbf{Con:} Removal of the exception rule against recognising child marriages might lead to individual cases which would be considered unacceptable in accordance to article 8 in the ECHR regarding the right to private- and family life. It would be too far to suggest a general abolition of the possibilities to make an exception from the recognition rule. It cannot be ruled out that situations can arise where a foreign child marriage should be recognised because of Sweden’s international obligations. A violation towards Sweden’s international obligation can, for example, be the European citizen’s right to free movement, as some countries like Spain and Norway are allowing some marriages at the age of 16\textsuperscript{115}.

\textbf{Pro:} The European Parliament has stated that child marriage should be non-existent and it is a violation of children’s rights. It should be in accordance with the ECHR to establish a general ban towards child marriage. Sweden should be able to disregard article 8 of the ECHR as the marriages discussed entails that at least one of the parties were under the age of 18 when arriving in Sweden. It should be believed that the marriage, and the family life, only lasted for a short time and the parties can

\textsuperscript{114} SOU 2017:96, p.1
\textsuperscript{115} Ibid. p.19-20
therefore not have established a life as married in the same way as if they would have been married for a longer time\textsuperscript{116}.

(T) Foreign child marriages shall not be recognised if one of the parties were under the age of 18 when arriving in Sweden.

\textbf{Con:} Not recognising a foreign marriage means that there are no legal effects for the parties in Sweden. The consequences of not recognising a foreign marriage can be that they will end up in a limping marriage, where they are not married within Swedish jurisdiction but still married in the country where the marriage was conducted. A minor, whose marriage is not recognised, have no rights to alimony, no matter if the minor lives together with its partner or not. And a minor who wants to leave its partner has no right to take over the accommodation the parties have together. The minor does not either have the right to inherit the partner if the marriage is not recognised\textsuperscript{117}.

It happens that asylum-seeking children, who entered a marriage in another country, expresses a wish to stay married after arriving in Sweden. A reason for that is that they feel secure with their partner when arriving in a country to which they have no connection or knowledge of. The free will of children have been debated as an argument for not strengthening the law regarding recognising foreign marriages. Article 12 in CRC demands that children’s opinions take into consideration when a decision involves the child in question. In the CRC committee, general comments appear the right to be listen too according to article 12 and shall be practiced in a way that it protects the child completely. There is a need to look at the causes of the marriage, and question whether the child has had any saying when entering the marriage. It can, however, be questioned if a child even can give a consent to a marriage\textsuperscript{118}.

\textbf{Pro:} It should however not lead to the conclusion that a minor should be worse off as unmarried than as married and that it can be a reason for a child marriage to be recognised. The premise for the Swedish legislation is that children primary shall be protected by the laws that aim to protect children’s rights and the child’s best interests and not by the marital rules.

\textsuperscript{116} Ibid. p.114
\textsuperscript{117} Ibid. p.107
\textsuperscript{118} Ibid. p.110
Rules of children’s rights and protection of children can be found in the Parental Act, the Social Service Act and the law of special provisions on the care of the young people. Children have the right to be supported by their parents. If the parents do not have the capability to support the child or do not fulfil their obligations, the society will step in. In contrast, the child is not dependent to be supported by its partner. More practical questions that come up in cohabiting with a partner, can be found in domestic partner Act, which includes minors.

A general recognition of foreign citizen minors’ marriages would conflict with the fundamental social norms and standards regarding children’s right to an independent and personal development, right to education and the children’s right to make personal decisions. It would also obstruct equality between sexes.

(T) An overall non-recognition, no matter connection, and age at the time of arrival in Sweden.

**Pro:** An overall non-recognition of all types of child marriages, no matter what connection the parties have to Sweden, would likely counteract and in time eliminate child marriage. This by eliminating the connection requirement that can be found in chapter 1. 8 a § in IÄL.

**Con:** An overall ban on foreign child marriages would affect even those child marriages that are not as urgent to deny. It could, for example, be a couple which at the time of entering the marriage was under the age of 18 but got their domicile in Sweden long after that. They might not have had a reason to assimilate the Swedish norms and consequences of a denied marriage, when they entered the marriage and have under a long time established a life as a married couple.

Even though the ban on recognising child marriages will not be general, there will still be remedies to access the most serious forms of child marriage, i.e. those committed by force. An overall non-recognition can come in conflict with article 8 in the ECHR on the right to private- and family life.

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119 SFS 2018:1288, Föräldrabalken, 1949:381, chapter 7.1§
120 SFS 2011:493, Sambolagen 2003:376
121 PROP 1983/84:144, om invandrings- och flyktingpolitiken, Stockholm: Regeringen p.75
122 IÄL 1.8a§
123 SOU 2017:96 p.18
124 Ibid.
6.2 Letters of comments

When the inquiry was completed, it was sent out to be reviewed by numerous authorities, organisations, and companies active in the topic.

The ombudsman for children agrees with the inquiry and writes in his answer: “In the following, I consider that the protection for child marriages should be wider, and include children that lack the connection to Sweden”\textsuperscript{125}. The proposal follows the demands of CRC, as well as the UN development goal; Agenda 2030, that ‘all states shall make all measures to abolish all traditional practices that harm children’s health’\textsuperscript{126}. Child marriage according to the UN is considered as a harmful and should be abolished. The ombudsman for children disagree with the inquiry’s suggestion regarding that a foreign child marriage shall have the possibility to be recognised if there are extraordinary reasons. Children should be protected from entering a marriage and if the exception rule still exists, there will still be a legal possibility for minors to live in a marriage in Sweden. The inquiry concludes with a suggestion to look into the situation where minors entered a marriage in another country and arrive in Sweden when they are between the ages of 18-25. The reason for the suggestion is that it can be considered inconsistent for the individual if someone who recently turned 18 and gets its marriage recognised while someone who is maybe a few weeks from turning 18 does not get its marriage recognised. The ombudsman for children considers that there is a need to review the exception rule for the people between the ages of 18-25\textsuperscript{127}.

The Swedish Women Lobby disagrees as well with the inquiry’s suggestion to keep the exception rule. It is a clear violation of CRC as it signalises that child marriages in some cases

\textsuperscript{125} \ DNR 3.9:0979/17, Barnombudsmannen (2018), remiss: Utvidgat hinder mot erkännande av utländska barnäktenskap (SOU 2017:96) Stockholm: Barnombudsmannen, p.1

\textsuperscript{126} \ Ibid. p.2-3

\textsuperscript{127} \ Ibid.
are accepted. In their opinion CRC should have precedence if there are conflicts between CRC and other international conventions 128.

The letter of comment from the Swedish Refugee Centre (Sveriges flyktningsrådgivningbyrå) acknowledges that undesirable consequences can occur if a foreign marriage does not get recognised, especially for a couple that established a life together as married for many years. However, the Refugee Centre points out that even if the married couple are no longer children (above the age of 18), it is important that the legislation stipulates that child marriage is not allowed during any circumstances. If the partners are above the age of 18 and do not get their marriage recognised, they can get married legally in Sweden 129.

6.3 Parliament debate

Child marriage has been debated a couple of times in parliament during 2018. On 21th of March, a debate was held regarding Family law. The parliament does not think that existing laws regarding foreign child marriages are strong enough and suggest that child marriages should never be recognised in Sweden if one of the parties were under the age of 18 at the time one of the parties arrived in Sweden.

A majority of the parties including the Moderates, Swedish Democrats, the Centre Party, the Liberals, and the Christian Party agreed with the proposal. The parties which did not agree with the proposal was the Green Party, the Left Party and the Social Democrats 130.

The Christian party advocates together with the Centre party for a non-recognition of foreign marriages where one of the parties were under the age of 18 at the time one of the parties arrived in Sweden 131. Parties like the Liberals agree to argue that “Sweden cannot have a system which provides full protection for Swedish born, but not for foreign-born children seeking freedom and protection in Sweden” 132.

131 Ibid.  
132 Ibid.
Social Democrats believe that child marriages should be heavily restricted and argues that the only thing that speaks for an exception rule is Sweden’s international obligation i.e. Citizens’ of the European Union’s right to free movement\textsuperscript{133}. However, the majority of the parties disagree with this statement. The Moderates and Swedish Democrats argue that the European law at present day is valued higher than CRC. Sweden’s biggest obligation should be children and their rights. I.e. the right not to be married before reaching legal age. The Moderates argue that Sweden prioritises processes, policies and paragraphs instead of thinking what is best for the affected child\textsuperscript{134}. The Christian Party and the Liberals point out that the Netherlands already in 2015 marked that child marriages are not okay. The Netherlands have shown that a total ban on child marriage does not need to limit the right of European citizens’ right to free movement\textsuperscript{135}. However, no evidence was brought up in the debate discussing in what way the right to free movement would be violated.

SOU 2017:96 is heavily criticized. Parties like the Social democrats want to wait for the letters of comment and the government’s consideration before making a statement\textsuperscript{136}. The Christian party state that international law is a tough obstacle. A further inquiry is needed where it solely look at the question regarding international law\textsuperscript{137}.

The Green party and the Left party did not make any statements regarding child marriages in this debate. They did, however, do so in other debates. In a debate regarding violence crimes and victims which was held at 19\textsuperscript{th} March 2018, the Green party argues that we cannot let children, that enter Sweden, to be seen as married, “\textit{when we incorporate CRC we have to stand for every child’s right to be a child, we have to make sure that no child in Sweden can be married. Even though there are marriages which are entered voluntary, child marriage is global to be considered as one of the most severe assaults on girls. Girls are being subjected to rape and control in these marriages and getting forced into early parenthood before even getting adults. Sweden needs to be clear on where the line is drawn}”\textsuperscript{138}.

At the debate regarding culture and leisure time for children on 11\textsuperscript{th} April 2018, the Left party stated that they will be waiting for the inquiry like the Social democrats before making a statement. All aspects need to be considered before making a decision.

\textsuperscript{133} Ibid.
\textsuperscript{134} Ibid.
\textsuperscript{135} Ibid.
\textsuperscript{136} Ibid.
\textsuperscript{137} Ibid.
\textsuperscript{138} Ibid.
6.4 Normative arguments

All children should enjoy the same rights in Sweden no matter citizenship, residency, ethnicity, age or gender. Sweden is today obligated to make sure that all children within the Swedish jurisdiction enjoy the rights that are set out in CRC. This is not the case in Sweden. The present legislation only protects the children with a connection to Sweden. This means that all children who do not have any connection to Sweden are not entitled to exercise that law. The principles of non-discrimination, which are used in many international conventions, are very clear in that all people within the Swedish jurisdiction should enjoy the same rights and laws no matter residency or citizenship\textsuperscript{139}.

The proposed law change “\textit{non-recognition if any of the partners were under the age of 18 when someone arrived in Sweden}”\textsuperscript{140} would hopefully be a way to block the loophole where one of the partners arrives in Sweden first and then wait until the other partner turn 18 before bringing them to Sweden. If this suggestion becomes law, children within the Swedish jurisdiction will become more equal no matter connection\textsuperscript{141}. However, even though the law would include all children, one cannot forget about children’s rights. All children have the right to be heard. Article 12 in CRC points out the importance that children’s opinion is taken into consideration. According to the child rights committee’s general comment underline the child’s right to be heard should be exercised in a way that they fully protect the child. It is important to find out how involved the child has been in the decision of entering a marriage. The investigator questions the ability of a child to agree to a marriage\textsuperscript{142}.

6.5 Empirical arguments

Laws can be very problematic when a case includes different legal systems. Whose jurisdiction should be followed and can a right or law be interpreted differently in different cases? One of the major dilemmas for the proposal in the SOU 2017:96 is whether Sweden

\textsuperscript{139} SOU 2017:96 p.103  
\textsuperscript{140} Ibid. p.17-18  
\textsuperscript{141} Ibid. p.108  
\textsuperscript{142} Ibid p.110
would violate its international obligation if not recognising marriages which are legal in countries of origin. There is one right that is debated not only in Sweden but also on the European level, how to interpret article 8 “The right to private- and family life” in the ECHR. The first part of the article states:

1. *Everyone have the respect for his private and family life, his home and correspondence.*

The inquiry implies that a complete ban on child marriages can in some cases be incompatible with the evaluations of article 8 in ECHR. The inquiry refers to the law 1994:1219 – The incorporation of the ECHR into Swedish legislation, as a reason why it could be a problem with our international obligation. A married couple should be considered as a family. Further on, the inquiry refers to a case in the European Court of Human Rights – Case no. 60119/12, Z.H. and R.H against Switzerland. The applicants were cousins who married religiously in 2010 in Iran when they were 14 and 18 years old. The marriage was not registered in Iran. 2011 they applied for asylum in Switzerland, but their marriage was not recognised. In 2012 after exhausting all remedies possible in Switzerland, the applicant filed a request for the European Court of Human Rights. The court argued that “article 8 in the convention cannot be interpreted as imposing on any State party to the convention an obligation to recognise a marriage, religious or otherwise, contracting by a 14-year-old child”. However, marriages that are not compatible with the national law are not a hinder to family life. Parties who enter a religious marriage which might not be recognised by national law may still be able to refer to the right to family life. The Court continues arguing that obligations neither be derived from article 12 – “*Men and women of marriageable age have the right to marry* […]

143 Ibid.
144 European Convention on Human Rights, (1950), Rome: European Court on Human Rights, article.8
145 Case no. 60119/12, Z. H. & R. H. vs. Switzerland [2015], Geneve: European Court on Human Rights. P.1-2
146 Ibid.
147 European Court of Human Rights (2017), *Guide on article 8 of the European Convention of Human Rights*, Geneve: European Court of Human Rights p.43
according to national laws...”. Article 12 of the convention give contracting parties some room to regulate marriages according to national laws.

Today there are countries around Europe who strengthen the national laws against child marriage. One of those countries is the Netherlands, which also have been referenced in reports, media, and political debates. In 2015 the Netherlands adopted the forced marriage prevention act which made the minimum age for marriage 18 with no exceptions. A marriage conducted in a foreign country will not be recognised until both parties turned 18-years. The Netherlands have also made restrictions on child marriage in their foreign legislation – the demand for a person who entered a marriage with someone who lives in the Netherlands and seeks residency shall be at least 21-year-old.

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148 Z.H & R.H vs. Switzerland p.7
149 SOU 2017:96 p.94
7. Concluding analysis

Before ending this thesis, I will review the normative arguments mentioned in chapter five and six and apply the two theories of Nussbaum and Okin. Nussbaum’s feminist internationalism theory deals with cross-cultural differences and state responsibility while Okin’s theory of women and multiculturalism is more universal, and focus on gender inequalities within cultural groups.

Child marriage is a traditional practice which occurs in most countries of the world. Scholars have under a long time considered child marriage a harmful practice, as this can limit children’s rights. The UN has made elimination on child marriage as a goal on the Agenda 2030. Nussbaum argues that people need to have a choice, they should determine themselves whether they want to continue practicing traditions or not. Nevertheless, she argues that all traditional practices are not worth preserving. In order to find out if a practice is harmful or not, a set of criteria need to be developed. Authorities and NGO’s in Sweden have made different inquiries to gather information regarding young girls in Sweden and their free choice of partner. The results show that an estimate on 70 000 girls in Sweden, fears of being married off by their parents. Should this not mark out that child marriage would create more harm than happiness. With this collection of information, it is plausible that Nussbaum would have argued that child marriage in Sweden is a problem and a traditional practice which should be eliminated.

Children that get married in Sweden have most of the time some form of foreign background and culture. Some cultures have a conservative view on life, believing that sexual intercourse is only for married people. So what if a girl has sex with a boy and ends up being pregnant? In many cultures it is considered a disgrace to the family to have a child before marriage, leaving the girl with two options: option 1: Marry the boy to restore the family’s honour, or option 2: be exiled from the family to live a life in loneliness. Arguments in the parliament debate suggest that keeping a valve for allowing marriages in certain cases, would give the girls a chance to keep a relationship with her family. It is reasonable to think that if the possibility for dispensation remains as a purpose of protecting girls from e.g. being exiled from the family, would mean that Sweden abandons its obligation to protect children from mistreatment and to treat everyone equally. Okin probably would have argued that Sweden is
failing to protect children from minority cultures and their conservative views, i.e. Sweden violates children’s right to equal protection of the law. It can be argued that child marriage often includes some form of coercion or force. According to Nussbaum, Sweden has a responsibility to define what marriage, divorce, parental responsibility, and legal obligations entail. The government should enforce laws that protect children from ill-treatment. It could probably be argued from Nussbaum’s theory that a law that criminalizes involvement in child marriage is much needed.

Even when the law for the removal of the dispensation was accepted in 2014, the protection against child marriage was not fully covered. The law only protects children to be registered as married and enjoying the laws that comes with it. There is now a bigger chance of children getting married in informal marriages, meaning that the authorities will lose their chance of helping these children. Informal marriages are a religious and traditional concern which belong to the private sphere, something that the societies should not interfere with. According to Okin, many of the cultural practices are taking place in the private sphere. These marriages can be even more dangerous than formal marriages as they are not supported by the law. Children in informal marriages will probably miss out on a free education, teaching them about self-esteem and other essential knowledge that will help them become independent. These marriages will probably never come to the public knowledge, leaving children vulnerable and without protection.

Nussbaum’s claim that a state has a right to interfere in the private sphere and create appropriate laws in order to protect children i.e. Nussbaum would have supported a law that criminalizes not only formal child marriages but also informal marriages. Further on, Sweden has a responsibility to ensure the safety of every child within its jurisdiction, especially girls as they are more likely to get married at a younger age than boys. It can be argued from the view of multiculturalism that Sweden fulfilled its obligation to its residents when removing the possibility to receive a marriage dispensation. Which in turn means an increase for equality between the genders.

In 2015, when Sweden received a large number of refugees, the focus shifted from gender equality to cultural differences. People arriving from other countries often belong to another religion or culture that may not share the same norms and value as the majority group. People who are a member of a cultural group have a right to practice his/her believes, as long as it does not harm anyone authorities should refrain from interference. When young girls arrived
in Sweden stating that they were married and wanted to stay married, it became confusing for authorities. Should authorities listen to and comply with the child’s request of staying married or should they follow Swedish law, making sure that the child is equality treated like the rest of Sweden’s residents? Following Nussbaum’s theory, it can be argued that Sweden has a responsibility to define what parental responsibility and legal obligation entail. A state should have a legitimate interest in children, and provide them with a protection which adults are not entitled to. Could it not be argued then, when a child arrives in Sweden stating she is married, that the authorities have a responsibility to this child and are obligated to ensure her well-being.

In a parliament debate in April 2018 several politicians wanted to keep a small valve, meaning that child marriages still can be recognised if there are extraordinary reasons. Both Nussbaum and Okin would probably not agree with this argument. If Sweden leaves this valve for exceptions children in Sweden would still be entitled to different laws and rights. There are many questions regarding age and maturity when debating about the valve. Should it be possible to recognise a marriage including a 17-year-old girl who explicitly requests to stay married? Nussbaum’s theory of feminist internationalism does not explicitly mention that adulthood starts at the age of 18. Suppose her theory accepts that a 17-year-old can be considered as a woman. Should not this “woman” be able to decide for herself whether she wants to stay married or not?

According to Okin, it is important to provide suitable representation for the less powerful members, to ensure their wellbeing when new policies are developed. Majority of the countries in the world today are run by men, parliaments around the world have an overrepresentation of men. Men, who decide on which rights and laws apply to children. Sweden is one of the leading countries in the world when it comes to equality between genders. The parliament is equally represented by men and women at the present day. Okin stresses that unless women are fully represented in discussions regarding group rights, their interests might be harmed rather than promoted.

The arguments I made in this conclusion does not only apply to child marriage but the universalism of human rights. As Okin writes “why should women from other cultures have a lower standard of human rights crafted especially for them? Whether immigrants or residents in their home country, why should women wait for salvation, when the West can readily
defend their rights by use of force if necessary?"\textsuperscript{150} If I reframe her question: Why should people from other cultures have a lower standard of human rights than others? Why should these people wait for salvation, when the West can readily defend their rights by use of force if necessary?

\textsuperscript{150} Okin, p.20
8. Summary

In this thesis, I have analysed how the argumentation is presented in the governmental inquiries SOU 2012:35 and SOU 2017:95. These sources have been the base for my thesis. The arguments regarding foreign conducted child marriages do not differ much from both inquiries. Both claim that removing the valve can cause serious consequences for a couple, SOU 2012:35 mention this valve as “special reasons” and entail children with foreign background, while SOU 2017:96 changed the valve to “extraordinary reasons”, but does not clarify what it entails, leaving several questions about the inquiries. Article 8, in the ECHR, is mentioned as an argument in both inquiries. In SOU 2012:35 it states that a general non-recognition would be in a violation of article 8. All political parties except the Left Party agreed to the inquiry. The Left Party drew the conclusion that Sweden would in fact not violate its international obligation. The represen make references to a UN statement that that child marriage should not have legal effects and all type of action and legal work should be taken to eliminate it.

SOU 2017:96 is still debating whether it could be a violation of article 8. At this point majority of the political parties like the Moderates have changed opinion, arguing for stronger protection. In the latter inquiry court cases from ECHR are used as references to show that ECHR has ruled in a case that it was no violation of article 8. The representatives from the Moderate Party thinks that European law is valued higher than CRC. The investigator in SOU 2017:96 suggests “a general non-recognition if one of the parties were under the age of 18 when arriving in Sweden”. Responses and views from politicians and letters of comments seem divided. While some argue for a total ban on child marriage, others agree with the suggestion from the inquiry. Many arguments from politicians and letters of comments seem to be rather normative, arguing about treating everyone equal rather than looking at the results of other countries that do not see article 8 as a hinder. Both politicians and letters of comments refer to Denmark and the Netherlands as they have strengthened the laws towards child marriage. In the latter inquiry, a reference made to a court case, where ECHR ruled that there was no breach of the country’s international obligations. This shows that is possible, for Sweden to look beyond article 8 and focus on the demands of Agenda 2030 i.e. eliminating all forms of harmful practices child marriages.
This conclusion would also stand as a differentiation from SOU 2012:35 och SOU 2017:96. A SOU does not aim to suggest or provide a base for handling, but instead offer a broad view of facts over alternative options whilst my thesis concludes in a standpoint.
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