



## GENDER IMPLICATIONS OF CHILD MARRIAGE: REFLECTION FROM SECTION 13 OF THE LAW OF MARRIAGE ACT NO. 5 OF 1971

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### ABSTRACT

This study examines the gender implications of the Law of Marriage Act, No. 5 of 1971, specifically in the context of Section 13. It also explores girls' attitudes towards child marriage and examines gender implications in the practise of child marriage due to the growth of gender disparity. The study employs a longitudinal research design whereby the life stories of married girls were randomly collected and analysed. Data were divided into themes and subthemes to respond to the research questions. The findings show that Section 13 of the Law of Marriage Act No. 5 of 1971 allows girls to get married as early as the age of 15 years with the assumption that, at that age, girls would be old enough to possess knowledge on how to take care of babies and their home. It was discovered that girls' attitudes about child marriage were negatively influenced by the presence of secondary schools in every ward, which raised awareness on the importance of education in their lives. The study also concludes that the gap in marriage eligibility between boys and girls serves as a vehicle for gender inequality as it contributes to women's underdevelopment and lowers their status to realise their full potential in all developmental activities. The article recommends that the government should open more secondary schools in every village to increase girls' enrollment. Also, the government should immediately amend Section 13 of the Law of Marriage Act, No. 5 of 1971, to comply with International Human Rights Instruments which protect a girl child. It is advised that politicians should consider gender perspectives and effects when enacting legislation.

**Keywords:** Child Marriage, Gender Implication, Law of Marriage Act, Life stories, Tanzania

**Paper type:** Research paper

**Type of Review:** Peer Review

### 1. Introduction

Child marriage is a social malady affecting developed and developing countries (Malhotra, 2010; Hassan, 2014; Chenge and Maunganidze, 2017). A girl below 18 years is a minor, so she cannot understand the nature of a contract she entered, as indicated in Section 11 of the Law of Contract Act CAP 345. Child marriage, also known as early marriage, is any union before the girl is emotionally and physically prepared to take on the responsibilities of marriage and parenthood (Nour, 2009; Walker, 2012; UNICEF, 2019). In this study, early marriage and child marriage were used interchangeably to refer to a female who marries before 18 years. Prevalence of the practise is high worldwide, as approximately 650 million girls and women alive today were married off before they reached the age of 18 years (UNICEF, 2020). About 88% come from developing countries, including South Asia, Sub-Saharan Africa, North Africa, the Middle East, Latin America, and the Caribbean (Nour, 2009; Montazeri et al., 2016). It is prevalent in the United States of America at 55%, Bangladesh at 66.2%, Nepal at 51.4%, Eritrea at 47%, and India at 44.5% (Walker, 2012). From the above premises, discrimination against the girl child has been an ongoing debate worldwide (CEDAW, 1995). Notwithstanding the commitment of Sustainable Development Goals to end child marriage by 2030, the practise has still not received enough consideration from different governments to raise the minimum age of marriage.



Despite decades of campaigns to eliminate it through legislation, child marriage under 18 years is still widespread in Africa, and the region is established to have the largest global share of child marriage practise (UNICEF, 2015). In Africa, it is customary to find men of 50 years and above marrying girls as young as nine (LHRC, 2015). The practise of child marriage in some African countries is reported as follows: Niger (76%), Chad (71.5%), Mali (70.5%), Guinea (63.1%), Burkina Faso (51.9%), Cameroon (47.2%), Malawi (48.1%), Uganda (47%), Zambia (41.6%), and Tanzania (41%) (Walker, 2012; Montazeri et al., 2016). These data show that the percentage of girl-child marriages in Tanzania is low compared to the rest of the world. Still, it is not well-known how child marriage affects the girl child below 18 years (Walker, 2012; LHRC, 2018).

In Tanzania, various explanations have been put forward to justify the practise of girl-child marriage. Marriage is perceived as a means of securing girls have a better life and increasing the family's economic status (Walker, 2012; Hassan, 2014). Others have alleged that early marriage is meant to control fertility, protect young girls from out-of-marriage pregnancy, the need for labour, and a submissive wife to care for the husband in old age and desirability of virginity (Montezeri et al., 2016). The practise is prevalent in different regions, including Shinyanga (59%), Tabora (58%), Mara (55%), Dodoma (51%), Lindi (48%), Mbeya (45%), Morogoro (42%), and Singida (42%) (LHRC, 2014). Notwithstanding, girl-child marriage reinforces the state of poverty and powerlessness, causes lower physical, mental, and intellectual ability, and hinders girl-child development. Unfortunately, these gender consequences of child marriage for girls have been ignored by the government, which has not made legal reforms to protect children from early marriage (LHRC, 2018). Unfortunately, legislators take years to amend such discriminatory provisions in the Law of Marriage Act, which lowers the status of women in Tanzania. Specifically, the present study is guided by three research questions:

- (i) How has the problem of child marriage evolved in Tanzania?
- (ii) What are girls' attitudes towards child marriage?
- (iii) What are the gender implications of child marriage?

## 2. Literature Review

The review of the related literatures is organised under the following sub-heading:

### 2.1 Age of Marriage

A child is defined by several international treaties, including Article 2 of the African Charter on the Rights and Welfare of the Child of 1990; a child means every human being below the age of 18 years. While the Convention on the Rights of the Child (CRC) of 1989 under Article 1 also defines, a child as every human being below the age of eighteen years. All Conventions defined a child as every human being under eighteen (18) years. However, CRC indicated that unless the majority is attained earlier under the law applicable to the child, this means that the majority age in some countries or states may be younger than 18 years. The Convention on Elimination of All Forms of Discrimination against Women (CEDAW) under Article 16(2) emphasises that marriage of a child has no legal effect, and the government is required to take appropriate action to amend law related to child marriage to specify a minimum age for marriage.

Moreover, Article 5 (1) of the Constitution of the United Republic of Tanzania (URT) 1977 directs that every citizen who has attained the age of eighteen is entitled to vote in any public election held in Tanzania. It is suggested that a person under 18 is considered a child in Tanzania. This suggests that the legal marriage age for men and women should be above 18 years, as reflected under international human rights instruments. Unfortunately, the Law of Marriage Act (LMA), which governs and regulates the whole institution of marriage, has, through the leave of court, allowed girls to enter into a contract of marriage at the age of 14 or 15 years, while a boy's marriage age is 18 years, as stipulated under section 13 of the Law. The same Act in Section 17(1) has further stated that a female who has not attained the age of eighteen years shall be required to obtain the consent of her parents (father/mother) or guardian in the absence of the parents.

The contradiction continues under the Sexual Offences Special Provision Act 1998 (SOSPA) Section 5, amended by Section 130 (2) (e) of the Penal Code. The provision provides that the consent for sexual activities is 18 years and above. It has been stated that a male person is said to have raped a girl or woman if he has carnal knowledge with or without her consent when she is under 18 years of age unless the woman is his wife who is 15 or more years of age and is not separated from the man. From these premises, there is a legal discrepancy as far as the treatment of a girl and boy child, marriage, and sexual activities are concerned.

Through the Education Act of 2002, the government has taken considerable efforts to protect the girl child. The law penalises individuals impregnating primary or secondary school students. Further, the Education Act in 2016 was amended to provide a stiff penalty of 30 years for any person who marries or impregnates a primary and secondary school girl. However, the majority of girls in rural areas are out of the education system; hence, they are unprotected by this legislation (Warioba, 2019). On the other hand, in the landmark case of Rebeca Z. Gyumi v. Attorney General (Tanzania Civil Cause No 5 of 2016). In this case, Rebeca Gyumi challenged the constitutionality of child marriage in Tanzania. As a result, the Tanzania High Court ruled that sections 13 and 17 of the Law of Marriage Act, which mandated differing minimum marriage ages for boys and girls, were discriminatory and unconstitutional. This means that the High Court of Tanzania ruled that marriage under 18 years contravenes the Constitution and accordingly advised the government to raise the minimum age of marriage to 18 years within one year. Upon Appeal in the Court of Appeal in civil Appeal no 204 of 2017. The court concluded that the entire case lacked merit. The appellant Attorney General was supposed to follow the High Court's ruling and have the LMA amended as directed. We entirely dismiss the Appeal with no order as to costs. Thus, child marriage persists in Tanzania despite the above-cited High Court and Court of Appeal of Tanzania's decisions that Section 13 of the LMA Act No. 5 of 1971 is unconstitutional as it contravenes articles 12, 13, and 18 of the Constitution of the United Republic of Tanzania of 1977. However, Tanzania has yet to make legal reforms to grant equal protection to girls and boys under the law. Hence, the existing law allows girls to get married at early ages in different ways.

## 2.2 Patterns of Marriage

The pattern of child marriage in Tanzania differs among ethnic groups as influenced by socio-economic characteristics (Torabi and Baschieri, 2014). Usually, the head of the family (father) arranges and forces girls into marriage, and only puberty is enough for girls to get married (World Bank, 2010; Polavarapu, 2006; Montazeri et al., 2016). Some girls are taken out of primary school to get married to ensure it is carried out. Later, the parents report the girl's absence from school as though she has been moved to another school, or they purposefully declare that their daughter has passed away. In the Kondo District, this approach is persistent. In the Maasai ethnic group, girls can be married off whether they attend school (although most do not). In Mbeya Region, Tunduru, and Tarime Districts, early marriage is common, contrary to Kilimanjaro Region, where girls usually get married only if there is no opportunity for further education (LHRC, 2014; Erulkar et al., 2020).

Among the Zigua, Kwere, and Zaramo ethnic groups, child marriage is done immediately after puberty and between the ages of 10 and 14 (LHRC, 2014; Mnubi, 2020). Girls undergo initiations (transition from childhood to adulthood) that prepare them to take full responsibility for being wives. They are taught about body hygiene, gender roles, responsibilities of parenthood, how to conduct themselves while in bed, and techniques to satisfy a man during sexual intercourse. During the initiation ceremonies, girls are given gifts such as wrappers, 'khanga', kitchen tools, a bed, gold, and money. This process of awarding the girls is known in Kiswahili as '*kutunza*'. This process makes a girl child feel rich and discouraged from continuing schooling. On the other hand, men feel proud to have a fresh girl from initiation; some men start marriage arrangements by promising or paying a higher bride price, locally known as *mahari/lobola*. Consequently, they end up having their own families while still minors (Mwakyoma, 1996; Stark, 2018; Stark, 2020). Another kind of girl-child marriage pattern is elopement marriage. An elopement marriage is a kind of marriage in which a man runs off secretly or disappears with a girl(s) to be taken as wife without her will (Mwakyoma, 1996; Wamoyi et al., 2015). This culture of elopement is prevalent in Tunduru District and

Mbeya Region, Tanzania, and the practise is commonly known as '*kutokomela/kunyaka*'. Elopement is usually accompanied by force, which in most cases negates the essential principle of free will, but in a few instances, involves an agreement between prospective spouses (Shadle, 2003; Wamoyi et al., 2015).

Another practise of girl-child marriage is known as betrothal. Parents enter into a marriage contract on their children's behalf. In this practise, the prospective husband gives the potential girl's parents a gift. It commonly takes place before the girl is nubile, and during the interval, he works on her father's land and may also cultivate the field near his village, which her mother will plant and reap. The work is considered part of the bride price (UNICEF, 1995). The child may not have attained the age of puberty and is just told of being the fiancé of somebody and not given a chance to exercise their free will to choose partners.

Unfortunately, Section 25 of the LMA recognises marriage contracted according to the customary rites, including elopement and betrothal. However, Judicature and Application of Law (JALO) section 9A (3) Cap 453 declares that Customary laws are valid if they do not contravene the express requirement of statutory law. It has been argued in the case of John Kirakwa Vs. Idd Siko, High Court of Tanzania (1989)45 Mwalusanya J (as he then was), among other things, held that "in my view, elopement and betrothal are done without the girls' free and voluntary consent; hence it is unlawful". The court decision concluded that the law does not recognise marriage contracted in these customary rites. It is, however, undisputed that most of the stated customs are still practised. Despite the high prevalence rate of child marriage in Tanzania, it is surprising to realise the limited availability of academic research on this area (Backlund and Blomqvist, 2014). Substantial research has been conducted to examine the causes of child marriage and its consequences; among such studies are ones done by Mwakyoma (1996), Ezer et al. (2006), McAlpine (2016), Stark (2018), and Schaffnit et al. (2019). However, little research has been done to explore the gender implications of Section 13 of LMA. This entails investigating the role of gender relations in allocating marriage rights and duties, benefits and disadvantages, and legal protection and punishment in Tanzania. To provide insight into the practise's long-term social, economic, and political impact; data collection was based on the life histories of married girls. This placed a girl child at the center of the research. The methods allowed for the exploration of complexity and interrelationship between the practise of early marriage, gender, and law. The life stories were grounded to reveal culture and experience as sources of information and justification of knowledge on the nature and truth of how child marriage was practised. This provided an opportunity to explain gender inequality and the events uniquely based on patriarchy to allow a better vision of reality (Marjorie, 1990; Thomson, 1992).

### 3. Methodology

The study centred on reported life stories from married girls in Tanzania. Life stories as a research tool remain on the margins of academic work, but during this study it was valuable for a researcher to pay close attention to the diversity of human experience (Pinnergar and Dayness, 2007). Life stories were used as sources of information about reality outside the text (Gabriele, 1993; Vähäsantanen and Arvaja, 2022). Also, they were used to unmask male bias and the kinds of discrimination that girls experience during child marriage.

This study employed a longitudinal research design whereby the life stories of married girls were randomly collected from different areas to detect any changes that might occur over time in the practise of child marriage. The longitudinal study took place between 20th March and 27th October 2020. The unit of analysis recorded the life stories of married girls between 9 and 18 years. The inclusion criteria for the study were reported life stories of married girls who had run away or were saved from the practise in rural and urban areas by different organisations. In total, 15 married girls' stories were collected from other parts of Tanzania. However, five potential participants' stories were excluded from this study because not all stories used by researchers constructed a narrative account to report the analysis results; rather, they involved literary elements and represented the participants' experiences. Ten life stories were considered sufficient for the longitudinal research analysis in this study, as similar studies by McAlpine (2016) and Vähäsantanen and Arvaja (2022) also found.

Triangulation of information was based on the information given by key informants, including Government Officers, such as Ward Executive Officers and District Commissioners, who also made follow-ups in a given story. In this manner, personal details that might reveal identities like name, family name, village, name of husband, and children were removed for ethical consideration (Standard and Prusak, 2005).

About fifteen life stories were collected in the electronic form of narrative stories from television, YouTube, and radio. Radio programmes visited centres such as Children Living in Difficulty Conditions (CWLDC) and *Alama za Nyakati*. Reported testimonies were received from Shinyanga, Mbeya, Mara, Arusha, and Dodoma. Themes and sub-themes were assigned to narrative stories to reflect the goals of uncovering the reality regarding the age of girls and men, regarding the presence of consent, violence, dignity issues, and practise. Issues derived from the stories were used to show the consequences of child marriage in their life (Gabriele, 1993). Collected life stories established gender implications of the practise, factors which influence child marriage, engage the audience, actors and structure relationship, powers and insights were managed, despite its difficulties in sampling (Rwebagira, 1996, Moezz and Mann, 2017).

On the other hand, newspapers, case law, and international and domestic legislation were purposively selected to support analysis and to understand gender violence and inequalities that girls experienced in the practise of child marriage (Walker, 2012, and Elliot, 2005). In this study, case law was utilised to demonstrate the inconsistency between customary practise and the law, while international laws and domestic legislation were explored to substantiate the violation of girls' rights (Hellum, 1999). The findings were supported by international law in demonstrating the ways in which the practise of child marriage is discriminatory and the extent to which courts protect a girl child by using the international legal framework (Rwezaura and Wanitzek, 2006).

#### **4. Findings and Discussion**

##### **4.1 Development of the practise of child marriage in Tanzania**

Evidence in records indicates that the practise of child marriage began to be formalised in 1969 through a government proposal that was tabled in the Parliament. The bill was dubbed a Government's Proposals on the Uniform Law of the Marriage of 1969 (White Paper). The proposal was plural and attempted to capture the diversity of Tanzanians regarding marriage practises. Hence, the proposal was drafted considering the religions, civil, and customary practises of people in Tanzania. The legal age of marriage was among the topics discussed in the Parliament. Section 13 of the proposal suggested that a man should be allowed to marry when he attains the age of 18 years. The justification was that a man aged 18 would have completed his primary school education. If he had not gone to school, he would have already acquired the necessary skills or knowledge to be self-reliant. The proposal articulated that a boy of 18 could vote, become a political party member (TANU), and enter into a contract.

Conversely, a girl can get married when she attains the age of 15 because at that age she is considered to be old enough and know how to care for her children and look after her home correctly (White Paper, 1969). It was suggested that setting different marriage ages for boys and girls justifies sexism (Bowman and Kuenyehia, 2003). This revelation is similar to Backlund and Blomqvist (2014), who claimed that the impression of female child sexuality in the legislative debate was a key element that allows for the reproduction of gender inequity. In contrast to boys, sexuality was seen as a possible criterion that may oppress girls by normalising oppressive behaviour and shielding them from unfavourable outside influences. (Pilcher and Whelehan 2004).

This further implies that in 1971, Tanzania's legislature enacted the Law of Marriage Act to consolidate gender inequalities in marriage and expose girls to multiple discriminations in their life (Polavarapu, 2006). The arguments for the legal marriage age decreased a girl's ability to live in the private realm and perform various domestic tasks while placing men in the public sphere to have access to education and participate in politics. Hence, men are expected to be breadwinners in the family. This finding supports the claims made by Pilcher and Whelehan (2004), Walker (2012), and LHRC (2015) that in girls' lives, sexuality is managed and formed by cultural norms and values; and that a girl's key life goals are believed to be getting

married, having children, and taking care of the family. Girls in this kind of marriage often experience worse developmental outcomes than boys their age, as they have less power and autonomy. Henceforth, the legal age of marriage lacked gender equity by assigning discriminatory gender roles and gender-based minimum ages that hindered the total advancement of a girl child in her life and left a packed room for protecting a girl child. Backlund and Blomqvist (2014) claimed that to address law enforcement adequately, and there must first be a statute outlawing child marriage in Tanzania.

#### 4.2 Girl's Attitude towards Child Marriage Practise

Observation from collected stories revealed that all girls showed efforts to reject the practise of early marriage, or any indicator towards that practise tended to resist getting married at a young age by running away from home, reporting such incidents to the nearby government office, or escaping marriage soon or after a few years in marriage. This finding is in line to Crichton's, et al. (2018) report that girls who resisted child marriage often did so by arguing that they want to complete their education and achieve their personal goals before getting married. The girls also highlighted the negative consequences of early marriage, such as health risks, domestic violence, and limited opportunities for personal and professional growth. This indicates that young girls changed their attitude towards child marriage in Tanzania as previous girls could not resist this practise. This is probably due to the coming of ward secondary schools, whereby in 2004 and 2005, about 1050 schools were built. This has influenced girls' aspirations to acquire an education; hence, elopement and betrothal are dying out slowly because the girls may refuse to get married and opt for education, equipping girls with the skills, knowledge, and credentials to participate fully in society (UNESCO, 2010). This finding is in line with WiLDAF (2016) that increased awareness of the importance of education influences girls to change their attitude towards marriage as advocated in community radio stations, mainstream media, social media, interaction with other people, and positive feedback from educated girls. This implies that young girls challenge their parents' belief that older men can care for women in all spheres because the practise exposes girls to multiple forms of violence.

#### 4.3 Gender Implications in the Practise of Child Marriage

##### 4.3.1 Girls' age of marriage

This study comprised 10 girls who were involved in early marriage with their ages ranging from 12 to 15 years, of which among them 50% were married off at 12 years as shown in Figure 1. The findings further indicate that one-fifth (20%) of girls were married at 14 years, and a small proportion (10%) were married off at 15. This implies that girls were married at tender ages and giving them adult responsibilities, which infringes on their right to the enjoyment of childhood, including the right to rest and leisure, to engage in playing, and other recreational activities is breached due to early marriage. This further implies that there is a possibility for girls who are married at a tender age to suffer from abuse, as they are powerless. In this way, we can see that the Law of Marriage Act contains discriminatory provisions against women, which expose women to multiple discriminations.

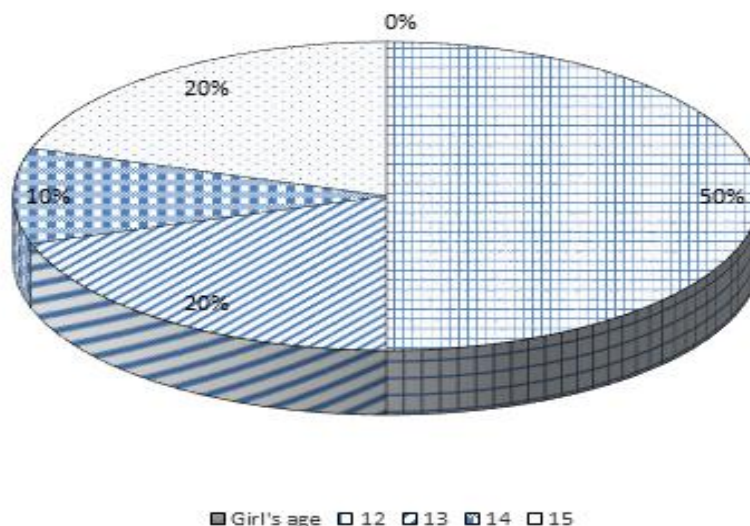


Figure 1. Age distribution of girls involved in early marriage (n =10)

### 4.3.2 Men's age of marriage

The study revealed that 50% of men with the age ranging between 26 to 30 years got married to girls of 12 years of age. On average, 30% of men ranging from 32 to 56 years married girls of 15 years of age, while 20% of men married 27 to 31 years old girls, and others married two girls with 13 to 14 years. This confirms that the age difference tends to reinforce the powerlessness of the girls, which places girls at higher risk of being abused. These findings tally with the information presented by LHRC (2015) that young girls are exposed to gender-based violence because they are often married to men who are much older than them. The CRC's Article 19, which forbids all types of violence against children, has also acknowledged the susceptibility of children in marriages to violence. One girl from Arusha narrated her story:

"I got circumcised when I was 13 and married a 36-year-old man soon after. My husband's family treated me like a maid and an orphan from a low-income household. I had my first child when I was 15 while caring for many livestock and other children in a forest."

These findings align with Bowman and Kuenyehia (2003) who stated that according to customary law, married women must also help males with farm work, carry out other tasks, and infringe on other women's rights.

**Table 1. The Pattern of Marriage ages between Men and Girls**

No.	Region/ District	Bride age	Husband age	Summary of marriage age		
1.	Dodoma	12	36	<b>Men age</b>	<b>%</b>	<b>Married girl age</b>
2.	Longido	12	60			
3.	Arusha	12	40	27 - 31	30	15
4.	Shinyanga	12	28	32 – 56	20	13-14
5.	Mbeya	12	26			
6.	Dar es Salaam	13	31			
7.	Dodoma	13	27			
8.	Shinyanga	14	36			
9.	Mbozi	15	56			
10.	Shinyanga	15	31			

### 4.3.3 Gender disparity in consent to marriage

Under this aspect, girls were married off without their consent due to different reasons. As shown in Table 2 that there were significant categories of marriage arrangement, 80% of girls' parents arranged their girl-child's marriage to justify their willingness for the wedding. At the same time, 20% of girls eloped. The observations show that in the Maasai ethnic group, girl children are married off before they even reach puberty and without their consent, regardless of whether they are schooling or not. The findings align with Bowman and Kuenyehia (2003) and Mohammadi (2016) that fathers consented on their daughters' behalf in most cases of child marriage.

Despite section 17(1) of the Law of Marriage Act, require girls between fifteen and eighteen before marrying to obtain their father's consent, or if he is dead, their mother's and no similar provision applies to boys. Findings further show that in the cases as earlier reported, girls were not part of seeking consent from their fathers. Instead, their parents took the responsibility of marrying off their daughters and consented on their behalf. This deprives them of their right to express their opinions, as Article 12 of the CRC provides. Also, Article 6 of the Universal Declaration of Human Rights provides for free and full consent from both parties in contracting marriage. This implies that if girls are engaged in marriage only with the consent of their parents, such marriage is a forced marriage since girls are not allowed or given a chance to express their views; hence they are enslaved in the husband's houses to save different roles under physical force or physical threats. Anitha and Gill (2009) argues that in the absence of consent, girls were not allowed to

express their views; hence they are enslaved, and significant imbalances in power in marital relations arise and create injustice between the parties, which entertain different forms of domestic violence.

**Table 2: Consent Status in the practise of child marriage**

Type of marriage	Consent status %	
	Yes	No
Arranged marriage by parents	-	80
Eloped/ Convinced by parents	10	20

#### 4.3.4 Humiliation of a girl child's dignity

The study unearthed that in the majority (80%) of recorded stories, parents/fathers have consented on behalf of their children (Table 2). In comparison, a small proportion of 20% of girls entered into a marriage contract through elopement. This shows that child marriages are not always consensual and that a girl's identity as a human being with the ability to think is lost. This shows that permission was not given voluntarily in all instances of child marriage; as a result, a girl child loses her identity as a human being with no right to think. Parents and in-laws see the girls as a piece of property to be used for their ends through the payment of the dowry price. Hence, girls are subjected to a source of economic gain. This confirms Polavarapu's (2006) and Ezer et al. (2006) argument that the right to enter into marriage willingly or voluntarily is inherent to a woman's dignity; hence, denying the right to consent reduces women's status to slavery. A girl from Shinyanga Region narrated that:

"I was married at a tender age to a man aged 36 years after he paid 13 cows as dowry price. I was used as a domestic servant, and early in the morning, I was required to fetch water for his parents and put them in front of their door. My husband used to beat me when I was pregnant after giving birth, and for every mistake I made."

This points out that husbands and in-laws see the girl as a source of cheap labour and an object of pleasure. Thus, girls are reduced to a thing and an object rather than a subject, leading to gender inequality. The study disclosed that parents in Loliondo District killed their girls who refused to consent to marriage. The parents feared losing around 40 herds of cattle already paid as bride dowry. This finding tallies with the decision in the case of Ahmed Said Kidevu Vs. Sharifa Shamte (1989 TLR 148). Maina, J. held that marriage is the voluntary union of a man and a woman and is contracted with the parties' consent. Moreover, the High Court of Tanzania insisted in the case of Jonathan Vs. Republic (2001, Tanzania Law Report TLR 5) and Mallya Vs. Republic (2001 TLR 88) that marriage without consent is invalid and a violation of dignity.

#### 4.3.5 Gender disparity in education

The study revealed that all girls (100%) involved in early marriage had no opportunity for further schooling. This is whether to continue with primary or secondary education. Among them, 60% of girls dropped out of schooling at standard three, and a small proportion (10%) dropped it at standard five (Table 3). In her story, one girl from Shinyanga region stated that "... My parents advised me to prioritise marriage over academics."

This connotes that child marriage denies girls opportunities for education and to build life skills. This revelation is similar to Walker (2012), who found out that girls who married before 18 are likelier to have dropped out of schooling, undermining the development rights of the girl child and women in general. Polavarapu (2006) also argues that child marriage compromises their overall development. This leaves them socially isolated with little education, skills, and opportunities for employment and self-realisation, contrary to Tanzania's commitment to poverty reduction by achieving gender equality. They do not participate and benefit equally like boys from economic activities and decision-making in their community.



**Table 3: Education status of girls**

No	Dropout	Girls %
1	Standard 3	60
2	Form 1	30
3	Standard 5	10

#### 4.3.6 Gender inequality in health

##### 4.3.6.1 Girls' marriage and premature death

This study confirmed that violence was used to force girls to get married. It was reported in a local newspaper, namely Kulikoni, that a Maasai girl was killed when she refused to get married at the age of 12 years:

"...A 12-year-old girl from Loliondo District was forced to wed a 60-year-old man in return for 30 cows. Her spouse coerced her into having sex with him before raping her. The girl tried to complain about the incident to her parents the next day, but her father advised her to return to her husband or risk being harmed. On the first day of intercourse, the girl chose to be assaulted rather than experience the pain. Her father chose to make a call to Morans. Her father stood away and watched as the Morans tied the girl with a rope and beat her with sticks called Njibi-Njibi all over her body. Following a brief period of bleeding, the girl's body was covered in cattle urine, which one Moran applied to the wounds to stop the bleeding. Meanwhile, other Morans were preparing soup for the girl to drink so she might gain energy. Sadly, when the girl's ties were cut, she asked for water but passed away before receiving any."

This implies that child marriage increases the risks of violence and abuse because all rights of a girl are violated at once, including rape, battering, and the right to life. This further connotes slight differences between funeral and wedding ceremonies in the community because all traditions dominated cries from girls compared to men. The findings agree with those of Heise (1994) that child marriage is among gender violence practices in the girl child during her childhood as the practices expose young girls to rape, battering, and health complications. This finding also agrees with those of Singh and Samara, 1996; Walker, 2012 and Montazeri et al. 2016 that child marriage curtails girls' rights to education, health, living an adequate standard of life, enjoying childhood, and protection. They are at risk of physical and sexual violence in marital relations. From the preceding argument, we can see that the law is a vehicle for gender inequality.

##### 4.3.6.2 Early marriage exposed the girl's child to disability

The discoveries show that all married girls were immature in handling reproductive activities. This implies that through child marriages, young girls were exposed to different health complications. One of the victims of child marriage from Dodoma, in her testimony, supports this by saying:

"When I was 12, my parents convinced me that marriage was preferable to education. As a result, I was pushed to marry. I developed a fistula because I was too young to have children. My doctor advised me that because my pelvic girdles were weak, I frequently let faeces flow from my bladder into my vagina."

These findings comply with the observation by Polavarapu (2006) who discovered a married girl child with a fistula problem; she has no control over urine as well as faeces, and it causes much distress to the poor girl because of the foul smell, which leads to discrimination and self-rejection. Nour (2009) and Warioba (2009) support these findings that the practice increases the risk for obstetric fistulas, depression, sexually transmitted infections, cervical cancer, malaria, and maternal mortality or infant death and discourage early pregnancy among young women, which can be preventable and treatable for fistulae. This finding contradicts what is stated in Article 24 of the CRC, which shows that a girl child with health issues is denied the right to the maximum degree of reasonably feasible development.

#### **4.3.7 Gender inequality in accessing justice**

This study revealed that all girls married at a tender age did not bring any action before the court to challenge the practice. This is probably because Section 13 of LMA states that the minimum age for marriage is 14 years under the leave of the court and 15 years for girls, while for boys, it is 18 years. The age limit signifies applications of other laws concerning who should bring a case before the court. The Civil Procedure Code of 1966 requires anyone not to bring an action in a court below 18 years old. Consequently, section 2 of the Age of Majority Act of Tanzania emphasises the age of the majority at eighteen years. This implies that this status prohibits a girl's right to vote as indicated in the Tanzanian Constitution, enter into a contract as indicated in Section 11 of the Law of Contract Act CAP 345, and own property contrary to the Convention on the Rights of the Child. This implies that child marriage denying a girl child brings an action to court due to the age limit. This position contradicts article 15 (1) of CEDAW of 1979, which calls upon women's equality with men before the Law and the Maputo Protocol of 2003, which directed that women's access to justice is right. However, Order XXXI, Section 1 of the Civil Procedure Code of 1966 gives an exception to the general rule that a child can bring a case to court through the next friend or the child's guardian. The principle under Order XXXI, Section 4 of the Civil Procedure Code, requires that any person who is of sound mind and has attained 18 majorities may bring a suit on behalf of a minor when there were violations Bill of Rights included in the Tanzanian Constitution as well as the Law of the Child Act. This means a child must have an adult representative to file a suit under the Law of the Child Act and the Bill of Rights. According to Order XXXI, Section 4 of the Civil Procedure Code, any person who is of sound mind and has attained the age of majority may bring a suit on behalf of a minor as long as their interests are not adverse to the minority. In this regard, the practice of child marriage is unconstitutional and infringes the law of the child, but the age limit to bring a case to court does not favour young girls to access justice unless she uses their next friend or guardian.

#### **4.3.8 Gender inequality in getting to justice**

This study revealed that the legal construction of the age of marriage invites the application of other laws; hence offenders use the same law to escape liability. According to the Sexual Offence Special Provision of 1998 (SOSPA), it is an offence for a man to have sexual intercourse with a girl below 18 years with or without her consent unless the woman is his wife. In this premise, men use SOSPA to defend themselves when they marry a young girl 14 years; hence, she is his wife. This suggests that the contested clauses allow marriage for those considered to be children while also giving offenders a haven to escape responsibility.

A similar view was seen in the case of DDP vs Waziri, Criminal Appeal (2001) 71 in the High Court of Tanzania at Moshi. In this case, the Appellant appealed against the District Court's decision to acquit the Respondent accused of raping her when she was 15. The Respondent contended that the sexual relations were consensual; the Appellant filed the complaint because she became pregnant, and he married another woman. According to Justice Munuo, a child is someone under 18 years of age, as the CRC defines. The CRC further requires that States Parties take protective measures to prevent and address child abuse. Section 130 (2)(1) of the Penal Code Cap 16 RE of 2022 clause establishes the crime known as "statutory rape" today. It is called that because it is illegal to have sexual contact with anyone who is under 18 years, regardless of their consent. Age plays a significant role in proving such an offence in that sense. According to the Penal Code, having sex with a minor, with or without her agreement, is illegal and a crime. Accordingly, the justice found the Appellant guilty of rape and imposed a mandatory sentence of 30 years imprisonment.

On the other hand, the court has tried to overcome this problem by using articles from the Constitution of the United Republic of Tanzania and International Human Rights instruments. As it was observed in the case of Mallya vs R, High Court of Tanzania (2002)88 Criminal Appeal, where Joseph Mallya relied on the LMA of 1971, Sec. 9(1) that provides that a customary marriage must be voluntary between the parties, he appealed his rape conviction. He alleged that he did not commit rape but married the victim under customary law. Justice Munuo held that the Appellant's Act was an abuse of custom and dismissed the Appeal. In support of this conclusion, the justice also cited Article 16 and Article 2 of the Universal

Declaration of Human Rights and CEDAW, respectively, requiring state parties to take appropriate measures to abolish customs and practises that discriminate against women.

It was further observed from Justice Mwesiumo (as he then was) in the case of Joseph Kivuyo and Regional Police Commanders and Others when he described the court's position in society as a "Temple of Justice and nobody should fear to enter it to battle his legal redress ". In this regard, the court opens the door for feminists to protect the rights of a girl child, as in the case of Rebeca Gyumi vs the Attorney General. In response to this call, a lady called Miss Gyumi submitted a petition for all minors, arguing that the Tanzanian Law of Marriage Act's lawful marriage age was unconstitutional. The Petitioner sought a declaration that sections 13 and 17 of the Law of Marriage Act No 5 are unconstitutional for offending the provisions of Articles 12, 13, and 18 of the Constitution of the United Republic of Tanzania of 1977. It was held that laws relating to marriage in Tanzania are generally not only unconstitutional and discriminatory but also violate the rights of the girl child. However, a declaration was not enough without the amendment of specific laws.

## 5. Conclusion and Recommendations

This paper concludes that the development of gender disparity in section 13 of the Law Marriage Act No.5 of 1971 stemmed from the Government's Proposals on Uniform Law of Marriage (Government Paper No. 1 of 1969), in which a girl child's adolescence was regarded as the basis for the legal age of marriage. It was also shown that girls under 18 years are not effectively protected since they are subjected to various forms of discrimination. As a result, the age of marriage is merely a theoretical safeguard for girls' rights. Members of Parliament are advised to evaluate concerns affecting gender groupings while adopting legislation by considering equal opportunity for boys and girls in their lives. Girls' opinions toward child marriage were found to be negative due to the cautions they received when they reached secondary school, which helped transform their viewpoints and raise their understanding of the value of education. It is recommended that the government open secondary schools in every village to promote girls' enrollment. The study also suggests that the difference in the minimum age of marriage between boys and girls serves as a conduit for gender effects such as violence, inequality, and human rights violations. As a result, child marriage is inextricably tied to women's underdevelopment and the lowering of women's standing. It is recommended that the government take immediate action to amend Section 13 of the LMA of 1971, as suggested by the High Court of Tanzania, to raise the minimum marriage age for girls and boys to 18 years to reduce the prevalence of the practise in Tanzania, protect and promote the rights of girls meaningfully. Amendment of Section 13 of the LMA of 1971 will ensure that national laws comply with regional and international human rights instruments on child rights.

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