



# **Child brides and legalised marital rape - A Commonwealth tragedy**

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**Presented by Sneh Aurora**  
**Commonwealth Human Rights Initiative**



Commonwealth  
8.7 Network

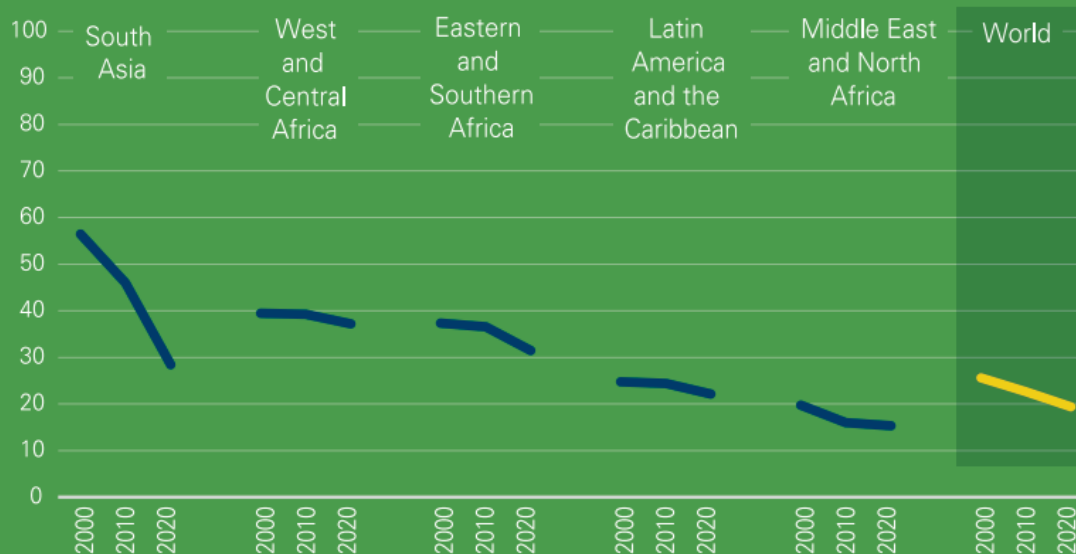


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# UNICEF: DATA ON CHILD MARRIAGE

Over the last two decades, the practice of child marriage has declined significantly


Percentage of women aged 20 to 24 years who were first married or in union before age 18



Worldwide, 650 million girls and women were married in childhood.

Five countries account for about half of this total number: India, Bangladesh, Nigeria, Ethiopia and Brazil.

Global progress in ending child marriage to date has been stronger among wealthier segments of society, while the poorest girls have been largely left behind.



The COVID-19 pandemic is raising the risk of child marriage through five main pathways: 1) interrupted education, 2) economic shocks, 3) disruptions to programmes and services, 4) pregnancy and 5) death of a parent. While these five factors are likely to affect child marriage in all settings, additional contextual factors may also play a role. Such factors include the overall prevalence of child marriage; the amount and direction of marriage payments; gender and social norms; the availability of social protection and poverty alleviation programmes; and the presence of ongoing conflicts, forced migration and displacement.

# Points of Discussion

1. International legal position - plus Commonwealth approach
2. National practice and challenges - Tanzania, India, Australia
3. Some recommendations for States

# Global Estimates Modern Slavery Report, 2022

*Number and prevalence of persons in modern slavery, by region*

	FORCED LABOUR <sup>(c)</sup>		FORCED MARRIAGE		MODERN SLAVERY <sup>(d)</sup>	
	No. <sup>(a)</sup>	% <sup>(b)</sup>	No.	%	No.	%
<b>World</b>	<b>27,577</b>	<b>3.5</b>	<b>21,993</b>	<b>2.8</b>	<b>49,570</b>	<b>6.4</b>
Africa	3,819	2.9	3,189	2.4	7,008	5.2
Americas	3,593	3.5	1,496	1.5	5,089	5
Arab States	886	5.3	814	4.8	1,700	10.1
Asia and the Pacific	15,142	3.5	14,207	3.3	29,349	6.8
Europe and Central Asia	4,137	4.4	2,287	2.5	6,424	6.9

**Notes:** (a) Number is expressed in thousands; (b) “%” denotes cases per 1,000 population; (c) “Total forced labour” comprises privately-imposed forced labour and State-imposed forced labour; and (d) “Total modern slavery” comprises all categories of forced labour and forced marriage.

# What are we talking about?

## Child marriage

*any formal or informal union where one or both parties is below the age of 18 years.*

**Forced marriage** - not defined under international law but is considered to be

*'a marriage in which one and/or both parties have not personally expressed their full, free and informed consent to the union'*

# International framework on child and forced marriage

- 1. **Convention on the Elimination of all forms of Discrimination Against Women (CEDAW)**
- 1. **Universal Declaration on Human Rights (UDHR)**
- 1. **Convention on the Rights of the Child (CRC)**
- 1. **African Charter on Rights and Welfare of the Child++**
- 1. **Convention on Transnational Organised Crime Supplementary Protocol on Trafficking in Person (Palermo Protocol)**





# When is child marriage modern slavery?

- If the child has **not given or cannot genuinely give their free and informed consent** to enter the marriage
- If the child is **subjected to control and a sense of 'ownership'** – through abuse and threats – and is exploited, and/or engage in non consensual sexual relations
- If the child **cannot realistically leave or end the marriage**

# Sustainable Development Goals (SDG Target 5.3)

**5** GENDER  
EQUALITY



*‘Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation’*



The Commonwealth

**CHOGM 2022  
Communiqué**

**Kigali Declaration on  
Child Care and  
Protection Reform**

# Marital rape

## The Declaration on the Elimination of Violence against Women, Article 2

Violence against women shall be understood to encompass, but not be limited to, the following:

1. Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, **marital rape**, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation;

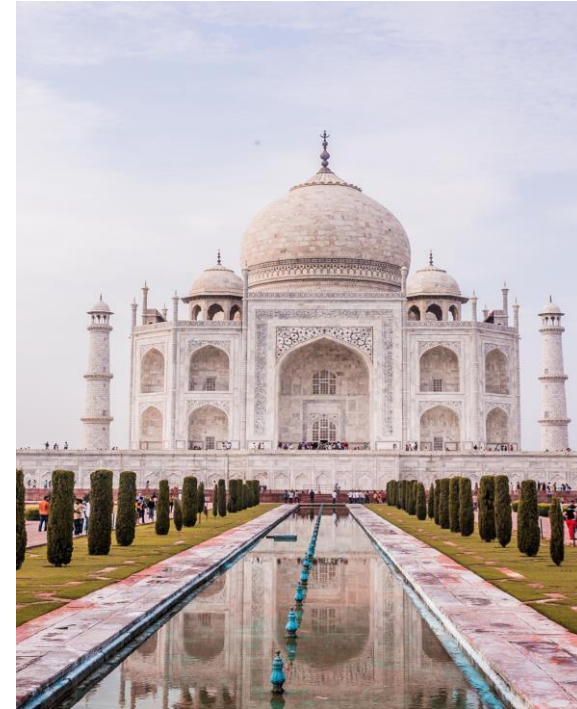
# Tanzania



- Law of Marriage Act (1971): legal age of marriage-18 for boys, 15 for girls
- Law challenged for violating girls' fundamental rights, and contravening Law of the Child Act.
- 2016: Tanzanian High Court ruled provisions unconstitutional; directed govt to raise age of marriage to 18 for both; appeal by govt overruled in 2019
- Need for clear legislation

# India

- Criminal law amendment act 2013, retained marital rape
- Indian Contract Act (1872) - forced marriage considered a void contract
- Protection of women from domestic violence Act (2005)
- Prohibition of Child Marriage Act, 2006 - civil prohibitions -
- Protection of Children from Sexual Offences Act - has been used in Assam to tackle child marriage under 14
- Challenges with recent enforcement in North East of country
- Last month, the Supreme Court refused to entertain a petition seeking uniform age of marriage for men and women



# Australia

- Australia Criminal Code Act 1995 section 270.7A - forced marriage offence
- Most common form of modern slavery currently reported
- Extends to marriages conducted outside Australia - with an Australian connection
- Applies to legally recognised marriages and religious, cultural ceremonies
- Impact of criminalisation - possible adverse impacts



# Recommendations

- Put those vulnerable to child marriage/forced marriage at the centre of interventions
- Raise the legal age of marriage to 18 without exception
- Strengthen gender-responsive, child-sensitive national referral mechanisms
- Adopt laws that tackle the underlying drivers of child/forced marriage
- Criminalise marital rape





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# **Thank you**

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