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**“COMMONWEALTH LAWYERS -  
COMMON CHALLENGES IN  
UNCOMMON TIMES.”**

# **“CHILD BRIDES AND LEGALIZED MARITAL RAPE: A COMMONWEALTH TRAGEDY.”**

**D 5: Tuesday, March 7, 2023.**

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# CHILD BRIDE = CHILD MARRIAGE:

## ► DEFINITION: CHILD

- Article 1 of the Convention on the Rights of the Child (“the CRC” ) defines a child as:  
“a person under the age of 18 years.”

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## ► DEFINITION: CHILD MARRIAGE

- “Any marriage where at least one of the parties is under 18 years of age.”( CEDAW Committee)

# 1. CHILD BRIDES

**60 % of child marriages takes place in the Commonwealth.**

**25 % of child marriages takes place in the Caribbean  
(Unicef, 2018)**

**Unlike the CRC, the African Charter on Human and Peoples' Rights specifically prohibits child marriage.** *“child marriage and the betrothal of girls and boys shall be prohibited and effective action, including legislation, shall be taken to specify the minimum age of marriage to be 18 years...”* (Art.21(2))

**39,000 child marriages occur every day  
(U.N.)**

# INTERNATIONAL INSTRUMENTS ON CHILD MARRIAGE

## ▶ Universal Declaration of Human Rights 1948 (Article 16 (1))

*" (1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution. "*

**International Covenant on Economic Social and Cultural Rights (ICESCR) 1966 (Article 10(1)).**  
*Marriage shall be entered into only with the free and full consent of the intending spouses. "*

## ▶ International Covenant on Civil and Political Rights ( ICCPR) 1966 (Article 23(2))

*2. The right of men and women of marriageable age to marry and to found a family shall be recognized.*

## ▶ UN Convention on the Elimination of All forms of Discrimination against Women (CEDAW) 1979 (Article 16 (1))

▶ *States Parties shall take all appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relations and in particular shall ensure, on a basis of equality of men and women...(*

▶ **CEDAW's General Recommendation 21** states: *The minimum age for marriage should be 18 years for both man and woman.*

▶ **Convention on the Rights of the Child, 1989. (CRC) Art. 19(1& 2)**

▶ **Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, 1964.**

# OTHER RELEVANT CRC ARTICLES

- ▶ Art 2 : Non - discrimination
- ▶ Art 3: Best interests of the child
- ▶ Art. 4: Protection of rights
- ▶ Art. 6: Right to life, survival and development
- ▶ Art. 9: Separation from parents
- ▶ Art. 18 Parental responsibility
- ▶ Art. 19: Protection from all forms of violence
- ▶ Art. 27: Adequate standard of living
- ▶ Art. 28: Right to education
- ▶ Art. 31: Right to leisure, play and culture
- ▶ Art. 34: Right to protection from sexual exploitation
- ▶ Art. 36. Right to protection from all other forms of exploitation.

# A Tale of Two Child Brides

## ▶ ANNA'S STORY:

- ▶ She said he was the “best husband in the world.” She was age 12. Her teacher got her pregnant. Her parents made him marry her.

## ▶ DOLLY'S STORY:

- ▶ Her parents forced her, at age 12, for economic reasons, to marry an older man.
- ▶ In her middle age, she had two husbands at her home, one in his 80's and one in his 50's.

# VARIOUS REASONS FOR CHILD MARRIAGE

- ▶ Gender inequality
- ▶ Lack of education on sexual and reproductive health
- ▶ Sexual violence
- ▶ Teenage pregnancy
- ▶ Economic reasons -poverty
- ▶ Geographical location
- ▶ Religious beliefs
- ▶ Cultural practices
- ▶ Low self esteem – to gain respect.

*“Call me, Mrs. Joseph, ah eh one foot Vizzie again. Call me Mistress Joseph, you have to put handle to mih name. Now I have a legal husband, I am a high faluting women. All you look at me, today, I reach in society.”*

**“One foot Visina.” (Mighty Duke).**



# CONSEQUENCES OF CHILD MARRIAGE

- ▶ **Adolescent mothers:**
- ▶ higher risks of health problems: eclampsia, systemic infections, etc.
- ▶ potential for sexually-transmitted diseases;
- ▶ pregnancy-related problems; depression, PTSD
- ▶ **Their babies:**
- ▶ higher risks-low birth weight, pre-term birth, severe neonatal condition. (WHO)

## LAW REFORM OBLIGATION

- ▶ All Commonwealth countries ratified CRC.
- ▶ General Comment No. 5 ( 2003)
- ▶ **Art. 4:** States must implement CRC so domestic laws must be made compatible.
- ▶ **Article 3:** States must ensure child such protection and care as necessary for his or her well-being.

# CHILD MARRIAGE: OTHER CONSEQUENCES

- ▶ Curtails educational opportunities- school drop-outs;
- ▶ Paucity of employment and career prospects;
- ▶ Limits full development of potential and growth and ability to contribute to society;
- ▶ Affects right to express opinion;
- ▶ Greater risk for domestic violence.

# NEED FOR LAW REFORM

States “shall take all appropriate legislative and administrative measures.” (Art.3 of CRC)

This is not optional but **mandatory**.

Law reform is problematic in plural legal and religious systems governed by different laws but this challenge can be overcome.

# PRE -LAW REFORM IN TRINIDAD AND TOBAGO

## Different minimum ages for marriage:

- ▶ Marriage Act Ch.45:01:(**boys-16, girls- 14** )  
**with parental consent)**
- ▶ Muslim Marriage and Divorce Act Ch. 45:02
- ▶ (**boys- 16, girls -12**)
- ▶ Hindu Marriage Act Ch 45:03
- ▶ (**boys-18, girls-14**)
- ▶ Orisha Marriage Act Ch 45: 04
- ▶ (**boys 18, girls 16**)

# LAW REFORM PROCESS

Publication of data on number of child marriages.  
Between 1996-2016. No. of marriages = 3478; 3,404 girls, 74 males. Husbands - ages 36, 46, 52 years.  
Intense lobbying by social groups;  
Media blitz - widespread publicity, consultation;  
Debate on recognition of plural society, respect for religious tolerance, race issues.  
Religious lines crossed by various groups-women's organisations, such as Hindu Women's Group  
Emphasis on issue as child rights issue.  
Culture comes into debate - calypso

# Calypso Monarch 2017 Mighty Chalkdust on child marriage: “Learn from Arithmetic.”

He referred to the wide disparity in age between the child bride and husband.

“75 cannot go into 14”

75/ 14

Vulgar fraction?

Improper fraction?

Culture used to advance rights.



# LAW REFORM AT LAST

**Trinidad and Tobago:** Miscellaneous Provisions (Marriage) Bill, 2016 passed in 2017 raised the minimum age of marriage across the board to 18 years.

**Antigua & Barbuda:** Marriage (Amendment) Act, 2019 set the minimum age of marriage at age 18.

**Guyana:** Marriage Act- Cap. 45:01. Minimum age - 18. But marriage with parental consent at age 16 in cases of pregnancy or birth of child.

**England and Wales:** Marriage and Civil Partnership (Minimum Age) Act, 2022 came into force on February 27, 2023. It raised the legal age of marriage to 18.

All parental consent removed.



## PART 2: LEGALIZED MARITAL RAPE

“But the husband cannot be guilty of a rape committed by himself upon his lawful wife, for by their mutual matrimonial consent and contract the wife hath given up herself in this kind to her husband, which she cannot retract.”

- ▶ Sir Matthew Hale C.J. in his History of the Pleas of the Crown, 1736.
- ▶ This is known as the marital exemption.

# DRIVERS FOR MARITAL RAPE

**RELIGION AND CULTURE** justified marital exemption.

*“Wives, submit yourselves to your husbands as to the Lord.”* (Ephesians 5:22)

*“And the two shall become one.”* (Eph. 10:5);

*“How can I rape myself?”* This was the cry of a senior female lawyer in The Bahamas.

Response: *“Husbands love your wives as Christ loved the church.”* Ephesians 5:25:”

# MARITAL RAPE

Formerly, all jurisdictions gave legal recognition to marital exemption for rape. Marriage = consent to sexual relations.

- ▶ Husband cannot rape his wife. She must be available to fulfil his sexual demands.

Definition of rape included the words.

“unlawful sexual intercourse” ( Jamaica s1(1) Sexual Offences Act  
“ who is not his wife.”

## PART 2: LEGALIZED MARITAL RAPE

- ▶ Earlier definitions of rape specified sexual intercourse by a male person with a female person who was not his wife.
- ▶ This definition gave legal recognition to the marriage exemption.
- ▶ It also failed to recognize the possibility that a female person could be guilty of rape.
- ▶ Law was later amended to create the offence of **grievous sexual assault** by a husband who raped his wife or cohabitant in specified circumstances eg. legal separation, pending divorce, etc.

# LEGALIZED MARITAL RAPE

- ▶ **DRIVERS OF REFORM**
- ▶ **CEDAW**
- ▶ **Work of Advocacy Groups** -Support for victims/survivors
- ▶ **Feminist Movement**
- ▶ **Result:** rape seen as a power and control and gender inequality issue rather than sexual crime;
- ▶ **Changes in adjudication of rape cases:**
- ▶ **Abolition of evidence of complainant's sexual history, recent complaint, corroboration;**
- ▶ **Judicial training in gender bias.**

## 2. LEGALIZED MARITAL RAPE

### RAPE -T&T Modern Definition

- ▶ A person commits the offence of rape when he has sexual intercourse with another person
  - (a) without the consent of that person where he knows that the complainant does not consent to the intercourse or where he is reckless as to whether the complainant consents to it, or
  - (b) With the consent of the complainant where the consent-
    - (i) is extorted by threat of bodily harm to the complainant or to another;
    - (ii) is obtained by personating someone else;
    - (iii) is obtained by false or fraudulent representations as to the nature of the intercourse; or
    - (iv) is obtained by unlawfully detaining the complainant .

**Definition is gender neutral.**

# LEGALIZED MARITAL RAPE

## ▶ DRIVERS OF REFORM

▶ CEDAW

▶ 2030 Agenda for Sustainable Development

▶ Spotlight Initiative to eliminate violence against women and girls

▶ ADVOCACY GROUPS

# LEGALIZED MARITAL RAPE

## LAW REFORM IMPERATIVE

Marital exemption does not accord with equality/non-discrimination provisions in International/regional instruments ratified by States such as CEDAW; and with their own Constitutions which spoke to equality.



# LEGALIZED MARITAL RAPE

## ▶ REFORM AT LAST

- ▶ Change in law in Commonwealth countries  
e.g. Canada Criminal Code 1985  
UK common law-R. v R.[1991] All E.R.747  
Reforms in Sexual Offences laws to  
exclude marriage exemption.

# LEGALIZED MARITAL RAPE

- ▶ Work of socialization of children and adults and law reform needs to continue.
- ▶ Important to educate parents, teachers and entire community, children from pre-school age to recognize and practise gender equity and to eradicate the old stereotypes and prejudices which cause discrimination and bring harm to women and girls.
- ▶ **Marital rape is not totally eradicated in law and practice. It remains one of the common challenges in these uncommon times.**

**THANK YOU**  
**FOR YOUR KIND ATTENTION.**