HIGHLIGHT

CHILD MARRIAGE: LEGAL AND SOCIO-CULTURAL ASPECTS

Child marriage is a huge problem in Sub-Saharan Africa, such as in Niger where over 75% of girls are married before age 18 and in Malawi and Mozambique, where over 50% of children are married before the age of 18. Child marriage practices infringe on the rights of the child, and are themselves a consequence of violations of the rights of the child. The causes of the phenomenon of child marriage are complex and interrelated. Social, cultural, religious, and economic factors influence norms, values, and behaviour on individual, community, and society levels. While poverty is an important driver of child marriages in Africa, one of the rationales for child marriage is related to preservation of the traditional value of girls' chastity and virginity. Using Malawi as a case study, one of the reasons some communities have resisted raising the age of marriage to 18 was the argument that it would allow a window period in which sexually mature girls would engage in sexual intercourse before marriage.

Monica J. Grant, a sociologist, found that in rural Malawi, parents worry about the girl-child becoming sexually active when she attains puberty.[14] Parents are anxious that their daughters will not finish school, but will instead get pregnant. Parents construct the girl as easily distracted from their studies by boys who will lure them into sexual relationships. In fact, another study had found that anxious parents preemptively took their girl-children out of school in order to prevent them from getting pregnant.[15]

Therefore, socio-cultural norms about sexuality of the girl-child, the value placed on the girl's virginity, and the construction of the girl-child as sexually weak against the sexual desires of boys, contributes to parents marrying off their girl-child as soon as she reaches puberty. Such constructions of girls' sexuality reveal underlying power dynamics in a patriarchal environment that justifies girl-child marriages.

In 2014, the African Union launched a campaign to eliminate child marriages on the African Continent. In 2016, the Southern African Development Community (SADC) adopted the Model Law on Eradicating Child Marriage and Protecting Children Already in Marriage. In a number of countries, such as Zimbabwe[16] and more recently Tanzania,[17] the courts have supported the application of human rights and legal norms to the eradication of child marriages.

It is important, however, that legal and human rights approaches to end child marriages address social and cultural norms around the sexuality of the girl-child. The anxiety that parents have about sexually mature girls who might be sexually active and get pregnant before marriage is a concern that motivates parents to limit the sexual agency of the girl. Parents may therefore feel justified to either restrict normative consensual sexual conduct, or to marry off the girl-child as soon as she reaches or approaches puberty. Clearly, the root problems of why and how society controls the sexuality of adolescent girls must be explicitly addressed by legal and human rights approaches that aim to end the scourge of child marriages.

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