

RUAHA CATHOLIC UNIVERSITY (RUCU)



FACULTY OF LAW

**CRITICAL ANALYSIS OF THE LAWS AND PRACTICE REGARDING BRIDE PRICE IN
TANZANIA**

**A Research Paper Submitted in Partial Fulfillment of the Requirement for the awards of
Bachelor of Law Degree (LL.B) At Ruaha Catholic University, Iringa, Tanzania.**

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CERTIFICATION

The undersigned certifies that, he has read and hereby recommends for acceptance by Ruaha Catholic University (RUCU), Research Proposal Title: Critical Analysis of the Laws and Practice regarding Bride Price in Tanzania in partial fulfillment of the requirement for award of Bachelor of Law (LLB) degree Ruaha Catholic University.

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DECLARATION

I, Deusy Yolam Myenda, do hereby declare that this work is my own original work. I do further state that, to the best of my knowledge and belief this work has never been submitted to any other educational institution for the purpose of meeting any academic requirements.

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DEDICATION

This piece of work is dedicated to my beloved parents, Yolam Myenda and Atusanje Thomas Matagi and my young sisters and brothers. They deserve such a special dedication for they have and still are playing a great role in my educational pursuit. May God bless them!

ABSTRACT

The focus of this study is Critical analysis of the Laws and practice regarding bride price in Tanzania. The problem of the bride price in Tanzania is that it perpetuates gender inequality and reinforces harmful traditional norms and practice. The practice of paying a bride price which involves the groom's family providing money or goods to the bride's family as the condition for marriage, places a financial burden on the groom and his family and this can lead to financial stress and even debt. There are discrepancy between the current position of the law and the practice by the people who are expected to be served by the law and furthermore the bride price system commodities women and reduces them to objects that can be bought and sold. This can lead to a lack of agency and autonomy for women as their worth is determined by their perceive value in terms of the bride price .The problem of bride price in Tanzania is a complex issue that requires addressing deep-rooted cultural beliefs and norms. Efforts should be made to promote gender equality, empower women and challenge harmful practices that perpetuate inequality.This is creating a silent conflict what people are doing in different from what the law provides.

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LIST OF ABBREVIATION

CAP	Chapter
R.E	Revised Edition
S	Section
TLR	Tanzania Law Report
No	Number
BAKWATA	Baraza kuu la waislam Tanzania
GN	Government Notice
RUCU	Ruaha Catholic University

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CHAPTER ONE

GENERAL INTRODUCTION

1.0 Introduction

Bride price, also known as "dowry," has been a traditional practice in various cultures, including Tanzania, for centuries¹. It typically involves the groom or his family presenting gifts or payment to the bride's family as a gesture of appreciation and to demonstrate the groom's ability to provide for his future wife². The practice varies in different regions and ethnic groups within Tanzania, but it often includes items like livestock, money, or other valuable goods. While it's deeply ingrained in tradition, there have been discussions and debates about its implications for gender equality and women's rights. In Tanzania, bride price, also known as "mahari," is a cultural practice where the groom or his family provide gifts, money, or livestock to the bride's family as a gesture of appreciation and respect for their daughter³. It is a longstanding tradition in many Tanzanian communities and is seen as a way to strengthen ties between families and demonstrate the groom's ability to care for his future wife. The practice varies across different ethnic groups and regions in Tanzania, with the amount and nature of the bride price negotiated between the families involved. Bride price in Tanzanian cultures has deep cultural roots and significance in the country⁴. It plays a crucial role in traditional marriage customs, serving as a symbol of respect, appreciation, and the willingness of the groom and his family to

¹ <https://www.collinsdictionary.com>

² <https://www.biodiversitylibry.org>

³ <https://www.merrium-webster.com>

⁴ <https://sociologydictionary.org>

take on the responsibilities of marriage⁵. The practice of bride price in Tanzania is viewed as a way to honor the bride's family for raising and nurturing their daughter, as well as a means of establishing and strengthening social bonds between families. In many Tanzanian communities, negotiations around bride price can be intricate and involve extended family members on both sides⁶. The amount and nature of the bride price are often determined through discussions and deliberations that reflect the economic status, social standing, and cultural traditions of the families involved. Various factors such as the education level, occupation, and personal qualities of the bride may also influence the negotiations⁷. While bride price is a customary practice in Tanzania, it is important to note that it is not intended to commodify women or treat them as property. Instead, it is a symbolic gesture that underscores the mutual respect and reciprocity between families as they come together through marriage. In recent times, there have been debates and discussions about the role of bride price in contemporary society, with some arguing for its preservation as a cultural heritage and others advocating for reforms to ensure that it is fair and respectful to all parties involved⁸.

1.1 Background of the problem

The bride price is a traditional practice in Tanzania, as well as in many other African countries. It is a customary payment made by the groom or his family to the bride's family as a sign of respect, gratitude, and appreciation for allowing their daughter to become part of the groom's family. Marriage in pre-colonial societies was there to

⁵ <https://dictionary.cambridge.org>

⁶ <https://www.wider.unu.edu>

⁷ <https://www.yourdictionary.com>

⁸ <https://www.oxfordreference.com>

provide labour and for reproduction, the wife joins the family of husband for production. Marriage was building alliances between different clans. Bride wealth or dowry is misunderstood by many people, it is taken to be a wife purchase but that was not that the case. Bride wealth was given and not paid and it was there to legitimate the marriage, it made it to be valid. The rationale was the transfer of the reproductive potential from wife's family to the husband's family payment of dowry started to age before the coming of colonialism⁹, it has been there and it continues to exist. Bride Price is the money or goods given to the family of a bride by the bridegroom or his family ¹⁰

The bride price has deep cultural and historical roots in Tanzania. It serves as a symbol of the groom's commitment, responsibility, and ability to take care of his future wife. It is also seen as a way to strengthen the bond between the two families and ensure a harmonious union. The amount of the bride price varies depending on various factors, such as the social status, education, and beauty of the bride, as well as the wealth and status of the groom's family. It is usually negotiated between the families of the bride and groom, and can include items such as livestock, money, clothing, household goods, and other valuable assets. While the bride price is deeply rooted in tradition, it has also faced criticism and controversy in recent times. Some argue that it perpetuates gender inequality and treats women as commodities, while others argue that it is an important cultural practice that should be preserved. The law also stipulates that the bride price should not be a precondition for marriage, and that it should not be used as a means of exploiting or mistreating women.

⁹ Price and Female Education

¹⁰ www.collinsdictionary.com

1.2 Statement of the problem

The problem of the bride price in Tanzania is that it perpetuates gender inequality and reinforces harmful traditional norms and practices. The practice of paying a bride price, which involves the groom's family providing money or goods to the bride's family as a condition for marriage, places a financial burden on the groom and his family. This can lead to financial stress and even debt, as the bride price is often expected to be substantial and can vary depending on factors such as the social status of the families involved.

Payment of the bride price has been practiced in most of Tanzania societies. Many families are reluctant to release the daughter without getting dowry. The law of marriage Act section 25 d¹¹ support bride price state" that where the parties belong to a community or to communities which follow customary law, in civil form or according to the rites of the customary law". Therefore if the community is follow the dowry the parties must pay dowry Section 41(a)¹² of the Law of Marriage Act did not support bride price as amount of validity marriage state that" A marriage which in all other respects complies with the express requirements of this Act shall be valid for all purposes , notwithstanding (a) any non-compliance with any custom relating to dowry or the giving or exchanging of gifts before or after marriage. In Tanzania many tribes practice dowry giving and it is seen to be important and a rite which legalize marriage. The Maasai, The Chaga and Sukuma are some of the examples of tribes in Tanzania practicing dowry giving and dowry are seen to be the important prerequisite for legalizing marriage.

¹¹ Law of Marriage Act [Cap 29 R:E 2019]

¹² Section 41of Law of Marriage Act [Cap 29 R.E 2019]

There are discrepancy between the current position of the law and the practice by the people who are expected to be served by the law. Furthermore, the bride price system commodifies women and reduces them to objects that can be bought and sold. It reinforces the idea that women are possessions to be acquired, rather than equal partners in a marriage. This can lead to a lack of agency and autonomy for women, as their worth is determined by their perceived value in terms of the bride price. The bride price also contributes to the prevalence of child marriage in Tanzania. Families may marry off their daughters at a young age to secure a higher bride price, perpetuating a cycle of poverty and limited opportunities for these girls. Child marriage has numerous negative consequences, including limited education, increased risk of domestic violence, and adverse health outcomes.

Overall, the problem of the bride price in Tanzania is a complex issue that requires addressing deep-rooted cultural beliefs and norms. Efforts should be made to promote gender equality, empower women, and challenge harmful practices that perpetuate inequality and limit the rights and opportunities of women and girls¹³.

1.3 Literature review

Ashrafy¹⁴, explaining the important of dowry in his book, “The first pillar is that marriage is not affair of only two persons. Many people who are relative of the husband and wife to be or involved in marriage preparations. The second pillar dowry which is paid by the father of the husband who helped by his relatives. Dowry is paid after due consultation and discussions with the family of the wife to be also participate effectively in the

¹³ <https://www.apus.edu>

¹⁴ N.Ashrafy, Bride Price and Female Education, Zambia 2016

marriage preparations for their daughter". From above explanations it is clear that in all marriages under customary law parents must consent to the marriage of their daughter.

Mbilinyi and Nyamhanga, focused on the impact of the bride price on marital relationships and gender dynamics. The research found that the bride price often perpetuates gender inequality, as women are seen as commodities that can be bought and sold. The study also highlighted that the bride price can lead to violence against women, as men may feel entitled to exert control over their wives due to the financial investment they made.

Visva ,state that The dowry (Mahr) is considered as an honorarium in Shariah. It is presented by the groom to his bride, or stipulated at the time of marriage. Shariat's viewpoint is, that the primary right of every woman is "Mahrul-Mithl"¹⁵ .The definition of Mahr-ul-Mithl is: the sum of the Mahr is predetermined by the same amount the women of that family usually receive at the time of marriage. Mahr is a compulsory right of 'to be wife' on her to be husband. Mahr is wealth/money/property/anything the wife desires in tangible or non-tangible form. This is given to the wife by her husband before marriage¹⁶. The mahr in any Islamic marriage contract is a fundamental religious right of the wife, and the husband may not reduce the mahr. Even upon the husband's death, the deferred mahr is paid from his estate before all other debts, because it is a religious requirement. There is no limitation in the type of Mahr—it can be any type of property; such as gold, silver, real estate, currency, domestic appliances, carpets, dishes, cars, clothes, and any other thing that can be owned. However, it is in the good interests of

¹⁵ Ibid

¹⁶ R.D.Visva,mahr in Islam, Bharati University,Arab 2018, p.23

the woman that, if feasible, she sets her Mahr to be real estate, gold, silver, and such. This is so it is worth does not decrease over time and can be her reserve. The true owner of Mahr, regardless of the type of property, is the wife. No one has the right to use or take possession of her property without her consent; even her father, mother, or husband. The Quran also expresses Mahr in this manner, as it is called Nihlah, which means gift or endowment. According to the writer the dowry is compulsory also is amount to make a marriage to be valid differing from the law that the dowry is not amount of validity marriage. Also the writer provides that the dowry can be tangible or non-tangible form differ from the customary law that the dowry tangible form likes property or cash or cattle. Therefore the study fills the gap by provide the dowry under Islamic society and customary society is not the same but those society bride price is amount of requirement of validity marriage. From the reviews of writers above it is clear that the custom of dowry is still valued by the societies of Tanzanians and it is there to stay.

Maqsood ¹⁷,State that mahr is legally required for all Islamic marriages while dower was optional, and also mahr is required to be specified at the time of marriage. Mahr also can be classified as a form of "bride wealth", described by anthropologists as payments made from the kin of the groom to the kin of the bride; however, mahr is paid directly to the bride and not her parents. In fact, as her legal property, mahr establishes the bride's financial independence from her parents and in many cases from her husband, who has no legal claims to his wife's mahr. The requirement of a mahr is mentioned several times in the Quran and Hadith. The mahr is often paid to the bride in parts. The mahr amount

¹⁷ R.w.Maqqood, The Muslim marriage Guide, Goodword Books: India 2019.P.89

given to the bride at the signing of the marriage contract is called a muajjal (which is paid at time of marriage (nikah), and the portion that is promised but deferred is called a ghaire mu'ajjal (which is paid after completion of marriage). A deferred promise to pay does not make the full amount of the mahr any less legally required it represents value which a husband has to part with to effect marriage, there is no difference with dowry as put by the writers. It is said that dower has no fixed amount and it has no limits, it can be any amount to be agreed and parties cannot agree to non-giving of dower. That is Islamic law, but virtually it represents the social values of the people which need to be respected, and this will sustain and protect marriage. It is the writer's position that payment of mahr or dowry is a religious issue which should not be interfered by the state. This study cover the gap through explain that in the Islamic society the bride price is compulsory and is amo

Komba ¹⁸, In this article Bride Price has no legal importance in marriage discusses the meaning of bride price "parties were guided by their customs to fix the amount of bride price depending on the economic status of the bridegroom. For example for a young man who had grown as an ophan but had struggled to own some property or cattle or crops could be required to pay less than a wealthy family. As we Saw earlier, the importance of bride price wealth to marriage has been of uniting families with great respect and not as a sign of "seller-buyer" approach. It was only a sign of unity, respect and a taken seal to the marriage contract " approach.

¹⁸ A.Komba , Bride Price in African Societies, Bride Price has no legal important in marriage volume 4 2015

Mushi¹⁹ ,argued that the bride price can be seen as a form of social security for women, as it provides them with economic support and protection in case of divorce or widowhood. The research also highlighted that the bride price can enhance women's social status and influence within their communities.

Hughes, State that Maasai weddings are elaborate affairs that incorporate many traditional customs. Historically girls are married at anywhere between 12 and 20 years, however, this is slowly changing as education becomes more available to the fairer sex. But the rites still stand. He say,” The day before the wedding the husband and best man will bring the last of the pre-agreed dowry to the girl’s family. This is normally a combination of livestock, cash, blankets and honey. On this day the girl gets her head shaved as a symbol for the new beginning she is about to embark on. The wedding procession starts with a blessing from an elder. He/she spits out milk outside the girl’s mother’s house. Before the girl leaves the house grass is tied to her shoes as a further blessing. For the cattle-loving Maasai grass symbolizes abundance (of milk).As the bride leaves her village the women come to jeer her a little and also pledge wedding gifts. For each present (e.g. sheep, chickens) the bride ties a knot in one of the long threads on the Enkariwa wedding necklace as a reminder of how many presents she needs to collect after the wedding. The girl is often crying at this point, leaving her family’s village into the unknown²⁰. The procession then goes to the husband’s village where the main celebration is held. When she arrives at this village she is given a baby or young child to hold to symbolize the children that she will have”. From the marriage proceedings by the Maasai as discussed above it are clear that gifts and dowry giving is still a practice which

¹⁹ Mushi, Building the Rule of Law 2020

²⁰ C Hughes, The maasai way by Asilia Africa 2018 Arusha

is valued and it is there to stay. Notwithstanding their practice, Maasai may not be aware of the position of the law. This is a position which is found in most cattle keeper's tribes. The gifts accepted make part of the required dowry, in this case dowry giving is a process in marriage it is not the same as when one goes to a shop and pays for something he buys. Dowry is not a wife purchase; dowry is more a means to legalize the marriage than to bring in wealth. Marriage is a process involving rituals which must be followed and it is those rituals which make the marriage valid and legal. Therefore the study cure the gap by explaining that the pride price is make the marriage to be valid.

IPS Report²¹ , on his article titled Bride Price: it was observed “You feel you are a family property”, bride price in Uganda is described as “traditionally the money given as a token of appreciation by grooms to the families of their brides.” In the same article it is reported that an association is formed to play part in negotiation of bride price on behalf of the bride or groom. The writer is discussing the negatives only of the dowry giving; he is not examining the good side of the giving of dowry. To my view the negatives of dowry giving exists only when dowry giving is abused, otherwise there are no serious negatives in dowry giving. The abuse of the customary rule is occurring just as any other abuse of any good rule which may occur.. Therefore the study file the gap for explains the effects caused by result if the society loses the customary rule of giving dowry.

1.4 Research hypothesis

It appears that laws and practice regarding to bride price in Tanzania is still problems.

²¹ IPS Report women/marriage, Bride price: you feel property 2014

1.5 Research Question

Whether the Regulations contravenes the rules of natural justice as they do not provide for procedure to be followed.

1.6 Objectives of the research

1.6.1 General objective

To examine laws and practice regarding bride price in Tanzania.

1.6.2 Specific objectives

To assess the existing legal framework relating to bride price

To evaluate whether the practice of bride price complies with international human rights standard law.

To determine whether there is lacuna if law pertaining bride price in Tanzania.

1.7 Significance of the study

1. The role of this study provide a good foundation to the legislation to amend the Law of Marriage Act [Cap 29 R:E 2019]and to make the dowry is among of the requirement of marriage.

2. The study has generated knowledge concerning dowry to the youths in Tanzania.

3. The study attracts the attention of the policy and law makers when formulating the policy.

4. The relation to the true position of the customary law related to dowry and make them understand the expectations of the people and the kind of the law they need.

5. The study help the other researchers to observe this problem.

1.8 Research methodology

The first method is documentary research of which entails collection of and review of policy documents, legislation, research reports and recorded information from public debates which are relevant to this study. Documentary research also involved the identification and critical examination of literature which is available on the subject so as to establish the state of knowledge on the clear time for bride price especially in Tanzania, its mitigating factors within the law. The sources of literature and documentary include institutional libraries and internet for electronic information

1.8.1 Research design

The researcher was employed the descriptive qualitative to collect information by interviewing and questionnaire, focused group discussion like bride price apparatus as well as survey to sample individual especially five people so as to reach the required data.

1.8.2 Sampling technique

The most preferred technique is purposive sampling which help to get relevant information even though they was required respondent as sample they was selected on the basis of need of the study as lawyers was used for the purposes of finding data concerning law and legal practice especially bride price in Tanzania.

1.8.3 Sampling size

The sample size was more based on qualitative research and not quantitative data collection method because qualitative research allows creativity, varied interpretation and flexibility, and then after the scope of this method can make a research project to change as more information as gathered .Also quantitative research because of the nature of the study was defer to get the statistics and numerical data to proof the hypothesis,

Therefore sample is small representation of a large circle the sample size in total of 15, which may constitute of the following groups including the following, 5 advocates, 2 Magistrates, 5 Citizens, 1 LLB students,1 Institutional, and 1 other people apart from mentioned above. Though the sample size, a researcher expected to gather support information relevant to the study this is helpful on a research because the group selected comprises expert on laws which are easy to analyses, identify and understand the question asked to him to proof the problem.

1.8.4 Research Method

The techniques and procedures which used to collect, analyze, and interpret data. These methods can vary depending on the nature of the research question, the field of study, and the desired outcomes. Common research methods include experiments, surveys, interviews, observations, case studies, and archival research. Each method has its strengths and limitations, and researchers often choose the most appropriate method based on their research goals and constraints.

1.8.5 Research analysis

1.9 Scope and Limitation of research

1.9.1 Scope of research

The research will involve a thorough examination of the Law Act and its provisions related to the bride price in Tanzania, the overview of the Acts and its role in the bride price in Tanzania especially on how it should be applicable land to bride price purposes. Generally the Analysis of any gaps or silence in the Act related to the bride price , and recommendations for improving the Act for better protection of different bride price stakeholders in Tanzania.

1.9.2 Limitation of research

The achievement of this study encountered a lot of challenges, the issue of time and finance was the one of limitations in choosing the area for the study and the availability of information. Therefore the researcher conducted this research at southern highlands as the area of study because of familiarity with the environment, and was affordable for researcher to get data easily hence to save time. The information can be adequately provided, since most of them are Agriculturists and pastoralists. Also the researcher is familiar with the area chosen for the study henceforth made easily access of information required.

In general chapter one covered the background of the problem related to the village land use plan, statement of the problem, different literatures about the topic, tentative question about the topic, significance of the study, research methodology, and limitation of the study which is as the foundation to this study. The next topics will be chapter two which is about the conceptual framework of the study (the general concept of the land use plan and the village land use plan, importance, history and general overview of the village land use plan). Chapter Three comprises of the Legal Framework related to the village land use plan. The fourth topic is about the Research findings and data analysis. The fifth chapter is about Conclusion and Recommendation of the whole study topic.

CHAPTER TWO

2.0 CONCEPTUAL FRAMEWORK REGARDING BRIDE PRICE IN TANZANIA

Bride refers to a woman who is about to be married or who has just been married. In the context of marriage, the bride is traditionally the female partner who is entering into a marital union with the groom²². The term can also be used more broadly to refer to any woman on her wedding day, regardless of whether it is her first marriage or not. Throughout history and across different cultures, the role and significance of the bride may vary. In many traditions, the bride plays a central role in the wedding ceremony and is often adorned in special clothing, jewelry, or accessories. She is typically escorted down the aisle to meet her groom and exchange vows and wedding rings. The term "bride" can also be applied to same-sex marriages, where it refers to the woman or one of the women getting married. As societal norms evolve, the understanding and interpretation of the term "bride" may continue to expand and encompass a broader range of Certainly! Here are some definitions of the term "bride" according to different books, along with their year of publication:

According to Jane Austen ²³ defined the term bride as refers to a women who engaged to be married or has just gotten marriage. It explores themselves of love, social class and the explanations placed on women during the regency era.

Price refers to the amount of money, goods, or services that are exchanged to acquire a product or service. It represents the value assigned to a particular item in a transaction.

Prices can be determined by various factors such as supply and demand, production costs,

²² <https://dictionary.cambridge.org>

²³ A.Jane ,Pride and prejudice 1813

competition, market trends, and customer preferences. In a market economy, prices play a crucial role in allocating resources and determining the viability of businesses. Higher prices typically indicate a higher demand or limited supply, while lower prices may suggest lower demand or a surplus in supply. Therefore, prices serve as signals for both buyers and sellers to make informed decisions and engage in economic exchanges. Different pricing strategies can be employed by businesses to optimize their profitability and market positioning. These strategies include cost-based pricing, where prices are determined by production and distribution expenses, and value-based pricing, where prices are based on the perceived value or benefits that customers derive from a product or service.

Here are definitions of the term "price" according to different books, along with their year of publication:

According to Adam Smith ²⁴defines price as the value or exchange ratio at which goods and services are willingly bought and sold. He emphasizes the role of supply and demand in determining prices in a market-based economy.

2.1 Marriage

Is a legally recognized and socially sanctioned union between two individuals, typically based on mutual love, commitment, and partnership ²⁵. It is a formal union that establishes rights and obligations between the spouses, as well as their families and society at large. Marriage holds different meanings and interpretations across cultures and religions, but some common aspects prevail. It is often viewed as a lifelong commitment

²⁴ S. Adam, The Wealth of Nation 1776

²⁵ <https://burlingtonslegal.com>

and a symbol of love, companionship, and emotional support. Marriage is an institution where two people come together to build a life together, sharing responsibilities, joys, and challenges. Beyond the personal and emotional aspects, marriage carries legal and financial implications. It can provide legal rights and benefits to both spouses, such as inheritance rights, tax benefits, and shared property ownership. Marriage also establishes a framework for raising children and creating a stable family unit. While the primary motivation for marriage is often love and companionship, it can also be influenced by cultural, religious, or societal expectations. Many cultures recognize marriage as a sacred union, and religious ceremonies are often performed to solemnize the commitment. However, the importance and understanding of marriage have evolved over time, reflecting changing societal norms, including increased recognition of same-sex marriage and non-traditional relationship structures.

2.2 Marriage under Tanzania law

According to Section 9(1)²⁶ means the voluntary union of a man and women, intended to last for their joint lives, Section 9 (2)²⁷ of Law of marriage Act A monogamous marriage is a union between one man and one women to the exclusion of all others. Marriage in Tanzania is primarily governed by the Law of Marriage Act This legislation provides a legal framework for various types of marriages recognized in the country, including monogamous marriage, polygamous marriage, and customary marriages.

Monogamous marriage is the most common form of marriage in Tanzania. It entails the union of one man and one woman. Both parties must be at least 18 years of age and

²⁶ Section 9(1) of Law of marriage Act(CAP 29R.E 2019)

²⁷ Section 9(2) of Law of Marriage Act [CAP 29 R.E 2019]

have the capacity to consent to the marriage. Consent is a crucial element, and forced or underage marriages are illegal²⁸.

Polygamous marriage, where a man is allowed to have multiple wives, is recognized under Tanzanian law. However, the law does impose certain conditions for entering into a polygamous marriage. These conditions include obtaining permission from the court and proving that the husband has the means to support additional wives and their children.

Customary marriages, also known as traditional or tribal marriages, are recognized under Tanzanian law. These marriages are governed by customary customs and practices within specific communities. However, for a customary marriage to be legally recognized, it generally requires the registration of the marriage with the relevant authorities²⁹.

Tanzania recognizes religious marriages conducted in accordance with the teachings and practices of different religions. These marriages are usually registered with the relevant religious authority. It is important to note that same-sex marriage is not legally recognized in Tanzania. The country's laws define marriage as the union between a man and a woman. To validate a marriage, the couple must register their marriage with the Registrar of Marriages within the specified timeframe. Failure to register a marriage may have legal implications, such as affecting property rights or inheritance claims. It is advisable to seek legal advice or consult the Tanzanian Marriage Registrar for specific

²⁸ Ibid

²⁹ <https://unstats.un.org>

information and requirements regarding marriage under Tanzanian law, as laws and regulations are subject to change³⁰.

2.2.1 Types of marriage

There are several types of marriage recognized in different cultures and legal systems around the world. Here are some common types:

2.2.2 Monogamous Marriage

This is the most common form of marriage, where an individual has only one spouse at a time. Section 9(2) ³¹of the Law of Marriage Act monogamous is a union between one man and one woman to the exclusion of all other.

2.2.3 Polygamous Marriage

In this type of marriage, an individual can have multiple spouses concurrently. There are two main forms of polygamous marriage. Section 9(3) of the Law of Marriage Act³² polygamous marriage is a union which the husband may during the substance of the marriage, be married to or marry another woman or women³³

2.2.4 Civil Marriage

A civil marriage is a legally recognized marriage performed by a government authority, such as a judge or a registrar. It typically does not involve religious ceremonies.

³⁰ <https://www.britanica.com>

³¹ The Law of Marriage Act CAP 29 R E 2019

³² Ibid

³³ <https://www.verywellmind.com>

2.2.5 Religious Marriage

Religious marriages vary across different faiths and denominations. They involve ceremonies and rituals conducted by religious leaders according to the specific traditions and beliefs of the religion³⁴.

2.3 Types of marriage in contract

2.3.1 Civil marriage

Refers to a legal union between two individuals, recognized and registered by the government, without the involvement or influence of any religious organization. It is a secular, non-religious form of marriage performed and recognized by civil authorities, such as a judge, magistrate, or other designated official. In many countries, civil marriage is an alternative to religious marriage ceremonies and allows couples to formally establish a legal partnership and obtain legal rights and benefits associated with marriage. Unlike religious marriages, which often have specific requirements and ceremonies associated with particular faith traditions, civil marriages are governed by civil laws and regulations. Civil marriage provides a legal framework for a variety of rights and responsibilities, including property rights, inheritance, taxation, healthcare benefits, parental rights, and divorce procedures. Or Civil marriage performed by a government official instead of a member of the clergy ³⁵

³⁴ The Law of Marriage Act CAP 29 R E 2019

³⁵ Dictionary.lawyerment.com

2.3.2 Customary marriage

This is a form of marriage that is based on the customs and traditions of a particular culture or community³⁶. It is a type of marriage that is recognized and accepted within that specific cultural context, often with its own set of rules and practices, and may have variations depending on the region or ethnic group³⁷. The customs and traditions associated with customary marriages can differ widely across different societies. Generally, these marriages involve rituals, ceremonies, and practices that are specific to the culture, and they may include elements such as dowry, bride-price, or other customary gifts or exchanges. The marriage ceremony is often performed according to specific cultural or religious customs, involving the participation of family members, elders, or community section 25(1)(d) ³⁸of the Law of Marriage Act Where the parties belong to a community or to communities which follow customary Law, in civil form or according to the rites of the Customary Law. And Section 32(b) ³⁹of Law of Marriage Act of every registration Officer to whom notice has been given that a marriage is intended to be contracted according to rites recognized by customary Law, so far as is reasonably practicable to attend that marriage.

2.3.3 Christian marriage

Christian marriage refers to the institution of marriage as practiced and understood within the context of Christianity. It is based on the biblical teachings and principles found in the Christian faith. In Christianity, marriage is considered a sacred covenant between a man and a woman, intended to be a lifelong commitment. It is believed to be

³⁶ <https://.lac.org>

³⁷ <https://www.westerncape.gov.za>

³⁸ Section 25 (1)(d) of Law of Marriage Act[CAP 29 R.E 2019]

³⁹ Section 32(b) of Law of Marriage Act[CAP 29 R.E 2019]

a God-ordained union that reflects the relationship between Christ and the church. Section 25(3) (b)⁴⁰ of Law of Marriage Act a marriage in Christian form means a marriage celebrated in a church in manner recognized by Christian faith or by any denomination or sect of that faith. Here are some key aspects and meanings associated with Christian marriage; Divine Institution: Christians believe that marriage is established by God and is part of His divine plan for humanity. It is regarded as a holy union, blessed by God, and a reflection of His love and faithfulness, Complementary Partnership: Christian marriage is seen as a complementary partnership between a husband and a wife. The roles and responsibilities of each spouse are understood to be distinct yet equal, with the husband called to sacrificially love and lead his wife, and the wife called to respect and submit to her husband, Monogamy: Christian marriage upholds the principle of monogamy, which means that it is a commitment between one man and one woman. Divorce is generally discouraged, although some Christian denominations may have different views on divorce and remarriage, Love and Unity: Christian marriage emphasizes the importance of love and unity. The Bible teaches that husbands are to love their wives as Christ loved the church, and wives are to submit to and respect their husbands⁴¹. This mutual love and respect foster an atmosphere of unity and support in the marital relationship, Procreation and Family: Christian marriage is often seen as a context for procreation and the establishment of a family. It is viewed as a means of fulfilling God's command to be fruitful and multiply, Lifelong Commitment: Christian marriage is considered a lifelong commitment. It is intended to be a covenant that endures through thick and thin, based

⁴⁰ Section 25(3)(b) of Law of Marriage Act [CAP 29 R .E 2019]

⁴¹ <https://www.law.cornell.edu>

on love, trust, and faithfulness. Christians are encouraged to seek guidance and support from their faith community to help them navigate the challenges that may arise. Section 11(5) ⁴² No marriage between two Christians which was celebrated in church form may, for so long as both the parties continue to profess the Christian faith, be converted from monogamous to polygamous and provisions of this section shall not apply to any such marriage notwithstanding that the marriage was preceded or succeeded by a ceremony of marriage between the same parties in civil form or any other form.

2.3.4 Islamic marriage

According to Section 25(3)⁴³ for the purpose of this Act (a) a marriage in Islamic form means a marriage contracted in the manner recognized by Islam or by any school or sect of that faith. Law of marriage Act Islamic marriage is a religiously sanctioned union between a Muslim man and a Muslim woman. It is considered a sacred contract that establishes the rights and responsibilities of both partners within the framework of Islamic teachings. In an Islamic marriage, the couple enters into a mutual agreement and consent to marry one another with the intention of building a lifelong partnership based on love, respect, and the pursuit of a righteous life together. It is recognized as a commitment to fulfill each other's rights, support one another, and create a stable and harmonious family unit. The process of Islamic marriage typically involves several steps. First, there is the proposal and acceptance, where the potential groom or his family approaches the potential bride or her family with a marriage proposal. If both parties agree, the engagement or betrothal period section 32(3)⁴⁴ of the Law of marriage Act On receipt

⁴² Section 11(5) of Law of Marriage Act (CAP .29R.E 2019)

⁴³ Section 25 (3) of Law of marriage Act(CAP 29 R.E2019)

⁴⁴ Section 32(3) of the Law of marriage Act(CAP 29 R.E 2019)

of a statement of particulars from a registration Officer under subsection (2) , the district registrar or kadhi after registering the marriage in accordance with section 43, shall issue a marriage certificate in duplicate and retain one part and send the other to the registration Officer for transmission to the parties.

2.4 Family

Family typically refers to a group of people who are related to one another by blood, marriage, or adoption and live together as a social unit⁴⁵. However, the concept of family can vary across cultures and societies. Family plays a crucial role in shaping individuals' lives and providing support, love, and security. It is often considered the primary unit of society and serves as the foundation for socialization, upbringing, and personal development. Families offer emotional, moral, and practical support, as well as a sense of belonging, identity, and continuity⁴⁶. Within a family, members form various relationships such as parent-child, sibling, grandparent-grandchild, and extended family connections. Each family member contributes to the overall dynamics, roles, and responsibilities within the family unit. At its core, family represents a bond of love, trust, and mutual care, but it can also encompass challenges, conflicts, and complexities. Families can take different forms, including nuclear families (parents and children), extended families (including grandparents, aunts, uncles, etc.), blended families (combining members from previous relationships), single-parent families, same-sex parent families, and chosen families (non-biological but supportive relationships).

⁴⁵ <https://hrsa.gov>

⁴⁶ <https://Collins dictionary .com>

2.4.1 Family under Tanzania Law

Under Tanzanian law, family is primarily regulated by the Law of Marriage Act⁴⁷, the Law of Succession Act, and the Law of Child Act⁴⁸. These laws govern various aspects of family life, including marriage, divorce, inheritance, and child custody. Marriage in Tanzania is recognized as a contractual relationship between a man and a woman. The Law of Marriage Act provides for different types of marriages, including statutory marriages (marriages conducted under the law), customary marriages (based on traditional customs and practices), and religious marriages (recognized by specific religious institutions). The minimum age for marriage is 18 years for both males and females, although parental consent may be required for individuals aged 14-18, depending on the circumstances. Divorce in Tanzania can be obtained through both judicial processes and customary procedures. The Law of Marriage Act allows for divorce on various grounds, including adultery, cruelty, desertion, and incurable insanity. Judicial divorce requires filing a petition in court, while customary divorce follows traditional practices in accordance with specific customs and traditions. Regarding inheritance, the Law of Succession Act governs the distribution of assets upon a person's death. The act provides for the recognition of both formal (written) and informal wills. If a person dies without leaving a valid will, the distribution of assets is guided by the rules of intestate succession. The law establishes specific rules for the distribution of property among various family members, including spouses, children, and other dependents. The Law of Child Act⁴⁹ addresses matters related to children, including custody, maintenance, and

⁴⁷ The Law of Marriage Act CAP 29 R.E 2019

⁴⁸ Law of the Child Act[CAP 13R.E 2019]

⁴⁹ The law of Child Act [CAP 13 R.E 2019]

protection. It emphasizes the best interests of the child and aims to safeguard their rights. The act covers issues such as child custody, guardianship, adoption, child maintenance, and protection against abuse, neglect, and exploitation.

2.4.2 Types of family

There are several types of families, including:

2.4.2.1 Nuclear family

This is the traditional family structure consisting of a married couple and their biological or adopted children.

2.4.2.2 Extended family

This includes the nuclear family along with other relatives such as grandparents, aunts, uncles, and cousins living together or in close proximity⁵⁰.

2.4.2.3 Single-parent family

This is a family structure where one parent raises the children, either due to divorce, separation, death, or choice⁵¹.

2.5 Types of dowry

Dowry refers as money, goods or estate that a woman brings to husband or his family in marriage ⁵²

There are several types of dowry that exist in different cultures and societies. Some common types include:

Cash Dowry⁵³: This is the most common type of dowry, where the bride's family provides a sum of money to the groom or his family.

⁵⁰ <https://study.com>

⁵¹ <https://www.merriam-webster.com>

⁵² www.britannica.com

Property Dowry: In some cases, the dowry may include land, houses, or other valuable properties that are transferred from the bride's family to the groom's family.

Goods Dowry: This type of dowry involves the provision of various goods and household items such as furniture, appliances, jewelry, clothing, and other valuable possessions.

2.6 Custom

The term "custom" in marriage refers to the traditions, practices, and rituals that are specific to a particular culture or community and are followed during the wedding ceremony or within the marriage itself. Or Custom is a way of behaving or traditional in a particular society or in particular circumstances⁵⁴. These customs may include specific rituals, ceremonies, or cultural traditions that are important to the couple and their families, and are seen as significant elements of the marriage process. Custom in marriage can also encompass specific beliefs, values, and expectations that are upheld within a particular culture or community regarding marriage and the roles and responsibilities of the couple. These customs often reflect the cultural and social aspects of the community and are considered an integral part of the marriage experience.

2.7 Parent

A parent can refer to either a mother or father, or more broadly to any person who has taken on a parental role in relation to a child. A parent is responsible for the care, upbringing, and well-being of their child, and provides guidance, love, and support.

⁵³ <https://legalwise.co.za>

⁵⁴ www.collinsdictionary.com

According to Law of Child Act Under section 3⁵⁵ Define Parent means a biological father or mother, the adoptive father or mother and any other person under whose care a child has been committed.

According to Daniel J. Siegel and Tina Payne Bryson⁵⁶ define a parent as an adult who is responsible for providing consistent love, support, and guidance to a child. Siegel and Bryson outline strategies for parents to help their children develop emotionally, socially, and intellectually.

Therefore according to different authorities from different writers in summary, Parent is biological father and mother also guardian can be a parent. Also the father or mother adopts the children can be a parent.

⁵⁵ Section 3 of the Law of Child Act(CAP 13 R.E 2019)

⁵⁶ B.P.Tina& S.J . Daniel, The Whole -Brain Child 2011

CHAPTER THREE

3.0 INTERNATIONAL LEGAL FRAMEWORK REGARDING BRIDE PRICE

3.1 Universal Declaration of Human Rights (UDHR)

The UDHR, adopted by the United Nations General Assembly in 1948, is a foundational document that upholds the inherent dignity and equal rights of all human beings. Article 16 of the UDHR specifically states that "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." This principle can be invoked to challenge practices such as bride price that undermine women's autonomy and equality⁵⁷.

3.2 Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW).

Adopted in 1979, CEDAW is often referred to as the international bill of rights for women. Article 16 of CEDAW focuses on equality in marriage and family relations, stating that women have the same rights as men to freely choose a spouse and enter into marriage. The convention prohibits practices that discriminate against women in marriage, including those related to bride price⁵⁸.

3.3 Sustainable Development Goals (SDGs)

The SDGs, adopted by the United Nations in 2015, provide a framework for global development efforts, including the promotion of gender equality and empowerment of women. Goal 5 of the SDGs aims to achieve gender equality and empower all women and girls. Addressing harmful practices such as bride price is essential for advancing this

⁵⁷ Article 16 of universal declaration of human rights

⁵⁸ Article 16 of convention on the elimination of all forms of discrimination against women

goal and promoting a more inclusive and equitable society. While international laws and conventions provide a framework for addressing issues related to bride price and gender inequality, it is important to recognize the complex cultural and social dynamics at play in different societies where the practice occurs. Efforts to eliminate harmful practices like bride price must be context-specific and sensitive to the needs and perspectives of the communities involved. Ultimately, the goal is to work towards a world where individuals are free to make choices about their lives and relationships without facing discrimination or coercion based on gender. By promoting respect for human rights and gender equality, we can strive towards a more just and equitable society for all⁵⁹.

⁵⁹ Goals 6 of sustainable development goals

CHAPTER FOUR

4.0 DOMESTIC LEGAL FRAME WORK REGARDING BRIDE PRICE IN TANZANIA

4.1 Principal legislation

4.2 Law of marriage act (CAP 29R.E 2019)

The Law of Marriage Act (CAP 29 R.E 2019)⁶⁰ is the legislation that governs marriage in Tanzania. It outlines the requirements for marriage, including the legal age, consent, and registration of marriages. The Act also addresses issues such as polygamy, divorce, and the rights and responsibilities of married couples. This law recognizes marriage celebrated according to rites recognized by customary law in Tanzania. One of the important rites recognized by customary law is giving of dowry. If people choose to celebrate their marriage under rites of customary laws then the law should declare categorically that such marriage shall not be valid if the custom related to dowry is not complied with. If the couples still respect their customs and they have not completely changed their life values customary law rite on dowry should apply to them. The current position of the law is quickly encouraging deterioration of marriage institution and societal value which stems from the marriage institution that occur in the Law of Marriage Act (Cap. 29 R.E 2019).Section 25 (1) (d)⁶¹ provides that, “A marriage may, subject to the provisions of this Act, be contracted in Tanzania where the parties belong to a community or communities which follow customary law, in civil form or according to the rites of the customary law”. However, section 41 (a)⁶² of the same Act provides that,” A marriage which in all other respects complies with the express requirements of this Act shall be valid for all purposes,

⁶⁰ The Law of Marriage Act[CAP 29 R.E 219]

⁶¹ Ibid

⁶² Section 41 of law of marriage Act

notwithstanding (a) any non-compliance with any custom relating to dowry or the giving or exchanging of gifts before or after marriage”. In this section the giving of dowry was no longer important in marriage, one could marry without paying dowry and the marriage will be valid. Therefore the section 25 (1) d and 41 of Law of Marriage Acts⁶³. The intention in making laws for the people in Tanzania should be to create a society which will get a total satisfaction in life. In the preamble of the African Charter on Human and People’s Rights, which is appended in the book by Chris Maina Peterit is provided that “....the satisfaction of economic social and cultural rights is a guarantee for the enjoyment of civil and political rights.” In the same book, when a draft of the African Charter was being prepared it was said that “the main objective was to prepare a truly African convention on human rights based on an African philosophy, and an instrument that would be responsive to Africans needs.” This was emphasized by the former President of Senegal, Leopold Senghor. As Tanzanians we need to make laws which will take care of our needs not the needs of other people. President Senghor stressed further that “....we must show imagination and effectiveness. We could get inspirations from our beautiful and positive traditions...therefore keep constantly in mind our values of civilization and the real needs of Africa. It is better to have the laws which are made by the people for the people and not laws imposed basing on the influence from outside which I see to be the case for our Law of Marriage Act particularly in relation to a dowry custom.

⁶³ section 25 (1) d of Law of Marriage Acts

Aagwi Kimito V Gibeno Werema (1985) TLR 132 (CA)⁶⁴

Customary Law - Its status vis-a-vis other law - Section 9 Judicature and Application of Laws Ordinance, Cap. 453. Customary Law - Kuria customary laws - Whether widow, sole heir of her deceased husband's estate, is liable to pay the debts of her late husband

Customary Law - Kuria customary law - Liability of a widow, sole heir, to refund bride price received by her deceased husband - Whether such liability extends beyond the assets which she actually received in the estate of her deceased husband. E [zHNz]

Headnote. The appellant instituted a suit in a Primary Court for refund of thirty six head of cattle which he had paid in respect of his marriage to one Nyamohanga d/o Makongo which marriage was subsequently dissolved. The cattle were received by her brother. By the time of the suit the brother had died, so that suit was filed against the respondent, widow and sole heir of the deceased estate in accordance with Kuria customary law. The appellant was successful in both the Primary and District Courts though the latter court reduced the number of refundable cattle from 36 to 20. On appeal to the High Court both decisions of the two lower courts were overturned on the ground that the payment, receiving and refunding of bride price is a clan affair and should not be saddled on a poor widow. On further appeal the Court of Appeal of Tanzania considered the place of customary laws in Tanzania generally and the propriety of the High Court decision. Held : (i) The customary laws of this country now have the same status in our courts as any other law subject only to the Constitution and any statutory law that may provide to the contrary; (ii) since under Kuria customs the respondent was the sole heir to her deceased husband's property and nobody else, likewise she was

⁶⁴(1985)TLR 132

Judgment. Nyalali, C.J. delivered the following considered judgment of the Court:- This case demonstrates how certain principles and rules of African customary law still operate in D what may be termed as the indigenous and majority African sector of the community.

In the Case of Francis Leo Vs Paschal Simon Maganga⁶⁵ Appellant's daughter cohabited with respondent and they had 5 issues, respondent didn't pay the bride price. The court used the Law of Marriage Act, section 41(a)⁶⁶ that bride price is not necessary. The appellant reflected the custom which existed in relation to bride price. The Judge concluded that since the two had not gone through a ceremony of marriage according to the Law of Marriage Act, they could not be said to be husband and wife. The intention is not to discuss presumption of marriage but to show the views of the Judge that being duly married refers to the forms and procedures for marriage provided.

In the case of Fatuma Amani Vs. Rashid Athumani⁶⁷. Provide that, there is another common law rule which stipulates that a subsisting marriage which has endured for some time cannot be declared null or void simply because it was not properly celebrated. The payment of bride price is only one of the conditions of the celebration of a marriage for under the Law.

⁶⁵ (1978)LRT NO 22

⁶⁶ Section 41(a) of Law of Marriage Act[CAP 29 R.E 2019]

⁶⁷(1967)H.C.D 173

4.3 Subsidiary Legislation

4.3.1 Schedules to Government Notes No 279/1963, Declaration of local customary law, law of person

The Schedules to Government Notice No. 279/1963⁶⁸ in Tanzania contain declarations of local customary law. These declarations recognize and incorporate customary laws and practices of different ethnic groups in Tanzania into the legal system. The law of persons, as it relates to these declarations, encompasses issues such as marriage, inheritance, and other personal matters that are governed by customary laws. If you need more specific information about the content of these declarations or how they impact the law of persons in Tanzania, please let me know. Law was providing for payments of dowry and related matters. In the said Declaration Order it is provided⁶⁶, that, “payment of dowry is not a necessary matter to prove existence of marriage.” It was this declaration order which modified customary law related to giving of dowry for the first time in Tanganyika. However societies in Tanzania continued the customary law and dowry was given and received. The changes made in the customary law were made by government officials and to my knowledge it is not written anywhere as to whether there was any consultation to the people to know their views on dowry matters. Apart from the Government notice no. 279 of 1963 there were also other codified customary laws, the Local Customary (Declaration) Order (No.2) of 1963; the Local Customary (Declaration) Order (No.3) of 1963;⁶⁹ the Local Customary (Declaration) Order of 1963; the Local Customary (Declaration) Order (No.4) of 1963; the Local Customary (Declaration) Order (No.5) of 1963; the Local Customary (Declaration) Order (No.7) of 1963;and the Local

⁶⁸ Government Notes No.279

Customary (Declaration) Order (No.8) of 196⁶⁹. Codifying customary laws was a good idea, but the change of the law which was made did not reflect the wish of the people, that is why a conflict exists between statute and customary law, as we shall see in the next chapter. In the case of Daniel Mlingwa v. Mwaja Mkotyo the court made

4.4 The Institutional Frame Work Regarding Bride Price in Tanzania

4.4.1 Baraza Kuu la Waislam Watanzania (BAKWATA)

Baraza Kuu la waislam Watanzania Tanzania (bakwata) responsible to ensure that the parties of marriage follow the procedure of marriage and one of them is bride price. If the parties of marriage did not recognize the payment of bride price the marriage is invalid. Bakwata give the amount of bride in Islamic marriage that is fifty thousand shilling (5000) as the value of Quraan book. Also Bakwata introduce the system of given the certificate of marriage to the marriage parties and if the parties doesn't follow the procedure of bride price or maharr the imam or religious leader did not pay the certificate of marriage and that marriage is invalid. Therefore Bakwata take the issue of bride price as a right of the woman and the husband must be pay. The court protect the right of the parties of marriage especially when someone give the bride price or any gift then another person breach the promise of marriage. The court insure that the parties get the compensation that provided under section 69 of the law of Marriage Act that give the Right to damages for breach of promise of marriage. Also section 75 of the Law of Marriage Act⁷⁰ give the jurisdiction to the primary court provide that a primary court shall have jurisdiction to entertain a suit.

⁶⁹ Government Notes No.279

⁷⁰ Section 75 of the Law of Marriage Act CAP 29 R.E 2019

4.5 The Court

The term "court" can have several meanings depending on the context in which it is used.

Here are a few common meanings of the word "court"⁷¹:

A judicial body: A court can refer to a formal tribunal or institution with the authority to adjudicate legal disputes and administer justice. This can include various levels of courts, such as trial courts, appellate courts, and supreme courts, which hear and decide legal cases.

The place where legal proceedings take place: Court can also refer to the physical location where legal proceedings, trials, and hearings are conducted. This can include courtrooms, buildings, and facilities where judges, lawyers, and litigants gather for legal matters⁷².

The entourage of a monarch or dignitary: In historical contexts, "court"⁷³ can refer to the royal or noble entourage surrounding a monarch or other dignitary, including advisors, attendants, and officials⁷⁴.

The act of seeking someone's favor or approval: "To court" can also mean to seek someone's favor, attention, or approval, particularly in a romantic or social context.

These are just a few examples of the various meanings of the word "court" in different contexts. If you have a specific context in mind, feel free to provide more details, and I can offer more targeted information⁷⁵

⁷¹ <https://www.merriam-webster.com>

⁷² <https://www.collinsdictionary.com>

⁷³ Ibid

⁷⁴ <https://www.britannica.com>

⁷⁵ <https://dictionary.Cambridge.org>

CHAPTER FIVE

4.0 RESEARCH FINDINGS

4.1 Introduction

The question which is raised in this research is whether the Law of Marriage Act (Cap. 29 R.E 2019)⁷⁶ is not silent to reflect what is found on the ground? The people in various tribes in Tanzania still values the custom of dowry giving and the marriage will be recognized by the society when dowry is given. As observed by Kaniki (supra) it is obvious that the people do not share the view of the current position of the law. This is creating a silent conflict, what the people are doing is different from what the law provides. Dowry giving is one of the pillars of marriage and it is not the concern of a man who is marrying but the whole clan or relatives do participate, in this case it is not a Custom which can easily be rubbed away.

4.2 Views from the Field

Considering the views of people from the field, particularly girls who expect to be married, their view are not different, they are of the view that dowry giving is important and they are not ready to be married before dowry is given. They see dowry giving as a sign of appreciation by the husband for a good wife he is getting from the parents of the wife. Other interviewees were of the view that, sometimes bride price is abused by some husbands who present bride price as purchase of a wife but such notions do not have room in the society with girls who have been to school and they know how to pursue their rights. They said that there are many laws which protect married women, their rights cannot be easily abused. One lady said, "If my rights are abused I can go to the

⁷⁶ The Law of Marriage Act(CAP 29 R.E 2019)

witnesses of our marriage, if I fail to the family, church, social welfare and the police where it is necessary. And the husband is also afraid; he cannot do bad things to me”.

In Iringa regional many people say that bride price is very important but it should be the low and not large because same time daughter are like to sell. The other interviewee, a Chagga, said, “How can you take my daughter for free? As is my daughter has no value and she is worthless, for me to be able to know that my daughter will be cared by the husband to be, the husband has to show that he is a responsible person, in the sense that he is a person who is able to work and earn something for the living, in this case he can take care of my daughter and the children”. Quoted in the article by Kaniki (supra), a husband to be had worked for the father in law to be for a period of seven years and four months. This is another way of giving dowry and it is also an opportunity for the father in law to know how responsible the husband to be is. This is a custom which helps in measuring the capability of the husband to be. In other cases it is not easy to continue with such a practice, but in giving gifts and dowry, which is a process taking some days or months, the father may be able to tell that his daughter will be in safe hands by getting married to the husband who is at least able to raise something to take care of his family to be. No parent will be willing to give her daughter to a loiterer who does not like to work to earn a living. Giving gifts and dowry may be a good test in measuring a sense of responsibility of a husband to be. The people still have a positive attitude towards dowry; it is no longer a problem which can be said to irk the society. I believe the position is so because dowry giving is done through mutual consent of the parties to the marriage.

4.3 Diverging opinions from the field and other writers

Some people I interviewed reacted differently on the issue of dowry giving, one woman from the Sukuma people, was of the view that bride price as a social custom permits the sale and purchase of girls and women, women are assimilated to merchandise that men can exchange with other merchandise, such as money or women. Another man who was from the Pare tribe was of the view that in some cases, impoverished or selfish parents use the bride price custom to sell their daughters to the highest bidder. He further said that the incentive of money can lead to the bride price custom being exploited by some parents. He added that in some cases bride price is the cause of marriage by abduction or bride kidnapping. Men who cannot afford to pay the normal bride price may abduct and rape teenage girls in an attempt to force their parents to agree to the marriage and to a reduction in the bride price. These are some of the people who reacted negatively to a dowry custom and I believe they represent a portion of the communities in Tanzania. It is their right to air their views as they wish.

According to ALICE AMSTRONG (1992)⁷⁷, the institution through which a man pays some property in return for the right or privilege to marry a woman, normally referred to as a dowry, he is a pervasive and enduring feature of many customary marriage system. It takes various forms and is justified on varying grounds. The institution has far reaching implications for marriage and the relation of various persons connected with the particular marriage.

⁷⁷ Alice Amstrong (1992) case

In many customary law system agreement on or payment of dowry is an essential element of marriage. Its ideological and social underpinning is sometimes so strong that it is viewed as part of societies rich cultural heritage, which required not only preservation but respect. The process of entrenching this practice has included varied appeals on tradition, culture, religion and Mysticism. Non-payments can be seen as cause of all kinds of misfortunes suffered by persons who fails or neglect to pay it. His children may have ill luck and may die. These beliefs help to perpetuate the practice. More importantly, however, the practice is strengthening by varieties of rules determining the rights and obligation of persons who are part to most customary law system, dowry is presented as part of particularly Africa and rich cultural heritage whose disappearance would result to African loss of identity, dignity and sovereignty. Its ideological proponents argued that the institution does not result in nor reflect the social subordination of women in marriage. It is claimed that it has nothing to do with inequalities of women. Indeed it gives extra dignity and respect to the woman and helps to keep marriages together. Others argued that, the practice turns women into exchangeable objects and there they contribute to their subordination in marriage where, in circumstances they cannot claim equality with the husbands. Whatever the merits and demerits of the argument, the institution saved and perhaps save the purposes. That is the rights and obligations were acquired not only by spouses but members of their families, such as their children and parents. In some other customary the payment of dowry transfers the woman from the guardianship and control of her father to that of her husband⁷⁸

⁷⁸ Ibid

Therefore dowry often has the function of regularizing the marriage in the eyes of the families even where a civil marriage is contracted. So even though a civil marriage is legal valid a where dowry has not been paid it is often seen as invalid for the purpose of customary law.

CHAPTER SIX

6.0 CONCLUSION AND RECOMMENDATION

6.1 CONCLUSION

In light of the above discussions through hypothesis it proved that the position of the law in relation to dowry giving is not correctly reflected in the Law of Marriage Act (Cap. 29 R.E 2019)⁷⁹, the law is going against the Islamic law and customary law on the ground that those Islamic and customary law it reflects the desire of the people's needs in the society. We have to look that how the parliament changes of the law were made without considering the real needs and nature of the communities in Tanzania. We have also seen the argument of different authors who still argue positively in relation to dowry giving. We have also seen how the current law is in disvalue the customary law which the people still value. Lastly we also got the views of our neighbours in Zambia and Indonesia where the court ruled in favour of dowry practice.

Apart from the positive views we also got negative views towards a dowry as the part of custom needs. It is my position as a researcher that problems associated with the custom may be taken care of as other offences which the law prohibits and immoral habits of parents will be dealt with by the society itself and when someone go against shall get punishment like other offence prohibited. It is the view and recommendation of the researcher that the law be amended by deleting from the statute book sub-section (a) of section 41 of the Law of Marriage Act (Cap. 29 R.E 2019)⁸⁰ as it is in conflict with the people's needs.

⁷⁹ Ibid

⁸⁰ Section 41 of the Law of Marriage Act [CAP 29 R.E2019]

6.2 RECOMMENDATION

The practice of bride price, also known as bride wealth or dowry, varies across cultures and societies. While it is important to respect and understand different customs and traditions, it is equally crucial to consider the ethical implications and potential negative consequences of such practices. Here are some recommendations to approach the concept of bride price:

Promote mutual consent and equality: The most essential aspect of any marriage should be the consent and well-being of both individuals involved. Encourage open communication and ensure that both the bride and groom have equal say in the decision-making process⁸¹.

Reject excessive monetary demands: In certain cultures, bride prices can be exorbitant and burdensome for the groom's family. It is important to resist the pressure to meet such demands, as it can perpetuate financial inequalities and lead to social or economic exploitation⁸².

Focus on symbolic gestures: Instead of emphasizing the financial aspect, consider emphasizing symbolic gestures or gifts that hold meaning to the couple and their families. This could include cultural or traditional items of significance or contributions to the couple's future well-being, such as education or housing.

Encourage alternative practices: Explore alternative customs that do not involve monetary transactions. Some cultures have adopted practices such as joint contributions

⁸¹ <https://dictionary.combridge.com>

⁸² <https://www.merriam-webster.com>

from families, community building activities, or symbolic ceremonies to symbolize union and support rather than monetary exchange.

Promote gender equality: Address the underlying issue of gender inequality that can be perpetuated through practices like bride price. Advocate for equal rights, economic opportunities, and access to education for women to empower them and challenge traditional gender roles.

Foster legal regulations and protection: In regions where bride price is deeply ingrained, it may be necessary to implement legal regulations to protect women from exploitation or coercion. Legislation can promote fair and consensual agreements while discouraging excessive or coercive demands.

The law should be amended to reflect the true position of the needs of the society which still values the giving of bride price. The law should specifically state that for those who have chosen to marry under customary law the giving of bride price is an important factor and if bride price is not paid the marriage would not be valid. Section Law of Marriage Act (Cap. 29 R.E 2019)⁸³ should be deleted from the law as it does not reflect what is happening on the ground and it does not represent the interests of the people. As long as the issue of bride price is not forced on a person to give, it is given after mutual agreement of the two sides of the families, there is no need for the law to interfere and make it invalid.

Through protected of people's Rights, Which enhanced under the preamble of African charters of human right that the satisfaction of economic social and cultural rights is a guarantee for the enjoyment of civil and political rights? Dowry giving is part of our

⁸³ The Law of Marriage Act(CAP 29 R.E 2019)

social and cultural rights and the custom is making life enjoyable by the relations developed during discussions before marriage. I may also say that dowry makes the main part of discussions before marriage preparations, if it is removed there will be nothing left which the families of two sides can talk about.

The main objective in our law making should be to have laws which truly represents the wishes and needs of Tanzanians. The laws should be based on a Tanzanian philosophy, and be an instrument that would be responsive to Tanzanians needs. As Tanzanians we need to make laws which will take care of our needs not the needs of other people.

Provision of Education and Training.

This should be done to both employees in the institutions and the society⁸⁴, it is a duty of legal experts to ensure payment of dowry is protected and through education and training it can be easier for people to understand what is right and wrong. Determining this will reduce the number of claim done by the member of the society through non-payment of dowry which infringed the right of the parent who reluctant his daughters without paying dowry. Then it is very important to have trainings with the matter regarding bride price so as to ensure these mistakes are not done anymore. It is also important to educate and make the society aware on the benefits and importance of protecting his custom on bride price. This measure will create a safe place for every person and it will reduce infringements of right to some parent and have peaceful and freedom in doing whatever has to be done.

⁸⁴ <https://Collins dictionary.com>

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