

MINIMUM AGE FOR MARRIAGE IN SRI LANKA AND THE GIRL CHILD : BRIDGING THE GAP IN MARRIAGEABLE AGE

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INTRODUCTION

The Convention on the Rights of the Child (CRC) considers every person below the age of 18 years as a child and states that in all actions concerning children, the best interests of the child shall be a primary consideration. This concept has become an all pervading standard in all matters relating to children such as administrative decision making as well as in civil and criminal proceedings before courts of law. In regard to marriage, UN Conventions such as Elimination of all forms of discrimination against Women (1979) and the Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962) though do not specify a particular age, advocate setting of a minimum age for marriage. However the UN Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration (1965) has set this age to be 15 years. In the local sphere, the Marriage Registration Ordinance and the Kandyan Marriage and Divorce Act which apply to non Muslims specify that the minimum age for marriage should be 18 years. The Muslim Marriage and Divorce Act (MMDA) which governs the marriages of Muslims, does not specify a minimum age for marriage but s. 23 of the Act states that the *Quazi* of the area where a Muslim girl under the age of 12 years lives can authorize her marriage after inquiry.

According to the Penal Code provision on statutory rape which applies to all persons whether Muslim or Non Muslims, a girl over the age of 16 years can have sexual relationship with a male but the non-Muslim marriage laws that apply to her prohibit her from marrying till she reaches the age of 18 years. This grey area of age between 16 years and 18 years creates practical problems for the non-Muslim girl child when she elopes with her lover but is unable to marry him. If she is under the age of 16 years, she is detained in the Children's Remand Home on the order of the court when no fit person is found to grant her custody. Consequently her education is disrupted and freedom of movement is curtailed. So far no research has been carried out on the practical problems faced by non-Muslim teenage girls due to the strict observance of minimum age for marriage. On the other hand, the provision in the MMDA permitting the *Quasi* to authorize a marriage involving a girl under the age of 12 years is in conflict with the Penal Code provisions on statutory rape which prohibit a male from having sexual relationship even with his lawful wife if she is below the age of 12 years. Marriage at a very low age exposes the Muslim girl child to health problems and exploitation by parents in a situation where the bride is not required to sign the marriage register under the Muslim law. As such, she is deprived of her childhood and education and is compelled to shoulder marital obligations at an early age. This research was undertaken to explore solutions for girls faced with difficulties under the General law and Kandyan law as well as under the Muslim law

OBJECTIVES OF THE RESEARCH

1. To study the influence of present Sri Lankan law on minimum age for marriage on the non-Muslim teenage girl child, the social and legal issues involved and the practices and procedures adopted by law enforcement authorities and courts in dealing with cases involving girls who have faced the above situation.
2. To study the situation faced by the Muslim girl child due to non adoption of a minimum age for marriage.
3. To study the law and procedure adopted in foreign jurisdictions in similar situations to protect the interests of children involved.

4. To propose recommendations to alleviate the situation of the girl child who is in this situation

METHODOLOGY

The research focused on two main aspects i.e. the situation of the under-aged girl child governed by non-Muslim Laws and that of the girl child governed by Muslim Law. Data collection was carried out in respect of these two aspects separately but adopting the same methodology. Qualitative data relevant to the above mentioned two main aspects were gathered through (a) study of legal materials and (b) interviews conducted with (i) a cohort of 53 under-aged non-Muslim girls who after eloping with their lovers faced innumerable legal and personal difficulties and court trials, (ii) a cohort of 15 Muslim girls married at an early age and (iii) resource persons who have a wide knowledge and experience on the research topic. Studying legal materials involved exploring international documents which have set standards on minimum age for marriage, statutes both local and foreign, cases decided by courts of law, statistical reports, survey reports and literature which have direct relevance to the topic. In collecting qualitative data through interviews two types of girls of the above cohort of 53 were interviewed. They were the girls detained in Children's Homes in Colombo, Moratuwa, Anuradhapura, Batticaloa and Galle and girls who had been released to elders pending court trials in the above districts. Out of the total number of 53 girls, in-depth interviews were conducted with 10 girls to ascertain their views. In order to ascertain the situation of the Muslim girl child, the cohort of 15 Muslim married women who were below 15 years at the time of marriage and living in Batticaloa where child marriages are prevalent among the Muslim community were interviewed. Other districts could not be visited due to the financial constraints, language and other logistical problems. All these married women were young wives below the age of 18 year at the time of data collection. In-depth interviews were conducted with five women out of the cohort of 15 Muslim married women. The in-depth interviews in respect of both non-Muslim girls and Muslim women were conducted using a pre-arranged questionnaire and recording their answers in the questionnaire itself. The resource persons interviewed included judges of courts of law, law enforcement authorities, legal practitioners, medical officers, officials at the Child Care and Probation Department, Police personnel, women and child rights activists and Muslim religious leaders. At these interviews their professional opinion was obtained in regard to the situation of the girl child under non-Muslim laws and Muslim Law. Their views were recorded in a sound recording instrument and later documented.

RESULTS AND DISCUSSION

At the interviews conducted with the cohort of 53 girls, it was found that a large majority of the girls were ignorant about the minimum age for marriage in Sri Lanka. The research revealed that the strict adherence to the minimum age for marriage had posed many problems for the girl child such as disruption of education, inability to marry the person whom they wanted, mental pressure due to restriction of movement at the prime age, loss of affection of parents and siblings, and in some exceptional situations, being compelled to bear a fatherless child when the lover has lost interest in her due to long time separation.

At the interviews held with 15 Muslim women in Batticaloa who had married before reaching the age of 16 years, it was revealed that the compulsion to marry at a very low age had created mental despair among the girls. The majority of girls were eager to continue their education, were still bearing the mentality of a child and were not ready to shoulder the responsibilities of an adult wife and mother. It was revealed that almost all girls were compelled to marry at a younger age due to poverty of parents, parental sense of insecurity, inability of parents to look after a girl after puberty, their apprehensions of their daughter eloping with a male etc. Children born to two of these young women had died and one wife

was in a state of mental disorder. Almost all girls expressed their desire to go to school.

On a perusal of the legal documents relating to minimum age for marriage in foreign jurisdictions, it was found that majority of these countries have set the age of 16 as the minimum age for marriage. This age limit falls in line with the international standards on minimum age for marriage. Interviews held with Probation Officers of the Department of Probation and Child Care revealed the necessity of reforming the existing law. Legal practitioners and judges were of the view that while maintaining the present minimum age for marriage, provisions should be made to accommodate interests of children over the age of 16 years who knowingly or unknowingly violate the present law on minimum age for marriage. Muslim lawyers were also of the view that the minimum age for marriage under Muslim law should be raised to 16 years and the bride should be required to sign the marriage register. Muslim religious leaders were skeptical about revising the minimum age for marriage. A recent Supreme Court decision gives a High Court judge the right to exercise his discretion and impose a suspended term of imprisonment on a youth who violated the provisions on statutory rape on consensual basis, thereby paving a way out for the young non-Muslim couple over the age of 16 years, if marriage laws are amended to permit them to marry with the permission of the court.

CONCLUSIONS AND RECOMMENDATIONS

Analysis of legal materials such as Statutes on minimum age marriage adopted by different countries reveals that some countries which maintain the minimum age for marriage at 18 years, permit children between 16 – 18 years to marry with parental consent and/ or court permission. The practices adopted by many Muslim countries indicate that they have set the minimum age for marriage at 16 years. The views of legal practitioners and judges of courts of law fall in line with these standards. The Probation Officers and Wardens of Children's homes who closely work with children detained in Children's home and who understand the practical problems faced by such children did not strongly suggest any law reform but were of the view that the present law on minimum age for marriage should be amended to accommodate interests of children under the present minimum age for marriage.

On the basis of the above discussion, it is recommended that in order to educate the general public regarding marriage laws, wide publicity be given to important aspects of marriage laws including the minimum age for marriage through different methods such as Legal Literacy programmes conducted at school and village level and through television interviews with legal personnel and through newspaper articles etc. Similarly, while recommending the retention of present minimum age for marriage at 18 years under the General law and the Kandyan law, action should be made taken to introduce reforms to marriage laws to permit girls over the age of 16 years to marry under special circumstances with the permission of the District Court which functions as the upper guardian of minor children. The Civil Procedure Code which determines jurisdiction of lower courts such as the District Court should be amended to give powers to the District Court to use discretion and authorize such marriages after formal inquiry. Similarly amendments should be introduced to the Muslim Marriage and Divorce Act raising the minimum age for marriage to 16 years and requiring the Muslim bride to sign the marriage register at the time of marriage.

REFERENCES

- Atrapattu, Ashmore F : (2000) Teenage pregnancy: *Sri Lanka Journal of Obstetrics and Gynecology*, 2000, Vol. 22, 11-20
- Goonsekere S., (2000) *Muslim Personal Law in Sri Lanka: Some aspects of the law on family relations*: Colombo: MWARF,
- Goonsekere, S. & Amarasuriya, H. (2012) *Study on Early Marriage in Statutory Rape in selected districts of Sri Lanka* : Colombo, Centre for Women's Research,

Goonesekere, S. (1987) *Parent and Child*, Colombo: Gunasena,

Marmba Liyanage Rohana v. Attorney General SC Appeal No: 89A / 2009

Marriage Registration Ordinance No 19 of 1907

Muslim Marriage and Divorce Act No: 13 of 1951

Penal Code Ordinance No: 2 of 1883

Report of Marriage and Divorce Commission, Sessional Paper XVI 1959 and Muslim Law Research Committee Report

UN Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962)

UN Convention on the Elimination of all forms of discrimination against Women (CEDAW) (1979)

UN Convention on the Rights of the Child (1989)

UN Recommendation on Consent to Marriage, Minimum Age for Marriage and Registration (1965)