

Savitri Goonesekere
and Harini Amarasuriya

EMERGING CONCERNS AND CASE STUDIES ON CHILD MARRIAGE IN SRI LANKA

unite for
children

unicef 

**EMERGING CONCERNS
AND CASE STUDIES
ON CHILD MARRIAGE
IN SRI LANKA**

ISBN: 978-92-806-4704-4

Disclaimer

The views expressed in this report are those of the authors and do not necessarily reflect the views of UNICEF or the Government of Sri Lanka.

UNICEF Sri Lanka, July 2013

ACKNOWLEDGEMENTS

We acknowledge with our appreciation,

The contribution of families and individuals who shared their stories of early marriage and statutory rape with the field researchers

The contribution of officers from state and non-state agencies working in the child protection sector who shared their experiences with the researchers

The contribution of Professor Swarna Jayaweera, Professor Chandra Gunawardene, Agnes Mendis and Thana Sanmugam (CENWOR) and Yashodara Kadiragamathamby in conducting the study

The support of Professor Priyani Soysa, Professor Gameela Samarasinghe, Dr Thiloma Munasinghe and Ms Purnima Perera in providing training for the field researchers

Vigitha Renganathan for support with translation

The excellent work of the field Researchers: T. Sathaanathan, Sellathurai Mallika, S G M Upekkha Kumarihami Senanayake, Mathanaruby Niroshananth, Nishanth Nagaratnam, P N Udayangani, P T K Pallewatte, H G N Prabani Bhanuka, A B M Nimsha Dissanayake, Chathurange Ekanayake, W S Damayanthi, H M Damayanthi, Michael Rosary Dickson and S V Sathyalingam.

The efficiency of Indika Edirisinghe and Kethakie Nagahawatte (CENWOR) in coordinating the project

The assistance of Kethakie Nagahawatte, Savithri Hirimuthugoda and T. Ranishka Nadeeshani (CENWOR) with the qualitative data analysis and newspaper article analysis

The assistance given by Vathany Narendran and Sugandhika Nawana (CENWOR) in compiling the study report

The financial and technical support for the study from the Ministry of Justice and UNICEF, Colombo.

Professor Savitri Goonesekere
Emeritus Professor of Law
University of Colombo
Sri Lanka

Dr. Harini Amarasuriya
Senior Lecturer,
Department of Social Studies
Open University of Sri Lanka

ABSTRACT

This study looks at the interface and connection between statutory rape and early marriage in selected districts in Sri Lanka. While both the concepts of early marriage and statutory rape have legal definitions (with the latter being an exclusively legally defined concept) this study also looked at the social and cultural dimensions of early marriage as well as its causes, trends and impact. The field work was conducted in 7 districts in Sri Lanka and consisted of in-depth interviews with service providers as well as individuals and families. A minimum of 10 case studies on early marriage and statutory rape were developed from each district. The study completed 71 case studies and 81 in-depth interviews. Additionally, newspaper reports from selected national newspapers in Sinhala and English were also analysed. The field work was preceded by a comprehensive literature review.

The study found that early marriage cannot be considered a traditional practice in Sri Lanka and that there was a high level of public awareness regarding the minimum age of marriage. Among the 71 case studies there were only 6 cases of early marriage. However, there were 32 cases of cohabitation which were recognised as ‘marriages’ by families and the community, with the understanding that these relationships need to be formalised through registration when the parties reached the legal age of marriage. There were 21 cases of teenage pregnancy and 49 cases of statutory rape. The majority of the victims of statutory rape were between the ages of 14-15 years. The age of the perpetrators ranged from under 18 years to the oldest being 65 years.

The study found that early marriage and early cohabitation affects girls more than boys and reflects gender biases and discriminatory attitudes in families and communities. Social values regarding the importance of maintaining a girl’s chastity and respectability placed pressure on girls to falsify ages

and register marriages or to consent to early cohabitation. These values were also reinforced by service providers including law enforcement officers. The study found a strong link between early marriage and statutory rape with many incidences of early marriage and cohabitation preceded by incidents of statutory rape. The study also found that there were inconsistencies and confusions regarding statutory rape both within the community and among service providers. The law proved also to be extremely inconsistently applied with regard to statutory rape with many delays and decisions that were often not in the best interests of the girls. The study found that both early marriage and early cohabitation has similar consequences for girls leading to early pregnancy, disruption to education, financial difficulties, decline in status and risk of domestic violence.

The study recommends that there should be increased awareness of the negative consequences of early marriage and early cohabitation. Age appropriate and effective sexual and reproductive health education and services should be made available for children. Amendments to the law to ensure that an underage girl who is a cohabiting partner can claim family support and maintenance for herself, as well as amendments to ensure that children who are born of such relationships are not discriminated, are necessary. Major changes to Child Protection Laws as well as guidelines on sentencing for child rape also need to be in place. Statutory rape must be considered as a grave crime and the culture of impunity rigorously challenged. Boys under the age of 18 accused of statutory rape should be dealt with under the juvenile justice system. While reforms to the law and strengthening of law enforcement is necessary, adequate attention also needs to be paid to ensuring that sensitive, effective and accessible support services for victims of early marriage and statutory rape are in place.

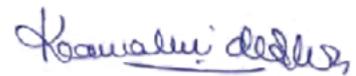
MESSAGE FROM THE SECRETARY OF MINISTRY OF JUSTICE

It is my great pleasure to pen this message at the presentation and launch of the Research Report on Early Marriages in Sri Lanka conducted by the Centre for Women's Research (CENWOR).

The Ministry of Justice in working towards ensuring justice for women and children has always sought to promote and protect the rights of women and children through the enactment of necessary legislation and through the implementation of mechanisms for the swift passage of cases through the Sri Lankan justice system, while reducing secondary victimization caused to children coming into contact with the law.

In view of the recent public calls for the revision of the legal age of consent and the legal age of marriage it was seen as imperative that a systematic and comprehensive research be carried out to ascertain the existent ideas and practices with regard to early marriages in Sri Lanka. Breaking away from established ideas of the prevalent conditions relating to early marriages based on anecdotal reports and hearsay, which have served to form public opinion of the marriage system in Sri Lanka, it was seen as necessary that early marriage should be considered in contrast with questions such as poverty, teenage pregnancies, teen sexuality, social ideals and knowledge afforded to the general public with regard to the prevalent laws in the country.

While congratulating CENWOR for the launch of this report, it is also my hope that by looking into and cataloguing data on early marriages of targeted vulnerable areas, this research conducted by CENWOR will serve as a support document for policy decisions to be taken by the various governmental and other stakeholders working for the protection of the rights of children and women.



Kamalini De Silva
Secretary
Ministry of Justice

MESSAGE FROM UNICEF SRI LANKA REPRESENTATIVE

UNICEF commissioned this qualitative inquiry in 2011 to better understand why children were marrying young and what could be done about it.

The inquiry was based on a 2009 desk review, which suggested that early marriage and statutory rape might be on the increase in Sri Lanka, particularly in less developed districts.

This finding concerned UNICEF, not only because early marriage limits opportunities for girls to complete their education, but also because it is often associated with adverse health outcomes, including risks to both mother and child during pregnancy and childbirth, under-nutrition and late physical and cognitive development amongst infants. Child brides are also at a higher risk of violence, abuse and exploitation.

This qualitative inquiry, based on an analysis of 71 case studies, reveals that child marriages (in the selected districts) are most often, a product of teenage sexuality, and do not appear to be linked to customary or forced marriages, or to families marrying off their daughters at an early age to reduce their economic burden. For instance, of the 71 girls interviewed, 21 girls (30%) were pregnant before they turned 18. This is 20% higher than the national average.

Amongst the key recommendations of this study are (1) the introduction of age-appropriate and effective teenage reproductive health services and information; (2) an awareness campaign around the impact of early marriage and (3) the revision of laws related to forced marriage and teenage pregnancy.

UNICEF hopes that the findings and recommendations will enable policy makers and activists to take action where required to ensure that all young men and women in the country understand reproductive health, the impact of early marriage and are able to make informed choices that benefit them and society at large.



Reza Hossaini
UNICEF Representative.

CONTENTS

CHAPTER 1

Early Marriage and Statutory Rape in Sri Lanka 1

Savitri Goonesekere

1.0 Introduction	2
1.1 Application of International and Regional Standards	2
1.2 Early Marriages in Sri Lanka: The National Context and Statistical Information on Rising Ages of Marriage	3
1.3 Policy Changes	4
1.4 Implementing the Legal Changes: Post 1995	5

CHAPTER 2

Early Marriage: Current Misconceptions in some newspaper report 9

Harini Amarasuriya

2.0 Introduction	10
2.1 Changes to marriage timing: causes	10
2.2 Marriage patterns in Sri Lanka	10
2.3 Current perceptions	11
2.4 Conclusion	12

CHAPTER 3

The Study: Objectives and Methodology 13

Savitri Goonesekere and Harini Amarasuriya

3.0 Objectives	14
3.1 Research questions	14
3.2 Sample	15
3.3 Data collection	16
3.4 Selection and Training of Research Assistants	17
3.5 Data Analysis	17
3.6 Limitations of the Study	17

CHAPTER 4

Case studies on Early Marriage and Statutory Rape 19

Harini Amarasuriya

4.0 Overview of case studies	20
4.1 Circumstances leading to the incident	20
4.2 Economic and social security	21
4.3 Family response	21
4.4 Official response	22
4.5 Consequences for girls	24
4.6 Disempowerment of girls	25
4.7 Conclusion	25

CHAPTER 5	
Perceptions of Service Providers	27
<i>Harini Amarasuriya</i>	
5.0 Introduction	28
5.1 Understanding of the Law	28
5.2 Causes of statutory rape and early marriage	28
5.3 Consequences	30
5.4 Reporting the Incidence of Early Marriage and Statutory Rape	31
5.5 Effectiveness of Responses	31
CHAPTER 6	
Summary of Main Findings	35
<i>Savitri Goonesekere and Harini Amarasuriya</i>	
6.0 Early marriage	36
6.1 The consequences of early marriage and Cohabitation on girls	36
6.2 Statutory rape	37
6.3 Reporting of incidents and law enforcement	37
6.4 Care and Protection	38
6.5 Social and Cultural Norms	39
CHAPTER 7	
Conclusions and Recommendations	41
<i>Savitri Goonesekere and Harini Amarasuriya</i>	
7.0 Introduction	42
7.1 Early Marriage and Cohabitation with Girls over 16 years: Conclusions	42
7.2 Statutory Rape : Conclusions	45
7.3 Statutory Rape and Incest: Conclusions	49
7.4 Teenage sexuality: Conclusions	49
ANNEX 1	51
ANNEX 2	53
REFERENCES	57

Early Marriage and Statutory Rape in Sri Lanka

1.0 Introduction

Child marriage is a phenomenon familiar to many countries in Asia and Africa. It has not been eradicated in South Asia sixty years after political independence, despite the many changes that have occurred in these decades. Though child marriages involve young boys in some countries of South Asia it is invariably girls rather than boys who are forced in to marriage usually at a very early age when they are incapable of expressing consent. The negative impact of early marriage on girls, their physical and emotional health and wellbeing, including disruption or denial of education has been highlighted in research from within the region and outside. The inevitable marginalization

in the household, the gender based discrimination experienced including domestic violence and risk of HIV/AIDS has also been analysed (Bates et al 2007; Jenson and Thornton 2003; Anita Raj 2010). The World Health Organisation and the UNFPA have highlighted the complex range of negative impacts including obstructed labour which causes conditions such as fistula or leaking urine and faeces that result in further isolation and rejection of the girl (WHO 2006). These negative impacts have led to child marriage being described as a harmful practice (UNICEF 2005). The denial of life chances is increasingly conceptualized as an infringement of human rights.

1.1 Application of International and Regional Standards

The Universal Declaration of Human Rights (UDHR 1948) and the two International Covenants incorporate the basic fundamental rights in international law. The UDHR specifically refers only to the aspect of forced marriage without the consent of the parties as an infringement of the right to enter marriage “with free and full consent” (Art 16 (2)). The UDHR however also states that “childhood (is) entitled to special care and protection” (Art 25 (2)). The same concepts of the right to freely consent to marriage, and the need for special measures for protection of children were also incorporated in the two International Covenants on Economic, Social and Cultural Rights (1966) (Art 10) and Civil and Political Rights (Art. 23 (3) Art 24 (1)). However human rights treaties that were adopted later by the United Nations were responsible for bringing child marriage within the scope of international human rights violations.

The UN Convention on Elimination of All Forms of Discriminations Against Women 1979 (CEDAW) addressed the issue of child marriage in a specific article. It clarifies that betrothal and marriage shall have no legal effect and that State Parties should set a minimum age of marriage and provide a system for compulsory registration of marriage (Art 16 (2)). The CEDAW Committee monitoring progress has adopted General Recommendations on Equality in Marriage (GR 21) and women and girls health (GR 24) which set standards on a State Party’s duty to prevent early

marriage. These norms have been reinforced by the Convention on the Rights of the Child, 1989 (CRC). The Convention’s concepts of a child’s right to life, survival and development, (Art 6) and the right to birth registration (Art 7) create obligations on the State to prevent early marriage. Rights to protection from exploitation and abuse, and the right to participate in making decisions concerning the child’s life, with evolving capacity and maturity, are also denied when early marriage takes place. The general norms of non-discrimination in Art 2 and the child’s best interests in Art 3 also reinforce the prohibition on early and forced marriage. This interpretation is incorporated into the General Comments of the CRC Committee which clarify that early marriages violate the full range of child rights incorporated in this instrument. These include a General Comment on Adolescent Health (GC 2003 No. 4 para 9, 20) and General Comment No. 3 on HIV/AIDS. This interprets CRC Art 6 on the right to life as requiring measures to protect girls children from early and forced marriage on the rationale that early marriages makes them more vulnerable to HIV/AIDS (GC 2003 No. 3 Para 11).

Human rights treaty standards have also been developed over a period of time, to conceptualise child marriages as a harmful practice which must be eliminated even if it is approved and legitimized in customary law and tradition. Child marriage is thus described as a “harmful traditional practice” in international human

rights law. Art 24 (3) of CRC refers to the obligation of a State Party to “take effective and appropriate measures to abolish traditional practices prejudicial to health.” The CRC General Comment on HIV/AIDS (GC No 3 para 11) recognizes that early marriage comes within the meaning of a “harmful traditional practice”. The General Comment on Adolescent Health emphasises the importance of interventions to set minimum ages of marriage and sexual consent without discrimination on the ground of sex (GC No. 4 para 9, 20). This approach is reinforced in the standards of CEDAW. Art 5 of this Convention requires the State to take steps to “modify” social and cultural and customary practices that conflict with the right to gender equality and non-discrimination. Several of CEDAW’s General Recommendations, on Health (No 24) Violence Against Women (No 19) and Equality in Marriage (No 21) consider early and forced marriages a “harmful” practice that must be eliminated, even if it is approved in local cultures and customs. Though human rights instruments including CRC recognize that the child of a minority ethnic community has a right to enjoy his/her cultures (CRC Art 30, ICCPR Art 27) and the right to freedom of religion (CRC Art 14, ICCPR 18) the manifestation of culture and religion is subject to the States duty to modify practices that infringe other human rights.

Sri Lanka adopts a ‘dualist’ approach to International

law, which means that human rights standards apply within the country only when they are incorporated in legislation, policy and jurisprudence of the courts. However ratification of treaties places an obligation on State Parties like Sri Lanka, under International law to harmonise law and policy with the standards that they have accepted by an official act of the State. Sri Lanka has ratified many treaties including CEDAW, CRC, and ICCPR. Successive governments have considered themselves bound by these treaties and have submitted their progress reviews reports to the treaty bodies monitoring implementations. The CEDAW Committee has, both in 2002 and 2011, reiterated the importance of introducing changes even in Sri Lanka’s personal laws in conformity with the norms of gender equality in the Convention. Sri Lanka is therefore bound under International Human Rights Law to harmonise domestic law and policy with treaties. Sri Lanka’s appellate Courts have applied treaty standards in their interpretation, and CRC and CEDAW require courts to continue to interpret laws in harmony with the standards set by these human rights treaties (Goonesekere 1998, 2004). The State must therefore work towards eliminating early marriages of children.

The approach in international human rights law has been supported in policy declarations of the regional organization SAARC (Goonesekere 1998).

1.2 Early Marriages in Sri Lanka: The National Context and Statistical Information on Rising Ages of Marriage

The first regulatory controls on early marriages in Sri Lanka come from the middle of the 19th century when the British introduced legislation setting a minimum age of marriage and declaring marriages below the specified age ‘void’ or lacking legal validity. The latter policy was different from that adopted by the British in the subcontinent of India where laws that set minimum ages of marriage, punished those involved in solemnising them, but did not touch the validity of the marriage (Goonesekere 1987; 1998). The minimum ages of marriages in early British legislation eventually incorporated the ages of 12 and 14 for girls and 16 for boys in the General law (General Marriage Ordinance (1907s 15)] and 12 and 16 in the Kandyan

law (Kandyan Marriage Act 1952 s. 66). The Muslim Marriage legislation, which culminated in the post independence Muslim Marriages and Divorce Act (1951) did not specify a minimum age, since early marriages are considered a practice legalized in the religion based Muslim personal law (Goonesekere 2000). An accessible system of registration of birth and marriages in the nineteenth century, through the Colonial Births and Deaths Registration legislation of 1895, procedures for marriage registration under the General and Kandyan marriages statutes, and consistent advocacy and awareness raising in the community contributed over the years to acceptance of these procedures on registration by the population.

Registration was made compulsory for the validity of a Kandyan marriage by British colonial legislation, and the legal position was not modified in the post independence Kandyan Marriage and Divorce Act (1952) (s 3 (1)). However registration of marriages is not compulsory under the General Marriages Ordinance, since the British adopted a different policy in this regard and this was not changed in the post independence period. Nevertheless the practice of registration of marriage appears to have been followed, and statistics on registration recorded.

Many of us have or had grandparents who were child brides and bridegrooms in the nineteenth century. My own paternal grandmother who lived in rural Matale recalled how, married at the age of 13 to a boy of 16, my grandfather, she would escape into the paddy store (atuwa) shed tears and find comfort playing with a memento given to her by her father. She also recalled fondly that grandfather would join her, and they would sit together holding hands and comforting each other. Both encouraged their children to study, and their children married in their twenties in the early part of the next century and also registered their

marriages. This anecdote conforms with the statistical scenario on registered marriages (Table 1). In 1901 though disaggregated data by types of marriages are not indicated, the mean age of marriages for males was 24.26 and for females 18.3. By 1921 it was 27.0: 21.4. Between 1932, to 1939, the age of marriage for males had increased to 27 – 28 in the case of Kandyan and General law marriages, and stayed between 18 – 22 for females in both categories. By 1991, the ages for both categories had stabilized around 27 – 28 for males and 22 – 24 for females. Statistics from 1939 in the case of Muslims indicate a similar but slightly lower mean age of 26 – 28 for men and 18 – 20 for women. The mean age of marriage for all communities from 1995 – 2006 have stayed within the range of 27 – 28: 24 – 25. The policy of State funded non-fee levying education, accessible to girls and boys and high retention rates of women in education, and accessible procedures to birth and marriage registration contributed to the rising ages of registered marriages in Sri Lanka (Goonesekere 1998). A UNICEF study of 2001 remarks on this phenomenon, and the fact that Sri Lanka is a country in South Asia that represents a success story in addressing the problem of early child marriage (Innocenti 2001).

1.3 Policy Changes

Despite these social transformations and the rise in the mean age of marriage, Sri Lanka's Demographic and Health Survey 2000 indicates that child marriages were solemnized. However, in 1987 the percentage of marriages under 15 had dropped to 3.4% and 15 – 19 to 24.4% (Sri Lanka Demographic and Health Survey, Dept. of Census and Statistics 2000). Sri Lanka ratified the CRC in 1991 and adopted a policy statement, the Children's Charter 1992, which incorporated CRC standards. In 1993 just before the Beijing World Conference of 1995 the policy statement known as the Women's Charter was adopted, incorporating the standards of CEDAW which had been ratified a decade earlier than CRC, in 1981. Gender advocates child right activists and policy makers joined together in special task forces and committees, and proposed major legal reforms in regard to the age of sexual consent and the age of marriage.

The nineteenth century Age of Majority Ordinance had been amended in 1989 even before the CRC was

ratified, to make 18 the age of majority, conforming to international standards. The mean age of marriage had stabilized at 27 for males and 24 for females. Policy makers were now more open to the idea that the age of marriage at least in Non-Muslim communities should be harmonised with the age of majority, and the realities on higher ages of marriage.

The issue of sexual abuse of children was also attracting public concern at this time. The law of rape in the nineteenth century colonial Penal Code indicated that sex with a child wife under the age of 12 years was rape (S.363). Since the minimum age of marriage had been defined as 12 years for a girl in the General and Kandyan law, this provision could only refer to Muslims, since there was no minimum age of marriage in Muslim law. An additional offence described in Victorian language as "carnal intercourse with girls", (S. 364 A) made it an offence to have sex with a girl between the age of 12 – 14 years, exempting from this, cases of girls legally married at 12 years, or even situations of cohabitation

above 12 years with the consent of guardians. When the Penal Code reforms were enacted in 1995, it was argued that s.364 A should be repealed, creating a new offence of statutory rape as part of a general initiative to reform the law on sexual exploitation of children. 16 years was recognized in the Sri Lanka court cases on child custody, and the Penal Code provision on kidnapping from guardianship, as an age of evolving capacity, or age of discretion, when a child acquires capacity to make decisions in regard to his/ her personal life. (Goonesekere 1987 ; Penal Code, 1883 s 352). It was therefore suggested that sex with a girl under 16 years should be considered statutory rape.

The Penal Code reforms of 1995 which introduced major amendments therefore created an environment for changes in the law on minimum age of marriage. They were accompanied by important changes to the General Law, and the Kandyan Law. Amendments to these laws in 1995 therefore raised the ages of capacity to marry for men and women in General and Kandyan Law to 18 years (General Marriage Ordinance Amendment, 1995). Kandyan Marriage Act (Amended 1995). The original provision in the Penal Code, (s.364 A) on the offence of “carnal intercourse with girls” was repealed, and the Penal Code was also amended to create a new offence of statutory rape of a girl under 16 years, irrespective of any proof that she consented to sex (s.363 as amended 1995). Incest up to that time was not criminalized in the Penal Code. The amendment of 1995 replaced the s.364 A offence of carnal intercourse with girls with a new broader offence of incest.

These policy changes therefore set new normative standards. Child marriage (below 18 years) was prohibited, and the law harmonised with the reality of raised ages of marriage for men and women. The exception for the Muslim community was retained on the basis of religion and personal law. Sex with a girl under 16 years was considered child abuse, and an offence of statutory rape. A girl therefore acquired legal capacity to express consent to sex at 16 years, accommodating the idea of growing maturity to make personal decisions at the age of 16 years (approximately O’Level grade in school). The age was not raised to 18 years in recognition of the fact that adolescent sexuality and teenage pregnancy was a reality in Sri Lanka, and raising the age of sexual consent to 18 years would make law enforcement impossible, encouraging violations and impunity.

An exception was also incorporated in regard to Muslims, to bring them within the prohibitions on sex with minors, by retaining a modified version of the earlier provision in the Penal Code that stated that sex with a child wife under 12 years was rape (s.363). As pointed out earlier when 12 years was made the minimum age of marriage in the General law and Kandyan by 19th and early 20th century colonial legislation, this provision could have applied only to Muslims. The earlier Penal Code provision on the prohibition of sex with a child wife under 12 years was modified with a reference to a child wife over 12 years, and incorporated into the amendment of 1995 that created the offence of statutory rape. Consequently in the case of Muslims, the relevant age for statutory rape is 12 years.

1.4 Implementing the Legal Changes: Post 1995

A publicity campaign was not undertaken to create public awareness on these major policy changes. This has seriously hampered effective enforcement of these changes in the law on early marriage and statutory rape.

Statistical information indicates that by 2000 marriages under 15 had dropped to 1.3% and marriages at the age of 15-19 to 19.7 (Demographic and Health Survey 2000). Since an ethnic breakdown is not given, it is not clear whether these figures relate to Muslim marriages

(where there is no minimum age of marriage) or whether child marriages under 18 years were being solemnized even under General Law and Kandyan Law in ignorance of the 1995 reforms on the age of marriage. It is also possible that information in household surveys on informal cohabitation, where the parties indicated that they were ‘married’, are also included in the statistics on legal marriage.

In any case official statistics also indicate a problem of teenage pregnancies of girls between 15 – 19

(Demographic and Health Survey 2000). This scenario is reaffirmed in a UNICEF study of 2004 on adolescent sexuality (UNICEF 2004). The Demographic Health Survey of the Department of Census and Statistics 2006 - 2007 however indicates that only 1% of women aged 15 - 19 gave birth (Department of Census and Statistics 2006/7). Yet this survey also discusses teenage pregnancy and gives a figure of 6% of pregnancy and motherhood in adolescent women in the age group 15 - 19 (ibid). 19 years as the upper age of adolescence, seems to be used because the Family Health Bureau uses this age, conforming to the upper age used by WHO. This is not in harmony with Sri Lankan law and policy, according to which a child becomes an adult at 18 years. In any case, even though statistics indicate that it is mostly adult women who marry and bear children, the statistics suggest that adolescent sex in Sri Lanka sometimes combined with cohabitation and pregnancy is a social reality (LHRD 2001; Goonesekere 2004)]. Research undertaken by medical professionals also confirms that Sri Lanka must address the problem of teenage pregnancy. Sri Lanka studies have recorded the negative impact of teenage pregnancy, and the increase in the incidence of such pregnancies. They have specifically referred to low birth weight of children born to teenage mothers, and complications in pregnancy that place the teenage mothers at risk (Attapattu 2000; Goonewardene 2001). The WHO and the UNFPA, have referred to the phenomena of early marriage, in many reports on Asian countries, identifying risks which include obstructed labour, leading to obstetric fistula, a condition that which invariably causes the death of the baby, and a tear which leaks urine and faeces. It has been noted that this condition can lead to isolation and rejection of teenage girls in families and communities. (WHO 2006).

State child care authorities, as well as non-governmental organizations providing care and services to adolescents have highlighted a range of problems. They point out that in situations where boys and men have sex with girls under 16 years, the police prosecute the men, leaving the girls in a situation where they may, as “victims” of abuse, be sent to Children’s Homes or shelters, through court proceedings. Since the legal age of Non-Muslim marriage is 18 years, under age marriages cannot be registered. If a pregnancy results, the strict abortion laws prevent legal termination,

sometimes leading to back street abortions with grave risks to the teenage girl. They claim that these laws also result in disruption of the lives of both parties in a situation where they are in a continuing relationship of informal cohabitation, even though the girl is under age (Women’s Development Centre Kandy in discussions with women’s groups; LHRD 2001). They point out that sometimes the Police wrongly interpret the exception in the law on statutory rape intended for Muslims whose personal law does not recognise a minimum age of marriage, as a general provision which suggests that marriages of girls under the age of 12 years are legal in the General law and Kandyan law. They are said to be reluctant to prosecute in cases where the girl is under 16 years, on the ground that she “can be married” with the consent of the family (LHRD 2001:5).

Recent case law in the Appellate Courts, also point to parental pressure for marriage when a girl under 18 years has a sexual relationship. In *Guneratnam v Registrar General* (2002) 2 Sri Lanka reports 302 a refusal by a registrar of marriages to register the marriage of a girl under 18 years was challenged by parents on the ground that the law as amended in 1995 retained the requirement of parental consent to marry, and therefore gave parents a right to have such a marriage solemnized. Justice Tillekawardena cited the General Marriage Ordinance provision on the age of capacity to marry, which clearly referred to 18 years, and held that an underage marriage was void, and had no legal consequences, even if the parents expressed their consent to such a marriage (Goonesekere 2004).

In an environment where parents and families do not understand the policy reasons for prohibiting early marriages the change in the law raising the age of marriage has encouraged corruption. Marriages of underage children are solemnised by falsification of birth and marriage registers. A Newspaper report indicated that 50 registrars had been interdicted for falsifying marriage registers and solemnizing under age marriages (Daily News 5 September 2006). Follow up by CENWOR with an official of the Trade Union of registrars indicated that they themselves were concerned, and taking measures to ensure that registration responsibilities were not disregarded by their members. The social pressure for marriage, when

teenagers engage in sexual relations, also contributes to an undermining of the accepted policies by courts and in public administration. The concept of a “customary marriage” is being developed to justify the recognition of underage cohabitation or marriage.

In one case where a defence to a charge of statutory rape was that the parties were married, (even though by falsifying ages), the Court of Appeal decided that until “the marriage” was invalidated by legal procedures the parties could be considered as married (Goonesekere 2004:60). In a recent unreported case in the Court of Appeal, a man of the Adivasi community was acquitted of statutory rape in appeal on the ground that he had married the girl according to community values. The Attorney General did not appeal the decision in the Supreme Court, despite the availability of grounds for appeal (Goonesekere 2004:60). There is also some confusion today in regard to whether unregistered marriages where the underage parties cohabit together can be considered a “customary” marriage, or a marriage solemnised according to custom. Sri Lankan case law clarifies that even a marriage solemnized according to customary ceremonies must conform to the requirement of capacity, including age of capacity to marry (*Tiagaraja v Kurukel* 25 NLR 89, *Subramaniam v Pakialetchumy* 55 NLR 87). Sri Lanka law also recognizes that long continued cohabitation can be used as evidence to prove a marriage according to the General Law of marriage. However the principle only creates an evidentiary presumption that a legal marriage was to be solemnised. Therefore case law has clarified that the presumption created by cohabitation can be rebutted or rejected by evidence that the parties lacked legal capacity to marry, and or the required ceremonies of marriage for a customary marriage had not been followed. Sri Lankan law and policy does not recognize that merely living together or cohabiting together creates a legal relationship that is accepted as a marriage (Goonesekere 1984). Yet a recent research report of 2009 on Early Marriages and Statutory Rape (Amarasinghe 2009), refers to “customary” marriages, which in our law are considered cohabitation outside marriage.

National statistics, research and analysis sometime assume, without giving evidence, that Non-Muslim Sri Lankan communities recognize a custom of

solemnizing underage marriages, and describe cohabiting together as marriage, despite the legal prohibition in this regard. (Amarasinghe 2009; Sri Lanka Demographic Health Survey 2000).

Thus the legal prohibition on child marriage and statutory rape in the reforms of 1995 do not appear to be understood by the authorities concerned. The uncertainties are also reflected in the national data. The term “customary marriage” is used to define marriages though there is no such legal concept. National data gives breakdown on early marriage and teenage pregnancy using the age of 19 years (the WHO age) rather than the legal age of majority, and termination of childhood (18 years), in Sri Lankan law and policy. National data does not clarify whether early marriages recorded relate to the Muslim community, were there is no minimum age of marriage.

Research which cites statistics on early marriage does not reflect an understanding of statutory rape policies, and does not clarify how marriages of children under 18 years have been officially recorded by registrars of marriages. Amerasinghe, for instance quotes statistics on registered marriages under 18 years in the period 1994 – 2003, remarking that there has been “a decline from 1996 to 2003” (Amarasinghe 2009:2). The data does not also indicate whether the registered marriages underage 18 include Non-Muslim communities, even when registration of underage marriages in these communities is illegal. This report also uses statistics on child abuse which are not disaggregated according to age, and thus conflates the ages of 16 to 18 years, though statutory rape is an offence only in the case of sex with children under 16 years. The study defines rape as forced sex, and under age “consensual marriages” where vaginal intercourse takes place (p. 6-7). Yet after the changes to the law in 1995 use of force is not necessary as rape is defined as sex with a girl over 16 years, without her consent, and statutory rape a criminal offence, and abuse of a girl who is under 16 years. When she is below 16 years she is considered lacking in capacity to consent to sex. Statistics cited from a girls home also refer to sexual abuse of girls “married before 18 years without parental consent” with no explanation in terms of the above legal concepts and principles.

Police records on statutory rape reflect a similar lack of understanding of the law and are not clear in regard to the ages of victims. These records do not disaggregate rape cases as those of victims over 16 years, or under 16 years, or by ethnicity.

In this environment of uncertainty and confusion in regard to accepted state policies and the legal controls, there is also clear evidence of the rising incidence of child abuse including sexual abuse of children under 16 years, which the law designates as statutory rape (Presidential Address, College of Paediatricians, Sunday Times. 27th Nov 2011). The years of armed conflict have also resulted in a phenomenon of early marriage and teenage pregnancy of girls in the conflict affected areas, and in Internally Displaced

(IDP) communities. Amerasinghe's study records the incidence of "under age marriages" and teenage pregnancies in these communities. (Amerasinghe 2009: 3 ,4). This situation poses new issues in regard to responses to post-war rehabilitation and reintegration and transitional justice.

The current study was undertaken in the context of these contradictory trends, with a view to ascertaining the incidence of child marriage under the minimum legal age for marriage, and the interface with current policies that seek to respond to child abuse including statutory rape of children below the age of 16 years. The study also intends to analyse the implementation of law and policy, the issues that arise, and propose policy changes in response to these issues.

Early Marriage: Current Misconceptions in some newspaper reports

2.0 Introduction

As described in Chapter 1, the age of marriage especially of girls has been of particular interest both from a rights perspective as well as a development perspective. From a rights perspective, delaying the age of marriage is linked to a child's right to development health, education and participation rights including the right to express consent to marriage. A denial of these rights in the case of girls impacts to perpetuate gender based discrimination. From a sustainable development perspective late marriage is an indication of increased participation of girls in education and higher levels of social and economic independence for women.

Early marriage is generally considered as linked to lower levels of education particularly among girls and

is usually discussed in the context of forced marriages. While early marriage has consequences for boys as well, the consequences are much more adverse for girls. It has implications for their physical, mental and emotional well being, poses a barrier for education and generally confers less power, status, agency and autonomy within the household (Bates et al 2007; Jensen and Thornton, 2003; Malhotra and Tsui, 1996).

This chapter describes prevalent attitudes regarding early marriage and statutory rape and discusses how early marriage and statutory rape have been recently reported in local newspapers.

2.1 Changes to marriage timing: causes

Analyses of changes to marriage timing, are generally seen in relation to a normative shift from family orientation to a more individual orientation with regard to family and marriage structures. This is also linked to modernisation theories, where it is argued that women delay marriage as a consequence of increasing educational opportunities, economic independence through employment opportunities and exposure to alternative norms and values. It is also argued that modernization leads to changes in perceptions in society, among parents and women regarding women's roles. These changing norms and ideas lead to preference for individual choice in selecting partners rather than arranged marriages, nuclear family arrangements over extended family arrangements and also the economic and social independence of women. It is argued that individual

choice in selecting marriage partners leads to less of an emphasis on the sexual purity of daughters by parents. Delay in age of marriage is also attributed to the fact that unlike in situations when parents choose the partners, individual choice means that the marriage partner may be selected through a process of trial and error (Malhotra and Tsui, 1993).

However, empirically, what is evident is that family and marriage systems are quite complex and extremely variable. These complexities do not lend themselves quite so easily to the dichotomy of traditional versus modern arrangements. In fact, "traditional" arrangements have proved to be adaptable to changing socio-economic contexts despite modernization theories predicting the demise of "tradition".

2.2 Marriage patterns in Sri Lanka

What needs to be examined closely in the Sri Lankan context is whether delays in age of marriage can be linked to normative changes regarding marriage, family and women's role. It is believed that higher educational opportunities for girls lead to economic independence and also delayed marriages. Explana-

tions for the Sri Lankan situation where the average age of marriage has been increasing has also been attributed to expanded educational and employment opportunities for women. However, recent media reports as well as statements from agencies such as the National Child Protection Authority have suggested

that early marriage incidents are on the increase. Certainly, news paper reports suggest that incidents of statutory rape are very much on the increase. But

as discussed in Chapter 1, the lack of understanding of current laws and policies has resulted in misleading and sometimes confusing media reporting.

2.3 Current perceptions

As part of this study, news paper reports of early marriage and statutory rape were collected and analysed over a period of one year from December 2010 to December 2011. Articles in two English newspapers, The Daily Mirror and the Island as well as one Sinhala newspaper, the Lankadeepa were analysed for this purpose. 134 incidents of sexual abuse of children were reported in the English newspapers and of these the majority, 117 cases involved children below the age of 16 years; that is, these were incidents of statutory rape. 16 cases were reported in the Sinhala media and 14 of these were incidents of statutory rape. However, the word statutory rape was not used in relation to reporting on any of these incidents. Instead, the word that is used is 'underage' therefore not distinguishing clearly between statutory rape and rape.

Furthermore, showing a lack of consistency and thereby perpetuating the lack of clarity on this issue, many of the articles refer to girls being 'molested' and in the Sinhala newspaper, the word keleseema (polluted) is also used carrying with it a veiled reference to and a value indictment that revictimises a victim of sexual abuse by considering her unclean.

In both Sinhala and English newspapers, the articles sensationalise the incident often using catchy titles:

"Under aged girl raped by lover" (Island, 29th Nov, 2011), referring to an incident involving a 15 year old girl which is legally an incident of statutory rape.

"A dirty old man" (Island, 20th May, 2011), referring to a 60 year old man raping a 12 year old girl.

"Sex-crazed youth sent to psychiatrist" (Island, 2nd Dec, 2011) referring to attempted rape by a 18 year old man of a 7 year old girl and an 8 year old boy.

"Romeo Remanded (Island, 8th Aug, 2011) referring to another incident of statutory rape involving a 15 year old girl. The report goes on to state that "the police

summoned the girl's parents and severely warned them to keep a close tab on their offspring".

"Girl on her way home polluted (kelessa dama) pushed into water in an attempt to kill her" (Lankadeepa 28 Nov 2011)

"Exorcist arrested for molesting 12 year old girl while claiming to cure fainting" (Lankadeepa Nov 14th, 2011)

Apart from these somewhat startling headlines, very little information is provided especially in the English newspapers about the case. The tone of these articles is also somewhat disturbing and certainly reinforces the perceptions that were recorded by service providers in this study (see Chapter 4). That is, these incidents are considered to be taking place with the 'consent' of the girl whatever her age. The perpetrator is portrayed as either a Romeo or mentally ill. The fact that this constitutes child sexual abuse, gender violence and a criminal offence is not discussed seriously. The police response in the case of "Romeo" of warning the parents suggesting that they had failed in their responsibility to protect the girl, does not merit any discussion (Island 2011).

The Sinhala newspapers provide a little more detail usually describing both the victim and the perpetrator's family background and sometimes describing the incident as well. The English newspapers which seem to be mainly getting these news items from police or court records merely note if the perpetrator has been arrested or not or if the courts have handed a sentence.

These cases were reported from all around the country and in a majority of incidents, the perpetrator was known to the girl. Several cases involved close relatives including fathers, grandfathers and uncles and thus identified by law as incestuous and grave sexual abuse.

What is noteworthy in these newspaper reports is that

while many state that the perpetrator was taken into custody on suspicion, there are very few (in fact, only 2) where there is any reporting of the conclusion of the case. There is no reporting of the implications for the girl (apart from a brief mention of hospitalisation for further investigation), need for or availability of support services for victims of such incidents. In fact,

a meaningful discussion about these incidents in terms of its social implications is totally absent in the print media that was analysed for the purpose of this study. The newspaper reports also indicate that apart from cases of abuse, teenage girls who are not of the age of capacity to marry are engaging in sexual relations.

2.4 Conclusion

Law reforms that carried heavy penalties for child sexual abuse have been in place for several years due to lobbying by child protection activists. Recently, there has been concern from certain quarters that the laws on statutory rape (where sex with a girl under 16 years is considered statutory rape) unfairly penalise teenage boys who have ‘consensual’ sex with teenage girls.

Certain suggestions (most recently by a government Minister) to lower the age of marriage to 16 years reveals the confusion that has been caused by the inability to distinguish between sexual abuse, consensual sex, teenage sex and sexual relations within the institution of marriage. Suggestions to lower the age of marriage reveal the perception that sexual relations as long as it takes place within the institution of marriage, are acceptable even among children.

What the newspaper analysis reveal are misconceptions regarding the law and that the nature of these acts of sexual violence and child abuse are largely

misunderstood by the general public. There is very little awareness on these issues and sadly the print media does not seem to be contributing in any way to raising awareness of these issues.

The sensationalist reporting of such incidents actually may have negative consequences. Men having sex with underage girls is legitimised even as the girl is stigmatised. There can be a “moral panic” in regard to issues of sexual abuse and teenage sexuality. The newspapers convey the sense that these incidents are on the increase but the media does not play any constructive role in educating the public on the laws and policies relating to such incidents. The lack of a culture of investigative journalism in Sri Lanka also means that other than merely reporting what takes place in courts or at the police, there is no analysis or discussion about the topic.

The Study: Objectives and methodology

3.0 Objectives

As pointed out in Chapter 1, in Sri Lanka, the legal age of marriage for non-Muslim communities is 18 years while the age of sexual consent is 16 years. Sexual relations with a girl child below the age of 16 years is considered rape, irrespective of any issue of consent since the laws considers that a girl below the age of sexual consent lacks legal capacity to express consent. A Desk Review had been commissioned by UNICEF on early marriage in Sri Lanka in 2009 (Amarasinghe, 2009). The Centre for Women's Research was commissioned by UNICEF to undertake a field study in 2011

on this topic with a view to ascertaining the incidence of early marriage in selected districts throughout the island. Anecdotal evidence and issues raised by women's groups offering services to victims of child abuse suggested that there could be an interface between early marriage and statutory rape. The field study therefore focused on the additional issue of the incidence of statutory rape and its impact, if any, on early marriage in these selected areas.

3.1 Research questions

The Desk Review commissioned by UNICEF prior to this study (see Amarasinghe, 2009) as well as a literature review (see chapter 1) formed the basis for this study. Since the study covered two areas, Child Marriage and Statutory Rape, and each concept has a specific legal definition, the concepts were legally defined in selecting the research sample. Statutory rape, for instance is an exclusively legal concept. However, one of the areas explored in this study were the social and cultural dimensions of the concept of early marriage and the ways in which that may not harmonize with the legal definition.

In Sri Lanka there is no 'customary law' on early marriage since the legal system does not recognise customary early marriage. However, since early marriage is legal in Muslim Communities, the study attempted to explore the situation in Muslim Communities and Non Muslim communities separately.

A. Non-Muslim Areas

The study planned to examine the two topics of early marriage and statutory rape and these were researched separately since they are different issues. However, the results from the study showed that many cases of early marriage were preceded by an incidence of statutory rape, and thus separating the two issues is quite complex.

The study identified the following research questions in relation to the interface or connection between the two topics.

1. Is there general awareness that the age of marriage is 18 years and that under age marriages cannot be legally registered and are therefore illegal?
2. Are girls and boys, schools, families, communities, aware that men or boys who have sex with girls below 16 years commit a criminal offence of statutory rape, and that they face prosecution and cannot marry the girl because underage marriage is illegal?
3. Is there community acceptance of continuing relationships and cohabitation of girls under the legal age of marriage and are these accepted as marriages?
4. To what extent is informal, early marriage a cultural response to teenage sexuality, and the prospect of teenage pregnancy?
5. Can awareness of the law on early marriage and statutory rape promote sexual responsibility among boys and prevent sex with underage girls, and family pressure to get underage boys and girls married?
6. Is there reluctance among judges, lawyers and law enforcement authorities to prosecute and punish for statutory rape based on the community perception that it will better for an underage girl to get married to the man or boy?
7. Are there policy reasons to change the law,
 - Lower or raise the age of sexual consent in the law on statutory rape?

- Lower the age of marriage to harmonise with the law on statutory rape?
- Do differences in these two laws, and the minimum ages specified create pressure to falsify information in birth and marriage registration procedures?

B. Muslim Areas

The study also intended to look at the causes, trends and impact of early marriage in Muslim Communities within the framework of the Muslim law. The relevant age for statutory rape in the case of Muslim is 12 years

3.2 Sample

The initial plan was to select a sample from 14 Divisional Secretary's (DS) Divisions, two each from the following districts: Batticaloa, Jaffna, Nuwara Eliya, Matale, Matara and Anuradhapura. The DS Divisions were selected based on areas with high rates of dropout rates from school, on the assumption that school dropout rates may be linked to early marriage. The selected locations were as follows:

- **Batticaloa:** Eravur Pattu and Korale Pattu
- **Jaffna:** Chavakachcheri and Kopai
- **Nuwara Eliya:** Hanguranketha and Haldamulla
- **Anuradhapura:** Mahavilachchiya and Kebithigollewa
- **Moneragela:** Moneragela and Badalkumbumbura
- **Matara:** Pitabaddara and Pasgoda
- **Kegalle:** Aranayake and Deraniyagala

under the Penal Code, repealing an earlier provision in the Penal Code prior to amendment. However, field researchers found it extremely difficult to obtain information on early marriages or statutory rape from within the Muslim community. Officials who were interviewed claimed that although these incidents were prevalent in these communities they were not reported. On the other hand, gaining access to Muslim communities to speak about such a sensitive topic within the short time that was available for field work for this study proved to be quite difficult. As a result, none of the cases discussed in this report are from among the Muslim community.

However, once the field work started, it was evident that due to the sensitivity of the subject being studied, identifying cases as well as obtaining consent from relevant people to participate in the study was quite difficult. Officials were reluctant (rightly) to share confidential data and those intimately involved in the cases were often reluctant to discuss them. Researchers often had to follow those who were willing to talk and also to pursue personal contacts in order to obtain information rather than restrict themselves to the DS Divisions that were selected for the study. As a result, the final sample was not limited to the specific DS Divisions but to each selected district. As mentioned earlier, the final sample was from non-Muslim communities. Ten case studies were developed from each location as well as several in-depth interviews with selected officials from each location.

Location	No of Case studies	No of Key Informant Interviews
Matara	9	9
Nuwara Eliya	10	12
Kegalle	12	16
Anuradhapura	10	12
Batticaloa	10	8
Jaffna	11	11
Moneragela	09	13
Total	71	81

3.3 Data collection

The field work was conducted in two phases:

A. Phase 1 – Survey of primary data

Primary data available with Central government and Provincial Ministries, the Departments of Probation and Child Care, District Child Development Committees, Child Promotion Officers, Women's and Children's Desks of the Police and/or Police Stations and major Non-Governmental Organizations working with communities in the selected sample locations were perused to identify incidence of child marriage and statutory rape in each selected district. Obtaining this data proved to be quite difficult as many officers were reluctant to share this information due to ethical reasons.

- Parallel to the above, interviews were conducted with officials from the agencies identified above to obtain information of specific cases (when possible) and also to obtain information regarding the procedures that were followed in relation to such cases.
- Court records in the selected sample locations were examined to obtain information on ongoing and past prosecutions for statutory rape.
- Perusal of newspaper reports on early marriage and statutory rape were carried out to supplement the above data.

B. Phase 2 – Survey of Children, Care Givers and Officials

In this phase, interviews were conducted with children in families and their care givers and officials such as Registrars of Births and Marriages, Police officers, Probation and Child Care Officers, health authorities and Child Rights Promotion Officers.

Interviews were conducted using semi-structured interview schedules (see annexe x) to gather information from the relevant persons listed above on the following:

- Awareness of the legal prohibitions on early marriage, the illegality of customary marriage, procedures for checking age, during registration of marriages,
- Root causes that led to child marriage (family factors, cultural, social, economic, and/or contextual factors such as displacement and risks associated with natural disasters and internal armed conflict),
- Information on ongoing and past prosecutions for statutory rape,
- Factors that resulted in statutory rape including lack of understanding of risk situations by victims, helplessness when sexual relations are with a family member, engaging in sex without knowing it is a criminal act,

Impact of child marriage and statutory rape on children such as

- School drop out or denial of opportunity to participate in education, to leisure and recreation,
- Being compelled to engage in domestic work or in income-generation activities and particular responsibilities such as looking after the elderly during school hours, when the child is below the age of 14 years (compulsory age for education and minimum age for labour).
- Responsibility for child care if there is a resulting pregnancy
- Health impact including premature pregnancy, health risks, sexually transmitted diseases, and
- Psycho-social impact resulting in depression and risk of suicide, due to separation from family or pressure to give up the relationship, forced marriage to another, marginalization and discrimination, and
- Being subjected to domestic violence and abuse.

3.4 Selection and Training of Research Assistants

Two Research Assistants (RAs) were selected from each district. One was from a social science background and the other from a legal background. The field researchers were trained at a two-day Workshop in Colombo to familiarize them with the research objectives, to develop their skills of building rapport with respondents, to probe and elicit detailed information as much as possible, related to causes of early marriage and statutory rape and collect information needed for case studies. Serious attention was

also paid to the ethical issues in conducting research on sensitive topics in order to ensure that participants were not subjected to intrusive questioning (see annexe x for details of training programme).

The senior researchers monitored the RAs in the field closely. RAs were requested to provide reports periodically to monitor their quality and obtain feedback from the senior researchers. At the end of the field work, the RAs again met for one day in Colombo for a de-briefing session.

3.5 Data Analysis

The data was qualitatively analysed to elucidate how specific factors singly or in combination lead to the issue of child marriage and statutory rape. The narratives of children and their care givers were analysed to ascertain the causes leading up to the incident, responses and the particular circumstances that influenced the trajectory of the case under study. This information was then assessed in relation to relevant documentary evidence and legal frameworks.

The data was categorised into different groups. Firstly, the cases were separated based on whether they were instances of underage sex (where both partners were below 18 years). Instances where the girl was below 16 years were categorised as instances of statutory rape. Where both partners were over 16 years, if one (or both) were less than 18 years and had entered into a marriage, these were categorised as incidents of early marriage. If no marriage had taken place but the

couple lived together as a unit, these were categorised as cohabitation.

When analysing these cases, attention was paid to the way in which the girl concerned described the relationship: for instance, certain cases involved explicit coercion (including instances of incest) and others where the girl described the relationship as consensual. The study also attempted to examine in detail what happened to the girls concerned after the incident: both in terms of official responses as well as personal consequences in relation to the girl's education, health, physical and emotional wellbeing.

Preliminary findings were initially shared with a small group of experts. Their comments were used to draft the study report which was then presented to a larger forum of experts and practitioners. The feedback from this forum was incorporated into the recommendations provided in this report.

3.6 Limitations of the Study

This study was not designed to generate information about the prevalence of early marriage and statutory rape but rather its causes and consequences. The sample was purposively selected and the number of case studies restricted to enable in-depth, qualitative analysis. The case studies discussed in this study should not be considered representative of any particular community or location since they were purposively selected, often based on information

provided by those in the community. The number of case studies were therefore limited in order to facilitate in-depth study of each case.

One of the main limitations the study faced was the lack of adequate time for the field work. Due to the short time frame within which this study was conducted, the field work was limited to a period of 1 month. The nature of the subject being researched required that

the RAs build trust among the research participants in order to elicit relevant information and also to ensure that the participants were comfortable to share what were often painful and distressing memories. Furthermore, RAs were instructed to ensure that unless the research participants were ready to share this information not to proceed with interviews. They were also asked to stop interviews if the participants became distressed and were also given instructions as to what to do in such situations to ensure that participants were not unduly disturbed by the research.

Due to restricted access to records, official documentation pertaining to early marriage and statutory rape could not be analysed. Only publicly available, published material has been analysed in this study.

Research of this nature has to be conducted sensitively and ethically. This is time consuming. Furthermore, obtaining qualitative information is necessary to understand the complexities of early marriage and statutory rape. If not, the specific circumstances of many of these cases are lost in broad generalisations.

To obtain this information requires skill and time and most importantly, an excellent rapport with the research participants. It is also imperative that the research is conducted in a manner that is not intrusive and unnecessarily disturbing for the participants. Hence, it is necessary to design studies of this nature giving sufficient consideration for the time that is required to deal with these issues.

Due to resource limitations and the initial focus of this study being on some conflict affected rural areas, urban locations have not been addressed in this study. This is somewhat of a gap. Recognising these limitations, and the small sample, however should not in our view prevent the findings of this study being used to reflect on the issues and concerned that must be prioritised. Those working on law and policy reform and programmatic interventions could use this study to address problems and work towards eliminating early marriage and statutory rape.

Case Studies on Early Marriage and Statutory Rape

4.0 Overview of case studies

This chapter will describe the main findings from the research conducted in the districts. This chapter will focus on the findings from the case studies of early marriage and statutory rape.

A total of 71 case studies from 7 districts were compiled. Of the 71 cases, 49 were incidents of statutory rape; that is, they consisted of incidents of sexual intercourse with girls under the age of 16 years. The majority of the girls in these incidents were between 14 and 15 years: there were 13 girls who were 14 years and 22 girls who were 15 years at the time of the incident. Five girls were 13 years. Among the 71 cases, 14 girls were 16 years. The youngest girl among the case studies was 4 years old.

When considering the ages of the perpetrators, the majority fall between the ages of 19 and 30 years. 26 of the men were between 19 and 25 years while 10 were between 26 and 30 years. There were 8 boys who were below 18 years and 3 who had just turned 18 years at the time of the incident. The oldest man was between 61 and 65 years. There were 6 men between the ages of 31 and 40 years and 3 between 46 and 50 years. It must be noted that we were unable to record the ages of the men in 14 cases. This was because the girls did not

know the age of the men concerned and also because in the majority of cases, the researchers were unable to speak to the men involved.

With regard to the current status of the relationship between the two people, in 32 of the case studies the two people involved were cohabiting at the time of the study. A total of 9 had registered their marriages. Of these six, had registered their marriages illegally since either one or both parties were under 18 years and had lied about their ages in order to register the marriage. The other 3 cases had married after either one of the underage partners (mainly the girl) or both turned 18 years. In 4 cases, the two people had separated after being together for some time. Among the 71 cases, there were 21 cases where the girl became pregnant as a teenager. In 21 cases the couples were cohabiting without legally registering their relationships as marriages. These relationships were nevertheless recognised by their families and communities as 'marriages'.

Thus, the data indicates the high incidence of cohabitation involving underage girls which are recognised as marriages and very minimum incidences of early marriages registered by falsifying age.

4.1 Circumstances leading to the incident

One of the most revealing factors in the 71 cases is that none of the cases, involved men unknown to the girls. One scenario involved a situation where the girl fell in love with or expressed a romantic interest in a man and facing strong opposition from home ran away with the man concerned. This incident usually preceded the incident of statutory rape. In many of these incidents, after the girl ran away, the girl's family either reported the incident to the police or made attempts to find the couple on their own without the involvement of the police. Once the couple was found, the main focus was to ensure that the couple got married or to obtain an assurance from the man that he will marry the girl once she turns 18 years. In instances where the police were involved, sometimes the man was placed on remand and released usually after some time, sometimes after as little as 14 days. In the majority of the incidents, the

court cases were still pending.

The other scenario was where the girls had been forcibly abducted and sexually assaulted. Even in these cases the perpetrator was a known person. In some cases, they were neighbours or relatives; other incidents involved the Buddhist priest at the local temple, swami in the kovil, and school teacher. There were 5 cases of incest with children under the age of 16 years leading to statutory rape; two involving fathers, one case involving the grandfather and the other two involving uncles. None of the cases of incest led to cohabitation or early marriage although the perpetrator and victim often ended up living in the same house or in close proximity as will be discussed later. None of the perpetrators were strangers either to the girl or to the girl's family.

4.2 Economic and social security

In some cases especially in the Anuradhapura, Jaffna and Batticaloa districts, respondents mentioned security as a reason for an under-age girl to be in a long term relationship. Sometimes the man provided economic support to the family and there were also times where he provided physical security especially during the conflict period. In some of these families, the parents too (particularly the mothers) had been teenagers when they had got married. In these instances, the family did not challenge or resist the relationship, and sometimes even encouraged it. In such cases, the law was seen as interfering in the lives of the people unnecessarily.

For example, a 15 year old girl in Moneragela who ran away with a 21 year old man was extremely critical of the police for having ‘interfered’ in their lives. They had lived together for 3 months before the man was arrested and the girl was asked to return to her parents. A father of a 17 year old girl in Jaffna, reported that 3 of his daughters had married when they were under 18 years¹. In fact, he too had been 17 years when he got married. He defended the decisions of his children and himself stoutly claiming that the early marriages of his daughters eased the economic burden on the family considerably. One case in Anuradhapura, where a 16 year old girl had registered her marriage with a 21 year old man, the mother claimed that the family did not oppose it as it was during the war when they were frequently displaced and needed the protection of a man. This resonates with Amarasinghe’s findings (Amarasinghe, 2009), where girls in the North and East were married early to prevent forcible conscription into the LTTE.

¹ Since these marriages had taken place outside the time frame of the study (the study limited case studies to those within the last 5 years), these cases have not been counted in the final sample.

In a few of these cases, the girls stated that their situation had improved after marriage or cohabitation. There was no opposition from the families; in fact these families were supportive and where the man was able to hold on to employment, the economic situation was also stable. In these instances, the girls also claimed to have found emotional support from the partner which they valued highly. However, in the majority of cases, this was not the situation and many of the girls were coping with distressing and difficult circumstances.

In situations where there was no resistance from the family for the relationship, most often they came to light in the hospital when the girl went into hospital to deliver a baby. At the hospital when the authorities suspected that the girl was underage, they reported the case to the police for investigation. In such situations, if the man gets arrested, considerable disruptions are created for the girl and the families involved. However, since most often, the man is released on bail after a period of time they continue to live together while the case is being heard. Some of the respondents complained about the legal costs and saw this as an unnecessary burden on the family.

A few reported incidents of domestic violence. In some of the cases, the man’s family was also responsible for some of the violence. The reasons for the domestic violence were reported as ‘suspicion’, accusations of infertility and not being good at performing household chores. Some of the girls returned to their natal families as a result of domestic violence. Some continued to live with their partners even though they mentioned occasional incidents of violence.

4.3 Family response

As mentioned earlier, parental opposition to teenage love affairs precipitated many of the runaway incidents leading to statutory rape and/or early marriage. When the parents discovered the affair, girls reported being scolded, beaten and having their mobility consider-

ably restricted. For instance, many said that they were not allowed to meet their friends, go for tuition classes or to be on their own. More than one girl said that the fear of permanent separation from the boyfriend influenced their decision to run away.

There were some variations in how families responded after the incident. In certain instances, parents were reluctant to involve the authorities. In such situations, if the girl had run away, they made their own inquiries and tried to bring the girl back home. Keeping the incident hidden from the authorities and others in the community was a primary concern for some parents. There were certain instances, where parents on one side supported the relationship and helped the young couple. One case in Matara where the girl involved in the incident was 13 years, the two families agreed to keep the couple apart till the girl turned 18 years of age and thereafter to arrange for the couple to be married. Both parties did not want the police to intervene and therefore this incident of statutory rape was never reported.

In the majority of cases, the girl's side of the family intervened and continued to support the girl or the couple after the incident. In many instances, the couple continue to reside with the girl's family and were usually financially dependent on them. Where there were children, the girl also usually looked for child care support from her own family. An incident in Moneragela illustrates the extent to which the girl's natal families become implicated in supporting the girl after the incident. The girl who was 17 years old ran away with her lover after becoming pregnant and eventually returned home to her family with the man. They lived with her family for 1 year before he deserted her. She filed a maintenance case from which she got Rs 30,000.00 but has not received any money for the last 3 years. She together with her child is supported by her family despite severe financial difficulties faced by the family as a whole.

There were also instances where other family members helped the couple. For example, in one incident

involving a 16 year old girl and a 17 year old boy in Kegalle, the couple is living with the boy's grandmother. The two had been in a relationship for 4 years before a teacher discovered a letter that the girl had received from the boy and had reported it to the parents. Since there were caste and social differences between the girl and the boy, there was strong opposition from the two families. The two ran away and after living with the boy's aunt for a few days, came to the grandmother's house where they now live.

In situations where the man agreed to live with and eventually marry the girl, families were usually reluctant to involve the police or any other authority preferring instead to manage the situation informally. In some instances, the family (usually from the girl's side) immediately informed the police of the incident. Then the police track down the couple if they have run away and bring them back home. In an incident in Kegalle, involving a 14 year old girl and a 22 year old man, after they ran away, the girl's father informed the police and with the help of the police tracked them both down. The girl and man live together close to the girl's natal family and have two children. However, whether the family informs the police seem to also depend on the perpetrator; where the person is somewhat influential, the family hesitate to make a complaint. For instance, in an incident in Matara, involving a Buddhist priest who raped an 8 year old girl, the family did not make a police complaint for fear of displeasing the Chief Priest in the temple. The family which was both socially and economically marginalised felt that they did not have the influence and the financial means to engage in a long drawn out battle with a powerful community institution such as the local temple.

4.4 Official response

An important finding of this study is the lack of consistency among officials in how they respond to incidents of early marriage and statutory rape. In the eyes of the law enforcement authorities, if the couple were cohabiting with the prospect of future marriage, this was an acceptable arrangement. These decisions are often taken from a 'humane' perspective; the

authorities seemed reluctant to pursue action against a man who claimed to be having a relationship with a girl, even if she was under 16 years of age. Apart from the legal considerations, what is worrying here is that although there is knowledge of the legal barriers to early marriage, the girl's wellbeing is only considered in terms of ensuring her 'respectability'.

Marriage is also the accepted end stage of a relationship in even when the nature of the relationship meant that the consequences of such a marriage were not in the best interests of the girl. Since marriage was considered a respectable solution, the implications of marriage or cohabitation for a girl at a young age with little resources to ensure a degree of independence in the relationship, were completely disregarded. This does not mean that officials or indeed even families approved of early marriages or cohabitation. However, girls below the age of 18 who entered into relationships with the opposite sex were expected to commit to the relationship as soon as possible. If this commitment meant cohabitation, while not encouraged this was accepted.

For example, in Kegalle, a girl who was having a relationship with a 27 year old man got pregnant when she was 15 years old. A school teacher who suspected the pregnancy, reported this to the family to whom the girl admitted that she was pregnant. The family did not initially go to the police. However, when they heard that the man was having another affair, they went to the police. The man was summoned by the police and had agreed to marry the girl. Since the girl was under 18 years, the registrar of marriages had refused to allow them to marry at that time. Although, the girl has now turned 18 years, she is still unmarried. In yet another incident in Kegalle, although the mother attempted to make a complaint to the police about her 15 year old daughter who ran away with her boyfriend, the police had refused to accept the complaint and instead advised the mother to get the couple married. In this case, the family had falsified the girl's birth certificate and got them married.

In an extremely disturbing case in Nuwara Eliya, where a 4 year old girl was raped by an 18 year old boy, the police had initially refused to accept the complaint. When the girl was taken to hospital, the hospital authorities had called the police who then filed a case. However, the court proceedings had become extremely stressful for the child and the family had agreed to a settlement. Thereafter, the courts had ordered a payment of Rs 5,000.00 as compensation and the case was settled. In contrast, another case in Kegalle involving a 15 year old girl, although the couple was in a relationship, the girl's family (who were financially able and socially influential) intervened strongly on

behalf of the girl and filed legal action. In this case, the court ordered Rs 100,000 compensation.

In some instances, the police reaction to the girl could only be described as brutal. In one incident a 16 year old girl in Moneragela had become pregnant and delivered the child at home by herself. The infant had died and a neighbour had seen the girl burying an infant in the garden. The neighbour had reported the incident to the police who together with the father assaulted the girl mercilessly in order to get her to reveal the name of the man who had made her pregnant. Subsequently, the girl was arrested and charged with infanticide and had been in remand for 10 months. Once released, she came back home and at the age of 19 years, married a 37 year old divorced man with 3 children. This was the only incident of alleged infanticide connected with early pregnancy found in this study.

Police response in certain cases was also influenced by the position and status of the perpetrator. For instance in Nuwara Eliya, a 15 year old girl who became pregnant after a relationship with a man over a period of two years, discovered that the man who had promised to marry her was going to marry another woman. When she told her family about her pregnancy, they attempted to make a complaint at the police station – however the police refused to accept the complaint. According to the girl's family, this was because the man concerned was an influential Trade Union member. However, after the girl gave birth to the baby, they attempted to register a complaint with the police once again. This time, the man was arrested but refused to accept paternity for the child. The police however have filed a case and called for DNA tests to prove paternity. Since the family cannot afford either the legal fees or the cost of DNA tests, they have sought help from NGOs to pursue the case.

In general, people expressed reluctance to go to the authorities especially the police and Probation and Child Care Services. Where the Probation Officers (POs) had got involved, their main intervention appeared to be to ensure that the girl's education was uninterrupted. In some instances, they had proved to be helpful to the girl and her family, supporting them through the legal process and helping the family in other ways as well. Where the authorities as well as the POs seem unable to offer a real solution is in cases of

incest. In two incidents of incest involving the father, the men were released on bail and returned to their families where they continue to live in the same house with the victims. In yet another incident of rape in Nuwara Eliya where the perpetrator is the grandfather, the 13 year old victim lives next door to the perpetrator who also returned home after being released on bail.

What is evident is that officials appear to struggle considerably with implementing the law in the context of imperfect systems and the lack of support services. Front line workers such as POs especially struggle with having to deal with the complicated nature of the cases they deal with and the limited resources to which they have access. For instance, the only option they can offer the girls is to place them in a children's home. This was almost universally rejected both by the families as well as the girls as an unacceptable option. Even POs (see details in the next Chapter) were reluctant to place girls in children's homes partly as a result of the increasing critique of institutionalisation of children and partly as a result of the inadequacy of children's

homes in most areas. In such situations, the officials seem to consider marriage as an acceptable alternative.

What is disturbing however is that even in instances where there was no prior relationship (which can arguably complicate matters) between the girl and the man, the response of the authorities was quite inadequate in terms of ensuring the best interest of the child involved in the case. For instance in Moneragela, a case where a 42 year old neighbour raped a 9 year old girl, the man was released on bail after 28 days and returned to the community. The girl continues to live in the same neighbourhood and although suffering from considerable shock and distress has not received any form of support. In another incident from Anuradhapura, a 31 year old man kidnapped and raped a 14 year old girl. This was after the girl's father had made two complaints to the police that this man had been harassing his daughter. After the incident, the man was arrested and released on bail and continues to live in the same community.

4.5 Consequences for girls

Although the majority of cases of statutory rape and early marriage presented in this report were preceded by a relationship between the victim and perpetrator, the consequences for the girls especially in terms of their mental and emotional wellbeing and also their position within the household and community were largely detrimental.

A significant number of the relationships did not last very long. A 14 year old girl in Matara who ran away with a 24 year old man lived together for three months with the man's family before returning home after being subjected to severe domestic violence. During this time, they had married each other after presenting a false birth certificate. When the girl started being abused, she had called her mother and complained. In this instance, the girl's family brought the girl back home and filed a complaint against the man and the case was continuing at the time of the study. The girl, with strong support from the PO was able to change schools and continue with her education. Only the Principal and the Student Counsellor at her new school know the story. As a result, the girl has been

able to recover fairly well from her experience.

Prior to the study, the research team hypothesized that school drop outs may be linked to incidents of early marriage. When research sites were identified, areas with high school dropout rates were selected for this reason. However, what the research has shown is that except in one instance, all the girls were going to school at the time of the incident. What is important is that after the incident, the majority of girls stopped going to school, even in instances of statutory rape which were not followed by early marriage or cohabitation therefore clearly having a negative impact by jeopardising educational opportunities. Many of the girls reported feeling humiliated and shamed as a reason for not continuing education. They talked about teachers asking them questions and being avoided by friends after the incident. Interestingly, it was mainly due to the intervention of the PO who either helped with changing schools or ensured that the girl continued her education in the same school that enabled the few girls who did so, to continue with their education.

4.6 Disempowerment of girls

One of the consequences of early marriage for girls is that their negotiation powers in the family and society are considerably reduced. This could be observed in this study as well. In the majority of cases, even where the girl had made the choice to run away with her boyfriend, after the incident, she becomes a passive observer. She is under the orders either of her partner, partner's family or her own family. Even the manner in which officials deal with these cases, there was no evidence to show that the girls views were taken into consideration at any point. Since the girl's reputation is damaged (even if the incident happened without her 'consent'), the main aim of everybody concerned appeared to be to patch up the situation in a way that was least socially damaging for the girl.

The age difference between the girls and the men involved in many of these cases also reinforces the disempowerment of the girls. The majority of these cases were not 'teen affairs' but involved teenage girls with older, sometimes much older men. The power imbalance in these situations makes the issue of the girls consent (in situations where she seemingly consented to the affair) quite problematic. In situations where there was no consent, it was evident that threats and intimidation were often used to prevent the girls from speaking out against what had happened to them.

There were only 2 incidents where some measure of empowerment could be observed in the girls involved.

In the incident of the 15 year old girl from Moneragela who had run away with a 21 year old man, the girl expressed anger at her family as well as the authorities for having separated the two of them. She was adamant that this was 'her choice' and that she should have the freedom to pursue her own happiness on her terms. However, this was a complicated story where the girl had a bad relationship with her family and had also dropped out of school after Grade 8. She had a 'bad' reputation in the community having had previous relationships as well. We can only speculate whether, her lack of fear in expressing her feelings was an indication of a genuine empowerment or rather rebellion against a range of forces who were acting against her. Also, her decisions were not necessarily in her own interests although she was clear about what she wanted to do.

The other case was a girl in Matara who became pregnant at 16 years. Her paramour promised to marry her and later rescinded on his promise when he discovered that she was pregnant. What was more, he went on to deny paternity. The girl who had sought support from a local NGO is determined to prove paternity and is fighting the case, even though the man has some measure of influence locally. This was the only case that was recorded where the girl had expressed anger and resentment about what had happened to her and had expressed any intention of fighting for her rights.

4.7 Conclusion

What is evident from the analysis of these cases is that the issue of early marriage in Sri Lanka is closely linked with statutory rape. Unlike in other areas of the world, early marriage in Sri Lanka cannot be viewed as a 'traditional' or customary practice. There is awareness of the requirement of registration and the illegality of early marriage. As noted, very few early marriages were recorded through falsification of records at the time of registration. However, cohabitation and a continuing relationship were encouraged and these relationships were accepted as marriages. Marriage in the form of early marriage or cohabitation is seen as a way of making unacceptable behaviour (sexual

practices outside of marriage) respectable. Furthermore, excessive reactions from families to romantic relationships of girls seem to also be a precipitating a chain of incidents leading to statutory rape and then in some instances early marriage or more often, cohabitation.

There were also incidents of statutory rape that did not result from a relationship or lead to cohabitation or early marriage. Those involving very young girls in particular were disturbing in that justice did not appear to have been meted out to the girls. The response of the law was not consistent and neither was

their evidence of any consistent and regular support that was given to the girls to deal with the trauma of sexual violence. In situations where the families did not have the power or influence to pursue legal action aggressively, they were often at the mercy of the law enforcement authorities who did not necessarily have the girls' best interests in mind.

Whatever the reasons and causes leading to statutory rape and/or early marriage, the consequences for the girls is consistent with what has been found in studies from other parts of the world. Education is usually interrupted, economic security in the majority of cases is at risk, the girls quickly become responsible for child care and domestic work, and their autonomy, status and position within the family and community is low.

Although this study was unable to look at the emotional and physical wellbeing of the girls in depth, none of the respondents reported any serious physical consequences at this point in their lives. However, the emotional stress and trauma of the incident as well as its aftermath often seriously damaged the girls. Many reported difficulties concentrating on school work (those who returned to school), feelings of shame and humiliation, and isolation from peer groups. Except

for a very few girls, no one had access to services that dealt with any of the psychosocial issues they faced.

What was also evident was that often the girls natal family faced many difficulties. The burden of pursuing justice in the face of insensitive and sometimes reluctant law enforcement authorities; supporting the girl and sometimes her child when the perpetrator deserted her; sometimes supporting the perpetrator were all ways in which the girls families got involved. Quite often, the girls lived with their families or close to their families even after they got 'married'. In many of these instances, they were financially dependent on their families. What was worrying was that families continued to see early marriage or cohabitation as an answer to some of these problems. Even though it often propelled the girl (and consequently the family) into further difficulties, marriage was seen as a solution at least to the immediate problem of loss of respectability. Thus, where early marriages did take place families were actively involved in falsifying documents or lying about the girl's age in order to facilitate early marriages.

Perceptions of Service Providers

5.0 Introduction

In addition to the case studies this study also interviewed service providers in the selected districts. These included mainly state service providers and where available non-governmental service providers.

State service providers were selected from law enforcement, child protection services, health, education, Registrars of Marriages and welfare services.

5.1 Understanding of the Law

This study revealed that all the service providers who were interviewed had a clear understanding of the law with regard to the minimum age of marriage. That is, they knew that the minimum age of marriage was 18 years. However, their knowledge of the differences in the Muslim law was somewhat hazy. While they knew that there was a difference when it came to Muslim personal law, very few were able to correctly identify the difference. Similarly, their knowledge of Kandyan Personal laws or the Thesawalami law was not very evident. Except for the police, POs and Child Rights Promotion Officers (CRPOs), and some medical personnel the law regarding statutory rape was not clearly understood. In fact, some were completely unaware of it. The field researchers explained the law on statutory rape to those who were unaware of it before proceeding with the rest of the interview.

The perception that sexual relations should take place only between marriage partners was firmly believed by almost all the service providers. In this context, many were of the view that the age of marriage and the age of consent should be the same. That is, either the age of marriage should be lowered to 16 years or the age of consent should be raised to 18 years. A few felt that the minimum age of marriage should be raised to around 20 or 21 years since they felt that the decision to marry needed a level of maturity that was absent at the age of 18 years.

The discrepancy between the age of consent and the

age of marriage was viewed as a 'gap' in the law since it meant that those who engaged in sexual relations could not get married even if they wanted to do so. As we will discuss further below, marriage was often seen as the best solution to teenage sex. Some service providers argued that not letting them get married left the girls more vulnerable since they could be deserted easily by the men. Also, if the girls got pregnant, it meant that the children of such a union would be stigmatised as 'illegitimate' 'bastards' (avajatha) children and hence marginalised by society.

Thus, many recommended that the age of marriage and the age of consent should be the same.

It must be noted that marriage registrars who were interviewed as part of this study stated that they were firmly opposed to the falsification of certificates in order to facilitate marriage of underage persons. Some said that there had been instances where marriage registrars had been party to such efforts but that due to increased awareness and also fear of legal consequences, this no longer happened. Families also described how marriage registrars refused to allow underage individuals to marry even when families put considerable pressure. Most families stated that marriage registrars had advised them to return after the persons involved had reached 18 years. This indicates that awareness of the legal age of marriage is high and that there is a degree of fear about breaking this law.

5.2 Causes of statutory rape and early marriage

According to the service providers the reasons for statutory rape and early marriage or cohabitation were primarily at the family level. They identified issues such as alcoholism, mothers migrating for employment, marital discord between parents as

pushing children towards 'unwholesome' behaviour. Ignorance was another widely cited reason for such incidents. Ignorance referred to not merely ignorance of the law – but being 'uneducated in the right way of doing things'. This included not knowing how to raise

children 'properly'. According to some, children today were more educated than their parents and hence did not take their parents seriously. Nor could parents communicate effectively with their children due to this reason. Many parents, they said, were 'scared of their children' and did not discipline them.

Expanding on the theme of inappropriate child rearing practices, service providers claimed that parents did not know how to protect their children properly. Children were left on their own with no supervision; were sent for tuition classes on their own; and parents were accused of not knowing what their children were up to. As a result, children were also considered to be starved of 'proper' love and affection. It was suggested that many children got into affairs and relationships because they were searching for the love which they did not get from their parents.

Most service providers also felt that children who came from particular social backgrounds were particularly vulnerable to statutory rape and early marriage or cohabitation. For instance, children of poor socio-economic backgrounds or children who lived in specific locations (remote areas) or children whose families were from the fisher families. Such social groups were perceived to have certain characteristics such as high levels of alcoholism and bad child rearing practices. Parents also were morally relaxed and did not instil correct values among their children; often parents too were engaged in 'immoral' behaviour and thus set bad examples for their children. The fact that families lived in small houses where the whole family slept in one room and hence children were exposed from an early age to the sexual activities of their parents was also seen as another factor which led children in the wrong direction. Only one or two service providers who were interviewed said that socio-economic status was not a factor and that children from all types of backgrounds were vulnerable to such incidents. However, they said that those from high socio-economic status had more resources to respond to such incidents and often covered up such incidents without letting them become public.

Service providers perceptions about the families and the backgrounds of children who were victims of statutory rape and/or early marriage or cohabitation

reveals some interesting issues regarding the relationship between service providers and their clients. What is evident in what the service providers said is the gap that exists between service providers and recipients: clearly, service providers considered themselves to be of a superior status both morally and socially. These kinds of things happened to 'other' people; people who were not like them and people who could be pitied but who were not absolved from any blame. It suggests a lack of empathy among service providers towards their clients which would clearly influence the way in which services are offered and delivered. The service providers were largely quite judgemental about the lives and behaviour of their clients setting themselves apart from those whom they worked with. This does not mean that these service providers were unsympathetic, but simply that the relationship between service provider and client was unequal both in terms of social as well as moral positioning. Furthermore, the power and status attached to the office of a government employee reinforced the degree of authority and power service providers had over their clients. This has consequences for the quality of service delivery.

The increased access of young people to mobile phones and the internet were also cited by service providers as being one of the causes for the moral corruption among young people which led to their engaging in risky behaviour. Mobile phones in particular allowed young people to have relationships that were difficult for parents to monitor. More worryingly, service providers pointed out that these new technologies enhanced the access to pornography among young people. One service provider described how 'missed calls' on mobile phones among complete strangers sometimes led to the initiation of relationships. Certainly, the mobile phone featured in the narratives of young people and their parents also as one of the ways in which either the relationship was maintained or discovered by parents. One of the first responses of parents to the discovery was usually to confiscate the child's mobile phone.

Another reason put forward by service providers for statutory rape and early marriage or cohabitation was the reluctance of families and increasingly teachers to instil discipline among children. Some linked this to the dominance of the child rights discourse where

teachers especially were scared to punish children due to fear of legal repercussions. Although not specified the form of punishment that service providers suggested included corporal or physical punishment since this has recently come under severe criticism from child rights activists.

Another idea that was put forward by several service providers was that of children being 'unable to control their feelings' (hangeem palanaya karaganna behe). What was suggested here was that children had no control over their sexual feelings and hence engaged in risky behaviour. Infatuation and romantic love confused the minds of children and made it difficult for them to exercise control over their actions.

What is extremely interesting in the way in which service providers analysed the causes that led to statutory rape and early marriage or cohabitation, is that their analysis was almost always about the victim. It is not the perpetrator's family background, parental relationships, socio-economic background or access to pornography that is problematised; it is the victim's circumstances which is analysed. As seen in the previous chapter, the circumstances of the victims were extremely diverse. Certainly, while this qualitative study does not provide data that can be generalised to a large population, what was evident was that in a

way, each victim had a unique story. Contrary to what the service providers said, not all the victims were from 'broken' families; of families of migrant workers; or were uneducated. The circumstances that led to the incident were far more complex.

What is of concern here is also the fact that in problematising the victim, service providers are indirectly blaming the victim of statutory rape and early marriage. As we saw in the previous chapter, the perpetrators were rarely children; they were adult men. However, the service providers were critical of children's access to pornography; the excessive freedom for children or the lack of surveillance of children's behaviour; the inability of children to control their feelings. This indicates that the more complex causal factors that make children vulnerable are not understood.

Sharon Stephens (1995) has discussed this in terms of a situation where from being children at risk, there is a transformation to seeing such children as risks. That is, children who do not conform to the standard definition of childhood as one of innocence and play, are regarded as threats to society. Similarly, these children who have 'lost' their innocence are perceived as having somehow invited the violation of their innocence by not conforming to the standards of an ideal childhood.

5.3 Consequences

According to the service providers, the consequences of statutory rape and early marriage or cohabitation are far reaching. The immediate consequence is the disruption to education. This was of huge concern for many service providers. One of the areas where they were most active was also to see how the victims could be supported to continue their education. In this regard, POs in particular were most active; seeking ways in which children could be re-admitted to schools and ensuring that they continued their education in some way. One school principal who was interviewed was extremely supportive of this and said that these children need to be supported to continue their education. This principal stated that he fought even with his own staff who accused him of allowing 'married' people to be in school when he wanted to allow children who had been asked to leave other schools to be readmitted to his school.

Service providers were also sceptical about the success of many of these relationships. Since these relationships were entered into without much thought or consideration, they said that in a few years, inevitably there were problems such as domestic violence, desertion and poverty. However, this pessimistic view of the endurance of these relationships contradicts with their insistence on marriage as a solution to incidents of sexual relations among young people. Although they felt that the marriages would be failures and that especially the girls faced myriad problems in the future, marriage was also the only solution that they offered the girls.

This links to one of the consequences of such incidents which they identified. This was the loss of respectability for the girl and the damage to her reputation. These were considered irreversible and even impacting

others in the family. For instance, it also affected the marriage chances of other members of the family. The only way in which the position of the girl could be somewhat retrieved or reinstated was through marriage. Even in incidents of statutory rape, where there was no question of a prior relationship with the girl, or in incidents of incest, the loss of reputation and respectability was articulated in terms of the girl, rather than any loss of social position for the perpetrator.

A few service providers mentioned that once a girl was initiated into sex, there was a tendency to get

‘addicted’ to sex (abbahi wenawa). In the words of one respondent: “like they need food and water to live these children get addicted to behaving like that. Then even if we place them under probation care or with their parents it is extremely difficult to correct these children”. Thus, the idea is that even if the first instance of sex was forced, gradually it happens through the girl’s consent. This they felt made it difficult for the girl to be ‘rehabilitated’. This indicates once again, that there is some sense that the victim is in need of rehabilitation.

5.4 Reporting the Incidence of Early Marriage and Statutory Rape —

Incidences of statutory rape and early marriage or cohabitation are most commonly reported to the police and to the Probation and Child Care Services. Other service providers (Grama Niladhari, Public Health Midwife and other service providers) may or may not get involved in the case depending on the situation. For instance, the public health midwife only got involved if there was a pregnancy. Grama Niladhari too were rarely active in such situations although they had information about such incidents in their areas. CRPOs too got involved especially in linking with other services, especially with the education sector.

Most of the respondents agreed that there was a rise in incidents of statutory rape and early marriage. Some, however, said that this was due to increased reporting of incidents rather than actual rise in numbers. In fact, many felt that early marriage was on the decline. Increased awareness among the communities about these issues resulted in people reporting these incidents more frequently. Even when families attempted to hide such incidents, police and probation services reported receiving anonymous petitions, letters or phone calls by the community.

Service providers said that there was a reluctance of

families to report incidents due both to shame and also fear of the law enforcement process. Law enforcement officials said that often the legal process was time consuming and expensive for families who considered this merely as an additional burden. They did not necessarily have confidence that the legal process would provide them with redress or be particularly sympathetic to their situation and hence often preferred to avoid it. According to some officials, families reported such incidents only when after such an incident, the man refused to marry the girl, abandoned the girl after some time or if there was domestic violence.

There was also a fear of probation services; for instance that children would be separated from families and placed in children’s homes. However, POs themselves stated that they placed children in institutions only as a last resort since they did not have much confidence in the quality of care provided by these institutions. It appeared that where the families were able to assure the PO that the child’s education would continue uninterrupted, the PO would make all effort to ensure that children remained with the family. But the fear of the child being placed in a children’s home sometimes acted as a deterrent for families to seek help.

5.5 Effectiveness of Responses

What was very evident in the course of this study was that the effectiveness of services was extremely inconsistent. The quality of the response largely depended on the commitment of individual service

providers rather than the existence of a supportive mechanism. This also meant that the personality of individual service providers had a significant influence on the nature of the intervention.

While mechanisms to report such incidents seem to be in place (hotlines etc) service providers had less assurance about what to do after cases came into their purview. One of the major problems as pointed out by the police was the delays in the legal process. The police refer cases of statutory rape to the Attorney General's Department for instructions. The average waiting time for the AG to respond was between 4-5 years. During this period, the perpetrator is usually released on bail and the victim's life circumstances have also undergone changes. Taking the case up after so many years has severe emotional and psychosocial consequences for the victim. She is forced to re-live the incident and the circumstances surrounding it; her attempts to move on with her life are interrupted and there are several other complications if she is in another relationship by this time. On the other hand the ineffectiveness of the legal process and the failures in prosecution creates an environment of impunity for the perpetrator.

The other issue is that even though the majority of service providers were sympathetic to the victim's situation and often wanted to help them, the resources that were available to them were limited. This meant that the psychosocial needs of victims usually went unaddressed. This included not just emotional and psychological support but also more practical forms of support such as safe houses, legal and financial aid and medical support. The main form of support that is offered is in terms of law enforcement; if the families make a complaint, the police would investigate the incident and initiate a prosecution. POs too would support this process by providing a Social Report to the court and additionally along with CRPOs try to ensure that the victim's education continued uninterrupted. Any other kind of support was provided completely at the discretion of the service provider concerned and it must be noted that many service providers went out of their way to provide other forms of support for victims and their families.

However, this raises an important concern; and that is the fact that apart from policy and legal frameworks, the child protection sector has failed to establish proper mechanisms to support child victims of statutory rape and early marriage. Essentially, while emphasising the importance of identifying and reporting such

incidents, what happens after, is not considered sufficiently.

This lack of clear support mechanisms have also led to service providers implementing 'pragmatic' solutions which may or may not be in the long term interests of children. Faced with the highly complex situations of their clients, service providers often choose what appears in their opinion to be the least harmful solution. One service provider described an instance where a 14 year old girl was the victim of incest. The perpetrator in this instance was her father. Her mother was a migrant worker and there were three other children who were being cared for by the 14 year old girl. In this situation, the service provider had to consider many aspects of the situation: imprisoning the father meant that the family was left with no breadwinner and removing the 14 year old girl from the family left 3 other children at risk. The alternative was to find shelter for all the children but to find a place which would accept all the children proved to be equally challenging. Finally, the decision was to do nothing and wait for the mother to return from abroad.

The lack of alternative forms of care and support can be seen as one of the reasons why service providers considered marriage to be one viable option for victims. Where the perpetrator was willing to marry the girl, law enforcement authorities said they sometimes did not prosecute the case. Instead, they got the perpetrator to write a letter promising to marry the girl once she reaches the legal age of marriage. In instances of early marriage, if the couple seemed to be doing reasonably well, the law enforcement authorities often turned a blind eye. In their view, their intervention would merely complicate the situation unnecessarily. Service providers realised that this was not within the legal framework they were supposed to work with but felt that this was the best that they could do.

The responses of service providers to the complexities of their client's situations raise several policy issues. It is important that the nature of statutory rape and early marriage in Sri Lanka is clearly understood. Furthermore, the current emphasis on reporting of incidents needs to be accompanied by appropriate support services. It appears from this study that while service

providers understand the legal process and while law enforcement and also probation services have clear procedures for implementing the law, the procedures and mechanisms for offering other types of services is less clear. This has consequences for law enforcement as well since only enforcing the law does not seem

to be a satisfactory response either from the point of view of service providers as well as their clients. In a situation where law enforcement too does not happen quite effectively or efficiently, then the advantages for clients to report incidents of statutory rape and early marriage or seek help are somewhat questionable.

Main Findings

6.0 Early Marriage

- 1 Early marriage in Sri Lanka cannot be considered a traditional practice. As the national statistics reveal, the average age of marriage in Sri Lanka is quite high both for women and men. This study also reveals that there is a high degree of awareness among the public regarding the law on the minimum age of marriage (18 years) and the need to register marriages. Among the 71 case studies considered in this study, only 6 can be categorized as cases of early marriage. In these cases, the relevant underage parties had provided false documents or lied to prove the minimum age of marriage. On the other hand, the study found 26 cases of cohabitation which were considered 'marriages' by the families and the communities. In these 26 cases, one of the partners, usually the girl, was under 18 years of age. Since a continuing relationship is considered in the girl's best interests there is encouragement for cohabitation and social recognition for these relationships as marriages.
- 2 There was no evidence of the practice of 'customary' marriages. That is, were relationships were recognised after performing rituals and ceremonies. Cohabitation was recognised as marriage, but there was awareness that these marriages had to be legalised once those involved had turned 18 years of age.
- 3 None of the incidents of early marriage and cohabitation found in this study can be considered as 'forced' marriages. That is, the girls had not been forced to marry unknown men. All of these incidents were preceded by a relationship between the two parties. However, it was also evident that the consent of the parties involved to marry or cohabit were obtained in some instances by family pressure and sometimes even pressure from law enforcement authorities. It was also evident that there was considerable social pressure on girls to consent to such arrangements once their relationship became public knowledge.
- 4 While there were a few instances where the families had encouraged marriage or cohabitation for reasons of poverty or security, the main reason for families to agree to such arrangements was to safeguard the honour of the girl and the family once the relationship between the girl and the man became public knowledge. In some cases, the families had mentioned the fact that the girl's partner financially supported the family or provided security during times of conflict. However, these were not the primary reasons that influenced the decision to marry or cohabit in a majority of the cases in this study.

6.1 The consequences of early marriage and Cohabitation on girls –

- 1 Apart from a few cases, many of couples that were cohabiting or married were struggling financially. A majority were dependent on their families especially the girls' natal families for support. In 4 cases, the couple had separated. The fear of desertion or abandonment was very real for many of the girls and their families especially where there was no legal recognition of the relationship. This placed the men in a position of power within these relationships since the threat of desertion was a constant fear for the girls. This was especially evident where there were children.
- 2 There was a high incidence of teen age pregnancies among the 71 case studies with 21 girls getting pregnant before turning 18 years. There were no reports of medical complications and all the girls had access to health care although in some instances, the health care was accessed

quite late in the pregnancy. A few couples were using contraceptives. Girls were heavily reliant on their natal families for child care support. Since many of the health consequences of early marriage occur as women grow older, it is also possible that the sample captured in this study were not yet experiencing any of these health problems.

- 3 Awareness of sexual and reproductive health was largely absent, and the ability of the girls to have any control over their sexual and reproductive health was limited. For instance, they were sometimes not allowed to use contraception since they were expected to 'prove' their fertility. They also referred to their partners as being a 'nuisance' (karadara karanawa), suggesting that the sexual relations between them were not fulfilling for the girls and hence sometimes unwelcome.

6.2 Statutory rape

- 1 Among the 71 case studies, there were 49 incidents of statutory rape. The majority of the girls were between the ages of 14 and 15 years of age while the youngest was only 4 years old. In 21 of these cases, the girls were forced to have sex underlying that these were cases of child sexual abuse. In the remaining 28 case, especially among girls between the ages of 13-16 years, the incident of statutory rape was preceded by a relationship between the two people. In these 28 cases, the incidents of statutory rape usually occurred after the girl ran away with the man after facing opposition to the relationship from either one or both families.
- 2 Except in one case where the girl refused to name the man involved, all the men were known and from the same community usually a person known to the family. Cases of incest involved fathers, grandfathers and uncles. Some perpetrators were those who were in positions of trust and responsibility towards the girls such as priests, teachers and close relatives. Threats and intimidation were often used to prevent the girls from reporting sexual abuse.
- 3 The majority of perpetrators were between the ages of 19 and 30 years. 8 were below 18 years and there were 3 who had just turned 18 years at the time of the incident. The oldest male involved was between 61 and 65 years.
- 4 The majority of the girls were going to school at the time of the incident. However, the incident usually led to disruption of the girl's education. Even when they were able to continue with their education, many were troubled by emotional and psychological distress, issues which were not dealt with either by the family or service providers. The response of most families and service providers was to get the girl to 'forget' the incident by discouraging her from talking about it. Thus, even when there was severe emotional and psychological distress, the girls got little or no support.

6.3 Reporting of incidents and law enforcement

- 1 The reporting of incidents of early marriage and statutory rape was inconsistent. Families sometimes sought the help of the police if the child had run away but there were instances where the family did not report the incident due to fear of the legal process. Some of the incidents came to the attention of the authorities through the health system when a pregnant girl sought medical attention. In other instances, families reported the incident after some time, if they were unable to seek some sort of settlement from the perpetrator or if the perpetrator abandoned the girl or refused to take responsibility for a pregnancy.

- 2 Newspaper reports also contribute to perpetuating misconceptions regarding the law on sexual offences and stigmatising the victim. Newspapers merely report incidents often in a sensationalist manner with little analysis of the causes or consequences of such incidents.
- 3 The legal response was by and large unsatisfactory. One of the major constraints to proceeding with the legal process cited by the law enforcement authorities was the delays in obtaining guidance from the Attorney General's department. As a result in a majority of cases no action was taken while the victims waited for some form of settlement of the case. This led to many instances where the perpetrator returned on bail often to the same community (in one instance to the same house) as the victim, after spending a few weeks in remand. Where cases on statutory rape were filed against couples who were cohabiting (on charges of statutory rape), the families were resentful of the legal proceedings as an unnecessary financial and emotional burden. Consequently there was an environment of impunity for adult perpetrators of statutory rape and child abuse.
- 4 Cases of statutory rape of young children, as well as older girls were settled by the payment of compensation to the child victim of sexual abuse. Settlements were also inconsistent; a case where a 4 year old was raped by an 18 year old man was settled with a payment of Rs 5000.00 while a 15 year old girl was granted Rs 100,000.00 compensation. In the latter case, the parents were both state employees and able to fight strongly on behalf of their daughter (even though the daughter had initially consented to the relationship) whereas the former family was from an extremely marginalised and deprived background.
- 5 The literature and anecdotal evidence suggests that the police and law enforcement agencies, including some judicial medical officers and lawyers from the Attorney General's Department do not differentiate between cases of statutory rape and consensual intercourse with a girl above the age of sexual consent (i.e 16 years). They refer to the fact that the perpetrator is a 'boyfriend' with whom the girl had 'consensual sex,' even when she is under 16 years. This approach is also reflected in the Anuradhapura Rape Case that was referred to the Supreme Court (2008) (03)/08 H.C. Anuradhapura No 333/04) for an opinion by the trial judge. This approach tends to legitimise what the law considers statutory rape, exploitation and sexual abuse of a girl under 16 years, creating an environment of impunity for perpetrators of child sexual abuse. An older girl in particular (13-15 years) is perceived as wanting sexual relations and not a victim of sexual abuse. The reluctance to condemn the conduct of the perpetrator or prosecute him often reflects stereotypical and gender biased attitudes to girls, and sexual relations. It ignores the lack of control girls of this age can exercise in relationships and the nature of the sexual relations they engage, which this study has already described.

6.4 Care and Protection

- 1 Apart from law enforcement, Probation Services were the most involved in the cases. However, what was evident was that the resources of the DPCCS to deal effectively with the complexities of the cases they were handling were woefully inadequate. The effectiveness of their response was determined largely by the commitment and dedication of individual POs rather than through a

supportive institutional mechanism. Given the circumstances, it is remarkable that some POs did what they were able to, including ensuring that the girls continued with their education in some instances, and offering whatever support they could where possible.

- 2 In general it was found that service providers were critical of the girls' backgrounds rather than considering the perpetrator's circumstances in analysing the cases they handled. Subsequently, the main causes for early marriage and statutory rape were identified as lack of stability in families, insecurity, irresponsible parenting, access to new technology such as mobile phones, too much freedom and lack of supervision. Service providers had little or no insights into the lives and backgrounds of the perpetrators even though the majority of the perpetrators were adult men. This in turn led to a victim blaming approach on the part of the service providers.
- 3 Service providers like family members found marriage (even early marriage) to be an acceptable solution to dealing with teenage sex, even if the girl's partner was several years older. As a result, many service providers identified the difference between the age of consent and the age of marriage as a 'gap' or weakness in the law. Many were of the opinion that the two should be the same. This suggests that the socially and culturally accepted norm was that sexual relations should only take place within the institution of marriage. The fact that the law recognised that entering into marriage and engaging in sexual relations were not necessarily the same was thus seen as a weakness in the law.
- 4 However, what the study revealed was despite existing norms, actual behaviour wasn't conforming to these norms. Certainly, there was evidence of sexual relations taking place outside the marriage institution not only among teenagers but also adults. However, when service provision is based on the assumption that sexual relations should take place only within the institution of marriage, and that all other sexual relations were considered deviant, there are problems with regard to the most vulnerable accessing much needed services. For instance, none of the girls in the study had access to effective sexual and reproductive information or services.

6.5 Social and Cultural Norms

- 1 The gendered nature of social and cultural norms was evident in this study. The loss of respectability, the shame, stigma and humiliation of going against social and cultural norms affected the girls rather than the men. In the opinion of the families and of the service providers the lives of these girls were forever blighted and the only chance they had was to keep the incident hidden as much as possible. Marriage to the perpetrator (except in instances where the girl was extremely young) was therefore seen as a better option than running the risk of being labelled as 'loose', and 'immoral'. Marriage was seen as a solution even when families and service providers recognised that marriage meant the loss of education, employment opportunities and childhood for the girls. The burden of maintaining social respectability was primarily with the girls at whatever cost to other aspects of their lives.
- 2 While sympathy was expressed with some of the victims of statutory rape especially the very young victims, the commitment to find justice for them was inadequate. As mentioned earlier, committed and dedicated individual service providers did what they could but were often

frustrated by institutional and systemic weaknesses. When families too did not have the financial means or social influence to pursue the cases, justice remained an unobtainable dream. The lack of other types of services, especially psychosocial services meant that not only did these victims not find justice; they were not provided with the support to recover from the very considerable physical and psychological trauma they had undergone.

- 3 Viewing the practice of sexual activity outside of marriage as against existing socio-cultural norms meant that the issue of statutory rape and early marriage in a majority of the cases that were studied was approached from a moral perspective rather than as a violation of child rights. Furthermore, the gendered nature of these norms meant that the girls were subjected to moral surveillance and judgement far more than the men. The seemingly increasing number of such incidents was articulated in terms of a general deterioration of moral values in society. While it is important to recognise the importance of moral and ethical frameworks in how forms of relationships are established and maintained in society there is a danger in doing so to the exclusion of all other perspectives especially when such moral and ethical frameworks are gendered. Importantly, the violence and power inequality that lies at the heart of many of these incidents is overlooked. The majority of the incidents that were documented in this study were not instances of 'teenage love affairs' but rather relations between teenage girls and adult men; and even pre-teen girls and adult men. By not focussing on the power relations that determines these encounters and instead approaching them in terms of instances of moral deterioration, the lack of empowerment of girls in relation to their sexuality, sexual and reproductive health were completely overlooked.

Conclusion and Recommendations for Policy Reforms

7.0 Introduction

The Study did not provide any information on the Muslim community in regard to this subject of early marriage. This section therefore addresses law and policy reforms in regard to Non-Muslim Early Marriage and the Criminal Offence of Statutory Rape.

The conclusions and recommendations are based on the research as well as the literature survey relevant to these topics. They also incorporate suggestions and comments from consultations with stake holders when preliminary findings were shared with this group.

7.1 Early Marriage and Cohabitation with Girls over 16 years: Conclusions

The study supports the view that early marriage affects girls rather than boys, and reflects gender biases and discriminatory attitudes in families and communities. It supports the arguments for a minimum age of marriage, synonymous with the age of 18 which is the general age of majority in Sri Lanka, since early colonial legislation was amended in 1989. The current Sri Lankan law and policy on early marriage is in harmony with obligations of the State under international law, and specifically as State Parties to the UN Convention on the Rights of the Child (CRC) and the UN Women's Convention (CEDAW), and local policy statements such as the Children's Charter (1992) and the Women's Charter (1993) that incorporate these commitments. The negative impact of early marriage is also documented in research in Sri Lanka, and this study. Early marriage clearly violates the development rights of girls, (health and education) their right to protection (risk of domestic violence and abuse) and participation rights as they evolve from adolescent to majority.

The study indicates that there is awareness in communities and families of the requirement of registration of marriage, and that early marriages is illegal. The social values in regard to preference for continuing relationships rather than purely sexual liaisons leads to pressure on girls and families to falsify ages and register an early marriage. Law enforcement authorities and social and child care workers from the National Child Protection Authority and the provincial Probation and Care services of government also reinforce these values on the importance of marriage. Cases that have come before the appeal courts and information from the Non-governmental Organisation Lawyers for Human Rights and Development (LHRD) Colombo, also indicates that there is confusion in regards to whether

parental consent can validate under age marriage.

The focus on marriage either encourages corruption through falsification of age in records at the point of registration of marriage, or pressure for long term cohabitation, which is described as "customary marriage". Early marriage and cohabitation are thus documented as "marriages", when records are maintained by health and social welfare workers. This leads to problems in data collection and analysis of information on early marriage. Cohabitation in Sri Lanka seems however different from 'customary child marriage' solemnized according to local rituals, customs and religious practice in other parts of South Asia. In Sri Lanka cohabitation between children under the legal age of marriage is recognized as a union that is not a legal registered marriage, and is a response to teenage sexuality and or pregnancy, and the preference for a continuing relationship if legal marriage a not possible .

This study supports the view that negative implications of both early marriage and early cohabitation are the same from the girls point of view. The legal implications are however different because a registered legal marriage confers spousal rights including property rights, and confers the status of "legitimacy" on children. Cohabitation gives no legal spousal rights to the girl, and only a right to citizenship and financial support for any children of the union (Citizenship Amendment Act 2003; the Maintenance Act of 1999). The status of "illegitimacy" of a child born to unmarried parents is recorded at birth, if the birth is registered, since the birth certificate contains information on the father and also whether the parents are married. This is sometimes a disincentive to school admission particularly in low income families, since

the birth may not be registered, when the father is unwilling to acknowledge paternity, and the school will require a birth certificate.

This study does not document any cases of early marriage encouraged by forced conscription of children by Non-State actors during the internal armed conflict, or the fragile security situation and disruption of education in the affected area. However literature

indicates that child marriages below the minimum age were solemnized in the conflict affected areas to avoid forced conscription or due to the disruption of education and the situation of personal insecurity in the community due to the armed conflict. Policy reforms must therefore address this reality in the post conflict period. Recommendations are therefore included to address this problem.

7.1.1 Recommendations

- 1 The Age of Marriage at 18 years should remain, as it has normative as well as substantive value as a benchmark for implementing child rights under CRC, implementing CEDAW Art 16 (2), and integrating a rights based approach to the wellbeing of families and communities and national development. Where early cohabitation with a girl above 16 years (at the age of consent) may be a reality whether in the former conflict affected areas or elsewhere, if the parties are in a continuing relationship, efforts should be made by community workers to encourage them to use the current law and solemnize the marriage after they attain the age of capacity to marry, at 18 years. They should be made aware that under the Legitimacy Act 1970 children born outside marriage acquire full legal status as the children of their parents when they subsequently contract a legal marriage.
- 2 Media should be used at national provincial and local levels to create awareness among adults on the negative impact of early marriage and cohabitation and the current prohibition on solemnizing by official registration or custom, marriages under 18 years. Children, families and communities, should be made aware that marriages below the age of 18 years cannot be contracted, and the rationale for the policy approach in current law and policy. This study indicates that adults in families are aware of the legal prohibition, but not its rationale, but that even law enforcement officials and service providers are not clear about the legal prohibition or the rationale.
- 3 Proactive measures, should be taken through the Ministry of Public Administration in cooperation with the Trade Union of Registrars to monitor and maintain standards on the duties and responsibilities of Registrars of Birth and Marriage and the need to prevent corruption in the falsification of documents relating to birth and marriage registration.
- 4 Training for public servants and the police should also clarify the laws on early marriages and the requirement of age and registration formalities, so that official marriage records and data on marriage, cohabitation and sexual offences such as statutory rape will reflect the legal age of capacity to marriage at 18 years and sexual consent at 16 years rather than a lower age. In particular, information on the age of marriage (18 years) and the age of capacity for sexual consent (16 years) should be given to all Health authorities and medical professionals through the Family Health Bureau, the Ministry of Health and professional colleges, so that correct records will be maintained on the incidence of early marriages, teenage pregnancy and cohabitation and sexual offences such as statutory rape. Current discrepancies with the WHO age on adolescence (19 -20 years) which go beyond the age of childhood) should be identified, and an appropriate definition of adolescence adopted for data and other purposes, in conformity with Sri Lanka law. UNICEF should facilitate a dialogue with WHO and State health authorities on this subject, as the lack of clarity prevents consistency in data collection and record keeping by

different agencies, and leads to problems in analyzing the situation on early marriage cohabitation and teenage pregnancy.

- 5 The age of sexual consent should be retained at 16 years since this is the age at which children acquire capacity for decision making according to Sri Lankan law, on the basis of evolving capacity. (“i.e age of discretion”) for purposes of guardianship, medical problems and abduction from parental custody). Since the minimum age of capacity to work and the minimum age of compulsory schooling is lower in Sri Lanka (at 14 years) “evolving” capacity must also be recognized in regard to sexual maturity. There was a consensus at the stake holders meeting that recognizing teenage sexuality and maturity to make decisions at 16 years was important in order to prevent further exploitation and abuse of girls in illegal sexual activity. What is required is giving teenagers in the age group 16-18 years of both sexes access to reproductive and sexual health information combined with strategies to create awareness among this group on the need to prevent teenage pregnancies and promote responsible sexual behaviour. The publication known as *Udavu Yavunaya* by the Family Health Bureau and National Institute of Education (1993) was a useful initiative and should be made accessible to children through the school system.
- 6 Where girls over 16 years are in sexual relationships, maximum effort should be made to provide support services including reproductive and sexual health services and counselling to ensure that the negative impacts of cohabitation are minimized or eliminated. Girls may also require support to move out of these relationships when they wish to do so or to register marriage once they acquire legal capacity at 18 years. This will require training of all professionals within hospitals, Child Rights Promotion Officers, Probation and Child Care officers, community health workers and NGO personnel who provide services at the community level. The recently inducted President of the College of Paediatricians focused on child abuse as a priority in her Presidential address (Sunday Times 27th Nov. 2011). Professional organizations should be partners in responding and preventing child abuse. They can contribute to both professional medical education in universities as well as in continuing education programme for medical professionals and health workers and service providers.
- 7 The law in regard to forced marriages, child marriages and the legal right of cohabiting partners and children should be amended to address some specific problems that have emerged in literature and this research.
 - The General Marriage Ordinance and the Kandyan Marriage Act should be amended to state in clear language that a marriage without the parties consent or below the age of marriage is void ab initio and illegal from its inception. This is the current law as interpreted in jurisprudence, but lack of clarity in the in the provisions of the Ordinance leads to misinterpretation, such as in the case of statutory rape of a girl in the adivasi community referred to earlier.
 - Sections 4 (2) and 4 (3) of the Kandyan Marriage, and Divorce Act regarding subsequent validation of early marriage should be repealed as contrary to current laws and policies prohibiting early marriage.
 - Section 22 of the General Marriage Ordinance as amended in Act No. 12 of 1997 should be repealed in line with the case of *Guneratnam v Registrar General* (2002) to clarify that

marriage below 18 years cannot be made valid by parental consent.

- The Maintenance Act (1999) should be amended to permit claims for family support by a girl who is an underage cohabiting partner. In the present law she can claim family support for a non-marital child, but she herself cannot claim support.

8 The situation of children born out of wedlock in the North, and the growing incidence of teenage pregnancy in Sri Lanka, provides an incentive to review the laws on status of children of unmarried parents, and eliminate the discrimination against so called ‘illegitimate children’. Current laws that discriminate against them are in conflict with Art 12 of the Constitution on the fundamental right to equality, and commitments under CRC and CEDAW. In particular the Birth Registration Ordinance should be amended so as to allow the authorities to issue a shortened birth certificate that includes information on parentage without indicating whether or not the parents are married. Even though a birth certificate is only prima facie evidence, and the information on parentage in the certificate can be challenged in litigation relating to property and inheritance, it is argued that a ‘long’ birth certificate with all details of parents including their marriage status, is necessary for public record purposes. Retaining such a long birth certificate should not prevent the authorities from issuing a shortened birth certificate that can be used for all other purposes. Major restrictions on the status of illegitimacy have been eliminated by the Maintenance Act (1999) and the Citizenship Act (2003). The reform to the Birth Registration Ordinance suggested will harmonise with these changes, our Constitutional norms, and Sri Lanka’s obligations in international law. A further area that should be reviewed is the law on inheritance to accommodate the idea of “family provision” from the estate of a parent for non-marital children entitled to maintenance under the Maintenance Act, since they do not have rights of inheritance in the current law, and also lose the right to maintenance and family support on the death of the parent.

7.2 Statutory Rape : Conclusions

The interface between early marriage and cohabitation and the criminal offence of statutory rape (sex with an underage minor girl below 16 years) was clearly evident in this study, as well as in the literature. Both early marriage and cohabitation were invariably a response to a sexual relationship with an adult man rather than a young boy. He was invariably someone known to the girl.

Since the age of evolving capacity and decision making or “the age of discretion” has not been reached in cases of statutory rape where the girl is under 16 years, these cases are perceived by the law as cases of child abuse. It is of interest that this study indicates that families were not as supportive of permitting long term cohabitation in these cases. They were inclined to make police complaints regarding the abuse, and were often disappointed at the delays and even denial of access to justice through the legal process, due to various

constraints in regard to investigation and prosecution. Officials who were caregivers were in general supportive of efforts to ensure that the girl’s education was not disrupted, and they made arrangements for the girl to find a new placement in another school, in order to avoid the stigma of an incident perceived as the sexual abuse. They were aware of the limitations of institutionalisation of the girl who had suffered the abuse, and encouraged her to live with her family. However in some of these cases too there was pressure from the family and caregivers to maintain a continuing relationship with the abuser, if that was possible in the circumstances.

The incidence of statutory rape and child abuse in Sri Lanka is a growing problem and it seems vital that the legal reforms and policy introduced in 1995 to prevent impunity, should be retained and strengthened. A clear distinction should be made therefore between

cohabitation with a girl above the age of 16 years and with a girl below that age. Failure to make this distinction legitimises child abuse in the form of sex with underage girls. Arguments such as their “consent” or their “being in love” with the perpetrator of this abuse

are used to undermine the law and policy rationale for criminalizing child abuse. The following recommendations for law and policy reform are made on the basis of the findings and the literature.

7.2.1 Recommendations

- 1 If impunity for child abuse is to be prevented every effort must be made to create widespread community awareness of the concept that sex with an underage girl is as serious crime as any other grave crime like murder or rape of an adult woman. Awareness must also be created among prosecutors, the police, law enforcement authorities, social workers and the Judicial Medical Officers that the offence is considered rape (“statutory” rape) on the rationale that the girl lacks maturity and legal capacity to consent. Our law states that a child below the age of criminal responsibility lacks maturity and capacity and cannot commit a crime. The law on statutory rape is based on the similar concept that a girl below the age of sexual contact (16 years) is incapable of “consenting” to sex. This is a recognition of a girl’s right to protection from abuse, and sexual exploitation. The right to consent, or participate in decision making (age of discretion) has been defined as 16 years in our law, so a girl below this age has protection rather than participation rights, on the basis that protection is more important to ensure her development rights, in health, education and protection from violence and abuse. This “protection rights” approach conforms with Article 3 of the CRC on the “best interests of the child” which has been recently stated as a principle in s. 5 of Sri Lanka’s International Covenant on Civil and Political Rights (ICCPR) Act (2007). All agencies of government and the courts are required to work towards achieving standards of the best interests of the child. This situation cannot be achieved by encouraging cohabitation or a “continuing relationship” with the perpetrator of the child abuse, because this will undermine the normative values and policy approach to protecting children and preventing child abuse.
- 2 This study indicates, as does literature over the last two decades, that the procedures for investigation, and prosecution of child abuse, witness protection and support for the victim are grossly inadequate. This study as well as the literature indicates that the inadequacies in regard to victim and family support, and delays in legal proceedings, discourage families seeking relief. The Penal Code reforms of 1995 have put the substantive law in place to a great extent, but not addressed the procedural issues. Therefore the Justice Tillakawardena Report (2010) should be the basis for introducing major changes in the Child Protection Laws, including (a) Further amendment of s.363 of the Penal Code on the offence of rape to clarify that the reference to sex with a child under 12 years of age refers only to cases where the legislation does not set a minimum age of marriage. This will indicate that it refers only to Muslims, since Muslim personal law based on religion permits child marriage. Efforts should however be made to dialogue with Muslim faith leaders and women’s groups and try to forge a consensus, that sex with a girl under the age of 16 years is child abuse and should be prevented in this community. If such a consensus emerges it will help to promote current national and international norms on the prohibition of early marriages of all children, and create an environment for enforcing the current provisions incorporated in the Penal Code reforms of 1995 relating to rape. (b) boys under 18 years can currently be prosecuted for statutory rape though the court has a discretion in sentencing (Penal Code s. 364 (2) proviso). They should be tried under the juvenile justice system rather than in regular criminal trial courts.

- 3 The National Child Protection Authority (NCPA) should be established once again as the independent statutory authority it was meant to be, with resources to fulfil its mandate. This should include the creation of a well resourced legal and police unit that can play a leadership role in investigation and networking with the Attorney Generals Department, relevant state agencies, and civil society organizations. The responsibilities of the NCPA as a central government agency and the probation and child care authorities at the devolved level must be reviewed and clarified in order to respond to child protection effectively. The Board of the NCPA should be strengthened and mandated to guide NCPA administrators including the Chairman and chief executive in regard to national policy, and interventions in regard to prevention and responses to child abuse.
- 4 The relationship between the devolved child protection authorities (the Department of Probation and Child Care) and the Central Government, (National Child Protection Authority and the Ministry of Women’s Empowerment and Child Development) has not been clearly worked out and this is impacting negatively on the quality of child care services that are of critical importance to child victims of abuse, and witnesses and their families. Some guidelines should be developed in the Child Protection Act or through administrative regulations to indicate the areas for separate responses and for networking and co-ordination.
- 5 Creating and maintaining a separate unit in the Attorney General’s Department to attend to child abuse cases is essential. This can help coordinate investigation and prosecution as well as effective networking at provincial level between government agencies, such as Probation and Child Care and Child Protection Officials, and the Women and Children Units of Police Stations. Speedy procedures and the avoidance of delays in legal proceedings must be made a priority.
- 6 Police investigation of statutory rape and child abuse cases should be coordinated with child care services providers so that initial investigation procedures are sensitive to children and their families. Child Care service providers should continue to link closely with education authorities to help the child and the family, and ensure that schooling is not disrupted. This interaction should also be used to create continuing child rights awareness in the education sector through programmes and workshops for teachers principals and parent teacher organisations particularly in State schools.
- 7 All police stations should link with the Attorney General’s Department’s special `unit closely to ensure that investigation and prosecution is handled carefully without intimidating children who are victims and witnesses and their families. If the girl is 15 years old, at the threshold of the age of sexual consent (16 years), the principle that the age of discretion and evolving capacity is about to be reached can be applied to ascertain whether there is a prospect of a stable continuing relationship, and family support, and it is in her best interests not to prosecute the perpetrator.
- 8 The Ministry of Justice, should take early initiatives, and have a time frame to bring draft Bills to parliament so as to introduce:
 - (i) The proposed Child Protection Act which is meant to replace the outdated current legislation.
 - (ii) A Witness Protection Act that creates an environment for child victim/ witness protection and procedures for conducting investigations and obtaining children’s testimony in a child friendly environment so as to reinforce the norms and standards of the new Child Protection Act. This could also help to streamline currently available procedures on obtaining video testimony, so that all child victims and witnesses will be able to give testimony in a child friendly procedural environment.

- 9 Guidelines on sentencing must be developed for trial courts dealing with cases of child abuse. The Anuradhapura Rape Case Reference to the Supreme Court referred to earlier resulted in a judgement that held that minimum sentences introduced through the Penal Code reforms of 1995 were unconstitutional, since they interfered with the judicial power and discretion in sentencing. A Public Interest Litigation petition (SC FR Application 2011 No 297/11) filed by Lawyers for Human Rights and Development (LHRD) and several women's groups was based on a scrutiny of sentences given by trial courts for rape over a period of time. This petition placed before the court many instances where suspended sentences were given in convictions for rape including statutory rape – the very situation that promoted the legislative reform of 1995 on minimum sentences. This petition was dismissed recently, in November 2011, by the Supreme Court on the ground of lack of standing (*locus standi*) of the petitioners. It has been reported by the petitioners that the Chief Justice indicated that a sentencing policy, was being drafted and this could include guidelines in the area of sexual offences. Meanwhile the Minister of Justice stated to parliament in December 2011 that a “Sentencing Bill” would be presented early to help formulate guidelines on sentencing. Guidelines are essential to ensure justice for child victims of abuse because of recent documented evidence of significant variations in sentences pronounced by the trial courts.
- 10 Institutionalised training facilities including ad hoc specific training programmes should be a mandatory requirement for recruitment and promotion of all service providers, including Child Rights Promotion Officers and Probation and Child Care officers. The study indicates that these officers do not have a back ground of values on child rights and are therefore unable to consistently work to protect the “best interests of the child” in harmony with the concept of child rights. This encourages ad hoc initiatives that sometimes violate the victims and child witnesses rights, and leads to further victimization. Performance evaluation should be mandatory for promotion, and coordinated by an agency such as NCPA, or an appropriate Central government agency like the Sri Lanka Institute of Public Administration.
- 11 Similar training should be mandatory for children's magistrate in Children Courts and other tribunals, law enforcement personnel including personnel in the police, and especially Women and Children's Police Desks, that deal with child abuse. The Judges Training Institute, University Law Departments and the professional law schools should be supported to integrate a child rights module into courses on family law and offer special courses on child rights. Medical Teachers and Postgraduate Medical institute should also be supported to include similar courses in their curriculums.
- 12 Resources should be provided to create “One Stop Centres” in all State hospitals that can provide services for victims of child abuse, including statutory rape. Maximum efforts should be taken to provide health care reproductive health services to victims, and this considered the primary responsibility of health care providers. Legal proceedings were taken in 2011 by the Police against midwives for giving contraceptives to children in health programmes, on the ground that this indicated complicity to sexual abuse. The Attorney General's Department subsequently gave instructions and guidelines, clarifying that the focus should be on the responsibility of health care personnel to provide these services.. However when incidents of child abuse are reported, health authorities have an obligation to report such incidents. It is best that such incidents should be reported by them to Child Right Promotion Officers and Probation and Child Care authorities who can follow up on the case with the law enforcement authorities. The police should not be contacted by the medical authorities, to avoid an over focus on investigation and prosecution of the perpetrator, and neglect of the need for victim support.

7.3 Statutory Rape and Incest: Conclusions

Incest surfaced in the case studies on statutory rape. Incest is a distinct and grave criminal offence after the amendments to see Penal Code in (1995) (s 364 A).

However a discretion has been given to the Attorney General to determine whether or not to prosecute .

7.3.1 Recommendations

- 1 Community based organisations and family health workers should be encouraged by Child Protection Officers to help locate and strengthen extended family support for victims of incest. Where such support is not available, they must explore the possibility of affording school boarding or shelter facilities or registered foster care arrangements that can be monitored regularly by them.
- 2 Child protection requires removal of the perpetrators or the child from the site of the abuse. Prosecution can ensure that the perpetrator rather than the child victim is removed from the abusive environment. Prosecution should therefore not be viewed as a last resort, but the first option if the best interests of the child cannot be ensured in alternatives care arrangements. Research indicates that incest is a “customary” practice in certain areas. The State has an obligation under CRC and CEDAW to take measures to eliminate “harmful traditional practices”. Incest could be considered such a custom. Sri Lanka has taken measures to put the law in place and has prohibited the practice and criminalised it. However that norm has not been publicised in the community.
- 3 There is a need for an aggressive media and publicity campaign on incest, and incestuous child abuse. Such media and public awareness campaigns have been successful in promoting attitudinal change in the community in areas such as population control and HIV/AIDs. This strategy should be used both to encourage prevention through peer pressure and to ensure that the child is not exposed to the risk of incest. A greater focus on child protection in families and communities can help to ensure that arrangements are made for caregivers who will act in the child’s best interests especially in the case of migrant families where a child resides only with the father or male next of kin. There is also a need to create awareness in schools, particularly in areas whether this practice is accepted in the community. Psycho-social counselling and support should be provided as an essential need for children affected, within the school or through state or civil society service providers in the community.

7.4 Teenage sexuality: Conclusions

This study shows very clearly that early marriage and more commonly cohabitation are primarily responses to teenage sexuality. The negative consequences of cohabitation for young girls as well as its gendered implications needs to be recognised and discussed widely. Rather than regarding early marriage as a ‘traditional practice’ (which as this study shows it is

clearly not in Sri Lanka), early marriage and cohabitation among young girls needs to be recognised and as a response to teenage sexuality and an attempt to conform to normative standards that dictate that girls should only engage in sexual relations within the institution of marriage.

7.4.1 Recommendations

- 1 Age appropriate and effective teenage reproductive and sexual health services need to be strengthened. Information on responsible sexual health practices, reproductive and sexual health, counselling services, and contraceptives are not made available and accessible to teenagers. Teenage sexuality should not be viewed as something that is ‘immoral’. Given current realities on teenage sexuality such an approach is counterproductive. Most teenagers interacting in schools and socially are sexually curious and encouraged to experiment particularly in the new IT environment with relatively easy access to sexual messages and visuals. Insensitive adult responses to teenage sexuality often lead to irresponsible and risky behaviour by teenagers. This makes awareness raising on responsible sexual behaviour and effective service delivery in these areas a gap that must be addressed immediately.
- 2 This study also shows that young girls are vulnerable to sexual abuse by adult men due to their own ignorance of sexual wellbeing and reproductive health. This situation is also exacerbated by the fact that girls are unaware of their rights and must also cope with stereotypical values regarding female sexuality. This means that sexual experimentation by a girl could have significant implications for her entire life. Thus, there is also a need to educate girls on reproductive health, responsible sexual behaviour and gender based discrimination.
- 3 At the same time, there should be targeted programmes for teenagers (boys and girls) on existing laws and policy rationales on preventing early marriage, statutory rape, sexual abuse and exploitation of children. They need to know that sex with or between under age children is illegal and that marriage is not an acceptable option and the social relevance and meaning of these policies.
- 4 This study showed that efforts to introduce sex education for girls and boys in schools have been ineffective due to negative attitudes of principals, school teachers, parents who believe that information will lead to experimentation. Only the correct information will prevent sexual experimentation and irresponsible sexual behaviour. Child sensitive teaching modules that have been developed and not used (eg. Udavu Yavuvanaya.) or new modules should be developed in consultation with the Family Health Bureau and NGOs and incorporated into programmes for schools and voluntary youth organisations.

Annex 1

Table 1: Mean Age at Marriage by year

Year	General marriages		Kandyan marriages		Muslim marriages		All marriages	
	Male	Female	Male	Female	Male	Female	Male	Female
1901							24.6	18.3
1911							26.5	20.8
1921							27.0	21.4
1932	27.2	21.6	26.2	19.5	–	–		
1935	28.7	21.9	25.6	18.7	–	–		
1939	28.6	22.2	27.6	20.5	28.4	18.4		
1945	28.9	20.6	27.5	19.6	–	–		
1946	28.8	22.9	27.7	21.1	28.3	19.8	27.0	20.7
1947	28.6	22.7	26.9	20.2	28.9	19.6		
1948	28.6	22.8	26.9	20.0	29.1	19.0		
1950	28.7	22.6	26.3	22.5	28.7	18.9		
1953	28.8	23.0	26.4	20.4	27.9	18.7	27.2	20.9
1955	28.5	22.9	28.1	21.5	27.1	18.4		
1958	28.5	23.1	27.6	21.2	27.1	18.3		
1960	28.3	23.1	27.6	21.5	27.1	18.5		
1963	28.8	23.2	29.2	20.0	28.6	19.5	27.9	22.1
1964	29.4	23.8	31.2	24.5	26.5	18.5		
1965	29.6	24.7	33.7	26.7	27.5	19.7		
1966	27.2	22.4	28.5	21.8	26.1	18.3		
1967	27.9	23.2	31.3	24.7	26.0	18.1		
1968	29.1	23.6	21.2	25.1	26.5	18.7		
1969	27.9	23.3	27.8	22.3	26.9	18.0		
1970	28.6	23.4	29.8	23.1	26.8	18.6		
1971	28.5	23.4	29.8	23.2	26.8	18.6	28.0	23.5
1972	28.5	23.4	30.0	23.3	26.9	18.6		
1973	27.7	23.3	26.7	21.7	25.9	19.4		
1981	27.86	23.89	26.90	22.46	26.32	20.76	27.56	23.37
1982	27.77	23.78	26.55	22.12	26.05	20.52	27.53	23.38
1984	28.13	24.16	27.20	22.72	26.61	21.20	27.91	23.78
1983	27.86	23.89	26.90	22.46	26.32	20.76	27.65	23.51
1987	28.39	24.46	27.41	22.94	27.08	21.78	28.19	24.08
1988							28.14	24.07
1991	28.62	24.78	27.78	23.35	26.88	21.85	28.38	24.37

1992							29	25
1993							28	25
1994							28	24
1995							28	25
1996							28	25
1998							28	24
1999							28	25
2000							28	25
2001							28	25
2002							28	25
2003							28	25

This table was compiled from the following sources:

Sri Lanka Department of Census & Statistics (1974), 1974 World Population Year : The Population of Sri Lanka (Committee for International Coordination of National Research in Demography(CICRED))

UN Economic & Social Commission for Asia & the Pacific. Bangkok (1976) Population of Sri Lanka (ESCAP country monograph series No.4)

Sri Lanka Department of Census & Statistics, Reports of the Registrar General on Vital Statistics.

Annex 2

Samples From News Papers

Schoolgirl, bus conductor caught in the act

PERCY KURUNERU -
ANURADHAPURA SPECIAL

The police arrested a bus conductor and a 15-year-old school girl engaged in a sex act in a private bus.

The conductor was 28 years old.

On July 10th morning she had informed her parents that she was going for a tuition class. Since she delayed in returning home, the parents

went in search of her and found her in a bus with the bus conductor engaging in the sex. They immediately informed the police.

The police, on questioning both parties found that this was

not the first time, but on earlier occasions they had used rest houses.

Police sent the girl for a medical examination on a Court order and produced the conductor before Court.

Thursday 22nd December, 2011

13

Young couple arrested

The Kuruwita police on Tuesday arrested a youth and an under aged girl who had spent the night in a hotel and returned the next day.

The 15-year-old girl had gone to her tuition class as usual and not returned that night.

The agitated parents informed the police and visited a soothsayer who had told them that the girl was safe and was staying at a place a few miles away.

The parents heaved a sigh of relief when the girl returned home the next morning but was surprised to see that the girl was accompanied by a young man.

When questioned the girl had introduced the youth as her boy friend and said that they spent the night in a hotel.

The infuriated father of the girl informed

the police and both of them were arrested immediately.

The suspects would be produced before the Kuruwita Magistrate on Thursday.

Underaged girl raped by lover

A sudden search of a lodge on the Tank Road, Dambulla on Saturday revealed the rape of a 15-year-old girl by her lover.

The victim was admitted to the Dambulla Hospital,

while the manageress of the lodge and the victim's lover were taken into custody and produced before the Dambulla magistrate and remanded on the same day.

Romeo remanded

The Nawalapitiya police arrested a youth who had sexual relations with an under-aged girl.

The suspect had told the police that he had a love affair with the 15

year old girl and on the day of the incident he visited her at her home when both her parents were away and got intimate with one another.

The police summoned the girl's parents and severely warned them to keep a close tab on their off spring.

The suspect was produced before the Nawalapitiya Magistrate and remanded till July 18.

Sex crazed youth sent to psychiatrist

UPALI PREMATILAKE, Ehliyagoda Corr.

A youth aged 18 years had been arrested by the Eheliyagoda police for attempting to molest a seven-year-old girl and an eight-year-old boy. The

Avissawella magistrate had ordered this youth to be sent to a psychiatrist and a report submitted to court. This youth is a resident of Thoranagoda in

Eheliyagoda. The two children have been admitted to the Avissawella base hospital.

7/18/11
2/12/11

බාලවයස්කාර තරුණිය දින 4 ක් තිස්සේ කෙලෙසු තරුණයෝ 5 ක් අත්අඩංගුවට කවත් 5 ක් සොයා පරීක්ෂණ

දඹුල්ල කාමර කුමර (අරියරාම) දෙතෙක් දඹුල්ල පොලීසිය මගින් සැකපිට අත්අඩංගුවට ගනු ලැබූ. දඹුල්ල බස් නැවතුම්පොළ අසල ත්‍රිමෝද රජ ධාවනය කරන තරුණයන් පිරිසක් ද මෙම සිද්ධියට සම්බන්ධ බව පොලීසිය කියයි. කවත් පස් දෙනෙකු අත්අඩංගුවට ගැනීමට පොලීසි කණ්ඩායමක් යොදවා තිබේ. පුද්ගලයන් 11 දෙනෙකු තරුණිය කෙලෙසා ඇතැයි පොලීසිය කියයි.

The Island Home News

Bad news for 'Naki Manamalayas'

The Senior DIG, Central Range Gamini Navaratne yesterday told the "Police Scene" that there were complaints of underaged girls living with elderly men in the Matale District and all police stations in the range had been asked to look for such couples. He said that a number of men living with underaged girls had been arrested in the last few months.

කලාන්තය දුරකරන බව කියා 12 විශැති දැරියකට අනවර කළ කට්ටඹියා අල්ලයි

කට්ටඹියා දිවයිනටම සාම විනිසුරු කෙනෙක්

(බණ්ඩාරනායක විමර්ශන ඒකකයේ ප්‍රධානියා)
12 හැවිරිදි දැරියකගේ කලාන්ත ගතිකය දරා කිරීම සඳහා යැයි කියමින් නිවැසියන් එළියට යවා දැරිය කනී කර අනවර කළ බව කියන "සර්" නමැති සැකකාර කට්ටඹියා පැල්පිටිගොඩ මාවතේදී සැකපිට අත්අඩංගුවට ගත් බව ඉංගිරිය පොලීසිය කියයි.
අකවරයට පත් දැරිය රෝහලට ඇතුළත් කර ඇත. එසේ ගණනාවක සිට කලාන්ත ගතිකයෙන් පීඩා විඳිමින් සිටි දැරිය සැකකාර කට්ටඹියා වෙත රැගෙන ගොස් ඇති මිච්චියන් කට්ටඹියා කිසි ආකාරයට දැරිය සුවපත් කිරීම සඳහා නොසෙසුන් පුද්ගලයන් පවත්වා ගාන්ති කරම ද කර අනතුරුව පසුගිය දිනක කට්ටඹියා හමුවට ගොස් දියණියගේ රෝගයට මෙතෙක් සුවයක් නැතැයි දන්වා ඇත.
කෙමිමුර දිනක් පවසා එයට පෙර දින කැලීම්

තෙල් කාලක් රැගෙන එන ලෙස දැරියගේ මිච්චියන්ට පවසා ඇති කට්ටඹියා කිසි ආකාරයට තැඹිලි කෙල් කට්ටඹියාගේ නිවසට ගොස් දී ඇති දැරියගේ මිච්චියන්ට සැකකාර පවසා ඇත්තේ පසු දින ඉර බැසීමට තෝරාගත් ප්‍රථම දැරියගේ නිවසට පැමිණෙන බවය.
කිසි අයුරින් සවස හතර පසු වෙනම සමග දැරියගේ නිවසට පැමිණ ඇති සැකකරු දැරියට කෙමක් කරන බවත්, එය අන් අය දැකීම හොඳ නැති බවත් දැරියට අනතුරුදායක බව පවසා නිවැසියන් එළියට යවා අත් දෙක මසවා වැදගෙන හිඳින ලෙස දැරියට පවසා ඇතැයි පොලීසිය කළ පරීක්ෂණවලින් හෙළිවී ඇත.
දැරිය වැදගෙන සිටියදී නොසෙසුන් ස්තෝම කියමින් විනාඩි දහයකට පසු දැරියගේ ඇඟිලි තෙල් යල්වා ඇති සැකකරු ඇසුරින් රහස් ප්‍රදේශය සිටි නොගත් තදින් මිනිසා ඇති බව මුද්‍රියන්

පොලීසියට කළ පැමිණිල්ලේ සඳහන් වේ. කට්ටඹියා පිටව ගොස් පැයක් ගත වන විට මත්කෙන් රහස් ප්‍රදේශය ඉමහත් වේදනාවට පත් දැරිය ඇයගේ පුංචි අම්මාට පැවසීමෙන් අනතුරුව පැමිණිලි කළ බව පොලීසිය කියයි.
සැකකාර කට්ටඹියාගේ ක්‍රියාවෙන් දැරියගේ රහස් ප්‍රදේශය නැසුම් ක්‍රමවලට සමානව තවත් කැලීම් ඇතැයි රෝහල් ආරංචිමාර්ග සඳහන් කරයි.
සැකකාර කට්ටඹියා මුළු දිවයිනටම සාම විනිසුරුවරයෙකු බව ද පොලීසිය කියයි.
සැකකරු හොරණ අධිකරණයට ඉදිරිපත් කිරීමට නියමිතය.
ඉංගිරියේ පොලීසියේ ස්ථානාධිපති පොලීසි පරීක්ෂක උදය කුමාර මහතාගේ උපදෙස් මත අපරාධ අංශයේ ස්ථානාධිපති උපපොලීසි පරීක්ෂක එම්.පී. විජේරත්න මහත්මරු පරීක්ෂණ පවත්වයි.

14/11/2011 @ 00am (14)

28/11/2011 ලංකා 3

සාකච්ඡා ඇරඹූ ගෙදර එමිත් සිටි දැරිය කෙලෙසා දියට තල්ලුකර මරන්න හදලා

සැකකරු පොලිස් අත්අඩංගුවට

විශාල අවිරාමයක් ඇතිව පවතින සැකකරු (25) දහවල් පාරේ ඇරඹූ සාකච්ඡා මගින් මරාගැනීමේ සිටිමට කුඩා කොටසක් වුවද අදාළ කොටසක් මරාගැනීමට සූදානම් වීමට පැමිණි බවට සාක්ෂි සපයා ඇති බවට (27) පරිදි අත්අඩංගුවට ගත් සිටි මරාගැනීමේ සැකකරු වෙයි.

මෙම සිද්ධියේදී පසු කලෙක සිටි සැකකරු වූ (27) සැකකරු සොයාගැනීමට පැමිණි කොටසක් අනුව අනුරාධපුර නගරයේදී සැකකරු අත්අඩංගුවට ගනු ලැබීය.

සැකකරු සැකකරු අනුරාධපුර පාරේදී සැකකරු සොයාගැනීමේ සිටිමට කුඩා කොටසක් මරාගැනීමට සූදානම් වීමට පැමිණි බවට සාක්ෂි සපයා ඇති බවට (27) පරිදි අත්අඩංගුවට ගත් සිටි මරාගැනීමේ සැකකරු වෙයි.

මෙම සිද්ධියේදී පසු කලෙක සිටි සැකකරු වූ (27) සැකකරු සොයාගැනීමට පැමිණි කොටසක් අනුව අනුරාධපුර නගරයේදී සැකකරු අත්අඩංගුවට ගනු ලැබීය.

වැසිකරු දිගේ යැදී බිඳවැටීමට පොලිසියේ සිටි රජයේ සේවයේ සිටි සැකකරු සොයාගැනීමට පැමිණි කොටසක් අනුව අනුරාධපුර නගරයේදී සැකකරු අත්අඩංගුවට ගනු ලැබීය.

මෙම සිද්ධියේදී පසු කලෙක සිටි සැකකරු වූ (27) සැකකරු සොයාගැනීමට පැමිණි කොටසක් අනුව අනුරාධපුර නගරයේදී සැකකරු අත්අඩංගුවට ගනු ලැබීය.

වැසිකරු දිගේ යැදී බිඳවැටීමට පොලිසියේ සිටි රජයේ සේවයේ සිටි සැකකරු සොයාගැනීමට පැමිණි කොටසක් අනුව අනුරාධපුර නගරයේදී සැකකරු අත්අඩංගුවට ගනු ලැබීය.

මෙම සිද්ධියේදී පසු කලෙක සිටි සැකකරු වූ (27) සැකකරු සොයාගැනීමට පැමිණි කොටසක් අනුව අනුරාධපුර නගරයේදී සැකකරු අත්අඩංගුවට ගනු ලැබීය.

2011 ඔක්තෝබර් මස 14 වැනිදා සිදුකරන ලද සාකච්ඡා

බාල වයස්කාර දැරියක කෙලෙසියැයි සිවිල් ආරක්ෂක හටයා අත්අඩංගුවට

බාල වයස්කාර දැරියක මරාගැනීමේ සැකකරු (25) දහවල් පාරේ ඇරඹූ සාකච්ඡා මගින් මරාගැනීමේ සිටිමට කුඩා කොටසක් වුවද අදාළ කොටසක් මරාගැනීමට සූදානම් වීමට පැමිණි බවට සාක්ෂි සපයා ඇති බවට (27) පරිදි අත්අඩංගුවට ගත් සිටි මරාගැනීමේ සැකකරු වෙයි.

වැසිකරු දිගේ යැදී බිඳවැටීමට පොලිසියේ සිටි රජයේ සේවයේ සිටි සැකකරු සොයාගැනීමට පැමිණි කොටසක් අනුව අනුරාධපුර නගරයේදී සැකකරු අත්අඩංගුවට ගනු ලැබීය.

වැසිකරු දිගේ යැදී බිඳවැටීමට පොලිසියේ සිටි රජයේ සේවයේ සිටි සැකකරු සොයාගැනීමට පැමිණි කොටසක් අනුව අනුරාධපුර නගරයේදී සැකකරු අත්අඩංගුවට ගනු ලැබීය.

ලංකාදිව 2011 සැප්තැම්බර් 8

තෙලිප්පවිල අනවර සිද්ධිය:

දැරිය පෙරෙට්ටුවේදී ප්‍රධාන සැකකරු හිටපු ගුවන් හටයා හඳුනාගනී

12 වැනිදා තෙක් යළි රිමාන්ඩ්: සෙසු සැකකරුවන් 4 දෙනාට ඇප

මහලු ප්‍රදේශයේ පවතින සැකකරු (25) දහවල් පාරේ ඇරඹූ සාකච්ඡා මගින් මරාගැනීමේ සිටිමට කුඩා කොටසක් වුවද අදාළ කොටසක් මරාගැනීමට සූදානම් වීමට පැමිණි බවට සාක්ෂි සපයා ඇති බවට (27) පරිදි අත්අඩංගුවට ගත් සිටි මරාගැනීමේ සැකකරු වෙයි.

මෙම සිද්ධියේදී පසු කලෙක සිටි සැකකරු වූ (27) සැකකරු සොයාගැනීමට පැමිණි කොටසක් අනුව අනුරාධපුර නගරයේදී සැකකරු අත්අඩංගුවට ගනු ලැබීය.

වැසිකරු දිගේ යැදී බිඳවැටීමට පොලිසියේ සිටි රජයේ සේවයේ සිටි සැකකරු සොයාගැනීමට පැමිණි කොටසක් අනුව අනුරාධපුර නගරයේදී සැකකරු අත්අඩංගුවට ගනු ලැබීය.

මෙම සිද්ධියේදී පසු කලෙක සිටි සැකකරු වූ (27) සැකකරු සොයාගැනීමට පැමිණි කොටසක් අනුව අනුරාධපුර නගරයේදී සැකකරු අත්අඩංගුවට ගනු ලැබීය.



සැකකරු පෙරෙට්ටුවේදී ප්‍රධාන සැකකරු (25) දහවල් පාරේ ඇරඹූ සාකච්ඡා මගින් මරාගැනීමේ සිටිමට කුඩා කොටසක් වුවද අදාළ කොටසක් මරාගැනීමට සූදානම් වීමට පැමිණි බවට සාක්ෂි සපයා ඇති බවට (27) පරිදි අත්අඩංගුවට ගත් සිටි මරාගැනීමේ සැකකරු වෙයි.

REFERENCES

- Attapattu A.F, Teenage Pregnancy, Lanka Journal of Obstetrics and Gynecology (2000) 22, 11-20);
- Bates M Lisa, Joanna Maselko, and Sidney Ruth Schuler (2007). Studies in Family Planning, Volume 32 No 2.
- De Silva, Amarasinghe (2009). Final Report including Executive Summary, Key Research Questions and Knowledge Gaps, Recommended Methodology and Research Plan submitted to UNICEF, Colombo.
- Goonsekere S (1984). Some Reflections on Solemnisation of Marriage in the General Law of Sri Lanka. Mooter Law Journal Volume 1 pp 24
- Goonsekere S. (1987) Sri Lanka Law on Parent and Child. M D Gunasena: Colombo
- Goonsekere S (1998). Children, Law and Justice: A South Asian Perspective. Sage: New Delhi
- Goonsekere, Savitri (1995). Realising gender equity through law: Sri Lanka's experience in the post nairobi decade, in Facets of Change, Women in Sri Lanka 1986-1995
- Goonsekere, Savitri and Gunaratne, Camena (1998). Women, Sexual Violence and the Legal Process in Sri Lanka: A Study on Rape
- Goonsekere S (2000). Muslim Personal Law in Sri Lanka: Muslim Women's Research and Action Forum, Colombo
- Goonsekere, S (2010). Anuradhapura Rape Case. Reference to the Supreme Court S.C Ref No 03/08 H.C Anuradhapura No 333/04 discussed in 'Legislative Reform and Judicial Interpretation', A.R.B Amerasinghe, A Matter of Esteem. Opr O Printing and Publishing Solutions, Colombo.
- Lawyers for Human Rights and Development (2003). Violation of Child Rights in the Implementation of the Law Relating to Statutory Rape. Colombo
- Lawyers for Human Rights and Development, Newsletter Kantha No. 1. 2001, Age of Marriage and Age of Consent to Sex : Harmful Consequences Brought on Children by Law
- Lawyers for Human Rights and Development (2011). Supreme Court Fundamental Rights Application No 297/11
- Lawyers for Human Rights and Development (2012) Justice Suspended? A Study on Suspended Sentences For Sexual Offences
- Registrar General's Department Ministry of Public Administration and Home Affairs. (1981-2003) Vital Statistics
- Sri Lanka Demographic and Health Survey, 2000
- Stepens, Sharon (1995) "Children and the Politics of Culture" in Sharon Stevens Ed. Children and the Politics of Culture Princeton University Press Princeton
- The Demographic Health Survey of the Department of Census and Statistics 2006 – 2007
- The Population of Sri Lanka (1974) CICRED Series
- Population of Sri Lanka (1976). ESCAP Country Monograph Series, No 4 Bangkok
- Registrar General's Department Ministry of Public Administration and Home Affairs. (1981-2003) Vital Statistics
- Sri Lanka Demographic and Health Survey, 2000
- The Demographic Health Survey of the Department of Census and Statistics 2006 – 2007
- The Population of Sri Lanka (1974) CICRED Series
- UNICEF (2001) Early Marriage: Child Spouses. Innocenti Digest No 7
- UNICEF (2004) National Survey on Emerging Issues Among Adolescents
- WHO (2006). Married Adolescents: No place of Safety

Newspaper Articles

Daily News 5 September 2006

Island, 20th May, 2011

Island, 29th Nov, 2011

Island, 2nd Dec, 2011

Island, 8th Aug, 2011

Lankadeepa 28 Nov 2011

Lankadeepa Nov 14th, 2011)

Sri Lankan Legislation

Births and Deaths Registration Ordinance (1895)

General Marriage Ordinance (1907)

Muslim Marriages and Divorce Act (1951)

Kandyan Marriage Act (1952)

General Marriage Ordinance Amendment (1995)

Kandyan Marriage Act Amendment (1995)

Penal Code Amendment (1995)

Conventions and Laws

UN Conventions and General Comments of Treaty Bodies

The Universal Declaration of Human Rights 1948

The International Covenant on Economic, Social and Cultural Rights (1966)

The International Covenant on Civil and Political Rights. (1966)

The UN Convention on Elimination of All Forms of Discriminations Against Women (1979)

The UN Convention on the Rights of the Child (1989)

CEDAW's General Recommendations, on Health (No 24) Violence Against Women (No 19) and Equality in Marriage (No 21)

General Comment Committee on the Rights of the Child No 3 on HIV/AIDS

unite for
children



**EMERGING CONCERNS
AND CASE STUDIES
ON CHILD MARRIAGE
IN SRI LANKA**

**Savitri Goonesekere
and Harini Amarasuriya**

