

OUR THOUGHT

CHILD PREGNANCIES, MINIMUM AGE FOR MARRIAGE AND CONSENT DEBATE

With the government on Monday withdrawing the Bill that was gazetted on February 9 this year to amend the Penal Code to lower the age for girls for sexual consent from 16 to 14, a question is naturally being raised as to what prompted the government to introduce the Bill without consulting all stakeholders.

Chair of the Women Parliamentarians' Caucus, MP Dr. Sudarshini Fernandopulle, while writing to Justice, Prison Affairs and Constitutional Reforms Minister Wijeyadasa Rajapakse had last month expressed the deep concern of the Caucus about the Bill and requested him to withdraw it. It was against that backdrop the minister had agreed to abandon the Bill. Accordingly, the government has informed the Supreme Court that it would not go ahead with the Bill.

The need to reduce the age of consent for girls has so many aspects. However, we have never in the recent past heard about any demand from any section of society for such a change in the age for consent. Yet, the minister argued on Monday that there is a possibility of the lives of young accused under the relevant provisions of the Penal Code being ruined. It is said that the Bill had intended to grant some discretion to judges in cases, especially where there has been a romantic relationship.

An important matter here is that the minimum age for marriage and sexual consent differ. The legal age for sexual consent varies from one country to another. Before 1995, Sri Lanka's General Marriage Registration Ordinance of 1907 and the Kandyan Marriage and Divorce Act of 1952 permitted marriages below 18 years of age. In 1995, both these laws were amended and the legal age of marriage was raised to 18 years. Consequently, in the same year, the Penal Code was also amended raising the age of sexual consent from 12 years to 16 years.

This difference between the age for marriage and the age for consent allows young men and women between these two ages to have free sexual relationships or it decriminalizes sexual relationships before the marriage but after the minimum age for consent. This can be justified on biological and psychological grounds but the imminent negative sociological consequences, especially those that befell the young boys and girls of the lower stratum of society also cannot be ruled out.

Besides, in the light of poverty and resultant frustration over opportunities for marriage, lack of education and guidance prompt young boys and girls to give in to their biological and psychological urges, leaving them legal limits in the statutory books. The knowledge that the age for consent has been lowered might encourage them further. This fact has to be considered especially against a backdrop of more under-aged marriages and under-aged pregnancies being witnessed recently. Although there are no specific and accurate details about such incidents, certain revelations by authorities in respective of certain localities throw some light on the matter.

For instance, in 2019, the Moratuwa Medical Officer of Health M.M. Thilakarathne informed the Moratuwa Municipal Council that 77 under-aged mothers had been reported in the area in the previous year (2018) alone, out of which 54 mothers had been interestingly in the range between 13 and 15 years of age. And during the first half of 2019, there had been nearly 30 under-aged girls in the area who had conceived. She attributes the phenomena to early termination of schooling, absence of parental care, family background, love affairs and sexual curiosity.

These problems do not affect any particular community. It is a common issue among almost all communities in the country. According to the statistics of the Census and Statistics Department 3204 child marriages had been recorded in 2012 out of which 2200 marriages had taken place within the Sinhalese community while 511 and 471 marriages had been reported from Tamil and Muslim communities.

These matters point to the fact that there is a grave problem that lies underneath the legal debates on the age for marriage and consent.