

CRY PARENTS CRY

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Cry Parents Cry: since there is nobody to protect your teenage girls-neither the law enforcement authorities nor the National Childcare Protection Authority; definitely not the human rights enthusiasts... not even the Law itself!

So, cry parents cry,
Make them sigh,
They're old enough and wise,
to know better.

Illustration 1

'A', an eleventh grader from a well affluent family who attends a well-known girls' school in Colombo falls in love with a muscular six-footer 'B'. She's deeply in love with him and he cajoles her to elope with him. The girl-a *virgo intacta* [a virgin]-goes with family heirlooms, enjoys a few days of romantic euphoria with 'B' at his place. 'B' sells all the jewellery 'A' has brought with her within a couple of days. Next 'A' observes peculiarity of behavior in 'B' who sniffs stuff and confronts him. To her trepidation she finds out that her knight in shining armor is an ex con, a habitual drug addict and, last but not least, a married man with three small children of his own! 'A' goes back to her parents who rush to the nearest police station to unfold the story. The officer, not with the least botheration of even lifting the pen, asks, 'how old is she?'' and when the weeping mother divulges the daughter is only sixteen years and one month, the officer throws the next question: 'is she of unsound mind?' and when the Father cries 'No' the officer replay the wordings, 'sorry, ma'am, we can't do anything? But when the Father shouts that the daughter has been raped and the family heirlooms have been stolen by her lover, the officer responds: 'if you start shouting, I'll put you in the cell and charge you for intimidation and obstruction!'

When the O.I.C. steps out of her room the grieving parents pour their grievance: ‘our darling little girl is only sixteen and she’s been raped; why can’t you bring the scoundrel to justice?’ repeats ‘A’s aunt to the looming physique of the O.I.C.

‘Because’ blurts the woman Chief Inspector in charge of the Women and Childcare Section of the police station. ‘Your darling little girl is over sixteen years of age; she’s not a child, and our law supposes that sex between consenting adults is not an offence unless she’s of unsound mind or was in a state of intoxication.’

A law student, who had come to collect his driving license after payment of fine for a minor offence, happened to be an interesting spectator of this commotion and ventures to assist the gathering by throwing some questions to the police.

Q: She’s sixteen years of age and you consider her as an adult?

A: Not me, the Law.

Q: She cannot even vote but you consider her as an adult?

A: Not me, the Law.

Q: But the Age of Majority Act, Maintenance Act, Penal Code, International Convention on Civil and Political Rights act, and even the United Nations Convention on the Rights of a Child says child means a person under the age of eighteen years?

A: Yes, yes, yes. But I can’t do anything because the law supposes so.

The Father quotes, ‘if the law supposes so, the law is an ass-an idiot.’

Illustration 2

‘A’s best friend and classmate ‘C’ following her friend’s footsteps precisely, elopes with ‘D’, double her age at *hora somni* [at bedtime]. Parents of ‘C’ without seeking the assistance of the police finds ‘C’ at a hotel with ‘D’ and bring her to the police and make a complaint. ‘A’s father after hearing the story comes to the police station and informs ‘C’s parents that it is useless to make a complaint as the act of ‘D’ does not constitute an offence. ‘Yes,’ says the O.I.C. The grandmother of ‘C’, a dignified old lady aged 75, says: ‘aiyo, the manager and the staff of the hotel also had seen them kissing and misbehaving’

‘What, are you sure?’ asked the O.I.C.

‘Yes, they told me so,’ replied the grandmother.

‘Don’t worry,’ O.I.C. continues, ‘we’ll prosecute the hotel staff’

‘What do you mean, a man who rapes a mere kid cannot be brought to book but any person who had seen the rape can be prosecuted!’ Words pour out of the mouth of the Mother.

‘Don’t even mention the word rape because the girl was over sixteen and she has consented to the intercourse. But we can definitely put the entire staff in the cell because the law supposes any person knowingly permits any child to remain in any premises for the purpose of causing such child to participate in any term of sexual activity commits an offence and the child means a person under eighteen years of age!’

‘If the law supposes so, the law is an ass-an idiot,’ shouts the decent grandmother.

Illustration 3

‘X’, an *et pupillio* [student] aged sixteen years five months and two days is taken away by ‘Y’, a sweet boy aged eighteen plus, from the paternal grandmother who is in *loco parentis* [in place of a parent] of ‘X’. Even though ‘Y’ is a *persona non grata* [person not appreciated] at ‘X’s home, grandmother as secretly thinking of getting ‘X’ married to ‘Y’ when ‘X’ was of age. On their honeymoon ‘X’ conceives. ‘X’ and ‘Y’ visit the grandmother and are forgiven immediately. The happy couple with the grandmother goes to the registrar of marriages to get married. ‘Nope’ says the registrar. ‘Why? I have been looking after my granddaughter since the age of five days after her parents died of a tragic car accident. I am the guardian and I will give consent to the marriage,’ persisted the good old grandmother.

‘Very sorry, the law supposes that to be a valid marriage both parties to the marriage have to complete eighteen years of age. Even if the parents were alive and gives consent I am still unable to register the marriage!’ explains the good natured registrar.

‘If the law supposes so,’ laments the grandmother, ‘the law is an ass-an idiot,’

Illustration 4

Two days after celebrating her sixteenth birthday 'E' goes missing. Frantic parents go and make a complaint. Messages are sent to police stations all over the Island; mortuaries are searched of to no avail... no news of 'E'. After three days little brother of 'E' starts singing that his sister had an affair with an *aiya* of his school and gives details. While the heat accumulates on *aiya*, he comes to the police station accompanied by a lawyer and 'E'. Girl wants to go with the boy as she has been deflowered by the boy. The girl's parents plead with the police to have the girl examined by the J.M.O. and put the boy behind bars. 'What for? We can't sue him. Girl's sixteen years and she's gone with the boy with her consent and had sex,' comments the O.I.C. Little brother of 'E' murmurs something in the ear of his mother. 'What's it'?' asks the O.I.C.

'She's on the Facebook wearing a bikini in a compromising manner with the boy,' says little brother showing the same.

'Now we do have a case,' grunts the officer. 'Whose Facebook account is this?'

'That *aiya*'s friend 'F's,' comes the ready answer.

'Don't worry, we'll get that *aiya*'s friend before Court and remand him pending further investigations,' boasts the O.I.C. in a commanding manner.

'What'd you mean? The boy who rapes my daughter cannot even be arrested but his friend who has a photograph of her in his Facebook can be remanded?' Father of 'E' bemoans.

'Yes, the law supposes so,' answers the officer.

'If the law supposes so, the law is an ass-an idiot,' acknowledges the Father.

Illustration 5

The O.I.C. is in a pensive mood. He had been blasted early morning by his superior officer for arresting a politico's henchman 'H'. Hitherto he has managed to secure his position without any trouble. Now all this! Politico has promised his senior officer that a

Fundamental Rights case is at his doorstep. This beautiful girl 'G' had come and complained that her husband 'H' was having a homosexual affair with 'I'. She had shown him video recording, photographs and brought an eyewitness. Everything was in shipshape and apple-pie order for a juicy Court case. Nothing was wrong. His IB's were in order. The video and photographs together with the high-tech apple phone had been properly sealed as productions. Old sergeant has prepared the B-Report in a spellbinding manner. Nothing wrong there either. He may be transferred; he didn't mind that. It is an occupational hazard. But this Fundamental Rights case threat bothered him. Has he done something illegal by arresting 'H' with this overwhelming evidence? There was talk the new Constitutional amendments were going to legalize homosexuality. There were protests over it. Then it has to be illegal. He calls the sergeant and asks him to bring the Penal Code with all its amendments. Asks the duty officer not to bother him and starts reading the damned Penal Code. After one hour and reading all the amendments for the umpteenth time he attains enlightenment about Act No. 22 of 1995. 'Upon all the three hundred and thirty million deities' shouts the O.I.C., 'homosexual activities are not illegal; release 'H' immediately!' And starts Writing furiously in the IB.

Old sergeant couldn't believe his ears: 'what's this sir?' asks the sergeant.

'Homosexual activities are legal?' answers back the O.I.C.

'If homosexuality is legal then the law is an ass-an idiot,' comes the reply from the sergeant.

'Never mind that, release 'H'. I have to safeguard my arse!' Tells the O.I.C. to the sergeant reminding him that with different spelling but same pronunciation of the so far repeated word indicates a different meaning in English.

'It was all Mrs. Bumble. She could do it' urged Mr. Bumble; first looking around to ascertain that his partner had left the room.

'That is no excuse,' returned Mr. Brownlaw, 'you were present on the occasion of the destruction of these trinkets, and indeed are, more guilty of the two in the eye of the law; for the law supposes that your wife acts under your direction?'

'If the law supposes that' said Mr. Bumble squeezing his hat emphatically on both hands, 'the law is a ass - a idiot. If that's the eye of the law, the law is a bachelor, and, worst, I wish the law is that his eye may be opened by experience - by experience.

Oliver Twist/Charles Dickens

The above quote was from the *Oliver Twist* by Charles Dickens based on, one could say, the English Common Law where husband and wife were considered as one person in law and husband was responsible for wife's misdeeds. The husband being responsible for wife's follies were laughable and the law at that time, Dickens considered, as an ass - an idiot, which led to the above criticism.

One look at the above illustrations and the laws applicable to them will enlighten us that those laws are laughable and the same criticism is applicable to them i.e. 'the law is an ass-an idiot'.

Are we a nation of sex maniacs or does our entire population consists of perverts? Some of the amendments and additional offences brought into the Penal Code and other enactments during the 1995 circa have caused more confusion than bringing the offenders to the Book. True, the sweeping changes were intended to stop child marriages and strict laws to punish the sex offenders were considered as *Ex necessitate* [of necessity] by the framers of the law, but the explanations given below for the above illustrations would surmise that eye has to be opened and amendments be brought to eradicate the conflicts, lacunas and dissimilarities attached apropos laws.

Explanations to Illustration 1

Why can't the police prosecute 'B' after he had committed such a horrendous act? Law in relation to kidnapping is mentioned in section 352 of the Penal Code. It states: '*whoever takes any minor under sixteen years of age if a female out of the keeping of the lawful guardian of such minor without the consent of such guardian is said to kidnap such minor from lawful guardianship?*'

Definition for statutory rape (as commonly used) is: *'a man is said to commit "rape" who has sexual intercourse with a woman with or without her consent when she is under sixteen years of age, unless the woman is his wife who is over twelve years of age and is not judicially separated from the man'* (s. 363 [e] Penal Code)

Since 'A' is over sixteen years of age 'B' cannot be prosecuted for kidnapping or for rape.

But, why did the O.I.C. ask whether 'A' was mad?

Well, our laws prohibit women of *non compos mentis* [not sane] getting themselves involved in any kind of sexual activities. If she is to have sex she has to cure herself. Poor creatures they cannot even enjoy a mere act of kissing. Strictly speaking there is no such prohibition, but any man who gets himself involved in sexual intercourse with a woman of unsound mind will face a jail term of seven to twenty years. (s. 363[c]/364 Penal Code)

Any person who, for sexual gratification does any act by the use of his genitals or any other part of the human body or any instrument on any orifice or part of the human body of any other person being an act which does not amount to rape... with the consent of the other person where such consent has been obtained at a time the other person was of unsound mind commits the offence of grave sexual abuse and the punishment is the same as of rape. (s. 365B Penal Code)

So the next time if you intend to participate in any form of sexual intimacy with a woman other than your own wife please see that you take her to a psychiatrist and get a certification that she is sane. On the other hand if she consents for such examination by a psychiatrist then definitely she is insane.

Explanation to Illustration 2

When the girl is sixteen years of age, our laws stipulate that if she goes with a man with consent and has sexual intercourse or any other sexual intimacy the man cannot be prosecuted. But, Section 286C and 360B imposes a duty on the onlookers and people who stand and wait and watch knowing that the premises they have a control over is being used for the commission of an act constituting child abuse.

Speaking of 'abuse of a child', a child means a person under' eighteen years of age. 'Abuse' is not interpreted. Dictionary meaning of abuse is: 'use (something) to bad effect or bad purpose.'" If we take the literal meaning, Child Abuse can be in sexual form, abusing a child in filth also could be Child Abuse, partaking alcohol by a child may amount to alcohol abuse, eating too much food could constitute bulimia and can be interpreted as abusing of food by a child and so on and on and could go on forever. Interesting factor attached to Section 286C is the absence of the word 'sexual' in the same. While none of the above actions are offences by itself a duty is cast on any person who has charge, care, control or possession of any premises being used for the commission of an act constituting child abuse to inform the O.I.C. of the nearest police station; if not he will face a jail term of up to two years.

It is also noteworthy to mention that the information must be to the nearest police station. So if a person from Anuradhapura informs about a child abuse to the National Child Protection Authority in Colombo still he commits an offence.

Section 360B is deeper in depth but partly similar to 286C.

Whoever knowingly permits any child to remain in any premises for the purpose of causing such child to be sexually abused or to participate in any form of sexual activity... commits an offence of sexual exploitation of children. (s.360B [1][a] Penal Code)

In the above section, word 'sexually' has been used. Also if any form of sexual activity of a child takes place, the person who allows such child to remain in the premises commits an offence. The meaning of 'child' is same as in Section 286C. This is funny, very, very funny! Any person who participates in any form of sexual activity with a person over sixteen years of age with consent is not an offence but any person who permits a person below the age of eighteen years to remain in any premises to participate in any form of sexual activity commits an offence. Main act is not an offence but an onlooker who has some sort of control over premises can be prosecuted. So the grandmother of 'C' calling law as an ass and idiot is quite justifiable!

Explanation to Illustration 3

Omnia vincit amor-love conquers all: 'X's love has conquered all. All except the Sri Lankan Law! *Amor et melle et fella est*-love is rich with both honey and venom: 'X's love to 'Y' and vice versa is rich with honey. Venom in the form of Law has ruined their lives. Child yet to be born will be *fillius nullius* (illegitimate child). Law does not allow pregnant 'X' to get married to 'Y' even if the guardian (or even if her parents were living, with their consent) gives consent for 'X' to get married.

An assorted number of laws were enacted 1995 circa to protect minors. The amendments to end child marriages among the majority of the population were brought in overnight. (Muslim Marriage and Divorce Act was not amended to end child marriages!) In the era of everything being instant, why not the laws? Amendments to the Marriages (General) Ordinance to end child marriages had a devastating effect on girls aged between the ages of sixteen and eighteen. Statutory rape was upgraded from age twelve to sixteen years. Marriageable age was considered as eighteen years after the Act No. 18 of 1995 came into force. In spite of it being amended by Act No. 12 of 1997 section 22 of the Marriages (General) Ordinance which could give consent to marriages of underage persons by Father, Mother or guardian had little or no effect as a result of very strong wordings in section 15. Section 352 of the Penal Code was never amended to uplift the kidnapping age. Interpretation of Section 15 and section 22 in **Gunaratnam v Registrar-General** ([2002]2 SLR 302) sealed the fate of teenagers aged between sixteen and eighteen. **Gunaratnam v AG** is very clear about the strong wordings in section 15 of the Marriages (General) Ordinance. It is also interesting to note that the words 'legislature' nor 'lawmakers' is used in the same but the words 'framers of the law' is used. Framers is a person who shapes or creates a concept plan or a system. (Dictionary meaning) So, the person who created Section 15 had no intention whatsoever to allow marriages between persons if either or both were under eighteen years of age.

Ultimate result is that a girl above sixteen but below eighteen can get herself involved in any form of sexual activity but she is unable to get married. *O tempora O mores!* (Oh the times oh the morals!)

Well what can you call the period between the age of sixteen and eighteen of girls? Grace period for men! Heydays for pedophiles. Dr. Colvin R. De Silva once in the Parliament said ‘the words ‘murder by statute’ when some parliamentarians tried to introduce death penalty retrospectively, what can you call the scenario of ‘X’? Rape by statute? Grave sexual abuse by statute?’

Whatever it is, there seems to be some kind of dark, strange and peculiar symbiosis between lawmakers and pedophiles. Whether the symbiosis is mutualistic, commensalism or parasitic or all in one is everybody’s guess!

So ‘X’s grandmother calling the law as an ass an idiot is excusable.

Explanation to Illustration 4

Section 286A of the Penal Code enumerates the instances of obscene publication, exhibition etc relating to children. 286A(4) states that child means a person under eighteen years of age.

A careful perusal of section 286A as a whole and in separation reveals that even though having sexual intercourse or any other form of sexual activity with a girl over sixteen years of age is not an offence; posting an indecent photograph of the girl mentioned on the Facebook will allow the law enforcement authorities to prosecute the contributor to such webpage. Whilst the actual act of intercourse is not an offence a mere picture posing in a bikini on the Facebook will mean hell of a lot of trouble for the contributor to such webpage! Pardoning of ‘E’s father for calling the law as an ass an idiot is not enough; he should be medalled!

Explanation to Illustration 5

Why did the O.I.C. release 'H'?

Section 365B of the Penal Code permits any person to use his genitals or any other part of the body or any instrument on any orifice or part of the body of any other person for sexual gratification, Provided the acts do not fall under subsections (a), (aa), (b) or (c). Subsections (a), (aa), (b) and (ci) speak of without consent of the other person, with or without consent when that person is under sixteen years of age, when the consent has been (*actus me invitofactus non est meus actus* = an act done by me against my will is not my act) obtained through intimidation etc. of the other person or the consent acquired while the other person was mad or in a state of intoxication. It is implied that use of orifice or any other part of the body with consent for sexual gratification is allowed between persons and it is also implied that those acts does not constitute as indecent acts. Hip hip hurray! Three hearty cheers for the Legislature of yesteryear! At last homosexual and other forms of lesbian activities are legalized after 315' of October, 1995!

Section 365A of the Penal Code might relate to homosexual and lesbian activities. But after a careful reading of 365A, 365B and 363 will enlighten us thus; 365A of the Penal Code teaches us about acts of gross indecency between persons whilst an offence of rape can be committed only by a 'man', an act of grave sexual abuse and gross indecency could be done either by a man, woman or a transsexual because both sections 365A and 365B speak of a 'person'!

Then we will have to answer the question what languishes the act of gross indecent acts when persons using their genitals on any orifice of another person with consent is not an offence? That leaves us with activities of transsexuals, shemales and lady boys. But they are also persons by all means. If that is so activities of them in sexual forms cannot be considered as wrongdoings, since gross indecent act is not interpreted anywhere and it is your guess as good as mine as to its proper meaning!

*Once the Law was sitting on the bench
And Mercy knelt a-weeping
“Clear out!” he cried “disordered wench!
Nor come before me creeping
Upon your knees if you appear,
’T is plain you have no standing here”*

*’ Then Justice came. His honour cried:
“Your status?.... devil seize you!”
“Arnica curiae” she replied...
“Friend of court so please you”
“Begone” he shouted... there’s the door...
I never saw your face before!”*

With one sweeping flow of his pen Ambrose Bierce explained what law and justice are. Mercy has no place in Law; neither friends nor favourites will be tolerated. But the eye of the law has to be opened by experience. Sweeping changes and amendments are necessary to eradicate the ridiculous nature of laws. Some of Sri Lankan laws as enumerated above are a shame to the maxims of *Actus legis nemini est damnosus* and *Actus legis nemini facit injuriam* which in turn means respectively ‘the Act of the law is hurtful to no one’ and ‘an Act of the law does injury to no one’. People in whose sovereignty governments are based are tolerant, but they will not be tolerant forever!

*So, cry parent cry,
Make them sigh (O will they?),
They’re old enough and wise,
to know better (O are they?).
Dum tacent clamant : though they are silent they cry loud!*