

## THE DILEMMA OVER SEX AND THE GIRL CHILD, 4 DEC 2012

There seems to be a dilemma over the issue of sex with under-aged girls i.e., those below 16 years of age.

First we say that young girls are in need of protection from sexual exploitation and that sex involving girls below the age of 16, irrespective of their consent, is statutory rape (Section 375(g) of the Penal Code). The assumption is that young girls are unable to give informed consent. So a man having a sexual relationship with a young girl below 16 years of age can be charged and imprisoned for statutory rape. But at the same time we also allow Muslim girls below the age of 16 years to be married off to their 'partners' provided permission is granted by the Syariah Court.

Two cases relating to both these aspects have been highlighted in the press recently. One is Blow for Rapist (Sun 20/11/12) where the high court overturned the non custodial sentence of a 22 year old electrician for statutory rape of a 12 years and 10 month old child last year and sentenced him to five and a half years in jail. The other is Man appeals for 12 year old daughter to marry (Malay Mail 12/11/12) where the parents of a young adolescent with a 19 year old boyfriend, appealed to the Syariah Court and obtained permission for their daughter's marriage.

In Malaysia the legal age of marriage for Non-Muslims is 18. Anyone below 18 years of age is deemed a child under the Child Act 2001. However, marriages are allowed for girls between 16 and 18 with written consent from the chief minister. For Muslims, the legal age of marriage for males is 18 and females, 16. With the permission of the Syariah Court, however, Muslims can marry at any age as long as puberty has been attained, there is parental consent and it is the opinion of the court that the person is ready for marriage.

According to Girls not Brides (Star 11/10/12), the Malaysian 2000 Population And Housing Census statistics showed that 6800 girls under the age of 15 were married and 235 children between the ages of 10 and 14 were widowed and 77 divorced or permanently separated.

The International Women's Health Coalition in their article Child Marriage: Girls 14 and Younger At Risk (<http://www.iwhc.org>) states that girls who are married at a very young age (less than 14 years of age) experience several disadvantages compared with those who marry later, including:

- greater control over the young bride by her husband and his family, including restrictions on her freedom of movement and her capacity to seek health care and family planning services
- increased likelihood that she will experience domestic violence and sexual abuse;
- little if any schooling and little possibility of pursuing educational opportunities;

- limited capacity to enter the paid labor force and earn an independent income;
- greater personal insecurity in the face of the possibility of divorce or early widowhood; and
- social isolation from her own family, friends, and other social networks.

Furthermore it is known that child marriages place young girls at risk of complications in pregnancy and childbirth. They are also said to be more vulnerable to sexually transmitted infections due to the lack of their full physical and physiological development as well as their inability to negotiate for their own protection.

So we need to be asking ourselves how is it that child marriages are still allowed despite various research around the world which shows the negative impact of this (i.e., educational, social, health and personal disadvantages), especially on the girl child. While reasons for marrying off young girls have included cultural practices, poverty, preventing immoral behavior (maksiat) or illicit sex (zina) or because the girl is pregnant, we (and all those involved in making a decision about this) really need to think about the impact of a marriage on the girl – for all the disadvantages stated above. The belief that marriage is a safety zone for young girls does a great injustice to them.

We also need to be asking how exactly do occurrences of child marriages in our country synch with the country's legislation on statutory rape. If we have legislation which clearly states that sex with a child below 16 years of age is a crime because the child is unable to give informed consent to sex, how then is a 13 year old girl's consent to marriage accepted? What is the message being sent out to people? Are we legitimizing sex with children through the granting of a marriage certificate? Is marriage now going to be used as a method of escaping prosecution for statutory rape in civil courts?

What is the point in having laws and policies on child protection, ratifying the Convention of the Rights of the Child and going on and on about the best interests of the child if we are not going to follow through with legislation or implement the policies meant to protect children?

It is high time that practices and/or beliefs that are harmful to children's well being are challenged. What exactly is stopping us?

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