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LAW AND POPULATION IN SRI LANKA

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I. INTRODUCTION

A. Some Demographic Characteristics of the Population

Sri Lanka, or Ceylon, as the country was known until the enactment of a new Constitution in 1972, is a small island situated in a very strategic position in the Indian Ocean. The total land area of the country is 25,332 square miles. The population of the country in 1971, at the last census, was 12,711,143, the ratio of males per 1000 females being 1055. The present average annual rate of growth is 2.3 percent. The growth of the population has not been constant. Migration, mortality and fertility factors have been responsible at various times for fluctuations in the rate of growth. During the last one and a half decades the Crude Birth Rate has been declining steadily, and in 1971 the rate was 30.1 per thousand. In 1971 women of reproductive age (15-49 years) constituted 23.7 percent of the population. Sri Lanka has a high proportion of young persons, and in 1971 nearly 40 percent of the population was in the age group 0-14 years. About 22.4 percent of the total population lives in urban areas. The population is not evenly distributed over the land area. Nearly 60 percent of the country's population lives in 23 percent of the total land area.

The relative sizes of the different ethnic groups are as follows: Sinhales (low country) are 43 percent (of the total population); Sinhales (Kandyan) 29 percent; Tamil (Ceylon) 11 percent; Tamil (Indian) 9 percent; Muslims 7 percent; and other 0.7 percent.

With regard to religion, 67 percent of the inhabitants are Buddhists; 18 percent are Hindus; 8 percent are Christians; and 7 percent are Muslims.

B. The Population Policy

The policy of the Government of Sri Lanka in regard to population issues may be inferred from certain statements appearing in the 5 Year Plan 1972 to 1976 brought out by the Government. A general statement to the effect that "the continued growth of population at the present high rates will pose problems which would defy every attempt at solution"¹ is supplemented by the identification of a few of the specific problems that have arisen or would arise. It is recognised that "the backlog of unemployment has been steadily increasing, the reason being that the economy has not developed rapidly enough in order to absorb the annual increase in the population of the working age."² Insofar as the investment for development is concerned the plan admits that "the low incomes of the mass of the population reduce the quantum of private savings available, while savings in the government sector are themselves limited on account of the expenditure on education, health, and food subsidies."³ Population growth is a critical variable in determining the future requirements for those public expenditures. An important objective of the plan is to raise the living standards of the low income groups, a task

which is relatively easier to achieve under conditions of slow population growth than high growth.⁴ The diversification of the rural economy to raise the income to a level commensurate with the size of rural population is another important objective whose achievement is clearly facilitated by a slow rate of population growth.⁵ The plan admits that the health and welfare and the significance of family planning as a health measure have not received sufficient attention in the past.⁶ Finally, the plan emphasises that facilities for family planning should be made available to all groups in the population.⁷

C. Scope of the Paper

In the absence of substantial migration, the growth of the population of a country is the result of the cumulative effect of the fertility behaviour and mortality. The fertility behaviour is influenced by a variety of economic, cultural, and social factors, some of which are amenable to change in the direction of supporting any population policy to which a nation commits itself. In this context, among the laws of a country there may be some which encourage and support high fertility, while there may be other laws that work in the opposite direction. A congruence between the national population policy and the laws of the country is greatly to be desired, if the national policy is to come to fruition within a short span of time. The scope of the present paper includes: (1) an examination of the laws of Sri Lanka, in order to identify those that are (and are not) supportive of the national population policy; and (2) an evaluation of the degree of effect which these laws have on family planning behaviour. (The term, "family planning," is used in a very broad sense in this paper.)

II. LAWS AFFECTING THE USE OF FAMILY PLANNING METHODS

A. Abortion

There is evidence that abortion was practiced by some people in Sri Lanka as far back as the 17th century.⁸ The exact incidence of abortion at the present time is unknown.

The law relating to abortion is contained in the Penal Code which was enacted in 1883. The Penal Code is based, by and large, on the Indian Penal Code which was drafted by the Indian Law Commission headed by Lord Macaulay. The provisions on abortion in the two Codes are similar, and even though the Indian Law on abortion has been radically changed since 1971 with the enactment of the Medical Termination of Pregnancy Act⁹, it is very likely that Indian authorities on abortion would continue to be regarded as of persuasive value in interpreting the provisions of the local Penal Code.

Section 303 of the Penal Code provides that "whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman," be punished with imprisonment of either description (simple or rigorous) for a term not exceeding 3 years and/or with a fine. The punishment is severe if the woman happens to be "quick with child." The term, "quick with child," has not been defined in the Code. It has, however, been used in contrast to the term, "woman with child." The former term refers to an advanced stage of pregnancy when there is perception of the movements of the fetus,¹⁰ while the latter term simply means "being pregnant."¹¹ The term, "miscarriage," has been left undefined, but it is usually given its ordinary meaning of the "premature expulsion of the contents of the womb before the term of gestation is complete."¹² The explanation appended to Section 303 states that "a woman who causes herself to miscarry" is within the meaning of this section. The Supreme Court has taken the view that a person can be convicted of the abetment of the offence declared punishable by this section, even if there is no evidence that the woman has in fact been pregnant.¹³

According to Section 304 any person who commits an offence under Section 303 by causing the miscarriage of a woman without her consent, whether she be quick with child or not, is guilty of a more serious offence for which the maximum punishment is imprisonment up to twenty years. While under Section 303 both the person procuring the abortion as well as the woman who causes her to miscarry are liable, under Section 304 it is only the person who procures abortion without consent who is liable.

Section 305 deals with the situation where death of a woman is caused by an act done with intent to cause the miscarriage of the woman. The Indian Penal Code drew a distinction between the acts done with and acts done without the consent, of the woman.¹⁴ But this distinction does not find a place in the local Penal Code. According to the explanation for Section 305 a person is liable under this section, even if he did not know that the act he performed was likely to cause death. Section 305 was exhaustively analysed by the Supreme Court in the leading decision on this subject, R.v. Waidyasekera.¹⁵ The Supreme Court pointed out that since Section 305, unlike Section 304, "contains no pointer to Section 303, nor is there any indication in that Section that the Legislature intended that it should be controlled by Section 303,"¹⁶ that in a charge under Section 305 there is no burden on the prosecution to establish that: (i) the accused did not cause the miscarriage in good faith for the purpose of saving the life of the woman; and (ii) that the accused in fact caused a miscarriage.

Section 306 states that:

Whoever before the birth of any child, does any act with the intention of thereby preventing that child from being born alive, or causing it to die after its birth. . . shall, if such act be not caused in good faith for the purpose of saving the life of the mother be punished with imprisonment of either description for a term which may extend to 10 years, or with fine, or with both.

Section 307 imposes a penalty which is less severe than the penalty prescribed by law for murder (culpable homicide), if the death of a quick unborn child is caused by an act which, though likely to cause the death of a pregnant woman, causes only injury to her. For the purposes of Sections 304, 305, 306 and 307 the term, "act," is deemed to include even an "illegal omission"¹⁷ and a "series of acts"¹⁸ or "series of omissions."¹⁹

The existing statutory provisions on abortion appear to be very stringent, but there has been no agitation whatsoever for the liberalization of these laws. In so far as the upper socio-economic groups are concerned, those who desire to terminate pregnancies apparently find little or no difficulty in doing so. Rajanayagam has observed that:

A woman from this group who is expecting an unwanted child will consult a psychiatrist for severe mental depression combined with suicidal tendencies. The psychiatrist advises termination of pregnancy to save the life of the woman, and she gets this done in a private or Government hospital by a qualified medical practitioner.²⁰

It would thus appear that it is really women from middle or low socio-economic groups who have to get their pregnancies terminated surreptitiously by quacks or by the so called "back-door abortionists." It is pertinent to point out in this connection that in Sri Lanka people from middle or low socio-economic groups have large-sized families, and the need to terminate unwanted or additional pregnancies may be greatest for these people. It is also these people who have the least awareness about contraceptive techniques. Though the exact incidence of criminal abortion is yet unknown, it has been reported that illegal abortions are done in this country "under the most primitive and unhygienic conditions, resulting in high mortality and chronic ill health."²¹ In 1973 the law relating to abortion was studied by a committee of the Medical Legal Society of Sri Lanka. The Committee recommended that the scope of the existing law should be extended to allow abortions for any of the following reasons:

- (a) The prevention of grave injury to the physical and mental health of the pregnant woman;
- (b) The pregnancy resulted from rape or incest;
- (c) There is substantial risk that the child, if born, would suffer from such physical or mental abnormalities as to be seriously handicapped in life.²²

These recommendations were endorsed at the National Seminar on Law and Population in Sri Lanka held in Colombo in January 1974.²³ In July, 1975, in the Final Report of the Committee of the Medical Legal Society of Sri Lanka, the Committee observed that, though the original intention of the Committee was to provide for a limitation of the sort where pregnancy was a result of rape, incest, or carnal knowledge, it may not be tactically wise to introduce a special provision for rape-pregnancies, etc. The Committee has suggested that in so far as Sections 303 and 306 are concerned that after the phrase, "in good faith for the purpose of saving the life of the mother," the following clause should be interpolated: "or for the purpose of preventing substantial injury to the physical or mental health of the woman."²⁴

In December, 1975 at a Seminar on the "Population Problems of Sri Lanka in the Seventies" the view was expressed that a matter which "deserves careful consideration" is the liberalisation of abortion laws to permit abortions to be performed not only to prevent injury to the physical or mental health of a woman but also when a person may desire to terminate her pregnancy for various other reasons including the failure of contraceptives and the difficulty in maintaining more children.²⁵

The Sections relating to abortion in the Penal Code refer to the requirement of "good faith." The Code is silent as to who is entitled to carry out operations even in the limited situations in which it is possible to do so to save the life of the mother. Section 51 of the Penal Code states that "nothing is said to be done or believed in good faith which is done or believed without due care and attention." Consent could be a valid defence unless such consent has been given under a misconception of fact.²⁶ It could be argued that it is only a qualified medical practitioner who is competent to obtain a valid consent for purposes of performing an abortion to save the life of a woman. A "qualified medical practitioner" for this purpose would mean a person who is registered as such under the Medical Ordinance, and this would exclude medical persons who do not have the minimum requirement of being a graduate of the medical faculty of the University of Sri Lanka or another university recognised by the Medical Ordinance.²⁷ Statutes enacted in several countries clearly specify the categories of medical personnel who are entitled to carry out abortions. These statutes sometimes also re-

quire the approval of a second physician or board. It would seem that the Penal Code should be amended to restrict the categories of persons who are entitled to carry out abortions, even in the limited circumstances in which abortion can be performed.

Abortion as a means of regulating population growth has now been widely accepted in several developed and developing countries. The question whether the abortion laws of Sri Lanka should be liberalised and, if so, to what extent appears to be a matter which should be carefully examined by a National Commission representing the different ethnic, religious, and professional groups. In deciding whether or not abortion laws should be liberalised the main consideration should be the demographic consequences that are likely to flow from a liberalisation of the law.

B. Sterilisation

Unlike abortion, sterilisation is accepted with fewer reservations as a means of population control, because sterilisation does not involve the destruction of a fetus.

Under Section 310 of the Penal Code a person who causes bodily pain, disease, or infirmity to any person is said to "cause hurt." A person who does an act with "the intention of thereby causing hurt to any person or with the knowledge that he is likely thereby to cause hurt to any person" and does thereby cause hurt to any person is said "voluntarily to cause hurt."²⁸ The Penal Code has designated seven kinds of hurt as "grievous," and among these are emasculation, privation of any member or joint, and any hurt which endangers life or which causes the sufferer to be, during the space of twenty days, in severe bodily pain or unable to follow his ordinary pursuits.²⁹ Section 313 provides that "whoever voluntarily causes hurt, if the hurt which he intends to cause or knows himself to be likely to cause is grievous hurt, and if the hurt which he causes is grievous hurt, is said voluntarily to cause grievous hurt." The explanation to this Section adds that: "A person is not said voluntarily to cause grievous hurt except when he both causes grievous hurt and intends or knows himself to be likely to cause grievous hurt. But he is said voluntarily to cause grievous hurt, if intending or knowing himself to be likely to cause grievous hurt of one kind, he actually causes grievous hurt of another kind." The use of an "instrument for cutting" to cause hurt or grievous hurt is an aggravating circumstance for which a higher penalty could be imposed.³⁰ It would appear that even a qualified medical practitioner who performs a vasectomy or tubectomy is prima facie liable for the offence of "hurt." As far as liability for grievous hurt is concerned, it would seem that if the operation is done negligently or, due to some complication, the person's life is in danger or the patient is in severe bodily pain or unable to follow his ordinary pursuits for a period of twenty days, the person performing the operation may be guilty of grievous

hurt. Emasculation means the "depriving a person of masculine vigour or castration"³¹ and since the effect of a vasectomy would be only to make the man sterile or to render him incapable of procreating, it is unlikely that a person who performs a vasectomy would become liable for grievous hurt under this heading. There is no privation of any member or joint in either vasectomy or tubectomy. It could, however, be argued that since the powers of procreation would be permanently affected, there is "destruction or permanent impairing of ...[a] member or joint" and that a person who performs a vasectomy, thereby depriving another of the opportunity of using one of his organs (member) for the purpose of procreation, is guilty of grievous hurt.

Consent of the person who complains of hurt is a valid defence under the Penal Code. Section 80 states that:

nothing, which is not intended to cause death or grievous hurt, and which is not known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended by the doer to cause to any person above eighteen years of age, who has given consent, whether express or implied, to suffer that harm, or by return of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of that harm.

But the effect of the consent given would be completely vitiated, if such consent had been given by the person under a misconception of fact and if the person doing the act knew or had reason to believe that the consent was given in consequence of such misconception. Certain acts done in "good faith" for the benefit of a person without consent (due to the impossibility or incapability of giving consent) are not treated as offences.³²

Section 81 states that "nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, to any person for whose benefit it is done in good faith, and who has given consent whether express or implied, to suffer that harm, or to take the risk of that harm." This Section would apply in the case where an operation had been done for the benefit of the patient.

It would appear, therefore, that, except in exceptional circumstances in which it is not possible to do so, it is always desirable to obtain in writing the consent of the person undergoing the sterilisation operation and preferably that of his/her spouse as well.³³ The medical implication involved in undergoing the operation should also be set out in the consent form. The absence of any local case law on sterilisation operations may well indicate that the legality of such operations has

now become firmly well-established, but it is not known whether, and if so to what extent, the absence of any specific statutory sanction authorising such operations to be performed has hindered the success of the sterilisation programme. Perhaps more persons would be prepared to undergo sterilisation operations and more medical personnel would be prepared to participate in such programmes, if there were legislation which specifically permitted sterilisation operations to be performed. Such legislation might also have the advantage of eliminating to a great extent the psychological fears entertained by certain ethnic or religious groups regarding the motives behind administrative attempts to implement sterilisation programmes.

Legislation appears to be necessary to : 1) specify the categories of people who are entitled to undergo sterilisation operations; 2) regulate the circumstances in which and the conditions under which sterilisation operations can and should be performed; 3) restrict the categories of doctors who are permitted to carry out such operations; and 4) provide immunity from civil and criminal liability for doctors who perform duly authorised sterilisation operations.

C. Contraception

The use of oral contraceptives now appears to be one of the most popular methods of fertility control among the new acceptors of family planning. Statistics indicate that among the new acceptors of family planning recruited in 1967, 2.4 percent used oral contraceptives; four years later, in 1971, the number of people using oral contraceptives had increased to 52.4 percent.³⁴ The importation of contraceptives is subject to the normal regulations applicable to imports. The importation of certain drugs could be banned on the recommendation of the National Formulary Committee of the Ministry of Health. Under an agreement entered into by the government some of the contraceptive requirements of the country are now supplied by the Swedish International Development Agency. The manufacturing of drugs locally is permitted. However, certain formalities, such as the approval of the National Formulary Committee of the formulae of the drugs to be manufactured and the approval of the factory where the drugs are to be manufactured,³⁶ have to be complied with.

The purchase and sale of contraceptives are subject to certain legal restrictions. The Control of Prices (Drugs) Order, 1969³⁷ enacted under the provisions of the Control of Price Act,³⁸ applies to the drugs which are listed in the schedules to this Order. The Control of Prices (Drugs) Order mainly deals with the maximum price at which certain drugs can be sold, but there is one regulation which prohibits any importer, trader or pharmacist from selling any drugs listed in Schedule II (oral contraceptives as well as all hormonal preparations are listed under this schedule) "except on the authority of a prescription issued by a medical practitioner registered under the Medical Ordinance."³⁹ The Medical

Ordinance⁴⁰ referred to in this regulation covers the category of medical practitioners who are commonly known as "western medical practitioners," as distinguished from "ayurvedic or indigenous medical practitioners"⁴¹ and "homeopathy practitioners."

The restriction that has been placed on the purchase of contraceptives from traders and pharmacists is primarily aimed at protecting the consumer. Oral contraceptives can be obtained from government hospitals and medical institutions but usually only after a doctor has issued a prescription. Government public health midwives, the grass-roots level workers in maternal and child health programmes, are entitled to supply contraceptives sufficient for a limited period of time. This procedure is not strictly in accordance with the legal requirements, but there are certain safeguards such as the requirement that the person first be examined by a doctor and that later, if referral to a doctor is necessary, no further contraceptives are to be supplied until the doctor gives instructions to that effect. It would appear that in a developing country like Sri Lanka one has to evolve a system of supplying contraceptives that strikes a balance between the possible health hazards involved in the unchecked use of contraceptives on the one hand and the financial implications involved in the requirement of a prescription on the other. (Private practitioners normally charge even a nominal fee before a prescription is given, and certain government hospitals and medical institutions are not easily accessible.) With a greater degree of awareness among consumers of the need to strictly adhere to medical instructions in taking or using contraceptives it should be possible to gradually relax these restrictions and ultimately to permit the purchase of contraceptives from commercial outlets without any restrictions. This type of awareness can be created not only through motivation and education in family planning work but also by introducing programmes on consumer education⁴² or drug abuse preventive education.⁴³

There are no specific legal restrictions on the distribution of literature on contraceptive techniques or on the advertisement of various biological and mechanical contraceptive devices over the mass-media.⁴⁴ The texts of the advertisements have to be worded so as not to infringe the penal laws relating to obscenity. The radio is the most popular channel of communication in this country. The Sri Lanka Broadcasting Corporation, which has the sole monopoly over the radio, has not permitted the advertisement of certain contraceptives over the commercial service, and one of the recommendations made at the National Seminar on Law and Population in Sri Lanka held in January, 1974, was to ask the authorities to change this policy.⁴⁵ The Report of the United Nations Interagency Family Planning Mission to Sri Lanka, after observing that this country "rejoices in a very impressive infrastructure of information,"⁴⁶ emphasised the need to intensify communication activities in relation to family planning work.

III. FAMILY LAW^{46a}

A. Minimum Age of Marriage

Under the Marriage Registration Ordinance No. 19 of 1907, no marriage is valid if the male party has not completed 16 years of age or the female 12 years (or, in the case of daughter of European or Burgher parents, 14 years).⁴⁷ These age limits were fixed almost 7 decades ago, but no attempt has been made to amend the law. The Marriage Registration Ordinance does not apply to those who marry under the Kandyan Law or Muslim Law. A person who is otherwise entitled to marry under a "Personal Law" (Kandyan law or Muslim law) would, however, be subject to these restrictions if such person contracts a marriage under this ordinance.

The Marriage Registration Ordinance requires the consent of the parent or guardian, if any party to the marriage is still a minor (under 21 years of age).⁴⁸ This requirement of consent is, however, dispensed with in the case of widows, widowers, and persons whose marriages have been legally dissolved.⁴⁹ If consent is unreasonably withheld or refused, the court has the power to grant consent to the marriage.⁵⁰

In 1958 the Royal Commission on Marriage and Divorce made a strong case for increasing the minimum marriage ages. The Commission observed that an increase in the minimum age will not only act as a check on maternal mortality but would also have a desirable effect on the birth rate.⁵¹ Taking into consideration the present stage of the development of the country and its economic conditions, the Commission recommended that the minimum ages should be 18 years for males and 16 years for females.⁵² This recommendation, however, has not been implemented yet. As far as the requirement of consent is concerned the Commission thought that this requirement serves as a salutary check on hasty and ill-conceived marriages and recommended that this requirement be retained.⁵³

Under the Kandyan Marriage and Divorce Act No. 44 of 1952 the minimum marriage age is 16 years for males and 12 years for females.⁵⁴ When one party is below the minimum age, such marriage may later become valid when either the parties have cohabited as husband and wife for a period of one year after the one party has attained the lawful age or when a child is born of the marriage, even if this is before the party has attained the lawful age of marriage.⁵⁵ Under the Kandyan Marriage and Divorce Act the consent of the parent or guardian is necessary, if the male is below 18 years and the female is below 16 years.⁵⁶ If such consent is refused, the Court, after inquiry, may grant such consent.⁵⁷ In the absence of a parent or guardian the District Registrar of Marriages may give his consent to the marriage.⁵⁸

The Royal Commission on Marriage and Divorce recommended in 1958 that 18 years for males and 16 years for females should be adopted as the minimum age limit for marriage and that the age of consent should be increased to 21 years.⁵⁹ Since in certain backward areas of the Kandyan provinces

there was still considerable ignorance about the actual ages of children and the legal requirements, the Commission suggested that in these areas the new age limit should not be enforced for a period of 5 years from the date of its report and that a considerable amount of education and propaganda should be undertaken in these areas to explain the ills of early marriage.⁶⁰ No steps have yet been taken to carry out the recommendations of this Commission.

The Muslim Marriage and Divorce Act No. 13 of 1951⁶¹ does not contain any reference to a minimum age of marriage for Muslim males and females, but the ordinance has prohibited the registration of Muslim marriages of females under 12 years of age, unless the consent of Quazi has been obtained.⁶² The non-registration of Muslim marriages has been made an offence under the ordinance.⁶³ But non-registration does not affect the validity of a marriage which is otherwise valid according to the Muslim law governing the sect to which the parties to such marriage belong.

There are certain principles and practices of the Muslim law which have a direct bearing on the age of marriage. According to the Report of the Royal Commission on Marriage and Divorce a Muslim under the age of puberty (presumed to be age 15), must obtain the consent of a parent or guardian in order to marry. After puberty a male Muslim may contract a marriage without consent, if he does so voluntarily. Also, after puberty a female of the Hanafi Sect is a Feme Sole and may contract a marriage by appointing her own Wali, i.e., "Guardian for Marriage." Such a female can presumably find a Wali who will give his consent. If a female of the Shaffi Sect was given in marriage before she reached the age of puberty, she may repudiate the marriage on attainment of puberty by establishing that her Wali acted contrary to her interest. An adult Siyeeba, i.e., a non-virgin, of the Shaffi Sect, like an adult Hanafi female, cannot be married against her will.⁶⁴

Under Section 363 of the Penal Code a husband commits the offence of rape, if he has sexual intercourse with his wife who is still under the age of 12 years. Section 364 A (1) of the Penal Code makes it an offence to "have or attempt to have carnal intercourse with a girl above the age of 12 years and under the age of 14 years," but Section 364 A (3) provides that "sexual intercourse by a man with his own wife or between a man and a girl who are living together as husband and wife with the consent of the parent(s) or guardian(s) of the girl, shall not be an offence under this Section, if the girl is of or above the age of 12 years."

The Commission on Marriage and Divorce observed in 1958 that:

the infant and maternal mortality rates are particularly high in the Muslim community in Sri Lanka, due largely to early marriages and to the number of pregnancies. A state should prescribe minimum age limits in conformity with its considered population policy. We do not think intelligent Muslim opinion would oppose a rise in age limits which must ultimately be to the benefit not only of the Muslims but to the rest of the community.⁶⁵

The recommendation of the Commission was that the minimum age of marriage in the case of Muslims should be 18 years for males and 16 years for females. As an interim measure, however, it was recommended that for a period of 5 years females between 14 and 16 years of age should be permitted to be married with the consent of the Quazi. In deference to the view of the only Muslim member of the Commission (whose death occurred before the final Report was issued) the Commission recommended that "the wording of the amendment to the Muslim Marriage and Divorce Act should be that no marriage shall be registered where a man is below the age of 18 and where a girl is below the age of 16 years." 66

In making the preceding important recommendations the Royal Commission on Marriage and Divorce examined all the issues involved from a broad perspective, taking cognisance of the social, economic, and demographic implications of such changes. It is unfortunate that no steps have been taken as yet to implement these recommendations.

The average age of marriage has risen considerably over the last few decades, due mainly to economic and social changes. At the beginning of the century, the average age of marriage for males was 24.6 years and 18.3 years for females; some seven decades later, at the census of 1971, these figures had risen to 28.0 years for males and 23.5 for females. But one significant feature in the rise in the average age of marriage is that this trend is peculiar only to those who marry under the General Law and Kandyan Law and not to those who marry under the Muslim Law. In other words, Sinhalese (low-country and Kandyan) and Tamil males and females marry at a later age than Muslims, especially Muslim girls. The following table on the average age of General, Kandyan and Muslim marriages from 1960-1970 displays this difference.

TABLE I

Average Age at Marriage for General,
Kandyan, and Muslim Marriages from 1960-1970

YEAR	GENERAL		KANDYAN		MUSLIM	
	Male	Female	Male	Female	Male	Female
1960	28.3	23.1	27.6	21.5	27.1	18.5
1961	28.8	23.1	27.8	21.7	26.5	18.4
1962	28.0	23.1	27.7	21.8	26.8	18.5
1963	28.8	23.2	29.2	20.0	28.6	19.5
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	31.2	25.1	26.5	18.7
1969*	28.5	23.3	29.6	22.9	26.9	18.6
1970*	28.6	23.4	29.8	23.1	26.8	18.6

*Provisional

In fact, not surprisingly, due to the early marriage of Muslim women the crude birth rate in the country is highest among Muslims. In 1968, for instance, the crude birth rate for Sinhalese was 32.2; for Tamils it was 33.7, and in the case of Ceylon Moors (Muslims) it was as high as 40.9.68 An increase in the legal minimum age of marriage together with greater awareness of the medical, social, and demographic implications of early marriages, it is hoped, would lead to late marriages and to the acceptance of the "small family norm." Though the law permits persons to exercise the right of franchise⁶⁹ and to obtain a driving licence⁷⁰ at the age of 18 years, to have any appreciable demographic impact the minimum age of marriage should be raised to more than 18 years - at least to 21 years for females and 23 years for males.

B. Registration of Marriages

The registration of marriages contracted under the Marriage Registration Ordinance is not compulsory. This has led to the recognition of "customary marriages," where on the basis of habit and repute, it is presumed that there has been a marriage. It is very likely that the recognition of these marriages may have a pro-natalist effect in that without any serious awareness of the consequences of marriage people may live together as husband and wife. If registration and compliance with other formalities were conditions precedent to the validity of all marriages, it is likely that people would become more conscious of the legal obligations they incur by contracting a marriage. Under the general law it is possible to obtain a special marriage licence without observing the otherwise required 12 day waiting period between registration and marriage. The Royal Commission on Marriage and Divorce observed in 1959 that resort to the special licence is so frequent that the value of the present waiting period requirement is largely negated. The Commission thought that since marriage is a serious undertaking and a decision for life, the state should always require some time-lag between the stages of deliberation and final decision to enable all parties concerned, including parents and guardians, if any, to make sure that due regard has been paid to the provisions of the law and the interests of the two parties.⁷¹ The Commission recommended that the law be amended to provide that even the special licence be issued only after a waiting period and that a special fee be charged for such licences. These recommendations, if implemented, are likely to have an effect on hasty and unplanned marriages.

C. The Institution of Dowry

The functional aspect of the dowry system was described in the Tesawalamai Code in the following terms: "It is by this means that most of the girls obtain husbands, since it is not for the girls but for the property that most men marry."⁷² In Sri Lanka a large number of marriages are still arranged by parents. In the case of arranged marriages not infrequently the quantum of the dowry plays an important and often a crucial role in the bargaining process. If a substantial dowry cannot be easily collected and if the bride is not in remunerative

employment, finding a suitable bridegroom will take considerable time. The demographic significance of this is that the dowry institution appears to tend to delay marriage. However, in connection with the International Women's Year it has been recommended that the institution of dowry should be abolished by law.⁷³ This suggestion was conceived purely as a measure to improve the status of women. While no doubt the improvement in the status of women may lower fertility rates, nevertheless, since the dowry system appears to be responsible for some delay in marriage, it also may lower fertility rates.

The dowry institution may disappear, however, without any legal action. Recent changes in the social system and in economic conditions of the people no doubt create problems in collecting dowries, and it is very likely that the dowry system will in time gradually disappear. Moreover, even after the disappearance of the institution of dowry, it is likely that there will be late marriages because of the highly competitive nature of the examinations that have to be completed to obtain higher qualifications and the difficulties in finding employment. However, it is important that legislation should be introduced to raise the minimum age of marriage, especially if the disappearance of the dowry is to be hastened by legislative prohibition.

D. Polygamy

Only those who profess the religion of Islam are entitled to contract marriages of a polygamous nature. It has been judicially recognised that in multi-religious and multi-communal countries the inhabitants domiciled in the country have an inherent right to change their religion and thus their personal law and then contract a valid polygamous marriage notwithstanding an earlier marriage. Following the Privy Council decision in the case of Attorney General v. Reid,⁷⁴ there has been an increase in the number of conversions to Muslim religion by those who had hitherto professed a different religion and married under a law other than the Muslim law.⁷⁵ Studies comparing the fertility in monogamous and polygamous marriages have shown that the polygamous ones were less fertile. Yet, the overall fertility of a polygamous society might be greater by reason of the larger number of women who are married at any one time.⁷⁶ It would thus appear that from demographic as well as eugenic points-of-view polygamous marriages should be prohibited by law.⁷⁷

E. Termination of Marriage and Remarriage

Judicial separation or separation a mensa et thoro (from bed and board) is a remedy available only under the general law and not under the Kandyan law or Muslim law. A decree of separation has only the effect of suspending some of the legal consequences of marriage. Upon application made by the parties the court can set aside a decree of judicial separation. The rationale underlining the remedy of judicial separation

is that it provides an opportunity for the spouses to reconcile if they so desire after a lapse of time. Under the new Administration of Justice (Amendment Law No. 25 of 1974) a significant change has been introduced in the law relating to judicial separation in that after a period of two years from the decree of judicial separation either party can apply for the dissolution of the marriage.⁷⁸ The court can, however, allow such application only if it is satisfied that the spouses have not resumed cohabitation. It would thus appear that the emphasis is on reconciliation. There does not appear to be a valid reason why this partial remedy of judicial separation should not be extended to those who marry under Kandyan or Muslim law. It is relevant to point out in this context that as far as divorce proceedings under the Muslim law and Kandyan law are concerned, an attempt at reconciliation is always made. The introduction of this new concept of judicial separation into these two personal laws would be in the best interest of these two systems of law and would not be repugnant to the basic principles underlining termination of marriage under these personal laws.

The divorce rates appear to be very high among certain groups of people. In 1962 the total divorce rate per 1000 marriages was 35.3. For marriages under the general law it was 18.0. It was 50.3 for Kandyan marriages and 152.4 for Muslim marriages. As far as re-marriage is concerned the percentage is much higher for Muslims and Kandyans than for others.

IV. OTHER LAWS THAT MAY AFFECT POPULATION

A. Compulsory Education

Education is often treated as a panacea for all the ills and evils which confront countries in the Third World and as a means of social mobility. Nevertheless, and although education is free in Sri Lanka, there is a very high student drop-out rate at all levels of education.

Education is still not compulsory in Sri Lanka. As the Royal Commission on Education first pointed out in 1961, regulations have yet to be enacted under the Education Ordinance of 1939 to define the "compulsory school age range."⁸⁰ In an agrarian society like that of Sri Lanka where the "extended family" system is prevalent and where hired labour is an expensive commodity, the very absence of any regulation imposing an obligation on parents to send their children to school is likely to result in children being deliberately kept out of school so that they can assist in agriculture and other domestic work. In recent times an attempt has been made by the Ministry of Education to introduce material on population education into the school curricula. Illiteracy and ignorance are the biggest barriers to the spread of family planning services and the acceptance of the "small family" norm. Also, if children are compelled to remain at school for a longer period, this will result in an increase in the age of marriage. All these considerations are sufficiently strong to warrant the immediate implementation of

measures designed to enact a compulsory minimum limit on the age at which one can terminate schooling and to ensure that it is strictly observed.

B. Social Welfare Laws

1. Introduction

A recent study on population growth and economic development has described this country as a forerunner among the countries of South Asia in the provision of social welfare schemes.

[Sri Lanka's] system of free education and health services and consumer subsidies is unmatched anywhere in the region. Successive governments have shown, over the years, a commendable concern for the welfare of the country's poorer citizens. And yet the provision of so many free services has become a severe strain on the economy as the population has grown so fast and government budgets have been held down by the slow pace of economic growth.⁸¹

2. Food Subsidies

Apart from the free medical and free education schemes that are available, a rice subsidy scheme has been in operation for the last two and a half decades. At present, half a measure of rice per individual per week is given free to non-income taxpayers and at a subsidised rate to taxpayers. In addition to this, another measure of rice per individual per week is given at a subsidised rate to both categories. Infants over the age of one year are entitled to this rice subsidy. After the recent crisis in the price of sugar a scheme was implemented to sell sugar also at a subsidised rate. Due to the shortage of rice and sugar and the exorbitant prices which certain people are prepared to pay for rice and sugar, families from lower socio-economic groups with a large number of children may find it a very profitable venture to sell the rice and sugar which they get at a subsidised rate. To this extent the rice and sugar subsidy schemes appear to have a pro-natalistic effect. The population implications of the regulations enacted under the Food Control Act⁸² that provide for these subsidy schemes are worth examining in detail in a separate research study in the context of factors such as the costs of such schemes, the expansion of rice production, employment strategies and the implementation of new nutrition policies.

3. Social Security

The Report on the Proposal to Introduce Statutory Provisions for Poor Relief in Ceylon highlighted in 1934 the extent to which poverty had become a major and a critical problem in many areas of the country:

The ideal to be aimed at is a state of society in which no Poor Law would be necessary, and until that ideal is attained, what is required is provision for the failure which will discipline and reform the idle and useless members of society and assist the unfortunate to overcome failures and become once again useful citizens.⁸³

The report stressed the urgent need for enacting a statute to provide relief for the poor. In 1936 the Commissioner for Relief of Distress Due to Sickness and Shortage of Food pointed out in his report that the economy of many of the people is such that:

...they are brought very near to starvation point by any small disturbance of their normal equilibrium, such as the death of a man, sickness or unemployment, bad weather conditions, even a small fine in the court, an invasion of their small patch of cultivation by deer, wild boar, an elephant or a neighbor's cattle....⁸⁴

Four years later, in 1940, when the Poor Law Ordinance⁸⁵ was enacted, it was observed that:

...it is at first sight curious that legal provisions founded on the English Poor Law should be enacted in Ceylon just as the English Poor Law is disappearing..., but the explanation is to be found in the rudimentary character of the social services in Ceylon and the simplicity of its economy.⁸⁶

The 1940 Poor Law Ordinance imposed on local authorities a number of duties. Among these were the following: (i) to provide relief for persons who are unable to maintain themselves owing to physical or mental infirmity or incapacity and to provide assistance to orphans and children of poor parents who are unable to provide education facilities and training to the children; (ii) to erect and maintain school building and orphanages; (iii) to establish and maintain institutions for the treatment of poor persons; (iv) to provide relief in cases of sudden and urgent necessity; and (v) to make contributions in aid of any voluntary agencies which appear to render useful aid in the administration of the relief of the poor, of orphans, and the children of the poor. The Poor Law Ordinance also contained provisions regarding the duties of families or of particular persons to relieve and maintain poor persons.

The Poor Law Ordinance was implemented on a limited scale in a few areas. Without the financial inputs necessary for the successful operation of such schemes it is not surprising that it was not an effective piece of social welfare legislation. It was realised as far back as 1947 that "the fewer the other social services, the more important is the poor law" and that even with "a fully developed body of social ser-

vices there will be need for the poor law as a residuary service."⁸⁷

In 1944 a Royal Commission was appointed to inquire into and report upon social services and allied services. The Commission in its report observed that "the social services in this country had developed piecemeal without any coherent plan,"⁸⁸ and in order to help "the ordinary man, woman, and child to face more readily the manifold problems of life,"⁸⁹ the Commission recommended the maintenance or establishment of the following social services, if the necessary financial resources were available: (i) health insurance, unemployment, and national provident fund schemes for all employed persons; (ii) childrens' and orphans' allowance schemes; (iii) old age and pension schemes; (iv) blind persons' pension scheme; (v) unemployment assistance scheme; (vi) a poor law system to be operated as a residuary service.

In Sri Lanka it is not uncommon to find persons belonging to several generations living under the same roof for a considerable period of time. One of the reasons that is given for the existence of this "extended family" system is the absence of adequate and effective social security schemes. If social security schemes are available and if employees and self-employed persons could be assured of a reasonably comfortable income after retirement, the need to have several children as a form of "insurance in old age" would no longer exist.

All public servants who joined government service prior to 1972 were entitled, upon the completion of a certain minimum period of service, to the benefit of a non-contributory pension scheme.⁹⁰ A person with about twenty five or thirty years service would be entitled to receive a pension which is approximately two-thirds of the annual salary for the few years immediately preceding retirement. Pensionable public servants have to contribute to a Widow's and Orphan's Pension Scheme as well.⁹¹ Teachers have a separate pension scheme.⁹² The Public Service Provident Fund Scheme⁹³ covers non-pensionable employees of the Government and all public servants who joined government service in and after 1972. Female employees who are otherwise entitled to receive a pension upon the completion of a certain period of years in service can opt to contribute to the Provident Fund Scheme. Contributions are paid to this scheme by the Government and by the employees at the rate of 7 percent and 5 percent of the salary, respectively. Considering the returns one could get monthly from investing the entirety or a portion of the amount that has accumulated over the years to one's credit in the Fund, the Pension Scheme is definitely more attractive than the Provident Fund Scheme.

The non-availability of the Pension Scheme to new entrants together with the decision to lower the compulsory age of retirement from 60 to 55 years (with the possibility of an extension for a few more years in exceptional circumstances) can be regarded as having the cumulative effect of influencing parents to look upon children as an investment for the future. The decision to abolish the Pension Scheme was motivated by financial

considerations, and the decision to retire public servants at an earlier age was taken in order to secure more employment opportunities for younger people. It is very unlikely that the population implications of these changes were taken cognizance of at the time these changes were implemented. In November, 1975, the Ministry of Finance undertook to restore the Pension Scheme for those who had joined government service in and after 1972.⁹⁴

As far as employees in the private sector and in public corporations are concerned, the law requires the employer as well as the employee to contribute towards the Employees' Provident Fund Scheme.⁹⁵ In the case of a female employee, she can withdraw the amount standing to her credit, if she ceases to be an employee as a consequence of marriage. The Employees' Provident Fund Scheme is administered by the Department of Labour. There are also a number of provident fund and pension schemes administered and maintained by the private sector. In the case of these private schemes the interest rate payable is normally higher.

Policies of life insurance are issued by the Insurance Corporation of Sri Lanka. Annuity schemes on sufficiently attractive terms, however, are not yet in operation.

The report of the interagency team organised by the International Labour Office made a number of recommendations in 1971 regarding social and welfare benefit schemes. After pointing out that "a major weakness of the rice subsidy from a welfare point-of-view is that babies (under 1 year old) are ineligible,"⁹⁶ the report observed that "a free rice ration is, in principle, excellent, if it can be afforded, [but] not if it contributes indirectly to unemployment or to less economic independence."⁹⁷ The report emphasised the need for expanding welfare measures such as: (a) increasing the benefits now given under public assistance and related schemes by at least the amount of the increased cost of rice; (b) expanding the present limited free milk scheme available to pregnant and nursing mothers and pre-school children; and (c) the replacement of the present school meal consisting of two "nutritious" biscuits by a full mid-day rice meal which "would have the additional advantage, we were told by the educational authorities, of increasing the incentive to send children to school, and of making much more educationally effective the last two hours of the teaching day in which children's energies are now somewhat diminished by hunger."⁹⁸ On the question of pensions the report had this to say: "...there would be much to be said for the Provident Fund's paying its pensions monthly, instead of in a lump sum, which is often soon spent. Pensioners would be more likely then to remain out of the labour market."⁹⁹

4. Maternity Benefits

In spite of convincing demographic evidence that generous maternity benefit laws tend to produce prolific mothers, unless there is sufficient motivation for family planning, no attempt has been made in Sri Lanka

to amend the statutes which confer generous maternity benefits. The Maternity Benefits Ordinance,¹⁰⁰ the Medical Benefits Ordinance,¹⁰¹ and the Shop and Office Employees (Regulation of Employment and Remuneration) Act¹⁰² contain a number of statutory provisions designed to enable working women to get maternity benefits for an unlimited number of pregnancies. One of the maternity and other benefits that is available before and after confinement is 6 weeks with full pay. It is interesting to note here that in 1949 an unsuccessful attempt was made in the House of Representatives to pass a resolution requesting the Government to grant all expectant mothers in employment 6 weeks leave with full pay before childbirth and 6 weeks leave with full pay after childbirth.¹⁰³ In seconding this resolution a Member of Parliament pointed out that "the efficiency of a Government can be measured by the importance that is attached by it to the care of the young children."¹⁰⁴

Given the maternity benefits law, and since schemes to provide a no-baby bonus or other incentives as alternatives to the granting of maternity benefits are not yet in operation in Sri Lanka, it is likely that certain employers are reluctant to employ females.¹⁰⁵ It is imperative that certain incentives be introduced to discourage women from utilizing maternity benefits. If a system of incentives or disincentives does not achieve the desired results, an alternative would be to require a female employee to be sterilised after she delivers 2 or 3 births.

5. Child Labour Laws

There are certain restrictions on the employment of children in some types of employment.¹⁰⁶ These laws have the salutary effect of reducing the economic value of children to their parents. But these laws are not strictly enforced in Sri Lanka, and as a result there is a large conglomeration of young boys and girls engaged in various types of employment.

6. Status of Women

One of the measures that has been suggested to encourage low fertility is improving the status of women. In 1931, women of this country were granted the right to vote. This was a significant and noteworthy achievement for more than one reason. No other country in Asia had by then conferred on women the right to vote. In Britain women were granted voting rights only in 1928. What is most surprising is that this was a right which neither the men nor the women of this country had ever seriously agitated for. The granting of voting rights to women therefore came as a very pleasant surprise to the women of this country who were, until that point of time in history, not concerned about political emancipation or equal rights. The real reason which motivated the British Government to grant voting rights to women would be of special interest to demographers and social scientists whose attention in recent times has been focused on the inter-relationship between status of women and population dynamics.

In 1927 a Special Commission with the Earl of Donoughmore as Chairman came to this country to make certain recommendations for constitutional reform. On the question of women's franchise the Commission said that "apart from the familiar arguments in its favour, and the general principle of sex equality, we have been impressed by the high infant mortality in the Island and the need for better housing and the development of child welfare, midwifery and ante-natal services, all providing problems in the solution of which women's interest and help would be of special value."¹⁰⁷ In other words, the Commission did not conceive of the granting of voting rights to women as a measure necessitated exclusively by considerations of sex equality. The Commission thought that this was a measure which would increase women's interest in and contribution to reducing certain health and social problems. It is significant to note that the Commission recognised the need for encouraging women to influence public opinion in the country. While recommending the gradual expansion of the female electorate by imposing at the outset a higher age qualification than that applicable to men, the Commission recommended that "there is much to be said in favour of a procedure which will throw on to the women themselves responsibility for making efforts to influence public opinion in Ceylon in favour of a fuller franchise."¹⁰⁸ The enjoyment of franchise by women culminated in the appointment of a female as a Prime Minister of this country in 1960. This event is regarded as one of the milestones in the progress towards the universal emancipation of women.¹⁰⁹

The Married Women's Property Ordinance,¹¹⁰ which has been quite rightly described as "a landmark in the emancipation of women,"¹¹¹ was enacted in 1923. Women who were governed by the general law became entitled to own property and to enter into contracts, as if they were unmarried, to sue and to be sued in their own names without joining their husbands, to grant loans to their husbands, etc. Women who were subject to the Kandyan Law, Muslim Law and the Tesavalamai were also entitled to enjoy most of these privileges under the various customary laws or the statutory laws applicable to them.¹¹² By comparative standards, women in Sri Lanka were in a very privileged position and had very little cause to complain about discriminatory legislation. There was no doubt that certain statutes did not lay down uniform requirements for males and females as, for example, the prohibition of employing women in certain trades, etc. These statutes, however, were designed to protect women for health, social, and cultural reasons and were never meant to be discriminatory as such.

Studies done in many countries have clearly shown that improving the status of women results in low fertility behaviour among such women. Women in Sri Lanka have gradually come to enjoy equal educational opportunities,¹¹³ equal employment opportunities, and the unrestricted right to socio-economic and political emancipation.¹¹⁴ But notwithstanding these changes in the status of women, no appreciable decline in the fertility rates of women has been recorded. Improvement in the status of women will not have any direct impact on fertility rates, unless the women concerned are aware of the need to regulate the number and spacing of children. A woman must be in a position to freely exchange views with

her husband about planning their family. Unless the necessary attitudinal and behavioural changes take place in women and unless they are in possession of sufficient knowledge and information about methods of family planning, no amount of improvement in their status can lower their fertility. What therefore appears to be a priority is "the formulation of educational strategies designed to provide women with a sound cognitive and attitudinal basis that would contribute to the rational decision-making in so far as family planning matters are concerned."¹¹⁵

7. Public Health and Safety

Some of the explanations that have been given for the high infant and maternal mortality rates in this country are the non-availability of good medical facilities, malnutrition, and ignorance of basic health habits. With the increasing use of more effective drugs, vaccines, and insecticides, infant and maternal mortality rates have been substantially reduced. Statistics indicate that during the two decades since 1944 the mortality after infectious and parasitic diseases declined nearly 75 percent.¹¹⁶ As a result of the social and economic developments that have been taking place in this country, the expectation of life at birth, which in 1920 was 32.7 years for males and 30.7 years for females, had risen to 64.8 for males and 66.9 years for females in 1967.¹¹⁷ Infant mortality rates have also dropped so much that there is no longer a need to have a large number of children to ensure the survival of at least a few. The existing statutory provisions for compulsory vaccination¹¹⁸ and the prevention of contagious or infectious diseases¹¹⁹ are generally satisfactory. On the other hand, however effective the medical services available may be and however stringently the laws may be implemented, the desired results cannot be achieved unless there is a personal commitment on the part of every person concerned to take all precautionary measures to suppress contagious and other diseases.

The Quarantine and Prevention Diseases Ordinance¹²⁰ and the Venereal Diseases Ordinance¹²¹ contain elaborate and stringent provisions on venereal diseases. The Health Department has a separate anti-venereal disease unit. Statistics indicate that venereal diseases are on the increase in this country. It would appear that more attention should be paid to the effective implementation of the legal provisions relating to the identification and treatment of persons suffering from venereal diseases. Since most of those who suffer from venereal diseases are in the young or middle age groups, it appears that legislation should require serological tests, such as Wassermann and Kahn, prior to marriage and and even afterwards periodically.

The Nuisance Ordinance,¹²² the Suburban Dairies and Laundries Ordinance,¹²³ the Municipal Dairies and Laundries Ordinance,¹²⁴ and the Penal Code¹²⁵ contain a number of statutory provisions designed for the protection of public health and public safety.

8. Environmental Protection

Programmes designed to protect the environment by controlling population growth and by regulating the movement of the population have not been formulated as yet. There is definitely an urgent need to discourage excessive urbanisation, which brings in its wake a number of social and economic problems. Legislation promulgated sufficiently in advance could safeguard this country against the environmental degradation that is so often a consequence of industrialisation.

9. Consumer Protection

When compared with the position in some of the countries in Asia and in the Pacific, most of the local statutory provisions designed to protect consumers are sufficient to give a certain degree of protection, though undoubtedly there is a need for enacting more comprehensive and exhaustive legislation on those aspects which are not covered or adequately covered by the existing legislation.¹²⁶ As far as enforcement is concerned, most of the statutory provisions are not enforced on a scale wide enough to have an appreciable impact. Among the factors responsible for this failure are the following: the absence of a co-ordinating mechanism to receive and channel consumer complaints; shortages of technical expertise, manpower and other resources to test products and check on contravention of statutory provisions; absence of minimum standards on the quality of a number of products; shortages of consumer goods resulting in consumers being reluctant to complain about quality or any other defects or deficiencies; and ignorance on the part of consumers about the legal safeguards and legal rights. All these factors have had a cumulative effect. The inclusion of consumer education as a subject in the school curricula and in programmes for out-of-school youth and adults is another matter that requires urgent attention.¹²⁷

10. Land Reform and Public Housing

In recent years as part of the overall development strategy the Government has imposed a ceiling on the amount of land any one individual may own.¹²⁸ Certain land holdings in excess of the ceiling are now being distributed among the landless peasants.

Apart from the legislation dealing with a ceiling on housing,¹²⁹ the State has also initiated a number of housing schemes. A number of countries have successfully made use of legislation as an instrument to keep large families from profiting from their large size by the manner in which the benefits of government land reform and housing programs are distributed.

C. Population Redistribution Schemes

In the 1930s with the establishment of colonisation schemes in

various parts of the country an attempt was made to redistribute the population on a limited scale. In the selection of colonists preference was given to those who had large families and to this extent these schemes had a pro-natalistic impact. In the early years of the colonisation schemes family labour was an asset because hired labour was expensive. But with the passage of time the existence of large families triggered off many problems relating to inheritance. Land had to be divided among several children resulting in fragmentation of land into uneconomic holdings. Some countries have used law to regulate the migration of people from rural to urban areas. In the formulation of a comprehensive national policy for Sri Lanka it is worth focusing attention on the role that law could play.

D. Criminal Laws Relating to Sexual Activity

1. Introduction

In the interest of society there are certain types of conduct which the law should not permit. The types of conduct which the law prohibits through the intervention of the machinery of criminal law are not without certain population implications as well. In so far as criminal offences in relation to females are concerned, it would appear, for example, to permit a person to have sexual intercourse with a female of tender years would not only be detrimental to her health but that the possibility of losing her virginity in a conservative social background would mean that she would have remote chances of getting married. To take another example, pregnancy as a result of rape or illicit sexual intercourse cannot be terminated under certain abortion laws, and this would mean that the woman concerned would have to be saddled throughout her life with an unwanted child. The exact types of conduct which any legal system must or must not prohibit is a matter of policy for the country concerned. Adultery, for instance, which is a criminal offence in India, is not a criminal offence in Sri Lanka.

2. Homosexuality

The exact incidence of homosexuality in this country is not yet known. The Penal Code has made homosexuality a criminal offence. Section 365 A of the Penal Code states that "any male person who, in public or private, commits or is a party to the commission of, or procures or attempts to procure the commission by any male person of any act of gross indecency with another male person, shall be guilty of an offence...."

In so far as the population implications of homosexual laws are concerned it would seem that "the repeal of antihomosexual laws would no doubt affect social attitudes toward homosexuality, thereby reducing the number of heterosexual marriages and births."¹³⁰ The function of criminal

law in relation to social morality is a topic which has generated much controversy in other countries, especially after the Wolfenden Committee issued its Report.¹³¹ This is an area which needs examination in depth in the context of the social, economic, religious, cultural, and demographic factors peculiar to this country.

3. Unnatural Offences

Under the heading "Unnatural Offences" the Penal Code contains the following Section: "Whoever voluntarily, has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment."¹³²

Penetration is sufficient to constitute the carnal intercourse necessary for the offence described in this Section.

4. Prostitution

The exact relationship between fertility and prostitution is not very clear. An imbalance in the number of males and females at the marriageable ages, the postponement of marriages due to unemployment or underemployment, marital or sex problems, and poverty are some of the factors which may affect the incidence of prostitution. These factors regulate both the demand for and supply of prostitutes.

The statutory provisions in Sri Lanka relating to prostitution are found in four different statutes. These provisions can be broadly classified as follows: (a) provisions which make prostitution an offence if done in particular circumstances; (b) provisions relating to the management of brothels and making a livelihood on the earnings of prostitutes; and (c) provisions relating to procurement, encouragement, or solicitation.

With regard to the first of the above categories, the Vagrants Ordinance enacted in 1842 contains provisions imposing penal liabilities on: (i) common prostitutes wandering in the public street or highway or in any place of public resort, and behaving in a riotous or indecent manner;¹³⁴ (ii) persons in or about public places soliciting any person for the purpose of the commission of any act of illicit sexual intercourse or indecency;¹³⁵ (iii) persons found committing any acts of gross indecency or found behaving with gross indecency, in or about any public place;¹³⁶ and (iv) persons found in public enclosures or private enclosures attached to dwelling houses without the permission of the persons in charge thereof, under such circumstances that it is reasonable to infer, unless they are able to explain their presence to the satisfaction of the court, that they are present for immoral purposes.¹³⁷ If the court is satisfied that any girl over the age of sixteen years¹³⁸ with the knowledge of her parent or guardian is "exposed to the risk of seduction or prostitution, or of being unlawfully carnally known, or is living a life of prostitution,"¹³⁹ the court can require the parent or guardian of such girl to

show cause why he should not be ordered to execute a bond for "the exercise of due care and supervision in respect of the girl."

With regard to the second category of statutory provisions, the Brothels Ordinance¹⁴⁰ makes it an offence for any person to "keep or manage or act or assist in the management of a brothel." ¹⁴¹ Tenants, lessees, occupiers, owners, lessors and landlords are also liable if they had knowledge that the premises was used for the purpose of habitual prostitution or as a brothel.¹⁴² The Ordinance appears to have the limited objective of suppressing brothels and does not make prostitution an offence by itself. The Vagrants Ordinance provides sanctions against any male person who is proved to live with or to be habitually in the company of a prostitute or against anyone, male or female, who is proved to have exercised control, direction, or influence over the movements of a prostitute in such a manner as to show that he or she is aiding, abetting, or compelling the prostitution.¹⁴³ Such persons are treated as "incorrigible rogues," and male persons, if convicted, can be whipped.¹⁴⁴

With regard to the last category of statutory provisions, a person who "systematically procures a person for the purpose of illicit or unnatural intercourse"¹⁴⁵ is treated by the Vagrants Ordinance as an "incorrigible rogue." The Children and Young Persons Ordinance¹⁴⁶ makes it an offence for any person having the custody, charge or care of a person who has not attained the age of sixteen years of age¹⁴⁷ to allow such young person to reside in or to frequent a brothel.¹⁴⁸ This Ordinance also makes it an offence¹⁴⁹ for any person having the custody, charge, or care of a young female to cause or encourage the commission of certain offences under the Penal Code¹⁵⁰ against her, such as assault or use of criminal force with intent to outrage her modesty, defilement of girls between twelve and fourteen years, and rape. The Penal Code also defines offences relating to the procurement of females. These provisions cover situations where females are brought into and taken out of the country. The consent of the female to become a common prostitute or an inmate of a brothel would not be a valid defense for an accused person.

In order to decide whether prostitution should be prohibited or legalised (and, if so, subject to what medical and health regulations), one must necessarily take cognizance of certain social, economic and demographic factors. In so far as the demographic factors are concerned, statistics indicate that in recent times there has been an imbalance in the availability of males and females at the marriageable ages. In Sri Lanka a husband is normally about 5 years older than his wife. Table 2 indicates the number of males per 100 females in the age group 5 years younger than the male age group at the time of the 1946, 1953, 1963, and 1971 censuses, respectively. ¹⁵¹

TABLE 2

Male Age Group	Census Year			
	1946	1953	1963	1971
20-29	103.7	116.4	88.3	90.6
25-29	97.9	99.7	85.1	73.4
30-34	91.2	84.5	95.9	77.7
35-39	128.3	124.1	109.2	102.2
40-44	88.0	86.5	83.4	87.1

Table 3 indicates the proportion of men and women who reported never having been married, in each of the last four censuses.¹⁵²

TABLE 3

Age Group	Census Year							
	1946		1953		1963		1971	
	Males	Females	Males	Females	Males	Females	Males	Females
15-19	98.7	75.3	98.7	75.7	99.0	85.0	99.4	89.5
20-24	80.5	29.4	83.5	32.5	84.7	41.3	86.3	53.1
25-29	43.4	11.8	45.4	12.8	50.5	17.1	52.6	24.6
30-34	22.4	6.6	21.7	7.5	26.1	8.3	25.5	10.9
35-39	12.5	4.3	11.8	5.4	13.1	4.8	13.7	5.6
40-44	9.3	4.1	8.7	5.0	10.4	4.3	9.4	4.3
45-49	7.6	3.4	7.6	4.4	7.2	3.9	7.9	3.6

5. Rape and Defilement of Females

The offence of rape¹⁵³ for which the maximum penalty is imprisonment for a term which could extend to twenty years¹⁵⁴ is committed by any person who has sexual intercourse (mere penetration is sufficient) with a woman either: (i) against her will, (ii) without her consent, (iii) with her consent when her consent has been obtained by putting her in fear of death or of hurt, (iv) with her consent when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married, or (v) with or without her consent when she is under twelve years of age. Also, Section 364 A(1) of the Penal Code makes it an offence, punishable with imprisonment up to two years, for a person to have (or attempt to have) carnal intercourse with any girl who is between twelve and fourteen years,¹⁵⁵ but "sexual intercourse by a man with his own wife with

the consent of the parents or guardians of the wife "is not an offence under this Section, if the girl is of or above the age of twelve years.¹⁵⁶ Though this is really an exception to the offence of rape, it would indirectly operate to restrain child marriages as well.

6. Kidnapping and Abduction of Females

Under the Penal Code it is an offence for a person to kidnap or abduct

any woman with intent that she may be compelled, or knowing it to be likely that she will be compelled, to marry any person against her will, or in order that she may be forced or seduced into illicit intercourse, or knowing it to be likely that she will be forced or seduced into illicit intercourse.¹⁵⁷

7. Cohabitation

The Penal Code makes it an offence for any man to cause by deceit any woman who is not lawfully married to him to believe that she is lawfully married to him and to cohabit or have sexual intercourse with him in that belief. ¹⁵⁸ This offence may be also prosecuted as an act of rape. (See part iv in the definition of rape in subsection no. 5 above.)

8. Outraging the Modesty

A person who assaults or uses criminal force against any woman intending to outrage, or knowing it to be likely that he would thereby outrage her modesty, commits an offence under the Penal Code.¹⁵⁹

9. Other Offences

The causing of miscarriages and bigamous marriages are offences under the Penal Code. Incest, though not dealt with in the Penal Code, has been made a penal offence under the different marriage and divorce laws.

V. POPULATION LAW, HUMAN RIGHTS, AND CONSTITUTIONAL SAFEGUARDS

The recognition of law as a means of regulating population growth has brought into focus the question of the extent to which law may limit or take away certain fundamental laws and human rights. The constitutional validity of the laws which have the direct effect of restricting fundamental rights becomes quite controversial, especially in those situations in which the law prescribes compulsory measures for the control of population growth, e.g., compulsory sterilisation laws.

Every state has the sovereign right to determine and promote demographic policies and measures that it considers most suitable for it-

self, without any outside interference. This is a principle about which debate should cease, especially since it has now been affirmed unanimously at the World Population Conference held in Bucharest in 1974. The Constitution of the Republic of Sri Lanka states that in the Republic of Sri Lanka the sovereignty is in the People and is inalienable.¹⁶⁰ The sovereignty of the people is exercised through the National State Assembly, consisting of the elected representatives of the people. The Assembly is the supreme instrument of State Power in the Republic. In its law-making the Assembly exercises the legislative power of the people.

Chapter V of the Constitution of the Republic of Sri Lanka deals with "Principles of State Policy." Among the principles which are to guide the making of laws and the governance of Sri Lanka are the following:¹⁶¹ the full realisation of all rights and freedoms of citizens including group rights; securing full employment for all citizens of working age; the rapid development of the whole country; the distribution of the social product equitably among citizens; and the organisation of society to enable the full flowering of human capacity both individually and collectively in the pursuit of the good life. The State has to endeavour to: (a) ensure social security and welfare;¹⁶² (b) eliminate economic and social privilege, disparity, and exploitation; (c) and ensure equality of opportunity for all citizens. ¹⁶³ The State has "to afford all possible opportunities to the people to participate at every level in national life and in Government including the civil administration and the administration of justice."¹⁶⁴

Chapter VI of the Constitution deals with "Fundamental Rights and Freedoms." Some of the rights and freedoms in the Constitution which have relevance to population law are: (a) all persons are equal before the law and are entitled to equal protection of the law; (b) all citizens have the right to freedom of movement and choice of their residence within Sri Lanka; (c) no citizen shall be discriminated against in employment on the ground of race, religion, caste, or sex (provided that specified posts or classes of posts may be reserved for members of either sex). All the fundamental rights and freedoms enshrined in the Constitution are subject to such restrictions as the law prescribes in the interest of national unity and integrity, national security, national economy, protection of public health and morals, the protection of rights and freedoms of others, or effecting the principles of state policy.

Thus, it would appear that under the Constitution of the Republic of Sri Lanka there are no fundamental rights and freedoms of an absolute character. The rights and freedoms may be curtailed on several grounds. Demographic considerations would be among these grounds.

One of the recommendations made at the National Seminar on Law and

Population in Sri Lanka held in Colombo in January, 1974, was that an "all party legislative committee of the National State Assembly should be set up and that this committee should consider from time to time the population implications of the legislation enacted or to be enacted by the National State Assembly."¹⁶⁵ The Seminar also recommended that "since population and family planning activities had become so crucial in the country, their importance should be recognised by the establishment of a separate portfolio at the cabinet level."¹⁶⁶

VI. CONCLUSION

It appears from the above survey that the laws of Sri Lanka which are likely to have any bearing on population dynamics or family planning were neither drafted nor implemented with the objective of achieving any specific population goals. Some of these laws, like those governing social welfare benefits or maternity benefits, are pro-natalistic in character, but these laws were never designed to augment the population. These laws were designed to achieve certain social welfare goals. It is very unlikely that at the time these laws were drafted any cognizance was taken of the population implications of these laws.

During the past few years an attempt has been made in Sri Lanka to use law reform for implementing social development strategies. Although the dynamic changes that are gradually taking place in the social system as a result of the acceleration of the modernisation process, will sooner or later bring about significant behavioural and attitudinal changes and although some of these changes have population implications, it is unlikely that these implications will be substantial enough to have any appreciable impact on the growth, composition, or distribution of the population. Since a beginning has already been made to resort to law reform to bring about radical socio-economic changes in society and since there is widespread realisation of the effects of the population crisis on the availability of food, employment, housing, education, health facilities, etc., the present climate appears to be very conducive to introducing legislation designed specifically to achieve certain population goals. It is only by understanding and appreciating fully the impact of law on family planning that sufficient interest can be generated in the task of population law reform. The realisation that the population crisis, if it remains unchecked will severely undermine the quality of life and socio-economic development both at the micro-level of the family and at the macro-level of the community or nation, should make every man, woman, and child of this country, irrespective of communal, religious, caste or political differences, support the formulation and implementation of legal measures to curb the population explosion. Sixteen recommendations for such legal measures have been included in the preceding sections of this monograph.

FOOTNOTES

- 1 The Five-Year Plan 1972-1976 (Colombo: Ministry of Planning and Implementation, Government of Ceylon, 1971), p. 21.
- 2 Id., p. 4.
- 3 Id., p. 6.
- 4 Id., p. 16.
- 5 Id., p. 12.
- 6 Id., p. 120.
- 7 Id., p. 121.
- 8 Knox, Robert, An Historical Relation of the Island of Ceylon (1681), cited by Sarkar, N.K. in The Demography of Ceylon (Colombo: Ceylon Government Press, 1957), p. 243.
- 9 Act No. 34 of 1971.
- 10 Ranchhoddas, R. and Thakore, D., The Law of Crimes (Bombay: Bombayhan Reporter Ltd., 22nd ed., 1971), p. 836.
- 11 Id.
- 12 R. v. Waidvasekera 57 N.L.R. 202, 208 (1955).
- 13 R. v. Fernando 27 N.L.R. 181, 183 (1925).
- 14 Section 314.
- 15 57 N.L.R. 202.
- 16 Id., p. 209.
- 17 Section 30.
- 18 Section 31 (1).
- 19 Section 31 (2).
- 20 Rajanayagam, S., "Illegal Termination of Pregnancy," in Proceedings on Law and Population in Sri Lanka, 1974 (Colombo: Law and Population Project, 1974) [hereafter cited as Seminar, 1974].
- 21 Fernando, W.D.L., "Medical Aspects of the Termination of Pregnancy," in Seminar, 1974, note 20 supra.

- 22 Reproduced in the paper by Fernando, W.D.L., in Seminar, 1974, note 20 supra.
- 23 Report of the National Seminar on Law and Population in Sri Lanka, 1974 (Colombo: Law and Population Project, 1974), p. 12.
- 24 Final Report of the Committee of the Medico-Legal Society of Sri Lanka on Recommendations for the Reform of the Law Relating to the Offence of Causing Miscarriage (Colombo, 1975), p. 1.
- 25 Jayasuriya, D.C. "Law as an Instrument of Population Change in Sri Lanka: the Present Status and Possible Reforms," in Proceedings of Seminar on Population Problems of Sri Lanka in the 1970s (Colombo: Demography Unit, University of Sri Lanka, December, 1975).
- 26 Section 83.
- 27 Ordinance No. 26 of 1927 (Cap. 105 of the L.E.C.).
- 28 Section 312.
- 29 Section 311.
- 30 Sections 315 and 317.
- 31 Ranchhoddas and Thakore, note 10 supra, p. 849.
- 32 Section 85.
- 33 At present some doctors obtain the consent in writing on the patient's bed head ticket.
- 34 The Population of Sri Lanka (Colombo: Department of Census and Statistics, Government of Sri Lanka, 1974), p. 16.
- 35 According to the Ceylon Daily News of 15 July 1975, The National Formulary Committee had banned the importation and manufacture of hormonal preparations used for pregnancy tests.
- 36 Factories Ordinance No. 45 of 1942 (Cap. 128 of the L.E.C.).
- 37 Published in Government Gazette No. 14, 1930/11 of 5 November 1970 as subsequently amended.
- 38 Act. No. 29 of 1950 (Cap. 173 of the L.E.C.) as subsequently amended.
- 39 Regulation No. 5.
- 40 Ordinance No. 26 of 1927 (Cap. 105 of the L.E.C.).

- 41 An attempt is now being made to educate ayurvedic medical practitioners about modern methods of family planning.
- 42 See also: Jayasuriya, D.C. "Developing Programmes for Consumer Education," 15 International Consumer 3 (1974).
- 43 See further: Jayasuriya, D.C. "Strategies for Introducing Drug Abuse Preventive Education in Developing Countries," Proceedings of the 31st International Congress on Alcoholism and Drug Dependence, (Geneva: I.C.A.A., 1975); Jayasuriya, D.C. "Some Reflections on Drug Abuse Preventive Education," 42 Medico-Legal Journal 4 (1974).
- 44 See also Jayasuriya, D.C., "Legal Restrictions Relating to Drug Advertisements in Sri Lanka," Population Law Studies Series No. 4 (Colombo: Family Planning Association of Sri Lanka).
- 45 Note 23 supra.
- 46 Report of the Family Planning Evaluation Mission to Ceylon, 1971 (United Nations: Ref. TAO/CEY/14), p. 66.
- 46a Due to space limitations only a few aspects of family law are considered here. See Jayasuriya, D.C., "Some Aspects of Law and Population Dynamics in Sri Lanka," in The Demography of Sri Lanka (Bangkok: ESCAP, 1976) for a more detailed analysis.
- 47 Section 15.
- 48 Section 22 (1).
- 49 Section 22 (1).
- 50 Section 22 (2).
- 51 Report of the Commission on Marriage and Divorce, Sessional Paper XVI of 1959, para. 94, p. 39. (The Commission was appointed in 1956 by the Governor-General to report on reforming marriage and divorce laws.)
- 52 Id.
- 53 Id., para. 96, p. 40.
- 54 Sections 4 and 66.
- 55 Section 4 (2).
- 56 Sections 8 and 66.
- 57 Section 12.

- 58 Section 7 (2).
- 59 Note 51 supra, para. 95, p. 39.
- 60 Id.
- 61 Cap. 115 of the L.E.C.
- 62 Section 23.
- 63 Section 17..
- 64 Note 51 supra, para. 85, p. 34.
- 65 Id., para. 84, p. 34.
- 66 Id., para. 99, p. 40.
- 67 Statistical Bulletin on Vital Statistics (Colombo: Department of Census and Statistics, government of Sri Lanka, 1972), Table VI.
- 68 Id., Table XII.
- 69 Constitution of the Republic of Sri Lanka, Section 66.
- 70 Section 124 (2) of the Motor Traffic Act. No. 18 of 1951 (Cap. 203).
- 71 Note 51 supra, para. 337, p. 144.
- 72 Section 5 of the Tesawalamai Regulations (Cap. 63 of the L.E.C.).
- 73 Ceylon Daily News of 7 August 1975.
- 74 67 N.L.R. 75 (1974).
- 75 The Report of the Marriage Law Committee of the Muslim Law Research Committee on the Muslim Marriage and Divorce Act (Colombo, 1974), para. 4:2, p. 9.
- 76 Lee, L., "Law and Family Planning," 2 Studies in Family Planning 81, 92 (1971).
- 77 Konotey-Ahulu, F.I.D., Medical Considerations for Legalizing Voluntary Sterilization, Law and Population Monograph Series No. 13 (Medford, Mass.: Law and Population Programme, Tufts University, 1973).
- 78 Section 627 (2).
- 79 Goonesekera, R.K.W., "Marriage and Divorce Laws of Sri Lanka," in Seminar, 1974, note 20 supra.

- 80 Interim Report of the National Education Commission, Sessional Paper No. 1 of 1962, para. 6, p. 4 (The Commission was appointed in 1961 by the Governor-General to report on educational planning in Sri Lanka. The more significant recommendations contained in the interim and final reports are discussed in Jayasuriya, J.E., Education in Ceylon before and after Independence, (1939-1968) (Colombo: Associated Educational Publishers, 1969).
- 81 Jones, G. and Selvaratnam, S., Population Growth and Economic Development in Ceylon (Colombo: Hansa Publishers, 1972), p. 1.
- 82 Act No. 25 of 1950 (Cap. No. 171 of the L.E.C.).
- 83 Sessional Paper No. 20 of 1934, para. 168, p. 107.
- 84 Sessional Paper No. 5 of 1936.
- 85 Ordinance No. 30 of 1939 (Cap. 141 of L.E.C.).
- 86 Report of the Commission on Social Service, Sessional Paper 7 of 1947 para. 55, p. 23. (The commission was appointed by the Governor in 1944.)
- 87 Id., para. 69, p. 28.
- 88 Id., p. viii.
- 89 Id., para. 280, p. 113.
- 90 The Minutes on Pensions contain the rules applicable to pensions.
- 91 Ordinance No. 1 of 1898 (Cap. 431 of the L.E.C.).
- 92 Act No. 44 of 1953 (Cap. 433 of the L.E.C.).
- 93 Ordinance No. 18 of 1942 (Cap. 434 of the L.E.C.).
- 94 Ceylon Daily News, 6 November 1975.
- 95 Act. No. 15 of 1958.
- 96 Matching Employment Opportunities and Expectations (Report of the United Nations Inter-Agency Mission to Ceylon, 1971).
- 97 Id., para. 726, p. 212.
- 98 Id., para. 721, p. 211.
- 99 Id., para. 725, p. 212.

- 100 Ordinance No. 32 of 1939 (Cap. 140 of the L.E.C.).
- 101 Ordinance No. 9 of 1912 (Cap. 226 of the L.E.C.).
- 102 Ordinance No. 19 of 1954 (Cap. 129 of the L.E .C.).
- 103 Hansard (House of Representatives) of 30 March 1949, col. 2136.
- 104 Id., col. 2137.
- 105 Matching Employment Opportunities and Expectations (Technical papers produced by the United Nations Inter-Agency Mission to Ceylon, 1971), p. 82.
- 106 The Employment of Women, Young Persons and Children Act No. 47 of 1956; The Shop and Office Employees (Regulation of Employment and Remuneration) Act. No. 19 of 1954; The Factories Ordinance No. 45 of 1942; The Employment of Females in Mines Ordinance No. 13 of 1937.
- 107 Report of the Special Commission on the Constitution (London, 1928), (Cmd. 3131), p. 3.
- 108 Id., p. 65.
- 109 Courier, March, 1975, p. 9.
- 110 Ordinance No. 18 of 1923 (Cap. 56 of the L.E.C.).
- 111 Tambiah, H.W., Principles of Ceylon Law (Colombo: H.W. Cave & Co. Ltd., 1972), p. 239.
- 112 See also Weeramantry, C.G., The Law of Contracts, Vol. I (Colombo: published by the author), pp. 475-488.
- 113 See also Jayasuriya, D.C., "The Population Implications of the Laws and Regulations Pertaining to Education in Sri Lanka," in Seminar, 1974, note 20 supra.
- 114 See also Dissanayake, Shathi, "Population Growth and Status of Woman," in The Population of Sri Lanka (Bangkok: ESCAP, in press); Goonesekera, Savithri, "Legal Status of Women and the Institution of Family," in Seminar, 1974, note 20 supra.
- 115 Jayasuriya, D.C., "Beyond Family Planning," in Seminar on Woman, Home, and the Community (Colombo: Family Planning Association of Sri Lanka, October, 1975).
- 116 Note 34 supra, p. 29.

- 117 Id., p. 28.
- 118 Vaccination Ordinance No. 20 of 1886 (Cap. 229 of the L.E.C.).
- 119 Contagious Diseases Ordinance No. 8 of 1866 (Cap. 223 of the L.E.C.); Quarantine and Prevention of Diseases, Ordinance No. 3 of 1897 (Cap. 222 of the L.E.C.); Diseases among Labourers Ordinance No. 10 of 1912 (Cap. 225 of the L.E.C.); Medical Wants Ordinance No. 9 of 1912 (Cap. 226 of the L.E.C.).
- 120 Ordinance No. 3 of 1897 (Cap. 222 of the L.E.C.).
- 121 Ordinance No. 27 of 1938 (Cap. 224 of the L.E.C.) and in the Venereal Diseases Regulations, 1943 (reproduced in Subsidiary Legislation of Ceylon, Vol. 4, pp. 796-800).
- 122 Ordinance No. 15 of 1862 (Cap. 230 of the L.E.C.).
- 123 Ordinance No. 38 of 1908 (Cap. 233 of the L.E.C.).
- 124 Ordinance No. 1 of 1896 (Cap. 234 of the L.E.C.).
- 125 Chapter XIV of the Penal Code.
- 126 Jayasuriya, D.C. "Consumer Protection Legislation in Sri Lanka," 1976 Asia/Pacific Consumer 10 (1976).
- 127 Note 42 supra.
- 128 Land Reform Law No. 1 of 1972.
- 129 Ceiling on Housing Property Law No. 1 of 1973. Two other important statutes are the Abolition of Fideicommissa and Entails Act No. 20 of 1972 and the Rent Act No. 7 of 1972. The Ceiling on Housing Property Law sought to regulate the ownership, the size, and cost of houses. The law stipulates that the maximum number of houses which may be owned by an individual who is a member of a family shall be such number of houses which together with the number of houses owned by the other members family is equivalent to the number of dependent children, if any, in that family, increased by two (section 2(1)). The maximum number of houses which may be owned by an individual who is not a member of a family is two (section 2(2)). Under this law a house cannot be constructed to exceed 2000 square feet in floor area inclusive of the thickness of the external walls (section 40). The law had the effect of depriving a large number of people of some of their houses. Houses which were not sold to tenants or to others within a particular period, vested in the Commissioner of National Housing. According to the preamble of the Abolition of Fideicommissa and En-

tails Act the purposes of this Act were: "to abolish fideicommissa, entails, settlements and restraints on alienation; to regulate and provide for title to property now subject to fideicommissa, entails, settlements and restraints; to limit the creation or operation of interests in remainder or reversion."

- 130 Lee, note 76 supra.
- 131 Report on Prostitution and Homosexuality (London; 1957), (Report of a Royal Commission, Cmnd. 247).
- 132 Section 365.
- 133 Ordinance No. 4 of 1841 (Cap. 32 of the L.E.C.).
- 134 Section 3 (1) (b).
- 135 Section 7 (1) (a).
- 136 Section 7 (1) (b).
- 137 Section 7 (1) (c).
- 138 Section 25 (a).
- 139 Section 12 (1).
- 140 Ordinance No. 5 of 1889 (Cap. 31 of the L.E.C.).
- 141 Section 2 (a).
- 142 Sections 2 (b) and 2 (c).
- 143 Section 9 (2).
- 144 Section 9 (ii).
- 145 Section 9 (1) (b).
- 146 Ordinance No. 48 of 1939 (Cap. 23 of the L.E.C.).
- 147 Section 88.
- 148 Section 73.
- 149 Section 72 (1).
- 150 Sections such as 345, 360 A, 364.

- 151 Note 34 supra.
- 152 Id., pp. 12 and 13.
- 153 Section 363 of the Penal Code.
- 154 Section 364.
- 155 Section 364 A (2).
- 156 Section 364 A (3).
- 157 Section 357.
- 158 Section 362 A.
- 159 Section 345.
- 160 Section 3.
- 161 Section 16.
- 162 Section 16 (8).
- 163 Section 16 (5).
- 164 Report of the Seminar on Law and Population in Sri Lanka, 1974
(Colombo: Law and Population Project, 1974), p.18.
- 165 Id., p. 19.

BIBLIOGRAPHY OF PUBLICATIONS
ON THE POPULATION LAW OF SRI LANKA

- Dissanayake, Shanthi, "Status of Women and Population Growth in Sri Lanka," in The Demography of Sri Lanka (Bangkok: E.S.C.A.P., in press).
- Farouque, S.H.M.X., "The Civil Registration Laws of Sri Lanka," in Proceedings of the Seminar on Law and Population in Sri Lanka, 1974 (Colombo: Law and Population Project, 1974) [hereafter cited as Seminar, 1974].
- Fernando, W.D.L., "Medico-Legal Aspects of Termination of Pregnancy," in Seminar, 1974.*
- Goonsekere, R.K.W., "Marriage and Divorce Laws of Sri Lanka," in Seminar, 1974.*
- "Laws Relating to National Development and their Effect on Population," in Seminar, 1974.*
- Goonsekere, Savitri, "Status of Women and the Limitation of Family," in Seminar, 1974.*
- Herat, S.Y.S.B., "Laws and Regulations Relating to Health that Affect Population Growth," in Seminar, 1974.*
- Jayasuriya, D.C., "Population Implications of Laws and Regulations Pertaining to Education," in Seminar, 1974.*
- "Population Implications of Citizenship, Immigration and Emigration Laws," in Seminar, 1974.* (An expanded version of this paper has appeared in 12 Ceylon Law Society Journal 14-22 (1974).
- "The Inclusion of Population Education in the Law School Curriculum," Population Law Studies Series No. 1 (Colombo: Family Planning Association of Sri Lanka).
- "Some Aspects of Law and Population Dynamics in Sri Lanka," in The Demography of Sri Lanka (Bangkok: E.S.C.A.P., in press).

*Proceedings of the Seminar on Law and Population in Sri Lanka, 1974 (Colombo: Law and Population Project, 1974).

- Jayasuriya, D.C., "Law and Its Bearing on Population Policies and Population Dynamics," Future, vol. 3(1) (1976).
- "Law as an Instrument of Population Change in Sri Lanka: The Present Status and Possible Reforms," in Seminar on the Population Problems of Sri Lanka in the Seventies (Demographic Training and Research Unit of the University of Sri Lanka; Sri Lanka Foundation -- United Nations Fund for Population Activities, 1975).
- "Some Guide-lines for the Teaching of a Course on Comparative Family Law with Special Reference to Population Implications," Population Law Studies Series No. 3 (Colombo: Family Planning Association of Sri Lanka).
- "Beyond Family Planning," Seminar on Woman, Home and the Community (Colombo, 1975).
- "Legal Restrictions Relating to Drug Advertisements in Sri Lanka," Population Law Studies Series No. 5 (Colombo: Family Planning Association of Sri Lanka).
- "Population Law : Its Genesis, Scope and Content," Population Law Studies Series No. 2 (Colombo: Family Planning Association of Sri Lanka).
- Rajakaruna, L.B., "Census and Demographic Law in Sri Lanka," in Seminar, 1974.*
- Rajanayagam, S., "Illegal Termination of Pregnancy," in Seminar, 1974.*
- "Medical Aspects of Sterilisation and Contraception," in Seminar, 1974.*
- Ratnasabapathy, V., "Laws Relating to Pension Rights, Retirement Benefits and Gratuities, Provident Fund and Life Insurance," in Seminar, 1974.*

*Proceedings of the Seminar on Law and Population in Sri Lanka, 1974 (Colombo : Law and Population Project, 1974).

Weerasooria, Wickrema,

"Taxation Laws and their Population Implications," in Seminar, 1974.*

"Law and Population: A Legal Approach to the Population Problem of Sri Lanka," in Seminar, 1974.*

"Labour and Welfare Laws and Their Bearing on Population," in Seminar, 1974.*

"Legal Aspects Relating to Advertisement of Drugs that Can Cause Abortions," in Seminar, 1974.*

"Law as an Instrument of Population Control," in Seminar, 1974.*

"Country Report on Population Law: Sri Lanka," paper prepared for the Southeast Asia Seminar on Law and Population (Jakarta, 1975).

"Population and Law," National Management Seminar on Population and Family Planning (1972).

Law and Population Project Papers:

Monograph on Law and Population in Sri Lanka (earlier draft of this monograph).

Report of the National Seminar on Law and Population in Sri Lanka, 1974.

"Legal Position Relating to Sterilisation in Ceylon."

"Offences Relating to Family Planning and Population Law."

"The Law Relating to Prostitution in Ceylon."

"The Law Relating to Venereal Diseases in Sri Lanka."

*Proceedings of the Seminar on Law and Population in Sri Lanka, 1974
(Colombo: Law and Population Project, 1974).