

A Legal Obligation to Report Child Sexual Abuse? - A Review of National and International Standards

N Mendis

Faculty of Law, University of Colombo, Colombo 3, Sri Lanka
nisharasdocs@gmail.com

Abstract Several revelations on child sexual abuse that shocked the public and gained media attention worldwide in recent years have highlighted an extremely serious social and legal issue. The scale of predatory paedophilia committed by certain persons in institutions such as the Catholic Church, BBC (Jimmy Savile) and Pennsylvania State University (Jerry Sandusky) have raised issues that go beyond criminal liability of individual perpetrators. Questions have been raised about the responsibility of the Vatican and other institutions, regarding long term failure to report such suspected criminal activities to child protection and law enforcement authorities. Criminal activities in these kinds of situations were often conducted on institution premises itself and at times with knowledge of persons in positions of authority, who nevertheless decided to deny protection to the child in favour of maintaining the institutional image, thereby protecting perpetrators from criminal investigation. The failure of such persons to act according to their conscience or moral responsibility to protect children from further rape and sexual abuse and to support their access to justice by reporting such abuse when brought to their attention, means we need to ask whether such duty should be made mandatory by law and failure to do so a punishable offence. This research analyses Sri Lankan law (including Penal Code Amendment Act no.16 of 2006) with a comparative study of legislation and policy in different jurisdictions with regard to civil or criminal liability for omission to report child rape or sexual abuse. International standards set by the Child Rights Convention and the recommendations of the Child Rights Committee in this regard (in particular CRC/C/VAT/CO/2 of 31st January 2014), will be critically analysed. Objectives of the research are to ascertain whether the legal system ought to protect the best interests of vulnerable children by placing a legal duty to report such abuse. Findings indicate an emerging responsibility upon States to establish clear rules, mechanisms and procedures for mandatory reporting of all suspected cases of child sexual abuse and exploitation to law enforcement authorities. This has been both a domestic response and part of international standard-setting.

Keywords Reporting Child Sexual Abuse, Omission, Civil and/or Criminal Liability

INTRODUCTION AND METHODOLOGY

It is a tragic feature of human society that child sexual abuse occurs far too often as a feature of family and social life. Today, as the unjust social stigma against the innocent victims of child sexual abuse is lessening, legal procedures are becoming more protective of victims and the social condemnation is shifting more towards punishing the criminality of the actual (or alleged) perpetrators of the criminal acts, we are witnessing more and more revelations of child sexual abuse in daily life and in the media. The unjust social stigma and the mental trauma of initiating and going through legal proceedings usually prevents child victims from revealing the abuse they are/were suffering (Herman, 2003) and it sometimes discourages even caring adults from reporting incidents for fear of causing post-crime victimisation (also referred to as 'secondary victimisation' or 'double victimisation') of the child. This paper does not focus on the admittedly very real problems of negative societal, law enforcement and judicial attitudes which re-victimise a child in need of special protection. While much more progress must be made for more compassionate and civilized social attitudes and legal processes in the situation of sexually abused children, there are a few welcome developments occurring in this area (see e.g. the use of video evidence in the case of child abuse cases to prevent further traumatization of child witnesses - S. 163(A) of the Evidence Ordinance (Amendment) Act No. 32 of 1990).

However, this paper focuses on another area which must be developed parallel with actions to change attitudes and legal procedure: the issue of the responsibility of reporting suspected abuse as a legal obligation, especially when the criminal acts take place on the premises of an institution which employs the alleged perpetrator and thus (sometimes inadvertently) also provides him with opportunity to carry out criminal acts.

This research is an analysis of legal standards in international conventions and domestic legislation. Sri Lankan law - mainly focusing on the Penal Code

Amendment Act no.16 of 2006 – will be compared with legislation and policy in other jurisdictions with regard to civil or criminal liability for the omission to report child rape or sexual abuse. The international standards (the Child Rights Convention and the recommendations of the Child Rights Committee in this regard, in particular CRC/C/VAT/CO/2 of 31st January 2014), will be critically analysed. The objectives of the research are to ascertain to what extent international and domestic law have identified that the legal system ought to protect the best interests of vulnerable children by placing a legal duty to report such abuse.

III. THE JUSTIFICATION FOR MANDATORY REPORTING

Society and the criminal justice system are both so flawed that reporting may not lead to justice for the victims and prevention of child sexual abuse through deterrence (refraining from the criminal acts due to fear of legal consequences) or punishment (long term imprisonment of perpetrators). However, the lack of reporting will definitely allow for abusers to continue harming the victim and other victims in the future as well. This is obvious, and has been proven in recent incidents relating to Jimmy Savile and Jerry Sandusky.

Savile was a celebrity media personality (BBC presenter) and philanthropist who used his influential position, place of employment and access to charitable institutions to act as a sexual predator for several decades. A majority of his victims were under the age of 18, some identified victims were very small children at the time. After his death at the age of 85, new investigations were initiated as a result of a television programme on his alleged activities. The Metropolitan Police Child Abuse Investigation Command created 'Operation Yewtree' (currently 30 detectives) to investigate Savile and similar cases that had been ignored or covered up. Approximately 600 persons have come forward so far, 450 of the allegations concern Savile (Grey and Watt, 2013). As noted by the joint report on the Savile Investigation:

Central to the many questions being posed by both his victims and others are why did it happen and why was it not noticed and stopped by police, health, education or social services professionals, people at the BBC or other media, parents or carers, politicians or even 'society in general'?

(Grey and Watt, 2013)

It appears that as the police and internal investigations and reports are being completed, victims may take civil action against the institutions where his abuse occurred.

There is also a question whether further laws are needed with regard to responding to sexual abuse (See UK Parliament, Commons Select Committee, 2012)

Jerry Sandusky was a former assistant football coach at Pennsylvania State University (usually referred to as Penn State). He was indicted by a Grand Jury for 52 counts against 10 young boys and in 2012 he was found guilty of 45 charges of sexual abuse and sentenced to a minimum of 30 years. His abuse had gone on for four decades, often happening on the premises of the University, but this child abuse and rape was ignored or covered up by his employers, perhaps due to wanting to maintain the national prestige of the Penn State football programme. This included the incident in which coaching assistant Mike McQueary witnessed the rape of a 10 year old child by Sandusky on the University premises in 2001 and reported it to Head Coach Joe Paterno (Grand Jury, Sandusky, 2001, p6; Klein and Tolson, 2015, p479). The allegations were finally proven in a court of law, which created the possibility of criminal charges and civil suits against his employers. Former Penn State President Graham Spanier and other officials (Vice president Gary Schultz and athletic director Tim Curley – Head football coach Joe Paterno died in 2012) are still awaiting trial on charges of empowering Sandusky's abuse by covering it up once they became aware of it and lying to investigators (Thompson, 2015; Freeh Report, 2012). By 2013 Penn State had paid a total of \$59.7 million in out-of-court settlements to 26 men who claimed that they were abused by Sandusky. As of April 2015, Penn State trustees agreed to settle with remaining uncompensated victims (Thompson, 2015).

The child abuse scandals that have rocked the Catholic Church from the Parish to Diocesan to Vatican levels are common knowledge and particular examples are not necessary. There have been criminal and civil outcomes in different jurisdictions in some cases of abuse. This paper will look at the Vatican response to its international responsibilities, particularly in the case of failure in reporting child abuse to the proper investigative authorities (the police) and thereby permitting abusive or rapist clergymen to continue their activities for decades.

III. LEGAL STANDARDS RELATING TO OMISSIONS

In all three types of situations abovementioned, the institution/employer not only (inadvertently) provided the opportunity and premises for the criminal act, but also failed to or decided not to inform the police once they became aware of the rape and sexual abuse and thereby failed to protect the victims. This is clearly a terrible moral failure – what kind of people can decide to protect a (serial) child rapist at the expense of the

innocence of children? How can they protect serial child rapist with the idea that their actions protect institutional honour and reputation? When voluntary standards of morality and conscience fail to compel the desired behaviour in society, legal consequences may compel persons to take action. Criminal or Civil liability for failure to report child abuse is thus required when society recognises its own tragic failure of moral action.

The *actus reus* and *mens rea* of criminal law is usually applied in the context of intentional or reckless or negligent wrongful actions. However, criminal law can also punish *omissions*— or failure to act when the law imposes a duty to act, thus causing harm. This duty can be imposed by statute, by contract or common law standards such as legal relationship (parents) or voluntary responsibility (to look after a vulnerable person e.g. *R v. Stone and Dobinson* 1977 2 All E.R 341). There is also a common law standard for ‘duty arising from commission of a fault’ – when a person creates an unlawful situation without *mens rea* but then recklessly fails to seek assistance to stop further damage. This liability has been described By Lord Diplock in the following manner:

I see no rational ground for excluding from conduct capable of giving rise to criminal liability, conduct which consists of failing to take measures that lie within one's power to counteract a danger that one has oneself created, if at the time of such conduct one's state of mind is such as constitutes a necessary ingredient of the offence (Lord Diplock in *R v Miller* 1983 2 AC 161, emphasis added).

In the above case, a vagrant was convicted of arson, although he did not intentionally light a fire but failed to put out a fire which he knew was caused accidentally by lit cigarette he had dropped.

Laws which impose liability for omissions are sometimes referred to as ‘Bad Samaritan Laws’ (See further, Herring, 2014, p109) and are described as part of a “communitarian social philosophy” of individual-social relationships and social responsibility (Ashworth, 1989, p431). This is a reference to the Bible New Testament parable of the ‘Good Samaritan’ - the person who helps another who is in need, compared with those who walked past without helping (The Holy Bible, Luke 11:30-37). It is significant that the ‘Good Samaritan’ parable was a reply by Jesus to the ‘lawyer’ who asks him ‘but who is my neighbour’ in response to Jesus’ statement that we must love our neighbour as we love ourselves.

There are both defenders and opponents of ‘Good Samaritan’ / ‘Bad Samaritan’ laws: both would agree that

there is a moral duty but the opponents argue that society should not legislate such a duty (Kleinig, 1986).

The legal scholars who argue against this standard being imposed as a legal responsibility, mainly do so because it is difficult to prove *mens rea* for an omission (not doing something) than actually doing something wrongful - but also because it perhaps ought to remain merely an issue of social condemnation or individual conscience and autonomy (See Dressler, 2000, 981-9). It is true that the extent to which a society would support the imposition of legal duty and punishment is based on the seriousness in which it views the alleged wrongdoing as something which should be punished. That is exactly why it is necessary to look at whether ‘turning a blind eye’ to child sexual abuse ought to be punishable by law instead of merely left to public/societal or individual conscience.

Failing to adhere to the moral commandment of ‘love thy neighbour’ can result in civil as well as criminal liability. This part of the parable was famously quoted by Lord Atkin in *Donoghue v Stevenson* (1932 AC 562) in what later became known as the ‘neighbour test’ in Scottish Law of Delict and English Tort law:

You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then, in law, is my neighbour? The answer seems to be – persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question [emphasis added].

In the case of reporting/failure to report child sexual abuse, it is clear that the child/children would be directly affected in that the abuse would continue if the abuser is not stopped and other children could become new victims. To what extent should the law allow a person to walk away without criminal or civil liability for such a moral failure? – this is the question that each legal jurisdiction needs to answer.

IV. SRI LANKAN LEGAL STANDARDS

Sri Lanka being a mixed legal system is nourished by both Delict and English Tort law. The duty of care is well-established in our law and could be the basis of claims in cases of failure to report child abuse. It may not apply as a duty to complete strangers/passers-by as it is in the Bible story, since it is usually interpreted restrictively in the legal context. However, it will cover any persons who

can be seen as owing a duty of care with regard to an abused child. Persons in charge of institutions for children (orphanages, schools) could easily fall within this category. The question is whether all citizens should have such a duty towards all children and whether liability for failing should be according to delict or criminal law.

In 2006, an Amendment to the Sri Lankan Penal Code inserted two new sections into the principal Enactment: Sections 286B and 286C. These sections create the following legal duties:

- "Duty of person providing service by computer to Prevent sexual abuse of a child".
- "Duty to inform of use of premises for child abuse".

In light of this new development - this paper will assess where the Sri Lankan law is positioned in terms of international standards on child rights and developments in other jurisdictions.

The standards of the Sri Lankan Penal Code are as follows. With regard to use of computers, Section 286B(1) states that a person who provides such a service "shall take all such steps as are necessary to ensure" that the facility is not used for the sexual abuse of a child. In a practical sense could mean actions such as blocking content relating to child pornography or tracking employee computer use to prevent transmission of such material. This anti-child pornography intent of Section 286B of the Sri Lankan Penal Code appears to be connected with the State obligation in Article 34(c) of the International Convention on the Rights of the Child (CRC, 1989), since it states as follows:

State parties undertake to ... take all appropriate national, bilateral and multilateral measures to prevent: ...

(c) The exploitative use of children in pornographic performances and materials.

This is a part of Article 34 of the CRC, which sets out ...the state responsibility for protecting children from unlawful sexual activity, sexual coercion or exploitation, prostitution or child pornography.

The "person who provides a service by means of computer" (inserted Section 286B of the Penal Code) needs further clarification, since it is individual criminal responsibility and not institutional delictual responsibility which is being referred to. The standard of responsibility is very high for failure to take all necessary steps for prevention of sexual abuse of a child and the *mens rea* is unclear under 286B(1). It is clearer for failure to report in 286B(2), since liability arises for if such a person as above mentioned

"has knowledge" of a computer being used for the commission of "an act

constituting an offence relating to the sexual abuse of a child",
[emphasis added]

according to Section 286B(2), he/she

"...shall forthwith inform the officer in charge of the nearest police station of such fact and give such information as may be in his possession with regard to such act and the identity of the alleged offender."

According to 286B(3), the punishment for contravening subsections (1) or (2) above mentioned could be imprisonment (either simple or rigorous) not exceeding two years or to a fine or both. The same punishment applies for any person who contravenes Section 286C.

Section 286C(1) relates to

"any person who, having the charge, care, control or possession of any premises..."

The standard required is knowledge of such premises being used for an act of child abuse. The responsibility to inform the OIC of the nearest police station and the punishment for being convicted of failing to do so are identical to Section 265B. This appears to be a fairly wide definition and covers the responsibility of different levels of authority of a premises ("charge, care, control or possession") and covers child abuse by any employees, visitors or outsiders who are using the premises for the commission of such acts. Child abuse in 286C(1) is wider than sexual abuse and can also include other forms.

Section 286B(3) identifies a "child" as meaning a person under eighteen years of age. This is the same standard as the International Convention on the Rights of the Child (CRC, 1989), which Sri Lanka ratified on July 12, 1991, accepting the international obligations to protect children. Sri Lanka followed the ratification of the CRC with the Cabinet approved National Children's Charter and the establishment of the National Child Protection Authority in 1999. The following sections discuss whether the Sri Lankan standard of reporting of child abuse is similar to the CRC standard and other comparable jurisdictions.

V INTERNATIONAL STANDARDS ON REPORTING OF CHILD ABUSE TO RELEVANT AUTHORITIES

The CRC standard on reporting of child abuse can be found in Article 19. States have a responsibility under Article 19(1) to take all

"...appropriate legislative, administrative, social and educational measures" to protect

the child from all forms of abuse including sexual abuse.”

Article 19(2) provides that such protective measures include

“...effective procedures for...reporting... instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

This has been interpreted by the Committee on the Rights of the Child, and the Committee recommends that in every country, the reporting of instances, suspicion or risk of violence should, at a minimum, be required by professionals working directly with children (CRC, GC 13, 2011, para. 49, emphasis added)

Since such individuals may face risks in making such reports, it was added that there is a State obligation to protect legally obligated persons making such reports in good faith (CRC, General Comment No. 13, 2011). But the General Comment does not go further than this to include a legal obligation to report child abuse on all citizens when there is good faith belief that such abuse has occurred. But it is possible to have a higher standard in domestic jurisdictions, since this is only a minimum recommended standard.

State parties to the CRC also have a responsibility to make State reports to the Child Rights Committee (Committee) on their progress in implementing Child Rights in within their jurisdiction. The CRC General Comment No. 13 stated with regard to the requirements under the Convention that it “consolidates and specifies” the measures already discussed with State Parties regarding treaty-specific reporting guidelines in Documents CRC/C/58/Rev.2 and Corr.1; General Comment No. 8, para. 53 and its own prior concluding observations (CRC, GC 13, 2011, para. 9). State reports to the Committee on progress should include laws and other regulations taken to prohibit violence against children and to intervene appropriately when violence occurs.

An opportunity to further clarify the obligations under Article 19 came when the Holy See submitted its report to the Committee, as a State Party, in 2014. The Committee reminded the Holy See that the consequences of ratifying the CRC require implementing the Convention not only on the territory of the Vatican City State but also through individuals and institutions placed under its authority as the supreme power of the Catholic Church (CRC/C/VAT/CO/2 of 31st January 2014, para.8).

In paragraphs 43 and 44 of the Concluding Observations by the Committee noted the failure by the Catholic Church to report members found to have committed sexual abuse against children, allowing them to continue causing harm. It was also noted that in some instances penalties were imposed on clergy who denounced child abusers (by ostracizing, demoting, terminating) and congratulations made towards those who remained silent about the abuses. A Commission was created by the Catholic Church in December 2013 to deal with the allegations of abuse. The Committee made recommendations to make the Commission more participatory, transparent and public. Paragraph 44 “strongly urged the Holy See” to:

(b) Immediately remove all known and suspected child sexual abusers from assignment and refer the matter to the relevant law enforcement authorities for investigation and prosecution purposes;

(d) Amend Canon Law in order for child sexual abuse to be considered as crimes and not as “*delicts against the moral*” and repeal all provisions which may impose an obligation of silence on the victims and on all those that become aware of such crimes;

(e) Establish clear rules, mechanisms and procedures for the mandatory reporting of all suspected cases of child sexual abuse and exploitation to law enforcement authorities;

(f) Ensure that all priests, religious personnel and individuals working under the authority of the Holy See are made aware of their reporting obligations and of the fact that in case of conflict, these obligations prevail over Canon law provisions [emphasis added];

Thus, the question is whether the Committee in its response to the Holy See goes beyond the previously stated standard of requiring professional working directly with children to report violence. It appears that the standard suggested is on all those that become aware of such crimes – and directly to law enforcement authorities rather than only to employer/superior. This author believes that this latest standard is preferable over more limited definitions of responsibility. The Sri Lankan Penal Code standard in 286C is similar, although clearly specific to care, control etc., of premises and does not require a ‘Good Samaritan’ response when there is knowledge of the existence of child sexual abuse on the part of a random member of the public and/or in a public place not under care, control etc.

VI COMPARATIVE DOMESTIC AND REGIONAL STANDARDS

Generally speaking a mandatory reporting law is a duty imposed by statute either:

- on specified persons (mandated reporters) or
- on all citizens,

...to report suspected cases of child abuse to child welfare agencies. Mandated reporters are specific types of persons having a duty to report specific types of abuse that they would come across in the course of their work e.g. doctors, nurses, teachers and school authorities, child welfare officers, police etc.

The nature of the specific duty also varies according to different domestic jurisdictions. The earliest jurisdictions to include such laws were some states in the United States of America, Australia and Canada (Mathews and Kenny, 2008; Council of Europe, 2014). All US states have laws for mandated reporters and may also require 'any other persons' to report (18 States); while New Jersey and Wyoming have not listed any specific professionals but require all persons to report (US Children Bureau, 2013). Interestingly, some of the States which list the mandatory reporters also impose duties on persons such as commercial film or photograph processors; computer technicians; animal control or humane officers; members of the clergy; and faculty, administrators, athletics staff, and other employees and volunteers at institutions of higher learning, including public and private colleges and universities and vocational and technical schools to mandatorily report child abuse (US Children Bureau, 2013).

There are also 'institutional reporting standards' – which vary from State to State, with some having no specific institutional obligation. In some States staff members who suspect abuse must notify the Head of the institution first, who is the person required to report to the law enforcement and/or child protection authorities (US Children Bureau, 2013). In some other states the individual reporter must make the report to the appropriate authority first (e.g. police, child welfare) and then notify the institution that a report has been made (US Children Bureau, 2013).

The abovementioned Penn State/Sandusky example falls under Pennsylvania law, *23 Pa. Cons. Stat. § 6311*, which creates a duty to report suspected child abuse, including sexual abuse, by a person who comes into contact with children in the course of employment, if his/her employer has care or supervision of such children. The staff member's legal duty is to notify the person or persons in charge of the institution who then has the

legal duty to report to Child Protective Services. This is why Mike McQueary was seen as discharging his legal duty (although questions on morality and conscience may continue), and why Graham Spanier, Gary Schultz and Tim Curley are facing criminal charges.

In Victoria, Australia, the duty is only on doctors, nurses, teachers and police and only if the child does not have a parent who is able and willing to protect the child (Matthews, 2014). But the Northern Territory, Australia requires all citizens to report suspected child abuse according to their *Care and Protection of Children Act* and *Domestic and Family Violence Act* (see online: Northern Territory Department of Health and Families).

In Ireland there were originally only policy guidelines (*2011 Children First: National Guidance for the Protection and Welfare of Children*), now followed by the *Children First Bill No. 30 of 2014*. Part 3 of the Bill identifies the duty as a duty applying to mandated persons listed in schedule 2 of the Bill:

...where a mandated person knows, believes or has reasonable grounds to suspect, on basis of information that he or she has received, acquired or becomes aware of in the course of his or her employment or profession as such a mandated person (Section 11, emphasis added).

In the United Kingdom, the list is much shorter than in Ireland, with the duty to report confined to particular social workers, health professionals and the police. The Irish list of mandated persons includes 27 different categories of professionals, including clergy and 'pastoral care workers' – a necessary response to the institutional-based abuses of children by the Catholic Church of Ireland (See further, Yallop, 2010: *The Report of the Commission on Child Sexual Abuse ('Ryan Report, Ireland) 2009*). There may also be professional codes of conduct for teachers and medical staff in the United Kingdom, but these are not legally binding. Apparently both the United Kingdom and Germany had examined the question of introducing the general obligation on all persons to report and had decided against it (Council of Europe, 2014, p5).

Thus, even despite the urging of the Council of Europe, all European Countries do not yet have mandatory reporting of child abuse. In a Draft Resolution adopted unanimously on 30 January 2014 by the Committee on Social Affairs, Health and Sustainable Development of the European Parliament, it was acknowledged that both voluntary and mandatory reporting laws have shortcomings, and the best interest of the child should be the primary focus and

relevant recommendations were made (Council of Europe, 2014, paras 3-4 and 8). This is in addition to the obligations undertaken (if any) according to Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse for professionals to report child sexual abuse and which also “encourages” any person acting in good faith to report (CETS No. 201, “Lanzarote Convention”, Article 12). Presently few countries have imposed a general legal obligation to report child sexual abuse e.g. Estonia and Sweden (Council of Europe, 2014, para.20).

VII CONCLUSIONS

Thus it can be seen that the legal duty to report child sexual abuse can vary according to jurisdiction, based on whether the standards

- consist of legally binding duty, policy or professional code of conduct
- applies to all adult citizens or only certain mandated persons
- and also whether mandatory reporting based on ‘reasonable suspicion’ or ‘knowledge’ – and reporting in good faith is protected.

The moral responsibility to report child sexual abuse is at the very least, on all adults with regard to all children – thus it can be argued that the mandatory legal responsibility – and consequent criminal or civil liability – should be on all adults (over 18) to report in good faith to the relevant law enforcement and child protection authorities. This must be supported by protections for good faith reporters and include other adjustments to the laws and procedures to encourage the best outcome e.g. good faith reporting as an exception to defamation law, alongside child-friendly healthcare/forensic, legal and social services procedures etc.

Sri Lankan law appears to combine duty of care and knowledge as the standard, and is on track with international developments in terms of legal standards. There is still room to improve and perhaps there is a need for a single clear statute on this rather than an overlooked and non-implemented Penal Code insertion. Comparison with best practices and further development of the Sri Lankan legal and child protection laws and procedures ought to be the subject of more research and investigation. There are also other related areas such as public knowledge of this responsibility and both police investigation and child protection training - that should go hand in hand for the law to be effective. Practical implementation is something that requires the co-

operation of all relevant child protection authorities as well the support of the general public.

Introducing mandatory reporting of child abuse and consequent criminal and/or civil liability for failure to report is not like waving a magic wand that can save children from abuse including sexual abuse or provide them with justice when they have been violated. There are many other areas where society must progress and civilize itself, in terms of attitudes, institutions and social welfare and legal frameworks. Introducing mandatory reporting obligations on all citizens is just one of the many steps that may need to be taken.

ACKNOWLEDGMENT

I am grateful to Mrs. JeevaNiriella, Senior Lecturer in Criminal Law, Faculty of Law, University of Colombo for her valuable comments during discussions with her on this research topic. I must also acknowledge the courageous and moral actions of my former students at the Faculty of Law, University of Colombo, for an incident where they immediately informed the police of a situation of suspected child abuse. Their actions were the inspiration to write this paper.

REFERENCES

- Ashworth, A., ‘The Scope of Criminal Liability for Omission’s, 1989, 105 Law Quarterly Review 431.
- Committee on the Rights of the Child, ‘General comment No. 13 (2011): The right of the child to freedom from all forms of violence’, CRC/C/GC/13
- CRC, ‘Concluding observations on the second periodic report of the Holy See’, CRC/C/VAT/CO/2 of 31st January 2014.
- Dressler, J., ‘Some Brief Thoughts (Mostly Negative) about ‘Bad Samaritan’ Law’, (2000) Santa Clara Law Review, 971 at 981-2
- Freeh, Louis, ‘Report of the Special Investigative Counsel Regarding the Pennsylvania State University Related to the Child Sexual Abuse Committed by Gerald A. Sandusky’, July 2012. p. 14-15, available online at: http://media.pennlive.com/midstate_impact/other/REPORT_FINAL_071212.pdf.
- Grand Jury Report, Pennsylvania, (2011), *Indictment against Jerry Sandusky*, available online at: <http://cbschicago.files.wordpress.com/2011/11/sandusky-grand-jury-presentment.pdf>.

Gray, David (Detective Superintendent, MPS) Peter Watt (NSPCC), *'Giving Victims a Voice': A Joint Metropolitan Police (MPS) and (National Society for the Prevention of Cruelty to Children (NSPCC) Report into allegations of sexual abuse made against Jimmy Savile under Operation Yewtree*, January 2013, available online at: <http://www.nspcc.org.uk/globalassets/documents/research-reports/yewtree-report-giving-victims-voice-jimmy-savile.pdf>.

Herman, J. L. 'The mental health of crime victims: Impact of legal intervention', *Journal of Traumatic Stress*, 16(2), 159–166, 2003.

Herring, Jonathan, *Criminal Law: Text, Cases, and Materials*, Oxford University Press, 2014.

Klein, Jennifer L. & Danielle Tolson, 'Wrangling Rumors of Corruption: Institutional Neutralization of the Jerry Sandusky Scandal at Penn State University', (2015) *Journal of Human Behavior in the Social Environment*, 25:5, 477-486

Kleinig John, 'Criminal Liability For Failures To Act', 1986, *Law and Contemporary Problems*, Vol. 49: No. 3, 161.

Mathews, Ben and Donald C. Bross Eds, 'Mandatory Reporting Laws and the Identification of Severe Child Abuse and Neglect', Vol. 4 of *Child Maltreatment*, Springer, 2015.

Mathews, Ben and Kenny, Maureen, 'Mandatory reporting legislation in the USA, Canada and Australia: a cross-jurisdictional review of key features, differences and issues', (2008) *Child Maltreatment* 13(1):pp. 50-63.

Mathews, Ben, *Mandatory Reporting Laws and Identification of Child Abuse and Neglect: Consideration of Differential Maltreatment Types, and a Cross-Jurisdictional Analysis of Child Sexual Abuse Reports*, *Social Science*, 2014, 3, 460-482 (Special Issue Contemporary Developments in Child Protection).

Northern Territory Department of Health and Families, available online at: http://remotehealthatlas.nt.gov.au/mandatory_reporting_overview.pdf.

Thompson, Charles, 'Penn State board acts to settle other outstanding Jerry Sandusky claims, April 9, 2015, http://www.pennlive.com/midstate/index.ssf/2015/04/penn_state_board_acts_to_settl.html

Parliamentary Assembly of the Council of Europe - Committee on Social Affairs, Health and Sustainable Development (Rapporteur: Mr Valeriu Ghiletschi) (2014), 'Report: Increasing the reporting of suspected sexual abuse of children', Doc. 13430, 19 February 2014 (Draft resolution adopted unanimously by the Committee on 30 January 2014), available online at <http://www.assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=20525&Language=EN>.

UK Parliament, Commons Select Committee, 'Evidence on the BBC's response to the Jimmy Savile case – Questions to George Entwistle, the Director-General of the BBC', 23.11.2012, video available online at: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/culture-media-and-sport-committee/news/121023-bbc-and-js-ev/>

United States, Children Bureau, 'Mandatory Reporters of Child Abuse and Neglect: State Statutes Current Through November' 2013, available online at: <https://www.childwelfare.gov/pubPDFs/manda.pdf>.

Yallop, David *Beyond Belief: The Catholic Church and the Child Abuse Scandal*, Constable, 2010 [see extract online <http://churchandstate.org.uk/2013/05/child-abuse-scandal-how-the-irish-government-protected-the-catholic-church/>]

BIOGRAPHY OF AUTHOR



Nishara Mendis is a lecturer in the Faculty of Law, University of Colombo, Sri Lanka, where she currently teaches International Law topics for undergraduates and Human Rights topics at the Postgraduate level. Her research interests are in Public International Law and related areas including Human Rights (especially economic and social rights), International Trade law, Humanitarian Law, Environmental Law, International Criminal Law and Law of the Sea. She received her LL.B (Hons, First Class) from the University of Colombo and LL.M from Yale Law School. She has also completed her PhD research at Maastricht University, The Netherlands.