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இலங்கை சட்ட உதவி ஆணைக்குழு
Legal Aid Commission of Sri Lanka



Child Protection Law



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Ministry of Justice



Child Protection Law

Legal Aid Commission of Sri Lanka

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Message from The Chairman

The Legal Aid Commission was established through Act No. 27 of 1978. Legal Aid Commission is a statutory legal institution which provides free legal consultations to an underprivileged community through a team of qualified lawyers. At the Commission, we provide legal assistance in multiple areas such as human rights, child rights, women's rights, elders' rights, family law, labor law to name a few. We have extended our scope of aid for awareness and guidance to provide relief in as many civil areas of law as possible.

Even though there are many organizations that deal with violation of rights, Legal Aid Commission is the only institution with the legal power to pursue legal proceedings as a statutory entity of the Sri Lankan Government.

The Legal Aid Commission provides legal consultations irrespective of income, social status, race, nationality, religion, gender or age. We are proud to serve deserving yet marginalized and vulnerable individuals with legal aid that has helped thousands island-wide obtain the equal access to justice.

I hope this series of booklets will further empower communities, officials and individuals to understand the law, to be aware of their rights and obligations, and to know that they can seek assistance from the committed team of legal officers of the Legal Aid Commission.

Rohan Sahabandu - PC
Chairman, Legal Aid Commission

The Legal Aid Commission of Sri Lanka

The Legal Aid Commission of Sri Lanka (LAC) was established by the Act No 27 of 1978, to provide legal assistance to vulnerable and needy communities and individuals whose access to justice is restricted or curtailed by social status, economic status, nature of their gender, cast, age or other criteria.

It is considered the foremost from amongst other institutions and organizations that provide legal aid, mainly due to its sustainability and stability.

The Legal Aid Commission is present in all 9 provinces across Sri Lanka in 84 centres educating, creating awareness and providing legal aid to all without prejudice. It consists of over 120 permanent legal officers and over 1000 panel lawyers from the regional Bar Associations.

The Commission's vision is to create a society where all deserving Sri Lankans must have equal access to justice.

The Legal Aid Commission has undertaken many ambitious projects to achieve this objective. The Act states that the Legal Aid Commission's mission is to provide Legal Aid to all the "Deserving Persons" in the Country.

Our Vision

EQUAL ACCESS TO JUSTICE

To create a society where all deserving Sri Lankans irrespective of their economic or social status, gender, caste, creed or nationality or the disabled have equal access to justice.

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Definition of “Child” According to Law

“ The Code of Civil Procedure and Orphans Ordinance considers a person below 18 years as a child ”

According to the United Nations Convention on the Rights of Child unless a person attains the age of majority through a defined law, a child is usually referred to as any person below the age of 18 years. Even though the international and national laws consider a person below the age of 18 as a child, laws in Sri Lanka define the child in various manners.

- The Adoption Ordinance, The Shop and Office Act, The Employment of Young, Women and Children Act defines a child as any person below the age of 14 years.
- The Code of Civil Procedure and Orphans Ordinance describes a person below 18 years as a child.
- The law on children and youth defines a child as a person below 14 years while a person below 16 years is considered a youth.
- According to the Maintenance Ordinance, a person below 18 years is considered as a child and a person below 25 years is considered as a vulnerable child.
- According to the Penal Code and its amendments for certain offenses a person below the age of 18 is considered as a child while for certain wrongs a person below the age of 16 is considered as a child.

Who is Responsible for the Safeguard of the Rights of Children?

The Convention on the Rights of Child in Article 18 states that a child should be provided special protection and treatment. The mother and the father are equally responsible for the care and growth of their children. In certain circumstances these responsibilities are vested with the legal guardian and they should work towards the betterment of the child at all times. The State should assist them in this matter. However, protecting and facilitating the rights of children is a responsibility of everyone in general.



International Law on the Rights of Children

United Nations Convention on the Rights of Child

This is the main international instrument which states the rights enjoyed by children and it was entered to in 1989.

The Convention states that children are vulnerable to danger because of their physical and mental immaturity and it is important to provide them special protection.

The States that have ratified the Convention are thereby vested with the responsibility of protecting the rights of child and abiding by the Convention under international law.

According to the Convention a State should create a mechanism to safeguard the rights of every child irrespective of differences in language, nationality, religion, gender, color, political ideologies and various other disabilities.

Article 42 of the Convention states that the State is vested with the responsibility of ensuring that both children and parents are aware of the rights enjoyed by children as stated in the Convention.

The Convention further states that the State should provide every child an opportunity to grow in an environment with care, love and protection while uplifting their personality, skills and attitudes.

Is Sri Lanka Vested with an International Responsibility to Safeguard the Rights of Children?

Sri Lanka has signed and ratified the Convention on the Rights of Child on the 17th of July 1991 whereby Sri Lanka is vested with the responsibility of safeguarding the Convention. By following the established international standards, Sri Lanka formulated the Children's Charter in September 1992.

Even though the Children's Charter is not legally enforceable, the provisions in the Charter are enforced through the Penal Code of Sri Lanka.

The Rights of Children Protected Under the Convention on the Rights of Child and The Children's Charter are Protected under 04 Categories

Right to Survival

A child's right to live, access to health services, food, clean water, shelter and other factors needed to ensure a sufficient lifestyle.

Right to Protection

This means the rights a child enjoys to be free from actions and practices that would be harmful for the child. Every child who is disabled, orphan and refugee enjoys these rights in an equal manner.

Right to Development

Every child enjoys a right to education, leisure and recreation, sport and to engage in cultural activities.

Right to Participation

Every child enjoys the freedom of expression, thought, conscience and information.

Other International Conventions on the Rights of Children

- Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography – January 2002.
- Worst Forms of Child Labour Convention No 182 of 1999.
- Optional Protocol on the Involvement of Children in Armed Conflict – February 2002.
- Minimum Age Convention No 138 of 1973 – The Convention states the minimum age to engage a child in employment and ensure the growth of children to maturity in physical and mental development.

National Law on Rights of Children

The Constitution of Sri Lanka 1978 Article 12 (4)

The Constitution is the most supreme and the basic law of any country. Under the 1978 Constitution of Sri Lanka which is operative at present, rights of children are protected through Article 12 (4) which provides for the responsibility of the State to include special provisions on protecting and safeguarding the rights of children.

Directive Principles on State Policy 27 (13)

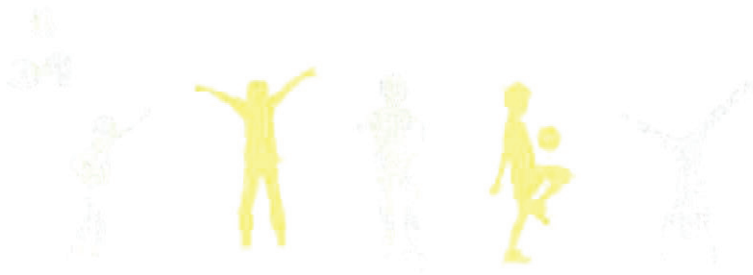
The State should promote with special care the interests of children and youth so as to ensure their full development (physical, mental, moral, religious and social) and to protect them from exploitation and discrimination. However when the State is presenting such policy it cannot be subjected to judicial review. These are mere policies and do not carry any legally binding obligation.

Fundamental Rights Law Relating to the Rights of Children

In an instance where a fundamental right has been breached through an executive or administrative action such person can seek relief through a petition made to the Supreme Court within a period of 30 days from such breach.

According to Section 21 (1) of the Constitution, a child could be educated through the medium of either of the National Languages.

Certain rights mentioned in the Children's Charter have been given legal enforceability through the fundamental rights law.



Rights of Children according to the Children's Charter	Constitution articles pertaining to the right stated in the Children's Charter
Section 02 Freedom from discrimination	Article 12(2) Freedom from discrimination
Section 12 and 13 Freedom of expression	Article 14 (1) Freedom of speech and expression including publication
Section 14 Freedom of thought, conscience and freedom to observe a religion of his choice.	Article 10 Freedom of thought, conscience and religion
Section 15 Freedom of association	Article 14 Freedom of Association
Section 36 Freedom from torture	Article 11 Freedom from torture

Himali Rathiyagala VS Corruption Prevention Unit Panadura (SCFR 462/2001)

The Supreme Court decided that the right to be free from torture or cruel, inhuman degrading treatment or punishment of a child has been breached by the police in inflicting harm upon her as per Article 11 of the Constitution and the police officers were ordered to pay damages to the child personally.

Rights of Children to Obtain Maintenance

According to Maintenance Ordinance No 37 of 1999 every child should be maintained by their parents until the age of 18. The maintenance of children between the ages of 18-25 who are not able to provide for their own living due to education, are unmarried or disabled is also vested with the parents.

- Children born out of lawful wedlock between the mother and the father can claim maintenance from the father.

- No application for maintenance can be made for a child not born. Applications can be made only after such birth.
- The rights enjoyed by children to claim maintenance from the father does not become null due to the divorce of the parents.

Right to Education of a Child

Education is made compulsory for every child until the age of 14. Legal actions can be taken against parents who do not send their children below such age to school, through the provincial and local government education officials.

Karunathilaka vs Jayalath De Silva 2003 1 SLR 35

The Supreme Court held that even though the right to education has not been stated as a separate right explicitly, when the whole fundamental rights chapter is read it is seen that the Constitution has established this right as fundamental.

Can Children be Employed According to the Law?

According to the regulations made by the Minister under The Employment of Young, Women and Children Act No 47 of 1956 no child under the age of 14 years can be employed in any kind of occupation. Parents and brokers who engage children as beggars and servants can be imprisoned up to 05 years under the law. However, a child could be employed in a family business and in a technical college approved by the State.

Even though children between the ages of 14 to 18 can be employed subject to certain conditions stated in the regulations made under Section 20 (a) of the Amendment Act No 24 of 2006 no child between the age of 14-18 can be employed in occupations which pose a threat on the life, health, education and occupations that hinder the mental and physical health of the children.

Thereby children cannot be employed in occupations associated with pesticides, fireworks, steel wiring, mining, excavation, climbing trees, cutting, transport of sewage and garbage. In the same manner they cannot be employed in firework sports and adventurous climbing.

According to the law an employer who employs a child in such dangerous occupation can be punished with imprisonment up to 05 years or fine or both or upon payment of compensation to the aggrieved child according to the discretion of the court.

National Authority on Tobacco and Alcohol Act No 27 of 2006

According to Section 31 of the Act, no person under the age of 21 can sell, offer for sale, or permit or promote the sale of any tobacco product or alcohol product to any person under twenty-one years of age.

Custody of Children

- Both the mother and the father can claim the guardianship of children during a divorce matter or a matter concerning the custody of children.
- Even though the legal and physical guardianship may be vested upon one parent the court does not prevent the access rights of the other parent.
- If the child is above 10 years of age the court will consider the opinion of the child in determining custody of a child.
- Before a divorce decree is given the court may make orders regarding the education, guardianship, maintenance of the child. These orders may be changed from time to time after the divorce decree is given.
- According to the cases decided recently there is no implication that the child should be necessarily placed on the custody of the mother or the father. The court should make a proper order considering the applications made by the parties, in the best interest of the child.

Property Rights Related to Under Aged Children

The sale, devolution or transfer of a property owned by a child even by his own parent is prohibited by law. The permission of the District Court should be obtained of such sale, transfer or any related action, if such is taken in order facilitate the education of the child or his betterment.

According to the testamentary laws applicable in Sri Lanka when one parent dies half of his/her property is devolved equally among the children. An illegitimate child could be made legitimate upon the subsequent marriage of the parents after the birth of the children and property could be devolved to such child upon the death of a parent.

Law Applicable in Adoption of a Child

Adoption means obtaining the legal custody of a child by persons other than the biological parents with the intention of bringing up such child as their legitimate child. The Adoption Ordinance No 24 of 1941 and its amendments are applicable in this instance.

The consent of the biological parent or the guardian is needed in this instance. No adopted child should be discriminated against in his school or in any other activity merely on the grounds that he is adopted. The adoptive parents should provide for the nutrition, education protection and all other responsibilities related to the child. Through an adoption, the rights of parents regarding the child comes to an end.

Are there Provisions to Adopt a Child without the Consent of the Parents or the Guardian (Matron of the Orphanage)?

According to Section 08 and 4(b) of the Adoption Ordinance, a person can make an application to the District Court seeking for an adoption order on the basis that such person has cared for the child in good faith as his own for a period of over two years, has provided for the child's education and protection or by the reason that such child has left his biological parents.

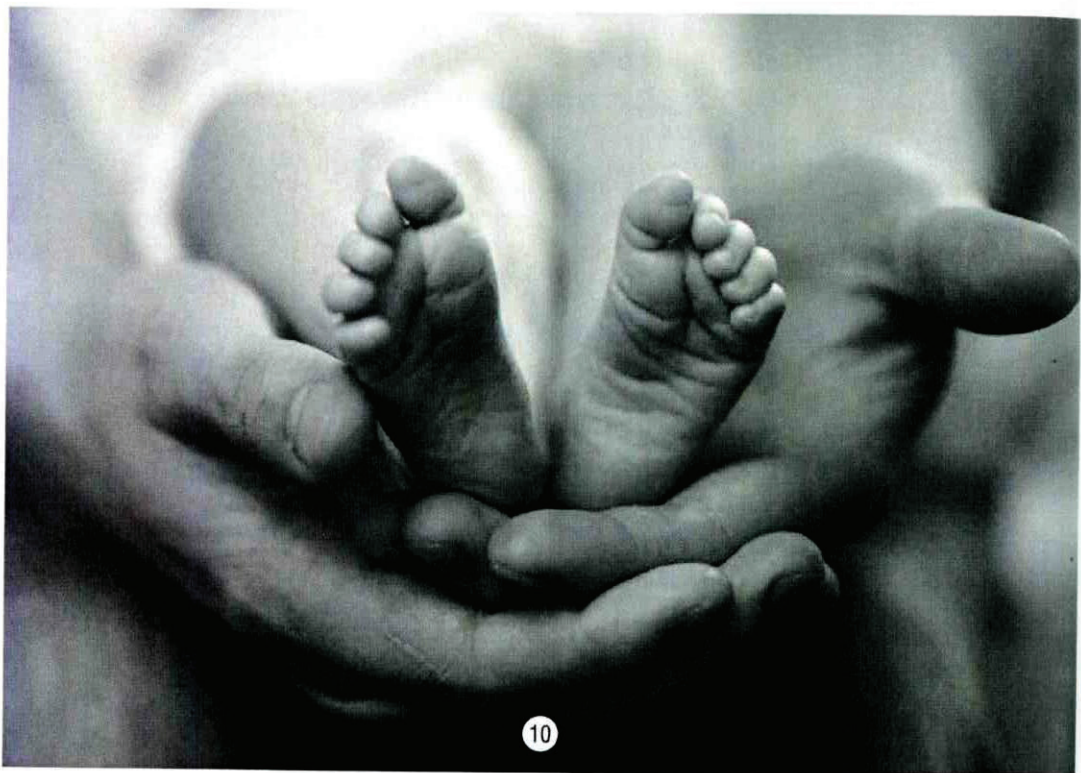
Offenses Regarding the Adoption of Children

According to Section 360(d) of the Amendment No 16 of 2006 to the Penal Code of Sri Lanka,

Whoever, for the purpose of placing any person in adoption -

- Arranges for, or assists, a child to travel to a foreign country without the consent of his parent or lawful guardian;

- Obtains the consent, whether written or oral of a pregnant woman, for money or any other consideration, for the adoption of the unborn child of such woman;
- Recruits a woman or a couple to bear children;
- Being a person concerned with the registration of births, knowingly permits the falsification of any register used for the registration of births or any birth record contained in any such register;
- Engages in procuring children from hospitals, shelters for women, clinics, nurseries, day care centres or other child care institutions or welfare centres, for money or other consideration or procures a child for adoption from any such institution or centre, by intimidation of the mother or any other person; or
- Impersonates the mother or assists in such impersonation, shall be guilty of an offense punishable by twenty years imprisonment or a fine.



Legal Protection Given to Disabled Children

Right to obtain maintenance from parents irrespective of the age.

Right to be free from mental and physical torture both within and outside his own home.

Equal protection under the law and the right to enjoy his own rights in equality with other children.

The disabled children of pensioners can obtain the pension payments after the death of their parents.

Right to obtain services including medical services from doctors in local government institutions.

Guardians could be appointed from the District Court to protect adopted children and their properties.

The Following Points are Important Regarding the Civil Rights of Children

- When a property has been transferred to a minor, a curator could be appointed to safeguard the property until he attains majority.
- After an application is made to the District Court the name of the father could be included in the birth certificate of a child who has been born out of lawful wedlock.
- While a person below the age of 14 cannot enter into a valid marriage such person cannot be married even if he has obtained the consent of the parents. (According to Muslim Law a girl who has attained the age of 12 and has attained majority can enter into a valid marriage with the consent of her parents.)
- The period of prescription regarding a minor's property does not start until he attains the age of 18.
- In an instance where facts required for a birth certificate of a child is not known, a certificate of assumed age could be obtained.
- When a case is filed to establish a civil right of a child, a next of kin should be presented and when making a case against a child, a guardian should be presented.

Offenses Against Children

What is Child Abuse and Juvenile Offenses?

Juvenile Offenses are such actions done by minors which are considered illegal. For example, stealing or assaulting another child or a person can be considered as an offense. Child Abuse is an action whereby an adult commits a wrongful action against a child or compels him to engage in such act. Physical and sexual assaults committed against children falls into this category.

Offenses against children surfaced in the Penal Code No 02 of 1883. The amendments bought to the Penal Code from time to time to fit various circumstances can be summarized as follows.

Amendment Act No 22 of 1995 to the Penal Code of Sri Lanka

- Attempting to or deriving sexual benefit from children
- Subject children to cruel treatment
- Supply of children for abuse
- Possession, sale, publication of any obscene or indecent exhibition of children or employing children for such activity

Amendment Act No 29 of 1998 to the Penal Code of Sri Lanka

- Employing women in begging
- Employing or putting children in service to provide sexual intercourse
- Employing children to transport drugs, poisonous materials, opium and other illegal substances

Amendment Act No 16 of 2006 to the Penal Code of Sri Lanka

- Failing to take action in an instance where a child is employed in sexual abuse through the computer by a person engaging in such action
- Failing to notice in an instance where attempts are made to commit sexual abuse
- Attempting to compel a child to cause sexual acts
- Recruiting children to engage in armed conflict
- Employing children in occupations forcefully
- Employing children in sale of various goods
- Commission of acts that may cause psychological and mental harm to children by a custodian; have been regarded as instances of grave sexual abuse

Statutory Rape

Section 363 (e) Penal Code Amendment Act

Statutory Rape is engaging in sexual intercourse with a girl below the age of 16 (Penetration is enough to commit the offense). This means engaging in sexual intercourse with a girl below 16 years of age with or without her consent. This offense is punishable by imprisonment up to 07 years and not less than 20 years with a fine. The amount of damages decided by the court should be paid to the victim.

Sexual penetration committed with a girl between the ages of 16-18 does not fall under rape. However if a girl below the age of 18 has been raped, rigorous imprisonment extending up to 10 years not more than 20 years or imposition of a fine could be sentenced by the court.

A judicial precedent which clearly established that a girl below the age of 18 cannot give her consent to any sexual act is;

“ This offense is punishable by imprisonment up to 07 years and not less than 20 years with a fine. ”

Kumara vs Republic of Sri Lanka (COA No 106/08)

The victim in this instance was the sister of the accused's wife and the act has been done with her consent. The girl at the time of the offense was 15 years and 11 months. The court stated that such age limit has been imposed to protect children who have not reached majority and even if a girl below the age of 16 has provided her consent, such consent should be regarded as void, as the law considers that there is a high possibility that such children could be easily compelled to engage in unlawful acts and they are not in a position to weigh the consequences of such acts and law aims to protect minor girls through the imposed laws.

Incest

Section 364 (a) of the Penal Code Amendment Act

This basically means engaging in sexual intercourse with people who are fully or remotely blood related, adopted children (parents, children, sisters, brothers and other blood relations). This offense is punishable by imprisonment not less than 07 years and not exceeding 20 years with a fine. Attempting to commit incest is punishable by two years imprisonment.

Offense of Engaging Children in Obscene Publication

Section 286 (a) of Penal Code Amendment Act

- A.** hires, employs, assists, persuades, uses, induces or coerces, any child to appear or perform, in any obscene or indecent exhibition or show or to pose or model for, or to appear in, any obscene or indecent photograph or film or who sells or distributes, or otherwise publishes, or has in his possession, any such photograph or film; or
- B.** being the parent, guardian or person having the custody of a child, causes or allows such child to be employed, or to participate in any obscene or indecent exhibition
- C.** takes or assists in taking of any indecent photograph of a child

shall be punished with imprisonment of either description for a term not less than two years and not exceeding ten years and may also be punished with fine.

Prevention of Child Abuse through the Computer

Section 286 (b) of Penal Code Amendment Act

A person who provides a service through the computer must take action to prevent possible instances of sexual abuse which may take place through the aid of a computer. As soon as he comes to notice of such act, the OIC of the respective police should be informed. Failing to provide such notice may be punishable by imprisonment up to 02 years or with a fine.

Causing or Procuring Children to Beg

Section 288 (a) of Penal Code Amendment Act

A person who procures a child to be in any street, premises or place for the purposes of begging or receiving alms, or of inducing the giving of alms (whether or not there is any pretense of singing, playing, performing, offering anything for sale or otherwise) is guilty under this section.

05 years imprisonment could be imposed on any parent, broker or any other person who causes to commit such act.

Hiring or Employing Children to Act as Procurers for Sexual Intercourse

Section 288 (A)(1) of Penal Code Amendment Act

A person who hires, employs, persuades, uses, induces or coerces a child to procure any person for illicit sexual intercourse can be punished with imprisonment of either description for a term not less than two years and not exceeding five years and may also be liable to a fine.

Acts of Gross Indecency between People

Section 365 (A) of Penal Code Amendment Act

This Section aims to prevent the employment of children in homosexual acts in public or in private or in other unnatural offenses.

When such offenses has been done by a person above 18 years against a person below 16 years, such person shall be punishable with rigorous imprisonment of not less than 10 years and not exceeding 20 years. Such person will be liable to pay the victim damages ordered by court.

Grave Sexual Abuse

Section 365 (B) of Penal Code Amendment Act

This concerns sexual offenses other than rape which may be committed against men or women.

- Any person who for sexual gratification, does any act, by the use of his genitals or any other part of the human body or any instrument on any orifice or part of the body of any other person,
- with or without the consent of the other person when the other person is under sixteen years of age; commits grave sexual abuse and shall be punished with rigorous imprisonment for a term not less than seven years and not exceeding twenty years and with fine and be ordered to pay damages for the victim as ordered by court.

Sexual Harassment

Section 345 of Penal Code Amendment Act

This offense covers any person who, with the use of assault or criminal force, sexually harasses another person, or by the use of words or actions.

This offense includes action which do not fall under rape or grave sexual abuse

Upon conviction a person may be punished with 05 years' imprisonment or fine or both

Muthubanda Vs AG (COA 176/2007)

The offense was committed against a girl in grade 06 by the principal of her school. The court considered that lifting her uniform and caressing her thighs constituted the elements stated in the offense and under Section 365 (2) (e) and he was convicted with rigorous imprisonment by the High court of Polonnaruwa along with Rs 50,000 fine. The Court of Appeal held that the act does not fall under 365 and the accused was sentenced with a lesser punishment under Section 345 of the Penal Code and the compensation was ordered.

Child Trafficking

Section 360 (c) (1) of Penal Code Amendment Act

Engages in the act of buying or selling or bartering of any person for money or for any other consideration

Engaging the child in slavery

Removing the body parts of the child

Engaging the child in prostitution or in deriving any other sexual benefit

any person who employs, transports, transfers, protects, accepts or does any other act when the child is below 18 years of age with or without their consent shall be guilty of an offense punishable with up to 30 years imprisonment.

Kidnapping from Lawful Guardianship

Section 352 of Penal Code Amendment Act

A child below 16 years in case of a girl and below 14 years in case of a boy is treated to be kidnapped when such child has been taken away from his/ her lawful custody without the consent of the person in custody, even when the consent of the child is given.

Police officers and every other official should be concerned of the following factors when dealing with children who have been kidnapped.

- Being empathetic towards the child
- Taking away the fear in the child
- Not imposing fear on the child
- Building a friendship with the child
- Building the child's trust in you
- Protecting the privacy of the child
- Been concerned of the needs and wants of the child in that instance
- Communicating with the child in a language he is comfortable with
- Providing an explanation to the child about what is going to be done
- Asking descriptive questions from the child

Steps to be Taken after a Child Abuse has Happened

The law has provided a prescriptive period of 20 years to report a crime. However when a sexual abuse has happened it should be reported to the Police as soon as possible. This is to avoid the destruction of evidence and assisting the police in investigation.

When going to the police it is important to take the clothes in which the abuse has happened.

The police officers are bound to write the plaint made by you in the proper manner. After the statement is written it should be signed only if it is true. Inform the police if there are corrections to be done.

The police should direct the victim of an abuse case to the doctor. If they fail to make such direction, request them to do so.

Can Students be Physically Punished to Maintain Discipline in School?

According to regulations made before 2005 punishments given in school should be limited to hitting a child's palm with a cane only in instances where any other punishment would not suit to mend the wrong that has been committed and such hits should not exceed four.

However according to the circular relating to disciplining of children in school made by the Ministry of Education, a principal or a teacher must not impose physical punishments upon a child even in good faith with the intention of correcting his behavior.

If physical punishments have been imposed on children in school even in good faith the following will be legal consequences.

- Violation of fundamental rights protected by the Constitution
- Offense of assault under the Penal Code
- Amounts to a breach of discipline by the teacher according to the establishment Code

Douglas Bandara vs Wickramasinghe (1995)2 SLR 167

A principal and two teachers have hit a child on the cheek and has accused him through indecent language. Due to the mental pressure imposed upon him, he was admitted to a mental hospital for a period of one month. The Supreme Court held that even if the teachers have a right to correct the children, such action must not violate the fundamental right of freedom from cruel and inhumane treatment of the child secured by the Constitution.

Steps to be Taken when a Child Engages in an Indisciplinary Action in School

In place of imposing physical punishments the child could be advised, educated about his fault upon giving notice to his parents.

Only upon a decision taken by the Principal after consulting the disciplinary committee of the School;

- Limiting or taking away the facilities enjoyed by the accused child (class monitor or prefectship).
- Suspension from school for a period of over two weeks if the action is grave.
- According to the gravity of the act, suspension of the child from school for a period of over two weeks upon the approval of the Provincial Education Director.

When taking disciplinary actions against children in school they should be correctly recorded and such actions should not be made popular in schools through notice boards or assemblies.

Further, according to Removal of Physical Punishment Act No 23 of 2005 imposing physical punishments on children is prohibited.

Cruelty to Children

Section 308 (A) (1) of Penal Code Amendment Act

Whoever, having the custody, charge or care of any person under eighteen years of age, willfully assaults, ill-treats, neglects, or abandons such person or causes or procures such person to be assaulted, ill-treated, neglected, or abandoned in a manner likely to cause him suffering or injury to health (including injury to, or loss of, sight or hearing, or limb or organ of the body or any mental derangement), commits the offence of cruelty to children.

A person who commits such an offence on children shall be punished with imprisonment for a term not less than two years and not exceeding ten years and may also be punished with fine. The court may also order compensation to the victim.



Provisions Against Employing Children as Prostitutes

Brothels Ordinance No 05 of 1889

- According to the Act, carrying out brothels is illegal and it has attempted to avoid the employment of children in brothels.

Loitering Ordinance Section 04 of 1841

- If a girl engages in prostitution with the knowledge of her parents or the parents have compelled the girl in prostitution by deceit, the parents and the guardians can be punished. In this case a child is considered to be less than 16 years.

Act to prevent the trafficking of women and children for prostitution

- Carrying out a business of trafficking women and children for prostitution or any other related act in a specific building
- Maintenance or management of such
- Letting or renting such place with knowledge
- Persons who invest in such business
- Or attempts to commit such act
- Abets or
- Assists or
- Works with a common intention

Shall be guilty of an offense punishable with 3-15 year imprisonment and pay damages to the victim.

Procuration

Section 360 (A) of Penal Code Amendment Act No 22 of 1995

Any person who procures, or attempts to procure, any person, whether male or female of whatever age with or without the consent of such person to become, within or outside Sri Lanka, prostitute shall be punishable with imprisonment up to 02 years and not exceeding 10 years and with a fine.

Sexual Exploitation of Children

Section 360 (B) (1) of Penal Code Amendment Act

Accordingly any person who

- a) permits any child to remain in any premises, for the purposes of causing such child to be sexually abused or to participate in any form or sexual activity or in any obscene or indecent exhibition or show;
- b) acts as a procurer of a child for the purposes of sexual intercourse or for any form of sexual abuse;
- c) induces a person to be a client of & child for sexual Intercourse or for any form of sexual abuse, by means of print or other media, oral advertisements or other similar means;
- d) takes advantage, of his Influence over, or his relationship to, a child, to procure such child for sexual intercourse or any form of sexual abuse;
- e) threatens, or uses violence towards, a child to procure such child for sexual intercourse or any form of sexual abuse;
- f) gives monetary consideration, goods or other benefits to a child or his parents with intent to procure such child for sexual intercourse or any form of sexual abuse.

Shall be punished with imprisonment up to 05 years and not exceeding 20 years or with a fine.

Reforms Introduced in the Recent Times to Ease Out the Criminal Proceedings Against Children

Code of Criminal Procedure Amendment Act No 28 of 1998

Under this amendment any person who has been arrested under suspicion for child abuse upon an application made to court by a Superintendent of Police can be detained for a period of three days and this has provided a manner to conclude the police investigations without any delay or disturbance and provide protection to the child.

Judicature Act (Amendment) No 27 of 1999

In court proceedings related to the rape of a child below the age of 16 non summary proceedings can be held directly in the High Court instead of the Magistrate Court under the provisions of this Act. This has avoided the uncomfortable situation the child would face upon being brought to court a number of times.

Evidence Ordinance (Amendment) Act No 32 of 1999

When a child is giving evidence in court, the court accepts video evidence in order to make the process quicker. This avoids the difficulties that the child may face in court.

Law Relevant to Child Victims and Juvenile Justice

Ensuring child safety and protection is the responsibility of the State and all people in general and is not limited to the parents. The law should ensure a special protection to children who are not physically and mentally mature. In contrast to protecting the rights of adults, protecting the rights of children and providing them legal protection should be done more carefully and sensitively. Protecting the rights of children and developing their personalities and attitudes are vital for the development of the country.

“The law should ensure a special protection to children who are not physically and mentally mature.”

What is Meant by Child Safety and Proper Protection?

This means protecting children against violence, abuse, robbery, negligence which may become barriers for a child's survival, development and participation. In a broader sense child safety and protection covers all sectors that work for the welfare and betterment of the children.

In Sri Lanka the main statute covering children and youth is the Children and Young Persons Ordinance No 48 of 1939. According to the provisions of the Act any person below the age of 14 is considered a child and persons between the ages of 14-16 are considered a youth.

Cases relating to children should be heard in an environment in which they are comfortable and with officials who are experienced in working with children. However Sri Lanka only has two Juvenile Courts, in Battaramulla and Jaffna.

Any Magistrate Court while exercising its usual jurisdiction may exercise the powers of juvenile magistrate jurisdiction.

The Following Types of Cases are Heard in Juvenile Courts

Juvenile Offenders

Hearing cases related to any offense stated in the Penal Code other than grave offenses such as murder, culpable homicide and robbery committed by a minor or a youth.

Children who are in the Need of Safety and Protection

Children who have been orphaned by their parents, street children, children who have been engaged in occupation, children who are street beggars, children who have become addicted to alcohol or drugs, stubborn, children who are uncontrollable, children who have fled from homes are directed to a suitable training or rehabilitation and orders are given for the safety of the children when the current custodians of the children do not provide for their safety and protection.

Is Every Wrong of Children Excused by Law?

According to Section 75 of the Penal Code nothing done by a child below the age of 08 years is considered as an offense.

According to Section 76 of the Penal Code anything done by an immature child above 08 years but below 12 years is not an offense.

According to the Evidence Ordinance Section 113 a child below the age of 12 cannot commit the offense of rape.

When an offense has been committed by a child between the ages of 12-18 legal actions could be taken.

Special Laws Relating to Juvenile Victims

- The victim who has been subject to abuse should be directed to the Women and Child Affairs Authority for further examination. Every investigation carried out in respect to a juvenile offender guilty of a crime should be done by a senior police officer under the supervision of the respective OIC.
- When the case is being investigated or when an investigation report is presented to court, there is no need to present a juvenile offender before the court. The child should be presented only if a decision is to be made in respect to the custody and protection of the child under the Children and Youth Ordinance.
- In cases relating to juvenile offenders (When cases are being called in open court or when called through prior motion) requests can be made to limit the number of people in court.
- The victim and the accused should not be brought in together.
- If the offense has not been committed by a family member of the victim, the victim could be handed over to the parents or the guardian and if they are not present, the child could be handed over to a relation. If these are not possible the child should be placed in a children's hospital or volunteer house.

Special Laws Relating to Juvenile Offenders and Accused

- The Juvenile offender could be bailed and handed over to the parents or guardians according to the discretion of the police OIC. If this is not done, until such time that the child is brought before court the child should be directed to a house of the Probation Department immediately.
- At the time the case is being investigated by the police, when the case is being called or heard in court, the presence of the parents or the guardian of the offender should be certified. (Section 14 and 16 of the Children and Youth Ordinance)
- Juvenile Offenders should be kept separate from the adult offenders in prison. When a child has been sentenced with capital punishment, the sentence will be reduced to lifetime imprisonment.

- The offense against a child should be stated clearly and without delay to the child in simple language and before sentencing such person, the past record and the present behavior of the child should be considered. (Section 09 and 10 of the Children and Youth Ordinance)

John Matthew Case 1986 (1) SLR 243

This case has decided that in respect to juvenile offenders, conviction by imprisonment should be established only in instances where there is no other possible punishment that could be imposed and they should never be imprisoned for the failure to pay a fine.

Common Principles Relating to Juvenile Offenders and Victims

When a decision has been made to present a child before the court the respective police officer must duly inform the matter to the probation officer (Section 17 (1) of the Children and Youth Ordinance)

A child who is in custody must be placed under the care of a police matron. A child should not be jailed under any circumstance. (Section 13, 14 and 37 (1) of the Children and Youth Ordinance)

The privacy of the incident should be protected and the self-respect of the child should be secured. (Section 11,18,19 and 20 of the Children and Youth Ordinance)

No news regarding a child offender should be published in media or revealed to a person who is not the parents of the child.

What Actions can be Taken Regarding an Abandoned or Helpless Child?

Information about such child should be duly given to the nearest police station or the probation office. Similarly protection and safety could be provided to a child through notice to a child rights promotion officer attached to any divisional secretariat office. Accordingly the respective officers according to the Children and Youth Ordinance Sections 34 and 35 will refer to the respective court in the said jurisdiction and seek an order for the protection of the child.

Best Interest of the Child

It is a nationally and an internationally accepted principle that when taking decisions relating to a child or when working in relation to them their best interest should be considered. This is stated in Section 03 of the Convention on the Rights of Child.

Accordingly the court should work in the best interest of the child in civil proceedings and when arriving at a decision the health, nutrition, future development, education, security, protection, ethical development and the likes of the child is considered.

Section 21 of the Children and Youth Ordinance states that in every instance the well being of the child or the youth should be considered.

International Covenant on Civil and Political Rights Act No 56 of 2007 (ICCPR)

According to Article 5(2)

In all matters concerning children, whether undertaken by public or private social welfare institutions, courts, administrative authorities or legislative bodies, the best interest of the child shall be of paramount importance.

According to the Act children enjoys the following rights

Section 05 (1) (a) have his or her birth registered and to have a name from his or her date of birth;

Section 05 (1) (b) acquire nationality;

Section 05 (1) (c) be protected from maltreatment, neglect, abuse or degradation; and

Section 05 (1) (d) have legal assistance provided by the State at the State's expense in criminal proceedings affecting the child, if substantial injustice would otherwise result.

Actions in respect to offenses relating to child abuse and violation of other child rights stated in the Act can be made to the High Court within a period of 03 months from the date of such act.

Prevention of Domestic Violence Act No 34 of 2005

“Any woman, child or any other person who is being subject to violence in his/ her home could seek a protection order from the respective Magistrate Court.”

When the victim is below the age of 18 the parents of such child, a person resident in the place where the child is resident, a person who has derived power from the National Child Protection Authority or a police officer may make an application on behalf of the child.

In respect to a sale, mortgage, obtaining a restraining order of a usual home maintained as a matrimonial home, a victim can take action by Section 11 (I) of the Act.

Institutions Established to Safeguard Rights of Children

Sri Lanka Child Protection Society

Various institutes have been established in the past to secure the rights of children. The first institute established, the Sri Lanka Child Protection Society is still operative at present. The society has been established by a group of VIPs and it has worked towards the betterment of the children to a greater scale. This society has worked for the establishment of the Juvenile Courts and the Child Protection Authority.

Sri Lanka Police

It is the duty of every citizen to provide information to the police about an instance of child abuse or any act of cruelty. Every police station has established a unit for women and children in order to protect and prevent child abuse and carry out investigations in such instances.

Head office of Child and Women protection Authority in the Police.

According to the Inspector General of Police Circular 1416/98 the unit for prevention of child and women abuse has been established.

Address; No 12, Pagoda Road, Nugegoda.

Telephone; 0112768076

National Child Protection Authority

The National Child Protection Authority has been established under the guidance of the President in order to bring into operation the rights of the children and to prevent child abuse.

The National Child Protection Authority, no 330, Thalawathugoda road, Madiwela.
Child assistance service 1929 which is operative 24 hours.

Information about mental, physical and sexual abuse, abandoned, neglected and street children could be provided to The National Child Protection Authority through the provided telephone numbers.

Human Rights Commission

The aim of the organization is to protect and promote human rights. The Commission has power to investigate into matters of violation of child rights.

Address; No 165, Kinsey Road, Borella, Colombo 08.

Telephone; 0112694925, 0112685980-1

Hotline; 0112689064

Department of Probation and Child Care Services

- Children who do not obey their parents/ guardians, cut school, are stubborn and children who engage in anti-social acts can be taken to the right path.
- Taking care of orphaned, abandoned, helpless children who have been subjected to cruel ill treatment and abuse.
- Investigation, supervision and funding organizations engaged in child welfare and volunteer services.

Address ; No 150, A.L.H.P Building, Nawala Road, Nugegoda.

Labour Department

Complaints can be made to the Labour Department and provincial labour offices in respect to instances of employing children below 14 years, engaging children between the ages of 14-18 in occupations that impose a risk on the lives, education, health or bodies of children.

Children and Woman Affairs Unit,
Labour Department, Narahenpita, Colombo 05.
Telephone; 0112587315, 0112369297

Sri Lanka Legal Aid Commission

The main objective is to provide legal assistance to any person met with legal problems and provide free legal advice to low income earners.

Taking actions to educate children and parents about their rights through the establishment of a unit for children.

Providing free legal advice without considering the levels of income in the best interest of the child in civil proceedings.

Taking needed legal actions in cases of abuse prevalent in various areas for which legal actions have not been taken.

Engaging in surveys related to children and providing consultation to the State regarding loopholes in the present laws related to children and recommending reformations to be made in the law.

Working in collaboration with the police, National Authority for Child Protection, Department of Probation and Child Care Services with a view to promote child rights.

Establishing a legal unit in the Child Protection Authority in Battaramulla and providing assistance to children in deriving solutions to their legal problems.

If you are in the need of providing awareness for children, parents and teachers of your schools about child rights and protection or is seeking to establish a legal unit in the school an application should be made with the approval of the principal to the Legal Aid Commission. Thereon we will provide the needed assistance.

Address;

Sri Lanka Legal Aid Commission,

Child Care Unit, Head Office,

No 129, High Court Complex, Colombo 12.


Telephone; 0115335281,0112433618 Fax 0112395894


Email; legalaidcommission1978@gmail.com


LAC Locations


Head Office	011-2433618	Mannar	023-2222045
Akkaraipattu	067-2279462	Marawila	032-2254443
Ampara	063-2223495	Matale	066-2224828
Anuradhapura	025-2224465	Matara	041-2233815
Attanagalla	033-2297020	Mathugama	034-2249262
Awissawella	036-2233857	Mawanalla	035-2247272
Baddegama	091-2292051	Minuwangoda	011-2297790
Badulla	055-2225759	Monaragala	055-2276891
Balangoda	045-2289099	Mt.Lavinia	011-2718708
Balapitiya	091-2255753	Mullaithivu	021-2290077
Bandarawela	057-2224733	Muththur	026-2238777
Battaramulla	011-2877687	Nawalapitiya	054-2224227
Batticaloa	065-2225399	Negombo	031-2281080
Chawakachcheri	021-2270882	Nikaweratiya	037-2260203
Chilaw	032-2222175	Nugegoda	011-2809068
Dambulla	066-2284551	Nuwara Eliya	052-2235260
Deiyandara	041-2268077	Panadura	038-2244822
Deniyaya	041-2271128	Point Pedro	021-2260212
Embilipitiya	047-2230299	Polgahawela	037-2243039
Galgamuwa	037-2253290	Polonnaruwa	027-2226572
Galle	091-2226124	Pothuvil	063-2248485
Gampaha	033-2248804	Pugoda	011-2405333
Hambantota	047-2221092	Ratnapura	045-2226899
Hatton	051-2222390	Tangalle	047-2240122
Hingurakgoda	027-2245521	Thambuththegama	025-2276259
Homagama	011-2748813	Thissamaharama	047-2239611
Horana	034-2265244	Trincomalee	026-2226328
Jaffna	021-2224545	Valachchenei	065-2258349
Kadawatha	011-2922440	Vavuniya	024-2221863
Kaduwela	011-2548150	Walasmulla	047-2245566
Kakirawa	025-2263536	Wallawaya	055-2274466
Kalmunai	067-2223710	Warakapola	037-2277075
Kalutara	034-2222017	Wariyapola	037-2268199
Kandy	081-2388978	Welimada	057-2244860
Kanthale	026-2234521	Mallakam	021-2059170
Kebithigollawa	025-2298101	Puttalam	032-2266636
Kegalla	035-2231790	Siyabalanduwa	055-2279250
Kilinochchi	021-2285618	Dehiattakandiya	027-2250700
Kuliyapitiya	037-2284611	LT-Borella	011-2698003
Kurunegala	037-2229641	Galagedara	081-2061025
Mahiyanganaya	055-2258332	Wattala	011-2935907
Maho	037-2275075	Hettipola	037-2291915

Legal Aid Commission of Sri Lanka

 No. 129, High Court Complex,
Hulftsdorp Street, Colombo 12.

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