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இலங்கை சட்ட உதவி ஆணைக்குழு
Legal Aid Commission of Sri Lanka



Family Law (Part II)

Maintenance, Custody, Adoption, Domestic Violence



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Ministry of Justice



Family Law

Maintenance, Custody, Adoption, Domestic Violence

Legal Aid Commission of Sri Lanka

Contribution By
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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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Family law relating to marriage and divorce has been discussed in the first part of this book.

In this second part, maintenance, custody of children, adoption, domestic violence, breaking marital promise and related law will be discussed.

Maintenance

Who is Entitled to Maintenance?

- Maintenance can be received from husband to wife and from wife to husband.
- Unmarried children over 18 years and under 25 years can receive maintenance from both the father and mother.

“ Maintenance law of present Sri Lanka is included in the Maintenance Act No.37 of 1999. A developed state of the maintenance law which was executed in our country for a period of time can be seen in the new law. ”

When the wife or husband request for maintenance the following should be completed.

1

The husband/wife is unable to maintain herself.

2

Husband/ wife should have an adequate wealth.

3

Husband/ wife should refuse to maintain or neglect the spouse.

■ **What is meant by an, 'adequate wealth' of a husband or wife?**

Here it is not important whether the husband/ wife has employment or not. When ordering maintenance the court only consider whether he/ she is a healthy person capable of employment.

■ **In which court should a maintenance case be filed?**

When the wife requests for maintenance from the husband she should file the case in either the Magistrate Court of the area she lives in or the Magistrate Court of the area where the husband lives in.

■ **Are there situations that can be exempted from the obligation of paying maintenance?**

When the wife requesting for maintenance is misbehaving or when both are living separately on mutual agreement the wife cannot request maintenance from the husband.



Who is the other party?

When the husband requesting for maintenance is misbehaving or when both are living separately on mutual agreement, the husband cannot request for maintenance from the wife.

After a divorce, as there is no marital bond of husband and wife, maintenance cannot be received from either party.

Can an illegitimate wife claim maintenance from a husband?

Not only a father but also a mother who neglects maintenance of children could be sued. If the illegitimate husband accepts or a DNA examination proves that the child is his, for the said child maintenance can be claimed from the illegitimate husband.

What is the age limit for children to claim maintenance from parents?

1. The father and mother are obligated to pay maintenance to children below 18 years of age.

2. The father and mother are obligated to pay maintenance to children between 18-25 years who cannot maintain themselves.

3. The father and mother are obligated to maintain a child of any age of physical or mental disability.

Could an illegitimate child claim maintenance from the father?

Yes. But should be proven by strong evidence of paternity.

How is a maintenance case filed?

Should file a case in a Magistrate Court. It is most suitable to be assisted by Legal Council. Wives and children with financial difficulties can receive free legal services from the Legal Support Commission or other institutions supplying legal support. Maintenance requests should be done through an affidavit.

When the wife files a maintenance case she is the applicant. When a child is requesting for maintenance, the child or the guardian can apply.

After appealing to the Magistrate Court for maintenance, when the wife sues the husband for maintenance, the magistrate sends the husband a copy of her affidavit along with a summons.

After an inquiry and taking into consideration the husband's income, the wife's wealth and other circumstantial matters, the husband is ordered to pay a monthly allowance.

■ **Is there a remedy for the wife's maintenance during the examination?**

An interim order can be issued to pay a monthly allowance from the date on which the maintenance appeal is presented. At the end of the examination the husband is ordered to pay a monthly maintenance allowance to the wife.

It should be remembered that the order is according to sentence 2 of the Maintenance Act mentioned above.

■ **What happens when a monthly maintenance payment to the wife is neglected ?**

The magistrate has the authority to issue a warrant to charge the respondent who neglects maintenance payment, the amount as a fine. A month's prison sentence each can be ordered for each maintenance arrears.

■ **When is there a court order to pay maintenance for children if the father or mother neglects ?**

Same as mentioned before. A one month prison sentence for a month's maintenance payment arrears.

■ **Are there other remedies to ensure maintenance payment?**

Yes. The magistrate can order to interdict the salary of a respondent who neglects to pay maintenance.

“ When such an order is in force the employer should deduct the maintenance fee from the respondent's salary and should send as per the court order. ”

■ **Could an order be arranged for the maintenance fee to be deposited in a bank or post office ?**

Yes.

■ **Could an order for the payment of maintenance fees be changed by the Magistrate Court?**

When the wife has started to live in misbehaviour the husband can request for the invalidation of an order to pay maintenance to her.

By proving that the children have an adequate amount of wealth the father or mother can invalidate an order to pay them maintenance.

■ **Can an appeal be presented against the magistrate's order to pay maintenance?**

Yes. Can appeal to the Supreme Court against the order of the magistrate. An appeal may be presented to the Supreme Court on a legal matter against a decision made by the Court of Appeal.

Even if an appeal is presented to the Magistrate Court during the time the appeal is examined the payment of maintenance fee doesn't stop.

But when there is just cause by reporting those reasons until the Appeal Court ends its examination and presents a decision the magistrate has the authority to give an order to stop maintenance payment.

Custody of Children

In a case of custody of children, the notion of the general public that the custody of male children goes to the father and custody of female children goes to the mother is wrong.

Whether the custody is given to the mother or the father, the party that did not receive custody has the right to meet and associate with the child.

According to Roman Dutch law the primal guardianship of children belongs to the father. Since the public law of Sri Lanka is the Roman Dutch law the legal status of our country was this, but English judges who served under the British rulers included English law principles to the law relating to custody of children. Therefore presently the decision of who should be granted guardianship of children is based on the English law principle, 'the Child's Best Interest'.

According to the Roman Dutch law the father holds full authority over the guardianship of younger children.

Judges who served during the time when our country was a British Colony steadily infiltrated English law principles into the law of this country.

In what situations does the matter of who should be given the guardianship of children arise?

In a divorce case when father and mother both are fighting over the custody of children, the courts have to solve this matter.

Also when the husband and wife are separated and in a case of child maintenance the matter of custody of children may arise.

Habeas Corpus Cases

When the husband and wife are not legally separated and the wife lives in her home with the child and the husband lives in his home. When the husband abducts the child living with the wife, the wife should request for a Habeas Corpus order from the Supreme Court which has court authority in the relevant area. The Supreme Court would order for the child to be presented to court and issue an order after an examination.

What is the age limit when an under-aged child becomes an adult?

When 18 years of age is completed a child becomes an adult. Therefore matters relating to child custody arise for children under 18 years of age.

In cases of custody of children, considering the child's best interest is the most important matter in English Law Principle.

English judges looked into the matter of whether the child's best interest would be, if the custody of child was vested upon the father or the mother.

The modern concept is to mainly consider the child's best interest and grant the child's custody to father or mother or another party.

When looking into the child's best interest what matters are given the most attention?

The court will consider all matters such as a place to reside, nutritional food, treatment for illnesses, mental well being, rest, security, ethical environment, good education for the child.

When the custody of the child is transferred to either father or mother does the court allow the child's preference?

The court would inquire the preference of female children above 16 years of age and male children above 14 years of age, but the child's preference is not the only factor.

In a situation where the husband obtains a divorce decision against his wife on misbehaviour can the husband get custody of an infant child?

Generally the custody of children is granted to the innocent party.

In such cases the court balances both the rights of the innocent party and the child's best interest and arrive at a decision.

When both father and mother are fighting over the custody of a child can the child's custody be transferred to both?

Cannot.

How could the father or mother who lost custody of child, meet the child?

Along with the order of transferring custody of the child to one party, a command is given allowing the party who lost custody to see the child.

Meeting of the child can be held on a weekend at a set time and place on mutual agreement. Sometimes permission is granted to the losing party to keep the child over the weekend. In most cases a temple or a church is named as a meeting location. It could also be a beach or a park.

Who received the custody of an illegitimate child?



A child born to an unmarried mother is an illegitimate child. The custody of such child belongs to the mother.

When a rich father and a poor mother is contesting a child's custody priority is given to whom?



The court have decided that a mother's warmth and love is a higher happiness to a child than all riches.

In a divorce case, can an appeal be made against the decision given by a District Court on a child's custody?



Can. An appeal can be made to the Court of Appeal against the decision of a District Court. An appeal can be made to the Supreme Court against a legal matter on a decision made by the Court of Appeal.

Adoption

A husband and wife couple or a single person could adopt a child.

A child adopted on a court order has all the same rights and responsibilities as a child of natural parents.

It is a grave mistake towards a child to adopt a child without a court order.

It is common for a couple without children to adopt a child from a poor relative or from an unmarried mother. It is also seen in situations when husbands and wives with only female children taking in a male child or with only male children taking in a female child for adoption.

In order to get a legal order for legal adoption an adoption case should be filed in the District Court.

For an adoption of a child to which court should we request for a court order?

A request should be made through the District Court of the resident area of the requesting party or the child.



Who can request for an order for adoption of a child?

A husband and wife couple or a single person could request. Otherwise two or more persons cannot request.

Is there an age limit to persons requesting for an adoption?

The requester should be above 25 years. The requester's age should be 21 years more than the age of the child requesting for adoption.

This 21 year gap does not apply in the following instances;

1

When the child is a direct descendant of the requester.

2

When the child is a half sister or half brother or a descendant of them.

3

When the child is a child of the requester's wife's or husband's other marriage.

Explain the legal status when a single person requests for adoption of a child ?

Even a single person could get a legal order to adopt a child. But when the only requester is a male and if the child is a girl a court order for adoption is not given.

But when there are special relative relationships an order can be received for it.

When both husband and wife are alive could an adoption order for a child be received on the request of only one person?

One person of a husband and wife couple cannot obtain a legal adoption order without the consent of the other.

But in the following circumstances an adoption order can be obtained by the request of one person of a husband and wife couple.

When one party is missing without trace

When one party is suffering from mental illness

When the two are divorced

What is the age limit of a child requested for adoption?

A request for adoption can be made only for children under 14 years of age. Husband and wives who are lovingly caring for children not of their own should well remember this age limit.

When issuing an order for adoption of a child should the consent of the natural parents be obtained?

Yes.

Consent should be obtained in the below mentioned methods;

1. if it's a child of a married couple consent should be taken from both.

2. if it's an illegitimate child the consent should be taken from the mother.

3. if it is a child under guardianship of another person consent should be taken from the guardian.

Isn't it possible to get an adoption order without taking consent of someone the consent should be obtained from?

The District Court is the highest authority for under-aged children, from which approval can be taken.

A person who should give consent as mentioned above, but,

Has abandoned the child.

Is a mentally ill patient.

Has neglected maintenance of the child, then without inquiring their consent, the District Court has the power to issue an order for adoption.

Does the court inquire the child's consent before granting an adoption order?

The consent of children above 10 years of age is inquired. Therefore it is wise to get an adoption order before the child reaches the age of good speaking ability.

Could the name of the adopting child be changed?

The child receives the surname of the requesting father. The child can be given a name as per the wish of the requesters.

■ **Could children be sold?**

It is prohibited to give or receive money or a gift from anyone or even promise to such in exchange for an adoption.

■ **What is the procedure when a foreigner needs to adopt a child?**

A husband and wife with citizenship of any country can apply to adopt a child of Sri Lanka.

The child requested for adoption should be a child in a government orphanage or in an orphanage registered under the Orphan Ordinance. Also should be a child chosen from a place by the Commissioner of Probation and Child Care. The applicants should attach an environmental education report about them from a recognised institution from their country, a police report from the authority in their area of residence, both attested by the Sri Lankan ambassador of that country, in the Probation and Child Care Commissioner's report.

■ **Once a foreign couple receives an adoption order and take the child to their country, then?**

The foreign couple should send progress reports of the child to the Commissioner of Probation and Child Care of this country until the child is 10 years old.

■ **Are there laws implemented to stop such children from child trafficking?**

Yes. There are provisions included for this in the Child Adoption (Amended) Act No 15 of 1992.

1 Any pregnant woman during her pregnancy.

2 A child with or without his mother held by any person illegally for adoption is committing a punishable offense.

Anyone convicted of such an offense can be sentenced to a maximum fine of Rs. 20,000/= or 2 years of imprisonment or both.

■ **How can a case be filed to obtain an adoption order?**

The Child Adoption Ordinances No. 24 of 1941 and No.54 of 1943 of Sri Lanka states the law in relation to this.

A child adoption order should be requested through a petition and an affidavit and also must present an affidavit from the natural parents or natural mother giving consent.

Breaking Promise of Marriage

A love letter with a promise of marriage is like a blank cheque. If the person writing the letter avoids marriage, can file a case and claim compensation. It should be in writing and also without any conditions, but a break of promise for marriage does not have to be written.

Who can get into a valid promise of marriage?

Only those who are suitable to commit into a valid marriage can get into promise of marriage.

Can a married give promise for marriage?

Although a married can give a promise of marriage, that promise is not valid in front of the law.

When forcefully signed into a promise of marriage what is the legal status?

Since promise of marriage is an agreement there should be free consent. It is not valid when a promise of marriage is given on improper influence, fraud or by force.

Promise of marriage given by someone when not in proper state of mind or by persons of non proper state of mind it is not valid. According to the exception in Section 20(3) of the General Marriage Registration Ordinance a case can be filed for breaking promise of marriage only when given in writing.

Is there a certain time limit when filing a case against breaking a promise of marriage?

There is. The case should be filed within 2 years of the date of breaking the promise.

- 1 Residence of the defendant
- 2 Place where the promise was made
- 3 Place where the promise was broken

A case can be filed in the legally authorized District Court in relation to any of these places.

When a promise of marriage is broken what are the remedies that can be taken by going to court?

Can claim compensation.

What are the compensation that can be claimed?

1

The loss incurred by breaking the promise of marriage can be claimed.

2

Mental pain incurred due to the breaking of the agreement compensation can be claimed.



Domestic Violence

If someone desires to go to one's own home, if any sadness is felt when leaving the home, it is a proof of living happily in that home. If the home the whole life is lived in is a living hell then he spends all his life in sadness.

If a person outside of our home cause us persecution, harassment or abuse there is a series of prepared laws and regulations that has been activated in our country.

But at a time when a clear law was needed to prevent mental and physical persecution and harassment by a close relative in your own home the Domestic Violence Prevention Act No. 34 of 2005 was launched.

“The importance of this is that anyone can go to the court for help for physical harassment as well as mental stress caused by others who are related to you.”

Under this Act those stated in the Penal Code as physical torture – offense related to the human body, criminal intimidation, by force, injury, assault, coercion, sexual abuse, abuse, adultery and many more offenses are included.

For aggressive shouting to mean mental harassment, it should be in the nature of serious disrespect or insult and be a part of usual behaviour. It should also seriously and instantly hurt the harassed person.

A person subjected to such harassment or an authorised person in place of such person can report this information to the court. If the person subjected to abuse is a child, a father, mother, guardian, any other person living in the same place as the child or a

person authorised by the National Child Protection Bureau can present themselves in place of the child.

The speciality about these cases is that the request is urgently considered by the court. There if the court is satisfied that steps should be taken to certify the safety of the person subjected to harassment an interim security order is issued immediately. There this order is issued prohibiting the person causing harm to approach the person being harmed.

This interim order is handed to the defendant and he is brought in to court. It is ordered to proceed with the inquiry on a date within 14 days.

During the inquiry the defendant should come to court and state reasons as to why a security order against him should not be issued.

The court will consider all matters and if it seems best to do so, a security order will be issued.

Other orders the court can issue under this Act;

Forward to family counselling.

Forward to social services counselling.

Forward to a psychiatrist.

If the court feels that a special security order should be issued towards the person being harassed an order can be done to observe the execution of the order.

If the defendant possesses any weapons, to remove them.

To issue an order to prevent the defendant from coming to the petitioner's place of service, school or whereabouts and cause harm or unease.

To issue a maintenance order if the persons subjected to harassment are dependants of the person causing harassment.

Additional orders to provide the necessary security health and welfare to persons being harmed.

An order to get police support for the persons being harmed to collect their personal belongings.

An order to supply temporary shelter facilities.

Any other additional orders the court feels suitable.

If the orders are violated

Person is punishable by a fine not exceeding Rs. 10,000 and imprisonment not exceeding one year.

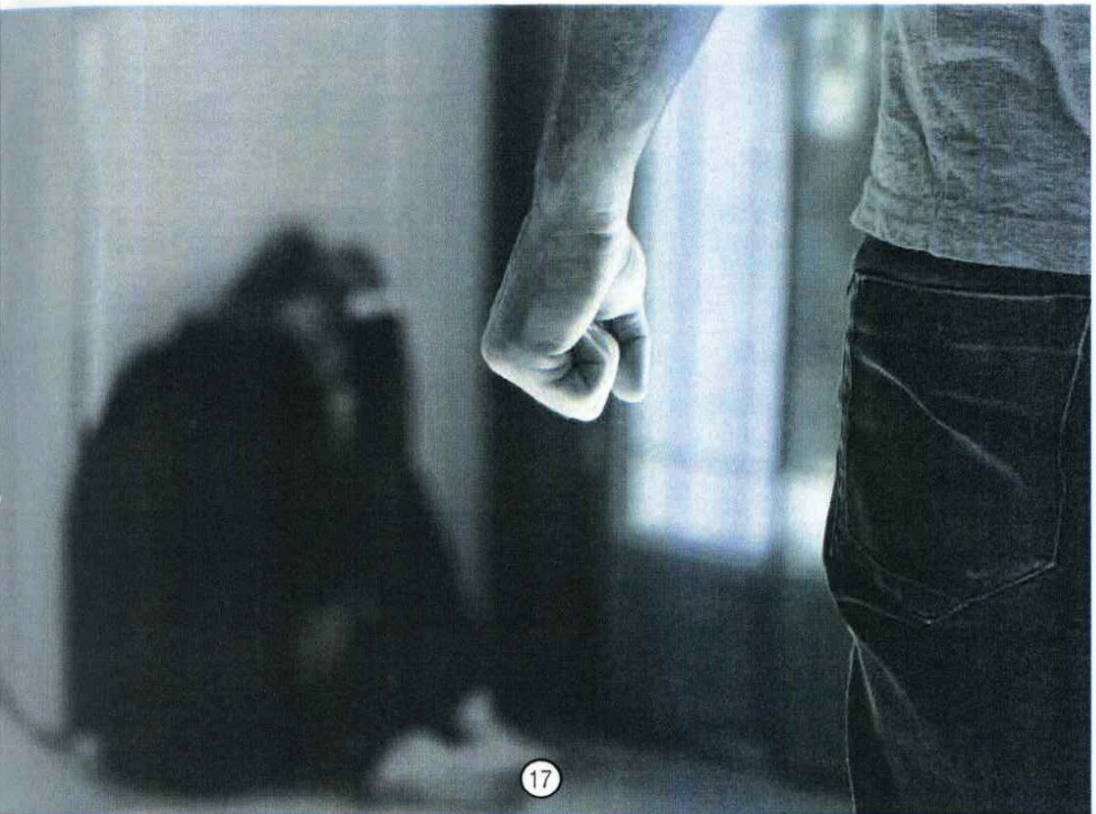
Situations when an interim order becomes a security order

An interim order is when at the initiative the plaintiff explains the information to the court and a temporary order is issued.

A security order is when an inquiry is done by bringing the defendant to the court an order issues when the court sees this order should be powerful.

At the beginning it could be issued for a maximum of 12 months.

Then when the case is brought and both parties are willing to settle the order mentioned prior is dissolved.





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

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