VIOLENCE AGAINST CHILDREN AND ENSURING THE JUSTICE FOR CHILD VICTIMS THROUGH HUMAN RIGHTS AND PENAL LAWS PERSPECTIVES IN SRI LANKAN CONTEXT

Muthukuda Arachchige Dona Shiroma Jeeva Shirajanie Niriella

Department of Public and international Law, Faculty of Law, University of Colombo, Sri Lanka
jeevaniriella@yahoo.com jeeva@law.cmb.ac.lk jeevaniriella@gmail.com

ABSTRACT:

In Sri Lanka, children are subjected to violence in a range of contexts, including psychological, physical and sexual violence pushing their protection into serious question. The variety of violent activities against children takes place both outside and inside the home which results in damage to their future. According to crime statistics in Sri Lanka, violence activities against children have been considerably increased especially in the later part of the last decade.

This study found that the absence of effective substantive and procedural criminal laws that aligned with international standards to punish the perpetrators and lack of proper system of assistance for child victims aggravated the situation. Therefore, this paper critically evaluates the substantive criminal law and procedural rules enacted in Sri Lanka in relation to violence against children. Further, reasons for violence against children, variety of violent activities that Sri Lankan children are being subjected to and consequences of violence against children will be discussed. This research is based on both library and fields research which involve reviewing of publications and interviews with relevant authorities.

Keywords: Penal Code, Violence against Children, Sri Lanka

1. INTRODUCTION

1.1 BACKGROUND OF THE STUDY

According to the Department of Census and Statistics, Sri Lanka, the population of Sri Lanka was 21,481,334 as at 2012. Out of this population approximately 7,000,000 persons are children, below the age of eighteen years which is a significant proportion of the total population of the country. Since the above said 7 Million of child population is approximately 36% of the total population of Sri Lanka, protection of children from all types of violent activities is of utmost importance for the social stability of the country. Media in Sri Lanka, reports many incidents relating to violence against children in a range of contexts, including physical, sexual and psychological which take place both outside and inside the home. Violence against children itself is a serious breach of human rights of children. Crime statistics in the Annual Police Administration Statistical Reports also reveal the increase of the offences committed against children in the country. Both these informal and formal information reflect and endorse the protection extending to children in the country is inadequate. Since children are the most vulnerable members of society due to the high dependency on their parents or guardians (adults) and immaturity it is the responsibility of family members to understand, support and ensure the rights of the children and policy makers to strengthen the laws relating to protect the children from all forms of violence activities. This research is a critical analysis of the contemporary penal laws (criminal law) relating to the protection of the children from violence.
1.2 PROBLEM STATEMENT

Sri Lanka ratified the Convention on the Rights of the Child on July 12, 1991 and became a member to the Convention. Since Sri Lanka adopts the duelist theory in relation to the application of the international Law in the national jurisdiction, it is required to translate such international agreements into the domestic level by enacting national laws. Article 157 of the 1978 Constitution of Sri Lanka stipulates that the duly ratified international agreements may have the force of law in the country and no regulation/rule/law may be enacted contrary to the international agreement. Therefore, it is clear that the legal system of Sri Lanka should take necessary steps to pass child protection laws against violence and establish other appropriate mechanisms which align with the provisions in Convention on the Rights of the Child (CRC). Further, Sri Lanka adopted a policy document, Children's Charter in 1992, to protect the children from all types of violence activities and to protect their rights. In 1999, the National Child Protection Authority (a special institution) which consisted of local monitoring and child protection committees was established to specifically address the child related problem in the country.


Although Sri Lankan Law has been developing to recognize and protect rights and interests of children, violence activities against children have been drastically increased during the last decade. Therefore, there is a necessity to look at this issue from socio economic and legal aspects to ensure the protection of the children. This research is an attempt look at this issue through the legal perspective: human rights and penal laws.

1.3 HYPOTHESIS OF THE RESEARCH

The drawbacks of the penal laws relating violence against children contributes to increase the problem in Sri Lanka.

1.4 OBJECTIVES AND JUSTIFICATION

This research basically attempts to

- Critically examine the existing substantive and procedural penal laws relating to the protection of children from violence and recommend the relevant remedies to those laws.

1.5 METHODOLOGY

This research adopted qualitative research method to complete the paper by identifying the legal issues associated with the protection of children from violent and abusive activities. The qualitative research method in this study involved in examination of relevant international and national standards and data collection from authoritative sources. Data collection was basically conducted through library research and internet based data bases. Primary sources which were relevant to the research area of this paper included statutory provisions, international standards, judicial decisions were strongly analyzed. The relevant secondary sources such as reports, research articles, website articles and text books on this topic also were examined to complete the paper.

1.6 LIMITATIONS

Although this research is focused on the protection of children from violent activities (child victims) it was not conducted face to face interviews with victimized children in order to maintain the research ethics and privacy of children as well as due to other practical difficulties.

2. DISCUSSION

The particular section of this paper mainly appraises the contemporary penal laws relating to violence against children. Being protected from violence as a right of a child will be discussed as a part of this discussion. Violence against children as a social problem in the country, variety of violence against children, main reasons for aggravating the situation, and ill-consequences of violence against child will be discussed to provide an idea of the present scenario of this problem.
2.1 VARIETY OF OFFENCES AND VIOLENCE AGAINST CHILDREN AS A SOCIAL PROBLEM IN SRI LANKA

Though the quality, coverage and reliability of information is uncertain (vague), some national statistics on reported crimes are available in the police statistical records and in the National Child Protection Authority (NCPA). According to the information gathered from NCPA, Police Administration Reports and Prison Statistics published by the Department of Prisons, children in Sri Lanka are more vulnerable to sexual offences. Non-fatal offences against body, take the next place in the hierarchy of the crime index. Rape, grave sexual abuse, sexual abuse/sexual harassment, incest, procuring, using children for obscene and exhibition and child prostitution/commercial sexual exploitation of children are more common among the sexually related offences. Being subjected to kidnapping, being stranded and neglected, employing children in begging, hurt, force, criminal force, assault, unlawful restrain, unlawful confinement, cruelty to children and child labour are the common offences committed against children under the category of non-fatal offences against human body. Murder, capable homicides not amounting to murder and causing death by negligence are the common fatal offences committed against children. The offences committed against children are categorized under two groups (minor offences and grave crimes) in Police Administration Reports. In these reports, minor physical injuries, sexual abuse, sexual exploitation, child prostitution, forced participation in pornography, used in obscene publications, incest, unnatural offences, subjected to cruelty, abduction, kidnapping, employing children in domestic labour, employing children for begging, denying education are mainly categorized as minor offences. Murder, attempted murder, culpable homicide not amounting to murder, grievous hurt, rape, and grave sexual abuse are categorized under grave crime group.

The number of reported cases relating to violence against children, which could be classified as minor in nature, was in the range of 700 to 900 per year during the period from 2000 to 2002. However, there was a 65% increase in the number of such offences in 2003 compared to that of year 2000. It was from 900 to 1488. The minor sexual offences such as sexual abuse, sexual exploitation, child prostitution, pornography and obscene publications contributed between 60% to 70% of the total minor offences reported during the period from 2000 to 2002 (i.e 68.6% in 2000, 67.4% in 2001 and 60.8% in 2002). However, this percentage has decreased drastically in the year 2003 to 34.7%. It is significant to note that a very high number of offences (60.1%) recorded under the category of “others” (such as simple hurt, force, criminal force, assault, unlawful retrain and unlawful confinement) in 2003.

According to the Police Administration Reports murder, attempted murder, culpable homicide not amounting to murder, grievous injuries and grave sexual abuses are classified as major offences against children. From 2000 to 2004, there was a 50% increase which was from 1288 to 1933 in the number of reported grave crimes against children. Crimes under the broader category of sexual abuse (rape, and other varieties of grave sexual abuses) were contributed the range between 65% and 70% of the grave crimes reported to the police during this period (i.e. 65.1% in 2000, 67.0% in 2001, 68.4% in 2002 and 68.9% in 2003).

Though the reliability of the reporting figures of both minor offences and grave crimes against children are questionable, the number of commissions of minor offences and grave crimes were gradually increased from 2003 to 2010. Further, when statistics are analyzed it seems that the number of offences reported in last two years (2011 and 2012) were relatively higher than the previous years in the last decade. There were 5132 cases of violence (both minor offences and grave crimes) against children were reported in 2011. It was 1/20 of the total number of minor offences and grave crimes, reported to the police in the year 2011. However, the statistics published by the above said three institutions indicate that the violence against has been gradually increased during the last decade. Further, those statistics indicate that girl children between 10-14 years of age are more vulnerable for violence especially sexual violence.

2.2 REASONS FOR VIOLENCE AGAINST CHILDREN

Due to immaturity and low level of mental and physical capacity, children are unable to understand the reality of the situations/incidents that they faced and obtain the available formal legal support. Therefore they may be vulnerable for violence repeatedly. This is the main contributory factor to increase the violence against children. In addition to the above said factor some socio-economic factors
such as family brake-down, poverty, peer pressure, poor attention of the parent on their children, urbanization and migration from rural to urban areas are contributed to increase the violence against children. According to the information gathered from NCPA migration of married women for foreign employments is made the situation worst. Especially when mothers employing in abroad, Middle East countries leaving their children behind, those children (between 200,000 and 300,000) often live in difficult circumstances and being subjected to different types of violent activities. Further, vacuums in substantive law especially penal laws and procedural laws also contributed to increase the number of cases of violence against children considerably.

2.3 ILL-CONSEQUENCES OF VIOLENCE AGAINST CHILDREN

According to Jim Hopper the ill consequences of child abuse depends on a variety of factors. They are intensity and frequency of abuse, the gravity of the violence activity, the time period that the violence takes place, age of the child, the relationship of the perpetrator, response from the other who know the problem of the child. As immediate consequences, abused children generally become quiet, reserved and avoid social settings. Their performance in schools is poor. They experience long-term adverse effects including permanent physical, mental and intellectual impairment, educational and emotional failure, criminal or delinquent behavior, and the possibility that the abused children in turn become abusers. These children may try to deal with stress and anxiety through substance abuse, deliberate self-harm or other harmful types of behavior. [1] Bodily injuries, unwanted pregnancies, gynecological problems, sexually transmitted disease headaches, permanent disabilities, asthma, irritable bowel syndrome and self-injurious behaviors such as smoking, unprotected sex etc.. are physical problems that the victim children are faced due to violence that they have being subjected to. Depression, fear, anxiety, low self esteem, eating problems, obsessive compulsive disorder, post traumatic stress disorder and alcohol or substance addict are the mental/psychological ill effects of child abuse. Additionally, the abused children may feel to commit suicide due to social stigma. [2]

2.4 LEGAL FRAMEWORK

2.4.i Application of the international and regional standards


With regard to the application of the international, as said earlier Sri Lanka follows the dualist system. Therefore, in Sri Lanka international law (treaty law) is not directly applicable domestically. It must first be translated into national legislation (enabling statute) before it can be applied by the national courts. Further, Article 157 of the 1978 Constitution of Sri Lanka stipulates that the duly ratified international agreements may have the force of law in the country and no regulation/rule may be enacted contrary to such international agreement. Therefore, it is clear that Sri Lanka legal system should enact the child protection laws and other appropriate legal procedures which align with the provisions in CRC, OPSC and ILO conventions.

2.4.ii Constitutional provisions and policies in the Children's Charter

After ratifying the CRC, Sri Lanka has introduced the Children's Charter, the first policy document relating to the protection of the rights of children based on the CRC, in 1992 aiming at the protection of the children from all forms of violent activities and ensure their rights and benefits. Thereafter, in 1999, the National Child Protection Authority (NCPA) which consisted
of local monitoring and child protection committees was established under the National Child Protection Authority Act No. 50 of 1998 to specifically address the problem of child abuse in Sri Lanka. In 2002 a Special Investigations Police Unit was established at the NCPA to deal with child abuse matters. Prior to 2002 the NCPA had two officers attached to deal with the cases relating to child abuse cases. At present the new unit consists of a total of 16 police officers to deal with such cases. This Police Unit, which operates under the Deputy Inspector General of Police - Crimes and Operation, handles (receive complaints, conduct investigation) the cases of child abuse and report those cases to the NCPA. In terms of the NCPA Act, No. 50 of 1998, the NCPA has been monitoring the progress of all investigations and criminal proceedings relating to such cases. In 2002, 14 complaints of grave crimes and 50 complaints relating to minor offences were reported to the unit directly. The unit itself has detected commissions of child sexual abuse by foreign nationals and has referred those cases to the Interpol and relevant embassies for further action. In addition to the aforementioned Police Unit there are 36 Children & Women Bureau Desks operating in the Island in following police divisions to handle child abuse cases. Those desks are functioned in Ampara, Anuradhapura, Badulla, Bandarawela, Batticaloa, Chillaw, Colombo – North, Colombo – South, Colombo- Central, Elpitiya, Galle, Gampaha, Gampola, Hatton, Jaffna, Kaluthara, Kandy, Kantale, Kegalle, Kelaniya, Kuliapitiya, kurunegala, Matale, Matara, Monaragala, Mount Lavinia, Negombo, Nikaweratiya, Nupegoda, Nuwara Eliya, Panadura, Polonnaruwa, Rathnapura, Tangalle, Trincomalee and Vavuniya police divisions. The respective ASPP Districts have been supervising such desks.

Non-discrimination and the best interest (well being) of the child are the two basic conceptual policies adopted by the Children's Charter. The Children's Charter well respects to equality before the law and equal protection of the laws. In other words children should not be discriminated due to their age or total dependency situation. The State of Sri Lanka should take the necessary steps including enacting relevant laws to adopt the two policies.

The 1978 Constitution guarantees equal rights without discrimination on the grounds of sex or age and permitted in achieving substantive equality for every human being. [3] According to the Article 12 (4), nothing in the Article 12 prevent special provisions being made by law, subordinate legislation or executive action for the advancement of women, children or disabled people. Unfortunately, the aforementioned right is limited only to the constitution and child victims (especially child victims of crime) are marginalized or forgotten in the criminal justice system in Sri Lanka except in few penal laws which focused on latter in this paper.

Articles 2, 3 and 6 of the Children’s Charter, enshrine the best interests of the child concept/policy. Chapter VI (Articles 27 to 29) of the Constitution deals with Directive Principles of State Policy and Fundamental Duties. Article 27 (13) of the Constitution stipulates that State shall 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. Since both the Directive Principles of State Policy and the Children’s Charter are not legally enforceable, best interest of child victims are not completely covered in statutory law in the country except in a few statutes. [4] However, it is significant to note that no single provision is included to define the term child victims in this charter.


2.4. iii Penal Code (Amendment) Act No 22 of 1995

The substantive criminal law/penal is mainly embodied in the Penal Code Act No 02 of 1883 along with some special laws enacted by the legislator of the State of Sri Lanka. The Penal Code Amendment Act No 22 of 1995, perhaps the most remarkable legislative enactment relating to sexual offences, passed by the Sri Lankan Parliament incorporating some substantial changes to the legal provisions then existing, with regard to rape and other sexually related offences. The parliament has enacted this Amendment with special purpose of protection women and children, who are more vulnerable to sexual offences and various types of harassments due
the socio-economic set up and the attitudes of Sri Lankan of society. Among the other changes brought with regard to the case of rape, increasing in the age of statutory rape,[5] eliminating the requirement that the act (sexual intercourse/access) should be against the rape victim's will, interpreting the term 'consent' as voluntary consent given by the rape victim[6] and removing the need of evidence for actual physical injuries to indicate the resistance made by the rape victim[7] are significant if the rape victim is a child.

According to section 363 (Exception) of the Penal Code No 2 of 1883, sexual intercourse between a man and a girl who was under the age of twelve years was considered as an offence which was known as statutory rape.[8] In such circumstances consent given by the girl was irrelevant.[9] Thus, twelve years was identified as the legally accepted age to express the consent for a sexual intercourse. This law has been amended by the 1995 amendment to increase the (legal) age for expressing the consent to sixteen years.[10] Therefore, according to the existing law expressing the consent is not a relevant factor if the girl is under the age of 16 years. This is subjected to the exception where the girl is over twelve years of age, wife of the man and not judicially separated from him. Thus, one may argue that the bar to sexual intercourse with a girl under twelve years even if she is the wife, is still available in the criminal law of Sri Lanka. However, the consent expressed by the victim (girl under sixteen years of age) is an important factor to be considered when the offence is committed by a boy who is under eighteen years of age (Proviso to the section 364. 2). In such cases consent is a relevant factor in respect of imposition of the term of the imprisonment (Proviso to the section 364. 2). Further, this may be discrimination between communities who do not recognize child marriages and the communities who recognize child marriages within their special laws.

The considered age (sixteen years) for expressing the consent for sexual intercourse, leads to confusion in the present law relating to child affairs. As mentioned earlier Sri Lanka is a member State to the CRC. According CRC (Article 1) a child means a human being below the age of 18 years unless the law applicable to the child, majority is attained earlier. In Sri Lanka the legal age which is recognized for the purposes of age of majority,[11] exercise of franchise, make a will and enter into a marriage bond (Other than Muslim Law) is eighteen years. Therefore, a question arises with regard to the consent expressed by a girl (child) who is between the ages of sixteen to eighteen years, for a sexual intercourse with a man is of a valid consent. This situation creates a grey area in our law.

Rape is a punishable offence in Sri Lanka. Section 363 of Penal Code Act No 02 of 1883 defines the offences of rape as forced penetrative sexual intercourse of a female victim by a male perpetrator. Therefore, it is clear that sexual intercourse with a male child is not defined as rape in the criminal law. It is not explicitly recognized as child sexual abuse in Sri Lankan penal laws too. Unfortunately this gap was not rectified even in the Penal Code (Amendment) Act 1995.

Although boys are not identified as rape victims per se under the original Penal Code, sexual intercourse with boys can be adjudicated under the both ordinary Penal Code,[12] and 1995 Amendment Act as unnatural offences[13] or acts of gross indecency between persons.[14] However, these sections do not protect boys between the ages of sixteen and eighteen. Further, boys who are being subjected to these offences probably could be convicted as co-offenders rather than victims.

(Commercial) sexual exploitation[15] was not adequately addressed in the penal law of Sri Lanka until the Penal Code Amendment Act of 1995 was enacted. Newly incorporated section; 360B criminalizes any person who allows a child to be on any premises for the purpose of ‘causing the child to be sexually abused or to participate in any form or sexual activity or in any obscene or indecent exhibition or show as well as a person who acts as a procurer of a child for sexual intercourse or any form of sexual abuse by means of influence, threat, violence or provision of money or benefits to the child or parents of the child However this section does not include guardians of the child. To the purpose of the section child means a person (both male and female) who is under the age of eighteen. On the other hand the National Child Protection Authority Act of 1998 provides a broad definition for the offence of child abuse which describes any forms of violence against children, including commercial sexual exploitation of children. Therefore one may argue that both the NCPA Act and the Penal Code do not make any distinction between the terms 'child abuse' and 'commercial sexual exploitation of a child' which may be treated as a drawback of the penal laws pertaining to protection of the children against violence.
Grave sexual abuse was introduced as a separate criminal offence by the 1995 amendment. According to section 365 B [16] any sexual activity which does not amount to the offence of rape is considered as the offence of grave sexual abuse. Consent of the victim is not a relevant factor to prove mens rea when the victim is person who is under sixteen years of age. The punishment imposed for the offence of grave sexual abuse is varied on the age of the victim. The minimum term of imprisonment is lesser (five years) if the victim of grave sexual abuse is under sixteen years of age, than the victim is under eighteen years of age (if it so seven years). [17]

Prior to the 1995 amendment, incest was not recognized as distinct criminal offence in substantive criminal law of Sri Lanka. Section 364 (A) defines incest[18] as ‘sexual intercourse with another, who stands towards him in any of the following enumerated degrees of relationship which include biological and adoptive parents and grandparents, children and grandchildren, sisters, brothers, nieces and nephews, aunts and uncles, widows and half-relations. The law applies to both male and female victims and either males or females may be considered perpetrators. However, this section does not distinguish child victims from adult victims.

Cruelty to children also was not criminalized until 1995.[19] Section 308A of the Penal Code stipulate that willfully assaults, ill treats to a person who is under eighteen years of age or neglects or abandons of such person is punishable offence. This section is equally applicable to both male and female children.

Prior to 1995, there was rule of practice which required the judge to take mandatory and independent corroboration [20] to the testimony of a prosecutrix in a rape case. The requirement that the act should be against her will is no longer presented in the penal law of Sri Lanka. Unlike the earlier law, evidence of resistance such as physical injuries to body (especially the victim of rape) is not essential to prove that the particular act took place without her consent. Therefore, now it is established in our law that it is not necessary that the evidence of the rape victim should necessarily be corroborated and the degree of corroboration is varied with the circumstances of the case.[21] However, in practice many Judges (many times) look for corroborative evidence which go the extent of proving the resistance made by her. This practical inference put the raped victim in secondary victimization. Therefore, it is important to work towards providing a clear understanding of the purpose of the 1995 Amendment, particularly this provision to the judicial officers.

It is true that there is no sentencing policy as to determine the most appropriate degree of punishment on the offender who has committed the offence of rape. The sentencing policy in relation to the above matter varies depending on the attitude of the judges who hear the cases and the discretion for considering various factors [22] relating to the specific case. This discretion may lead to create a sentencing disparity of punishments, even in similar circumstances. This defeats the idea of uniformity of punishment, further putting rape victims in a discriminative position. However, the Penal Code (Amendment) Act, No 22 of 1995 introduced the concept of minimum sentencing rule in respect of all sexual offences [23] in order to send the massage of deterrence and minimize further dilemma that the victim has to go through by imposing a lenient punishment on the offenders who committed a heinous offence. Similarly, suspended sentence is prohibited where there is mandatory minimum sentence prescribed as the appropriate punishment.[24] However, the provisions in 1995 Amendment did not remove the discretion of the Court to impose a sentence lesser than ten year minimum sentence where statutory rape is committed by a boy under eighteen years old. [25] This is a divergence of the main purpose of the particular amendment, i.e. protection of women and children from gender-based violence, but focuses more on rehabilitation of the offender.

Section 17 of the Code of Criminal Procedure Act No 15 of 1979 provides necessary legal provisions in respect of the compensation to the victims of a crime. Through compensation order Courts may direct the offender to repair the loss or damages caused to the victim. Usually, compensation is recovered from the fine as an ancillary order, which is imposed for an offence [26] as decided by the Court in the decision of Rabo v James (32 NLR 91) . But the Penal Code (Amendment) Ordinance, No 22 of 1995 [27] empowers the Courts to impose a compensation order as a mandatory punishment [28] with imprisonment for sexual offences.[29]

2.4. iv Penal Code Amendment Act No 16 of 2006

The laws of the Penal Code on trafficking in Sri Lanka have recently been amended to concur with
the Optional Protocol on Trafficking. As of the 2006 amendment, the mechanisms of trafficking include buying, selling, bartering, recruiting, transporting, transferring, harbouring, receiving, ‘or any other act’. [30] The addition of the words ‘or any other act’ allows the law to address a wide range of recruitment mechanisms that may not be included in the definition. In the 2006 amendment, the actus reus of the trafficker includes the use of threat, force, fraud, deception, or inducement or by exploiting the vulnerability of another. However, some common means by which traffickers acquire victims are not included, such as abduction, or deceiving, causing fear to, threatening or coercing the parent or guardian.[31] Whereas the previous Penal Code legislation on trafficking, as of the 1995 amendment, was limited due to its emphasis on the transportation of the trafficked child ‘to a foreign country’, this has been addressed in the 2006 amendment, in which the country of destination is not mentioned. Thus the law includes both internal and external trafficking.[32] The most significant weakness in the present amendment is the exceedingly soft penalty for trafficking, being ‘not less than two years’ for an adult, and ‘not less than three years’ for a child’. [33]

2.4.v. Code of Criminal Procedure Act No 15 of 1979

Under the criminal law in Sri Lanka, generally the accused has a right to counsel or in other words, the right to represent. However, in Jagathena v Bandaranayake (1992 1 SLR 371) the court has recognized that the right be given to the aggrieved party to be represented in terms of section 260 of the Code of criminal Procedure Act. Therefore, the aggrieved party in a sexual offence case can support any relevant matters before the trial judge which the aggrieved party wishes to bring to the notice of the court of law and this could be done even before the Court of Appeal.

Section 191 and 400 of the Code of Criminal Procedure Act No 15 of 1979 permit (provide the opportunity to) the victim to conduct the prosecution in the absence of a Counsel for her in summary trial before the Magistrate and in the absence of the representative of the Attorney General in non-summary trial before the High Court respectively.

2.4.vi Evidence Ordinance No 14 of 1883

Further, the Evidence Ordinance has also taken some steps to ensure that the victim is able to give evidence without being subjected to any undue harassment or intimidation. In other words the Sri Lankan legislature has set out legal provisions having in mind the victim protection, dignity, integrity and safety. Those steps are as follows: Section 150 provides that there must be sufficient basis for asking questions otherwise the Attorney-at-Law can be reported to the Supreme Court; section 151 prohibits asking indecent or scandalous questions whilst section 152 restricts asking insulting or annoying questions from the victim; section 153 forbids cross examination of bad character of the victim. Further, the Judicature Act (Amendment Act No 27 of 1988) provides for direct indictment in cases of statutory rape in order to avoid the secondary victimization of the victims.

However, the sources indicate that existing laws designed to protect children are poorly enforced. Sources indicate that many law enforcement officers, as well as the public, are not fully aware of the laws designed to protect children from all the types of violence. Some statements say that lengthy delays in the prosecution of sexual assault cases, long delays in court proceedings, impunity enjoyed by the perpetrators and discrepancies fall short in collection of medical evidence in cases of sexual offence have contributed to the de facto decriminalization of rape.[34]

3. CONCLUSION AND RECOMMENDATIONS

Although the Parliament of Sri Lanka has put some efforts into eliminating violence against children by introducing substantive penal laws and procedural laws as counter legal measures for the issue of violence against children especially, (the issue of sexual violence), these laws are not sufficient to eradicate problem completely. Therefore it is suggested that definition to child should be aligned with CRC, review of the present system of mandatory sentencing in child-related crimes, in order to identify whether such provision has had the desired effect of reducing those crimes.

Reference:


2. Information gathered from NCPA officials and World Health Organization.

3. Article 12 (1) of the Constitution of 1978 states that all persons are equal before the law and are entitled to protection of the law. Article 12 (2) says that no citizen shall be discriminated against on the grounds of age, religion, language, cast, sex, political opinion, place of birth or any of such grounds.

4. Section 5(2) of the ICCPR Act No 56. The section states that in all matters, whether by public or private social welfare institutions, courts, administrative authorities, or legislative bodies, the best interests of the child shall be of paramount importance; Further see the Domestic Violence Act No . 34 of 2005 and Jeyarajan v Jeyarajan 1999(1) SLR 113.

5. Section 363 (e) of the Penal Code Amendment Act No. 22 of 1995.


7. Section 363 Exception 2 of the Penal Code Amendment Act No. 22 of 1995.


9. The earlier section 363 (second exception) says that... ‘Sexual intercourse by a man with his own wife, the wife not being under twelve years of age is not rape’.

10. Section 363 (e) – with or without her consent when she is under 16 years of age, unless the women is his wife who is over twelve years of age and is not judicially separated from the man.


17. Section 13 of the Penal Code Amendment Act No 16 of 2006.


20. The King v Ana Sheriff (1941) NRL 169; The King v Marthelis (1942) 43 NLR 560; The King v Themis Singh (1944) 45 NLR 378; The King v Basnayake (1948) 49 NLR 414 CAA; King v Athukorala (1948) 50 NLR 256 CCA.


22. A.G. v Ranasinghe 1993 2 SLR 81 In this case the Court emphasized that in a rape case an immediate custodial sentence can be imposed to mark the gravity of the offence, to emphasize the public disapproval, to serve as a warning to the others, to punish the offender and to protect the woman.....


25. Proviso to the section 364 (2) of the Penal Code Amendment Act No. 22 of 1995.

27. Section 364 of the Penal Code (Amendment) Ordinance, No 22 of 1995 says that whoever commits rape shall, except in the cases provided for in subsection (2) (3), be punished with rigorous imprisonment for a term not exceeding twenty years and with a fine, shall in addition be ordered to pay compensation of an amount determined by the court, to the person in respect of whom the offence was committed for the injuries caused to such person. Further see, sec.364 (2) (g) of Penal Code (Amendment) Ordinance, section 365 as amended by the Penal Code (Amendment) Ordinance, No 22 of 1995.


29. Sections 364 (1) and (2), 365 A of the Penal Code (Amendment) Ordinance, No 22 of 1995.

30. Section 360 C of the Penal Code amendment Act No 16 of 2006


33. Section 360 C of the Penal Code Amendment Act No 16 of 2006.


**Bibliography**

