

# **Evaluating the Domestic application of CRC principles in Sri Lankan Jurisprudence.**

*Sharya Scharenguivel*

*Head Department of Private and Comparative law and Professor of Law*

## **Background**

The law relating to children is found in the residuary common law, the statute law and the special laws. Any reform of the law involves looking at all these sources if comprehensive law reform is to be undertaken.

This paper concentrates on two of the core principles contained in the CRC, the principle of non-discrimination and the best interests of the child. The objective of the paper is to examine the degree of entrenchment of these two core norms in the General and Special laws of Sri Lanka and to make some recommendations for reform.

The principle of non-discrimination is examined mainly in relation to the extra-marital child. All of the systems of law in Sri Lanka discriminate between the marital and non-marital child. However the degree of discrimination differs. In the General Law and the Muslim Law the degree of differentiation is significant whereas in the Kandyan law discrimination is only evident in relation to inheritance rights to ancestral property. The other area in which the principle of non-discrimination will be examined will be in relation to the adopted child. Here to one can see a variation between the different systems.

The best interests' principle will be examined in the context of guardianship, custody and access. The paper will examine whether in these areas the predominant considerations are parental rights or the interests of children. The paper will also focus on statutory definitions of the best interests' criterion and judicial perceptions of this standard both in Sri Lanka and elsewhere. The role of the judiciary in entrenching this principle via their upper guardianship jurisdiction will be examined.

## **Sources**

The sources that will be examined for this paper are the Roman Dutch law principles and their modification that has taken place in through the introduction of statutes and judicial activism. The customary Thesawalamai and the codifications of the Thesawalamai by the Dutch and the British and the judicial decisions in the British period and the post colonial period will be commented on. It will be demonstrated that the Thesawalamai has survived in a meaningful way only in relation to matrimonial property and succession. Principles relating to guardianship, custody, and adoption have for the large part being replaced by the General law thereby expanding the scope of the applicability of the General law. In our examination of the Kandyan law we see a similar trend with the exception that the Kandyan law in relation to adoption has been retained to some extent through codification. It will be shown that the applicability of Muslim Law principles, by contrast, has not in the main given way to the General Law. The law of the sect has being statutorily been made the source of the law marriage and divorce the consequences of marriage and intestate succession. Guardianship and custody issues have been litigated in the ordinary civil courts which have resulted in the best interests' criteria finding its way into such decisions. Some colonial statutes can be accessed by all communities thereby creating the seeds of a uniform law. This paper will also examine whether those laws provide a precedent for the introduction of international norms into the jurisprudence of Sri Lanka.

Conclusions

This paper will demonstrate that both the principles of non discrimination and the best interests' principle have been compromised in the Sri Lankan plural legal system legal system. Legislative reforms in the General Law and the Special Laws therefore become imperative if these all important concepts are to be fully entrenched in the Sri Lankan legal system. Undoubtedly such reforms will be viewed cautiously by any elected government unless the agitation for reform comes from pressure groups and in the Special laws by those who are governed by those laws.

## **An Evaluation of Sri Lankan Labour Standards in the light of the Core Conventions of the International Labour Organisation**

*A.Sarveswaran*

### **Background**

Among the 188 Conventions of the International Labour Organization (ILO), eight Conventions are categorized as core Conventions. They are the Freedom of Association and Protection of the Right to Organize Convention, Right to Organize and Collective Bargaining Convention, Forced Labour Convention, Abolition of Forced Labour Convention, Equal Remuneration Convention, Discrimination (Employment and Occupation) Convention, Minimum Age Convention and Worst Forms of Child Labour Convention. Sri Lanka has ratified all core Conventions while many other countries in our region have not ratified them. Therefore, Sri Lanka has an obligation to give effect to the principles embodied in the core conventions. The objective of this paper is to evaluate to what extent Sri Lankan labour legislation and other legislation expressly or implicitly embody the principles of the core conventions and to make suggestions to amend the legislation to enhance the protection of the rights and interests of employees.

### **Methods**

For the purpose of this paper, the salient principles embodied in the core conventions have been identified and divided into four categories namely freedom of association and collective bargaining, elimination of forced and compulsory labour, elimination of discrimination in employment and occupation, and abolition of child labour. The provisions of the Constitution, labour legislation and other legislation have been evaluated to explore to what extent the principles embodied in the core conventions have been expressly or implicitly embodied into them, and to make suggestions to make them compatible with the core conventions.

### **Results**

The Conventions expressly provide for freedom of association, protection against acts of anti-union discrimination and promotion of collective bargaining and impliedly provide for right to strike. The provisions in the Constitution, Industrial Disputes Act and the Trade Unions Ordinance guarantee these trade union rights. It is suggested to amend the Industrial Disputes Act to give effect to collective agreements of public officers' unions, and to amend the Trade Unions Ordinance to repeal the provisions relating to unnecessary control of registration and function of trade unions. The Conventions provides for elimination of forced or compulsory labour in all its forms. Provisions of the Constitution, the *Tundu* Prohibition Ordinance, the Prevention of Social Disabilities Act and the Penal

Code eliminate forced or compulsory labour in Sri Lanka. The Conventions provide for equal remuneration for men and women workers for work of equal value, and equality of opportunity and treatment in respect of employment and occupation. The Constitution has provisions with regard to right to equality. The provisions of the Wages Boards Ordinance and the Industrial Disputes Act could be used to promote non-discrimination in employment in the private sector. The Shop and Employees' Act and the Maternity Benefits Ordinance provide job security to female employees against termination of employment for pregnancy or confinement related matters. The Penal Code provides punishment for sexual harassment. It is suggested to amend labour legislation and cast statutory obligations on employers to provide safe environment to female employees. The Protection of the Rights of Persons with Disabilities Act prohibits discrimination on the ground of disability in recruitment for any employment or office. The Conventions provide for minimum age for employment, and elimination of the worst forms of child labour. The Shop and Office Employees (Regulation of Employment and Remuneration) Act, Minimum Wages (Indian Labour) Ordinance and Employment of Women, Young Persons, and Children Act prohibit employment of children who are under age of fourteen years. The Penal Code and the Employment of Workmen, Young Persons and Children Act prohibit employment of persons under the age of eighteen years in hazardous occupations. It is suggested that hazardous occupations shall be prescribed with appropriate guidelines under the Act to give effect to the provisions of the Act.

## **Conclusion**

The plethora of labour legislation and other legislation in Sri Lanka expressly or implicitly embody most of the principles embodied in the core Conventions of the ILO. An evaluation of the labour standards of Sri Lanka in the light of the core Conventions of the ILO illustrate that the Sri Lankan labour standards are very much compatible with the principles embodied in the core Conventions of the ILO and the amendments suggested will enhance the protection of the rights and interests of the employees in Sri Lanka without compromising the wider interests of investors, society and the state.

## **The Applicability of Delictual Liability against Pure Economic Loss caused by Negligent Acts: A Sri Lankan Approach**

*Udapadie S. Liyanage*  
*Department of Private and Comparative Law,*

### **Background of the study:**

Patrimonial loss occurred due to physical injury has been redressed by law. In delict, damage or loss is assessed in monetary means and damages are ordered by the court to compensate someone who suffered a legally compensable loss. It requires showing damage done to plaintiff's patrimony (*damnum*) or diminution in it caused by defendant's unlawful and negligent conduct. It does not mean a mere injury to patrimony but includes the actual loss suffered by the plaintiff. In this, it involves actual losses and future or prospective losses that are consequential to patrimonial loss. Accordingly, it is essential to show that the loss is occurred due to any physical damage done by the defendant.