

**A CULTURE OF RIGHTS OR CULTURAL RIGHTS?  
CHILD'S RIGHT TO PARTICIPATE IN CUSTODY AND GUARDIANSHIP  
ISSUES: EXPERIENCE OF SRI LANKA.**

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**Abstract**

Guardianship of children is one area where a conflict of culture and human rights occur mainly between (a) parents and children, (b) the two parents, or (c) between parents and third parties. A variation of interpretation and expression of the rights and obligations between these stakeholders could be identified in different legal systems. The variation is mostly found between cultural relativism and universalism. The demands of the law become more complicated where the parents belong to two different cultures and, as a result, are governed by different laws. Such experiences are not rare in Sri Lanka where the plural legal tradition does not 'prohibit' mixed marriages though such marriages are not 'recognized' in the eyes of certain 'personal laws'. As in any other situation where culture conflicts with human rights, the focus of the law should mainly be on the children, as it is their lives, which are in turmoil due to reasons beyond their control. While cultural rights are important for a secure sense of human identity, human rights are undeniable for a dignified human life. A balanced approach of the law needs to take cognizance of the demands of both the rights holders as well as the duty bearers.

The first part of this paper discusses the issues involved in guardianship and custody of children, through the prism of human rights and the second part focuses on the applicable laws of Sri Lanka in the light of international standards, with a conclusion, on how best to assure the realization of the best interest standard *via* the recognition of the child's right to participate in the plural legal system of the country.