

# Local Laws

## Constitution of Sri Lanka 1978

Section 12:

(1) All persons are equal before the law and are entitled to the equal protection of the law.

(2) No citizen shall be discriminated against on the grounds of race, religion, language, caste, sex, political opinion, place of birth or any one of such grounds :

Provided that it shall be lawful to require a person to acquire within a reasonable time sufficient knowledge of any language as a qualification for any employment or office in the Public, Judicial or Local Government Service or in the service of any Public Corporation, where such knowledge is reasonably necessary for the discharge of the duties of such employment or office :

Provided further that it shall be lawful to require a person to have a sufficient knowledge of any language as a qualification for any such employment or office where no function of that employment or office can be discharged otherwise than with a knowledge of that language.

## Penal Code (Amendment) Act (No. 22 of 1995) - Sect 5 Replacement of section 345 of the principal enactment

Sexual harassment was introduced as a criminal offence in the 1995 amendment of the Penal Code. It defines sexual harassment as assault or use of criminal force, to sexually harasses another person, or by the use of words or actions, to causes sexual annoyance or harassment to such other person. Unwelcome sexual advances by words or action used by a person in authority, to a working place or any other place, shall constitute the offence of sexual harassment.

Section 345: Whoever, by assault or use of criminal force, sexually harasses another person, or by the use of words or actions, causes sexual annoyance or harassment to such other person commits the offence of sexual harassment and shall on conviction be punished with imprisonment of either description for a term which may extend to five years or with fine or with both and may also be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person.

1. Unwelcome sexual advances by words or action used by a person in authority, to a working place or any other place, shall constitute the offence of sexual harassment.

2. For the purposes of this section an assault it may include any act that does not amount to rape under section, 363."

## Women's Charter

### RIGHT TO PROTECTION FROM GENDER-BASED VIOLENCE

16. The State shall take all measures to prevent the phenomenon of violence against women, children and young persons in society, in the workplace, in the family as well as in custody, in particular such manifestation of it as rape, incest, sexual harassment and physical and mental abuse, torture and cruel, inhuman or degrading treatment.

Such measures shall also include:

- i. the promotion of legislative reforms not only in terms of the substantive law but also with regard to preventive and punitive measures which would clearly recognize the rights of the women victims of violence;
- ii. the promotion of structural reforms within the law enforcement machinery and sensitization of enforcement authorities so as to strengthen their capacity to deal with crimes of violence directed against women;
- iii. provision of support to Non-governmental organizations, community-based organizations and programmes which provide support and counselling services to women victims of violence, including those affected by armed conflict and civil strife.

## Bribery Act of 1954

The Bribery Act (s19) defines sexual harassment as an offence and brings forward the concept of gratification when dealing with sexual harassment. In enforcement it will take the form of sexual bribery in return for performing or abstaining from performing any official act, or expediting, delaying, hindering or preventing the performance of any official act by favouring, hindering or delaying any person in the transaction of any business with the Government recruitment, transfers, promotions and other service conditions and employment benefits.<sup>1</sup> This law is applicable only in the context of the public sector.

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<sup>1</sup>Perera, Shamelka&Abeyasinghe, Sashini 2017. Combatting workplace sexual harassment of female employees in Sri Lanka: An empirical analysis. Paper presented at the APIIT Business , Law and Technology conference, July 30<sup>th</sup> 2017.

## Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act

### ARTICLE 2

#### Ragging.

(1) Any person who commits, or participates in ragging, within or outside an educational institution, shall be guilty of an offence under this Act and shall on conviction after summary trial before a Magistrate be liable, to rigorous imprisonment for a term, not exceeding two years and may also 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.

(2) A person who, whilst committing ragging causes sexual harassment or grievous hurt to any student or a member of the staff, of an educational institution shall be guilty of an offence under this Act and shall on conviction after summary trial before a Magistrate be liable to imprisonment for a term, not exceeding ten years and may also 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.

## National Human Resources and Employment Policy

Sections 286-300 address the issues of mainstreaming gender. While the policy accepts that “women are disadvantaged in the labour market” and “job opportunities for women are limited to only a few sectors, whereas men have a wider range to choose from” the policy recognizes that “women workers are also far more vulnerable to sexual harassment at the work place and, given social attitudes and limited job options, almost invariably suffer in silence.”

The policy highlights:

A secure environment by maintaining law and order for women to travel to and from work in the night will be provided. Safe and efficient transport services through public-private partnerships will be provided. Sexism and gender stereotyping in the workplace will be discouraged. Legal and institutional infrastructure will be strengthened to handle issues of gender discrimination and sexual harassment.

High concentration of overseas labour migration in low-skill job categories and to a few destinations. The high percentage of low-skill migrants lead to poor working conditions, hardships encountered due to harassment and abuse and low average levels of remittances. The high dependence (about 80 per cent) on the Gulf countries creates vulnerabilities. High social costs of migration of unskilled female migration are also noted through negative impacts on families, especially on spouses and children.

289. Women workers are more vulnerable to sexual harassment at the workplace which is a criminal offence in Sri Lanka. Many enterprises have recognized the need to prevent sexual harassment of females and males at the work place and have adopted policies and procedures to this end.

294. Attitudinal changes will be promoted:

- Sexism and gender stereotyping in the workplace ought to be discouraged.
- The state's legal and institutional infrastructure will be strengthened to handle issues of discrimination and sexual harassment.
- A more equitable sharing of the burden of care and household chores between men and women will be encouraged.

## International Conventions

### *Ratified Conventions*

#### Universal Declaration of Human Rights

##### **Article 7**

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

##### **Article 17**

1. Everyone has the right to own property alone as well as in association with others.
2. No one shall be arbitrarily deprived of his property.

##### **Article 23**

1. Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
2. Everyone, without any discrimination, has the right to equal pay for equal work.
3. Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
4. Everyone has the right to form and to join trade unions for the protection of his interests.

**Sri Lanka ratified the Convention on the Elimination of All Forms of Discrimination  
CEDAW Article 11**

1. States Parties shall take all appropriate measures to eliminate discrimination against women in the field of employment in order to ensure, on a basis of equality of men and women, the same rights, in particular:

- (a) The right to work as an inalienable right of all human beings;
- (b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment;
- (c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training;
- (d) The right to equal remuneration, including benefits, and to equal treatment in respect of work of equal value, as well as equality of treatment in the evaluation of the quality of work;
- (e) The right to social security, particularly in cases of retirement, unemployment, sickness, invalidity and old age and other incapacity to work, as well as the right to paid leave;
- (f) The right to protection of health and to safety in working conditions, including the safeguarding of the function of reproduction.

2. In order to prevent discrimination against women on the grounds of marriage or maternity and to ensure their effective right to work, States Parties shall take appropriate measures:

- (a) To prohibit, subject to the imposition of sanctions, dismissal on the grounds of pregnancy or of maternity leave and discrimination in dismissals on the basis of marital status;
- (b) To introduce maternity leave with pay or with comparable social benefits without loss of former employment, seniority or social allowances;
- (c) To encourage the provision of the necessary supporting social services to enable parents to combine family obligations with work responsibilities and participation in public life, in particular through promoting the establishment and development of a network of child-care facilities;
- (d) To provide special protection to women during pregnancy in types of work proved to be harmful to them.

3. Protective legislation relating to matters covered in this article shall be reviewed periodically in the light of scientific and technological knowledge and shall be revised, repealed or extended as necessary.

**No. 100 Convention concerning Equal Remuneration for Men and Women Workers for Work of Equal Value, 1951**

The term 'equal remuneration' is ... defined as rates of remuneration established without discrimination based on sex. This Convention is supplemented by Recommendation No. 90 – Equal Remuneration, 1951.

Article 1 defines the term 'discrimination' for the purposes of the Convention. It includes: (a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation; and (b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or 24 treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

By Article 2 the State has undertaken to pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation with a view to eliminating discrimination in this regard. Further, special measures designed to meet the particular requirements of those who for specified reasons require special protection or assistance shall not be construed to be discrimination (Article 5). In fulfilment of these obligations it is suggested that the State should enact an equal employment law which would cover both the private and public sectors, covering all aspects of employment. Such a law must also ensure that gender specific issues such as maternity protection and equality of opportunity for workers with family responsibilities (discussed below) are incorporated into the law in terms of Article 5, and do not make women vulnerable to discrimination. Other relevant conventions are as follows:

**No. 103 Convention concerning Maternity Protection (Revised), 1952;**

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C103](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C103)

**Sri Lanka is a signatory of the  
Discrimination (Employment and Occupation) Convention (C111), 1958**

**Article 1**

1. For the purpose of this Convention the term discrimination includes--

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.

2. Any distinction, exclusion or preference in respect of a particular job based on the inherent requirements thereof shall not be deemed to be discrimination.

3. For the purpose of this Convention the terms employment and occupation include access to vocational training, access to employment and to particular occupations, and terms and conditions of employment.

**Article 2**

Each Member for which this Convention is in force undertakes to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in respect thereof.

**C095 - Protection of Wages Convention, 1949 (No. 95)**

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