Sri Lanka Legislative Drafting Workshops

Seidman, Robert B.

http://hdl.handle.net/2144/22400

Boston University
THE PREVENTION OF CHILD ABUSE STATUTE

A statute to provide for the prevention of child labour through employment of children for wages in industries, construction, building, shops, restaurants, house hold services or any other services and for other relevant matters.

Be it passed by the Provincial Council of the Central Province of the Democratic socialist Republic of Sri Lanka.

Short title and date of operation.

1. This statute may be cited as the Prevention of Child Abuse (Labour) Statute No. ?? of 1999 and shall come into operation on the date the Minister may declare by a notification published in the Government Gazette.

2. A person shall construe this statute to achieve the following objectives:

(a) to prevent persons from abusing children by putting children out to employment, or by employing children in exchange for money or money's worth;

(b) to increase the incomes of very poor parents of children; and

(c) to increase the number, and to improve the quality of children's homes and day care centers.

PART ONE.

PROHIBITION OF CHILD ABUSE THROUGH EMPLOYMENT

CHAPTER 1.

DUTIES OF EMPLOYERS AND OF PERSONS IN CHARGE OF CHILDREN

3. Abuse by employing child labor in commercial pursuits.

(1) In this Act, 'child' means a person under fourteen years of age.

(2) A person may not abuse a child by employing the child or by making use of a child's labor in a commercial establishment or in household industry.
(3) A person may not abuse a child by employing the child in household labour for remuneration in money or money's worth paid to that person or to the child.

4. Abuse by putting a child out to paid employment

(1) In this Act, 'a person who has care of a child' shall mean a child's parent or guardian, or a person who for the time being has the responsibility to care for a child.

(2) A person who has care of a child may not abuse the child by placing that child in employment for money or money's worth.

CHAPTER 2.

POWERS AND DUTIES OF THE PROVINCIAL COMMISSIONER WITH RESPECT OF CHILD ABUSE THROUGH LABOR

5. Powers and duties of the Commissioner with respect of child abuse through labor.

(1) In this statute "Commissioner" means the head of the provincial department of probation and child care.

(2) With respect to preventing and punishing instances of child abuse in terms of this statute the Commissioner shall have the following powers and duties: –

(a) to establish, maintain and control a system for monitoring child abuse in terms of this statute; statute a system for

(b) to enter a workplace of a commercial establishment to inspect for an instance of child abuse in terms of this statute,

(c) upon reasonable grounds to believe that on the premises a person is committing an offense against this statute, to enter a home to inspect for an instance of child abuse in terms of this statute;
(d) to collect, classify and publish information about child abuse in terms of this statute, including information about households relevant to child abuse in terms of this statute.

(e) to prosecute cases of child abuse arising in terms of this statute;

(f) develop, manage and operate a program for training Gramaniladharies in their duties pursuant to this statute;

(g) to organize a Division of Child Abuse (Labor) in the Department of Probation and Child Care;

(h) to hold an inquiry into a child abuse dispute, settle the dispute in the manner prescribed by this statute or by regulations made thereunder;

(i) to make an order to pay compensation to the child or to the Provincial Child Care fund up to the limit of 2000 rupees.

Powers and duties of a Gramaniladhari. With respect to preventing and punishing instances of child abuse in terms of this statute, a Gramaniladhari shall have the following powers and duties: –

(a) to enter a workplace of a commercial establishment within the Gramaniladhari’s division to inspect for an instance of child abuse in terms of this statute;

(b) upon reasonable grounds to believe that on the premises a person is committing an offense against this statute, to enter a home within the Gramaniladhari’s division to inspect for an instance of child abuse in terms of this statute;

(c) to collect, classify and forward to the commissioner or an authorized person, information about child abuse in terms of this statute occurring within the Gramaniladhari’s division, including information about households relevant to child abuse in terms of this statute;

(d) to attend training courses and workshop concerning the enforcement of this statute as the Commissioner may require.
(e) to prepare household lists for all families of the division and collect information.

(f) to assist the Commissioner or an authorized person to organize training programmes to educate parents, relatives, employers and children of the Division.

7. Violations: Orders to Pay

Orders for violations.

(1) If in the course of an inspection of a commercial establishment or a household the Commissioner or an authorized person or Gramaniladari it reasonably appears to the Commissioner or an authorized person or Gramaniladari that a person has committed an act of child abuse in terms of this statute, the Commissioner or an authorized person shall forthwith in writing order that person to pay a sum not exceeding Rupees 2000/.

(2) If pursuant to subsection (1) the Commissioner or an authorized person orders a person to pay, with that order, in writing, the Commissioner or an authorized person shall inform that person that the person may appeal to the Minister not later than two weeks from the date of the order, together with a form for the appeal and a stamped envelope addressed to the Commissioner.

8. Injunction against a pattern or practice of abuse

Injunction.

(1) If the Commissioner becomes aware that a person has a pattern or practice of abuse of children in terms of this statute, as evidenced by three or more orders made pursuant to section 7 against a person within the preceding three year period, the Commissioner shall seek injunction from a court, enjoining that person from abusing a child in terms of this statute.

(2) If the Court finds by a preponderance of the evidence that the person has received three or more final orders made pursuant to section 8 within the three years preceding the bringing of the complaint, the Court shall make enjoin that person from abusing a child in terms of this statute.
(3) The Court shall require that an injunction made pursuant to subsection (2) remain in force for not less than six months from the date of its issuance.

(4) If during the period that an injunction made pursuant to subsection (2) remains in force, pursuant to subsection (1) the Court finds by a preponderance of the evidence that the person against whom the Court directs that order has suffered a final order pursuant to section 11, the Court shall order that person to serve a sentence of imprisonment of not less than six months nor more than three years.

PART TWO

CHAPTER 3.

FINANCE.

9. The Minister shall established a fund called “Child Care Fund” and shall consist with following incomes;

(1). All moneys that Provincial Council may allocate through it’s annual budget;

(2) Fines that paid under the section 7,(1) of this statute;

(3) Grants that may pay by a person, an organization or a foreign Country or an establishment;

(4) All sums of moneys collect from any other form.

10. Minister shall pay moneys out of the fund with the approval of Provincial Council for the purpose of implementation of income supplement scheme and to pay incentives for informant regarding child labour.
INCOME SUPPLEMENT FOR VERY POOR PERSONS IN CARE OF CHILDREN

11. Power of the Minister to pay income supplements

Out of funds made available by the Provincial Council and funds paid into the Provincial Council on account of orders made pursuant to section 7, and with the agreement of the Provincial Minister for the subject of finance, in an amount authorized by the Provincial Council, the Minister may pay an income supplement to a very poor person in care of a child.

PART THREE

DISPUTE RESOLUTION; APPEALS

CHAPTER 4.
DISPUTE RESOLUTION AND APPEALS

12. Petition for relief

(1) A person aggrieved because a Gramaniladhari or an official of the Department did not make an order pursuant to section 8 or section 12 may petition the Minister to make that order.

(2) The Minister shall investigate the matter and either make or refuse to make the order requested.

(3) Within one month after the Minister receives a petition mentioned in subsection 1, the Minister shall advise the petitioner of the action taken.
13. Appeal to the Minister

(1) Within two weeks from receiving an order made pursuant to sections 7, 8 or 9, a person aggrieved by the order may appeal to the Minister.

(2) On that appeal, the Minister or an official person delegated by the Minister to hear and decide the matter shall:

   a. Within two weeks after receiving the appeal, give to the person appealing the order, the supposed employer and the supposed person in care of the child notice of the time and place of a hearing on the appeal, that the Minister will conduct not later than two weeks after sending the notice of hearing;

   b. hold the hearing at the time and place specified in the notice of hearing;

   c. at the hearing give interested parties opportunity, by themselves or by counsel, to present oral and written evidence, and to present arguments concerning the order; and

   d. not later than two weeks after the close of the hearing, by a written decision stating reasons, based on the preponderance of the evidence presented at the hearing; determine the appeal; and

   e. not more than three weeks after the hearing, send by mail a copy of the decision to the parties who appeared at the hearing.
14. Appeal to a court

Appeal to a court

(1) Not later than one month after receipt of a copy of the decision as mentioned in section 12(2)(e), a party aggrieved by the Minister's decision may appeal to a court of competent jurisdiction.

(2) The court shall hear the appeal on the record made before the Minister.

(3) On the appeal, the court may reverse, amend or affirm the decision of the Minister on grounds only of bias or prejudice, corruption, illegality apparent on the face of the decision, or that no evidence in the record supports the decision.