



**Rights of Differently-Abled Child Victims of Domestic Violence: An Assessment under the Sri Lankan Legal Framework**

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**ABSTRACT**

Among the victims of domestic violence, differently-abled children are the most vulnerable group in the community. The Prevention of Domestic Violence Act is the main statute regarding the law relating to domestic violence, which does not specifically lay down provisions for protection of this vulnerable group. However, the Sri Lankan legal framework for the protection of the rights of differently-abled children against violence is somewhat comprehensive as there are both domestic and international legal standards. A slow progress is observed in the implementation of strategies to overcome the current issues concerned with victimized differently-abled children. Against this background, the objectives of this study were to analyze the current legal framework in Sri Lanka towards the protection of differently-abled children against domestic violence and to explore the need of prioritizing the rights of them against domestic violence. This study is entirely based on a qualitative approach by referring to secondary sources while following the Black Letter Research Methodology. This study further highlights the lack of data regarding this aspect as one of the major reasons for problems in the implementation process since assessment of the current situation is the most crucial aspect before taking preventive measures.

## 1. INTRODUCTION

Violence against children, particularly on differently-abled children, is a major issue in the global context. The term 'differently abled' is a euphemism for 'disabled' and is used as a more positive way, which was introduced in 1990s to describe people with disabilities.<sup>1</sup> Moreover, these children are considerably at a higher risk as they become easy targets and they have very little power in society, as most of the time they are isolated from the outside environment.<sup>2</sup> A 'person with disability' is defined in the Convention on the Rights of Persons with Disabilities (CRPD) as a person who is suffering from long-term mental, physical, intellectual, and sensory impairments that would prevent him/her from effectively participating in societal activities equally with other persons.<sup>3</sup> Also, article 7(2), in the said convention requires that, in all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.<sup>4</sup> In the Prevention of Domestic Violence Act (PDVA), 'domestic violence' is defined as i) an act constituting an offence specified in Schedule 1 to the Act and ii) any emotional abuse, caused or committed by a relevant person inside or outside the home environment and arising out of the personal relationship between the relevant person and the aggrieved person.<sup>5</sup>

The impact of domestic violence against

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1 Okrent A, 'Why Did "disabled" Replace "Handicapped" as the Preferred Term?' (Mental Floss, 3 November 2015) <<https://www.mentalfloss.com/article/69361/why-did-disabled-replace-handicapped-preferred-term>> accessed 10 May 2023

2 Robinson S and others, 'Prioritising Children and Young People with Disability in Research about Domestic and Family Violence: Methodological, Ethical and Pragmatic Reflections - Journal of Family Violence' (SpringerLink, 28 January 2023) <<https://link.springer.com/article/10.1007/s10896-023-00496-9>> accessed 10 May 2023

3 Convention on the Rights of Persons with Disabilities, December 13, 2006, article 1.

4 Convention on the Rights of Persons with Disabilities, December 13, 2006, article 7(2).

5 Prevention of Domestic Violence Act 2005, s 23.

differently-abled children is rather under-researched in Sri Lanka, compared to numerous research studies carried out on their educational rights and different health impairments. Hence, the research objectives of this study were to analyze the current legal framework in Sri Lanka towards the protection of children with disabilities against domestic violence and to explore the challenges faced by them while highlighting the need to prioritize the rights of them against domestic violence.

## 2. MATERIALS AND METHODS

This study followed the Black Letter Research Methodology and is entirely based on the qualitative approach to critically analyze the need for special protection for differently-abled children against domestic violence and to address the current legal framework on the protection of them against domestic violence in Sri Lanka. For this purpose, secondary sources such as the Constitution of Sri Lanka, the PDVA, the Convention on the Rights of the Child (CRC), and the CRPD were utilized apart from several other national and international instruments. Additionally, journal articles, reports, websites, and blogs were also referred in this study.

## 3. RESULTS AND DISCUSSION

### 3.1. Protection Available through Sri Lankan Legal Framework

The PDVA is the main statute regarding domestic violence law in Sri Lanka. It is important to note that, it does not contain any specific provision relating to the rights of differently-abled children and therefore, the general provisions laid down in the Act are applicable to children with disabilities as well.

With respect to the right to equality and access to justice, PDVA states that, an aggrieved person, to whom the act of domestic violence has been committed or is likely to be committed may

make an application for a protection order to prevent that act from being continued from the Magistrate's Court.<sup>6</sup> The Constitution of Sri Lanka as the supreme law of the country while highlighting the right to equality in article 12(4) illustrates, the State's responsibility to take necessary procedures to enact any special provision through laws, subordinate legislations, and executive actions for the advancement of women, children, and persons with disabilities.<sup>7</sup> The Children's Charter similarly demonstrates on right to equality where it states that the State shall take necessary actions to prevent children from various forms of discrimination.<sup>8</sup> It also elaborates on the right of children regarding access to justice in Article 12. According to CRC, a child shall be provided with a reasonable opportunity to be heard in judicial and administrative proceedings either through a representative or directly by himself or herself or through an appropriate body as provided by the national laws of the State parties.<sup>9</sup>

Provisions relating to the right to remedy for the children who are victimized by acts of domestic violence are comprehensively laid down in the PDVA. Accordingly, there are three types of persons who can make an application in writing to the Court on behalf of a child victim of domestic violence; the child's parent or guardian, a person with whom the child is residing, and a person authorized by the National Child Protection Authority. As per Section 4 of the PDVA, the Court after considering the application for a protection order being satisfied that the aggrieved person needs some sort of temporary relief by way of an interim protection order until the conclusion of the inquiry, Court has the authority to order an interim order in favour of the aggrieved person within fourteen days from the date of furnishing

the application.<sup>10</sup> It is significant that the interim order only remains in force until the protection order is issued or the interim order been vacated, but the protection order shall remain in force for a time period not exceeding one year.<sup>11</sup> The Respondent is prohibited in many ways by way of interim order or protection order as provided in section 11 of PDVA. Some important prohibitions are; entering a residence or other place shared by both respondent and the aggrieved person, entering the aggrieved person's residence/ place of employment/ school, entering a temporary accommodation of the aggrieved person, prohibiting preventing the aggrieved person from using and having access to shared resources and following or stalking the aggrieved person. If the Respondent has failed to comply with the protection or interim order, he will be guilty of an offence and be liable on conviction after a Summary Trial by a Magistrate, and he will be sentenced to pay a fine not exceeding rupees ten thousand or imprisonment period not exceeding one year or in a combination of both aforesaid.

The state parties to the CRPD shall take suitable approaches to ensure the differently-abled children are enjoying all fundamental freedoms and human rights equally as other children and when taking necessary measures, such child's best interests should be considered of paramount importance. Further, state parties must guarantee differently-abled children have the right to address their views at liberty and be considerate that their views are given due weight according to their age and maturity on an equal basis as other non-disabled children. In addition to that, one of the most significant state responsibilities provided by the said Convention is to provide the children with disabilities, a special assistance to help them realize their rights.<sup>12</sup> The guidelines demonstrated by this Convention are applicable to Sri Lanka as

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6 Prevention of Domestic Violence Act 2005, s 2.

7 Constitution of Democratic Socialist Republic of Sri Lanka, 1978, article 12(4).

8 Children's Charter, Human Rights Commission of Sri Lanka (1992).

9 Convention on the Rights of the Child, November 20, 1989, article 12.

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10 Prevention of Domestic Violence Act 2005, s 4.

11 Prevention of Domestic Violence Act 2005, s 5, s 10.

12 Convention on the Rights of Persons with Disabilities, December 13, 2006, article 7.

our country is a state party to that Convention and the same legal principles are laid down in the domestic enabling statute, the Protection of the Rights of Persons with Disabilities Act.

The National Policy on Disability for Sri Lanka has introduced several strategies in promoting the rights of children who have disabilities. Accordingly, ensuring the right to equity in decision-making within the family, assuring they are living in an atmosphere filled with happiness, love and understanding and supporting the families with disabled children are some of such approaches.<sup>13</sup>

### 3.2. Challenges Faced by Differently-abled Children

Children with disabilities face unique forms of abuse; withholding medication or over-medication, sexual assault when a disability inhibits a person's ability to consent, refusing to help when doing day-to-day tasks, ignoring healthcare appointments, threatening abandonment and deliberately avoiding personal care and hygiene.<sup>14</sup> The most crucial issue is that, violence against differently-abled children is often disregarded and consequently a higher number of cases would go unreported. In the U.S. about 70% - 85% of cases of abuse of disabled people have become unreported.<sup>15</sup>

This cannot be different for Sri Lankan situation as well. In the year 2022, overall, 79 grave child abuse cases were reported, including 28 deaths, 25 physical abuse cases, nine drug abuse cases, 27 negligence cases, four disappearance cases, and seven abduction cases.<sup>16</sup> Accordingly, sexual abuse cases were at the highest rate of 41% compared to

13 The National Policy on Disability for Sri Lanka, Ministry of Social Welfare (2003).

14 'The links between Disability & Domestic Violence' (Sanctuary For Families, 28 July 2022).

15 'The links between Disability & Domestic Violence' (Sanctuary For Families, 28 July 2022).

16 Protecting Environment and Children Everywhere (PEaCE) / End Child Prostitution in Asian Tourism (ECPAT) Sri Lanka, 'Child Abuse in 2022 in Sri Lanka' (Latest in the News Sphere | The Morning, 12 February 2023) <<https://www.themorning.lk/articles/pEqi9pLLcSgmCNK86pST>> accessed 10 May 2023

other child abuse cases.<sup>17</sup> As per the statistics given by the police department, 1,500 cases of rape, including statutory rape, were reported in the late nine months of 2022 and out of the 1,500 reported rapes, more than 13% were against adult women, while 86.6% were statutory rapes.<sup>18</sup> As WHO highlights, children with disabilities associated with mental illness or intellectual impairments appear to be among the most vulnerable, with the risk of sexual violence compared with their non-disabled peers.<sup>19</sup> However, when investigating the Sri Lankan context, it is apparent that, there is no recently updated data concerning differently-abled children against violence. The absence of a proper categorization of violence against children and differently-abled children suggests that, Sri Lanka needs to have an official database specifically for differently-abled children and not only laws to protect them.

Children with disabilities might not recognize the abuse and even if they can understand, since they are highly dependent on the abuser, they might be reluctant to speak up. Sometimes parents or guardians might neglect the signs of abuse and professionals who are specifically dealing with them may not appropriately trained to identify whether the children are exposed to abuse.<sup>20</sup> Inadequate awareness among families which have differently-abled children to find accessible services especially important to them is another

17 Protecting Environment and Children Everywhere (PEaCE) / End Child Prostitution in Asian Tourism (ECPAT) Sri Lanka, 'Child Abuse in 2022 in Sri Lanka' (Latest in the News Sphere | The Morning, 12 February 2023) <<https://www.themorning.lk/articles/pEqi9pLLcSgmCNK86pST>> accessed 10 May 2023

18 Protecting Environment and Children Everywhere (PEaCE) / End Child Prostitution in Asian Tourism (ECPAT) Sri Lanka, 'Child Abuse in 2022 in Sri Lanka' (Latest in the News Sphere | The Morning, 12 February 2023) <<https://www.themorning.lk/articles/pEqi9pLLcSgmCNK86pST>> accessed 10 May 2023

19 Mitchell C, 'Paho/WHO: Children with Disabilities More Likely to Experience Violence' (Pan American Health Organization / World Health Organization) <[https://www3.paho.org/hq/index.php?option=com\\_content&view=article&id=6998%3A2012-children-disabilities-more-likely-experience-violence&Itemid=0&lang=en#gsc.tab=0](https://www3.paho.org/hq/index.php?option=com_content&view=article&id=6998%3A2012-children-disabilities-more-likely-experience-violence&Itemid=0&lang=en#gsc.tab=0)> accessed 10 July 2023

20 'Children with disabilities - safeguarding our most vulnerable' (The Safeguarding Company).

reason for such cases to remain unreported.

#### 4. CONCLUSION

It is obvious that legislations, policies and plans are needed in safeguarding the welfare requirements of children with disabilities, while giving adequate consideration towards the universal concept of 'best interests of child'. However, in this process of overcoming the difficulties connected with the challenges faced by children with disabilities, necessary intervention from both professionals and disabled children should be met. However, these challenges have not been accurately assessed and no credible reports have been published focusing on the extent of ignorance on this aspect. Databases, information gathered from surveys and participatory studies are necessary to grasp the real situation in the country in relation to the above aspects. Consequently, the related information can be used in suggesting necessary preventive measures to protect differently-abled children who are vulnerable to domestic violence.

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