

Penal Code (Amendment)

Act No 22 of 1995

AN ACT TO AMEND THE PENAL CODE

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka, as follows :-

Short title **1.** This Act may be cited as the Penal Code (Amendment) Act, No. 22 of 1993.

Insertion of new **2.** The following new section is hereby inserted immediately after section 286 of the Penal Code (hereinafter referred to as the principal enactment") and shall have effect as section 236A of the principal enactment:-

Obscene 286A,
Publication
exhibition &c
relating
children's.

(1) Any person who-

- (a) hires, employs, assists, persuades, induces or coerces any child to appear or perform in any obscene or indecent exhibition or show or to pose or model for, or to appear in, any obscene or indecent photograph or film of which he sells or distributes, or otherwise publishes, or has in his possession, any such photograph or film; or
- (b) being the parent, guardian or person having the custody of, a child, causes or allows such child to be employed, or to participate, in any obscene or indecent exhibition or show or to pose or model for, or to appear in, any such photograph or film as is referred to in paragraph (a) ;
- (c)

- (i) takes, or assists in taking of any indecent photograph of a child; or
- (ii) distributes or shows any such photograph or any publication containing such photograph;
- (iii) has in his possession for distribution or showing any such photograph or publication;
- (iv) publishes or causes to be published, any such photograph or publication or causes to be published, any advertisement capable of conveying the message that the advertiser or person named in the advertisement distributes or shows any such photograph or publication or intends to do so,

shall commit the offence of obscene publication and exhibition relating to children and shall on conviction be punished with imprisonment of either description for a term not less than two years and not exceeding ten years and may also be punished with fine.

(2) In this section-

"child" means a person under eighteen years of age; and
"film" includes any form of video recording.

Insertion of new section 308 in the principal enactment.

3. The following new section is hereby inserted immediately after section 308 , and shall have effect as section 308A of the principal enactment:-

Cruelty to children. 308A.

(1) Whoever, having the custody, charge or care of any person under eighteen years of age, wilfully assaults, ill-treats, neglects, or abandons such person or causes or procures such person to be assaulted, ill-treated, neglected, or abandoned in a manner likely to cause him suffering or injury to health (including injury to, or loss of sight of hearing, or lino or organ of the body or any mental derangement), commits the offence of cruelty to children.

(2) Whoever commit* the offence of cruelty to children shall on conviction be punished with imprisonment of either description for a term not less than two years and not exceeding ten years and may also be punished with fine and 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."

Replacement to section 311 of the principal enactment.

4. Section 311 of the principal enactment is hereby repealed and the following section substituted therefor:-

Grievous hurt The following kinds of hurt only are designated as "grievous" ; principal enactment

- (a) emasculation; -
- (b) permanent privation or impairment of the sight of either eye;
- (c) permanent privation or impairment of the hearing of either ear ;
- (d) privation of any member or joint;
- (e) destruction or permanent impairment of the powers of any member or joint;
- (f) permanent disfiguration of the head or face ;
- (g) cut or fracture, of bone, cartilage or moth or dislocation or subluxation, of bone, joint or tooth;
- (h) any injury which endangers life or if' consequence of which an operation involving the opening of the thoracic, abdominal or cranial cavities is performed;
- (i) any injury which causes the sufferer to be in severe bodily pain or unable to follow his ordinary pursuits, for a period of twenty days either because of the injury or any operation necessitated by the injury.'

Replacement of section 345 of the principal enactment.

5. Section 345 of the principal enactment is hereby repealed and following section substituted therefor:-

Sexual harassment 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.

Explanation. 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."

Replacement of the heading "OF KIDNAPPING ABDUCTION AND BLAVERY.

6. The heading appearing immediately before section 350 Of the principal enactment is hereby repealed and the following new heading substituted therefor:-

"OF KIDNAPPING AND ABDUCTION "

Replacement of section 360 of principal enactment.

7. Section 360A of the principal enactment is hereby repealed and the following section substituted therefor:-

Procuration. 360A. Whoever-

(1) procures, or attempts to procure, any person, whether male or female of whatever age (whether with or without the consent of such person) to become, within or outside Sri Lanka, prostitute;

(2) procures, or attempts to procure, any person, under sixteen years of age to leave Sri Lanka with or without the consent of such person) with a view to illicit sexual intercourse with any person outside Sri Lanka, or removes, or attempts to remove, from Sri Lanka any such person (whether with or without the consent of such person) for the said purpose;

(3) procures, or attempts to procure, any person of whatever age, to leave Sri Lanka (whether with or without the consent of such person) with intent that such person may become the inmate of, or frequent, a brothel elsewhere, or removes, or attempts to remove, from Sri Lanka any such person (whether with or without the consent of such person) for the said purpose;

(4) brings, or attempts to bring, into Sri Lanka any person under sixteen years of age with a view to illicit sexual intercourse with any other person, in Sri Lanka or outside Sri Lanka;

(5) procures, or attempts to procure, any person of whatever age (whether with or without the consent of such person) to leave such person's usual place of abode in Sri Lanka (such place not being a brothel), with intent that such person may for the purposes of prostitution become the inmate of, or frequent, a brothel within or outside Sri Lanka;

(6) detains any person without the consent of such person in any brothel with a view to illicit sexual intercourse or sexual abuse of such person,

commits the offence of procuration and shall on conviction be punished with imprisonment of either description for a term at not less than two years and not exceeding ten years and may also be punished with a fine-.

Insertion of new section 360 and 360c of the principal enactment.

8. The following new sections are hereby inserted immediately after section 860A AND shall have effect as section 360B and 360c of the principal enactment :-

Sexual exploitation at children .

360B. (1) Whoever:-

(a) knowingly permits any child to remain in any premises, for the purposes of causing such child to be sexually abused or to participate in any form or sexual activity or in any obscene or indecent exhibition or show;

(b) acts as a procurer of a child for the purposes of sexual intercourse or for any form of sexual abuse;

(c) induces a person to be a client of & child for sexual Intercourse or for any form of sexual abuse, by means of print or other media, oral advertisements or other similar means;

(d) takes advantage, of his Influence over, or his relationship to, a child, to procure such child for sexual intercourse or any form of sexual abuse;

(e) threatens, or uses violence towards, a child to procure such child for sexual intercourse or any form of sexual abuse;

(f) gives monetary consideration, goods or other benefits to a child or his parents with intent to procure such child for sexual intercourse or any form of sexual abuse,

commits the offence of sexual exploitation of children and shall on conviction be punished with imprisonment of either description for a term not less than five years and not exceeding twenty years and may also be punished with fine.

(2) In this section " child " means under eighteen years of age.

trafficking. 360c.

(1) Whoever :-

(a) engages in the act of buying or selling or bartering of any person for money or for any other consideration ;

(b) for the purpose of promoting, facilitating or inducing the buying or selling or bartering or the placement in adoption, of any person for money or for any other consideration

(i) arranges for, or assists child to travel to a foreign country without the consent of his parent or lawful guardian;

(ii) obtains an affidavit of consent from a pregnant woman, for money or for any other consideration, for the adoption of the unborn child of such woman : or

(iii) recruits women or couples to bear children ; or

(iv) being a person concerned with the registration of births, knowingly permits the

falsification of any birth record or register ; or
(v) engages in procuring children from hospitals, shelters for women, clinics, nurseries , day care centres, or other child cure institution or welfare centres, for money or other consideration or procures a child for adoption from any such institution or centre, by intimidation of the mother or any other person ; or

(vi) impersonates the mother or assists in such impersonation

commits the offence of trafficking and shall on conviction be punished with imprisonment of either description, for a term not less than two years and not exceeding twenty years and may also be punished with fine and where such offence is committed in respect of a child, be punished with imprisonment of either description for a term not less than five years and not exceeding twenty years and may also be punished with fine.

(2) In this section " child " means a person under eighteen years of age.!

Repeal of section 361 of the principal enactment **9.** Section 361 of the principal enactment is hereby repealed.

Repeal of section 362 of the principal enactment. **10.** Section 362 of the principal enactment is hereby Repealed.

Replacement of section heading "OF RAPE" **11.** The heading appearing immediately before section 363 of the principal enactment is hereby repealed and the following new heading substituted therefor :-
" OF RAPE AND INCEST " .

Replacement of section 363 Of the principal enactment. **12.** Section 363 of the principal enactment is hereby repealed and the following section substituted therefor :-

Rape 363. A man is said to commit " rape " who enactment has sexual intercourse with, a woman under circumstances falling under any of the following descriptions:-

(a) without her consent even where such woman is his wife and she is judicially separated from the man

(b) with her consent when her consent has been obtained, by use of force or threats or intimidation or by putting her to. fear of death or hurt, or while she was in unlawful detention.

(c)with her consent when her consent has been obtained at a time when she was of unsound mind or was in a state of intoxication Induced by alcohol or drugs, administered to her by the man or by some other person

(d) with her consent when the man knows that he is not her husband, and that her consent is given because the believes that he is another man to whom she is, or believed herself to be, lawfully married;

(e) with or without her consent when she is under sixteen years

of age, unless the woman is his wife who is over twelve years of age and is not judicially separated from the man.

Explanation-

(i) Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape;

(ii) Evidence of resistance such as physical injuries to the body is not essential to prove that sexual intercourse took place without consent.

Replacement of section 364 of the principal enactment.

13. Section 364 of the principal enactment is hereby repealed and the following section substituted therefor:-

'Punishment 364.
for rape.

(1) Whoever commits rape shall, except, in the cases provided for in subsections (2) and (3), be punished with rigorous imprisonment for a term not less than seven years and not exceeding twenty years and with fine, and shall in addition 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 each person.

(2) Whoever-

(a) being a public officer or person in a position of authority, takes advantage of his official position, and commits rape on a woman in his official custody or wrongfully restrains and commits rape on a woman;

(b) being on the management, or on the staff of a remand home or other place of custody, established by or under law, or of a women's or children's institution, takes advantage of his position and commits rape on any woman in mate of such remand home, place of custody or institution ;

(c) being on the management or staff of a hospital, takes advantage of his position and commits rape on a woman in that hospital;

(d) commits rape on a woman knowing her to be pregnant;

(e) commits rape on a woman under eighteen years of age ;

(f) commits rape on a woman who is mentally or physically disabled ;

(g) commits gang rape,

shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall in addition 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;

Provided however, that where the offence is committed in respect of a person under sixteen, years of age, the court may,

where the offender is a person under eighteen years of age and the intercourse has been with the consent of the person, impose a sentence of Imprisonment for a term less than ten years,

Explanation 1

Where the offence of rape is committed by one or more persons in a group of persons, each person in such group committing, or abetting the commission of such offence is deemed to have committed gang rape;

Explanation 2

"women's or children institution" means an institution for the reception and care of women or children, howsoever described;

Explanation 3

"BECAUSE " means the precincts of the hospital and include* the precincts of any institution for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation.

(3) Whoever commits rape on a woman under sixteen years of age and the woman stands towards the man in any of the degrees of relationships enumerated in section 364A shall on conviction be punished with rigorous imprisonment, for a term not less than fifteen years and not exceeding twenty years and with fine.

(4) Where any person fails to pay the compensation he is ordered to pay under subsection (1) or subsection (2), he shall, in addition to the imprisonment imposed on him under subsection (1) or subsection (2) be punished with a further term of imprisonment of either description for a term which may extend up to two years

Repeal of the heading 'OF CERNAL INTER COURSE WITH YOUNG GIRLS.

Replacement of section 364A of the principal enactment.

14. The heading appearing immediately before section 364A of the principal enactment is hereby repealed,

15. Section 364A of the principal enactment is hereby repealed and the following section substituted therefor :-

"INCEST" 364A.

(1) Whoever has sexual inter-course with another, who stands towards him in any of the following enumerated degrees of relationship, that is to say-

(a) either party is directly descended from the other or is the adoptive parent, adoptive grand parent, adopted child or adopted grand child of the other; or

(b) the female, is the sister of the male, either by the full or the half blood or by adoption, or is the daughter of his brother or of his sister, by the full or the half blood or by adoption, or is a descendant from either of them, or is the daughter of his wife by another father,

or is his son's or grandson's or father's or grandfather's widow; or

(c) the male, is the brother of the female either by the full or the half blood or by adoption, or is the son of her brother or sister by the full or the half blood or by adoption or is a descendant from either of them, of is the son of her husband by another mother, or is her deceased daughter's or grand daughter's or mother's or grand mother's husband,

commits the offence of 'incest'

(2) The offence of incest shall not be affected or negated by reason of the existence of any defect In the legality of way relationship given In this section, such as absence of a valid marriage or adoption

(3) Whoever-

(a) commits incest, shall be punished with rigorous Imprisonment for a term not less than seven years and not exceeding twenty years and with fine;

(b) attempts to commit incest shall be punished with imprisonment of either description for a terms which may extend to two years.

4) No prosecution, shall be commenced for an offence under this section except with the written sanction of the Attorney-General,".

Replacement of the heading "OF UNNATURAL OFFENCES.

16. The heading appearing immediately after section 364A of the principal enactment Is hereby repealed and the of the heading OF UNNATURAL OFFENCES following heading substituted therefor;-

"OF UNNATURAL OFFENCES AND GRAVE SEXUAL ABUSE".

Amendment of section 365 of the principal enactment.

17. Section 365 of the principal enactment is hereby amended by the substitution, for the words " shall also be liable to fine.", of the words " shall also be punished with fine and where the offence is committed by a person over eighteen years of age in respect of any person under sixteen years of age shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shell also be ordered to pay compensation of an amount- determined by court to the person in respect of whom the offence was committed for injuries caused to such person."

Replacement of section 365A of the principal enactment.

18. section 365A of the principal enactment is hereby repealed and the following section substituted therefor :-

"Acts of gross indecency between persons".

365A. Any person who, in public or private, commits, or is a party to the commission of, or procures or attempts procure the commission by any person of, any act of gross indecency with another person, shall he guilty of an offence, and shall be punished with imprisonment of either description, for a term which may extend to two years or with fine or with both and where the offence is committed by a person over eighteen years of age in respect of any person under sixteen years of age shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall 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."

Insertion of new section 385 in the principal enactment **19.** The following new section is hereby Inserted immediately after section -385A and shall have effect as section 365B of the principal enactment.

"Grave sexual abuse. 365B.

(1) Grave sexual abuse is committed any person who, for sexual gratification, does any act, by the use of his genitals or any other part of the human body or any Instrument on any orifice or part of the body of any other person, being an act which does not amount to rape under section 363, in circumstances falling under any of the following descriptions, that is to say-

- (a) without the consent of the other person ;
- (b) with the consent of the other person where the consent has been obtained by use of force, threat, or intimidation or putting such other person in feat of death or of hurt or while such l other person was in unlawful detention;
- (c) with the consent of the other person where such consent has been obtained at a time the other person was of unsound mind or was in a state of intoxication induced by alcohol Of drugs.

(2) Whoever-

- (a) commits grave sexual abuse shall be punished with rigorous imprisonment for a. term not less than seven years and not exceeding twenty years and with fine and shall 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 ;
- (b) commits grave sexual abuse on. any person under eighteen years of age shall be punished with rigorous imprisonment for a term not less than ten years and not exceeding twenty years and with fine and shall 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."

Insertion of new heading OF PUBLICATION OF MATTER RELATING TO CERTAIN OFFENCES immediately after section 365B of the principal enactment **20.** The following new heading is hereby inserted Immediately after section 365B of the principal enactment :-

"OF PUBLICATION OF MATTER RELATING TO CERTAIN OFFENCES".

Insertion of new section 365C of the principal enactment. **21.** The following new section is hereby inserted immediately after the heading "OF PUBLICATION OF MATTER RELATING TO CERTAIN OFFENCES", and shall have effect as section 365c of the principal enactment-

Publication of matter 365c.

relating to
section
offences.

(1) Whoever prints or publishes, the name, or any matter which may make known the identity, of any person against whom an offence under section 345 or section 360A or section 360B or section 363 or section 364A or section 365 or section 365A or section 365b, is alleged or found to have been committed (hereinafter in this section referred to as "the victim") shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

(2) Nothing in subsection (1) shall apply to the printing or publication of the name or any matter which may make known the identity, of the victim, if such printing or publication is-

(a) by or under the order of the officer in charge of the police station or the police officer, making investigation into such offence, acting in good faith for the purposes of such investigation; or

(b) by or with the authorization in writing of the victim; or

(c) by or with the authorization In writing of the next of kin of the victim where the victim is dead or the parent or guardian of the victim, where the victim is a minor or is of unsound mind:

Provided no such authorization shall be given by such next of kin to any person other than to the Chairman Secretary or Manager, how so ever described, of any welfare institution or organization recognized by the State,

(3) Whoever prints or publishes any matter to relation to any proceeding in any court with respect to an offence referred to in subsection (1), without the previous permission of such court, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both.

Explanation

The printing or publication of judgement of the court of Appeal or the Supreme Court does not amount to an offence within the meaning of the section.

Sinhala text to prevail in case of
Inconsistency.

22. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.