

IS MY WORKPLACE SAFE?

LABOUR LAWS AND LGBTIQ COMMUNITY



AUTHORED AND COMPILED BY
DINUSHA MOHANASUNDERAM

EQU  L GROUND

IS MY WORKPLACE SAFE?

LABOUR LAWS AND LGBTIQ COMMUNITY

Authored and Compiled by
Dinusha Mohanasunderam

© 2022

TABLE OF CONTENTS

Definitions and Abbreviations	01	Violations at Workplace	17
Introduction	03	Statutory Violations	17
		Contractual Violations	19
Employment Related Laws in Sri Lanka	05	Violations of Fundamental Rights	20
Workplace Offences	08	Redress Mechanisms	21
Harassment	08	Under the Criminal Procedure Code	21
Assault	09	Under the Law of Contracts	21
Criminal Force	10	Under the Industrial Disputes Act	23
Cause Hurt	11	Under the Law of Delicts	26
Cause Grievous Hurt	11	Under the Constitution	27
Sexual Harassment	13		
Bribery	16		
Ragging	16		
		Glossary	28



DEFINITIONS AND ABBREVIATIONS

LGBTIQ:

Lesbian, Gay, Bisexual, Transgender, Intersex and Queer/Questioning.

Lesbian:

A woman who is physically, emotionally and/or spiritually attracted to other women.

Gay:

A man who is physically, emotionally and/or spiritually attracted to other men. Usually used to describe men loving men but can be used as an umbrella term to identify the whole LGBTIQ community – as in ‘Gay Community’.

Bisexual:

A person who can be physically, emotionally and/

or spiritually attracted to either men or women.

Transgender:

A person whose sense of gender identity does not correspond with their birth sex.

Intersex:

A term to describe persons born with any of several variations in sexual characteristics including chromosomes, gonads, sex hormones or genitals that do not fit the typical definitions for male or female bodies.

Queer:

A word that describes sexual and gender identities other than straight and cisgender. Lesbian, gay, bisexual, and transgender people may all identify with the word queer.

Questioning:

A person who is questioning their sexuality or gender identity.

SOGIE:

Sexual Orientation and/or Gender Identity/Expression.

Sexual Orientation:

A person's identity in relation to who they are emotionally, physically and romantically attracted to; being heterosexual (attracted to opposite sex), homosexual (attracted to same sex), or bisexual (attracted to both sexes).

Gender Identity:

A person's deeply felt internal and individual identification of their gender, which may or may not be the same as the sex they were assigned at birth.

Harassment:

Harassment is any improper and unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person. Harassment may take the form of words, gestures or actions which tend to annoy, alarm, abuse, demean, intimidate, belittle, humiliate or embarrass another or which create an intimidating, hostile or offensive work environment. It includes harassment based on any grounds, such as race, religion, color, creed, ethnic origin, physical attributes, gender or sexual orientation.

(Source: UN, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N08/238/36/PDF/N0823836.pdf?OpenElement>)

INTRODUCTION

The concept of employment arises from the employer–employee relationship between the parties. It came into existence from the ancient master–servant relationship where the servant would work for the master in return for a wage. In this master–servant relationship, the servant had no power or a right against the master, and it almost took the form of slavery. Today, laws relating to employment or labour laws as we call them have taken a different approach. Even though it is based on the same master–servant relationship, in today’s context, the employee is much more protected against the doings of the employer, receives recognition more than a servant, and has a lot of rights that the employee can exercise.

Despite the protection that the employees receive through our domestic labour laws, or the existing recommendations and conventions given by the International Labour Organisation (ILO) Conventions, there seems to be a lack of knowledge about what these employee rights are, and what can be done if they are violated. Because of this lack of knowledge, many employees face multiple problems in their workplaces starting from harassments, unjust terminations, violation of fundamental rights, and more.

Speaking to a fraction of the workforce who are a part of the LGBTIQ community, it came to light that most of them are not aware of what their rights are, and what they could do if these rights were violated.





A study by EQUAL GROUND on workplace discrimination (2021) revealed that, 42% of the LGBTIQ respondents feared revealing their SOGIE at their workplace due to stigma and discrimination they would face. 58% of the respondents had experienced verbal harassment and 31% had experienced sexual harassment.

The study also revealed that the victims chose to remain silent because they feared facing increased discrimination and/or stigmatisation. This booklet is designed to be used as a quick reference guide for LGBTIQ employees, to help them understand and know their rights in a workplace. This booklet provides a basic knowledge of the labour laws in Sri Lanka, and what actions can be taken if your rights are violated, and highlights a few key areas of importance, which we believe will be useful. However, this booklet does not capture the entire spectrum of labour laws in Sri Lanka, and as such there are more rights available to you, if you are an employee.

The offences and violations explained in this booklet are not exhaustive, but rather, provide insight into the most common types of offences and violations an LGBTIQ employee may encounter based on previous research.

EMPLOYMENT RELATED LAWS IN SRI LANKA

In Sri Lanka, we have several laws related to employment, labour and industrial relations. For ease of understanding, these laws can be divided into different categories. Please note that reference is made to the original Act or Ordinance, and that most of these Acts/Ordinances have been amended over time. Even though not referenced in here individually, all the amendments to these Acts/Ordinances should be read together and will be collectively considered as applicable laws.

Laws on Social Security

- Employees Provident Fund Act No 15 of 1958.
- Employees Trust Fund Act No 46 of 1980.
- Payment of Gratuity Act No 12 of 1983.

Laws on Welfare and Well-being of Employees

- Employment of Women, young Persons and Children Act No. 47 of 1956.
- Maternity Benefits Ordinance No 32 of 1939.
- Employment of Females in Mines Ordinance No 13 of 1937.

Laws on Terms and Conditions of Employment

- Wages Board Ordinance No 27 of 1941.
- Shop and Office employees' (Regulation of Employment and Remuneration) Act No 19 of 1954.
- Employment of Trainees (Private Sector) Act No 8 of 1978.
- National Minimum Wages of Workers Act No 3 of 2016.
- Budgetary Relief Allowance Act No 4 of 2016.
- Inland Revenue Act No 24 of 2017
- Minimum Retirement Age of Workers Act No 28 of 2021.

Laws on Occupational Health and Safety and Workmen's Compensation

- Factories Ordinance No 45 of 1942.
- Workmen's Compensation Ordinance No 19 of 1934.

Laws on Foreign Employment

- Sri Lanka Bureau of Foreign Employment Act No 21 of 1989.
- Fee Charging Employment Agencies Act No 37 of 1956.

Laws on Labour Relations

- Trade Union Ordinance No 14 of 1935.
- Employees Councils Act No 32 of 1979.
- Industrial Disputes Act No 43 of 1950.
- Industrial Disputes Hearing and Determination of Proceedings (Special Provisions) Act No 13 of 2003.
- Termination of Employment of Workers (Special Provisions) Act No 45 of 1971.

Law on Plantations and Estate Labour

- Estate Labour (Indian) Ordinance
- Medical Wants Ordinance
- Indian Immigrant Labour Ordinance
- Minimum Wages (Indian Labour) Ordinance
- Trade Union Representatives (Entry in Estates) Act
- Estate Quarters (Special Provisions) Act
- Allowances to Plantation Workers Act
- Services Contracts Ordinance Workers (Special Provisions) Act No 45 of 1971.

An organisation can have different types of employees. Within an organisation, you can either be a permanent employee, a probationary employee, or a contractual employee. All categories of these employees are entitled to superannuation benefits (paid pension scheme like a retirement fund) under the Employees' Provident Fund Act and, where applicable, the Payment of Gratuity Act. Employees Provident Fund Act and the Employees' Trust Fund Act also apply across the board to all categories of employees (excluding domestic workers).



The following laws apply equally to all categories of employments

Industrial Disputes Act No 43 of 1950.

Workmen's Compensation Ordinance No 19 of 1934.

Trade Union Ordinance No 14 of 1935.

National Minimum Wages of Workers Act No 3 of 2016.

Budgetary Relief Allowance Act No 4 of 2016.

Inland Revenue Act No 24 of 2017.

Minimum Retirement Age of Workers Act No 28 of 2021.

The terms and conditions of employment for employees who work in a shop or office will be governed by the Shop and Office Employees (Regulation of Employment & Remuneration) Act 1954. For the employees who fall under the Wages Board Ordinance, the Minister of Labour has the power to regulate matters such as wages, holidays, leave and overtime from time to time.

The Termination of Employment of Workmen (Special Provisions) Act will apply where the employment relationship is a "Scheduled Employment" under the Act. That means any employment falling under either the Wages Boards Ordinance, Shop and Office Employees Act or Factories Ordinance.

WORKPLACE OFFENCES

Workplace offences could be of different forms. It is almost impossible for a Human Resources Department in a company to keep monitoring all what their employees are doing. Because of this, there is a possibility that a company might miss the signs of harassment their employees are going through.

Harassment

Can be subjective, meaning that it could differ from person to person. *For an example, one employee might be fine with swear words or jokes at the workplace, while it may be highly offensive and unacceptable to another employee.* Therefore, some companies can have its own policies setting out the code of conduct including the do's and don'ts for the employees of that company.

Workplace Harassment could be physical harassment, meaning that the person doing the act of harassing, will be using some violence against the person getting harassed and, that violence could possibly cause bodily injuries as well. If such happens, then that person would be committing a criminal offence.

A few examples of different types of harassment offences which can be committed in a workplace are Assault, Criminal Force or Hurt.

People can commit verbal or visual harassment, apart from physical harassment. This could lead to mental harassment, and mental trauma or psychological injuries through such verbal or visual harassment.

Assault, Criminal Force, Hurt, Grievous Hurt and Sexual Harassment are recognised criminal offences under the Penal Code of Sri Lanka.



Assault

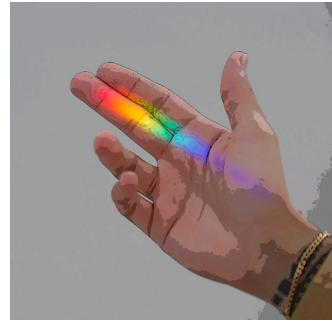
The definition for Assault is found under **Section 342*1** of the Penal Code. Assault in the workplace means where you can feel or see that someone is going to hit you or cause you some injury.

Example: if A is homophobic and doesn't like B because B is gay, and every time person B looks at A, person A says that he is going to hit B or picks up something to hit B (A doesn't necessarily have to hit B or cause injuries) then A will be committing the offence of Assault.

Section 343 of the Penal Code also deals with Assault but with an exception. What it says is that if A assaults or uses force on B, then A can be put in jail, fined or both. But if A hits B because B provoked A, and by that it means B made A angry enough to hit B, then A will not be committing an offence of assault under this section.

Section 346 of the Penal Code talks about someone intentionally assaulting or hitting you to dishonour you.

Example: if A is homophobic and doesn't like B who is a lesbian and hits or pokes B, or even attempts to hit or frightens B of getting hit, then A will be committing an offence under this section.



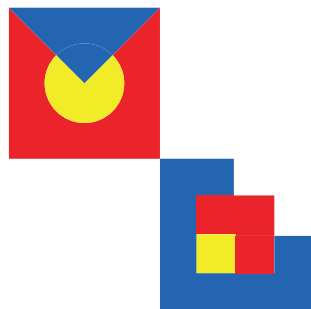
**1 Refer to the Glossary to read the full definition of Sections mentioned hereafter*

Criminal Force

The definition of Criminal Force is found under **Section 341** of the Penal Code. It states that if someone wilfully/intentionally uses force/violence against another to injure the other (without that other person's consent), or very well knows that their actions are likely to cause injury or cause annoyance or frighten the other, then that person will be committing an offence under this section.

Example: while A is walking inside the office B intentionally puts their leg out in person A's path so that A will trip and fall, or B throws a paper weight that is on the table at A to hurt A. In either of these cases B will be committing an offence under this section.

What is important to remember under this section, is that the person doing the act is doing so **intentionally, and without the other person's consent**. It does not matter if they did not know for certain that the other person will get hurt from the act. As long as the person doing it knew that the actions **could** cause another person to feel afraid, or annoyed, then that person will be committing an offence. *In this example above, B can say that the paper weight was not directly thrown at A, but because A was seated in the path where B was throwing the paper weight towards, it would have struck A by mistake. But according to this section, such defence will not be accepted because B knew that A was sitting in the throwing path and therefore there is a likelihood that A might get injured if B threw the paper weight in that direction.*



Cause Hurt

According to **Section 310** of the Penal Code, Causing Hurt becomes an offence when one person intentionally/wilfully causes some pain, illness or even spreads a disease on another person. A person who knows that they are going to cause pain to another and wilfully causes that pain to the other, as well as a person who knows that their actions may or may not cause pain to another but still does, and the act ends up causing pain to the other, will be committing an offence under this section.

Example: if A hits B with a ruler and hurts B, then A will be committing the offences of voluntarily causing hurt even though person A might have thought that hitting B might not hurt B. Because A knows that generally, if they hit someone with a ruler it will cause pain. Therefore, it doesn't matter if A thought that in this instance it won't cause pain to B. A will still be committing this offence.

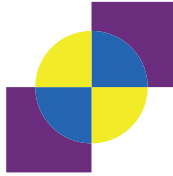
Cause Grievous Hurt

This is a more serious version of the offence mentioned above. Under this **Section 311** of the Penal Code there are eight situations or injuries which are listed out as “grievous hurt”. They are;

- Emasculation.
- Permanent sight of either eye.
- Permanent privation of the hearing of either ear.
- Privation of any member or joint.
- Destruction or permanent impairing of the powers of any member or joint.

- Permanent disfiguration of the head or face.
- Fracture or dislocation of a bone or tooth.
- Any hurt which endangers life, or which causes the sufferer to be, during the space of twenty days, in severe bodily pain or unable to follow ordinary pursuits.

So, in addition to causing hurt under **Section 310**, if the act results in any of the injuries listed above, then that person has also committed an offence under **Section 311**.



Example: A who doesn't like B because they are transgender, pushed B off the stairs and B fell and dislocated their shoulder. In this situation A has committed both offences of causing hurt as well as causing grievous hurt.

Sexual Harassment

The definition of Sexual Harassment is found under **Section 345** of the Penal Code.

Sexual Harassment could either be physical (assaulting you, hitting you, or some physical action) or mental (saying things which are inappropriate for the workplace, that is sexual, homophobic, transphobic etc.) or both.

It could be caused by anyone against anyone irrespective of their gender. Sexual Harassment could either be an act done openly, or an act done discreetly or secretly. **What is important is that the act is offensive, unwelcomed, uninvited, unreasonable, and unaccepted. It does not matter if the act was unintentional or deliberate.** What matters is if the act was unwarranted and inappropriate.

Anyone can be a target of sexual harassment. It could involve a manager, co-worker or even a non-employee like a client or customer of the workplace. It could be in form of direct sexual advances or indirect sexual propositions, high

ranking employees asking for sexual favours from low ranking employees, managers intimidating the subordinates, or even sending sexual content such as forwarding sexual jokes, sharing nudes or pornographic pictures.

According to law, the offence of sexual harassment could occur in the form of a *“Quid Pro Quo”* which means there is a sexual favour or threat by a person in power or authority. A form of harassment that conditions employee benefits on sexual favours. For example, where workplace rewards and prospects (appraisals, increments, bonus, onsite or other opportunities etc.) are based on the sexual bargain or the terms and conditions of the employment (hiring, promotion, retention, transfers etc.) depends on the sexual bargain. It also could take the form of a *“Hostile Environment”* referring to a situation or instance where a person's personal boundaries are -violated by means of unwelcome physical approaches, gestures, conduct that is sexually discriminatory between the supervisors/managers and subordinates or seniors and juniors, any of which makes the workplace environment abusive.

Sexual Harassment should not be looked at lightly as an attempt of flirtation, or as an act of socialising between the parties. What you should remember is if the act was “*Unwelcomed*”. That means you did not consent to the act, you did not want that act to happen, or that act happened by force against your wish/consent. Even though Sexual Harassment is based on sex or sexuality, it most often than not, displays an exercise of power or control over another.

Who can cause Sexual Harassment at a workplace?

- Male employees can harass female employees.
- Female employees can harass male employees.
- Same sex harassment.
- Peer harassment.
- Supervisors/Managers/Seniors can harass Subordinates/Juniors.
- Subordinates/Juniors can harass Supervisors/Managers/Seniors.
- Third party harassment (non-employees, vendors, suppliers, contract staff etc.).

What type of Sexual Harassments can happen at a workplace?

(Please note that this is not an exhaustive list, it can happen in more ways)

Physical

- Brushing or rubbing a person's genitalia against another.
- Touching, kissing, hugging, squeezing, stroking.

Verbal

- Making sexual comments.
- Insulting a person's sex, sexual orientation or gender identity.
- Commenting on a person's appearance (body shaming).
- Slandering and spreading rumours (slut shaming).
- Requesting sexual favours.
- Making sexual noises.
- Discussing topics related to sex and fantasies.

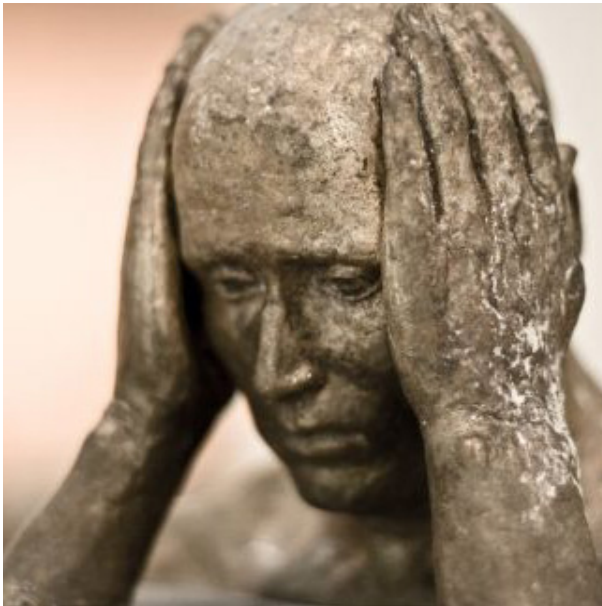
Gestural

- Making sexually expressive finger/hand movements.
- Wagging the tongue, smacking the lips, blowing kisses.
- Imitating sexual acts.
- Staring, ogling, leering, watching, winking.

Visual

- Sending sexually explicit content.
- Making inappropriate advances over social media.
- Posting a person's personal/intimate videos/photos on the internet without consent.

Apart from the above mentioned in the Penal Code, following are some other offences which could also take place at a workplace.



Bribery

The **Bribery Act No 11 of 1954** will apply to actions of public servants and as such, applicable for the government sector employees. According to **Sections 19(b) & (c), 20(b) and 89** of the Bribery Act, if someone requests and accepts sexual intercourse or sexual favours to do their job or to not do a certain act or to provide employment, appointment, promotion, transfer, increment, bonuses etc. they will be guilty of the offences of Bribery under the Bribery Act as well as Sexual Harassment under the Penal Code.

Example: A is working in a government establishment and B is the boss or superior. B asks A to do something that is sexual, in order to confirm A's job or to give a promotion etc., then B will be guilty of the offence of Bribery as well as Sexual Harassment.



Ragging

According to **Sections 2 & 17** of the **Prohibition of Ragging and Other Forms of Violence in Educational Institutions Act No 20 of 1998**, if you are working in an educational institution, and a person causes some hurt or violence against you then that person will be guilty of the offence of ragging. If the act the person perpetrated against you causes sexual annoyances as described under the offence Sexual Harassment, then that person will be committing the offence of Sexual Harassment under the Penal Code in addition to the offences under this act.

Example: A is a lecturer at a higher education institute, and B who is a student in that institute misbehaves with A or says inappropriate things which are sexual in nature to A, then B will be guilty of the offence of Ragging under this act as well as Sexual Harassment under the Penal Code.



VIOLATIONS AT WORKPLACE

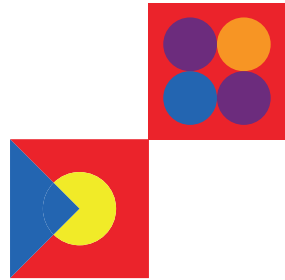
This chapter discusses possible violations of the law or the employment contract that can happen in a workplace. As mentioned in the introduction of this booklet, there are quite a few laws which can govern you and your employer based on the nature of your job and the place you work.

Statutory Violations

The private sector employment is generally governed under the ***Shop and Office employees' (Regulation of Employment and Remuneration) Act No 19 of 1954 (SOEA)***.

Under this Act there are several sections that set out how a company should function. *For example, the number of hours, the number of days, how much of leave is one entitled to, and more is explained in this Act. If your employer makes you work against these laws set out in this Act, then your employer is in breach of this Act.*

Another important statute that is used in the workplace is the **Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971**. According to the provisions of TEWA your employer cannot terminate you for any other reason other than disciplinary reasons. Under **Sections 2 and 5 of TEWA**, if your employer wants to terminate your services for any reason other than a disciplinary reason, then it can only be done through your own resignation or by getting the approval from the Labour Commissioner.



For an example, your employment contract might state that if the employer is not happy with your performance, they can terminate your services by giving you one months' notice. But legally,

no matter what your contract states, if the reason for termination is not 'disciplinary misconduct', then your employer cannot terminate you.

Here, termination can mean either suspending your services temporarily, or asking you to leave permanently, or even telling you to leave because the company is closing.

It was decided in the case **St. Anthony's Hardware Stores Ltd v. Ranjit Kumar (1978-79) 2SLR06** that inefficiency or incompetency does not fall under the category of "disciplinary reasons" under TEWA, therefore, if your employer terminates your services because of any reason other than disciplinary, such as your SOGIE, your employer will be in breach of TEWA and you can take action against your employer for unfair dismissal.



Contractual Violations

The relationship between an employer and an employee is governed by a contract of employment. This is a document which sets out all the rules, regulations, duties and obligations of the parties to this contract. The terms of this contract can vary from company to company. The reason for this difference is that this relationship is one where the parties enter on their own with their consent. If one party is unhappy with the terms, they always have the option not to agree to it or to not enter into an agreement with the other party.

Employers can also choose to include clauses which have international recognition or international standards through the contracts or through their code of conduct or office policies. *For example, an employer can choose to be committed to be an equal opportunity employer. This means the employer cannot discriminate its employees on any grounds whatsoever. In such an organisation, if you were not given a promotion or some benefit because of your Sexual Orientation, or because you are Transgender or Queer, then that employer is in breach of the contract.*

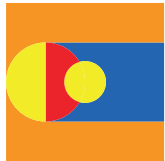
A Collective Agreement: is an agreement an employer is bound by. This agreement is entered into between the employer and the employee or the trade union of the company. According to **Sections 5(1) & 8(1) of the Industrial Disputes Act No 43 of 1950**, these Collective Agreements can include terms to ensure that there are obligations on the employer to keep the workplace free from violence and harassment. The trade union is a representation of the entire workforce. The union has the power to negotiate or bargain benefits with the employers for the benefit of all employees.

Example: if the trade union of your company has entered into a collective agreement with your employer which states that the company should be an equal opportunity employer and that there will be zero tolerance against discrimination, then such terms of that collective agreement will become a term (called an implied term) of your employment contract which the employer should not violate.

VIOLATIONS OF FUNDAMENTAL RIGHTS

Fundamental Rights are applicable to every citizen of the country and guaranteed under the Constitution of Sri Lanka. This includes rights which are needed for a human being to carry out a peaceful life. If you are working in a government organisation or establishment, and if your fundamental rights have been violated by another government employee, then you can file a fundamental rights action against that violation. Out of the limited rights guaranteed under the fundamental rights chapter in the Constitution, there are a few which will apply in a work environment.

One such important right is **Article 12** of the Constitution. This guarantees that as a citizen of this country, everyone should be treated equally and is entitled to equal protection of the law. It further states that no citizen should be discriminated on the grounds mentioned in Article 12 or similar personal grounds. *How this applies to a work is in situations where you are not hired into a government office or organisation because of your Sexual Orientation, or you might not be given a promotion, or you might be transferred because your superior does not accept you being queer or bisexual, simply for who you are. At this point your fundamental right to equality is violated.*



Another important right is **Article 14 (g)** of the Constitution. This right allows every citizen in the country to be engaged in lawful employment. Every citizen is given the right to take up a profession of their choice, to establish a business, to be involved in a trade. *For an example, if you are working in the government sector and your services are terminated because they are unaccepting of your Gender Identity or Sexual Orientation, your employer is in violation of this article.*

REDRESS MECHANISMS

Under the Criminal Procedure Code

If you have been a victim to any of the offences under the Penal Code mentioned, or any other offences under the Penal Code, then you can make a complaint to the police. According to **Section 5 of the Criminal Procedure Code**, once you file a complaint with the police and they record your statement, the police should conduct an inquiry/ investigation. Based on the nature of the offence and the severity, they will file an action in either the Magistrate Court or the High Court. Upon conclusion of the case, if the accused is found guilty, then the court can sentence a fine, imprisonment or both, based on the law.

Under the Law of Contracts

A contract is an agreement entered into between parties voluntarily. This means the parties that enter into this agreement can agree on any type of terms. But there will be some terms which are guaranteed by law, *for example terms relating to working hours, leave, EPF/ETF etc.*, and some terms which are included after negotiation between the parties or some standard policies of the employer. *For example, terms relating to your salary, allowances, designation etc. are an outcome of negotiation. But terms relating to disciplinary matters, standard work practice, code of conduct, dress code of the organisation, non-solicitation, restraint of trade, termination, are clauses which are common to all employees of that organisation.*



If you believe that your employer is violating any of these terms which are not guaranteed by law (that means, it is a term which was included as a common term or a term that has been included after negotiation between the parties, and is not a term which has another remedy by law) then you can file an action against your employer for breach of contract in the District Court asking for compensation within two years of the violation. It's advisable to consult an Attorney to do this for you.



Under the Industrial Disputes Act

As mentioned above, there are some terms in the contract which must be included in accordance with the law. If your employer is violating those terms, then your remedy is based on what the law governing those terms say. Most of the labour law violations are governed under the **Industrial Disputes Act No. 1954 (IDA). Section 48** of the IDA defines what an “industrial dispute” is.

Generally, if an industrial dispute occurs, a complaint should be submitted in writing regarding the dispute between an employer and an employee, or between employers and employees. This is applicable to employees in private or semi-Government sectors. Disputes connected with employment, non-employment, terms of employment and service conditions, as well as termination of employment or re-employment can be complained to the Industrial Relation Division at the Head office or to District Labour Office/ Labour sub office in the area where the relevant employer is located.

If you have not received any solution from the district office, you can make the complaint directly to the Labour Commissioner or Deputy Commissioner of Labour.

Labour Commissioner is a labour officer to whom you can address any of your employment related issues.



The Commissioner has the power to decide on their own whether there is a dispute that needs to be sorted, or if someone informs them about a dispute, they can try to settle it. *For an example, if your employer is not paying your EPF/ETF, or is unreasonably denying you from taking your entitled leave, or not giving you paid off days for the weekends/holidays you work, you can make a complaint to the Labour Commissioner by way of a letter addressed to, or by filing an online request via <https://cms.labourdept.gov.lk/>*

Upon investigating the matter, the Labour Commissioner can then call for an inquiry and can try to settle the matter or refer it to an industrial arbitrator or industrial court for resolution.

Under **Section 31B** of the IDA, if you have been unfairly terminated by your employer or if there is a dispute on Gratuity or a dispute of labour conditions set out by law, then you can make an application in writing to the Labour Tribunal for the matter to be heard and judged.

Example: under the Shop and Office Act, you are entitled to a full day leave on Poya but your employer doesn't let you take the leave. Or you work on the weekend (out of your usual working hours), but your employer doesn't give you paid 2 days off for the weekend you worked.

“Unjust Termination”

As explained above under the TEWA your employer cannot terminate your services for any reason other than disciplinary. If your employer terminates your employment for any other reason, you can make an application in writing by yourself, or through a Trade Union you are a part of (you



can also use the services of an attorney at law) to the Labour Tribunal and ask for your employment to be reinstated.

Under **Section 31B (4)** irrespective of what is mentioned in your employment contract, the Labour Tribunal has all the power to grant any relief even if such relief is against the terms of your contract.

Example: if your employment contract states that your employer can give you 30 days' notice and terminate your services without a reason, and your employer does so, you can make an application to the Labour Tribunal. If the President of the Labour Tribunal decides that this termination is unjust, then the Tribunal can issue an order to your employer, asking them to give your job back/or other appropriate redress, irrespective of what the employment contract says.

A violation of a Collective Agreement term:

This is considered an offence under the IDA. Therefore, if your employer is violating a term found in any Collective Agreements you have the right to make an application/complaint to the Labour Commissioner as mentioned above.



Under the Law of Delicts

A delict is a civil wrong committed by one person against another. The basic principle in a delict is that there is a “duty of care” towards another, and when this duty is violated, the responsible party will be committing a delict.

For an example, an employer owes a duty of care to provide a safe office environment to its employees. If an employee is being harassed and is subjected to abuse by co-employees, then the employer can be found guilty of having breached their duty by not providing their employee a safe environment.

You can file an action in a civil court by consulting an Attorney. Moreover, if a co-worker is found guilty of committing any offence against you, you can also make your employer vicariously (indirectly) liable for not providing a safe work place, and that therefore, your co-worker’s actions within the workplace can be considered as your employer’s actions.



Under the Constitution

If a fundamental right is violated, or if there is an immediate danger of it being violated, by an executive or administrative (government sector) action in your workplace as explained in the previous chapter, you have a remedy guaranteed by the Constitution itself.



Under **Article 17** of the Constitution, if your fundamental rights have been violated or if you are concerned that it is likely to be violated in the immediate future by an executive or administrative action in your workplace (government sector), then you can file a petition to the Supreme Court for relief. You should note that you need to apply for relief within 30 days of violation. It is advisable that you make a written complaint to the Human Rights Commission of Sri Lanka (HRCSL), as soon as your rights are violated. When you make a complaint to the HRCSL, your 30-day time stops running from the day the complaint was made, and thereafter, you can file the matter in the Supreme Court after gathering all relevant evidence. It's also advisable to consult an Attorney to assist you in this regard.

GLOSSARY

Penal Code

Section 342

*“Whoever makes **any gesture or any preparation**, intending or knowing it to be likely that such gesture or preparation **will cause any person present to apprehend** that he who makes that gesture or preparation is **about to use criminal force to that person**, is said to commit “an assault “*

Section 343

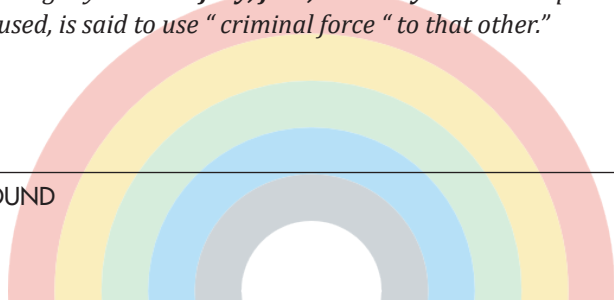
*“Whoever **assaults or uses criminal force** to any person otherwise than on grave and sudden provocation given by that person shall be punished with **imprisonment** of either description for a term which may extend to three months, or with **fine** which may extend to fifty rupees, or with **both**.”*

Section 346

*“Whoever **assaults** or uses **criminal force** to any person **intending** thereby to **dishonour** that person otherwise than on grave and sudden provocation given by that person, shall be punished with **imprisonment** of either description for a term which may extend to two years, or with **fine**, or with **both**.”*

Section 341

*“Whoever **intentionally uses force** to any person, **without that person’s consent** in order to the committing of any offence or intending illegally by the use of such force **to cause**, or **knowing it to be likely** that by the use of such force he will illegally **cause injury, fear, or annoyance** to the person to whom the force is used, is said to use “criminal force “ to that other.”*



Section 310

Whoever causes bodily **pain, disease, or infirmity** to any person is said to “cause hurt.”

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.”

Bribery Act

Section 19

(b) “Who being a **public servant, solicits or accepts** any gratification as an **inducement** or a reward for his **performing or abstaining** from performing any official act or for such **expediting, delaying, hindering, preventing, assisting or favouring** as is referred to in paragraph (a) of this section, or
(c) who, being a public servant solicits or accepts any gratification, shall be guilty of an offence punishable with **rigorous imprisonment** for a term of not more than **seven** years and a **fine** not exceeding **five** thousand rupees.”

Section 20

(b) “Who **solicits or accepts** any gratification as an **inducement** or a reward for **his doing** any of the acts specified in sub-paragraphs (i), (ii), (iii), (iv), (v), (vi) and (vii) of paragraph (a) of this section, shall be guilty of an offence punishable with **rigorous imprisonment** for a term of not more than **seven** years and a **fine** not exceeding **five** thousand rupees.”

Section 89

For the purposes of this Act –

*(a) a person **solicits** a gratification if he, or any other person acting with his knowledge or consent, **directly or indirectly demands, invites, asks for, or indicates willingness to receive**, any gratification, whether for the first-mentioned person or for any other person, and*

*(b) a person **accepts** a gratification if he, or any other person acting with his knowledge or consent, **directly or indirectly takes, receives or obtains, or agrees to take, receive or obtain** any gratification, whether for the first-mentioned person or for any other person.*

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

Section 2

*(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.*

Section 17

*“Ragging” means any act which causes or is likely to cause **physical or psychological injury or mental pain or fear** to a student or **a member of the staff** of an educational institution.*

*“Sexual Harassment” means the use of **criminal force, words or actions** to cause **sexual annoyance or harassment** to a student or **a member of the staff** of an educational institution.*

Termination of Employment of Workmen (Special Provisions) Act No. 45 of 1971

Section 2

(1) No employer shall terminate the scheduled employment of any workman without -

*(a) the **prior consent in writing** of the **workman**; or*

*(b) the **prior written approval** of the **Commissioner***

(4) For the purposes of this Act, the scheduled employment of any workman shall be deemed to be terminated by his employer if for any reason whatsoever, otherwise than by reason of a punishment imposed by way of disciplinary action, the services of such workman in such employment are terminated by his employer, and such termination shall be deemed to include -

*(a) non-employment of the workman in such employment by his employer, whether **temporarily** or **permanently**, or*

*(b) non-employment of the workman in such employment in consequence of the **closure** by his employer of any trade, industry or business.*

Section 5

*Where an employer terminates the scheduled employment of a workman in contravention of the provisions of this Act, such termination shall be **illegal**, **null** and **void**, and accordingly shall be of **no effect** whatsoever.*

Industrial Disputes Act

Section 5

(1) In this Act, “collective agreement” means an agreement -

(a) which is between -

(i) any employer or employers, and

(ii) any workmen or any trade union or trade unions consisting of workmen, and

(b) which **relates to the terms and conditions of employment** of any workman, or to the privileges, rights or duties of any employer or employers or any workmen or any trade union or trade unions consisting of workmen, or to the manner of settlement of any industrial dispute.

Section 8

(1) Every collective agreement which is for the time being in force shall, for the purposes of this Act, **be binding on the parties**, trade unions, employers and workmen referred to in that agreement in accordance with the provisions of section 5(2); and the **terms of the agreement shall be implied terms in the contract of employment** between the employers and workmen bound by the agreement.

Section 48

“industrial dispute” means any **dispute or difference between an employer and a workman** or between employers and workmen or between workmen and workmen **connected with the employment or non-employment, or the terms of employment, or with the conditions of labour, or the termination of the services, or the reinstatement in service**, of any person, and for the purpose of this definition “workmen” includes a trade union consisting of workmen;

Section 31B

(1) A **workman** or a trade union on behalf of a workman who is a member of that union, may make **an application in writing** to a labour tribunal for relief or redress in respect of any of the following matters: -

(a) the **termination of his services** by his employer;

(b) the question whether any **gratuity or other benefits are due** to him from his employer on termination of his services and **the amount of such gratuity and the nature and extent of any such**

benefits, where such workman has been employed in any industry employing less than fifteen workmen or any date during the period of twelve months preceding the termination of the services of the workman who makes the application or in respect of whom the application is made to the tribunal;

(c) the question whether the forfeiture of a gratuity in terms of the Payment of Gratuity Act, No. 12 of 1983 has been correctly made in terms of that Act; and

(d) such **other matters relating to the terms of employment**, or the conditions of labour, of a workman as may be prescribed.

(4) **Any relief or redress may be granted** by a labour tribunal to a workman upon an application made under subsection (1) **notwithstanding anything to the contrary in any contract of service** between him and his employer.

Constitution

Article 12

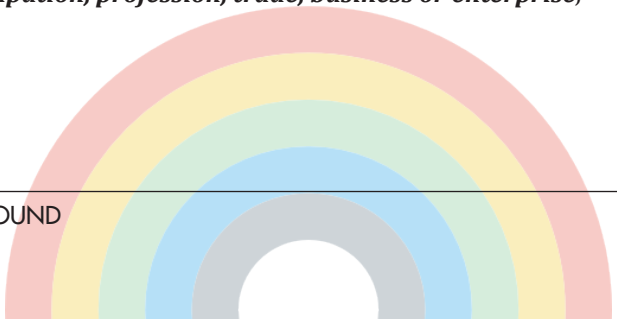
(1) All persons are **equal before the law** and are entitled to the **equal protection of the law**.

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

Article 14 (g)

(1) Every **citizen** is entitled to –

(g) the freedom to **engage by himself or in association with others** in any lawful **occupation, profession, trade, business or enterprise**;



Article 17

*Every person shall be entitled to **apply to the Supreme Court**, as provided by Article 126, in respect of the **infringement or imminent infringement** by executive or action, of a fundamental right to which such person is entitled under the provisions of this Chapter.*

Criminal Procedure Code

Section 5

All offences—

*(a) under the **Penal Code**,*

(b) under any other law unless otherwise specially provided for in that law or any other law,

*shall be **investigated, inquired** into, **tried** and otherwise dealt with according to the provisions of this Code*



