

## ABSTRACT

Children are the foundation of the society. Therefore it is the legal duty of each government in the world to protect the rights of the children to ensure the best interest of the children. This concept of the best interest of the child is extending to every condition in children's lives. Among them it is mainly discussing in the field of Divorce Law in Sri Lanka.

In Sri Lankan context it has basically expressed its view through the limited provisions of the constitution of the democratic socialist republic of Sri Lanka 1978 such as the section of 12(4), 27(13), and government Acts such as Amended Penal Code, Domestic Violence Act, and Maintenance Act and the Children's charter in 1992. Furthermore Sri Lanka had ratified the Child Rights Convention on 12 July 1991. But ratification of international instruments does not automatically have the force of law in Sri Lanka. To have domestic effect, they must be incorporated into domestic law through a legislation. Therefore due to unless of the direct law or guideline, Sri Lankan courts enjoying a wide discretion power towards the children in custody matters as the upper guardian of the children.

When a divorce case is made in the court, if parties had a child, it is the right of the child to choose under whom to live with him until the certain age of guardianship which is eighteen years of age. In contrast Sri Lankan judiciary grants the decision of the custody of the child during the divorce action and end of the divorce action as the upper guardian of the children without considering the child's wish as a primary consideration. Sri Lankan judiciary mainly consider the maintenance power of the parents or other health and educational issues of the children to offer the custody of the child under divorce law in Sri Lanka. Furthermore if court will think that the child's wish will harm for the future

of the child, it has the power to neglect the consent of the child as per its discretion and can make custody decisions under divorce law in Sri Lanka without considering the child's wishes, likes or dislikes. Therefore it will badly affect some fundamental rights of the children such as freedom of thoughts, conscience and religion, right to equality, freedom of speech and expression and association with others to enjoy and promote his own culture.

However Commonwealth countries such as Australia and South Africa have implemented special laws to ensure the best interest of the child by considering international standards which was granted by Convention on Rights of the child and other international instruments.

Therefore to protect the rights of the child under divorce law in Sri Lanka, the concept of the best interest of the child must be ensured with a proper guideline by a direct legislation of child rights is essential in Sri Lanka.

***Key words:*** Best Interest, Child, judicial discretion, divorce law, Sri Lanka