

Report of the sub-committee on Reforming the Law related to Assisted Schools and Training Colleges

To: The Chairman, Law Commission of Sri Lanka

Date: 26th October 2023

1. Background and introductory remarks:

By letter dated 10th July 2023, the Ministry of Justice requested the Law Commission to examine the laws related to Assisted Schools and Training Colleges and to submit a report regarding any proposed reform to the same. The request was based on a letter dated 19.06.2023 sent to the Ministry of Education by one Amara Dissanayake and signed by several persons belonging to the Sri Lanka Assisted School Teachers Service. The letter alleges that the law relating to Assisted Schools and training colleges is outdated and no longer serves the needs of society.

Accordingly, a subcommittee consisting of the following members was appointed to study the matter: Prof. Naazima Kamardeen, Mr. Chanaka de Silva PC and Ms. Shehara Weerakoon.

The two attachments contain the following additional concerns and recommendations:

Attachment No. 1

The Main Concerns expressed in the Letter.

1. Assisted Schools operating now need to be taken over by the Government or their complete authority should be vested on the Zonal Director or the District Secretary.
2. While salary payments and promotions of the teachers of Assisted Schools at the moment are being conducted by the Government, recruitments and transfers are conducted by the management boards of the non-Governmental organizations. This situation of recruitments and transfers should take place under the power of Ministry of Education and in the term “Sri Lanka Assisted School Teachers Service”, the words “Assisted Schools” should be deleted and made recognizable as the “Sri Lanka Teachers Service”.
3. Practical changes should be made to transfer the expertise of the personnel working in special education units, which the Ministry of Education maintains at great expense at the moment, for the use of the children with auditory, visual, and intellectual disabilities. For this, the knowledge of the teachers in Assisted Schools can be updated regarding their development, by conducting training

sessions and providing subject contents. Supervision can be carried out by the special education units of the Zonal Education Offices.

4. In developed countries of the world, children with auditory, visual, and intellectual disabilities continue their education in a normal school. This builds-up their personality. Since our country is unable to reach that position in one step, a co-subject field and a time frame can be introduced as an in between step – make possible to join a teacher’s class in normal school for lessons regarding subjects and student activities, to enjoy sports-meets, concerts, Literature Societies, new inventions circles and handwork with normal school children.
5. Open new special needs schools by using schools/buildings which are now closing due to lack of students, or schools in which the play-ground premises are not used fully.
6. Create the necessary facilities for children with special educational needs to follow Degrees, Post-graduates and Diplomas.

Attachment No. 2

Unsatisfactory Situation at present in Assisted Schools, as articulated in the Letter.

1. Groups who come-up with a non-Governmental organization at any level, appoint their friends and relations for the administrative board and arbitrarily forge donations and other receivables obtained for the educational purposes of the children.
2. The education process in most of the Assisted Schools is not done properly as most of the persons on the administrative boards are not educationists or even the handful who are there are prone to get personal benefits.
3. Since recruiting of teachers is done by an administrative board, the most suitable teacher may not be appointed. Appointing upon personal relationships is clearly visible.
4. When true teachers of the system stand against this system by revealing the bribery and corruption and child abuse, opposition and harassment by corrupt Principals and administration board is very common.

5. Boarding facilities and the state of food in the Assisted Schools are unsatisfactory at the moment.
6. The best evidence to prove that the present Assisted Schools are acting solely for their own betterment is: - quite a lot of children with visual disabilities, auditory disabilities and intellectual disabilities are remaining at home without advancing with special education.
7. Differently-abled children with auditory and visual disabilities are not with disorders in mental power, intelligence and sensitivity. Such Children in other countries have developed their talents to reach the top. Our country too should reach that level.

2. Matters to be undertaken in the research:

In deciding whether the existing laws require any reform, the subcommittee decided to study the following matters:

1. Whether the teachers in Assisted Schools are facing problems as a result of being unable to obtain transfers from their current schools.
2. Whether the facilities in these Assisted Schools are sufficient for their purposes.
3. Whether there is corruption in the management of these schools (as alleged in the letter sent)
4. Whether children with special educational needs attending these schools should be integrated into the regular school network and allowed to study certain subjects along with those children.

3. Methodology of the research:

3.1 Perusal of Documentation:

The first step consisted of desk-based research where the relevant laws and regulations were perused.

Laws related to Assisted Schools and Training Colleges

List of Laws and Regulations

1. Assisted Schools and Training Colleges (Special Provisions) Act No. 5 of 1960
2. Assisted Schools and Training Colleges (Supplementary Provisions) Act No. 8 of 1961
3. Education Ordinance No. 31 of 1939

Extracts from Relevant Laws and Regulations

Assisted Schools and Training Colleges (Special Provisions) Act No. 5 of 1960

Sec. 2 Application	“This Act shall apply to every Assisted School, other than any such school as is specified in the Schedule to this Act...”
Sec. 3 Director	Minister may, by order, appoint a Director as the manager of every Assisted School to which this Act applies, provided that, where the proprietor of any Assisted School serves a notice on the Director stating that he has elected to carry on the administration of such school as an unaided school, Minister’s order shall cease to apply to such School.
Sec. 6 Unaided schools	<p>If the proprietor of any school has made an election under Sec. 5 (for Grade I or II Assisted Schools), to be an unaided school, such proprietor shall</p> <ol style="list-style-type: none">a. Educate and train the pupils in such school in accordance with the general educational policy of the Government;b. continue to maintain all such facilities and services as were maintained by such school on the day immediately preceding the date on which this Act was passedc. Not, after the date of such election, admit a pupil whose parent does not profess the religion of such proprietor unless prior permission is obtained from the Directord. not levy fees other than any fees for facilities and services which are permitted by regulations made in that behalf under the Education Ordinance;

	<p>e. make no reduction in the accommodation provided in such school for pupils;</p> <p>f. not dismiss or discontinue any pupil who was in that school on the day prior to the date of such election, except upon disciplinary grounds and with the approval of the Director;</p> <p>g. comply with the provisions of any written law applicable to such school and matters relating to education;</p> <p>h. not, except with prior approval of the Director, terminate the services of any teacher or employee who is on the staff of such school, on or after the day this Act was passed.</p> <p>i. pay to every teacher and employee who is on the staff of such school the salary and allowances due to such teacher or employee in respect of any month not later than the tenth day of the subsequent month;</p> <p>j. not, except with the prior approval of the Director, alter the terms and conditions (including terms relating to salary, allowances and leave) of service of any teacher or employee who is on the staff of such school on or after the day this Act was passed</p> <p>k. satisfy the Director that necessary funds to conduct and maintain the school will be available and shall conduct such school to the satisfaction of the Director; and</p> <p>l. not directly or indirectly by himself or any other person cause or permit any other person to have any strike or lock-out within or about the school premises which would have the effect of preventing such school being conducted to the satisfaction of the Director.</p>
<p>Sec. 7 Proprietor may request Director to take a poll</p>	<p>Proprietor of any Assisted School may make a written request to Director to take a poll to enable teachers, parents of pupils in assisted school to elect whether the school should be administered by proprietor as unaided school.</p>
<p>Sec. 12 Offence to obstruct Director</p>	<p>Every person who obstructs the Director or any officer authorized by him in the exercise, performance or discharge of his powers, functions or duties as manager of any school to which this Act applies shall be guilty of an offence.</p>

Sec. 14 Regulations	Minister may make regulations in respect of any matter for which regulations are authorised/required to be made by this Act and for the purpose of giving effect to the principles and provisions of this Act.
Sec. 15 Offences Penalties	and Any person who contravenes or fails to comply with any provisions of this Act or of any Order or regulation made thereunder shall be guilty of an offence (punishment after summary trial before Magistrate is imprisonment for three months with/without fine, not exceeding 500 rupees)
Sec. 16 Conflict	The provisions of this Act shall have effect notwithstanding anything contained in any other written law. In the event of conflict, the provisions of this Act shall prevail.
Sec. 17 Interpretation	<ol style="list-style-type: none"> 1. Assisted School - any school or training college to which aid is contributed from State funds or was contributed from such funds on July 21, 1960 2. Director – Director of Education 3. Parent – Father of pupil, or if the father is dead or resides outside Ceylon, his mother, or if both are dead or reside outside Ceylon, the legal guardian
Schedule	<ol style="list-style-type: none"> 1. Any school maintained exclusively for the education of children suffering from any mental or physical disability. 2. Any school maintained exclusively for the teaching of dancing. 3. Any estate school. 4. Any school which was conducted on July 21, 1960, mainly for persons over fourteen years of age.

Assisted Schools and Training Colleges (Supplementary Provisions) Act No. 8 of 1961

Sec. 2 Application	This Act shall apply to every assisted school of which the Director was on December 1, 1960, or is, or becomes, the Manager by virtue of the operation of any Order made under the Assisted Schools and Training Colleges (Special Provisions) Act, No. 5 of 1960.
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<p>Sec. 7</p> <p>Property vested in the Crown</p>	<p>Any property vested in the Crown by a Vesting Order may be used by the Director for and on behalf of the Crown for the purpose of conducting and maintaining a school.</p>
<p>Sec. 10</p> <p>Divesting Orders</p>	<p>Notwithstanding that any property used for the purpose of any school to which this Act applies has vested in the Crown, the Minister by a Divesting Order, shall,</p> <ul style="list-style-type: none"> • if such property ceases to be used/is not needed for the purpose of a school, • if the Director ceases to be manager of that school by virtue of the operation of any Order made under the Principal act • if a determination is made on a reference to arbitration under this Act that any property in respect of which that Vesting Order was made, is not property liable to vesting <p>revoke that Vesting Order in so far as relates to such property from the relevant date</p>
<p>Sec. 11</p> <p>No compensation</p>	<p>No person shall be entitled to compensation from the crown in respect of any property vested in the crown by a Vesting Order or possession/use by the crown of any vested property that was subsequently divested, or for any loss incurred by them by reason of such vesting or divesting of property in the crown.</p>
<p>Sec. 13</p> <p>Offence</p>	<p>Every person who prevents or obstructs or resists any person from or in taking possession, under section 12, of any property for and on behalf of the Crown shall be guilty of an offence under this Act</p>
<p>Sec. 15</p> <p>Director</p>	<p>The Director may exercise, perform or discharge any power, duty or function vested in or imposed on the proprietor of any school to which this Act applies by the Education Ordinance or by any other law, and such proprietor shall cease to exercise, perform or discharge any such power, duty or function</p>
<p>Sec. 16</p> <p>Power of entry</p>	<p>1. Any of the following persons shall be entitled to enter the premises of any school to which this Act applies during such hours as may be determined by the Director from time to time</p>

	<ol style="list-style-type: none"> 2. The Director or any person authorised by him in that behalf. 3. Any teacher in such school. 4. The pupils attending such school for instruction. 5. The parents of pupils attending such school. 6. Employees of such school. <p>(2) Any person who obstructs or resists any other person in the exercise of such other person's right of entry to any school to which this Act applies conferred by subsection (1) shall be guilty of an offence under this Act.</p>
<p>Sec. 19</p> <p>Director to make good any loss or repair any damage</p>	<p>Where any loss or damage has been or is caused to any property which had prior to the date of such loss or damage been used for the purposes of any school to which this Act applies or which is being conducted and maintained by the Director for and on behalf of the Crown, the Director may make good such loss or repair such damage, or may prepare an estimate of the cost of making good such loss or repairing such damage</p>
<p>Sec. 25</p> <p>New schools</p>	<p>(1) No person shall, on or after the date of the commencement of this Act—</p> <ol style="list-style-type: none"> a. establish any school for the education of persons who are between the age of five years and the age of fourteen years (both ages inclusive); or b. establish any school, other than a school referred to in paragraph (a), for the education of persons who are below the age of eighteen years without the prior approval of the Director. <p>(2) Regulations may be made under this Act for the conduct and regulation of schools which are established with the approval of the Director given under paragraph (b) of subsection (1).</p> <p>(3) The preceding provisions of this section shall not apply to the establishment of a school solely for religious instruction.</p>

<p>Sec. 27</p> <p>Penalties for offences</p>	<p>Every person who is guilty of an offence under this Act shall, on conviction after summary trial before a Magistrate, be liable to imprisonment of either description for a term of six months with or without a fine not exceeding five hundred rupees.</p>
<p>Sec. 28</p> <p>Offences by body corporate</p>	<p>Where an offence under this Act is committed by a body corporate, every person who at the time of the commission of that offence was a member of that body corporate shall be deemed to be guilty of that offence unless he proves that the offence was committed without his consent or connivance, and that he exercised all such diligence to prevent the commission of that offence as he ought to have exercised having regard to the nature of his functions in such capacity and in all the circumstances.</p>
<p>Sec. 30</p> <p>No suit to lie against Minister/Director</p>	<p>No suit or prosecution shall lie against the Minister, Director or any officer or other person for any act which is in good faith done or purported to be done by him under this Act.</p>
<p>Sec. 31</p> <p>Conflict</p>	<p>In the event of any conflict or inconsistency between the provisions of this Act and the provisions of any other written law, the provisions of this Act shall prevail over the provisions of such other written law.</p>
<p>Sec. 33</p> <p>Interpretation</p>	<ul style="list-style-type: none"> • “assisted school” has the same meaning as in the principal Act; • “Director” means the Director of Education, and includes any Additional Director of Education, any Deputy Director of Education, any Additional Deputy Director of Education, any Assistant Director of Education or any Additional Assistant Director of Education; • “property liable to vesting” means any property belonging to any class or description of property for the time being specified in the First Schedule to this Act, but does not include— <ul style="list-style-type: none"> a. any temple, mosque, kovil, church, chapel, or other place (by whatsoever name called) which was, on July 21, 1960, and is on the date of commencement of this Act, used for the purpose of public religious worship ; or

	<p>b. any movable property which is, on the date of such commencement, kept in such temple, mosque, kovil, church, chapel, or other place, for exclusive use for that purpose;</p> <ul style="list-style-type: none"> • “religious observance or worship” does not include any religious instruction given during school hours
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Education Ordinance No. 31 of 1939

<p>Sec. 22</p> <p>Preparation of local education schemes</p>	<p>No local education scheme shall be valid, and no steps shall be taken to carry out any local education scheme until it has been approved by the Minister etc, provided that no such scheme shall be confirmed by the Minister, which is prepared in pursuance of any policy aimed against assisted denominational schools as such.</p>
<p>Sec. 34</p> <p>Religion etc not a bar for admission</p>	<p>No applicant shall be refused admission into any assisted school on account of the religion, nationality, race, caste, social status, or language of such applicant or either of his parents.</p>
<p>Sec. 35</p> <p>Religious Instructions</p>	<p>The person in charge of a government or assisted school shall not require or permit a pupil to attend in the school or in any place of worship situated within the school, any instruction in, or worship or observance connected with a religion which is not the religion of the parent of the pupil.</p> <p>If this provision is breached, the Director-General of any assisted school, may withhold or refuse to pay any such grant from State funds as may be payable to the manager of the school or remove the school from the list of registered schools.</p>
<p>Sec. 36</p> <p>Managers</p>	<p><i>Concerns the appointment of managers of Assisted Schools (overwritten by the Assisted Schools Act?)</i></p> <ol style="list-style-type: none"> 1. The DG may appoint as the manager of an assisted school, any person recommended in writing by the proprietor of the school.

	<ol style="list-style-type: none"> 2. The DG may (for reasons to be stated in writing and communicated to the proprietor of as assisted school) refuse to appoint as the manager of that school, the person recommended by the proprietor and may require the proprietor to recommend some other person as manager. 3. If proprietor refuses or neglects or is unable to recommend a person who appears to the DG to be a suitable manager, it shall be lawful for the DG, in their discretion, to appoint a suitable person as manager. 4. The DG may suspend or remove from office, the manager of an assisted school either on the DG's own motion or upon a written request made in that behalf by the proprietor of the school. 5. Where the proprietor makes a written request to DG to suspend or remove from office the manager of the school, the DG may (for reasons to be stated by them in writing and communicated to proprietor) refuse to suspend or remove the manager from office. 6. A person suspended/removed from office of manager by DG of DG's own motion, shall be entitled to appeal to the Minister against the suspension/removal. Decision of the Minister on any appeal shall be final and conclusive. 7. Proprietor shall be entitled to appeal to Minister against any decision of the DG refusing to appoint as manager, the person recommended by the proprietor or the DG appointing as manager a person other than the person the proprietor recommended or suspending/removing from office the person appointed as manager on recommendation of the proprietor. Decision of Minister on such appeal shall be final and conclusive. 8. Every appointment, retirement or removal of the manager shall be notified by DG in the Gazette 9. No teacher of an assisted school and no person who derives any profit or emolument from an assisted school shall be appointed or shall act as manager of that school. 10. Every person who, after he is suspended/removed from office of manager by the DG, refuses to vacate his office or
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	<p>resists or obstructs any other person lawfully appointed from entering upon or executing the duties of the manager OR acts as manager in contravention of subsection (2) shall be guilty of an offence (liable on conviction after summary trial before magistrate to a fine not exceeding 100 rupees and in the case of a continuing offence, a fine not exceeding 10 rupees in respect of each day during which the offence is continued.</p>
<p>Sec. 37 Regulations</p>	<p>(1) Minister may make regulations either for whole of SL or defined areas, for the purpose of giving effect to the principles and provisions of this Ordinance, provided that no regulation shall be made in pursuance of any policy aimed against any particular assisted denominational schools as such.</p> <p>(2) Minister may make regulations in respect of</p> <p>a. the conditions subject to which grants from State funds will be paid in respect of an assisted school, the purposes for which such grants will be paid, and the conditions for the breach of which such grants will be stopped</p> <p>b. the language through the medium of which instruction shall be given in any class in any government or assisted school.</p> <p>c. The standards of accommodation and sanitation to be maintained in government and Assisted Schools</p>
<p>Sec. 47 Fees</p>	<ol style="list-style-type: none"> 1. No fees shall be charged in respect of admission to, or of the education provided in, a government school or an assisted school. 2. Notwithstanding the above, regulations may be made under this Ordinance, authorising the charging of fees from pupils in government or Assisted Schools in order to defray the expenses incurred in providing therein facilities for games, PE or services for educational, recreational or health purposes. 3. Notwithstanding the above, fees may be charged in respect of the admission or education of a pupil admitted or promoted to a class above standard VIII in any assisted school, only if the pupil has not been certified under regulations made in that behalf to be suitable for senior

	<p>secondary education.</p> <p>4. In the case of any assisted school, the DG may, for the contravention of subsection (1) withhold or refuse to pay any such grant from State funds as may be payable to the manager of the school or remove the school from the list of registered schools.</p>
<p>Sec. 62 Interpretation</p>	<p>1. Assisted school – a school to which aid is contributed from State funds</p> <p>2. Manager – in relation to an assisted school means the person who appoints, transfers or dismisses or discontinues teachers in such assisted school.</p>

Findings based on the laws and regulations:

After studying these laws and regulations, the subcommittee concluded that there is no apparent deficiency in these laws as such that prevent the proper and efficient management of such schools. Therefore, the sub-committee decided to interview the teachers and principals of the Assisted Schools and invited them to a meeting via zoom.

3.2 Interviews with stakeholders:

An invitation was sent via the Ministry of Education, requesting the relevant stakeholders to be present for a virtual meeting at 2 pm on the 12th October. About twelve persons, consisting of teachers and principals, attended this meeting.

At the meeting, the following points were noted:

- The issue raised by the original letter was only in relation to schools catering to children with special educational needs, and not to all Assisted Schools. (semi-government schools)
- Teachers in these schools are recruited specifically for that school by the school itself, based on the needs of the school and the expertise of the teachers. There is no possibility of transfer as these teachers do not belong to the Sri Lanka Teacher Service. As a result, teachers who wish to move to another district or

area on account of marriage or other considerations are unable to either do so or continue teaching since there is no possibility of transfer.

- When questioned as to whether they were aware of this situation at the point of recruitment, they admitted in the affirmative, but they said that it was stifling their career prospects.
 - When the sub-committee queried as to whether there are any comparable schools that they could transfer to, they noted that the options were limited, but that if the option to at least get a mutual transfer was available, it would help.
 - One of the Principals also agreed with this view, since she said it was difficult to recruit and retain staff because of this problem.
- Regarding the facilities in these Assisted Schools, the persons who participated mentioned that there were sufficient facilities in their schools. They noted that there was a drop in funding during the COVID period but that it has picked up at present. They were concerned that there was a drop in students in these schools after COVID and the economic crisis, indicating perhaps that the parents are now unable to afford even the subsidized fees that are charged.
 - None of the persons who participated mentioned that there was corruption in the management of these schools (as alleged in the letter sent). It was interesting to note that none of the persons who signed the letter attended the meeting. Therefore, this point cannot be effectively ascertained.
 - On the question of whether children with special educational needs attending these schools should be integrated into the regular school network and allowed to study certain subjects along with those children, the Principal of the Chitra Lane school mentioned that children with minor learning challenges are already integrated into the regular system and that these Assisted Schools only cater to students with severe challenges, and that these children would not be helped by attending regular schools.

4. Main findings:

The subcommittee arrived at the following findings and conclusions:

1. There are very few Assisted Schools catering to children with special educational needs. Most of these are run by private organisations. Some are privately funded but others receive limited funding from the government. Accordingly, they would fall within the category of Assisted Schools.
2. The teachers in these Assisted Schools are recruited by the respective Schools, depending on their needs. They are absorbed into the Sri Lanka Assisted School Teachers Service on the recommendation of the Manager of the Assisted School, upon the relevant teachers fulfilling the required qualifications, subject to the availability of vacancies in the approved cadre of teachers for the school. Otherwise, they remain outside the Sri Lanka Assisted School Teachers Service.
3. There is no possibility for teachers in these schools to transfer out of these schools, as they are recruited by the respective Schools. They have been aware of this situation at the time of their recruitment. This situation is not very different to any other private school or private institution, which does not have a network of branches. As such, once they have accepted the relevant appointments, they must be willing to stay on in these schools until resignation, termination, or retirement.
4. However, clearly this may become a daunting prospect for many of them, due to changes in circumstances for differing reasons. Nevertheless, this situation is no different to other employees in similar situations, who are in non-transferable employment.
5. It is not possible to ascertain whether funding presently received by such schools is sufficient, since the participants may not have been willing to portray a negative aspect of their schools. However, the general impression created by the participants at the public consultation was that the schools would definitely benefit from further funding.
6. It is not possible to ascertain whether there is corruption in the management of these schools. When directly questioned, the participants denied this. Further, none of the persons who made that allegation in the letter attended the public consultation.
7. It is not possible to recommend that unused schools should be rather used / be converted to meet the needs of these children. However the option of the children attending these Assisted Schools may be integrated into regular schools – although the persons who attended the public consultation were not inclined to such a move. Further, the subcommittee believes that this particular decision should be made by a person qualified in special needs education. Several private regular schools have been catering to children with special needs with much success.

5. Recommendations:

1. The teachers in Assisted Schools providing education to children with special educational needs render a very unique and necessary service. Their skills in dealing with and educating such children will necessarily develop and enhance with the practical experience they gain over the years. Therefore, it would definitely be beneficial to such schools, the students in such schools and the society at large, to retain such experienced teachers in service for as long as possible.

In the circumstances, whilst there are legal and practical challenges to transfer these teachers as outlined above, it would be best to examine the possibility of devising a scheme of mutual transfers among teachers in these Assisted Schools. The relevant unit in the Ministry of Education supervising the schools may be able to maintain a list of persons desiring such transfers. Where there are matching requests, the transfer could be voluntarily worked out between such teachers and their schools, by mutual consent. Such a process would help in retaining experienced staff in the field, whilst also helping the teachers who need to relocate due to life choices.

2. There may be a need to expand such schools or open new ones in the future, depending on the statistical information of the children having special needs area wise, as may be prudent. The practical aspects of such expansion will have to be studied further.
3. The reported decline in student numbers is alarming as it reflects that these children are not getting the education that they need. The numbers of such students with special educational needs not receiving meaningful education and the reasons therefor, should be carefully studied, and suitable action should be taken to remedy the situation.
4. No major law reform is needed to effect any of the above measures. Therefore, the subcommittee does not recommend any amendments to the existing legislation