

# Sri Lanka: Legal Research and Legal System

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## 1. Introduction

Sri Lanka, under British colonial rule referred to as Ceylon, is a multi-ethnic and multi-lingual island, home to major world religions such as Islam, Christianity, Hinduism and Buddhism. With a surface of 65,610 square kilometres, Sri Lanka covers an area about the size of Ireland or, the present European states of The Netherlands and Belgium together.

Located in the Indian Ocean off the southern end of the Indian subcontinent, the island is connected with the Indian mainland by a string of islands called Adam's Bridge. Geographically, Sri Lanka can be divided into three regions: a lowland dry zone in the north and east, a mountainous region in the central part of the island and a lowland wet zone in the south and west. Plenty of rivers run down from the mountains into this region. The climate of the island is regulated by two monsoons: the southwest monsoon from April to September and the northeast monsoon from October to the end of January. The annual rainfall is over 1.250 mm.

The variety of climate zones, rainfall patterns and physical features determined the exercise of kingdoms in the country and colonial conquest. Even before the European powers arrived, Sri Lanka was a central market place for cinnamon and other spices.

Regrettably, the country is also known for the civil war between the majority Sinhala and the minority Tamil that affected Sri Lanka since 1983. It came to an end in May of 2009. The conflict and the subsequent violent eruption in the form of war is the result of successive governments and opposition politicians from both ethnic groups that fueled and fostered nationalism. The failure to settle grievances of the minority Tamil population in accordance with the majority Sinhala population was repeatedly stressed by various academics. To this end, the Sinhala-Tamil conflict is a result of modern politics.

Sri Lanka has five ethnic groups — the aforementioned Sinhala and Tamil; further more Muslims, Burghers and Veddhas. The Sinhala make nearly three-fourths of the population. The Tamil population consists of two groups: Sri Lanka Tamils (long-settled descendants from southeastern India) and Indian Tamils (recent migrant workers from southern India, brought to Sri Lanka under British rule). Slightly more than one-eighth of the total population belongs to the former group. Muslims, who trace their origin back to Arab traders of the 8th century, account for about 7.5 percent of the population. Burghers (a community of mixed European descent) and Veddhas (regarded as the aboriginal inhabitants of the country) make in total less than 1 percent of the population.

The Sinhala constitute the majority in the most parts of the country. The Sri Lankan Tamils live predominantly in the Jaffna Peninsula and in the adjacent districts of the northern lowlands. Smaller agglomerations of this group are also found along the eastern littoral where their settlements are juxtaposed with those of the Muslims. The main Muslim concentrations occur in the eastern lowlands. In other areas, such as Colombo, Kandy, Puttalam, and Gampaha, Muslims form a small but important segment of the urban and suburban population. The Indian Tamils, the vast majority of whom are plantation workers, live in large numbers in the higher areas of the Central Highlands.

Among the principal ethnic groups, language and religion determine identity. While the mother tongue of the Sinhala is Sinhalese -an Indo-Aryan language- the Tamils speak the Dravidian language of Tamil. Again, while more than 90 percent of the Sinhala are Buddhists, both Sri Lankan and Indian Tamils are overwhelmingly Hindu. The Muslims usually speak Tamil. Christianity draws its followers (about 7 percent of the population) from among the Sinhalese, Tamil, and Burgher communities.

Meanwhile, Sri Lanka has remained a constitutional democracy since independence from British colonial rule in 1948. Legal profession is well-founded and legal education is grounded in liberal orientation. The basis of the legal system is the current 2nd Republican Constitution from 1978. This written Constitution permits amendments or repeal. Except identified entrenched provisions, the Constitution can be amended by Parliament with a 2/3 majority. The present Constitution was

amended 19 times. Furthermore, there were five other abortive attempts which also included an attempt to introduce a new Constitution in 2000. Sri Lanka is in the process of the drafting its third republican constitution, and a number of changes are envisaged, namely: executive presidency, bill of rights, new electoral system, status of Buddhism and devolution of power.<sup>[1]</sup>

The ethnic and religious nature of the island, and colonial legacy, have impacted the legal culture and system of Sri Lanka. In the following sections, the article will shed light on these facets of legal development against the background of history.

## **2. Colonial History and the Law**

The arrival of the European powers indicated the end of indigenous rule in the country as it was known and paved the way to the unique character of the island. For more than 400 years, Sri Lanka was ruled by three different foreign rulers, each of them with different approaches to govern the island – however, each of them exploited the country through the totality of their naval powers. This presence of European rule was followed in three subsequent periods: Portuguese rule from 1505-1658, the Dutch rule from 1658-1796 and the British rule from 1796-1948.

Colonial rule is a multifaceted form of control: before the European powers arrived in 1505, the island had three kingdoms: the Kingdom of Kotte in the west, Kingdom of Kandy in the center of the island and the Kingdom of Jaffna in the north.

### **2.1. Impact of Colonialism on the Law**

European control of what is now Sri Lanka began in 1505 when inclement weather drove a Portuguese fleet of ships, commanded by Lourenco de Almeida, into what is now the Colombo harbor.

Almeida, who also realized the strategic value of the island-nation in the context of trade routes, established cordial relations with the King in Kotte. Over a few years the Portuguese, capitalizing on the divisions within the Kotte kingdom, gradually gained control of much of the country's coastal regions. Kotte, situated in a suburb of Colombo, is now the legislative capital of Sri Lanka. The Portuguese tried to invade and win ground in the Kingdom of Kandy between 1592–1594, but met with resounding defeats. The Kingdom of Jaffna was annexed only in 1619.

The Portuguese did not introduce their laws in the coastal regions they controlled. They did, however, establish the Roman Catholic faith as the strongest Christian faith in the country: this can be considered as one of the most durable legacies of the Portuguese. The creation of these new identities contributed to more complexity in demography. Converts were treated preferably and were exempted from taxes et al. The Portuguese rule -that predominantly impacted the Tamil and Sinhala communities in the coastal regions- led to a differentiation between Kandyans and Low-Country Sinhala, as the latter found the mark of foreign presence in their legislation, land structures and customs. And, Portuguese colonialism did not lead to any significant changes in the administrative system, as the basic structure of native administration was not modified. The Kingdoms were based on a hierarchical system, with the kings at the apex and several layers of officials under him. In this system, the Portuguese stepped into the vacuum created by the remoteness of the King of Portugal and established themselves at the top layer of administration with

chief officials, who were captain-generals and superintendents of revenue. The principal change in the power structure was the creation of the revenue office.

The Portuguese, were eventually ousted by the Dutch, whose help was requested by the King of Kandy during the 1600s. The Dutch commercial company, the Vereenigde Oost-Indische Compagnie (VOC) came to the island in the pretext of helping the King of Kandy to fight the Portuguese. At that same time, however, they secured control over the profitable cinnamon lands. When the Dutch pushed the Portuguese out of the country, they controlled far less land than the Portuguese did. Meanwhile the Kingdom of Kotte extended their territorial hold and saw the Dutch as their feudatories. But the Dutch intended to stay and further their control over the island. After several battles between the Dutch and the Kingdom of Kandy, colonial rule was accepted by the Kingdom of Kandy in 1766 with a document acknowledging Dutch sovereignty over the entire coastline of the island up to a depth of four Sinhalese miles. This, eventually made the Kingdom of Kandy a landlocked entity.

With the Dutch establishing their control over the island, primarily in the coastal regions, the judicial system of Sri Lanka underwent an evolution. Roman-Dutch law gained a presence in the country. This "Roman-Dutch law has withstood many a tide of legal and political change to remain as the foundation of Sri Lanka's general and common law."<sup>[2]</sup>

The Dutch, just as the Portuguese, maintained the indigenous administrative system, as it was a system of indirect rule with Dutch officials in higher positions and native chief below them. The system itself was subdivided into three groups, namely commercial, civil and military. The Dutch judicial system was well organized. Three major courts of justice were established: one each in Colombo (west), Galle (south), and Jaffna (north). A circuit court, the Land Raad, presided over by a dissava, sat in various districts. Local chiefs sat in on cases involving local customs. Thus the customary and personal laws that existed in the West, South and North of the country also were administered in the courts, unless these were in sharp discord with Dutch jurisprudence. The customary and personal laws are based on ancient customs of the Sinhalese and Tamils whose ancestors hailed from specific regions in the country, as well as the customs of the Muslims.

In the 18th century, Roman-Dutch law was increasingly used in the south-west and the south. As a consequence, private property (land) rights spread rapidly in these areas, and property transfers were subject to Roman-Dutch law. The Dutch also made efforts to codify the customary law of the different ethnic groups. Codifying Sinhala customary law, however, posed difficulties because of regional diversity and associated issues. Partly as a consequence of this problem, Roman-Dutch law increasingly applied to the Sinhala in the coastal areas, especially to those Sinhala who were Christians. The *Thesavalamai*, the laws and customs of the Tamils of the Northern Jaffna province, was codified in 1707, and a code of Muslim law was applied with the consent of Muslim elders. To these laws will be referred in the later section.

The next and final foreign ruler of the island, the British, had a strategic interest in the island, especially in the prestigious port of Trincomalee, as it guaranteed hegemony in the Indian Ocean. However, the British accepted the Dutch control over

the island as long as the French were not emerging in the region. but with the beginning of war between the French and Dutch in 1794 the British saw an opportunity to oust the Dutch from Sri Lanka, a military success they obtained in 1796. The British adopted a unitary administrative and judicial system for the entire country. A decision by the British to continue enforcing the existing laws, and consequent developments, led to Roman-Dutch law gaining a firm presence in the entire country. As the Sri Lankan legal academic Anton Cooray states:

“(...) The surrender of the Dutch possessions in Sri Lanka in the twilight years of the Eighteenth Century was a blessing in disguise for the future of Roman-Dutch law (in Sri Lanka). (...)”<sup>[3]</sup>

In 1815, when the Kandyan Kingdom in central Ceylon fell to the British, for the first time in history; there was a continual friction between the ruler of Kandy and colonial authorities. Also, Kandyan Chiefs were not satisfied with the Kandyan king and they pushed the British to take over. With strong support from detachments from India, the British took over the entire country of Ceylon came under the rule of a foreign power. At this point, the application of Roman-Dutch law was extended to the whole country: “The British administration, which undertook to continue to apply existing laws, extended the application of Roman-Dutch law beyond the Dutch controlled coastal areas when, in 1815, British sovereignty extended to the whole of Sri Lanka.”<sup>[4]</sup>

An Act of Settlement was concluded with the Kandyan Chiefs and provided for some kind of indirect rule, under which the Kandyan Chiefs kept certain autonomy. The British established a modern system of judicial and civil administration. They respected the prevailing laws, namely the Roman-Dutch laws, and the customary laws that applied to the different ethnic groups.

British rule lasted through 1948, when Sri Lanka gained its independence.

## **2.2. Colebrooke-Cameron, Donoughmore and Soulbury Commissions**

The British set up three different commissions to define their rule and determine the development of the country.

In 1829 the British Colonial Office sent a Royal Commission of Eastern Inquiry, the *Colebrooke-Cameron Commission* – to assess the administration of the island. This Commission envisaged three key reforms: one of the most important reforms the commission undertook was to introduce an administrative system based on uniformity, dividing the country into five provinces. The second reform was the decentralization of executive power in the government. Autocratic powers of the governor were removed, replacing his advisory council with an Executive Council, which included both official and unofficial nominees. The Executive Council inherited the power to appoint the members of the Legislative Council, which functioned as market place of ideas on legislative matters. The Legislative Council had a focus on Sri Lankan membership- in 1833 three of the fifteen members were Sri Lankans. The governor nominated them to represent low-country Sinhala, Burghers, and Tamils, respectively. Finally, the administrative services and civil service opened themselves to local citizens. These constitutional reforms were indeed revolutionary for any European colony at that time.

In 1927 a royal commission under the Earl of Donoughmore visited Sri Lanka to determine for the conditions of the island's eventual self-rule and initiated a number of proposals to foster the ambitions to this end. The *Donoughmore Commission* introduced universal franchise in 1931 and the legislative branch of the government -the State Council- that functioned in both an executive and legislative capacity. Its seven committees performed executive duties and each committee consisted of designated members of the State Council and was chaired by an elected Sri Lankan, who was addressed as minister. The *Donoughmore Constitution*, eventually, marked the beginning of the experimentation in participatory democracy.

In July 1944, Lord Soulbury was appointed head of the *Soulbury commission* entrusted with function to draft a new, post-independent constitution. To this end, British constitutional parliamentary principles served as model for the Soulbury Constitution of independent Sri Lanka, The *Soulbury Commission* foresaw a parliamentary system with a bicameral legislature. Members of the first House of Representatives were directly elected by popular vote. Members of the Senate, or upper house, were elected partly by members of the House and partly by the governor general, who was primarily a figurehead. The British monarch appointed the governor general on the advice of the most powerful person in the Sri Lankan government--the prime minister.

### **3. Legal Constructs**

As outlined above, Sri Lanka is a multiracial and multilingual country; meanwhile, various customs, conventions, concepts and sanctions of the communities are reflected and effectuated in and through the law. Three customary and religious law regimes were established, namely: *Kandyan Law*, *Thesavamalai Law* and finally the *Muslim Law*.

Under British rule, the Charter of Justice of 1801 ensured the continuation of the laws that were in force at that time. These applicable laws were all of the following: Roman-Dutch principles brought into force by the Dutch, the *Kandyan Law* as personal law applies to Kandyan Sinhala, the *Thesavalamai Law* is essentially customary law that is personal and territorial in character applies to Jaffna Tamils in the Jaffna province, the Muslim Law that applied to the Muslims, and a limited body of Buddhist and Hindu Law applicable mainly to Buddhist and Hindu religious property and customs.

Various tests need to be applied if the personal laws mentioned above do apply to the persons in question. However, Roman Dutch Law also finds its application in other aspects of life, as it is the Common Law of the country. As the impact of the Common Law System derived from the English system is more profound, Roman Dutch Law. The Common Law in the island nation underwent a significant metamorphosis, as it was in a fluid state of aggregation, absorbing different aspects of law: for instance, the Constitutional and Administrative Law in Sri Lanka was derived from the Anglo-American System, whereas the Sri Lankan Commercial Law is based on English Commercial Law. Roman Dutch Law is to be found in areas of the law relating to succession, persons, property and obligations; the law governing civil wrong-doing (or also called the law of delict) is predominantly based on Roman

Dutch Law. Criminal Law and its procedure are governed by the Penal Code and the Criminal Procedure Code.

The conglomeration of different laws led to British colonial judges encounter some difficulties in ascertaining applicable laws, especially where Roman-Dutch law principles were expected to be followed. As a consequence, on many occasions British judges introduced principles of English law on the basis of ambiguity in the applicability of Roman-Dutch law. The lack of judicial precedents, and the un-codified nature of the laws, provided an excuse for judges to avoid applying Roman-Dutch law principles.

As a consequence, a body of English law principles was in force along with Roman-Dutch law, in addition to indigenous laws such as Kandyan, Thesavalamai and Muslim Law.

### 3.1. Personal Laws

**Roman-Dutch Law** now generally applies in Sri Lanka when statutes and indigenous laws do not regulate the issue in question. Roman-Dutch Law represents in Sri Lanka an inherited legal tradition. It has co-existed with several systems of indigenous laws, and the English common law, creating a “distinct legal culture that is described today as a ‘mixed’ civil and common law system.”<sup>[5]</sup>

Thus “Roman-Dutch law is often described in Anglo-American legal terminology as the ‘common law’ of Sri Lanka ... A system of law that applies in Sri Lanka when statutes and indigenous laws do not regulate any matter.”<sup>[6]</sup>

In fact, when the British themselves declared Roman-Dutch law as the common law of Ceylon, Roman-Dutch law assumed even greater importance under the British than it had enjoyed under Dutch rule of Ceylon.

Today, Roman-Dutch law exists only in Sri Lanka and South Africa.

**Kandyan Law** applies to ethnic Sinhalese whose can trace their lineage back to the Kandyan provinces during the period of the Kandyan monarchy in central Sri Lanka. The Kandyan monarchy ceased to exist with the British takeover of central Sri Lanka in 1815.

Kandyan Law does not apply to all Sinhalese who are now resident in the Kandyan provinces; however, Kandyan Law does apply to Kandyan Sinhala who now do not reside in the Kandyan provinces in central Sri Lanka. Kandyan Law that remains applicable to Kandyan Sinhala in present day Sri Lanka relates to marriage, divorce, and interstate succession.

Kandyan Sinhala have the option of choosing to marry under the *Marriage and Divorce (Kandyan) Act*, or the *General Marriage Ordinance*. Kandyan Sinhala who choose to marry under the *Kandyan Act* will be governed by Kandyan law in matters relating to marriage, divorce and interstate succession by virtue of the *Kandyan Law Ordinance*, as well as the *Kandyan Matrimonial and Inheritance Ordinance*.

Kandyan laws on adoption are also applicable to those who marry under Kandyan Law. The General Law applies in other related issues such as alimony and child custody.

Kandyan Sinhala who choose to marry under the *General Marriage Ordinance* are governed by Roman-Dutch Law in matters relating to marriage, divorce, and interstate succession.

The relevant laws on this topic are mostly in the *Kandyan Declaration and Amendment Ordinance*, and the *Kandyan Marriages and Divorce Act*.

**Thesavalamai Law** is based on ancient customs of Jaffna Tamils in Sri Lanka. It applies to Tamil inhabitants of the Jaffna Peninsula in Northern Sri Lanka. This customary and personal law also applies to numerous Jaffna Tamils who no longer live in the Jaffna Peninsula.

It is a commonly held belief among many in Sri Lanka that Thesavalamai applies only to Jaffna Tamils who reside in the Jaffna peninsula. The Supreme Court of Sri Lanka, however, ruled in a 1988 case, "*Sivagnanalingam v. Suntheralingam*"<sup>[7]</sup> that *Thesavalamai* is a personal law that applies to Jaffna Tamils wherever they live in the country, and that it applies also to their movable and immovable property, wherever it is situated in the country. The Supreme Court, overturning decisions of the lower courts, held that *Thesavalamai* would not apply to Jaffna Tamils only if there is "unequivocal evidence of abandonment of...inhabitancy in Jaffna."

This Supreme Court ruling suggests that a Jaffna Tamil could live for decades in another part of the country and not lose "Jaffna inhabitancy" if he or she, for instance, continues to own property in the Jaffna Peninsula, or even visits Jaffna on a somewhat regular basis. The ruling also indicates that each case must depend on its own facts.

The only *Thesavalamai* laws that are now applicable to Jaffna Tamils relate to property and interstate succession resulting from marriage.

*Thesavalamai*, which was codified by the Dutch in 1706, gained legal validity when the British enacted the *Thesavalamai Regulation No. 18 of 1806*. Other relevant laws are *Ordinance No. 5 of 1869*, the *Matrimonial Rights and Inheritance Ordinance of 1911*, amended by *Ordinance No. 58 of 1947*, The *Thesavalamai Ordinance* and *Thesavalamai Pre-Emption Ordinance*, and the *Jaffna Matrimonial Rights and Inheritance Ordinance No.1 of 1911*.

In family law related issues, the **Muslim Special Laws** apply to all Muslims in Sri Lanka. When a Muslim marries another Muslim, the bride and the groom do not have the option of getting married under the General Law, unlike in the case of Kandyan Sinhala. Marriage, divorce and other related issues involving Muslims are governed by the *Marriage and Divorce (Muslim) Act, no.13 of 1951*, and any subsequent amendments.



Issues related to interstate succession and donations, involving Muslims, are dealt with under the *Muslim Interstate Succession Ordinance No.10 of 1931*, and any subsequent amendments.

There is awareness now that these personal and customary laws based on ancient customs discriminate against women. As the Supreme Court pointed out in *Sivagnanalingam v. Suntheralingam*, under *Thesavalamai* “the surviving spouse is not (automatically) an heir of the deceased’s estate.” The spouse, however, has preferential claim under certain circumstances.

Also, under Muslim personal laws, for instance, “Although section 25 (1) (b) of the *Muslim Marriage and Divorce Act* states that the consent of the bride is essential to a marriage, in reality her presence is not required when the marriage contract is concluded between the father or guardian of the bride, and the groom. The consent of the bride is irrelevant to the conclusion of the marriage contract.”<sup>[8]</sup>

The efforts needed to revise these personal laws based on ancient customs, in order to remove any bias against the rights of women, are now hindered by the debate over minority rights in Sri Lanka:

“... Given the context of a war [the current ethnic conflict in Sri Lanka], whose roots belong to ethnic tensions, it is unlikely that we would see in the next few years amendments to the personal laws which would result in positive change for [women’s rights]. This is because the concept of women’s right to equality has been continuously subordinated in Sri Lanka to the major debate on minority rights...”<sup>[9]</sup>

An authority on Sri Lankan law, H.W. Tambiah, touches on the rich and complex nature of Sri Lankan law:

“... In Sri Lanka, there are five systems of private law. The Roman-Dutch law, as modified by statutes, and interpreted by the courts, is the general law of the land. English common law applies to commercial contracts and commercial property and has been tacitly accepted in many matters. English law was also introduced by statute and as such forms the statutory law of the land. The *Thesvalamai* is both a personal and local law.... Similarly, Kandyan Law applies to the Kandyan Sinhalese, and the Muslim laws, to the Muslims, in [matters relating to] marriage, divorce, [alimony] and inheritance.

Private law governs issues between individuals. It consists of the law of persons, property, obligations, and delicts or torts.”<sup>[10]</sup>

### **3.2. International Legal Reflection: The United Nations Treaty Bodies and the Personal Laws**

The treaty bodies of the United Nations have dealt in detail with the above mentioned personal laws in the country. For instance, the Committee on the Elimination of Discrimination against Women (CEDAW), Human Rights Committee (HRC), the Committee on the Rights of the Child (CRC) and the Committee on Economic, Social and Cultural Rights (CESCR) have continuously commented on

the discrimination of women under the customary and religious law regimes, hindering the progress and empowerment of women.<sup>[11]</sup> In particular, the treaty bodies pointed out to the possibility of marriage of girls as young as 12; the CESCR, on the other hand, pointed out to the adverse effects of the personal laws on the women's economic and social rights. The CESCR highlighted the impediments in the field of health, education and work when marriage was allowed at an early stage. The CEDAW deplored the preference of men over women under the personal laws regarding inheritance and underscored their grievance regarding the plurality of legal systems and the lack of judicial review of pre-constitutional systems.<sup>[12]</sup>

The CEDAW writes in its concluding observation from 2011:

“(...) While noting that there is an ongoing reform of the Muslim Personal Law, the Committee is concerned about the persistence of discriminatory provisions in the law, including in the Penal Code, the Land Development Ordinance which gives preference to male heirs over females, the general personal laws, the Muslim Personal Law, the Kandyan Law and the Thesavalamai Law. The Committee is also concerned about the plurality of legal systems composed of the general, customary and religious laws and the lack of choice for women between the different legal systems. The Committee further reiterates its concern at the fact that there is no opportunity for judicial review of legislation pre-dating the Constitution. (...)”<sup>[13]</sup>

#### **4. The Structure of the Courts System**

The hierarchy of the Sri Lankan court system is set out in section 2 of the [Judicature Act No. 2 1978](#). This legally enshrined hierarchy sets out that primary courts, magistrate's courts, district courts and high courts are courts of first instance, while high courts exercise appellate and review jurisdiction in limited and specific cases. Court of Appeal and Supreme Court are the Appellate Courts.

In cases involving criminal law, a Magistrate's Court or a High Court is the only court with primary jurisdiction; the respective legal domains of each are provided in the *Code of Criminal Procedure*.

The preponderant majority of criminal law cases are initiated at a Magistrate's Court. These cases may be initiated by any police officer, or public servant, with a written or oral complaint to the magistrate (see section on Magistrate's Court). Murder trials and various offenses against the State originate in a High Court (see section on High Courts). Original jurisdiction over most civil matters lies with the relevant District Court (see section on District Courts).

Until 1972, The Judicial Committee of the Privy Council in Britain was the final court of appeal for Sri Lanka. The right of appeal to the Privy Council “was abolished...as there were concerns that any attempt to discard the existing Constitution in 1972 might be adjudged unconstitutional.”<sup>[14]</sup>

At that time, “Parliamentarians constituted themselves as members of what was termed the ‘Constituent Assembly’ to draft and adopt a new Constitution,”<sup>[15]</sup> which became effective on May 22, 1972. There are also other courts such as the Kathi

Courts that handle matrimonial disputes among Muslims, and numerous tribunals (see section on Other Courts).

#### **4.1. The Supreme Court**

The Supreme Court is the highest and final court of record, and exercises final civil and criminal appellate jurisdiction. The Supreme Court has jurisdiction in respect of Bills and interpretation of the Constitution, final appellate matters, fundamental rights, sole jurisdiction in relation to Presidential Election Petitions, validity of referendums and breach of privileges of Parliament and consultative jurisdiction on matters referred to it by the Sri Lankan President.

Litigants who do not agree with a decision of the original court, be it civil, criminal, or Court of Appeal, may take the case before the Supreme Court, with permission from the Court of Appeal, or special permission from the Supreme Court. The Supreme Court, however, will only agree to consider cases involving a substantial legal issue.

The Supreme Court is composed of a Chief Justice and not less than six, and not more than ten, other judges.

Cases that fall under the several jurisdictions of the Supreme Court are exercised, subject to provisions in the Constitution, by a bench of at least three judges of the Supreme Court. Thus different cases may be heard at the same time by several judges of the Supreme Court sitting apart.

The Constitution provides the Chief Justice with the authority to increase the number of Supreme Court judges hearing a particular case to five or more judges. This increase in the number of judges hearing a Supreme Court case would transpire especially if the issue under consideration is one of general and public importance.

Appeals of decisions of a High Court Trial at Bar are heard by a Bench of five or more Supreme Court judges.

The Supreme Court is entrusted with certain exclusive jurisdictions. Subject to provisions in the Constitution, the Supreme Court exercises jurisdiction over constitutional matters and fundamental rights issues.

Also, the Supreme Court exercises sole and exclusive jurisdiction over questions concerning the constitutionality of a parliamentary bill or a particular provision in the bill, subject to certain constitutional requirements. The Supreme Court has the exclusive jurisdiction to hear and determine issues relating to the interpretation of the Constitution.

The Supreme Court also has the sole and exclusive jurisdiction to hear and determine issues relating to the infringement of fundamental rights by Executive or Administrative action. These fundamental rights include freedom of thought, conscience and religion; freedom from torture; right to equality; freedom from arbitrary arrest, detention and punishment; prohibition of retroactive penal legislation; and freedom of speech, assembly, association and movement.

The Constitution provides for temporary restrictions on fundamental rights if national security issues are involved.

The Supreme Court also exercises consultative jurisdiction. If the President of the Republic deems that a question of law or fact that has arisen is of such a nature and of such public importance, the President may refer the question directly to the Supreme Court for an opinion.

The consultative jurisdiction also extends to any concerns expressed by any Member of Parliament regarding the ability of the President to effectively discharge his or her duties. These concerns, in the first instance, would be addressed in writing to the Speaker of the House of Representatives by the member or members of Parliament. These concerns would be that the President is permanently incapable of discharging the functions of the office due to mental or physical frailty, or that the President is guilty of intentional violation of the Constitution, treason, bribery, misconduct or corruption involving the abuse of the powers of the Office of President, or any offense under any law involving moral turpitude.

When the Speaker, subject to specific requirements in the Constitution, refers the allegations to the Supreme Court, the Court is required to report its findings to the Speaker within two months. During the Supreme Court's determination of the issue, the President can appear before the Court to present his or her case, or the President may be represented by an attorney-at-law. The Supreme Court then reports its determination, and the reasons for its determination, to the Parliament.

This determination and opinion of the Supreme Court should be by at least five judges of the Supreme Court, including the Chief Justice, except for in the event of the Chief Justice's recusal. The Chief Justice's recusal will result in another judge of the Supreme Court taking the Chief Justice's place.

Based on the Report from the Supreme Court, the Parliament may vote to remove a President from office, subject to specific requirements in the Constitution.

The Supreme Court also exercises jurisdiction over legal issues related to the election of a President of the country, and legal issues surrounding a referendum. The Constitution stipulates that the foregoing two issues have to be determined by a bench of at least five Supreme Court judges, including the Chief Justice, unless the Chief Justice appoints another Supreme Court judge in his or her place.

Legal issues surrounding any breach of privileges of Parliament by any person also fall under the purview of the Supreme Court.

Supreme Court cases are published in the *Sri Lanka Law Reports*. As of October 2008, Supreme Court cases from 1878 through 2005 are accessible online. See the section on Cases, Bills and Acts.

Judges of the Supreme Court and Court of Appeals (next section) are appointed by the President of the Republic, subject to provisions in Article 41C of the Constitution. Article 41C was introduced by the 17th Amendment to the Constitution which became effective on October 3, 2001.

The 17th Amendment stipulates that the President's selection and appointment of a Supreme Court judge requires the approval of the Constitutional Council, which is composed of the Prime Minister, the Speaker of the Parliament, the Leader of the Opposition in Parliament, a nominee of the President, five persons appointed by the President who were nominated by both the Prime Minister and the Leader of the Opposition, and one person selected by the majority of Members of Parliament belonging to political parties or independent groups not affiliated with the political parties or groups of the Prime Minister or Leader of the Opposition.

The Constitutional Council's approval is not required if the appointment is for a period of less than 14 days. The Constitutional Council established under the 17th Amendment had powers to select 30 members to independent commissions and approve nominees of the President in respect of other appointments, viz. the Chief Justice and Supreme Court Judges, the President of the Court of Appeal and the Judges of the Court of Appeal, the Judicial Service Commission, Attorney General, Solicitor General, Auditor General, Supreme Court and Court of Appeal Judges, Inspector General of Police, the Parliamentary Commissioner for Administration (Ombudsman) and the Secretary-General of Parliament.

Therefore, the 17th Amendment to the Sri Lankan Constitution put in place a system of checks and balances to ensure that the power vested in the Executive by the people through the Constitution is subject to scrutiny. It also gave confidence to the officials of the public service and the police, to carry out their duties without fear and upholding the rule of law, as a result of which merit and performance were recognized as key factors in making appointments to top positions in the state and political victimization was reduced- in comparison, the 18th Amendment has diluted the aspect of checks and balances to the extent that the new Parliamentary Council is not comparable to the Constitutional Council established under the 17th Amendment. The power to appoint persons to key public offices has been absolutely vested in the President and the Parliamentary Council is only a body without actual power, only if the President requests such observation. The International Commission of Jurists noticed back then:

“In 2010, the 18th Amendment to the Constitution was passed by Sri Lanka's Parliament. It abolished the Constitutional Council and created an ineffective Parliamentary Council, empowering the President to directly appoint key public service posts and the superior judiciary, including the Chief Justice, the President and Judges of the Court of the Appeal and those members of the Judicial Service Commission (JSC) other than its Chairman which is ex officio, the Chief Justice. The JSC is the body entrusted with the power to appoint, promote, transfer exercise disciplinary control and dismiss judicial officers of the subordinate courts. The result was a significant erosion of the independence and impartiality of the Sri Lankan judiciary.”[\[16\]](#)

The 19th Amendment, however, rectified and changed a number of malpractices, among them [the revival of Constitutional Council and the establishment of independent commissions](#).

An order of the President of the Republic is required to remove from office a Supreme Court judge, including the Chief Justice. The President's order for removal of a judge is preceded by the President addressing the Parliament on the relevant issues surrounding the "proved misbehavior, or incapacity," that necessitates the removal of the judge from office. The removal of a Supreme Court judge requires the support of a majority of the Members of Parliament, including those members not present in Parliament at the time of the vote.

The Speaker of the Parliament will agree to the President's address to Parliament if not less than one-third of the Members of Parliament sign a notice of the resolution in support of the President's address to Parliament. The notice of the resolution will provide the full particulars of the alleged "misbehavior," or the incapacity of the judge to carry out the functions of a Supreme Court judge. In this context it is worth to elucidate the case of Ms. Shirani Bandaranayake, former Chief Justice of the Supreme Court: Shirani Bandaranayake, the 43rd Chief Justice of Sri Lanka, was impeached by Parliament and then removed from office by President Mahinda Rajapaksa in January 2013.

[The impeachment motion against Ms. Bandaranayake that was debated by Parliament on the 10th and 11th of January 2013.](#) The motion was passed by Parliament with 155 MPs voting for and 49 MPs voting against it. Opposition MPs described the impeachment motion as flawed and therefore invalid. Ms. Bandaranayake was removed from office on the 13th of January 2013 after President Mahinda Rajapaksa ratified the impeachment motion passed by Parliament.

The International Bar Association asserted:

"In the light of all the evidence and consideration of relevant domestic and international law and practice, the IBAHRI concludes that the removal of Chief Justice Bandaranayake should be reversed, by way of immediate steps that are consistent with the Sri Lankan Constitution and extant rulings of the Court of Appeal and Supreme Court. Standing Order 78A should also be repealed (insofar as it is not already rendered void by these rulings), and consideration should be given to the creation of a disciplinary procedure for judges that is fully consistent with the Sri Lankan constitution, common law principles and international human rights law. There is no absolutely fixed model that such a procedure must emulate."<sup>[17]</sup>

Ms. Bandaranayake was accused of a number of charges including financial impropriety and interfering in legal cases, all of which she denied. The impeachment followed a series of rulings against the government by the Supreme Court, including one against a bill proposed by Minister Basil Rajapaksa, President Rajapaksa's brother. Ms. Bandaranayake was replaced as chief justice by former Attorney General Mohan Peiris. Mr. Peiris was considered an ally of President Rajapaksa and his appointment was seen by critics as further consolidation of power by the president and his family. Ms. Bandaranayake refused to recognize the impeachment and lawyer groups refused to work with the new chief justice. Ms. Bandaranayake's controversial impeachment drew much criticism and concern from within and outside

of Sri Lanka. In November 2012, the then-United Nations Special Rapporteur on the independence of judges and lawyers, Gabriela Knaul, urged the Sri Lankan government to reconsider the impeachment and ensure that any hearing complies with "the fundamental principles of due process and fair trial".

At a press briefing on the 18th of January 2013 the then-United Nations High Commissioner for Human Rights Navi Pillay expressed deep concern about the impeachment which had "further eroded the rule of law in the country and could also set back efforts for accountability and reconciliation". Pillay went on to describe the "flawed" impeachment as a "gross interference in the independence of the judiciary and a calamitous setback for the rule of law in Sri Lanka". Pillay also expressed doubts about the independence and impartiality of Bandaranayake's successor Mohan Peiris.

However, given the unconstitutional nature of the impeachment, Ms. Shirani Bandaranayake was reinstated in her office after the election of the new Sri Lankan President, Mr. Maithripala Sirisena.

The Parliament, by law or by Standing Orders, provides for all matters relating to the presidential address to Parliament, including the procedure for passing the resolution, information on the investigation, proof of the alleged "misbehavior" or incapacity of the judge, and the right of the judge to appear before Parliament and be heard in person or through a representative.

The age of retirement for Supreme Court judges is 65 years.

#### **4.2. Court of Appeal**

The Court of Appeal is the first appellate court for decisions of all original courts and certain Tribunals, established under Chapter XV of the current Constitution.

The Court of Appeal is composed of the President of the Court, and not less than six, and not more than eleven other judges. Many cases at the Court of Appeal are presided over by a single judge.

The Court of Appeal hears appeals against judgments of the High Courts. It exercises appellate jurisdiction for the correction of errors in fact or in law at a High Court, or any Court of first instance, or Tribunal, or other Institution. In addition to the jurisdiction to affirm, reverse, correct, or modify a judgment, the Court of Appeal may give directions to a Court of first instance, Tribunal, or other Institution, or order a new trial, or order additional hearings as the Court of Appeal deems appropriate.

"Even when there is no right of appeal from a particular court or tribunal, [the Court of Appeal] can exercise [its] powers of 'revision' and quash the original court's or tribunal's order [based on] an error of law apparent [in] the record."<sup>[18]</sup> The Court of Appeal, if appropriate, also has the authority to issue a 'stay order' and suspend proceedings in a lower court until the revision application is heard and determined.

The Court of Appeal also has the authority to receive and admit new evidence additional, or supplementary, to evidence already recorded in a court of first instance.

Appeals of judgments, sentences and orders at a High Court Trial at Bar are forwarded directly to the Supreme Court by virtue of the *Code of Criminal Procedure (Amendment) Act, No.21 of 1988*.

The Court of Appeal, in exercising its power to examine and reverse a judgment of any court of first instance, has the authority to examine any record of any court of first instance.

The Court of Appeal also exercises the power to grant and issue, as provided by law, writs of certiorari, prohibition, procedendo, mandamus, and quo warranto.

The Court exercises jurisdiction to grant writs of habeas corpus in order to bring before the Court a person who has to be dealt with according to the law, or to bring before the Court a person illegally or improperly detained in public or private custody.

The Court of Appeal grants injunctions, and also exercises the jurisdiction to try petitions challenging the election of a Member of Parliament.

The Court of Appeal sits in Colombo. The Chief Justice may direct that particular sittings of the Court be held in another judicial zone or district.

Appeals against judgments, sentences and orders of the High Court (other than judgments, sentences and orders delivered at a Trial-at-Bar), are heard by at least two judges of the Court of Appeal.

Parliamentary election petitions are heard by the President of the Court of Appeal, or by a judge of the Court of Appeal nominated by the President of this Court, or by more judges of the Court of Appeal nominated by the President of this Court, of whom the President of the Court may be one.

Other issues before the Court may be heard by a single judge of the Court of Appeal.

If the Court hearing a case consists of two judges and they fail to agree on a decision, the issue is reviewed by three judges of the Court of Appeal.

Court of Appeal cases are now published in *Sri Lanka Law Reports*. As of October 2008, Court of Appeal cases from 1809 through 2005 are accessible online. See section on Cases, Bills, and Acts.

The appointment of Court of Appeal judges requires the same procedure as that for the appointment of Supreme Court judges (see earlier section on the Supreme Court). The age of retirement for Court of Appeal judges, however, is 63, as opposed to 65 for Supreme Court judges.

The removal from office of a Court of Appeal judge requires the same procedure as that for the removal of a Supreme Court judge, with the President of the Republic addressing Parliament and a majority of the Members of Parliament, including those not present in Parliament, supporting the removal (See the three paragraphs preceding the final sentence in the Supreme Court section.)



### 4.3. High Courts

Trials at a High Court are conducted by the State (Sri Lanka), through the Attorney-General's Department. The Attorney-General's Department prosecutes on behalf of the State. These High Courts have the authority to hear, try and determine all prosecutions on indictment.

Murder trials and various offenses against the State are tried at the High Court, but also this instance has jurisdiction over offences committed aboard aircraft and with the territorial air space; other criminal offenses are tried at a Magistrate's Court. It is empowered to pass judgements with death sentences, life imprisonment and impose fines et.al.

While some High Court trials will have a jury, some trials will not have a jury. The types of cases that require a jury are provided in the *Second Schedule of the Judicature Act No.2 of 1978*. Also, the Attorney-General has the authority to determine whether a case that does not fall into a category provided in the *Second Schedule of the Judicature Act No.2 of 1978* should nonetheless have a jury. It can also hold a Trial-At-Bar where three judges nominated by the Chief Justice sit in judgment.

The Penal Code stipulates the types of cases argued in a High Court: "The Penal Code defines most of the criminal offenses known to our law. And the *Code of Criminal Procedure Act. No: 15 of 1979* sets out which of these offenses [can be tried] by each court [High Court and Magistrate's Court]."[\[19\]](#)

The High Court is composed of not less than ten and not more than forty judges. This Court sits in 16 provinces in the country (16 High Courts).

The High Court of each province exercises:

- Original jurisdiction over prosecution of offenses committed within a particular province.
- Admiralty jurisdiction, which is usually exercised in Colombo, the capital city.
- Commercial jurisdiction, which is vested by the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996.
- Jurisdiction to hear cases involving attempts to influence the outcome of a decision made, or an order issued, by the Judicial Service Commission. This jurisdiction is vested by Article 111 L (2) of the Constitution.
- Applications for the return of, or access to, a child, under the Hague Convention, is handled by the High Court of the Western Province (*Civil Aspects of International Child Abduction Act, No:10 of 2001*).
- Appellate jurisdiction over convictions, sentences, and orders imposed by the Magistrate's Courts and Primary Courts within the province.
- Writ jurisdiction in respect to powers exercised under any law or statutes enacted by the Provincial Council of that particular province, with regard to an issue delineated in the Provincial Council List.
- Appeals of decisions reached by Labor Tribunals, Agrarian Tribunals, and Small Claims Courts.

The Provincial High Court sits in the following cities: Colombo, Kalutara, Galle, Matara, Batticaloa, Jaffna, Chilaw, Negombo, Gampaha, Kegalle, Kurunegala, Kandy, Avissawella, Ratnapura, Badulla, and Anuradhapura.

Judges of the High Court are appointed by the President of the Republic on the recommendation of the Judicial Service Commission, and in consultation with the Attorney-General. The President of the Republic, acting on the advice of the Judicial Service Commission, exercises authority in disciplinary matters concerning the High Court judges. The President may terminate the service of a High Court judge on the advice of the Judicial Service Commission.

The Judicial Service Commission (JSC) was established by the enactment of Article 111D of the Constitution, incorporated by the 17th Amendment, which became effective on October 3, 2001. The JSC is composed of the Chief Justice (as Chairman) and two other judges of the Supreme Court appointed by the President of the Republic.

The age of retirement for High Court judges is 61.

#### **4.4. District Courts**

District Courts are the Courts of first instance for civil cases. District Courts have jurisdiction over all civil cases not expressly assigned to the Primary Court or a Magistrate's Court.

Sri Lanka has 54 judicial districts. Every District Court is a court of record and is vested with unlimited original jurisdiction in all civil, revenue, trust, insolvency and testamentary matters, other than issues that are assigned to any other court by law. Jurisdiction in relation to family matters migrated to the newly established Family Courts with the Judicature Act No. 71 of 1981. Jurisdiction regarding commercial transactions and special provisions under the Intellectual Property Act and Companies Act is vested with the Commercial High Court.

Certain specific civil issues handled by the District Courts include:

- Cases related to ownership of land.
- Action by landlords to eject tenants.
- Action to recover debts of more than Rs. 1,500.
- Action in connection with trademark and patent rights, and infringement of copyright laws.
- Claims for compensation of more than Rs. 1, 500 for injuries caused by negligence.

Commercial disputes that are more than three million rupees in monetary value fall within the purview of the High Court in Colombo, the administrative capital, in accordance with the *High Court of the Provinces (Special Provisions), Act No. 10 of 1996*.

There is a standard form of plaint for each type of action, and if necessary, there may be variations to the form.

The normal procedure is for the filing of a plaint by the plaintiff. The plaint is argued before a District Court judge, and if the judge is satisfied that all matters are in order, an order may be issued to serve summons, along with a copy of the plaint, on the defendant(s). Usually, the plaintiff, or the plaintiff's attorney, must ensure that the Court's fiscal officer serves the summons, with a copy of the plaint, to the defendant.

The defendant appears in court on the summons returnable date. The defendant, or his or her lawyer, is provided with a date by which an answer to the plaint is required.

Further pleadings may be filed, especially if the defendant files a counter-claim, a claim in reconvention. The counter-claim, if any, must relate to the issue brought before the District Court by the plaintiff. The plaintiff may then file a replication in response to the defendant's claim in reconvention. The right to appeal and revision of orders and judgments leads to the Court of Appeal and eventually to the Supreme Court.

The above procedure is the normal procedure at the District Court. There is also a Summary Procedure for the District Court provided in Chapter 53 of the *Civil Procedure Code*.

Judges of the District Courts are appointed by the Judicial Service Commission (See section on High Courts for information on the JSC). The JSC has the power to dismiss and maintain disciplinary control over the District Court judges.

The retirement age for District Court judges, generally, is 60 years.

#### **4.5. Magistrate's Courts**

The Magistrate's Courts are established under the *Judicature Act, No.2 of 1978*. Each Judicial division has one Magistrate's Court, and there are 74 judicial divisions in Sri Lanka. Each Magistrate's Court is vested with original jurisdiction over criminal offenses (other than offenses committed after indictment in the High Court.)

In cases involving criminal law, the Magistrate's Courts and the High Court are the only Courts with primary jurisdiction. The respective domains of these Courts are detailed in the *Code of Criminal Procedure*.

Appeals from these courts of first instance may be made to the Court of Appeal and, under certain circumstances, to the Supreme Court, which exercises final appellate jurisdiction.

The vast majority of the nation's criminal cases are tried at the Magistrate's Courts level, which forms the lowest level of the judicial system.

Cases may be initiated at a Magistrate's Court by any police officer or by anyone else making an oral or written complaint to the Magistrate. The Magistrate is empowered to make an initial investigation of the complaint, and to determine whether his or her Court has proper jurisdiction over the matter, whether the matter should be tried by the High Court, or whether the matter should be dismissed.

If it is determined that the Magistrate's Court has the proper jurisdiction over the matter, the prosecution may be conducted by the complainant (plaintiff), or by an officer of the Government, including the Attorney-General, the Solicitor-General, a state counsel, or any officer of any national or local government office.

At the trial, the accused has the right to call and cross-examine witnesses. Trials are conducted without a jury, and the verdict and sentence are given by the Magistrate.

Any party in a case who is in disagreement with a judgment has the right to appeal the judgment, on any point of law or fact, at the Court of Appeal.

If the police decide not to institute criminal proceedings in a Magistrate's Court, the complainant has the option of filing a private plaint, and the complainant may retain an attorney for this purpose.

As indicated earlier, while murder trials and various offenses against the State (Sri Lanka) are tried in a High Court, other criminal offenses are tried in a Magistrate's Court. The Penal Code defines which court, a Magistrate's Court or a High Court, has the necessary jurisdiction (*Code of Criminal Procedure Act No.15 of 1979*).

If a new offense is codified by law, for instance the *Prevention of Terrorism Act*, the relevant statute will indicate the manner of trial.

The Magistrate's Courts are ordinarily empowered to impose the following sentences: A fine of up to Rs. (rupees) 1,500.00, and/or two years of rigorous or simple imprisonment, unless special provisions vest the Magistrate's Courts with the power to impose higher penalties.

Magistrates are appointed by the Judicial Service Commission (JSC), and the Commission exercises disciplinary oversight over the judges, including the power of dismissal (See section on High Courts for information on the Judicial Service Commission).

The retirement age for Magistrate's Court judges, generally, is 60 years.

#### **4.6. Primary Courts**

Primary Courts are the lowest Court of first Instance. One of the frequent subjects invoked before the Primary Court is Section 66 of the Primary Courts Procedure Act which concerns disputes affecting land, where the breach of peace is at stake. Each Primary Court is vested with the following jurisdictions:

- Original civil jurisdiction over cases involving debt, damages, demands, or claims that do not exceed Rs. 1,500.
- Enforcement of by-laws by local authorities and disputes relating to recovery of revenue by these local authorities.
- Exclusive criminal jurisdiction over cases relating to offenses "prescribed" by regulation by the Justice Minister.
- Offenses in violation of the provisions of any Parliamentary Act, or subsidiary legislation, that is related to jurisdiction vested in the Primary Courts.

The Primary Courts are established under the *Judicature Act, No.2 of 1978*. There are seven Primary Courts: One each in Anamaduwa, Angunukolapelessa, Kandy,

Mallakam, Pilessa, Wellawaya and Wennappuwa. In all other divisions, the Magistrate's Court exercises the jurisdiction of the Primary Courts. Requests for revision of orders made by a Primary Court are handled by the High Court in that province.

All Primary Court judges are appointed by the Judicial Service Commission (JSC), which is also vested with the power of dismissal of the Primary Court judges (See section on "High Courts" for information on the JSC).

Generally, the retirement age for Primary Court judges is 60.

#### **4.7. Commercial High Court**

The High Court for the Western Province is vested with exclusive jurisdiction in respect of some specified commercial matters in terms of the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996 and it was ceremonially opened by the Minister of Justice and Constitutional Affairs on 11th October 1996. The Western Provincial Commercial High Court is vested with Provincial jurisdiction in respect of the following matters with effect from 11th of October 1996:

- All actions where the cause of action has arisen out of commercial transactions including causes of action relating to Banking, Export or Import of merchandise, services affreightment, insurance, mercantile agency, mercantile usage, and the construction of any mercantile document in which the debt, damage or demand is for a sum exceeding Rs.3 Million.
- All applications and proceedings under sections 31, 51, 131, 210 and 211 of the Companies Act No. 17 of 1982 i.e. actions to relieve a Company of the consequences of non-compliance with the conditions constituting it a private company - s.31, actions to make irregular allotments void and actions to recover loss, damage or costs incurred as a result of such irregular allotments - s. 51; actions for a Court to order a meeting of a Company to be held as specified where compliance with the Articles of the Company or the provisions of the Companies Act is impracticable - s.131; applications complaining against oppression in the conduct of the affairs of a company - s.210; applications complaining of mismanagement - s. 211.
- All proceedings under the Code of Intellectual Property Act No.52 of 1979 other than proceedings required to be taken in terms of this Act in the District Court of Colombo. This Court however will not have jurisdiction in respect of actions instituted under the Debt Recovery (Special Provisions) Act No.2 of 1990. The new court will have jurisdiction in respect of the aforementioned matters where the defendant/defendants resides/reside or the cause of action has arisen or the contract sought to be enforced was made or the registered office of the Company is situated within the Western Province. [The High Court of the Provinces (Special Provisions) Act No. 10 of 1996 also includes provision for the Minister to make an Order vesting in the Western Provincial High Court all island jurisdiction in respect of actions seeking an injunction against the Registrar of Companies or the Securities Exchange Commission all proceedings required to be taken in the District Court of Colombo under the

Code of Intellectual Property Act No. 52 of 1979 and all appeals required to be made under Section 17 of the Fair Trading Commission Act No. 1 of 1987. The making of an Order for this purpose by the Minister in the Gazette appears to have been deferred as the Ministry wishes to assess the working of the new Court and then decide on that aspect.] The appeals against the orders and judgments of this Court can be made directly to the Supreme Court.

#### **4.8 Other Courts and Tribunals**

The other courts include the Kathi Court, the special tribunal that adjudicates on matrimonial matters relating to Muslims. Buddhist ecclesiastical matters that fall under the purview of the *Buddhist Temporalities Ordinance of 1931* are heard by the ordinary courts. Disciplinary matters pertaining to Buddhist clergy are handled by religious councils which are under the authority of the Buddhist priests themselves. Also existent are

There are numerous administrative tribunals, such as the Inland Revenue Board of Appeal, The Workmen's Compensation Tribunals, Labor Tribunals, the Board of Appeal under the Factories Ordinance, Tribunals under Agricultural Productivity Law, Labor Tribunals under the Wages Board Ordinance, Rent Board of Review, Rent Boards, Ceiling on Housing Property Board of Review, Land Acquisition Board of Review, Quazis and Boards of Quazis, Agricultural Tribunals, Court Martials, which perform functions of a quasi-judicial nature. Their decisions are capable of revision by the Appellate Courts by way of Writs or appeals as provided by the various enactment's by which each of these Tribunals have been established. The decision of the Court of Appeal may be taken up at the Supreme Court.

By the Mediation Boards Act No. 72 of 1988, Parliament has established Mediation Boards in various areas in Sri Lanka. A Commission appointed under this Act appoints a panel of mediators who have been vested with power to mediate on certain criminal and certain civil matters, where the State, a public officer or the Attorney General is not involved as a party. The Mediation Boards have the power to issue certificates, non-settlement without which no Court of first instance could entertain any action in relation to movable or immovable property, debt, damage or demand which does not exceed Rs.25,000/- in value, matters not specified in the third schedule to the said Act or offences falling within those specified in the second schedule to the Act. The main function of Mediation Boards is to act like a mediator to settle disputes amicably.

#### **4.9. Independence of the Judiciary**

It is noteworthy that the international bodies, such as the United Nations Human Rights Council in the country's 2nd Universal Periodic Review has reiterated and

recommended that the independence and transparency of the judiciary must be observed and strengthened.[\[20\] The forthcoming report of the country visit of the Special Rapporteur on the Independence of Judges and Lawyers to Sri Lanka will be of utmost importance to assess the situation of the judiciary in the current state.](#)

## **5. Sri Lankan Law in Relation to International Law**

Sri Lanka had, until today, three constitutions that governed the country since its independence in 1948. None of them contained any specific provision setting out the relationship between domestic and international law. However, public law at Sri Lankan independence was an outcome of English Law: Despite the rapid changes generated and propelled through globalization, suspicion persisted regarding international law: this might be contributed to the concept of parliamentary sovereignty. In any case, as Prof. Dr. Deepika Udugama writes in a recent article, it seems that there is a firm recognition by the judiciary and political system that the post-colonial legal system was and is dualist.

### **5.1. The Status of International Law**

The current, Second Republican Constitution from 1978 does not contain any concrete provisions setting out the relationship between international and domestic law. After nearly 450 years of foreign rule, public law was predetermined by English public law and this explains the reluctance of the legal system in Sri Lanka to give up the constitutional principle of sovereignty. The three successive post-independence constitutions have affirmed the supremacy of the parliament in the enactment of laws in Sri Lanka: tantamount in the current constitution is [art. 76 \(1\)](#) of the Second Republican Constitution from 1978 which sets out:

“Parliament shall not abdicate or Delegation of in any manner alienate its legislative power, legislative and shall not set up any authority with any power legislative power”.

Three landmark cases before the Sri Lankan Supreme Court underscore the Sri Lankan perceptivity of international law: firstly, in the [Leelawathie v Minister of Defence and External Affairs Case](#) the Supreme Court held the view that the Universal Declaration of Human Rights cannot be applied in the domestic setting as it is not a legal instrument that can establish its role as a part of domestic law. Another case that exemplifies the relationship between Sri Lankan domestic law and international law and international obligations is the [Sepala Ekanayake Case](#). In this case, Sepaka Ekanayake, a Sri Lankan national, had hijacked an aircraft that was registered in Italy. While Sri Lanka had ratified the Tokyo, Hague and Montreal Conventions on matters pertaining to offences against aircraft, there was a gap in the domestic legislation to make such offences punishable. To this end the authorities did not have any legal instruments to push for legal actions against Mr. Ekanayake. Last but not least, the most prominent and well-known case that highlights the relationship between Sri Lankan legal system and the international legal system is the ambiguous [Singarasa v. Attorney General Case](#) In this case the Supreme Court found that while the Sri Lankan government had ratified the International Covenant on Civil and Political Rights, the rights cannot be directly invoked when there is lack of domestic implementation. This judgment, while there a number of other problematic issues to be addressed, spells out the current Constitution's favoritism towards dualism.

## 5.2. The Role of Human Rights in Contemporary Sri Lanka

The protection and promotion of human rights in Sri Lanka is rather sparse:

The first Constitution of independent Sri Lanka (the so-called [Soulbury Constitution](#)) from 1948 entailed a minority protection clause. This is clear from [Article 29 \(2\)](#). However this very article failed in defending the rights of the minorities in respect of the disenfranchisement of the Tamil plantation workers with the [Citizenship Act \(1949\)](#) or the [Sinhala Only Act \(1956\)](#) due to the weaknesses of the judiciary. K.M. de Silva writes in his “survival of the Soulbury Constitution after 1956 was not so much a matter of conviction as of convenience.”[\[21\]](#)

Under the 1st Republican Constitution from 1972, a declaration of emergency limited parliamentary scrutiny of executive acts, prohibited judicial review, and suspended the bill of rights protecting individual citizens. With the presence of extensive emergency power, the concept of ‘decisional mobility’ could easily be translated into the arbitrary use of state power. The most crippled arm of government under the 1972 Constitution was undoubtedly the judiciary. There were ideological reasons for the government bias against the role of the judiciary in a developing society. Early Supreme Court decisions with regard to the right to property had convinced many progressive individuals that the judiciary would block progressive legislation aimed at accelerating change. As the 1947 Constitution had not produced a ‘rights consciousness,’ the concept of the judiciary as an instrument of social reform was not considered a valid possibility. Under the 1972 Constitution the traditional judiciary was denied scrutiny over executive action except in so far as to determine that executive action was not arbitrary and obeyed the principles of natural justice. Unlike the Soulbury Constitution, the 1972 Constitution did contain a non-justifiable bill of rights. But the provision contains limitation. The specific provision states:

“The exercise and operation of the fundamental rights and freedoms provided in this chapter shall be subject to such restrictions as the law prescribes in the interests of national unity and integrity, national security, national economy, public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others or giving effect to the Principles of State Policy set out in section 16.”[\[22\]](#)

The current 2nd Republican Constitution foresaw two major changes: first, the dilution of the representative system through a presidential system and, second, the introduction of an executive presidential system instead of the prevailing parliamentary system, both with considerable repercussions on the human rights. While this Constitution made fundamental rights and freedoms justifiable, they were again subject to limitation. It reads in art. 15.7:

“The exercise and operation of all the fundamental rights declared and recognized by Articles 12, 13(1), 13(2) and 14 shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order and the protection of public health or morality, or for the purpose of securing due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the



general welfare of a democratic society. For the purposes of this paragraph "law" includes regulations made under the law for the time being relating to public security.”[23]

A very recent joint statement issued by the United Nations Special Rapporteur on the independence of judges and lawyers and Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Ms. Pinto and Mr. Mendez respectively points out to the current state of human rights in the country:

“(…) Sri Lankan citizens continue to live without minimal guarantees against the power of the State. It is now critical and urgent to replace the legal framework that allowed serious human rights violations to happen and set up sound democratic institutions and legal standards that will give effect to and protect human rights embodied in the constitution of Sri Lanka as well as the international human rights treaties it has voluntarily ratified. (…).”[24]

## 6. Case Law

The principle of *stare decisis* is adhered to in Sri Lanka. Supreme Court decisions are binding on all other courts. A decision of the Court of Appeal is binding on the courts of first instance, if the decision is not in conflict with a decision of the Supreme Court. Since 1978, when a new Constitution became effective in Sri Lanka, decisions of the Supreme Court before 1978, and the decisions of the Privy Council when this Council in the U.K. was the final Court of Appeal for Sri Lanka, are technically no longer binding. But the earlier case law may still serve as “guidance,” and the word “guidance” suggests that the earlier case law is much closer to binding evidence than to persuasive evidence.

Sri Lanka’s laws passed before 1978 remain valid through *Article 168* of the 1978 Constitution.

## 7. Cases, Acts, Bills, Journals and Publishers

Supreme Court and Court of Appeal cases now are published in the *Sri Lanka Law Reports*. As of October 2008, Supreme Court cases from 1878 through 2005, and Court of Appeal cases from 1809 through 2005 are accessible online [here](#). Access this link and then scroll down to the Asia section and select the Sri Lanka link. There also is a link at this site for Sri Lanka legislation. The legislation-link, however, may not download quickly.

Other case law online can be found under:

- [LawNet](#)
- [WorldLii](#)
- [Attorney General of Sri Lanka](#)
- [Refworld](#)

Landmark cases before the Sri Lankan Supreme Court can be found here.

Acts and Bills of Parliament, when available for publication, are published in the [Extra Gazette](#). The Acts and Bills links are at the top left corner of this site. Usually, it takes a while for the Acts, Bills, Forms, Gazette, and News links to appear

on the top left corner. After accessing the Acts or Bills link, select the “E” link for English. The “S” link is for the Sinhala language version, and the “T” link is for the Tamil language version. Other useful governmental publications can be found with the Law Commission of Sri Lanka [here](#).

The Law and Society Trust maintains a comprehensive and resourceful law library which can be found [here](#). Other material related to law can be found with the Centre for Policy Alternatives [here](#) (copy and paste the link into a browser if it does not open). The Institute of Human Rights in Sri Lanka is another useful source, which can be accessed [here](#). The University Teachers for Human Rights Sri Lanka have a colorful and vast history in the protection and promotion of human rights. Their website can be reached [here](#). [The Faculty of Law Colombo](#) and the [Department of Law Peredeniya](#) offer also law libraries.

Sri Lanka has notable legal journals, namely the [Sri Lankan Journal for International Law](#), the [Colombo Law Review](#), the [Sri Lanka Journal of Forensic Medicine, Science & Law](#).

Notable publishers are [Blackhall](#), [Sarasvi](#), [Lake House](#).

## 8. Major Codifications

The major codifications are:

- [The 1978 Sri Lankan Constitution](#)
- The Civil Code.
- [The Code of Civil Procedure: Civil Procedure Code. Act 79 of 1988. Amended by Acts 9 of 1991 and 34 of 2000.](#)
- Commercial Code.
- [Criminal Code: Penal Code. Chapter 25. Amended by Penal Code \(amendment\) Act of 1995.](#)
- [Code of Criminal Procedure: Code of Criminal Procedure Act. Chapter 26, Law 15 of 1979. Amended by no. 39 of 1982 \(The 1979 Act repealed earlier codifications.\)](#)
- A comprehensive listing of codes and legislation of Sri Lanka can be accessed [here](#).

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[3] Cooray, p.2.

[4] Cooray, p.2.

[5] Savitri Goonesekera, "The Roman Dutch Law in the Plural Legal System of Sri Lanka." *The Colombo Law Review*. Faculty of Law, University of Colombo, Sri Lanka. v.9, p.1 (1998).

[6] Goonesekera. p.1.

[7] [Sivagnanalingam v. Suntheralingam. In 86 SLR \(Sri Lanka Law Reports\) v.1 \(1988\).](#)

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