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Sri Lanka: Legal Research and Legal System

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1. Introduction

Sri Lanka, formally known as Ceylon, is a multi-ethnic and multi-religion island nation in the Indian Ocean, near the southern coast of India. The distance between the south-eastern tip of India and north-western Sri Lanka is only about 40 miles. Sri Lanka's total land area is 25,330 square miles, roughly the size of West Virginia, and it a population of a little more than 20 million. Due to major civil conflict that has affected Sri Lanka for more than two decades, no census was conducted in certain parts of the country during the last two decades or more. Thus, all demographic figures include relevant estimates for certain areas in the country.

The ethnic and religious diversity of the nation, and also its colonial history, have a direct bearing on aspects of the legal system of Sri Lanka.

The country's largest ethnic group is the Sinhalese whose native tongue is the Sinhala language. The Sinhalese form about 74% of the population. The majority of the Sinhalese are Buddhists, with a Christian minority.

The next largest ethnic group is composed of the Tamils who form 18% of the population, and their native tongue is the Tamil language. The majority of the Tamils are Hindus, with a Christian minority.

The majority of the Christians among both the Sinhalese and the Tamils are Roman Catholics.

The descendants of Indian tea-estate workers, brought in by the British from Southern India from the nineteenth century to the 1930s, form a distinct group. Their native language also is Tamil and they also are referred to as up-country Tamils. The majority of up-country Tamils are Hindus, and they still form a mainstay of the tea industry employees. The 18% figure for the percentage of Tamils in Sri Lanka includes the up-country Tamils.

The third largest ethnic group is composed of Muslims, mainly descendants of Arab traders, and Malays, mainly descendants of South-East Asians who arrived in Sri Lanka during Dutch rule of the country. For a significant segment of the Muslims, Tamil is the main language. The Muslims, excluding the Malays, constitute about 7% of the population.

The other ethnic group is composed of Burghers who are descendants of Dutch and Portuguese settlers, and are

mostly Christian. Largely due to the strongly nationalist politics that began in the 1950s, a significant segment of the Burghers emigrated to Australia. Due to this emigration, and also due to Burghers marrying Sinhalese and Tamils, the Burghers now are a relatively small community in Sri Lanka. English is the first language for the Burghers.

The Burghers, Malays, and the Veddhas, who are the descendants of the original inhabitants of Sri Lanka, form about 1% of the population. (All ethnic-composition figures are from the "*New York Times Almanac*" 2008).

2. Colonial History and the Law

European control of what is now Sri Lanka began a few years after 1505 when inclement weather drove a Portuguese fleet of ships, commanded by Lourenco de Almeida, into what is now the Colombo harbor. Colombo, now the capital of Sri Lanka, is on the west coast of Sri Lanka.

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 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. The Portuguese were ousted by the Dutch during the 1600s.

With the Dutch gaining control of Sri Lanka, primarily in the coastal regions, 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." [1](#)

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 Sinhalese in the coastal areas, especially to those Sinhalese who were Christians.

The *Thesawalamai*, the laws and customs of the Tamils of the Northern Jaffna province, was codified in 1707.

A code of Muslim law was applied with the consent of Muslim elders.

The British ousted the Dutch from Sri Lanka in 1796, and 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)." [2](#)

In 1815, when the Kandyan Kingdom in central Ceylon fell to the British, for the first time in history, 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." [3](#)

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.

3. Legal Constructs

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* that applied to the Kandyan provinces, the *Thesawalamai Law* (also spelt as 'Tesawalamai') that applied to the 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.

This conglomeration of different laws led to British judges encountering some difficulty 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 that there existed ambiguity on 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 Law and Thesawalamai.

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."⁴

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."⁵

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 Sinhalese who now do not reside in the Kandyan provinces in central Sri Lanka. Kandyan Law that remains applicable to Kandyan Sinhalese in present day Sri Lanka relates to marriage, divorce, and interstate succession.

Kandyan Sinhalese have the option of choosing to marry under the *Marriage and Divorce (Kandyan) Act*, or the *General Marriage Ordinance*. Kandyan Sinhalese 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 Sinhalese 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*.

Theswalamai 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 Thesawalamai 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*⁶ that *Thesawalamai* 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 *Thesawalamai* would not apply to Jaffna Tamils only if there is "unequivocal evidence of abandonment of...inhabitanacy 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 inhabitanacy" 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 *Thesawalamai* laws that are now applicable to Jaffna Tamils relate to property and interstate succession resulting from marriage.

Thesawalamai, which was codified by the Dutch in 1706, gained legal validity when the British enacted the *Thesawalamai 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 *Thesawalamai Ordinance* and *Thesawalamai 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 Sinhalese. 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 *Thesawalamai* "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."⁷

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.⁸

It should be pointed out, however, that these types of personal laws notwithstanding, only a minority of women to whom these laws are applicable suffer undue discrimination. In 1960, Sri Lanka elected the world's first woman Prime Minister, Sirimavo Bandaranaike. Bandaranaike's daughter, Chandrika Bandaranaike Kumaratunga, was elected President twice (under a different Constitution). Kumaratunga served as President from 1994 to 2005.

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 *Thesawalamai* 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. [9](#)

4. The Structure of the Courts System

The court-structure consists of a Supreme Court, a Court of Appeal, High Courts, Municipal Courts, and Primary Courts. Additionally, there are numerous tribunals, etc.

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." [10](#)

At that time, "Parliamentarians constituted themselves as members of what was termed the 'Constituent Assembly' to draft and adopt a new Constitution," [11](#) which became effective on May 22, 1972. It has been suggested that the concerns of minority communities in Sri Lanka were not adequately considered in the drafting of that Constitution.

On Aug 31, 1978, another Constitution replaced the 1972 Constitution. Under this Constitution, for the first time in Sri Lanka an Executive President, elected by the entire country, became the leader of the country. Under the earlier Constitution, the government was headed by a Prime Minister, who, as a Member of Parliament, would have been elected by just one electorate in the country.

As a consequence of major civil strife that erupted in 1983, now efforts are being made to replace the 1978 Constitution with a new Constitution in order to grant greater political autonomy to the different regions in the country. These efforts, at present, seem stalled in an All Party Conference constituted by the current President, Mahinda Rajapakse. Furthermore, not all political parties in the country agreed to participate in the Conference.

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.

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.

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.

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.

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." ¹² 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 Capital city. 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.

Murder trials and various offenses against the State are tried at the High Court; other criminal offenses are tried at a Magistrate's Court.

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.

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]." [13](#)

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:

- i. Original jurisdiction over prosecution of offenses committed within a particular province.
- ii. Admiralty jurisdiction, which is usually exercised in Colombo, the capital city.
- iii. Commercial jurisdiction, which is vested by the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996.
- iv. 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.
- v. 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*).
- vi. Appellate jurisdiction over convictions, sentences, and orders imposed by the Magistrate's Courts and Primary Courts within the province.
- vii. 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.
- viii. 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.

Certain specific civil issues handled by the District Courts include:

- i. Cases related to ownership of land.
- ii. Action by landlords to eject tenants.
- iii. Action to recover debts of more than Rs. 1,500.
- iv. Action in connection with trademark and patent rights, and infringement of copyright laws.
- v. Claims for compensation of more than Rs. 1, 500 for injuries caused by negligence.
- vi. Divorce cases (Formerly, divorce cases were handled by the now defunct Family Courts).

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 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 complaint, 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

Each Primary Court is vested with the following jurisdictions:

- i. Original civil jurisdiction over cases involving debt, damages, demands, or claims that do not exceed Rs. 1,500.
- ii. Enforcement of by-laws by local authorities and disputes relating to recovery of revenue by these local authorities.
- iii. Exclusive criminal jurisdiction over cases relating to offenses "prescribed" by regulation by the Justice Minister.
- iv. 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 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.

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, etc.

Most decisions of these tribunals can be appealed at the Court of Appeal; when regarding a substantial question of law, the decision of the Court of Appeal may be taken up at the Supreme Court.

5. 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.

6. Cases, Acts, and Bills

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.

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.

7. Major Codifications

The major codifications are:

- i. The Civil Code.
- ii. The Code of Civil Procedure: Civil Procedure Code. Act 79 of 1988. Amended by Acts 9 of 1991 and 34 of 2000.
- iii. Commercial Code.
- iv. Criminal Code: Penal Code. Chapter 25. Amended by Penal Code (amendment) Act of 1995.
- v. 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 is in the "Sri Lanka" section of *Foreign Law: Current Sources of Codes and Legislation in Jurisdictions of the World*, edited by Thomas H. Reynolds and Arturo A. Flores. This publication is listed in the Bibliography section of this article.

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End Notes

¹ [Anton Cooray. "Oriental and Occidental Laws in Harmonious Co-existence: The Case of Trusts in Sri Lanka." *Electronic Journal of Comparative Law*. v.12.1 \(May 2008\) p.2.](#) (Accessed Aug. 2008).

² Cooray. p.2.

³ Cooray. p.2.

⁴ 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).

⁵ Goonesekera. p.1.

⁶ [Sivagnanalingam v. Suntheralingam](#). In 86 SLR (Sri Lanka Law Reports) v.1 (1988).
From the preceding URL, scroll down to the Asia section and select the 'Sri Lanka' link.)
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⁷ ["Muslim Personal Law and Women," by Cat's Eye](#), in the *Island* newspaper, Sri Lanka, July 9, 2003. Access this URL and select the "Midweek Review" link on the left panel (Accessed Feb. 2007).

⁸ [Ramani Muttettuwegama. "But I am both.' Equality in the Context of Women Living under Parallel Legal Systems: The Problem in Sri Lanka."](#) A Briefing Document. p.1.
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⁹ H.W.Tambiah. "Sri Lanka," in *Encyclopedia of Comparative Law: National Reports*.
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¹⁰ Dayanath C. Jayasuriya. "Sri Lanka," in *Legal Systems of the World: A Political, Social, and Cultural Encyclopedia*. ed. Herbert M. Kritzer. v. IV, S-Z. ABC.CLIO:
Santa Barbara, CA (2002) p. 1528.

¹¹ Jayasuriya. p. 1528.

¹² Ruana Rajepakse. *An Introduction to Law in Sri Lanka*. Aitken Spence Printing, Pte, Ltd., 315 Vauxhall Street,
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¹³ Rajepakse. p.2.