

Chapter - 01

Law and Justice

1.0 Introduction

There is a popular saying that “Ignorance of Law is no excuse”. (IGNORANTIA JURIS HAUD EXCUSAT) It is essential that all of us should have an idea about law. One reason for the occurrence of most conflicts and disputes in society today is that people do not have a proper idea about law. The main objective of this chapter is to provide you with an idea about the main aspects of law and justice, which you should be aware of, and which lead to minimize conflicts and disputes.

In general terms Law can be considered as a system of rules which controls the external behaviour of people in society. It can also be defined as orders given for the people by the person wielding sovereign authority.

Legal experts have presented various definitions about law. Some of them are indicated below.

- Laws are a system of basic principles recognized and implemented both by the people and by the authorities (Bount)
- It is a collection of rights and duties implemented by the State. (Green)
- It is a system of regulations enacted and implemented by the State for the administration of justice. (Salmand)
- It is a collection of rules enacted and implemented by an institution that had obtained authority for that purpose (Oxford Encyclopedia)

If the law of a country operates properly that society is law-abiding. When law is combined with man, it is empowered. An accepted rule, convention or any other similar draft is passed by the Legislature after deliberation there, and after it is ratified by the Speaker, it becomes an accepted law of the country. In a democratic country the governed (common people of the country) as well as the rulers are equally subjected to the Laws so formed.

Justice means 'acting impartially'. There are two main components of justice. They are,

- i. Truth
- ii. Morality

It is further elucidated by the following statement on justice presented by Barker.

The accumulation of political theories is justice. Justice that prevails in society should be simple and impartial. When this occurs even an ordinary citizen can claim justice - Barker

Law should function as the subsidiary of justice. It eradicates evil and creates impartiality. The main objective of Law is dispensation of justice. When Law does not operate in a country, there ensues arbitrary rule or autocracy in that country.

There are several pre-conditions for the establishment of justice:

1. The Right to know about the allegations [charges] against a person.
2. The Right to prove oneself.
3. The Right of a person to appear before courts of law on his/her own behalf or to be represented by a Lawyer.

It is clear that Law and Justice are two concepts different from each other. Justice is necessary to promote social stability and when a conflict occurs between two individuals to resolve it fairly and impartially. Table 1.1 shows how Law and Justice differ from each other.

Difference between Law and Justice

Law	Justice
Laws are enacted and implemented by the Government	It is related to conscience and wisdom
Can be implemented even by force when necessary	Based on customs and manners, social experiences and religious influences
Violation of Law is punishable	When justice is violated such a person is subjected to social punishments such as isolation in society.
Law controls the external behaviour of citizens	Related to human feelings
Law is specific	Justice is not something implemented by the state
There are institutions that implement the Law that is subjected to interpretation	Justice is sometimes found vague and not specific.
Law is implemented uniformly throughout human society	Justice is built on individual and social diversity
The span of Law is narrow	Justice is found to expand in a broad manner.
Laws can be framed as an approach to the problems when they occur	Based on human feelings, a social approach is created

In ancient society there was no wide difference between justice and law. It was because in those societies legal acts too were regarded as justice.

Characteristics of Law, its sources and divisions

Laws are defined as regulations imposed by the state based on authoritative power, and for the control of the external behaviour of people in an organized society.

It can be concluded that Law originated with the origin of the state. Thus, on account of the obedience to state man becomes subjected to law, or, in other words, due to his fear of the strength of the state the individual obeys the law. Man cannot subjugate law, but he is subjected to law.

Characteristics of Law

There are certain essential characteristics in law which are depicted in diagram 1.1

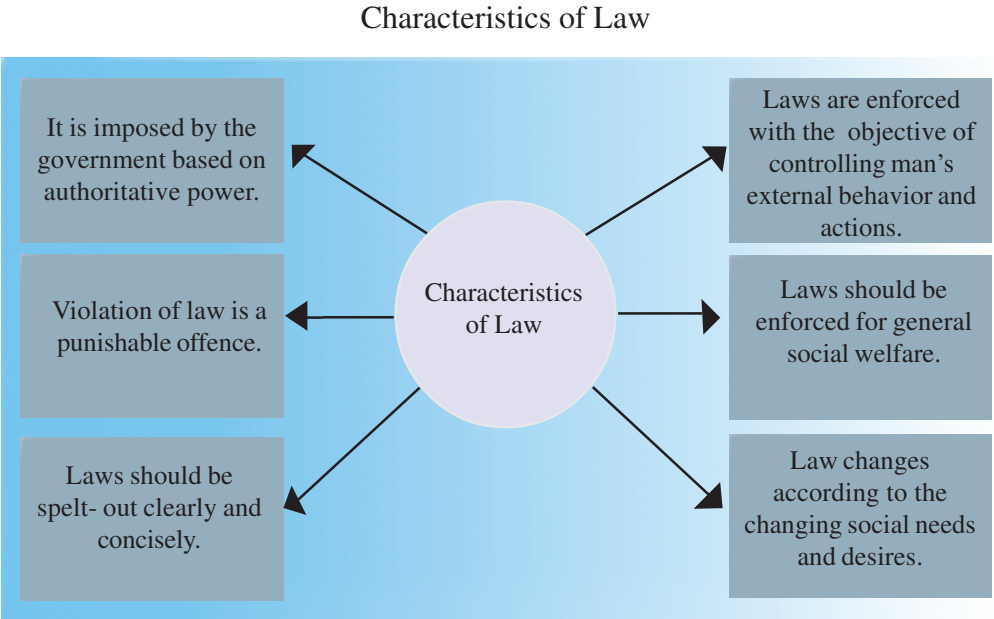


Diagram 1.1

Sources of Law

Here, sources refer to the fundamental aspects or factors that affect something. Accordingly, the factors that affect law can be defined as sources of Law. The sources that lead to the emergence of a law are stated below.

1. Customs and manners

Customs and manners are the oldest sources of law. Customs and manners accepted by the society, become social laws. These are also known as Customary Law.

2. Religion

In the primitive societies in particular one notices that Law was based on religion. Muslim Law and Law pertaining to temples and devalas (Temporalities) are examples of such laws.

3. Judicial decisions

The various decisions and conclusions taken by the Courts of Law in dispensing justice, too form the sources of Law. These decisions are used as precedents in subsequent judgments.

4. Scientific theories based on legal experts' views

Various views expressed by Legal experts after a study of Law are regarded as scientific theories. The Boards framing laws use these scientific theories as sources.

5. Statutes

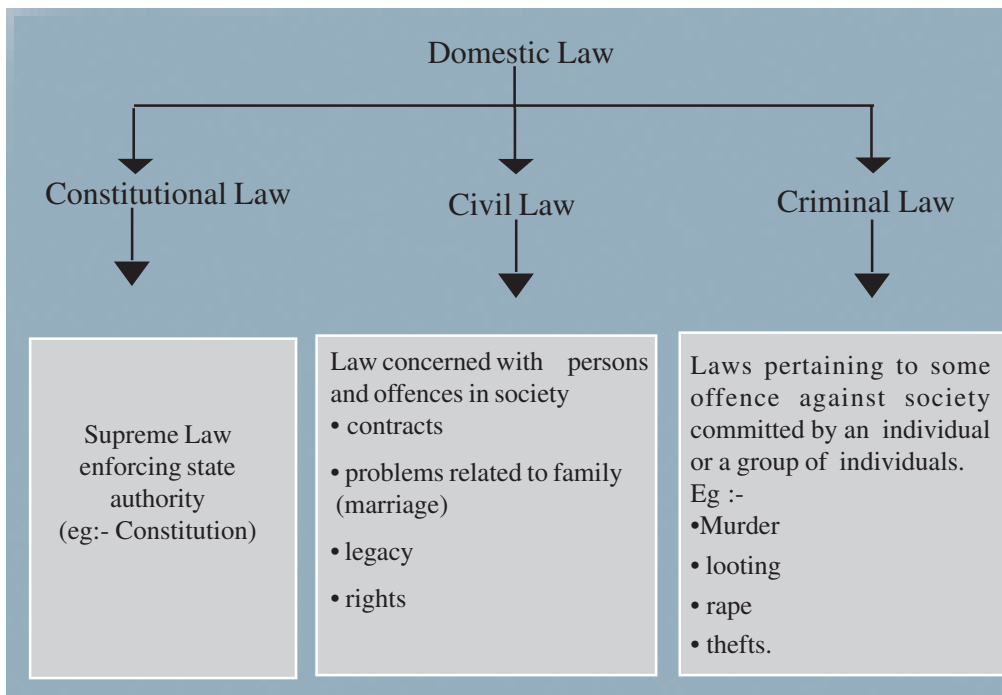
Statutes are a very crucial and powerful source of law. The framing of laws necessary in administration is done through statutes.

6. The Constitution

The supreme law of a country is its Constitution. It is essential that every Law made by the legislature or by any other means should be consistent with the Constitution.

Types of Law

The law enforced in Sri Lanka can be divided into two categories as Domestic Territorial Law and International Law. The divisions of Domestic Law are given below:



International Law

When Sri Lanka deals with other countries, she has to abide by the laws internationally recognised. These laws include contracts entered into with various countries, and international customary law. These also include the Laws recognised when holding membership in institutions such as the United Nations Organization. These also may include laws pertaining to international naval and air travel and those related to dealings with International Police.

Civil Law	Criminal Law
<p>Law concerned with offences between persons in society is called civil law. Contracts, problems related to family marriage legacy rights, come under this category.</p>	<p>Laws pertaining to some offence against society committed by an individual or a group of individuals are called criminal law. eg :- Murder, looting, rape, thefts come under this category. The prosecution in a criminal case is the Government. Here the Police and the Attorney General lead the prosecution on behalf of society or the Government.</p>

Criminal Law

In common parlance, an anti-social act and one in contravention of values is considered a crime. It is a crime to kill a person according to criminal law. But to hang a person on a court order is not a crime.

There are several culpable crimes according to Criminal Law

- Action against the State.
- Action against public peace.
- To commit murder or physical harm that could cause death.
- Cause injury.
- Sexual harassment.
- Rape.
- Causing damage to Public property.
- Offences pertaining to property (theft, looting, accepting contraband smuggled property, breach of faith).

1.1.4 Fundamental Law

Fundamental Law is also known as Constitutional Law. The main source of law of any state is its Constitution. It is essential that all legal reforms effected within the legal system and the administrative system are framed so as not to infringe the constitutional framework.

Other types of Law in operation in Sri Lanka

Apart from the Laws mentioned above there are other types of law enforced in the country, depending on the region and society of relevance. Significant among them are,

Kandyan Law,
The Thesawalamai and
Mohammedan Law.

These three types of law are discussed here.

1. Kandyan Law

Before the British took over the administration of the Kandyan region a separate law was in force there. It is mentioned that it was unwritten, and hence was based on customs and traditions. A judicial interpretation of this Kandyan Law was presented subsequently, and it was incorporated into the ordinance No 5 of 1952. Under the Kandyan Law the Kandyan Marriage Ordinance on marriage was enacted in 1870. This law applies only when a marriage between a Kandyan man and a Kandyan woman is performed in a Kandyan area. According to the marriage Act of 1952, in other situations the marriage has to be performed according to the Common Law of the land. According to Kandyan Law the property coming down from inheritance or through generations is called paraveni (inherited property) and what one has earned is called acquired (lathimi) property.

2. The Thesawalamai

The customs of the Malabar inhabitants who lived in the province of Jaffna collected on the orders of Governor Simons (Dutch) in 1706, called Thesawalamai have been recognized as Law by regulation No.18 of 1706.

● The Sources of Thesawalamai

1. The Thesawalamai (Compiled by the Dutch in 1706)
2. Statutes related to the Thesawalamai
3. Judgments delivered on the interpretation of the Thesawalamai
4. Customary Laws of the land

All immovable property in Jaffna is governed by Thesawalamai. According to this law, administration of property is in the hands of the husband and the law states that the wife cannot gift any property without the permission of the husband.

Similarly in the management of property the husband can either sell or mortgage property even without the permission of the wife.

By the Jaffna Marriage Rights and Inheritance (Amendments) Ordinance No 58 of 1947 the property of people coming under the Thesawalamai were brought under the purview of this law irrespective of their place of residence. According to this law when it is proposed to sell any land it is essential to give priority first to the person living in closest proximity to the proposed land.

3. Mohammedan Law (Muslim Law)

The focal source of Mohammedan Law is the Holy Quran.

● **There are four main sources of Mohammedan (Muslim) Law.**

- 1. The Holy Quran** - The Holy religious scripture of Muslims.
- 2. A Hathees /Sunna** - Customs and traditions of Prophets which help to take legal decisions. They are considered to be utterances actions and decisions of Prophet Mohammed.
- 3. Ijma** - Certain unanimous decisions taken by legal experts after Prophet Mohommed.
- 4. Kiyas** - Decisions agreed upon by legal professionals. If the persons who have studied Islamic Law reach an agreement on an important situation, such decisions are known as Kiyas.

What is in operation currently in Sri Lanka is the Mohammedan Law drafted in 1806. This Law was amended by the Registration of Muslim Marriages and Divorce Ordinance No 27 of 1929. By the Ordinance of 1929 Kathy Courts were established for the first time to resolve matrimonial cases.

Roles of State Legal Officers

Here three positions or roles at the highest level in the judicial and legal set up in Sri Lanka are discussed. The Minister of Justice, the Attorney General and the Chief Justice are most prominent among them. The role of these three officials are dealt with in the following pages.

The Minister of Justice

The Minister of Justice is considered a key person in the task of framing legislation and their implementation. He is the official responsible for framing the laws pertaining to the judicial sphere, presenting them to Parliament and getting them passed by Parliament.

In addition, the Minister is also legally bound to perform the duties vested in him through several acts in accordance with the Constitution and other statutes.

The Chief Justice

According to chapter xvi of the Constitution adopted in 1978 the Supreme Court is stated to be the highest and final superior court of record in the Republic. The Head of the Supreme Court is the Chief Justice. Moreover, the Chief Justice exercises full authority to review the legal system of Sri Lanka. The supervision, direction and control of the Registrar and the registry of the Supreme Court, are among the functions of the Chief Justice.

In terms of article 136 (1) of the Constitution the Chief Justice wields the authority of framing regulations on the following matters: (For this purpose, the Chief Justice names three other judges of the Supreme Court).

- ❖ The terms under which appeals to the Supreme Court and the Court of Appeal are to be entertained.
- ❖ Hearing of appeals including those terms.
- ❖ Rules as to the procedure pertaining to other matters relevant to appeals.
- ❖ Dismissal of appeals for non-compliance with rules.
- ❖ Determining the time within which action may be instituted and the dismissal of matters for non-compliance with rules.
- ❖ Rules as to the granting of bail.
- ❖ Rules as to the stay of proceedings.
- ❖ The preparation of copies of records for the purpose of appeal or other proceedings.
- ❖ The admission, enrolment, engaging, suspension of appointments and removal of attorneys-at-law, appointment of Senior Attorneys-at-law, rules of conduct and etiquette for such attorneys-at-law.
- ❖ Determining the attire of judges, attorneys-at-law and officers of the Court.
- ❖ The manner in which panels of jurors may be prepared and the mode of summoning, empanelling and challenging of jurors.
- ❖ Proceedings of Fiscals and other ministerial officers of the Courts and the process of such courts and the mode of executing them.
- ❖ Enacting rules on all matters not provided by any law about the practice and procedure of all courts.
- ❖ Amending and changing the rules of courts.

In addition the Chief Justice holds the position of the Chairman of the Judicial Service Commission.

1.2.2 The Attorney General

The position of Attorney General in Sri Lanka originated from the position of Advocate Fiscal that existed in the Dutch Period. The present position of Attorney General was created by ordinance No.01 of 1883 and the first Attorney General was Sir William O’Gale Carr. The Attorney General who is the Chief Law Officer of the Republic of Sri Lanka is appointed by His Excellency, the President. The Attorney General is also the Head of the Attorney General’s Department which functions under the Ministry of Justice.

Some of the primary powers of the Attorney General are indicated below:

1. The authority of granting pardon to partners to crimes on the foremost evidence and other matters in lawsuits that can be heard only by the High Court.
2. The authority to grant approval to file certain cases in a criminal court.
3. The authority to delegate the responsibilities vested in the Attorney General, to his representatives.
4. The authority to summon officers of Government Departments whenever necessary and give them the necessary advice.
5. The authority to take legal action against public servants who are guilty of treating the public unfairly, and hesitate to dispense justice or default.
6. It is compulsory that before filing action against a Minister or a Secretary or, any Public Officer, that it is intimated to the Attorney General.
7. The authority to order reinstatement of action against the offenders who have been acquitted by the Magistrate.
8. The authority to free the accused in situations where there is no sufficient evidence against them.
9. The authority to see that the Acts presented in Parliament do not contravene the provisions in the Constitution.

In addition to the above some of the duties of the Attorney General are given in diagram 1.3

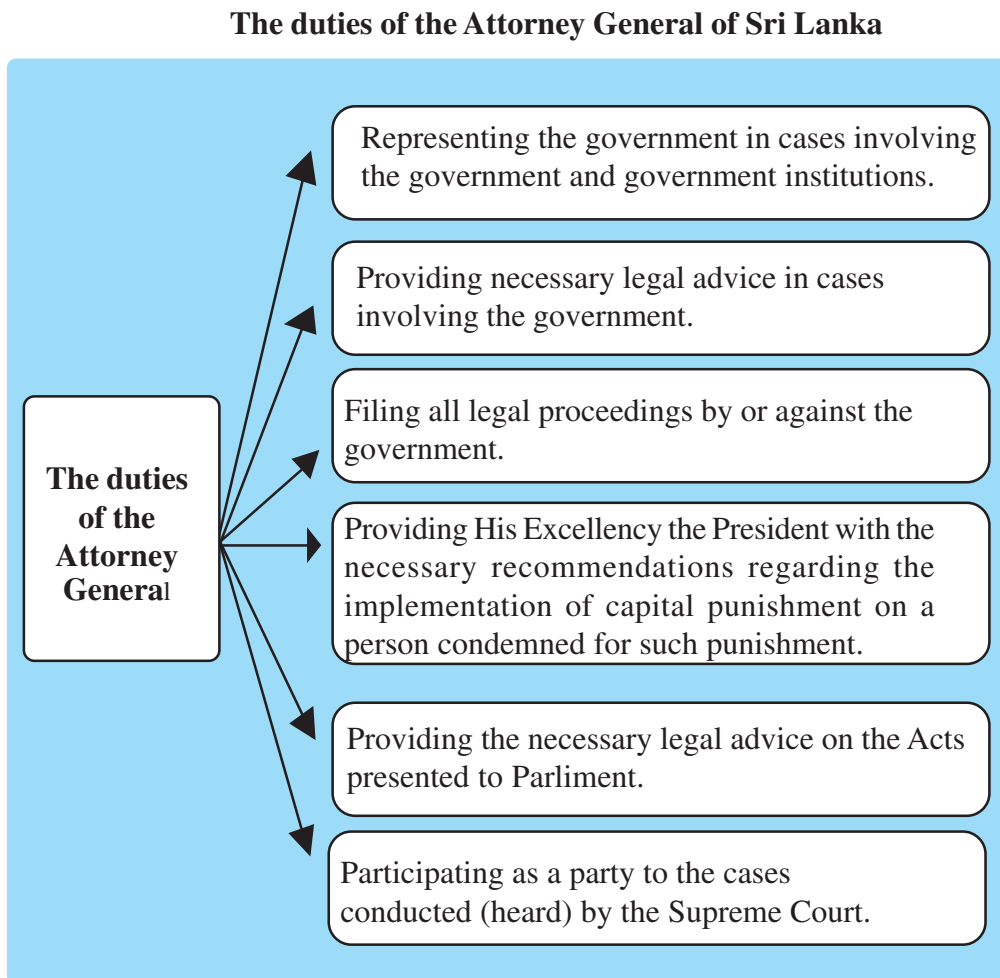


Diagram 1.3

The following are the officers who represent the Attorney General in the implementation of his powers.

1. Solicitor General
2. Additional Solicitor Generals
3. Deputy Solicitor Generals
4. Senior Government Attorneys
5. Government Attorneys

Independence of the Modern Judiciary of Sri Lanka

The Judiciary has a special role to perform in safeguarding the freedom of citizens and human rights in a democratic system of government.

When the independence of the Judiciary exists a confidence in the law begins to build up in the citizens of a country and on account of this people respect the Law and cooperate in its enforcement. If the independence of the Judiciary prevails, every citizen of the country will be protected by law in a fair and an equal manner.

Various provisions have been made in the constitution of 1978 too to protect the independence of the Judiciary. The measures taken to ensure the independence of the Judiciary are spelt in the articles 107 to 117 of this constitution.

Measure Taken by Sri Lanka to Ensure the Independence of the Judiciary

The Judiciary (the system of courts) is the institution for the administration of Justice. The symbol of a lady with covered eyes carrying a balance represents justice and shows that it stands for justice. It also indicates that justice is fair for all without any prejudice. The following provisions have been made under the Constitution of Sri Lanka to safeguard the Independence of the Judiciary.



Diagram 1.4

- ❖ Appointment of Judges.
- ❖ Removal of Judges.
- ❖ Confirmation of the salaries of Judges.
- ❖ Recognizing that Judges cannot engage in other sources of income.
- ❖ The establishment of a Judicial Service Commission.
- ❖ Restriction of unnecessary intervention in, and control of the Judicial System.

The appointment of Judges

In terms of the 1978 Constitution of Sri Lanka, the appointment of judges of the Supreme Court and the Court of Appeal is done by the President subject to the approval of the Constitutional Council. Moreover, these judges hold office during good behaviour and the age of retirement of the Judges of the Supreme Court is 65 years and that of the Judges of the Court of Appeal is 63 years.

Through the assurance of security of service of the Judges in this manner, independence of the Judiciary is anticipated.

Removal of Judges from Service

Unlike in the case of other posts in government service, there is provision in the Constitution itself that Judges are a category of officers who cannot be removed from office. To remove them from service a long procedure has to be followed. By this too, it is expected to provide permanency of their service conditions and to create an atmosphere suitable to allow them to give independent decisions. If it is proved that a judge of any Court of Law is guilty of an offence or misconduct a resolution for his removal should be presented to the President by a majority of the Members of Parliament including those not present at such session. Besides the decision taken by the President in this regard a judge cannot be removed from office by any other means.

The Speaker could accept the proposal to remove a judge only if 1/3 of the members in the House have signed voting for it and if the relevant misconduct is described in detail. When this requirement is not fulfilled the proposal cannot be accepted or it cannot be entered in the order paper. This too acts to safeguard the independence of the authority of the Judiciary.

Salaries of Judges

According to article 108 (1) of the Constitution it has been decided to pay the salaries of the judges out of the Consolidated Fund. Hence no opportunity is provided to discuss about the Judiciary through the budget. It is the Parliament that determines the salaries of the officials in the Supreme Court and the Court of Appeal.

According to article 108 (2) of the Constitution, the salary payable to and the pension entitlement of a judge of the Supreme Court and a Judge of the Court of Appeal cannot be reduced under any circumstance after his appointment. This too provides a strong safeguard for the independence of the Judiciary.

Accepting other appointments

Furthermore, article 110 (3) states that even after retirement a judge cannot engage in any other profession.

It is stated in article 110(2) of the constitution that the judges of the Supreme Court and the Court of Appeal shall not perform any other office whether paid or not without the written consent of the President.

Restriction of unnecessary interventions and controls

In order to safeguard the independence of the Judiciary, acts such as undue influence on the activities of the Judiciary as well as causing contempt of the system are declared punishable offences.

Establishment of the Judicial Service Commission

The Judicial Service Commission can be stated as a special measure taken to ensure the independence of the Judiciary.

By the Constitution of 1978, the Judicial Service Commission has been reestablished

The Chief Justice shall be the Chairman of the Judicial Service Commission and two judges of the Supreme Court are the other members. These appointments are made by the President and their term of office is five years.

There is a special clause to the effect that any member of the Judicial Service Commission can be removed only by showing cause (cause assigned). When removing any other officer the President is not bound to show cause. This provision too is a step to safeguard the independence of the Judiciary. Its objective is to free the Judiciary from the influence of the Executive.

Activity:

Explain the importance of safeguarding independence of the Judiciary, and its social need in Sri Lanka.



Present Judicial System and its historical evolution

The historical evolution of the Judicial System of Sri Lanka dates back to the monarchical system of government that prevailed in ancient times. During this era the king was the person at the highest level in the judicial system and he enjoyed complete liberty in dispensing justice. The judicial system operated under an unwritten system of laws that passed from generation to generation. In the judicial system in ancient Sri Lanka the King (monarch) was the final appellate authority.

When examining the judicial system that prevailed in Sri Lanka, attention should be focused on the Sinhalese monarchical judicial system, the colonial judicial system and the post-independence judicial system.

Sri Lankan (Sinhalese) Monarchical Judicial System

Among the institutions that wielded judicial authority in the early stages of the ancient judicial system of Sri Lanka were Village Councils, Rata Sabha and in addition, the courts of Royal officials, Maha Naduwa and the Monarch functioned as higher courts. The King or monarch functioned as the highest authority in disposing justice.

The Judicial system during the colonial era

The Judicial System that prevailed in Sri Lanka during Portuguese, Dutch and British rule is discussed here.

The Judicial System during the Portuguese Period

The Portuguese retained the ancient Sinhalese Judicial System. Judicial power was exercised by the Korale, Vidane and Disawe. The Village Council too continued to function and in addition two other Judicial authorities were established. They were,

1. Courts manned by experienced Mudaliyars
2. Court of the General

The Judicial System during the Dutch Period

The Dutch introduced a systematic Judicial System. The Judicial authority in Sri Lanka was exercised in the name of the States General in the Netherlands. According to it the Highest Court was the High Court that had been established in Batavia in Java.

During the Dutch period the island was divided into three main Judicial Districts of Colombo, Galle and Jaffna, from where the Judicial system operated.

The Judicial System in the British Period

With the vesting of the administration of the maritime provinces of Sri Lanka in the British, the Judicial System too underwent change. The British during their rule divided Sri Lanka systematically into 5 Judicial Zones. Each province was divided

into districts and divisions and for each district a District Court was established while for each division a Court of Request and a Magistrates Court were established. Based on revenue divisions or parts thereof, rural courts too were established.

1.7 Judicial pattern during the British Period

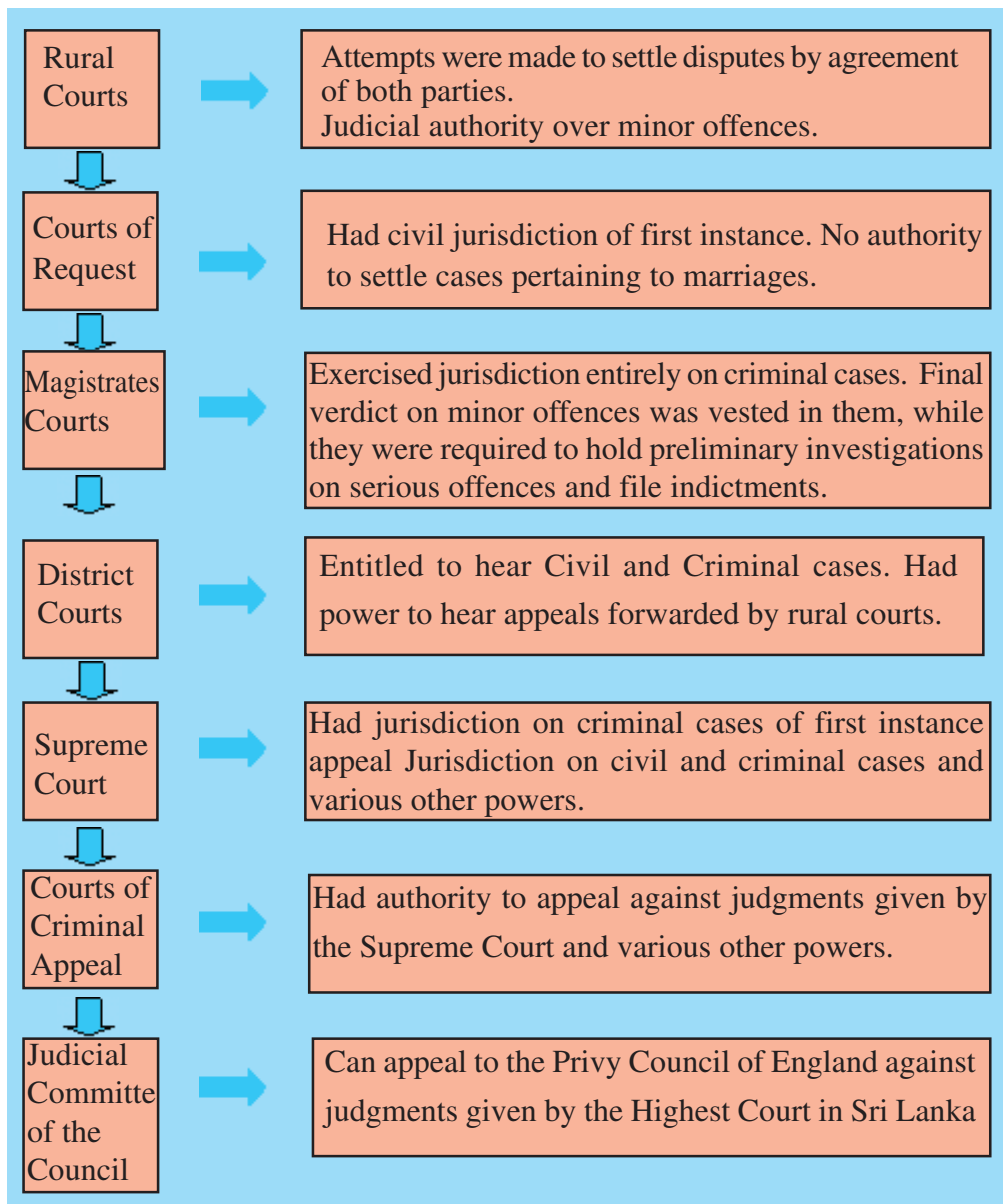


Diagram 1.4

Judicial system since the introduction of the Constitution of 1972

- The next change in the judicial system occurs with the passage of the Republican Constitution in 1972. This was influenced by the Administration of Justice Act No.44 of 1973.
- In 1973 the judicial institutions namely, the Supreme Court, High Courts, District Courts and Magistrate's Courts were established within the judicial system. Arrangements were made to divide Sri Lanka into Zones, Districts and divisions and to set up in each of them High Courts, District Courts and Magistrate's Courts respectively.
- Under the Constitution of 1972 the appointment of Judges was done, and the appointment of the Judges of the Supreme Court and those of the High Courts was done by the Cabinet of Ministers on the recommendations of the Judicial Services Board.

Assignment



Study the recent changes that have occurred in the Judicial System of Sri Lanka and prepare a report.

Types of Courts, their power and functions

According to the views expressed on justice a Court of Law can be defined as follows:-

- Courts are institutions that mete out justice to the people.
- A Court of Law is the institution that performs the task of interpreting the laws enacted by the Legislature.

There are many types of courts in Sri Lanka. In general there are 6 main functions performed by these courts. They are given in diagram 1.8

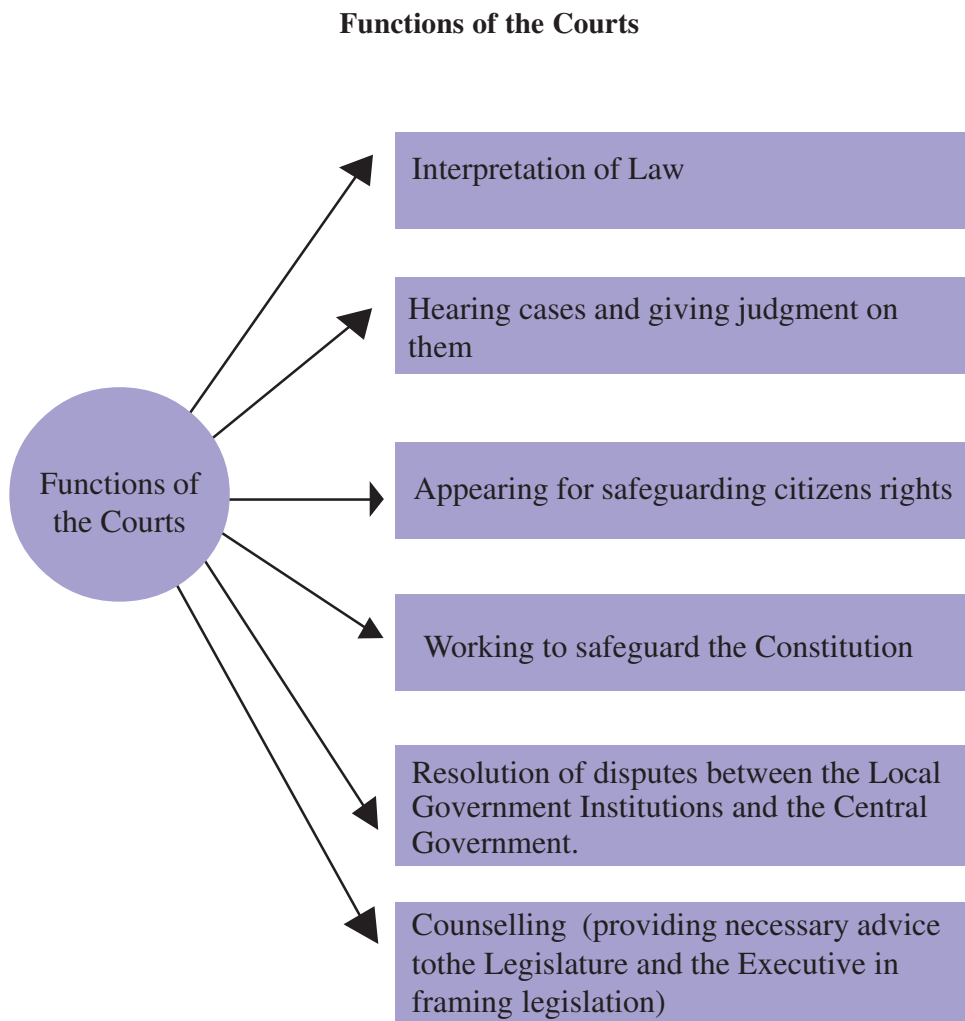


Diagram 1.5

1.5.1 Types of Courts

There are 6 main types of Courts in Sri Lanka at present.

1. Supreme Court
2. Court of Appeal
3. Provincial High Court
4. High Court

5. District Court
6. Magistrate's Court

In addition there are a few other institutions performing judicial work based on specific tasks.

It is mentioned in article 105 of the 1978 Constitution of Sri Lanka, that in addition to the Courts mentioned above, tribunals or judicial institutions can be established through Parliamentary Acts.

Special Courts' Authorities and Institutions

Institute	Relevant Act	Function
Labour Tribunal	Industrial Disputes Act	To solve labour disputes
Kathi Courts	Muslim Marriages and Divorce Act	To solve problems pertaining to Muslim marriages
Rent Board	Rent Act	To solve disputes between landlords and tenants

The Supreme Court

The Supreme Court is the highest Court in Sri Lanka. This is the final appellate institution. The Supreme Court established in terms of article 105 of the Constitution of 1978 is the highest Court in Sri Lanka. This is located in Colombo. It consists of the Chief Justice and not less than 10 and not more than 16 competent judges.



Front view of the Supreme Court in Sri Lanka

According to article 118 of Chapter XVI of the Constitution of 1978, the jurisdiction of the Supreme Court is divided into several parts.

- Jurisdiction over the constitutionality of draft bills.
- Jurisdiction for the protection of fundamental rights.
- Final appellate jurisdiction.
- Consultative jurisdiction.
- Jurisdiction in election petitionss.
- Jurisdiction in respect of any breach of the privileges of Parliament.
- Jurisdiction in respect of such other matters which Parliament may by law vest or ordain.

Apart from the above mentioned powers the Supreme Court exercises the sole and exclusive power to interpret the Constitution. In the event of it being discovered that a case currently heard in another court is related to the Constitution, it is essential that the hearing be stopped forthwith , and the matter referred to the Supreme Court for its opinion.

The Court of Appeal

Besides the Supreme Court the other superior court is the Court of Appeal. According to the Constitution of 1978, the Court of Appeal should consist of a President and a panel of judges not less than six and not exceeding eleven. According to the 17th Amendment to the 1978 Constitution of Sri Lanka, the names proposed for appointment as judges of the Court of Appeal should be submitted to the Constituent Assembly and in the event of these names being approved by the Constituent Assembly, they are appointed by the President.

The Court of Appeal exercises power to investigate appeals against verdicts given by Courts of the first instance such as Primary Courts, Magistrate's Courts, District and High Courts and pass judgment, to investigate petitions in Parliamentary elections, jurisdiction over appeals on all tribunals and other institutions and the power to investigate into the affairs of lower courts.

Provincial High Court

In terms of the 13th Amendment to the Constitution of 1978 it has been proposed to establish Provincial High Courts for each Provincial Council. These High Courts are vested with the power of resolving commercial (trade) disputes, hearing appeals directed from Primary, Magistrate's and District Courts and trying appeals against the decisions by Labour Tribunals. Further, these High Courts have jurisdiction to issue writs against persons who exercise power within the Provincial Council under a statute of the council itself or any other law. Moreover, the Provincial High Court has the power to issue writs of Habeas corpus requesting the production of those who are illegally detained in the province.

The power of appointing judges to Provincial High Courts lies in the Chief Justice. He has the power to appoint judges to Provincial High Courts out of the judges who are currently serving in High Courts.

High Court

According to article 111 (1) of the Constitution, the High Court is vested with the primary stage in the exercise of jurisdiction on criminal cases. The powers of the High Court are described in section 9 of the Judicature Act No.2 of 1978. In the High Court cases are tried by one judge with or without a Jury.

The High Court is vested with jurisdiction over all the crimes committed in Sri Lanka. Similarly it has the admiralty jurisdiction over ships. Diagram 1.6 gives a guideline on the cases tried by a High Court.

Cases tried by a High Court

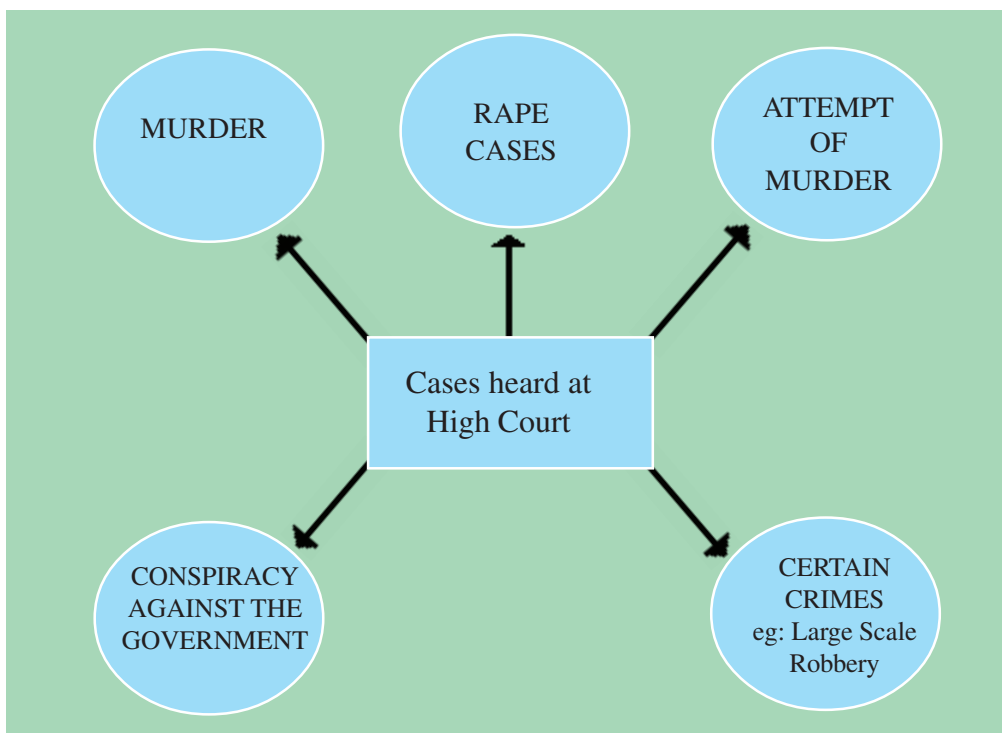


Diagram 1.6

There are several offences which can be investigated by a High Court under its Jurisdiction.

- ❖ An offence committed fully or partially in Sri Lanka.
- ❖ An offence committed within our territorial shelf or in the air.
- ❖ An offence committed within Sri Lanka's air boundaries.
- ❖ An offence committed in the sea such as piracy
- ❖ An offence committed in a ship or an airplane registered in Sri Lanka.
- ❖ An offence committed abroad by a Sri Lankan.

District Court

A District Court is established in each Judicial district. Resolution of civil cases pertaining to the particular district is vested in the District Court. The jurisdiction of the District Court is spelt in chapter IV and V of the Judicature Act No.2 of 1978. There are many cases that can be investigated and decided by a District Court .

Following are some examples for them:

- Divorce cases.
- Divorce claims.
- Cases related to the breach of promise of marriage.
- Rape cases.
- Case on the declaration of legitimacy/ illegitimacy of marriages.
- Cases on care, guardianship and property of persons of unsound mind and mental infirmity.
- Testamentary cases on the property of those who have died with or without a last will.
- Cases on Revenue.
- Cases on trust and bankruptcy.
- Cases on debt payment, claiming damages and all financial cases .
- Partition cases.
- All land cases.

- Cases on rent.
- Cases on accidents, compensation, insurance.
- Cases instituted under the Companies Act.

This list shows that relief can be sought for most issues of branch of Civil under Law that occur day by day in society through the District Court.

Magistrate's Courts

Magistrate's Courts are also known as Police Courts. In every judicial division, a Magistrate's Court has been set up. A Magistrate hears cases. According to the law of Sri Lanka, criminal cases that are not heard in High Courts are directed to Magistrate's Courts. Powers and jurisdiction over the cases directed through the Penal Code which is the Code of Law on criminal cases, the Criminal Procedure Code Act No.15 of 1979 and through other Acts, are vested in the Magistrate's Court.

In the cases heard at the Magistrate's Court, the police functions mainly as the prosecution. These courts lead primary investigations on conflicts and crimes within the area of jurisdiction and hears primary cases pertaining to public health, offences of security and morals, thefts, looting, causing damage to property, murder and attempt to murder.

The Magistrate's courts also have the power to hear cases on offences passed by Parliamentary Acts and legalize. Following are examples of such cases.

- Investigating offences caused under the Forest Act and pass sentence.
- Offences about illicit liquor under Excise Act.
- Offences under Act No. 7 of 1979, for the recovery of ownership of state lands.
- Offences under the Act No. 27 of 1980 on cosmetics, equipment and drugs.
- Offences under the Food Act No.26 of 1980
- Offences under the Road Development Authority Act No. 73 of 10981
- Offences under the Motor Traffic Act.

Activity: 1.3



Meet a lawyer in your area and prepare a list of offences against which action can be instituted under the above Acts.

1.6 Alternative methods of Conflict Resolution

Arbitration

Professional disputes between the administration and the administered can be called conflicts. On account of the conflicts between the administrator and the employee, the administrative pattern of an institution may breakdown, efficiency and productivity may diminish and cordial relationships may be adversely affected. Hence, in order to build an orderly set up in the institution the conflicts have to be resolved or settled. For this various courses of action can be followed within the legal framework. This entire process is called arbitration .

When there is a conflict about employment (Job) the process of resolving it is called 'arbitration'. The provisions for arbitration in sections 15(a) to 21 in the Industrial Disputes Act.

Arbitration can be carried out in two main ways:

* **Voluntary Arbitration**
The parties involved inform the Commissioner of Labour on their own and resolve the conflict through an arbitrator named by them.

* **Forced Arbitration**
If the parties involved do not propose an arbitrator in terms of clause 3(J)(d), the Minister by authority vested in him, can detail a person or a group of persons to resolve the dispute.

The arbitrator is a person or a group of persons appointed to settle the dispute by discussing with the parties involved.

The Process of Arbitration

- The Commissioner of Labour provides to the arbitrator a report on the dispute to be settled.
- The parties involved produce a description of the matters in dispute in writing.
- The description produced is exchanged between the opposite parties and response.
- After deciding on the date of investigation it should be completed within a reasonable period.
- If there are external parties who are involved in the conflict but not the original parties they too should be made to participate.
- If one party fails to be present an ex-parte (unilateral) decision is given.
- The decision is gazetted as early as possible, given proper publicity, and due legal status.
- The effective date of the verdict of arbitration could be either the date it was given or a date mentioned therein or the date it was published in the gazette.
- The decision can be rejected by persons named in the decision though not parties to the arbitration process by submitting a written statement on the prescribed form.
- By informing an involved party or a trade union a decision can be rejected. It is stated that an arbitration decision, if personally rejected by a party will not be valid.
- If an intimation is received to the effect that a verdict given by the arbitrator is rejected, the verdict is deemed inoperative after the lapse of 03 months from the date of the acceptance of such intimation. Or else the verdict is deemed cancelled 12 months after the date it became effective.
- The invalidation of the verdict too should be published in the gazette by the Commissioner of Labour. The relevant Trade Union, its members and the employers are bound to accept this verdict.

Counselling

If a dispute arises between an employer and employees of an institution about service it can be resolved through a mediator before it is aggravated. This is called Counselling. The provisions for such resolution are spelt in sections 11 to 15 of the Industrial Disputes Act.

Here, through a person recognized and accepted by both parties, every possible attempt is made to resolve the dispute through discussion and in a cordial and friendly manner. The inquiring officer or the arbitrator can take suitable decisions on the issue.

After arbitration a note containing its terms should be prepared and it should be signed by all parties involved or their representatives. The Commissioner of Labour notifies the parties concerned to inform him whether they accept the recommendations within 14 days and if he does not receive a written reply within that period the arbitrators decision is deemed accepted.

The Ombudsman

When fundamental human rights and other rights are violated through the Executive as well as through the administration, it is the duty of the government to safeguard those rights. In order to perform this duty steps have been taken to appoint a Commissioner with administration. The special authority is known as “The Ombudsman”.

By the 1978 Constitution of Sri Lanka a Parliamentary Commissioner for Administration or and Constitution Ombudsman was introduced.

Provisions about the position of the Parliamentary Commissioner for Administration are given in article 156 of the Constitution of 1978.

The main functions of the Ombudsmen in Sri Lanka are twofold.

- i. To protect the fundamental rights of all citizens.
- ii. To protect violation of the citizens from all administrative injustices.

- ❖ The Parliamentary Commissioner subject to the approval of the Constitution (Ombudsman) is appointed by the President for Administration and he can hold office during good behaviour. This ensures his independence. He has the right to work unbiased without being subject to any influence.
- ❖ To remove the Ombudsman from office too the President must take a decision on a motion to that effect being passed in Parliament in the same manner as Judges of the Supreme Court are removed.
- ❖ The salary of the Ombudsman is paid out of the Consolidated Fund and it cannot be reduced.
- ❖ According to the Constitutional Amendment of 1994, any person can submit his grievance directly to the Ombudsman. Prior to this amendment, the grievance had to be presented to the Ombudsman through a Member of Parliament through the Public Petitions Committee.

Conciliation Boards

As an alternative way of resolving civil disputes, a special category of institutions called Conciliatory Boards have been set up in Sri Lanka and they perform a valuable service. The task of resolving minor disputes is entrusted to these boards.

Assignment

Make a presentation to the class about the Ombudsman as indicated in article 156 of the Constitution of 1978.



Human Rights Commission

- The Human Rights Commission was established under the Sri Lanka Human Rights Commission Act No.21 of 1996, in order to safeguard human rights. This Commission was planned as a high level national institution performing a multiplicity of functions, merging investigative, advisory functions and bringing about a high level of awareness.
- It is stated in section 3(1) of the relevant gazette notification that it should consist of 20 persons who are well versed in the subject, with good practical experience.
- It is stated that the members of this Commission are appointed by the President on the recommendation of the Constituent Assembly. It is stated that the members should be appointed for a period of 3 years on the recommendation of the Prime Minister after consulting the Speaker, and the Leader of the Opposition.
- Even if there are vacancies for members in the Commission, it will not affect its functioning, and the existing members could conduct its affairs.

Functions of the Human Rights Commission

- * With the objective of ensuring that action will be taken in terms of the provisions of the Constitution relevant to basic needs and for respecting the fundamental rights and promoting them being vigilant about the executive and administrative actions and procedures.
- * Investigating complaints about the infringement and imminent infringement of fundamental rights. Taking measures to resolve them by compounding them and reconciling the parties.
- * Advising and assisting the government in the preparation of legal and administrative procedure relevant to the development, promotion and protection of fundamental rights.
- * Recommending to the government about the steps that should be taken to ensure that the national legal and administrative practices conform to international human rights, requirements and standards.

- * Recommending to the government on the necessity of contribution to and agreeing with pacts and other international instruments in the field of human rights.
- * Raising awareness on human rights, promoting them and providing an education that conforms with human rights.

Powers of the Human Rights Commission

- ◆ Investigate into the infringement of human rights.
- ◆ To set up sub-committees on human rights at Provincial Council levels.
- ◆ To intervene in law suits on the infringement of human rights with the permission of the Judiciary.
- ◆ To examine those detained by the Judiciary or in any other form and submitting the necessary recommendations to uplift their condition.
- ◆ To implement the orders given to the Commission by the Supreme Court.
- ◆ To conduct research on human rights, to promote knowledge through programmes, seminars and workshops and disseminate and distribute research outcomes.
- ◆ To provide the necessary funds to an aggrieved person to compensate for committed expenditure in submitting his own complaints.
- ◆ To perform all other beneficial acts necessary to fulfil the functions of the Commissions.

Activity 1.4

List the provisions on human rights embodied in the Constitution.



The significance of the Rule of Law

- Rule of Law means ruling according to an accepted legal system. Rule of Law can be defined as the treatment of both the ruler and the ruled on par or being subject to law.
- Rule of Law can be defined as the Law being supreme to every individual as well as every institution in society.

The Principles related to the concept of Rule of Law

- i. General Law is considered supreme in governance.
- ii. All are considered equal before Law. Law is fair and just for all. No person is entitled to receive special privileges before Law.
- iii. People have inherited rights from birth and from the society (and not from Law).

Marshall has stated three features that affect the Rule of Law

- All should be subjected to Common Law
- Law should be enforced for all in a just, fair and equitable manner by an independent Court of Law.
- There should be an impartial, specific, reasonable and just common system of law.

- ◆ Under the Rule of Law it is important that Law is enforced equally on all. This means that it must be enforced disregarding a persons status, occupation, wealth or any other matter. Moreover the need for an independent judicial system too is important. The appointment transfer, retirement or removal of judges and matters such as their salaries, be paid particular attention so that the functioning of the judiciary is not affected. Further since “ignorance of law is no excuse” the implementation of an awareness, programme on the Law is also important in upholding the Rule of Law.

Importance of fair and prompt administration of justice

Shortcomings of Law and delays in administering justice are the main hindrances for efficient and reasonable meting out of justice. In Sri Lanka too it appears that it takes a long time to terminate the hearing of cases in Law Courts. This itself causes much inconvenience and hardship to people.

Relative to the number of cases presented for hearing, the number of Law Courts for their resolution is not sufficient. Hence it is clear that there is a delay in meting out justice.

Possible hardships caused to people when justice is not administered fairly and promptly

- People lose confidence in the judicial system and Law.
- Law gives place to Lawlessness.
- People are made to spend more money, time and energy awaiting administration of justice.
- Escalation of various crimes and corrupt practices in the country.
- People resorting to irregular ways of seeking judicial redress.
- Degeneration of equality and equity of law in the country.

Assignment



Dispensation of justice fairly and promptly by avoiding the above hardships, would help the maintenance of good governance in society.

Summary

- ❖ Laws are the regulations enacted by the Government based on authority, in order to control people's external social behaviours within an organized society.
- ❖ Among the sources of Law, customs and manners, religion, court decisions, views of legal experts, statutes and the Constitution of the country can be cited.
- ❖ Laws are classified as inland and international. Inland law can be classified as Civil Law and Criminal Law.
- ❖ The Supreme Law of a country is its Constitution.

- ❖ Apart from this, in Sri Lanka there are specific types of Laws called Kandyan Law, Muslim Law and Thesawalamai.
- ❖ The power of making and enacting Laws are vested mainly in the Minister of Justice, Chief Justice and the Attorney General.
- ❖ The provisions for safeguarding the independence of the Judiciary are embodied in the Constitution itself.
- ❖ In Sri Lanka there is a hierarchy of courts, namely, the Supreme Court, Court of Appeal, High Court, District Court and Magistrate's Court.
- ❖ As alternative methods to disputes and resolve conflicts, there is the system of arbitration, Ombudsman and Human Rights Commission.
- ❖ Treating everybody equal before law is the essence of the Rule of Law.