

01

Law and Justice

Introduction

As citizens, it is our responsibility to be concerned about the well being of the society. According to the principle “ignorance of the law is no excuse” everyone should have a proper understanding of the law. This chapter will focus on giving a basic knowledge about law and justice, different types of laws, Judicial systems, ways of settling disputes, and the concept of Rule of Law.

Defining law

Law can be defined as a system of rules used for controlling formal human behaviour and human activities in a community or in a country. Different thinkers have defined law in different ways.

Definitions given by T. H. Green and John Austin are given below.

Law is a system of rights and obligations enforced by the state . **T.H. Green**

The law is the command of the sovereign and violating it is a punishable offence. **John Austin**

Every society should be ruled according to a specific law. It is the responsibility of the citizens of a country to respect and obey the law. Justice, peace and social security are secured in a society where the rule of law exists. The prime aim of the law is to control human behaviour by which justice is ensured so that life, rights and property of the people are safeguarded.

Justice is an other concept related to law. Justice can be defined as a fair behaviour or fair treatment. Justice is meted out through impartial enforcement of law after listening to all the parties well.

Dispensing the law should be done in fairness and equality to all. If the law is properly exercised in a country the society becomes law abiding. People develop a positive attitude towards the law and trust it. It contributes to create a just and fair society.

Following factors are very important to create justice.

- Right of an individual to know about allegations made against him
- Right of an individual to be heard, in person or by an Attorney-at-Law, at a fair trial by a competent court.
- The right to get a fair and an impartial trial

Characteristics of law

All are equal before law and all have the right to get the protection of law. Some of the highly civilized societies, where advanced legal systems prevail, have the following characteristics.

- Laws are made only by the state based on its authoritative power
- They are made with the intention of controlling human behaviour and actions
- Laws should be fair and just
- Laws should be enacted aiming at achieving the wellbeing of the common society
- Laws should adjust in conformity with the changing needs of the society
- Laws should be clear and definite
- Contravention of law is a punishable offence

Sources of law

Factors that contribute to the derivation of law or the means of getting information about law can be defined as sources of law. Some of these sources are as follows.

1. Constitution - It is the supreme law of a country
2. Different statutes - They are enactments passed by the parliament and they can also be taken as the sources of law
3. Judgements - Decrees, orders, pronouncements or judgements delivered by competent Courts of Law which are followed by the other courts of law subsequently. This is known as Case law.
4. Views and principles expressed by legal authorities or eminent scholars of law are recognized as scientific principles of law.
5. Customs - Well established customs accepted by the society are known as Customary laws
6. Religion - Laws have been made on the basis of different religions. E.g. Muslim law and Vehera and Devalagam law.

Types of laws

According to the way that laws are exercised, they are classified as domestic and international law.

Domestic laws

Domestic laws are operative and effective within the territory of a country. They can differ from country to country. They are enacted in order to meet the needs of the country. Domestic laws can be classified into two types as Civil law and Criminal law. They are described in the diagram given below.

Differences between criminal law and civil law are as follows.

Criminal Law	Civil Law
<ul style="list-style-type: none"> ● When a person damages the life or the property of another person, criminal law is applied to determine the case. ● Criminal law does not have different branches but it is classified as crimes of severe nature and minor offences. ● Special punishments are imposed or inflicted by the Courts on persons convicted of such crimes and offences. <p>E.g.- confiscation of property by the state, capital punishment, imprisonment.</p> <ul style="list-style-type: none"> ● Criminal Procedure of 1979 and the Penal Code of 1833 are important statutes that deal with crimes. ● In criminal law, the priority is given to punishments and rehabilitation. ● In criminal law the complaint or indictment is prepared by the police or Department of Attorney General. 	<ul style="list-style-type: none"> ● Civil law resolves or deals with disputes among individuals. ● Civil law has different branches. <p>E.g. - Law of contract business law, family law</p> <ul style="list-style-type: none"> ● Paying compensation to the affected parties on civil offences committed on them. ● Civil procedure code is important with regard to civil law. ● Civil law gives priority to recover damage or restoration of damage from the parties at fault. ● In a civil case application for relief from court is sought by individual parties concerned.

Criminal law covers and includes prevention of crimes, taking action against offences concerning anti social activities, activities that affect or threaten peace in the public such as murder, torture, injuring, sexual harassments and crimes, rape, damaging common property, stealing property, looting, keeping stolen items and keeping drugs and more over selling them.

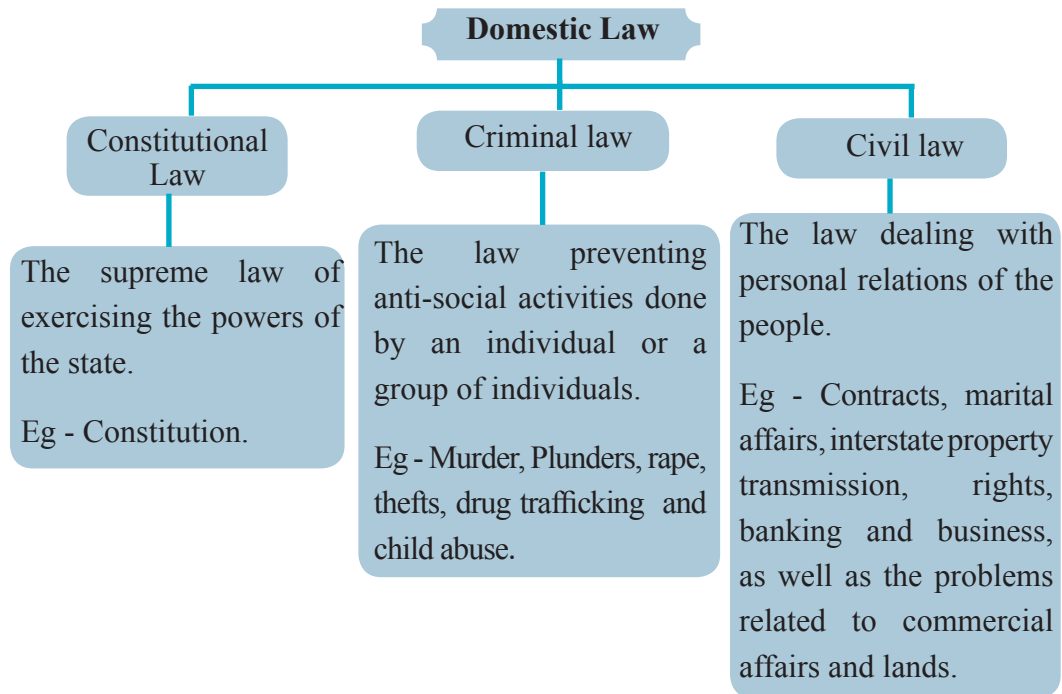


Diagram 1.1 Classification of Domestic Law

International Law

'Starke' defines international law as the law that controls inter-state relationships, relationship between states and international organizations and the individuals. Currently there are many branches of law that have emerged from international law.

Eg - International human rights law, environmental law, law of entrepreneurship, oceanic law. International Court of Justice and International Criminal Court to dispense with international law.

The Legal systems of Sri Lanka

Roman-Dutch law is the Common law of Sri Lanka. In addition to that there are a few other special laws in Sri Lanka.

(01). Kandyan law

Kandyan law was in operation during the time of ancient Kandyan Kingdom. During the period of British rule, this law was restricted only to the Sinhalese living in Kandyan territories. Today, this law controls marriage, divorce, heirship etc. Kandyan Sinhalese are free to contract marriages under the General Law of the country.

(02). Thesawalamai law

The term Thesawalamai means the custom of the land. This law had its origin in the customs of the Tamils resided in Northern province. All those customs were codified into a law in 1706.

(03) Muslim Law

Muslim law is applicable to anyone who follows Islam. Al-Quran, Al-Hadees, Sunnahs, Ijma and Kiyas are the documents that are considered as sources of Islamic law. Mohamadan Code made in 1806 is currently operative in Sri Lanka.

Eg- Muslim marriages and divorce, estate rights, adoptation, maintenance etc are governed by this law. Quazi courts were set up in 1929 for the first time to close cases according to Muslim law.

The responsibility of a state is to establish a good society in the country while preserving and maintaining law and order. It is essential to work according to indigenous laws when the law is in conflict with the other laws of the country. It is also important to bring dignity to the country when dealing with other countries under the international law.

Activity 1.1



- What do you mean by the term “Law”?
- Explain as to why a country needs law.
- Describe the special laws in Sri Lanka briefly.

Judicial system in Sri Lanka

Evolution of judicial system in Sri Lanka

The judicial system in Sri Lanka has had its origin in the monarchical era. The king was the highest and the supreme judicial officer while judiciary was functioning under an unwritten system of law. The final appeal on any judgement was also made to him.



Fig. 1.1 Kandy Magul Maduwa the royal court

Portuguese continued to apply the ancient Sinhala judicial system in Sri Lanka during their rule. Judicial powers were exercised by Korale, Disave and Vidane while village council system or gam sabha was also continued. During the period of the Dutch there were three judicial districts namely Colombo, Jaffna and Galle. They employed a systematic judicial system.

The judicial system was made much more systematic during the period of British colonial rule. Accordingly, the Roman –Dutch law introduced by the Dutch was also applied further by the British judicial system. During that period, one could appeal to the privy council of England against a decision given by an apex court in Sri Lanka. Constitutional reforms in 1972 abolished that power. According

to the Law of Dispensing Justice introduced in 1973, the Supreme Court of Sri Lanka was made as the apex court while the Court Of Appeal, High Court, District Court, Magistrate Court and the Primary Courts remained as other courts of the judicial system of Sri Lanka.

Activity 1.2

- Study the special changes brought about to the judicial system in post-independence period of Sri Lanka.

Present judicial system of Sri Lanka

Judicial system established under Judicature Act and by the Constitution of 1978 is illustrated in the diagram given below.

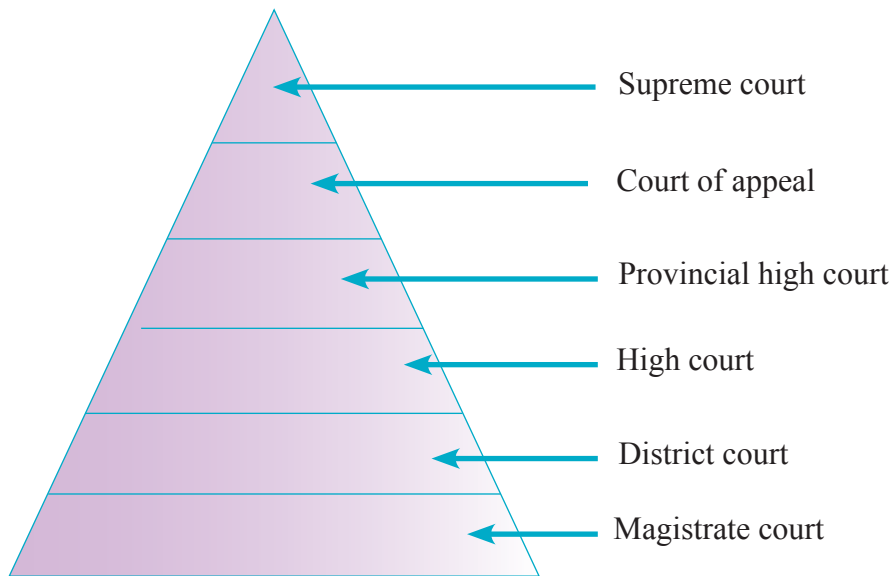


Diagram 1.2 - Present judicial system of Sri Lanka

In addition to the judicial system mentioned above, some other institutions and tribunals administering judicial functions have been set up through special Acts of Parliament. Accordingly, labour tribunals have been established to settle labour disputes, while Quazi courts have been set up for resolving marriage and divorce

issues of Muslims. More over Rent Control Board has been established to resolve problems related to house rentals. In addition to this, Conciliation Board has been established to resolve the disputes without going to court.

Now, let us study the main judicial institutions briefly.

Suprme Court

Supreme Court is the highest and final superior court of record and is empowered to exercise its powers, subject to the provisions of the Constitution. The Court has final and conclusive civil and criminal appellate jurisdiction on appeals from the Court of Appeal or any Court of first Instance. It is headed by the Chief Justice. Powers of the Supreme Court which comprises of the Chief Justice and other Judges are shown in the diagram 1.3.

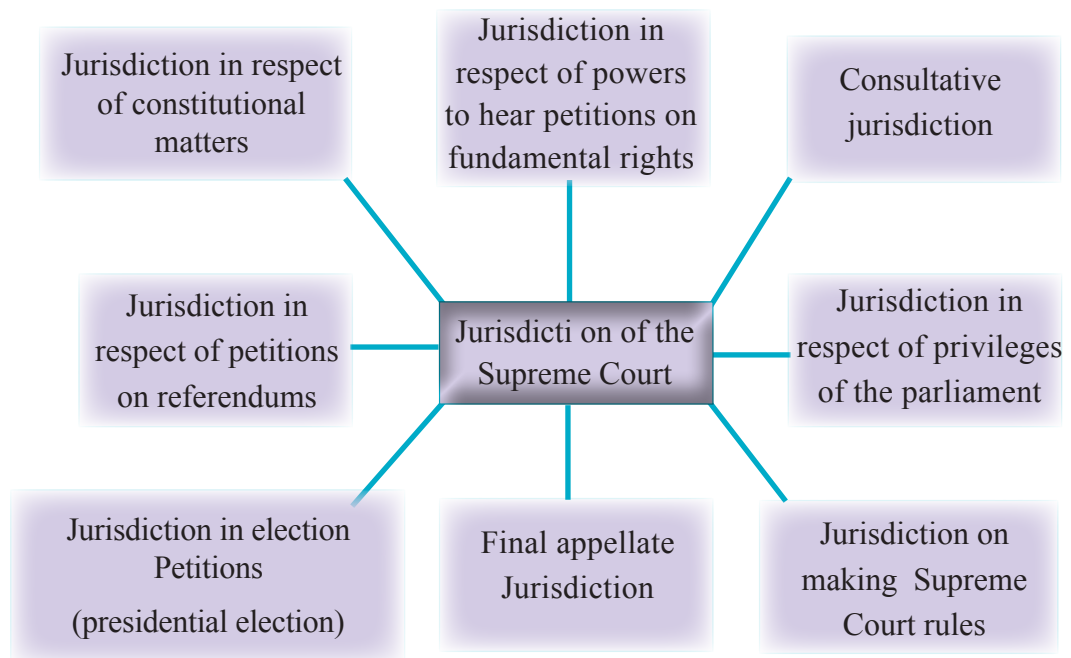


Diagram 1.3 - Jurisdiction of the Supreme Court



Fig. 1.2 - Supreme court

Court of Appeal

Next to the Supreme Court, the Court of Appeal is the highest and final superior court of record. It is headed by the president of the Court of Appeal. Judges are appointed to the Court of Appeal by the president under the recommendation of the Constitutional Council. Jurisdiction of the Court of appeal are as follows.

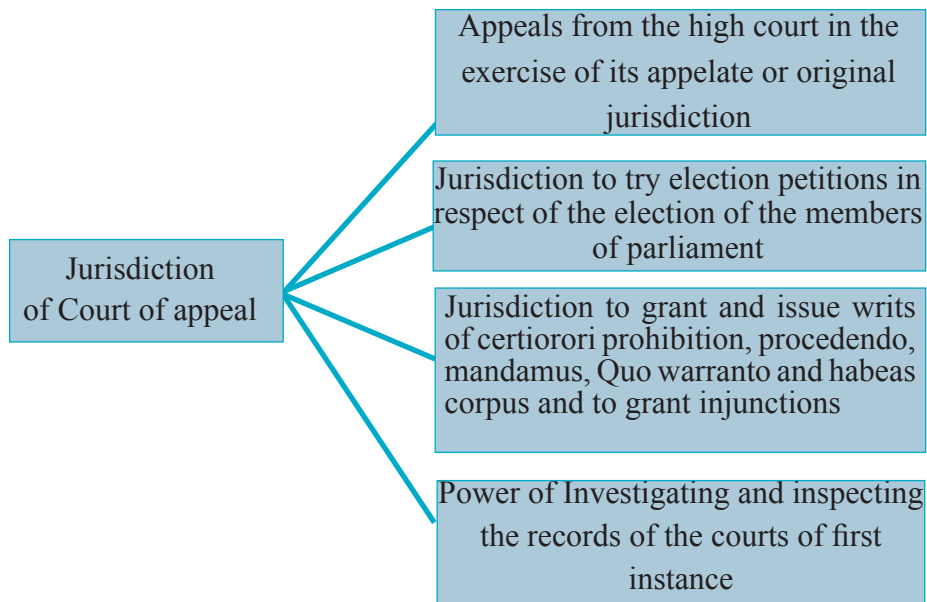


Diagram 1.4 Jurisdiction of Court of Appeal

Provincial High Court

The Provincial high courts were established under 13th Amendment of 1978 constitution. Judges are appointed to this court by the chief justice. The purpose of establishing this court is to decentralize the powers of court of appeal to provincial level. It provides an opportunity for the public to present their appeals at provincial level. The powers of this court are as follows.

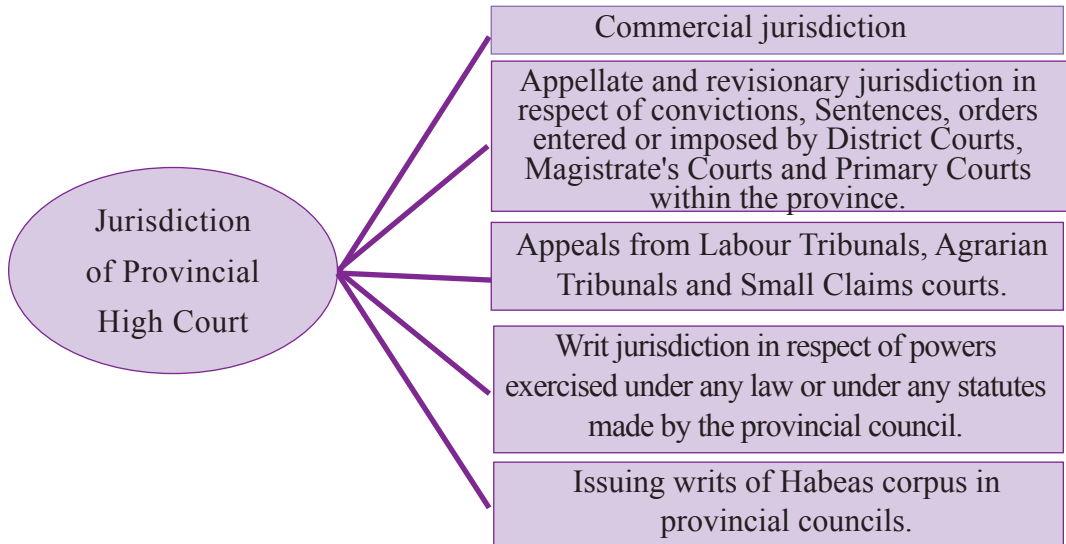


Diagram 1.5 Jurisdiction of Provincial High Courts

High court

The High Court of Sri Lanka established under the Constitution, has power and the authority to hear, try and determine all prosecutions on indictment. It has criminal and admiralty jurisdiction and also jurisdiction with regard to offences committed aboard aircraft and within the territorial air space. The High Court is the only Court which exercises the jurisdiction of the Court of First Instance and the appellate jurisdiction. It exercises the civil jurisdiction as well as the criminal jurisdiction.

Commercial High Court is empowered to hear cases involving commercial transactions worth of which exceeds three million rupees and jurisdiction over the cases falling under the Intellectual Property Act. Those powers are as follows.

Jurisdiction of High Court

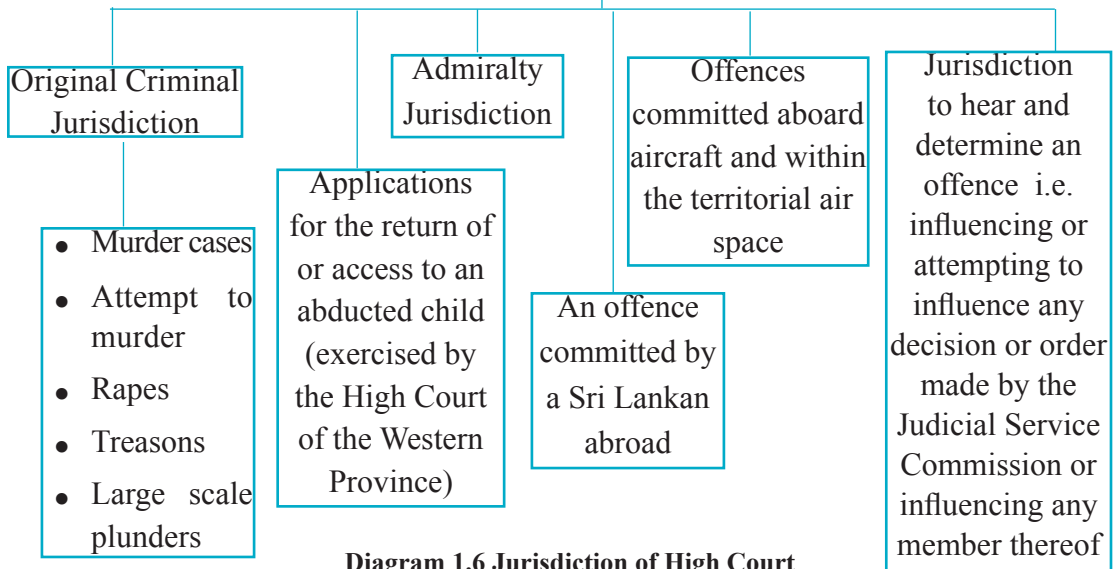


Diagram 1.6 Jurisdiction of High Court

District Courts

District Courts have been established in 54 judicial districts in Sri Lanka. These courts have all civil jurisdictions relevant to each district. The appointment and removal of district court judges are carried out by the Judicial Service Commission. Cases heard by District Courts are as follows.

1. Cases related to marriages. (divorce, marriage ,asking compensations for sexual misconduct and divorce allowances etc)
2. Testamentary Cases - (cases related to the property of people, died without leaving a last will i.e. intestate estate of deceased persons)
3. Guardianship of idiots and persons of unsound mind and guardianship of their property Cases related to guardianship and legality of the under aged children.
4. Cases related to guardianship and legality of the under aged children.
5. Demands for adoption of children.
6. Requests for changing the names in birth certificate.
7. Cases related to incomes.

8. Cases on trusts and bankruptcy.
9. Cases on payments, debts, damages demands for and financial cases.
10. Partition cases.
11. Cases on lands.
12. Cases on house rents.
13. Cases on compensation for accidents and insurance.
14. Cases filed under company act.

Magistrate's Court

Magistrate's Courts are established for 74 judicial divisions in Sri Lanka. Every Magistrate's Court is vested with original criminal jurisdiction, and is ordinarily empowered to impose sentences up to a fine of Rs. 1,500 and/or 2 years rigorous or simple imprisonment.

All Magistrates are appointed by the Judicial Service Commission.

Appeals from convictions, sentences or orders of Magistrate's Courts within a Province lie to the High Court of the Province.

- Offences on public security.
- Offences related to army, air force and navy.
- Offences related to government servants.
- Offences related to elections.
- Request for orders concerning protection from domestic violence.
- Providing false evidence and offences against public justice.

In addition to that this court can also work on offences mentioned in parliamentary Acts.

Eg.- Forest Ordinance, Excise Ordinance, Cosmetics, Devices and Drugs Act, Food Act, Road Development Authority Act, as well as Motor Traffic Act.

Activity 1.3



- Observe a judicial institute in your area and prepare a report about its functions.

Duty of the chiefs who exercise the law

Three main offices or roles that occupy the top most place on judicial affairs and law of Sri Lanka can be identified. They are, the Minister of Justice, Chief justice, and Attorney General. Now let us study their duties.

Minister of Justice

Minister of justice is entitled to get the bills related to the field of judiciary from the parliament as well as to answer the questions of the parliament on judicial affairs. He can also discharge the functions assigned by the constitution and by the other acts, as well as to appoint Justice of Peace.

Chief Justice

He is the chief of the Supreme Court which is the apex court of Sri Lanka. He is in charge of inspecting registrar of Supreme Court giving commands and control. He is also the chairman of Judicial Service Commission. He makes rules related to judiciary and three more judges assist this course. Few areas on which rules are made are as follows.

- Rules as to the procedure for hearing appeals, appeals, to be entertained or dismissed.
- Rules as to the granting of bail.
- Affairs related to the profession of lawyers (Admission, Enrolment, suspension and Removal of Attorneys - at - Law)
- Affairs related to panel of jurors.
- Amending, changing rules and introducing new rules related to judiciary.
- Proceedings of Fiscals and the process of such courts.

Attorney General

Present post of Attorney General has been established according to the ordinance no 01 of 1883. Attorney General who is the chief legal officer of Sri Lanka is appointed by His excellency the President. He is the chief of the department of Attorney General. Some of his functions are as follows.

1. Power to grant pardon on the most obvious evidence and other matters in the cases that can be exclusively heard by the high court.
2. Giving approval for filing some cases in criminal courts.
3. Powers to summon some officers of government departments to his office and giving necessary advice to them.
4. Power to take legal actions against government servants who treat the public unfairly and those who are reluctant to mete out justice as well as those who ignore their duties.
5. Before a case is filed against a minister, secretary, or a government officer, it should be informed to Attorney General.
6. Power to confer the responsibility of Attorney General to his representatives.
7. Power to release convicts when enough evidences are not available.
8. Taking the responsibility on the constitutionality of bills submitted to parliament.

Functions of Attorney General are as follows.

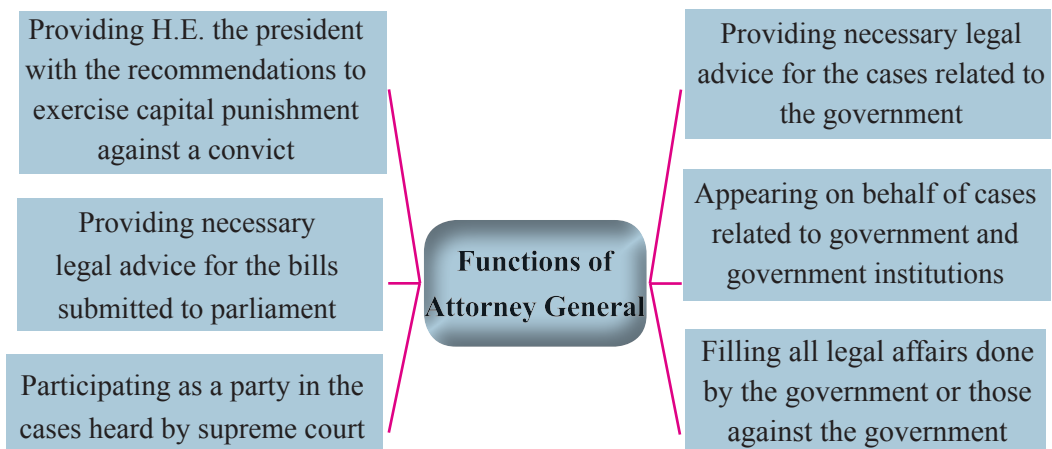


Diagram 1.7 Functions of attorney general

There are few officers who are helpful in fulfilling powers and function of Attorney General.

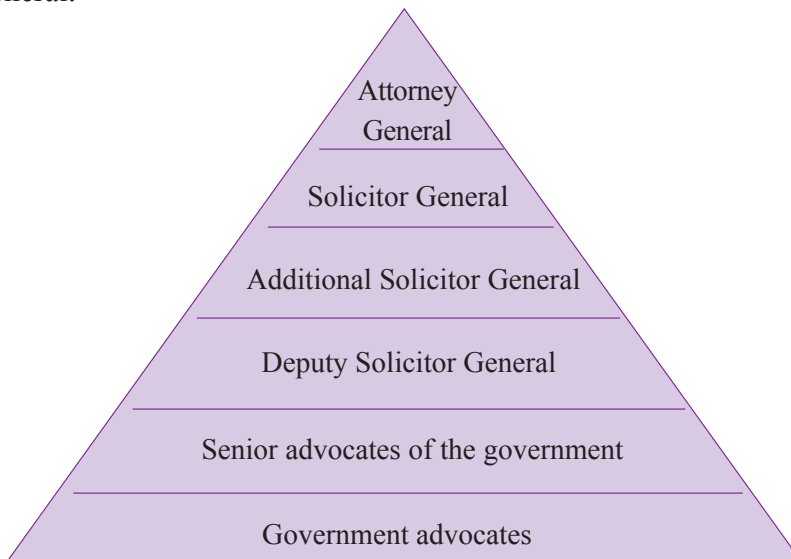


Diagram 1.8 Officers who assist the Attorney General

Activity 1.4

- Evaluate the functions of Minister of Justice, Chief Justice and Attorney General.

Alternative methods of resolving disputes

Several alternative methods have been established in Sri Lanka before going to a judiciary to resolve a problem. It provides an opportunity for the people to save their money, time and labour while getting an immediate solution which is agreeable to both parties. Some of those methods are as follows.

Arbitration

Problems arised between employers and employees are harmful for the respective institution as well as for the existence of the country. Working on solving those disputes within a legal framework is known as the arbitration Industrial settlement Act of 1950 can be used for that.

Settlement can be classified into two on the basis of the way it takes place.

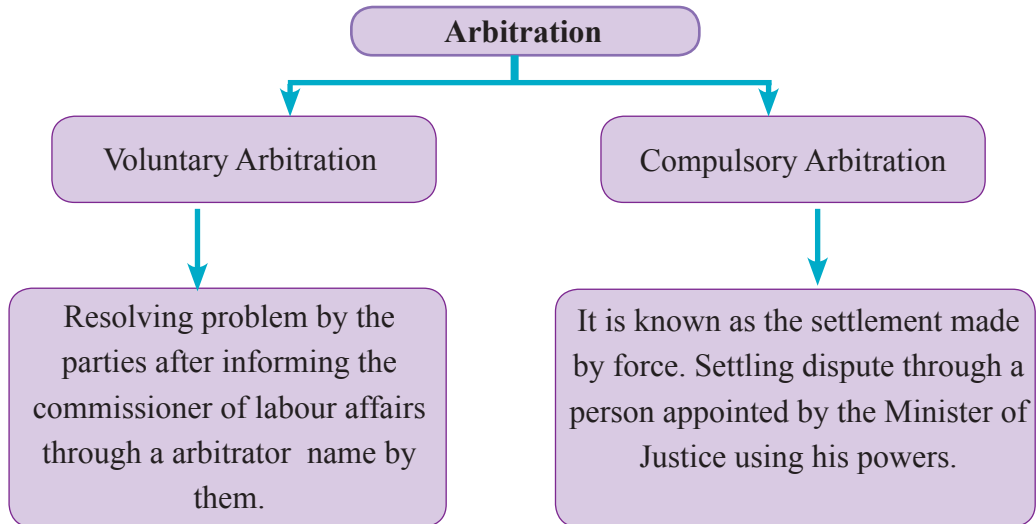


Diagram 1.9 – Methods of arbitration

An individual who discuss with both parties related to a dispute and come to a resolution is called an arbitrator. One or more arbitrators may involve in the arbitration procedure.

In the process of arbitration, a report on dispute is given to the arbitrator by the commissioner of labour. The arbitrator contents an investigation of dispute that should be finished within a reasonable time frame. If there are other parties related to the dispute, they should also participate in it. The decision is given after obtaining the ideas of both parties. The decision should be published in Gazette by the commissioner of labour to ensure the legality. The parties can also reject the decision.

Ombudsman

The post of Ombudsman or the administrative officer of parliamentary affairs has been established in order to safeguard the fundamental rights and other rights of citizens from being violated by the executive or administrative affairs.

This post was introduced by the constitution of 1978. He performs two main duties.

- I. Preventing the violation of fundamental rights of all citizens.
- II. Protecting citizens from all administrative injustice.

He is appointed by H.E. the President. He can hold the post as long as he is of good health and conduct. The salary is paid through consolidated fund and it cannot be diminished during his term of the office. He can be removed by H.E. the President through a parliament resolution. After 1994, any citizen can complain directly to the Ombudsman.

Activity 1.5



- Prepare a report after collecting information about the functions of a conciliation board in your area. Mention merits and demerits of it too.

Human Rights Commission

Every individual has a right to safeguard his human rights. It will be discussed at length in the chapter on Human Rights and duties. A person can complain to the Human Right Commission about violations of human rights and get a relief. This commission has been established through the Act number 2 of 1996. It is comprises of 20 members and they are appointed by H.E.the president.

Main functions of the commission are as follows

1. Making people aware of human rights
2. Giving advice to the government on fundamental rights
3. Hearing the complaints on violation of human rights and giving solutions.
4. Being watchful about executive and administrative affairs so that Human rights are safeguarded.
5. Giving advice to the government to make national laws and policies according to international principles on human rights.
6. Giving advice to the government about the need to enter into international treaties relevant to human rights.

Powers of Human Rights Commission are as follows

- Inspecting the violation of Human Rights and interfering in judicial affairs
- Establishing sub committees relevant to human rights in principle level

- Making recommendations after examining those who are imprisoned through a court order or in any other ways
- Conducting programmes to promote human rights
- Providing a reasonable compensation for those whose human rights are violated

Counselling and conciliation are two other methods followed which have already been discussed in citizenship education book of grade 10 under the topics of methods of conflict resolutions, (page 102 – 105) Thus, they are not discussed here.

Activity 1.6

- Write the advantages that individuals, institutions and society in common get by the use of alternative ways to solve disputes.

Rule of Law

Rule of law means ruling a country on the basis of the supremacy of the law. Every individual and institution is expected to work according to the law. Constitutional law is the most supreme law in our country and everyone is obliged to work according to it.

G. Martial has also mentioned about three characteristics that influence the rule of law.

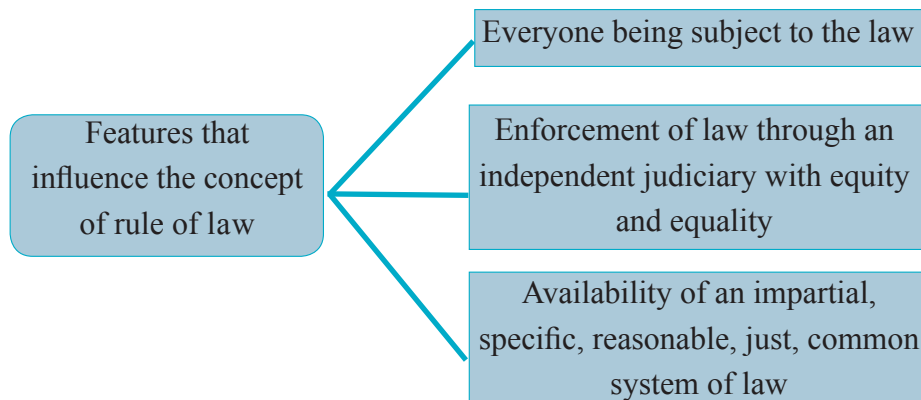


Diagram 1.10 – Features that influence the rule of law

According to the above qualities some of the features seen in a society where the rule of law has been established are as follows.

- Availability of an independent judicial system
- Awareness of every citizen about law
- Not treating ignorance of the law as an excuse
- Dispensing law impartially without any delay
- Not exercising law on the basis of status, profession, wealth or any other matters
- Treating everyone equally before the law
- Not exerting influence on judges in their decision making

When this concept is exercised, the extreme conditions that can badly affect individuals can be minimized so that a fair and just society can be established.

Independence of the Judiciary

Judiciary occupies a significant place in modern society. The reason is the priority given for judiciary for safeguarding rights and freedom as well as to ensure justice and equity.

When the judiciary is independent and impartial, a confidence is built up in individuals about judiciary. People tend to live while respecting law under such conditions. Constitution of 1978 has provided many provisions to safeguard independence of judiciary.

The use of goddess Athena as the symbol of judicial affairs, indicates the fact that it functions with an equity, impartiality in a moderate manner. Some of the provisions introduced to safeguard independence of judiciary are as follows.



Fig 1.3 Athena

- Appointment of judges

Judges are appointed by H.E. the President under the recommendation of the constitutional council. The age of retirement is mentioned and they cannot be removed before it. They can hold the post as long as they are in good health.

- Removal of judges

There has been a special procedure proposed in the constitution. This procedure also expects to ensure job security. So that they can give Judgements independently and impartially.

- Salaries of judges

Salaries are paid to the judges through a consolidated fund. It is also a step to safeguard independence of judiciary. Accordingly, the budget has no reference to the allocations related to judges. Salaries of the judges of Supreme Court and Court of Appeal are deducted by the parliament.

- Accepting other positions

According to the constitution it is strictly prohibited for the judges of Supreme Court or Court of Appeal to accept any other paid or non paid post without approval of the H.E. President. They should not be employed in any other profession.

This also prevails as a provision to ensure the independence of judiciary.

- Restriction of unnecessary involvements and control.

To ensure independent judiciary, infaluencing judicial affairs was determined to be a punishable offence. Judges can function without being subject to any other influences due to this provision.

- Establishing judicial service commission

Establishment of judicial service commission is also a step to safeguard the independence of judiciary. Chief Justice is the President of this commission while two other judges are members. Members are appointed by H.E. the President for a period of five years.

Activity 1.7



- Do you think judiciary should be independent? State 5 reasons supporting it.

Importance of dispensing law impartially without any delay

Taking much time for a trial can lead to dilute the confidence of citizens about the law and judiciary. Drawbacks or delay of dispensing justice can make an injustice for those who are affected.

Some of the demerits of unnecessary delay and not dispensing justice impartially are as follows.

- Decline of the confidence of individuals on judicial system and the law
- Rise of anarchy instead of the law
- Increase of crime and corruptions in the country
- Deterioration of equity and equality of law in the country.
- Tendency to use illegal methods to achieve justice
- Spending much money and time to fulfill the justice
- Decline of people's respect to judiciary and the law

Independence of judiciary and dispensing justice efficiently with equity are essential to minimize above situations and to achieve the concept of good governance in the country.

It is also a prime duty of the citizens to work while respecting the law and judicial system of the country peacefully. Every citizen should abide by law since it is a tool that perfects peaceful and justifiable societies.

Activity 1.8



- Discuss the importance of living as a law abiding citizen.