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# The Legal System of Sri Lanka

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## Introduction

Sri Lanka, formerly known as Ceylon, is a small island-nation in South Asia. It is referred to as a “Legal Museum” because different kinds of law have affected the development of the law of Sri Lanka. The legal system of Sri Lanka consists of a number of different systems and diverse traditions, and the interaction between the legal systems can be clearly understood when explained in historical perspective. The existence of a multiplicity of laws in Sri Lanka is the result of historical development after the invasion of various European powers.

The 16th century heralds the beginning of western rule with the arrival of the Portuguese in 1505. The Portuguese were the first European power to exercise dominion over Ceylon. They conquered only a part of the island. At that time, the two main sections of the population were the Sinhalese, who spoke the Sinhala language, and the Tamils, who spoke the Tamil language. The Sinhalese, who were Buddhists, occupied the southern and western areas of Sri Lanka; while the Tamils, who were Hindus occupied the northern areas. The rest were a community of the Muslim traders<sup>1)</sup>, who had settled on the western seaboard.

Although the Portuguese occupied Ceylon from 1505 to 1656, they did not introduce their own system of law into Ceylon, because the Portuguese legal system was not developed enough to be transplanted to another country. The law for the Sinhalese before the arrival of the Portuguese was a single system which was administered in the Sinhalese areas. However, from the period of Portuguese rule, a distinction was made between the laws and customs of the Kandyan (consisted of the central area and the north-central plain of the island) and low country (coastal areas outside the Kandyan kingdom) areas. As the Portuguese did not occupy the Kandyan provinces, they did not influence the law in these provinces. But the laws and customs in the maritime province came under the influence of Portuguese customs, and in due course the Sinhala laws and customs changed their character.

Followed by the Portuguese, the Dutch ruled certain parts of Ceylon from 1656 to 1796. They introduced Roman-Dutch law to Ceylon as they carried the law of their homeland into their colonies, scattered in the East and West Indies. The early colonial policy of the Dutch was to apply their laws to both European and local inhabitants alike. But it became apparent that non-recognition and destruction of local customs created animosity among the local people. Therefore, the Dutch applied their laws to criminal cases and allowed the local customs to hold sway in civil cases.<sup>2)</sup> Dutch law was resorted to where the local customary laws were silent or the Dutch considered them unsuitable. As the Dutch never ruled the Kandyan provinces, they had no influence on the Sinhalese laws in those areas. Jayawardena in his book *The Roman-Dutch law as it prevails in Ceylon* states that the Dutch law, was not the primary law that was applied to the Sinhalese in the maritime provinces in Dutch times. He further states that it

is clear that the Dutch were mercenary in their outlook and regarded the colonies as sources of revenue. The Dutch were not interested in enforcing their laws on such colonies. However, under Dutch rule in the late eighteenth century, the colonial administrators codified the rules of inheritance, marriage and divorce law in order to facilitate the application of Muslim family law. These special laws were preserved and adopted after the British defeat of the Dutch in 1796.

In 1796, the British conquered the island. The Kingdom of Kandy in the mountainous central area of Ceylon had, throughout rule by the Portuguese and Dutch rule maintained its territorial integrity. However, in 1815, the King of Kandy was deposed and the entire island passed under British sovereignty. The British had acquired Sri Lanka as a ceded colony, and the law that was already in force, there prior to cession, continued in force until changed. The principle that the laws of each area of the colony remained in force subject to certain qualifications, until changed by the deliberate act of the new sovereign was followed by the courts in Ceylon.<sup>3)</sup> This principle was also given statutory force by the enactment that the laws which prevailed under "the ancient Government of the United Provinces (i.e. of the Dutch) should continue subject to such alterations as have been or shall be by lawful authority ordained."<sup>4)</sup> Consequently, the Roman Dutch law and the customary laws of the Sinhalese, the Tamils and the Muslims continued in force.<sup>5)</sup> Muslim law was applied as a strict personal law. Personal law is the law applicable to a section of the population in a given territory considering certain common factors which they possess. *Tesawalamai*, a personal law, governed only Tamils resident in a particular territory (Jaffna district). Kandyan law governed the Sinhalese residents in the Kandyan kingdom. Buddhist law and Hindu law affected the growth of the Sinhala law and

Tamil law respectively, but were not given effect by the courts as separate and distinct systems. Religious laws were given effect if observed as custom, or if there was a religious dispute which affected civil rights. The Roman-Dutch law, introduced during the period of the Dutch rule, was applied during the British administration to the European inhabitants, the Sinhalese outside the Kandyan provinces and those subject to the special personal laws where those laws were silent.

### **The modern sources of Dutch law in Ceylon**

The treaties of the jurists and the cases decided by the Ceylon courts interpreting and sometimes modifying the Roman-Dutch principles may be regarded as the most important modern sources of Dutch law in Ceylon. The three significant sources of modern Roman-Dutch law are (1) the treatise of the jurists, (2) Ceylon case law, and (3) statute.

The most important and the oldest source of Roman-Dutch law is the treatise of the writers. Among the jurists who are most frequently cited in the Ceylon courts are Voet, Grotius, Van der Linden, Van der Kessel and Van Leeuwen. The Ceylon courts generally preferred the view of Voet, but in *Ceylon General Tea Estates Co. Ltd., vs. Pulle*,<sup>6)</sup> the court gave preference to the views of Grotius and Van der Kessel, over those of Voet and Van Leeuwen.

The decisions of the Ceylon courts are an important source of Roman-Dutch law as it is applied in Sri Lanka today. In Roman-Dutch law, as it was administered in Holland, and other countries whose laws are based on Roman law, the decisions of courts were not a very significant source of law. The Ceylon cases consult South African authorities on issues regarding the interpretation of Roman-Dutch authorities because South Africa is a

jurisdiction where Roman-Dutch law is applied.

These statutes enacted by the Dutch are also a source of modern Roman-Dutch law to a limited extent. There seems to be some difficulty as to the extent to which Dutch law applies in Ceylon. It seems to have been accepted by Ceylon courts that Dutch legislation of general character is applied to Ceylon, if it was passed before 1656.

This proposition is subject to two qualifications. First, Dutch statutes passed before 1656 which were clearly of a local or peculiar nature have not been regarded as part of Roman-Dutch law that was in force in Dutch colonies. In the case of *Ramasamy vs. Tamby*,<sup>7</sup> it was held that the usury laws of Holland, being in their nature merely local enactments and unsuited to the conditions of Ceylon, were not introduced by the Dutch, and were not enforced during their occupation. Secondly, statutes passed after 1656 which had been introduced to Ceylon might nonetheless apply here, if it can be shown that some statute or part thereof had been incorporated into the customary law.

With regard to the importance attached to Roman-Dutch law, Professor T. Nadaraja takes the view that Roman-Dutch law, as found in the treatise was the fourth in order of importance as a source of law in Ceylon in the Dutch period. The Statute of Batavia which was an important legislative enactment proceeding from the headquarters in Bavaria of the Dutch East India Company which had the power to legislate for the colonies, and was considered the most important.

## **Roman Dutch Law**

The phrase Roman-Dutch law (*Roomach Hollandis Recht*) was invented by Simon Van Leeuwen who employed it as a sub-title of his work, *Paratitla*

*Juris Novissimi* published in Leiden in 1852. The term Roman- Dutch law is a mixture of Roman and Dutch law. It is the legal system which was developed during medieval times in The Netherlands and Germany, deriving from Roman Law and German law.

Roman-Dutch law was introduced to Ceylon after 1656, when the maritime provinces of Ceylon were conquered by the Dutch. In 1796, the British assumed sovereignty over the Dutch territories, but by the Proclamation of 1799 the law, which was in force under the Dutch government, was retained.

In the British period, Roman-Dutch law, subject to the application of statute, came to be applied to the inhabitants of Ceylon (including the Sinhalese of the maritime provinces), and to those subject to Kandyan law, Muslim law and *Tesawalamai* where those laws could not be applied. Roman-Dutch law was superseded by other laws in relation to its subject matter and thereby restricted. It was extended to the Kandyan province and was applied to the non-Kandyans and Kandyan residents where their laws could not be applied.

The Roman-Dutch law is referred to as the “common law” or “residuary law” of Ceylon, applicable to fill in the gap in a legal system containing a multiplicity of personal laws.<sup>8)</sup> The “common law” of Ceylon is the Roman Dutch law.<sup>9)</sup> Thus, the phrase “common law” has been traditionally and frequently used in Ceylon to describe the Roman-Dutch law, the residuary law of the land which is common to all persons; the law, which is distinct from the laws which govern special sections of the community (the Muslims, the Tamils of Jaffna and the Kandyans) applies to the entire population (including those subject to these special laws where these special laws and the statute laws cannot be applied).



As to the law of persons, large sections of the people are governed by their own personal or customary law, and the Dutch and English influences are hardly recognised. As concerns property, the foundation is based on Roman-Dutch law, but many parts of the law have been amended by legislation and local customs. As for inheritance, Roman-Dutch law is superseded by later statutes. Concerning contracts, Roman-Dutch law is still prevalent, while in commercial law, there are some statutes influenced by English law. As regards quasi-contracts, especially unjust enrichment, Roman-Dutch law has a strong influence. Similarly, Roman-Dutch law strongly influences tort law.

### **The overlap of English law and Roman-Dutch law**

The influence of English law in Ceylon is not as far-reaching as it has been in in some other former British colonies. The introduction of English law into most British colonies was virtually total - the laws in force in England were adopted for the conquered British colony.<sup>10)</sup> In Ceylon, a different pattern was followed because of the existence of the Roman Dutch law and the personal laws. The English law relating to certain subjects was incorporated by statute and judicial decisions.

As already mentioned, the fundamental law is the Roman-Dutch law. The English law on certain subjects has been incorporated, and in certain areas has superseded the Roman-Dutch law. In *Jayawickrema vs. Amarasuriya*,<sup>11)</sup> the English law relating to consideration was held to be not part of the general law of Ceylon, because the concept is foreign to the Roman-Dutch law. But consideration, as required in contracts, is statutory law based on English law. It is interesting to note that at a point where the applicability of the English law is terminated, Roman-Dutch law comes back

into operation. In interpreting “specific performance” and “existing contract” it is the Roman-Dutch law, and not English law, which is relevant.<sup>12)</sup> In determining whether a trust had been created for an illegal purpose, and in what circumstances, is the general law which applies, and not English law.<sup>13)</sup>

In Roman-Dutch law where there is no fixed place for the performance of a contract, it is the duty of the creditor to seek out the debtor and seek performance. However, in English law, the debtor must seek out the creditor. The cause of action would arise in the former case where the debtor resides and in the latter case where the creditor resides. This was decided in the case of *Haniffa vs. Ocean Accident Corporation*,<sup>14)</sup> The distinction is important as the place where the cause of action accrues is the sole factor which confers jurisdiction on the court in which the action is brought.

Another example where the English law and Roman-Dutch law overlap is in the law of trusts, The Trusts Ordinance (1917) is a codification based, to a very great extent, on the English law of trusts. Where there is no special provision governing trusts in the Ordinance, English law applies under section 2 of the Trusts Ordinance. However, in *Lily de Costa vs. Bank of Ceylon*,<sup>15)</sup> the question arose whether English law or Roman-Dutch law was applicable. In this case, the defendant bank collected a dividend warrant for its customer to which the customer had no title at all. The bank was sued by the plaintiff, the true owner of the warrant, for recovery of the amount of dividend warrant on the basis that the English law of conversion applied, and that the defendant had committed the tort of conversion in relation to the dividend warrant. The defence of the bank was that it had collected the amount of the warrant in good faith and without negligence, and paid it out to the customer before it knew that the plaintiff was the owner of the warrant, and that by Roman-Dutch law which applied, it was not liable to



the plaintiff. The customer in question was a party to a clever fraud relating to the dividend warrant, for which he was later tried and convicted. The majority of the court in this case was of the view that conversion was not a part of the general law of Ceylon, that in relation to negotiable instruments and the law of banks and banking, the English law of conversion was applicable.

## **The Personal laws of Ceylon**

In order to understand the term “personal law,” it is important to understand the meaning of “territorial law” A “territorial law” is one which applies to all persons resident in a particular territory. The application of the personal law does not depend upon where a person resides, but instead applies to a section of the population in a given territory, considering certain common factors which they possess.

The personal law of Sri Lanka is divided into three; the general law of marriage legislated under the influence of Roman-Dutch law, which is applied to the lowland Sinhalese living around the centre of Colombo ; Kandyan law, which is applied to the highland Sinhalese living around Kandy, *Tesawalamai* and the Tamils of Jaffna, and Muslim law, which is applied to the Muslims. These systems of law are not of general application but apply to special communities within Sri Lanka.

## **Kandyan law**

Prior to the arrival of the Portuguese in 1505, the manners and social system, the customs and law of the Sinhalese of both up-country and low country were almost identical with slight differences from area to area conditioned by purely local usage.<sup>16)</sup> During the Portuguese and Dutch reign,

the native laws and usage of the Sinhalese of the low country though not expressly superseded, were considerably affected by contact with European laws, manners, thoughts and religion. The British while preserving the existing laws of the Kandyan, administered Roman-Dutch law on all the Sinhalese in the low country, under the assumption that this was the procedure followed in Dutch times.

However, an examination of the Proclamations shows that between 1815 and 1835 the British had applied Kandyan law to all the inhabitants of Kandy, and not merely to Kandyans. The British regarded Kandyan law as a territorial law, and not as a personal law. Early case law shows that Kandyan law was regarded as territorial in character. In the case of *Mongee vs. Siyar Paya*,<sup>17)</sup> the Kandyan chiefs consulted the Board of Commissioners and found that under the British government it had always been customary to decide cases which arose between Hindus according to Kandyan law. In the subsequent case of *Kershaw vs. Nicoll*,<sup>18)</sup> it was held that a European wife of a European domiciled in the Kandyan province was governed by Kandyan law. Thus, the applicability of Kandyan law was not limited to Kandyan natives. The application of Kandyan law was a matter of controversy and the decision in *Kershaw vs. Nicoll* was overruled in *William vs. Robertson*,<sup>19)</sup> which held that Kandyan law was territorial in its application, and persons governed by Kandyan law would have to prove that they had a Kandyan domicile, as distinct from a Ceylon domicile. This decision was a starting point for holding that Kandyan law was not applicable to low country Sinhalese settled in the Kandyan provinces, even if they were married to Kandyans. This was further confirmed in the decision of *Wijesinghe vs. Wijesinghe*,<sup>20)</sup> where it was held that a low country Sinhalese living in the Kandyan province was governed by Roman Dutch law, and did not merely

become subject to Kandyan law by residence in the Kandyan province.

It has been judicially decided that the Kandyan law is applicable as a personal law to the Kandyan Sinhalese. In the absence of any definition of Kandyan Sinhalese, it has been suggested that the term applies to descendants of persons who were domiciled in Kandy at the time of the annexation of the Kandyan province in 1815. However, over the centuries, a large number of Sinhalese people from the maritime provinces have settled in the Kandyan area and have upcountry names; these people are deemed in the eyes of law to be Kandyan Sinhalese. Balasingham, in his book *Laws of Ceylon* states that families who have long lived rooted to the soil of any province where Kandyan law prevailed and speak the language and follow the customs there prevalent, may be regarded as Kandyan. Balasingham further goes on to say that the test is how they regard themselves and how they are regarded by others.

## **Muslim Law**

The Ceylon Muslims constituted the descendants from Ceylon Moors, Indian Moors and Malays. Their communities are scattered in various parts of the country. In the south western province and central highlands, they live with the Sinhalese; in the eastern and northern provinces they live with the Tamils.

Muslim law, unlike the other customary laws of Ceylon, is a religious law, and applies to any person of whatever race who is an adherent to Islam whether by birth or conversion. While the law governing Muslims was originally codified as a collection of customary law, as part of the colonial policy, in regard to recognition of the diverse laws governing different sections of the population, Muslim law has a wider application in the modern

law. With the repeal of the Mohammedan Code of 1806, the law of the sect to which a Muslim belongs was introduced by statute, in regard to marriage and divorce, inheritance and certain types of gifts. The Sri Lanka Muslims belong to the Sunni sect, and the majority are followers of the Shafi'i school of law.<sup>21)</sup> The statutory provisions thus permit the application of the Muslim law as a personal law governing Muslims.

The factor which governs Muslim law is not whether a person belongs to a particular race or community, but whether or not he professes the Islamic faith. A person born of Muslim parents is presumed to be a Muslim. A person could also become a subject to Muslim law by conversion, and Muslim law is applicable immediately on conversion to Islam. In a case in which the conversion was not genuine - for example a man becoming a Muslim for the purpose of marrying a second time while the first wife is alive, the burden shifts to the person who allegedly professes Islam to rebut the evidence of an insincere conversion. In *Reid vs. Attorney General*,<sup>22)</sup> is a case in which a man had contracted a marriage according to Muslim rites. He had, as a Roman Catholic, contracted an earlier marriage and his first wife was still alive. He was charged with the offence of bigamy. He pleaded that he was a convert to Islam and that hence his second marriage was a valid one. The accused and his second wife had become converts to Islam on 13th June 1959, and they registered their marriage on 16th July 1959. Chief Justice Basnayake said that although the proximity of the date of the second marriage to the date of conversion gave room for the suspicion that the change of faith was with a view to overcome the provisions of the marriage ordinance, such circumstances do not affect the validity of the second marriage. Basnayake C.J. referred to the evidence of the Muslim priest who had testified to the conversion. The inference that may be drawn is that if

there is such a conversion, the court will not go into the circumstances that led to such conversion. The decision in *A.G. vs. Reid* was affirmed by the Privy Council which held that a person has an inherent right to change his religion or personal law.

However, there was the subsequent case of *Katchi Mohamed vs. Benedict*.<sup>23)</sup> In this case, the accused was a Muslim man married to a Muslim wife according to Muslim rites. Subsequently, he became a Catholic and married a Catholic woman while still married to his first wife. It was held that he was guilty of bigamy because the second marriage came within the definition of marriage in Section 84 of the Marriage (General) Registration Ordinance, and was therefore an invalid marriage under section 18.

### ***Tesawalamai***

The word *Tesawalamai* means the “customs of the land.” *Tesawalamai* or Tamil customary law originally applied to “Malabar inhabitants of the Province of Jaffna,” and in modern law, by judicial interpretation, is considered the law applicable to the members of the Ceylon Tamil community who have a permanent home in the Jaffna province.<sup>24)</sup>

Thus, *Tesawalamai* applies not only to Tamil inhabitants of Jaffna and their descendants, but to any Tamil who may come at any time to settle down in Jaffna and who acquires a Jaffna residency. In *Tharmalingam Chetty vs. Arunasalam Chettiar*,<sup>25)</sup> it was held that a person whose father had come from South India after 1806 was governed by the *Tesawalamai*. The *Tesawalamai* applies to Tamils with a Ceylon domicile and Jaffna residency. The term “residency” has no fixed meaning. Wood Rentron C.J. thought that the word “inhabitant” applied to a person who had acquired a permanent residence in the nature of domicile in Jaffna. This definition of “inhabitant”

could be supported by the judicial decision of *Spencer vs. Rajaratnam*,<sup>26)</sup> where a Jaffna Tamil had left Jaffna when very young and settled down and married a person in Colombo. He was held not to be governed by *Tesawalamai*. Similarly, in the case of *Somasunderam vs. Charavanamuttu*,<sup>27)</sup> a Jaffna Tamil, born and educated in Colombo, was living in Colombo for the purpose of practising his profession. He had settled down in Colombo and considered it his home. His parents had a permanent house in Jaffna. He had married in Jaffna but never lived there. It was held that he was not an inhabitant of Jaffna. The law of *Tesawalamai* is flexible to the extent that persons subject to the *Tesawalamai* could change the law by which they are governed by changing their residency.

## Conclusion

With the turn of events such as the invasion of various European powers, the ethnic and cultural scenario in Ceylon has taken on a colourful appearance. The Europeans left behind their descendants, who were the Portuguese, Dutch, Burghers and the English settlers in the planting community.

Although Sri Lanka has been influenced by foreign laws, the law of Sri Lanka still strongly preserves traditional factors. There exists a mixed interaction of various laws in Sri Lankan society. *Tesawalamai*, embodied in the social structure, and Kandyan law, as practiced among the people seem to have contributed to the formation of the Sri Lanka culture, whether in consonance or in discord with one another. Islamic law was later added to this mixture of transplanted law. Though not well integrated into a single system of law, the indigenous law and earlier transplanted laws together formed the indigenous structure of Ceylon law. These transplanted laws



have kept their basic features, as evidenced by the fact of their adoption into contemporary official law.

It is apparent that the creative role of the courts is minimised where personal laws are applicable. For example, when the Mohammedan Code was silent on a matter, it was always possible to argue in a court of law that the provisions in it should be amplified by reference to the principles of Islamic jurisprudence. The judicial practice of referring to Islamic law has led to the expansion of the scope of Muslim law as a personal law, thus preventing resort to the principles of Roman-Dutch law on family relations,

Thus, a historical survey of Sri Lanka laws shows that there is interaction between indigenous and western laws. The first such law from the Portuguese in the 16th century had little significant influence; and the Dutch law which followed had such a profound influence that today, the Roman-Dutch law, which is regarded as the Common Law of Sri Lanka, fills in the gaps in the customary laws. The last such law received was the English law, which has permeated through the existing laws, while the various phases of indigenous and assimilated laws remain valid.

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### **References**

- 1) Muslims are those who profess the Islamic religion. The word "Muslim" carries no connotation of race. The Muslims of Ceylon are Moors (descendants from Arabian ancestors) or Malays. But a person of any race, by conversion to Islam can become a Muslim.
- 2) T, Nadaraja, *The Administration of Justice under Dutch Government* in 12 J.C.B.R.A.S. (N.S) p. 1, 10)
- 3) *Abeysekera vs. Jayatillake*, (1932) 33 New Law Reports (N.L.R.) 51 P.C.
- 4) The Proclamation of 23rd September 1799, the Charter of Justice 1801, and

Ordinance 5 of 1835

- 5) Jennings, W.I. and Tambiah, H.W. *Dominion of Ceylon, Development of its Law and Constitution* (British Commonwealth Series, Vol. 7, 1952) p. 62
- 6) (1906) 6 N.L.R. 98
- 7) 1875 Ramanathan Reports 189
- 8) Savitri Goonesekera, *Damage by Animals* in 1971 Colombo Law Review
- 9) E.R. Wickremasinghe, *Our Common Law* in 1949 C.L.C.R. 11
- 10) Sir K. Roberts Wray, *Commonwealth and Colonial Law*, Stevens Ltd., London, pp. 529-557
- 11) (1918) 20 N.L.R. 289
- 12) L.J.M. Cooray, *Reception in Ceylon of the English Trust*, 1971, Colombo pp. 43, 149-150
- 13) Cooray, op. cit. pp. 43, 91-99
- 14) (1933) 35 N.L.R. 226
- 15) (1969) 72 N.L.R. 457
- 16) F.A. Hayley, *Treatise on the Laws and Customs of the Sinhalese*, 1923, H.W. Cave & Co. Colombo, pp. 23-25.
- 17) Board Minutes, July 7, 1820
- 18) (1860-62) Ramanathan 157
- 19) (1886) 8 S.C.C. 36
- 20) (1891) S.C.C. 199
- 21) (1964) 67 N.L.R. 25 P.C.
- 22) (1964) 67 N.L.R. 25
- 23) (1961) 63 N.L.R. 505
- 24) Jaffna Matrimonial Rights and Inheritance Ordinance, No. 1 of 1911, s. 3
- 25) (1944) 45 N.L.R. 414
- 26) (1913) 16 N.L.R. 321
- 27) (1942) 44 N.L.R. 1