



News Letter

THE JUDICIAL SERVICE ASSOCIATION OF SRI LANKA

2020 VOLUME II

"Open up your heart and Let the sun shine in"

EDITOR: ARUNA BUDDHADASA.

ASSISTANT EDITOR: LAHIRU NIRMAL SILVA.

Congratulations

New Appointments to The High Court



(Group photo of newly appointed High Court Judges with Honourable Chief Justice Jayantha Jayasuriya)

- | | |
|-------------------------------|---------------------------|
| 01. A.G.U.S.N.K.Senevirathna. | 07. Hasitha Ponnampereuma |
| 02. Lanka Jayarathna. | 08. Aravinda Perera |
| 03. Indrika Kalingawansa. | 09. W.M.M.Thalgodapitiya |
| 04. C. Meegoda. | 10. Ranga Disanayaka. |
| 05. Amalee Ranaweera. | 11. D.A.R.Pathirana |
| 06. D.W.W.M.R.C.P.Kumari Dela | 12. N.T.Wikramasekara |

Have been promoted and appointed as High Court Judges on 2020.
The JSA warmly congratulate for all colleagues on their promotions.

Inside this News Letter

01.	Promotions and new Appointments	Page 02
02.	Secretary's Report	Page 03
03.	School Admissions-SC Judgment	Page 05
04.	JSC circulars – RE: Covid -19	Page 16
05.	AGe's instructions Letter	Page 22
06.	Supreme Court Judgments	Page 29
07.	Court Of Appeal Judgments	Page 32
08.	Proposed Code of Ethics for Judges	Page 35
09.	Acts of 2020	Page 36
10.	Index of Articles Published on JSA Law Journal	Page 37



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Editorial

“Open your heart and let the sunshine in”

At a time where civilization is overcoming a dark and decisive chapter in history, we greet you once again as the Judicial Service Association. To our fellow judges who are carrying out their duties without any hesitation or fear despite the global COVID-19 pandemic, we extend our love and respect to you while wishing you and your loved ones, good health, strength and safety.

The times in history where mankind and the world were shrouded by darkness are countless. The painful memories of pandemics, natural disasters, and wars have taught mankind a lesson. As an individual, the darkness caused by external factors and the darkness that overwhelms us due to internal physical and mental reasons, gives us and our loved ones, unbearable pain. While we suffer in the prison of darkness, we possess the ability to transmit that suffering on to others knowingly or unknowingly. The truth we must admit without hesitation is that we too are faced with such harsh criticisms.

If we do not act with compassion and empathy as a judge, we cannot prevent our loved ones, colleagues, and the general public from facing painful consequences as a result of our actions. It is our belief that if we continue to keep our hearts closed off, the suffering that we cause to others could in turn be our suffering.

As a judge and a human being, the challenge that is set upon us is to discover a means of breaking down the source of darkness and leading a bright life. Our suggestion for this year's theme is finding a way to lead a brighter life through self-evaluation and self-reflection. Bravery instead of fear, wisdom instead of ignorance, purpose instead of self-interest, non-violence instead of violence, brotherhood instead of self-centeredness, generosity instead of selfishness, justice instead of injustice, and fairness instead of unfairness, will show us the way to lead a brighter life like sunlight against darkness.

Let us open our hearts to the sunlight. Let us make an effort for a brighter life instead of dark suffering. Let us rejoice in the light of a life filled with humanity, brotherhood, love, and wisdom. Tomorrow will then be a better world than it is today.

“If the sun does not come to you, you should be the sun”.



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Mr. Rasika Mallawaarachchi
Mr. Pamoda Jayasekara
Mr. Mahesh Wakishta
Mr. Harshana De Alwis
Mr. Chaminda Karunadasa

New Appointments to the Supreme Court

Justice A.H.M.D. Nawas
Justice Kumudunee Wikramasinghe,
Justice Shiran Gunarathna
Justice Janak De Silva,
Justice Achala Wengappuli,
Justice Mahinda samayawardana

Were newly appointed as Judges of the Supreme Court. The JSA wishes all the best on their Lordship's new Appointments.

New Appointments to the Court of Appeal

Justice Arjuna Obeysekera were newly appointed as President of the Court of Appeal and

Justice Menaka Wijesundara,
Justice D.N.Samarakoon,
Justice M.Prasantha De Silva,
Justice M.T.M.Laffar,
Justice C.Pradeep Keerthisinghe,
Justice Sampath Abayakon,
Justice M.S.K.B.Wijerathna,
Justice S.U.B.Karalliyadda,
Justice R.Gurusinghe,
Justice Dhammika Ganepola,
Justice K.K.A.D.Swarnadipathi,
Justice Mayadunna Koraya,
Justice Prabakaran Kumararathnam,
Justice Neel Eddawela

Were newly appointed as Judges of the Court of Appeal. The JSA wishes all the best on their Lordship's new Appointments.

New grade promotions

The Judicial Service Association warmly congratulates all colleagues who were granted with grade promotions by the Judicial Service Commission.



Secretary's Report

As the sole Association representing the minor judiciary, Judicial Service Association has throughout represented to safeguard the independence of the judiciary from various attempts to attack it from outside and within it. thereby, it has immensely supported the judicial officers in functioning without fear and favor. Apart from working on to create a conducive environment to function independently, Judicial Service Association has taken several welfare activities for the benefit of its' members. Accordingly, Judicial Service Association has taken following actions for the benefit of the general membership and able to achieve fruitful results.

I. Grade I School Admissions.

Even though the children of judicial officers were given the admission to schools of their choice from year 2010, in year 2018 few judicial officers were not given the schools as requested. In this backdrop two judicial officers evoked the Fundamental Right Jurisdiction of Supreme Court and strategically Judicial Service Association was named as a respondent in the said case. Judicial Service Association has filed objections and prayed the Supreme court to direct Secretary Ministry of Education to provide Schools to the children of judicial officers as of their choice. Finally, on 18th of June 2020 Honorable judges of the Supreme Court delivering the judgment in SCFR Applications No. 222/2018 and 223/2018 directed the Secretary of the Ministry of Education to provide schools to the children of Judicial officers following the procedure adopted throughout. Further it was directed the Secretary of Ministry of Education not to change present procedure without consulting JSC and JSA in admitting the children of Judicial officers. I quote the following excerpt from the judgment of SCFR Application No. 222/2018.

"In the circumstances, I direct the respondents not to change the aforementioned practice followed in the years 2011 to 2016 and 2018, 2019 without formulating a criterion in consultation with the relevant stakeholders for the admission of the children of the judicial officers in state schools."

Judicial Service Association thank Hon. Chanima Wijebandara, and Hon. Chathurika Silva for filing the said cases as petitioners and Mr. Romesh De Silva P.C., and Mr. Sanjeewa Jayawardena P.C., their juniors and instructing attorneys for appearing in the said cases without obtaining legal fees.

2. Appointment of High Court Judges from official Bar

Judicial Service Association have met the Honorable commissioners of the JSC on several instances and sent letters to JSC with regard to the grievances of judicial officers by appointing relatively junior officers from attorney Generals' Department as the High Court judges. Further Judicial Service Association has requested the Judicial Service Commission to formulate a minimum eligible criterion for ascension of law officers from Attorney Generals' to the High Court in the said meetings. Judicial Service Association was able to succeed in the said efforts.

3. Numbers of Contested Judgments and orders considered for Annual Increments in Covid-19 pandemic situation.

Judicial Service Association has brought to the notice of the Judicial Service Commission with regard to the difficulties faced by judicial officers in fulfilling the required minimum numbers of judgments, for considering for the annual increments, in present Covid-19 pandemic situation.

In the meantime, Hon. Secretary of the Judicial Service Commission by letter dated 20th of August 2020, informed the Judicial Service Association, that the JSC has to provide concession of two and half month, in which period courts were not functioning. Judicial Service Association is concerned about the continuous grievances in this regard.

4. Contempt proceedings against on malicious attack on judiciary by media briefings.

In the last part of the December 2019 and early 2020, a certain attorney at Law by media briefings maliciously attacked judiciary on false allegations on several pending and concluded cases. Several electronic and print media have given vast publicity to such briefings and thereby, it has severely damaged the public confidence on judiciary.



In an attempt to safeguard the independence of the judiciary, Judicial Service Association has initiated contempt proceedings in Supreme Court against the said Attorney at Law and the contempt proceeding is presently pending before the Supreme Court.

5. Updating the JSA Website and Codification and Digitalization of JSC Circulars.

For the benefit of the Judicial officers, Judicial Service Association has updated the JSA Website and codified all the circulars issued by the Judicial Service Commission in digital form. Said circulars are available in JSA website www.jsasl.lk.

6. Members family trip and get-together.

Judicial Service Association has organized a member's family trip to Nuwara-eliya on 12th and 13th October 2019. Several entertainment activities organized for the participants in the trip and around 75 Members participated.

7. Collecting finances for judicial officers in urgent financial needs for surgeries.

Judicial Service Association had collected funds from our members for the urgent financial needs of two judicial officers for their surgeries. Accordingly, our generous members contributed Rs 3,125,000/- for the liver transplant of a judicial officer and Rs. 852,000/- for the Kidney transplant of a judicial officer. We thank all the judicial officers who have contributed to it.

8. Contribution to the COVID-19 Healthcare and Social Security Fund.

Judicial Service Association has collected Rs.528,000/- from its' members and contributed to the COVID-19 healthcare and social security fund in April 2020.

9. One day seminar on Victimology.

Judicial Service Association in collaboration with the Sri Lanka judges' Institute organized a Seminar on "Victimology" at Auditorium of Ministry of Justice and Prison Reforms on 19th of October 2019.

10. One day service to get NIC, Passport and Driving License.

On 19th October 2019, JSA has organized a one-day service to obtain National Identity Cards, Passports and Driving License for its' members. Several members benefited from the said services.

11. JSA News Letters and JSA Law Journal

Judicial Service Association has published 2 JSA News Letters and a JSA Law Journal in year 2019. In year 2020 JSA has already published one JSA News Letter and another News Letter will be released on 19.12.2020.

12. Special Loan facility through Peoples' Bank and Bank of Ceylon.

Judicial Service association has negotiated with the Peoples' Bank and Bank of Ceylon to obtain a special loan facility on concessionary terms for its members. As the result of the said negotiation both Banks have introduced a special loan facility on concessionary terms, which is comparatively less than prevailing market rates.

13. Dialog Phone package

In collaboration with High Courts Judges Association, JSA has arranged a special Dialog phone package for Judicial officers in year 2020.

Judicial Service Association is the most important forum for entire judiciary. Almost all the benefits enjoyed by the judicial officers achieved through the coordinated effect by the Judicial Service Association. It is important that all the members collectively join and work together to resolve issues and grievances faced by judiciary. Therefore, we request all the members of our esteemed Association to come forward to work towards the common cause of the entire judiciary.

Prasanna Alwis,

Secretary,

Judicial Service Association.

17.12.2020.



School Admissions - Victorious Achievement of the Year 2020

“Dear colleagues,

Happy to inform that we won the FR applications filed regarding school admissions to the children of judicial officers. This is the great achievement. Now we have accepted criteria for admitting Judges' children to schools without going after anyone. I have to thank Chanima and Chathurika for came forward fearlessly and being petitioners of above petitions. And once again JSA as an association showed its ability to protect judicial officers' rights.

I here with forward today's Supreme Court Judgment.”

Hon. Ranga Dissanayaka, High Court Judge.

Former President to the JSA (2016-2018) on 18th June 2020

We quoted Hon. High Court Judge Ranga Disanayaka's own words to communicate this great news. We take this opportunity to thank Hon. High Court Judge Ranga Disanayaka, Hon. High Court Judge Hasitha Ponnampereuma, Hon. Chanima Wijebandara, Hon. Chathurika Silva and other members who came forward on behalf of the association to reach this milestone. And also we should thank to all who given their great assist for betterment of our children's tomorrow. Your priceless and historical effort is much appreciated.

“Even 2020 we could admit our children to grade one of the desired schools last week. I know this is not a mere paper transaction among few organs of the state. It was a result of a huge mission of JSA. This is to thank the president, former presidents Hon. Ponnampereuma & Ranga Dissanayake, secretary and the members of the Exco who discussed the challenges and alternatives at all the past Exco meetings. ”

Bandara Illangasinhe, District Judge, Dambulla.

In The Supreme Court Of The Democratic Socialist Republic Of Sri Lanka

In the matter of an application under Chapter III of the Constitution of the Democratic Socialist Republic of Sri Lanka in terms of Article 17 read together with Article 126

Alankarage Dona Chathurika Silva,
No. 52, Pepiliyana Mawatha,
Pepiliyana.

Petitioner

Case No: SC/FR/222/2018

AND

Case No: SC/FR/223/2018

Wellawalage Dakshika Chanima Wijebandara,
No. 52, Pepiliyana Mawatha,
Pepiliyana.

Petitioner

Vs.

I. Sunil Hettiarachchi,
Secretary – Ministry of Education,
'Tsurupaya', Pelawatta,
Battaramulla.



- 1 A. Pathmasiri Jayamanne,
Secretary – Ministry of Education,
'Isurupaya', Pelawatta,
Battaramulla.
- 1 B. N H M Chitrananda
Secretary – Ministry of Education,
'Isurupaya', Pelawatta,
Battaramulla.

Added IB Respondent

2. Hon. Akila Viraj Kariyawasm, Minister of Education,
Ministry of Education,
'Isurupaya', Pelawatta,
Battaramulla.
- 2 A. Hon. Dallas Alahapperuma
Minister of Education,
Ministry of Education,
'Isurupaya', Pelawatta,
Battaramulla.

Added 2A Respondent

3. W.M. Jayantha Wickramanayake Director – National
Schools, Department of Education, Ministry of Education,
'Isurupaya', Pelawatta,
Battaramulla.
4. Judicial Service Association,
Chief Magistrate's Court Premises,
Colombo 12.
5. R.S.A. Dissanayake
President – Judicial Service Association,
Chief Magistrate's Court,
Colombo 12.
- 5 A. Hasitha Ponnampereuma,
President - Judicial Service Association,
District Court,
Matale.

Added 5A Respondent

6. M. M. M. Mihal
Secretary – Judicial Service Association
Magistrate's Court,
Mount Lavinia.
- 6 A. Prasanna Alwis,
Secretary – Judicial Service Association,
Magistrate's Court,
Kaduvela.

Added 6A Respondent

7. Hon. Attorney General
Attorney General's Department
Colombo 12.

Respondents

Before: Priyantha Jayawardena PC, J
Vijith K. Malalgoda PC, J
E.A.G.R. Amarasekara, J



Counsel: Romesh de Silva, PC with Sugath Caldera and Harith de Mel for the Petitioners
 Sanjeeva Jayawardena, PC for the 4th – 6th Respondents.
 Viraj Dayaratne PC, ASG with Ms. Sureka Ahmad, SC for the 1st, 2nd, 3rd and 7th respondents.

Argued on: 17th June, 2019

Decided on: 18th June, 2020

Priyantha Jayawardena, PC, J

Facts of the Application

SC/FR Application No. 222/2018

The petitioner stated that at the time of filing the instant application, she was serving as the Additional District Judge of Mathugama. Subsequent to her appointment as a Judicial Officer in 2010, the petitioner had been transferred to various parts of the Island in the years 2013, 2014, 2015 and 2017 to function as a Judge.

The petitioner had filed the instant application in her personal capacity as well as on behalf of her child, as the petitioner's child had been denied admission to Grade I of Visakha Vidyalaya for the year 2017 and for the benefit of all Judicial Officers. Thus, this application will fall within the scope of private and public interest litigation regimes.

The petitioner alleged that the acts referred to in the petition constitute executive and administrative action which resulted in the violation of the Fundamental Rights of the petitioner and her child.

The 1st respondent is the Secretary to the Ministry of Education and the 2nd respondent is the Hon. Minister of Education. The 3rd respondent is the Director of National schools and the 4th respondent is the Judicial Service Association. The 5th and 6th respondents are the President and the Secretary of the Judicial Service Association, respectively.

The petitioner stated that as per the Circular No. 17/2016 issued by the Ministry of Education applicable for the year 2017 school admissions, the children belonging to 'various categories' were entitled to apply for Grade I of State Schools.

Moreover, the petitioner stated that the aforesaid scheme for admissions to Grade I of State Schools requires a stipulated criterion to be fulfilled. However, Judicial Officers are unable to fulfill the said criterion due to the nature of the work that they have to perform and the office held by them.

Further, the children of persons in the staff of institutions directly involved in school education, the children of persons arriving after living abroad with the children and the children of officers in the Public Sector, State Corporations and State Banks who have received transfers on exigency of service have been included in the said Circular for admission to Grade I of State Schools.

Furthermore, the petitioner stated that the Department of Education had recognized that the members of the Three Armed Forces and the Police were unable to comply with the said stipulated criterion in the Circular and thus, a special criterion had been formulated for the admission of the children of the members of the Three Armed forces, to a State School.

However, there is no such special criterion stipulated in the said Circular applicable for admission of the children of Judicial Officers to Grade I of State Schools.

Therefore, from the years 2011 to 2016, the following practice had been followed when admitting the children of Judicial Officers to a State School:

Judicial Officers seeking to admit their children to State Schools would forward their applications indicating the school of first preference to the Judicial Service Commission through the Judicial Service Association. If the admission of the children was warranted, the Judicial Service Commission would forward the applications to the Ministry of Education. Thereafter, the Ministry of Education would admit those children to the preferred school of the Judicial Officers.

However, the said practice had not been followed in the year 2017.

The petitioner stated that in the circumstances, the Ministry of Education had accepted and acknowledged that Judicial Officers are a separate category for the purpose of admitting their children to State Schools and accordingly, admitted the children of Judicial Officers to a school of their preference, including to Grade I.

Further, over the years Judicial Officers had applied to admit their children to various schools in different parts of the island such as Visakha Vidyalaya in Colombo, Royal College in Colombo, Darmashoka Vidyalaya in Ambalantota, D.S. Senanayake College in Ampara, Maliyadeva Girls' College in Kurunegala, Swarnapali Girls' School in Anuradhapura, Bandarawela Central College in Bandarawela, Viharamaha Devi Balika Vidyalaya in Kiribathgoda and Ferguson High School in Ratnapura, etc. and their requests had been entertained by the Ministry of Education by following the said practice.

The petitioner stated that in the year 2017, there were 27 applications for admission of the children of Judicial Officers to various grades of different schools. However, out of the 27 applicants, only 6 applicants had been admitted to the school of their preference. Moreover, out of the 5 applicants who had applied to Visakha Vidyalaya for Grade I, only one applicant had been granted admission to the said school.

The petitioner further stated that there were 7 applications from Judicial Officers for the school admission of the year 2018. All these applicants had received admission to their school of preference, except one child. Later, he too had been admitted to the school of his preference consequent to litigation.



The petitioner stated that in view of the said practice that was in existence for several years, she had a legitimate expectation that it would be followed by the Ministry of Education and the Department of Education with respect to the admission of children to Grade I for the year 2017 which would have enabled her to admit her child to Visakha Vidyalaya, Colombo.

Hence, complying with the said practice, the petitioner had made an application to admit her daughter to Grade I of Visakha Vidyalaya for the year 2017, through the Judicial Service Association for admission.

The petitioner further stated that the Judicial Service Association had submitted her application to the Judicial Service Commission, which had thereafter forwarded the same to the Ministry of Education with a recommendation to admit the child to Grade I of Visakha Vidyalaya.

The petitioner stated that the failure on the part of the Ministry of Education and the Department of Education to follow the aforementioned practice in the year 2017, violated her legitimate expectation.

Moreover, the petitioner stated that the Ministry of Education and the Department of Education had reverted to the said practice applicable to Judicial Officers once again in the years 2018 and 2019.

The petitioner further stated that, the Director of National Schools had sent a letter dated 12th April, 2017 to the Secretary of the Judicial Service Commission, requesting the petitioner and the other

Judicial Officers referred to in the said letter to participate in a meeting presided over by the Minister of Education on 18th April, 2017 in order to admit their children to State Schools.

However, the petitioner had refused to participate at the said meeting as she was of the view that it was inappropriate for a member of the judiciary to meet with officials of the Ministry of Education to admit their children to schools.

The petitioner further submitted that on 18th April, 2017 the petitioner's child was granted admission to St. Paul's Milagiriya which however, is not the school preferred by the petitioner.

The petitioner stated that subsequently she became aware that certain judges who had met the Minister of Education were able to admit their children to schools of their preference.

In the circumstances, the petitioner stated that she could not get her child admitted to a school of her choice as she declined to meet the Minister of Education and due to the failure of the Ministry of Education and the Department of Education to follow the longstanding practice of admitting the children of Judicial Officers to a school of their preference.

The petitioner stated that in the circumstances, the respondents have violated the Fundamental Rights of the petitioner and her child, guaranteed by Article 12(1) of the Constitution.

SC/FR Application No. 223/2018

In addition to the above stated facts, the petitioner in SC/FR Application No. 223/2018 stated that she is also a Judicial Officer and at the time of filing the application, she was serving as the Magistrate of Nugegoda.

Subsequent to her appointment as a Judicial Officer in 2007, the petitioner had been transferred to courts in various parts of the island in the years 2008, 2010, 2013, 2016 and 2018 to function as a Judge of those courts.

In accordance with the practice followed by the respondents to admit the children of Judicial Officers to State Schools, the petitioner had submitted her application through the Judicial Service Association for the admission of her daughter to Grade I of Visakha Vidyalaya.

The petitioner stated that the Judicial Service Association had submitted the said application to the Judicial Service Commission which had thereafter forwarded the same to the Ministry of Education with a recommendation to admit the child to Grade I of Visakha Vidyalaya.

Thereafter, on 17th April, 2017 the petitioner had been informed by the Judicial Service Commission that a meeting was convened by the Minister of Education on 18th April, 2017 to discuss the issues relating to admission of the children of Judicial Officers to State Schools.

The petitioner stated that when she attended the said meeting along with the other judges, the officials of the Ministry of Education informed that they had taken into consideration the recommendations made by the Judicial Service Commission, seniority and transfers as their selection criteria, and handed over a letter of admission to Sirimavo Bandaranayake Vidyalaya for her child. However, since it was not the school of first preference of the petitioner, she had not admitted her child to the said school.

Subsequently, the petitioner found out that the child of a Judicial Officer who is junior to her, had been given admission to Visakha Vidyalaya, while her child was not granted admission to the same.

Accordingly, the petitioner stated that overlooking her request over a junior officer's is discriminatory and inconsistent with the said practice followed by the Ministry of Education to admit the children of Judicial Officers to State Schools.

Further, in addition to the application sent through the Judicial Service Association, the petitioner had made an application for the admission of her child to Visakha Vidyalaya (1st preference) and Sirimavo Bandaranayake Vidyalaya. However, the said application had not been entertained as the petitioner could not fulfil the admission criterion stated in the said Circular applicable for admission to Grade I.

In the circumstances, the petitioner stated that the respondents have violated the Fundamental Rights of the petitioner as well as her child guaranteed under Article 12(1) of the Constitution.



After both applications were supported, the Court granted Leave to Proceed for the alleged violation of Article 12(1) of the Constitution.

Objections of the 3rd respondent

Re: SC/FR/222/2018

The 3rd respondent filed objections and denied the allegations made by the petitioner and stated that the Ministry of Education is unable to admit all children to schools of their choice as the capacity to accommodate students into more popular schools is limited. He stated that, every year the Ministry of Education issues a Circular with regard to admissions to State Schools in order to ensure that there is no discrimination, and that parents are afforded an equal opportunity to admit their children to schools.

The 3rd respondent further stated that the Ministry of Education had made every effort to accommodate the requests of Judicial Officers with regard to school admissions in the past. However, as the year 2017 had twenty seven (27) applications, the Ministry of Education had introduced the following new criterion to admit the children of Judicial Officers to State Schools having a greater demand;

- “(a) where the transfer of the Judicial Officers has been between two Districts and the school, that had been requested was situated within the District to which the Judicial Officer had been transferred to, then taking into consideration the distance between the two stations, admission was granted to either the school that had been requested or a school of similar standing,
- (b) where the transfer of the Judicial Officers has been between two Districts but the school that had been requested was situated in a different District, then the permanent residence of the Judicial Officer was taken into consideration when granting admission to schools. However, in such instances only requests for admissions to Grade I were considered,
- (c) where the transfer was within the same District or in the case of a promotion, then the distance between the stations were considered when allocating a school. However, in such instances only requests for admissions to Grade I were considered, and
- (d) in one instance where the Judicial Officer had passed away, the child was given admission to the school that had been requested”.

Furthermore, the petitioner's child had been given admission to St. Paul's Milagiriya which is a school of similar standing to Visakha Vidyalaya.

The 3rd respondent further stated that the Circular issued by the Ministry of Education provides different categories under which a person could admit a child to a State School. Thus, the petitioner's claim that the nature of her office prevented her from applying to a State School under the said Circular, is incorrect.

The 3rd respondent claimed that the petitioner had not been treated unequally and the said Circular does not provide for a special procedure to be adopted in favour of the children of Judicial Officers.

Re: SC/FR/223/2018

The 3rd respondent stated that the petitioner in application No. SC/FR/223/2018 had submitted an application privately requesting both Visakha Vidyalaya (1st preference) and Sirimavo Bandaranayake Vidyalaya (2nd preference) under the said Circular in addition to the application that was sent through the Judicial Service Association.

The 3rd respondent stated that the petitioner's daughter was granted admission to Sirimavo Bandaranayake Vidyalaya, which was the petitioner's second preference. Thus, the petitioner is now estopped from stating that the said school is not her choice of preference. The 3rd respondent further stated that, a Judicial Officer is not barred from applying to a State School under the categories provided in the Circular applicable for ordinary citizens.

Objections of the 5th respondent

SC/FR/222/2018 and SC/FR/223/2018

The 5th respondent filed an affidavit and stated that a few Judicial Officers who had met the Minister of Education personally had got their children admitted to schools of their choice for Grade I in the year 2017 and Grade 2 in the year 2018.

Further, it was stated that the Judicial Service Commission had made every effort to prevent any interaction between the Judicial Officers whose children seek admission to State Schools and the officials of the Ministry of Education.

Furthermore, the 5th respondent stated that the Judicial Service Association had forwarded the applications of the petitioners to the Judicial Service Commission, which had thereafter forwarded the same to the Ministry of Education with a recommendation.

Submissions of the petitioners

Both applications were taken up together for hearing as the issues involved in the applications are similar.

At the hearing of the instant applications, the learned President's Counsel for the petitioners submitted that the instant Fundamental Rights applications consist of two aspects:

- (a) securing and preserving the independence of the Judiciary as a matter of public interest, and
- (b) the grievance of the petitioners, their children and the children of the Judicial Officers in general.

He further submitted that except for the year 2017, all applications for school admissions forwarded by the Judicial Service Commission for the years 2011 to 2019 had been entertained by the Ministry of Education except for one child. Thus, in view



of the past practice pertaining to the admission of the children of Judicial Officers to State Schools, the petitioners entertained a legitimate expectation to admit their children to a school of their preference.

Moreover, the learned President's Counsel drew the attention of court to the stipulated criterion in the Circular for the admission of children to Grade I of State Schools and submitted that the said criterion is arbitrary and capricious as it does not include the children of Judicial Officers.

The learned President's Counsel further submitted that the petitioners' children were not admitted to their preferred schools because they had declined to meet the Minister of Education personally.

Further, the petitioners' children were denied admission to Visakha Vidyalaya on the ground that there were too many applicants in the year 2017. However, there was no evidence before court to suggest that Visakha Vidyalaya was unable to accommodate the petitioners' children.

Moreover, it was submitted that a Judicial Officer takes on an onerous duty of administration of justice and upholding the independence of the judiciary. Hence,

- (a) the personal life of a Judicial Officer is restricted,
- (b) the professional requirements of office are demanding and often subject to great personal sacrifice,
- (c) Judicial Officers cannot meet persons and interview persons or seek appointments with officials;
- (d) Judicial Officers cannot engage in social activities in the ordinary course organized by Past Pupils Associations, School Development Societies etc.

Further, the learned President's Counsel submitted that Judicial Officers are a separate category and thus, cannot be compared with the officers of the Executive. In this regard, the attention of this court was drawn to Article 170 of the Constitution where the definition of a Judicial Officer explicitly excludes a Public Officer.

He contended that only the Judicial Service Commission is vested with the discretion of deciding whether a Judicial Officer is entitled to a benefit or not. Thus, the Executive is precluded from deciding such matters.

In the circumstances, a child of a Judicial Officer should be entitled to a State School of their preference. Hence, the State has an obligation to provide a separate criterion to enable the children of Judicial Officers to obtain an education from a State School of their preference.

Submissions of the respondents

The learned Additional Solicitor General submitted that the doctrine of legitimate expectation is not an absolute notion and has to be balanced against the need to ensure the adaptability of the administrative authorities to meet the changing needs of society.

During the course of his submissions, the learned Additional Solicitor General cited the case of *Hughes v Department of Health and Social Security* (1985) AC 776 HL where Lord Diplock held that: "Administrative policies may change with changing circumstances, including changes in the political complexion of governments. The liberty to make such changes is something that is inherent in our form of constitutional government."

He further cited the judgment in *Ginigathgala Mohandiramlage Nimalsiri v Colonel P.P.J. Fernando* (SC/FR Application No. 256/2010, SC minutes 17th September, 2015) which held that: "Where an expectation is founded on a policy and later a relevant change of policy is notified, the expectation founded on the previous policy cannot be considered as legitimate."

Furthermore, the practice which the petitioners are relying upon, has not been stipulated in any circular or any other document. Thus, even though the Ministry of Education had followed a practice with regard to school admissions referred to by the petitioners in the past, that does not give rise to a legitimate expectation as no formal undertaking has been given that the said practice would continue without any changes.

In support of his submissions, the learned Additional Solicitor General cited the case of *Desmond Perera v Commissioner of National Housing* [1997] 1 SLR 149.

He contended that it was not only the petitioners' children who were not granted their school of preference, but there were many other children of Judicial Officers who were not given admission to their preferred school.

It was further contended that the respondents were compelled to adopt a special formula for the year 2017, in order to cope with the requests of all Judicial Officers applying to get their children admitted to State Schools which have a higher demand.

The learned Additional Solicitor General submitted that the instant applications pertain to personal matters involving the private life of Judicial Officers and do not have any bearing on their official functions as Judicial Officers. Thus, the hardships faced by Judicial Officers in their personal life cannot be interpreted as an interference with the Judiciary.

Furthermore, it was submitted that the refusal to admit the children of the petitioners and other Judicial Officers is not arbitrary and therefore, is not a violation of fundamental rights guaranteed under Article 12(1) of the Constitution.

Have the Petitioners' Fundamental Rights Enshrined in Article 12(1) of the Constitution Been Infringed?

One of the matters that needs to be considered in this application is whether the new criterion applied for the admission of the children of Judicial Officers to State Schools in the year 2017 violates the equal protection of the law guaranteed under Article 12(1) of the Constitution.



(a) The admission criterion applicable to the children of Judicial Officers

In order to consider the above, it is necessary to examine the criterion set out in the aforementioned Circular applicable for the admission of children to State Schools for the year 2017.

Section 6.0 of the Circular No. 17/2016 which is applicable for the admission of children for the year 2017 states that the children of the following categories were entitled to apply for Grade I of State Schools:

- “ (i) Children of residents in close proximity to the school,
- (ii) Children of parents who are Past Pupils of the school,
- (iii) Brothers / sisters of students already studying in the school,
- (iv) Children of persons in the staff of Institutions directly involved in school education,
- (v) Children of officers in Public Sector / State Corporations / State Banks receiving transfers on service exigency,
- (vi) Children of persons arriving after living abroad with the child” (the details specified in paragraph 6.6 of the said Circular includes persons who have travelled overseas on State service as well as for personal requirements).

Further, Section 12.0 of the said Circular provides a separate category for the admission of the children of the members of the Three Armed Forces and the Police who are/were engaged in operational duties. In terms of the said Section, firstly five children are selected for each parallel class in a State School by the Secretary of the Ministry of Defence and the Secretary of the Ministry of Public Order. Then, a list of the selected children is forwarded to the Ministry of Education which would thereafter refer such children to the relevant school.

Are Judicial Officers included in the said Circular?

In terms of Article 170 (b) of the Constitution a ‘Judicial Officer’ means:

“... any Judge, presiding officer or member of any other Court of First Instance, tribunal or institution created and established for the administration of Justice or for the adjudication of any labour tribunal or other dispute but does not include a person who performs arbitral functions or a public officer whose principal duty or duties is or are not the performance of functions of a judicial nature.”

[Emphasis added]

Further, Article IIIM (a) of the Constitution defines a ‘Judicial Officer’ as:

“... any person who holds office as judge, presiding officer or member of any Court of First Instance, tribunal or institution created and established for the administration of Justice or for the adjudication of any labour or other dispute, but does not include a Judge of the Supreme Court or of the Court of Appeal or of the High Court or a person who performs arbitral functions, or a public officer whose principal duty is not the performance of functions of a judicial nature.”

[Emphasis added]

A careful consideration of the Circular applicable for the admission of children to State Schools shows that the categories referred to in the said Circular do not include Judicial Officers and their children.

In view of the above, the Ministry of Education had been adopting the following practice in the years 2011 to 2016, 2018 and 2019 for the admission of the children of Judicial Officers to State Schools:

- (i) A Judge seeking admission of a child to Grade I would forward an application indicating the school of preference to the Judicial Service Association,
- (ii) The said Association would forward the said application to the Judicial Service Commission,
- (iii) The Judicial Service Commission would then consider the application and forward it to the Ministry of Education with a recommendation, if it warrants admission of the child,
- (iv) Thereafter, the Ministry of Education would admit the child to the preferred school of the Judicial Officer.

(b) Changing the admission criterion applicable to the children of Judicial Officers for the year 2017

The 3rd respondent stated that as there were twenty seven (27) applications from Judicial Officers in the year 2017, the Ministry of Education introduced the new criterion stated in the Objections filed by the 3rd respondent, when allocating schools to the children of Judicial Officers for the year 2017.

Old practice v New criterion

According to the old practice, the children of Judicial Officers were admitted to State Schools based on the recommendation of the Judicial Service Commission as the said Circular issued by the Ministry of Education did not provide for the admission of the children of Judicial Officers to State Schools.

However, the new criterion introduced by the Ministry of Education; for the admission of the children of Judicial Officers for the year 2017, was applicable only for judges who got transfers during that year.

Thus, the said new criterion is a departure from the past practice. Particularly, as the said criterion did not provide for the admission of the children of all Judicial Officers to State Schools on a general basis but on a transfer basis.

Further, the new scheme has done away with the past practice followed by the Ministry of Education to admit the children of Judicial Officers to State Schools since the year 2011.



Circular v New criterion

As stated above, the aforementioned Circular did not provide for the admission of the children of Judicial Officers to State Schools. Thus, the Ministry of Education had introduced and followed the aforementioned past practice to admit the children of Judicial Officers, which is similar to the admission of the children of the members of the Three Armed Forces and the Police who are/were engaged in operational duties and the staff of institutions directly involved in school education.

However, the new criterion introduced by the Ministry of Education for the year 2017 for the admission of the children of Judicial Officers is different to the criterion stipulated in the said Circular for other categories provided for the children of other officers in the Public sector, State Corporations, State Banks, the staff of institutions directly involved in school education, the members of the Three Armed Forces and the Police who are/were engaged in operational duties.

Moreover, the said new criterion introduced to admit the children of Judicial Officers in the year 2017 was only restricted to Judicial Officers who were transferred from one district to another and it did not contain a criterion to admit the children of Judicial Officers other than those who got transfers.

Is the new criterion arbitrary?

The 3rd respondent contended that since there were twenty seven (27) applicants in the year 2017, the Ministry of Education had followed the said criterion when allocating schools to the children of Judicial Officers.

Further, the 3rd respondent contended that the petitioners' children were denied admission to Visakha Vidyalaya on the ground that there were twenty seven (27) applicants for the year 2017.

However, as per the document produced and marked as '3R3' by the 3rd respondent, there were only 5 children out of the 27 applicants seeking admission to Grade I at Visakha Vidyalaya in the year 2017 whereas the other applicants had applied to various other schools in the island. This matter is discussed in detail later in the judgment.

Therefore, I hold that the introduction of the new criterion is arbitrary and not warranted by the circumstances that prevailed at the time of admissions.

(c) School admissions made after the stipulated date

The 3rd respondent stated in his Objections that the petitioners' children could not be admitted to Visakha Vidyalaya as there were no vacancies available for the said school. However, the 3rd respondent did not produce any material to show that Visakha Vidyalaya could not accommodate the petitioners' children. Consequent to an Order made by the court, the 1st to 3rd respondents filed a detailed list of admissions, to Grade I for the year 2017 and Grade 2 for the year 2018 to Visakha Vidyalaya, made after the admissions were finalised.

Name of the applicant	Date of Admission	Admitted Grade	Admission No.	Reason
Vaishnavi Alexandra Ramanayake	10/01/2017	1	39630	Based on the letter dated 18/04/2017 by the Secretary of the Ministry of Education
Nilasi Devsadi Senanayake	07/12/2017	1	39881	Based on the letter dated 14/11/2017 by the Secretary of the Ministry of Education
A.N. Maligaspekorale	23/01/2018	2	40218	Based on the letter dated 04/01/2018 by the Secretary of the Ministry of Education
K.P.M. Bihansa Kathiriarachchi	01/02/2018	2	40222	Based on the letter dated 22/01/2018 by the Secretary of the Ministry of Education
U.S. Dulanya Wijetunga	02/05/2018	2	41226	Based on the letter dated 06/04/2018 by the Secretary of the Ministry of Education
V.G.N. Chethara Karunathilaka	26/06/2018	2	40454	Based on the letter dated 20/06/2018 by the Secretary of the Ministry of Education
K.M.J. Ehansa Kodithuwakku	21/05/2018	2	40315	Based on the letter dated 24/04/2018 by the Secretary of the Ministry of Education

(The details produced above were taken directly from the document produced by the 3rd respondent marked as '3R3'.)

However, the 3rd respondent failed to explain as to how the aforementioned children were admitted to Visakha Vidyalaya after the admissions were finalised.



Further, the above details show that the respondents have violated the said Circular issued by the Ministry of Education by granting admission for the above children to Visakha Vidyalaya.

Moreover, the admission of the aforementioned children to Visakha Vidyalaya shows that the explanation given by the 3rd respondent for the failure to follow the longstanding practice and for the introduction of a new criterion for the admission of the children of Judicial Officers to State Schools for the year 2017 is untenable.

(d) Does the Ministry of Education have the power to convene a meeting to admit the children of Judicial Officers?

On 12th April, 2017 the Director of National Schools who is the 3rd respondent in the instant application had sent a letter to the Secretary of the Judicial Service Commission, requesting the Judicial Officers referred to in the said letter to participate in a meeting presided over by the Minister of Education on 18th April, 2017 to admit the children of Judicial Officers to State Schools notwithstanding the fact that there had not been such a practice on previous occasions.

Further, other parents who had applied under the said Circular had not been requested to participate in the said meeting or in any other similar meeting. Moreover, the said Circular applicable for the admission of children to State Schools does not provide for the convening of such meetings.

Hence, I am of the view that the Ministry of Education had no power or authority to convene such a meeting. Moreover, convening the meeting with Judicial Officers to admit their children to schools is illegal and arbitrary to the said Circular.

Is there a violation of Article 12(1) of the Constitution?

In the circumstances, denying admission to the children of the petitioners to State Schools, by introducing the said new criterion for the year 2017, admitting children to State Schools after the admissions were closed and convening a meeting for Judicial Officers to admit their children to State Schools by the Ministry of Education, is a violation of the petitioners' Fundamental Right to equal protection guaranteed by Article 12(1) of the Constitution by the 1st to 3rd respondents.

Did the Petitioners Entertain a Legitimate Expectation to Admit their Children to State Schools?

In order to seek redress under the doctrine of legitimate expectation, a person should have a legitimate expectation which was based on a promise, practice or a policy by the authority that is said to be bound to fulfil the expectation. However, such a practice need not be published or incorporated in a written document.

An expectation reasonably entertained by a person is considered legitimate if the person has justifiable reasons to form such an expectation. However, the applicability of the said doctrine is based on the facts and circumstances of each case.

In *Ginigathgala Mohandiramlage Nimalsiri v. Colonel P.P.J. Fernando* (SC/FR Application No. 256/2010, SC Minutes 17th of September 2015) it was held that the doctrine of legitimate expectation could arise by "believing an undertaking or promise given by a public official or by taking into consideration of established practices of an authority".

[Emphasis added]

In this context, it is necessary to examine whether the practice of admitting the children of Judicial Officers to State Schools gave rise to a legitimate expectation.

It is pertinent to note that the said Circular applicable for the admission of children to State Schools did not provide for the admission of the children of Judicial Officers to State Schools. The said void had been filled by admitting the children of Judicial Officers to State Schools on the recommendation of the Judicial Service Commission from the years 2011 to 2017 as a practice. Further, even after the year 2017, the same practice has been followed once again by the Ministry of Education to admit the children of Judicial Officers for the years 2018 and 2019.

The petitioner submitted that the following details pertaining to the applications from Judicial Officers to admit their children to Visakha Vidyalaya since the year 2015.

Year	School	Grade	No. of Applicants
2015	Visakha Vidyalaya	I	3
2016	Visakha Vidyalaya	I	2
2017	Visakha Vidyalaya	I	5
2018	Visakha Vidyalaya	I	0
2019	Visakha Vidyalaya	I	2



Hence, I am of the view that, the expectation formed by the petitioners is within the powers of the decision-maker, and the said practice is not contrary to the Circular applicable for the admission of children to State Schools.

In *R (Bancourt) v Secretary of State for Foreign and Commonwealth Affairs* (No. 2) [2008] 61, [2009] 1 AC 465 it was held that:

“The legitimate expectation may entail either (1) no more than that the decision-maker will take his existing policy into account, or (2) an obligation on the decision-maker to consult those affected before changing his policy, or (3) an obligation for the decision-maker to confer a substantive benefit on an identified person or group. Those categories represent an ascending hierarchy which must be reflected in the precision, clarity and irrevocability of any alleged representation or promise on which the expectation is said to be based. To rely successfully on a substantive expectation a claimant must be able to show that the promise was unambiguous, clear and devoid of relevant qualification, that it was made in favour of an individual or small group of persons affected; that it was reasonable for the claimant to rely on it; and that he did rely on it generally, but not invariably, to his detriment”.

A careful consideration of the practice followed by the Ministry of Education to admit the children of Judicial Officers shows that there was no ambiguity or uncertainty of the said practice. On the contrary, the said practice was precise and filled a void in the admission criterion stipulated in the Circular.

In the aforesaid circumstances, I hold that the past practice of the Ministry of Education, pertaining to the admission of the children of Judicial Officers to State Schools, gave rise to a legitimate expectation as it had admitted the children of Judicial Officers upon the recommendation of the Judicial Service Commission, since the years 2011 to 2016.

Did the Change of the Practice Breach the Legitimate Expectation?

When a public authority intends to deviate from an established practice, which has been in operation for a considerable period giving rise to a legitimate expectation, it is essential that the persons affected by such deviation are given advance notice of the proposed change except in situations where the authority is unable to continue with the relevant practice due to circumstances which warrant such a deviation.

A similar approach was taken in the case of *Dayaratne v. Minister of Health and Indigenous Medicine* (1999) 1 SLR 393 where it was held that “when a change in policy is likely to frustrate the legitimate expectations of individuals, they must be given an opportunity of stating why the change of policy should not affect them unfavourably”. [Emphasis Added]

Moreover, the need to give notice to affected persons from a change in practice or policy was also discussed in *Hughes v Department of Health and Social Security* (1985) AC 776 HL, where Lord Diplock stated that:

“When a change in administrative policy takes place and is communicated in a departmental Circular to, among others, those employees in the category whose age at which they would be compulsorily retired was stated in a previous Circular to be a higher age than 60 years, any reasonable expectations that may have been aroused in them by any previous Circular are destroyed and are replaced by such other reasonable expectations as to the earliest date at which they can be compelled to retire if the administrative policy announced in the new Circular is applied to them.”

In the instant application, it is important to note that the respondents have deviated from the said practice, only in the year 2017 and have reverted to the same practice in the years 2018 and 2019.

Moreover, as stated above the reasons given by the respondents for changing the admission criterion applicable for the admission of the children of Judicial Officers are not warranted by the circumstances that prevailed at the time of admission for the year 2017.

Further, I am of the view that the cases cited by the learned Additional Solicitor General in support of his contentions are not applicable to the instant applications.

In the circumstances, I hold that, the Ministry of Education and the Department of Education have changed the practice applicable for the admission of the children of Judicial Officers for reasons which were not justified by the respondents. Further, introducing the new criterion is violative of the established procedure applicable for the admission of the children of Judicial Officers to State Schools. Moreover, the material produced by the 3rd respondent shows that seven (7) students had been admitted to Visakha Vidyalaya after the applications were closed. This contradicts the position taken by the 3rd respondent for introducing the said new criterion.

Moreover, if a practice is introduced and followed to fill a lacuna in a particular Circular or criterion which led to a legitimate expectation, such practice shall not be changed without introducing an alternative criterion to fill such a lacuna unless there are compelling reasons to deviate from such a practice.

Hence, I am of the opinion that changing the past practice without giving prior notice and introducing the said new criterion for the year 2017 violated the legitimate expectation of the petitioners.



Orders of Court

Judges are an essential part of the administration of justice. They are required to maintain the honour and dignity of their profession, at all times. It is the responsibility of the judge to adjudicate a dispute honestly and impartially on the basis of the judge's assessment of the facts and in accordance with the conscientious understanding of the law.

Conflicts of interest occur where there is a conflict between the public duty and the private interest of a judge, in which the judge's private interest could improperly influence the performance of their official duties. This needs to be avoided, at all times. In the circumstances, a judge is required to maintain a form of life and conduct more severe and restricted than that of other people.

The Constitution of Sri Lanka has provided the necessary framework for the judiciary to maintain the aforementioned standards and to protect the independence of the judiciary. This position was held in *Jathika Sevaka Samgamaya v Sri Lanka Handabima Authority* (SC Appeal No. 15/ 2013 SC Minutes 16th December, 2015) where it was held:

"Article IIIC of the Constitution is a manifest intention to ensure the judiciary is free from interferences whatsoever. Thus, there is a clear demarcation of powers between the judiciary and the other two organs of the government, namely, the executive and the legislature."

Article 27 of the Constitution states:

"27(2) The State is pledged to establish in Sri Lanka a democratic socialist society, the objectives of which include –

...
...
...

(h) the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels."

In the case of *Watte Gedera Wijebanda v Conservator General of Forests and Other* (2009) I SLR 337, it was held that although Directive Principles are not specifically enforceable against the State, they provide important guidance and direction to the various organs of State in the enactment of laws and in carrying out the functions of good governance.

Hence, all children including the children of Judicial Officers are entitled to equal access to education and it is incumbent upon the State to have a proper mechanism to secure the said right. As stated above, the Department of Education and the Ministry of Education had been following the practice referred to above to give effect to the State Policy of equal access to education. Hence, the said practice has led to the formation of a legitimate expectation among the Judicial Officers to admit their children to State Schools. Thus, such a practice introduced and followed to fill a lacuna in the admission criterion applicable to State Schools cannot be varied or abolished without introducing an alternative criterion to fill the said lacuna.

An underlying principle of natural justice, upon which the principle of legitimate expectation is based, is the right to be heard.

As such, the Ministry of Education and the Department of Education was under a duty to give advance notice if it intended to replace the said established practice which had given rise to the legitimate expectation.

A similar position was held in *Dayaratne v. Minister of Health and Indigenous Medicine* (1999) I SLR 393 where it was held that;

"when a change of policy is likely to frustrate the legitimate expectations of individuals, they must be given an opportunity of stating why the change of policy should not affect them unfavourably. Such procedural rights have an important bearing on the protection afforded by Article 12 of the Constitution against unequal treatments arbitrarily, invidiously, irrationally, or otherwise unreasonably dealt out by the Executive".

In the circumstances, I direct the respondents not to change the aforementioned practice followed in the years 2011 to 2016 and 2018 to 2019 without formulating a criterion in consultation with the relevant stakeholders for the admission of the children of Judicial Officers to State Schools.

Further, for the reasons stated above, I direct the Principal of Visakha Vidyalaya and the other respondents to take immediate steps to admit the petitioners' children, Minuwanpitiyage Senoli Yunaya Peiris and Chanima Ranalee Jayaratne, to Visakha Vidyalaya forthwith and place them in an appropriate grade.

I order no costs.

Judge of the Supreme Court

Vijith K. Malalgoda, PC, J

I agree

Judge of the Supreme Court

E.A.G.R. Amarasekera, J

I agree

Judge of the Supreme Court



JSC circulars and special notices issued in the time of Covid - 19 Pandemic

JSC/SEC COR: 8



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நிதிச் சேவை ஆணைக்குழுச் செயலகம்
Judicial Service Commission Secretariat

මගේ අංකය
எனது இலக்கம்
My No.

ඔබේ අංකය
உமது இலக்கம்
Your No.

දිනය
திகதி
Date

JSC/SEC COR: 8

Measures in View of COVID 19

To: All High Court Judges/All Judicial Officers and Presidents of Labour Tribunals

In view of the situation that has developed in certain parts of the country due to the outbreak of COVID 19, the Judicial Service Commission decided to issue the following instructions to all High Court Judges/Judicial Officers and Presidents of Labour Tribunals with the aim of preventing the spread of COVID 19.

1. Courts situated in areas where curfew has been imposed

- Rescheduled dates of all cases (calling and trial) listed for the days on which curfew is in force should be published by way of a notice.
- Magistrates/ Additional Magistrates should attend to remand extension matters and wherever possible extension of remand should be done by electronic means.
- Judges/Judicial Officers should ensure that only the minimum number of staff required is requested to report to work, preferably on a rotational basis, in order to facilitate maintaining of social distancing.

2. Courts situated in areas where there is no curfew in operation

Judges/Judicial Officers of such courts are directed to review the situation prevalent within its geographical jurisdiction in consultation with the relevant health authorities and take appropriate decisions regarding listing and hearing of cases including on rescheduling of cases (calling and/or trials) by publication of notices, if the situation so warrants, with notice to the members of the Bar.

- Attention of all Judges and Judicial Officers is drawn to JSC/SEC COR-5 dated 19.04.2020 and JSC Circular No-442 dated 25.08.2020 which are attached hereto. Furthermore, strict adherence to relevant health guidelines and advisories should always be ensured when court hearings are conducted.

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Judicial Service Commission Secretariat
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- Senior most High Court Judge exercising criminal jurisdiction in a particular area, should request all judicial officers functioning within such High Court's area of territorial jurisdiction to report on the prevailing situation and its impact on the functioning of such court and submit a report to the Judicial Service Commission within three days of issuing this circular and should take steps to notify the Judicial Service Commission forthwith of any subsequent change of circumstances regarding the functioning of courts in the area concerned.

- All judicial officers/ magistrates should take necessary measures to compile the report referred to in paragraph 4 above, in consultation with relevant authorities including health authorities and should facilitate the reporting process stipulated in the said paragraph, efficiently.

Under the command of the Judicial Service Commission,

H.S. Sanjivaratne
Secretary
Judicial Service Commission

H. Sanjeeva Somaratne
Secretary
Judicial Service Commission
Colombo 12

26th October 2020.

Judicial Service Commission Secretariat,
Colombo 12.

- Honorable Attorney General - for information & necessary action
Secretary to His Excellency the President - for information
Secretary, Ministry of Justice - for information & necessary action
Acting Inspector General of Police - for information & necessary action
Commissioner General of Prisons - for information & necessary action
Secretary, Bar Association - for information & necessary action

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මහාධිකරණ විනිශ්චයකාරවරුන් ඇතුළු සියලුම අධිකරණ නිලධාරීන් වෙත,

தொடர் 19 வாழ்கிறீமே! அவமானம் அவம் வன பரீதே தியா கிரீத

බන්ධනාගාර 4෫෫කින් අධිකරණ නියෝග ප්‍රකාරව අධිකරණ වෙත ඉදිරිපත් කිරීමේදී, බාහිර පුද්ගලයන්ගෙන් කිසිවක්ද, විශේෂයෙන්ම මානසිකව අසාමන්‍යයන්ගෙන් කිසිවක්ද, අධිකරණයට පැමිණීමට අවකාශයක් ලබාදීමට ඔවුන්ගේ අවධානයට ලක් කිරීමට මට නියම කර ඇත.

[illegible]

JSC/SEC COR: 5 සහ 2020.04.19 දිනැති අධිකාරණය සේවා නොමැත්තේ සහා ව්‍යුළේට්ටෙරුව
JSC/SEC/Notice 4 සහ 2020.05.08 දිනැති දැන්වීමේ දී නවමත් ප්‍රදානවත්කමට පවතින බවත් එම
ව්‍යුළේට්ටෙරුව සහ දැන්වීමේ දෙකෙන්, බන්ධනාගාර දෙපාර්තමේන්තුවේ සේවයේ සේවය කිරීමට අදාළ
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අව. සංචිත පොතකින්
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 ප්‍රතිකර්මය

2020 අගෝස්තු මස 25 වන දින,
අධිකරණ සේවා කොමිෂන් සභා ජ්‍යෙෂ්ඨය.

JSC/SEC COR: 9



அதிபரைக்குப் பேரறிவுரைத் தீர்மானம்
நீதிச்சேவை ஆணைக்குழுச் செயலகம்
Judicial Service Commission Secretariat

JSC/SEC COR: 9

மேல் தகவல்
பாது இலக்கம்
My No.

தேய
திகதி
Date

Functioning of Courts Situated within the Isolated Areas

URGENT MATTERS

To: All High Court Judges/All Judicial Officers and Presidents of Labour Tribunals of the Courts/LTs situated within isolated areas

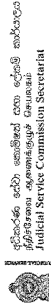
Taking into consideration the press releases issued by the Department of Government Information dated 14.11.2020 and numbered 433/2020 and dated 15.11.2020 and numbered 434/2020 (as amended), you are directed to take up only the urgent matters during the week commencing from 16.11.2020 to 20.11.2020. In this regard, you are required to adhere to the following guidelines below.

1. The Presiding Judge of the Court should decide which matters are to be taken up, from and out of the matters received by way of motions, through the official fax and/or official email address of the respective Courts.
2. Every endeavor must be made to take up matters at the given time slots.
 - In stations where more than one Judge/Judicial Officer is functioning, Judges/Judicial Officers, by mutual arrangement, may work on a rotational basis.
3. The Judge/Judicial Officer who is in charge of administration should ensure to get down only the “minimum number of members of the staff” required to facilitate the above.
4. Taking up of urgent matters should be done only in the presence of relevant Counsel /Attorneys-At-Law only. Litigants should not, under any circumstance, be permitted to gain access to isolated areas. It is advisable to put Counsel/AALs on notice, that the litigants will not be permitted entry to the court premises.
5. At all times, Court proceedings must be carried out strictly adhering to the health advisories/guidelines issued by the government/health authorities.
6. The official fax numbers and email addresses of the Courts/LTs situated in the areas which have been declared as “isolated areas” are given below:

Colombo District

- High Court Colombo
E-mail: colhc228@gmail.com
Fax No – 0112438893

தலைவர், 573, புதுமலை, சென்னை 12.
 த.கே.இல. 573, புதுமலை, சென்னை 12.
 P.O. Box 573, Huttukodir, Colombo 12.
 www.jsc.gov.lk
 jscinformation@jsc.gov.lk
 (+94) 11 2463111
 (+94) 11 2433119 / 2451159
 (+94) 11 7321104



- Magistrate Court Negombo
Email: mcnegombo02@gmail.com
Fax No : 0312222291
- Magistrate Court Mahara
E-mail: maharamc067@gmail.com
Fax No: 0112926046
- Labour Tribunal Negombo
Email: lt21addnegombo@gmail.com
Fax No : 0312227404

Under the command of the JSC

H.S. Somaratne
Secretary
Judicial Service Commission
H. Sanjeewa Somaratne
Secretary
Judicial Service Commission
Colombo 12

C.C. :

01. Hon. Attorney General – for information & necessary action
02. Secretary to His Excellency the President – for information
03. Secretary, Ministry of Justice - for information & necessary action
04. Acting Inspector General of Police - for information & necessary action
05. Commissioner General of Prisons - for information & necessary action
06. Secretary, Bar Association - for information & necessary action

- Civil Appellate High Court Colombo
Email: civilappealhighcourt@gmail.com
Fax No – 0112478853
- Commercial High Court Colombo
E-mail: commerciahighcourt@gmail.com
Fax No: 0112441241
- District Court Colombo
E-mail: coldcoffice@gmail.com
Fax No -0112421732
- Chief Magistrate's Court
Email: chiefmagistratecourt@gmail.com
Fax No : 0112434350
- Magistrate Court Fort
E-mail: mcfortacc2@gmail.com
Fax No -0112430055
- Magistrate Court Maligakanda
E-mail: maligakandamc@gmail.com
Fax No: 0112695711
- Labour Tribunal Colombo
E-mail: lt2addl@yahoo.com
Fax No -0112684023

Gampaha District

- High Court Negombo
E-mail: hcnegombo@gmail.com
Fax No – 0312225423
- Civil Appellate High Court Negombo
Email: civilappealnegombo@gmail.com
Fax No – 0312280372
- District Court Negombo
E-mail: dcnegombo@gmail.com
Fax No -0312222293



අධිකරණ සේවා කොමිෂන් සභා ලේකම් කාර්යාලය
நீதிச் சேவை ஆணைக்குழுச் செயலகம்
Judicial Service Commission Secretariat

මගේ අංකය JSC/SEC COR-10

මගේ ලිපිනය
My No.

ඔබේ අංකය
Your No.

දිනය 30.11.2020
දිනය
Date

To: All High Court Judges and All Judicial Officers

Measures to minimize the spread of Covid – 19 in Prisons

The JSC having considered the prevailing situation in Prisons has decided to issue the following guidelines with the aim of minimizing the spread of Covid – 19 in Prisons.

- All Magistrates and Additional Magistrates are required to strictly comply with Section 3 (1) of the Release of Remand Prisoners Act No.8 of 1991.
- In other instances where a person is languishing in remand custody due to his inability to furnish bail, despite bail having been granted by a competent court, Magistrates and High Court Judges may exercise their discretion and order that such bail be furnished within a specific time period, preferably on or before 31st of January 2021, and until such time may consider the release of such person upon entering into a bond without sureties.

Under the command of the Judicial Service Commission

H.S.Somarathne
Secretary
Judicial Service Commission
H. Sanjeeewa Somaratne
Secretary
Judicial Service Commission

Copy :
01. Hon. Attorney General F.Y.I.
02. Secretary/MOI F.Y.I. and F.N.A.
03. Inspector General of Police F.Y.I.
04. Commissioner General of Prisons

To provide the respective courts with a list of suspects/accused who are languishing in remand custody due to the inability to furnish bail, along with the relevant case numbers.

My No: - JSC/SEC/COR

JSC/SEC/Notice 2

To All High Court Judges/ Judicial Officers /Presidents of Labour Tribunals

Instructions to courts for the prevention and control of Covid-19

Judicial Service Commission directed me to bring the instructions annexed hereto on the subject referred to above, issued by Director General of Health Services to the attention of all High Court Judges/Judicial Officers/Presidents of Labour Tribunals for information and necessary action.

Under the command of the Judicial Service Commission

H.S.Somarathne
Secretary
Judicial Service Commission
H. Sanjeeewa Somaratne
Secretary
Judicial Service Commission
Colombo 12

20th November 2020,
Office of the Judicial Service Commission Secretariat,
Colombo 12.





Instructions for selected public activities/venues for the prevention and control of COVID - 19

Courts

Description

Courts are a high risk setting for COVID-19 transmission as mixing of persons from different areas / different risk levels occurs. They also require support functions such as photocopy and printing services, translation services, estates and parking spaces which can contribute to risk / be affected.

Specific message/ instructions:

For the Administration

- Appoint a responsible person to each of the courts, who is expected to develop an institutional preparedness plan and to oversee that preventive measures are implemented throughout
- Responsible person to ensure health education of all staff is regularly conducted
- Responsible person to ensure constant reminders of the need to adhere to COVID-19 prevention behaviours – physical distancing, respiratory etiquette, hand washing/use of sanitizers and proper wearing of masks
- Provide adequate number of flet operated/ sensor operated sinks with soap for hand washing at the entrance and within the court premises. These should be installed and maintained to function in strategic, multiple locations to improve accessibility
- Alcohol based hand sanitizers should be made available at key service points
- Maintain a staff roster and inform staff who are required to be present each day. Human resource restrictions should be based on recommendations issued by Ministry of Health.
- Set up temperature monitoring system at the court entrance. Only those with normal temperature should be allowed to enter the premises. Non-contact infra-red devices are preferred for temperature monitoring.
- Only those who are essential for the court cases should be allowed to enter the court premises
- Maintain a registry of all persons entering the court premises. This should include name, NIC number, address and telephone number and the location to be visited
- Mask must be worn properly to cover both nose and mouth by everyone within the court premises.
- Keep the doors, windows & fan lights open as much as possible to strengthen cross ventilation
- Operate the air conditioner/ ceiling fans at moderate speeds. Refer to the general guideline on maintenance of air conditioners
- Ensure regular cleaning and disinfection of frequently touched surfaces, e.g. door handles, table tops, elevator buttons between sessions, especially in areas with high crowd turnover
- Ensure physical distancing of a minimum of 1 meter between persons. Seats/ benches should be placed/ marked in a way which allows 1 meter distancing in all directions.
- Witness box should be physically distanced and frequently touched areas cleaned/disinfected regularly.

1



Instructions for selected public activities/venues for the prevention and control of COVID - 19

- Consider appointment systems / sessions for cases and electronic / telephone methods for court proceedings and court administration as far as possible (E-Filing and Virtual Courts).
- Limit the number of persons present at a given time to 50% capacity or less based on risk category of the area. The maximum number of people to be permitted in each room should be determined, prominently displayed and strictly enforced.
- If there is a lift, mark the positions on the floor to limit the number of passengers at a time to maintain the safe distance between each other and facing away from each other
- Ensure seating and service points in the canteen adhere to physically distancing and other preventive guidelines
- Consider the requirement for an employee acknowledgement of COVID-19 precaution instruction form to educate professional and other staff
- Strictly enforce the no smoking policy of the government on the court premises
- You are required to fill the provided Assurance form, indicating compliance with the instructions given. The Assurance form should be submitted to the local authority (Municipal council/ urban council/ pradeshiya sabba) and a copy should be sent to the local Medical Officer of Health. The Registrar of each Court is responsible to ensure that the above guidelines are strictly adhered to.

For the Judges / Legal officers / other staff

- Wash your hands with soap and water at least for 20 seconds before entering and leaving the premises and frequently at work
- Practice respiratory etiquette: cover your mouth and nose with elbow when sneezing
- Avoid touching mouth, nose and eyes
- Wear your face mask properly at all times to cover both nose and mouth - these can be disposable / reusable. Adequate reusable face masks should be available for personal use. Sri Lanka Standards Institution has made available standards for reusable masks.
- Always maintain minimum 1-meter physical distance.
- Do not organize or participate in any gatherings.
- Avoid contact with frequently touched surfaces unnecessarily (such as door handles, lift buttons, stair railings and shared objects such as pens and staplers) and use non-touch techniques e.g. using elbow to open doors.
- Stay home even if you have fever or minor respiratory symptoms such as sore throat/cough.
- Take the minimum necessary personal belongings with you. These belongings (purse, phone, keys) should be disinfected as soon as you get home. Avoid wearing jewellery, watches, etc. to office if possible.
- Do not share personal items such as pens/ pencils/ plates/cups/ water bottles.
- Minimize the exchange of books, diaries and other similar documents.

For Judges / legal officers

- Do not share coats/ slacks/ hats. These should be worn only when essential and cleaned regularly.

2



Instructions for selected public activities/work settings for the prevention and control of COVID-19

Methods of Instruction

- Health messages through posters/trackers/notices.
- Adopt innovative methods of sending frequent reminders.
- Reference to health guidelines general and specific for each supportive service mentioned in the document.

Dr. ARELA GUNAWARDENA
 Director General of Health Services
 Ministry of Health
 Colombo 10.

Instructions for selected public activities/work settings for the prevention and control of COVID-19

- Consider advocating for a temporary period of not wearing cloaks based on the alert level of the country.
- Do not hang your coats/cloaks in common places where it will get mixed up with others' coats/cloaks.
- In chambers/offices minimize the number of clients as much as possible. All persons entering the office should be wearing masks. Keep the doors and windows open as much as possible to improve ventilation. Alcohol based hand sanitizers should be used frequently. Regularly clean and disinfect frequently touched surfaces. In shared office spaces do not exchange personal items.
- Maintain a record of all contacts encountered during the day as far as possible.
- For legal officers - minimize handling of money. Alternate methods such as online bank transfers, bank deposits should be considered.

For litigants

- Avoid going to the courts unless it is essential, and spend the minimum time required to get the work done. Do not loiter on court premises/canteen.
- Strictly follow signposts, instructions on numbers permitted, seating arrangements.
- Wear your face mask properly to cover both nose and mouth at all times.
- Wash your hands with soap and water at least for 20 seconds before entering and leaving the court premises. Use hand sanitizer when required.
- Practice respiratory etiquette - cover your mouth and nose with elbow when sneezing.
- Avoid touching mouth, nose and eyes.
- Always maintain minimum 1-meter physical distance from others.
- Avoid contact with frequently touched surfaces such as door handles, stair railings and common pens unnecessarily and use non-touch techniques e.g. using elbow to open doors.
- Minimize handling of money. Alternate methods such as online bank transfers, bank deposits should be considered.
- Notify the legal authority if having fever and respiratory symptoms such as sore throat and cough.

Special considerations:

- The free civilian movement due to road access and availability of other public services may pose additional risks where the courts occupy large areas almost amounting to village like situation, such as in Hultsderp. Local arrangements to restrict movement due to public road access may have to be specially arranged after consulting with local authorities. It is to be noted that public inconvenience needs to be avoided. This services to the public such as groceries, communication shops, other vendors all need to strictly comply with the health guidelines and a method of strictly monitoring their co-existence should be adopted. The support of the local authorities and police to monitor and enforce preventive measures can be obtained.
- In isolated areas/areas declared to be of high risk - limit number of cases taken up to only urgent/essential cases

22



මගේ අංකය :- JSC/SEC/CIR/2020

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ඉහත සඳහන් (අ) සහ (ඇ) අවස්ථාවන්ට අදාළ ජයර වැරදි සහ/හෝ පවතින තදු අභිභවිතවත් හානිකාරී ගොවිකම් ප්‍රමාණයන්ට (Not being User Quantities) අදාළ නොවන අතර සැලකිය යුතු ගොවිකම් කර ප්‍රමාණයන්ට, (Substantive Quantities) එනම්, ගොවිකම්කරුන්ගේ ඉදිරි බර ග්‍රෑම් 01 ක් හෝ ඊට වැඩි වන අවස්ථාවන්ට පමණක් අදාළ විය යුතු ය.

කැනඩියානු සැලසුම් වැරදි නොහොත් ගොවිකම්කරුවන්ගේ නඩු පැවරීම

අත්දැකීම්වලට ගනු ලබන ගොවි ප්‍රමාණය කිලෝ ග්‍රෑම් 05 ට අඩු වන අවස්ථා වල දී ඒ සම්බන්ධයෙන් අදාළ විමර්ශන උඩත ගොනු නිකුත්කිරීමට වෙන වෙනම කිරීම සලකා නොවන අතර, 1984 අංක 13 දරන පනත මගින් සංශෝධිත විෂ වර්ග, අඹ, සහ අන්තර්ගතයක මාසයට පහත 78(5)(අ) වන වගකිය ප්‍රකාරව පැකට්ටුවන්ට වරදැව නිකුත් කළහොත් අදාළ මහේස්ත්‍රාත් අධිකරණයෙහි පැවරීමට යොමුවිය මගින් පිළවර ගත යුතු ය.

කෙසේ වෙතත්, අත්දැකීම්වලට ගනු ලබන ගොවි ප්‍රමාණය කිලෝ ග්‍රෑම් 05 ට වැඩි වන අවස්ථා වල දී සහ අදාළ ගොවි වල බර ප්‍රමාණය කිලෝ ග්‍රෑම් 05 ට වඩා අඩු වුව ද, සැලැස්සුම් කිරීමට යටත්ව ඉහත අත්දැකීම්වල (අ) (ආ) සහ (ඇ) අවස්ථාවන් යටතට ඇතුළත් වන්නේ නම්, ගොවිකරණයේ සිටි පොදුතා පත්‍ර ගොනු කිරීම සලකා බැලීම සඳහා සම්පූර්ණ කරන ලද ගොනු ගොනු නිකුත්කිරීමට වෙන වෙනම කළ යුතු ය.

අධිකරණ සේවා කොමිෂන් සභාව
නිකුත් කිරීම
අධිකරණ සේවා කොමිෂන් සභාව
නිකුත් කිරීම

- පිටපත් :
1. ලේකම්, අධිකරණ සේවා කොමිෂන් සභාව, කොළඹ 12.
 2. ලේකම්, අධිකරණ සේවා කොමිෂන් සභාව, කොළඹ 12.
 3. රජයේ රිය සම්පන්න, රිය සම්පන්න අධිකරණ සේවා කොමිෂන් සභාව, අංක 31, ඉස්පරා මාවත, පැලමන, බත්තරමුල්ල.
 4. අධ්‍යක්ෂ (නීති), පොලිස් මූලධර්මය, කොළඹ 01.
 5. අධ්‍යක්ෂ, පොලිස් මූලධර්මය කාර්යාලය, කොළඹ 01.
 6. පුරාතන කොමසාරිස්, පුරාතන අධිකරණ සේවා, රාජගිරිය.
 7. බන්ධනාගාර කොමසාරිස් ජනරාල්, බන්ධනාගාර මූලධර්මය, කොළඹ 08.



My No. : JSC/SEC/CIR/2020

To : All High Court Judges and All Judicial Officers,

Issues regarding Overcrowding of Prisons

Having considered concerns raised regarding Overcrowding of Prisons, Judicial Service Commission directed me to emphasize the importance of adhering to the following Circulars issued by JSC from time to time, on the above subject.

S/N	Circular No./Circular Letter No.	Issued Dated
01.	250	01.02.2000
02.	250 (a)	14.02.2000
03.	250 (b)	02.10.2020
04.	354	15.10.2012
05.	379	29.10.2014
06.	Circular Letter No. JSC/SEC/CIR/2017	06.07.2017
07.	417 "Enforcing release of remand prisoners Act No.08 of 1991"	24.04.2018
08.	429	19.11.2018

Under the command of the Judicial Service Commission

H.S.Somaratne
Secretary
Judicial Service Commission
H. Sanjeeva Somaratne
Secretary
Judicial Service Commission
Colombo 12

30th November 2020,
Office of the Judicial Service Commission Secretariat,
Colombo 12.

ආණ්ඩුවේ රජ පරීක්ෂක දෙපාර්තමේන්තුව
அரசாங்க இரயணப் பகுப்பாய்வாளர் திணைக்களம்
No. 31, Isart Mawatha, Pelawatha, Battaramulla.
SRI LANKA.

GOVERNMENT ANALYST'S DEPARTMENT

දුරකථන 011 - 2786595
දුරකථන/ෆැක්ස් 011 - 2176800
ෆැක්ස් 011 - 2786594
Email : govanalyst@slnet.lk

ආ.ර.ප./මන්දලය/1/2020 2020.11.09

නීතිපතිතුමා,
නීතිපති දෙපාර්තමේන්තුව.

විශේෂයෙන්ම සඳහා ලැබෙන හෙතෙමින් හමු වන සංඥාපිටි අනුප්පාදන ප්‍රතිපත්ති

ලක්ක කරගත් සම්බන්ධයෙන් අද දින පැවැත්වූ දුරකථන සංවාදය හා සබැඳි.

02. ආණ්ඩුවේ රජ පරීක්ෂක දෙපාර්තමේන්තුවේ මන්දලය අංශය වෙත විශේෂයෙන් සඳහා ලැබෙන ග්‍රාම් 2 දක්වා දළ බරක් සහිත හෙතෙමින් සාම්පල වල විශ්ලේෂණ ප්‍රතිපල අනුව ප්‍රධාන,

- සංඥාපිටි හෙතෙමින් මිලි ග්‍රෑම් 500 ඉක්මවා ඇති බවට ඉතා අඩු වන අතර එය 5% පමණ වන බවද,
- සංඥාපිටි හෙතෙමින් මිලි ග්‍රෑම් 1000 (ග්‍රෑම් 1) ඉක්මවා ඇති බවට ඉතාමත් වැඩි වන අතර එය සියලුම එකතුවක් වඩා අඩු ප්‍රතිපත්ති බවද,

දන්වා තිබේ.

H.W.
D.H.L.W. JAYAMANNE
B.Sc.(Hons), LL.B., LL.M., LL.D. (Hons),
Additional Government Analyst
Government Analyst's Department
No. 31, Isart Mawatha,
Pelawatha, Battaramulla.

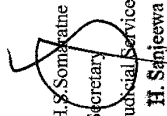
My No:-ISC/SEC/CIR/2020

To All High Court Judges & Judicial Officers

Sub-committees Appointed under the Ministry of Justice to Speed up the Legal Reforms of the Government in order to Strengthen the Process of Administration of Justice

Having considered a letter numbered MOI/P/PMO/7 dated 18.10.2020 sent by Mr.M.M.P.K.Mayadunne, Secretary, Ministry of Justice on the above subject, Judicial Service Commission directed me to publish the same on the website of the Judicial Service Commission Secretariat, for your information.

Under the command of the Judicial Service Commission


H.S. Somaratne
Secretary
Judicial Service Commission
H. Sanjeeva Somaratne
Secretary
Judicial Service Commission
Colombo 12

02nd December 2020,
Office of the Judicial Service Commission Secretariat,
Colombo 12.

අමතර තොරතුරු
Additional Information
අමතර තොරතුරු
Additional Information

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Mr. H.S. Somaratne
Secretary
Judicial Service Commission Secretariat

Dear Mr. Somaratne

Sub-committees Appointed under the Ministry of Justice to Speed up the Legal Reforms of the Government in order to Strengthen the Process of Administration of Justice

The Cabinet of Ministers has approved the proposal submitted by the Hon. Minister of Justice on 14.09.2020 to set up a Special Unit under the Ministry of Justice to speed up the legal reforms of the Government.

02. Accordingly, five sub-committees have been appointed for a period of two years from 07.10.2020 and the composition of the proposed committees are given below.

Sub-committees	Chief Legal Advisors	Legal Consultants
Infrastructure Development	Mr. U.R. De Silva, President's Counsel, Former President of the BASL	Mr. Shanth Fernando, Attorney-at-Law, Executive Member of the Colombo Law Society
Digitization and Court Automation	Mr. Navin Marapana, President's Counsel	Mr. Ruwantha Conray, Attorney-at-Law
Criminal Law Reforms	Mr. Shavindra Fernando, President's Counsel, Deputy President of the BASL	Mr. Sanjith Senanayake, Attorney-at-Law
Civil Law Reforms	Mr. Lasitha Kanuwanarachchi, Attorney-at-Law, Executive Member of the BASL	Mr. Sanjeeva Dassanayake, Attorney-at-Law
Commercial Law Reforms	Mr. Kaushalya Nawaratna, Former Attorney-at-Law, Secretary of the BASL	Mr. Shehan Gunawardane, Attorney-at-Law



මගේ අංකය :- ISC/SEC/CIN/2020

සියළුම මහාධිකරණ විනිශ්චයකාරවරුන් සහ අධිකරණ නිලධාරීන් වෙත,

නේත්‍රසාධක ප්‍රවර්ධන පනතේ සඳහා සේව්‍යාලීනත් ඇතුළත් කර ගැනීම සම්බන්ධව

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03. These sub-committees are functioning as an extension of this ministry and each sub-committee is expected to identify the strengths and weaknesses of the existing system and identify and recommend the measures in order to address the issues.

04. Members of the above Sub-committees expect to liaise effectively and closely with all the stakeholders to obtain their expertise assistance to make this task a success.

05. In view of the above, I shall be much thankful, if you could kindly take necessary action to make aware the respective officials under your purview regarding the above initiative.

06. Your cooperation in this regard is much appreciated.

Thank you


M.M.P.K. Mayadunne

Secretary

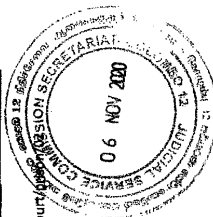
Ministry of Justice

Copies:

1. Mr. U.R. De Silva, President's Counsel, Former President of the BASL – for info. Pl.
2. Mr. Navin Marappana, President's Counsel – for info. Pl.
3. Mr. Shavindra Fernando, President's Counsel, Deputy President of the BASL – for info. Pl.
4. Mr. Lasitha Karunawararachchi, Attorney-at-Law, Executive Member of the BASL – for info. Pl.
5. Mr. Kaushalya Nawaratna, Attorney-at-Law, Former Secretary of the BASL – for info. Pl.

Office of the Judicial Service Commission secretariat,
Colombo 12.

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M. M. P. K. Mayadunne
Secretary
Ministry of Justice



JSA Law Reports - 2020 Volume II

SUPREME COURT JUDGMENTS*JSALR 2020/II/I***Ramakrishnan Sivalingam****Vs****Ramakrishnan Dharmalingam**

SC Appeal No. 125/2018

Before : Justice Buwaneka Aluwihare, PC.
Justice J. V. K. Malalgoda, PC. J,
Justice Preethi Padman Surasena, J,

Decided on : 16. 10. 2020**Aluwihare, PC. J,**

The Plaintiff-Appellant-Respondent filed action before the District Court against the Defendant-Respondent-Petitioner-Appellant and sought a declaration that the Plaintiff has prescribed to a half share of the land and the building bearing No. 23, Sedawatte, Wellanpitiya.

The Defendant moved this court by way of Leave to Appeal and Leave was granted by the Court on 27th August 2018 on the questions of law referred to in sub-paragraphs (c) and (h) of paragraph II of the Petition of the Defendant dated 4th December 2017. The said questions in verbatim, are as follows;

II. (c) Whether the High Court of Civil Appeal holden in Colombo has failed to consider that the Learned Trial Judge has properly identified the cause of action?

(h) Whether the High Court of Civil Appeal holden in Colombo has erred by coming to the conclusion that the Respondent [Plaintiff] has a prescriptive right to the said property?

The Defendant, relied on the decision in *Terunnanse v. Menike* (1895) 1 NLR 200 to substantiate the point raised that, prescription can only be used as a defence, and not as a weapon of offence, to the effect that the Plaintiff as the party bringing the action, cannot rely on prescription to claim the title.

Held:

1. There can be instances where a person who had acquired prescriptive title is forcibly ejected and, in such situations, the ejected party should be able to go before the law and vindicate its rights
2. Although these observations were made by his Lordship in giving expression to the phrase 'possession for ten years previous to' that occurs in Section 3 of the Prescription Ordinance, it recognised the right of a party, seeking title based on prescription, to invoke the jurisdiction of the court in order to vindicate its rights.
3. Thus, it appears that there is ample jurisprudence developed by our courts over the years, for the proposition that prescription is not only to be used as a shield but also can be used to vindicate one's title to land or other immovable property.
4. Thus, if a party to a case of this nature describes the property in the plaint to a degree or to an extent, that enables the court to enter a clear and a definite judgement and if the description of the property would not impede the execution of the decree, that would be sufficient compliance with Section 4I of the Civil Procedure Code. In each case the court has to consider this issue based on the facts and circumstances of that particular case.

*JSALR 2020/II/II***Mahavidanage Simpson Kularatne****Vs.****People's Bank**

S.C. Appeal 04/2015

Before : Justice Buwaneka Aluwihare, PC. J,
Justice Priyantha Jayawardana, PC. J,
Justice Murdu N.B.Fernando, PC. J,

Decided on : 15.09.2020**Murdu N. B. Fernando, PC. J,**

The defendant was a customer and an account holder at the Tissamaharama branch of the plaintiff bank.



JSA Law Reports - 2020 Volume II

The defendant operated a current account and in the course of banking transactions presented cheques and deposited money to this account. The plaintiff bank honoured the cheques presented by the defendant and the current account became over drawn.

The defendant failed to pay back the over drawn sum and the plaintiff bank on 11-09- 1997 instituted action against the defendant in terms of the Debt Recovery (Special Provisions) Act No 02 of 1990 as amended by Act No 09 of 1994 and annexed two cheques issued by the defendant and the statement of account to its plaint.

Held:

1. Thus, the key word in this legislation is 'lending institution' and 'debt'. A lending institution may resort to the provisions of the Act, if the lending institution could satisfy court that the transactions referred to in the plaint, falls within the definition of 'debt'.
2. Thus, from the above referred judicial decisions, it is amply clear that an 'overdraft' falls within the four corners of the Act subject to the other pre-requisites therein been fulfilled.
3. Vide section 4(2) of the Act, upon presentation of the plaint together with annexures before a court, if the court is satisfied, that the 'instrument, agreement or document' produced in court appears to be properly stamped, and not open to suspicion by any alteration or erasure or other matter on the face of it, and not be barred by prescription, the court being satisfied of the contents contained in the affidavit shall enter a decree nisi.
4. The defendant only gets an opportunity to challenge a decree nisi issued by court in the first instance, only when he receives summons and is granted permission and/or leave to appear and show cause against the decree nisi already issued.
5. The Debt Recovery Act as discussed is a Special Provisions Act designed and enacted comparatively recently by the Legislature for a particular purpose, namely to regulate and expedite the procedure

relating to debt recovery of lending institutions and in my view a court should strive to achieve the said objects in interpreting the provisions of the Act. It is not right or correct for a court to hold against the intention of the Legislature in determining matters coming under the purview of the Act.

JNALR 2020/II/III

Hattuwan Pedige Sugath Karunaratne

Vs.

Hon. Attorney General

SC Appeal 32/2020

Before : Buwaneka Aluwihare, PC. J,
P. Padman Surasena, J,
E. A. G. R. Amarasekara, J,

Decided on : 20.10.2020

Aluwihare, PC. J,

On the 21st of October 2013 the indictment had been read over to the Accused and he had pleaded not guilty to all the counts.

The proceedings did not disclose the reasons as to why the indictment was read over to the Accused for a second time, almost at the tail end of the trial. This was a matter where, at the inception, the Accused had elected to plead not guilty. Neither does the record bear out whether the Accused had wished to withdraw his earlier plea of not guilty not whether he has subsequently expressed his desire to plead guilty.

Held:

1. No doubt, the Accused has a right to withdraw his initial plea of not guilty at any time before the judgement is delivered and a plea of guilty can be advanced. In such an instance the court has a duty to act cautiously; not only must the court be satisfied that the withdrawal of the plea is out of the Accused's own free will but must also satisfy itself that the withdrawal of the initial plea was only after having fully understood the consequences of his act.



JSA Law Reports - 2020 Volume II

2. In terms of Section 183 of the CPC, an Accused is entitled to withdraw his plea of guilty any time before the sentence is passed, with the leave of the magistrate. These are safeguards provided by the legislature to prevent any injustice being caused to an Accused and they cannot be dismissed lightly. When an Accused pleads guilty, it is not to be taken at its face value, unless the plea is expressed in an unmistakable term with full appreciation of the essential ingredients of the evidence.
3. No counsel is compelled by court to undertake the defence of an Accused and it's a choice an Attorney-at-Law can exercise. Thus, for moral reasons or otherwise if a counsel is not comfortable in accepting an appointment to undertake the defence of an Accused as an "assigned counsel" they are free to refrain from undertaking such duties. Once appointed, however, they cannot shirk their responsibilities and are under a professional duty, not to act in a manner detrimental to or prejudicial to the rights of the Accused that, they are defending.
4. No doubt the duty of a State Counsel is to present the Prosecution in an effective manner to the best of their ability in furtherance of securing a conviction, if the evidence can support the charge. The Prosecutor, however, is an officer of the court and their role is to assist the court to dispense justice. Thus, it is not for a Prosecutor to ensure a conviction at any cost, but to see that the truth is elicited, and justice is meted out.

JSALR 2020/II/IV

Bank of Ceylon

Vs.

Flex Port (Pvt) Limited.

SC Appeal I20/2012

Before : Sisira J. de Abrew, J,
Vijith. K. Malalgoda, PC. J,
P. Padman. Suresena, J,

Decided on : 03.07.2020

Sisira J. de Abrew, J,

The Plaintiff-Appellant Bank instituted action No.4329/03/M in the District Court of Mount Lavinia against the Defendant-Respondent to recover a sum of Rs.1,232,642.57 and 24% interest per annum with effect from 1.8.1999 on the basis of the said O/D facilities granted to the Defendant-Respondent. The learned District Judge by his judgment dated 30.7.2008 dismissed the action of the Plaintiff-Appellant Bank on the basis that the action was prescribed.

Held:

1. Considering all the above matters, I hold that an overdraft granted by a bank to a customer is a loan.
2. Thus, acting on the principles laid down in the above judicial decision, I hold that in an action to recover an overdraft granted by a bank to a customer, cause of action would arise at the time the demand was made.

My PAIN
may be the
REASON
for
SOMBODY'S
LAUGH.

But
My LAUGH
must never be the
REASON
for
SOMEBODY'S
PAIN

- Charlie Chaplin -



**COURT OF APPEAL JUDGMENTS****JSALR 2020/II/V****Ajit Damon Gunewardhane and others****Vs.****Consumer Affairs Authority**

CA /PHC /APN/149/2017

Before : Hon. K. K. Wickremasinghe, J,
Hon. Devika Abeyratne, J,

Decided on : 18.09.2020**Hon. K. K. Wickremasinghe, J,**

It is alleged that the Respondent Company on or, about 14th May 2011 committed the said offences by manufacturing, distributing and selling a contaminated Elephant House Cream Soda 1.5 Liter bottle which involved substances that are harmful for human consumption as confirmed by the Government Analyst Report.

The action was instituted in the Magistrate's Court of Fort where the summons was issued against the Company and the Directors. Being aggrieved by the order of naming the petitioners as Accused, the instant application is lodged.

Held:

1. It is clear that the meaning of a provision of a statute should be elicited from the intention of the Parliament and such interpretation must not violate meaning of the words that are expressly used.
2. If a person who commits an offence under the Consumer Affairs Authority Act, No.09 of 2003, the company as well as every person in charge of for the conduct of the business of the company at the time of the commission of the offence is deemed to be guilty of the offence and the proviso carves out under what circumstances the liability is exempted.
3. The word "shall be deemed guilty "used in Section 60 (7) of the Consumer Affairs Authority Act, No.09 of 2003 has to be interpreted

in such a way that a body corporate and every director and officer of such body corporate is guilty by operation of law until and unless they bring evidence as to lack of knowledge and due diligence.

4. Section 66 which imposes liability under the said Act of India and Section 60 (7) of the Consumer Affairs Authority Act, No.09 of 2003 of the case in hand is identical. Both the provisions impose liability to the body corporate and every director and officer of such body corporate in a deemed effect.
5. In light of Section 60 (7) of the Consumer Affairs Authority Act, No.09 of 2003 naming the Directors of the body corporate as Accused is correct in a deeming effect.
6. The directors are liable to go through the trial when they are named as Accused and at the stage of the trial they can act according to the Proviso to Section 60 (7) of the Consumers Affairs Authority Act, No.09 of 2003.

JSALR 2020/II/VI**HemawathicGnanawickrame****Vs.****Somawathie Wickremasinghe**

CA. Rev. 771 / 00

Before : ShiranCooneratne, J,
Dr. Huwan Fernando, J,

Decided On : 02.09.2020**Dr. Ruwan Fernando, J,**

When the case was taken up for trial on 23.03.1999, the Intervient Petitioners first moved to withdraw their claim but no order was made either allowing or disallowing the application. Thereafter, the original Plaintiff moved to withdraw the partition case but no order was made either allowing or disallowing the application. Later, on the same day, the original 8th and 9th Defendants informed Court that they were prepared to proceed with the action.



JSA Law Reports - 2020 Volume II

On 13.03.2000, the learned Additional District Judge delivered the judgment in open Court and directed that the land depicted in the Preliminary Plan No. 2516 be partitioned according to the evidence given by the 18" Defendant. The 17" Defendant-Petitioner, 1 A Defendant-Petitioner and the 3" Defendant-Petitioner have filed this application seeking to set aside all proceedings that had taken place after the original Plaintiff had moved on 23.03. 1999 to withdraw the action and dismiss the partition action.

Held:

1. It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision and thus, it carves out an exception to the main provision to which it has been enacted as a proviso and to no other.
2. A proviso, however, can only operate to deal with a case, which would have fallen within the ambit or the section to which it is a proviso. A proviso must be considered in relation to the principal matter to which it stands as a proviso and thus, the section must be read along with the proviso as a whole.
3. It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso and thus, it is to be construed harmoniously with the main enactment as a proviso is subservient to the main provision.
4. The territory of the proviso, therefore is to carve out in an exception to the main enactment and exclude something which otherwise would have been within the section and thus, it has to operate in the same field.
5. It is open to the Court to dismiss a partition action only in the event of the parties who had asked for a partition expressing an intention not to prosecute the action after the Court had given all reasonable opportunities.
6. If the District Court is obliged to dismiss the partition action for a mere application of a

Plaintiff to withdraw the action, disregarding any intention of a Defendant who had asked for a partition of carrying on with the action, it is obviously inconsistent with the spirit, object and purpose of section 70 (I) of the Partition Law.

JSALR 2020/II/VII

Ven. Thanamalwila Gunaratne Thero

Vs.

Bajjama Kankanamge Wimalawathie

CA 909/97(F)

Before : Janak De Silva, J,
Bandula Karunarathna, J,

Decided on : 25.11.2020

Bandula Karunarathna, J,

Plaintiff had stated that the Defendant had failed to give back possession after the expiry of the said lease and was in occupation of the subject matter without making payments.

The Defendant's position was that he did not give back the possession to the temple since the said land was no longer the property of the Plaintiff. As opposed to this argument of the plaintiff, the Defendant stated that on the issue of ownership, a certain portion of the land belonging to the temple had been acquired by the Government. The Defendant's position was that he did not give back the possession the temple as it is now belonging to the government.

Held:

1. When the defendant disclaims the tenancy pleaded by the plaintiff he states definitely and unequivocally that there is no relationship of landlord and tenant between the plaintiff and him to be protected.
2. The rationale of the above principle appears to be that a Defendant cannot approbate and reprobate. In cases where the doctrine of approbation and reprobation applies, the person concerned has a choice of two rights, either of which he is at liberty to adopt, but not both.



JSA Law Reports - 2020 Volume II

3. Where the doctrine does apply, if the person whom the choice belongs irrevocably and with full knowledge accepts the one, he cannot afterwards asserts the other. He cannot affirm and disaffirm.
4. Hence a Defendant who denies tenancy cannot consistently claim the benefit of the tenancy. For the protection to be invoked, the relationship of landlord and tenant, between the Plaintiff and him, should not be disputed by the Defendant.

JSALR 2020/II/VIII

Abdul Hasan Mohamed Mubgarak

Vs.

Ahmed Bawa Mobamed Asham and others

C.A. No. PHC 167/2013

Before : Shiran Gooneratne, J,
Dr. Ruwan Fernando, J,

Decided on : 30.09.2020

Dr. Ruwan Fernando, J,

After the filing of affidavits, counter affidavits, marked documents and written submissions, the learned Magistrate by order dated 17.12.2009 identified the subject matter of the action as a right of way dispute, which is depicted as lot 4 in plan No. 4160 made by W. Seneviratne, Licensed Surveyor. After having evaluated the affidavits, documents and written submissions, the learned Magistrate held that the Respondent is entitled to use said right of way as a means of access to his land depicted as lot 4 in plan

no. 4160 from the Hospital Road and the Appellant had obstructed the said right of way.

Held:

1. The right intended to be declared under section 69 is definitely not with regard to servitude per se, but a right in the nature of a servitude and thus, the period of 10 years plays no important role as it is not a dispute touching upon a servitude relating to a right of way like in a civil action.
2. when a party is seeking relief under section 69 of the Primary courts' Procedure Act, it is not necessary to establish his right in a manner as required in a District Court case. All what the Court has to determine is whether a party had acquired a right of way or whether he is entitled, for the time being, to exercise a right of way in the nature of servitude until such party is deprived of such right by virtue of an order or decree of a competent court.
3. The procedure of an inquiry under Part VII of the Act is sui generis and thus, the procedure to be adopted and the manner in which the proceedings are to be conducted are clearly set out in sections 66, 71 and 72 of the Act
4. A wide discretion has been given to the Primary Court judge under section 72 of the Act to decide on the type of evidence and material on which he should act in making his determination under section 68 or 69 of the Act.



***Not all of us can do
great things.
But We can do
small things with great love.***

- Mother Teresa -



Observations Pertaining to the Proposed Code of Ethics for Judges prepared by Retired Judges Association

1. The proposed code of ethics that has been prepared by the Retired Judges Association gives an invaluable guidance for the sitting judges to function the courts effectively and to maintain the judicial office unimpaired.
2. In creating a comprehensive code of ethics, the Bangalore Principles and the American Model Code of Judicial Conduct shall give an important guidance while we adopt our own precepts of judicial ethics. These two instruments cover the entire judiciary and are based on eminent principles. It is our firm belief that the Sri Lankan judiciary now requires a principled code of ethics that goes beyond regulatory orders in order to protect the integrity, impartiality and the independence of judicial branch of the state.
3. We have observed that use of social media amongst judges is increasing. The time has come to create ethics for use of social media in a manner that protect the dignity of the judicial office. In many jurisdictions, the judges have been reprimanded for improper use social media. Accordingly, some basic factors are mentioned below for consideration.
 - I. When using social media, the judge/Judicial officer should protect the integrity, dignity and independence of the judiciary. Using social media includes making comments or posting photographs or ideas.
 - II. Any improper comment or post should not be made.
 - III. Any contact or friendship should not be maintained in conflict of interest of the judicial office.
 - IV. The judge should avoid from making any comment, post or having any interaction whatsoever which has any connection with any litigation pending, finished or frequently litigated matters before the judge through social media.
 - V. Any post or comment in connection with any political issue, current affair, politician or any party involved in such affair shall not be published amongst friends or otherwise as any such matter or a matter related to that issue might come before the judge by way of a litigation.
 - VI. The judges should avoid posting comment or idea indicating that they are in a rigid or conclusive view with regard to any legal issue. The parties or lawyers may be prejudiced or might hesitate to make submissions regarding such issues as the judge has already indicated his conclusive view regarding the issue through social media.
 - VII. Information received during the course of official duties should not be used through social media.
 - VIII. Recusal may be considered depending on the degree of involvement conflicting the interests.
4. It is our observation that in order to maintain the integrity of the judiciary a judge should not accept any position or office offered by the government until at least two years after his retirement. The public might have an adverse view if the judge happened to hear a case involving the government during his tenure.”



Acts of 2020

The Acts of Sri Lanka 2020

No	Name of the Act	Endorsed Date
1. 0000	Twentieth Amendment to the Constitution	2020.10.29
2. 2/2020	Finance (Amendment)	2020.10.12
3. 3/2020	Nation Building Tax (Amendment)	2020.10.12
4. 4/2020	Economic Service Charge (Amendment)	2020.10.12
5. 5/2020	Ports & Airports Development Levy (Amendment)	2020.10.12
6. 6/2020	Appropriation	2020.11.20
7. 7/2020	Appropriation	2020.12.10

“

"In some of the Magistrate's courts, I have observed that, it is humanly impossible for the Magistrate to draft the charges by his own handwriting. In such magistrate Court, the magistrate is entrusted with about 500 or more cases on every single day. He is supposed to call all the cases in the open court and to try some of them as trails too. This will not conclude the duty cast upon him on that day. He is supposed to hold identification parades in some of the cases. In certain instances, his presence for the inquests is also inevitable. And, being the administrator of the institution, he has to attend for numerous matters. He is responsible for the maintenance of proper accounts. Disposal of productions is an unforgettable part of the daily life of the Magistrate. It is required to have a few public auctions per year for the confiscated articles. It is needed lot of preparation. The multiple nature issues of the staff will cause him plenty of pressure. The preparation of judgment cannot opt to disregard for any cost.

These are some of the affairs the Magistrate is required to attend on the daily basis. He is in an endless race with the running out time; day in and day out."

Hon. Lal Bandara HCJ

High Court -Tangalle

Case Number: RA 11/2019

Date of the Judgement : 23/07/2020

”



Index of Articles Published on JSA Law Journal

JSA LAW JOURNAL 2013

Modern day contracting; e-commerce, m-cash & what-next?	I
Justice Saleem Marsoof, P.C.,	
Judicial stress – Reality exposed	13
Justice P.H.K.Kulatilaka	
Commercilisation of Personality & Celebrity Rights	18
Ruwan Fernando	
The Insurance Ombudsman Scheme and Its Relevancy to “Judicial Decision” Making	39
Dr. Wickrema Weerasooria	
Sentencing in Criminal Justice in Sri Lanka: Issues, Policy and Need to Reform	47
M.A.D.S.J.S.Niriella	
Intellectual Property Law and Criminal Liability: Some important aspects	61
Dr. D.M. Karunaratna	
Use of DNA Technology for crime investigation in Sri Lanka	75
Dr. Ruwan J. Illeperuma	
Child Protection Mechanism in Sri Lanka	84
Anoma Dissanayaka	
The Perspective of Section 8I of the Partition Law & It’s Applicability	88
Prasanth De Silva	
They are no longer two, but one	97
Lanka Jayaratne	
Protection of Natural Environment during International Armed Conflicts	105
Pradeep Hettiarachchi	
Judicial Accountability	112
Aruna Aluthge	
Fiction and poetry in Judgments	124
Chanima Wijebandara	
E-Filing of documents with the District Court	138
Priyantha Liyanage	
Doctrine of Confirmation by Subsequently Discovered	144
Facts and The Concept of Torture	
J.Trotsky	
Medical Negligence in Sri Lanka in the light of Prof. Priyani Soyza v Rienzie Arsecularatne Case	156
Gayantha Hemachandra	
Hippocratic Oath and Medical Ethics... But, Rules are bound to break...	167
R.S.M. Mahendraraja	
Case law related to building encroachments in Sri Lanka	173
Chinthaka Srinath Gunasekara	
Human smuggling - the need for reform	181
W.K.D.S. Weeratunga	



Need for Certain Institutions Essential for Promoting Constitutionalism In Sri Lanka	185
M.Ganesharajah	
International standard of privacy implementation and issues of human Rights, concerning privacy and security	190
Dushantha Eritawala	
How vital is it for the Judicial decision making process to reflect the best interest of the child under the light of Convention on the Rights of the child (CRC)	200
A.N.J. De Alwis	

JSA LAW JOURNAL 2014

Random Thoughts on Real Evidence	1
Justice Buwaneka Aluwihare P.C	
Judges like Caesar's Wife: Should be above Suspicion?	8
Seevali Amitirigala	
An Introduction to Bail Jurisprudence	15
Indika Attanayake	
Domestic Laws and the 1958 New York Convention	30
Domenico Di Pietro	
Salient Features of Apartment Ownership Law	48
Mahanil Prasanth De Silva	
Combatting Torture in Sri Lanka Through International Human Rights Law	56
M. Elanacheleyan	
Charge	69
Palitha Fernando P.C	
A Fundamental Insight into "Criminal Appeals" and Essential Principles of Law to be followed by Trial Judges	76
Dr. Ranjit Fernando	
Copyright Infringement on the Internet and Internet Service Provider Liability: Sri Lankan Law in the Context of English Law	86
Ruwan Fernando	
Buddhist Perception on Social Justice and Healing Justice	114
M. Ganesharajah	
Application and Relevance of "Res Ipsa Loquitur" In Motor Accident Cases (Civil) In Sri Lanka	125
Chinthaka Srinath Gunasekara	
Winding up Law in Sri Lanka : Need of a Corporate Rescue Culture	144
Nuwan Tharaka Heenatigala	
Art of Writing Judgments: Law and Literature	161
Gayantha Hemachandra	
Evaluation of Evidence in a Criminal Trial	168
Nalinda Indatissa	
Critique of the Concept of Dock Statement in Sri Lanka.	181
Sarath Jayamanne	
Appellate and Revisionary Powers of Provincial High Courts.	211
S. T. Jayanaga	



Administration of Justice - Basic Institutional Arrangements	226
Justice P.W.D.C. Jayathilake	
The Qualities Required of a Judge	231
Nishshanka Bandula Karunarathna	
Status of Proceedings in the Magistrate's Court: When an Incompetent Appeal is Lodged	241
Priyantha Liyanage	
Law of Hurt and Grievous Hurt for Medico-Legal Purposes	245
R.S.M. Mahendrarajah	
Issues Arising at the Enforcement of Interim Measures of Protection in International Commercial Arbitration	264
Kaweendra Iranthie Nanayakkara	
The Implications and Enforcement of Competition Law in the South Pacific	286
Salvin Nand	
Application of Expert Evidence in the Criminal Justice Arena	298
Purnima Paranagamage	
Plea of Non Est Factum; It Is Not (My) Deed	310
Thushara Rajasinghe	
Sovereignty and Belief: Thoughts on H.L.A. Hart, The Rule of Recognition, and the Crisis in Iraq	317
Dr. Charles J. Reid, Jr.	
Justiciability of Social, Economic and Cultural Rights in Sri Lanka: Prospects and Challenges	329
Wasantha Seneviratne	

JSA LAW JOURNAL 2015

Separability and Kompetenz - Kompetenz - Quo Vadis The Twin Doctrines Of Commercial Arbitration in Sri Lanka?	01
Justice A. H. M. D. Nawaz	
Partition and Land Cases and the Issue of Prescription	11
An Article by Hon. Justice J. F. A. Soza	
Probative Value of A Confession In International Human Rights Law	41
J. Trotsky	
Sexual Orientation & Gender Based Discriminations in the Criminal Justice System of Sri Lanka: An Analysis in the Light of Internationally Accepted Rights of Lesbian, Gay, Bisexual & Transgender People	51
Gayantha Hemachandra	
Duties and functions of Courts and the Judiciary towards providing assistance and protection to victims of crime and witnesses	67
Yasantha Kodagoda	
Adding New Life to The Principle of Best Interests of The Child In Custody Cases Through Judicial Activism	101
Chamath Madanayake	
The Role of Sentencing in the Administration of Criminal Justice	113
Indika Attanayake	
Computer Crimes; Endless Race of Road Runners	127
Dr Thusitha B Abeysekara	



Dying deposition on the cause of death as evidence in a Criminal Case	143
Palitha Fernando P. C.	
The Development of LexMercatoria as A Body of International Commercial Law	151
M. Ganesharajah	
Democratization of International Institutions: Challenges and Prospects	155
V. T. Thamilmaran	
Comparison between Prohibitory orders under sec.I06 of SriLanka and sec.I44 of India under Criminal Procedure Code	163
Mahie Wijeweera	
Resuscitate Hangman's Noose - A view point	171
Justice P. H. K. Kulatilaka	
Important Principles of Insurance and the Insurance "Ombudsman" Scheme	179
Dr. Wickrema Weerasooria	
Discovery under section 27 of the evidence ordinance: scope and its logical application in cases of dumb person.	187
R. M. S. B. C. Ragala	
A Spectrum of Relationship	
(A Brief Outlook on the Various Aspects of The Bank - Customer Relationship.)	201
W. K. D. S. Weeratunga	
Fitness to plead and Insanity defense	209
Dr. Neil Fernando	
Victims of Crimes in Sri Lanka A comparative Study on the Assistance to and Protection of Victims of Crime and Witnesses, Act No. 04 of 2015.	219
Dushantha Eritawala	
Investigation of A Crime Scene	227
Professor Ravindra Fernando	
Castell vs. De Greef 1994 (4) SA 408	
The Principles laid down in this South African Case Shed light to area of Negligence of Persons who possess special skills in appropriate cases in Sri Lanka	233
Jayaki De Alwis	
Conviction, Acquittal and Discharge under The Criminal Procedure of Sri Lanka. - Magistrate's Perspective	243
Asanga Bodaragama	
Legal nature of amalgamation of companies under the Companies Act No. 07 of 2007	251
Nuwan Tharaka Heenatigala	
Modes of Service of Summons in Sri Lanka open to Abuse	263
Lakmini Vidanagamage	
JSA LAW JOURNAL 2016	
Non-Consummation of Marriage; Ground for Nullity	I-6
A.K.M. Patabendige	
Medico Legal Management of Torture Victims and Role of the Judicial Medical Officer	7-II
Dr. Ajith Tennakoon	
Rights of the Transgenders; Protection under the Existing Law	12-22
Buddhika C. Ragala	



The Dock; To Have or Not to Have ?	23-42
Chanima Wijebandara	
Sacred Duty Of The Judge In A Partition Suit	43-53
Chinthaka Srinath Gunasekara	
Law Relating To Protection Of Elephants	54-64
Geethani Wijesinghe	
To Be Hanged By Neck Till Death	65-86
Girish Kathpalia	
Covering The Cover; Copyright Law And Covering In Sri Lankan Music	87-98
Dr. Gowri Nanayakkara	
Best Interest Of The Child As A Rationale For Judicial Decision Making: Some Views On The Supreme Court Appeal Case No I7/2013	99-104
Dr. Hemamal Jayawardene Hasini Jayawardene	
Real Evidence: Myth And Realities	105-110
Jayaruwan Dissanayake	
Public Policy- The Unruly Horse	111-116
Lal R. Bandara	
Equality And Effective Access To Justice For Persons With Disabilities: Overcoming The Barriers In Sri Lanka	117-122
Lasanthi Daskon Attanayake	
International Arbitration Impact of Jurisdictional Challenge	123-132
M. Ganesharajah	
Section 154 of The Evidence Ordinance; Hostile Witness With Special Reference To English And Indian Law	133-140
Mahie Wijeweera	
Lawful Interest Recoverable In Banking Transactions	141-147
Manjula Karunarathna	
Effective Protection Mechanisms For The Victims Of Child Abuse; Need For Effective Legislative Framework To Meet With Contemporary Challenges	148-158
Navaratne Marasinghe	
Economic Rights of Journalists Under The Intellectual Property Act; - ANCL Vs. Chandraguptha Amarasinghe -	159-166
Nuwan Tharaka Heenatigala	
Pragmatic Approach In Writing Crime Judgments In The Trial Courts	167-175
Justice P.H.K. Kulathilaka	
Statutory Protection For Victim Rights	176-190
Purnima Parana Gamage	
Law and Euthanasia 'Mercy Killing Should Not Lead To 'Killing Mercy'	191-194
R.S.M. Mahendrajah	
The "Public Trust" Doctrine	195-207
Rajitha Perera	
Discretion Is A Double Edged Knife	208-214
Seevali Amitirigala	
Justice to Victims Who Are Suffering From Mental Retardation	215-225
Sehan Soyza	



The Office of President Of Labour Tribunal A Profile Of Generic Functions In The Sri Lankan Legal Context-	226-239
Sudantha Ranasinghe	
An Informed Approach To Combat Sexual Offences: A Criminological Analysis	240-249
Dr. Thusitha B. Abeysekara Samindika Alkaduwa	
Marking A Document In A Civil Trial	250-260
Trinity Rajapakshe	

JSA LAW JOURNAL 2017

Indivisibility of Credibility - A Note in Abstract	15-19
Justice Buwaneka Aluwihare	
A call for a rational mechanism for the assessment of Judicial Performance in Sri Lanka	21-35
Chanima Wijebandara	
Lifting the Corporate Veil: Instances and Limitations	39-44
Sujeewa Nissanka	
Let your case speak for itself make the doctrine res ipsa loquitur work for you	45-56
Jayaki De Alwis	
Why Buddhism should be given Foremost Place in the Constitution of Sri Lanka?	57-66
Manicavasagar Ganesharajah	
Sentencing Guidelines from decided cases on Sentencing	67-84
Mahie Wijeweera	
Good fences do good neighbours make...	85-94
Chinthaka Srinath Gunasekara	
Consecutive recognition of Fundamental Rights in Sri Lanka	95-110
Purnima Parana Gamage	
Applicability of Criminal Law in Cheque Bouncing Cases	111-122
Bharathie Rasanjula Wijerathne	
Of Thesawalamai - A perspective from Feminist Jurisprudence	123-135
Anandhi Kanagaratnam	
Appeals against the orders of the Labour Tribunals - An overview	136-142
Asanga Bodaragama	
Money Laundering and Sri Lankan Legislature	143-151
Dhammika Hemapala LL.B	
Balance the Rights of the Suspect and the Victim; A critical analysis of fair trial rights of suspect and victim in Criminal Justice System of Sri Lanka	152-166
Jayaruwan Dissanayaka	
Applicability of the provisions of Civil Procedure Code (amendment) Act No. 08 of 2017 to the existing legal framework	167-186
Manjula Karunaratna	
Judicial Independence and the principles governing the Independence of the Judiciary:	187-191
Sirimewan Mahendraraja	
An overview of the procedure relating to Sequestration before Judgment in Civil Procedure Code	192-199
Nuwan Tharaka Heenatigala	
Right based approach to determine the pleas of autrefois acquit and autrefois convict	200-210
Lilan Warusavithana	



JSA LAW JOURNAL 2018

Part - I

Child Marriages And Other Abuses under The Muslim Marriage And Divorce Act Of Sri Lanka	I-27
Justice Saleem Marsoof PC	
Child Abuse	28-31
Professor Ravindra Fernando	
The Logistician cum Lawyer	32-42
Professor Prathibha Mahanamahewa, Dr. Lalith Edirisinghe	
Copyright And The Conceptual Mismatch In Developing Countries: The Sri Lankan Perspective	43-65
Dr Chamila S. Talagala	
Judgment Writing	66-78
R. S. S. Sapuvida	
Importance of Safeguarding Banking Secrecy	79-87
Dilini Nilanga Wilathgamuwa	
The Right of the Accused to Speedy Trial	88-92
Priyantha Liyanage	
Applicability of the House and Town Improvement Ordinance	93-103
Chinthaka Srinath Gunasekara	

Part - II

Preventing Othello's Error in Court: A Discourse on Demeanour	107-129
Chanima Wijebandara	
Are you an administrator ?	130-132
D.M.D.C.Bandara	
Globalizing Human Rights: An Asian Perspective	133-147
Anandhi Kanagaratnam	
Salient Features Pertaining To A Driving Licence In Terms Of Motor Traffic Act.	148-154
Manjula Karunarathna	
An overview of the law relating to Parate Execution procedure in Sri Lanka	155-159
Nuwan Tharaka Heenatigala	
Separating Shepherds from Butchers: Going Beyond the Traditional Role of the Demeanor of Witnesses when Assessing their Credibility and Reliability in Judicial Review of Evidence in both the Trial and Appeal	160-200
Kushika Kumarasiri	
Identifying the corpus in a partition action; issues and suggestions of the duty of the court	201-210
Lilan Warusavithana	
The Role Of Jurors In The Context Of Social Media	211-219
Keerthi Kumburuhen	
An Equitable Balance Between Constructive Trust Law Regime And Dynamic Legal Strategizing Dimension	220-237
H.K.M Harshana de Alwis	



JSA LAW JOURNAL 2019

Part - I

Admissibility of Social Media Evidence in Court Proceedings: Evidentiary Principles and Limitations.	I-31
Justice Dr. Ruwan Fernando	
Subject To Proof	32-47
Wickum A. Kaluarachchi	
Law And Procedure Relating To Testamentary Actions	48- 80
K.M.S. Dissanayake	
Sustainable Fisheries Management in the Indian Ocean	81-96
Vikum De Abrew	
Challenges to Human Rights in the Face of Terrorism: Domestic and International Legal Responses with special reference to Sri Lanka	97- 119
Professor Wasantha Seneviratne	
Unallotted Shares: Never Ending Story?	120 - 128
Chinthaka Srinath Gunasekara	
Judicial Legislation, an Instrumentality of Judicial Imperialism via Judicial Activism but as an Antipathy of Judicial Oligarchy	129 - 145
Sudantha Ranasinghe	
Promoting Innovation and Creativity through Intellectual Property Law: A Sri Lankan Perspective	146 - 161
Dr. Nishantha Sampath Punchihewa	

Part - II

Strategic Legal Approach against Agrochemical Catastrophe	165 - 186
Harshana de Alwis	
Sky Is Not The Limit - A Synopsis on Space Law	187 - 198
Dulani Weeratunga	
Judicial Independence and The Rule of Law: A Critical Analysis of Sri Lankan Constitutions	199 - 213
Anandhi Kanagaratnam	
Law relating to Custody of Children in Sri Lanka	214 - 222
Nuwan Tharaka Heenatigala	
Presidential Immunity under the Contemporary Sri Lankan Constitution: Is it a strong Presidential Pillar with Unfettered Constitutional Support or not?	223 - 255
Kushika Kumarasiri	
Sureties, Forfeiture of Bonds & Consequences Thereof	256 - 268
Chamila Rathnayake	
Law Governing Contracts By Electronic Mail	269 - 283
Keerthi Kumburhena	

*Every beginning has an end and every end is
a new beginning.*

Wish you a happy new year!



Memories of JSA Annual trip 2019 - Radella and Moon plains, Nuwaraeliya



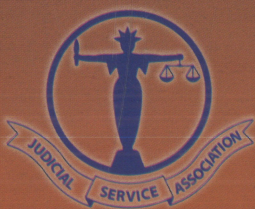
Love is a Magic Ray

*Love is a magic ray
emitted from the burning core
of the soul
and illuminating
the surrounding earth.*

*It enables us
to perceive life*

*as a beautiful dream
between one awakening
and another.*

- Khalil Gibran -



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