



SUPREME COURT OF SRI LANKA

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Message from the Chief Justice of Sri Lanka

The Supreme Court of Sri Lanka has an illustrious history and a rich tradition, spanning over more than two centuries, since its establishment in 1801. It is said in our Independence Day souvenir of 1948, that “there is no other institution in the Island which by its long and honourable record of achievement which commended greater respect than our Supreme Court”. The Supreme Court of Sri Lanka is a fortress of stability and continuity. Thus, there has been a long felt need for a publication documenting its past glory, its great traditions and its present position.

I congratulate Ms. Anandhi Kanagaratnam for compiling this monograph on “Supreme Court of Sri Lanka” which deals with the establishment of the Supreme Court of Ceylon in 1801 and its independent existence up to date under different Constitutions. It covers the composition and jurisdiction of the Supreme Court, and also the procedure for the appointment of the Justices and the role of the Judges. This monograph also contains interesting anecdotes regarding the Supreme Court. I also wish to thank Mr. D.N. Samarakoon for taking the time to read through the draft and for suggesting amendments, Mr. M.I.M. Azhar for volunteering to take some beautiful images of the Supreme Court of Sri Lanka and Mr. Thilina Rathnayake for the design.

I believe this monograph will be useful not only for Judges but also for all who are concerned with the administration of justice in Sri Lanka.

Priyasath Dep, P.C.
Chief Justice

The Chief Justices of Sri Lanka from 1802 to 2018

Sir Codrington Edmund Carrington	1802
Edmund Henry Lushington	1807
Sir Alexander Johnston	1811
Sir Ambrose Hardinge Giffard	1820
Sir Richard Ottley	1827
Sir Charles Marshall	1833
Sir William Norris	1836
Sir Anthony Oliphant	1838
Sir William Ogle Carr	1854
Sir William Carpenter Rowe	1857
Sir Edward Shepherd Creasy	1860
Sir William Hackett	1877
Sir John Budd Phear	1877
Sir Richard Cayley	1879
Jacobus Petrus de Wet	1882
Sir Bruce Lockhart Burnside	1883
The Rt. Hon. Sir John Winfield Bonser	1893
Sir Charles Peter Layard	1902
Sir Joseph Turner Hutchinson	1906
Sir Alfred George Lascelles	1911
Sir Alexander Wood Renton	1914
Sir Thomas Anton Bertram	1918
Sir Charles Ernest St. John Branch	1926
Sir Stanley Fisher	1926
Sir Phillip James Macdonell	1931
Sir Sydney Solomon Abrahams	1936

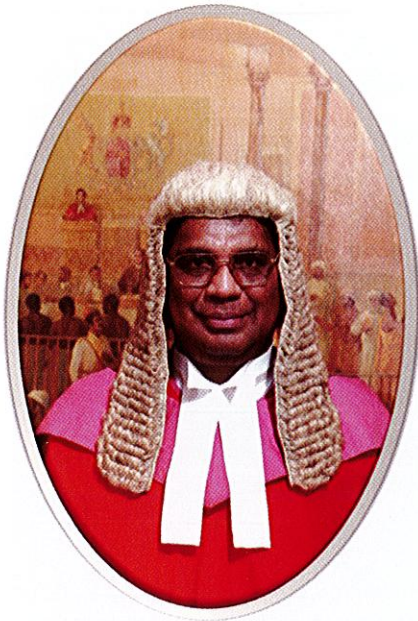
Sir John Curtois Howard	1939
Sir Edwin Arthur Lewis Wijeyewardene	1949
Sir Edward George Perera Jayetileke	1950
Sir Allan Edward Percival Rose	1952
Hema Henry Basnayake	1956
Miliani Claude Sansoni	1964
Hugh Norman Gregory Fernando	1966
Gardiye Punchihewage Amaraseela Silva	1973
Victor Tennekoon	1974
Neville Dunbar Mirahawatte Samarakoon	1979
Suppiah Sharvananda	1984
Parinda Ranasinghe	1988
Herbert Thambiah	1991
G.P.S. de Silva	1991
Sarath N. Silva, P.C.	1999
Asoka de Silva, P.C.	2009
Dr. Shirani Bandaranayake	2011
Kanagasabapathy Sripavan	2015
Priyasath Dep, P.C.	2017

Hon'ble Justices of the Supreme Court of Sri Lanka



(Left to Right) Hon'ble Lady Justice Murdu N.B. Fernando P.C. | Hon'ble Justice Vjijith K. Malalgoda P.C. | Hon'ble Justice H.N.J. Perera | Hon'ble Justice Sisira J de Abrew | Hon'ble Lady Justice S. Eva Wanasundera P.C. | Hon'ble Chief Justice Priyath Dep, P.C. | Hon'ble Justice Buwaneka Aluwihare P.C. | Hon'ble Justice Priyantha Jayawardena P.C. | Hon'ble Justice Prasanna Jayawardena P.C. | Hon'ble Justice L.T.B. Dehideniya

Profile of the Chief Justice of Sri Lanka Honourable Priyasath Dep, P.C.



Honourable Justice Priyasath Dep, P.C., was sworn in as the 45th Chief Justice of Sri Lanka in March 2017.

His Lordship was educated at St. Joseph's College, Colombo, where he excelled in studies, athletics, rugby, and soccer. Thereafter His Lordship obtained a Bachelor Degree in Development Studies at the University of Colombo and was subsequently enrolled as an Attorney -at-Law in October 1976.

His Lordship joined the AG's Department as a State Counsel in January 1978. He was promoted to the post of Senior State Counsel in February 1989, made a Deputy Solicitor General in February 1996, Additional Solicitor General in October 1999 and a President's Counsel in April 2000. His Lordship was appointed Solicitor General in April 2007 and functioned in that capacity until his elevation to the Supreme Court in June 2011.

His Lordship served the Attorney General's Department for more than 33 years and had the distinction of being the Head of both Civil and Criminal Divisions, and also served as acting Attorney General on many occasions.

During his tenure at the Attorney General's Department, His Lordship represented the Government of Sri Lanka in bilateral and multilateral negotiations pertaining to extradition and mutual legal assistance in criminal matters, and he was also a member of the Sri Lanka delegation and participated in the negotiations to conclude the SAARC Treaty on Mutual Legal Assistance in Criminal Matters. His Lordship also led the Sri Lanka delegation to Russia and India to negotiate bilateral treaties on Mutual Legal Assistance in Criminal Matters and Transfer of Prisoners. His Lordship was also the head of the Sri Lanka delegation to the 48th and 49th Sessions of the Asian-African Legal Consultative Organization held in Malaysia in 2009 and Tanzania in 2010. His Lordship was also elected as the Vice President of the Organization at its 49th Session.

His Lordship was awarded a scholarship by the Dutch Government that enabled him to acquire a Post-Graduate Diploma in International Law at the International Institute of Social Studies in the Hague. His Lordship also has a Master's Degree in International Relations from the University of Colombo.

The Chief Justice is a life member of the Bar Association of Sri Lanka (BASL), Medico-Legal Society, and Royal Asiatic Society. His Lordship is also a member of the International Association of Prosecutors and Commonwealth Magistrates and Judges Association. The Chief Justice is also the current President of the Medico-Legal Society of Sri Lanka.

Profile of the Judges of the Supreme Court of Sri Lanka

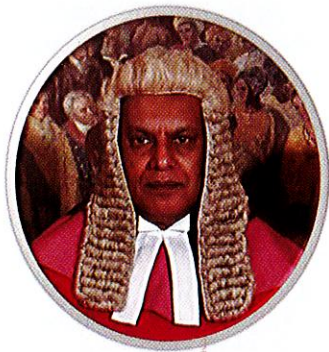


Justice S. Eva Wanasundera P.C.

Her Ladyship commenced her primary schooling at the St. Thomas' Girls' School in Matara and ended her secondary schooling at Dharmapala Vidyalaya, Pannipitiya. While in school, in the year 1971 she won a scholarship to go to the United States of America at the age of 18 years under the auspices of the American Field Service. She spent one year in Tucson, Arizona and attended the Canyon Del Oro High School as a Student.

Her Ladyship took oaths as an Attorney at Law on 25th August 1977. Her Ladyship apprenticed under proctor A.B.W. Jayasekera, the renowned lawyer and a teacher. Her Ladyship practiced in the unofficial bar mainly at the Magistrate's Court of Gangodawila, Nugegoda and at the District Courts of Mt. Lavinia and Colombo.

Her Ladyship joined the Attorney General's Department as a State Counsel in the year 1979, steadily rising up the ranks, to become Senior State Counsel, Deputy Solicitor General, Additional Solicitor General, Solicitor General and finally Attorney General of Sri Lanka in September, 2011. Her Ladyship was the first lady Attorney General of Sri Lanka. While serving in the Attorney General's Department, she was awarded a scholarship to the University of Leicester in England. Her Ladyship obtained a Master's Degree in International Trade Law in 1995 and represented Sri Lanka in the United Nations' Session in Geneva in the first quarter of the year 2012. Her Ladyship was thereafter appointed to the Supreme Court as a Judge of the Supreme Court on 5th July 2012.



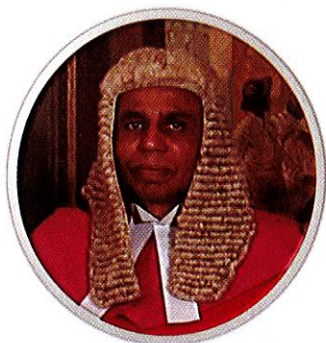
Justice Buwaneka Aluwihare P.C.

Upon being called to the Bar in 1982, having done a short stint in the unofficial bar, Justice Aluwihare joined the Attorney General's Department as a State Counsel in 1983. He served the Attorney General's Department for over 30 years and Justice Aluwihare was appointed as a Judge of the Supreme Court in December 2013. At the time of his appointment to the Supreme Court, Justice Aluwihare was an Additional Solicitor General.

While serving at the Attorney General's Department, Justice Aluwihare also served as a legal consultant to

the Securities and Exchange Commission of Sri Lanka and the Financial Intelligence Unit of the Central Bank. Justice Aluwihare was enrolled as a Solicitor of England and Wales in the year 1989 and he also holds a LLM degree from the University of London. He was appointed President's Counsel in 2013. From 2005 up to 2013 Justice Aluwihare served as a Lecturer and Examiner of Law of Evidence at the Sri Lanka Law College and also served as a visiting lecturer at the Kothalawela Defense University.

Justice Aluwihare worked for the United Nations as a prosecutor and had been involved in the conduct of prosecutions in cases relating to violations of international Humanitarian Law, in East Timore. Justice Aluwihare is an old boy of St. Sylvester's College Kandy.

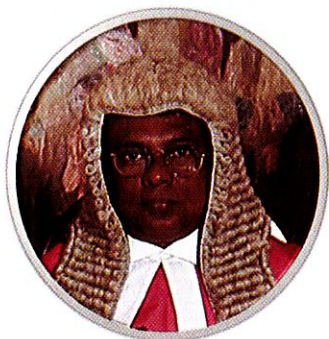


Justice Sisira J de Abrew

His Lordship had his early education at Dharmasoka College, Ambalangoda. His Lordship joined the Law College in the year 1978, where he passed the preliminary and final year examinations with honours, and was the recipient of prizes for Legal History, Criminal Procedure and Industrial Law at the Sri Lanka Law College. He was later called to the bar in 1981.

His Lordship thereafter joined the Attorney General's Department in 1982 and was promoted as Senior State Counsel on 22nd February 1996. During his tenure at the Attorney General's Department, he conducted prosecutions before the Magistrate's Courts and High Courts in almost every province and was recognized as a successful prosecutor in the AG's Department. He has served in a supervisory capacity both in the Criminal and Civil branches of the Department and represented the Honourable Attorney General in numerous matters before the Court of Criminal Appeal and Supreme Court.

His Lordship was appointed Judge of the High Court in September 1998, in which capacity he served in Ampara, Kandy, Anuradhapura and Colombo before he was appointed Judge of the Court of Appeal on 20th January 2005. His Lordship was elevated to the Supreme Court on 7th May 2014 and has served Judicial Service Commission from May 2016 onwards.



Justice Priyantha Jayawardena P.C.

His Lordship received his primary and secondary education at Nalanda College Colombo. While at Nalanda, he excelled in studies and rugby, playing for the college rugby team. Later he entered Sri Lanka Law College and was enrolled as an Attorney-at-Law of the Supreme Court in 1988 and served as a Research Assistant to the late Justice Mark Fernando and late Justice P. Ramanathan.

In 1994, after pursuing a Master's Degree in Commercial Law from the University of Aberdeen, United Kingdom, and returning to Sri Lanka he joined the Attorney General's Department as a State Counsel. During his time in the UK, having completed the Qualified Lawyers' Transfer Test, he was enrolled as a Solicitor of the Courts of England and Wales.

Later, he served as a private legal practitioner in Labour Law, Commercial Law and Public and Constitutional Law for nearly a decade. He was appointed President's Counsel in 2012. He was also a visiting lecturer of Commercial Law at the University of Moratuwa (Department of Building Economics). Justice Priyantha Jayawardena served as Board Member, Director and Legal Consultant to many government organizations and private sector institutes. His Lordship was appointed to the Supreme Court on 7th May 2014.

Justice H.N.J. Perera



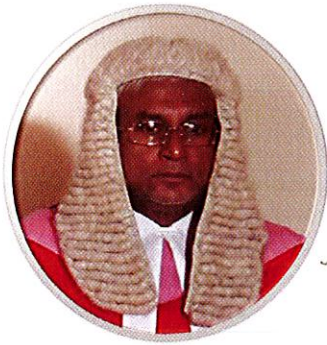
His Lordship had his primary and secondary education at St. Thomas' College Kotte and St. Thomas' College Gurutalawa. His Lordship thereafter entered the Sri Lanka Law College and enrolled as an Attorney-at-Law on 25th August 1977.

His Lordship commenced his distinguished Judicial career on 1st March 1980 when he was appointed as a Judge of the Primary Court and thereafter as a Magistrate in 1984, in which capacity he served in Mt. Lavinia, Walasmulla, Kalutara and Fort. In July 1990, Justice Perera was promoted as District Judge and served as Additional District Judge in Galle, Matara

and Colombo and thereafter as District Judge of Kalutara, Avissawella and Mt. Lavinia.

During his tenure, His Lordship successfully completed the intensive study programme for Judicial Educators conducted by the Commonwealth Judicial Education Institute in Halifax, Nova Scotia, Canada in September 1997 and "Commercial Law Training for Sri Lankan Judges" organized by the International Development Law Organization (IDLO) held in Rome, in July 2005. His Lordship also served as a member of the panel of lecturers in the Judges Institute of Sri Lanka.

His Lordship was appointed as a High Court Judge in July 2001, and served in this capacity at Ratnapura, Kandy and Nuwara Eliya. His Lordship Justice Nalin Perera was one of the first Judges chosen to serve in the newly established Civil Appellate High Courts in Kandy. Thereafter he served as Civil Appellate High Court Judge in Colombo until his elevation to the Court of Appeal in July 2011. He was appointed as a Judge of the Supreme Court on 3rd March 2016.



Justice Prasanna Jayawardena P.C.

His Lordship was educated at Royal College and, thereafter, entered the Faculty of Law of the University of Colombo in 1975, graduating in 1978 with a LL.B. (Honours).

His Lordship then worked as a Legal Research Officer at the Marga Institute for a brief period and from 1979 onwards, spent several years in various senior management positions in the Banking Sector. Having left banking in 1988, he passed the Attorneys-at-Law final examination with a class and was called to the

Bar in 1989. His Lordship apprenticed and served as Junior Counsel in the Chambers of B.J. Fernando, President's Counsel.

His Lordship had an extensive practice, mostly in the areas of Commercial Law, Banking, Company Law and Intellectual Property Law, primarily in the Commercial High Court and District Court and also in the Appellate Courts. He was appointed President's Counsel in 2012.

Prior to His Lordship's appointment to the Judiciary, His Lordship was an active member of the Bar Association of Sri Lanka and was unanimously elected to the office of Deputy President in 2013 and 2014.



Justice Vijith K. Malalgoda P.C.

His Lordship was called to the Bar in September 1982 and he joined the Attorney General's Department as a State Counsel in November 1983, where he served as a Senior State Counsel and Deputy Solicitor General and was subsequently appointed as the Additional Solicitor General in June 2012. During his career at the Attorney General's Department, he served as an ad-hoc expert in the Bali Process on Human Smuggling and Trafficking and actively took part in drafting Model Laws on Human Trafficking and Smuggling.

His Lordship obtained a Master's Degree in Commercial Law from the University of Aberdeen, Scotland, and received the United Nations Fellowship on Human Rights from the Centre for Human Rights, Geneva, Switzerland and Special Training on Commercial Law at the National University, Singapore.

His Lordship was commissioned as an Air Commodore, in 2009 and served as the Judge Advocate at the Sri Lanka Air Force until September 2011. His Lordship also served as a member of the Board of Examiners for the Final Year Examination and an Examiner of the Sri Lanka Law College. His Lordship was appointed as a Judge of the Court of Appeal of the Republic of Fiji in May 2014 and was appointed as the President, Court of Appeal

of the Democratic Socialist Republic of Sri Lanka on 9th September 2014. Subsequently, His Lordship was elevated to the Supreme Court in April 2017.



Justice L.T.B. Dehideniya

His Lordship had his Primary and Secondary education at St. Thomas College, Matale and passed the Attorney-at-Law Final Examination with First Class Honours in 1979. His Lordship enrolled as an Attorney-at-Law in 1980 and practiced for three and half years from 1980 to 1984 at Matale.

His Lordship joined the Judiciary in 1984 as a Primary Court Judge and served for three and half years from 1984 to 1987 in that capacity. His Lordship thereafter sat as a Magistrate for six and a half years from 1987 to 1994 and District Judge for twelve years from 1994 to 2006.

His Lordship was later elevated as High Court Judge exercising Criminal Jurisdiction for two years, High Court Judge exercising Civil Appellate Jurisdiction for five and half years and High Court Judge exercising Commercial Jurisdiction for one year.

His Lordship attended various Workshops and Conferences including short term knowledge sharing session – City University Hong Kong 2004, Seminar on recent developments in law – National Judicial Academy, Bopal, India, 2010 and Course on Judicial Ethics and Effective Course and Case Management – Judicial and Legal Training Institute, Malaysia, 2013.

His Lordship was appointed Judge of the Court of Appeal on 30th January 2015, as President of the Court of Appeal in June 2017 and as Judge of the Supreme Court in January 2018.



Justice Murdu N.B. Fernando, P.C.

Her Ladyship had her early education at Princess of Wales College, Panadura and thereafter entered the University of Colombo, where she obtained a Bachelor of Laws Degree. Her Ladyship was called to the Bar in 1983, and joined the Law Commission of Sri Lanka as an Assistant Secretary prior to joining the Attorney General's Department as a State Counsel in 1985.

In 1997, Her Ladyship assumed duties as Deputy Solicitor General and was promoted Additional Solicitor General in 2014. Her Ladyship was also appointed as President's Counsel in the year 2014. In 2017, Her Ladyship was appointed as a Senior Additional Solicitor General. During her 32 years long tenure at the Attorney

General's Department, Her Ladyship had represented the State and the Statutory Institutions before all courts of law in Sri Lanka, and was also the head of the civil section.

Her Ladyship holds a Master of Laws Degree from King's College, University of London and a Diploma in Trade Law and Practice from the University of Colombo. She was also awarded the British Technical Cooperation Training Award for a study program on Commercial Law at King's College London and AUSAID Australian Leadership Fellowship on Child Sexual Abuse in Sri Lanka, conducted by the University of Sydney. Her Ladyship has also undergone training in the United States on Financial Markets conducted by the International Science and Technology Institute. Her Ladyship was elevated to the Supreme Court in March 2018.

*Reproduced from the Bar Association Law Journal 2016 Vol. XXII Special Commemorative Edition
LAWASIA Golden Jubilee Conference – Sri Lanka 2016*

History of the Supreme Court of Ceylon up to the Republican Constitution of 1972

Sri Lankan Legal System

The legal system of Sri Lanka (formerly known as Ceylon) can be described as a synthesis of different systems of law, procedures and of administrative experiences owing to foreign invasions from time to time. Thus, the legal system of Sri Lanka is a mixture of Roman Dutch Law, English Common Law, Kandyan Law, Thesawalamai Law and Muslim Law. This mixture is a result of historical development due to invasion by various European powers. Thus, the criminal law is based on English Law while much of the common law is Roman Dutch Law, with certain aspects such as marriage, divorce, and inheritance associated with Kandyan Law, Thesawalamai and Muslim Law based on the ethnicity and geography.

From the 16th century began the western rule in Ceylon with the arrival of the Portuguese in 1505. The Portuguese were the first European power to exercise dominion over Ceylon. They conquered only a part of the island and occupied Ceylon from 1505 to 1656. The Portuguese did not introduce their own system of law into Ceylon, because the Portuguese legal system was not developed enough to be transplanted to another country. However, from the period of Portuguese rule, a distinction was made between the laws and customs of the Kandyan (consisted of the central area and the north central plain of the island) and low country (coastal areas outside the Kandyan Kingdom) areas. As the Portuguese did not occupy the Kandyan Provinces, they did not influence the law in these Provinces. But the laws and customs in the Maritime Province came under the influence of Portuguese customs, and in due course the Sinhala laws and customs changed their character.

The Dutch and Dutch East India Company ruled coastal areas of Ceylon from 1656 to 1796 by driving the Portuguese out. The Dutch introduced Roman-Dutch law to Ceylon as they carried the law of their homeland into their colonies, scattered in the East and West Indies. The early colonial policy of the Dutch was to apply their laws to both European and local inhabitants alike. But it became apparent that non-recognition and destruction of local customs created animosity among the local people. Therefore, the Dutch applied their laws to criminal cases and allowed the local customs to hold sway in civil cases. Dutch law was resorted to where the local customary laws were silent or the Dutch considered them unsuitable. As the Dutch never ruled the Kandyan Provinces, they had no influence on the Sinhalese laws in those areas. Further, the Dutch towards the latter part of their rule also established the post of Advocate Fiscal. This office had the dual functions; in civil cases, to deliberate and vote as a judge, and in criminal cases, as public prosecutor.

In 1796, the British conquered the island of Ceylon and the Maritime Provinces which remained under the control of the Dutch, continued to be under the dual administrative control of the British United India Company and the Government of Great Britain from

1798 to 1802, until ceded to the British. During this period instructions were issued to the Court of Directors of the United India Company regarding civil administration, administration of justice, civilian policing and treatment of offenders as follows:

“.....The temporary administration of Justice and Police in the Island of Ceylon should as nearly as circumstances will permit be exercised by you in conformity to the Law and Institutions that subsisted under the Dutch Government subject to such directions as you shall now or hereafter receive from us.....”

“and barbarous mode of proceedings against persons suspected or convicted of crimes, if any such shall have prevailed in this said Settlements are to be wholly abolished.”

The Kingdom of Kandy in the mountainous central area of Ceylon, was not ruled by the Portuguese and Dutch, and thus maintained its territorial integrity. However, in 1815, the King of Kandy was deposed and the entire island passed under British sovereignty. The British had acquired Sri Lanka as a ceded colony, and the law that was already in force, there prior to cession, continued in force until changed. The principle that the laws of each area of the colony remained in force subject to certain qualifications, until changed by the deliberate act of the new sovereign was followed by the courts in Ceylon. This principle was enunciated by Lord Mansfield in *Campbell vs. Hall* decided in 1774 A.D. in relation to island of Granada ceded to Britain by French authorities. Consequently, the Roman Dutch law and the customary laws of the Sinhalese, the Tamils and the Muslims continued in force. The long duration of British rule also saw English law exert a profound influence over the development of the legal system and laws of Sri Lanka. A large number of statutes were passed incorporating English law and English legal principles.

The Proclamations made in 1799 and 1801 established the original Courts of Civil jurisdiction and the provisions regarding the procedure to be followed in all civil suits. The Charter of 1883 established a District Court in each District. In 1889 the Courts Ordinance was enacted consolidating the Administration of Justice System in the country which was followed by the enactment of the Civil Procedure Code No 2 of 1889, which consolidated the laws relating to the procedure of the Civil Courts in the island. This landmark piece of legislation though amended is still in force in Sri Lanka. The administration of criminal justice was also codified by the British. The Penal Code and the Criminal Procedure Code were enacted in 1883 and the Evidence Ordinance in 1896. These were the key sources of the Law of Criminal Justice in Ceylon. The Criminal Procedure Code enacted in 1883 was subsequently replaced by the Criminal Procedure Code No. 15 of 1898 and remained in force for almost eight decades until it was replaced by the Administration of Justice Law No. 44 of 1973. The present Code of Criminal Procedure Act No. 15 of 1979 which replaced the Administration of Justice Law, along with the Judicature Act No. 2 of 1978 remains the key laws governing the conduct of criminal trials. Further, both the Penal Code and the Evidence Ordinance too continues to be in force with their subsequent amendments. The Civil Procedure Code No. 02 of 1889 was later repealed when the Administration of Justice Law was enacted in 1974. But the Civil Courts Procedure (Special Provisions) Law No. 19 of 1977 by section 02 omitted the expression “the Civil Procedure Code” from section 3(1)

(a) of Administration of Justice Law and provided in section 4 (1) that, "The provisions of the Civil Procedure Code shall for all purposes, be deemed to be and to have been, in operation as if the same had not been repealed and shall continue to be the law governing the procedure and practice in all civil courts". Thus according to law, the Civil Procedure Code enacted in 1889 continues.

History of the Supreme Court of Ceylon

In the days of the Dutch administration of Ceylon, the Island's first and highest Court was known as the Hoff van Justitie of Colombo. It was composed of seven or more judges who were appointed by the Dutch Governor in Council. Some of the members of this Court were chosen from the Governor's Counsellors, the Senior Counsellor being ex officio president; others from the Civil and Military Services. Three major courts in Colombo, Galle and Jaffna were established, while final appellate powers for all such courts were exercised in Colombo. Thus for the first time in the history of this country the location of the final appeal was established in Colombo. The Judges received no pecuniary remuneration by way of salary or otherwise.

In civil suits-at-law, the Hoff van Justitie of Colombo exercised an original jurisdiction in disputes above a certain monetary value. It also exercised an appellate jurisdiction over the two minor Courts of Colombo – the Court of Lanraad and the Hoff van Kleine Gorechts Saken and the Hoff van Justitie of Galle, Matara and Jaffna.

The Hoff van Justitie of Colombo was also the highest Court of Criminal jurisdiction in the Island. It tried all capital cases and all cases which were of too great magnitude for the lesser Courts. They were Land Raaden and Civiele Raaden. In Land Raads, native chiefs were invited to hear cases involving local custom. The customary law of the land was administered by the Dutch unless it clashed violently with Dutch jurisprudence. But from the 18th century Roman Dutch law was used in Sinhalese South and South West especially in property conveyances. Similar criminal courts were established at Galle, Matara and Jaffna.

Both in civil and in criminal matters, an appeal lay from the Hoff van Justitie of Galle, Matara and Jaffna to the Hoff van Justitie of Colombo, and then to the Hoff van Justitie of Batavia. The right of appeal to Batavia was restricted in certain ways.

After the Dutch capitulation, the British, by their Proclamation of the 23rd of September 1799, made certain arrangements "for the further administration of justice among the native inhabitants of the settlements of Ceylon." The gist of the Proclamation, following a well-established principle of International Law, was that justice should be administered in the Colony "as nearly as circumstances would permit according to the Regulations published and established" by the Dutch. This proclamation of 1799 would thus be our fountain statutory authority for the proposition that the Common Law of Ceylon is the Roman-Dutch Law. "Civil Courts" were established in the towns of Colombo, Jaffnapatam and Galle with jurisdiction limited to the cognizance of civil causes to the Limit of a certain monetary value. And, by the Proclamation of 14th October 1799, a Court of Judicature for the exercise of criminal functions was formed. It was called the "Supreme Court of Criminal Jurisdiction." The "Greater Court of Appeal" was also

simultaneously constituted, which was to sit in the town of Colombo, with jurisdiction to confirm or reverse all sentences and decrees appealed from.

By the Charter of the 18th of April 1801, was constituted the "Supreme Court of Judicature in the Island of Ceylon." It consisted of two judges, namely Chief Justice Sir Codrington Edmund Carrington and Puisne Justice Henry Lushington. They have to be Barristers of either the English or Irish Bars of not less than five years standing. They were appointed by Letters Patent under the Great Seal of Great Britain and Ireland and held their offices during the pleasure of the Crown. The Chief Justice had precedence next after the Governor, and the Puisne Justice after the Lieutenant Governor and the Officer Commanding the Forces. An appointment to the bench of Ceylon's Supreme Court was considered the culminating glory for those in the Colonial Judicial Service. More so to be appointed as Chief Justice and occupy what was popularly called "the Middle Seat" of the Supreme Court Bench.

"The Civil Court" and "The Supreme Court of Criminal Jurisdiction" were abolished, and their jurisdiction, both civil and criminal, was to be exercised by the Supreme Court established by this Charter. It was also enacted that this Supreme Court was also to be a Court of Equity, administering justice "as nearly as might be according to the Rules and Proceedings of the High Court of Chancery in Great Britain." An appeal lay from the Supreme Court to the King in Council in all civil disputes which exceeded the sum of five hundred pounds or five thousand rix dollars. There was, however, no appeal to the King in criminal cases.

By Charter of 1810, the jurisdiction of the Supreme Court, both civil and criminal, was extended to "every part of the British Settlements in Ceylon." The system of trial by jury was also introduced by this Charter. The Charter of 1810 made the Supreme Court sit in two divisions, the first in Colombo presided by the Chief Justice and second in Jaffna presided by the Puisne Justice. The two divisions also went on circuit to be arranged by the Chief Justice with the concurrence of the Governor. It has been pointed out that the right of sitting upon juries conferred on the natives of the country was a privilege possessed at that time by no other natives in Asia

The Charter of the 18th of February, 1833 revoked all the Charters and Letters Patent that preceded it. Likewise, all laws and usages repugnant to this Charter were annulled. The various provincial and other Courts of original jurisdiction, the minor Courts of Appeal and the appellate jurisdiction of the Governor were abolished. One Supreme Court, to be called "The Supreme Court of the island of Ceylon", was established. This Court consisted of a Chief Justice and of two Puisne Justices. They were appointed by Letters Patent issued under the Public Seal of the island in pursuance of His Majesty's Warrants and held office during the pleasure of the Crown. The Island was divided into circuits. The civil and criminal sessions of the Supreme Court were held by one Judge in each of these circuits. At the civil sessions assessors were associated with the Judge and at these sessions all appeals from the District Courts of the circuits were disposed of. The criminal sessions were held before a Judge and a jury of thirteen men. The Supreme Court could issue the writs of Mandamus, Proceendo, Prohibition, and Habeas Corpus. In civil actions an appeal was allowed to His Majesty in Council from all final judgments, orders, and decrees, provided the matter at issue was above the monetary value of £500.

The next important landmark in the history of the Supreme Court is Ordinance No. 20 of 1871. It provided for the summoning of special jurors to try criminal cases before the Supreme Court. Ordinance No. 16 of 1880 provided for the appointment of a Commissioner of Assize to hold criminal sessions of the Supreme Court.

This brings us to the Courts Ordinance No. 1 of 1889 the principal legislative enactment relating to the jurisdiction of the different Courts in the Island. It came into operation by Proclamation published in the Government Gazette of August 1, 1890. The original Ordinance provided for a Chief Justice and two Puisne Justices. The appointments of the fourth and fifth Judges were created by Ordinance No. 24 of 1901 and by Ordinance No. 36 of 1921 respectively. In process of time the strength of the Supreme Court was gradually increased until, the Supreme Court consisted of a Chief Justice and five Puisne Justices, the Legislative Council having passed an amendment, (21 of 1926) to the Courts Ordinance by which the appointments of a Sixth Judge to the Supreme Court Bench was sanctioned. The Supreme Court of Ceylon, then constituted consists of:-

1. Hon. Sir Stanley Fisher, Kt., Chief Justice
2. Hon. Mr. T.F. Garvin K.C., P.J.
3. Hon. Mr. L.C. Dalton P.J.
4. Hon. Mr. R.W. Lyall Grant, P.J.
5. Hon. Mr. Allan Drieberg K.C., P.J.
6. Hon. Mr. M.T. Akbar, K.C., P.J.

There was considerable volume of opinion in the country at that time for the inauguration of a Court of Criminal Appeal similar in all respects to the Court that goes by this name in England. As Sir St. John Branch, late Chief Justice, remarked, in his memorandum to the Government, "the demand for a Court of Criminal Appeal is difficult to resist on principle."

The subsequent steps worthy of mention are that, by Ordinance No. 2 of 1891, the Supreme Court was declared a Colonial Court of Admiralty and that, under Section 223 (1) of the Criminal Procedure Code of 1898 the number of jurors to be empaneled to try a criminal case was altered from 13 to 7.

Constitution

The Chief Justice is in office *primus inter pares* (a first among equals). An analogy found in the office of Prime Minister of the British Cabinet. Under the law certain proceedings can be initiated only at the discretion of the Chief Justice e.g. a trial at bar (held at Colombo by Jury before 3 Judges) under Section 216 Cr. P.C. and Section 31 of Courts Ordinance. The general administration of the working of the Supreme Court receives his supervisory control, the Registrar being the Administrative Head of the Supreme Court Registry.

The Chief Justice and the Puisne Justices are appointed by Letters Patent issued under the Public seal of the Island in pursuance of warrants issued by His Majesty under the sign Manual. They hold their offices during the King's pleasure.

The Governor also had the right to make provisional appointments to the Bench of the Supreme Court following the death, resignation, illness, incapacity, absence from the island, or being granted leave or suspension of any of its permanent occupants. While in office Their Lordships are incapable of holding any other office of profit or emolument. The exceptions are that they may accept the office of Judge of the Court of Vice-Admiralty in the Island or of Commissioner of prize causes and other maritime questions arising in India.

The Governor in Executive Council has, however, the right to suspend any Judge of the Supreme Court from the exercise of his functions provisionally, until His Majesty's pleasure can be known. But – quote the words of Section 11 of the Courts Ordinance – “as it is expedient that no such act of suspension should take place except upon the most evident necessity, and after the most mature deliberation” the right of the Governor so to suspend is hedged in with certain rules that would have to be observed in such cases.

Whenever the Chief Justice so recommends, a Commissioner of Assize may in addition to the Justices enumerated above, be appointed to preside over the Criminal Sessions of the Supreme Court. He is appointed by the Governor by Commission under the public seal of the Island. He holds office for such period and for such criminal session, or part of a criminal session of the Supreme Court as shall be specified in his commission of appointment. On the question of the rights, powers and privileges of a Commissioner of Assize, the Supreme Court has by a pronouncement of its Full Court, set the imprimatur of its approval on Sections 25 and 26 of the Courts Ordinance, which conferred on a Commissioner of Assize, exercising the original jurisdiction of the Supreme Court, “all the rights, powers and privileges of a Judge of the Supreme Court.”

The Supreme Court held four or five Sessions for the Year. Two or three Sessions were held in Colombo and the Judges went on the Northern and Southern Circuit to hold sessions. They left on these circuits with a 15 Gun salute and their return was greeted by a 15 Gun salute. Punctilious ceremony is observed at the railway station on the arrival of the Judge for Sessions. The Fiscal receives him. The Chief Commissioned Officers of the Police are in attendance in uniform and the route to the Judge's residence is lined at intervals by Police Guards. On the day fixed for the holding of the sessions in any station, the Judge or Commissioner of Assize attends religious services in the morning and thereafter proceeds to the Supreme Court. The Judge attired in his full scarlet robes (which were the colour of the original criminal jurisdiction of the Supreme Court) with his full bottomed wig mounts the bench at the appointed hour. If the Chief Justice is to preside the sword and mace bearers attired in scarlet robes with gold braided belts are in attendance and while the Chief Justice is mounting the Bench they go ahead of him with sword and mace and these they fix on the bench just behind the Judge. The Guard of Honour presents arms and a Police Bugle sounds the royal salute. A Guard of Honour is provided by a posse of constables in command of a Police Superintendent or a Police Inspector. The Judge and others then take their seat.

The interesting custom of handing a pair of White Gloves to the Judge in the event of there being no cases whatever on the calendar was practiced for the last time at Batticaloa in 1922 when His Lordship Sir Anton Bertram proceeded to Batticaloa to hold the Criminal Session there.

By Ordinance No. 8 of 1924 (Amendment of Section 28 of the Courts Ordinance) sessions need not be held in the event of there not being in any circuit any cases committed for trial or sufficient cases to justify the holding of a sessions, but the Governor after consultation with the Judges by notification in the Government Gazette may cancel such sessions and direct that any cases ready for trial be tried at such times and places as specified in the said notification.

Donoughmore Constitution

In August 1927 the Secretary of State announced the appointment of a Special Commission under the Chairmanship of Lord Donoughmore "to visit Ceylon and report on the working of the existing Constitution and on any difficulties of administration which may have arisen in connection with it; to consider any proposals for the revision of the Constitution that may be put forward, and to report what, if any, amendments of the Order in Council now in force should be made."

The Donoughmore Commission recommended that the new Constitution should transfer to the elected representatives of the people complete control over their internal affairs subject only to such provisions as would ensure that they were helped by the advice of experienced officials and to the exercise by the Governor of certain safeguarding powers. The Donoughmore Report described as "the most remarkable state paper on Colonial Affairs of the 20th Century" also recommended universal adult franchise. The Commissioners felt that there was considerable justification for the argument that only by exercising the vote could the political intelligence to use it be developed.

Subsequently, the Ceylon (State Council) Order in Council, 1931, was passed by the King in Council to establish what came to be known as the Donoughmore Constitution. This Constitution provided for a State Council consisting of a) three persons exercising the functions of Chief Secretary, Legal Secretary and Financial Secretary and called Officers of State; b) fifty persons elected on a universal adult franchise in accordance with the Ceylon (State Council Elections) Order in Council 1931 which was passed simultaneously by the King in Council c) Not more than eight nominated members appointed by the Governor. The first election under the new Constitution was held in June 1931 on the basis of universal adult suffrage. With everybody above the age of 21 years being permitted to vote under the new Constitution, Sri Lanka became one of the first Asian countries to grant voting rights to women. It was the only constitution in the British Empire, outside the "white" dominions of Australia, South Africa and Canada, enabling general elections with adult universal suffrage.

It is also recorded during this period that one of the country's most respected Chief Justices, Sir Sydney Abrahams during the ceremonial sitting to welcome him as the Chief Justice in 1936 stated as follows:

"Certainly, I can say without any modesty that it is the greatest day of my life – it is a dream come true. Every entrant to the Colonial Legal Service dreams that one day he may have the joy of occupying this seat, which it is now my privilege to occupy to administer justice in a beautiful island which

has been truly called the pride of the Colonial Service and to be at the head of the judiciary which has been said by learned Predecessors to be the finest system of justice in the whole British Empire."

Soulbury Constitution

As the Atlantic Charter of August 1941 drafted by leaders of the United Kingdom and the United States of America had declared the right of all peoples to self-determination and self-government, the contents of the Congress resolution were communicated to the leaders of the Allied Powers. This "freedom resolution" was also conveyed to those members of the British Parliament who were sympathetic to the cause of Indian freedom and they were requested to press also the case of freedom for Ceylon. In May 1943 a Solemn Declaration made by His Majesty's Government stated that the post-war re-examination of the reform of the Ceylon Constitution would be directed towards the grant to Ceylon of full responsible government under the Crown in all matters of internal civil administration. His Majesty's Government would retain control of defence and external relations. His Majesty's Government thereafter proceeded to appoint a Commission with Lord Soulbury as the Chairman, to examine and discuss any proposals for constitutional reform which had the object of giving effect to the Declaration of His Majesty's Government on that subject and to advise His Majesty's Government on all measures necessary to attain that object. The Soulbury Commission visited Ceylon from 22 December 1944 to 9 April 1945 and travelled throughout the island. The Report of the Soulbury Commission was published on 9 October 1945. In a White Paper, embodying the decisions of the British Government, issued on 31 October 1945, it was stated that the main features of the Constitution under which Ceylon would be governed during this period would follow the general lines of the recommendation of the Soulbury Commission with some modifications.

Following the recommendation of the Soulbury Commission for an independent Judiciary, the Constitution provided that the Chief Justice and Puisne Judges of the Supreme Court and Commissioners of Assize were appointed by the Governor-General and held office during good behavior. They could not be removed except by the Governor-General on an address of the Senate and the House of Representatives. Their salaries were determined by Parliament, charged on the Consolidated Fund and could not be diminished during their term of office. It is also significant that there was express provision that every Judge of Supreme Court appointed and in office before the Constitution came into operation was to continue in office.

The Constitution also provided for the independence of all judicial officers through the establishment of an independent Judicial Service Commission. The Commission consisted of the Chief Justice, a Judge of the Supreme Court and another person who was or had been a Judge of the Supreme Court. The appointment, transfer, dismissal and disciplinary control of judicial officers were vested in the Commission. Any person who influenced or attempted to influence any decision of the Commission or any of its members was guilty of an offence. The term "judicial officer" was defined to mean the holder of any judicial office but did not include a Judge of the Supreme Court or a Commissioner of Assize.

Independence Constitution

The general election to the first Parliament under the Soulbury Constitution was held in 1947. The same year a declaration was made in the House of Commons of the United Kingdom by the Secretary of State and in the State Council of Ceylon by the Governor that as soon as the necessary Agreements had been negotiated and concluded on terms satisfactory to the Governments of the United Kingdom and Ceylon, immediate steps would be taken "to confer upon Ceylon fully responsible status within the British Commonwealth of Nations". Subsequently, the Ceylon Independence Act received the Royal Assent on 10 December 1947 and took effect on 4 February 1948. This Act severed the links which had bound Ceylon to the British Parliament and Government. After the enactment of the Independence Act and the Independence Order in Council the Courts accepted and recognized the Constitution which was contained in the Ceylon (Constitution) Order in Council as the Supreme Law in Ceylon. After the attainment of independence, the Citizenship Act No. 18 of 1948, was enacted to provide for citizenship of this country. However, Independence Constitution failed to establish an entirely new framework for the Supreme Court and only included the appointment, transfer and dismissal of the judges. From the time of British conquest of Ceylon in 1796 up to independence in 1948 there were 30 British Governors and 27 Chief Justices appointed.

Republican Constitution of 1972

The first major change in the legal system of the country, which was in existence since 1833, was made with the promulgation of the Republican Constitution of 1972. The First Republican Constitution unlike the Soulbury Constitution was autochthonous or rooted entirely in Sri Lanka. The 1972 Constitution not only provided that the National State Assembly was the supreme instrument of State power, legislative, executive and judicial, but also contained express provision prohibiting judicial review of the constitutionality of legislation which the Supreme Court obtained from the Independence Constitution. While a Fundamental Rights chapter was enshrined in this constitution the enforcement of its jurisdiction was not given to the court. The Administration of Justice Law No.44 of 1973 repealed most of the previous legislation regarding the judiciary including the Courts Ordinance, the Criminal Procedure Code, the Court of Appeal and the Court of Criminal Appeal Ordinance, Legal Practitioners Ordinance, Incorporated Law Societies Ordinance, the Civil Procedure Code and Courts of Admiralty Ordinance. It removed the original criminal jurisdiction from the Supreme Court and vested to the High Court. The appellate authority which the Privy Council had until 1971 was abolished as the Supreme Court became the last resort in both civil and criminal cases. The previously existing Judicial Service Commission was replaced by a Judicial Services Advisory Board and a Judicial Service Disciplinary Board.

Another significant change introduced during this period was the fusion of the two branches of the legal profession, namely advocates and proctors, and the age-old traditional dual professional system which existed in relative harmony for over a century was repealed and the new law was brought into operation by a notification in Government

Gazette on the 1st of January 1974. Thus, every person who was either an advocate or a proctor on the day preceding the appointed date (which in effect meant the day prior to 1st January 1974) is now deemed to be an Attorney-At-Law.

Subsequently, the Second Republican Constitution of 1978 provided the legal framework for the Supreme Court which functions today.

Reference: "The Legal Heritage of Sri Lanka" by A.R.B. Amerasinghe, "A Handbook of the Supreme Court of Ceylon" by C. Arasaratnam (1929), "A History of the Ceylon Police", Volume I (1795 – 1866) by A.C. Dep, "An Introduction to the Legal System of Sri Lanka", by L.J.M. Cooray, "Highlights and Anecdotes about our Bench, Bar and Legal System" by Dr. Wickrema Weerasooria, Attorney-at-Law, "The Legal System of Sri Lanka" by J. Mervyn Canaga Retna, "The Legal System of Ceylon in its Historical Setting" by Prof. T. Nadaraja.

The Supreme Court of Sri Lanka Under 1978 Constitution

Introduction

The Present Constitution of Sri Lanka was promulgated on 17th August 1978 as the Supreme Law of the Democratic Socialist Republic of Sri Lanka. The Constitution lays down the basic framework of the system of government. It is confined to the main principles and rules relating to basic matters such as the Source of Sovereign Power, the Legislature, the Executive, the Judiciary, the Process of Constitutional Amendment and the definition, guarantee and enforcement of Fundamental Rights.

In Article 1 of the 1978 Constitution the State of Sri Lanka is described as “a Free, Sovereign, Independent and Democratic Socialist Republic.” The Second Republican Constitution declares Sri Lanka a unitary state and vests sovereignty in its people. Sovereignty while being inalienable includes the powers of government. The roots of the doctrine of separation of powers are engraved in Articles 3 and 4 of the Constitution. Article 4 of the Constitution, describes the mode in which the powers of government are to be exercised. That is to say: (a) The legislative power of the people shall be exercised by Parliament, consisting of elected representatives of the people and by the people at a Referendum (b) The executive power of the people, including the defence of Sri Lanka, shall be exercised by the President of the Republic elected by the people (c) The judicial power of the people shall be exercised by Parliament through courts, tribunals and institutions created and established, or recognised, by the Constitution, or created and established by law, except in regard to matters relating to parliamentary privileges, immunities and powers of Parliament and of its Members, wherein judicial power of the people may be exercised directly by Parliament according to law.

Composition of the Supreme Court

The Supreme Court consists of the Chief Justice and of not less than six and not more than ten other Judges. The Supreme Court has power to act notwithstanding any vacancy in its membership, and no act or proceeding of the Court shall be, or shall be deemed to be, invalid by reason only of any such vacancy or any defect in the appointment of a Judge.

Jurisdiction of the Supreme Court

The Supreme Court is the highest and final superior court of record and subject to the provisions of the Constitution exercises: jurisdiction in respect of constitutional matters; jurisdiction for the protection of fundamental rights; final appellate jurisdiction; consultative jurisdiction; jurisdiction in election petitions; jurisdiction in respect of any

breach of the privileges of Parliament; and jurisdiction in respect of such other matters which Parliament may by law vest or ordain.

The present Constitution did not reintroduce judicial review of legislature but vested Supreme Court with the exclusive jurisdiction of pre-enactment judicial review to examine the consistency of Bills with the provisions found in the Constitution. Article 80 (3) of the Constitution lays down that where a Bill becomes law upon the certificate of the President or the Speaker, as the case may be, being endorsed on it, no court or tribunal shall inquire into, pronounce upon or in any manner call in question the validity of such an Act on any ground whatsoever. However, by Article 120 the Supreme Court is conferred with jurisdiction to determine any question as to whether any Bill or any provision in such Bill is inconsistent with the Constitution. Furthermore, under Article 125 of the Constitution the Supreme Court has sole and exclusive jurisdiction to hear and determine issues relating to the interpretation of the constitution.

The sole and exclusive powers of deciding cases relating to infringement or imminent infringement of fundamental and language rights stated in chapters III and IV of the Constitution, by administrative or executive action is vested with the Supreme Court by Article 126. In granting relief for the aggrieved of such violations the court has a vast discretion and flexibility in providing “just and equitable” compensation.

In terms of Article 127 the Supreme Court is the final Court of civil and criminal appellate jurisdiction for errors in fact or law which shall be committed by the Court of Appeal or any Court of First Instance, tribunal or other institution and the judgments and orders of the Supreme Court in all cases is final and conclusive.

In its consultative jurisdiction under Article 129, the court provides its opinion to issues regarding a question of law or fact that has arisen or is likely to arise and is of public importance, referred to it by the President.

The Supreme Court also inquires into and reports its determination regarding allegations put forward by the Speaker on a resolution by a Member of Parliament under Article 38 (2) (a) alleging that the President is permanently incapable of discharging the functions of his office by reason of mental or physical infirmity or that the President has been guilty of intentional violation of the Constitution, treason, bribery, misconduct or corruption involving the abuse of the power of his office or any offence under any law, involving moral turpitude. Such opinion, determination and report shall be expressed after consideration by at least five Judges of the Supreme Court, of whom, unless he otherwise directs, the Chief Justice shall be one.

Article 130 of the Constitution has conferred power on the Supreme Court, to determine any legal proceeding related to Presidential elections or validity of a referendum, as well as hear appeals from a judgement of the Court of Appeal in an election petition case.

In addition to this the Supreme Court by Article 131 has the power to take cognizance of and punish any person for the breach of the privileges of Parliament.

Under Article 133 the Chief Justice with previous consent of the President could appoint the President of the Court of Appeal or any other judge of the Court of Appeal as ad hoc judges when the required quorum of judges is not available in court.

The Supreme Court is also vested with the powers of establishing regulations for the entire judicial system of the country by Article 136. These rules include those of hearing appeals, proceedings in the Supreme Court and Court of Appeal, granting bail, stay of proceedings, the admission, enrolment, suspension, removal and the etiquette rules of attorneys-at-law, attire of judges and attorneys-at-law and the manner in which the jury is prepared, summoned, empanelled and challenged.

Appointment and Tenure of Judges of the Supreme Court

The Chief Justice, and every other Judge of the Supreme Court are appointed by the President by warrant under his hand, subject to the approval of the Constitutional Council.

In terms of the Constitution Judges of the Supreme Court could hold office during good behaviour and can serve until the retirement age of 65 years. The Judges of the Supreme Court cannot be removed except by an order of the President made after an address to the Parliament and supported by a majority of the total number of Members of Parliament (including those not present) has been presented to the President for such removal on the ground of proved misbehavior or incapacity.

A resolution for the presentation of such an address can be entertained by the Speaker or be placed on the Order Paper of Parliament only if notice of the resolution is signed by not less than one third of the total number of Members of Parliament and sets out full particulars of the alleged misbehaviour or incapacity. Parliament is required to provide for all matters relating to the presentation of such an address (including the procedure for the passing of the resolution, the investigation and proof of the alleged misbehaviour or incapacity, and the right of the judge to appear and to be heard in person or by representative), by law or by Standing Orders of Parliament.

A Judge of the Supreme Court is not permitted to perform or hold any other office, whether paid or not, or accept any place of profit or emolument, except as authorized by the Constitution or by written law or with the written consent of the President.

Further, any person who held the office as a permanent Judge of the Supreme Court is prohibited from appearing or practicing in any court, tribunal or institution as an Attorney-at-Law at any time without the written consent of the President.

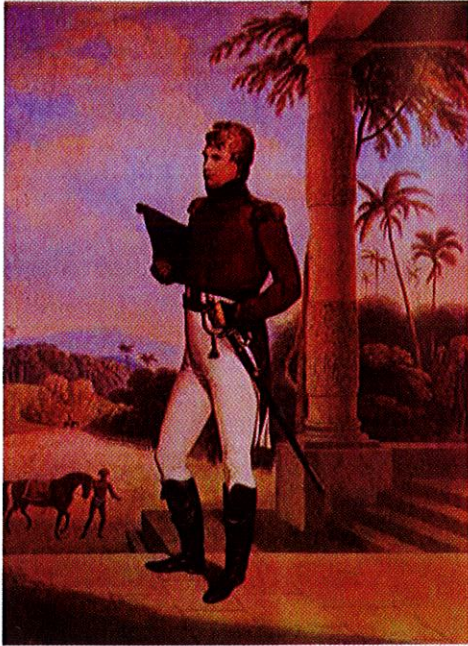
Tussle between the Executive Government and the Military– Shifting of the Supreme Court to Hulftsdrop

The Supreme Court of Sri Lanka has a great tradition; constituted by Charter 1801, this Court has asserted the independence of the law, even when the military was predominant. Its first conflict was with General Wemyss who took exception to the execution of sentences of whipping and hanging on the military parade ground.

During the Kandyan War the Supreme Court shifted to the Fort to a building close to where the garrison was stationed. The soldiers were often seen to be after liquor and now that the Supreme Court was in the Fort, the sitting Magistrate Mr. Flower had two soldiers who were found drunk publicly flogged. Colonel Baillie, the Commandant of the Fort took offence at this and protested. He indicated to Mr. Flower that he would send his men out with side arms “to defend themselves from the officers of the Police” Mr. Flower brought this to the notice of Mr. Justice Lushington and he charged Colonel Baillie in Courts. Governor Fedrick North (first Governor of Sri Lanka from 1798 to 1805) who went into this more dispassionately found that Colonel Baillie had not intended to threaten Mr. Flower but what he had stated obviously hurt Mr. Flower. Colonel Baillie had said “but if I should order my men to wear side arms what would be the consequences and you Flower how would you like a bayonet in your fat guts”. Mr. Flower was a fat man.

However, as the law had been set in motion, Governor North could do nothing. Colonel Baillie was summoned before the Supreme Court and bound over in £ 5000.00 to keep the peace for a year. The military officers who were in courts were naturally hurt and showed their displeasure in their faces. This event, left as is but usual in similar cases a great irritability in the minds of both parties, and every subsequent order of the Court was looked upon as a vexation by the Military while every act of the Military was considered as a contumely by the Court.

Soon after, corporal punishment was inflicted on the Parade ground. This was after all not a sacrosanct place. It was formally the ordinary place of execution even of capital punishment. But this was enough for a man like General Wemyss. On the 24th September; Colonel Baillie shut the gates of the Fort from 8.00 am – 12.00 noon on an order from General Wemyss who was at Chilaw 50 miles away. This order was made on the pretext that spies were entering the Fort during these times. Shut out from the Fort the Supreme Court reacted by issuing a summons on the General to appear in Courts. When he made his appearance, he was bound over in 10000/ to keep the peace for one year and to appear when noticed.



A painting of Colonel Charles Baillie, Commandant of Colombo, taken from the book "The Supreme Court of Sri Lanka" by A.R.B. Amerasinghe

Very soon the General had to appear again in Courts, this time to explain the contents of a letter which he had written. Governor North who had read this describes the contents as being so imprudent in substance, so indecent in expression. In this letter he had referred to Mr. Flower as the "fatty and contemptible Minister of Justice". He had referred to some others as "catchpoles". In his explanation the General did not say who the "catchpoles" were. But the Chief Justice assumed that the reference was to the Advocate Fiscal, Johnston and the Registrar Rose.

The Advocate Fiscal, Johnston, who was greatly offended by this reference decided to take his own action. He sent the Registrar with a note asking for an explanation. It was so worded that the General took this for a challenge. He gave his explanation but appointed no time or place. Hearing this Governor North acted with great speed. He obtained Johnston's word of honour that no duel would take place and sent Rose asking for the General's explanation. Between them occurred an altercation "so gross in some expressions" that the situation worsened. Now Governor North tried to appease Johnston and sent the Chief Secretary Arbuthnot to "calm the mind to this young gentleman of the law".

There was a short calm which was, however, interrupted from an unexpected quarter. The Chaplain of the Brigade preached a sermon on Paul's trial before Felix. The Chief Justice took offence over this assuming that it was a reference to them. Governor North was surprised that they convinced themselves "of the supposed similarity between the General and St. Paul with which no one had hitherto been struck".

Governor North was now convinced that if the Supreme Court remained in the Fort there would be constant trouble between it and the Military. He then took steps to shift the Supreme Court to Hulftsdorp. He ordered this shift on the pretext that he wanted these buildings to house the Indian Regiment of Caffres brought to Ceylon. He also made out that the Supreme Court was moved out to better buildings "into by far the most decorous buildings on the island for their Court House, which I had myself inhabited for three years.

Not long after some of the Military personnel employed in the General's household, with a letter from him, endeavored to take over a tree for firewood. The native owner

resisted this attempt and complained to the Sitting Magistrate Mylius and he immediately protected the property and had the offenders arrested. The General then gave a satisfactory explanation and his men released.

However, the bitter feelings between the General and the Chief Justice continued. The General gave up saluting the Chief Justice and refrained from giving him recognition. The Chief Justice ignored all this. One day the General approached his carriage and spoke to Lady Carrington, completely ignoring him. This made the Chief Justice to protest.

All these quarrels and bickering had their toll on General North. In one of his dispatches to Lord Camden, Governor North in sheer desperation exclaimed. "For Heaven's sake My Lord, lodge in the hands of my successor authority sufficient to quell them, and above all things appoint for his association persons animated with the desire of concord and with a spirit of patience, moderation and forbearance".

These clashes of personalities had an effect not only on Governor North but on the Executive Government as well. This was during the war with Kandy. "The Executive Government was totally paralyzed by the unhappy difference which existed between it and the Military power." The Governor finally wrote to the Judges intimating his intention to remove the court-house to Hulftsdorp which was formerly the residence of Mr. Andrews, the Collector, and for a time of the Governor himself. Subsequently, sometime in 1805 the Supreme Court moved to Hulftsdorp (the old Supreme Court building presently housing the High Court Colombo) from the Fort.

This article appeared in the book "A History of the Ceylon Police", Volume I (1795 – 1866) pp 26-29 by A.C. Dep

INTRODUCTION OF JURY TRIALS IN CEYLON

Charter of Justice granting trial by Jury was read and promulgated on the 16th March 1812. Ceylon was the first country in the East which was granted this privilege and it was entirely due to the recommendations of one of our great Chief Justices Sir Alexander Johnston who was also President of the Legislative Council. A Jury of 13 persons were to try the prisoner who was allowed five peremptory challenges without assigning any cause and an unlimited number of challenges on cause shown. The Jurors were divided into Europeans and Burghers and Natives. The native Jurors consisted of Sinhalese Vellalas alone. This naturally caused much dissatisfaction among the other castes. In 1843 the Government endeavoured to remove this anomaly. The Bill introduced into Council was vigorously opposed by the Vellalas and Counsel were heard at the Bar of the House. The Council Chamber was crowded to its utmost capacity and Sir Richard Morgan then a youth of twenty-two appeared in support of the Bill and James Stewart subsequently Acting Queen's Advocate in opposition. James Stewart's main argument was that the time was not yet ripe for reform. The Diehards were of course defeated and the Bill carried. The old distinction was abolished and three panels of Jury were created – English speaking, Sinhalese speaking and Tamil speaking. The number of Jurors was the same and the verdict was by a majority, the Judge having no power to send back the Jury for reconsideration or in any way controlling their verdict. The Criminal Procedure Code of 1883 made important changes in this respect. It authorized the Attorney-General to withdraw the case from the Jury at any stage. It gave the Crown and the accused person three peremptory challenges each and reduced the number of Jurors from 13 to 9 or 7 according to which as the Governor in Executive Council should decide. In cases of murder the verdict should be by at least a two-third majority. Ordinance No. 15 of 1898 enacted that the Jury should be seven and in every case the verdict should be unanimous or by a majority of not less than five to two. Two peremptory challenges were allowed on behalf of the accused or group of accused but the Crown was given the privilege of getting every Juror to stand out. The Judge is authorized to send back the Jury to reconsider their verdict in case they are not unanimous. In certain circumstances the Judge has authority to discharge the Jury.

Every male person residing within the Island who has attained the age of twenty-one years and who possesses the required qualifications was qualified to serve as a Juror in the Supreme Court at sessions held for the Circuit, provided that the place where he resides is within the District of the District Court having jurisdiction over the place where such session is holden or is not distance more than thirty miles in a straight line from such place or if distance more than thirty miles is within eight miles by road of a Railway Station.

Jurors were also not compelled to serve more than a fortnight in any one sessions unless at the expiration of the fortnight a trial in which he is engaged as a juror is pending and then only until the end of such trial. A juror was also entitled to be exempted from service

if he has served as a juror at some other sessions of the Supreme Court holden within the same circuit within twelve months from the date for which he is summoned provided:

- a) That the claim for exemption is made by letter addressed to the Registrar immediately after such person has been summoned to attend and
- b) A Judge of the Supreme Court is of opinion that the exemption can be allowed without unduly reducing the panel.

The Jurors were also classified into three classes as follows:

Class I – comprised of all those whose names were included in the List of Special Jurors annually prepared by the Fiscals of different Provinces, in terms of section 257 (4) of “The Criminal Procedure Code, 1898,” whether sitting as special Juror or not.

Class II – included all those names in the List of English-speaking Jurors prepared by the Fiscals of different Provinces, in terms of section 257 (1) of “The Criminal Procedure Code, 1898.”

Class III – consisted all those names in the List of Jurors as prepared annually by the Fiscals of the different Provinces, in terms of section 257 (2) and (3) of “The Criminal Procedure Code, 1898.”

Based on the above classification Class I Jurors were paid Rs. 10 as Batta or per diem and Cents 50 as travelling allowance per mile, while Class II Jurors were paid Rs. 6 as Batta and Cents 50 as travelling allowance per mile. Class II Jurors were paid Rs. 3.50 as Batta and Cents 37 ½ per mile as travelling allowance.

Reproduced from “A Handbook of the Supreme Court of Ceylon” by C. Arasaratnam (1929)

The Administration of Justice Law, No. 44 of 1973, adopted by the National State Assembly of Sri Lanka, repealed in toto several statutes, including the Criminal Procedure Code of 1898 and established an entirely new system of courts. Sri Lanka was divided into 16 judicial zones and a High Court vested with original criminal jurisdiction was newly established within each zone. The criminal jurisdiction vested in High Courts was of extensive scope. The Administration of Justice Law declared that “Subject to the provisions of this law, all trials before the High Court shall be by Jury before a Judge.” Subsequently, the Code of Criminal Procedure Act, No. 15 of 1979 replaced the Administration of Justice Law. At present the Code of Criminal Procedure Act, No. 15 of 1979 and the Judicature Act No. 2 of 1978 remain the key laws governing Jury Trials. According to the present legislative scheme, the accused has the option to decide whether he should be tried in the High Court with or without a Jury if any of the offences in the Indictment is an offence classified as an offence that should be tried by Jury as provided in the Judicature Act No. 2 of 1978 as amended by Act No. 16 of 1989. It is the duty of the High Court Judge to provide the accused with an opportunity to exercise his option at the time of serving the Indictment. The Jury is required to reach a unanimous verdict or a verdict by a majority of not less than five to two. However, during the past decade or so Jury trials in fact rarely took place due to the cumbersome nature of the procedure.

First Ceylonese To Adorn The Supreme Court Bench



Sir Harry Dias

Sir Harry Dias was the first native Sinhalese Judge to be appointed to the Supreme Court Bench in July 1879. Harry Dias also holds the record of being the first Sinhalese Barrister and the first Sinhalese to receive a knighthood. Harry Dias was born on 22nd August 1822. He was called to the Bar by the Middle Temple in 1848. When Harry Dias returned from England he joined the local Bar and soon built up a lucrative practice. When the appointment of Gillman as District Judge of Kandy was cancelled and the Governor was required to appoint a practicing lawyer, Sir William Gregory offered the post to Dias and he declined the offer. However, during the latter part of his life he accepted the judicial appointment.



Sir Edwin Arthur Lewis Wijeyewardene

Sir Arthur Wijeyewardene, K.C., was born on 21st March, 1887. He won a government scholarship and proceeded to England but returned without completing his studies because of the rigours of the climate there. He tried to join the Ceylon Civil Service but was rejected on medical grounds. So he turned to the law. He was appointed Deputy Public Trustee on 15th April 1932 and on 15th February 1935 as Public Trustee. He was sworn in as Solicitor General on 12th October 1936 on the very same day Illangakoon was sworn in as Attorney General and it was the first occasion when both principal law officers were sworn in together. Arthur Wijeyewardene took silk in 1937 and on 25th April 1938 was appointed Acting Attorney General. On 15th January 1949 he became the first Ceylonese Chief Justice. He was knighted and, in the absence of the Governor General, was the Officer Administering the Government from 30th June to 6th July 1949.

Reference: "The Supreme Court of Sri Lanka" by A.R.B. Amerasinghe, "Highlights and Anecdotes about our Bench, Bar and Legal System" by Dr. Wickrema Weerasooria, Attorney-at-Law

Glimpse of Supreme Court of Sri Lanka



In 1984, during a visit to the People's Republic of China, Dr. H.W. Jayewardene, Q.C., explored the possibility of obtaining assistance to build a new Supreme Court. Subsequently in that year, when His Excellency the President Mr. J.R. Jayewardene, visited China, a firm offer of assistance was made by the Government of the People's Republic of China. In June 1984 a committee was appointed to formulate a design concept and the relevant Protocol was signed in Beijing on August 17th, 1984. The foundation stone for the New Superior Court building was laid on 4th February, 1985. Subsequently, the New Superior Courts Complex was handed over to His Lordship Chief Justice Parinda Ranasinghe by His Excellency the President Mr. J.R. Jayewardene on 17th September 1988. The Apex Court of Sri Lanka continues to dispense justice to date from this Court Complex housed in Hulftsdorp.

Ceremonial Court



The Bench in the Ceremonial Court can accommodate the Judges of the Supreme Court, the Court of Appeal, the High Courts, the District Courts and the Magistrate's Courts, in different levels. The Lawyers have their seats in the center, which is the well of the court, with an inner Bar for the "Silks", and the public are accommodated in balconies on the two sides. High on each wall of the Ceremonial Court hangs eight silver pennants depicting Sankha, Purnagatha, Srivatsi, Camara, Ankhusa, Matsya-Yugala, Swastika and Bhadra-pitha, the auspicious symbols of the ancient Buddhists and Hindus.

Court Room of the Hon'ble Chief Justice of Sri Lanka



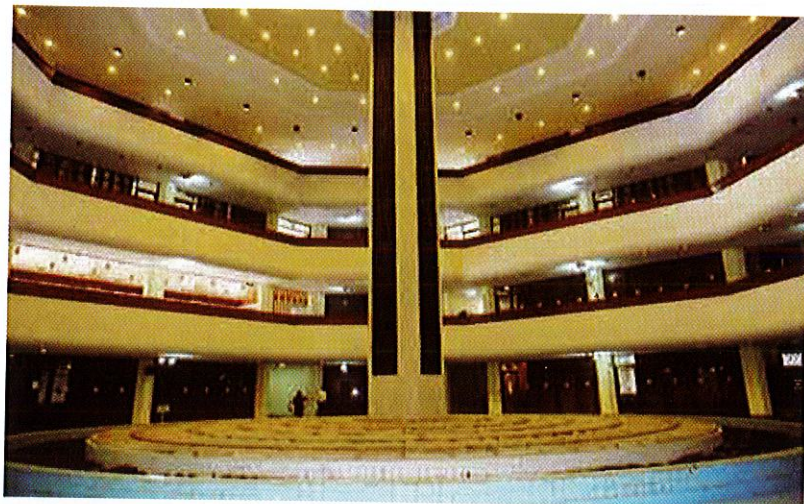


Painting of Lord Buddha settling a dispute over a throne between the Yakkhas and Naghas in Sri Lanka. This painting was placed in the Supreme Courts Complex because it is the first recorded instance of dispute resolution in Sri Lanka.

Supreme Court Judges Lounge



Painting adorning the Judges Lounge depicting the "Introduction of Trial by Jury". This is a reproduction of a painting by a Russian, James Stephan, who was a Court painter to King George the Third and whose patron, it is said was the then Chief Justice, Sir Alexander Johnstone. Trial by Jury was introduced to Ceylon by Johnstone, CJ, who also played an important role in abolishing slavery in this country in the early 19th Century.

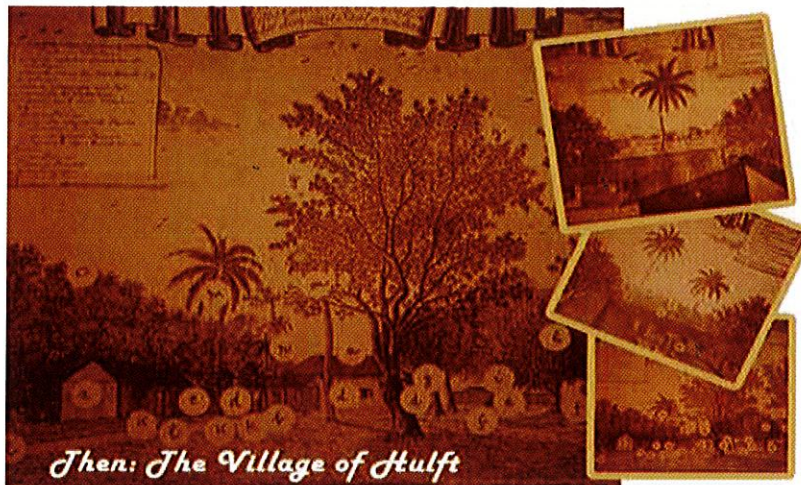


The 50 feet central column dominating the central Octagonal Courtyard in which the "Universal Declaration of Human Rights" is inscribed on the three sides of the pillar in Sinhala, Tamil and English Languages, and on the fourth side the declaration is inscribed in Sanskrit.

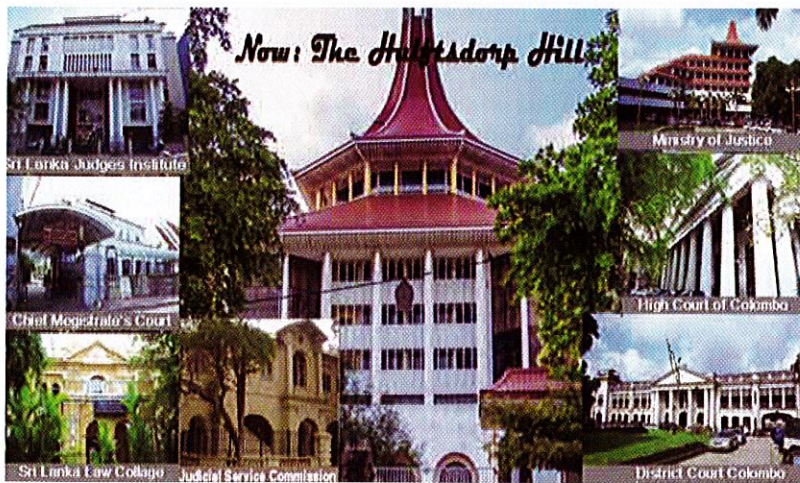


This painting at the entrance of the Supreme Court is of King Rajasinghe the II making a presentation of a collar of gold to General Hulft, as a reward for the General's assistance in attempting to expel the Portuguese from Sri Lanka. Hulftsdorp was named after General Hulft ("Dorp" being the term for "village" in Dutch).

HULFTSDORP



Then: The Village of Hulft



Now: The Hulftsdorp Hill

Some Interesting Anecdotes About The Judiciary During The Colonial Time

There is an interesting anecdote on the appointment of Sir Harry Dias to the Supreme Court Bench in July 1879. The story is told that Harry Dias was an accomplished horseman and he attracted the British Governor's notice by the graceful way in which he rode his horse on Galle Face Green. "Who is the dark gentleman?" asked Governor Sir William Gregory pointing to Harry Dias. He was told that he was a distinguished Sinhalese Advocate called Dias. There was just at that time a vacancy on the Supreme Court Bench and Governor Gregory remarked: "If he can sit on his horse so well, he should be able to sit on the Bench as well". The next day Harry Dias was sent for to Queen's House (the Governor's Residence) and the appointment offered to him, which he accepted.

An incident in an outstation Court illustrates the colonial atmosphere even in judicial proceedings: a native civilian Judge was sitting on the Bench; an European planter, who was accused in a case appeared before him with his hat on his head. The Judge, though young in years, kept his presence of mind; he merely said, "Remand the accused to the House of Observation (mental home)", the strong arm of the law seized him and moved him out. A few minutes later the accused reappeared in Court, with his hat off his head and an apology on his lip.

Legal precedents had great weight with Ceylon Judges. It is said that Sir Justice Thomas Edward de Sampayo (Judge of the Supreme Court from 1913 to 1915) when he once came on the Bench saw before him that at the Bar a Counsel with an array of law reports in front of him "Mr. X", said His Lordship, "If you cite any one of those authorities, I will dismiss your appeal." None were cited.

An interesting incident occurred when Leonard Woolf was the Assistant Government Agent of Hambantota. An eminent lawyer from Colombo appeared in a case heard in the District Court of Tangalle, and Leonard Woolf was the Judge. The lawyer from Colombo was well known for arguing in a very loud voice. Leonard Woolf did not like the manner. The lawyer argued in his usual high tone. The Judge lost his temper and ordered the lawyer not to bark like a dog. The witty lawyer had the court laughing for a short time when he replied "My Lord, I cannot refrain from barking as there is a wolf (Woolf) on the Bench."

Reference: "Ceylon And Her People" by N.E. Weerasooriya, "Supreme Court of Sri Lanka" by A.R.B. Amerasinghe, "Leonard Woolf As A Judge In Ceylon" by Prabath de Silva

Old Supreme Court



This building housed the Supreme Court of (Ceylon) Sri Lanka for over 175 years. This building was since the middle of the 17th century the official residence of the Dutch Governors and Commanders-in-Chief who ruled the Maritime Provinces of Sri Lanka. Dutch General Hulft was the first Dutch Commander-in-Chief to occupy Hulftsdorp hill. He successfully attacked the Colombo Port and Harbour with the help of King Rajasinghe II who was directing his forces from Maligakanda. Hulft was killed by a bullet fired by a Portuguese soldier on the verge of the fall of the Portuguese. The hill on which Hulft lived and died was called Hulftsdorp which means Hulft's village.

From the year 1656 to the year 1796 this building was part of the official residence of the Dutch Governors of Ceylon. After the fall of the Dutch in 1796, the first British Governor Frederic North continued to occupy this building as his official residence till 1805.

In 1801 with the commencement of the Civil Government under Governor North, the Supreme Court comprising of a Chief Justice and one Puisne Judge was established by the Charter of Justice of 1801. The Chief Justice was Sir Codrington Edmund Carrington and the Puisne Judge was E.H. Lushington. This Supreme Court sat in a building opposite Gordon Gardens in the Colombo Fort.

In 1805 Governor North shifted his residence from Hulftsdorp to Queen's House which was the private residence of the last Dutch Governor John Gerald Van Angelbeck and gave the buildings at Hulftsdorp to the Supreme Court. Since then the Supreme Court has sat in Hulftsdorp in this Dutch Building for over 175 years. Presently the High Court of Colombo is housed in this building.

Compiled by Ms. Anandhi Kanagaratnam, Magistrate/Secretary to Hon'ble Chief Justice under the guidance and directions of His Lordship Priyasath Dep, P.C., Chief Justice of Sri Lanka

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SUPREME COURT OF SRI LANKA