KDUIRC
INTERNATIONAL RESEARCH CONFERENCE

15TH INTERNATIONAL RESEARCH CONFERENCE

Economic Revival, National Security, and Sustainability through Advancement of Science, Technology, and Innovation

29TH - 30TH SEPTEMBER 2022

LAW

PROCEEDINGS

GENERAL SIR JOHN KOTELAWALA DEFENCE UNIVERSITY

15TH INTERNATIONAL RESEARCH CONFERENCE

ECONOMIC REVIVAL, NATIONAL SECURITY, AND SUSTAINABILITY THROUGH ADVANCEMENT OF SCIENCE, TECHNOLOGY, AND INNOVATION

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Welcome Address

Major General Milinda Peiris RWP RSP VSV USP ndc psc
Vice Chancellor, General Sir John Kotelawala Defence University

Chief Guest, Secretary - Ministry of Defence, General Kamal Gunaratne (Retd), Keynote Speaker, Hon. Prof. Subramanian Swamy, Your Excellencies in the Diplomatic Corps, Chief of Defence Staff, Gen Shavendra Silva, Commander of the Army, Lt Gen Vikum Liyanage, Commander of the Navy, Vice Admiral Nishantha Ulugetenne, Eminent plenary speakers representing our friendly nations, Vice Chancellors of Other Universities, Former Commandants of KDA, Former Chancellors and Vice Chancellors of KDU, Rectors of KDU Campuses and Deputy Vice Chancellors, Deans of Faculties and Centre Directors, Senior Military Officers and Police officers, Academics, Administrative Staff, Students, All distinguished guests including those who connected with us in the cyberspace, Ladies and gentlemen, Good Morning to you all!

I am deeply honoured to make the welcome address at this inauguration of the 15th International Research Conference (IRC) of General Sir John Kotelawala Defence University.

To begin with, I warmly welcome our chief guest this morning, Gen Kamal Gunaratne (Retd), Secretary to the Ministry of Defence for gracing this important occasion. We owe you a great deal of respect for the whole-hearted support extended for the progression of this university at all times. Also, may I have the distinct honour of welcoming our keynote speaker, the esteemed and renowned personality, Hon Prof Subramanian Swamy from neighbouring India.

Hon Sir, we are extremely grateful to you for accepting our invitation and honouring us with your gracious presence to deliver the keynote address of this two-day international research conference. I am sure that your eminent presence adds great value to the event, and we are looking forward to listening to your words of wisdom, which will surely set the most appropriate tone for this scholarly event.

I also welcome the Chief of Defence Staff, Gen Shavendra Silva, Commander of the Army, Commander of the Navy and all other members of our Board of Management. Let me also warmly welcome the members of the Diplomatic Corps representing our friendly nations, Vice Chancellors and Senior Academics from other universities, Former Commandants of KDA, Former Chancellors & Vice Chancellors of KDU, Other officials of Ministry of Defence, Academics, Senior Military Officers, Plenary speakers, Scholars presenting papers in this two-day conference, and all other distinguished invitees and students joining this event physically as well as on cyberspace. As the Vice Chancellor of KDU, I admire your valuable presence at this occasion.

Reflecting on KDU IRCs held last year and the year before, we held them under the most trying circumstances of the grave pandemic. They really tested our resilience and defiance against challenges to the very core. Along with the IRCs, we determinedly continued with all academic and other activities of the university with much vigor, and the results are evident in our achievements.

Ladies and gentlemen, today, we are glad that KDU has firmly established its foot print as a unique higher educational model in the world, which even its critics would not be able to disagree with. The best evidence is its steady growth in its popularity as an Higher Education Institute in Asia, as well as the quality of its output, which are evident in the Times Higher Education Impact Ranking, 2022 table, where KDU is ranked 2nd in Sri Lanka for Quality of Education and 4th in the overall ranking in the country and in the 801-1000 range globally. A more recent indicator of our growth is evident in the world ranking of Law Schools, where the KDU faculty of law took a leap in the world ranking from the 498th place in 2021 to the 83rd place in 2022, from the 189th place to the 25th place in Asia, and from the 5th place to the 2nd place in Sri Lanka.

Ladies and gentlemen, today, we hold the 15th consecutive IRC at a time when we, Sri Lankans are in a grave need to pull up our socks as a nation to face the seemingly unsurmountable economic crisis we are in. And we as a university are determined to give our utmost best for the nation at this crucial juncture.We believe that the role of the universities and the intellectual community of the nation is of paramount importance for the resurrection of our economy, and that of the nation's defence university is even more significant as it deals with the national security perspective which is inseparably linked with the economic crisis and with a possible recovery from the same.

Serious research in defence and security studies needs to go hand in hand with rigorous research in all other fields. This, we believe, is an essential prerequisite for a quick and sustainable recovery from the crisis. So, we carefully selected the overarching theme, *"Economic Revival, National Security, and Sustainability through Advancement of Science, Technology, and Innovation"* for this year's conference, and its scope encompasses a wide range of significant research possibilities to engage in.

Our aim in selecting this theme entails a holistic vision of the complexities of economic and national security perspectives which demand comprehensive inter- and multidisciplinary approaches to resolve contemporary issues. The expectation is to carry forward the research outcomes to the attention of those in authority to consider implementation to resolve related issues. I do not intend to talk any further on this aspect as I am sure our keynote speaker would elaborate on the conference theme and its significance. Ladies and gentlemen, having commenced in the year 2008 in a humble way, the KDU IRC gained gradual momentum as a trustworthy forum for the country's scholarly community to showcase their multi-disciplinary research outcomes. And what is noteworthy is the ever growing increase in the number of research papers

submitted for the conference, and more so is the increasingly higher quality of the papers presented at the conference.

Therefore, KDU enjoys the humble pride of its leading role in strengthening the research culture in the country that is more and more inclined towards product based or problem solving outcomes in relevant fields, which I believe is the need of the hour. Also the involvement of internationally collaborative research is on the increase. Anyone who visits the KDU IRC Proceedings would note the evolutionary path of the progression in research in the country spearheaded by KDU – You could see the increasingly high numbers of researchers representing almost all the universities, other Higher Education Institutes and research institutes of the country as well as those from renowned universities, Higher Education Institutes and research institutes in the world. So, we are proud of our role in establishing local and international research and scholarly networks that would further enhance creation of new knowledge in diverse disciplines and dissemination of the same.

Ladies and gentlemen, the organizers of this year's research conference too have been doing their utmost best to maintain and upgrade the quality of the annual research conference despite challenges, especially in the face of financial constraints which compelled them to significantly cut down on peripheral expenses.

The circumstances have compelled them to rely on our own resources as much as possible, which I believe is a blessing in disguise in the crisis situation to convert challenges into opportunities. I appreciate their effort and the support extended from all quarters to make the KDU International Research Conference a resounding success in terms of achieving its objectives. So, let me conclude by once again welcoming our chief guest, the erudite keynote speaker, and all the other distinguished invitees. I convey my congratulations to all researchers who will be presenting their research during the couple of days.

I also request those whose papers were not selected through the double blind reviewing process not to get disheartened because you had competed with many for a placement in the conference. Finally, let me express my heartfelt thanks to the Chairman of the Conference Organizing Team, Dr. Kalpa Samarakoon, Secretary, Dr. Pandula Athawuda Arachchi and the other members of the team for the tireless hours, days and weeks you spent to see the success of this important event.

May the KDU IRC be a haven for establishing scholarly links at national and international levels, which would pave the way for fruitful research, academic and even industrial collaborations for the betterment of our nation, its security and its social, economic and political stability that would in turn pave the way for the creation of a self-sufficient nation in the not so long future. Let us optimistically believe in ourselves and in our potentials to reach that target sooner than later.

Thank you.

Chief Guest Speech

General Kamal Gunaratne (Retd) WWV RWP RSP USP ndc psc MPhil
Secretary - Ministry of Defence, Sri Lanka

Hon. Prof. Subramanian Swamy, Keynote speaker of the 15th International Research Conference 2022 of General Sir John Kotelawala Defence University, Your Excellencies in the Diplomatic Corps, Chief of Defence Staff, Commander of the Army, Commander of the Navy, Chief of the Staff of Sri Lanka Air force, Vice Chancellors of Other Universities, Vice Chancellor of KDU, Eminent speakers from friendly foreign nations, former commandants of KDA, former Chancellors and Vice Chancellors of KDU, Rector of KDU Metropolitan Campus, Rector of KDU Southern Campus and Deputy Vice Chancellors, Deans of Faculties and Directors, Senior Military Officers and Police officers, Distinguished guests, Ladies, and Gentlemen's. Good morning to all of you.

I consider it as a great pleasure and privilege to be present here today as the chief guest of the inauguration ceremony of General Sir John Kotelawala Defence University's International Research Conference, which is taking place for its 15th consecutive time.

Without a doubt it provides as opportunity for academics, professionals, researchers and practitioners from all around the world to share their research findings and expertise addressing mutual challenges in their fields. Further it provides an opportunity for a wide interaction and networking with national and international scholars in respective fields which in turn proved beneficial for the participants to broaden their horizons of knowledge through intellectual discussions most importantly despite the global pandemic situation and the reason economic, social and political setbacks in effect it is truly inspiring to see that the KDU is continuation the conduct of this conference with renewed spirit and commitment

Therefore, ladies and gentlemen at this moment I would like to encompass
My sincere appreciation to the Vice Chancellor and the conference organizers for the invitation extended for me to be the chief guest to the most significant academic events of this University. In this context of promoting an excellent academic culture generation of knowledge and subsequent applications of it led to innovations and novel technologies that are crucial for the advancement of humanity, well-being, and sustainability. The knowledge is generated by scientific research and at this backdrop, it is delightful to see that the theme of this year's conference reads economic revival, National Security, and Sustainability through the advancement of Science, Technology, and Innovations, which is a well-timed theme reflecting directions that we should pursue as a country irrespective of the boundaries of time and era.
Further, at this moment, ladies and gentlemen, I will be failing in my duty if I do not acknowledge the distinction of a brilliant keynote address conducted by the former Minister of Commerce Law and the Justice

Republic of India, Honorable Professor Subramanian Swamy. Sir, we as Sri Lankans truly appreciate the accept acceptance of our invitation extended to attend and maintain throughout the past in continuation of the display of your friendliness towards Sri Lanka. The ideas that would be shared by you in this eminent forum today will indeed bring a sparkling light to the discussions to be conducted during this conference that will become highly fruitful with your intellectual input.

All the foreign and the local participants including the senior officers od tri-forces and police would be immensely benefited by the inputs that would be given by you to broaden the Horizon of their knowledge.

Moving on the the focus of the conference I must emphasized that with the effects of globalization in effect the growing international independencies affecting the Sri Lankan National security as well as reasons concerns raised by economic and political implications. There is a recognized need for assessment of the potential to national security, that may emerge during the thrive towards revival of national economy and sustainability.

As per my belief given the importance of certain sectors to the effective functioning of the Sri Lankan society the said need for a deeper conceptual understanding of the threats that may impact the implied economic revival and sustainability in all aspects focusing on technological scientific and innovative faces would be comprehensively discussed with in the earnest gathering of intellectuals during these two days.

A strategic standpoint keeping the past and also most recent lessons learned

In mind a newfound leadership of the present government, Sri Lanka should call for national determination where all sectors of Sri Lankan society including civil organizations, security institutions, political entities and business associations come together to discuss fundamental issues such as national identity, national reconciliation, transitional justice, governance structure, economic revival and many more.

This is a fundamental step towards building consensus and religious legitimizing state institutions and private organizations in the country towards a common goal. Not only would such an effort-based process serve as the foundation for a national pact addressing the country's issues, pointing out how it would concurrently compel every group in society to work towards state building and the sustainability of a secure country due consideration to scientific and technological innovations.

Furthermore, giving high priority to providing solutions to the country's most freezing matters of concern to improve the world's image of Sri Lankans society the Sri Lankan government must take every step necessary to recover high-priority initiatives in the fields of the economy, institution-building, and political reform.

Whilst giving true meaning to the said initiatives in order to address emerging challenges promoting more research and development becomes a task of topmost priority bestowed upon all of us who are present here today.

Fortunately, as a secretary Defence and the Chairman of the KDU Board of Management, I

feel tremendously proud and content to state that KDU is at the forefront of researching the development and security related problems holistically.

In this context, one of the unique aspects of KDU IRC in comparison to s plethora of symposia that we witness in the country and beyond its borders remains to be its firm commitment to defence and strategic aspects of the contemporary world with emphasis on local and regional trends.

In that this conference continues to pioneer in upholding the notion that security is a prerequisite for the viability of achievements in all other areas in which mankind relies on in order to facilitate such outcomes it maintains a seamless association of defence and security with other core areas such as Sciences, Medicine, Engineering, Build environment and Spatial Sciences, Technology, Management, and Huminites. We are fundamental knowledge images. To be honest, I personally acknowledge this pragmatic philosophy as a remarkable achievement of KDU and thereby of the country as a whole. Resulting in interactions and dialogue across apparently distinct disciplines will certainly usher increasing exchanges and collaborations among experts in diverse areas, therefore, I am well certain that all faculties of Sir John Kotelawala Defence University with their interest and commitment to knowledge in diverse academic disciplines and outside researchers' inputs would contribute immensely to this year's research conference theme.

The knowledge that you are giving to another and sharing during this conference would be an immense benefit not only to the academic community but to the entire humankind to make their lives better.

In conclusion, ladies and gentlemen, at the current context we are on the average of striving to accomplish serenity and excellence in an economic revival, national security, and sustainability through unexploited frontiers of technological innovations as a nation. Therefore, conferences of this nature are instrumental in clearing our fond of mind for the betterment of establishing solutions, therefore, let me express my sincere appreciation to the Vice Chancellor and organizers of the 15th KDU IRC 2022 for inviting to this occasion as the chief guest and giving me an opportunity to speak to you. Let me appreciate all the efforts and congratulate all of you for working your way towards a timely and appropriate theme. Finally, I wish all the participants all the very best in their research endeavors and the KDU research conference for 2022 to be successful in every way.

Keynote Speech

Hon Prof Subramanian Swamy
Former Minister of Commerce, Law & justice, India

Hon. Professor Subramanian Swamy, former Cabinet Minister of India made insightful remarks in the keynote address and initiated his speech by extending his gratitude towards Vice chancellor Major General Milinda Peiris for the invitation bestowed on him and went on to acknowledge the presence of the chief guest, Secretary to Ministry of Defence, General Kamal Gunaratne stating, how the Indians themselves couldn't put an end to a major terrorist problem in the region. Professor Swamy recollected how Sri Lanka has never been defeated throughout history, exempting a few setbacks. Furthermore, Professor Swamy remarked how the 21st century isn't going to distinguish between large nations and small nations, as it's a new era with innovations. Speaking from his experience as a trained economist, Professor Subramanian Swamy recalled how all economic development took place when the share of innovation calculated within the GDP rounded up to at least 55%, indicating the development of the USA, Europe and China as examples. He explicating further, mentioned that the growth rate of GDP would be dependent upon the extent to which one innovates. Professor Swamy also recognized the role that could be assumed by the universities in the development of the concept of innovation.

Professor Swamy, elaborated on the inception of the definition of – National security relating to its historical context. He expressed that for most of the 20th century national security had been a matter of military power, and explicated with the dawn of the 21st century, non-state actors posed most of the challenges to national security as opposed to conventional military warfare. Moreover, professor Swamy emphasized that long-term unsustainable practices make the state more vulnerable to internal and more resilient to external threats. Professor Swamy pointed out the "economic factor "as the primary reason behind Sri Lanka's recent upheaval. Furthermore, he scrutinized the removal of democratically elected people from office, which in turn would disallow them to complete their full term, which he recognized as a blow to the country's national security.

Professor Swamy detailed important aspects that need to be regarded in policy formulation; clearly defined structure of objectives, the order of priorities, strategy to achieve them, and resource mobilization. He also stated that no country should be too dependent on one country, and pointed out how Sri Lanka owes a single country, a staggering 52% in internal and external debt. He further resonated that the world has moved from the notion of "development" to "sustainable development", "sustainable economic development and sustainable national security" during the course of the last thirty years of the 20th century. Professor Swamy asserted that the most stable system of governance is democracy. Furthermore, he perceived economic security, political security, energy security, homeland security, and new

technology and innovations to be primary elements that constitute sustainable national security. Honourable professor Subramanian Swamy concluded his speech by stating that the sustainable national security of a country is the ability to provide comprehensive protection and holistic defence of citizenry and climate change, other issues of globalization, terrorism and many more.

Vote of Thanks

Dr Kalpa W Samarakoon
Conference Chair, 15th International Research Conference,
General Sir John Kotelawala Defence University

The Chief Guest, General Kamal Gunarathne, Secretary to the Ministry of Defence, The keynote speaker, Hon Prof Subramanian Swamy, Chief of the Defence Staff, Commander of the SL Army, Commander of the SL Navy, The Representative of the Commander of the SL Air force, The Vice Chancellor of KDU, The Rector KDU Southern Campus, The Rector KDU Metropolitan Campus, The Deputy Vice-Chancellor (Defence & Administration), The Deputy Vice-Chancellor (Academic), Deans of Faculties, Directors, Senior Professors, Senior Officers of tri-officers, and Police, Distinguished invitees, Colleagues, ladies, and gentlemen. Good morning!

Sri Lankans have been suffering an economic slowdown in the post covid era, in particular, with a social and economic crisis, food insecurity, and inequitable provision of health and education, due to its over-reliance on traditional exports, tourism, and constant geopolitical battles.

In this context, KDU has been successful in organizing its 15th consecutive International Research Conference. We, strategically analyzed the role of academia of the country to collectively come together and facilitate the transfer of knowledge, skills, and solutions using science, technology, and innovation.

The IRC theme selection for 2022, aims to provide a multi-professional platform to all the scholars based in Sri Lanka and overseas to bring in their innovative research ideas to fulfil this national responsibility thrust upon us, to revive the nation's economy, to achieve sustainable economic growth coupled with an environment of justice and enhanced security for all.

This year's conference attracted more than six hundred and ninety paper submissions in 11 sessions the highest-ever submissions since the inception of IRC. This indicates the amount of novel knowledge generated in our country. This year is the conference's inaugural technology and criminal justice sessions.

With deep appreciation and gratitude, I would like to express my heartiest thanks to General Kamal Gunaratne, the secretary to the Ministry of Defence who is our Chief Guest today at KDU-IRC 2022. Sir, your gracious presence in this occasion despite other commitments is truly appreciated and encouraging, and it has certainly added glamour and value to this important event on the KDU calendar.

The same goes with Hon. Prof. Subramanian Swamy. He is a renowned academic and has been a distinguished politician in India and even beyond. Sir, I greatly appreciate your willingness to be our keynote speaker. It is truly an honour, privilege, and inspiration to witness your presence among the KDU community today.

I would like to take this opportunity to express my heartfelt gratitude and deep appreciation to the Vice Chancellor of General Sir John Kotelawala Defence University, Maj. General Milinda Peiris, with your leadership, guidance, and timely decisions, prevailed throughout the event organization. The event would not be bound to be a success without your active input, particularly under the current difficult context. Thank you indeed Sir.

I will be failing in my duties if I didn't acknowledge the crucial involvement of KDU Deputy Vice-Chancellor (Defence and Administration), Brigadier W. Chandrasiri. He in fact steered KDU-IRC 2022 organization effort providing correct and pragmatic directions successfully even when the team was at difficult crossroads. I would also like to thank the Deputy Vice-Chancellor academic and all faculty Deans and Directors, who held the responsibilities for organizing and conducting forthcoming academic sessions.

Ladies and Gentlemen, as I said before, It has been a seemingly overwhelming challenge to organize, coordinate and conduct a research conference of this magnitude at this time.

I must appreciate the support of our sponsors. Platinum Sponsors, together with banking giants namely, Bank of Ceylon, People's Bank, and special sponsors, Gamma interpharm and George Stuart Health.

Let me take this opportunity to thank generously, conference secretary, Dr Pandula Athaudaarachchi, Senior lecturer and consultant interventional cardiologist, and the tremendous work done by the three co-secretaries, Dr. Gihani Jayaweera, Lt Col Lasitha Amarasekara and Ms. Sandali Goonathilaka, who stood alongside me ever since work has been commenced in mid of 2022 with exceptional commitment. I also thank all the session coordinators who supported tirelessly around the clock from the moment. I am certainly indeted to them for the success of KDU-IRC 2022.

I deeply appreciate all the presidents of the committees, and committee members, faculty committees, Office of Vice-chancellor, Office of DVC, officers of Bursar, Officers of the registrar, Adjutant, co-admin who held and executed the roles and responsibilities over the IRC. A special thank goes to the media and communication team led by the Director of IT, Publishing, printing and editorial committees.

I take this opportunity to thank all authors who shared their valuable research works at KDU-IRC. I thank both internal and external reviewers who perused and evaluated the submissions. Please be assured that your expertise shown and valuable time spent in critical reviewing is duly appreciated.

An event of this dimension cannot happen overnight. The wheels start rolling months in advance, it requires meticulous planning and execution and an eye for details. I cannot thank everyone enough for the involvement they have shown, So please bear with me if I would not have named all the supporters.

I expect that participants of the two-day conference that commenced just now will have an occasion that broadens their horizons of own know-how and improve networking in a refreshing environment which all of us at KDU has attempted to facilitate. I wish you the very best at the conference.

Thank you very much!

LAW

PLENARY SESSION

Constitutional Reforms and the Present Crisis: A Pragmatic Approach

Hon. Dr. Wijeyadasa Rajapakshe PC

Minister of Justice, Prison Affairs, and Constitutional Reforms, Parliament of Sri Lanka

Chairperson, Your Lordship the Chief Justice Jayantha Jayasuriya PC, Hon. Justice Priyantha Fernando, President of the Court of Appeal, Ms. Indika Demuni de Silva PC, Solicitor General, Hon. Dr. Susil Premajayantha, Minister of Education, Mr. Palitha Kumarasinghe PC, Chairman of the Standing Committee of Legal Studies, Dr Athula Pathinayake, Principal of Sri Lanka Law College, Vice-chancellor, Dean of the Faculty of Law, Faculty Members, distinguished guests, and students present both physically and virtually.

I wish to thank the Vice Chancellor and Dean of the Faculty of Law, KDU for inviting me to share some thoughts on the theme; 'A Multi-faceted Legal Response to Post-Pandemic Crisis through Resilience, Creativity, and Innovation.' This is much needed for the resilience of the country after the aftermath of the Covid-19 pandemic which is considered one of the seven deadliest plagues of human history. Although it has officially claimed 5 million lives, the actual and related death toll is much higher. Facing an outbreak of a pandemic like Covid-19 was arduous and the resilience required in the aftermath is quite burdensome. The legal response to a crisis of this nature is two-fold, the first being the enforcement of the law in addition to the health guidelines curtailing the proliferation of the diseased and the second to engage in the development of the law for the resilience and the reinvigoration of society in the spheres of health, economy, education, society, and culture. A century-old law enacted in most countries during the era of the Spanish flu in 1918 & 1919 which engulfed over 50 million lives is not adequate to address the complex issues arising in the present sophisticated society.

It is important to explore new avenues through scientific research and analysis. The reinvigoration of social and economic drives of a society after a pandemic warrants the establishment of new practices which ultimately require legal framework modifications. Legal responses in terms of changing dynamics of technology-related applications are a key component for a thriving economy after such a crisis, the law will have to be enacted to face the new challenges and requirements of new social interactions when obtaining services and goods and new payment methods and new methods for dispute resolution. For example, Covid-19 created the need for such activities to be contactless and have minimum personal meetings. Creative, innovative, political, and democratic engagement across the widest and most diverse range of society is essential to build public trust in governance and institutions and their capacity to manage crises. Broader and more interdisciplinary expertise is needed to respond to pandemics that are parasitic on the Covid-19 health emergency. Collaboration and coordination across

levels of government need more effective but request clear guidelines as to competence, capacity, and communication.

The pandemic created the opportunity for the consolidation of democracy and innovation in the protection of rights as well as the opportunity to prove the resilience of democratic institutions. In response to the concerns of legal uncertainty and lack of effective control countries across the world were to press for targeted legislation to address legislative control as well as provide a clear and limited legal basis for action. I wholeheartedly wish you all success in the worthy endeavor of your university to create interaction and explore remedial measures for resilience. Thank you very much.

Role of International Relations and International Law in Addressing the Post-Pandemic Crisis in Sri Lanka

Hon. Prof. GL Peiris

Member of Parliament, Sri Lanka

COVID-19 is not a challenge that Sri Lanka had to face alone. It enveloped the international community as well; it was a global issue. The entire country and the entire world had to confirm these terrains and find a pragmatic solution. The importance of international institutions and international legal principles which are to be the focus of this discussion is of special importance unlike in Spanish flu and other similar epidemics which afflict the world in the last century. The important difference today is that countries through domestic policies cannot find reliable solutions to this problem. We cannot eradicate this COVID-19 by formulating and implanting within national boundaries policies that are conceived of by individual states because the problem has spread far beyond national boundaries. It is consequently important if we are to achieve pragmatic results on the ground for a measure of collaboration among all the countries in the international community, we have to formulate strategies together. If COVID-19 is raging in one part of the world and there is no sufficient interest, it is bound to have repercussions for other countries. So, it is today a true reason that no country is safe from COVID-19 until all the countries are safe. Now, this highlights the issue relating to equity regarding access to vaccines, and that in turn brings out the issue of economic inequalities, the horrendous imbalance between the resources that are available in different countries to protect their populations through a systematic program of vaccination.

So this is why the World Health Organization has taken leadership in this field and is striving very hard to ensure an equal distribution of vaccines throughout the world in countries weak and small and countries wealthy and not so wealthy, in order to ensure minimum access to greatly needed vaccines for vast populations inhabiting countries where economic resources are scarce and not sufficient for the governments of those countries to procure sufficient vaccines to keep the overwhelming section of the population protected. So, all countries have to cooperate in this endeavor. There should not be selfishness, brotherly spirit must be adopted, not just as a matter of paying lip service to ideals but as a matter of practical implementation through deeply held convictions and unrelenting commitments. So, I think that is very important at the international level.

Then we also need the legislation in this country Sri Lanka. It is essential in formulating this legislation. We do not need to reinvent the wheel nor is it either feasible or desirable to evolve solutions

taking into account only this country. We must look at successful experiments elsewhere. After all, this pandemic has been tackled quite effectively in some countries. So, we must look at those experiences and try to extract what is our value from those experiences but all the time we must have uppermost in our minds the paramount means to adapt those experiences to suit the combination of circumstances in our own country. A solution that has worked very well may not be equally successful in Sri Lanka because of differences relating to our culture, our economy, our social customs and so else, so there has to be elasticity and creativity in that regard but we do need a legislative initiative which we do not have at this time.

There is no comprehensive statute in Sri Lanka as we speak which makes provision for the steps that need to be taken to combat COVID – 19. We went through different phases at one time, we perhaps, that we close down the entire country, but there is a horrendous impact on the economy. We may be able to spend, and we are maybe able to control the spread of medicines but at a considerable cost to livelihoods in the country to encounters. So that is not a balanced approach to a problem. We have to strike a balance between these competing objectives of public policy. You can't open everything out and life cannot be as normal because then there is very considerable risk with regard to health awareness at the same time, we cannot deprive our people of income by shutting down the country in time.

What is the right balance to strike on certain occasions? We adopted measures that are not strictly legal, for instance, curfews were imposed under general laws which have no application to this particular instance. So many countries have enacted special legislation to deal with COVID-19 and Sri Lanka should do the same.

There's been a private members bill that was formulated for this purpose. I think it was drafted by the Hon. Justice Sunandaram and was submitted to the government. It was referred to the Health Ministry for their observations but unfortunately, up to now, no progress has been made with regard to the enactment of that legislation. I think it is urgently required. We should not postpone that. In that way, this legislation is required to consider all aspects of COVID-19. The health aspects, the economic aspects, the demographic aspects, in the cultural aspects, all of these must be comprehensively addressed in one piece of legislation that represents an adequate response to the formidable challenges that have arisen as a consequence of COVID-19. This country certainly has the expertise to do that. We have international exposure and international institutions stand ready and willingly eager to assist in this endeavor. So, I don't think there should be further procrastination or delay. We should seize the opportunity and come up with legislation that the country needs to face this effectively. That is well within our capability our means to do so, and I think the central message emanating from this International Seminar that Kotelawala

Defense University has had the resolve and the imagination to organize, the central message should be the need for such legislation and paramount necessity for all political parties irrespective of their differences to lay aside temporarily different aims and objectives and to unite national interest for the purpose of formulating and implementing legislation of this time. So may I thank you for the invitation that you have extended to me through participating in these important deliberations.

Ensuring Right to Education in the Aftermath of a Global Pandemic: Legal Perspectives

Hon. Dr. Susil Premajayantha

Minister of Education, Ministry of Education, Sri Lanka

The Chairperson, His lordship the Chief Justice, Jayantha Jayasuriya PC, my colleague who has taken his leave Hon. Dr. Wijeyadasa Rajapakshe PC, Hon. Justice Priyantha Fernando, Ms. Indika De Silva, Solicitor General, Mr. Palitha Kumarasinghe PC, Dr. Athula Pathinayaka Principal of Sri Lanka Law College, the Vice Chancellor of KDU, Dean of the Faculty of Law, academic staff, and the undergraduates.

First of all, I take this opportunity to thank the Vice Chancellor, the Dean, and the academic staff for organizing this event. I remember last year we had a similar research conference on a different topic, and I understood that the Law Faculty of KDU ranks 25th amongst 1600 law faculties and ranks 2nd in Sri Lanka. This is a great achievement because as the Minister of Education covering Higher Education, General Education, Technical and Vocational training, Science and Technology, and Engineering, this portfolio is important, especially in the field of research. Generally, in Sri Lanka compared to the general population of 22.5 million we ought to at least have 22000 researchers, but we only have 5000 researchers and among them, only 2000 engage in applied research. Today, however, we need more researchers to engage in applied research so the theme today we have chosen is more relevant to applied research. With that, allow me to speak a few words about the effects of the pandemic in our country with special attention to the general education level of the country.

According to UNESCO statistics, nearly 100 million children across the world would move beyond the minimum proficiency threshold in reading and writing. Studies show conclusive evidence that the verbal and numerical skills of children have been as low as 10% during Covid 19. After I took over the Ministry just 3 months ago, I advised our Directors to conduct a survey, especially among Grade 1 and 2 students because those children are affected due to school days being less than 50% of the total in 2020 and 2021. If you missed the literacy and numerical skill and other 8 competencies within that two-year period of time you have missed your entire life, now we are taking measures to improve the literacy and numeracy of Grades 1,2, and 3, especially in public schools but also private schools. This is the effect of Covid 19 on education. Recently, I participated in a preparatory meeting of educators in Paris, and it reiterated that countries with low-income students are affected quite adversely. As a result, United Nations Secretary General initiated a fund named FED of 10 billion USD and it

was launched in New York on the 19th of September. I had the opportunity to attend that event at the UN Head Quarters along with all international organizations working together to help financially and technically to cover the losses occurred during the Covid 19 pandemic. We have already made a decision to table policy papers to the Cabinet and thereafter the Parliament and consult central oversight committees.

We are moving forward by reforming the entire educational system of the country after it was conceived. The Independent Education Act was introduced in 1945 by Dr. CWW Kannangara. Thereafter, in 1961 another milestone that occurred was the taking over of the privately managed schools by the Government and then in 1972 there was an attempt to reform education, However, I feel reforms are not enough to address the issues we are confronting. So, I think we have to transform education and by 2030 we have achieved Sustainable Development Goals for quality education for all as a country.

Since the early 1950s, we have improved our literacy by nearly 100% but we have to introduce technology. In 1999, the USA after having a survey decided to introduce STEM education and this system spread out to far East countries as well. To this day, we have 96 countries using this system. Recently, some countries like India added another discipline calling it STEM education, introducing the field of art and commerce. So, it is high time for us to also do this as well, as we are lagging behind.

There are emerging technologies such as Artificial Intelligence, nanotechnology, and genome sequencing in some developing countries such as Vietnam which suffered over 25 years of war. They have stepped into such fields introducing the basics into the school curriculum. I do not know how many of our students engaged in science and technology are aware that we have a state-of-the-art nanotechnology lab in Pitipana which we started last year. So, it is high time to introduce STEM education into our system.

This conference is confined to law but when we consider the introduction of new laws and amendments to existing Acts, we have to think about the effects of doing so. As the Minister of Education, we are working towards transforming education in the areas of general education, higher education and we have some affiliations to some foreign universities. Recently, I visited the University of Toronto and York and had 2 Zoom conferences with university academics. Most of them are expatriates of Sri Lanka who are serving in leading universities in other parts of the world. One of my close friends, Prof. Sivananthan invented infra-red at Chicago University of Illinois and was awarded by President Obama. Another friend of mine, Dr. Bandula Vijith, invented stents in 1996 in Hart center in Houston. So, we have many academics and inventors we have produced in the past, now it is time our younger generation to engage in research in the field of law, science, and technology.

We always talk about innovation but unfortunately how much do we allocate

from our national budget to research? Only 0.11%. Countries like Japan allocate at least 3% of their GDP to research. All developed countries develop as a result of Research and Development. There is competition among innovators and researchers. Normally in our countries, our research on particular subject findings is confined to papers so now we have a system where under our Ministry we link innovators with industry entrepreneurs which is what we lack at the moment.

So, I believe I have covered science, technology, and innovation and our plans to reform and transform education with technology and bridge the gap we lost during Covid-19 in 2020 and 2021, especially with primary education. Thank you.

Legal Reforms to Promote Foreign Direct Investments in Sri Lanka

Mr. Palitha Kumarasinghe PC
Chairman, Standing Committee on Legal Studies, University Grants Commission, Sri Lanka

I must say in this very outset, unless we attract foreign direct investment to this country, we have no future. We cannot overcome the present economic situation of the country without foreign direct investment. So therefore, we need to see we need to revisit our investment regime and to take strong possible action to attract more and more foreign direct investment. Of course our legal regime is concerned for a foreign direct investment we start with our constitution article 157 of the constitution provides that the investment agreements between government to government are adopted by parliaments ⅔ majority must be given protection by the constitution and no action should be taken by the government to frustrate those investments that is in the constitution and thereafter when we opened the economy in 1978 introduced a liberal economic system and in fact we were the first country to open the economy for a foreign investment its from our area South Asia and that was in 1978 and we immediately introduced GCC data colombo economic commission law and we opened up the country for a foreign investment with new legal machine and permitting the GCEC presently known as the board of investment to grant tax concessions and facilities and also to put up freeze its own export processing source and those things and from 1978 we have attracted sufficient number of foreign investments through the BOI. thereafter we realized the mechanism is not effective to bring down a large investors and that is how we were compelled to introduce Strategic Development Projects Act No. 14 of 2008 to provide facilities for a flagship investment and the large investment and under the strategic development project act the government is empowered to give special incentives with the approval of the parliament to the flagship companies to invest in Sri Lanka. And recently we have adopted a very important, comprehensive legal machine in the colombo port city economic commission act no.11 of 2011 and to create specifically as set out in the preamble to one-stop shop and to grant all facilities registration, implementation even granting visas and tax exceptions and all those facilities under that in the colombo port city area for a foreign investment and that's exclusive for foreign investments and not for local investments and having done all these things from 1978 when we look back and when we compare our country with other countries in the region we have not achieved much and the countries in the region even the Bangladesh has overtaken us and there are more investments in Bangladesh even the Maldives than Sri Lanka. That shows that we're having a problem. So that is why we have to look into our legal regime and see

what we can do to remedy these problems. When i see the problem in a practitioner's point of view we have clients we get information from the clients and we know up to certain extent what went wrong with Sri Lankan system and we have a somewhat good legal system and complicated legal system and say for instance we have an archeological department established about 100-150 years back follows department wildlife department all those are very good institutes that protect whatever as a regulator they protect their relevant sphere of work. But when it comes to foreign direct investment, we have a problem because the investors come here not because they love us or not because they're fond of us. They come here to invest their money, make profit and repatriate the profit. If they cannot establish their business in Sri Lanka will change within the shortest possible time and if they're unable to run their business without interference from the government or in other institutes or regulators and they cannot repatriate their profit then they will not come to Sri Lanka. And that is where we have gone wrong. Though POI board of investment talks and advertises saying that they have one-stop shop is really not a one-stop shop it's only a post office for obvious reason because if somebody wants to get the approval to establish a foreign investment when they are starting an industry or even a hotel what they can do is to make the application to POI and the that approval from POI only a principal approval then to establish the, we'll say hotel we need to go from the pillar to post. Say for instance if you want to establish a hotel in Dambulla in cultural triangle you know how many places you have to go, you have to go to the archeological department because that area is covered by the archeological department, then you have to go to the forest department, the you have to go to wildlife, then you have to go to Sigiriya, then to MBRO the to get the facilities you have to go to the RDA then you have to go to the electricity board and you have to go from pillar to post to collect all these approvals. Do you know that we have a very advanced data and voice telecommunication system and this telecommunication system depends on the towers. Do you know how many permissions you need to get to establish one tower? You have to get 27 license to put up one tower to have an effective telecommunication network, mobile network or internet network you must have at least 1300 towers in the country. With the 5G you must have a tower in every 500 meters to get the 27 licenses is not an easy thing and look at all the licenses most difficult is the parties of license. It is difficult to get the approval from the local authority and these are the problems. When the port city was established thus the legal regime there is only for a limited area, the port city reclaimed area and for their legal mechanism is very simple and port city is empowered to build all license and for our facilities. This is a different regime only for the port city. So, unless we amend our law and make facilities for one-stop shop and the single window facility it will be extremely difficult to attract the foreign investment to Sri Lanka. But it's not easy

because all these regulators are governed by separate legal machines. The forest department is the regulators for forest matters, wildlife department is the regulator for wildlife matters, central environmental authority is a regulator for environment matters and of course when we try to grab all these powers to one institute we know the difficulty and when the port city bill was presented it was challenged in the supreme court for good reasons they say how can these powers are given to different organizations ultimately the government was compelled to amend or suggest amendment two thirds of the bill was amended before it was for the third reading in the parliament. So, it's not easy to grab the powers of the other institutes into one institute to grant facilities for foreign investment where the GCC expert at was he my bill was introduced then constitutional council under the first republican constitution held or made a determination that was unconstitutional and luckily at that time there was no referendum provision and it was presented under the impact is under the republican constitution parliament can pass that bill in two thirds majority. Then government did not have two thirds majority they had a five six majority in the parliament. The then prime minister made a famous speech saying that i have no animosity against the judges who made the determination and i have five six majority i have passed this law. Of course, the law was passed. But the 2nd republican constitution was introduced and all those powers all those judges were sent. So that was the situation with the government tried to influence certain things and get the things done even for the benefit of the foreign investment to have our assistance and of course people are entitled to 100% constitution to go before the supreme court and challenge these enactments and that's their right. So we need to be careful when we try to grab all these powers and give the foreign investment under one place one window and one shop. And of course, we can do it administratively and I am aware at certain point at that time that there was a very powerful bureaucrat and he was chairing all meetings, he called all the agencies and to say yes, there was a problem and the electricity board. Of course, it was some time back in 2005 to 2010 also the same thing was implemented then there was a complaint by the ministers saying so and so is trying to abuse our power and the power is given to the electricity minister but the president's office officer is using that power to grant benefit to foreign investors. So, unless we adopt a system like this administratively its extremely difficult to attract the foreign investment to this country. The second matter regarding the land and without land we cannot get the investors. Unfortunately we know that our Land Act prevents the investors from buying the land even the board of BOI investors so we have to change that law and to allow BOI have to investors into to purchase land for their business as long as they do business in Sri Lanka . Then we have a problem with the tax, incentives. No one will come to this country for foreign investment unless they get special incentives from the government and that's the truth and. Now

why should I come here and give this money if I can't get the tax concession of course it's a matter for the parliament. They are in charge of the funds and they need to take the decision and when enactments are introduced strategic development at every approval must go before the parliament every approval for any investor must go before the parliament for the approval sometimes it takes about six months for an approval so that didn't work so that's why the port commission act or the Colombo Port City Bill this functions were brought and it was challenged before the supreme court and of course the supreme court allowed subject to certain amendments to grant a special tax incentives for the investors in the port city. At the same time, we have to understand the system now is slow and is changing under the organization of economic corporation and development. OECD those are the 37 developed western countries they have a forum called global corporate minimum tax and international treaty and as all developing countries to sign that imposing minimum tax for a foreign investment. Next, 136 countries have signed and notable exception to Sri Lanka. But now we're not that, we are now vegas not users very soon we need to sign that agreement and under that agreement we cannot give tax incentives below certain level imposed by the western countries. What happens world big multinationals like amazon, Google they've entered into investment in Ireland and they got their 10% tax in the Ireland so United States lost the money as a result this is the benefit this is the reaction and now, we cannot do the tax incentives below certain level imposed by the western countries. There's another matter that we have to consider is the labour, Industrial Disputes act, Termination of Employment Act, trade union act and so investors are not willing to subject to these matters. Trade union actions to them is not acceptable and you cannot have strikes with the foreign investors so we have to control certain way this trade union actions in respect of the foreign direct investments. Then we come to the most important matter, the dispute resolution mechanism. Of course, we know that according to the business 2020 indicator, Sri Lanka is ranked in the 164th place out of 190 economies in relation to enforcement of contracts in other words if you go to courts to enforce a contract even in commercial high court. It will take 46 days if we appeal it will take about 10-12 years. So, these are not good for the foreign investment and therefore we need to look for a mechanism and the only mechanism is the alternate dispute resolution and arbitrations so we have to encourage all investors and even the commercial sector to go for arbitration and unfortunately our arbitrations are ad hoc arbitrations where we go and decide how to proceed the arbitration, we don't follow established rules even ancestral rules or even ICC rules or even the British rules. Therefore, we have our own rules we are according to that and our arbitration takes 3-4 years to come to an end. After that when we go to the high court for enforcement, another couple of years in the high court. Therefore not only we must have arbitration, we must have a mechanism to allow foreign direct investors and all those who are

dealing with them commercially must have a provision to have a compulsory arbitration under the properly established arbitration center and subject to prescribed rules and of course our arbitration center is established even on the port city act and there should be a special arbitration for the port city and we must have a separate arbitration center regulated by law and the governing council must be appointed by independent body something like a judicial service commission and they must have a arbitrators panel with competent qualified arbitrators properly trained. Presently our arbitrators are handled by the lawyers and or retired judges or represent lawyers. That is why there is a long relay in determination of even arbitration matters. So, we have to go for alternate dispute resolution, compulsory arbitrations then only we can think about foreign direct investments in this country otherwise they cannot take years and years for a dispute resolution. Our legal system is very slow to get all of this sorted sometimes we need to wait for years. Today one of my matters is the order of the interim orders was postponed for four days and the interim order against the bank preventing the product execution to recover one and a half billion rupees in force for the last two years and of course I am mindful of that I am making this presentation in the presence of his lordship the chief justice. But these are the facts these are delays in our legal system so we have to deviate from our old system and go for arbitrations. Those are my initial presentations and do reforms to attract more foreign direct investments to the country. Of course, I have not mentioned in detail about another factor that we need to minimize the corruption in the country and primary corruption act must be applicable not only to the government sector but also be introduced to the private sector.

Legal Education in Sri Lanka during the Post-Pandemic Crisis: Importance and Impact

Dr. Athula Pathinayake
Principal, Sri Lanka Law College

Your Lordship the Chief Justice Jayantha Jayasuriya PC, Hon. Justice Priyantha Fernando, President of the Court of Appeal, Ms. Indika Demuni de Silva PC, Solicitor General, Hon. Dr. Susil Premajayantha, Minister of Education, Mr. Palitha Kumarasinghe PC, Chairman of the Standing Committee of Legal Studies, esteemed Colleagues, and Guests.

We are told that Mahatma Gandhi said, "live as if you were to die tomorrow, learn as if you were to live forever" which resonates strongly at times greatly. Recently, we lawyers have been forced to abandon our habits and established ways of thinking. For us, thinking like a lawyer has been a badge of honor and a mark of high levels of reasoning, but our traditional ways of thinking have been deeply challenged.

The year 2022 began like any other with academic programs rolling out like usual and then the COVID-19 pandemic struck. Lockdowns were imposed, and we saw our academic institutions close along with other organizations across society. The closure took our profession by surprise. In legal education, as in the law itself, we have largely followed well-established traditional processes with physical attendance classes and in-person appearances in Court. Lawyers and legal educators had minimal experience with online meetings or e-learning platforms. So, when we faced unexpected worldwide lockdowns, legal education which until then was conducted physically came to a sudden halt. Even so, we quickly established e-learning platforms and continued with lectures online. As you might imagine the shift was challenging because the processes were unfamiliar to students, lecturers, and administrators alike.

While the pandemic consumed the entirety of the academic years of 2020 and 2021 restricting legal education to online education, regular physical lectures were resumed in 2022 under a hybrid model. That hybrid model was successful until April this year, but the economic crisis forced us to revert to online education. Our familiarity with the platforms was more than an advantage but there were additional challenges for academics, including extended power cuts.

Then the question is, what was the broader impact? We know a little about the impact of these dangers. One study conducted by professor Rameez in 2020 at the Southeastern University of Sri Lanka, found that 65% of students considered online education save time and money and 77% thought it provides positive incentives to students. Also, many students faced many difficulties in paying full attention to online learning. Some students struggled with e-learning, due to

factors such as sudden changes in learning patterns, their economic stature, loneliness at home, their lifestyle, and lack of IT skills. In addition, although the majority of students were initially interested in online education, their interest declined over time.

Though this study was based on a survey of students at the Southeastern University of Sri Lanka, in general, it seems reasonable to think it would apply to law students as well. Our experience confirms this. These sentiments have been echoed by the Asia Development bank in a brief published in May 2022. While students liked the convenience of online learning, especially the accessibility of the teaching material, some challenges were identified such as mental and physical health issues, inability to experience practical components, power cuts, poor signal, lack of devices, and poor internet.

In legal education, we use lectures, seminars, competitions, court visits, post-mortem visits, debates, moots, and other courses of teaching methods designed to give students a range of learning experiences. We think they are an important part of holistic legal education, but most of them were unavailable to law students throughout 2020 and 2021. We saw low attendance and lesser engagement during lectures at that time. Which is also indicative of the students' declined interest. Another aspect is due to prolonged lockdowns and a consequent lack of social interaction have led to a decline in mental health among students.

So, what have we learned for the future? I do not need to elaborate on the significance of the Republic in ensuring the continuity and improvement of legal education. That is obvious. But are there lessons in that COVID-19 experience for the future of a stronger, better system of legal education? Indeed, what we have gone through has given us a teachable moment. We faced a crisis and were resilient in the face of the challenges. We found a virtuous blended mode.

Now we must incorporate the advantages of e-learning in our traditional lecture rooms. Organizations around the world have changed radically since the pandemic. Many now offer work from home. Most meetings are held virtually. While fundamental tasks such as grocery shopping are now done online much more often. One classic example is, known as a very traditional and conservative body, the Council of Legal Education now almost converted into a paperless working environment at their meetings thanks to the initiative and the advice given by his Lordship Chief Justice. The incorporation of technology in efforts to modernize has reached public assistance as well as in wide-ranging reforms undertaken by the Ministry of Justice. All these changes mean that it is vital for legal education in Sri Lanka to keep up, necessity is the mother of invention, and we must take forward the inventions that arose from the recent crisis as we step into the future. For instance, Law College is attempting to move away from the root and traditional learning, but that itself is a challenging task. It requires a new kind of creative thinking and teaching that goes beyond the notion of modernization.

The entrance of technology for legal education serves another important end. With the rise of the 4G, as my learned friend said, and other developments, Sri Lanka is poised to become a 21st-century Singapore or Hong Kong. In the future, the law will certainly play an important role, and it is of utmost value that the law students of today who will be the lawyers of tomorrow are already familiar with the way technology works. The pandemic will be remembered as a dark time but in the days ahead we need to leave the focus on these positive developments and the country's potential.

The experiences of legal educators during the pandemic have also inculcated a measure of flexibility and degree that is new in the traditionally rather rigid world of law. The unprecedented crisis we faced has forced us to be more adaptable to external developments. For instance, Law College which took pride in never being shut down during any crisis even black July was this time forced to shut down its doors in the face of an invisible pathogen. Now we are more amenable to adjusting our ways to externalities. In a certain way, legal education in Sri Lanka survived a tumultuous period during two years of successive crises but we can see this as a formative period of legal education in Sri Lanka and an opportunity. Educators and students underwent alien experiences and have come out as more resilient, holistic, and adaptable people. So, what does this mean for the future? While the changes we underwent in ensuring the continuity of legal education can, in general, be viewed in a positive light there are still some concerns, we must not skip lightly over these in our efforts to modernize legal education.

The mechanisms we adopted in the past two years were band-aid solutions. Patch ups to enable us to brave the storm. Going forward, we must invest in a deep technological system. Preferably, as once spoke, to facilitate high-quality and modern legal education. It is a question of whether such technology exists in Sri Lanka and if it does, whether we have the resources to invest in it. In addition, our academic and administrative staff will have to undergo extensive training to familiarize themselves with any such new system. Although there is considerable demand to modernize legal education in total we must not jump the gun. There must be more consultations and reviews before we begin a large-scale modernization because contrary to popular opinion, technology is not healthier. As just one small example, our current curriculum contains vestiges of the old traditional classroom-based road learning from throughout legal education. If technology is going to play a significant role in the delivery of legal education, then the curriculum too must be fundamentally updated. This will not be a walk in the park. It will take dedication and hard work. It will be an extensive, tiresome, and challenging process spanning multiple years and will undergo many trials, rollouts, and rollbacks. We must also ensure that the mental and physical health challenges raised by exclusively online learning are mitigated in the future. We do not want to subject the student population

to a mass mental health crisis. So, the challenging times we underwent have forced us to change our ways. With caution, we may find this opportune moment as we work to bring legal education to the standards of the 21st century.

In conclusion, I can do no better than to quote Jennifer Fleming, pioneering in strategy development and performance alignment, speaking about the challenge we now face. It is a simple statement but it's profound as it pinpoints the nature of the task that suggests the creativity, we shall need to summon in order to succeed. Finally, I can say teaching in the internet age means we must teach tomorrow's skills today. Thank you.

TECHNICAL SESSIONS

Rule of Law in the Essence of Common Good in Sri Lanka: A Sri Lankan Case Study

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Abstract: *Representative democracy arose as a result of the expansion of the population but in antiquity, there was direct democracy where every citizen participated in law-making for their Common Good. This study identifies the judicial body of the government that enforces the principles of the Rule of Law that has adopted direct democracy to a certain extent in the late 20th century, by allowing elected officials in society with real interest to represent another for the Common Good. A number of Case Studies in Sri Lanka and around the world support this thesis statement. With this study, it is evident that this concept primarily arises under Fundamental Right petitions and Writ cases that are called against the whims and fancies of the administrative authority in subjectively using their vested discretionary power disregarding the Common Good. These authorities are given power under the Rule of Law to fulfill the desires of the citizens for the betterment of the state. This qualitative research is primarily supplemented by case laws, and it successfully concludes that the Rule of Law has been a paramount factor and the essence of the concept of Common Good. It is evident with the decided cases where the court has considered the Common Good and the future public benefit of the people by compelling the administrative authorities even when the applicant was in lack of locus standi.*

Keywords: *Common Good, Rule of Law, Public Interest, Public Benefit*

1. Introduction

Through direct democracy, the early Greek city-states allowed every citizen of its state to engage in law-making for the Common Good. (Goonetilleke, n.d.). Likewise, under the present judicial system, it has given authority to public entities to be involved in matters which affect the public at large or to its considerable portion. This may be identified as Public Interest Litigation and it allows the state to uphold citizens' rights for the Common Good because the democratic governmental organs operate through a checks-and-balances system. The judiciary ensures that the powers delegated to the executive and legislative branches of government are used for the benefit of the people. In furtherance, to make the concept of the Common Good more meaningful, people must be able to participate somewhat directly in the administrative process and it could be argued that the Rule of Law lies in the essence of this concept.

Rule of Law was systematically introduced by Prof. A.V. Dicey in his exquisite work, 'An introduction to the study of the law of the Constitution' in 1885. However, Rule of Law has been recognized since the time of the Greek philosopher Aristotle. Rule of law is usually presumed to ensure impartial judiciary, efficiency, protection of Fundamental rights, objective decisions, rationality, and equal and fair hearing. Rule of Law is scattered through vast subjects under the modern developments of

law but in this situation, it will only be regarded from the perspective of Administrative law.

In the case of *Premachandra vs. Major Montague Jayawickrema and Another (Provincial Governors' Case)(1994),* G.P.S. De Silva, C.J. pointed out that discretion is given to public officials in trust for the benefit of the public, to be used for the Common Good, and the legitimacy of their use is determined by the specific purpose for which their powers were assigned. By this, it could be identified that the concept of Common Good should rely on Rule of Law in order to ensure the discretion of the public authorities is concerned to par with the Public Interest. Even though Prof. A.V. Dicey did not acknowledge discretionary power under the Rule of Law, Wade and Forsyth state that under the modern trends of law it is inevitable not to give discretionary power to public authorities (Wade & Forsyth, 2014). Therefore, it must be examined whether the Rule of Law has moulded the law for the Common Good under the prevailing standards. In addition, it must be noted that the Doctrine of Public Trust and *locus standi* are also used as tools in developing this concept through Public Interest Litigation.

When assessing this concept, it mainly relies on judicial decisions, and in this condition, it will be referred through the context of Sri Lanka by the decisions given for and against Fundamental rights petitions in the Supreme Court of Sri Lanka and by the Court of Appeal which uses its writ jurisdiction in deciding on Public Interest. Furthermore, the Indian precedents will be discussed as a reference, the neighbouring country of Sri Lanka which has many judicial precedents dealing with Public Interest Litigation. Indian laws have a major influence on Sri Lankan law, as evident in Sri Lankan case law.

2. Methodology

This qualitative research involves both primary and secondary sources, such as related cases, books, journal articles, and online sources, as well as an analysis of the current Sri Lankan context and observation of the Indian context. The focus of this research is to explore how the Rule of Law has been incorporated as a main principle in the concept of Common Good, particularly in protecting and upholding citizens' rights in Fundamental Right petitions and Writ jurisdiction. Since Public Interest case laws are mainly based on judge-made law, a deep evaluation of cases may aid in exploring the past and present state affairs effectively.

3. Facts and Findings

For this study, the authors have chosen three Sri Lankan Landmark cases which will be comparatively analysed with the Indian jurisdiction. These cases have fundamentally acknowledged the Rule of Law in Public Interest by questioning the actions of the administrative authorities for the Common Good of the people and the essence of the Rule of Law is identified through Constitutional provisions.

A. Common Good for the Protection of Environment

Environment and its benefits are one of the main focuses under this concept and the case of *Heather Therese Mundy vs. Central Environmental Authority* (2003) is an explicit case that first emerged as a writ case under the Court of Appeal whereby it was dismissed under dissatisfaction but it was later appealed to the Supreme Court. The question was on the Final Trace of the project of Southern Expressway that must be evaluated through an Environmental Impact Assessment Report [EIAR] from the Road Development Authority [RDA] and the approval of the Central Environmental Authority [CEA] was a requisite as to Section 23Z of the National Environment Act No. 47 of 1980. Two alternative

routes were submitted to RDA through the EIAR as the Original Trace and Combined Trace. The RDA recommended the combined trace but the CEA approved it with certain conditions and adjustments which include,

- Minimize traveling through wetlands and the relocation of people
- Providing alternative lands and paying compensation for acquiring non-residential lands.
- In wetland areas the Final Trace must follow the Original Trace. (Condition IX)

Under Section 23EE of the National Environmental Act, every amendment or alteration must be approved by the project approving agency, and, in this instance, it is the CEA. The decisions taken by the CEA regarding the construction of the expressway were questioned under the case of *Public Interest Law Foundation vs. Ceylon Environmental Authority and Another* (1999) but was dismissed by U. De Z. Gunawardana, J.; even though the CEA granted approval under the aforesaid conditions and adjustments, the RDA followed the Final trace which caused three main issues, namely (1) Adopting the final trace to avoid harming the environment, but this was disputed (2) No EIAR and CEA approval on the adopted trace. (3) Appellants were adversely affected by the final trace. The question arose where the final trace adversely affects the appellants and this can be analyzed as a violation of the rights of equality guaranteed in the Constitution because they were not adversely affected previously by the original nor the combined trace. Fernando, J. pointed out that one of the appellants constructed her residence and completed it in 2001 whereby the residence is now affected by the expressway. This can be identified as an infringement of Fundamental Rights under Article 12[1] and 14[1] of the Constitution. In the Court of Appeal, the appellants had prayed for a writ of *certiorari* and *mandamus* but the court did not consider the Public Interest of the appellants because this project was considered an absolute necessity for the development of the country. Further, it was held that under a project of this enormity, it is humanly impossible and inevitable to commence with perfection. It could be observed that since this project benefits the public at large the Court of Appeal did not consider the Common Good of the appellants.

Fernando, J. expressed that the violation of Fundamental Rights was clear before the Court of Appeal but it was disregarded. In consideration of the final trace, condition IX was made to give effect to the original trace and not just near the original trace which made it contrary to the given approval by CEA. Finally, the Supreme Court held that only the farmer knows about the real value of his land and the smaller the land is the compensation must be greater. The court recognized the violation of Fundamental Rights of the appellants and ordered them to pay compensation to the appellants while handing over the possession of the land in respect of the quantum of damages. It could be identified that even though the RDA had discretionary power on executing the final trace, it must be approved by the CEA because it acted as the project approving agency under Section 23Y of the National Environmental Act. Therefore, it should be pointed out that the actions of the RDA were *ultra vires* because it had taken decisions arbitrarily which could be identified as a clear violation of the Fundamental Rights of the appellants. Moreover, the Supreme Court upheld the Rule of Law by recognizing arbitrary action of the respondents while stating that the discretion must be used for the Common Good and in Trust for the people by granting necessary reliefs.

B. Common Good for Foreign Institutions

When considering Common Good and the Rule of Law it must also be clarified under the intervention of foreign entities upon the local standards of law. The case of *Noble Resources International Pte Limited vs. Hon. Ranjith Siyambalapitiya, Minister of Power and Renewable Energy* (2015) could be shown as an example where the Petitioner, a Singaporean company, was held as not having *locus standi* to pray before the Supreme Court on violation of its Fundamental Rights. The petitioner had supplied coal to the third respondent (Lanka Coal Company Ltd) since 2010. In 2015 the Standing Cabinet Appointed Procurement Committee (SCAPC) submitted a bid on behalf of the said respondent concerning the Coal suppliance in the Puttalam Coal Power Plant. The petitioner bid the lowest whereby the Technical Evaluation Committee (TEC) and the SCAPC must award the tender to the petitioner as to the procedure of the bid document but this never came to par with that expectation. This decision was *ex facie* contrary to the terms and conditions and it was held unlawful, unreasonable, violation of legitimate expectations, and Fundamental Rights under Article 12[1] and 14[1][g] of the Constitution. Conversely, Additional Solicitor General Mr. S. Rajaratnam pointed out two primary objections based on the standing of the petitioner under Article 126 of the Constitution, mainly because the petitioning company was registered under Singaporean laws.

K. Sripawan, C.J. held that relief should be granted as the court may deem it just and equitable and not by the objections drawn by the respondent. The reason to hold this position can also be identified as the checks system which upholds the Rule of Law. Likewise, the court cannot disregard taking precautions merely because the petitioner does not have standing before the court while it would supplement the government agencies to act contrary to the Common Good and to uphold unlawful actions that oppose Rule of Law. This procedure of bidding must follow the Government Procurement Guidelines (2006) and the tender must be awarded to the lowest bidder whereby in this situation it was the Noble Resource International Pte Ltd as recommended; subsequent events occurred.

15.06.2015	A meeting was held by SCAPC with the petitioner to clarify the 'parcel size.'
17.06.2015	SCAPC requested the petitioner to submit a discount price.
18.06.2015	No discount was awarded by the petitioner.
06.07.2015	SCAPC awarded the tender to the 22nd respondent.

The SCAPC directed the TEC to re-evaluate the bids disregarding the evaluation procedure under the Government Procurement Guidelines which could be 'identified as a precaution taken to uphold the Common Good, transparency, justice, and equality in the evaluation and neither the state nor SCAPC cannot act discretionarily disregarding these guidelines. By this Sripawan, C.J. decided that the allocation of the tender to the 22nd respondent does not have any validity under the law. Furthermore, as to Mr. Romesh De Silva, P.C. it can be observed under Clause 5.5 of the Instruction to Bidders document, that no bidder can contact Lanka Coal Company or any person related to the bid until it is awarded and if contacted it may result in rejection. However, the 22nd respondent contacted the SCAPC by letter after the opening of the bids. Awarding the bid to the 22nd respondent ignoring the petitioner, can be identified as a violation of Fundamental Rights under Article 12[1], and even though Procurement Appeal Board invited for a hearing on this matter, no hearing was held. This is a

violation of *audi alteram partem* which is considered one of the paramount factors of Natural Justice that signifies the Rule of Law.

As to the final decision the court held that the petitioner could not be granted any remedy because after a deep consideration it was held that the petitioner did not have standing under the court's jurisdiction. But when considering the Public Interest the court has a solemn duty to protect the Rule of Law to safeguard the Common Good and faith of the people, whereby the court called for a new bid for the suppliance of coal which must be fair, just, and equal for the bidder.

C. Common Good in Land Acquisition

When considering the matters relating to land acquisition, especially for the Common Good of the public, the case of *De Silva vs. Athukorale, Minister of Lands, Irrigation and Mahaweli Development and Another* (1993) is informative. This questioned the discretionary powers of the Minister under the Land Acquisition Act No. 09 of 1950 where seven allotments of land were acquired in Bibile under the ground of urgency. The appellant sought relief under a writ of *certiorari* arguing that the acquisition was not under urgency but under a political motive and was contrary to Section 16 of the Urban Development Authority Law No. 41 of 1989. However, the application was dismissed, and the land was handed over to the 2nd respondent, the Urban Development Authority (UDA). Under financial issues, the project was not implemented and because of this, the appellant sought to have the land back according to the available remedies under Section 39A of the Land Acquisition (Amendment) Act No. 8 of 1979.

There was no question about the representation of the appellant and his *locus standi* but a problematic situation arose under the gazette published according to Section 39A on divesting the first allotment of land. This was inquired by the appellant from the Minister of Land through the Secretary of the President where it was stated that the responsible authority was the UDA but the UDA was still conducting a study about the utilization of these lands in doubt. It must be noted that the land was not in use for nine years and the construction of the shopping complex was decided in the latter part of 1990. On a perusal of two documents, it was noticed that only the second lot was necessary for the project and the other allotments were not.

Again the appellant prayed for a writ of *certiorari* and *mandamus* on divesting the formerly stated allotments but the Court of Appeal dismissed the application holding the position that the appellant was not entitled to question the acquisition. As per Fernando, J., the applicant has satisfied Section 39A[2], nevertheless, the Court of Appeal has not reviewed the actions of the minister on refusing the divest of the land; how the other lands in addition to the second allotment will be used for the Common Good of the public. Furthermore, the Supreme Court based its argument on two main factors, (1) The Minister's discretion was not unfettered or absolute; (2) The unreasonableness of land retention without any public purpose. Nevertheless, according to the Deputy Solicitor General, the Minister's discretion was absolute under Section 39A[1] and only can be subjected to review if it was improper, illegal, or an abuse of power. Nevertheless, private land could only be acquired for the Common Good however, it cannot be used for personal benefit nor as revenge. The land could be restored to the former owner (Section 39 and 50) when the public purpose has faded. Nonetheless, as to Section 38[a], if the land was acquired under an urgency but later if it disappears, the land could not be restored. While disagreeing with that view, Fernando J., pointed out that if the acquired

land was not used for the public purpose, then insufficiency of justification arises that grows with the lapse of time. Furthermore, if a new public purpose arises the land which is acquired previously could be used for it but in this regard, the 1st respondent did not hold any reason to favor his actions.

Section 39A was implemented as a remedy to uphold the Rule of Law and all unaffected allotments must be divested on equal grounds (Article 12) but there was no allegation of violation of Fundamental Rights under Article 126 and the case solely proceeded as a Writ application under Article 126[3]. The amendment (1979) was brought to empower the Minister to restore lands to the original owner because the power of acquisition was given to act *bona fide* in Trust for the people whereby exercising rationally in the Common Good and not gaining personal benefit. The use of discretion by the Minister in this instance was seen as a wrongful refusal and was ignorant on acquiring 19 acres of land to build a shopping complex that only needed 3% of that proportion. Therefore, only the second allotment was needed to build this complex. Finally, the Supreme Court dismissed the order given by the Court of Appeal and the writ of *mandamus* was issued against the 1st respondent to make a divesting order on other allotments under Section 39A. Hence, it could be identified that no land could be acquired for personal benefit but the acquisition must only be done in Trust of the people for the Common Good.

D. Indian context

In this instance, Indian cases will be analysed, and it must be noted that Public Interest was introduced by Krishna Iyer J. in the case of *Mumbai Kamagar Sabha vs. Abdul Thai* (1976). In addition, the case of *Hussainara Khatoon vs. the State of Bihar* (1979) was the first reported case on Public Interest concerning barbarous conditions in prisons. (Sen, 2012). A landmark position was held by the case of *People's Union for Democratic Rights and Others vs. Union of India & Others* (1982, 1983) which questioned the ill-treatment and living conditions of workmen who work under contractors employed by the Union of India, which was identified as a violation of Fundamental Rights and other Labour laws. The Supreme Court acted with urgency for the Common Good highlighting the violation of the Minimum Wages Act, unequal remuneration, and violation of Article 24 of the Indian Constitution dealing with child labouring. Yet, the respondent argued that the petitioner lacked *locus standi*.

The Supreme Court allowed the petition, and this could be identified under three contention points. Firstly, the court regarded the broader approach of justice for the Common Good where any member of the public could act on behalf of another who suffers from poverty, illiteracy, or any other disadvantage that makes that person unable to approach through court action. Secondly, the court took this decision in furtherance of the complaint brought under the violation of labour laws and Fundamental Rights. Thirdly, since these labour laws were implemented to protect the Common Good of the workmen, the actions of the contractors must meet those standards.

Concerning the concept of Common Good, this can also be focused on the environmental pollution that happens regarding the inappropriate disposal of waste. The case of *M.C. Mehta vs. Union of India (Ganga Pollution case)* (1988) is predominant whereby an acclaimed Public Interest Attorney M.C. Mehta pointed out the extensive water pollution in the Ganga river generated mainly by the Kanpur city effluent, that is directly released to the river without first treating them. To show the magnitude of this great pollution, a matchstick was thrown into the

river which burst into flames for almost 30 hours on the upper layer of water because of the deposited inflammable chemical waste. Therefore, for immediate action, the petitioner requested a writ of *mandamus* from the Supreme Court but the respondents argued that they had already installed primary treatment facilities but they could not afford secondary treatment plants as it was a large investment. It must be noted that every human has a right to enjoy a healthy as well as a safe environment. Thus, the court held that this contamination creates water-borne illnesses and it is essential to safeguard the river for its consumers. This case emphasizes the gravity of protecting the environment for the Common Good without merely focusing on compensating or mere economic losses.

4. Discussion

The concept of Common Good can be simply identified as a moral right enjoyed by the majority of the people in a state. Under a state of representational democracy, the representatives must always tend to act on behalf of the people and use the given power in Trust of the citizens. The Rule of Law must be assured to the people by guaranteed equal protection under Article 12[1] but this was in question under the case of *Sugathapala Mendis and Another vs. Chandrika Kumaratunga and Others (Waters Edge Case)* (2008) where the actions of the Ministers and the UDA in land transferring (lease) to Asia Pacific Golf Course Ltd. was not directed towards the Common Good even though it was said as so. Indeed, it could be seen by the events that took place that the Executive acted towards gaining profit from the land without any intention to act towards the public for their Common Good. This was seen as an irresponsible, subjective, and illegitimate use of power whereby the court made this transference null and void. It can be identified that the Executive and its branches must make decisions with utmost care for the Common Good of the people followed by objective proceedings that tend to uphold the Rule of Law mainly by guaranteeing impartiality to all the citizens. As Abraham Lincoln, the 16th United States President stated, 'government of the people, by the people, for the people' (The Gettysburg Address, 1863), the government must act in Trust for the betterment of the citizens. The concept of Common Good is based on equality and equity that manipulate the government to always accord with the Rule of law as it is the essence of this concept.

As to the above-discussed case laws, acting in Trust will always attract the Rule of Law to protect the Common Good in action. Therefore, in this situation, it could be interpreted that the administrative branch of the government and its entities must always look toward the likes and dislikes of the public when implementing laws on all the matters which affect the public directly or indirectly. This can be identified in the landmark case of *Bulankulama and Others vs. Secretary, Ministry of Industrial Development and Others (Eppawela case)* (2000) where Amerasinghe, J. pointed out the statement that was made by Judge C. G. Weeramantry on ancient Sri Lankan irrigation work in the International Court of Justice case *Hungary vs. Slovakia* (1997). As an overview, His Lordship mentioned that the ancient Sri Lankans did not permit any water drop in the land to reach the sea without benefitting mankind. By this, it could be identified that from antiquity, the Common Good was upheld as paramount to mankind and the Eppawela case itself granted the standing to a resident at Eppawela to make representation through courts for the Common Good on their infringed rights. This infringement was based on Article 12[1], 14[1][g], and 14[1][h] under Fundamental Rights which could be identified as one of the main branches of the Rule of Law. This case can be compared to the Ganga Water Pollution case in India because both cases were concerned with protecting natural resources for

the Common Good of the people by using Rule of Law, but in the latter case, the Writ jurisdiction was used. Furthermore, this can be seen as evidence that the Rule of Law has followed the Common Good in its essence.

It can be noted that similar to the Mundy case, the Eppawela case and the Ganga Water Pollution case were also concerned about the environmental aspect and its use for the Common Good highlighting the Rule of Law. Prof. A.V. Dicey states that discretion on the governmental authority would create insecurity and always leave room for arbitrary action. (Dicey, 2003). However, Prominent legal writer Jefferey Jowell criticizes this view of Prof. Dicey by pointing out the welfare and regulatory tasks of discretion in the modern day. (Jowell, et al., 2015). It must be argued that with the current trends it is inevitable to fade arbitrary actions by merely refusing discretion, but it could be done by upholding the formal and substantive values of Rule of Law such as cohere and indeed overlap, the certainty of law, equality, legitimacy, and access to courts and rights. Therefore, discretion must be granted to the authorities contemplating the Common Good of the people but if it is not implemented under proper standards, the decisions could always be questioned under Fundamental Rights and Writ jurisdiction. Evidently, the case of *Environmental Foundation Ltd vs. Urban Development Authority of Sri Lanka and Others (Galle-face Green case)* (2009) could be shown. Whereas the UDA tried to lease out the Galle face green to a private company for their personal use. This action was questioned by a non-governmental organization pointing out that UDA did not have the discretion to do so disregarding its original purpose. The court upheld that this decision was *ultra vires* because the Galle-face green was dedicated to the 'ladies and children of Colombo' for the common benefit.

It must be further pointed out the role of *locus standi* which questions the restrictions imposed on the litigant and his interest in the matter at hand. Dr. Mario Gomez identifies the purpose of legal standing as 'a filter in cases of judicial review' and Prof. Peter Cane identifies the purpose as restricting access to judicial review. (Gomez, 1998). Article 126[2] of the Constitution refers to two preliminary restrictions. Namely: He may himself or by an Attorney-at-Law on his behalf and within one month thereof. At first, the literal meaning was followed whereby the case of *Somawathi vs. Weerasinghe and Others* (1990) did not allow the wife to question the violation of his husband's rights under the argument that she did not have standing with regard to Article 126[2] of the Constitution but this was changed in *Sriyani Silva vs. Iddamalgoda, Officer-In-Charge, Police Station Paiyagala and Others* (2003), where it made possible to question upon the real interest of the person on the ground that a person who is not directly affected could be more equipped and competent to present a legal issue than a person who is directly affected. Likewise, in the Indian case of *People's Union for Democratic Rights and Others vs. Union of India & Others* (1982, 1983) even though the real interest could not be expressly identified, the court established the broader approach by allowing any member of the public to represent the aggrieved party. Other than this limitation in the real interest, the previously mentioned *Noble Resources International* (2015) case explains the limitation on foreign entities. As far as the domestic laws are concerned no foreign entity could hold legal standing for the violation of their rights. This limitation is open to doubt because the violation of rights solely occurs through the illegitimate actions of the administrative authorities who are to act under the Rule of Law. Therefore, a mere disregard of the standing of a foreign entity must always be questioned through the actions of the administrative authority which is placed to carry out its duties

for the Common Good to uphold the Rule of Law. Nevertheless, as Wade and Forsyth explained, remedies could only be awarded only and if only the litigant has standing. (Wade & Forsyth, 2014).

It is clear that the vested power of public authorities must always direct toward the public in Trust. It is evident from the case of *Vasudewa Nanayakkara vs. K. N. Choksy* (2007) that if the public authorities acted beyond their vested power the courts have the power to make that decision null and void. (Samararatne, October, 2010). Furthermore, the public benefit was doubted in the case of *Benett Rathnayake vs. The Sri Lanka Corporation and Others* (1999), where the Supreme Court mentioned the high standards and efficient service expected from public officers. This case was about the refusal of a Sinhala telefilm to be telecasted during the 'prime time' where the petitioner argued that it was a violation of his Fundamental Rights. Finally, Fernando, J. held that the airwaves which are a limited resource, is public property; therefore it must be utilized in the interest of the public and for their Common Good. It must be highlighted that the litigant may not always bear *locus standi* to proceed with the case but the role of the judge is to look deep into the roots of the matter to identify the primary factor for the issue that does not par with the Rule of Law and address that matter in order for the Common Good and to eliminate future litigations that could arise from the same matter.

Taking into consideration the current events that occurred, the X-Press Pearl ship disaster is fundamental. (Sirilal & Illmer, 2021) This ship contained containers filled with billions of plastic pellets and various chemicals that leaked after the ship hull sank into the ocean bed while the other part was in flames for several days. As a result, many marine creatures washed up on the shores because of being contaminated by the leakage. Hence, this created a major environmental threat and made many lose their livelihood of the fishery. Public Interest Litigation on Fundamental Rights was filed for the Common Good by the Archbishop of Colombo, Environmental Scientist Ms. Ajantha Perera, and several others while the Centre for Environmental Justice sued the Government and the Ship company concerning the marine life and moreover, a criminal inquiry was heard by Sri Lanka's Criminal Investigation Department by questioning the Ship authorities on affairs that led to this disaster. (Weerarathne, 2021), (The Maritime Executive, 2021). This could be seen as one of the contemporary events that occurred threatening the Common Good of the people. The Sri Lankan government claimed compensation and insurance money from the shipping company and a part of which was dedicated to the Common Good. This shows the importance of Rule of Law which was used in directing the claimed money towards the Common Good and benefit of the affected people.

Another example is the hazardous waste that was uncovered by the Sri Lankan Custom, whereby, 263 containers filled with plastic, electronic and medical waste were found. Sri Lanka is a signatory to the 'Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal' and the exporters are required to obtain consent before sending biohazardous waste; this made it an illegal shipment. The Centre for Environmental Justice has filed a petition regarding the re-export while highlighting the environmental and health threat to the general public and Sri Lanka also claimed compensation under the Basel Convention while CEA stood up in investigating those who are responsible for importing hazardous waste threatening the Common Good by it. In upholding the Rule of Law the Sri Lankan Government has improved the Imports and Exports Act No. 01 of 1969 and is yet to

introduce an enabling legislation on the Basel Convention for the Common Good. (Rodrigo, 2020).

5. Conclusion

In essence, it must be noted that discretion is given to the public authorities to be used for the benefit of the people and the purpose of Rule of Law is to treat people equally and have a checks and balances system among the organs of the government. When considering the current situation, judicial review is used to evaluate arbitrary decisions which are taken by administrative authorities. For this, the Courts have accepted direct democracy to a certain extent by enabling the public to act on behalf of another. This representation shalll advantage the whole society in the present and in the near future. Moreover, the Rule of Law is considered as an essential element in its use for the Common Good, and therefore, it can be successfully concluded that Rule of Law is the essence of the concept of the Common Good. When analyzing the decided cases, it was evident that the Rule of Law has been a paramount factor in Public Interest Litigations, which mainly consider the Common Good of the people.

According to the Mundy Case, the powers of the administrative authorities must be used only and for only the Common Good of the people, and it could be seen that the government has a preliminary duty in protecting the environment for the Common Good of the people. In the case of Noble Resources International, even though the petitioner lacked *locus standi*, the court considered the future Common Good of the people and looked into the actions of public authorities while upholding the Rule of Law. In land acquisition, the authorities must always act objectively, and in the case of *De Silva vs. Atukorale*, it is evident that these authorities must acquire properties with an interest that benefits the public while upholding the Rule of Law by agreeing with the laws implemented in relevant statutes enacted by the parliament for the Common Good of its citizens. Furthermore, this concept has been amplified by many case laws and incidents that took place in past decades on protecting the Public Interest which expanded the view of the judicial system in Sri Lanka as well as in other countries such as India. Finally, this study fortifies that this concept is preliminarily supplemented by Rule of Law and in other words, it is the essence of the concept of the Common Good.

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Abbreviations

EIAR	- Environmental Impact Assessment Report
RDA	- Road Development Authority
CEA	- Central Environmental Authority
SCAPC	- Standing Cabinet Appointed Procurement Committee
TEC	- Technical Evaluation Committee
UDA	- Urban Development Authority

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"Abandoning the Sinking Ship or Solo in a Battle Ground?" Role of Sri Lankan Judiciary in Strengthening of *De-Jure* Equality among Genders

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Abstract *: This research aims at re-evaluating the Sri Lankan judiciary's adherence into the concept of the de-jure equality between genders as set forth in the Convention on the Elimination of all forms of Discrimination against Women (Herein after referred to as CEDAW). The main objective of the research is to analyse the judicial interpretations/approaches on the concept of de-jure equality between genders under Sri Lankan Law. Secondary objective is to evaluate the whether the Sri Lankan judiciary has creatively and progressively interpreted the concept of de-jure equality, in absence of an enabling statute for CEDAW in the domestic jurisdiction.*

On the other hand, it should also be considered that Sri Lanka has signed and ratified CEDAW, therefore, as a state party, it indicates the positive intention on implementing CEDAW in the domestic jurisprudence. To achieve the above indicated objectives, researchers utilize the relevant theoretical framework and selected case law decided by the Supreme Court of Sri Lanka. Research methodology is qualitative and further, it adopts legal research methodology, which is fundamentally desk research. It should be verified that for the analysis on case law, cases were selected based on the purposive sampling method. Outcome of the research is focused on policy-implementation.

KeyWords: *Judiciary, CEDAW, De-jure Equality*

1. Introduction

CEDAW is recognized as the corner stone for women's human rights law. It is one of the key UN Human Rights Treaty Based mechanisms in the United Nations' system. It is the only legal document which solely on the protection of women's human rights law which binds state parties under international law. CEDAW was adopted in 1979 by the General Assembly and came into force in 1981. Sri Lanka is a state party to CEDAW since 1981. Unfortunately, it should be emphasised that there is no enabling statute in Sri Lanka to enforce CEDAW in domestic law. Hence, the judiciary could play a progressive role in achieving CEDAW's key terminology in absence of an enabling statute for the same. However, when carefully concerns on the nature of the obligations, several other domestic laws including the 1978 Constitution, protect *de-jure equality* between men and women in domestic law. On the other hand, there are still gaps in gender equality law provisions in specific areas such as property inheritance, land acquisition and in divorce under the scopes of special laws in the country.

In light of the above indicated reflections on Sri Lankan legal system on achieving gender equality, it should be focused on the judicial interpretations on the theoretical concept of *de-jure* equality among genders. This study will focus on the judicial interpretations; mainly areas such as in Family Law, Laws on the Sexual Violence against Women and Laws on Sexual

Harassment in the Workplace in light of achieving *de-jure* equality among genders.

A. CEDAW's Role in Achieving of De-Jure Equality Between Genders

Equality and Non-discrimination between men and women is the key terminology of CEDAW (Weissbroadt, 2009). It has two facets, *de-jure* equality, which basically means the 'legal equality' and on the other hand, *de facto* equality, interpreted by the Committee on the Elimination of Discrimination against Women as the 'substantive equality or equality of results. *De-jure* equality between genders is an important element in achieving substantive equality between genders. Inline with the CEDAW's obligations, state parties must respect, protect and fulfill *de-jure* equality between men and women in their respective domains such as executive, legislation and judicial spheres.

Sri Lankan legal system has dualistic approach when incorporating its international treaty obligations into domestic legal system. In this aspect, it should be noted that even though Sri Lanka has signed and ratified CEDAW before few decades ago, it has not adopted an enabling statute yet. However, it could be emphasized that based on the equality provision enshrined in the article 12 of the 1978 Constitution's fundamental rights chapter on gender as a non-discriminatory ground. Therefore, the judiciary could play a vital role in absent of such enabling statute in the domestic jurisprudence.

B. Laws Against Sexual Harrassment In The Workplace and De-Jure Equality

Men were the sole breadwinners of the family up until recent times, however, in current context, both men and women enjoy equal right to employment. Regardless of the equal right to employment, the inferior societal role of women as subordinates mostly leads to perpetuate the violence against them. Considering the aforesaid socio-legal underpinnings, sexual harassment in the workplace could be recognized as one of the most significant areas in which progressive interpretations of law could play a key role to achieve *de-jure* equality between genders. Therefore, it is important to review judicial interpretations in recent case law in the area of sexual harassment in the workplace.

*In the case Manohari Pelaketiya v H.M. Gunesekera and Others (*SC/FR/No 76 [2012]- *herein after referred to as Manohari case).* The Petitioner was serving as the teacher in Eastern Music in a reputed College in Colombo. This is a case of sexual abuse and harassment caused to the Petitioner by the Principal and another teacher at the same school. Leave to proceed was granted for alleged violations of Articles 12(1) and 14(1)(a) of the Constitution. Honourable Justice Gooneratne indicates that 'Article 12(2) declares that no citizen shall be discriminated against on the ground of sex... Sri Lanka boasts of both constitutional as well as international obligations to ensure equity and gender-neutral equality which this Court cannot simply ignore.' *(*SC/FR/No 76 [2012] Going more beyond, Justice Gooneratne emphasised the importance of adhering into CEDAW obligations, interpreting in broad manner. While acknowledging the progressive interpretation of the judiciary in *Manohari* case, it should be noted that Indian judiciary has adopted the similar views on sexual harassment in the work place in the case of *Vishaka & Ors vs State of Rajasthan & Ors,(* (1997) 6 SCC 241), indicating constitutional and international law obligation on achieving *de-jure* equality through addressing sexual harassment in the workplace. In that aspect too, it is commendable that Sri Lankan courts are inline with the progressive interpretations on the same area in regional court systems.

C. Laws Against Sexual Violence and De-Jure Equality

This part of the research focuses on the interpretations on the elements in the laws of sexual violence against women by the judiciary. It is important to analyse interpretations on the element of 'consent' by the Supreme Court of Sri Lanka. It should be noted that the element of the consent in rape laws has been subjected to criticism in CEDAW based international law (*Vertido V. Philipines*, 2010) as well as by Feminist Legal Theorists, in general. As indicated by Susan Estrich, one of the eminent scholars in Feminist Legal Theory, 'it is important to note that the male rape fantasy is not a nightmare about all rapes, and all women, but only about some; the law of rape has focused its greatest distrust not on all victims, but only on some. As indicated further by Estrich, 'the formal prohibitions of the statute do not distinguish between the stranger and the neighbor, between the man who climbs in the car and the one offered a ride home. (Estrich, 1987)

Inoka Gallage v Kamal Addararachchi and Another ([2002] 1 SriLR 307-Herein after referred to as *Kamal Addrarachchi* case) is one of the benchmark cases in Sri Lankan law. Firstly, when carefully consider, judicial interpretations on establishing the element 'consent,' it was seen in the judgement that 'the Court of Appeal has taken into consideration the previous and subsequent conduct of the prosecutrix. The court also has considered the absence of injuries on the prosecutrix despite the fact of her saying that she offered vigorous resistance. The doctor's evidence was that she is still a virgin. Hence the Court of Appeal concluded that if any sexual act had taken place, it had been with her consent. Secondly, as the court indicated based on the evidence of the friend it appears that the prosecutrix is a person who changes her version of the events when it suits her. ([2002] 1 SriLR 307) 'Since the Court of Appeal had considered the prosecutrix as an unreliable witness not worthy of credit, there was no duty cast on the Court of Appeal to consider the evidence of the accused.' ([2002] 1 SriLR 307).

Ajith vs Attorney General ([2009] 1SLR 23) was a kidnapping and rape case. The issue to be determined by the Court of Appeal was whether the witness (i.e. the victim) was reliable and whether the court should require corroborative evidence when the witness is deemed non-reliable. In this case, the Appeal Court indicated that 'in a charge of rape why does Court expect the victim's evidence to be corroborated by independent evidence. In the case of *Ajith vs Attorney General* ([2009] 1SLR 23), bench indicates that 'I now advert to this question. Charge of rape being the easiest charge that a woman can make against a man in this world'. The above indicated generalization is also yet a another example of certain prejudices and biasness's of courts which has a direct impact on achieving of *de-jure* equality between genders. In both rape cases indicated above, the establishing the element of 'consent' was ambiguous. This very ambiguity, on the other hand supports the theoretical underpinnings introduced by the Feminist Legal Theorists as indicated above by the authors such as Estrich as the ''male fantasy on rape.'' (Estrich, 1987)

When considering the establishment of the element of consent, it should mainly consider on achieving *de-jure* equality between genders. It should be unbiased. 'In practice, distinctions have always been drawn. It is the male fantasy cases-the "simple" cases in which the unarmed man rapes the woman he knows- that these rules have been articulated and applied most conscientiously to punish the victims and to protect male defendants. And it is in those cases that prosecutors, courts, and juries continue to enforce them in practice.' (Estrich, 1987).

As indicated above, it should be emphasised that court must strictly adhere into the concept of *de-jure* equality when considering sexual violence against women cases. Therefore, right to

equality before law and right to fair trial should not be contradict with the individual opinions on 'moral certainty' when establishing the evidence in sexual violence against women.

D. Divorce, Maintenance Laws and De-Jure Equality

Sri Lankan

legal system entails with the influence of both Roman Dutch Law and the English Law. Roman Dutch Law has made a great impact in the family law. Therefore, the shadows of the earlier concepts such as preferential treatment for fathers in custody matters still maintains its presence time to time in judgements. In those aspects, achieving *de-jure* equality through judicial interpretations might be influenced by the archaic concepts such as 'father is the sole breadwinner' or 'women's character is the vessel of the family honour.' In the case of *Premanie Samarasinghe v Leelaraja Samarasinghe* (C.A. APPLICATION No. 587/89), the issue was for the consideration that when could the dowry property be reclaimed by the wife in a suit for divorce or separation. In line with the Roman Dutch Law principles, the court held that 'Dowry is a marriage portion where movable or immovable property is given by a parent or a third party to a woman in consideration of marriage.' Further, court held that 'when dowry or any portion thereof given on behalf of a wife is actually given to or used by the husband, or if the husband has already derived any benefits therefrom or will derive in the future any benefits by reason of that marriage, then if the marriage is dissolved due to the fault of the husband, he has to forfeit those benefits. Where the wife has not put matrimonial fault of her husband in issue, she cannot seek settlement of property on the basis of forfeiture of benefits.' (C.A. APPLICATION No. 587/89). However, the above judicial interpretation implies a far-cry from achieving *de-jure* equality between genders through judicial interpretations.

In the case of Wijesundera v Wijeykoon ([1992] 2 Sri LR 1), Magistrate Court dismissed the application made by the Applicant Appellant, for maintenance for herself and her child. It was held that 'the claim also made for maintenance by the wife, because a valid marriage is still subsisting between the appellant and the respondent. Section 2 of the Maintenance Ordinance, per se, gives a wife the right to claim maintenance from her husband. However, section 4 imposes certain restrictions on that right. a wife living in adultery is denied the right to claim maintenance from her husband. This provision accords with maintaining public morals and the sanctity of marriage. It is implicit in that finding that the appellant has had an adulterous union. This would mean that the appellant is living in adultery and therefore would not be entitled to claim maintenance from the respondent.' ([1992] 2 Sri LR 1). However, it should be noted that the concepts of morality and legality should be in line with achieving of the *de-jure* equality.

On the other hand, in the case named *Fernando v Fernando* (Precia W. Fernando (Nee Perera) v Dudley W. Fernando and 2 Others [1968] 70 NLR 534), which was reported in 1970, 'The interest of the child is the paramount factor. The rule is that the custody of very young children ought ordinarily to be given to the mother, a rule which ought not to be lightly departed from. It is no answer to this rule that the law ordinarily gives the father a superior right to custody and it is too late in the day to urge that the father's right to custody is absolute and not to be interfered with. Overriding considerations taking their force from the mother's past character or conduct or from her inability to give the children a suitable home may no doubt in individual cases prevail over this principle…' ([1968] 70 NLR 534).

After careful consideration of the above cases, it could be recognized that the courts are still adhering into archaic Roman Dutch Law principles on deciding custody and divorce matters in some cases, rather than focusing on the necessity of achieving *de-jure equality* between genders. It should be noted that depending on the Roman Dutch Law principles would not necessarily be harmful if those principles are being interpreted in the progressive manner, in line with achieving of *de-jure* equality between genders.

2. Recommendations and Conclusions

It could be concluded that Sri Lankan judiciary has played a key role in establishing *de-jure* equality in absence of an enabling statute for CEDAW. However, it was also discussed that due to certain inhibitions such as adhering into archaic principles/theories, and perpetuation of gender-biasness, there were difficulties in establishing the elements of certain crimes. On the other hand, it was seen that stereotypical attitudes on gender sometimes filled the void in the absence of strong evidence to establish the compulsory elements such as the consent in the rape cases.

Prejudices and unconscious biases and stereotypical attitudes on gender roles, the full achievement of *de-jure* equality becomes a difficult task. Most importantly, achieving *de-jure* equality between genders is not the sole expected outcome but only one step in the path of achieving substantive equality or *de-facto* equality between genders. Therefore, achieving of *de-jure* equality between genders is essential and integral element in the process of achieving of *de-facto* equality between genders.

To achieve the successful outcome, firstly, Sri Lanka must adopt an enabling statute for CEDAW. Secondly, judiciary must be in line with the progressive judicial interpretations/developments in the regional level courts as socio-political scenarios and socio-legal aspects of the South Asian region mostly similar to that of other countries. Thirdly, the progressive judicial interpretations on the theoretical concepts such as *de-jure* equality and substantive equality or *de-facto* equality between genders in regional human rights mechanisms, such as the European Human Rights system should be utilized as guiding authorities in the domestic legal interpretation process.

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Placing International Law within the Domestic Context Through Constitutional Recognition: A Policy Oriented Approach

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Abstract: *International law that primarily governe the relationship between the interaction of States even at the beginning of the 20th century has now evolved into a comprehensive body of law that govern subject areas such as family law and property law through the international standards set out in many of the human right treaties across the world which were an exclusive part of the domestic law. Though, the impact of international law has become undeniable, how countries have utilized international law in their domestic legal system has not found any specific pattern. While a country may be free to adopt its own methodology of adopting or transforming international law into the domestic legal system, main research problem which is addressed through this paper relates to the question of as to how the constitutional framework could be utilized to place international law within the domestic legal system through an policy oriented approach, and by policy it is intended to analyse how a country could best utilize international law in the domestic context by considering the constitutional structure of a country along with its own social, economic and cultural realities. This analysis is carried out utilizing the doctrinal approach, and the results have revealed that such a constitutional mechanism could help to make international law more obligatory and directory, demarking the competencies of the governmental institutions regarding the recognition and implementation of international law, advancing the pith and substance of constitutional rights, selecting international obligations possible of being given effect at the domestic level and the general advancement of domestic human rights norms by upscaling them with international standards. In this context, it is highly recommended that a proper constitutional framework be instilled with a policy-oriented approach for the recognition and implementation of international law at the domestic sphere.*

Keywords : *Recognition of International Law, Policy Oriented Approach, Human Rights.*

1. Introduction

In many countries, the constitution would act as the supreme law of the country. It would normally have a mechanism for the recognition and implementation of domestic laws. There is a need for enacting similar provisions in the constitution of a country for the recognition and implementation of international law within the domestic legal system to get rid of the uncertainty or any ambiguity that may arise in its absence. However, this recognition and implementation of international law should be done in a manner which would not hinder the constitutional framework and the mandate regarding the recognition and implementation of any other law. The mechanism for recognition and implementation of international law within the domestic legal system should be done in accordance with the constitutional fundamentals of separation of powers and the rule of law

coming under the broad spectrum of Constitutionalism, while taking into the consideration the sovereignty of the country as well.

The second Republican Constitution of Sri Lanka makes reference to international law in its directive policy coming under chapter VI of the said Constitution.[1] Article 27 (15) of the Constituion[2] declares that, the State shall 'endeavour to foster respect for international law and treaty obligations.' However, this Article does not provide provisions for the recognition and implementation of international law in the domestic legal system. Since Article 27(15) is merely a guideline, it is incapable of creating, any rights and duties as Article 29[3] makes it clear that no right, obligation, or responsibility declared in the directive policy is going to be justifiable. As a result, these directive principles of state policies are of little importance in terms of substantive individual rights.

Meanwhile, Article 157[4] allows the Parliament to give effect to treaty obligations undertaken by the Sri Lankan government relating to foreign investments or national economy by the approval of a two thirds majority. Accordingly, the Parliament directly enacts the relevant international treaty a part of the domestic law without there being a need for any enabling legislation. However, this approach has been used in rare occasions and finding examples are very difficult indeed. While the 1978 Constitution in two instances refers to international law, when it comes to the implementation of international law the domestic context, the Constitution is silent. There is no mechanism within the Constitution on how to apply the international rules or customs into the domestic legal sphere.

The current constitution fails to provide provisions as to how the country should give effect to international treaties under the domestic legal system that have been ratified, as the constitution also fails to provide a coherent mechanism for the entering into international legal obligations which arise through the signing /ratifying international treaties. In order to adopt a proper mechanism to create the international treaties which are ratified by the state as a part of the domestic law, constitutional legitimacy should be upheld. This can only be achieved through providing constitutional provisions as to how the country should enter/undertake international obligations through treaties and how they are to be domestically implemented. This problem is not limited to Sri Lanka's treaty obligations arising under international law. It is evidently the case of application of customary international law in the domestic legal system. The judiciary plays a creative role in interpreting the constitution. However, the Sri Lankan judiciary has failed in applying the principles of customary international law in the domestic legal system or to show any coherence which has resulted in the law becoming uncertain and unpredictable. This can also be attributed to the absence of constitutional provisions regarding recognition and implementation of international law in the domestic context.

In this backdrop, it's imperative to discover a proper mechanism for the recognition and implementation of international law as rights and obligations which are derived from a higher international standard. In addition to this, where a country ratifies an international treaty or undertakes an international obligation pertaining to some rights or obligations, it would be unfair to deny the people, the ability to yield the fruits

[1] Consitution of the Democratic Soclailst Republic of Sri Lanka 1978, Chapter VI.
[2] ibid, Article 27 (15).
[3] ibid, Article 29.
[4] ibid, Article 157.

arising out of such an undertaking by not having a proper mechanism for the recognition or implementation of such obligations in the domestic legal system. When seeking for a constitutional implementation of international law in the domestic context, there would be a great need for the three branches of the government, namely, the legislature, the executive and the judiciary from the time of negotiating the Sri Lankan international law obligations by implementing them within the domestic sphere.

Hence, the main contention of this research is to identify as to how the constitutional framework could be utilized to place international law within the domestic legal system with a policy oriented approach.

2. Methadology

This study was conducted using a doctrinal approach to find policy reasons that could be used to advocate for constitutional recognition and implementation of international law. Nonetheless, the research contains a critical examination of primary sources, including constitutional provisions, jurisprudence, and secondary sources of textbooks and journal articles.

3. Discussion

The need for a constitutional provision for the recognition and implementation of international law rests on a number of grounds. These include the increasing impact of international law on the domestic sphere, philosophical considerations, upkeeping the constitutional fundamentals of separation of powers, rule of law, allocating competencies to the judiciary regarding their role concerning the same, uplifting the rights and duties of the individuals at the domestic sphere and to fulfil the international obligations of a country taken at the international level (*pacta sunt servanda*) by giving effect to such obligations at the domestic level. With the expansion of international law, it has had a profound impact on the domestic legal system[5]. While the traditional notion of international law only concerned with the interactions of states at the international level the expansion of the application of international law upon international organizations, Non-Governmental organizations (NGO's), multinational organizations and at times even individuals, the ambit of international law has expanded by leaps. This has had a considerable impact on the national legal system, specifically when there is inconsistency between the international and national legal standards.

As international law itself does not provide any guideline on how it should be absorbed into the domestic legal system it has created many controversies and confusion. According to Chiam[6], since the theories of monism and dualism have been unable to grasp the state practices associated with the recognition and application of international law at the national level they simply provide abstractions that are not very helpful in a practical sense. In the absence of an appropriate guideline or theory to be applied regarding this gap, facilitating constitutional provisions is a viable solution to overcome the difficulties faced by countries. The Constitution is more appealing because it is the supreme law of the land, the authority it has over the legal system and its operation in a country. In the case of *Singarasa V. Attorney General*[7], Sarath N. Silva, C.J. commenting

[5] J. Starke and I. Shearer, *Starke's International Law* (11th Edn, Butterworths 1994)

[6] M. Chiam, 'Monism and Dualism in International Law' (2018) Oxford Bibliographies https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0168.xml#:~:text=Monism%20and%20dualism%20also%20provide,a%20single%20universal%20legal%20system. Accessed 23.07.2020

[7] (2013) 1 SRI L.R 245-252, at 251.

on the dualistic nature of the 1978 constitution held as follows;

" … The Classic distinction of the two theories characterized as monist and dualist is that in terms of the monist theory, international law and municipal law constitute a single legal system. Therefore the generally recognized rules of international law constitute an integral part of the municipal law and produce a direct legal effect without any further law being enacted within a country. According to the dualist theory, international law and municipal law are two separate and independent legal systems, one nation and the other international. The latter being an International law regulates relations between States based on customary law and treaty law. Whereas the former, national law, attributes rights and duties to individuals and legal persons deriving its force from the national Constitution…"

The theories advanced by H.L.A Hart under his thesis of 'rule of recognition'[8] and Hans Kelsen's theory of 'grundnorm'[9] also advocate the idea of enacting constitutional provisions for the recognition and implementation of international law in the domestic sphere. In his master class, 'The Concept of Law', Hart argues that in modern societies the recognition and validation of laws are carried out with the rule of recognition. The rule of recognition simply means the rules recognized by a society, so as to decide on the validity of a specific rule. Hart argues that, while in primitive societies there was no requirement for such a rule of recognition since it was not a complicated society where interaction between individuals were limited therefore, primary rules were sufficient to govern such societies. However, as the societies got more complex, primary rules became inadequate and the need for having secondary rules emerged. The main secondary rule is the rule of recognition, which provides guidelines as to the recognition of any other rule in a legal system. What has happened to these societies when they have turned from primitive societies to complex ones is equally applicable to the impact of international law upon the domestic legal system where in the good old days there was hardly any talk of conflict between the two, whereas in the modern world they have often come into conflicts and disagreements. Therefore, having a rule of recognition is important to resolve this controversy. Hart argues that, in countries with a constitution, the constitutional provisions related to recognition and validation of laws in the domestic sphere will be the rule of recognition since it will provide for the recognition of a legal rule and determine whether such rule is valid or not. Therefore, according to the philosophical arguments put forward by Hart, it becomes clear that providing a constitutional provision for the recognition and implementation of international law in the domestic sphere is required.

Kelsen in his work 'The Pure Theory of Law' speaks about the validation of norms for those norms to become binding and effective. Where a lower norm is validated by a higher norm, the lower norm becomes effective under the legal system (whether international or domestic), and when one cannot validate a lower norm by a higher norm, such would become the grundnorm. In the domestic sphere, the constitution would be the grundnorm and for any law to be validated, it should be ultimately traceable to the ultimate norm of validation in the chain of norm validation. Regarding the recognition and implementation of international law in the domestic sphere, such a

[8] H.L.A Hart, *The Concept of Law* (3rd Edn, OUP 2012)

[9] H. Kelsen, *Pure Theory of Law* (1st Edn reprint, California Press 1967)

process should also find a validation through a grundnorm. The constitution being the grundnorm of a given domestic legal system should therefore contain such provisions for the validation of international law at the domestic sphere. It would be particularly helpful for the three branches of government to determine the existence and validation of a standard that is questioned at the national level.

These philosophical arguments support the assertion that there is a need to provide a constitutional provision for the recognition and implementation of international law in the domestic sphere. The constitution being either the basic norm or the basis of the rule of recognition would help to clarify the position of international rules and norms in the domestic sphere. This would help to eliminate any confusion or conflict that might lead to a lack of constitutional provisions. Regarding the position of CIL in the national sphere, again, the Constitution provides no guidance as to their status in the domestic sphere. Therefore, when adopting international law in the domestic sphere, allocating power to the three branches of government must done while ensuring a proper balance of the powers exercised by each of these branches. It must be conceded that a branch cannot circumvent or exceed its authority. Consequently, it may be emphasized that an introducing constitutional provision for the recognition and application of international law would also contribute to advancing the notion separation of powers within the constitution.

The rule of law is considered as an important fundamental of the legal system of a country. In particular, the idea of maintaining the certainty of law as a precept of the rule of law as shown by Fuller[10] in his thesis on 8 aspects of making a valid law is an important remark in the recognition and implementation of international law the domestic sphere. When considering the recognition and enforcement of international law at the national level, the importance of maintaining the certainty of the law can never be undermined. It is argued that the Constitution, as the supreme law of the country, can provide the necessary guidelines to achieve constitutional certainty in the implementation of international law. It is therefore clear that compliance with the rule of law and the constitutional provisions for the recognition of international law will also ensure legal certainty.

International obligations are fulfilled by countries under the premise of *pacta sunt servanda*. Therefore, international law is much dependant on the respect shown to it by its participants, the states. State practice sometimes has shown a tendency to use international law when it is advantageous to it and sometimes it has disregarded it when it has shown to be detrimental for them[11]. When a country takes up an obligation at the international level, whether it fulfils that obligation or not will be determined according to international law and when it comes to its obligations under the domestic sphere, international law is bit weak in enforcing its authority at the domestic level, unless the norms that are violated enjoys a jus cogens status, which are considered as being inviolable.

In the absence of any external pressure, the recognition and implementation of international law is a matter solely to be decided in accordance with the domestic law of a country. Therefore,

[10] Lon Fuller, Morality of Law (2nd Edn, Yale 1969) Chapter 2.

[11] Nico Krisch, 'International Law in Times of Hegemony: Unequal Power and the Shaping of the International Legal Order' (2005) EJIL 369

having constitutional provisions for such recognition and implementation of international law at the domestic level seems the only viable solution to advance the premise of pacta sunt servanda which binds the fabric of international law together. It is also argued that, by providing constitutional provisions for the recognition and implementation of international law at the domestic sphere, the respect to and the advancement of international law could also be achieved as a constitutional backing for international law would obviously help to uplift the position of the voluntary nature of international law into something which is more mandatory. By having a constitutional provision for the recognition and implementation of international law at the domestic sphere would, therefore, be useful to make international obligations taken by the state be made mandatory than a directory. Since taking up such obligations would have been within the powers and discretion of the state sovereignty. However, once it chooses to take international obligations at the international level, it is not within their power not to recognize and implement such obligations under the domestic sphere since under the constitution, the sovereignty is with the people and not with any branch of the government or the government itself.

4. Conclusion

In conclusion, this research has revealed that a constitutional provision for the recognition and implementation of international law in the national context is useful for a number of reasons. These provisions are useful to integrate the principles of international law within the national sphere. This process should be carried out according to the concepts of state sovereignty, separation of powers, rule of law and constitutional supremacy. Nevertheless, the assignment of appropriate competence to the judiciary, the raising of the rights and duties of persons will also increase the international obligations of the complaint. The study, therefore concludes that a constitutional provision for the recognition and implementation of international law in the national sphere is the best option available. The rationale for choosing the constitution over other mechanisms is that the constitution is considered to be the grundnorm of the country and it provides for the ultimate recognition rule regarding the recognition and implementation of the law in a particular legal system.

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Gender Stereotypes in Sri Lankan Legal Profession: The Company Secretarial Role

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Abstract:*Phenomenon of corporate glass ceiling still exist in many companies across the globe and especially evident in Asian region including Sri Lanka. Comparative to other top management positions, board are predominated by men and recognized and acknowledged as a masculine arena. (Konrad, Kramer & Erkut, 2008). As a member of the board, role of company secretary is drastically changed overtime. Similarly, it has been claimed that company secretary is the longest serving member in a board comparative to directors. Due to orthodox patriarchal mindset, this critical and significant role in the modern companies is still an under researched domain (McNulty and Stewart, 2015; Hilb, 2011; Cadbury, 2002; Roberts, 2003; Muller, Lipp & Pluss, 2007, Erismann- Peyer, Steger & Salzmann, 2008). However, with the recent corporate and financial crisis, the role of company secretary regained its prominence as earlier. This study reflected on the research problem of whether modern company secretarial role is a gender stereotyped in Asian region especially in Sri Lanka? This is a qualitative exploratory and descriptive research. Findings of the study revealed that modern company secretaries plays an important role as central corporate governance professional in both private and public companies. Also, company secretarial role was transformed from simple administrative record keeping to a top-notch corporate governance and leadership role. Further, this study provide evidence, how Sri Lankan company secretaries utilized this gender stereotyped role to scatters contemporary corporate glass ceiling and utilized it as a strategy to diffuse gender equality on contemporary patriarchal Sri Lankan society.*

Keywords*: company-secretary, women, worker, glass-ceiling, gender-stereotype*

1. Introduction

The findings of the International Labour Organization's (ILO) study " Women at work trends 2015" revealed that global female labour force has decreased from 52.4 to 49.6 and the chances for women to participate in the labour market remains 27% lower than the those of men. (Ranaraja & Hassendeen, 2016). Further, it was found that despite the high literacy rate and educational achievements, Sri Lanka women participation in labour force is at a very low rate like 30-35 percent over the last two decades. ILO also emphasized that there is occupational segregation and concentration around the world and only 5 percent of women are employed in professional and technical occupations and only 2 percent in administrative and managerial positions. However, despite this low supply and demand for female labour in

general, there is a high demand for female labour for specific occupations like company secretaries in domestic corporate context. Lim (1996) defines occupational segregation as the "tendency for men and women to be employed in different occupations which includes both vertical and horizontal segregation." Horizontal segregation is where women tend to be confined to specific occupations in comparison with men. Where, vertical segregation is women are concentrated at different levels within a specific occupation. The labour forces in most of the Asian countries like India, Bangladesh, Pakistan including Sri Lanka evident occupational segregation (Chakraborty, 2013; Gunatilaka; 2013; Sutharshan, 2014). Even though women perform much better than men in professional category in Sri Lanka (Gunatilaka; 2013) clearly women are at disadvantage in breaking the corporate glass ceiling. Glass ceiling connotes artificial or invisible barriers that prevent women advancing certain level in corporate ladder (Reich, 1997). The Latin word "caelum" means heaven or sky. In 1986 the wording of "glass ceiling was first coined by a U.S Journalist in a Wall Street Journal article (Platt, DeVore, McIntyre & Simon,2015; Holton & Dent,2016). According to scholars, Sri Lankan working women face not only glass ceiling but also double jeopardy when it comes to climbing their career ladder, where capable and qualified women are not promoted and simultaneously companies not able to replace them (Wickremasinghe & Jayathilaka, 2006). In the said backdrop, modern company secretarial role in Sri Lanka is challenged not only with double jeopardy but also with both horizontal and vertical occupational segregation.

The word secretary means secrecy where the etymology derived from Latin word "secretarius" which connotes notary or scribe who write and keeps records of meetings. Schlott (1989) claimed the history of this occupation able to trace back to its earlier predecessors beyond 5,000 years. In 1600-1833, the Board of East India Company as the first Joint Stock Company, had the need of a clerical officer called company secretary to keep their records (Seth, 2012). However, modern corporate secretarial role first appeared in United Kingdom in late 19th century and this was spread-out in common law countries by the first half of the 20th century and later rest of the developed countries (Laletina & Kosyakin, 2018). At the very inception, company secretary and the board of directors had the master/servant relationship. In 1902, Lord Macnaghten held that duties of company secretary is limited to somewhat humble character. Professional secretaries are distinguished by meeting the certification requirements set forth by various professional bodies in different jurisdictions, which include a rigorous exam and/or apprenticeship in order to license as registered corporate secretaries. In United Kingdom and other common wealth countries including Sri Lanka commonly refer this position as company secretary whereas in United States, Canada, Eastern European counties and Post-Soviet States etc. the same designation refer as corporate secretary. Similarly, board secretary is a more common norm to refer the same position. Normally, the designation of company secretary is treated as a senior position, form of a managerial or above rank in both private and public quoted companies around many jurisdictions.

It is imperative that company secretary to be well disciplined and ethical in his/her professional conduct. The chief aim of this occupation is corporate good governance and productivity enhancement of the corporate (Muigua, 2019) through primarily compliance with law and ethics of the land. Secondary, to adherence to internal management

procedures adopted by the employer. Hence, key responsibility of the company secretary is to ensure company and the board of directors complies with the legislations and regulations of the respective jurisdiction and they function within the four corners of the law. Moreover, company secretary is the formal company representative who can make representation on behalf of the company especially when it comes to corporate related legal documentations and proceedings. Similarly, company secretary is liable for defaults, commissions and omissions committed by company or by the board of directors. e.g. failure to file any changes in the details of the directors, secretary, shareholding and annual returns etc., Thus, company secretary plays a fundamental role in company life cycle from its inception to wind up. Also, public quoted listed companies in Sri Lanka it is mandate to appoint a registered company secretary in order to ensure the legal and regulatory compliance. Thus, domestic company legal framework utilize company secretary as an invisible mechanism for corporate good governance by placing an impartial internal regulatory officer inside the corporation.

2. Research Problem

However, despite there is a growth and demand for company secretarial function there is very less tendency for male legal professionals willing to join and establish a career as a company secretary in Sri Lanka. Further, in majority of the local boards, the sole female representation in board is made by the company secretary. Therefore, objectives of this study is to exaime whether Sri Lankan board directorship and company secretarial positions are gender stereo typed roles. Hence, this study raises the questions; 1) whether there is a glass ceiling for women worker to join in the capacity of director? 2) does company secretary position in Sri Lanka is identified as a gender stereotyped role to be filled by a women worker? 3) does this company secretarial role transformed from simple secretarial role to more influential governing and leadership role in modern corporates? 4) does this does company secretarial role utilized as a mechanism to shatter the corporate glass ceiling in modern corporations to reach higher positions in corporate governance? With that , this paper aims to examine and reflect how Asian patriarchal superiority and female inferiority in society embraced, transformed and embedded in to contemporary Sri Lankan corporates through occupational segregation and corporate glass ceiling. Further, how modern professional women workers scatter such glass ceilings and occupational segregations through transformation of such barriers to careers opportunities.

3. Methodology

Scholars claim that research should expose the hidden dynamics of the boards (Van der Walt & Ingley, 2003). Whereas, Pettigrew (1992) argues that board as open systems, researches relates to roles of board, composition, attributes of top managements should not be separated from research of powers in institutions and society. Or in other words corporations as units of society it also becomes expose to social dynamics and corporations becomes a reflective mirror of the society.

This research is a qualitative study mainly based on systematic literature review on both published and unpublished material during the time frame of 2000-2020. The study adopted a subjective approach to overcome the limitations on the confinement of company secretary role to its administrative and clerical attributes. Hence, study used a broad-minded lens of power (Pettigrew,1992) as such approach provides a better understanding, meaning and holistic approach to identify what attributes, competences and skills of a

company secretary enable to break the glass ceiling. Further, to examine how does modern women workers able to transform the orthodox secretarial role to governance and leadership role. Also, such lens helps to capture both formal and informal practices which influences the role of company secretary. This study emphasized and reflected on how power hierarchies and gender stereotypes in society subtly constructed and maintain within corporations and how glass ceiling was formed and ways to overcome such challenges in modern corporations.

4. Results & Disscusion

A. Evolution of Company Secretarial Role

In 1887, Lord Esher, Master of the Rolls, claimed that "A secretary is a mere servant. His position is that he is to do what he is told and no person can assume that he has authority to represent anything at all, nor can anyone assume that statements made by him are necessarily accepted as trustworthy without further enquiry" (Tricker,2015). Whereas, by 1971, Lord Denning, Master of the Rolls, held

"Times have changed. A company secretary is a much more important person nowadays than he was in 1887. He is an officer of the company with extensive duties and responsibilities. This appears not only in modern Companies Acts but also by the role, which he plays in the day-to-day business of companies. He is no longer merely a clerk. He regularly makes representations on behalf of the company and enters into contracts on its behalf… so much so that he may be regarded as (doing) such things on behalf of the company …" (Tricker, 2015)

Further, according to The Cadbury Report (1992) "the company secretary has a key role to play in ensuring that board procedures are both followed and regularly reviewed. The chairman and the board will look to the company secretary for guidance on what their responsibilities should be discharged. All directors should have access to the advice and services of the company secretary. Further, studies claim that chairman is entitled to the strong support of the company secretary in ensuring the effective functioning of the board (Tricker, 2015). In 2015, United Kingdom developed a model to highlight the multiple perspectives of company secretary as a; humble clerk, chair support, advocate for the collective conscience of the company, boundary spanner, honest broker and as a governance change agent (McNulty & Stewart, 2015). Due to the influential and potentially powerful role in the present corporate context, previously behind the scene administrative role of company secretary is now moving more and more in to spotlight and catching the eye of public. Also, Leathwaite (2018) executive summary stipulated that;

"Company secretaries are now vital to deliver sustainable business performance and are finding themselves increasingly in the limelight needing to deal with more sophisticated corporate governance and regulatory issues. In our experience the role is, and has been for some time, emerging from the shadows. Hence, company secretary is a critical part of an organization's executive team and that the company secretary has the potential to act as a key pivot point between the business and the board."

In Sri Lanka there are total of 109,810 companies. Where, 103,832 are private companies and 4,375public quoted companies and 1,603 foreign companies as at 28.05.2021. Similarly, under present Companies Act No.07 0f 2007 Section 221 it is mandatory to have a company secretary for a company. Further, Section 221 provides the required qualification to be a company secretary .Further Securitas and Exchange Commission of Sri Lanka provides another list of specific directions where a company

secretary of a listed company required to be adhered to. Thus, earlier mere clerical secretarial role is now formed to a legislatively acknowledged licensed occupation in Sri Lanka.

B. Gender Stereotyped Role of Company Secretary

The underestimation of women as less capable and talented to lead held by a social group refer as gender stereotype. Therefore, it does correspond to the reality (Martin, 2008). Moreover, according to gender stereotype, the characteristics of women does not feature to be a leader (Klenke.1996; Koenig, Eagly, Mitchell & Ristikari, 2011). Broadly gender related behaviour in organizations can be categorized in to three main areas as; biological, social and cultural/structural (Bartol, Martin & Kromkowski, 2003; Cleveland, Stockdale & Murphy, 2000; Powell & Graves 2003). However, research on gender and management is either marginalized or polarized (Rees, 2003) Thus, there are critical gaps in existing knowledge such as how gender perception and preference applicable and function (Malhotra & De Graff, 1997;2000) in corporate world including Sri Lanka (Gunatilaka,2016).

The structural artefacts such as the type of legislation the organization incorporated, constitution of the organization, primary purpose of the organization e.g. profit or non-profit, private, public or listed, concentration of shareholders and members the number of executive and non-executive directors will create the built-environment where the organization and board operates which forms a unique setting not only for organization and board (Robertson.2018) but also for a company secretary. Similarly, company secretaries fall under the definition of 'officer' of a corporation. Also, company secretaries are subject to many of the same duties and obligations as directors.. The company secretary comes to act as 'the grout' to fill the knowledge cracks that might otherwise appear during a board meeting (Handicott, 2002). The Australian Courts have recognized the pivotal role of company secretary and held "the expression 'company secretary' is not a term of art. The responsibilities of company secretaries varies from company to company, within company, and overtime. They have tended gradually to wax over many decades… Despite, the growing role and obligations of role of company secretary and existing glass ceiling to become a director of the board as follows;

"Shareholders had been asking, 'when are you going to have a woman?' So they out a woman on just to say they had a woman. She had to break down brick walls to be heard. She had to work hard to get in to the conversation, almost like not being there. Management was not interested in her competency. It was old boy's club. And no one on the board wanted a female. - Male CEO (Konrad, Kramer & Erkut, 2008).However, the position of company secretary is dedicated for women workers.

C. Problems of Gender Stereotyped Company Secretarial Role

Meyerson and Fletcher (2000) claim there is only 10 percent of women representation in managerial positions and less than 4 percent in upper most ranks of Fortune 500 companies. Similarly, there is only 21 percent of women workers in managerial positions globally (Strank & Dyrchs, 2012). Moreover, prior studies already affirmed that women workers face obstacles on climbing the career ladder and they were prevented from entering to managerial positions (Elmuti, Jin, 2009).Thus, women workers in higher levels of business are still rare by resulting a significant gender gap specially in upper most ranks. There is

only 22 percent of women representation in boards and 25 percent in the managerial positions in Sri Lanka (Uduwella & Jayatilaka, 2018; Grant Thornton, 2018). Also, previous study found that Sri Lankan women have higher cognitive skills than men and also they possess non-cognitive skills similar to men but they are getting paid less comparative to men of same status (Gunewardena, 2015).

Despite the remuneration gaps and issues of rankings, company secretary is duty bound to disclose any information that is related to illegal committed or practiced or likely to be committed or practiced by company, directors, shareholders or employees to deter any form of wrong doing by the company or its stakeholders. Therefore, this occupation requires company secretary to be impartial in her all dealings without any fear or favours with all stakeholders. Hence, this role demands to be knowledgeable and updated with necessary laws and regulations to act the same.

"I was the only woman in a room of guys. I'm not shy, but trying to get your voice heard around the table is not easy. You can make a point that is valid. Two minutes later 'Joe' says exactly the same thing, and all the guys congratulate him. It is hard, even at our level, to get your voice heard, You have to find a way to wedge in, and they realize you are not going away -Woman Director" (Konrad, Kramer & Erkut, 2008)

In the domestic context not only company secretary is gender stereotyped but also directors. While company secretarial position is stereotyped as feminine the position of director is stereotyped as a masculine. However, in a public quoted company, the position of company secretary is legally acknowledged as the key advisor to the board and management on corporate governance issues while same was treated as main contact point of shareholders and external agencies. Therefore, due to this legislative enforcement company secretaries have gained formal recognitions in boards. Similarly because of legal knowledge and authority vest in them, they were able to acquire certain control over the board.

Simultaneously, company secretary should be either directly responsible to the board or should be accountable through chairman to the board for her core duties. If the company secretary is assigned other non-core duties or playing a dual or combined roles as a company secretary and as a member of the management team e.g. legal head might require to follow dual reporting lines for chairman as well as Chief Executive Officer. Hence, both company secretary and board should ensure there is no conflict nor compromise in performing both positions. E.g. company secretary also performed the role of corporate counsel time to time she need to take side of each role. In such circumstances, she may comply with the law than concerning the best interest for the company in long run. This would be inconsistent with the central governance role as a company secretary and hamper impartiality and un-biasness in advising the board in corporate governance issues. On the other hand, such double hatting would prevent whistleblowing role of corporate unethical and bad governance practices due to being a member of the management team.

Further, company secretary should bind the other board roles as a unified body while seek to maintain the consensus among the members of the board to protect the interest of the company. This task becomes critical and challenging when there is power asymmetries and destructive behaviours are presence in the board (Ladkin, 2013; Collinson, 2012; Briskin, 2011; Schyns & Hansbroughn, 2010; Padilla, Hogan, & Kaiser, 2007). Therefore, company secretarial duties are essential ingredients in

implementation of sound corporate governance procedures (Maltas, 2002)

"They look at you sceptically as to how you got there. First, you'd better show men why you're there. Women don't get the benefit of the doubt. Board meetings are pretty brutal." (Konrad, Kramer & Erkut, 2008)

Some companies opt to outsource the company secretarial role and to obtain the service of a freelance company secretary or from a company secretarial firm than having an in house permanent company secretary primarily due to cost cutting purposes and to maintain corporate secrecies. Also, if the company secretary to implement the corporate governance framework throughout the organization, company secretary should know the business, not just the governance of business and also must know the board, not just the business of the board (Roberstson, 2018). At the same time, company secretary can reduce the number of cognitive biases that play in board decision making process as opposed to taking advantage from them or allowing others to take advantages from them (Robertson,2018,p.39). Hence, the role of a company secretary encompasses several pressures such as authority pressure, time pressure, peer pressure and role pressure (Robertson, 2018). Also, modern gender stereotyped company secretarial role encounter many challenges.

D. Prospects of Gender Stereotyped Company Secretarial Role

Due to the high dynamics and growing complexities in companies the company secretarial role was took the second transition from Chief Administrative Officer (CAO) to Chief Governance Officer (CGO) role. As a CAO company secretary role is to meet the minimum legal requirement. Whereas, CGO company secretary is one of the key governance officer and whose skills, expertise and knowledge of the organization are harnessed for the benefit of the board and the organization. (Robertson, 2018).

"When we speak to company secretaries, and from our survey, we find that there has been significant changes to the role over the years. Eighty percent said that their role had increased somewhat or significantly in the time they had been in it. (Increased significantly: 46%; somewhat significantly: 34%) Many also stated that the role had increased due to greater pressure from the regulator" (Thornton, 2018)

Also, in the eyes of many directors company secretary position represents a shield against non-compliance and breaches of the company law. Thus, company secretary should be fully conversant with the company law and regulations which is crucial for corporate good governance (Lang, 1998). Hence, company secretarial role is expanded vertically by scattering the glass ceiling as well as horizontally by attracting multi perspectives like management, legal, audit and control etc. The recent hikes in the corporate meltdowns in world over, indicated the essence to have an effective corporate governance structure whether the corporate is private or public. In this juncture, many boards look up to the company secretary for guidance to implement such structures to overcome malpractices and mitigate corporate corruptions and frauds. As per previous findings in many instances the company secretarial role seems as either silent in the corporate scandals whilst in other instances, the company secretary is held liable especially when there is evidence that she executed some critical documents that gave the leeway to such corruption or fraud (Wanjiku, 2012).Also, company secretary has to build relationships because it's ultimately an influential role (McNulty & Stewart, 2015). Therefore, company secretarial role varies on broad spectrum from simply CAO to CGO role

(Robertson, 2018). Merriam- Webster define influence as "the power to change or affect someone or something" either positively or negatively. In the corporate governance context, influence can be seen as changing a person's currently held opinion to another in order to get what you expect. Thus, in any organization, leaders and managers are inherently engaged in a business of influence. Hence, company secretary also required to function under different momentums of direct and indirect influence in terms of the stakeholders on their influence roster (Robertson, 2018). The contemporary role of company secretary has enriched with authority and power. Similarly, the role has expanded both vertically and horizontally by entailing many legal obligations. Thus, these new warrant prospects need to handle with much care to avoid greater danger for both company and company secretary.

5. Findings and Recommendations

Even though, Company Secretary is appointed by the board, thereafter she will commence to govern the board and company. Governance is more than just complying on codes, laws, regulations and standards. It is about creation and inculcation of cultures of good practices in organizations (International Finance Corporation, 2016). Similarly, corporate governance issues are not haphazard but arise from a determinable path (Jones & Pollitt, 2003). Therefore, corporate secretary plays a key role in guaranteeing that board and company are complied with the statutory legal frameworks and internal regulatory framework. According to Companies Act No.07 of 2007 Sri Lanka company secretary has a responsibility for company's compliance with the Companies Act where such responsibility becomes much higher for a listed company where it demands compliance not only with the Companies Act but also to adhere as per Listing Rules of capital market requirements. Interpersonal relational power of the company secretary becomes politically critical in a crisis or major change in corporate (Van Essen, Engelen, & Carney, 2013). Thus, corporate secretary provides high level of corporate governance with actions relates to minimizing agency conflicts, adherence to corporate due procedures and initiating management best practices with the corporate. (Laletina, & Kosyakin, 2018).Thus, across the boarders modern company secretary's role as a corporate governance professional embraced multiple roles such as auditor, complier, controller, risk monitor, whistleblower, regulator and act as a central board processor, building block or genesis (Finkelstein and Mooney,2003).

Similarly, company secretary is the advisor and executor of internal corporate governance while act as the interface and arbitrator between internal and external governance elements (Dixit & Arun (2013). Hence, this role calls for thorough knowledge of the business environment which company function and expertise on rules, regulations, standards and laws where applicable. A recent study carried in United Kingdom found that company secretaries should be 'commercially mind' to carry out their role effectively (The All Party Parliamentary Corporate Governance Group ,2012) Therefore, 3rd Benchmarking Study conducted by Chartered Secretaries Australia claimed that company secretary had evolved to the level of Chief Governance Officer.(Benchmarking Governance Practices in Australia ,2005) Hence, modern company secretarial role was identified in the capacity of a 'Key Management Personnel' (Kapoor,2013) or 'Director' (International Finance Corporation, 2016). Whereas, modern company secretary act as the main catalyst of corporate governance. Therefore, company secretarial role shifted from its inception

clerical role to compliance role and in the third phase to managerial and governance role. Therefore, modern company secretarial role transformed the previous master/servant relationship to a more independent and accountable hybrid corporate and legal relationship while act as the 'conscience of the company'. Thus, inclusion of minimum gender balance ratio for both male and female for composition of board as regulations and enforcement of such ratio through internal and external audit standards becomes necessary. Simialrly, awareness on actual company secretarial role within the legal profession will support to change the present gender stereo type relevant to company secretarial role,

The court drawn attention to the concept of collective conscience role of the company secretary. Thus, under the concept of collective conscience role of company secretary she should strive not only for appearance of legal and regulatory compliance but should strive for actual legal and regulatory compliance. To achieve the same, company secretary should perform a cultural broker role by forming a piping system, where critical information flows through and around actors and relationships. Hence, company secretaries recognized as steward or guardian for the whole organization rather than a single organizational process. Therefore, cultural broker function of a company secretary able to inculcate and flourish the desired culture within the organization.

However, when company secretary wears double hats as a servant to the board in one capacity and as a peer of the board in another capacity it will form many challenges and complexities within the organizations. Nevertheless, these double hats roles are not new to this role where in 1581 English Levant Company Secretary performed the commanding actions in Her Majesties Name (Epstein, 1908) and by 1600 Secretary of East India Company, became the Secretary of the State with the powers to execute the sovereign rights (Kaye, 1853; Ramaswami, 1983).Hence, at that time secretarial role was coupled with both affairs of the Company and the State. Similarly, company secretary of the Dutch East India Company in 1602 performed modern dual roles of company secretary as the secretary to the board as well as the adviser or advocate to the board (Schmidt, 1988; Gepken-Jager, 2005) When these companies collapsed, the wider powers vest with the company secretarial role got drastically narrowed and limited only to affairs of the company. Conversely, with recent past corporate collapses demanded to expand the role and duties of company secretary with corporate governance responsibilities (Murphy, 2003; Monks & Minow, 2004; Daigneault, 2004). With effect of that, company secretary was offered more effective tempered leadership with more visible power (Roberts, 2008) Hence, upon the review of literature it is evident that role of company secretary is in the cycle of regaining its historical double hatted powerful governing role in the contemporary context.

Once Sir Harvey Jones Former CEO of the British Company ICI said "A company secretary should have considerable personal integrity and be seen to stand for probity and right within the company. The secretary should be seen to 'side with the angels" and be prepared to state when the occasion demands that 'I fear that while what we are doing is within the letter of the law we are not within the spirit.' They have to be trusted by everyone. It is a bloody tough job." (Tricker, 2015). According to the above analysis it is evident that modern company secretary is vested with wide powers and lot of duties and responsibilities. Thus, company secretary is a professional vital for smooth operation of a modern companies.

Companies are expanding beyond boarders and company secretary's role also got expanded parallel as a central internal corporate governance official who manage and control the network of directors, shareholders, employees and company as well as the primary accountable officer for external legal and regulatory bodies. "The company secretary profession as a whole needs to evolve and develop into a more strategic and commercial offering. We need to stop being seen as administrative cost centres but rather as commercial board advisors and enablers, not barriers, to the business"(Leathwaite 2018).

Despite the changes taken place overtime and the significant role and contribution made by the company secretary to a board, still this position has a low profile in the board room (Arnold, 1987). Hence, this low profile role preferred to be occupied by a women worker rather than by a male worker. Therefore, it is necessary to carry out behavioural studies on power capabilities of company secretary (Cyert & March, 1963; Huse, 2005) to identify whether there is any gaps between the genders. Further to examine the power difference among the directors and company secretary in order to justify present gender stereotyping of the role of company secretary.

6. Conclusion

The study findings revealed that glass ceiling still significantly prevails in modern Sri Lankan companies especially at the top levels. Similarly, company secretary position is socially constructed as a feminine occupation and therefore it is gender stereotyped for women workers. Also, modern Sri Lankan company secretary role is an occupation where there is striking occupational and gender segregation. However, fragment of women workers in the said occupation exhibit the application of their leadership skills to transform the said position from mere administrative role to a more effective governing and advisory role by scattering the glass ceiling. Thus, occupation of Company Secretary was redefined and reconstructed to a corporate position equivalent to a key managerial and leadership role in contemporary Sri Lanka.

This research study provided a novel illustration how organizational limitations able to transform as opportunities by thinking differently and adopting innovative approaches to old age corporate issues with the example of how glass ceiling was broken by the modern company secretaries by wearing double or multiple hats and shouldering burdens of organizations silently. Further, findings of this study reflect how women workers able to strategically transformed patriarchal dominance at apex of company which is a unit of building block of broader society. Thus, how scattering of glass ceilings in companies act as a change agent to diffuse gender equality in society.

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Impact of the Assistance to and Protection of Victim and Witness act to the Fair Trial Concept

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Abstract*: Protection of Victims and witnesses is one of the important aspects in the Criminal justice system. No doubt that it shall be the duty of the state to preserve the rights of the concerned parties by enacting effective legislative enactments. On the other hand the concept of fair trials shall be upheld at every situation. There can not be any derogation to this vital fair trial concept by any means. Provisions and practical application of the legislative enactment prevailing concerning protection of victims and witnesses contains provisions contrary to the fair trial concept. The possible recommendations on legal reforms and mechanisms to uphold fair trial concept while focusing on the rights indicated within the concerned of legislative enactment is addressed by this article.*

Keywords: *Victims, Witnesses, Fair Trials*

1. Introduction

As privileged citizens of this wonderful island nation we have come across if not we have heard about the ways that the suspects of criminal matters are treated by police and other entities. On the other hand, there are plenty of examples to show the manner in which the victims and the witnesses of crimes are treated and the hardships they face from the suspects and their counterparts. Having the legitimate intention of protecting the victims and witnesses and to abide by the internationally required standards by March 7, 2015, the Assistance to and Protection of Victims and Witnesses Act No. 4 of 2015 ("Act")was enacted.

There is no doubt that it is the duty of the state to protect citizens from crimes, including victims, witnesses, sources of information, and others. The ability to investigate and prosecute organized criminal groups successfully relies on the safety of witnesses and victims . The Organized Crime Convention of year 2000, Article 24 deals with witness protection. This clause aims to protect witnesses in criminal proceedings from punishment. Some examples of these techniques include witness relocation and allowing them to testify in a way that ensures their safety .

In the Sri Lankan context, there are situations where the rights vested in suspects by the Constitution and other legislative enactments are blatantly violated by the application of provisions of the Assistance to and Protection of Victims and Witnesses Act No. 4 of 2015. To be specific, certain fair trial concepts such as *audi alteram partem*, Presumption of innocence and unnecessary involvement in the execution of rule of law can be highlighted as examples.

CHARACTERISTICS OF WITNESS PROTECTION PROGRAMS

Organized criminal figures were the most frequent perpetrators of witness intimidation, which necessitated the use of protective services for the victims. Police informants and criminal acquaintances of defendants were the most usually protected witnesses . Yet witness for the suspect is also a recognized "witness" (Liam, 2006) whereas considering the practical aspects

prevailing in Sri Lanka the witnesses for the defense are often neglected and their rights are vulnerabilities are generally neglected.

The European Court of Human Rights observed in the case of PS v Germany, 2003 "principles of fair trial require that the interests of the defence are balanced against those of witnesses and victims called upon to testify, in particular where life, liberty or security of person is at stake". (Enrique, 2005)

With that an individual witness's level of risk irrespective of the fact that the witness is for prosecution or defense must be taken into account while deciding on protective measures. National police forces typically manage most witness protection programs, and the majority of programs based on these enacted laws neglect certain protections vested on witnesses for all the parties.

As a whole, it is submitted that people and news organizations are of the belief that witness protection measures are required and should be put in place for the prima facie aggrieved party(Rosalind, 2007). The majority of governments have realized the importance of enhancing the monitoring, evaluation, and safeguarding of witnesses' rights in courtrooms around the world. Yet it is clear that there is a lacuna in certain aspects.

Open-source information is missing in order to objectively analyze witness protection systems among jurisdictions. There has been a scarcity of research on the effectiveness of witness protection programs in preserving the witnesses of the defense which plays a vital role in the fair trial concept. As a means of protecting witnesses of all parties from intimidation or revenge, specific processes must be implemented. This kind of safeguard is essential to maintaining the rule of law and upholding the concept of fair trial.

As long as the defendant's safety is not compromised, an escort or separate waiting room may suffice. Additionally, the judiciary may close the courthouse and secure evidence, provide temporary safe homes, utilize voice distortion and facial disguises or conduct testimony through video conference to protect witnesses of all parties instead of protecting the witnesses of the "victim/s". (Enrique, 2005)

In some cases, even the defense needs a witness' cooperation, additional safeguards like a formal witness protection program are necessary since an organized criminal group's influence and control is so widespread . These cases necessitate a new identity and a new location, either within the country or outside of it, for the witness's protection.

A closer look is needed at the new legislation that came into effect on March 7, 2015, the Assistance and Protection of Victims and Witnesses Act No. 4 of 2015. Defining, protecting, and enforcing the rights and entitlements of crime victims and witnesses, as well as outlining the duties and responsibilities of the state, judges, and other public officials in promoting these rights, protections, and enforcement, will go a long way towards helping and protecting these people. To be sure, each of these objectives is a strong step in the right direction, but the manner in which they would be accomplished under this Act raises several questions on the balance of uplifting fair trial concepts.

A VICTIM BECOMES A HEAVILY INVOLVED IN THE INVESTIGATION PROCESS

Perhaps there are provisions in Act No. 4 of 2015 that give victims of crime the right to inquire about how an investigation into their complaint is progressing by submitting a query to the investigating police station or other authority, the Attorney General or the Registrar of Court, as applicable. This includes inquiries about hearing

dates, progress of judicial proceedings, dispositions, an arrest, acquittal, or conviction of an accused or suspected person and the date on which that person will be sentenced or acquitted, respectively .

To prosecute people who commit crimes, the state has certain obligations to investigate and prosecute. The Act No. 4 of 2015, on the other hand, aims to make it the posisiblity of the victim to pursue the alleged criminal records to its completion. This is a blatant violation of the Fair trials as it allows the prosecution to influence the due process of law.

Certain offences such as rape and assault, allow the culprit to be identified and tracked down before the arrest. Before a suspect in a criminal case may be identified, it is common for investigations to be conducted. This “Act” appears to indicate that the alleged perpetrator has always been known to the claimed victim. Victims may be subjected to harrowing injustices in criminal investigations as long as the perpetrators of their alleged crimes are known to them before this “Act” may be used to press charges against them.
In a few areas, the “Act” makes it crystal clear what should have been obvious all along. Every police officer, police station, and other police unit has the duty to investigate a complaint made by a victim of crime in accordance with Section 3 of the Police Department's Code of Conduct. For this purpose, the British prior to the indipendece, by way of legislations vested certain powers to the current police force of Sri Lanka. Further, Attorneys at law can represent victims in any inquiry into an incident, including criminal and medical investigations and magisterial inquiries, so that the appropriate authorities can make any necessary representations on their behalf. (Rosalind, 2007)

If the victim so desires, they can also request a certified copy of the cause of death form as well as any other expert reports and police reports filed in the Magistrate's Court as well as Medico-Legal and Registry of Fingerprint reports. At a time when the perpetrator's identity is still required to be proved before a competent court, the victim has the opportunity to prey on the entire judicial system, including the police and judges by accessing these reports. (Liam, 2006) However, there is a clause which states the Magistrate may refuse to issue a certified copy of these reports if the police consider that doing so may compromise ongoing investigations. Before, during, and after any investigation, trial, or appeal, victims have the right to interact with the Attorney General in writing or through legal counsel. This includes non-summary inquiries, trials, and appeals. It is also possible for a victim of an incident to submit written communications or statements, as well as get a response from an investigator to an investigation into the offense.

Hence, would having the ability to exert pressure on investigators, the Attorney General, and the courts during the appeals process have any advantage for victims? The victim has the right to seek redress from a variety of people . There will be even more strain on the Attorney General's Office, law enforcement, and the courts as a result of the increased workload. Moreover, this can be identified as a direct involvement in the execution of justice.

It is the victim's right to be present at all judicial or quasi-judicial proceedings relating to the offense, unless a court or tribunal finds that the victim's testimony would be materially harmed by hearing other evidence or that the proper administration of justice can only be ensured by excluding the victim from the hearing of certain portions of such proceedings.

As a victim, one has a right, either personally or through legal counsel, to describe how the offense affects their life, including their physical

state of mind, occupation or profession, income and other areas of quality of life and property. (Enrique, 2005) If this is explained taking into consideration a fight taken place and if both parties are injured there may be an ambiguity as to who the actual victim is.

In considering the above, the courts have the power to hear appeals and applications for revision from the victim of a crime on how that crime has affected his physical health, mental well-being, career or professional activity and income in addition to all the other areas of his personal life. (Liam, 2006)

ADVERSE LEGAL IMPLICATIONS OF NATIONAL AUTHORITY FOR VICTIMS AND WITNESSES OF CRIME

Additionally, the Act establishes a National Authority for Victims and Witnesses of Crime , which will be overseen by a Board of Management, in addition to the previously mentioned measures that provide victims greater leverage over law enforcement, the Attorney General's Department, and the courts itself. When it comes to receiving complaints concerning potential abuses of victim or witness rights, the tasks and responsibilities of this authority include conducting investigations into these alleged or suspected abuses and compelling the relevant authorities to take appropriate corrective action.

The victim and witness protection authority shall have the authority to require any person other than a judicial officer or the Commissioner of the Commission to appear before the Authority and produce any document, a certified copy thereof, or other material in his or its possession or custody in order to conduct investigations into allegations of an imminent violation of a victim or witness's rights(Liam, 2006).

In fact any occurrence or procedure can be accessed by the Authority to conduct an investigation and record it at any moment. That is to say, if the police, the Attorney General's office, and the courts refuse to let the victim get the National Authority for the Protection of Victims of Crime and Witnesses to do its duty, the victim can. According to Section 14(1)(f) of the Act, the authority may solicit, accept, and receive donations, bequests, or grants from sources inside or outside Sri Lanka and utilize them to carry out its duties and functions creating certain advese impacts to the fair trial concept and even on sovereignty.

Section 24(3) prohibits the Authority from asking or accepting help from any foreign government or national, foreign, or international organization unless the Attorney-General and the Secretary to the Ministry of the Minister in charge of Foreign Affairs have granted their prior consent. However, this is of no use in the real world. It is the responsibility of the Attorney General and the Minister of Foreign Affairs (minister) to ensure that all funds are obtained legally.

The Act No. 4 of 2015 therefore can be described as a fragile piece of legislation from start to finish. It is unclear as to why foreign aid is required in order to safeguard the rights of victims and witnesses. The National Authority for the Protection of Victims and Witnesses could be used by foreign parties interested in certain cases to exert pressure on the police, (Rosalind, 2007) Attorney General's Office, and even the courts. Anyone who flouts the Authority's rules is guilty of contempt, which is punished by the Supreme Court as if it were a crime against the Supreme Court itself.

The Supreme Court may receive a certificate from the Authority stating that someone has violated the Authority's rules of procedure by engaging in an act of contempt against the

Authority. Any evidence that has been verified to be genuine is admissible unless the contrary is proved. Contempt charges against the Authority may not be brought against any member of the Authority, even by a Supreme Court, as long as they are brought by a third party.

Other institutions, such as the National Authority for Victims and Witnesses of Crime and Witnesses, have been established to safeguard victims and witnesses. Specifically, the "Victims and Witnesses Assistance and Protection Division" is to be established and maintained by the Inspector General of the Police in accordance with any guidelines issued by the National Authority for Protection of Victims of Crime & Witnesses to provide assistance and protection to victims of crime and witnesses, in accordance with Act No. 4 of 2015. An Inspector General of Police chosen as a board member of the National Authority for Victims and Witnesses would supervise the Division's Senior Superintendent.

In addition to the investigations conducted by its own officers, these special police units will also enlist the help of any other officers who may be able to aid in the investigation. The Assistance to and Protection of Victims and Witnesses Act, No. 4 of 2015, does not help victims or witnesses; rather, it gives interested parties in Sri Lankan courts better access to cases breaching the fundamentals of fair trial concepts.

MODUS OF HINDERING FAIR TRIAL REQUIREMENTS

It is the right of an accused to a fair trial. Victims and witnesses are critical to the success of a legal system, and their protection is essential. This precaution must not endanger the right of the accused to a fair trial. Article 14 of the ICCPR ensures that anybody facing criminal charges has the right to a fair trial. (Enrique, 2005)

Article 13(3) of Sri Lanka's Constitution protects the rights of those who have been accused of a crime. A person accused of a crime has several rights as per the provisions of Code of Criminal Procedure. Testing a witness's reliability and credibility through cross-examination is an effective strategy whenever an allegation or an accusation is brought against a person. Further, defendants possess a right to be represented in person or by an attorney is provided for under sections 201 and 202 of the Code of Criminal Procedure act and the opportunity to present evidence in front of them under section 260 of the said act.

For example, expunging witnesses' names and addresses from public records may not always be in the best interest of their constitutional rights. If anonymity is used, these rights will be questioned, and their use will be questioned as well. Examining the procedures thoroughly prevailing under the established procedural aspects in criminal law it is evident that concealment of the identity of the witnesses may have adverse impacts to the fair trail concepts.

PUBLIC TRIALS

A fair trial must be open to the public unless there is a compelling cause to keep it private. As indicated earlier Article 14 of the International Covenant on Civil and Political Rights guarantees "a fair trial" for everyone. Trial shall be impartial, competent, and open trial by law-enforced tribunals.

The "act", on the other hand, recognizes that the press and the public may be prohibited from a trial in whole or in part. to keep the peace, uphold morals, or safeguard national security in a representative democracy to the extent that it is strictly necessary to protect the parties' private lives, circumstances where public disclosure could impair the interests of the parties, the opinion of the court justice".

Open clinical trials are preferred for a variety of reasons. One of them is maximizing. allows additional witnesses to come forward and provide pertinent information, which reduces the likelihood of witness perjury, public scrutiny and criticisms against the courts for concealing the proceedings. As a result, public hearings are necessary for fair trials.

It is therefore necessary to not take it for granted and it is critical to the administration of justice. In the role of witness safety, protocols can lead to the public being separated from the trial or the disclosure of information about the victims and their families being withheld.

There are a number of factors to consider when considering whether or not to conduct public trials(Rosalind, 2007). No doubts that there are plenty of circumstances where it is necessary to have closed trials, yet there may be circumstances where parties may mislead the courts to have concealed proceedings in our adversarial justice system.

2. Recommendations

Perhaps As per the travaux preparatoires of the Assistance to and Protection of Victims and Witnesses Act No. 4 of 2015 the motives of the "act" are clear, it can be recommended to have;

- Certain inquisitorial aspects deviating from the typical adversarial system when certain orders like cancellation of bail is made by the courts.
- Allow authorized parties such as the media and general public to witness the court proceedings when trials are heard the Assistance to and Protection of Victims and Witnesses Act No. 4 of 2015 and establish a code/ make amendments to act, to impose liabilities to the witnessing parties to protect the confidentiality of the witnesses.
- Impose legal concepts similar to "pre-trials" when allegations are brought against suspects by the prosecution on intimidations, threats or inducements.
- Impose limitations on the magnitude of involvement by the victims or witnesses on the investigations and other material steps.
- Make amendments to notify to the courts by way of reports, when third parties are involved in the investigations and other material proceedings

3. Conclusion

Travaux preparatoires and the practical implementation of the Assistance to and Protection of Victims and Witnesses Act No. 4 of 2015 denotes that this much needed piece of legislation is enacted with the intention of providing redress to victims and witnesses. Yet it is prima facie clear that there are critical lacunae in this positive legislative enactment contrary to the fair trial concepts which are internationally recognized. There are practical instances to specify that certain parties tend to use the gaps of this legislation to obtain unfettered advantages, if not to impede on the rights of the citizens. Some of the procedural aspects adopted in courts in certain instances paved its way to set negative precedence on the practical application of this enactment, yet again hindering the vital fair trail concepts.

It is therefore vital to address these indicated gaps of the legislation to provide efficient and effective protection mechanism to the witnesses and victims. Incorporating and adopting aforementioned procedural and other recommendations will pave its way to uplift the travaux preparatoires of this piece of legislation uplifting the fair trial concept.

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"Come High Water, Come Hell"; Kinetic Weaponization of Water and the Interplay of International Humanitarian Law and International Disaster Law

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Abstract: *The reverberating effects of mankind's continued harnessing of the destructive potential of water and his deployment of such potential as a weapon in armed conflict, either as a means or a method of warfare, are extensive. Although international law provides, albeit insubstantially, for the protection of persons concurrently affected by armed conflict and disasters, it does not provide explicitly for disasters that are resultant to an ongoing armed conflict. This paper seeks to fill this gap by elucidating the instrumental international humanitarian law framework that implicitly prohibits the deployment of water as a kinetic weapon and the instrumental international disaster law framework that provides for response and relief in the event of disasters eventuated by the kinetic weaponization of water. In exploring the interplay between international humanitarian law and international disaster law pertinent to disasters eventuated by the deployment of water as a kinetic weapon in armed conflicts, the paper justifies why international humanitarian law prevails over international disaster law as lex specialis in the provision of protection for persons victimized by such disasters in armed conflicts.*

Keywords : *International Humanitarian Law, International Disaster Law,* weaponization of water

1. Introduction

The history of man incontrovertibly evinces that mankind is a warring race immanently called to conflict (Adam Fergusson, 1992), and of the innumerable armed conflicts man has engaged in through the three millennia past, water remains an integrant in innumerous wars waged (Peter H Gleick, 2006). The harnessing of the destructive potential of water and its subsequent deployment as a weapon of war by man is a marked exemplification of water as an integrant in armed conflict. Herein, the destructive potential of water comes to be employed as both a means and a method of warfare in the conduct of hostilities in armed conflicts globally, and that notwithstanding the myriad of provisions and prohibitions under international law.

The deployment of water as a weapon in armed conflicts beget multitudinous ramifications that are disastrous in, but unlimited to, the humanitarian paradigm (Camilo Sarmiento and Ted R Miller, 2006) invoking the interplay of international humanitarian law and international disaster law in the context of armed conflict. Ergo, this paper is written with the purpose of elucidating the existent instrumental legal framework, enumerating the provisions and prohibitions under international humanitarian law and enumerating the perplexities and provisions under international disaster law, pertinent to the kinetic weaponization of water in the humanitarian paradigm. The paper is limited to the armed conflicts traceable to the twentieth and twenty-first centuries only.

WATER IN WAR

A trifold classification contrived by the Pacific Institute provides that water as an integrant to conflicts, armed or not, could either be a trigger for conflict, a weapon in conflict or a casualty of conflict (Pacific Institute, 2021). The tactical deployment of water as a weapon in armed conflict, either as a means and/ or a method of warfare, is traceable to the ancient Greeks (AK Chaturvedi, 2013) and the Islamic State post 2012 (Ibrahim Mazlum, 2017) alike. It is posited that water could be deployed as a weapon in armed conflict as one of three classes, namely toxic weapons, deprivatory weapons and kinetic weapons.

Although this paper is centered on the deployment of water as a kinetic weapon, it is acknowledged that transpositions between the aforementioned classes of weapons are an actuality dependent upon the circumstances of the armed conflict, including the calculated and/ or uncalculated changes in the course of the conflict as charted and/ or uncharted respectively by the armed actors that weaponized the water. Such transposition is amply evidenced in the flooding of the Pontine Marshes south of Rome, by the German army in 1944, wherein water deployed as a kinetic weapon through the opening of dykes to obstruct the Allied forces by forcing a flood transposed into a toxic weapon through the deliberate introduction of malaria to the flood water leading to casualties amongst combatants and civilians (Erhard Geissler and Jeanne Guillemin, 2010).

KINETIC WEAPONIZATION OF WATER

The deployment of water as a kinetic weapon entails the targeting, or controlling, of a body of water and the concomitant releasing en masse of such water, thereby deliberately exploiting its inherently dangerous kinetic potential rendering it a weapon in warfare. The isolated targeting of a dam controlled by an adversary in an armed conflict in order to enfeeble such adversary is an exemplification of the kinetic weaponization of water as a means of warfare as evidence in the diversion of the water of the Jubba River in Somalia by Al Shabaab in 2018, forcing the adversary to an undefendable territory by flooding the defendable territory (Christina Goldbaum, 2018). Correspondingly, the sporadic or systematic release of water held in a dam, or series of dams, controlled by an armed actor in an armed conflict as an offensive stratagem intended to impede the belligerent activities of an adversary is an exemplification of the kinetic weaponization of water as a method of warfare evidenced in the control of multiple dams in Iraq and Syria by the Islamic State between 2014 and 2017 (Leith Aboufadel, 2017).

PROVISIONS AND PROHIBITIONS – INTERNATIONAL HUMANITARIAN LAW

The kinetic weaponization of water, as a means or method of warfare, is not explicitly provided for under international law. Natheless, cognate implicit prohibitions pertinent to the conduct of hostilities in armed conflicts exist in international law, notably under the Additional Protocol I and Additional Protocol II to the four Geneva Conventions, and under customary international humanitarian law. The existent provisions implicitly prohibit the kinetic weaponization of water by providing for the release of water as a dangerous force consequent to the deliberate targeting of a work or installation containing such force as opposed to explicitly prohibiting the targeting, or controlling, of a work or installation with the singular intention of releasing the water contained, that has the potential of being a dangerous force, as a kinetic weapon.

Article 56 of Additional Protocol I provides for the consequent kinetic weaponization of water in international armed conflicts. Herein, per

Article 56 (1), Additional Protocol I prohibits works or installations holding dangerous forces, such as dams and/ or dykes, from being the object of an attack regardless of their status as military objectives thereby preventing the release of dangerous forces that could cause severe losses among the civilian population. In an international armed conflict, the attacking of works or installations holding containing dangerous forces in contravention of the prohibition per Article 56 (1) of Additional Protocol I, thereby deploying water as a kinetic weapon, amounts to a grave breach of international humanitarian law, per Article 85 (3) (c) of Additional Protocol I, if the armed actor attacked with the "knowledge that such attack will cause excessive loss of life, injury to civilians or damage to civilian objects, as defined in Article 57, paragraph 2 a) iii)". An extension of the prohibition under Additional Protocol I exists in relation to the attacking of military objectives at or in the vicinity of the aforementioned works or installations thereby prevent similar consequences per Article 85 (3) (c).

Correspondingly, Article 15 of Additional Protocol II provides for the consequent kinetic weaponization of water in non-international armed conflicts. Yet, aberrantly, no grave breaches provision akin to Article 85 (3) (c) of Additional Protocol I exists in Additional Protocol II with regard to non-international armed conflicts. Comparable to the absence of the grave breaches provisions in Additional Protocol II is the absence of the extension of the prohibition on the implicit weaponization of water as a kinetic weapon in the context of non-international armed conflicts s as opposed to that provided per the second limb to Article 56 (1) of Additional Protocol I.

Notwithstanding the prohibitive provisions per Article 56 (1) of Additional Protocol I, an exemption lies with regard to dams and/ or dykes used regularly, significantly and directly in support of military operations in excess of their normal function. The exemption permits the attack on such works or installations if it is the only viable means to terminate such support to the adversary in an international armed conflict per Article 56 (2) (a) of Additional Protocol I. An extension of such permissive exemption under Additional Protocol I exists in relation to the attacking of military objectives located at or in the vicinity of such dams or dykes per Article 56 (2) (c) of Additional Protocol I. The airstrikes by the US led coalition on Islamic State targets in the vicinity of the Mosul dam, Haditha dam and Fallujah dam in Iraq in 2014 is an exemplification of this exemption in praxis (Julian E Barnes, 2014). The exemptions per Article 56 (2) of Additional Protocol I are bound nonetheless by the obligations on precaution per Article 57 of Additional Protocol I and the necessity for the taking of practical precautions to obviate the release of dangerous forces Article 56 (3) of Additional Protocol I. It is noteworthy, and aberrantly so, that a no permissive provisions exist on the implicit kinetic weaponization of water in non-international armed conflicts.

The prohibitions enumerated per Article 56 1 of Additional Protocol I and Article 15 of Additional Protocol II are found in customary international humanitarian law per Customary International Humanitarian Law Rule 42. The rule in customary international humanitarian law reflects the practice of States, as provided through a multitude of military manuals, such as per Paragraph 8.5.1.7 of United States Naval Handbook of 1995, and domestic legislations that deem contravention of the stipulated prohibitions in international armed conflicts and non-international armed conflicts as offences, such as per Section 3 (1) and Section 4 (1) of the Geneva Conventions Act of 1962 of Ireland. The governmental policy of States

further reflects their bearing on the implicit customary international humanitarian law prohibitions on the kinetic weaponization of water, amply evidenced in the expression of the Office of the Human Rights Adviser of the Presidency of the Colombian Republic on "the need for restraint and precaution… with respect to an attack by government troops on a dam in order to dislodge guerillas" (Jean-Marie Henckaerts and Louise Doswald-Beck, 2009).

COME HIGH WATER

The deployment of water as a kinetic weapon in an armed conflict entails divers ramifications that are disasters in their own right or exacerbate a core disaster. Flooding is the single most disastrous ramification of the deployment of water as a kinetic weapon in armed conflict, leading to incalculable losses amongst men and their property caught in the floods; amply evidenced in the destruction caused by the Islamic State through the inundation upstream the Fallujah dam, including the city of Abu Ghraib, consequent to the closing of the dam's floodgates and diversion of its water in 2014 (United Nations Counter-Terrorism Executive Directorate, 2017).

The flooding is compounded by a myriad of resultant ramifications that include, but are not limited to, the transmission of water borne and vector borne communicable diseases as in flooding of the Pontine Marshes south of Rome by the German army in 1944 (Erhard Geissler and Jeanne Guillemin, 2010), the contamination of sources of fresh water, the contamination and/ or devastation of sources of food including livestock, as evidenced in the extensive losses amongst livestock caused by the inundation upstream the Fallujah dam eventuated by the closing of the dam's floodgates and diversion of its water by the Islamic State in 2014 (United Nations Counter-Terrorism Executive Directorate, 2017), infrastructural degradation, and psychological traumatization of the survivors of the floods.

RESPONSE AND RELIEF – INTERNATIONAL DISASTER LAW

The recognized response to flooding and to the concomitant ramifications are provided for under international disaster law. The International Law Commission's Draft Articles on the Protection of Persons in the Event of Disasters of 2016 is the foremost instrument in international law that provides for response and relief in the context of disasters (Robin Geiss and Nilz Melzer, 2021). Yet the Draft Articles is a non-binding instrument and not customary international law unlike the greater body of international humanitarian law and, as the title of the instrument suggests, is comprised of draft articles that are not unanimously ratified by the international community (Giulio Bartolini, 2017).

Draft Article 9 provides that States are to reduce the risk of disasters by taking measures apt to prevent, mitigate and prepare for disasters. Draft Article 9 is complimented by Draft Article 10, imposing a duty upon a State affected by a disaster to "to ensure the protection of persons and provision of disaster relief assistance in its territory, or in territory under its jurisdiction or control". Herein, Draft Article 11 to 17 provide for external assistance in disaster relief with an emphasis on the sovereignty of the affected State.

The Draft Articles is an instrument that comprehensively provides for disasters under international disaster law, yet such provisions are strictly pertinent to the disasters that eventuate in times and contexts of peace. Draft Article 3 Subparagraph (a) Commentary 12 of the commentary to the Draft Articles holds that armed conflicts are not provided for per Draft Article 3 (a). Therein, the Draft Articles remains implicitly impertinent to the disasters

consequent to the deployment of water as a kinetic weapon in armed conflict. It is explicitly provided through Draft Article 18 (2) that the Draft Articles "do not apply to the extent that the response to a disaster is governed by the rules of international humanitarian law", that is in armed conflicts. Draft Article 18 (2) thus mirrors Paragraph 1 (4) of the Guidelines for the Domestic Facilitation and Regulation of International Disaster Relief and Initial Recovery Assistance of 2007 in excluding the provisions of international disaster law to armed conflicts and/ or to disasters that transpire in the context of armed conflicts.

Classification of the armed conflict concerned, and other concomitant circumstances and complications only heighten the inapplicability of international disaster law in armed conflicts, including the kinetic weaponization of water. Herein lies the need to give thought to the interplay between international humanitarian law and international disaster law, especially to provide for the suffering that ensues from disasters in armed conflict, effectuated by the deployment of water as a kinetic weapon or otherwise.

INTERPLAY – INTERNATIONAL HUMANITARIAN LAW AND INTERNATIONAL DISASTER LAW

The disasters that demand giving thought to the interplay between international humanitarian law and international disaster law could be categorized as complex emergencies, which is as the Inter-Agency Standing Committee defined in 1994, "a humanitarian crisis in a country, region or society where there is total or considerable breakdown of authority resulting from internal or external conflict" (United Nations Refugee Agency, 2001). In such complex emergencies wherein disaster is eventuated by the kinetic weaponization of water, the invocation of Draft Article 18 (2) would evince that international humanitarian would be applicable as the lex specialis. Yet, this notion remains rather convoluted for the regime of international law that provides most protection in the context of a disaster consequent to the deployment of water as a kinetic weapon would rely purely on the aggregate circumstances of the armed conflict and crisis in question.

Such complexities are reflected per Draft Article 18 Commentary 9 of the commentary to the Draft Articles, which provides that in situations of armed conflict, "the rules of international humanitarian law shall be applied as lex specialis, whereas the rules contained in the present draft articles would continue to apply "to the extent" that legal issues raised by a disaster are not covered by the rules of international humanitarian law". In that, per Draft Article 18 Commentary 9 of the commentary to the Draft Articles, the Draft Articles would provide cassus ommisus to international humanitarian law "in the protection of persons affected by disasters during an armed conflict while international humanitarian law shall prevail in situations regulated by both the draft articles and international humanitarian law".

The application of international humanitarian law, rather than international disaster law, as the lex specialis to provide for disasters eventuated by the deployment of water as a kinetic weapon in armed conflict is propitious in the provision of protection to those victimized in light of the personal and geographical scopes of application of international humanitarian law. Herein, the personal scope of application of international humanitarian law casts a wider protective net by encompassing the protection of victims of armed conflict, irrespective of whether their victimization is attributable solely to the armed conflict or to a disaster in the context of an armed conflict. The overarching application

of the personal scope of international humanitarian law, as opposed to that of international disaster law which provides for those victimized by disasters in the context of peace, ensures the prioritization of the needs of the civilian population in times of an armed conflict irrespective of circumstances effectuating such needs.

The application of international humanitarian law as the lex specialis in providing for disasters in the context of armed conflicts is apt in terms of the geographical scope of application of international humanitarian law. Upon adoption of a purely functional approach in addressing the complexities concomitant to the circumstances of disaster, such as the collapse of infrastructure, and armed conflict, such as the loss of territorial control, international humanitarian law prevails as the most viable regime that provides for the protection of the victims of combined circumstances, that is the victims of disasters in the context of armed conflict. Moreover, international humanitarian law prevails as the more efficacious regime in providing for disasters and armed conflicts that exists concurrently, including disasters eventuated by the deployment of water as a kinetic weapon in armed conflicts, and that in light of the circumvention of the aforenoted complexities.

An exemplification of the efficaciousness of international humanitarian law as the lex specialis in providing for disasters in armed conflicts is evidenced the provisions for consent to relief operations. Although Draft Article 13 provides for the question of consent of the affected State on the provision of external relief, it remains wholly inadequate for application in the contexts of an armed conflict. Alternatively, the question of consent to relief is provided for in international humanitarian law, yet with a focus on the actualities of the armed conflict, especially in terms of how an armed conflict is classified. Herein, per Article 59 of the Fourth Geneva Convention, international humanitarian law provides for the provision of humanitarian relief by “States or by impartial humanitarian organizations such as the International Committee of the Red Cross” in cases of occupation per Article 59 Paragraph 2 of the Fourth Geneva Convention. Correspondingly, Article 70 of Additional Protocol I provides for the provision of humanitarian relief in the context of international armed conflicts whilst the provisions of humanitarian relief in non-international armed conflicts is provided for per Article 18 of Additional Protocol II with an emphasis on the particularities of such armed conflicts.

COME HELL

The flooding eventuated downstream the river Sutlej in Pakistan by the release of water by India from a dam upstream as recent as August 2019 (Reuters, 2019) evinces that water continues to be employed by man as a means and method of warfare and deployed as a kinetic weapon in armed conflicts regardless of their classification. Yet, notwithstanding such actuality, the predominately prohibitive, and partially permissive, international humanitarian law framework provides only implicitly for the kinetic weaponization of water, that is in consequence to the deliberate targeting of a work or installation containing such force as opposed to explicitly prohibiting the targeting, or controlling, of a work or installation with the singular intention of releasing the water contained as a kinetic weapon.

Since international humanitarian law does not prevail as an explicitly preventive framework providing for the kinetic weaponization of water at present, mankind must rely on the responsive framework of international law to

provide for the disasters eventuated by the deployment of water as a kinetic weapon. Yet, man is nonetheless limited by recourse to international humanitarian law over international disaster law in providing for such disasters. The prevalence of international humanitarian law as the lex specialis in provision of response and relief in the wake of disasters that exist concurrent to armed conflicts remains efficacious as it provides for the unique operational dynamics of armed conflicts and coincidental disasters (Marwan Jilani, 2009). Ergo, international humanitarian law prevails as the framework applicable to the disasters eventuated by the deployment of water as a kinetic weapon in armed conflicts as it better provides for those victimized by such disasters.

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Challenges before forest conservation in Sri Lanka: comparatively analyzing the laws against illegal timber logging

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Abstract*: Deforestation is one of the major environmental crisis faced by many nations. Even so, most of them have successfully face this challenge by practicing effective forest conservation policies. Population growth and the high demand for timber market has adversely affected the rate of deforestation in Sri Lanka as well. Before 1970s, natural forests catered the country's timber requirement. When the Government, declared some natural forests as protected areas, and imposed regulations that banned harvesting timber from unprotected natural forests and restrictions on felling and transport of timber, created an artificial scarcity of timber in the country. This led to illegal timber logging and other forest offences. This research aims to review the laws relating to illegal timber logging in Sri Lanka, to analyze the effective implementation of those policies and to compare Sri Lankan policies with those in Australian jurisdiction to identify how they have achieved better conservation of forests. It further aims to recognize the loopholes prevailing within the Sri Lankan legal framework and to provide recommendations as to how to improve the existing legal regime with regard to timber logging in Sri Lanka for a better forest conservation. The research was conducted using black letter approach using relevant primary and secondary sources as a comparative analysis between Sri Lankan and Australian jurisdictions. The study concludes Sri Lankan legal system is inadequate to prevent illegal timber logging and lacks forest policies to address the issue of deforestation and thereby, recognizes the importance of adopting from Australian standards in order to control deforestation and achieve better forest conservation in Sri Lanka.*

Keywords: *Deforestation, Forest Conservation and Illegal Timber Logging.*

1. Introduction

"A nation that destroys its soils destroys itself. Forests are the lungs of our land, purifying the air and giving fresh strength to our people" - Franklin D. Roosevelt.

Sri Lanka is an island with 65,610 square km land area and blessed with a rich biodiversity. Due to its tropical climate, it is the house for over twenty million people and a rich array of flora and fauna. In the beginning of the last century, Eighty percent of the total land area of Sri Lanka was covered with closed-canopy natural forests. However, it reduced alarmingly over last few decades due to numerous reasons. At the early stage of the decrease, forests have been lost due to the spread of plantation agriculture introduced by the British administration. In the twentieth century, rate of deforestation increased with the expansion of informal settlements due to population growth, national development projects and planned settlement programs of the government and land encroachments. Due to large-scale plantation and excessive harvesting of timber, at present only 25% - 30% of the total land area is covered by natural forests. Thus, it is evident that, forests are

continuously subjected to violation due to numerous reasons such as, agricultural expansion, industrialization, urbanization, large-scale timber extraction and climate change. In Sri Lankan context, the historical pattern of forest utilization began from forest exploitation in 1880. After that timber harvesting during 1880 to mid-1950s, was followed by peak and decline of timber harvesting from mid 1950s to early 1980s, and finally consolidation from mid-1980s. (Ruwanpathirana, 2012) At present, the remaining major forest areas have been restricted to three key regions of the country; Mahaweli River basin and Northern plains, Central hills, and Yala sanctuary in Southeast. In addition, the Forest Department manages around 90000 hectares of forest plantation in Sri Lanka, out of which average 1100 hectares of plantation is released annually to State Timber Corporation for harvesting. According to the Ministry of Forestry and Environment, annual sawn wood consumption per 1,000 persons in Sri Lanka in 1993 was estimated at 31 cubic meters and sawn wood demand in Sri Lanka is projected to grow from 0.544 million cubic meters in 1993 to 0.885 million cubic meters in 2020, at a rate of 12,600m3 per year. (Gunatilake, 2007) MFE predicts with the increasing demand for plywood and other wood-based panels would increase respectively, at rates of 2.8% and 3.5% per year (MFE, 2005) Scarcity of timber in the country led to raise in timber prices and this unfortunately provided incentives for illegal logging from natural forests. Thus, enforcement of regulations that restrict illegal timber logging and implementation of legal framework for an effective forest conservation is necessary. Therefore, this research review the existing forest policies in relation to illegal logging in Sri Lanka to perceive whether the existing laws in Sri Lanka are adequate to control and prevent illicit felling of trees. The Sri Lankan legal framework is compared with the Australian legal framework in order to recognize the shortcomings of the Sri Lankan framework to achieve a better forest conservation.

2. Methodology

The research was carried out as a library research adopting the black letter approach. Black letter approach was adopted because effective access to empirical data was challenging due to limited access to the libraries due to the current situation prevailing in the country. It was conducted by collecting data through primary resources such as relevant legislations, international conventions and judicial decisions and secondary resources such as research articles, books with critical analysis, journal articles and other electronic resources. This research was carried out as a comparative analysis by comparing the Sri Lankan legal framework with the Australian laws. Australian standards were selected due to its comprehensiveness and accuracy in addressing the issue of deforestation and forest conservation, thus enabling these standards to be adapted in to the Sri Lankan legal framework.

CHALLENGES BEFORE FORESTCONSERVATION IN SRI LANKA

Forests are essential for the affluence of living on earth as it provides the substrate for life on earth. In the perspective of human beings, forests provide for many needs and environmental services, which are demanded by the people. It is quite evident that a satisfactory extent of forests should prevail for the existence of life on earth, but the deforestation and forest degradation has endangered the very existence of Forests. Therefore, this loss and degradation of forests no longer concern only the affected nation but also of the global community.

Deforestation is generally referred to as the conversion of forest land in to an alternative none forestland use systems such as agriculture, grazing or urban development. (Kooten and Bulte, 2000) According to the United Nations Framework Convention on Climate Change secretariat, deforestation is caused mainly because of clearing and using land for agricultural purposes. He elaborated further, that subsistence farming is responsible for 48% of deforestation; commercial agriculture for 32%; logging for 14%, and fuel wood removals make up 5% of deforestation. (Ekanayake and Theodore, 2017)

The Government of Sri Lanka owns all the state forests lands and they belong to four classes. Class one forests are preserved forests for it is rich with biodiversity and class two forests are preserved for non-extractive uses while class three and four forests are used for sustainable multiple uses and plantation respectively. According to the 1985 forest inventory report, there are two types of forests in Sri Lanka namely; Protection forests and Production forests. The two main government institutions; 'Department of Forest Conservation' and 'Department of Wildlife Conservation' do management and control of all forestlands. In addition to these, four other institutions namely; 'The Ministry of Forestry and Environment', 'The Ministry of Public Administration, Parliamentary Affairs and Plantation Industries', 'The Ministry of Education' and 'The Ministry of Industries that controls Forest Industries' governs the forestry sector of Sri Lanka.

With the introduction of new administrative and legislative changes, the demand for high and medium yield timber in wet zone forests particularly in low land areas increased. After the creation of the STC in 1968, as a separate arm of the forest department to implement the functions of logging, extraction, sawmilling, and marketing of timber, timber-utilization rates remained low. However, since then the activities of forest department were much focused on reallocation of resources for conservation, afforestation, training, and forestry extension. Forest Department records show that threat of logging is much higher in forest plantations than in natural forests. During the period of 1985 to 1995, an average of 2 000 cases of illicit cuttings were recorded per year, from forest plantations while, only 1 000 cases were recorded from natural forests. Out of these forest plantations, Teak plantations are the most vulnerable to illegal cuttings. Further, volume of timber involved in such cases were recorded about 1 130 m3 per year.

In 1972, due to the public outcry against logging in Sinharaja, halted all commercial timber harvests and the reserve was designated a conservation area with the exception of allowed selective felling in the dry zone forests until late 1998. Then in 1990, a complete ban was imposed by the forest department and the STC, against logging in all natural forests until growing stock is fully recovered. Under this, all logging operations in natural forests and forest plantations require an environmental impact assessment. This ban was imposed in order to preventing further degradation and loss of natural forest cover, rehabilitate forests that have been heavily degraded, protect and maintain biodiversity, maintain environmental and hydrological functions of forests and to preserve recreational, aesthetic and cultural values.

Even though a logging ban was imposed, neither a formal policy revision, enactment of a special legal provision nor amendment to the Forest Ordinance was made regarding regulation of this logging ban. The National Environmental Regulation No. 1 of 1993 through the EIA procedure governs the control and extraction of timber from natural forests

and thus it is in accordance with precautionary principle. However, Sri Lankan legislation lacks many sustainable measures in forest conservation. Therefore, the requirement of mandatory environmental clearance in controlling logging operations of extracting of timber from both natural forests and forest plantations should be applicable not only to forests clearings exceeding five hectares but also to other mass scale clearings as a preventive measures to prevent further such massive destructions of forest cover. Therefore, as the existing system lacks such preventive and precautionary measures controlling these illicit felling, even at present, illegal cutting in natural forests occurs in large scale. According to the forest offense records by the forest department's in 1993 revealed 639 offenses of illegal harvests that produced 706 m3 of timber from the natural forests. (Asia- Pacific Forestry Commission, 2001)

SRI LANKAN FOREST POLICIES REGARDING FELLING OF TREES AND ILLEGAL LOGGING

During ancient times, the village community lived in harmony with the neighboring forest environment and had its own privileges and a good deal of self-administration. (Zoysa, 2002) The establishment of rules and regulations for the felling of trees can be dated back to the King Mahinda IV period of 972 to 959 BC. (Zoysa, 2002) Later inscriptions belonging to Pollonnaruwa Kingdom also proves that there were rules against illegal logging of fruit bearing trees such as coconut and Palmyra.

Exploitation of timber was first instituted through the adoption of Felling Rules In 1835. With the enactment of Timber Protection Act No 6 of 1878, a standard system to enforce laws against felling and logging of trees was introduced. In 1879, system for issuing Timber-cutting licenses and its management was introduced. However, Timber Protection Act only remained in effect for seven years. After that, basing on the observations made by scientist D.A. Vincent in his report submitted to the government of Sri Lanka in 1882, the Forest Ordinance No 10 of 1885 was enacted repealing Timber Protection Act No 6 of 1878. With the enactment of the Forest Ordinance No 10 of 1885 enabled the declaration of reserved forests, sanctuaries and controlled the felling and transport of timber. However, forest conservation and forest management took a scientific approach only after the introduction of Forest Ordinance No 16 of 1907.

At present, the legislation that governs the illegal logging and felling of trees is the Felling of Trees (Control) Act No 9 of 1951. The Government in 1953 introduced a comprehensive sectoral forest policy with the aim to maintain a sustained yield of timber and other forest products for general housing and industrial requirements. By the 1986 Forestry Master Plan, introduced a moratorium on logging operations in natural forests in the wet zone. As a result, a 'Forestry Sector Development Project' was launched in 1990, which enabled the establishment of an 'Environmental Management Division' in the Forest Department. Subsequently, a logging ban was imposed in all natural forests including the Sinharaja Forest, after it being declared a national heritage under the National Heritage and Wilderness Areas Act No 3 of 1988.

Offences in relation to reserved forests has been described in the part II of the Forest Ordinance No 16 of 1907 by the sections 6 and 7 under prohibited acts. Section 6 (b) states, any person who in a reserved forest, causes any damage by negligence in felling of any tree, or cutting or dragging any timber, shall be guilty of an offence, and be liable on conviction to imprisonment or to a fine or for both fine and imprisonment. Further, by section 7 (1) (a) makes any person who makes a fresh

clearing in a reserved forest, guilty of an offence and be liable on conviction. Section 7 (1) (d) states, any person who fells, cuts, saws, converts, collects, removes or transports any trees or timber or collects, removes or transports any forest produce or has in his possession, custody or control any tree, timber or forest produce shall be guilty of an offence and be liable on conviction. However, by section 8 (1) excludes any person from such liability for the prohibited acts prescribed in sections 6 and 7, if such act is done with the prior permission of a forest officer or done in accordance with a regulation made by the minister will be excluded from this liability. Forests offences relating to village forests are described by the part III of the ordinance. Section 14 prohibits from 'any person from removing any tree enumerated in the schedule one. Part IV of the ordinance regulates of the protection of forest and forest produce. Section 19 it prohibits any person from cutting , marking , lopping or injuring , by fire or otherwise, of reserved tree in any forest, except with the leave of rules made by the Minister in this behalf, or by permission in writing of a forest officer empowered by the Minister to grant such permission.

The Act No 30 of 1953 and Act No 1 of 2000 have amended Felling of Trees (Control) Act No 9 of 1951. Subsection 1 of section 2 provide Minister the power to make Orders prohibiting or regulating the felling of trees and making orders regarding issuing of permits. Further subsection 2 of section 2 states order made under this section, will have effect either throughout Sri Lanka or in any particular area in Sri Lanka, and may prohibit the doing of anything regulated by the Order except under the authority of a license granted by such officer as may be specified in the Order. As amended by the Act No 1 of 2000, section 4 provides for the Penalty for contravention of any order made under this act. It states, any such person act in contravention of order shall be guilty of an offence, and shall be convicted after summary trialed by a Magistrate. In addition, he will be liable to a 'fine not less than five thousand rupees and not exceeding fifty thousand rupees or to imprisonment of either description for a term not less than six months and not exceeding one-year or to both such fine and imprisonment. By section 4(2) states upon the conviction of any person for an offence under subsection (1), any tree or part thereof in respect of which such offence has been committed shall, by reason of such conviction be forfeited to the State. According to subsection 4 of section 4 an officer designated in writing by the Conservator of Forests shall take charge of any tree or part thereof vested in the State, and shall dispose of it in accordance with the directions of the Conservator of Forests. However, with the exception of Jak Fruit, Bread Fruit and Palmyra trees owned by the private landowners, this act does not impose a restriction on cutting down trees in the private lands by their owners. Further, the act does not make it mandatory to have a license for cutting down trees that are excluded from the above restricted category unless they to be transported.

As opposed to this view, the National Environment Act No 47 of 1980 makes it mandatory to have a license in cutting down trees even from the privately owned lands. Under the section 21 of the act, states the national environmental authority shall in consultations with the national environmental council with the assistance of the Ministry shall recommend to the Minister a system of Management policies for forestry.

AUSTRALIAN FOREST POLICIES REGARDING FELLING OF TREES AND ILLEGAL LOGGING

The world's attention was directed to the wide-ranging detrimental effects of illicit logging of

trees when the G-8 raised the issue in 1998, and launched an Action Program on Forests. In 2005, the G-8 Environment and Development Ministerial Conference prepared a plan of action, subsequently adopted by G-8 leaders, for reducing illegal logging activity and trade of illegally sourced timber.

Australia's Illegal Logging Prohibition Act No 166 of 2012 was implemented in order to regulate illegally logged timber and timber products. According to a 2005 study by JP Management Consulting for the Australian Government, Australia is a significant importer of wood products (AUD$ 4.4 billion in 2014) of which up to AUD$ 400 million come from sources with some risk of being illegally logged. (Pepke, 2015) According to AILPA, illegally logged timber is defined as timber, harvested in contravention of laws in force in the place (whether or not in Australia) where the timber was harvested. Section 8 and 9 of the AILPA considers "intentionally, knowingly or recklessly" importing or processing illegally logged timber a criminal offense. The Act covers timber harvested both nationally and internationally in compliance with World Trade Organization rules, like the European Union Timber Regulation. Further, the Act is designed to complement United Sates Lacey Act Amendment.

This legislation only focuses on requirements of Australian businesses, whereof both importers and processors are required to practice and prove due diligence. Australian businesses must practice due diligence to assess and manage the risk that the timber or timber products they are importing for processing has been illegally logged. Part II of the Act states the regulations must prescribe due diligence requirements for importing regulated timber products. Such requirements must be prescribed only for the purposes of reducing the risk that imported regulated timber products are not made from illegally logged timber as per section 14 (2). Further, section 13 makes it mandatory for Importers to submit a declaration to the Custom Minister at the time of import to declare that due diligence has been undertaken. Part III of the AILPA provides for the requirements for processing raw logs with due diligence.

In addition, AILPA has established comprehensive monitoring and investigation powers to enforce the requirements of the Act. Part IV of the act has laid down legal provisions governing appointment of inspectors, monitoring and investigation. According to section 22, an inspector may enter any premises and exercise the monitoring powers for determining whether this Act has been, or is being, complied with or determining whether information given in compliance, or purported compliance, with this Act is correct. Such entry must be with the consent of the occupier of the premises or under an investigation warrant. Further, as per section 27 inspector may take assistance from other persons in exercising powers or performing functions or duties, if that assistance is necessary and reasonable. Maximum penalties imposed by the AILPA for the importation or processing of prohibited products are five years' imprisonment and or fine of USD$ 55 000 for an individual and or USD$ 275 000 for a corporation.

COMPARATIVE ANALYSIS AND LESSONS TO BE LEARNT

Sri Lankan logging ban was imposed without any formal policy statement or amendments to the existing forest policy. It was implemented with the directive provided by the Ministry Of Lands, Irrigation and Mahaweli Development in 1990 to the forest department. However, the Australian legislative enactment has been in force since 2012. Further, when compared to the AILPA, Sri Lankan legislations are not been

updated for a long period. With the new developments in the technological and scientific fields, environment has undergone many novel challenges. This development in the technological fields has adversely affected all aspects of the environment. Thus, legal regime governing the environment should amend accordingly to counter these adverse impacts. In that regard, while the AILPA amended several times in 2013, 2015 and 2018, the forest conservation legislations in Sri Lanka has lastly amended in 1900.

Even after the implementation of the logging ban in 1990, some of the natural forests in the Mahaweli Development area was subjected to continuous clearing due to the development purposes until late 1996. In addition, the areas along roads in northern and eastern parts of the country were excluded from the effect of the ban under the clearance for security reasons. Therefore, logging by STC has continued by the prior approval of the Forest Department at the request of the defense institutions.

When compared to Australian legal framework, Sri Lanka lacks effective enforcement of the law due to lack of monitoring and investigating system regulating such enforcement. As provided by the part IV of the AILPA, it has laid down legal provisions governing appointment of inspectors, monitoring and investigation.

3. Recommendations

Thus, it is evident that, a robust law enforcement mechanism is vital in order to conserve the Sri Lanka`s forests against these adverse impacts of illegal timber logging. These multitudes of legislations governing protected areas should be amended to make effective use of those forest policies. In addition, offences relating to forests should be made cognizable and should incorporate legislative provisions in relation to illegal logging and forest conservation and other matters to be dealt with in a timely manner, in order to ensure that all the adversities could be countered and addressed with this evolving nature of threats. Moreover, penalties and fines imposed should be made vigorous and increased according to the monetary values in the present day to ensure that the parties understand the seriousness of their actions towards the environment and to make sure such offences are not repeated.

Appropriate policy and legislative framework regulating the logging ban should be developed for an effective implementation of the logging ban. As mentioned above, the logging ban has been instituted by the order of the Ministry of Lands, Irrigation and Mahaweli Development in 1990, without any formal policy statement or an amendment to the existing forest policies. Therefore, appropriate policies with functional and clearly defined conservation goals have to be introduced. Further, development of suitable institutional sector, other than the forest department and STC have to be established for regulation and monitor of these policies. In this regard, political will, the support of the Government and their commitment would be necessary for a successful and effective implementation of the logging ban. Survey and demarcation of the forest boundaries is essential to prevent illegal felling and encroachment. Along with the increase in population, many forests lands have been encroached for residential and agricultural purposes. These illegal encroachments have led to reduction of forest cover in both reserved and other conserved forests. In order to control and minimize these illicit felling and encroachment, programs have to be prepared to conduct surveys and demarcate the forest reserves and other State forests.

Development of non-forest wood resources along with forest plantations can act as viable alternative to timber from natural forests. Incentive schemes prepared by the Government can encourage the private sector to establish forest plantations and plant trees in home gardens and agroforestry systems. Such an arrangement would be beneficial as it would reduce the current market demand of the timber and timber products and thereby, minimize the illegal logging and other illicit felling in the natural forests.

Adequate resources for forest protection and law enforcement would be a necessary mandate for the effective law enforcement. In order to provide a better forest protection against illegal felling and encroachment, to the island wide natural forestry sector, the number the number of field staff from the DWLC and the Forest Department has to be increased. Furthermore, they should be provided with proper training to enhance and strengthen their law enforcement capabilities.

Another improvement to for a sustainable forest management could be the development of an appropriate monitoring system. Development of criteria and indicators constitute an important aspect of the sustainable forest management. Although there have been several international initiatives on the development of criteria and indicators, Sri Lanka should place much emphasize on enforcement of such mechanism.

Efficiency of the forest industries should be improved to raise the productivity in sawmill sector and other timber producing sectors. Old and inefficient equipment that has not been designed for small-dimension logs, and inadequate management and labor skills, are major problems faced by the forestry sectors at present. Thus, it has resulted in low recovery rates and poor overall productivity, particularly in the sawmill sector. Therefore, in order to reduce the waste produced, the efficiency rates of the wood-processing technologies should be enhanced.

Lastly, for an effective enforcement of logging ban and other forestry policies, political and public awareness of these policy implementations is of utmost importance. For the enforcement of any regulation governing the environment or protection of forestry sector in particular, the decision makers or the legislative bodies need to be familiar with the benefits of such forest conservation. The current extension and awareness programs implemented by the Forest Department, Department of Wildlife Conservation, and Non-Governmental Organizations should be strengthened and expanded to cover all levels of the target groups. Furthermore, the community participation in forest management would be beneficial in effective implementation of forestry policies. The National Forest Policy recognizes that the State alone cannot protect and manage the forests effectively. In this regard, people's participation in forestry development and management should be promoted as one of the main strategies for forest conservation.

4. Conclusion

Sri Lanka is an island with 65,610 square km land area and blessed with a rich biodiversity. Due to its tropical climate, it is the house for over twenty million people and a rich array of flora and fauna. According to the forest cover map presented by the forest department in 1992, two million hectares were covered by natural forests out of its total land area of six point five million hectares. However, over the past few decades due to rapid growth of population, illicit cutting of trees, encroachments, clearing of lands for agricultural purposes and plantations has

contributed to the significant drop in forest cover. Therefore, it is important that the relevant stakeholders understand that, if these adverse impacts continues to grow, it will be unstoppable both in the short and long term, as those repercussions can immediately affect in the decline of biodiversity, wildlife, stability of local weather and ultimately risks our own quality of life.

When comparing to the Australian standards it was evident that the Sri Lankan legal framework is inadequate to address the issue of deforestation due to illegal logging activities and felling of trees in both natural forests and plantations. As discussed above the existing legislative provisions governing illicit logging and the logging ban imposed are not adequate in effective conservation of forests in Sri Lanka. Thus, Sri Lanka needs to implement timely concerned forest policies and effective monitoring system to address these adverse impacts on the forest conservation. The study recognize the importance of establishing a system to regulate and monitor the logging ban and other illicit cuttings by relevant authorities. In this regard, the study recommends amendment of the existing legislature and implementation of a more coherent, stringent and an effective legal framework to achieve a better forest conservation

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The National Environmental Act 1980

The National Environmental Act 1988

The National Environmental Act 2000

Abbrevations and Specific Symbols

DWLC- Department of Wildlife Conservation

EIA – Environmental Impact Assessment

MFE- Ministry of Forestry and Environment

STC - State Timber Corporation

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Futurama: Robot Rights and the Law

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Abstract*: Artificial intelligence (AI) has been a growing concern among humans. 'Sophia' the humanoid being granted citizenship of Saudi Arabia in 2017 points to a future where science fiction might not be a faction of human creativity but also a reality. The most recent incident of the AI chat bot 'LaMDA' developed by Google that took the world by storm in 2022 underscores the relevance of this research to modern times. This research is aimed at distinguishing robot rights from human rights, ascertaining the viability of recognising robots as a separate legal entity, analysing the existing legal regime governing AI to find issues, and proposing a way forward when dealing with legal issues that might arise in the future. This study is a library research based on secondary sources such as scholarly articles, policy directives, literature surveys and other on-academic resources. The study was limited to AI, more specifically, stages III and IV of AI. The authors have also limited the discussion to the cases of 'Sophia' the humanoid and 'LamDA' the AI chatbot. Moreover, the scope of legal analysis was limited to the European Union laws. This study identifies inherent problems in extending biological connotations to robots, equating robots to animals and imposing corporate liability schemes on robots. Therefore this study finds that AI driven autonomous robots should be recognized as a separate legal entity and conferred an electronic personhood that stands in between human rights and inferior rights such as animal rights*.

Keywords: *Artificial intelligence, robot rights, human rights*

1. Introduction

History was made in 2017 when Sophia, the humanoid driven by artificial intelligence (AI) received citizenship in Saudi Arabia (Tavani, 2018). Many condemned this act, depicting it as an erosion of human rights and it became a laughing stock since Saudi Arabia already had reservations about equal rights for women (Hart, 2018). Sophia is not the only popular humanoid. Junko Chihira, Erica, and Geminoid DK are a few that top the list (Destiny Robotics, 2022). There are four main classes of AI robots: reactive machines, limited memory, theory of mind, and self-awareness (Lateef, 2021). Sophia and other humanoids are essentially reactive machines with limited memory, whereas Google Assistant and Alexa are limited memory bots. Theory of mind and self-aware robots are still a work in progress and currently research is being carried out. In several recorded incidents, humanoids have expressed their keenness to dominate the human race (Caballero, 2018). Some have even pledged loyalty in the event of an AI uprising to protect the humans (Halkon, 2015). On one occasion, when two AI chatbots were allowed to converse with each other, after a while, both bots opted for a language they were not programmed to communicate with each other (Arti, 2021). Most recently, in July 2022, the story of Blake Lemoine, an engineer at Google, took the world by storm. He was put on paid leave for calling an AI chatbot he was developing named, "LaMDA '', 'sentient.' Lemoine used a transcription of the conversation he had with the bot where

LaMDA has allegedly expressed its desire to be treated as a person, to learn more about the world and that it is aware of its existence and that it feels happy or sad at times (Lemoine, 2022). The argument that this being the first step towards AI-Armageddon could be far-fetched. However, the new dimension of robot rights and its legal implications should be taken seriously.

2. Methodology

This research is futuristic and exploratory and both theoretical and applied in nature. The existing theories and concepts have been tested by deductive reasoning and the research opts for a positivist approach aiming to work out the theories and their applicability to humans as a species. This is primarily qualitative research utilizing library and online research tools. A wide range of literature has been used including academic sources such as books, policy directives, legislations, reports, journal articles, literature surveys, and non-academic sources such as blogs, online newsletters, and online articles.

3. Discussion

Many reasons have been brought into discussion for granting distinguished rights for robots. The technological development of robotics together with AI, has demonstrated that robots are no longer mere machines or tools. Humanoids such as Sophia, Junko Chihira, Erica, Geminoid DK, and advanced applications like LaMDA epitomise properties of moral personhood including consciousness, intention, and rationality in robots in real life. In contrast, legal scholars have challenged the recognition of robot rights on jurisprudential, normative, and practical grounds (Tavani, 2018). This study intends to distinguish robot rights from human rights, ascertain the viability of recognising robots as a separate legal entity, analyse the existing legal regime governing AI and its loopholes, and suggest recommendations.

A. Distinguishing Robot Rights from Human Rights.

Technology has advanced into creating robots who can learn and gain experience as they interact with human beings. Even the appearance and facial characteristics of these robots are identical to a human. Sophia for example, who is a humanoid robot, has been recognised as a legitimate citizen of Saudi Arabia. Further, she was screened in famous media interviews and she appeared in two major events organised by the United Nations (UN). Being the first robot in the world to hold citizenship status, her intention is to be a robot ambassador between human beings and robots (Walaa, 2019). A survey conducted by De Graaf (2022) exhibited certain human rights derived from the Bill of Rights and attempted to underpin connotations of the rights that a robot should possess in light of human rights (De Graaf, Hindriks and Hindriks, 2022). In that study, they state that the right to 'self-determination' as identified in the International Convention of Economic Social and Cultural Rights (ICESCR), is similar to the right that robots should be conferred as a 'right to make their own decisions for itself'. Similarly, Chopra and White (2004) identified the 'right to energy' in the case of robots synonymous with the 'right to food' of humans that is essential for robots to function and sustain operations (Chopra and White, 2004). De Graaf (2022) further argues that similarly, several rights in the International Covenant on Civil and Political Rights (ICCPR) can be integrated into the realm of rights of robots.

Advancing this argument further, Carl Wellman (Wellman, 1999) argues, classic freedoms and rights such as equality and equity before the law, freedom of expression,

right to life and right against torture can be fitted with few amendments to certain words such as 'life' and 'human' to avoid strong biological connotations. Further, the proposed inter-governmental agreement of The Declaration on Animal Rights (DAR) of the UN identifies certain rights of animals (non-human). It protects the rights against 'killing' or being 'slaughtered'. DAR leaves legal footprints to follow and identify the rights other than human rights. The terms 'killing' and 'slaughtering' can be modified as 'terminated indefinitely' in the context of robots. However, Tyler Jaynes argues that modelling robot rights in the same way as identical to other rights may not fulfil the proper purpose of such rights. In support of the above argument, he points out that switching off a robot by disconnecting its power does not match death in the human context as its personality is restored once power is restored (Jaynes, 2019).

Further, a company once legally incorporated receives legal personality and certain rights similar to human rights i.e., natural persons. It includes the right to be sued and to be sued under the company's name and also to possess and own properties. David Ciepley states that a corporation is an artificial being, invisible, intangible, and existing only in contemplation of the law. Therefore, it is apparent that traditional understanding of rights in comparison with those of humans' is an obsolete legal argument (Ciepley, 2013).

However, Darling argues that having a humanlike appearance is an insufficient ground to recognise robots' rights on the same footing (Darling 2016). Also, even if AI robots possess human-like abilities once developed to a certain level of sophistication to become rational, intelligent, autonomous, conscious and self-aware, it is erroneous to define robot rights under the human rights umbrella. Miller develops his arguments in support of this and states that AI robots are created for a particular purpose. (Fleming Miller, 2015) Therefore, robot rights are distinguished by nature from human rights, animal rights and corporate rights. Further, Miller argues in support of his argument based on ontological differences such as moral rights and cognitive capabilities taking the 'Social Relational Approach.' In the social relational approach, the moral standing of robots will be decided by the social relationship between humans and robots (Gunkel, D. J., 2014). Therefore, as the European Union's (EU) Committee on Legal Affairs (2016) suggests, it is evident that even the most sophisticated autonomous robots can have the status of 'Electronic Persons' with specific rights and obligations which calls robots to be treated as a different legal person.

B. Ascertaining the Viability of Recognising Robots Rights as a Separate Legal Entity.

This part of the study commits to answer the question 'Can and should robots have rights?' If that is so, should they be identified as a separate legal entity? Robot rights have been in discussion from the inception of the concept of robots dating back to the 1920s. Rights are the entitlements to perform certain actions or to be in a certain status (Leif Wenar, 2022). According to Wenar, the term 'right' consists of basic components: 1) claims, 2) powers, 3) privileges and 4) immunities. Technological advancement in AI in the process of developing human-like robots, the traditional understanding of rights of robots have evolved to a great extent. AI in robotics is elevated from Artificial Narrow Intelligence (ANI) to Artificial General Intelligence (AGI) and now, Artificial Super Intelligence (ASI).

Two studies conducted on this topic have (Annexure A and Annexure B) proposed that robots should possess their own rights which

stem from human rights, corporate rights and animal rights. The grounds to justify that humanoid robots with AGI and ASI technology are, 1) the moral standings of robots as a human-like machine, 2) the social rationality of AI robots when interacting with human beings, and 3) the purpose that they are created for. Although, robots still need to undergo many improvements and developments to become as intelligent as human beings. The achievements and developments in robots like Sophia – the world's first robot citizen and the first robot ambassador for the UN - have shown their potential to be as smart as human beings, if not more in the future. Therefore, recognising a robot as a separate legal entity preserves its rights as a robot and imposes legal obligations and liabilities on robots when interacting with human beings. Such regulation would enable better control over humanoids.

C. Existing Legal Regime Governing Artificial Intelligence

AI and its legal implications are downright problems of developed states. It is a known fact that in many developing states there are many issues pertaining to basic human rights let alone the issue of not having the digital infrastructure to research and develop AI. Nevertheless, regional organisations such as the EU have decided to regulate AI before it outgrows the current laws and such regulation shows foresight (Wurah, 2017).

The EU has one of the most robust legal frameworks and in 2017 the legal committee of the EU Parliament voted in a report to create laws to regulate robotics and AI. The EU report has numerous proposals, *inter alia*, mandatory requirements of equipping all autobots with 'kill switches', insurance schemes that cover damages done by robots and the creation of an electronic personhood to grant rights and responsibilities to sophisticated androids (Hern, 2017). Mady Delvaux's report (2017) on Recommendations to the EU Commission on Civil Law Rules on Robotics underscores the need to create an ethical guideline for the development of AI and a liability scheme applicable to robots (European Committee on Legal Affairs, 2017, p.6).

Delvaux makes five important recommendations to drafting this new liability scheme: 1) creating a legal definition for 'smart autonomous robots' (European Committee on Legal Affairs, 2017, p.20), 2) creating a registry of robots in the public domain that is freely accessible (European Committee on Legal Affairs, 2017, p.20), 3) creating an Agency with the technical, ethical and regulatory expertise to support the relevant public actors (European Committee on Legal Affairs, 2017, p.28), 4) creating a Charter for Robots, in compliance with the EU Charter of Fundamental Rights, consisting of Codes of Ethics for the conduct of robot engineers and research, licensing and use (European Committee on Legal Affairs, 2017, p.28), and 5) imposing civil responsibilities on robots. The more instructions given to a robot and higher the autonomy, the greater the responsibility placed on the robot (European Committee on Legal Affairs, 2017, p.17). The author suggests that all parties involved in bringing the robot alive must take responsibility. In case damages were caused by the robot, by the inclusion of electronic personhood and mandatory subscription to an insurance scheme, the robot would be liable to pay damages (European Committee on Legal Affairs, 2017, p.20).

In April 2021, The EU Commission proposed an AI Act namely, "Laying down harmonized rules on AI and amending certain Union legislative Acts." Much like the EU's General Data Protection Regulations (GDPR) of 2018, the EU AI Act is creating waves internationally and it has the potential of becoming a global

standard. However it can be observed that it is *prima facie* anthropocentric, which is not necessarily bad or harmful. It is just that all the discussions that went on since 2017 about recognizing the electronic personhood of robots as a separate legal entity are not encapsulated in the proposed AI Act. Therefore, a question is posed whether the initial praise received for the foresight of the EU in recognising the potential of AI outgrowing the existing legal regime was in vain. The proponents lay down FOUR specific objectives for the newly proposed Act: 1) ensure that AI systems placed on the Union market and used are safe and they respect existing law on fundamental rights and Union values; 2) ensure legal certainty to facilitate investment and innovation in AI; 3) enhance governance and effective enforcement of existing law on fundamental rights and safety requirements applicable to AI systems; and 4) facilitate the development of a single market for lawful, safe and trustworthy AI applications and prevent market fragmentation (AI Act, p.3). The choice of the new instrument is justified mainly by the need for a uniform law including the definition of AI, the prohibition of certain AI enabled harmful practices and the classification of certain AI systems (AI Act, p.7). Besides a narrow, precise and clear definition of AI, many stakeholders have requested the EU Commission for the definitions of 'risk', 'high-risk', 'low-risk', 'remote biometric identification' and 'harm' (AI Act, p.8). Among such stakeholders, most contributions were received from business organisations and the rest were academic institutions, public authorities and civil societies (AI Act, p.8). Needless to say, the proposal for new rules would not have exceeded basic, near and tangible realities.

The scope of the new laws are limited to placing AI systems on the markets, putting them to service and use (AI Act, Title I). Title II of the Act establishes a list of prohibited AI practices following a risk based approach. It is aimed at differentiating the uses of AI that create 1) an unacceptable risk, 2) a high risk and 3) low and minimal risk (AI Act, Title II). In line with the risk-based approach, Title III of the Act contains specific rules for high-risk AI systems that pose risks on the health and safety or fundamental rights of natural persons. A high-risk AI system is classified according to its intended purpose. It does not only depend on its function but also on the specific purpose and modalities for it is used (AI Act, p.13).

In the totality of the Act, the term robot occurs only in a handful of places. On page 24 of the proposed Act, the proponents acknowledge robots becoming increasingly autonomous. Particular relevance is placed on the adverse impacts of high-risk AI on fundamental rights guaranteed by the EU Charter: the right to human dignity (Article 1), right to protection of personal data (Articles 7, 8), non-discrimination and gender equality (Articles 21, 23), freedom of expression (Article 11), freedom of assembly (Article 12), right to a fair trial and the presumption of innocence (Articles 47, 48). Apart from basic rights, special rights such as workers' rights and the right to fair and just working conditions (Article 31), right of consumer protection (Article 28), rights of the child (Article 24), rights of disabled persons (Article 26) and the right to environmental protection (Article 37) have also been placed a similar importance. Few restrictions are also imposed by the proposed Act particularly on the right to conduct business (Article 16) and the freedom of art and science (Article 13) in the interest of public health and safety and to mitigate the infringement of other fundamental rights. Title IV of the Act confers transparency obligations for AI systems that 1) interact with humans, 2) are used to detect emotions or association with

social categories based on biometric data, or 3) generate or manipulate data (deep fakes). However, the Act assures that increased transparency obligations will not disproportionately affect intellectual property rights (Article 17), as the necessity of information will be minimized to the extent that the right of an individual to an effective remedy will be ensured (AI Act, p.11). Title V of the Act provides measures to regulate AI through competent national authorities by establishing regulatory sandboxes while Titles VI, VII and VIII addresses governance and implementation of the Act at the national level. The Act also urges non-high-risk AI providers to establish codes of conduct with voluntary commitments such as environmental sustainability, ensuring accessibility for disabled persons and stakeholder participation, etc. (AI Act, Title IX). Final provisions of the Act are dedicated to emphasize the obligation of all parties to ensure confidentiality of information, rules for the delegation of power and the Commission's obligations (Titles X, XI and XII, AI Act).

4. Conclusion

Robotics technology has been growing by leaps and bounds. However, the question remains, "Are we ready for the future that awaits us?" In a world where humans are not the only species that has the ability to self-determine, humans have to ensure laws and regulations are in place to prevent AI from outgrowing the existing system. To impose liability, there must be rights conferred at the outset for liability implies rights and *vice versa*.

There are mainly THREE schools of thought for conferring rights to robots. Scholars from the first line of thought have attempted to draw similarities between human rights and robot rights e.g. by equating the human right to food with the right to energy of a robot. Moreover, some have even argued that human rights such as the right to self-determination, right to a fair trial and the freedom of expression are attributable to autonomous AI driven robots. Some scholars have argued that biological connotations of human rights should not be extended to robot rights. Thus, attempting to equate robot rights with human rights only circumscribes the entire scope of robot rights. The second school of thought attempts to compare robot rights with those of animals. Evidently it has not yielded better results either. Animal rights such as the right to not be killed or slaughtered is not attributable to robots since robots can be restored by restoring their power. Mere kill-switches serve no purpose to that end. The third school of thought attempts to attribute corporate personhood to robots. It is true that a corporation is also artificially made and is intangible, invisible and only exists in contemplation of the law. However, robots are arguably more sophisticated. Corporate liability schemes and the corporate veil cannot overlap with AI driven autonomous robots.

Finally, the problem boils down to whether robots should be granted rights by recognizing electronic personhood as a separate legal *persona* i.e., the new fourth school of thought. To reiterate, recognising robot rights as a separate legal entity preserves their rights as robots and imposes legal obligations and liabilities on robots when interacting with human beings. Such regulation would enable better control over AI driven autonomous robots. The report prepared for the EU by Mady Delvaux in 2017 proposed to draft a liability scheme for robots that clearly defines 'smart autonomous robots,' Other recommendations include creating a public registry of robots and a Charter for robots in compliance with fundamental rights and imposing civil liability on robots. None of the recommendations have been implemented to date. Even the newly proposed AI Act of 2021

has only managed to touch the basic, near and tangible realities and failed to recognize the electronic personhood of robots. There is no global standard for the regulation and governance of autonomous robots and associated AI technologies. Thus, the existing laws are inadequate for the future.

It is strongly recommended that the 2017 EU report on the regulation of robotics and AI be implemented. EU directives have thus far served as a policy stronghold and much like the EU GDPR creating strong waves internationally, it will help create a global standard for the regulation of AI driven autonomous robots. Furthermore, in recognizing the rights of robots, it must not be held equal to human rights nor at the level of inferior rights such as animal rights. Electronic personhood should be placed somewhere in the middle.

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The Application of the Strong Precautionary Principle: Suggestions for Sri Lanka

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Abstract: *The precautionary principle is a widely accepted and applied principle in Environmental Law. Academic literature recognizes two formulations of the precautionary principle: strong and weak. This research seeks to defend the strong precautionary principle based on Earth jurisprudence and to lay down suggestions to change the judicial attitude in Sri Lanka in the application of the precautionary principle while comparing the Sri Lankan judicial stance in this regard with that of India. The research is carried out using the black letter approach and the international and comparative research methodologies. This research would provide a guide to ensure that the precautionary principle is best utilized against human activities affecting the environment in Sri Lanka. It would also contribute to filling a long-felt lacuna in the existing literature on an in-depth discussion on the application of the precautionary principle in Sri Lanka*.

Keywords: *The precautionary principle, earth jurisprudence, strong version of the precautionary principle*

1. Introduction

The precautionary principle is based on the argument that it is better to foresee and assess environmental damage and take measures to prevent or mitigate it. Thus, the precautionary principle stands against letting environmental damage take place and seeking measures to remedy the damage. Academic literature recognizes two formulations of the precautionary principle: strong and weak. The strong formulation of the principle demands that precautionary measures must be adopted even where it cannot be shown that the activities are likely to produce significant harm and requires the proponent of an activity to bear the burden of proving that the proposed activity is environmentally benign. The strong precautionary principle is neither well-received nor well-favoured in the academic literature. This research seeks to defend the strong precautionary principle in light of the Earth jurisprudence and to lay down suggestions to change the judicial attitude in the application of the precautionary principle in Sri Lanka while comparing the Sri Lankan judicial stance in this regard with that of India.

2. Methodology

This research is carried out using a combination of two methodological approaches: the black letter approach and the international and comparative research methodology. The research selected India to make comparisons with Sri Lanka since the Indian judiciary has always been a pioneer in the adoption, application, and development of innovative legal approaches for the protection of the environment.

STRONG PRECAUTIONARY PRINCIPLE

The best method to explain the strong precautionary principle is to make a contrast between the recognition of the precautionary

principle in the Rio Declaration (1992) and the Wingspread Declaration (1998). According to Rio Declaration, '[i]n order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation'. Accordingly, regulation cannot be denied solely on the basis of a lack of decisive evidence of the harm (Sunstein 2003, p. 1012). However, in order to be qualified as a harm worth precautionary measures, it must be either serious or irreversible.

By contrast, Wingspread Declaration holds, '[w]hen an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically. In this context, the proponent of an activity, rather than the public, should bear the burden of proof.'

Accordingly, while Rio Declaration stipulates precautionary action where there are 'threats of serious or irreversible damage', Wingspread Declaration emphasizes two things: (1) precautionary measures must be adopted even where it cannot be shown that the activities sought to be undertaken are likely to produce significant harms. (2) the proponent of an activity, rather than the regulatory authorities, should bear the burden of proving that his activities are environmentally benign. Sunstein adds further and holds that under this approach, regulation is required even where the costs of such regulatory measures are high (Sunstein 2003, p. 1018).

The formulation of the principle adopted in the Rio Declaration is termed the 'weak precautionary principle' while the Wingspread approach is widely recognized to be the 'strong precautionary principle'.

CRITICISMS AGAINST STRONG PRECAUTIONARY PRINCIPLE

The strong precautionary principle has been the target of widespread academic criticism. Sachs holds that it 'has become a punching bag for many scholars of risk regulation' (Sachs 2011, p. 1304).

Arguably, the strongest criticism against the principle is raised by Sunstein who holds that '[t]aken in the strong form, the precautionary principle should be rejected, not because it leads in bad directions, but because it leads in no direction at all' (Sunstein 2003, p. 1003). He holds that it is paralyzing, inflexible, and extreme (Sachs 2011, p. 1285) because 'it forbids all courses of action, including inaction' (Sunstein 2002, p.17). He refers to several concrete problems: regulation of arsenic, genetically modified food, nuclear power, threats to marine mammals due to military exercises, and greenhouse gases and holds that in none of these problems, the risk is close to zero. Accordingly, if under the strong precautionary principle the burden is imposed on the project proponent to prove that his actions are environmentally benign, he will never be able to meet it (Sunstein 2002, p. 17–20). He perceives, therefore, strong precautionary principle as eliminating 'technologies and strategies that make human lives easier, more convenient, healthier, and longer' (Sunstein 2008, p. 25).

His view is shared by several other scholars. For instance, Miller and Conko (2000) hold that '[i]n practice, the precautionary principle establishes a lopsided decisionmaking process that is inherently biased against change and therefore against innovation'. Hansson holds that the principle has been accused in academic literature 'as stifling innovation by

imposing unreasonable demands on the safety of new technologies' (Hansson 2020, 245).

DEFENDING STRONG PRECAUTIONARY PRINCIPLE

This research relies on the theory of Earth jurisprudence in defending the strong precautionary principle. The core principle of the theory of Earth jurisprudence is accepting human beings only as a part of the wider Earth community (Cullinan 2011, 13). Cullinan further holds that 'one of the primary causes of environmental destruction is the fact that our governance systems are designed to perpetuate human domination of nature instead of fostering mutually beneficial relationships between humans and the other members of the community' (Cullinan 2011, 13).

The criticisms against the strong precautionary principle carry two interesting characteristics. First, they perceive the precautionary principle, specially, the strong formulation of it, as imposing a restriction on the developments, innovations, and initiatives which could bring benefits to human beings at the expense of potentially drastic impacts on beings other than humans. Accordingly, this criticism is another extension of the anthropocentric ideas often reflected in Western legal philosophies and must therefore be outright rejected due to two reasons. First, as believed in Earth jurisprudence, man is not the only being that matters in the Earth community. Second, science has proven that man's survival is dependent on the survival of nature (Odum 1963; Odum 2004; Lovelock 1995; Ruse 2013). Thus, the strong precautionary principle is not depriving man of growth, rather it ensures it by guaranteeing the safety of Earth, on which his growth depends unconditionally. Therefore, it is only logical to take precautionary measures if there are threats of harm to humans or the environment regardless of their gravity.

Second, many of the criticisms against the strong precautionary principle revolve around the argument that the strong formulation of the precautionary principle requires the project proponent to prove 'zero risk' or 'absolute safety' for an activity to proceed (Sachs 2011, p. 1305). However, the strong precautionary principle does not necessarily suggest such an extreme and perhaps even impossible standard to be met. The authors of this paper build two arguments in this regard. First, it is only just and rational that the onus of proof is attached to the risk creator: the project proponent to establish that his project is not harmful to the environment rather than imposing it on the regulator to prove that the proposed project is harmful to the environment. Second, the project proponent need not establish that his activity has no risk, but rather he must establish that the activity proposed by him takes the maximum precautions necessary to maintain the integrity, balance, and health of the environment and all its beings rather than just the man.

JUDICIAL STANCE IN SRI LANKA

At the outset, the judicial recognition and application of the precautionary principle in Sri Lanka reveal that Sri Lanka follows the Rio approach of the weak precautionary principle. In *Bulankulama v Secretary, Ministry of Industrial Development* (*Eppawela Case)* (2000), honourable justice Amerasinghe cited Principle 15 of the Rio Declaration and held '[t]he precautionary principle…in my view, ought to be acted upon by the 4th respondent. Therefore if ever pollution is discerned, uncertainty as to whether the assimilative capacity has been reached should not prevent measures being insisted upon to reduce such pollution from reaching the environment.'

A similar approach was followed in *Ravindra Gunawardena Kariyawasam v Central Environmental Authority and others (Chunnakam Power Plant Case)* (2019)**,** where honourable Jayawardena J held,

The precautionary principle comes into play where not only the likelihood of harm, but also its nature and extent, may all be uncertain. These principles are based on common sense dictates that a society should seek to avoid environmental damage which may result from proposed projects, by exercising care, foresight and forward planning. Simply put, that, as the old adage says, 'It is better to be safe than sorry' The approach that States should be guided by the `Precautionary Principle' where there is an element of uncertainty with regard to the environmental harm that may be caused by a proposed project is highlighted in Principle 15 of the Rio Declaration.

However, while the court relied on the Rio Declaration, in both instances court did not have a particular emphasis that the harm must be serious. The court rather emphasized the need of adopting precautionary measures in the face of uncertainty about the nature and extent of the harm. The court nevertheless had no discussion on who must bear the onus of proof. Thus, the Sri Lankan judicial stance seems to be a confused version of the two ends of the precautionary principle. However, the reference made to principle 15 of the Rio Declaration in justifying the adoption of the precautionary principle implies that the court intended to adopt the weak version embodied therein.

JUDICIAL STANCE IN INDIA

As far as India is considered, the judicial approach carries the characteristics of both the weak and strong versions of the precautionary principle. In *Vellore Citizens Welfare Forum* (1996), the court recognized that the onus of proof is on the actor or the developer/industrialist to show that his action is environmentally benign but emphasized the necessity of adopting precautionary measures only where there are threats of serious and irreversible damage. This approach was reaffirmed in the *MC Mehta v Union of India (Taj Trapezium Matter)* case (1997).

A very progressive approach in this regard was followed in *Andhra Pradesh Pollution Control Board v MV Nayadu* (1999). In the case, the court while referring to Rio Declaration, looked beyond Rio definition of the precautionary principle and held:

The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by (justified) concern or risk potential. However, at the same time, the court noted that the precautionary principle is still evolving and 'the consequences of its application in any potential situation will be influenced by the circumstances of each case'. The court also observed that 'the new concept which places the burden of proof on the developer or industrialist who is proposing to alter the status quo has also become part of the environmental law [in India]'.

This case was cited and followed in a number of subsequent cases including *Jhammanlal Gautam v Ministry Of Environment Forest* (2021), *Mukesh Kumar Aggarwal v Cpcb & Ors* (2021) and *PG Najpande v Another vs Chief Secretary* (2020).

3. Recommendstion and Conclusion

This research holds that the strong precautionary principle can challenge its criticisms since it is the version of the precautionary principle that recognizes man's true position in the wider Earth community. While the Indian judiciary has incorporated at least vaguely some elements of the strong precautionary principle, Sri Lankan judiciary is still reliant on and upholds the weak formulation of the precautionary principle embodied in the Rio Declaration. This research suggests that the judiciary can recognize and apply the strong precautionary principle in environmental litigation in Sri Lanka placing man in the correct position where he must be. This would particularly be meaningful since it is the judiciary in Sri Lanka which pioneered the environmental movement and played a versatile role in protecting the environment of the country over and above the other two branches of the government in the two decades following 2000.

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Applicability of ordinary law of Sri Lanka in Foreign Direct Investment: A critical study of Port City Project in Sri Lanka

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Abstract: *This study examines the practical application of ordinary law of Sri Lanka in FDI, with a particular focus on the Colombo Port City Project in Sri Lanka. The objective of this study is to critically examine the applicability of ordinary law in Sri Lanka's Port City Project, where the unique phase of foreign investment plays a major role to attract foreign investments to address Sri Lanka's balance of payment crisis and provide local job creation. The country's approach to FDI has two key drivers: (I) the urgency of attracting FDI; and (II) greater politicization of foreign investment projects. The latter arose from geopolitical concerns, which affected several of the Executive branch's significant investment decisions. It should be noted that Sri Lanka is significant in this geopolitical war because of its advantageous location in the Indian Ocean. It has grown troublesome as China becomes more involved in important industries including ports, transportation, and energy. It is worthy to be noted that, whether Port City Project investments are subject to the ordinary law and which institutions have the authority to approve such projects in accordance with the concepts of transparency and public accountability for such decisions. The study, therefore, primarily concentrates on the Sri Lankan legal jurisprudence and how the investment law plays its role when it comes to the public-private partnership between the Government of Sri Lanka and a project company called CHEC Port City Colombo (local subsidiary) which is the arrangement to develop Sri Lanka's first-ever Special Economic Zone(SEZ).*

Keywords: *foreign direct investment, national security, and sovereignty, Geo-politics.*

1. Introduction

The Port City Project is billed as, a gateway to South Asia, which was first conceived of under the previous administration (2005–2015) and was unveiled during Xi Jinping's visit to Sri Lanka in 2014. The CPC is a flagship initiative of China and a key component of Xi's Belt and Road Initiative (BRI). The project, which spans 269 hectares of reclaimed sea land, is valued at the US $1.4 billion and is Sri Lanka's single greatest investment. With Colombo being one of the top 25 busiest ports in the world, the proposed project is being sold not just for Sri Lanka, but for South Asia as a "world-class metropolis". Even though it appears to be an intriguing proposal, it should be underlined where it is being hatched and how it is being developed by reclaiming many hectares of land from the sea to provide China with a strategic edge in the Indian Ocean.

It is believed that the previous administration had originally suggested plans for a Colombo Port City in 2004 by purchasing property in the Colombo city region, and this proposal would have presented issues with regard to shifting the populace to alternative territory within the city. Therefore, the previous administration made the decision to build the port city by reclaiming the water in order to solve these

issues. Hence, a 600-acre stretch of sand from the bottom of the Indian Ocean was dredged by tens of Sri Lankan ships that were financed by China to build the metropolis. Since the details of this project, which the Sri Lanka Ports Authority (SLPA) claims to be the greatest private sector development initiative in Sri Lankan history, are not in the public domain and the people of this nation are unable to evaluate its potential effects on the environment, society, and economy.

Indeed, the first major investment decision which was to build SEZ through Colombo Port City raised serious concerns related to Sri Lanka's territorial sovereignty. It was argued that the establishment of such SEZ through a public-private partnership between the Government of Sri Lanka and a project company called CHEC Port City Colombo would lead the landfill into a "Chinese colony" thus, such a zone is not subject to Sri Lanka's territorial sovereignty. At the same time, the process by which Sri Lankan Government approved such FDI decisions has been criticized and increased public awareness owing to their potential geopolitical influence and related challenges to sovereignty and national security, as well as the transfer of Sri Lanka's national assets to foreign powers. In this context, this research critically evaluates how the Port City Act(PCA) works under the ordinary law and whether such FDI decisions with related to CPC project operates in accordance with the concepts of transparency and public accountability or not.

2. Methodology

The primary source of information for this research was scholarly texts, journals, conference papers, and legislation. This legal research utilizes open-domain data for the analysis. The study also made reference to the current Sri Lankan Constitution, administrative directives, and national policies, particularly the Foreign Exchange Act 2017, the Board of Investment Law 1978 (BOI Act), and the Strategic Development Projects Act 2008 (SDP Act), with special emphasis on the Port City Act, which was controversially passed in May 2021. As the secondary sources, the data were collected from the books, e-books, reports prepared by the NGOs and INGOs, statistical reports, journals, scholarly articles and empirical data available at both library and electronic databases.

3. Discussion

A. Investment policies and identified CPC Project issues with related to the ordinary law of Sri Lanka.

Sri Lanka has implemented an investment policy that is generally hospital towards foreign investments since the liberalization of the country's economy in 1978. In accordance with the Exchange Act 2017, foreign investment shall not be allowed money lending, pawn broking, retail trade capital of less that US one million and coastal fishing. It is further stated by relevant laws that the business activities in which limited investment is allowed or restricted due to the facts of promoting local industries or security-related issues. As per rule, foreign investments should be observing by domestic laws governing issues such as land, labour and the environmental. It should be noted that, certain exemptions on investment projects can be applying over the domestic laws such as inland revenue, customs and exchange and the projects which are located in geographically demarcated areas are governed by a separate regulatory framework apart from the rest of the country with related to such issues in the customary manner.

Moreover, The Board of Investment Law 1978 indicates that projects are eligible for exemptions from certain laws based on "eligibility incentive criteria", such as the minimum level of capital and employment that

will be generated by such project. Under the Strategic Development Projects Act 2008, investment projects which are identified as a "Strategic Development Project" can be granted exemptions from laws specified in the schedule of the act. In addition to these two national laws, the Board of Investment has the sole authority to identify projects eligible for exemptions in consultation with relevant line ministries, taking into account factors provided for in the SDP Act, such as the strategic importance of a given project and the amount of foreign exchange involved therein.

Colombo Port City Economic Commission Act (Port City Act) which was controversially come into effect in May 2021 excludes the application of several laws within the area of authority of the Port City. The law which has been listed in Schedule III of the act does not have any application within the Area of Authority due to the fact that the subjects regulated by those laws have been incorporated into the Port City Act itself. Moreover, the companies which are engaged in the offshore banking business shall be registered as offshore companies and such companies' general administration activities are exempted from the application of provisions of the Company Act of Sri Lanka. It shows that Port City Act has reduced burden of compliance and controversially impacted on the ordinary law of Sri Lanka. Significantly, Schedule II of the Port City Act includes the Casino Business Act and Termination of Employment of Workmen Act. It should be highlighted that these laws are from which foreign investment projects can be exempted and thus, including these laws was controversial and are not included in the BOI Act and SDP Act.

B. Identified CPC issues with related to the concepts of public transparency and public accountability.

Investment projects initiated by foreign individuals or corporate investors (who may choose Sri Lanka as their investment destination) will be approved by the BOI or, beginning in May 2021, by the PC Act. In accordance with this, there are two aspects to be highlighted: which institution has the authority to approve the CPC Project and how these decisions are made.

Firstly, the BOI can approve projects under Sections 16 and 17 of the Act, but the Foreign Exchange Act prevents the BOI from approving foreign investment in non-permitted sectors such as coastal fishing or money lending. Similarly, it cannot approve foreign investment in sectors governed by specific laws, such as manufacturing arms and military hardware. When it approves foreign investment of more than 40% of the equity in companies proposing to carry out restricted business activities such as mass communication, deep-sea fishing, mining and primary processing of non-renewable natural resources, thus the BOI takes a case-by-case approach to approving foreign investment projects. Secondly, the Port City Commission has been established, but the Act establishing it does not provide any specific criteria for evaluating applications for investment in the Port City SEZ. The section 30 of the Act only stipulates that the Commission is responsible for deciding whether to accept or reject any application for "good reasons". Thus, it clearly indicates that there is no institutional framework for public procurement in order to regulate and oversee such decisions. Furthermore, the failure of showcase the transparency and public accountability of such decisions leads the CPC project in question with related to the "Public participation" in the international and national law. In the case of Eppawala Phosphate Case, it was held that the public participation in such decision making relating to "prescribed projects" which is constituted in the National

Environmental Act has been considered by the Court to be an essential right vested with people directly affected by such projects and a vital element in ensuring the sustainability of the development driven by them.

In the *Chunnakam Power Plant Case*, it was decided that BOI, acting in its capacity as a Project Approving Agency (PAA), had violated its legal and regulatory obligations to implement the environmental impact assessment (EIA) which was constituted under NEA. The Court has further held that when approving investment projects, the Supreme Court has to be required to determine that the EIA as an indispensable element of ensuring public participation in the decision making process. The possibility of circumventing the EIA framework through contractual arrangements between the foreign investor and the government was rejected by the Court. Hence, these cases indicate that the BOI Act and the Port City Act don't demand that contracts involving foreign investment be made public or that Parliament or the Cabinet approve them. The Court has specifically called attention to how foreign investments affect public scrutiny.

The Right to Information Act of 2016 (RTI Act)13 has gained significance in this context as a result of specific foreign investment regulations' failure to ensure transparency. The RTI Act strengthens the basic right to information granted by Article 14A of the Constitution while recognizing citizens' right to access information in the possession, custody, or control of a public authority. There are, however, arguments both in favor of and against the RTI Act's application to government foreign investment contracts that an investor has with a pertinent statutory authority. Hence, the RTI Act 2016 (RTI Act)13 contains a number of exemptions with related to FDI, but most exemptions are subject to override by a public interest override. It indicates that the failure to conduct a public procurement process for CPC large-scale projects may be argued to have denied the public an opportunity to participate in those investment decisions, undermining their transparency.

C. *The constitutional framework of CPC project in Sri Lanka and related issues.*

The 1978 Constitution of Sri Lanka does not offer a framework for evaluating investments. However, Sri Lanka's bilateral investment treaties have a legal foundation according to Article 157 of the Constitution. The purpose of BITs is to safeguard (private) investors and their international capital investments. It should be noted that parliamentary approval will directly incorporate provisions of international investment treaties into Sri Lankan law. To translate an investment treaty into domestic law, no enabling legislation is required. As a result, domestic courts may now hear cases involving the substantive and procedural rights granted to foreign investors protected by such BITs. Foreign investors do not, however, have a right to challenge governmental or administrative actions that go against the terms of these agreements under Article 157 of the Constitution. Thus, it can be argued whether the agreement between China and the government of Sri Lanka does have any remedial system for CPC or not.

4. Recommendations and Conclusion

As mentioned above, Public dissent against some development projects has resulted in landmark lawsuits that challenged them on multiple different grounds, including their incompatibility with fundamental rights as contained in the 1978 Constitution. The Sri Lankan judiciary has used these lawsuits as a vehicle through which to safeguard the country's natural and national resources. In some cases, the Court indefinitely blocked and/or nullified high-profile investment

projects proposed or concluded by the Executive with foreign entities interested in investing in the country. Eppawala and Chunnakam power plant cases indicates where the domestic courts interfere and provide the legal protection for country's' natural resources and significant of the public transparency and accountability. The Court urged the Executive to exploit Sri Lanka's natural resources in trust for the public benefit. Importantly, the Court denied favoring foreign investors against members of the public in a manner that violates citizens' fundamental rights under Article 12(1) of the Constitution.

It should be highlighted that the fundamental rights of our country should be merged with other frameworks(RTI) in order to improve the effective compliance and disclosure requirements when it comes to the FDI decisions. Moreover, judicial review can be the domestic mechanism to improve the public transparency and accountability in the FDI decision making process. In the case of CPC Project, the details of such significant elements such as EIA and other component's to be made such large-scale infrastructure project are not in the public domain and the people of this nation are unable to evaluate its potential effects on the environment, society, and economy. Hence, it should be noted that, such decision making process can be led through the judicial review and can be questioned its public transparency and accountability for such decision making.

In addition to that the fundamental rights of the Citizens of Country should be taken into more consideration when it comes to the sovereignty of people and territorial sovereignty of our country. It is worthy to be noted that other frameworks for investments should be complied with Supreme Law of the country and when it comes to the decision making of such mega scale investments, the agreement should be led through the special requirements to be followed in order to safeguard the nation's territorial sovereignty. As mentioned above, the PC Act shows that separate legal framework for such investments without compliance with Supreme Law of the Country lead to controversial issues. Hence, it is vital to enhance the all other frameworks in accordance with safe guard the territorial and people sovereignty.

Owing to the insecurity of the economic policy environment, the unpredictable and outdated regulatory system, stringent administrative procedures, enhanced bureaucratic discretion, and public sector corruption, attracting an increased volume of foreign investment has been somewhat difficult for Sri Lanka. Addressing such concerns is critical to making Sri Lanka a welcoming and appealing destination for FDI. However, equal emphasis must be placed on ensuring democratic oversight of the investment decision-making process, particularly decisions made by the Executive branch.

The Supreme Court nullified and voided the Share Sales and Purchase Agreement between the Sri Lankan Government and the chosen investor (whose consortium included a foreign company) to sell 90% of the shares in the Sri Lanka Insurance Corporation in the case of *Vasudeva Nanayakkara v. K N Choksy and Others* (SLIC). This is because it was discovered that improper and illegal Executive and administrative acts were present throughout the whole privatization of the SLIC. It's significant that the Court determined that those activities violated the petitioners' and citizens' fundamental rights protected by Article 12(1) while stating that using executive power in a way that serves the public good is "positively related to the right to equality."

Furthermore, it was held in the *Eppawala Phosphate* case that the Court denied favouring

foreign investors over members of the public in a manner that violated citizens' fundamental rights under Article 12(1) of the Constitution (the right to equal protection of the law). Hence, the above mentioned cases indicates that the lack of a transparent and reliable public procurement process, as well as the lack of policy of government procurement practices, has eroded foreign investors' confidence. Lack of transparency has also influenced public perceptions of foreign investments, with many people now viewing foreign investment as a form of foreign interference. Because of this perception, domestic politicians have been able to use foreign investment as an emotive electoral issue to shape their short-term political agendas, undermining the use of foreign-funded development projects as an effective economic tool to achieve the country's national interests. Thus, it has been somewhat challenging for Sri Lanka to draw in more foreign investment because of the unstable nature of the country's economic policy environment and the unreliable and antiquated regulatory system. It is essential to address these issues if Sri Lanka is to become a friendly and alluring location for FDI. Equal importance must be given to establishing democratic scrutiny of the investment decision-making process, especially for executive branch decisions.

Significantly judges in Sri Lanka have invalidated FDI rulings on the grounds of abuses of human rights. Such litigation could now result in arbitrations under investment treaties against Sri Lanka. In other words, it can be considered as violation of investment treaty protection which was accepted by the home state. The fundamental rights petition that contested the hedging agreements reached by the Ceylon Petroleum Corporation is the best illustration in this regard. This petition ultimately led to several international and domestic legal proceedings, including a treaty-based investment arbitration. In the case of Deutsche Bank AG v. Sri Lanka, it was held that Sri Lanka partially accountable for the decisions made by the judiciary, and the claimant investor, Deutsch Bank, received a US$60 million settlement. It demonstrates that Sri Lanka's domestic and international investment treaty-making processes have not received much attention, leaving important questions unanswered, such as whether it is appropriate and constitutional to give foreign investors access to international law in order to resolve their disputes without going through Sri Lanka's national court system. The above mentioned analysis emphasizes that the sufficient policies related to public transparency and accountability should be compliant with both international and national law in order to protect the territorial and people's sovereignty, which could also create the platform for protecting the national security of Sri Lanka.

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Abbrevations and Specific Symbols

FDI – Foreign Direct Investment
BOI – Board of Investment
CPC – Colombo Port City
SEZ – Special Economic Zone
CHEC – Chinese Harbor Engineering Company
SLPA - Sri Lanka Ports Authority
NGO – Non Governmental Organization
INGO- International Non-Governmental Organizations
RIT - Right to Information
EIA – Environmental Impact Assessment
PAA – project Approving Agency
SDP – Strategid Development Project

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Combating White Collar Crimes: A Comparative Study on Regulating the Rapid Evolution of White Collar Crime in Sri Lanka

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Abstract: *It is undeniable that corporate entities engage in what are now classified as white-collar crimes, with senior managerial figures and high-ranking officials being the skilled perpetrators. Consequently, a number of crimes such as money laundering, bribery, forgery, tax evasion, human trafficking, intellectual property theft and financial embezzlement have taken an epidemic form thus becoming a ubiquitous phenomenon in a nation like Sri Lanka. Although the diverse socio-economic felonies committed by the top class may not trigger any bodily harm to the victim, they may significantly damage the economic fabric through the disintegration of stock market, public interest and the government thus, becoming a serious threat and difficult to prevent not only at the domestic context but also at the global context thereby raising an immediate concern. Therefore, the focus of this paper revolves around the multi-faceted issue of white-collar crimes which are much of a controversy today and also attempts to analyse the loopholes in the law in force at present with regard to corporations and further recommends to regulate legal measures in order to prevent and suppress these crimes, or at the very least to diminish their frequency and severity through a comprehensive legal analysis comparing the jurisdictions of UK, USA and India that can immensely contribute to the development of an adequate legal framework for Sri Lanka to combat these crimes. Accordingly, the author has incorporated a methodology that is qualitative and normative in nature to accomplish the purpose of the paper and has utilized both primary and secondary sources of law regarding white-collar crimes.*

Keywords :*Corporate entities, White-collar crime, Socio-economic issue*

1. Introduction

It is an ascertained fact that white-collar crime is a relatively new phenomenon, compared to most type of offences. White-collar crime is a crime committed in the course of one's employment or profession by a person of high social standing and moral character (Montreal, Sri Lanka Guardian, 2011). These crimes are usually committed by concerned executives or other white-collar workers of both public and private corporations against the corporate entity they work for. Kuriyal and Parveez (2018) have stated that white-collar crime is a distinct wrongdoing that seems to do no physical harm. Even yet, it fetches significant and detrimental impact on the society as a whole in terms of socio-economic growth. As a result, the threats from white-collar crimes have turned into a global issue affecting both developed and least developed countries making them struggle relentlessly to combat threat for the persistence of their economic growth.

It is also noteworthy that according to McGee and Byington (2010) the manifestation of technological advancement and industrial evolution being the most looming grounds for white-collar crimes to rise worldwide, many examples of white-collar crimes are considered more extensive than conventional crimes as they elicit intense concern and threaten national

security. Generally speaking, as it is said by Anand (2019) there are many professions that offer lucrative and illegal opportunities to obtain financial gain through unethical ways, but sadly, such unlawful activities hardly ever draw the attention of the public and thereby of the law.

Author has further stated that white-collar perpetrators are often people with extensive knowledge of discipline in IT, engineering, management, organizational philosophy and medicine, etc. and what encourages them to commit such offences whilst breaching the trust placed upon them is their eminent positions. Therefore, it is not a secret that law enforcement and regulatory authorities often fail to trace and punish such offenders and although they are caught the only penal sanctions for white-collar crimes are restitution, where the victim can be identified and loss is quantifiable; remedial order that remedies damage such as environmental pollution where the culprit will be ordered to clean up the mess he made; and payment of compensation and not any severe form of punishment thereby mitigating the seriousness of the crime (Abeyratne, 2011).

As per the crime statistics of Sri Lanka which has revealed forgery, bribery, mischief, cheating and criminal misappropriation of property as the most recurrent white-collar crimes that are uprising in no small measure, it can be expressed that from a legal point of view, although numerous laws have been initiated in Sri Lanka in order to safeguard the national economy from the curse of white-collar crime those have not been able to attain much of a success yet.

The prime purpose of this paper being to explore numerous illustrations of white-collar crimes that are common in Sri Lanka, their impact and legal measures that can be implemented to combat such crimes the paper is focused on covering the objectives of analysing the existing legal regime and other statutory provisions in respect of companies pertaining to white-collar crimes and identifying the practices that can be incorporated to the domestic legal framework from the lessons learned through a comparative legal analysis of the jurisdictions of UK, USA and India.

2. Methodology

For the purpose of achieving the objectives of this paper a methodology that is qualitative in nature has been adopted. The author has picked up research materials to obtain data relevant to the study through numerous primary sources such as domestic legislations, statutes, enactments of other jurisdictions and landmark judicial decisions and secondary sources such as books, journals, web articles and newspapers that provide the legal provisions regarding white-collar crimes and necessary knowledge about such crimes respectively.

Furthermore, the author has adapted a comparative approach while analysing the jurisdictions of United Kingdom (UK), United States of America (USA) and India.

3. Results and Discussion

A. THE CONCEPT OF WHITE-COLLAR CRIME

Over the past two decades, there has been a dramatic increase in white-collar crimes which are known to be a range of crimes committed by professionals who are either in business or government, the aim behind being to either gain assets such as money, property or services or to obtain some sort of personal advantage. The term 'white-collar crime' was first used by the criminologist and sociologist Edwin Sutherland in 1939 as "a crime committed by a person of high social status and respectability in the course of his occupation" (Sutherland, 1950). Although this term was not coined since 1939, the earliest documented case of a white-collar crime traced back to 15th century which is a landmark case in England known as *Carrier's case* of 1473 where the authorized agent to transport wool attempted to steal some for himself thereby committing an offence constituted as the crime of larceny (Nagarajan and Sheriff, 2012). Later on, the definition of white-collar crime was further

developed by Sutherland as "crimes committed by a person of the upper socio-economic class who violates the criminal law in the course of his occupational activities and professional activities" (Upadhyay, 2014). Since then, many definitions have arisen, by which white-collar crime is described as separate and distinct from "common crime".

Accordingly, white-collar crimes being referred to as non-violent, illegal activities that are committed for financial and personal gain by individuals, businesses and even government organizations it can be expressed upper and middle-class offenders, motivation by financial gain, lack of violence, a systematic aspect, a breach of trust and widespread victimization as some of the elements involved in a white-collar crime (Berghoff and Spiekermann,2018). Among these the most standard features of white-collar crimes are that they are perpetrated during trade, business within the professions of upper and middle-class people as a result of greed, capacity and scope.

Today white-collar crimes encompass a broad array of offences that range from moral ethical violations of regulatory and civil corporate laws, occupational crimes and breach of trust that are prone to cause a pure socio-economic harm.

1. Ramification of Common White-collar Crimes in Sri Lanka:

White-collar crimes generally include corruption, fraud, money laundering, embezzlement and bribery. When looking at a real-life scenario the case of Enron can be presented as the most notorious example for a corporate fraud and insider trading where the executives of Enron greatly overstated the company's stock value thereby allowing them to sell off their shares for millions of dollars only days and weeks prior to the company's collision in bankruptcy (Law shelf, 2022).

In the context of Sri Lanka, it is evident that almost 50% of the companies are victims of many types of such crimes where only two thirds of these offences being detected by chance (Sunday Times, 2006). It can be stated that the most common types of white-collar crimes that often occur in the country as legally recognized are criminal breach of trust, mischief, fraud, criminal misappropriation of property, forgery and cybercrimes while forgery, bribery, credit card frauds, fraudulent foreign employment schemes, embezzlement, extortion, currency schemes, fake employment placement, insider dealing, tax evasion, false invoicing, manipulation of stock valuations, non-payment of customs, misuse of company or business funds, various forms of bribery and corruption, overstating prices, improperly auditing accounts of top management fees, misstatements and misinterpretations and money laundering can be considered as the common undetected or least detected forms of white-collar crimes in Sri Lanka.

When looking at the situation in the country the attention shall be drawn to the recent examples which involved white-collar crimes such as the over pricing of essential food items on a website by a reputed e-commerce company, the data scam which is known as the worst white-collar crime in Sri Lanka where some most sensitive and secured data from the National Medicines Regulatory went missing due to an action of an unnamed systems engineer and irregularities that took place in the Treasury Bond issuance in 2015 and 2016.

2. White-collar Crime in UK, USA and India:

Firstly, in the United Kingdom the efforts of the law enforcement authorities have been to stamp out the criminal activities such as bribery, corruption, money laundering, cheques and credit card frauds, embezzlement, obtaining money or property under false pretences and terrorist financing activities.

Secondly, in the context of USA it is well known that American outrage over white-collar crimes is not new as it is a reaction that stems from a serial of corporate misdeeds going back to sixty years

such as the misconducts of companies like Wright-Mills in 1940's and 1960's which grew public distrust towards big businesses (Nelken, 2007). Lawmakers had realized the socio-economic impact of white-collar crimes due to the rising of crimes such as bribery, computer and internet fraud, antitrust violations, counterfeiting, credit card fraud, trade secret theft, embezzlement, insider trading, financial, government, healthcare, insurance, mail, phone, telemarketing, credit card and securities fraud, intellectual property theft and tax evasion.

Thirdly, when looking at the situation in India it can be expressed, forged recruitment, bribery, counterfeiting of currency, cybercrime and misappropriation of public property as the most familiar forms of white-collar crimes in the country. In 2009 public attention was drawn towards the fraud relating to financial statements in Satyam Computer Services Ltd where the offender fabricated profits and cash accounts for years thereby becoming the biggest scam in the history of India (Beohar and Singh, 2018).

3.. Socio-economic Cost of White-collar Crime:

It is apparent that white-collar crimes such as tax evasion, corruption and bribery that are often concealed have a significant adverse impact on the government revenue, economic growth, public confidence and especially on the recovery from COVID-19. Although white-collar crimes are viewed from a traditional perspective as less serious than other types of crimes, in the modern context it is evident that the recognition of the significant harm it causes to the economy of the country has grown. Accordingly, due to the impacts such as economic misbalance which occurs when a group of resourceful people gain more profit through unlawful means thereby causing majority class to suffer the evils of their actions, adverse effect to future generations where disturbance caused by white-collar criminality can make the future generations suffer from poverty and unemployment, adverse impact on infrastructural progress when a large amount of money is embezzled during construction work of the government causing government infrastructure to fall down before the time of completion, impact on parliamentary budget when large amounts of money are smuggled to other countries, being a crime against society through allowing black money to float in the market for personal gains at the cost of heavy lost to state and loss to government revenues where the whole fiscal policy is disturbed because of tax evasion it can be asserted that white-collar crimes directly affect the financial condition of the country (Ali, 2019). However, it is also important to note that the cost of a white-collar crime cannot be measured in monetary damages alone as it results in posing damage to the victims in terms of violating their rights, health risks, compromising security and bringing harm to the wildlife and the environment. The majority of the experts agree that white-collar crime has a much greater economic cost than other ordinary crimes. And on the other hand, it is also agreed that such crimes can lead to organizational failures and job losses and can also put employees in risk through unsafe working conditions, harm consumers through the sale of hazardous products and cause pollution issues for the community. Furthermore, sociologists have also outlined those white-collar crimes are particularly detrimental to the society due to the fact that they are committed by those in positions of power who are expected to act responsibly and set a good example. (Meier and Short, 1982).

When looking at the social impact of white-collar crimes according to Sri Lankan context developing the existing legal framework can be justified on the grounds of threats than can be caused upon the public life and the environment due to corruption such as in the case of *Chunnakam case* (SC/FR Application No. 141/2015) which involved a huge pollution of ground water; omissions in respect of worker's

safety when companies are only focused on maximization of profit and embezzle money of the funds allocated for implementing safety measures for example such as in the case where a worker confronted the tragedy that happened in a rubber factory in Horana where he fell into a tank collecting ammonia waste and similarly, on the ground of violation of right to health and life of the public through embezzling money that is allocated to enhance the safety and quality of goods especially essential food items such as in the case where Edna Chocolate Company was held liable for using milk powder contained with melamine which can bring forth negative health effects.

B. LEGAL FRAMEWORK PERTAINING TO WHITE-COLLAR CRIME

1. Legal Framework in Sri Lanka:

The Penal Code being the main source of laws in respect of white-collar crimes in Sri Lanka it sets out a number of offences such as cheating, mischief, criminal breach of trust, dishonest misappropriation of property and forgery which incriminates a variety of acts as white-collar crimes.

Financial Transaction Act No. 6 of 2006 (FRTA) which was introduced as a reaction to LTTE terrorism and most importantly as a part of a global reaction to curb money laundering from international drug trafficking and terrorism (Weerasooriya, 2011) of which the overall objective is to combat money laundering, terrorist financing and related crimes, Prevention of Money Laundering Act No. 5 of 2006 (PMLA) which seeks to prohibit money laundering in Sri Lanka and to provide measures to combat and prevent money laundering (Preamble of the Act), the Banking (Amendment) Act No. 2 of 2005 which was introduced to strengthen the Monetary Board and prohibit pyramid schemes, Payment Devices Fraud Act No. 30 of 2006 which purports to prevent the possession and use of unauthorized or counterfeit payment devices, to create offences connected with the possession or use of unauthorized payment devices, to protect persons from lawfully issuing and using such payment devices and to make provisions for the investigation, prosecution and punishment of offenders (Preamble) which was mainly brought forth to combat credit card and bank teller machine frauds and Computer Crimes Act No. 24 of 2007 which provides for the identification of computer crimes and procedure for the investigation and prevention of such crimes can be named as other important statutes that seek to criminalize various types of white-collar criminal practices.

Apart from the aforesaid laws the Companies Act No.7 of 2007 also regulates provisions with regard to combating of white-collar crimes such as; Sections 189, 190- 200, 212, 217, 218, 219 and 220 that regulate the conduct of directors of a company. Section 374 which provides fraudulent situations where a director can be held criminally liable after the winding up of the company, Section 375 which provides for fraudulent trading, Section 376 power to require repayment of money or returning of property in case of default or breach of duty or trust, Section 377 disclaimer of onerous property, Section 380 that provides offences of companies in liquidation, Section 381 where accounts are not kept properly, Section 382 on prosecution of delinquent officers, Section 384 on corrupt inducement affecting appointment as liquidator, Sections 224 which provides for oppression, Section 225 which provides for mismanagement where shareholders of the company are given the power to speak up against the actions that are oppressive and prejudicial to the interests of the company and Section 234 under which derivative action was recognized by where the company itself or shareholders as held in the case known as Colombo Hilton Case (1 SriLR 20, 2003) can bring an action to the court in order to protect the interests of the company.

2. Sri Lankan Judicial Response towards White-collar Crimes:

When looking at the judicial response towards white collar crimes in Sri Lanka, few of the judicial decisions pertaining to several penal code offences that are legally recognized can be taken into account.

Accordingly, cases such as *Smith vs. Jayasuriya* (1899 Koch's Report 42) and *King vs. Lavena Maricar* (10 NLR 369) have dealt with the constituent elements of establishing the offence of mischief which is a crime as provided under Section 408 of the Penal Code.

Under the offence of dishonest misappropriation of property as per Section 386, *Stickney vs. Sinnatamby* (1886, 5 CL Rev.112), *Fernando vs. Charles* (4 NLR 215) which defines the mens rea element of the said offence can be set out.

As provided in Section 388 under the offence of criminal breach of trust the case, *Buchanan vs. Conrad* (1982 2 CLR 135) can be held important where a clerk was charged in respect of a deficiency of an account.

The offence under Section 398 Cheating was also held in a number of cases such as *Gunijee vs. Silva* (2 NLR 85) which relates to a false representation, *Kadirama Tamby vs. Venasitamby* (1908 3 Bal. Rep. 278) relating to a mortgage, *Eliyatamby vs. Kathiravel* (37 NLR 16) in relation to making of a false statement regarding a pawned article and *Ellawala vs. Inspector of Police* (45 NLR 60) which involved a case of continuance of false representation.

3. Legal Framework in UK:

Due to the increased recognition of white-collar crime as a problem that draws a larger public attention and involves high profile scandals agencies such as Serious Fraud Office (SFO) and Financial Services Authority (FSA) were established for the monitoring and investigating of corporate crimes in the United Kingdom. SFO has the powers of prosecution as well as investigation whereas, FSA has the criminal prosecution powers to reduce financial crimes. As a pre-emptive step in enforcing white-collar crime UK parliament in addition to establishing agencies created Serious Crime Prevention Orders (SCPOs). These can be issued to corporations and individuals by having power over a business's financial property, or business dealings and the employment of the staff (Huynh, 2010).

Furthermore, the main fraud offences in UK are contained in Fraud Act of 2006 by which the general offence of fraud is punishable with up to 10 years of imprisonment was introduced containing offences of fraud by false representation (Section 2), failure to disclose information (Section 3) and abuse of position (Section 4) and the Theft Act of 1968 which contains the offences of false accounting (Section 17) and false statements by company directors (Section 19).

The Bribery Act of 2010 is considered the primary piece of legislation in respect of bribery and corruption in UK.

Also, there are a number of anti-corruption conventions that are applicable to England and Wales such as OECD Convention of Combating Bribery of Foreign Public Officials in International Business Transactions of 1997, Council of Europe Criminal Law Convention on Corruption of 1999 and UN Convention against Corruption of 2003.

For the insider dealing and market abuses relevant provisions are provided in Section 52 of the Criminal Justice Act of 1993 and Part 7 of Financial Services Act of 2012 whereas Section 37 of the Serious Crime Act of 2015 and Criminal Finances Act of 2017 provide for the main regulatory provisions with regard to money laundering.

Moreover, the European Union's Market Abuse Regulation (MAR) governs offences of carrying on unauthorized activities, insider dealing, producing of misleading statements and market abuse.

Under Section 993 of the Companies Act of 2006 under fraudulent trading it is recognized as an

offence to carry on any business with the intention of defrauding creditors.

It is also important to note that under the common law in UK there are two main types of corporate criminal liability which are 'Vicarious Liability' where companies can be held criminally liable for the illegal acts committed by their employees or agents and the 'Identification Principle' or 'directing mind and will' under which a company will normally be liable for serious offences that do not impose strict liability where the commission of the offence is attributed to an individual who was the directing mind of the company or an embodiment of the company at the material time (Geary and others, 2021).

4. Legal Framework in USA:

Activities that constitute white-collar offences are enumerated by both state and federal legislations. The US Constitution under its Commerce Clause has given authority to the federal government which includes the FBI, the Internal Revenue Service (IRS) and the Securities and Exchange Commission (SEC) for the enforcement and regulation of white-collar crimes.

As established in the case of *United States vs. Dotterweich* (320 U.S. 277) under the 'Responsible Corporate Officer' doctrine it is presumed that a high-ranking corporate official is with the knowledge about the wrongdoings of his or her corporation.

In 1934, Securities and Exchange Commission (SEC) was established by the US Congress as an economic watchdog under the Securities Exchange Act of 1934. SEC has the power to enforce and regulate the US states stock and securities market under this act and also to collect monies from securities violations and to disburse those for the compensation of fraud victims (Black, 2008). Under the Sarbanes-Oxley Act of 2002 according to Section 308, SEC is also granted the power to compensate victims of corporate fraud. Under this act of Sarbanes-Oxley which was introduced in 2002 as a response to large corporate scandals such as Enron, Adelphia, WorldCom and Tyco International it is required additional obligations from publicly held companies to encourage transparency and accuracy during their public financial disclosures and to ensure compliance with securities laws. Also, this act established the Public Company Accounting Oversight Board (PCAOB) for the prevention of fraud in larger scale through granting of power upon PCAOB to oversee and regulate auditing functions of accounting firms when auditing public companies.

Furthermore, the statute, Racketeer Influenced and Corrupt Organizations Act of 1970 (RICO) was established under the Organized Crime Control Act of 1970 in order to provide enhanced criminal penalties making it illegal to acquire, operate or receive income from an entity through a pattern of racketeering activity (Salinger, 2004). It was held in the Supreme Court case of *Sedima S.P.L.R vs. Imrex Co., Inc.* (473 US 479) that RICO can be applied to legal commercial enterprises where the purchase orders and credit memos were forged by the business for the increment of their purchase price.

5. Legal Framework in India:

The Indian Government has passed a number of regulatory legislations to dealt with cases of white-collar crime. Most importantly the Indian Penal Code and the Essential Commodities Act of 1955, Foreign Exchange (Regulation) Act of 1974, Import and Exports Control Act of 1947, the Industrial Development and Regulation Act of 1951, Prevention of Money Laundering Act of 2002, the Prohibition of Corruption Act of 1986, Companies Act of 1956, the Code of Criminal Procedure of 1973 and the Information Technology Act of 2000 contain numerous provisions with regard to penalty of white-collar crime (Jain and Others, 2017).

Accordingly, in order to prevent banks from acting as a chain in money laundering process and to maintain public safety through keeping adequate knowledge of the sources of money the Prevention of Money Laundering Act was passed

in 2002. The Code of Criminal Procedure Act and the Prohibition of Corruption Act of 1986 have made all public employees accountable for their corrupt activities committed while performing their official duties and have made provisions to take legal actions against them. The Companies Act of 2013 further contains provisions on a number of corporate crimes such as Section 447 which provides a list of offences and specifies special courts for speedy trials for Section 447 offences. Additionally, the white-collar crimes which involves production, supply and distribution of essential goods in regular market are also governed by the Essential Commodity Act of 1955. Importantly, the Indian Government has implemented the Information Technology Act of 2000 for the handling of cases of computer related offences that are punishable such as copying of data without permission, unapproved access and download, virus insertion and causing malicious harm to computer systems.

C. A COMPARATIVE ANALYSIS BETWEEN THE LEGAL FRAMEWORKS PREVAILING IN SRI LANKA, UK, USA AND INDIA PERTAINING TO WHITE-COLLAR CRIMES:

The systems of handling white-collar crimes in UK and USA are quite similar but do differ in several aspects. Firstly, when looking at the similarities it is evident that both jurisdictions have broad, far-reaching statutes such as RICO and SCA which are used for the conviction of white-collar criminals by prosecutors. It is also expressed that both the statutes allow seizure of funds and property in order to help victims recoup some of their losses. And further regulatory agencies for the oversight of securities markets and investigation of potential violations have been established under both jurisdictions. Secondly, when looking at the differences it is clear that the way each country approaches to deter white-collar crime is different as USA has a harsher punishment system while UK does not grant harsher penalties. Accordingly, RICO and Sarbanes-Oxley allows enhanced penalties for racketeering charges and securities violations respectively. Although the USA system is not preventative in nature it relies on harsher punishments and larger fines heavily for the prevention of corporate persons from committing white-collar crimes. However, on the other hand, UK is comprised with a system of preventative nature thereby do not grant harsher penalties for white-collar criminals. For instance, SCPOs allow restrictions to be put on those who are likely to commit white-collar crimes. Likewise, the SEC, SFO and FSA are authorized to monitor public companies.

From the legal perspective of India, it is evident that there exist various legislations that have been enacted to deal with white-collar crimes. However, it is noteworthy that these special enactments pertaining to white-collar crimes and the Indian Penal Code provisions are not harmonies to each other. For instance, when looking at the Prohibition of Corruption Act and CrPC although these statutes contain provisions with regard to taking action against public officers for commission of crimes within their professional capacity, at the same time, these laws provide that no proceeding against such public official shall be initiated without the prior approval for prosecution by superior authority in any court of law.

When looking at the situation in Sri Lanka that is similar to India although there have been numerous statutes drafted by the law makers for the prevention of white-collar crimes from happening not having severe punishments like under the jurisdiction of USA which imposes longer time periods for imprisonment and higher penalties, preventive measures for the avoidance of malpractices and lack of regulatory authorities to investigate or detect such crimes in many cases where most of the Sri Lankan companies being more family owned are huge drawbacks in the domestic legal system.

4. Conclusion

It is clear that globalization and modern business development has opened up new opportunities for human corruption. In the past few decades, the development of science and technology has brought forth the novel concept of culpability known as white-collar crime which is in the form of financial crime that is inevitably viewed and treated as a serious danger to a country's economy and society.

Especially, for a developing country like Sri Lanka which is burdened with numerous complexities has become further agonized due to the adverse impacts of this socio-economic issue of white-collar crimes. Therefore, while being in a struggle to develop the economy the country has fallen into a position where it is forced to suffer from the curse of those crimes due to many attributes that has led to the commission of such crimes such as non-violent nature thereby refraining criminals from thinking that they are committing a wrongdoing, illegal trade schemes, voracity for assets, monetary needs, technological amplification and the absence of an effective legal system as visible in many cases. Although Sri Lanka has promulgated a number of strict laws and regulations it is evident from the study that the country's legal framework pertaining to white-collar crimes still struggles to combat those crimes effectively unlike in UK and USA which has largely contributed for the regulation of the rapid evolution of white-collar crimes ensuring good governance and public tranquillity.

In the given context, it is inevitable to note that prioritizing the prevention of white-collar crime is crucial in order to protect the economy of the country from jeopardize.

5. Recommendations

In the light of the above discussion following recommendations for the combating of rapid evolution of white-collar crime can be proposed as follows;

To begin with, the Companies Act of 2007 being the substantive law relating to companies it does not address violent crimes that are borne from white-collar crimes. Thus, from the need for a separate legislation revealed, it is proposed to enact a legislation that solely deals with corporate crimes that are committed as results of white-collar crimes.

Due to the evolving nature of white-collar crimes, it is recommended to law makers to enact updated laws that are revised from time to time.

Most importantly, it is proposed a stronger stance is required to be taken with a more severe form of punishments as learned from the legal framework pertaining to white-collar crimes in USA in order to prevent such crimes from happening.

On this note, it is also suggested to incorporate the numerous types of white-collar crimes that range from minor to major offences in the Penal Code of the country as by doing so the perpetrators can be punished adequately.

Also, as per the UK jurisdiction it is also proposed to regulate legally preventative measures for the avoidance of such crimes.

Also, it is inevitable to consider white-collar crimes as serious crimes with rigorous punishment as they are highly responsible for the injury of country's economy.

Furthermore, not only judicial actions but also departmental actions shall be taken against every professional alleged to have involved in corruption, misuse of position or violation of his or her service for unlawful gains.

In addition, adequate regulatory authorities such as SFO and FSA should be established to detect white-collar crimes that are often overshadowed and are only detected by chance and for the investigation of operations of a company to prevent frauds which are often committed in the face of fraudulent recruitment and falsifying accounts.

Furthermore, the Company Act can be amended by including new provisions as to how best practices should be strictly followed in accounting, auditing, reporting, corporate

governance and other capital market related functions. And also, as another important mechanism it can be proposed an internal friendly procedure that gives a secured opportunity where anyone employed in the corporation to report any malpractice to relevant officials who are authorized to deal with such complaints. For further success, whistle-blower protection shall be ensured as it is noteworthy that they are the people who often knows information within the corporation and attempts to disclose knowledge they have with regard to commission of white-collar crimes by the high-ranking officials.

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Criminal Finances Act of 2017
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Abbrevations and Specific Symbols

FRTA- Financial Transaction Act
PMLA- Prevention of Money Laundering Act
SFO- Serious Fraud Office
FSA- Financial Services Authority
SCPO- Serious Crime Prevention Orders
MAR- Market Abuse Regulation
IRS- Internal Revenue Service
SEC- Securities and Exchange Commission
PCAOB- Public Company Accounting Oversight Board
RICO-Racketeer Influenced and Corrupt Organizations Act

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Truth or Treason? The Tussle Between Secrecy and Security

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Abstract*: Sri Lanka has long standing legislation, protecting official secrets in the interests of national security. Yet, these laws are yet to clearly demarcate the boundaries of such terminology, which may result in the infringement of fundamental rights such as the right to expression, publication and dissemination, guaranteed in the Constitution of 1978; neither does Sri Lankan law permit the release of material it categorizes as 'official secrets' for the public good. Thus, if a public servant were to act as a whistleblower, she would not have the defence of public interest. To this end, the article seeks to analyse two recent case studies that occurred in the United States, prosecuted under the Espionage Act of 1917, a statute which could well be deemed Sri Lanka's counterpart. Through such evaluation, the writer seeks to caution against similar action being taken against any Sri Lankan citizen who might release information, to further accountability and transparency in the government. The writer posits that lessons could be learnt from such a comparative analysis, suggesting that the defence of public interest be made a part of Lankan jurisprudence when it comes to civic minded citizens and a clear definition be provided for pivotal terms such as 'official secrets' and 'national security.' Leaving room for ample interpretation of legal terminology might result in injustice, repression and legal uncertainty. Clarity and curtailment would aid greatly towards establishing trust in public authorities, the tri forces, state accountability and ultimately foster sustainable national security.*

Keywords: *Official Secrets, National Security, Whistleblowers, Public Interest.*

1. Introduction

States around the world have legislation governing what are termed 'official secrets' underscoring the importance of such communications, involving the higher echelons of governments, inter – State relations and government departments. There is increased importance when the 'secret' pertains to national security, armed conflict and the defence of the State. This article proposes to evaluate two Sri Lankan laws which pertain to this area, namely the Official Secrets Act and the Army Act, and other contemporary domestic legislation. The focus will be on position of a public official who is privy to classified information and seeks to make such available to the public, in the belief that the public is best served by that knowledge, that they have a right to know the manner in which the government makes decisions, which might not always be for the benefit of its citizens. It will be highlighted hereafter that such a hypothetical public spirited citizen will face criminal sanctions, under the Sri Lankan law. Further, there will be an analysis of two situatons that arose in the United States pertaining to offical secrets, under the Espionage Act of 1917, for comparative purposes. The writer shall aim to analyse the necessity for legislation relating to 'official secrets' overall, in the context of national security and the legal position of those who seek to divulge matters which are deemed highly classified. Finally, the article argues that

in order for national security to be sustainable and for it to have an organic and holistic growth, there must be legal clarity to concepts that are punitive in nature, and legitimate defences be permitted to an accused.

A. LEGISLATION IN SRI LANKA

1) The Official Secrets Act No. 32 of 1955

Closing in on 70 years, this piece of legislation is fast becoming archaic. It is purported to 'restrict access to official secrets and secret documents and to prevent unauthorized disclosure thereof' as stated in its preamble. Section 7 is of pivotal importance to the current discussion, as it seeks to outline the culpability of a person 'entrusted with an official secret or secret document' who 'communicates or delivers it to any other person who is not a person to whom he is authorised to communicate or deliver it…' As per section 7(2) even the unauthorized recipient of such secret or document, who will communicate such secret or document to another, shall be punishable. It is submitted that this section would apply to journalists in possession of such documents. Section 8 is even more unequivocally applicable to a recipient journalists, as it states, 'if any person receives any official secret or secret document or permits it to be communicated or delivered to him, having reasonable cause to believe that it is communicated or delivered to him in contravention of this act shall be guilty of an offence punishable…' The term 'having reasonable cause to believe' provides a requirement of knowledge that the missive communicated is in contravention of the law, and at least prevents receipt from being a strict liablity offence. Yet, the question arises – to what extent does this contribute to the protection of journalists and their rights? Fortunately, there is some leniency in section 8(2), where the recipient can provide a defence that the communique 'was not due to any soliciatation or demand on his part.' In that case, only a journalist who is surprised by the communication left on his table would be protected; yet what about the journalist who is informed verbally of an official secret by an individual and demands (justifiably) proof before publication and dissemination? Would such journalistic caution be rewarded with punishment? Thus, the function of the Act is two pronged, punish the individual 'leaking' the secret and the recipient of the secret. All forms of discouragement have been meted out. As per section 26, the punishment would be imprisonment for a term of 2 years and a fine.

It is of the utmost importance to consider the interpretations of words such as 'official secret' and 'secret document'defined in section 27 of the Act. The phrase 'offical secret' has been defined widely and the last subparagraph is telling; 'any information of any description whatsoever relating directly or indirectly to the defences of Sri Lanka.' This is an all encompassing definition and provides an extraordinarily wide berth for interpretation. A 'secret document' is defined as 'any document containing any official secret' which makes this clause dependant on the interpretation of what an official secret is. This wide ambit has led to academics arguing that this is a draconian piece of legislation (Jayawardena 2009). A further criticism levelled at the statute is that it does not permit defences such as public interest (a defence permitted in private law, such as for example, in actions for defamation). In such circumstances, it is clear that individuals who seek to make the government accountable for its failures or highlight human rights violations, will be punished, as many issues could be interpreted as protected under the Official Secrets Act. The Sri Lankan statute is modelled on the Britsh statute of the same name, which has also been decried at various points in history. The British government enacted a newer version in 1989 which

included an almost invisible appeasement to mounting criticism, by providing a shred of a defence in section 2(3), enabling an accused to claim that he did not know or have any cause to belive that the information, document or article in question related to defence or would have damaging consequences. Whilst it is deemed an improvement of sorts, it is submitted it would not protect an individual who is aware of the contents but publicizes it in the interests of the public, to ensure transparency and accountability in government. Britain, being a nation which has joined western coalitions in waging wars around the world, ought to have a more public interest oriented statute. The Sri Lankan statute then, is not far behind, as it contains sweeping terms, minimal restrictions in interpretation, ambiguous requirements as to *mens rea* and almost virtually no defence (an aspect that is not present in the Penal Code of the country). Is this position truly fair by an accused person? Should a public spirited citizen be denied such fundamental legal protections?

2) The Army Act No. 14 of 1949

It is unequivocally accepted that once one joins the armed forces, a very high standard of conduct and loyalty is expected; else it would lead to chaos, disarray and dangerous results to national defence and civilian life. The Army Act of Sri Lanka governs the areas that require strict obedience by officers, which are absolutely necessary in the interests of the nation. As per article 125, any person subject to military law should refrain from disclosing, either orally or in writing, the numbers or position of forces, preparations for movements or orders relating to operations or movements. If found guilty of such disclosure, he shall be deeed to have committed an offence, particularly if it is found to have been injurious to the forces. This is indeed a legitimate concern bcause the lives of other officers and the success of military operations should not be endangered. Nevertheless, the issue remains, what would the outcome be if an officer speaks out over a military decision that violated the norms of international human rights law and humanitarian law? Would the aforementioned legislation protect such officer's right to free speech and conscience? Such a situation has not arisen in the Sri Lankan context but has arisen in the global context, which shall be discussed in subsequent sections.

Furthermore, to what extent can the Official Secrets Act and the Army Act be reconciled with the provisions of the 1978 Constitution of Sri Lanka?

3) The Fundamental Rights Chapter in the 1978 Constitution of Sri Lanka

Our controversial 44 year old Constitution has a traditional set of fundamental rights which are justiciable in the Supreme Court, as per Articles 18 and 126. Chapter III of the Constitution lays down some detailed fundamental rights, notably the freedom of speech and expression, the right to publication (article 14(1)(a)) and the relatively novel right of access to information (article 14A), included through the nineteenth amendment to the Constitution in 2015. The relevant information being sought should be 'required for the exercise or protection of a citizen's right' which is held by the State, a government ministry, department or statutory body. This extends to provincial and local government bodies as well.

However, the rights enumerated in the Chapter III of the Constitution, including the pivotal rights mentioned in article 14 and 14A, are restricted. Such restrictions are laid out emphatically in articles 14A(2) and 15. These limitations are of great importance. Both articles 14A(2) and 15 state that the fundamental rights enumerated in Chapter III

can be restricted by laws prescribed in the interests of national security, territorial integrity and public safety, to name a few. Therefore, it is submitted that in the event of an 'official secret' being released to the public, a court of law *could* determine that such release breached (or did not) the restrictions laid out in the Constitution. The repeated issue is that there is no definition of key terms such as 'national security.' Again, as with the Official Secrets Act and the Army Act discussed above, there is no defence of public interest available to a defendant / accused. Ultimately, Lankan legislation and the Constitution provide no viable definitions and no legitimate defences to the releasing of information that the authorities could label as 'official secrets.' The public authorities are vested with a wide discretion in the interpretation of these terms, and that in itself, it is submitted, not conducive towards fairness, transparency and public utility.

Article 16 of the Constitution provides a further safety net to any laws that may be in existence that contradict the fundamental rights chapter. Through it, all existing written and unwritten laws shall remain operative, notwithstanding any inconsistency with the provisions of the fundamental rights chapter. Would this then provide for further restrictive interpretations of the Official Secrets Act, which definitely precedes the current Lankan Constitution?

It is submitted that Sri Lanka has very stringent laws on the release of official secrets. Constitutional gurantees of the right to freedom of expression, publication and information may not sufficiently safeguard those who seek to place certain vital information in the public sphere, in the public interest. Whilst it is conceded that certain secrets must always remain within the domain of secrecy in the national interest, how legitimate would it be to cower under the banner of 'official secrets' when governmental decisions impact on the rights of its citizens and blatantly violates fundamental human rights? To this end, two situations that occurred in the United States shall be evaluated, in the light of its legislation and the role of law in national security.

B. THE UNITED STATES, THE ESPIONAGE ACT OF 1917 AND THE TREATMENT OF WHISTLEBLOWERS.

The Espionage Act of 1917, a much maligned piece of legislation in the United States, known for its outdatedness, does not make a distinction between those who steal and leak government secrets to foreign governments and government employees who release documents to the national press in the public interest. Thus, one can observe that there is a broad criminlization of unathorized sharing of national defence information. The accused, in order to be convicted must have reason to believe that her actions would harm national security, yet in the cases that follow, this aspect was not considered. The prosecution is not required to prove that the accused foresaw harm or that harm to national security occurred in actuality. Thus, the burden is quite low; the prosecution should merely prove the release of documents it categorizes as classified. The approach seems to be similar to that of a strict liability offence, with no regard being paid to the mental element or public interest defence that an accused could bring forward. To this extent, one can see a striking similarity between this US statute and the legislation in Sri Lanka, meriting the following comparisons and case studies. If any similar occasions should arise in Sri Lanka, it would be pertinent to know how such were dealt with, in the US, considering the similarity of the two statutes.

1) The case of Chelsea Manning

Chelsea Manning (formerly known as Bradley Manning) was a highly skilled army intelligence analyst who stood trial for leaking government approximately 700, 000 files to the famous WikiLeaks and ushering in sensitive information to the public domain. Upon her disclosure, Manning wrote the following telling, pivotal words, '(T)his is possibly the more significant documents of our time, removing the fog of war, and revealing the true nature of assymetric warfare' (*United States v Bradley E. Manning* ARMY 20130739, 31st May 2018). It was alleged that she used her official status (an analyst working in Baghdad in 2010) to find documents suggesting that there were more than 15,000 unaccounted civilian deaths in Afghanistan and Iraq, all perpetrated by the US Army. It was also found that the US government failed to investigate allegations of torture and human rights violations of detainees. These were violations of the Military Rules of Engagement of the US Army. Her trial began in 2011 and concluded in 2013 [*Manning v United States DOJ* – 234F.Supp.3d 26 (D.D.C. 2017)], where she was ultimately found guilty of 20 counts of leaking State secrets to the website, under the Espionage Act of 1917, which criminalizes the leaking of such information (Pilkington 2013). Whilst she faced the prospect of 90 years of imprisonment, (incidentally being handed down 35 years) her sentence was commuted by President Obama to 7 years incarceration. She is now currently released and goes by the name of Chelsea, pursuant to a sex change procedure.

However, despite her new found freedom, the legal issues that led to her incarceration in the first place, merit attention. The Espionage Act was usually utilized to criminalise those who engaged in trading secrets with foreign, enemy governments and the criminalization of Manning was considered a violation of civil liberties by most. Manning was not convicted of 'aiding the enemy' (members of the European Union decried her being tried for such a crime) yet her sentencing was serious and lengthy. If one is to evaluate her conviction, one must analyse the nature of the leaked information.

Records showed that Manning was not meted out appropriate treatment during the early period of incarceration, awaiting trial, requiring that she sleep with no clothing and being isolated from other inmates for 23 hours a day (Cohen 2011). This begs the question – was the person who highlighted illegal actions, treated worse than the perpetrators of war crimes?

Manning maintained from the outset that her aim was not to commit treason against her country but to shed light on the day to day realities of the American war effort, and spark a domestic debate on its foreign policy. This led to many considering her as a true patriot as opposed to a traitor (The European Parliament Statement, 2013). One of the key information revealed by Mannning was a video dubbed 'collateral murder', where a military helicopter shooting at two vans, resulted in the tragic death of civilians, two Reuters journalists, accompanied by the hooliganism and inhumane mirth of US soldiers executing the strikes. Manning penned a letter to President Obama in 2013 which contained noteworthy sentiments. She wrote, 'It was not until I was in Iraq and reading secret military reports on a daily basis that I started to question the morality of what we were doing. It was at this time that I realized that in our efforts to meet the risk posed to us by the enemy, we have forgotten our humanity. We consciously elected to devalue human life both in Iraq and Afghanistan…whenever we killed innocent civilians, instead of accepting responsibility for our conduct, we elected to hide behind the veil of national security and classified information

in order to avoid any public accountability… patriotism is often the cry extolled when morally questionable acts are advocated by those in power… when I chose to disclose classified information, I did so out of a love for my country and a sense of duty to others…' (Rosenthal 2013).

It is well known that Manning's release of the relevant documents caused diplomatic embarrassment to the United States and resulted in many altering moments in international relations. The documents affected most relationships America had with the world, according to Crowley, a former State Department official. Due to the 'leaks' the US ambassador to Mexico resigned over comments he made via cable, on the Mexican government; the US ambassador to Libya was recalled after his detailed communications of the Gadaffi government. Some even credit the Tunisian uprising as the result of the 'leaked' cables, as one was about Tunisian politician, Zine el-Abidine Ben Ali (Shaer 2017). The Guardian newspaper opined that the leaked war logs 'show a conflict that is brutally messy, confused and immediate.' It was one of the primary news sources that published Manning's 'leaked' material, after having removed material which the editors deemed dangerous to the safety of troops, local informants and collaborators. This assertion in their editorial itself points to the fact that there may have been material injurious to the security and defence of US troops, which ought not to have been released by Manning. Yet, once such material were removed, the Guardian concludes that, 'the collective picture that emerges is a very disturbing one... a war fought ostensibly for the hearts and minds of Afghans cannot be won like this.' (Rusbridger 2010).

The Manning case brings to light the delicate dichotomy between the protection of official secrets and the protection of human rights. Did she place any of her own troops at risk, or did she publicise facts and events which should be posited within the catalogues of global knowledge? Interestingly, at Manning's sentencing, government witnesses testified that no American deaths could be attributed to the leaks. The words of Manning herself, are instructive, 'there are plenty of things that should be kept secret…lets protect sensitive sources. Lets protect troop movements. Let's protect nuclear information. Lets not hide missteps. Lets not hide misguided policies. Lets not hide history. Lets not hide who we are and what we are doing' (Shaer 2017). One then needs to take a clear look at the Sri Lankan law and evaluate whether there are any possibilities of concealing missteps and history, under the guise of official secrets, and how restrictions can hamper accountability and transparency. The story of Daniel Hale, another activis, as of Chelsea Manning, would be even further instructive.

2) The case of Daniel Hale

Hale's life took a similar trajectory to that of Manning. He was a former US Air Force signal intelligence analyst from 2009 to 2013, participating in the US drone programme, collaborating with the National Security Agency and the Joint Special Operations Task Force, in Bagram Air Base, Afghanistan. His role was to track the location of cell phones of enemy combatants, who would then be monitored and eliminated through drones. He was charged under the Espionage Act of 1917 (same as Manning) and found guilty of leaking numerous government documents, exposing the cost of civilian life and inaccuracies of the American Drone Programme. The US Drone Programme has often been dubbed America's assassination Programme. On March 2021, Hale was sentenced to 45 months in prison, by the District Court of Alexandria, Virginia (Weiner 2021). This begs the question – what

was the nature of the material given to the press and public by Hale, that merited such an arduous confinement? There are claims that he was being held in a room with 100 people, deprived of a change of clothes, bedding or visitors (Gibbons 2021), reminiscent of the inhumane treatment meted out to Manning. Again, begging the question – who was the true criminal here?

Hale's crime was, ostensibly, taking classified documents and handing them over to a journalist who published a series of articles at the Intercept, called 'The Drone Papers' in 2015. Hale's documents illustrated the fatal failures of the Drone Programme, in Somalia, Yemen and Afghanistan – one document highlighting that during a 5 month military operation in Afghanistan, nearly 90% of people killed were not the intended targets. This number is staggering in its tragic magnitude. There was other evidence - that the US military did not account for civilian deaths in Afghanistan, and any time military age males were killed, they were wrongly classified as 'combatants killed in action' or 'militants' (Schahill 2015). Those killed were also named as 'enemy killed in action' or EKIA by the military, and interestingly, presumed guilty unless posthumously found to be a non terrorist. Thus, the status of those killed were classified by the American military and the CIA in a manner that would soothe their conscience but had no basis in factual or legal reality. Targets were killed based on scant evidnce and were placed on kill lists loosely and denigratingly called 'baseball cards', studiously in keeping with the all American vocabulary (Schahill 2015). It is clear that the fundamental legal premise, presumed innocent until proven guilty, was a luxury not afforded to these victims. Hale strongly believed that these baseball cards were created utilizing utterly fallible data, subject to much human error. There was also the issue of people being killed by Drones, when they were not engaged in active warfare, which Hale felt was untenable. He was of the view that kill lists were made, targets followed and eliminated before they could be found guilty of any wrongdoing, in any court of law. Recall that under the laws of war, killing a combatant is permissible, yet those killed by Drones were not acting as combatants at the relevant time. The scarcity of evidence that they were combatants, and yet deserving of death through remote means, were arbitrary and violative of basic norms of law, to say the least. Those assassinated were assigned 'death sentences without notice, on a worldwide battlefield' (Scahill 2015). Hale continuously maintained that he could not keep silent due to his conscience. He stated to the judge, in a poignant letter that has received much acclaim that, 'not a day goes by that I don't question the justification for my actions… I am grief stricken and ashamed of myself' (Weiner 2021). Those familiar with all aspects of his trial have written how Hale frequently spoke of the crises with his conscience, in long speeches before the judge as well as carefully penned letters (Gibbons 2021).

President Obama and his tenure is well known for the proliferation of Drone warfare. He often spoke publicly of the precsion of Drone attacks, stating that there were zero civilian casualties, and that there was a 'near certainty' that civilians would never be killed by such attacks. These remarks struck a chord within Hale, as he had first hand knowledge of their fallacy. The other issue that plagued Hale was that far from fighting a war on principles, the war that he witnessed was profitable to weapons manufacturers – that it merely provided a platform for the weapons industry to thrive. This again showed the lack of accountability of the US government and its pandering to the weapons manufacturing industry, in clear violation of public interest. The collective idea

that the documents present is that, there was an over reliance on signals intelligence which was fallible, high and incalculable civilian death toll and an inability to obtain vital information from terror suspects, as the aim was assassination and not capture; overall, the futility of the Afghan war was obvious through these 'leaks' (Schahill 2015). It is not surprising then, that the US government saw Hale's actions as a public embarrassment. Hale states it unequivocally in his letter to the judge, 'it did not matter whether it was…an Afghan farmer blown in half, yet miraculously conscious and pointlessly trying to scoop his insides off the ground, or whether it was an American-flag-draped coffin lowered into Arlington National Cemetery…both serve to justify the the easy flow of capital at the cost of blood – theirs and ours.'

Daniel Hale had no option of a defence in his charge. In his simple yet powerful statement, he made the following plea, 'I am here because I stole something that was never mine to take: precious human life. I couldn't keep living in a world in which people pretend that things weren't happening that were. Please, your honour, forgive me for taking papers instead of human lives' (my emphasis).

3. Concluding Remarks

The recent extradition of Julian Assange (the founder of Wikileaks) to the United States has brought the US Espionage Act into the forefront. What was evidenced in the cases of Manning and Hale was the persecution, prosecution and punishment of 'leakers', which took on new numerical heights during the Obama administration. The Trump administration crossed a further frontier with the Assange persecution by seeking to punish the disseminator of the 'leaks'. Assange's trial, played out in public, signified the UK's obedient concurrence with the dictates of the US. It also highlighted the endorsement of the British judge and Priti Patel (Home Secretary of the UK) to extradite Assange, an Australian citizen, to the United States, to be tried under the Espionage Act. The silence of Australia is deafening in its lackeyed muteness towards the overarching policies of the US. This is all the more surprising given that in 1980, Justice Mason in the High Court of Australia held as follows, 'it is unacceptable in our democratic society that there should be a restraint on the publication of information relating to government when the only vice of that information is that it enables the public to discuss, review and criticize government action… unless disclosure is likely to injure the public interest it will not be protected.' (*Commonwealth of Australia v John Fairfax & Sons Ltd* (1980) 147 CLR 39, 52). Laudable Australian sentiments in 1980 which seem to have disintegreated in 2022. Now, the reach of the Espionage Act has expanded to punish the publisher, worrying independent journalists everywhere. Anyone familiar with modern history and international law would know that US military operations are hardly confined to its own borders. The erudite Daniel Larsen pens, 'the fearsomeness of the Espionage Act's draconian penalties arises from the sheer breadth of the statute's potential application. The Act provides no limits on who can be charged and it protects all information connected to "national defense"… the Act has morphed from a comparatively narrow but vigorous law primarily protecting the US military into a vague, highly punitive juggernaut of unrestrained government secrecy ' (Larsen 2021). As stated earlier, the pivotal term, 'national defense' is not subject to definition in any part of the Espionage Act, similar to the legislative intent and instruments in Sri Lanka.

This brings one to the ultimate aim of this article – how are we to bridge the dichotomy between protecting what truly harms national

security whilst espousing the causes of government accountability and respect for all human rights? It is by no means suggested here that restriction of the freedom of information and expression must not occur for the sake of national security. A State is responsible for the protection of the lives of the tri forces as well as the military successes of its operations. Even international humanitarian law has recognized this throughout the centuries of its development. In no way must the freedom of expression and information undermine the planning, course and conclusion of a military operation or place at risk those who are engaged in such. Sri Lanka faced such a tragic debacle when members of the coveted Long Range Patrol Unit were destroyed when details of their whereabouts were leaked to the LTTE (Athas 2002). One should never envisage this type of security compromise, and the protection of State combatants should be non negotiable. As Condon (2014) states, '… the justifications for secrecy are strong when certain national secrets are at issue, like those implicating military strategy, diplomacy, or the names of covert intelligence sources, the rationales lose force when illegal secrets are at issue' (my emphasis).

What this article aims to suggest is that there must be global transparency in matters which have no correlation to the security of troops, and where it is highly apparent that governments seek to hide behind the expansive façade of national security / official secrets. This is the purpose of enumerating the tragic situations of Chelsea Manning and Daniel Hale, and the brief comparative analysis of the US statute – the Espionage Act of 1917 – as a precedent not to be followed by any accountable government or a nation purporting to uphold the laws of war. There should be no draconian deterrence of government officials, from revealing government wrongdoing – wrongdoing that is detrimental to its own citizens.

Vagueness of definition and interpretation erodes legal certainty and government accountability (Nasu 2015). It justifiably gives rise to suspicions of extra judicial activity, human rights and international humanitarian law violations. The issue is then whether the legislature should provide a more comprehensive definition of 'national security' which is far seeing and clear, rather than leave an ambiguous phrase to be determined by judicial means. Lord Nicholls of the UK was of the opinion that generally the judiciary was ill equipped to 'second guess' the national security significance of certain information (*A v Secretary of State for the Home Department* [2005] 2 AC 68 (House of Lords), 128).

Condon (2014) further states, 'government secrecy and the abuse of power have long shared a symbiotic relationship'. This perception needs to be evaluated and rehauled. She further argues that secrecy leads to poor decision making by governments, and confers legitimacy on illegitmate actions. She suggests that if a Court finds *prima facie* evidence of unlawful conduct, then it should strongly consider the principle of democractic accountability and the privileges accorded to official secrecy should yield. It is submitted that this is a good suggestion – yet still places the burden on the judiciary, and presupposes a progressive, liberal judicial outlook. This may be problematic in a country like Sri Lanka which does not have laws or a culture of judicial review of legislation or certain executive actions. The concept of checks and balances is not delicately interwoven in the present Constitution. Whilst the Right to Information was newly introduced to the Fundamental Rights Chapter in the Constitution, (and one must be thankful for its novelty and utilization) – the Right to

Information Act details when information could be withheld. In Part II, denial of access to information, sections 5 (b) (i) and (ii) state that information which would undermine the defence of the State, national security or Sri Lanka's relations with another State, would be protected. As iterated earlier, it is not the author's intent to place national security and defence in jeopardy, but one must take issue with the blanket definitions which have no guidance for judicial interpretation, giving greater leeway for illegal secrets to be kept secret. In such a position, a Lankan Chelsea Manning and a Daniel Hale can be prosecuted in the same illegitmate manner, if the legitimate defence of public interest is disallowed by law. Thus, even though the public has had much access to information since the RTI Act and Commission came into being, the type of information released are outside the scope of this paper. The fundamental question this paper seeks to ask is, what would the position be if Sri Lanka had whistleblowers similar to Manning and Hale – and if we would take the same steps America took, under the Espionage Act, which also does not allow the defence of public interest? Would this be the best way forward towards ensuring democracy, government accountability and transparency? Is this the appropriate way to ensure sustainable national security? The general public will uphold and respect secrets which actually are pivotal for national security if illegitimacy, violations of human rights and the law of war are called out, at the appropriate time. This will only increase respect for the armed forces, the administrative and bureaucratic processes and the ultimate executive decision makers. Needless to say that Manning's and Hale's 'leaks' only served to undermine the American public's trust for the administration and the justifiability of wars carried out through the tax payer's money. Their 'leaks' also showcased that the US war atrocities would only breed more dissent and lead to insurgent / insurrectionist movements in the areas under siege. If one looks at the long term, larger picture, objectively, through the lens of true patriotism, one would see that delegitimizing illegality would ultimately be best for the upholding of national security. This ought to be the end goal for sustainability in national security – the sustainability one envisages for decades to come.

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A Protective Legislation for Whistle-blowers to Thwart White-Collar Crimes: A Comparative Analysis of Sri Lanka and United Kingdom

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Abstract: *White collar crimes in the context of commercial law primarily carry the structures of money laundering, capital market malpractices, terrorist financing and falsification of financial statements. As these crimes pose a grave menace upon the economy of a country, Sri Lanka which is currently undergoing a massive economic crisis needs to pave its attention to prevent these crimes of privilege by safeguarding the employees who are willing to disclose but are hesitant to blow the whistle owing to the dread of retribution by their top management. In order to determine the efficacy of the law and to examine the concerns with its regulatory oversight, this article showcases the author's research findings from the assessment of the pertinent legal provisions made in relation to the security of whistle-blowers in the United Kingdom by additionally serving the purpose of comparing the British law with that of Sri Lanka to ultimately make recommendations based on the relevant provisions and to adopt them into the Sri Lankan legal system. The library research approach was applied to accomplish this objective, and the qualitative data that were retrieved from statutes, case laws, books, and journal articles proved how inadequate the statutory protections for whistleblowers in Sri Lanka are. For the fulfillment of analytical objectives, the methodology of International Comparative Research was adopted by citing UK case laws and statutes, ILO treaties, and UN conventions. Finally, the article is concluded with the principal recommendation of implementing an independent legislation on Whistle-blowers Protection modelled after the UK's Public Interest Disclosure Act 1998 by discussing certain additional recommendations to uplift the established standards laid under the provisions of Public Interest Disclosure Act.*

Keywords **:** *Whistle-blower Protection, White Collar Crimes, Disclosure*

1. Introduction

Contrary to orchestrated crime or other types of crime syndicates, white-collar crimes are being committed by individuals who seize advantages in organizations engaged in lawful commerce. It is hard to spot the wrongdoing when it's covered up by a reputable company. As a result, preventing and combating this form of crimes calls for a distinct strategy. For this purpose, disclosure from individual persons or corporate whistle-blowers is of paramount importance.

Ralph Nader originally used the phrase "whistle-blowing" in 1971 at a Conference on Professional Responsibility. The phrase "truth-telling insider" reeked of treachery, according to Nader, also stated that whistle-blowers ought to have the respect of the public despite how Americans typically referred to them as 'finks,' 'stool pigeons,' 'informers,' or ' rats within their own workplace.' (Harrell, 1983)

There are numerous definitions on whistleblowing and, subsequently, on who are referred to be whistle-blowers depending on the law of the particular state. The Council of Europe offers a broad definition in its Recommendation CM/Rec(2014)7 and accompanying memorandum, both of which

were approved by the Minister's Committee in 2014. Accordingly, it states that. “In the scope of their employment contract, whether in the public or private sector, anybody who reports or publishes information about a harm or damage to the public interest is referred as a whistle-blower.”

The Apex Court, in the case of Manoj H. Mishra v. Union of India [Civil Appeal No. 4103 of 2013] declared that the following criteria must be met in order for someone to be recognized as a whistle-blower.
(a) The primary goal of disclosing the matter should be to purge the organization and enhance the public welfare.

(b) The public interest needs to be best served by reporting such matters.

Despite the occurrence of corporate failures owing to white collar crimes in Sri Lanka, no reference on whistleblowing could be found under Companies or Securities legislations. The bankruptcies of Golden Key Credit Card Company and Pramuka Bank are two examples which could be cited. If a whistle-blower had disclosed the illicit business operations sooner, the livelihoods of huge number of bank depositors and their savings worth billions of rupees may have been saved, not to mention the employees' livelihoods as well.

The United Kingdome possesses strong roots of whistle-blower protection legislation implanted by the Public Interest Disclosure Act 1998 (PIDA), and it has been the prime source of securing whistle-blowers ever since its enactment, giving incentive to others who wish to blow the whistle as well. This research attempts to offer an equitable review by addressing both the benefits and drawbacks of the UK PIDA 1998, as well as by drawing a comparison between the established law of Sri Lanka and UK, by additionally forming the fact that Sri Lanka is nowhere close to offering protection to whistle-blowers, and thus requires to embrace the exemplary UK PIDA 1998 to seal the existing legal gap.

2. Methadology

A. Methodology

In order to gather secondary quantitative data as well as primary and secondary qualitative data, the article implemented the library research methodology. Secondary qualitative data and primary qualitative data were collected via comparative research methodology, and were mainly cited from the jurisdiction of United Kingdom. United Kingdom was chosen as the country for the purpose of comparison owing to the main reason that Sri Lanka being a country which has laid its English Law foundation based on the traditional British Law and thus makes it less challenging for Sri Lanka in the process of adopting the statutory provisions established under the British law.

B. Methods

UN Conventions, Conventions passed under ILO, UK’s Public Interest Disclosure Act 1998, Financial Services and Markets Act 2000, the Companies Act 2006 along with the Constitution of Sri Lanka were the main sources where Qualitative primary data were accumulated.

Websites, books and articles from journals were been used to gather qualitative secondary data, whilst pre-collected statistics generated via them were been used to gather quantitative secondary data.

LEGAL PROVISIONS UNDER SRI LANKAN LAW WHICH CURB WHISTLE BLOWING

S.16 of the Sri Lanka Press Council Law No.5 of 1973 renders it to be a crime indictable by a prison sentence to publicly release any news publication related to any portion of the Cabinet Ministers' proceedings, any

manuscript sent by a Minister to the Cabinet's Secretary or conversely, or of any affair purporting to be a decision of the Cabinet, ostensibly even though the publication was made in good faith with the intention of uncovering malfeasance or fraud.

Numerous statutes, notably those pertaining to financial institutions, necessitate declarations to be signed by employees promising to hold "every transaction" of that organization hidden unless transparency is mandated by the directors, by any lawful court, by the individual who is directly related to the transaction or if he/she is in the execution of his workplace duties or for the purpose of abiding by any law.(Section 61, Bank of Ceylon Ordinance No.53 of 1938)

The said law implies that employees are not permitted to expose fraud on their own discretion, but must stand in line until directed to do so by the directors or by a lawful court. But the problem is, it is very unlikely for the directors or a lawful court to be informed of white collar crimes unless exposed by an employee who is aware of such.

The exposure of fraud in the public interest is further restricted through S.45 of the Monetary Law Act No.58 of 1949 by stating that no employee shall be obligated to produce any document or book to disclose of any concern he comes across to a lawful court.

EXPLORING LEGAL RECOGNITION AFFECTING WHISTLE-BLOWERS UNDER EXISTING LAW

A. United Kingdom

Whistleblower protection is not yet recognized by the UK's Securities or Companies Acts. Both the Financial Services and Markets Act of 2000 and the Companies Act of 2006 remain mute on this matter. Alternatively, section 43CH of UK's Public Interest Disclosure Act 1998(an amendment of Employment Rights Act 1996) states that the individuals who disclose information which are qualified to be exposed in the interest of the public, the intention being a *bona fide* one (prior to 2013 Amendment), is entitled of the privilege of not being harmed by any action or default of their employer as a result of such exposure.

The 'public interest' requirement was strengthened by section 43B(1) whilst the bona fide requirement was eliminated on 25th of June 2013. As a result, a qualifying disclosure is now defined as one where the employee has a reasonable belief that such revelation is given in the public interest. Due to the fresh provision 123(6A) in the ERA 1996, which indicates that the arbitrator can decrease any grants made to the whistleblower by not more than 25% when the arbitrator identifies that the reporting was submitted bearing a mala fide intention, although 'good faith' is no longer a component of the PIDA and the ERA 1996, it does have some influence on remedies (Vinten, 2003).
In the case *Parkins v. Sodexho Ltd* [2002] IRLR 109, it was decided that a legitimate duty deriving from an employer-employer contract ought not to be differentiated from every other contractual duty. This decision elevated the argument that any grievance about a person's employment agreement can be regarded as a shielded disclosure, even if the problem does not directly affect other workers or the general public. Therefore, 'public interest' is also considered to be a subclass of the general public. However, it was determined in *Darnton v. University of Surrey* [2008] ICR 615 that an employee could be shielded even if he is erroneous but only reasonably misled.

Though the protection under PIDA would not be extended upto volunteering individuals or self-employees, the training employees, both private and public sector workers and temporary employees are offered coverage via the act regardless of years of stay or age. As

specified in S.43(B)(2), PIDA urges workers to disclose misconduct not merely within the jurisdiction of United Kingdom, but anywhere else, since it makes no difference whether the underlying collapse happened within the boarders of United Kingdom or overseas.

Under S.43(B)(3), a revelation of facts is not considered as a qualifying disclosure if the individual delivering the revelation commits a felony by executing it, demonstrating Act's attempt to draw a borderline among doing the correct thing and misleading the institution and related persons. Though the PIDA has indeed been enacted to shield whistleblowers from punitive acts, it is crucial to highlight that such protections does not apply to each and every exposure submitted and only qualifying disclosures produced in compliance with Sections 43C to 43H will provide whistleblowers with adequate coverage. Furthermore, Section 43D of the Act permits employees to raise concerns regarding the organization's misconduct and pursue legal advice on any issue thereto, including getting a counsel from Public Concern at employment, which has been approved as a recognized professional advicing institution by the British Bar Council.

In essence, the Act offers coverage in two distinct ways, one being the coverage from illegal impairment described under S.47B and the other being from unfair termination described in S.103A. The Court of Appeal in *Woodward V Abbey National PLC* [2006] IRLR 677 ruled that post-dismissal drawbacks are aswell enforceable within the Act.

The Act provides that any individual who is been exposed to such disadvantage may submit his or her grievance to a labour tribunal stating that such individual has been put through an impairment in breach of section 47B. By asserting that, whereby an arbitration panel uncovers an allegation under section 48(1)(A) the panel needs to render a pronouncement to that effect and grant a compensation to be reimbursed by the employer to the alleged victim in relation to the conduct or ommission to act to which the allegation pertains, S.49 of Employment Rights Act has added additional remedies.

Additionally, the Act's section 103A specifies that a termination of a worker will be considered unjust if the individual's only substantive cause for termination is that the person submitted a privileged disclosure. A teacher exposed the employer's malfeasance in *Bolton School v. Evans* [2007] ICR 641,CA by breaking into the employer's personal computer. Although the disclosure constitutes a protected disclosure, the jury decided not to offer whistleblower protection since the employer's primary motivation for disciplining the teacher was system hacking rather than disclosing.

Regarding compensation, S.124(1A) permits a grant of an unrestricted sum for termination in breach of S.103A or 105. (6A). In *Lingard v. HM Prison Service*, a jail official was granted an unprecedented compensation of £ 477,600 in 2003 for unjust constructive termination as a consequence of disclosing abuse and harassment in the jail. This demonstrates the manner in which the arbitral tribunals view placing a whistleblower at threat as a blatant violation for which a significant amount of damages should be awarded. The actuality that such massive grants are pricey for employers is another evidence of how gravely UK treats the protection of whistleblowers.

PIDA discourages revelations to exterior entities, despite the fact that such revelations are also shielded. Such whistleblowers must first meet specific requirements in order to be eligible for protection (AD claims whistleblower retaliation, 2015). The strictness of these conditions makes it very

evident that in the United Kingdom, media coverage is only to be used as a final option (Mazumdar, 2013), through clause 43G(3)(d). It is clear that the UK is insistent of offering internal whistleblowers the top significance. External revelations are discouraged except if the revelation is extremely significant and owing to such, the crime was not brought up at work out of trepidation of stigmatisation. Thus, it is evident that the statutes's goal is to encourage workers for internal exposures to the max (Park, 2018).

The three-tiered framework, which provides a rather more holistic strategy to the public release of relevant information regarding white collar crimes and the institutional concerns of maintaining such information confidentially, could be utilized to further explain why PIDA empowers internal whistleblowing over external whistleblowing. It establishes a tier system where each tier has more stringent requirements which must be met in order for the whistleblower to be shielded.

Since the disclosure is strictly implemented internally in the first layer, information remains within the company. If the first tier is ineffective, the second tier which is not the immediate exterior society but perhaps the proxy for it will be employed to blow the whistle. The organization is essentially discouraged by this. The second and third layers continue to be interconnected in the identical manner. Here, the third layer advances and serves as a monitor to ensure that the second tier is carrying its rectification role effectively. Thus, the 3rd tier approach primarily aims to hold organizations accountable for the manner in which they deal with complaints made against them and the people making those complaints rather than holding organizations directly responsible to public for their immoral behaviours (How does the EU Whistleblowing Directive protect whistleblowers?, 2022). It must be emphasized however that the PIDA requires no employer to establish a mandatory framework for handling complaints from whistleblowers or more precisely a protocol for doing so. Even though the employer has established a protocol, no one is particularly advised to follow it. This implies that there is no set procedure for placing a whistleblower policy into effect within the company either.

B. International Framework

- The International Covenant on Civil and Political Rights (ICCPR)

According to Article 9 of the ICCPR, freedom of speech includes the freedom to seek, receive, and transmit information of all sorts, independent of borders, verbally, in writing, or in printed form, through any means of preference. Since Sri Lanka has ratified this legal framework, Sri Lankan employees are shielded from punitive measures taken by their employers or institution for blowing the whistle, since it is the country's role to safeguard the rights granted by the ICCPR. This right comprises of the right to self-determination, the right to be free from prejudice, and the right to be free from being tortured, brutal, or humiliating punishments. However, it is to be acknowledged that the Human Rights Committee is responsible for issuing remarks on state parties' reports on the efficacious application of the covenant, but so far, it has not released remarks on the utilization of ICCPR's right to freedom of expression as a shield to safeguard whistle-blowers, but a minimum threshold of defence still exists.

- Universal Declaration of Human Rights (UDHR)

It is fair to accept that although UDHR contains no Articles explicitly connected to the safeguarding of whistleblowers, a few Articles can indeed be interpreted to offer such

connotation. As a member state of the United Nations, although compliance to the UDHR is voluntary and is non-binding, it has implemented a common criterion of accomplishments for all citizens in all countries. Thus, although not as powerful as a straight piece of legislation that offers protection and Sri Lanka could read such Articles in a way that implicitly protect whistleblowers.

Whilst Article 19 of UDHR guarantees the freedom of opinion and expression, Article 9 states, "No one shall be subjected to arbitrary arrest, detention or exile". Though arrests and exiles are too common and conventional, arbitrary arrest fits the criteria of a punitive impact a whistle-blower would face, and 'detention' here can be read as suspension from employment for disclosing.

- United Nations Convention against Corruption (UNCAC)

UNCAC was ratified by SL in 2004, and Article 33 of it provides that, every member state must take into account on incorporating suitable initiatives into their domestic laws to offer coverage against any unwarranted punishments for any individual who discloses to the proficient officials of any information relating to crimes determined in conformance with this Convention in good faith and on reasonable basis whilst the intention being a bona fide one. This plainly refers to the safety of whistleblowers. Thus Sri Lanka, being a state party, implicitly provides protection to those who blow the whistle.

- International Labour Organization (ILO)

The ILO Convention No. 158 on Termination of Employment enacted in 1982 is one of the principal instruments that expressly offers immunity for whistleblowers. This convention disallows the dismissal of an employee for raising concerns to administrative authorities over an allegation or involvement in proceedings against employers accused of violating laws. Regrettably, only 38 states have ratified the convention and Sri Lanka is not among them, which implies that this clause has no binding legitimacy over the employees and employers in Sri Lankan institutions. Nevertheless, several other ILO treaties ratified by Sri Lanka may be relevant to a certain degree, as well as on certain circumstances of whistleblowing.

1. Article 2(1) of the Forced Labor Convention No.29 of 1930 provides that the phrase 'forced labor' should imply all the services which would be levied from an individual subject to the threat of any sanction and for something that the aforesaid individual has not made himself voluntarily available. Additionally Article 25 provides that, the unlawful implementation of forced labor is a criminal offense and the ratifying states are obliged to ensure the sanctions being strictly adopted into the domestic legal system. According to the interpretation of the aforementioned two clauses when related to whistleblowing, no employee could be forced to perform forced labor given by the employer as a punishment for blowing the whistle.

2. According to Article 01 (b) of the 1958 Convention No.111 on Discrimination (Employment and Occupation), the word 'discrimination' encompasses the choice that has the impact of invalidating equal opportunity in occupation as may be ascertained by the person involved after meeting with constituent employers, trade unions and with other relevant parties. This may be taken to imply that workers from member nations would not face discrimination from opportunities which would be destructive to their employment

for the simple reason that those workers have raised the alarm about unlawful actions carried out by the institution within its doors.

C. Sri Lanka

- *Provisions Cited from the Constitution*

By inference from Article 12(1), the Sri Lankan Constitution establishes a fundamental right to be free of fraud and corruption. Articles 3 and 4 of the Constitution affirm this. This implicit anti-corruption liberation applies to the private sector organizations as well.

Article 14(1)(a) coupled with Article 12(1) recognizes the right of speech and expression, subjected to extremely limited constraints, to expose fraud. This liberty is not confined to the public sector.

Article 28 specifically imposes fundamental obligations on every citizen in Sri Lanka, including the duty to enhance the national interest, labour diligently in his chosen vocation, safeguard and preserve public property, and secure nature's resources. Fulfilling those tasks will frequently need the uncovering of malfeasance. .

The Constitution explicitly offers administrative(Article 156(1) , parliamentary (Article 42 and 43) and judicial remedies (FR jurisdiction under SC – Article 126, writ jurisdiction of COA- A.140) for malpractice and corruption, compatible with the objective of addressing white collar crimes and to safeguard the individuals involved in disclosing such conduct.

- *Provisions Cited from Other Statutes*

In the utter lack of an explicit clause to the contrary, confidentiality provisions added by Legislative acts should be interpreted as 'offering a protective cover of secrecy' solitarily for 'legal transactions' rather than for corrupt practices, especially in the context of the rights and obligations enriched in the constitution which were highlighted above.

The same principles should apply to confidentiality provisions added by regulations like Established Codes, with the exception that those should be null and void if they are in conflict with the fundamental rights established under the Constitution.

- *Clauses in Contracts*

Confidentiality clauses in contracts, whether public or private, that directly exclude disclosing white collar crimes or that are intended to be regarded in that way are unlawful under the Contract Law as it is contrary to public policy and are thus ineffective (Weeramantry, 1967).

ATTEMPTS UPTO DATE TO ADOPT EXPLICIT PROVISIONS INTO THE SRI LANKAN LEGAL SYSTEM

Sri Lanka being a nation which has experienced numerous corporate failures, it is regrettable to admit that some creditors have even committed suicide since they were unable to pay debtors because the company lacked internal whistle-blower strategies and whistle-blower shielding laws, which would have provided assurance for whistle-blowers to disclose and prevent irreparable harm from corrupt practices within the firms. When the Golden Key crashed down, the liability burden for the fixed deposits was solely totalled up to Rs.130 billion (Golden Key: System and investors to blame, 2022). It could have been avoided if a single employee raised the alarm but nobody came forward to do so owing to the anxiety of aftereffects of such disclosure.

Though Sri Lanka initiated the first ever draft policy to safeguard whistle-blowers in the year 2016, it appears to be challenging since there is a confusion between the words

'witness' and 'whistle-blower' which makes it problematic to design an effective statute because not all whistle-blowers are witnesses (Yamey, 2000).

A Right to Information Act, according to some is an important instrument in the process of combating white collar crimes and would promote good governance in private as well as public sectors (McDougall, 2002). The Right to Information Act should indeed be supplemented with a legislation to safeguard whistle-blowers, because the data gleaned through the RTI Act could essentially be utilized to rectify an unfairness or misconduct, which would necessitate that individual's protection. For the purpose of sustaining an action of a whistle-blower in the interest of public, legislation on Whistle-blower Protection is required to safeguard the courageous individuals who initiate such action. The significance of a separate legislation is not just to safeguard whistle-blowers, but equally to put the Right to Information Act into action. Nevertheless, it is necessary to highlight that, separate whistle-blower protection legislation has a significant impact when seen as a standalone statute, as a weapon to combat corporate malpractices.

As previously stated, the RTI Act protects persons who reveal information pertaining to the provisions of the Act. Nevertheless such protection is not offered to those who reveal malfeasance. Accordingly the requirement of an independent piece of legislation on whistle-blower protection applicable to employees in both public and private sectors, identical to PIDA is spotlighted by the Right to Information Commission's obligation to exercise caution when disseminating information that could impact the degree of protection granted upon the whistle-blowers.

3. Conclusion

There seems to be a comprehensive restriction on the disclosure of malfeasance and white collar crimes in Sri Lanka due to the imposition of legal provisions relevant to numerous numbers of organizations, via subsidiary statutes such as the Establishment Code which applies to all public office holders and by contractual confidentiality terms and conditions applicable to both public and private sectors. Such restrictions not only discourage whistle-blowers, but also subject individuals to disciplinary punishment, perhaps termination for being a whistle-blower. Thus, as a consequence of the existing legal context in Sri Lanka, the domestic legal system is craving for legal protection upon whistle-blowers.

The research was largely centered on the juxtaposition of Sri Lankan and British laws, with the purpose of determining the necessity for Sri Lanka to implement legal changes to safeguard its private sector and public sector employees. In the comparison process of the two jurisdictions, it was made clear that the United Kingdom Public Interest Disclosure Act 1998 is the most comprehensive legislative act related to whistle-blower protection. When the crucial provisions of the Act were compared with the prevailing implicit legal provisions in Sri Lanka, the researcher was able to determine that Sri Lanka requires to grasp a massive breakthrough and render significant adjustments for the purpose of accomodating whistle-blower protection.

Considering the arguments built in recent years, one could rely on the opinion that the PIDA is no longer up to scratch, which is partially precise, but it should be noted that certain improvements and modifications to the Act could restore its effective operation. Therefore, this research concludes its work by making legal recommendations on adopding

the British law by suggesting additional improvements to PIDA.

4. Recommendations

Initially, the regulator to be placed in charge of dealing with concerns relating to whistle-blowers when introducing a separate legislation needs to be determined, i.e., whether the Securities and Exchange Commission or the Registrar of Companies. According to the researcher, SEC will work much better for this function since it performs equivalent tasks.

- Enactment of a Separate Legislation for Whistle-blower Protection

A specific law not only aids in putting issues in context but also assists the augmentation of statutory assurance and precision. Despite receiving its fair proportion of critics, the UK PIDA of 1998 has been in effect for 20 years and serves as the model law for other developing nations including South Africa. As a consequence, it will also be an appropriate piece of statute for Sri Lanka. Furthermore, it should be emphasized that not all provisions of the PIDA could be adopted by Sri Lanka due to practical considerations. Consequently, what could be implemented precisely in practice need to be chosen and the followings were chosen by the researcher to include mandatorily.

To achieve uniformity, identical laws must be applicable towards the employees in both government and private sectors. Unlike PIDA, the extent for protected individuals should not be restricted to permanent employees but should cover contractors, consultants, former employees, interns, trainees, volunteers and part-time employees as well.

According to the PIDA, the suggested law should also recognize qualifying disclosures as outlined in its PART IVA. Moreover, it is recommended to adopt UK's three-tiered strategy into the Sri Lankan legal system, by primarily encouraging internal whistleblowing, allowing recourse to external authorized authorities and if that fails, by allowing recourse to the public, media or police. The goal of encouraging internal whistleblowing ought to be to preserve an institution's integrity.

In order to stay one step ahead of PIDA, the researcher recommends enacting a provision which encourages anonymous reporting. The statute should make it illegal to reveal the whistle-blower's identification unless the whistle-blower consents.

A protection has not been offered to the whistle-blowers prior to or throughout the process of disclosure by PIDA. Contrary to such, the researcher recommends to offer a shield for the individual who blows the whistle throughout the process of disclosure under the Sri Lankan law since a considerable amount of harm could occur even during the said period of time.

The suggested Sri Lankan statute, analogous to PIDA should offer remedial action via the employer such as monetary compensation and interim relief for wrongful termination and related matters thereto. Additionally, while granting compensation, courts must consider not merely the losses on wages but equally the injuries for mental distress and wellness.

Furthermore, by exceeding the standards established under PIDA the researcher recommends Sri Lanka to declare it a legislative obligation for employers to implant an internal whistleblowing mechanism for employees to execute within each firm during the occurrence of a white collar crime.

In the event of an unfair dismissal claim, the burden of proof must be moved from the whistleblower to the employer and such

employer must be burdened to demonstrate that the whistleblower was fired for a cause independent from blowing the whistle.

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Advancing Science and Technology without Environmental Degradation: Sustainable Development and Way Forward

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Abstract *: It is no secret that, given today's limitless scientific and technology developments and scarce natural resources, environmental and technological progress often intersects. Therefore, it is crucial to strike a balance between environmental concerns and technological development at the same time in order to conserve what we already have for future generations and, eventually, to prevent the Earth from degrading. The environment so far has been polluted and destroyed as a result of technological advancements like those related to radiation technology, electronic manufacturing, large-scale construction and energy production related industries, although these advancements typically incorporate measures to minimize environmental degradation. In the past ten years, irreversible ecological habitat destruction, excessive techno-waste release into the environment, deforestation, global warming, and climate change has all emerged as major environmental threats. If it does not take actions to mitigate these threats immediately, mother Earth will eventually perish.*

This paper aims to advocate the pure idea of "Sustainable Development" which has been stepped out from its framework due to the technological advancement. The paper employed doctrinal research methodology to attain this goal and the qualitative and quantitative data that were gathered from books, journal articles and reports showed that the development of science and technology is the primary cause of environmental deterioration. The paper concludes that environmental preservation should be given more attention in sustainable development, and makes recommendations to minimize environmental degradation through advancements in science and technology in addition to other environmental legal principles.

Keywords*: Environmental Degradation, Technological Advancement, Sustainable Development*

1. Introduction

Environment in its broad context includes air, water, soil, flora and fauna. As provided in Principle 2 of the Stockholm Declaration on human environment is, 'the natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems' constitutes the environment. It may be considered as a mixture of the most delicate and vulnerable natural resources on Earth in accordance with the preceding treaty description. Humans depend on the environment because it supports the livelihoods and ensures the survival in all of its aspects. Maintaining an ecologically healthy environment is therefore in own personal interests of humans as well as the common interest of all states to promote environmental well-being so that the

population can exercise the right to a healthy and productive environment.

It is clear that limiting the advancements in science and technology is not possible as humans in the twenty-first century. The premise ought to keep society from turning the focus away from environmental protection issues and towards the issues related to technological advancement. The majority of environmental pollution agents, however, appear to come from sectors that have developed as a result of research and technology. In fact, 75 percent of the land has been damaged by human activity in the domains of scientific and technology progress, according to a 2017 study from the Intergovernmental Panel on Climate Change (IPCC). This has resulted in a significant loss of biological diversity and desertification. The aforementioned facts demonstrate how science has developed to the point that it may eventually supplant environmental protection. The failure to give environmental protection, the consideration it deserves in relation to the concepts and principles of environmental law is where this important issue collides. One of the contemporary solutions to this conundrum is reconciliation with "Sustainable Development". In order to attain the primary goal of sustainable development, society should pay closer attention to environmental preservation since the degree of environmental protection correlates with the success of a development project. According to the Earth Charter of 1998 and the Precautionary Approach recognized under Principle 15 of the Rio Declaration on Environmental and Development of 1992, industrialists and project proponents can be further burdened to take precautionary measures to mitigate or at least to minimize environmental degradation. Since social norms generally emphasize taking essential activities before such actions lead to adverse effects, the same should be applied in environmental aspects under “Precautionary Principles”. As a result, the law states that those who violate these clauses could be liable under the Polluter-Pays Principle or the Precautionary Principle, depending on whether their actions ultimately result in adverse circumstances. Although the "Precautionary Principle" and the "Polluter-Pays Principle" play significant roles in the legal framework for environmental law, the environment still faces serious dangers.

Despite the provisions ingrained in these international treaties, conventions, and Protocols that followed them, people have chosen to tackle environmental problems from an anthropocentric perspective. This perspective views the environment in terms of human values and holds that as people are the most important being in the universe, thus the environment should be protected solely for their enjoyment. This premise hinders the intrinsic value of the natural earth, yet regarded for its substantial importance to human beings. Principle 1 of the Rio Declaration emphasizes the afore-stated stance, asserting that 'Human beings are at the centre of concerns for sustainable development, they have a right to a healthy and productive life in the natural environment'. The most key issue in this regard is how to successfully conserve and sustain the ecosystem without deteriorating it. Therefore, the article's goal is to illustrate the idea of ‘Sustainable Development’ from a fresh angle that prioritizes environmental preservation by suggesting more practical and competitive recommendations to be implemented in order to strengthen the pure values of the sustainable development framework.

2. Methodology and Experimental Design

A. Research Methodology

The paper adopted doctrinal research methodology to collect secondary quantitative

data and both primary and secondary qualitative data. The afore-stated was employed to understand the core principles and concepts of Environmental law, allowing for the recommendation of an effective framework to encourage environmental protection while also continuing to allow for scientific advancement.

B. Methods and Experimental Design

The Stockholm Declaration of 1972, Rio Declaration of 1992, and case laws from India and Sri Lanka were employed to acquire qualitative primary data. Since both jurisdictions have numerous competitive judgments on environment related case laws, it has eased the in-depth understanding of the legal perspective on the topic of the study. Books and journal articles were used to obtain qualitative secondary data, while pre-compiled reports from the United Nations (UN), IPCC and AIS Study Centre were utilized to obtain quantitative secondary data.

3. Results

One of the significant issues being considered in the contemporary context is environmental degradation. Environmental degradation is defined by the UN International Strategy for Disaster Reduction as the 'Reduction in the capacity of the planet to meet social and environmental goals and demands'. Long-term ecological consequences, some of which can destroy entire ecosystems, can be used to identify environmental issues. An environment is a special type of entity that includes both living and non-living elements. Even if it appears to be okay on the surface, there are negative effects. Some specialized animal and plant groups, the majority of which are unique to their bioregion or require a huge area to ensure that their genetic lines are maintained, feel the brunt of these effects the most. The combination of a significantly large and growing human population, steadily rising per capita income, and the use of resource-depleting and environmentally destructive technologies results in ecological consequence or deterioration. When technological advancement divides up lands, the environment is also divided. Streets that cut through a forest or even trails that weave through plains are some examples of this.

According to research, it is evident that industrial activity, specifically deforestation, air pollution, and water pollution, is the main cause of environmental degradation. The investigations have shown that new constructions, which are entirely dependent on new technical building methods, are the main cause of the deforestation. When building sites use technological equipment for large structures instead of using human labour, the vibrations, radiation, and noises that the equipment emits produce additional negative environmental damages that will ultimately cause the ecosystem to degrade quickly. With the advancement of science and technology, industrial machines with high radiation outputs, vibrations, and noise levels are constantly used on building sites, degrading the environment. It is obvious that as knowledge and technology have developed, environmental degradation has been increasing quickly. Additionally, it is directly contributing to the negative health conditions facing the general people.

Environmental deterioration may have negative effects on human health. Respiratory issues like pneumonia and asthma can develop in areas where harmful air pollution is present. It is known that air pollution has caused millions of deaths indirectly. The UN has noted that during the Covid-19 Pandemic period, nearly all of the states had to halt operations at their industrial locations, and everyday vehicle traffic also decreased. As a result, the UN performed research as part of its 15th Sustainable Development target to determine how the ecosystem has changed. In the above-

noted study, it was found that the rate of air pollution had swiftly decreased and that the Taj Mahal Trapezium Zone had also been freed of the toxic chemicals that were being released by the factories. Additionally, they have seen that as industrial, scientific, and technological activities have decreased, the globe has become somewhat greener. Additionally, researches have showed that following the Pandemic, deforestation levels have grown once more due to an upsurge in development. Even though deforestation was prohibited during the pandemic period, practically all activities during that time were undertaken online, where the radiation from technical equipment badly affected the ecosystem.

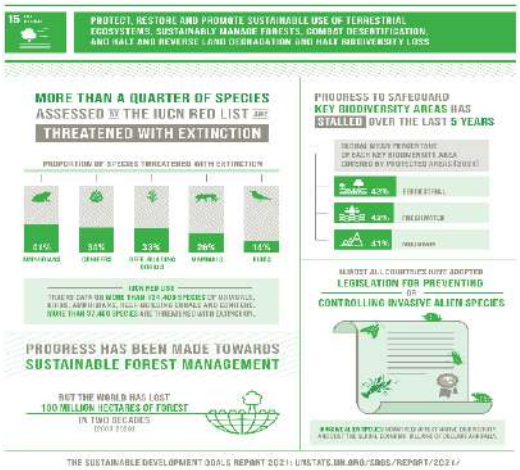

Figure 1. Life on land, UN Sustainable Development Goal #15

Source: The Sustainable Development Goals Report 2021

In order to resist pollution, replenish nutrients, safeguard water sources, and stabilize the climate, biodiversity is crucial for maintaining the ecosystem's equilibrium. The main drivers of biodiversity loss include deforestation, global warming, overcrowding, and pollution. For the tourism business, which depends on tourists for a daily income, environmental degradation can be a major setback. Most tourists may be greatly turned off by environmental harm in the form of less greenery, diminished biodiversity, massive landfills, and increasing air and water pollution. In terms of restoring green cover, cleaning up landfills, and protecting endangered species, the enormous costs that a nation may have to bear owing to environmental degradation can have a big economic impact. The decline of the tourism sector might also have an economic consequence. Environmental degradation will also have a negative impact on the ozone layer, which shields the planet from dangerous UV rays. The ozone layer is being destroyed by the presence of hydrochlorofluorocarbons, also known as chlorofluorocarbons, in the atmosphere. When it runs out, it will release dangerous radiation back onto the planet.

4. Discussion

The primary components that must be guaranteed are the sustaining natural capital stock and the preservation of the environment from pollution in order to secure a country's sustainable trajectory, which ultimately calculates to the global sustainability. In addition, a suitable adaptation mechanism must be taken into account when responding to environmental challenges on a global scale, particularly those related to climate change. Despite the fact that changing current rules and regulatory frameworks has been the subject of several talks, little has been done to improve general environmental management practices. The three main categories into which the current global community's most pressing environmental issues fall are as follows. They are the degradation of natural capital stock, environmental pollution and the means of the responding impacts in global level.

Land, water, and air degradations are the three basic types of environmental degradation. Degradation of land and soil occurs as a result

of subpar farming methods, overuse of pesticides and fertilizers, and landfill leaks. Degradation of water is when significant amounts of industrial waste are dumped nearby in rivers or lakes, oceans are polluted by rubbish dumped there, and there is illegal dumping as well. Air deterioration, particle pollution, and ozone layer thinning are all examples of atmospheric degradation. In addition to the three primary techniques, there are numerous other types of pollution that can occur, including radiation pollution, noise pollution, and light pollution, all of which contribute to environmental degradation.

According to Toner Buzz (2022), the total amount of deforestation that has taken place over the past three decades has directly contributed to environmental degradation overall and will pose a threat to future global sustainability goals. The following is a list of the findings from the Toner Buzz studies:

- 31% of the earth's surface is covered by forests, approximately 4.06 billion hectares
- Only 18% of the world's forests are on land protected from deforestation.
- Over 420 million hectares of forest have been lost since 1990.
- Between 1990-2010 an average of 15.5 million hectares of forest were destroyed every year.
- Between 2010-2015, 12 million hectares of forest were destroyed every year giving a 22.58% decline for 2010-2015 compared to 1990-2010.
- Between 2015-2020, 10 million hectares of forest were destroyed every year giving a 35.48% decline for 2015-2020 compared to 1990-2010 and 16.67% decline compared to 2010-2015.
- 2,400 trees are cut down each minute.
- 25.8 million hectares of forest were lost in 2020, double the amount of forested land lost in 2001
- Prior to 2019, greenhouse gas emission from tropical forest degradation was seriously underestimated.
- 14,800 square miles of forest are lost every year. This is roughly the same size as Switzerland.
- Deforestation causes approximately $2 trillion to $4.5 trillion in lost biodiversity each year.
- 4.2% of the world's tree cover loss was between 1990 and 2020.
- By 2030, there may be only 10% of the world's rainforests left.
- 31% of modern diseases are a result of deforestation.
- 137 different species of plants, animals, and birds are lost every single day due to global forest loss.
- Approximately 1,400 tree species are currently listed as critically endangered.

Figure 2. Global deforestation for the year 2022

Source: Toner Buzz

According to Deforestation Facts and Statistics 2022 [Global Data] by Toner Buzz, following studies demonstrate the extent of environmental degradation brought on by air pollution particularly that brought on by harmful industrial activity worldwide.

- 9 out of 10 people worldwide breathe polluted air

- About 7 million people die every year from air pollution. Almost 90% of deaths occur in countries of low and middle income.
- Air pollution is the 4th largest threat to human health.
- Air pollution led to 1 in 10 deaths in 2013, which cost the global economy about $225 billion in lost labour income.
- Of the world's 20 most polluted cities, 18 are in China
- Air pollution kills more people than guns and car accidents put together in the United States.
- Despite being the world's largest carbon emitter and the country with the worst air pollution on the planet, studies demonstrated that the nation made major progress in reducing air pollution thanks to strict policy action.
- A child born today might not breathe clean air until they are 8 years of age.
- Breathing polluted air can reduce life expectancy by up to 2 years.
- Studies demonstrated that more than 200 pollutants in polluted air can age skin and makes us look older.
- 4 million people die from indoor air pollution each year.
- India, China, Bangladesh, and Pakistan account for the 50 most polluted cities in the world when it comes to air pollution.
- Air pollution kills more than 1 million seabirds annually.
- Lung cancer is responsible for about 6% of outdoor air pollution deaths.
- 91% of the world experiences outdoor air pollution.
- Pneumonia and ischemic heart disease are the most common causes of premature death brought on by indoor air pollution.

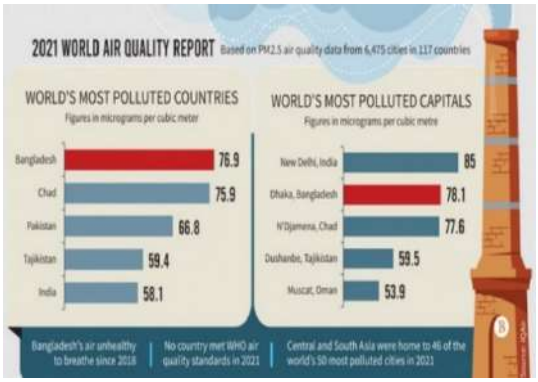

Figure 3. World air quality report for the year 2021
Source: Vajiram & Ravi, IAS Study Center

The notion of sustainable development has been acknowledged as a workable solution to end poverty and enhance the standard of living for people. Given that environmental deterioration is intensifying as science and technology advance, it appears to pose a serious danger to sustainable development. The following are the key components of sustainable development as they relate to the field of environmental law. Taking appropriate measures to stop and address the causes of environmental degradation is known as the precautionary principle. According to the Polluter Pays Principle, the polluter has an unequivocal obligation to pay for environmental restoration as well as compensation for victims. The laws that monitor and control human activities related to the environment when they are likely to lead to environmental degradation will ultimately safeguard the environment as the final characteristic. The Constitution, which establishes the right to a clean and healthy environment as well as the responsibility to safeguard it, and the country's Penal Code, which defines public nuisance to include all forms of pollution, are the two most important pieces of law.

In the case of *Geethani Wijesinghe and the Environmental Foundation Limited v. Minister of Environment and Natural Resources, Environment Ministry SC (FR) Application No. 87/2007* which is known as the Air Pollution Case in Sri Lanka, in order to lessen the excessive air pollution caused by the harmful gases generated by automobiles, the court has ordered the enactment of new legislations to monitor the Air emission, Fuel, and Vehicle Importation Standards of vehicles in Sri Lanka. The increased use of cars by the worldwide community as a result of scientific and technological advancements has led to environmental damage.

In the case of *Watte Gedara Wijebanda v Conservator General of Forest and eight others SC Application 1556/2004*, Justice Tilakawardane referred to Principle 21 of the Stockholm Declaration 1972 and Principle 1/ 2 of the Rio Declaration 1992. It was held that, '…. although the instruments and the constitutional provisions cited above are not legally binding upon government, they constitute an important part of our environmental protection regime'.

In the case of *Al Haj M.T.M. Ashik and four others, Trustees of Kapuwatta Mohideen Jumma Mosque, Denipitiya, Weligama v. R.P.S.Bandula, O.I.C Weligama and nine others SC (FR) Application No. 459/2008*, which is known as the Noise Pollution Case, due to the noise produced by the mosque's amplifiers and loudspeakers, the case was brought before the court. In the case, it was made clear that excessive use of amplifiers and loudspeakers contributes to both public annoyance and noise pollution, both of which would have a negative impact on the environment.

In the case of *M.C. Mehta v Union of India (1997) 2 SCC 41*, the case was based on the Polluter Pays Principle where the Supreme Court of India has ordered to pay compensation for the damages occurred due to the discharging of poisonous effluents from the factories situated near by the River of Ganges. In the case of *M.C. Mehta v Union of India (1997) 2 SCC 353*, which is a very famous case where the court has ordered to stop functioning and relocate the industries in another area since the gases emitted from the industries can damage the Taj Mahal with the time pass. Moreover, in the case of *M.C. Mehta v Union of India (1998) 9 SCC 93*, the court held that the authorities should strictly adhere to the laws and the protect the Taj Mahal Trapezium Zone from air, sound and other means of environmental pollutions where the case was filed against the musical concern by "Yanni" Troupe. It shows that the excessive usage of the scientific and chemical related sources in industries can be considerable threats to the environment.

In the case of *Vellore Citizens Welfare Forum v. Union of India and Others AIR (1996) SC 2715*, Justice Kuldip Singh stated that, "although the leather industry in India is a major foreign exchange earner and is of vital importance to the country, it has no right to destroy the ecology, degrade the environment and pose a health hazard". He further established that the traditional concept of development and ecology are opposed to each other is no longer acceptable since the only answer is enhancement of "Sustainable Development" towards environmental preservation.

5. Conclusion

With all the research done by experts and academics, it is now obvious that the environment, along with the variety of plants and animals it supports, is in danger due to the significant global advancements that the expansion of science and technology has sparked. Human health, the planet's biodiversity, country tourism, and the global economy have all been negatively impacted by environmental deterioration. The degree of a

healthy environment for a better existence has been severely eroded as a result of the negative impacts that have already taken place. It has directly contributed to the sustainable development being threatened. The goal of sustainable development is to meet the needs of the present generation while protecting the environment and all of its advantages for future generations. However, it is still debatable if the current diminishing resources will allow for the continued existence of future generations. The environment has degraded as a result of the advancement of science and technology, and the public now only cares about meeting their needs rather than the safety and preservation of the environment for future generations. As a result, the true value of the sustainable development concept has now been diminished. Furthermore, it is evident from the rulings made by state courts in environmental issues that the law always encourages the public to protect the environment, even when the authorities are acting inadvertently for their own gain. The environment has been severely harmed by the use of science and technology for development projects, but it has also been harmed by the radiation, gases, and other dangerous particles that are released. So, as a general proposal for preventing further environmental degradation, studies have indicated that the use of science and technology in a way that threatens the environment should be monitored, the violators should be punished, and the severity of laws and regulations should be enhanced.

6. Recommendations

The following suggestions might be made in order to prevent environmental deterioration and achieve the true objectives of sustainable development by prioritising the environmental protection, after analysing all the information on pollution and the study results.

1. Reduce Deforestation - Stopping deforestation is essential for our environmental system in order to reduce the negative effects of environmental deterioration. Trees store greenhouse gases, provide oxygen, serve as a natural habitat for a variety of animals and plants, many of which could become extinct if these forests are destroyed, hence it is not financially feasible to chop or burn them down. To conserve the environment, a significant afforestation campaign needs to be started. Through reforestation or afforestation, it can have better effects. Moreover, it can be reduced through inventing alternative sources to fulfill the wooden needs which should definitely be eco-friendly products.

2. State laws governing human activities - Every time there are issues that significantly harm the environment, governments must step in and establish a framework. Governments can easily achieve the actual means of sustainable development by minimizing the environmental degradation that occurs as a result of the advancement of science and technology by strengthening the laws relating to the environment as well as the scientific and technological means relating to the environment. Governments impose substantial levies on activities that damage the environment and provide financial incentives for ecologically favourable behaviour. These will also compel businesses and individuals to refrain from actions that worsen the environment.

3. Proper education on environmental protection and sustainable development - It is imperative that kids understand how daily actions have a negative impact on the environment and how society may reduce

its ecological footprint. Early education should begin in the classroom. Compared to adults, kids are typically more ready to learn new things and alter their behaviour. When the kids get older, they are more inclined to act in an environmentally beneficial way, and they might even persuade their parents to do the same.

4. Intergenerational equity and Influence others - By persuading others of the value of acting in an ecologically responsible manner, one can further increase the positive effect. Expressing others about the true costs of environmental degradation to future generations and how making tiny changes in daily living might help to mitigate these negative consequences as is evident; a variety of factors can have an impact on the environment. People can contribute to the environmental destruction that is happening all around the world if they are not careful. However, they can take steps to stop it and care for the environment by offering environmental education to those who will help them become more aware of their surroundings and be able to address environmental issues, making the environment more useful and protected for the children and other future generations.

5. Fines and Penalties - To lessen the negative ecological effects, there should also be high sanctions for unauthorized dumping. People and businesses will continue to illegally dump their rubbish since they are aware that the penalties are minimal even if they are caught. Raising the penalties for unauthorized dumping would therefore make it more appealing to discard waste at designated waste disposal facilities. Illegal dumping should be severely punished, especially when it comes to the discharge of dangerous scientific and technological equipment particles from industries.

6. Lower the consumption levels - Reduced consumption is now very necessary. The sophisticated culture is constantly seeking for the newest technology, including smartphones, electronics, fashionable clothing, and so forth. However, this behaviour causes a significant depletion of resources and an excessive amount of waste creation. To prevent the negative ecological effects, we must dramatically reduce our consumption levels. The most crucial reality is that overuse will once more raise the issue of throwing away items that are not in use.

7. Reuse to reduce waste generation - By making better use of the commodities and food, waste output can be decreased. If something is ancient but still functional, think of a creative method to give it a new look or put it to use in another way. The tangible items will be utilized more effectively as a result. If they are no longer usable, separate them and donate them for recycling. The development of science and technology has allowed for more technologies that recycle garbage from used materials without harming the environment.
8. Avoid Plastic - Plastic pollution and the deterioration of the ecosystem are both caused by plastic trash, which is a major environmental issue. It is considered to be among the worst products ever developed through science and technology and a significant environmental danger. Avoid using disposable plastic bags, cups, plates, containers, utensils to reduce plastic waste. Also, avoid purchasing goods that come in plastic packaging or wrappers. Bring your own reusable items that you

can use over and over again will be highly beneficial.

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A Critical Examination of Whether The National Security of Sri Lanka is Adequately Protected in Cyberspace

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Abstract: *The 21st Century is the century of Hi-tech and is no stranger to cyberattacks. Even Sri Lanka has undergone many cyberattacks in the past which have also raised national security concerns. Whilst Sri Lanka has enacted legislation to deal with computer crimes such as the Computer Crime Act No. 24 of 2007, Evidence (special provisions) Act No 1995, Electronic Transactions Act No. 19 of 2006, Payment Devices Frauds Act No 30 of 2006, and the Intellectual Property Rights Act No. 36 of 2003, there are no enacted cybersecurity laws. In fact, the two Bills, namely the Cyber Security Bill and the Defence Cyber Commands Act have still not been passed even though it was proposed in 2018. Consequently, only Section 06 of the Computer Crime Act No. 24 of 2007 mentions computer crime offences committed against national security. Thereby, the research problem of this article is to examine whether the current cyber laws in Sri Lanka are sufficient to adequately protect the country's national security in cyberspace. The research objectives of this research are to examine whether the current cyber laws protect the national security in Sri Lanka (1), to evaluate the implementation process in the criminal justice system in terms of cyber laws (2) and to gain some perspectives on how other countries such as the United Kingdom and the United States of America have formulated legislation to protect their country's national security in the cyberspace. This research is an internet-based desk-based research and concludes that the existing legislation is insufficient to adequately protect the national security in Sri Lanka and that it is imperative to enact the two draft cybersecurity Bills at the earliest.*

Keywords: *Cyber-attacks, National Security, Cyber Security Laws*

1. Introduction

Cybercrimes is a rampant issue in Sri Lanka. The following examples illustrate that hacking websites containing sensitive data can be exploited politically, economically and socially, which would lead to a national security concern. For instance when the hacktivist collective Anonymous hacked the websites of the Ceylon Electricity Board, the Sri Lanka Police, and the Department of Immigration and Emigration through distributed denial-of-service (DDoS) attacks (Attanayake, 2022). Another instance was when a group of hackers hacked on five different occasions, five websites belonging to state institutions such as Sri Lanka Police, Health Ministry, the Ceylon Electricity Board, the Hector Kobbekaduwa Agrarian Research and Training Institute and the Southern Provincial Council (Fernando, 2021). Next, when the Bangladeshi Grey Hat Hackers hacked 22 government websites that were sub domains of the North Central province (Anon, n.d.) and when hacker 'Davy Jones' hacked into the site of Sri Lanka Foreign Employment Bureau and the Ports Authority website (Anon, n.d.) as well as when the State television channel Rupavahini was also hacked (Anon, n.d.).

National Security is defined by Mario Nobilo as *"an interaction between Political, Economic, Military, Legal, Social and other internal and*

external social factors through that individual states attempt to ensure their state sovereignty, integrity and political independence for rapid social development" (Mendis, 1992). Sri Lanka has the following legislation to combat cybercrimes, namely, the Computer Crime Act No. 24 of 2007, Evidence (Special Provisions) Act No 1995, Electronic Transactions Act No. 19 of 2006, Payment Devices Frauds Act No 30 of 2006, and the Intellectual Property Rights Act No. 36 of 2003, of which Section 06 of the Computer Crime Act No. 24 of 2007 mentions offences committed against national security. Nevertheless, there are no legislation in Sri Lanka currently which prevents, mitigates, or responds to cyber security threats. Therefore, there are no impediments to the country's national security. Despite the many cyberattacks that Sri Lanka has faced, it was only in 2018 that two bills on cybersecurity were proposed to be passed (EconomyNext, 2021). However, to date, the two Bills, namely the Cyber Security Bill and the Defence Cyber Commands Act have not been passed. Jeff Kosseff has defined cybersecurity law as *"a legal framework that promotes the confidentiality, integrity, and availability of public and private information, systems, and networks, through the use of forward-looking regulations and incentives, with the goal of protecting individual rights and privacy, economics and national security"* (Kosseff, 2018).

Accordingly, the research problem of this article examines whether the current cyber laws in Sri Lanka are sufficient to adequately protect the country's national security in cyberspace. The research objectives of this research are to examine the current cyber laws protecting national security in Sri Lanka (1), to evaluate the implementation process in the criminal justice system in terms of cyber laws (2) and to gain some perspectives of how other countries such as the United Kingdom and the United States of America have formulated legislation to protect their country's national security in the cyberspace.

2. Methodology

This is a library-based, qualitative research. Special reference is made to secondary sources such as Sri Lankan legislation, Bills, as well as scholarly articles, reports, electronic sources, academic writings, books and newspapers relevant to national security and cyber security in Sri Lanka, the United Kingdom and the United States of America.

3. Results and Discussion

WHETHER THE CURRENT CYBER LAWS PROTECT THE NATIONAL SECURITY IN SRI LANKA

As aforementioned, there are several legislations which have been introduced to deal with the criminal justice system in the development of the Information and Communication Technology (ICT) Industry. Among these, the Computer Crime Act No 24 of 2007 is the main legislation which discusses about the protection of national security in Sri Lanka in the context of cyberattacks.

Section 6 of the Computer Crime Act No. 24 of 2007 provides that any person who intentionally performs any malfunction from a computer, which is going to be an imminent threat or danger to the national security, national economy or public order shall be guilty of an offence. However, it is noteworthy that the interpretation clause of the Computer Crime Act No. 24 of 2007 does not attempt to define the terms 'public order' or 'types of imminent threats to national security'. Due to the lack of a standard interpretation, discrepancies are created during the legal implementation process. For instance, on 08th June 2021, fake news was circulated on social

media platforms by stating that *"the Presidential Secretariat, Foreign Ministry, Medical Research Institute, Survey Department, and several other websites had been hacked"* (NewsWire, 2021). Consequently, the Police arrested a 28-year-old boy without a warrant, under the Prevention of Terrorism Act and Computer Crime Act No. 24 of 2007 (Kothalawala, 2021). However, the legal professionals argued that the Computer Crime Act No. 24 of 2007 has not recognized 'online fake news' as an imminent threat to national security. Therefore, this incident highlights that there is no consensus between the legal practitioners and the Police regarding the execution of the Computer Crime Act No. 24 of 2007 and that even though the Computer Crime Act No. 24 of 2007 enforces penal sanctions on any person who commits an offence which is an imminent threat or danger to national security, this legislation is insufficient in terms of monitoring, detecting, preventing and/or managing incidents in the cyberspace. Thereby, it is imperative to note that not only does Sri Lanka need cybercrime laws which take care of the criminal justice aspect of the breaches of cyber security but also cyber security laws which deal with the prevention of cybercrime (Anon, 2018).

IMPLEMENTATION PROCESS OF CYBER LAWS IN THE ICT CRIMINAL JUSTICE SYSTEM OF SRI LANKA

In the process of approving the Cyber Security Bill, it is stated that *"Electronic communication across cyberspace has been recognized as a crucial factor that can directly affect national security"* (Gamini Gunaratna, 2022). This statement indicates the importance of strengthening the cyber security laws in Sri Lanka.

Accordingly, Sri Lankan Criminal Justice System is functioning with the collaboration of several authorities to safeguard the country from cyberattacks. Firstly, there is a Cyber Crime Unit in the Sri Lanka Police within the scope of the Criminal Investigation Department (CID). In the Cyber Crime Unit, there is a number of experienced and well-qualified officers to proceed with criminal investigations. The second significant step is the establishment of the Computer Emergency Readiness Team -Coordination Centre (CERT-CC) in 2006. Furthermore, CERT-CC initiated the establishment of the E-Government Policy in 2009. Following the civil war in Sri Lanka, the E-Government strategy had a positive impact on both the social and economic development of the country. However, the lack of an institutional framework for the further standardization of national infrastructure can be recognized as the main disadvantage of this E-Government strategy (Rainford, n.d.).

Even though there are institutions, which monitor, detect, prevent, mitigate, and manage incidents in cyberspace, the draft Cyber Security Bill establishes the Digital Infrastructure Protection Agency of Sri Lanka and empowers the Sri Lanka Computer Emergency Readiness Team (CERT). This means that once the Cyber Security Bill is passed in Parliament, the Digital Infrastructure Protection Agency of Sri Lanka will be able to recommend cyber security policies and standards for the Government of Sri Lanka and facilitate the implementation of these policies and standards in government institutions and other sectors as well as act as the central point of contact for cyber security in Sri Lanka, and act as the interface for the multi-directional and cross-sector sharing of information related to cyber threat indicators, defensive measures, cyber security risks, incidents, analysis, and warnings in relation to cyber security for government institutions and other sectors, among other powers, duties and functions of the Digital Infrastructure

Protection Agency (Cybersecurity Bill, 2019). Similarly, according to Section 15 of the draft Cyber Security Bill, the Sri Lanka Computer Emergency Readiness Team shall be the national coordination point of contact for cyber security incidents and threats in Sri Lanka. Further, some of the powers and functions mandated by Section 15 (4) of the draft Bill are to conduct and manage cyber security services for government institutions and other sectors when requested, and to provide national-level cyber threat information to the Digital Infrastructure Protection Agency, to establish and maintain membership, to collaborate with international computer emergency readiness teams to ensure effective coordination and response to cybersecurity-related incidents in Sri Lanka and to monitor the designated Critical Infrastructure Information owned by the government and other sectors in order to detect, investigate and respond to potential cyber threat. Therefore, there is a timely need for the two draft Cyber security Bills to be enacted in the country because at present Sri Lanka is vulnerable to managing cyberattacks as apparent from the many cyberattacks that have taken place recently.

It is in this light that this research recommends the importance of hastening the process of passing the Cybersecurity Bill. As a result, Sri Lanka should prioritize bringing all stakeholders together and strengthening the cybersecurity-related criminal justice system. This is extremely important to prevent any incidents which may breach national security in the future.

EXAMINING HOW OTHER COUNTRIES HAVE ENACTED CYBER SECURITY LAWS TO PROTECT THE COUNTRY'S NATIONAL SECURITY

The United Kingdom and the United States of America have enacted thorough cyber security laws to protect their country's national security in cyberspace. Both these countries have a common law legal system.

UNITED KINGDOM

An important piece of cybersecurity legislation in the United Kingdom is the Network and Information Systems Regulations 2018 (NIS Regulations), which implemented the EU Cybersecurity Directive 2016 prior to Brexit (Technology Law Dispatch, 2022). Per this legislation, operators of essential services and relevant digital service providers are mandated to register with the relevant competent authorities, meet a baseline level of cybersecurity requirements, and report any incident which has a significant impact on the continuity of the essential services (Technology Law Dispatch, 2022).

A series of cyberattacks occurred in the United States of America in the recent past. One such incident was the colonial pipeline ransomware attack which infected some of the pipeline's digital systems and subsequently shut it down for several days (Kerner, 2022). Another incident was the cyberattack on SolarWinds, a major US information technology firm, where foreign hackers used the hack to spy on private companies such as the FireEye, a cyber security firm and the Department of Homeland Security and Treasury Department and this had gone undetected for months (Jibilian and Canales, 2020). Another cyberattack which occurred recently was a massive hack on the Microsoft Exchange email server software. It is noteworthy that the United Kingdom by observing the situation in the United States of America decided to enact new legislation as part of its new National Cyber Strategy as well as update the NIS Regulations and widen its list of companies to include Managed Service

Providers (MSPs) which provide specialized online and digital services (GOV.UK, n.d.).

As ascertained, Sri Lanka is no stranger to cyberattacks. However, unlike the United Kingdom which strives to enact strong cybersecurity laws by observing other countries, even when Sri Lanka itself has undergone cyberattacks, the Legislature is imperceptive in passing cyber security laws to mitigate and/or prevent any further attacks. This is why, similar to the United Kingdom, Sri Lanka must establish relevant authorities where operators of essential services and digital service providers are mandated to register with the relevant authority and meet the desired cyber security requirements.

UNITED STATES OF AMERICA

Cyber security regulation in the United States America comprises directives from the Executive branch and legislation from Congress that safeguards information technology and computer systems (Hardeep Singh, 2015). Some of the federal laws in the United States of America dealing with cyber security are as follows. 1996 Health Insurance Portability and Accountability Act (HIPAA), 1999 Gramm-Leach-Bliley Act, and 2002 Homeland Security Act, which included the Federal Information Security Management Act (FISMA) (Hardeep Singh, 2015). Per these regulations, it is mandated that healthcare, financial and government entities have to ensure the security of their systems and data (EES, 2021). Further, according to the Federal Information Security Management Act (FISMA), all federal agencies have to implement information security policies, concepts and standards (EES, 2021). This is in stark contrast to the situation in Sri Lanka, where the individual institutions and organisations are responsible for their own cyber security and have to ensure that they are adequately protected in the face of any cyberattacks.

Next, in terms of state laws, in the United States of America, most states have passed legislation imposing security requirements. For example, the SHIELD Act of New York requires reasonable security for personal information and specific measures that may satisfy that standard (ICLG, 2019). In California, the California Consumer Privacy Act (CCPA) sets statutory penalties if it can be proved that the impacted business failed to implement a reasonable security procedure to protect personal information (EES,2021). Massachusetts regulations impose specific security requirements regarding personal information which also include the implementation of a written security programme and encryption of certain data (EES,2021). When comparing this situation to Sri Lanka, as aforementioned, it is apparent that currently there are no cyber security laws for the monitoring, detection, prevention, mitigation and management of incidents. As such, it is imperative that the two draft Bills, be passed as soon as possible by the Legislature, especially since the draft Cyber Security Bill establishes the Digital Infrastructure Protection Agency and the Sri Lanka Computer Emergency Readiness Team (to assist the Digital Infrastructure Protection Agency).

4. Conclusion

In conclusion, it is clear that Sri Lankan cyber laws are still insufficient to adequately protect the country's national security in cyberspace. As a result, this study emphasizes the significance of enacting the Cyber Security Bill and the Defence Cyber Commands Act by 2022. It is ascertained that Section 6 of the Computer Crime Act No. 24 of 2007 is the one and only provision available to protect the national security of the country in cyberspace. Thus, the absence of cyber security laws cannot be

fulfilled through the existing legal provisions. Further, after evaluating the criminal justice system in Sri Lanka in terms of cyberspace it can be determined that as a first step the two Bills relating to Cyber Security should be prioritized by bringing all stakeholders together and passing comprehensive cyber security laws. The discussion revealed that policymakers must accelerate the passing of the draft Cybersecurity Bill and the Defence Cyber Commands Act in order to monitor, detect, prevent, mitigate and manage incidents in cyberspace. Finally, similar to the United Kingdom and the United States of America, Sri Lanka should also have sector specific cyber security laws and take proactive measures to identify potential cyber threats that may arise in Sri Lanka, by observing the vulnerabilities that other countries face, so that specific legislation which deals with that particular matter can also be enacted. In this manner, the national security of Sri Lanka will be protected in cyberspace.

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Conflicts of Laws: Polygamous Marriages with a Foreign element

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***Abstract**: Polygamous acts are prohibited under Sri Lankan law; however the Muslim Personal Laws are an exception. Although this fact is grounding, the concept of polygamous marriages occurring between a Sri Lankan national and a foreign national when contracting the Sri Lankan National's subsequent marriages after the first legal marriage is not instituted for, as it is quite a rare occurrence.*

The legal framework in Sri Lanka only presides over the matters of polygamous marriages occurring between the citizens of Sri Lanka. It does not have a fully-fledged set of laws to regulate or recognize those marriages in an instance if, issues arise in relation to polygamous marriages with a foreign element were to happen to a Sri Lankan national or a partner of a Sri Lankan national.

Therefore, the objective of this research is to critically evaluate whether the existing legal framework of Sri Lanka could invalidate an individual's subsequent marriage contracts with a foreigner, and if so, whether such individual could be penalized and whether such marriage would be criminalized under the Sri Lankan law. This research also aims to explore existing legal framework around the world that have addressed this issue and if Sri Lanka could also apply those laws to its native legal system.

Keywords: *Conflicts of Laws, Polygamous Marriages, Private International Law*

1. Introduction

The Sri Lankan legal system possesses a full-fledged set of laws on Bigamy with regard to the subsequent marriages that happen between Sri Lankan nationals after their first legal marriage.

Firstly, it has failed to establish laws on issues such as bigamy between a Sri Lankan who has entered into a subsequent marriage contract (while having a subsisting legal marriage with a Sri Lankan) with a foreign national.

Secondly to establish grounds in the case where a Sri Lankan national contracts a marriage with another Sri Lankan national according to the Sri Lankan law, while he/she is already in a legal marriage contract according to the law of an alien nation. Thirdly, it has failed to institute grounds for in the case where, two Sri Lankan nationals contract a marriage in accordance with a foreign law, while one party subsists in a matrimonial contract according to the Sri Lankan law.

This is the result of the Penal code and the Criminal Procedure Code of Sri Lanka only existing to address and criminalize illegal activities that occurs by its citizens only within the borders of Sri Lanka with regard to issues such as this. Even though polygamous marriages are criminalized in the Sri Lankan context, this research aims to evaluate if Sri Lanka has the authority and jurisdiction to invalidate a marriage contract that occur in the international sphere. It also ventures to see in case where a subsequent marriage occurs abroad, if the victim could bring legal action against the offender, and to recognize if these actions could be criminalized and penalized with laws available in Sri Lanka or if new laws should be set down to address these matters.

2. Methodology

This research paper will rely upon a qualitative research method, as it will be taking into consideration the applicable legal standards, related case laws, and expert views in order to evaluate and address the issue at hand so that they could be inculcated into the domestic legal system to cater to issues that would possibly arise in relation to this aspect of the law of persons. As primary sources, existing and relevant local, and international legislative enactments and decided case laws are used. While textbooks, journal articles and web resources have been referred to as secondary sources to conduct the research.

DEFINING THE CONCEPTS: POLYGAMOUS MARRIAGES AND PRIVATE INTERNATIONAL LAW

In accord with the definition of the Merriam Webster dictionary Polygamous Marriages could be defined as acts of entering into one or more subsequent matrimonial contracts with one person while still legally being married to another. Private International Law is a part of each country's state law; it becomes functional when a conflict arises between private individuals of two or more states on deciding which country has jurisdiction and which laws have authority over the legal dispute at hand (Jenson, 1989).

VALIDITY OF THE MARRIAGE

The landmark case Hyde v. Hyde (1866, LR 1 PD 130) held that marriage was a voluntary unification for life between two individuals in order to exclude others. This decision pledged the ratio decidendi of the rule that polygamous marriages were prohibited in England as well.

According to Cheshire, the formal requirements of marriage will be governed by the law of the country where the marriage takes place, therefore two parties can enter into a valid marriage contract if they both fulfill the substantial requirements that are needed by the domestic law of the country that the marriage is celebrated in. (Cheshire, 2008).

However, in this context, one must consider the differences in the substantial requirements that are needed to fulfill the capacity of the parties and the validity of a marriage as it has a foreign element and occurs between two private individuals. The capacity and nature of marriage differ from one legal system to another, in case if it was a polygamous marriage that was contracted under the laws of a foreign nation. Firstly, it would make it rather challenging to decide if the marriage contract that the parties got into is valid under the Sri Lankan law, secondly to ascertain if the victim could bring and action under the Sri Lankan law or if they could seek for a different remedy. (Chaturvedi and Nayak, 2011)

CONFLICT OF LAWS PRINCIPLE

The principle of Conflict of Laws tries to regulate cases with a foreign element. It checks whether the particular country has jurisdiction to determine the question, and, secondly, determines which country's rules should be applied in resolving the dispute. Conflict of Laws is concerned with three factors, namely Jurisdiction, Choice of Law, and Recognition of a foreign judgment. Issues that arise regarding these factors are decided by connecting factors. A connecting factor could be defined as a factor that links a person or an event to a legal system. For an instance, in a suit for divorce before the courts of Sri Lanka, the connecting factor will be the habitual residence of the parties to the case. (Shaw, 2017).

Therefore, in turn, characterization is the process of identifying and arranging the facts and knowledge of a particular case in order to ascertain which law is more suitable to apply in the given situation.

Hence, it is convinced that private international law should be utilized when addressing the issue at hand, as it deals with individuals from two different nations, since Sri Lanka does not contain any laws to regulate polygamous marriages with a foreign element as per section 2 of the penal code, since, a person will only be guilty in respect of the penal code for acts and omissions that were committed within the bounds of Ceylon. (Kundu, 2021)

JURISDICTION AND CHOICE OF LAW

The question of jurisdiction is intricate due to the issues with the different constitutions and the conflict of laws. However, the law that decides the nature of marriage has not yet been clearly specified even in the English legal framework. To draw out Cheshire's example, for an instance in the case where a woman residing in England enters into a matrimonial contract with a Muslim in London and then cohabits with him in Pakistan where he resides, it is still rather unclear about what law which determines whether the marriage is monogamous or polygamous in nature, because, there are no grounding laws or provisions established yet, to determine the nature of marriage to render it valid or invalid. In the aforementioned case, the choice of law therefore should either be the Pakistani law (place of domicile) or the English law (place of celebration of the marriage).

There are a few types of choices of law doctrines that the authorities may intend to venture upon while selecting which law should be used in a certain suit.

Dual Domicile Doctrine is one and is widely employed in English law. According to this doctrine, a person's domicile at the date of the marriage is considered. For a marriage to be valid, both parties should have had fulfilled the substantial requirements by the law of his or her domicile to venture into a matrimonial contract. This doctrine is accepted to be comparatively more grounding than the rest because, of the fact that it believes that the parties should be governed by the law of their existing domicile and since this doctrine is easier to be applied in potential future situations. (Cheshire, 2008).

Consequently, through the case *Lee v. Lau* (1967 P 14), legal authorities ventured to discover solutions to the questions that arose; when determining if a marriage that had a foreign element was valid, by claiming that the law which governs any issue which may arise out of that marriage and, the validity of that marriage should be referred to the state which was *Lex Fori*. To illustrate the case *Lee v. Lau*, the marriage was performed in Hong Kong and its domestic law allowed the husband to take secondary wives. Despite that, Hong Kong's law considered this union as monogamous, Cairns, J., held that it was for the English law as the *lex fori* to determine whether it was a polygamous marriage, and whether it was valid or not. Therefore, as per Cairns J. determining the nature of the marriage should be done according to *Lex Fori* (Law of the Forum where the case has been instituted) (Kundu, 2021)

In addition to the above concepts, the Articles 11, 20 and 22 of the Hague Convention on Celebration and Recognition of the Validity of Marriages which was concluded on the 14th of March 1978 also highlight marriages that occur between two territorial units and draws out a formal clarification of jurisdiction and the law to be used by the states who are parties and signatories to it, while also clarifying its position on conflicts of laws.

Article 11 (1) of this convention, essentially prohibits the contracting state to recognize a marriage contract if either one of the spouses was already married.

Article 20 enlightens about the jurisdiction and the laws to be applied. It holds that when two or more systems of law applies due to different categories of persons, the contracting state is to construe the rules in force of that state. Which essentially means to follow the domestic law of the contracting state.

Thirdly, Article 22 clarifies the issues that may arise due to conflicts of laws as it declares that the Convention shall replace the laws which has conflicts when it comes to marriages between the states who are parties to the convention. (Hague Convention on Celebration and Recognition of the Validity of Marriages, 1978).

Most of the aforementioned concepts are parts of English law, although the United Kingdom is not a part of the Hague Convention on Celebration and Recognition of the Validity of Marriages. Despite Sri Lanka being a dualist state, and international laws cannot be directly included in its domestic legal system, it is quite possible to establish based on the English common law system, that it would only do justice if Sri Lanka also utilized the Dual Domicile Doctrine and the concept of *Lex Fori* to address to issues that arise in suits that are in relation to marriages with a foreign element attached to it.

3. Recommendation and Conclusion

According to section 362B of the Penal code of Sri Lanka, marrying again during the lifetime of the husband or wife is considered void and the offenders are to be subject to imprisonment and liable to a fine. This situation is valid only for marriages that may occur within Sri Lanka, and we could presume that this could apply to the second scenario that was discussed in the introduction (establishing grounds in the case where a Sri Lankan national who contracts a marriage with another Sri Lankan national according to the Sri Lankan law, while he/she is already in a legal marriage contract according to the law of an alien nation). Therefore, when establishing validity of the above scenario Sri Lanka has authority to make the marriage contract null and void as the matrimonial contract occurs within the bounds of Sri Lanka, giving authority for Sri Lanka to regulate despite the nationality of the parties. (Penal code, 1883) It is possible to establish that in a way, it does follow the concept of *Lex Fori* to establish this ground.

However, the main issue is whether Sri Lanka has the authority to regulate polygamous matrimonial contracts that may take place according to an alien legal framework. Sri Lankan courts often find it difficult to distinguish whether such marriages that are contracted in relation to a different framework could be accepted as valid in Sri Lanka or not. In relation to this matter, problems in conflicts of laws occur as discussed above.

According to Cheshire, it is the general rule of private international law, that the formal validity of a marriage is governed by the law of the place of celebration of marriage. In addition to that, taking into account the doctrine of *Lex Fori*, in relation to International Law where the issues and problems which may arise regarding a particular suit maybe decided and clarified upon the legal grounds where that suit maybe instituted. (Sykes, 1970)

Thus it is fit to submit that Sri Lanka may have to adhere to the decision that was given by the contracting state, in relation to types of cases that were illustrated prior (Sri Lankan entering into a subsequent marriage contract (while having a subsisting legal marriage) with a foreign national according to the law of a foreign nation AND Sri Lankan national who is already in a matrimonial contract with another Sri Lankan national according to the Sri Lankan law, but had contracted a subsequent marriage with another Sri Lankan according to the law of a different country), as Sri Lanka does not

have a specific set of principles to address to situations aforementioned.

However, as Sri Lanka is a dualist country, it is impractical for Sri Lanka to follow conventions and doctrines without ratifying them, which is why the Hague Convention on Celebration and Recognition of the Validity of Marriages (1978) cannot be readily applied. Hence it is paramount to establish that Sri Lanka should take measures to become parties to such conventions and apply international doctrines such as the Dual Domicile Doctrine and *Lex Fori* into its domestic legal framework so that its easier for authorities to regulate and make decisions in relation to its domestic framework itself, than depending on alien rules and regulations, which cannot be readily incorporated when deciding a case.

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Sri Lankan Perspectives on "Fighting the Lie"; Criminalizing Online Falsehoods

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Abstract*: In ancient times, war was wholly militaristic and physical in nature, where troops protected borders. However, at present war has changed from physical space to virtual space. Social media is the biggest platform utilized by extremists, terrorists , profit and politically motivated individuals to attain illegal motives. Disinformation, misinformation, falsehoods, online manipulations and hate speech have become apex threats to Sri Lanka's national security. The research problem is the need to criminalize online falsehoods. The research methodology utilized is a non-doctrinal research, which is also known as socio-legal research. The rationale behind non-doctrinal research is, to seek answers from a multi-disciplinary approach. The paper goes beyond legal analysis and also looks from a national and strategic security perspective. The research will shed light on what are online falsehoods, Sri Lanka's experiences as a victim of online falsehoods, laws relating to online falsehoods, freedom of expression and the gaps, lacunae and weaknesses prevalent in the laws curbing online falsehoods. Further, the research will evaluate the Singapore's Protection from Online Falsehoods and Manipulation Act 2019, for purposes of comparative analysis. The Paper has identified the necessity to introduce legislation to criminalize online falsehoods. Consequentially, the paper has provided a plethora of recommendations on preventing and mitigating online falsehoods.*

Keywords: *Freedom of expression, Laws, Online falsehoods, Social media, Sri Lanka, Singapore*

1. Introduction

At present, determining what a fact is and what is fake has become an arduous task. The reason is, that social media is the biggest information-sharing platform. In past, information/ communication was penned or inked, heard or watched, but now, the readers and spectators are able to interact and interpret. Therefore, it is crystal clear that war has changed from a physical aspect to an online space. As a result of wide availability, cost efficiency, productivity and technical capability, social media has become eye candy, yet deceiving for users. Social media has become the lifeblood of information-sharing platforms. As much as it caters for the day to day's needs, on the other hand, social media intrudes on personal space and results in privacy violations at certain points. Content created, generated, modified and disseminated online does not end the way it started. There might be additions, omissions, alterations or fabrications to a part or whole of the content. Disinformation, misinformation, false information, manipulations and hate speech are challenges that any country face. Due to these reasons, determining what to believe and what not to believe is strenuous.

Sri Lanka is a victim of online falsehoods and this was witnessed in many situations. For example, during the Covid- 19 pandemic, the

death toll was fabricated[12], boycotting of Muslim businesses aftermath of the Easter Sunday Attack in 2019, fake intelligence alerts as to the recovery of bombs as well as misinformation, disinformation and hate speech campaigns were conducted by LTTE and its international networks are such examples. Even though online falsehoods are a national security menace to Sri Lanka, Sri Lanka does not have separate legislation to criminalize online falsehoods. Nonetheless, there is legislation such as the 1978 Constitution, Penal Code, Prevention of Terrorism Act (PTA), Police Ordinance and there regulations. Further, Computer Crimes Act 24 of 2007 to curb terror content, yet they are inadequate in the digitalized world.

In light of these circumstances, it is high time to criminalize online falsehoods, which are committed in numerous ways. Many countries including Singapore have already introduced legislation to criminalize online falsehoods. Therefore, a separate Act has become a key requisite in criminalising online falsehoods. Nonetheless, it is crucial to ensure freedom of expression of individuals will not be unjustly and arbitrarily threatened.

2. Methodology

The research problem is to identify online falsehoods as a threat to Sri Lanka's national security and the need to criminalize it. To explore answers, researcher has perused domestic laws related to fake news and interpretations of it. Further, researcher has debated the sufficiency of laws and whether the said laws are strong enough to curb fake news. In the end, researcher has concluded that it is imperative to have a legislation criminalizing falsehoods and manipulations, however, enabling room for freedom of expression through healthy dialogue. To sustain the argument, the researcher has looked into Singapore's jurisdiction. Therefore, to adduce answers, reach objectives and provide recommendations, researcher has utilized a non-doctrinal approach. The methodology is also known as socio-legal research. As mentioned by (*Dahiya,* 2021), "Non-doctrinal research takes a multi-disciplinary approach towards legal research. It employs methods and information available from other disciplines to make a comprehensive approach towards law." The rationale behind embracing a non-doctrinal research methodology is to look beyond the law. The research not only looks into the letter of law but also its practical implementation from a multidisciplinary approach. This research is aided and supplemented by legislation, which is a primary source. In addition, research has used secondary sources such as books, journal articles and proceedings to enhance credibility and analysis.

3. Analysis

A. Online falsehoods

Online falsehoods have become threats to Sri Lanka's national security. As per, (Pal, 2019), "Online falsehood encompasses the phenomenon whereby unfounded and unverified online messages leave behind their digital footprint in the form of texts, pictures or videos on the Internet…. such dubious messages are often mistaken as facts, and in turn cause people to take actions that they would not have taken otherwise." The "false" content takes many facets. Falsehood is

12 Gunawardene, N. (n.d.). Sri Lanka: Media and factcheckers tackle Covid-19 'infodemic'. [online] International Media Support. Available at: https://www.mediasupport.org/covid19-2/sri-lanka-media-and-fact-checkers-tackle-covid-19-infodemic/ [Accessed 31 Aug. 2022].

sometimes synonymously defined as disinformation or misinformation. However, when analyzing falsehoods, disinformation as well as misinformation, cannot be separated. Disinformation is the deliberate dissemination of false or misleading content. On the other hand, Misinformation refers to false or misleading content disseminated without knowing the information to be false. In addition, Online Rumors are any unsubstantiated content circulating online.

B. Lessons learnt

According to, (the Ministry of Communications, Information, and the Ministry of Law, 2018) Green paper, "the Euromaidan protests were characterized as an unlawful seizing of power by forces supported by the West. Second, they sought to characterize the regime in Ukraine as "fascist". The supposed ultimate goal of these dual narratives was to "destabilize Ukraine psychologically and to advance a conviction that the country is a failed state" In contrast, in the Czech Republic and Slovakia, it has been suggested that misinformation campaigns were conducted to create the impression that the US seeks to dominate the world, and that the future holds only conflict." Same as in the West, Sri Lanka too has its fair share in the game of falsehoods. Soon after the Easter Sunday Attack in 2019, Muslims were seen as suspects and were subjected to communal violence by hateful, degrading and insulting comments on social media, which resulted in boycotting Muslim businesses. The covid-19 death toll is another fine example, in which authorities had to reiterate the truth to the public and prevent unnecessary controversies. Another example is LTTE and its international networks. The Sri Lankan government successfully defeated the militaristic aspect of LTTE and ensured the rights of all Sri Lankans, irrespective of ethnicity, religion or language. However, LTTE, its international networks and front, cover and sympathetic organizations of LTTE are accusing Sri Lanka of committing genocide, human rights violations, humanitarian law violations, causing intergenerational trauma and snatching away the Tamil Homeland[13]. LTTE especially uses Twitter and Facebook pose all these allegations via social media. These fictitious allegations are hazardous to the country as repeating a lie makes the lie believable. As a result of these repeated allegations Italy, Canada and the European Union have passed laws, resolutions and memorandum of associations against Sri Lanka such as Canada's Genocide Education Week Act, 117th US Congress Resolution 413 and 46/1 Resolution.

C. Laws

Sri Lanka does not have separate legislation, unlike Singapore, to combat and mitigate online falsehoods. However, there are other statutes, which address the issues, nonetheless, realistically; these laws are inadequate when looking at the digital environment.

i. Sri Lankan Constitution 1978

According to the Sri Lankan Constitution, the supreme law of the country "national security" takes precedence. As per 15(7), "The exercise and operation of all the fundamental rights declared and recognized by Articles 12, 13(1), 13(2) and 14 shall be subject to such restrictions as may be prescribed by law in the interests of national security, public order and

[13] Hellmann-Rajanayagam D, 'The Concept of a "Tamil Homeland" in Sri Lanka — Its Meaning and Development' (1990) 13 South Asia: Journal of South Asian Studies 79 <https://doi.org/10.1080/00856409008723142>

the protection of public health or morality, or to secure due recognition and respect for the rights and freedoms of others, or of meeting the just requirements of the general welfare of a democratic society. For this paragraph, "law" includes regulations made under the law for the time being relating to public security. 14(1) a, b, c, g and h are subjected to restrictions. Article 14. (1) states that "Every citizen is entitled to – (a) the freedom of speech and expression including publication; 14(1)(a) shall be subject to such restrictions as may be prescribed by law in the interests of racial and religious harmony or concerning parliamentary privilege, contempt of court, defamation or incitement to an offence.

Freedom of speech, expression and publication are essential rights in any state. Sri Lanka being a country, which is democratic, government, is duty bound to respect public opinion and allow healthy dialogue and constructive criticism. Nonetheless, engaging in misinformation, false information and falsehoods to deceive the public, manipulate, enrage and incite unrest and violence should not be tolerated. The rights enshrined in the Constitution are focused on the betterment of people, and the rationale behind limiting freedom of speech, expression and publication is in light of public interest, and racial and religious harmony.

ii. International Covenant on Civil and Political Rights (ICCPR) Act and Act No. 14 of 1995

Section 3 of the Act states that, 3(1) No person shall propagate war or advocate national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence, further, 3(2) states that, Every person who— (a) attempts to commit; (b) aids or abets in the commission of; or (c) threatens to commit, an offence referred to in subsection (1), shall be guilty of an offence under this Act. (3) A person found guilty of committing an offence under subsection (1) or subsection (2) of this section shall on conviction by the High Court, be punished with rigorous imprisonment for a term not exceeding ten years. (4) An offence under this section shall be cognizable and non-bailable, and no person suspected or accused of such an offence shall be enlarged on bail, except by the High Court in exceptional circumstances.

The section is vast in scope. Yet, it is insufficient when relating to digital platforms. For instance, "propagating war or advocating national, racial or religious hatred that constitutes incitement to discrimination" on social media is an easy task. This was finely depicted in the aftermath of the Easter Sunday Bombings in 2019, where Muslims were viewed as terrorists and faced hatred from social media. As a result, (The New Indian Express, 2019.) reported, "The blockade of Facebook and WhatsApp has been imposed from midnight following violent incidents between the minority Muslim and majority Sinhalese communities, officials said. The resultant effect of anti-Muslim campaigns on social media resulted in ethnic unrest leading to boycotting of Muslim businesses. This showcases the gravity of online falsehoods which have endangered the national security of Sri Lanka.

iii. Police Ordinance

According to section 98, "Any person who shall spread false reports with the view to alarm the inhabitants of any place within Sri Lanka and create a panic shall be guilty of an offence, and be liable to a fine not exceeding two hundred rupees, or to imprisonment, with or without hard labour, for any period not exceeding twelve months; and if he shall be convicted a second time, or shall persist in the offence after warning to desist, he shall be liable to corporal punishment not exceeding twenty lashes." However, this Ordinance is also inadequate to

curb online violence. Falsehoods happen in various ways such as, through posts, videos, pictures, vlogs, blogs or stories. Therefore, it does not always professional at the outset. Irrespective of nature, the predicament is disastrous. Therefore, it is high time to involve stringent laws to criminalize online falsehoods.

iv. Penal Code

According to, Section 120 of the Penal Code "Whoever by words, either spoken or intended to be read, or by signs, or by visible representations, or otherwise, excites or attempts to excite feelings of disaffection to the State, or excites or attempts to excite hatred to or contempt of the administration of justice, or excites or attempts to excite the People of Sri Lanka to procure, otherwise than by lawful means, the alteration of any matter by law established, or attempts to raise discontent or disaffection amongst the People of Sri Lanka, or to promote feelings of ill-will and hostility between different classes of such People, shall be punished with simple imprisonment for a term which may extend to two years, or to excite the People of Sri Lanka to attempt to procure by lawful. means, the alteration of any matter by law established, or to point out to their removal matters which are producing or have the tendency to produce feelings of hatred or ill-will between different classes of the People of Sri Lanka.

Explanation one of this section is noteworthy. Accordingly, "It is not an offence under this section by intending to show that the State has been misled or mistaken in measures or to point out errors or defects in the Government or any part of it, or in the administration of justice or to excite the People of Sri Lanka to attempt to procure by lawful. means, the alteration of any matter by law established, or to point out to their removal matters which are producing or .have tendency to produce feelings of hatred or ill-will between different classes of the People of Sri Lanka.". therefore, constructive criticism and error-free expression are not curbed by Penal Code. Even though this section criminalized falsehoods to an extent, it is still insufficient to prevent and mitigate online falsehoods.

v. Computer Crimes Act

As per, section 6 (1), " Any person who intentionally causes a computer to perform any function, knowing or having reason to believe that such function will result in danger or imminent danger to— (a) national security; (b) the national economy; or (c) public order, shall be guilty of an offence and shall on conviction be punishable with imprisonment of either description for a term not exceeding five years. This section deals with the online aspect, however, it is still limited in scope, it does not criminalize institutes and coperations.

vi. Other jurisdictions

As stated by, (Silverman,2018) Belarus and Kenya enacted laws that enable the government to prosecute people who spread false information, German hate-speech legislation, known as NetzDG, includes the requirement that platforms must remove "unlawful" material within 24 hours after been notified.

vii. Singapore's Protection from Online Falsehoods and Manipulation Act 2019 (POFMA)

This Act seeks to prevent the electronic communication of falsehoods, in addition to safeguarding against the use of online platforms for the communication of such falsehoods. According to POFMA, it focuses on statements of fact, defined as statements, that a reasonable person seeing, hearing or otherwise perceiving would consider as

representations of fact. However, the Act is not intended to cover opinions, criticisms, satire or parody. This means, Act only penalizes deliberate harmful content. As per communicating a statement which that person knows or has reason to believe that it is a falsehood, and the communication of that falsehood in Singapore is likely to be prejudicial to Singapore's security, be prejudicial to public health, public safety, public tranquillity or public finances, prejudicial to the friendly relations of Singapore with other countries, Influence the outcome of a presidential election, general election, by-election or referendum, incite feelings of enmity, hatred or ill-will between different groups of persons; or diminish public confidence in the government. As per POFMA if the content is recognized as a falsehood, Correction Direction, Stop Communication Direction, Targeted Correction Direction, Account Restriction Direction, Disabling Direction and a General Correction Direction is issued as deemed fit. More importantly, POFMA's constitutionality was questioned as to whether it breaches freedom of expression. Court of Appeal of Singapore in 2021 held that the Act is constitutional, and it does not breach the right to freedom of speech under Article 14(1) (a) of the Singapore Constitution.

4. Conclusion and Recommendations

It is clear that online falsehoods have become a threat to Sri Lanka's national security. Due to that reason, to fight the online war, to prevent and counter the misuse of online accounts it is prudent to introduce a separate legislation to criminalize online falsehoods. The legislation should not criminalize satire, parody or constructive criticism. Act should have specific appeal procedures and calibrated remedies. This will ensure transparency of the sources generated and disseminated online as they will be error-free. The Act will also safeguard the privacy of users by preventing fabrication and falsification of information. It is important to instil media as well as information literacy in the public including journalists to spot fake news and debunk them.

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Is Sri Lanka Greenwashed? : Comparative legal analysis on status of Greenwashing in Sri Lanka

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***Abstract**: As the results of environmental damage are increasing, the majority of people around the world are suffering from its impacts. Due to that reason, they attempt to mitigate the effect of this issue as much as possible and one way of such mitigation is consuming sustainable and eco-friendly products and services. Consequently, businesses and companies started to introduce sustainable products with the intention of beginning a sustainable market. However, several people who wanted to get the commercial benefit of this practice started to mislead the consumers by pretending that their artificial and harmful products are also sustainable and organic. This practice of misleading consumers was developed as 'Greenwashing' and now most of countries have started to pay their attention to mitigate the impacts on Greenwashing. Some countries have introduced their regulations regarding Greenwashing. However, when it comes to Sri Lanka, even though Greenwashing is existing within the country, the relevant authorities and organizations have still failed to address this issue. Simultaneously, there is a lacuna in the legal system of Sri Lanka as well due to the lack of proper and specific laws for Greenwashing. In this research it is purposed to compare and analyse the Sri Lankan laws related to Greenwashing with other specified laws and guidelines in the international level. In addition to that this is a qualitative research based on international codes and guidelines together with national laws.*

Keywords: *Greenwashing, Sustainability, Misleading consumers, Environmental impact*

1. Introduction

Environmental pollution is the major reason behind climate change, global warming, loss of bio diversity, certain diseases and ecological imbalance etc. With the inception of industrialization, humans began to invent substitutes like plastics, polythene and some other chemicals which ease the daily lifestyle of humans. However, over time they found that plastics and polythene together with the manufacturing process of such materials create the ground for severe damages to the environment including its living beings. Hence, in the modern-day people have acknowledged the inevitable consequences brought about by the unsustainable and environmentally harmful products and services. Therefore, a majority of people tend to avoid these kinds of products and prefer Eco friendly, Organic products. This was proved by the National Geographic and Globescan's latest Greendex study which was conducted based on 18 countries (Assoune). Greenwashing is the practice which was created by money minded marketers and under the term of greenwashing it is indicated a false and misleading marketing style which attempts to impress the customers by advertising the products and services of particular company are environmentally sustainable. Certain scholars use the term 'Eco pornography' to indicate the meaning of Greenwashing (Hoch

and Franz,1992). The Oxford English dictionary describes the term 'greenwashing' as '"Disinformation disseminated by an organization, etc., so as to present an environmentally responsible public image; a public image of environmental responsibility promulgated by or for an organization, etc., but perceived as being unfounded or intentionally misleading'(Assoune). Therefore, under greenwashing, such products and services are not actually eco-friendly as they mislead and miscommunicate the consumers. Unfortunately, it is difficult to distinguish the green washed products from the products which truly contribute to the environmental protection.

2. Methodology

This research was conducted under the doctrinal research methodology in order to study about the present legal aspects in Sri Lanka regarding Greenwashing while comparing with the legal aspects in the world. Additionally, to assess the laws existing in Sri Lanka regarding Greenwashing, it has been utilized a comparative and international methodology as well.

3. Results and Discussion

Usually under Greenwashing the companies pay more attention to attract consumers by spending money and time by convincing that those products are ecofriendly, whilst at the same time hiding their environmental impact. Thus, this practice can be recognized as a disagreeable and inappropriate, since the consumers' good intention to be familiar with sustainable products are misused by the companies for their commercial purposes.

This term 'Greenwashing' was coined by the environmentalist Jay Westervelt in 1986 through one of his essays. In it he emphasized that the hoteliers promoted the reuse of towels as a sustainable method with the hidden intention of saving their cost for towels (Watson,2016). During the same period, in the mid 1980s, Chevron company who is a leading character of the oil industry publicised their contribution to the environment via tv programmes and media. However, it was revealed that they were polluting the environment while violating the Clean Air Act 1967 and Clean Water Act 1972 of United States. With that evolution of misleading consumers, now it can be seen the greenwashing in numerous products including foods, beverages, sanitary products, vehicles, fashion brands and even financial institutions also commits the sins of Greenwashing.

Most importantly the practice of greenwashing should not be mingled with the green marketing, as there is a visible margin between these two concepts. In accordance with green marketing the businesses and companies are obliged to ensure that their products are ecofriendly with less environmental impact. Their main objective is to continue the business with a minimized environmental impact. Usually, the green marketing products do not contain toxic ingredients and they are reusable, recyclable whereas by way of greenwashing practices the companies utilize the same concept of protecting the environment while manufacturing products and services which are not eco-friendly. However, the most negative effect of greenwashing is the disappointed consumers will not be relied upon the truly sustainable products as their trust is already broken.

The main and identifiable characteristics of greenwashed products are, the vague language with misleading and false environmental claims. For an example, once the Hyundai company advertised that one of their cars has the capability of cleaning the air and it was highly criticized by the Advertising Standards Authority (Puddicombe, 2021). Moreover,

greenwashed brands use greenery images with words like 'green' and 'eco' to depict and establish the idea of sustainability in the consumer's mind. At the same time, it is prudent to get rid of using the products which claim '100% ecofriendly' or '100% natural' while containing in a materials like plastics or polythene. Further in order check the truth behind the environmental claims of a particular product, a study can be done about the certifications.

i. Six Sins of Greenwashing

Under green washing the companies cunningly utilize the misunderstanding and lack of knowledge of the consumers. Consequently, the study conducted by TerraChoice in 2010 was able to introduce 7 sins of greenwashing which depicts the types of greenwashing (bluedotmarketing,2021).

ii. The Sin of the Hidden Trade-Off

Under this concept the small amount or part of the product which is organic is highlighted, regardless of the rest of artificial and harmful ingredients contained in it. Rather than focusing on the real nature of the products, the consumers tend to buy these kinds of products thinking that it is organic and healthy. Basically, this is not a false concept but it amounts to a misleading concept. For an example a product made utilizing a small attribute which is eco-friendly, can be caused to occur mass pollution during its procedure, even though it was made with organic ingredients. Instead of demonstrating that pollution, the particular companies stress out the organic ingredient.

iii. The Sin of no proof

Generally, for an environmental claim it is necessary to have a certification by a third party as the third-party certification publicise the manufacturing process of the company. Rather than a mere statements about the product, in order to support the claim, it should be proved with facts and details. When an environmental claim is not supported by a certification of reliable third party, it creates the sin of no proof.

iv. The Sin of Vagueness

Poor definition or the broad meaning cause to this sin as the consumers misunderstand the product. As an example, a hand sanitizer which contains 99% of chemicals and mentions that it is chemical free, commits the sin of vagueness.

v. The Sin of Irrelevance

Under this sin it is made an environmental claim which is irrelevant and unhelpful for eco-friendly products and simultaneously it is a truthful claim. By means of tricky statements and focusing the attention of consumer to the irrelevant facts, this sin is committed. For an example there is sin of irrelevance when a product mentions that it does not contain a harmful chemical which is banned and not used by other products as well.

vi. The Sin of Lesser of Two Evils

When questionable products are saying that they are environmentally friendly and organic, there is the Sin of Lesser of Two Evils. For an example, if a cigarette company claims that their cigarettes organic and eco-friendly, there is a risk for the health of the consumers at the same time. Simply it contains the technical truth which changes the attention of the consumer from the massive health and environmental risk that can be happened from the product. This green claim can be truthful within the product category, but it can be harmful for the consumers.

vii. The Sin of fibbing

Making false environmental claims amounts to the Sin of fibbing. For an example, once the Hyundai company advertised that their cars have an ability to clean the air. Generally, this type of a sin is not common, as making false statements can be a reason to deprive the trust of the consumers.

viii. The Sin of worshipping false labels

When false certifications endorsed by third parties are used in products, this sin can be visible. Under this sin, the products use certain labels showing "approved" by certain standards such as Energy Star Certified, Green Seal Certified. (bluedotmarketing,2021).

ix. Impacts of Greenwashing

Basically, greenwashing can be affected to the environment and the consumers at the same in different ways.

x. Impact on environment

The misleading of consumers paves the way for severe impacts on the environment as it misuses the consumers' intention to support environmental protection in different ways. The companies publicise that they take actions for the protection of environment whereas their products and services do a huge harm while manufacturing. Rather than making changes in the products or manufacturing process, the companies rely on a mere advertising which says that it is eco-friendly. However finally it ends up with the destructive contribution to the environment. The Malaysia Palm Oil Council, in 2008 advertised that Palm oil trees provide a habitat for various species of flora and fauna. However later it was found that palm oil trees caused extinction of rainforest species, destruction of flood buffer zone and different other damages to the environment. Likewise, Shell company once advertised their oil sands 'secure a profitable and sustainable future'. However, the UK Advertising Standards Authority declared that Shell company has no evidence to prove the sustainability on the environment. Identically cosmetics, beverages and food items which say organic and contained in unsustainable materials do a considerable impact to the environment (Dhal,2010).

xi. Impacts on the consumers

According to research conducted by TerraChoice in 2009 it was revealed that out of 397 cleaning products, children's products and cosmetics only 3 products were made using sustainable materials and sustainable manufacture process. Unfortunately, those greenwashed products were most popular brands in the market at that time. The unawareness of consumers about greenwashing leads to the unstainable and unhealthy practices which cause to generate serious health issues like cancers, genetic disorders (Dhal,2010). In the garment industry of low and middle-income countries (LMICs), due to the cotton dust and the poor sanitary facilities the garment workers have to face cancers, lung diseases (Bick, Halsey and Ekenga, 2018). Ben and Jerry, a company which manufacture dairy products stated that they focus of 'making world a better place'. However, it was revealed that this company utilizes low quality farmed milk for their dairy products. 10 samples out of 11, taken from Ben and Jerry company was positive for herbicide contamination which is harmful for human health (pegasuslegalregister, 2018). The confusion of the consumers generated by greenwashing can create a mistrust towards the true environmental claims and consequently it will be destroyed the green market which purposes to protect the environment. Similarly, the products which pretend that they are Eco friendly, can be a reason to affect the human health together with their economy as well.

Laws related to Greenwashing in other jurisdictions

United Kingdom can be known as an initiate state which established a standardized practice to diminish the impact of greenwashing. In 2021, Competition and Markets Authority (CMA) of United Kingdom established Green Claims Code declaring the guidance which are relevant to the businesses and companies when considering the protection of consumers regarding environmental claims. Most importantly this code has connected with the inclusions of Unfair Trading Regulations 2008 (CPRs), Misleading Marketing Regulations 2008 (BPRs) and Advertising Standards Authority (ASA)'s rules as well. It contains 6 key principles

a) Be truthful and accurate;

b) Be clear and unambiguous;

c) Not omit or hide material information;

d) Only make fair and meaningful comparisons;

e) Consider the full lifecycle of the product or their service

f) Be substantiated.

Any business which fails to comply with the Green Claim Code can be subjected to the actions taken by the Competition and Markets Authority (CMA), Advertising Standards Authority (ASA) and trading standards. It is prudent to identify these codes as a flow from Consumer Protection from Unfair Trading Regulations 2008 (CPRs) and Business Protection from Misleading Marketing Regulations 2008 of UK, rather than a newly established law which strictly focuses on greenwashing.

Other than this Green Claim Code of UK, it cannot be found a specific law for greenwashing in other jurisdictions. However, there is a visible contribution by organizations, federations which work for consumers and environmental protection. During the absence of a proper regulation for Greenwashing in United Kingdom, the non-profitable organizations like Green Peace initiated in raising voice against the greenwashing (Dhal, 2010). Changing Markets Foundation, as a worldwide non-governmental organization based on Netherlands, discusses about social issues. Focusing on protection of sustainable trade practices, it has presented a report titled 'Licence to Greenwash', considering the textile certifications. In this report they have evaluated the 10 certifications in the fashion industry and by means of that they have found that the majority of existing certification brands act to hide the environmental impact caused by the fashion industry (ChangingMarketFoundation,2022).

Likewise, the World Federation of Advertisers (WFA) has introduced a set of regulations related to Greenwashing including six guidelines. Under those guidelines, firstly clear wording and understandable language should be present without confusing the consumer. Secondly, sufficient information must be included in the products for the benefit of the consumer and to mitigate miscommunication. At the same time, marketers are obliged to indicate the limits of durability of the product and their environmental claims should be based on the lifecycle of the product. Moreover, instead of a mere comparison with other competitive products, in accordance with these guidelines, it is required to mention advance information. For an example if a company states that their ingredients are organic, it should be mentioned what makes the ingredients more organic than other products. Similarly, if any business intends to advertise about an environmental claim, they are required to

mention strong evidence for that claim as well. Finally, it is required to demonstrate the impact to the environment, the contained ingredients and the process of production in order to educate the consumer regarding the product (Whitaker and Williams, 2022).

The Federal Trade Commission (FTC) of United States in 1992 introduced a set of guidelines to restrict the practice of greenwashing. In accordance with these rules the language must be clear, the claims which are comparative should be clear and there should not be any over exaggerating of environmental claims etc.

As a result of keeping an eye on this growing misleading trend, the United Nations Conference on Sustainable Development in Rio in June 2012 (Rio 2012) established guidelines on Green Economy, which aims at implementing a practice of economy which is interacting with environmental protection as well. Therefore, by means of such steps it is granted a responsibility on the companies and consumers only to be familiar with the Eco-friendly products which actually contribute to the protection of the environment. Simultaneously, The Attorneys General Task Force on Environmental Marketing was established in 1989 by the Attorney General of Minnesota with the purpose of providing the justice for the consumers with good intention of protecting the environment.

In addition to that, University of Oregon in United Kingdom has established a Greenwashing Index which allows the public to give feedback, rate on the various advertisements which make environmental claims. This can be known as an active participation of public to mitigate the negative impact of greenwashing. In the same line certain other organizations like Greenpeace, Friends of the Earth also work on spreading the public awareness on greenwashing and gaining opinions from the public about environmental claims (Lorance, 2010).

Laws related to Greenwashing in Sri Lanka

. When considering the situation of Sri Lanka, there can be found numerous cosmetics which says they are 'greenest' and 'environmentally friendly' while containing in plastic tubes or bottles. Simultaneously their websites also have published articles on environmental protection. Moreover, there are plastic water bottles which mention 'eco-friendly' on the polythene label and 'organic' foods containing in polythene covers. However, no authority has recognized these companies as greenwashing companies. It becomes evident that even though Greenwashing is commonly existing in Sri Lanka, still it has not been addressed effectively.

In order to indirectly address the greenwashing practices, there are few statutes in Sri Lanka which aim on consumer protection. The Food Act No. 26 of 1980, was an act which was established to govern the manufacture, sale, distribution of food in Sri Lanka, regulating the advertising and labelling of food products. Under section 3 it states that advertising or labelling of the food in a false, deceptive and misleading manner is prohibited under the Act which generates a false impression regarding the item. Simultaneously, in terms of section 160(4) of the Intellectual Property Act No.36 of 2003, any action which misleads or likely to mislead the public creates an act of unfair competition and further it has been mentioned the instances which may constitute misleading; such as process of manufacturing, suitability of product, quality and quantity etc. Further, in terms of section 7 of Consumer Affairs Authority Act No.9 of 2003, the objectives of the Act are to protect the consumers from the marketing of goods and services which are

detrimental to life and property, while safeguarding consumers from and seeking remedies for unfair trade practices etc. Significantly, under the functions of this Act, it is intended to educate the consumers regarding the rights and interests while protecting them. Further, under section 30, no trader is allowed under the Consumer Affairs Authority Act No.9 of 2003 to conduct any misleading or deceptive action. Together with that according to section 31, false representation of the standard, quality, approvals and certificates about the goods is also prohibited. Identical provisions are mentioned in the section 18 and 19 of the Consumer Protection Act No.1 of 1979 as well.

In addition to that, under the functions of the Rupavahini corporation mentioned in section 7 of the Sri Lanka Rupavahini Corporation Act No. 6 of 1982, a television broadcasting service should be carried out prioritizing the public interest and the programmes broadcast by the corporation should be controlled and governed. Furthermore, in accordance with the Code of Ethics Standard of Practice, there is a standard which declares that any untrue statement or omission of fact should not be done which initiates a misleading.

When concerning the essence of these Acts regarding Greenwashing, it is obvious that these Acts were not enacted with the specific purpose of mitigating Greenwashing. Therefore, it is difficult to completely eradicate the negative impact from Greenwashing by applying the above-mentioned provisions. Even though they are applicable to a certain extent, when comparing with UK, still Sri Lanka is in a very primitive stage. Although Green Claims Code is not a separate law, with the purpose of modifying the existing consumer protection laws to address the issue of greenwashing, UK regulators have gone beyond the existing legal framework.

4. Recommendations

Obviously, there is an absence of a specific legal framework for greenwashing in Sri Lanka. As a result, it is evident that even though Sri Lanka follows a silent approach regarding Greenwashing, there is a high risk of having impacts of Greenwashing to Sri Lankan consumers. Initially it is significant to aware the consumers about the practice of greenwashing and its impacts. Therefore, it is necessary to have a legal tool which distinguishes the true environmental claims from misleading greenwashing claims and there should be guidelines and standards to mitigate the practice of greenwashing. Such legal framework should be operated regularly since there can be variations in the modes of greenwashing. At the same time there is a necessity of having a regulation to sue against greenwashing companies after a proper investigation.

Furthermore, to receive the public participation, it should be created several mobile applications and forums for the consumers to comment and rate on the environmental claims which is similar to the Greenwashing index of University of Oregon. Moreover, there should be a legal framework to ensure the transparency of the products with environmental claims by providing necessary evidence using numerical data rather than attractive words like ‘environmentally friendly’. Further, Public awareness on greenwashing should be promoted and it can be supportive to get the contribution from non-governmental organizations as well. Finally, instead of giving the burden on consumers regarding categorizing greenwashing products, with the public participation the relevant authorities should take an action to update the laws.

5. Conclusion

In terms of Greenwashing, the companies pretend that not only their products, but their labelling, manufacturing, distributing also sustainable and environmentally friendly. After considering their common products and services in the society it is evident that from food item to financial service, Greenwashing is applied. The main issue related with Greenwashing is, as the misled people attract towards these brands with the good intention of reducing the environmental impact, the environmental harm become serious. In a conclusion it becomes visible that as there is no a considerable consideration to this greenwashing concept in Sri Lanka, there is a lacuna in the legal system due to the absence of specific law or regulation to control the greenwashing. Moreover, it is evident that existing laws related to consumers rights and food safety are also not sufficient for this purpose. Lack of knowledge regarding the consumers rights, lack of sufficient laws and regulations for Greenwashing in Sri Lanka depicts that still the majority of products and services are misleading consumers to a considerable extent. In contrast, within Sri Lanka, a contribution from non-governmental organizations also cannot be seen mainly due to the lack of knowledge about greenwashing Therefore, it must be stressed that in Sri Lanka the deliberation focused on Greenwashing is not sufficient when comparing with the other jurisdictions like United Kingdom.

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2. Intellectual Property Act No.36 of 2003

3. Consumer Affairs Authority Act No.9 of 2003

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5. Sri Lanka Rupavahini Corporation Act No. 6 of 1982

The Principle of Distinction; oscillation between Military objectives and Civilian objects in IHL

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Abstract: *The International Humanitarian Law (IHL) governs events that occur in a state during armed conflict. It limits the effects of an International Armed Conflict (IAC). There are six principles in IHL. This paper intends to discuss about the Principle of Distinction. Principle of Distinction distinguishes every act and person involved in armed conflict. This distinction is generally between combatants and civilians. The key international legal instruments that govern IHL are Geneva Conventions (GC) I to IV and its Additional Protocols (AP) I and II. These GC provisions and AP provisions are used to justify the military objectives and the civilian objects in an armed conflict. This paper aims to discuss the exceptional situations as well. In Non-International Armed Conflicts (NIAC), IHL limits methods and means of warfare and people who are not directly participate in hostilities (DPH). Either IAC or NIAC the application of IHL principles remain still. The principle of distinction is used to apprehend the distinction between military objectives and civilian objects. In war, before conducting an attack it is vital to refer and analyse the situation under principle of distinction. This principle of distinction assists to discern whether the attack will gain the expected military advantage. It is important to calculate the collateral damage and to justify the military necessity in the light of principle of distinction. There is only a delicate distinction between military objective and civilian object. It is important to understand this distinction before planning an operation during a conflict. The inability to address this delicate distinction had led to many problematic outcomes among states in aftermath of war. Therefore, this paper aims to discuss about the tenuous area that leads to contradictions between military objectives and civilian objects.*

Keywords: *Distinction, Military objectives, Civilian object*

1. Introduction

International Humanitarian Law constitutes a reaffirmation and the development of the traditional international law of war (jus in bello). Most rules of the law of war now extended even to those armed conflicts that the parties don't regard as wars. The term International Humanitarian Law (IHL) takes this in to account. International Humanitarian Law sets certain bounds to the use of force against an adversary. It determines both the relationships of the parties to conflict with one another and relationship with neutral states. Certain provisions of international humanitarian law are also applicable in relationship between the states and its own citizens.

In armed conflict, belligerent may apply only that amount and kind of force necessary to defeat the enemy. Acts of war are only permissible if they are directed against the military objectives, if they aren't likely to cause unnecessary suffering and if they are not perfidious. In international armed conflicts, international humanitarian law formally recognizes and defines distinct categories of persons who don't or no longer directly participate in hostilities as a "protected

person". Wounded, sick and shipwrecked prisoners of war and civilians are fallen under this category of protected persons. While no formal categories of protected persons exist in non-international armed conflict (NIAC). The applicable international humanitarian law notwithstanding grants material protection to those who don't further engage in hostilities.

Under the aforementioned persons who enjoy general protection, international humanitarian law grants special protection to certain groups of persons, women, children, refugee, displaced persons, missing persons, medical and religion personnel, humanitarian relief personnel, journalists, pregnant mothers and personnel involve in peace keeping missions are who entitle to protection under civilian category of international humanitarian law (IHL). International law regarding persons taking part in or affected by an international armed conflict makes a fundamental distinction between combatants, who have become legitimate military objective and civilians, a distinction being a leading principle and an unchangeable bottom line in international humanitarian law applicable in international armed conflicts. This distinction concludes the international legal status of the two categories.

International law applicable in international armed conflict ascertained which persons are entitled to the status of combatant or of civilian regardless of the basic classification.

2. Miltary Objectives

Firstly, significance of the military objectives and civil objects should be clearly observed. The boundary between military objectives and civil objectives remains a critical problem. Referring to article 52 of Additional Protocol I (AP I) of the Geneva Conventions (GC). This becomes most heavily debated provisions of the Additional Protocol and significantly in military circles of western countries has been extremely contentious to it. Article 52 of AP I firstly demand military objectives to be objects which by their nature, location, purpose or use make an effective contribution to military actions. Hence under the military objectives, the installations, buildings or ground sectors which are directly involved in the military endeavour of the belligerent. This makes an effective contribution to the military operations due to their inclusion in the military dispositions of adversary; this is controversial to the restrictive definitional approach states in the Hague Rules of Warfare. Boundless interpretations of "military objective" have been developed. For example, Total Warfare Doctrines advanced by Air Marshall Trenchard in 1928 mentions military objective as "any objective which will contribute effectively towards the destruction of the enemy's means of resistance and lowering of his determination to fight".

The intention of any military action always should be to influence the political will of the antagonist especially in the defensive circumstances where energies determine to pursue its goals where violence must be broken. There is a distinct advantage through the article 52 of AP I over lists of admissible military objectives proposed in past, namely the flexibility of its practical implementation and this can have adverse effects where it can have wide margins of interpretation let the belligerents to construe it with completely different results according to their particular interests. It can also be alleged that the officer in charge of the operative action should have knowledge on determining the specific target as lawful military objective, needs peruse

information as to the accurate nature, exact purpose and use of the objective concerned.

Military objectives generally include armed forces, military aircrafts and warships, buildings and objects for combat service support and commercial objectives which make an effective contribution in military action. On aforesaid objectives, the ICRC (International Committee on Red Cross) and Diplomatic Conference employ an abstract definition in order to limit the scope of term military objective. Repeated criticisms are present due to wide margin of interpretation. At the heart of the category of military objectives are the armed forces of the adversary, including all military auxiliary organizations and paramilitary units fighting side by side with regular armed forces as well the regular units of army, navy, air force, all militia and other groups who fight for enemy. This includes any part of the population in non-occupied territory on the approach of foe, spontaneously takes up arms to defend the invading force and guerrilla forces in occupied territories. Lawful combatants include paramilitary and armed law enforcement agencies which are incorporated with equipment serving for combat purposes namely warships and military aircrafts.

The installations and objects for immediate combat service support of military nature such as barracks, fortifications, staff buildings, military command and control centres, military airfields, part facilities of Navy, Ministries of military nature for instance national defence, installations for supply service are traditional military objectives. Buildings and objects for combat service support has an additional layer of meaning which arose problematic consequences in delimitation rather than in cases dealing with buildings of obvious military function. Logistical bases of armed forces, stores of arms or military supply munitions dumps, fuel stores and etc. parliament of a country can be considered as a military objective on the notion that it's the place decisions on the defence are made, in counter argument it can be claimed that since it deals with the politicians where the majority is of civilian individuals this should be an objective refrain from attacking similar as civilian objectives.

The most delicate distinction is between permissible military objectives and civilian objects concerns the commercial aspects which makes an effective contribution to the military action. This is a highly debated area. The ICRC's 1956 list includes means of communication, broadcasting networks, television stations, telephone and telegraph installations and all these are of fundamental military importance industries with importance to conduct war. For instance, in April 1999 NATO bombed the Serbian state television and radio station in Belgrade. A committee appointed by the prosecutor of ICTY assessed that attack is legitimate since it targeted at disrupting command, control and communication network but in contrary it's debatable on the legal basis stating that attack had been made because the station was a part of propaganda machinery. The attack on the Baghdad television station during Iraqi Freedom Operation by America and in Sri Lankan context LTTE attack on Central Bank, Colombo and attack on Katunayake International Airport can be recalled.

Regarding disputes on "industries of fundamental importance for the conduct of war" it's indisputable that industries production of armament falls within this category, heavy industries providing metallurgical engineering and chemical products for consistency of the conflict and installations for production of electrical energy for the military purposes is licit military

objectives. Excluding this aspect would result dangerous opportunities to immunize armaments production of subcontracting and decentralising production in to civilian forms that would ultimately erode the basis of entire system tempting states ignoring the whole regulatory framework, to return to approaches of total war which directly aims the economic potential of the adversary. This dilemma should be sensibly answered with implementation of pertinent rules by bona fide interpretation of requirements of article 52 AP I.

The Para troops are lawful military objectives as article 42 of AP I but not crew members of parachuting from an aircraft in distress and objects by their nature, location, purpose or use make an effective contribution towards war actions. The debatable issue emerged on the air force crews parachuting are that, under what circumstances that the military aircraft may be fired. Parachute troops and airborne combat units it's beyond doubt that are legitimate military objectives since parachuting from a military aircraft in prima facie fall under offensive category, when comparing and contrasting military and civil objectives "military advantage" becomes significant. This means the benefit that can be expect from attack as a whole but not isolated or specific parts of attack and linked military objective. Both render towards determining definite military advantage especially under article 52 AP I.

Subsequently Unmanned Aerial Vehicles (UAVs) which are used to target control and have been equipped with armaments and Unmanned Combat Aerial Vehicles (UCAVs) over the past decades had become popular since 2002 where the first UCAV was sent in targeting of high ranked Taliban by CIA. UAV and UCAV have mostly been used in Somalia, Yemen, Pakistan for various purposes like surveillance and intelligence or in order to support ground troops. According to the manual published by the Harvard University on Humanitarian Policy and Conflict Research in 2009. This further claim that UAV which doesn't carry a weapon and which can't control a weapon which is used solely for intelligence purpose of surveillance and reconnaissance (ISR functions) don't raise the question on *ius in bello* and UCAV which carries and launches a weapon, which can target directions, supporting ISR functions is itself a weapon; i.e. Predator Drone.

Civilians present under the military objectives are not protected against the attacks directed at those objectives; i.e., civilian workers in an arms production plant will not prevent opposing armed forces from attacking military objective. The persons who are not combatants under the article 4 of Geneva Convention (GC III) and article 43 of AP I must be seen as civilians. Both civilian population and individual civilians according to article 51 of AP I enjoy general protection against dangers arising from military operations and the civilians taking up arms against the military becomes legitimate military objective; i.e., actions of Iraqi forces during Operations Iraqi Freedom where Iraq deliberately used civilians to physically shield their operations. Attacks against such installations remain licit in the principle but the "principle of Proportionality" may cause the attacker difficulties during attempt of justifying.

Enemy military aircrafts are lawful military objectives which can be warning at the aerial war zones to make them crash landed. The crew members and the passengers who could save become unlawful combatants and mercenaries. They shall become the prisoners of war (POWs) according to article 4 of GC III. Military aircrafts used against violence are permitted to be attacked even there are civilians on board according to general rule. This doesn't prevent aircraft from being a

military objective and rationale behind this is, those passengers voluntarily run the risk of being shot down. Other enemy public aircrafts shouldn't be attacked without early warnings. Such aircrafts are permitted to be attacked only when they escort military aircraft, fly through an aerial zone interdicted by the adversary and take part in hostilities. The planes and helicopters used by the government organs which doesn't make for military tenacities and don't take part in hostilities aren't legitimate military objectives.

3. Civilian Objects

The civilian objects are which granted protection from being attacked under any consequence. They are prohibited to fire or to bombard even for the purpose of terrorizing the civilian population unless they take direct part in hostilities. Attacking civilian objects in reprisal is also constrained. The principle of non-combatant military is the logical significance of the fundamental principle of limited warfare. This principle makes the distinction between military and civilian objects. Under "military necessity", the civilian population or individual civilians are not permissible objects to be attacked. The terror attack too has to be considered as grave breaches in the war crimes. The Yugoslav or the Serbian Army has repeatedly made terror attacks on civilian population during war in Croatia in 1991, Soviet warfare in Afghanistan during 1980s, Iraqi attacks with "Scud" missiles on Saudi Arabia and Israeli cities during the Kuwait war in 1991 becomes the recent examples for blatant illegitimate belligerent practices.

Defending the localities building and installations that could be fire or bombard in order to break down active resistance and to eliminate military objectives located; i.e., conquering and destructive fire bombardments and still should be locally limited to actual resistance and actual military objectives. The civilian population covers "defended localities", comprises legal military objectives but entire city or the village don't become military objective due to mere fact that some combatants with enemy force remain there. The wholesale destruction is permissible only when violence is justified by military necessity to neutralise enemy resistance and to destroy specific military objectives located within that territory.

In advance it's proscribed to attack safety zones and neutralised zones which are designed in the sole purpose of giving shelter to the wounded and sick soldiers and to civilians who hasn't taken part in hostilities referring to article 23 of GC I, article 14 and 15 of GC IV, medical and religious personnel as in article 12 and 15 of AP I, hospital ships in article 22 of GC II, hospitals and related personnel like doctors, nurses as in article 19 of GC I and article 18 and 20 of GC IV, objects indispensable for the serving of the civil population; i.e. production of food stuffs, clothing and drinking water installations with the intension of mala fide to deprive the civilian population of their supply as in article 54 of AP I and article 14 OF AP II any exception from this prohibition would be permissible only on the friendly territory under cogent military necessity according to article 54 of AP I, the coastal life boats and installations as per article 27 of GC II, cultural objects as in article 53 of AP I, aircrafts prohibited by the international law employ for exchange of prisoners and medical aircrafts as per articles 36, 37 of GC I, article 39 of GC II, article 17 of AP I and civilian aircraft where public travel.

The Geneva Conventions I, II, III and IV and the Additional Protocols I and II supported by the customary law identify a series of specifically protected objects against which the use of any

sort of force is restrained. These shouldn't be used as objects to attack, other hand they shouldn't be used by belligerent for hostile purposes in the framework of military operations. Precise localities are declared as the safety zones to provide safe shelters for the wounded and sick, for children and mothers and elderly people, such zones serve as lodging for protected persons but they should forbid from containing any military object. They must be located in areas which all probability isn't relevant for the conduct of hostilities; i.e., neutralised zones around the Anglican Cathedral in port Stanley on the Falkland Islands where it made conclusion between the Argentine and British authorities on 13 June 1982. This becomes an example for such agreement in contemporary practice.

All the Geneva Conventions and the two Additional Protocols refers to an absolute protection for medical and religious personnel, to hospital ships, to religious places like churches, temples and mosques as in articles 19 and 24 of GC I, regarding military hospitals, military medical personnel and chaplain attached to the armed forces, this is extended by articles 12 and 15 of AP I to civilian medical and religious personnel. In non-international armed conflict protection for medical and religious personnel and medical units and transportation means referred as in articles 9 and 11 of AP I. Hospital ships already enjoy this privilege under the Hague Conventions of Hospital Ships of 1904. This proviso is consolidated by article 22 and 35 of GC II.
As another argumentative category "protection on the objects indispensable for the survival of the civilian population" has been emerged. In international customary law this isn't recognized in the principle of proportionality and sets boundaries of attacks on such objects where the damage and destruction logically load to significant grave sufferings for the civilian as a whole or individually; some common examples are food stuffs, agricultural areas for the production of food, live stocks, drinking water installations like water tanks, supplies and irrigation works. It's restricted even to attack, remove, to destroy or to render useless such objects indispensable for survival of civilians, rendering useless consist acts like deliberately pollution through chemicals or water reservoirs or contamination of the crops by defoliants.

An irrigation channel shall not be destroyed to interrupt agricultural production and due to its importance for the sustenance of civilian population this may be allowed with permission if the irrigation channel is used as defensive position by the militants in occupation and field of crops burst down to clear the area for artillery. Another debatable aspect is installation of electrical power supply installations on concern on the extent that the power supply serves military purposes in maintaining military installations makes it undoubtedly a military objective. The elimination of power supply network can lead to a considerable disruption to civilian infrastructures like drinking water supply and a recent example is Operation Desert Storm in 1991 in Iraq. A significant protection is provided for the cultural objects through Hague Convention on the Protection of Cultural Property in the event of armed conflict and provisions of article 53 of AP I and article 16 of AP II extent it to protective regimes of historical monuments works of art and places of worship which constitute the cultural heritage.

In operation military leaders to have a role to protect civilians. A military leader should verify the military nature of the objective that is to be attacked as in article 57 of AP I, select the means and methods of minimizing the incidental injury and damage to civilian life

and objects, abstain from landing any attack which would be excessive related to concrete military advantage anticipated, give advance warning for the civilian population, select the military objectives with least military incidental damage, should take feasible precaution in attacking apply equally to the operations of UCAVs, missile attacks and remotely controlled weapons. Attacks against the military objectives should be conducted in manner where maximum precaution will be taken to protect civilian population complying with article 1 of AP I. operations which may affect the civilian population shall be preceded by an effective warning unless situations don't allow.

4. Conclusion

It's clear that in general view, military objectives and civil objects seems to have very significant distinctive features but in-depth analysis it's proved that there is only a delicate distinction between military objectives and civilian objects in conclusion. Application of International Humanitarian Law (IHL) to the problematic circumstances dealing with the military objectives and civil objects should be done in a sensible manner in accordance with the application of principle of proportionality, military advantage, military necessity, distinction, precautions, limitations in warfare supplemented with Geneva Convention I, II, III and IV , Additional Protocols I and II to the conventions and related conventions such as Hague Conventions, Petersburg Declaration of 1868, Rome Statute ICC of 1998 and Ottawa Treaty of 1997 and the recent cases such as Operation Desert Storm, Iraqi Freedom Operation, Serbian, Taliban and ISIS attacks and application of Humanitarian Law on the situations with the opinions from ICRC

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I am a LLB graduate. I have done my Masters in Social Work and a Diploma in Human Rights. I am currently reading for my MSc in Clinical and Counselling Psychology and MSc in International Relations at John Moore's University. I am interested in research areas such International Humanitarian Law and Defence and Strategic Studies. I am currently serving as a Counter-Terrorism Analyst in an institution affiliated to government sector. I have been awarded with several awards as a delegate in Model United Nations Conferences.