



THE
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**Containing cases and other matters decided by the
Supreme Court and the Court of Appeal of the
Democratic Socialist Republic of Sri Lanka**

[2009] 2 SRI L.R. - PART 15

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DIGEST

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CONSTITUTION — Article 129(1) — Consultative Jurisdiction — The President of the Republic may refer a question of law or fact that has arisen or is likely to arise which is of such a nature and of such public importance, that it is expedient to obtain the opinion of the Supreme Court — He may refer such question to the Supreme Court for consideration and the Court shall report its determination and opinion to the president within the period specified in such reference — International Covenant on Civil and Political Rights 393

Centre for Policy Alternative (Guarantee) Ltd. And Three Others

(Continued from Part 14)

Notice was issued on the Attorney General, as required by Article 134 (1) of the Constitution. Four parties named above intervened and Counsel representing them were permitted to make submissions.

Addl. Solicitor General representing the Attorney General made comprehensive submissions on the question stated above.

The International Covenant on Civil and Political Rights was adopted by the General Assembly of the United Nations on 16.12. 1966 and came into force on 23.3. 1976. Sri Lanka acceded to the Covenant on 11.6.1980. At the time of accession the currently operative Constitution was in force as the Supreme Law of the Republic.

As stated in the Preamble to the Covenant the rights recognized and enshrined therein stem from the Universal Declaration of Human Rights. We have to state as a basic premise that the fundamental rights declared and recognized in Chap. III of the Constitution are based on the Universal Declaration of Human Rights.

Article 3 of the Constitution states that in the Republic of Sri Lanka Sovereignty is in the People and that sovereignty includes fundamental rights.

Article 4 of the Constitution which sets out the exercise of Sovereignty reads as follows:

4 (d) " the fundamental rights which are by the Constitution declared and recognized shall be respected, secured and advanced by all the organs of government, and shall not be abridged, restricted or denied save in the manner and to the extent hereinafter provided. .. "

It is thus seen that fundamental rights declared and recognized by the Constitution from part of the sovereignty of the

People and have to be respected, secured and advanced by all organs of Government. This is, in our opinion a unique feature of the Constitution which entrenches fundamental rights as part of the inalienable Sovereignty of the People. Thus the fundamental rights acquire a higher status as forming part of the Supreme Law of the land and cannot be abridged, restricted or denied except in the manner and to the extent expressly provided for in the Constitution itself.

Article 118 (b) of the Constitution vests jurisdiction in the Supreme Court for the protection of fundamental rights and Article 126(1) vests in the Court an exclusive jurisdiction to hear and determine any question relating to the infringement or imminent infringement by executive or administrative action of any fundamental right or language right declared and recognized by Chapter III or Chapter IV of the Constitution. Article 126(2) gives a right to any person who alleges an infringement to invoke the jurisdiction of the Court by a petition. The Supreme Court Rules enable any person in indigent circumstances to invoke this jurisdiction by addressing a letter directly to the Chief Justice. Such a person is thereafter granted legal aid for the effective presentation of his case.

Article 126(4) of the Constitution empowers the Court to grant just and equitable relief in respect of any alleged infringement and also to make directions. The Court has permitted public interest litigation covering matters that transcend the infringement of individual rights. Directions have been issued in connection with matters of general importance as to liberty, personal security and administrative action connected with a wide array of matters that impact on the natural environment, particularly with regard to water, air and noise pollution.

It is in the general background of the matters stated above that we have considered the specific questions stated in the reference.

Addl. Solicitor General in a thorough and comprehensive submission presented to Court an account of specific legislative compliance in relation to each Article of the Covenant. Counsel agreed on the correctness of the submissions made with regard to such legislative compliance. On the basis of the submissions of the Additional Solicitor General, the observations of Court and submissions of other counsel, for purposes of clarity a comprehensive schedule annexed hereto was prepared with two columns. The column on the left gives the particular Article of the Covenant and the column on the right gives the legislative compliance within Sri Lanka and the relevant pronouncements made by the Supreme Court and the other Courts to further strengthen the guarantee of rights recognized in the Covenant.

It has to be emphasized in this connection that Parliament enacted special legislation titled “International Covenant on Civil and Political rights (ICCPR) Act No56/2007 to give Legislative recognition in respect of certain residual rights and matters in the Covenant that have not been appropriately contained in the Constitution and the other operative laws. The preamble to the said Act states as follows:

“AND WHEREAS a substantial part of the civil and political rights referred to in that Covenant have been given legislative recognition in the Constitution of Sri Lanka, as well as in other legislation enacted by Parliament.

AND WHEREAS it has become necessary for the Government of Sri Lanka to enact appropriate legislation to give effect to those civil and political rights referred to in the aforesaid Covenant, for which no adequate legislative recognition has yet been granted.”

This enactment has been made by the Parliament of Sri Lanka in compliance with the obligation as contained in

Article 2.2 of the Covenant, which requires a State Party to “adopt such law or other measures as may be necessary to give effect to the rights recognized in the Covenant”.

Furthermore the Supreme Court has in several decided case relied on the provisions of the Covenant to give a purposive meaning to the provisions of the Constitution and other applicable law so as to ensure to the People that they have an effective remedy in respect of any alleged infringement of rights recognized by the Constitution.

Counsel for the Intervient Respondents did not detract from the general premise stated above. Counsel for 1, 2 and 3 Intervient Petitioners made specific submissions on certain alleged inconsistencies with the rights recognized by the Covenant. We would now briefly deal with the submissions made by Counsel:

Dr. Wickremaratne, representing the 3rd Intervient Petitioner made submissions on seven specific matters. They are briefly as follows:

- (i) That the provisions of the Article 15(1) read with Article 13(5) and (6) of the Constitution are inconsistent with the guarantee in Article 15(1) of the Covenant, which is a non-derogative in terms of Article 42 of the Covenant. The gravamen of Dr. Wickremaratne’s submission is that in terms of Article 15(1) of the Covenant, a person shall not be held guilty of a criminal offence on account of any act or omission which did not constitute a criminal offence at the time when it was committed. In otherwords that no one shall be held guilty of an offence created *ex post facto*.

As submitted by Addl. Solicitor General, Article 13(6) of the Constitution specifically incorporates a guarantee as con-

tained in Article 15(1) of the Covenant. However, the submission of Dr. Wickremaratne is that Article 15(1) of the Constitution enables a restriction of the right guaranteed by Article 13(6) to be prescribed by law in the interests of national security. The submission is that such a restriction is not permissible in terms of the Covenant. When questioned by Court Dr. Wickremaratne was unable to point to any specific instance where a law has been enacted by the Parliament of Sri Lanka or any Regulation has been promulgated in the interest of national security to create an ex post facto offence. In the circumstances we are of the opinion that the submission of Dr. Wickremaratne is based on a hypothetical premise. If and when a law is sought to be made to create an ex post facto offence, the constitutionality of that law would be considered by this Court on the basis of the firm guarantee as contained in Article 13(6) that there shall be no enactment of ex post facto offences. In the case of *Weerawansa vs. Attorney General* ⁽¹⁾, this Court has specifically held that Sri Lanka is a party to the Covenant and a person deprived of liberty has a right of access to the judiciary. The only instance of ex post facto penal legislation in Sri Lanka is contained in the Offences against Aircraft Act No. 24 of 1982, which was enacted by Parliament after a Sri Lankan national hijacked an Alitalia aircraft and brought the ransom to Sri Lanka. The law was enacted by the Sri Lankan Parliament based on the International Covenants that were already in operation to ensure that the instance of hijacking is appropriately prosecuted and if found guilty punished.

- (ii) Dr. Wickremaratne submitted that Article 16(1) of the Constitution, which provides for existing law to continue in force notwithstanding any inconsistency with the provisions of the Constitution, ensure the continued validity of certain personal laws, specifically governing

Muslim and Tamil persons in respect of specific matters. It was submitted by Mr. Sumanthiran that certain provisions of the personal laws discriminate, especially against women. The matters on which submissions were made do not relate to any state action affecting rights of person. The instance of alleged discrimination is in personal Family Law.

These are customary and special laws that are deeply seated in the social milieu of the country. It is to be noted that Article 27 of the Covenant makes a specific reservation that

“in states in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right in community with other members of their group to enjoy their own culture, to profess and practice their own religion or to use their own language.”

In our view it could not be contended that the provisions of Article 16(1) of the Constitution that only provides for the continuance in force of the already operative law could be considered to be inconsistent with the Covenant only on the ground that there are certain aspects of Personal Law which may discriminate women. The matter of Personal Law is one of great sensitivity. The Covenant should not be considered as an instrument which warrants the amendment of such Personal Laws. If at all there should be any amendment such request should emerge from the particular sector governed by the particular Personal Law.

- (iii) Dr. Wickrearatne submitted that the immunity granted by Article 35(1) Constitution to the President as the Hand of State is inconsistent with the provisions of Article 2(3) of the Covenant which vests any person whose right and freedom are violated with an effective remedy. Whilst it

was conceded that there would be no objection to the personal immunity from suit or prosecution of the Head of the State; the inconsistency complained of is that is the case of ministerial acts of the President proceedings could be instituted against Attorney-General in terms of Article 35(3) of the Constitution, there is no such remedy in respect of acts performed as Head of State.

In the case of *Mallikarachchi vs. Siva Pasupathy*⁽²⁾ at 74 and 77 this Court stated that the provisions of Article 35(1) are not unique to Sri Lanka and that there are similar provisions in other countries and further that the immunity would cease when the incumbent President ceases to hold office. Addl. Solicitor General has referred to several instances where the former President is now impleaded in our Courts. Dr. Wickremaratne was unable to point to any instance where a person aggrieved of an infringement of any of his rights has been denied a remedy in view of the immunity granted to the Head of the State by Article 35(1) of the Constitution.

(iv) Dr. Wickremaratne submitted that Article 80(3) of the Constitution which provides that the validity of the enactment of any law by Parliament cannot be challenged after it is certified by the Speaker of Parliament denies an effective remedy to a person who alleges that the law derogates from any right recognized by the Covenant and as such it is inconsistent with Article 2(3) of the Covenant.

Article 121(1) of the Constitution empowers any citizen to challenge the constitutionality of a Bill within one week of the Bill being presented to Parliament.

Upon such challenge this Court is empowered in terms of Article 123 to determine whether any provision of the Bill is

inconsistent with the Constitution. Submission of Dr. Wickremaratne was that this provision is not an effective window or review constitutionality of legislation.

It is to be noted that there is no provision in the Covenant which mandates judicial review of legislation. Article 2(3) of the covenant cited by Dr. Wickremaratne provides that the State should ensure that any person whose rights or freedom are violated have an effective remedy through a competent judicial authority. The submission is hypothetical since it is based on the premise that there will be a Law enacted by Parliament in derogation of the rights recognized in the Covenant and it would not be challenged by any citizen before this Court prior to enactment.

- (v) Dr. Wickremaratne submitted that an amendment to a Bill made at the Committee Stage of Parliament cannot be challenged by any citizen before this Court.

It is to be noted that amendments are generally made at the Committee Stage in Parliament with regard to matters of incidental or procedural nature. In any event Article 72(2) of the Constitution specifically provides that where an amendment is proposed to a Bill in Parliament the Attorney General shall communicate his opinion to the Speaker as to the constitutionality of the proposed amendment, when the Bill is ready to be presented to Parliament for its acceptance.

- (vi) Dr. Wickremaratne and Mr. Sumanthiran submitted that there are certain provisions in the Agrarian Services Act No. 58/79 (as amended). The Co-operative Society Law No. 5/1972 and the Civil Procedure Code, which provide for the imprisonment of any person for failing to fulfil a contractual obligation, in contravention of Article 11 of the Covenant.

We are inclined to agree with the submission of the Addl. Solicitor General that in regard to the Agrarian Services Act and the Cooperative Societies Law penal sanction would not attach to pure contractual obligations but to statutory obligations.

Arrest and imprisonment is provided for in Section 298 of the Civil Procedure Code only in respect of a judgment debt, where there are circumstances that establish an intent of defraud and so on. Hence the instances cited by Counsel do not amount to an inconsistency with Article 11 of the Covenant.

(vii) Dr. Wickremaratne submitted that the provisions of Article 107 of the Constitution which provides for impeachment before Parliament of any Judge of a Superior Court, read with Rulle 78A of the Standing Orders of Parliament which provides for inquiry to be held by a panel consisting of Members of Parliament erodes the independence of the judiciary which has to be assured in terms of Article 14 of the Covenant. Dr. Wickremaratne submitted that in other countries an impeachment could be based only on an inquiry carried out by an independent panel of Judges or retired Judges.

There is merit in the submission of Dr. Wickremaratne that the process of impeachment of Superior Court Judges can be held like a sword of democles over incumbent Judges who would be placed in peril of an inquiry to be to be held within Parliament by a Panel consisting of Members of Parliament. However, this by itself does not amount to an inconsistency with Article 14 of the Covenant which mandates equality before the courts of law and a fair and public hearing by competent, independent and impartial tribunal.

Mr. Sumathiran who reiterated the submissions made by Dr. Wickremaratne with regard to the personal law and imprisonment for certain contractual obligations which have been dealt with above, in addition made a specific submission that there is no constitutional or statutory recognition of the right to self determination as stated in Article 1.1 of the Covenant.

The Addl. Solicitor General quite correctly submitted that the right to self determination does not require enforcement through legislative means, as established by the Human Rights Committee. This position is fortified by the Declaration of Principles of International Law contained in the United Nations General Assembly – Resolution 2625 (XV) Referring to the phrase “All people” in Article I of the Covenant Mr. Sumanthiran submitted that there should be statutory recognition of what he described as “internal self determination.”

We have to note that in terms of Article 3 of the constitution “in the Republic of Sri Lanka sovereignty is in the People and is inalienable”. Thus sovereignty is reposed in the People as a whole and it cannot be contended that any group or part of the totality of People should have a separate right of self determination.

Whilst appreciating the erudition of Dr. Wickremaratne’s endeavour of going through the gamut of Sri Lankan Law with the fine tool counts of the Covenant, we are impressed with submissions of the young Counsel representing the Legal Aid Commission (who relied on the observation of Lord Denning on the impact of the European Convention of Human Rights on the Law of England) that the correct approach should be to give effect to the covenant in the social, cultural, economic, political and legal framework of Sri Lanka.

For the reasons stated above we express the opinion in terms of Article 129 (1) of the Constitution that –

- (i) that the legislative measures referred to in the communication of His Excellency the President dated 4.3.2008 and the provisions of the Constitution and of other law, including decisions of the Superior Courts of Sri Lanka give adequate recognition to the Civil and Political Rights contained in the International Covenant on Civil and Political Rights and adhere to the general premise of the Covenant that individuals within the territory of Sri Lanka derive the benefit and guarantee of rights as contained in the Covenant.
- (ii) That the aforesaid rights recognized in the Covenant are justiciable through the medium of the legal and constitutional process prevailing in Sri Lanka

We wish to place on record our deep appreciation of the valuable assistance given by the Addl. Solicitor General and other Counsel who assisted on this matter.

SARATH N. SILVA – I agree.

R.A. N. G. AMARATUNGA – I agree

SALEEM MARSOOF – I agree

A. M. SOMAWANSA – I agree

D. J. DE S. BALAPATABENDI – I agree

Article 12(3) - Fundamental right of freedom from subjection to disabilities, liabilities, restrictions, or conditions with regard to public places

Article 27 – The directive principles of state policy provides for equal opportunity to all citizens to prevent any disability being suffered on grounds of race, religion, language, caste, political opinion or occupation

Article 126 – The Supreme Court of the State shall have sole and exclusive jurisdiction to determine any question relating to any alleged violation of a fundamental or language right, be it by an executive or administrative action, and it shall have the power to grant such relief or make such directions as it may deem just and equitable

Supreme Court has expanded the Locus Standi – Corporate bodies and Public Interest Litigation.

Parliamentary Commissioner for Administration Act No. 17 of 1981 as amended by Act, No. 26 of 1994:

Section 10 – While that act provides for the establishment of the office of the Parliamentary Commissioner for Administration (Ombudsman) who through this section has the capability to investigate into alleged violations of fundamental rights, and if such rights are violated is capable of reporting his findings to the Public Petitions

Committee for the requisite action to be taken thus providing for an added safeguard against the violation of fundamental rights.

Human Rights Commission of Sri Lanka Act, No. 22 of 1996

Section 2 – Provides for the establishment of a Human Rights Commission

Section 10 – The functions of the Commission include conducting of investigation for inquiries into procedural compliance of provision in the Constitution for the protection of fundamental rights, alleged infringements of those rights, advise in the formulation of legislation and procedure and ensure compliance with international standards and to provide education and awareness of these rights

Section 11 – Makes provision for a wide use of power in order to meet the above objection

Section 14 – Provision for the investigation of alleged infringements of rights even on the Commissions own motion

Section 26 – Protects the Commission against suit for actions done in good faith for the above stated purposes. Thereby this legislation provides for an independent organ to strengthen the protection and safeguarding of these rights

Article 4**Article 5**

Article 6 - Right to life and restrictions on capital punishment

Article 6.1
Right to life and no one to be arbitrarily deprived of life

Grant of Citizenship to persons of Indian Origin Act, No. 35 of 2003:

Section 2 - All persons qualifying are of Indian Origin and are granted the full rights that a citizen of the state shall have, ensuring the safeguarding of rights indiscriminate of social origin.

Article 15(7) of the Constitution Imposes a Negative obligation

Article 125 and 126 - Supreme Court having sole and exclusive jurisdiction to interpret the Constitution has held that Article 11 read with Article 13(4) recognizes the right of life

In the Cases of *Sriani Silva v. Iddamalgoda* [2003] 2 Sri. L.R. 63, 75 - 77

The Supreme Court has held that the right to life is implied in Chapter III of the Constitution.

Court has held "Although the right to life is not expressly recognized as a fundamental right that right is impliedly recognized in some of the provisions of Chapter III of the Constitution. In particular, Article 13(4) provides that no person shall be punished with death or imprisonment except by order of a competent court. That is to say that a person has a right not to be put to death

because of wrongdoing on his part, except upon a court order. ... Expressed positively, that provision means that a person has right to live unless a court orders otherwise. Thus Article 13(4) by necessary implication recognises that a person has a right to life - at least in the sense of mere *existence as distinct from the quality of life* - which he can be deprived of only under a court order. If, therefore without his consent or against his will a person is put to death, unlawfully and otherwise than under a court order, clearly his right under Article 13(4) has been infringed. ... Article 11 guarantees freedom from torture and from cruel and *inhuman* treatment or punishment. Unlawfully to deprive a person of life, without his consent or against his will, would certainly be inhuman treatment, for life is an essential precondition for being human I hold that Article 11 (read with Article 13(4)) recognises a right no to deprive of life whether by way of punishment or otherwise - and, by **necessary implication, a right to life.** That right must be interpreted broadly, and the jurisdiction conferred by the constitution on this Court for the sole purpose of protecting fundamental rights against executive action must be deemed to have conferred all that is reasonable necessary for this court to protect those rights effectively.

| | |
|--|---|
| | <p>Quality of life improved by the Supreme Court through cases pending on the regulation of</p> <p>Sound pollution SC/FR/38/2007</p> <p>Air pollution in SC/FR/89/2007</p> <p>Salinity of Water SC/FR/81/2006</p> <p>It may be further noted that Chapter XIV of the Penal Code elaborates the offences affecting the public health and safety.</p> |
| Article 6.2 - Death Penalty for most serious crimes | Penal Code of 1889 as amended: Murder |
| Article 6.4 - Right of Convict to seek pardon or commutation | <p>Article 34(1) of the Constitution - President has power to grant pardon</p> <p>Section 312 Code of criminal Procedure Act, No. 15 of 1979 as amended - President may commute sentence for sentences of death, rigorous imprisonment or simple imprisonment</p> |
| Article 6.5 - No death sentence for below 18 years. | <p>Penal Code as amended:</p> <p>Section 53 - Sentence of death not to be pronounced on persons under eighteen years of age</p> <p>Section 54 - Sentence of death not to be pronounced on pregnant women</p> |
| Article 7 - Non subjection to torture or to cruel, inhuman and degrading treatment or punish- | <p>Constitution of Sri Lanka, 1978:</p> <p>Article 11 - Fundamental right of freedom from torture or cruel, inhuman or degrading treatment or punishment</p> |

Article 8 - Non practice of slavery

Article 9 - Right to liberty and security of person, not being subjected to arbitrary arrest, or detention

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act, No. 22 of 1994:

Section 2 - Any person who attempts, aids or abets, conspires or tortures any other person is guilty of an offence

Section 3 - Threat or state of war, political instability, public emergency or order of a superior officer or authority would not constitute a defence for this offence creating a more stringent safeguard against torture

Abolition of Slavery Ordinance, No 20 of 1844

Section 2 - Slavery shall no longer exist and all such persons would henceforth be free and entitled to all rights, privileges of free persons

Constitution of Sri Lanka, 1978:

Article 13(1) - Fundamental right of freedom of arrest except according to the due procedure of law and right to information of reasons for arrest

Article 13(2) - Fundamental right to be presented before the nearest competent court according to procedure established by law if being held in custody or otherwise deprived of personal liberty and for such not to be continued except upon terms of that court according to due process of law

Article 13(3) - Fundamental right to a fair hearing before a competent court in person or by an attorney-at-law

Article 13(4) - Fundamental right not to be imprisoned except by order of a competent court

Code of Criminal Procedure Act, No. 15 of 1979 as amended:

Section 17 - This section given provision for the payment of compensation to victims of unlawful arrest or detention

Section 23 - Any person to be arrested must be informed of the nature of the charge or allegation upon which he is being arrested

Section 32-33 - Provides for specific and limited circumstances in which arrest can be conducted without a warrant of arrest. In all other circumstances arrest can only be conducted with a warrant of arrest, ensuring freedom from arbitrary arrest

Section 37 - Persons arrested without a warrant must be presented before a Magistrate within a reasonable time not exceeding 24 hours

Section 53 - Provides for the substance of the warrant to be communicated to the party in question in executing an arrest under a warrant of arrest

Section 54 - Provides for the due presentation of a person arrested under a warrant of arrest before court

Article 10 - Rights of persons deprived of their liberty - shall be treated with humanity and respect

Chapter XXXIV - Makes provision for the granting of bail for certain offences

Civil Procedure Code:

Section 298 - Provides for specific and limited circumstances in which arrest can be made with the issue of a warrant which ensures that arbitrary arrest does not take place.

Bail Act, No. 30 of 1997:

Section 2 - Provides that the practice to be followed is that the grant of bail shall be the rule and its refusal shall be the exception

Section 4 - 5 - Provides for the granting of Bail for bailable and non-bailable offences (the latter being at the discretion of the court)

Section 21 - Gives provision for anticipatory bail

Constitution of Sri Lanka, 1978:

Article 11 - Fundamental right of freedom from torture or cruel, inhuman or degrading treatment or punishment

Human Rights Commission of Sri Lanka Act, No. 22 of 1996:

Section 11 (d) - Provides the Commission with the power to inspect and monitor the welfare of detained persons and to make recommendations for the necessary improvements

Section 10(2) - Persons only accused but not convicted to be separated from convicted persons. Juvenile offenders to be separated.

Article 11 - No one shall be imprisoned merely for inability in fulfilling contractual obligations.

Article 12 - Right to liberty of movement, freedom to choose residence and freedom to leave and return to the state.

Code of criminal Procedure Act, No. 15 of 1979 as amended:

Section 24 - 30 - These sections give provision to ensure that all persons arrested or detained are treated with dignity and in a manner befitting with the inherent human dignity

Subsidiary Legislation of General Application - Volume I - (Cap. 54) General Rules Relating to Prisons -Page 766-860

Rule 177-181 - Rules as to separation and Classification of Prisoners

Rule 190-216 -Rules relating to Unconverted Prisoners and Civil Prisoners

Imposes a Negative obligation

Section 298 of the Civil Procedure Code.

Constitution of Sri Lanka, 1978:

Article 14(1)(h) - Fundamental right of freedom of movement and of choosing residence within the state

Article 14(1)(i) - Fundamental right of freedom to return to the state

Rodrigo vs SI Kirulopone and others - SC/FR297/07 - S.. C. Minutes 3-12-2007 (road Block Case)

Somawansa and 205 others Vs AG - SC SPL 1 - 205/2006 - (Freedom to leave and return to the State under Immigration laws.)

**Article 14(3) (3)
(e) - To examine
witnesses against
him and ob-
tain attendance
of witnesses
on his behalf**

**Article 14(3) (f)
- If language dif-
ficulty then as-
sistance of in-
terpreter**

**Article 14 (3) (g)
- Not to be com-
pelled to testify
against himself
or confess guilt.**

**Article 14(4) -
Procedure of ju-
venile persons
- Rehabilitation**

**Article 14(5) -
Right to have
conviction and
sentence re-
viewed by a
higher court**

Act No. 65/2007 Section 4(1)(d)

Act No. 56/2007 Section 4(1) (e)

Act No. 56/2007 Section 4(1) (f)

**Act No. 56/2007 Section 5(1) and
(2)**

Constitution of Sri Lanka, 1978:

Article 127 & 139 - Provision for the right to appeal against decisions of the courts of first instance and superior courts by the Supreme Court and the Court of Appeal of the State respectively

Code of Criminal Procedure Act, No. 15 of 1979 as amended:

Chapter XXVIII - Gives provision for an appeal process to have decisions reviewed by superior courts

Judicature Act No. 2 of 1978 - Sections 14 and 16 - Right of Appeal in criminal Cases granted

Article 14(6) - Compensation for malicious prosecution

Article 14(7) - No one shall be convicted for the same offence for which he has been convicted or acquitted.

Article 15 - right not to be held guilty for actions which did not constitute an offence at the time of commission

Article 16 - Right to recognition as a person

Article 17 - Right to Privacy family, home, reputation

Delictual liability under the common law (RDL) for malicious prosecution

Principles of Double Jeopardy (Code of Criminal Procedure Chapter XX-VII Section 314 and 315)

Constitution of Sri Lanka, 1978:

Article 13 (6) - Fundamental right not to be found guilty of an offence for an action which did not constitute an offence at time of its commission

Act No. 56/2007 Section 2

Common law Delictual rights to sue for damages and for loss of reputation. Also Sections 71 and 75 of the Post Office Ordinance No. 11/1908 as amended. (CAP 520)

Computer Crimes Act No 24 of 2007

Section 3 -unauthorized access to a computer an offence

Section 8 - illegal interception of data an offence

Section 10 unauthorized disclosure of information enabling access to a service an offence

Article 18(1)

- Freedom of Thought Conscience and Religion

Article 18(2) - No one shall be subject to coercion which would impair his freedom to have a religion of his choice

Article 18 (3) - Permissible restriction on freedom to manifest once religion or belief.

Article 18 (4) - Respect for the liberty of parents to ensure the religious and moral education of their children

Constitution of Sri Lanka, 1978:

Article 10 - Fundamental right of freedom of Thought, Conscience and Religion including freedom to adopt a religion or belief of choice

Article 14(e) - Fundamental right of freedom to manifest religion or belief in worship, observance, practice or teaching

SC Determination 2/2001 - Christian Sahane Doratuwa Prayers Centre 19/2003 New Wine Harvest Ministries incorporation - held Article 14(1)(e) and 14(1) (g) cannot be enjoyed together." The freedom guaranteed by Article 10 to every person to adopt a religion or belief of his choice postulates that the choice stems from the free exercise of once thought and conscience without their been any fetter or allurements which in anyway distorts that choice.

Constitution Article 15(7)

Age of Majority Ordinance No. 7 of 1865 as amended.

Parents right to children's upbringing - religious moral upbringing - common law, law of persons.

Article 19 - Freedom of expression and right to hold an opinion

Article 19 (2) - Freedom of Expression and Freedom of Information

Constitution of Sri Lanka - Article 10 and 14

Constitution, Article 14(1) (a) and Article 27 - The directive principles of state policy provide for equal opportunity to all citizens to prevent any disability being suffered on grounds of religion, language, political opinion, etc.

Constitution of Sri Lanka, 1978:

Article 14(1)(b) - Fundamental right of freedom of peaceful assembly

Penal Code of 1889 as amended:

Section 290 - 292 - Provides that actions of injuring, defiling, insulting or otherwise, of a religion in general or a place of worship, religious assembled, religious feelings, etc. shall carry with it penal sanctions.

Profane Publications Act - Prohibits publications insulting or ridicule of any observances sacred to any religion

Environmental Foundation Ltd. vs. UDA SC Minutes 23.11.2005 - SC Expressed the view that the Fundamental Right relating to freedom of speech and expression including publication guaranteed by Article 14(1) (a) to be meaningful and effective should carry within its scope an implicit right of a person to seek relevant information from a public authority in respect of a matter that should be in the public domain. Court stressed that it should necessarily be so where the public interest in the matter outweigh the confidentiality that is attached to affairs of State and official communications.

Article 19(3) - Permissible Restrictions in respect of rights under Article 19.

Article 20(1) - Prohibition of propaganda for war.

Article 20(2) - Prohibition of advocacy of notional, racial religious hatred

Article 21 - Right to peaceful assembly

Article 22 - Freedom of association and right to form and join trade unions

Article 22(2) - Permissible Restrictions -

Article 23 - Protection of the family unit

Constitution, Articles 15(2) and 15(7)

Act No. 56/2007 Section 3

Act No. 56/2007 Section 3

Constitution of Sri Lanka, 1978:

Article 14(1) (b) - Fundamental right of peaceful assembly.

Constitution Article 14(1)(c) - Fundamental right of freedom of association

Constitution Article 14(1) (d) - Fundamental right to form and join a trade union

Constitution of Sri Lanka, Article 15(4)

Constitution of Sri Lanka, 1978:

Article 27 - The directive principles of state policy provide that the State shall recognize and protect the family as the basic family unit

Prevention of Domestic Violence Act No 34 of 2005 - Protection orders can be obtained in respect of offences committed within the environment of the home

Article 23(2) & (3)
- **Right of man and Women of Marriageable age to marry. No marriage without consent of spouses.**

Article 23(4)
- **Equality of spouses in marriage**

Article 24 –
Rights of Children

Evidence Ordinance - Sections 120(2),(3) and (4) admissibility of evidence of husband and wife

General Marriages Ordinance
Penal Code

Article 12(1) of the Constitution.
Maintenance Ordinance as amended.

Section 5 of Act 56 of 2007.

Constitution of Sri Lanka, 1978:

Article 12(4) of the Constitution provides that subordinate law, legislation or executive action for the advancement of Children not precluded by Article 12

Article 27 – The directive principles of state policy provides for the special care for the interests of children specifically to protect against discrimination, and to ensure their full physical, mental, religious and social development

Children and Young persons Ordinance -makes provision for the establishment of juvenile Courts, Supervision of Juvenile Offenders and for Protection of children and persons.

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| <p>Article 25 - Franchise and access to Public Affairs</p> | <p>National Child Protection Authority Act No 50 of 1998 - makes provision for the prevention of child abuse and the protection and treatment of children who are victims of such abuse.</p> <p>Section 6(a) of Act No. 56 of 2007 Constitution of Sri Lanka, 1978:</p> <p>Article 4(e) - Sovereign Right of freedom to exercise the right of franchise at the elections of the President, Members of Parliament and Referendums, by all qualified and registered electors over the age of 18</p> |
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