

Sri Lankan legal system

1.0 Legal system of Sri Lanka

Sri Lanka has a mixed legal system which based on many sources. This study explain the following requirements of the legal system.

- Rules of recognition.
- Rules of change
- Rules of adjudication.

1.1 Rules of recognition

According to Hurt, rules of recognition represents the foundations of legal system. Rule of recognition is a collection of norms and requirements governing the legitimacy of all laws.¹ Therefore, rule of recognition gives power to new laws by validating them. Commonly Sri Lanka's legal system is based on following laws.

Roman- Dutch law

Roman Dutch law is considered as common law of Sri Lanka and this law was introduced by Dutch administration when they rule Sri Lanka. At the time of British Empire, British policy was to permit the law that exist in the particular country at the time to continue without change. British administration considered Roman Dutch law which Dutch administration introduced to their administrative region as an existing law of Sri Lanka.⁴ After that Roman Dutch law is considered as common law of Sri Lanka.

English law

Instead of legislation, the most important part of Sri Lankan legal system is based on English law which was introduced by British administration. Most of the business and commercial law in Sri Lanka is based on English law.

Personal laws

Instead of Roman Dutch law and English law, there are some personal laws which consider as law in Sri Lanka. Personal laws are rules and regulations which apply only for particular of Sri Lankans. Kandyan law, Thesawalamai law and Muslim law are the personal laws which consider as law in Sri Lanka.⁵

Legislation

This is the most important source of law in Sri Lanka. Legislation contain acts passed by the parliament. Any act to recognize as law of the country, need to be approved by the parliament and need to be signed by the speaker.⁴ Parliament's legislation power can be delegated to subordinate legislation such as ministries to make detail rules and regulations. However, those regulations need to be tabled to the parliament.

Case law

Case laws refer the decisions of the Supreme Court, court of appeal and high court. In Sri Lankan legal system, there is a custom to follow previous judge made law of high courts.

Customs

Some of customs which practice long time from particular category of Sri Lankans has been also considered as source of law. To become a law, the court or legislation need to give a legal recognition for those customs.

Therefore Sri Lankan legal system has been based on many sources and rules of recognition has been build up from many different aspects.

1.2 Rule of change

Rule of change discuss the power of a person or an institute to create, amend or extinguish the law of the country.¹ Parliament is the main body of Sri Lanka which has legislation power to create, amend or extinguish the law. Members of parliament are selected from the general election by representing every citizen of the country. Instead of parliament, provincial councils and ministries can use delegated legislation power of the parliament to create, amend and extinguish regulations in certain areas according to the constitution of Sri Lanka.

Further case law can be changed based on the new judge made law. As an example, existing case law can be replaced by new decision of higher court or a bench of higher number of judges.

1.3 Rule of adjudication

Finally, there need to be a body or institute to apply the law. This is called as rule of adjudication. The main elements of this are to determine whether law has been satisfied or violated in particular scenario and determine the methods and procedures need to be followed in adjudication system. According to the constitution of Sri Lanka, judicial power of the people is executed by the

parliament through courts, and various institutions. Police department of Sri Lanka has main responsibility to keep law and order in the country. Court system of Sri Lanka is based on the British judicial system. Following courts has been established in Sri Lanka to exercise the legal system.

- The Supreme Court.
- The court of appeal.
- The high court.
- The District court.
- The family court.
- The magistrates' court.
- The primary court.

2.0 Legal system of Australia.

There are two main source of law in Australian legal system as statute law and common law.

2.1 Statute law

According to Australian legal system, there are nine parliaments which has ability to enact the laws such as commonwealth parliament, six state and two territory parliament. As examples, state legislation has introduced laws such as the good act (1958), crime act (1958) and commonwealth legislation has introduced laws such as competition and consumer act (2010) and the corporation act (2001).³

Those parliaments has ability to delegate their legislation power to other subordinate bodies such as local councils or other statutory authorities established under relevant legislations. Laws, regulations or ordinance which introduce by these bodies are called as subordinate or delegated legislation. As examples, Australian Competition and Consumer Commission (ACCC) guidelines and Australian Securities and Investment Commission (ASIC) guidelines can be identified as subordinate legislations.³

2.2 Common law

This means laws which introduce from courts such as federal, state and territory courts.

Instead of that Australian law has influenced by international laws including treaties and conventions which Australia is a signatory. Instead of that, customary laws which follow by the particular community of the Australia has also considered as law once approved by the legislation.²

When compare the legal system of two countries, there can be identified similarities in rule of recognition and rule of change. Legislation power of the parliament and decision of courts can be identified as similarities of both legal system. Further Sri Lankan legal system is based on many sources. In Sri Lanka, legislation power of the parliament is superior and it has limitedly delegate to other administrative bodies and institutes. However in Australia, there are nine parliaments including state parliaments and legislation power has been delegated to other institutes effectively.

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