

**SURVEY for SUBMISSION to the  
PUBLIC REPRESENTATIONS  
COMMITTEE for the DRAFTING of a  
NEW CONSTITUTION for  
SRI LANKA**

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# **1 Summary of Proposals**

Based on the findings of the survey, the following proposals can be put forward.

1. The Constitution should be the supreme law of the country.
2. Unitary nature of the State should be retained.
3. Judicial review of legislation should be introduced.
4. Equal recognition should be given to both Sinhala and Tamil languages as official languages in the administration and administration of justice.
5. A symmetric system of power- sharing should be included in the Constitution. The pivotal factor in implementing power- sharing should be the safeguarding of the rights of minorities.
6. A Constitutional Court with authority for judicial review of legislation should be established.
7. Personal laws should be reformed- rather than abolished- to comply with the international human rights obligations of Sri Lanka.
8. The Fundamental Rights Chapter should provide protection for at least the basic rights of the different aspects of the lives of the People.

## **2 Introduction**

The conclusion of 30 year long civil war coupled with the current unique political atmosphere has led Sri Lanka to a point of transition; an opportune moment for drafting a new constitution for the island. As former Indian Prime Minister Jawaharlal Nehru astutely pointed out, a constitution “should express the dreams and aspirations of the People.” A constitution should be a document of bi-partisan consensus.

Unlike India whose constitution has withstood years of turbulence from its advent in 1950, Sri Lanka has had three different constitutions since independence- the Soulbury Constitution of 1947; the First Republican Constitution of 1972; and the Second Republican Constitution of 1978. It is questionable whether these constitutions truly embodied the needs and aspirations of the People. If a constitution which truly encapsulates the pulse of the People is to be adopted, it is imperative that the public be consulted in the constitutional drafting process.

In order to facilitate that motive, the Faculty of Law of the University of Colombo has taken this initiative. A survey involving three themes, 1) Power sharing arrangements 2) Constitutional Court and 3) Fundamental Rights was conducted among the undergraduates from all four academic years of the Faculty of Law. The data thus collected is presented in a report with the use of graphs, tables and comparisons.

The subsequent paragraphs carry an analysis of the opinions of the undergraduates. The questionnaire administered included both preferential and discretionary types of questions i.e. to choose an option from a given list and to express free ideas, respectively. To facilitate better understanding of the questions and encourage well thought out responses from the undergraduates an introduction was given pertinent to the areas covered in the questionnaire before conducting it.

### 3 Limitations

In the process of conducting the survey several challenges had to be overcome. Apart from technical constraints and human frailties the predominant issue was the narrow sphere of the sample subject to the survey. With the emergence of a discourse on the drafting of a new constitution, there was commendable enthusiasm among the undergraduates of all faculties of the University of Colombo. However, in reality the survey sample had to be confined to the Faculty of Law.

The undergraduates of the Faculty of Law comprise a wide racial, cultural, religious and linguistic diversity and represent many of the districts and provinces of Sri Lanka. Furthermore there is a close nexus between the three selected criteria and the curriculum, enabling the surveyed individuals to present informed opinions. Even in this situation issues were not non-existent. For example the involvement of the fourth year undergraduates in the survey was limited due to imminent exams; adversely affecting the overall percentage of responses.

Sinhala Medium	408
Tamil Medium	64
English Medium	127

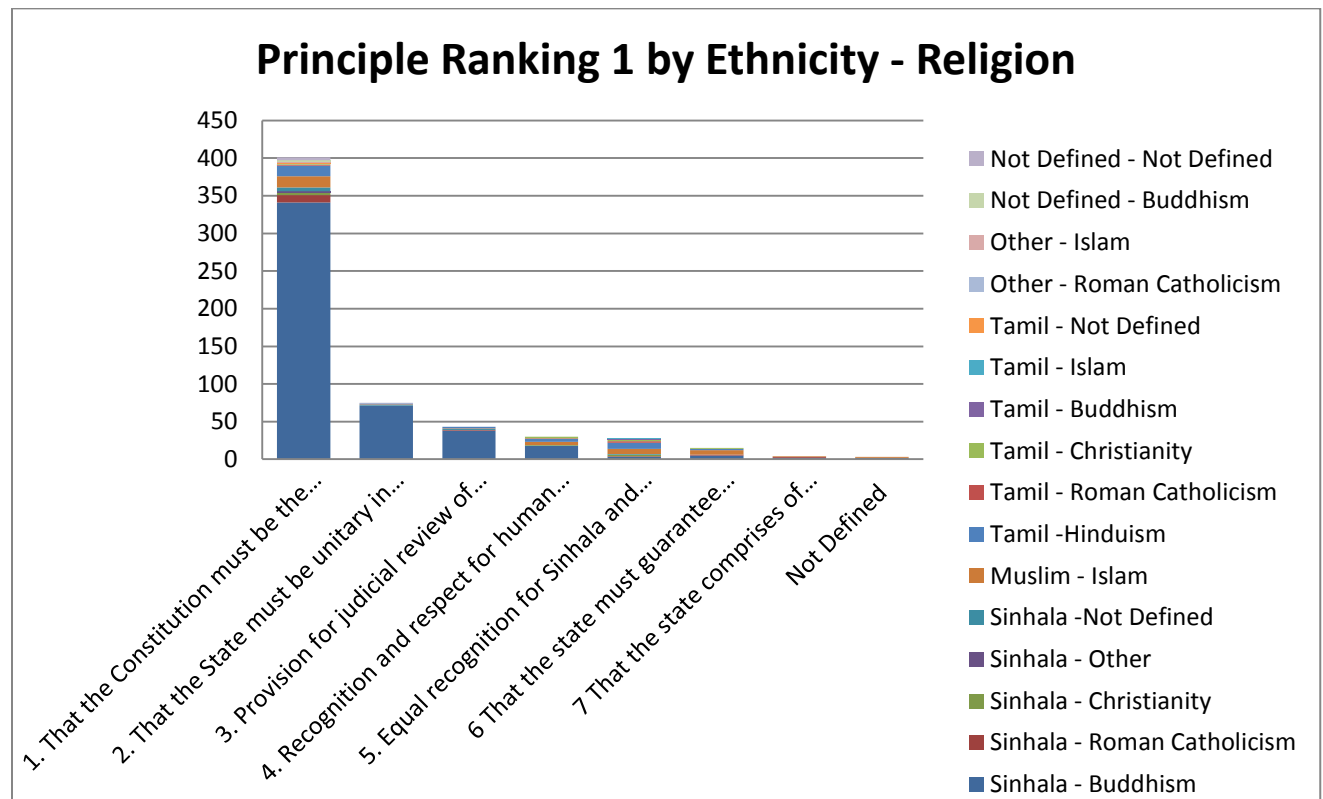
Female	539
Male	59
Not Defined	1

Buddhism	483
Hinduism	31
Islam	38
Roman Catholicism	19
Christianity	12
Other/Not Defined	16

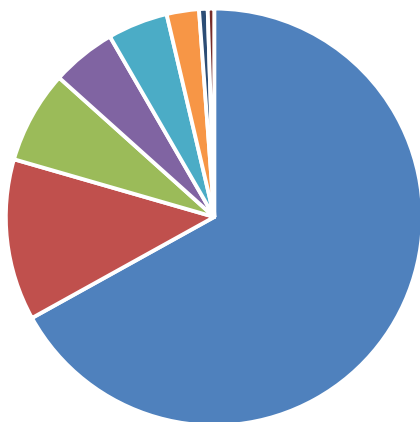
Sinhalese	510
Tamils	44
Muslim	36
Burgher	0
Other /Not defined	9

## 4 Analysis

### 4.1 Ranking of Principles



### Principle Ranking 1

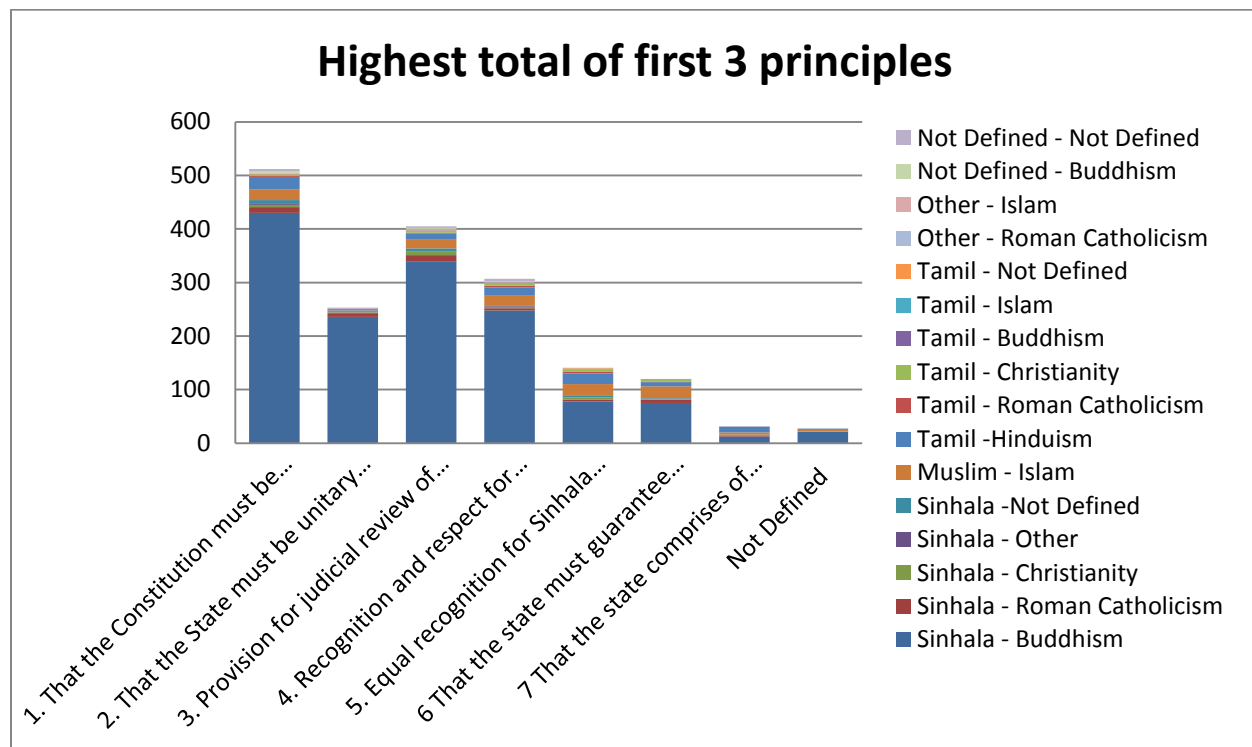


- 1. That the Constitution must be the supreme law of the country
- 2. That the State must be unitary in nature
- 3. Provision for judicial review of legislation
- 4. Recognition and respect for human rights as per Sri Lanka's international obligations
- 5. Equal recognition for Sinhala and Tamil as official languages throughout the country both in administration and in the administration of justice
- 6. That the state must guarantee equal respect for all religions
- 7. That the state comprises of different Peoples(s) and communities and is highly diverse
- 8. Not Defined

Principle Ranking 1 by Ethnicity	Sinhalese	Muslims	Tamils	Undefined
1. That the Constitution must be the supreme law of the country	361	15	17	8
2. That the State must be unitary in nature	72	1	1	1
3. Provision for judicial review of legislation	40	1	2	
4. Recognition and respect for human rights as per Sri Lanka's international obligations	19	4	7	
5. Equal recognition for Sinhala and Tamil as official languages throughout the country both in administration and in the administration of justice	7	7	14	
6. That the state must guarantee equal respect for all religions	6	6	3	
7. That the state comprises of different Peoples(s) and communities and is highly diverse	3	1		
8. Not Defined	2	1		



<b>Principle Ranking 1 by Religion</b>	<b>Buddhism</b>	<b>Islam</b>	<b>Hinduism</b>	<b>Roman Catholicism</b>	<b>Christianity</b>	<b>Not Defined</b>
<b>1. That the Constitution must be the supreme law of the country</b>	343	16	14	12	4	12
<b>2. That the State must be unitary in nature</b>	71	1	1			2
<b>3. Provision for judicial review of legislation</b>	38	1	2	1		1
<b>4. Recognition and respect for human rights as per Sri Lanka's international obligations</b>	18	4	4	1	3	
<b>5. Equal recognition for Sinhala and Tamil as official languages throughout the country both in administration and in the administration of justice</b>	4	8	8	3	4	1
<b>6. That the state must guarantee equal respect for all religions</b>	5	6	2	1	1	
<b>7. That the state comprises of different Peoples(s) and communities and is highly diverse</b>	2	1		<b>1</b>		
<b>8. Not Defined</b>	2			1		



Principle	Sinhalese	Muslims	Tamils	Undefined
1. That the Constitution must be the supreme law of the country	454	20	29	9
2. That the State must be unitary in nature	244	4	3	2
3. Provision for judicial review of legislation	364	16	18	7
4. Recognition and respect for human rights as per Sri Lanka's international obligations	258	17	25	7
5. Equal recognition for Sinhala and Tamil as official languages throughout the country both in	88	22	30	1

administration and in the administration of justice				
6. That the state must guarantee equal respect for all religions	84	22	14	
7. That the state comprises of different Peoples(s) and communities and is highly diverse	16	4	11	1
8. Not Defined	22	3	2	

Principle	Buddhism	Islam	Hinduism	Roman Catholicism	Christianity	Not Defined
1. That the Constitution must be the supreme law of the country	432	22	23	14	6	15
2. That the State must be unitary in nature	236	4	2	6		5
3. Provision for judicial review of legislation	343	17	12	13	9	11
4. Recognition and respect for human rights as per Sri Lanka's international obligations	250	19	16	7	8	7
5. Equal recognition for Sinhala and Tamil as official languages throughout the country both in administration and in the administration of justice	79	23	20	6	8	5
6. That the state must guarantee	12	22	8	4		2

<b>equal respect for all religions</b>						
<b>7. That the state comprises of different Peoples(s) and communities and is highly diverse</b>	6	4	10			
<b>8. Not Defined</b>	21	3	2			1

**The three most important principles to be included in a new constitution. Indicate the level of importance by numbering them 1 – 3, with 1 being the most important.**

A majority of the participants of this survey, 401 of 599 students amounting to 70% of participants, had requested that the **constitution be the supreme law of the country** as the first option. However only 512 of 1797 (28%) of the students had asked that it be placed among the first 3 most important principles.

The second most favoured principle as the first option was that the **state should be unitary in nature**. 97% of those who had requested this, were Sinhala Buddhists. Similarly 14% of the participants had ranked it within the first 3 most important principles. Here too 96% of them were Sinhalese. In line with Article 2 of the second republican Constitution of 1978 (herein – after referred to as 1978 Constitution) of Sri Lanka, an overwhelming majority of the Sinhala Buddhists seems to oppose the idea of the implementation of a federal structure within the island.

42 out of 599 had ranked **judicial review of legislation** as the first option- a mere 7% of the participants, reflecting the idea that the judiciary is not an institution that commands widespread respect in the country. Nonetheless when observing it as an option within the first 3 ranks, judicial review of legislature has garnered a considerable percentage - 22.5% providing

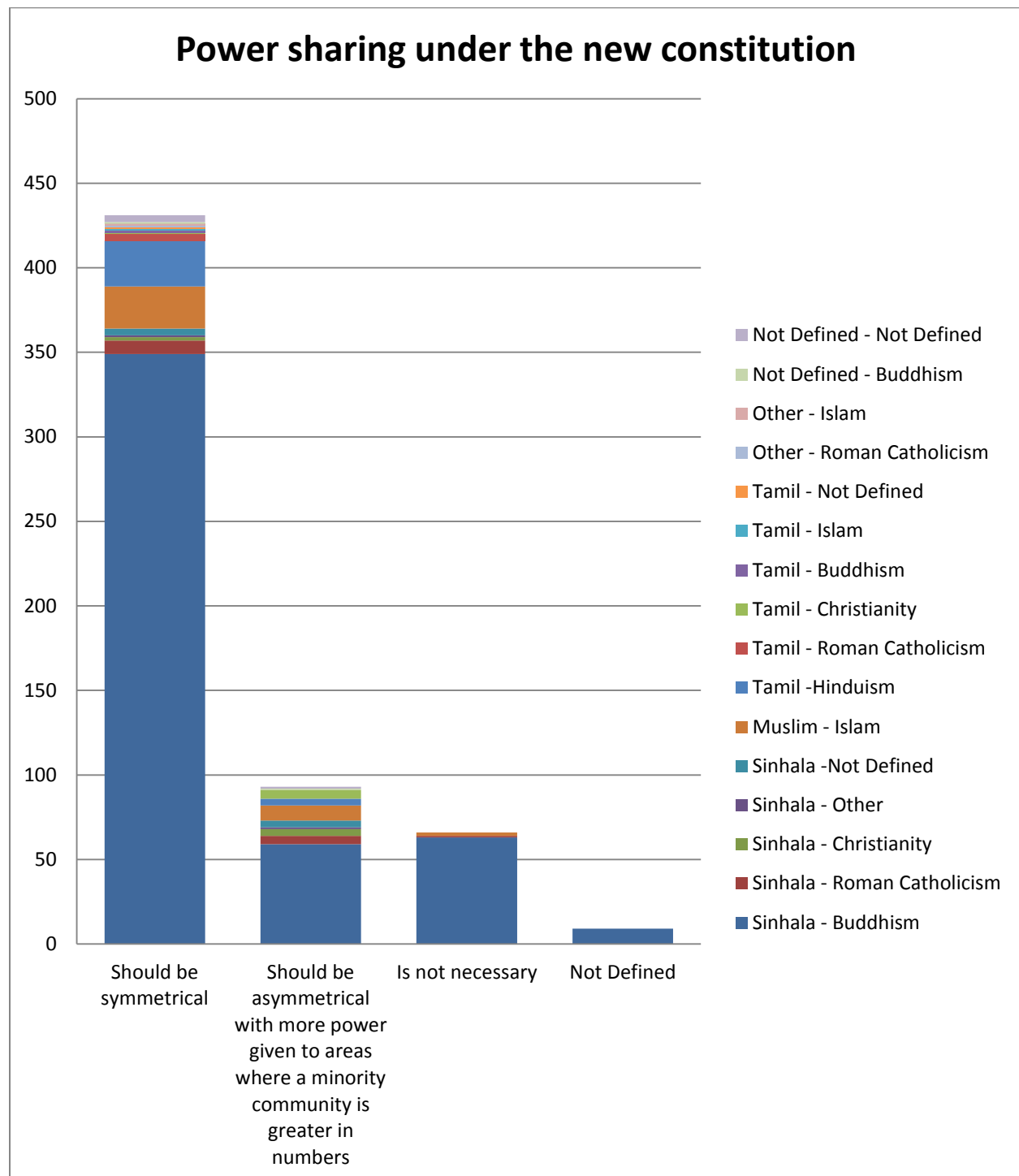
a completely different view. It appears that the citizenry who witnessed the systematic violation and manipulation of constitutional provisions to satisfy desires of rulers throughout past decades have realized it is prime time to introduce judicial review.

Only 4.6% had recognized **equal recognition for both Sinhala and Tamil in the administration and administration of justice in the country** as the most important principle. Out of 28 students who preferred it as the most important principle, 21 (75%) were either Tamils or Muslims, depicting the request of Tamil speaking people for equal language rights. Only 2.5% of the population had regarded religious equality as being of utmost importance, 60% of which were non Buddhists. This may perhaps reflect the disfavour of minority religious groups towards Article 9 of the 1978 Constitution that states 'Buddhism shall be given the foremost place'.

It appears that Tamil speaking individuals as well as Non-Buddhist Sinhalese have felt and recognized difficulties and discriminations owing to the difference between the status granted to Sinhala and Tamil. It is important that this factor be taken into consideration especially in constitution making, since it could be a great step towards reconciliation and eliminating discrimination.

17% had also requested for **recognition and respect for human rights as per Sri Lanka's International obligations**, as one of the 3 most important principles; past experiences reveal that mere ratification of international covenants and protocols do not guarantee the envisaged rights; a inadequate practical implementation of their provisions may have been the motivating factor behind the recognition of the above principle.

## 4.2 Power-Sharing Arrangements



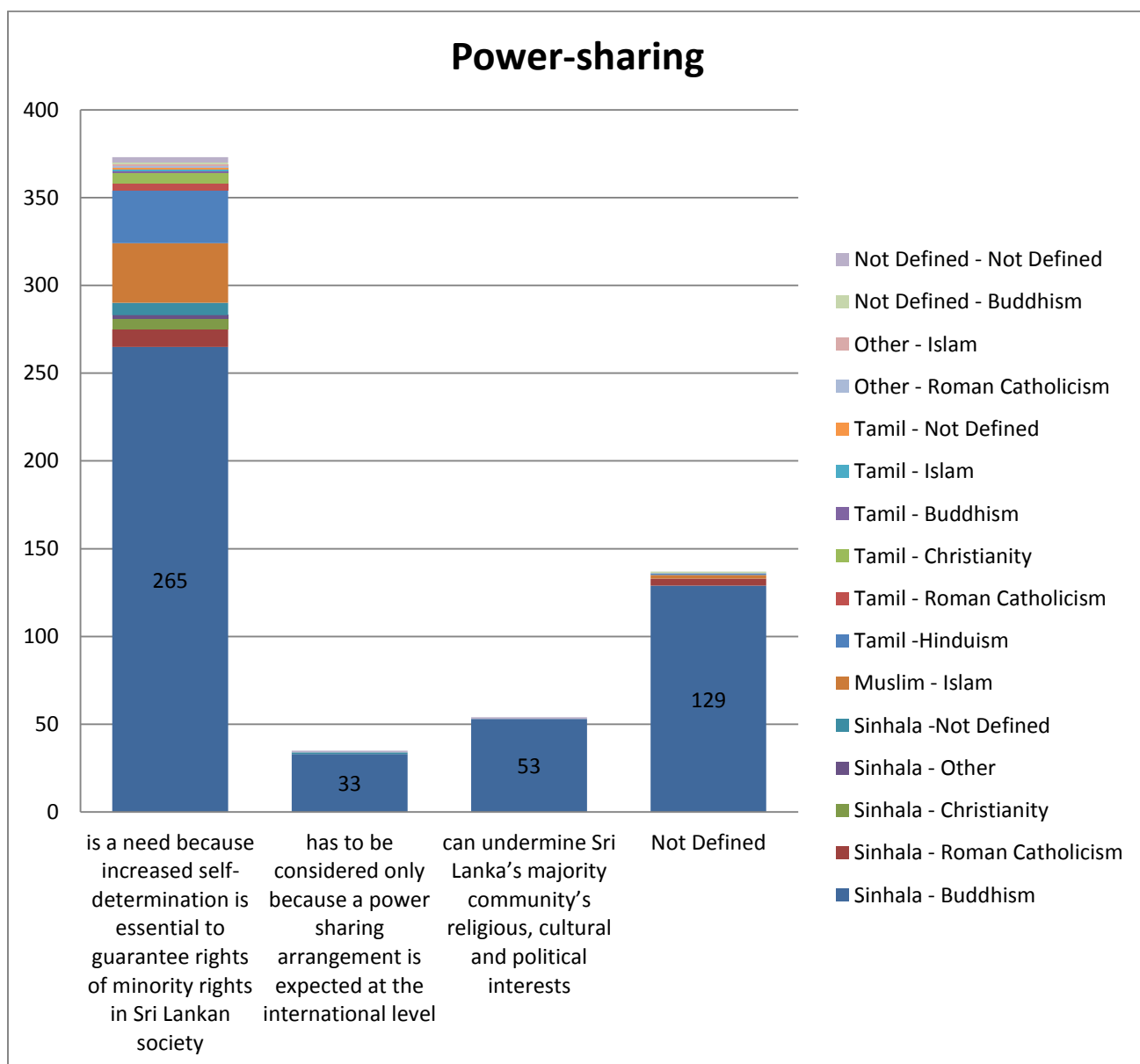
<b>Power sharing under the new constitution</b>	<b>Sinhalese</b>	<b>Tamils</b>	<b>Muslim</b>	<b>Not defined</b>
<b>Should be symmetrical</b>	364	35	25	7
<b>Should be asymmetrical with more power given to areas where a minority community is greater in numbers</b>	73	9	9	2
<b>Is not necessary</b>	64		2	
<b>Not defined</b>	9			

Only 13% of the Sinhala Buddhists subject to the survey, 5% of Muslims and 1 out of 14 Sinhala Roman Catholics thought that **power- sharing under the new constitution is not necessary**.

71% of the total number of students surveyed felt that power- sharing **should be symmetrical**. 69% of Muslims and 71% of the Sinhalese and 79% of the Tamils were for symmetric power-sharing. Interestingly, 72% of Sinhala Buddhists, 87% of Tamil Hindus and 100% of Tamil Roman Catholics found a symmetric system desirable while only 16% Tamil Christians wanted such a system implemented.

Out of the total number surveyed only 15% were agreed with advocating an asymmetric system. 12% of Sinhala Buddhists, 67% of Sinhala Christians, 36% of Sinhala Roman Catholics and 25% of Muslims were for power- sharing **being asymmetrical with more power given to areas where a minority community is greater in numbers**. When considering the Sinhala ethnic group without considering religion, only 14% were for asymmetric power- sharing. The Tamils as an ethnic group did not seem highly enthusiastic for such a system with only the support of 20%. In considering the Tamil community along lines of religion, 83% of Tamil Christians as opposed to 13% of Tamil Hindus found asymmetric power- sharing desirable.

Thus it can be seen that a majority identified a necessity for power- sharing but preferred it to be according to a symmetric system. Symmetric power- sharing enjoyed a substantial preference in comparison to asymmetric power- sharing. This can lead to the conclusion that citizenry prefer the introduction of various ways and means to mitigate the adverse impacts of concentration of power at the center, equal distribution of power among the provinces being the crucial factor. It appears that the general belief even among the Tamils is that power-sharing should confer equal powers to all units rather than peculiar powers to certain units.





<b>Power Sharing</b>	<b>Sinhalese</b>	<b>Muslims</b>	<b>Tamils</b>	<b>Not defined/other</b>
<b>is a need because increased self-determination is essential to guarantee rights of minority rights in Sri Lankan society</b>	<b>290</b>	<b>34</b>	<b>43</b>	<b>6</b>
<b>has to be considered only because a power sharing arrangement is expected at the international level</b>	<b>34</b>			<b>1</b>
<b>can undermine Sri Lanka's majority community's religious, cultural and political interests</b>	<b>53</b>			<b>1</b>
<b>Not defined</b>	<b>133</b>	<b>2</b>	<b>1</b>	<b>1</b>

All Tamils regardless of their religion (with the exception of a not defined 2%) and 94% of the Muslims were of the view that power- sharing **is a need because increased self-determination is essential to guarantee minority rights in Sri Lankan society**. 55% of Sinhala Buddhists and all Sinhala Christians too acknowledged this view.

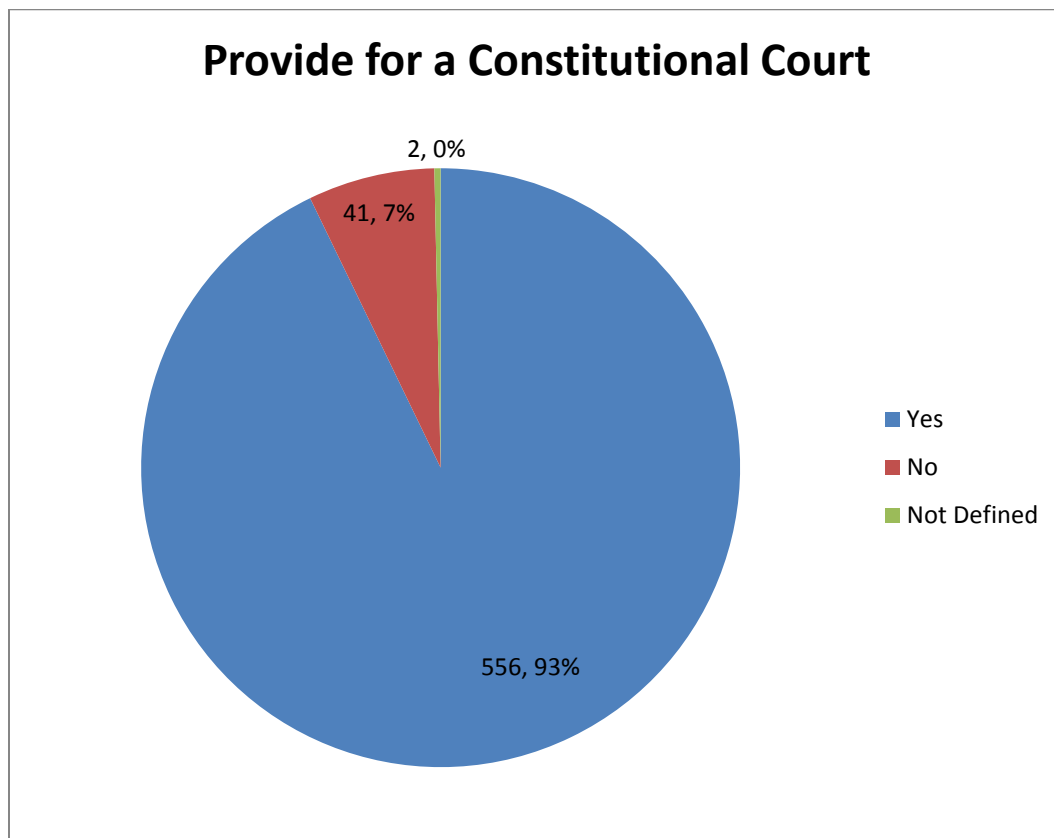
The entirety of those who were of the idea that **power- sharing has to be considered only because such an arrangement is expected at the international level** were Sinhala Buddhists. As a percentage of the total Sinhala Buddhists subject to the survey, it was only a minimal number amounting to 7%.

Similarly, the idea that **power- sharing will undermine the religious, cultural and political interests of Sri Lanka's majority community** was exclusive to Sinhala Buddhists. However, they comprised of only 11% of all the Sinhala Buddhists subject to the survey.

A noticeable trend was that 26% of Sinhala Buddhists had not defined a choice from the 3 choices given above –probably a reflection of the confusion and controversy in the general society on power sharing.

The views regarding power-sharing are complex, especially showing extreme heterogeneity pertinent to ideas of Sinhalese.

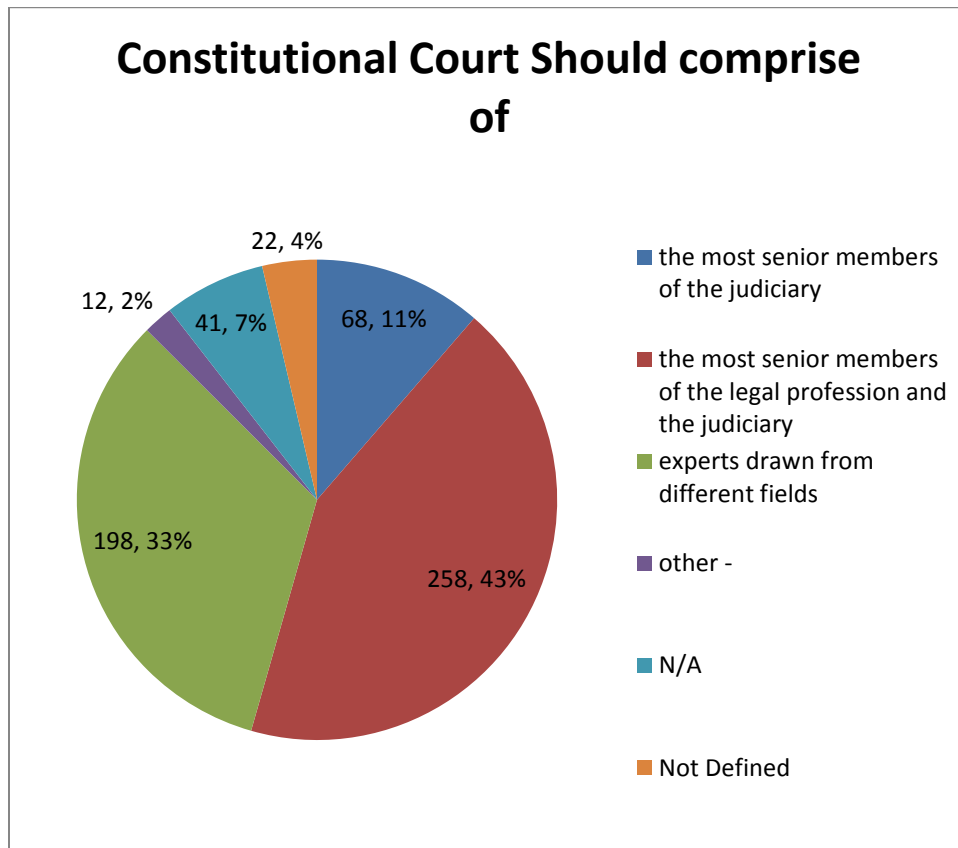
### 4.3 Constitutional Court



#### **Should a Constitutional Court be established?**

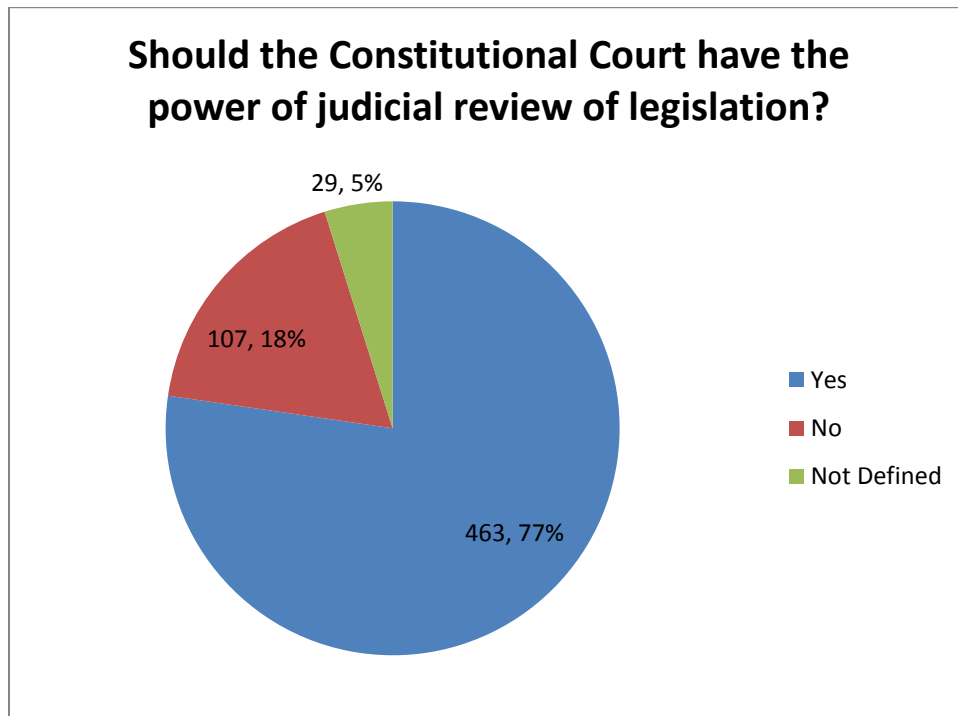
93% were of the view that a Constitutional Court should be established. It reflects the opinion that constitutional matters should not be left to the whims and fancies of those in power and a special court with expertise and technical potential to deal with constitutional matters should be entrusted that task. It also implies a general feeling that the Supreme Court's role in upholding the provisions of the Constitution needs reinforcement.

## Composition of the Constitutional Court



43% said the Constitutional Court should be composed of the most senior members of the judiciary and legal profession. Not a great distance behind, 33% were of the view it should comprise of experts drawn from different fields. It is worth to note that there is a general reluctance to give this responsibility to members of the judiciary as clearly depicted in the chart- only 11% were in favour of appointing most senior members of the judiciary; that tacitly implies the public's realization of a politicized judicial system.

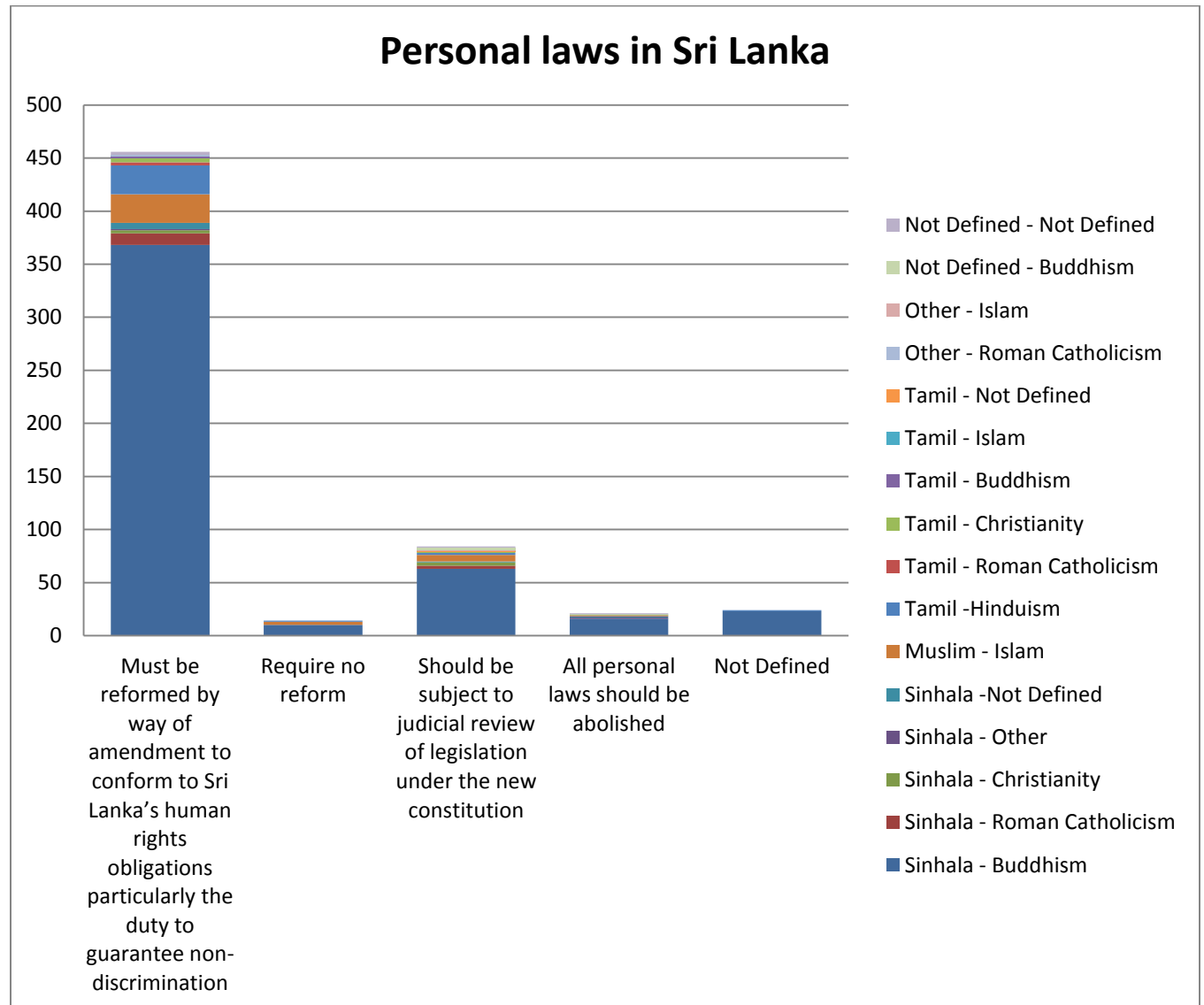
## Judicial Review in Constitutional Court



18% have said the Constitutional Court should not have judicial review while 77% thought such review is desirable. 5% did not have a clear opinion.

## 4.4 Fundamental Rights

### Personal Laws



	Sinhalese	Muslims	Tamils	Not Defined
All personal laws should be abolished	17		2	2
Must be reformed by way of amendment to conform to Sri Lanka's human rights obligations particularly the duty to guarantee non-discrimination	373	27	50	7
Require no reform	10	3	1	
Should be subject to judicial review of legislation under the new constitution	66	6	7	4
Not Defined	23		1	

Only 4% are for the complete **abolition of all personal laws**, out of which 16 are Sinhala Buddhists. There is a general reluctance among the Muslim community towards the abolition of personal laws.

456 out of the total 599 surveyed (76%), hold the opinion that Personal Laws must **be reformed by way of amendment to conform to Sri Lanka's human rights obligations**, particularly the duty to guarantee non-discrimination. A majority recognizes and values personal laws and understands that it is difficult and discriminating to abolish them completely. In a multicultural society like Sri Lanka this is not a surprising response as noted in the well-known remark, "the

Sri Lankan legal system is embarrassed rather by the richness of its sources than by the lack of them.”<sup>1</sup>

It is interesting to note that 75% of the persons professing Islam (27 out of a total of 36) were for reforms, especially in the context that Muslim Law does not meet the standards set by International Law and the General Law in several instances.

Only 14 out of 599 (2.3%) out of which 3 were followers of Islam, said that **no reform** was required. Hence the need for reform of personal laws is widely felt.

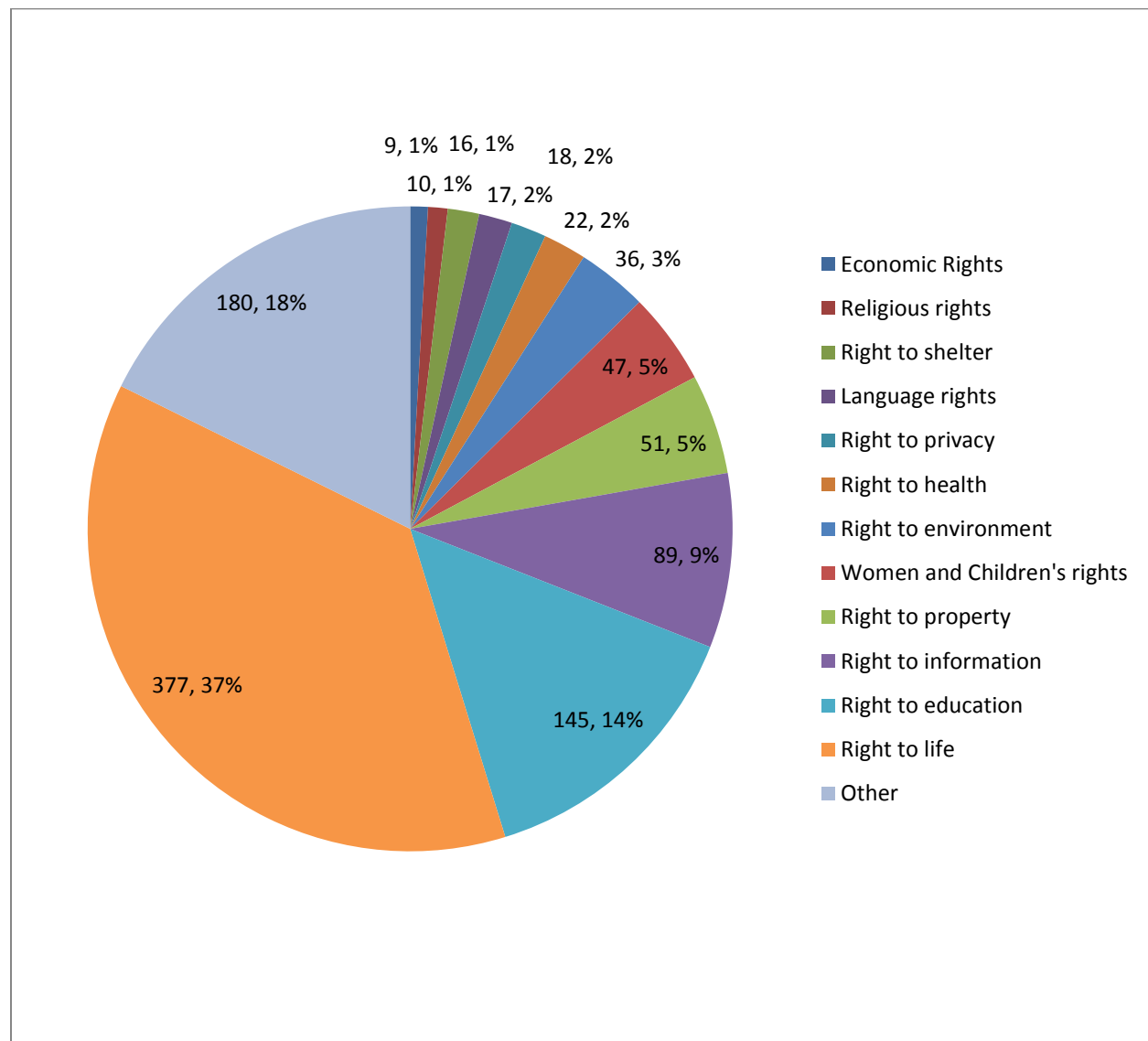
Reforming the personal laws was preferred over **subjecting them to judicial review** as evident from the low percentage (14%) who were for such review.

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<sup>1</sup>Sir Ivor Jennings & H W Tambiah, *The Dominion of Ceylon* (Stevenson & Sons Ltd 1952) 184



## New Fundamental Rights to be included in the FR Chapter

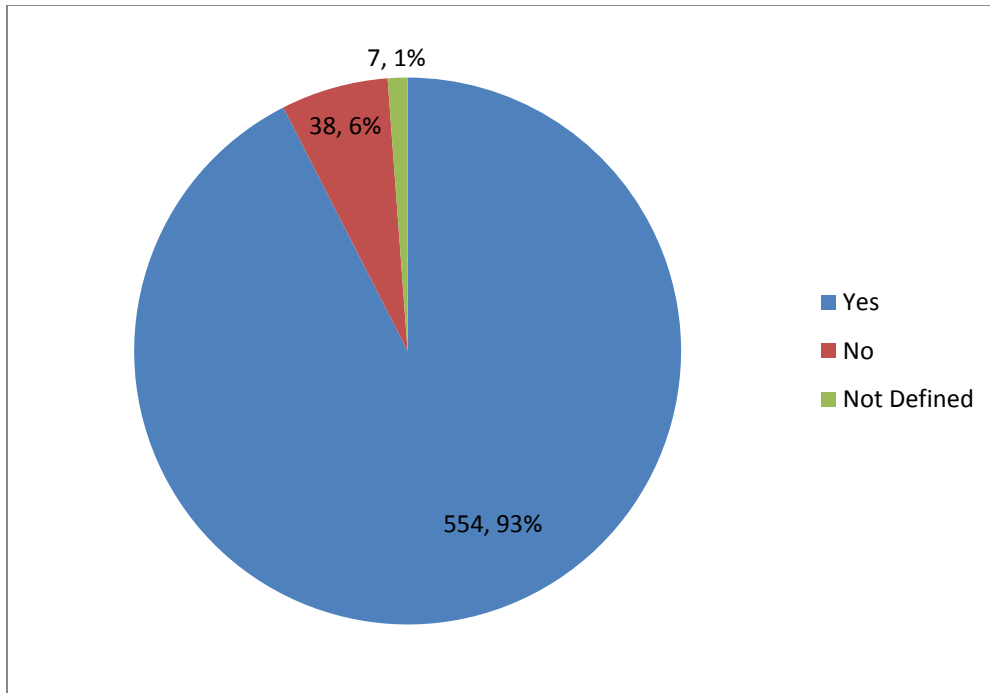


37% (45%) were of the opinion that 'Right to life' should be incorporated into the Constitution making it the FR the most number of people valued. 14% (17%) called for a 'Right to education' an interesting feature in a country which offers free education to citizens. Though 'Right to information' was introduced to the Constitution by the 19<sup>th</sup> amendment 9% of the surveyed individuals identified it as necessary to be included. 5% were of the opinion that the 'Right to Property' needs Constitutional guarantee while 2% identified a similar right, the 'Right to Shelter'. 5% held the opinion that 'Women and Children's Rights' should be included. Women and children were perceived as vulnerable groups and it is essential that each constitutional

provision be looked at with a perspective of gender parity. 'Right to Environment' (4%) was also proposed by 4% probably in the context of the environmental issues emerging in the country. Both 'Right to Health (3%) and 'Right to Privacy' (2%) were desirable for 2%. The 2% who called for 'Language Rights' and the 1% who found it desirable that 'Religious Rights' were given recognition were mainly composed of minority ethnic and religious groups. Another 1% called for Economic Rights, a unique factor since generally only civil and political rights are given constitutional protection.

18% suggested other rights, among which rights such as media freedom, right to equality, freedom from discrimination, right to minimum standard of living, right to dignity etc. took prominence.

**Should relevant international law be considered in interpreting the fundamental rights chapter?**



A vast majority amounting to 92% believe that **the relevant international law should be considered in interpreting the fundamental rights chapter**. 6% opposed.

Majority is for **the inclusion of all human rights that Sri Lanka has agreed to respect at the international level**.

## **5 Conclusion**

Sri Lanka has had two opportunities to draft an ideal constitution upholding basic principles of constitutionalism in the recent history; one reason for the failure to achieve targeted goals could have been the lethargy in ensuring public participation. Although these constitutions were branded as autochthonous constitutions it is doubtful whether they had a public root springing from our own soil. Today in commendable contrast, a painstaking endeavour has been taken to consult the ideas of the multitudes in the drafting of the proposed Third Republican Constitution of Sri Lanka. This further guarantees the legitimacy of the constitution. A constitution should maintain an equilibrium between flexible and rigid ends i.e. responsive to the needs of citizenry so as to suit the dynamic nature of human society and not to the desires of omnipotent rulers. We are certain that if due procedure is perpetuated it would result in a Constitution upholding values of constitutionalism and rule of law.

## **6 Acknowledgements**

This is not the effort of a single individual; many have contributed greatly towards this process. This task was conceptualised by Dr. Dinesha Samararatne and her untiring support and commitment was truly an inspiration to all of us.

We also take this opportunity to thank other individuals. The Dean of the Faculty of Law, Heads of the Departments, lecturers, non- academic staff and our dear colleagues, for their great efforts to make this endeavour a great success.

### **The Dean**

Ms. Indira Nanayakkara

### **Heads of Department**

Ms. Wasantha Seneviratne – Department of Public and International Law

Ms. N. Rose Wijesekere – Department of Private and Comparative Law

Dr. S Segarajasinghe - Department of Commercial Law

### **Lecturers**

Mr. N Selvakkumaran

Dr. Naazima Kamardeen

Dr. Shanthi Segarajasingam

Mr. M.A.M Hakeem

Dr. Sampath Punchihewa

Dr. Dinesha Samararatne

Mr. M.A.M Hakeem

Ms. U.A.T Udayanganie

Ms. Susarithaa Segar

Ms. Danushka Medawatte

Mr. Isuru Liyanage

Ms. Thilini Galappaththige

Ms. T. Koomarasooriyar

Ms. Menaka Ranjan

### Non-Academic Staff

Ms. Maheshika Perera

Ms. Erangika Silva

Ms. Hansa Perera

Mr. Lasitha Gurusinghe

### Student Volunteers

#### Year 1

Ms.Eimasha Dabare

Ms.Paba Piyarathne

Ms.Zeitun Hakeem

Ms.Shelani Palihawadana

Ms.Hasini Rupasinghe

Ms.Sakuni Weeraratne

Ms. Madhurya Bandara

Ms.Saanaree Manorathne

Ms.Vineshka Mendis

#### Year 2

Mr.Sanjit Dias

Ms.Raaya Gomez

Mr.Ashen Fernando

Ms.Nillasi Liyanage

Ms.Sindhu Ratnarajan

#### Year 3

Mr.Kavindu Herath  
Mr. Buddika Karunathilake  
Ms.Thamarashi Jayasooriya  
Ms. Kethaki Wanasinghe  
Ms.Madhushani Pathirage  
Ms. Mahindika Abeysena  
Ms.Ziyasa Johardeen  
Ms.Thamali Dilrukshi  
Ms.Erangi Pramodha  
Ms. Chamodhya Bandara  
Mr.Duminda Vitharana  
Mr.Mohammed Iyasdeen  
Mr.Arumugam Dhanushan  
Mr.Renganathan Ramkumar  
Ms.Thulanjani Arunthayarajan  
Ms.Razna Mubarak  
Ms.Amudini Kalimuttu  
Ms.Rashani Perera  
Mr. Kavindu Hewageeganage  
Mr. Ishare Karunarathne

#### Year 4

Ms.Azra Jiffry  
Ms.Binendri Perera

#### Drafting Team

Ms.Nillasi Liyanage

Mr.Ashen Fernando

Ms.Sindhu Ratnarajan

Mr.Ishare Amanthe

Ms.Ishara Sapumali

Mr.Kavindu Hewageeganage

Ms.Rashani Perera

#### Core Team

Ms.Rashani Perera

Mr.Kavindu Hewageeganage

Ms.Nillasi Liyanage

Ms.Sindhu Ratnarajan

Mr.Ashen Fernando

#### Special Thanks

Mr.Vikum Jayasinghe

Ms.Siransi Dullewe

Ms.Sajini Elvitigala

Mr.Hiran Geeganage

Mr.Dimuthu Wahalathanthri

Ms.Lakna Kularathne

Mr.Heshan De Alwis

Mr.Nishan Nilantha





## **7 Annexure**

### **Survey for Submission to the Public Representations Committee for the Drafting of a New Constitution for Sri Lanka**

**Department of Public & International Law, Faculty of Law,  
University of Colombo, February 2016**

*This is a survey carried out among the undergraduates of the Faculty of Law on selected themes relating to proposed constitutional reforms. A report will be submitted to the Public Representations Committee based on the findings of this survey. A copy of the report will be made available to participants of the survey. Please be kind enough to respond to the questions given below.*

Year .....

Medium .....

Sex .....  
 Ethnicity .....  
 Religion (if any) .....  
 District .....

1) From the principles stated below mark the three most important principles (if any) that you would wish to be included in a new constitution. Indicate the level of importance by numbering them 1 – 3, with 1 being the most important.

- i. That the Constitution must be the supreme law of the country .....
- ii. That the State must be unitary in nature .....
- iii. Provision for judicial review of legislation .....
- iv. Recognition and respect for human rights as per Sri Lanka's international obligations .....
- v. Equal recognition for Sinhala and Tamil as official languages throughout the country both in administration and in the administration of justice .....
- vi. That the state must guarantee equal respect for all religions .....
- vii. That the state comprises of different Peoples(s) and communities and is highly diverse .....

### **Power-sharing Arrangements**

2) Power sharing under the new constitution

- i. should be symmetrical .....
- ii. should be asymmetrical with more power given to areas where a minority community is greater in numbers .....
- iii. is not necessary .....

3) Power-sharing

- i. is a need because increased self-determination is essential to guarantee rights of minority rights in Sri Lankan society .....
- ii. has to be considered only because a power sharing arrangement is expected at the international level .....
- iii. can undermine Sri Lanka's majority community's religious, cultural and political interests .....

**Constitutional Court**

- 4) Should the new constitution provide for a Constitutional Court (a court that has jurisdiction to interpret all questions related to the interpretation of the Constitution)?

Yes/No

- 5) If the answer to the above question is 'yes' what should be the composition of the Constitutional Court?

Should comprise of

- i. the most senior members of the judiciary .....
- ii. the most senior members of the legal profession and the judiciary .....
- iii. experts drawn from different fields .....
- iv. other - .....

- 6) Should the Constitutional Court have the power of judicial review of legislation?

Yes/No

## **Fundamental Rights**

7) What types of human rights should be included in the chapter on Fundamental Rights?

- i. Only Civil and Political Rights .....
- ii. All human rights that Sri Lanka has agreed to respect at the international level  
.....
- iii. Civil and Political Rights and Economic, Social and Cultural Rights.....

8) Should relevant international law be considered in interpreting the fundamental rights chapter?

Yes/ No

9) Personal laws in Sri Lanka

- i. Must be reformed by way of amendment to conform to Sri Lanka's human rights obligations particularly the duty to guarantee non-discrimination .....
- ii. Require no reform .....
- iii. Should be subject to judicial review of legislation under the new constitution.....
- iv. All personal laws should be abolished .....

10) Name three new fundamental rights that you would propose be included in the fundamental rights chapter

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