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**PROCEEDINGS**

# **Department of Commercial Law**

# **Cross-Border Accountability: A Critical Analysis of Effects of European Human Rights Due Diligence Laws in Developing Nations**

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## **Abstract**

The issue of human rights impacts on foreign direct investment (FDI), especially in developing countries, has been a subject of longstanding debate. Historically, the approach to addressing these impacts has primarily relied on voluntary standards with limited legal constraints. This approach has led to inconsistent practices among multinational corporations, particularly in developing countries, with some prioritising human rights while others downplay their significance. The recent trends in due diligence laws have shifted toward a more regulatory approach that directly addresses human rights issues associated with the extraterritorial activities of their subsidiaries and their value chains. This shift acknowledges the shortcomings of voluntary standards and aims to create a structured, legally binding framework for addressing human rights issues in commercial activities. As a result, these laws are gaining prominence in developing countries. However, it is premature to make definitive predictions as these laws are still in their infancy. The main objective of this article is to critically evaluate the evolving landscape of due diligence laws relating to FDI and its implications on human rights in host developing countries. This research concludes that these laws have a significant impact on developing countries in minimising corporate human rights abuses, contributing to sustainable development, and significantly responding to the global call for accountability. The research adopts a doctrinal analysis, using both primary and secondary data. Tables and figures are incorporated where necessary to present the data analysis. Through this analytical approach, the article aims to contribute to the ongoing discourse on striking a balance between economic interests and the imperative to safeguard human rights in the context of FDI.

**Keywords:** *human rights, foreign investment, due diligence laws, developing countries, accountability*

# **Countering the Digital Era through Law: Challenges and Prospects in Regulating Electronic Transactions in Sri Lanka**

SK Doranegama

## **Abstract**

Today's world is navigating through the digital era and the needs of contemporary society are changing drastically. The law is bound to keep up with these new developments to ensure justice and social stability. The technological advancement and rising popularity of e-commerce have given rise to many changes, including the introduction of electronic transactions (henceforth abbreviated as 'ET') as a new form of transaction. These developments have introduced legal complexities because existing laws were originally designed to accommodate the traditional methods of transactions. The need to address the newly developed loopholes prompted Sri Lanka, like many other countries, to introduce a range of new legislations to match this evolving societal need. This essay explores this progressing field of law while addressing the research question of whether the existing legal framework in Sri Lanka that governs ET is adequate to address the loopholes and protect the rights of the parties who use ET. The study critically examines the legal framework that governs ET mainly focusing on the Electronic Transaction Act of Sri Lanka No.19 of 2006, and the Amendment to the Electronic Transaction Act No. 25 of 2017. Additionally, the study explores other relevant statutes and case law, drawing examples from international jurisdictions. The research utilized the qualitative research methodology by collecting primary and secondary data through legislation, books, articles, and case law. The key findings of the study indicate that Sri Lanka is at the forefront in South Asia when it comes to ET law due to the legislative initiatives to introduce new laws to address different areas of ET. The essay further points out that there are several legal barriers particularly concerning the practical implementation of the law, such as the challenges in governing human interactions with automated systems which needs to be addressed through evolving laws to protect the rights of the data subjects and parties entering into ET.

**Keywords**— *Electronic Transactions, New Developments, Gaps, Implementation, Laws*

# **Using Intellectual Property Rights as Collateral for enhancing access to finance by SME sector in Sri Lanka**

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## **Abstract**

The use of Intellectual Property as collateral in the financial industry largely remains an unexplored area of the legal and banking landscape in Sri Lanka and limited academic attention has been paid to examining the said scenario. On the other hand Small and medium-sized enterprises (SMEs) are considered to be the backbone of the country's 'real economy' in terms of economic contribution. However, the SME sector faces many challenges, such as access to credit facilities, due to the lack of collateral. Hence, this research was motivated by a clear lack of relevant legal and academic effort on the subject when Sri Lanka is deliberating on promoting the export-oriented Small and medium-sized enterprises (SMEs). Even though the Sri Lankan IP Act of 2003 accords a comprehensive framework for the protection IP rights, it does not contain any provision dealing with the use of IP assets as collaterals. This conundrum has to be investigated in light of the international experience and best practices to introduce a legal framework to the Sri Lankan banking and commercial legal regime. Accordingly, the main objective of this research is to analyze, from an IP law perspective, the importance of using IP rights as collateral for the cash-strapped SME sector in Sri Lanka for obtaining credit facilities and it further aims to shed light on different IP tools that can be effectively used as collateral. This research will be carried out as a library-based research using primarily and secondary sources extensively. Interestingly the blend of both Qualitative and Quantitative data will be collected to establish the arguments raised in the research. Eventually, this research suggests that Sri Lankan policymakers need to foresee an amendment to the Mortgage Act in order to include 'all types of movable assets including IP rights'. Perhaps the government should partially underwrite the value of IP used as collateral to create an IP marketplace ecosystem in Sri Lanka which is vital for the country to leap forward into a developed nation.

**Keywords:** *Intellectual Property Rights, collateral, Small and Medium sized Enterprises, financing*

# **Copyrights in AI-Generated Materials- A Reflection on the Law with a Special Focus on Sri Lanka**

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## **Abstract**

The development of Artificial Intelligence (AI) has questioned the traditional understanding of the law including intellectual property rights. The possibility of providing copyright protection for AI generated works has become a contentious issue. Copyright law provides the author with the right to exclude others from exploiting her/his work. In a work developed by AI, a real problem will be in the identification of the author as copyrights are generally granted to authors for their creative work. Section 5 of the Intellectual Property Act No 36 of 2003 defines the author as “the physical person who has created the work”. When a work is created through the involvement of artificial intelligence, identification of the author becomes difficult. However, this in itself should not exclude a broader discussion on the topic since individuals may use AI generated works and claim copyrights. Therefore, using the doctrinal method, this research aims to find out the most appropriate means of balancing the competing interests of the relevant parties involved, including the authors and users of copyrighted works. It is suggested that AI generated works that are capable of being provided with copyrights protection should not altogether be excluded from copyrights protection just because the creator is not a physical person. Instead, it is suggested that alternatives should be looked at from different perspectives, including the introduction of a separate threshold to grant copyrights to AI generated works or to create sui generis rights to AI generated works capable of being granted copyrights.

***Key-words:*** *Copyrights, Artificial Intelligence, Authorship*

# Independence and Impartiality of Arbitrators in Sri Lanka: A Critical Review

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## Abstract

Arbitration is the most preferred alternative dispute resolution mechanism among investors and stakeholders in the commercial sphere. In arbitration, impartiality and independence of arbitrators are *sine quo non* to establish natural justice as arbitrators are required to enter into a fair and just award. Section 10 of the Arbitration Act No. 11 of 1995 of Sri Lanka (the Act) enables parties to challenge the appointment of arbitrators if justiciable doubts exist as to their impartiality and independence. However, the section is silent on the instances in which justifiable doubts would arise and also it does not demarcate the degree of disclosure required by arbitrators. Hence, the aforesaid lacunas in the legal provision create confusion for arbitrators and parties to arbitration. Therefore, the objective of the research is to analyse legal provisions and case laws on impartiality and independence and suggest recommendations to add clarity to section 10 of the Act. Doctrinal method is used in the research as it enables the analysis of applicability and development of impartiality and independence in arbitration with respect to international standards and institutional rules. Additionally, comparative analysis of domestic laws of the United Kingdom (UK), India, and Sri Lanka assisted to identify differences and suggest recommendations. India is selected as legislative reforms in India have addressed the concern and had shown progress in making arbitration fair and efficient. The UK is selected as legal provisions and recent judgments have analysed the law in the area of research. Research findings revealed having explicit legal provisions on instances that give rise to justifiable doubts and the degree of disclosure required by arbitrators facilitates ensuring the trust of the parties in the arbitration process. Hence, the paper proposes an amendment to the Act to include precise legal provisions to objectively assess the independence and impartiality of arbitrators.

**Keywords**— *Impartiality of arbitrators, Independence of arbitrators, justifiable doubts, duty to disclose*

**Protection of Indian Traditional Cultural Heritage through Intellectual Property  
Regime: Special reference to Bastar Handiworks from Chhattisgarh, India.**

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**Abstract**

Bastar, a district from State Chhattisgarh of India has tribal people as more than 70% of the total population. Popular and unique souvenirs from State of Chhattisgarh, particularly from Bastar are the tribal handiworks like Dhokra Craft, Iron Craft, Wooden Craft (registered Geographical Indications registered in India) which are reflective of different tribal lifestyle and their relationship with nature. While these artifacts constitute a major source of livelihood for the community at Bastar, different online platforms, business entities sell similar craftworks labelled as tribal crafts from Bastar. This raises the question whether geographical indication laws are the suitable legal tools for protection of traditional cultural heritage of a country. The question becomes even more pertinent when the intellectual property international organizations are in process of finalization the first legal binding instrument for protection of traditional knowledge and traditional cultural expressions. This research evaluates whether the Indian geographical indication regulatory framework as established under the Geographical Indications of Goods (Registration and Protection) Act, 1999 along with Rules, 2002 are adequate and sufficient to address the questions relating to protection of traditional cultural heritage. This research takes the Bastar handicraft example as a specific case study to highlight the limits of protection traditional cultural heritage through geographical indication regulatory framework in India and employs interview method as tool for conducting the research among traditional craftsman in State of Chhattisgarh. The objective is to locate the fruitfulness of intellectual property laws particularly geographical indications as a tool for social upliftment for traditional artisans. The researcher also looks for alternate options of protection of traditional cultural heritage through trademark and copyright laws in India and addresses their scope of applicability. This research highlights the plights of traditional artisans who majorly fail to match up with growing prowess of piracy due to technological developments and industrialization. The study also shows how traditional cultural expressions as subject matter are ill suited for intellectual property regime and the much-celebrated success of geographical indications registrations in India has its own shortcomings. In particular reference to “Bastar” artworks, this research reveals truth about the vagueness of what is traditional for India.



**Keywords:** *Traditional cultural heritage, tribal people, India, Geographical Indication, Copyright, Trademark.*

## **Balancing of Conflicts between Creation Driven and Investment Driven Intellectual Property Rights in Sri Lanka: A Critical Analysis**

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### **Abstract**

The main objective of this research is to investigate how to balance the conflict between creation driven and investment driven intellectual property rights with reference to Sri Lanka. The investigation is carried out by adopting the doctrinal legal research methodology thereby analyzing primary and secondary legal sources. The increasing development of intellectual property (hereinafter referred to as 'IP') applications reflects the growing importance of technology and innovation in everyday life and the world economy. Without limiting the flourishing, the individual lives, IP assets encompasses all the features of a property and considered to be a valuable asset for business organizations of all size. Therefore, IP protection is important for organizations to set them ahead among competitors and use IP as an essential part of their business strategy. Thus, IP needs to be sufficiently protected from duplications, manipulations, and unauthorized use as it can threaten the market position of an organization with IP assets, affect such organization's business growth and the return on investment. Companies follow innovation-centric strategies in today's business context to get an edge over the competition by investing in IP creation. Many businesses are of the view that the IP is one of the most efficient tools for overcoming competition and achieving competitive advantage in the field. This view helps innovators protect their product from misappropriation and earn returns by licensing their products and processes. The IP rights possesses a significant potential in monetary terms for both tangible and intangible assets that can be licensed or sold. As such, at the time of raising funds or for further innovation, IP plays a crucial role and can stimulate the interest of investors, which is common for Sri Lanka. As a result of this stimulation, there is an important shift in the way that policymakers and legislators at both international and domestic levels think about IP. Accordingly, deviating from the conventional concept of protecting creative works of inventor or author, an emphasis is placed upon the importance of protecting investment, even in the conventional types of IP right. However, there remains a question, deviating from creation driven perspective and stepping towards investment driven perspective of IP would neglect the true contribution of the original creators of IP. In this context, this research discusses the traditional conception of IP in relation to the ownership and creation, then the changing context of IP as an investment. Furthermore, it examines the

advantages and disadvantages of the said changing context and finally, makes recommendations on how to balance the conflicts which may arise in Sri Lankan context.

***Keywords:*** *Intellectual Property, Creation, Investment, business success*

# **The Role of Audit in Modern Society and the National Audit Act: A Critical Analysis**

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## **Abstract**

The accounting and auditing system of a nation plays a pivotal role in maintaining public sector auditing and public sector governance through accountability and transparency, thereby bolstering public confidence and trust. Any failure in this system could result in financial collapses, causing depositors to lose their savings and the government to incur significant costs. Adopting international accounting and auditing standards is essential for ensuring effective surveillance of financial disclosure and reporting in order to combat corruption and the exploitation of public funds with the utmost efficacy. Auditing is required to protect public assets and resources for the benefit of the general public. This study evaluates the efficacy of the National Audit Act No. 19 of 2018 in preventing corruption and mismanagement of public funds. The paper evaluates the effectiveness of the Act in deterring corrupt officials, assessing its legal authority, and determining whether it effectively promotes transparency and accountability in accordance with public expectations and determines whether the Act complies with International Financial Reporting Standards and International Standards on Auditing in enhancing audit quality within the Sri Lankan financial environment. The study utilized qualitative methods to analyze primary and secondary sources, such as scholarly articles and current legislative frameworks, in order to form conclusions. It is anticipated that the Act will strengthen the core values of the public sector and ensure the efficacy of auditing by facilitating the establishment of independent audit functions for the benefit of the people. This study identifies certain loopholes and concludes that the Act needs changes to make it a more effective instrument for preventing corruption, protecting public funds, and strengthening the accountability and auditing system in the nation.

**Keywords:** *Audit, Accountability, Financial, Governance, Transparency*

# **Foreign Direct Investments and Tax Exemptions: The Sri Lankan Scenario**

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## **Abstract**

In the face of the economic recession in Sri Lanka, proposals and discussions about various strategies have come to the fore, but the most effective proposal is to attract more foreign investments into the country. Among the various concessions and incentives provided by the Government of Sri Lanka to foreign investors, tax concessions occupy a very high place. Accordingly, many successful tax concessions such as tax exemptions, tax concessions, holidays, exchange control exemptions and tax havens have been introduced from time to time through tax amendments. One of the objectives of the Inland Revenue Act No24 of 2017 was the introduction of these tax concessions. Therefore, the tax exemptions and concessions have been introduced to the Act under the IVth schedule. By introducing these tax incentives and concessions, the government expects to bring in a large amount of foreign investments to Sri Lanka and improve its current economic situation. Based on the above basic facts, the research problem that is expected to be solved in this research is to consider whether tax havens are a strong force for attracting foreign investment. The primary purpose of this research is to analyze the relationship between tax havens and investment incentives. The research is qualitative in nature, while the quantitative method is used to collect statistical data from government websites, databases, and publications. Findings indicate that tax exemptions and concessions could be crucial in attracting foreign direct investments and solving the economic issues in the country. Recommendations include amending the existing laws in order to make this activity sustainable and fair by all stakeholders.

**Keywords:** *Tax Havens, Investment Incentives, Tax Exemptions, Economic Crisis*

## **Reforming the Competition Law Regime in Sri Lanka: Insights from US, EU and India**

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### **Abstract:**

Even though the competition or antitrust law has become an important pillar of the pantheon of commercial law in any developing or developed country, Sri Lanka continues to remain a jurisdiction devoid of adequate competition laws in the South Asian region. In this light, the purpose of this paper is to critique the current status of competition law in Sri Lanka viewed through the lens of experience drawn from more advanced jurisdictions such as the US, EU and India and propose appropriate law reforms. The research employs a critical review of literature by following the black-letter or doctrinal legal research methodology coupled with comparative legal research and analysis. The results of this research indicate that there is no adequate legal framework to prevent anti-competitive behaviour by Sri Lankan firms. Even more strikingly, it is hard if not impossible to find any antitrust enforcement mechanism in the country whereas robust competition law enforcement mechanisms are evident in other jurisdictions selected for this study thereby protecting the process of competition for the benefit of consumers. Arguably, a potential solution lies with the introduction of a stand-alone (*sui generis*) competition law regime, so that it would no longer be necessary to rely on the legal provisions embedded in the Consumer Affairs Authority Act, No. 09 of 2003. For this reason, the experience drawn from more sophisticated jurisdictions such as the US, EU and India can undoubtedly serve as best practices for Sri Lanka. Therefore, this research offers new insights to policymakers in Sri Lanka to formulate law reforms in the area of competition law. From a developing country's perspective, it is true that law reform alone is not sufficient to achieve the desired outcome and other factors contributing to healthy market competition are also required.

**Keywords:** *Competition Law, Anti-competitive behaviour, Law Reform.*

## **‘Nanny states would do so’: A critical analysis of the normative foundation of tobacco plain packaging measures**

Dr. Sanath Wijesinghe

### **Abstract**

The tobacco industry has often used the nanny state criticism in their campaigns to derail the efforts of implementing tobacco plain packaging measures in many countries. In its popular context, the term nanny state refers to a country that seems to be overprotective or unduly interfering with the personal choice of its people by disregarding individual freedom and autonomy. However, the normative foundation and the policy guidance for the implementation of plain packaging are well embodied in international legal and policy strands, including the World Health Organization Framework Convention of Tobacco Control, WHO's Global NCD Action Plan 2013–2020 and the UN's Sustainable Development Goals (SDGs). Further, the concept of regulatory autonomy enables countries to design, implement and enforce plain packaging measures at the country level, fulfilling their international legal and policy obligations towards protecting public health. Accordingly, the main objective of this research is to critically analyse the normative foundation of tobacco plain packaging measures through international legal standards and regulatory autonomy of the countries in enacting laws to improve public health. This research employs a doctrinal legal research method which consists of a critical review of primary and secondary sources associated with the nanny state and plain packaging debate, the international legal and policy standards on plain packaging, and the concept of regulatory autonomy to achieve the main objective. Finally, the research argues that the normative foundation embedded in international legal and policy standards and the concept of regulatory autonomy create a fertile ground for the implementation of tobacco plain packaging measures at the national level. Using nanny state criticism on plain packaging as a case study, this research forms some lessons for WHO member countries' future efforts to regulate alcohol, junk food and soft drinks.

**Keywords:** *Nanny state, tobacco plain packaging, normative foundation, regulatory autonomy*

# **DABUS; the AI Innovator: A Critical Analysis of the Patentability of AI-Generated Inventions**

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## **Abstract**

Intellectual Property Law (IPL) accepts a natural person's claimed rights which were created/innovated by themselves in granting a patent. However, after the gradual development of Artificial Intelligence (AI) in the modern industrial revolution, it started to challenge the traditional principles rooted in the IPL to secure intellectual property rights of the intellectual creations both man and machine-made. The traditional stance pertaining to the word 'inventor' in the corners of IPL perspectives was highly questioned in *Thaler v Commissioner of Patents* [(2021) FCA 879] and 'DABUS' AI device. In this backdrop, the main objective of this research is to identify the legal boundaries of patentability created by AI structures and devices. The secondary objective is to define the patent requirements of AI-generated inventions by interpreting the word 'inventor' in the eyes of existing IPL through a comparative jurisprudential analysis of both AI innovations and IPL. The research methodology is based on the legal research methodology; a library-based secondary data analysis. Thirdly, to apply the comparative developments to the Sri Lankan IPL framework and analyse how the domestic law could develop to address the situations as such. The expected outcome is of the nature of policy research, in order to guide more progressive approaches on academic and comparative judicial interpretations through exploring the roots of the modern AI innovations relevant to IPL to decide whether the patent requirements for registration needed to be redefined. By concluding the research paper, the author suggests a balanced legal framework to eliminate the dilemma between the human inventor and the AI inventor to secure the patentability of an invention.

**Keywords:** *Intellectual property law, artificial intelligence, patent, inventor.*



# **Exploring the potential of the Legal tech industry in Sri Lanka; A critical evaluation of the opportunities and challenges through a comparative analysis**

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## **Abstract**

Artificial Intelligence is becoming an in-vogue concept of the era. It impacts many aspects of human life, including the law and legal profession. The legal Tech industry which refers to using technology to provide legal services has also expanded embracing AI models using big data, machine learning, algorithms, data prediction, and case management tools, etc. There is a current discourse about how these models can be used to develop the legal landscape. For example, whether the law's delays can be minimised by utilization of legal tech. This is as yet a primitive idea and a business model in Sri Lanka. The use of information technology in the Sri Lankan legal industry is observed to be at a very low level except for a few instances during the Covid 19 pandemic. This paper intends to critically analyse the potential of developing the legal tech industry within the legal landscape of Sri Lanka. It adopts a doctrinal approach and in addition, an empirical study is conducted to provide more contextualised recommendations by ascertaining the practical underpinnings and attitudes of the stakeholders. The comparative study critically reflects the lessons learned from the UK as a benchmark. For the purpose of this paper, the authors do not believe in 'AI solutionism' as a concept and argue that AI-assisted modules should be developed to facilitate the legal landscape while preserving its human element for more effective and cognitive usage. The findings of this paper deal with three aspects of the legal industry; professional ethics, data protection, and threats to the legal profession. The paper finally recommends legal and policy reforms at different levels; legal and regulatory landscape, legal education, professional training, and development through collaboration among different stakeholders and interdisciplinary research.

**Keywords:** *artificial intelligence, data, legal tech, legal industry, machine learning*

# **Department of Private and Comparative Law**

**A comparative analysis of divorce law in Sri Lanka and Singapore through  
'Therapeutic Jurisprudence'.**

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**Abstract**

In their work on mental health law, Professors David Wexler and Bruce Winick introduced the concept of 'Therapeutic Jurisprudence,' referred to as TJ, in the late 1980s. Now, it applies to numerous fields of law, including family law. The focus of TJ is the social force of the law. It acknowledges that the legal system (including rules, procedures, and actors) can have therapeutic or anti-therapeutic effects and seeks to modify its roles in order to increase the positive impact on an individual's well-being while preserving due process principles. It is an interdisciplinary approach to law that encourages investigation of the impact of the law on the psychological and emotional well-being of those it affects. This research aims to examine the current divorce law under general law in Sri Lanka and its impact on the parties and children (if any) through the lens of TJ. The general law recognises three fault-based grounds for divorce: adultery, malicious desertion, and incurable impotency. Even though the Judicature (Amendment) Act No. 34 of 2022 reintroduces a 'Family Court' and a 'Family Counsellor', the three fault-based grounds for divorce and the hearing under the adversarial system remain the same. For the purpose of this research, a desk review of international human rights instruments will be followed by a comparative analysis of Sri Lankan and Singaporean domestic and foreign legislation, academic articles, and case law. Singapore was chosen as a comparative jurisdiction because it has recently implemented TJ in the context of divorce. In conclusion, the research suggests that policymakers must reconsider the divorce laws in Sri Lanka in light of TJ. The research provides recommendations based on its findings.

**Keywords:** *adultery, divorce, incurable impotency, malicious desertion, therapeutic Jurisprudence*

# Unravelling the Complexities of Pure Economic Loss: Exploring Assumption of Responsibility under English Law

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## **Abstract**

Within English law, pure economic loss refers to financial harm arising from negligence or breaches of contract, without physical injury or property damage. This study examines liability for such loss through the principle of 'assumption of responsibility.' While this principle is prevalent in English negligence law, its potential ambiguity poses a significant challenge that requires careful consideration. Through critical examination of the complexities surrounding the assumption of responsibility theory, including factors such as causation, duty scope, reliance, and foreseeability, this research aims to enhance our understanding of resolving disputes involving pure economic loss. The objectives of this study are twofold: first, to analyse the challenges inherent in resolving such disputes, and second, to propose solutions that consider these factors and overcome the associated challenges. To achieve these objectives, this research adopts a methodological approach based on doctrinal analysis, utilising primary and secondary legal sources. The analysis of case law plays a pivotal role in this research, providing valuable insights into the factors considered by courts when calculating pure economic loss. By incorporating the insights gained from case law analysis, this study captures the nuances of judicial decision-making and offers practical implications for legal practitioners, policymakers, and courts. It emphasizes the importance of a balanced and nuanced approach when addressing disputes involving pure economic loss, with particular consideration given to factors such as foreseeability, the defendant's knowledge, and the nature of the parties' relationship.

**Keywords:** *Negligence, Pure economic loss, Assumption of responsibility, Causation, Foreseeability.*

**Abolishing acquisitive prescription under the title registration system in Sri Lanka:  
Advocating a harmonious approach**

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**Abstract**

Prescription Ordinance No.02 of 1871 (PO) includes complete and exhaustive provisions regarding acquiring land ownership by adverse possession. However, the Registration of Title Act No. 21 of 1998 (RTA) precludes the prescription of land registered under the Act, aiming to establish certainty and clarity in land ownership. Therefore, the crucial challenge is to determine whether abolishing acquisitive prescription in its entirety is appropriate in the Sri Lankan legal context. To this end, the paper will; (a) identify prescription as a mode of land acquisition under Sri Lankan law, (b) review the objectives of RTA in the context of *Bim Saviya* Programme of Sri Lanka, (c) analyse the impact of altogether abolishing acquisitive prescription under the RTA in the socio-legal context of Sri Lanka, (d) provide recommendations considering the potential benefits and drawbacks of this decision. The methodology of this research mainly involved a doctrinal analysis based on primary and secondary legal resources and provided a comparative study. It was revealed that acquisitive prescription has traditionally played a central role in the Sri Lankan registration system. The Torrens system of land registration offers a multitude of economic benefits, inter alia, enhancing land transaction costs, increased access to credit and stimulating urban development. However, section 57 of the RTA abolishes this traditional method of acquiring land ownership. Therefore, acquisitive prescription would no longer be considered a valid means of acquiring land ownership in Sri Lanka after the full implementation of the Torrens system. However, reviewing the *Bim Saviya* programme, which aims to minimise land disputes and create a dynamic land market by establishing title indefeasibility, revealed that the RTA has fallen short of expectations. Accordingly, it is concluded that instead of abolishing acquisitive prescription under the Torrens system, the existing law on acquiring lands in Sri Lanka should be amended to ensure that both systems can operate harmoniously.

**Keywords:** *acquisitive prescription, registration of title in Alberta, registration of title in Sri Lanka, Torrens system*

# **Strengthening the Legal Framework against Sexual Harassment of Domestic and Agricultural Workers in the Sri Lankan Informal Economy: Law and Policy Recommendations**

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## **Abstract**

Domestic and Agricultural Workers in informal economy often become silent victims of numerous types of sexual harassment at work regardless of their gender, ranging from verbal and nonverbal abuse to unwanted physical contact. The unique challenges including the informal and non-standard employment status, absence of applicable codes of conduct, the lack of human resource support, and the prevalence of verbal agreements fostering job insecurity and arbitrary termination, significantly heighten the risk of sexual harassment in such informal work settings. International labor law has been employed to address the issue, specially introducing the ILO Convention No. 190 on Violence and Harassment to provide comprehensive guidance and standards for combatting informal workplace sexual harassment. Sri Lankan law lacks specific legislation with a robust and solely dedicated framework for protecting workers from sexual harassment in both formal and informal workplace settings, relying instead on indirect legal approaches to address the issue. The criminal approach of protection under the section 363 of the penal code in Sri Lanka is often challenging due to the heavy burden of proof associated with such cases. Thus, the effectiveness of prevailing framework in defending workers employed in informal domestic and agricultural sector is still up for debate. The primary research objective is to assess the adequacy of Sri Lankan laws, which offer an indirect legal framework for addressing workplace sexual harassment, in safeguarding employees in non-traditional domestic and agriculture sectors, while identifying gaps in the existing legal framework. The research adopts a doctrinal legal approach, including a comprehensive literature review and a comparative analysis in order to provide recommendations to necessitates ratifying and implementing of Domestic Workers Convention No. 189 and Recommendation No. 201, along with ILO Violence and Harassment Convention No. 190 and Recommendation No. 206 which consists of a widespread scope to cover all work settings, including informal work to improve domestic and agricultural workers' protection against sexual harassment.

**Keywords:** *sexual harassment, informal work, labor laws, Sri Lanka*

**Piercing the Technology Veil: An attempt to decode the modern employment contracts  
of digital economies.**

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**Abstract**

We have entered into the most unusual working arrangement of this generation. *Labour Digitalization* due to technological advancement has changed the aspects of the traditional world of work. The more crucial would be the adoption of novel employment arrangements which have led to the emergence of new classes of workers such as click workers, crowd workers, digital nomads, teleworkers, etc. The flexibilities and novelty in these employment arrangements have led employers to create “false” or “bogus” self-independent contracts to govern their employment relationships with the workers who connect and serve them through technological mediums. As the classification of contractual relationships functions as *finium regundorum* in employment law, this trend helps employers evade their employment obligations. Therefore, the workers of digital economies lack proper protection, which they would have enjoyed in a traditional work setup by rendering the same set of services. Therefore, this study aims to decode the bogus self-independent contracts to enable the workers of digital economies to enjoy their protection under an employment contract. For this purpose, the study involves a qualitative approach with doctrinal, comparative, and case law studies. The study suggests utilizing the functional analysis to decode the employment contract to differentiate the workers of digital economies between workers and self-independent contractors. To achieve this objective the study recommends the adoption of functional equivalence and technology neutrality principles from modern contract law to the employment law sphere. These principles could logically stand to decode the bogus self-independent contractors and widen the employment protection to the workers of the digital economies, as they strive to focus on the function as opposed to the medium in which the performances are carried out.

**Keywords:** *Functional equivalence, Technology veil, Technology Neutrality*

# **Safeguard the Rights of Unskilled Sri Lankan Migrant Workers: Challenges and Prospects**

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## **Abstract**

Migrant workers are an integral part of the Sri Lankan labour force and immensely contribute to the development of the economy of the country. However, migrant workers are a stereotypically disadvantaged group that are often faced with abuses and violations of their rights by various parties such as employers and government officials of receiving countries. This problem is further deteriorated due to these workers' unskilled nature and vulnerability. Despite the existence of a plethora of International Conventions and recommendations concerning the protection of migrant workers, the implementation and practical use are minimal and there are several incidents of serious violations of human rights. Notwithstanding the said serious issues, due to various factors such as economic poverty, lack of education, and lack of opportunities locally, there is an ever-increasing demand for employment in countries like the Middle East. This cycle is continuing without resolving the issues pertaining to migrant workers. Against this backdrop, this research intends to evaluate and analyze the adequacy of the existing legal framework regarding unskilled migrant workers and find a mechanism that can afford protection to safeguard their rights. In this research, the author adopts a qualitative and comparative study method to collect data and compare the Sri Lankan Legal Framework with the Philippines to get experiences from another jurisdiction. The research argues that there should be a mechanism to safeguard their rights as migrant workers in the receiving country, and sending countries are also responsible for safeguarding their citizens abroad. However, the implementation of laws in receiving countries like Kuwait, UAE, and other Middle Eastern countries presents a practical challenge due to the different nature of their legal systems. Thus, Sri Lanka can draw lessons from the Philippines in terms of enacting legislation like the Republic Act No.8042-Migrant Workers and Overseas Filipinos Act of 1995 that specifically applies to safeguard the rights of unskilled Sri Lankan migrant workers.

**Keywords:** *Migrant workers, Labour Law, Human Rights Law, Philippines, Legislation*



# **Development of the Common Law of Sri Lanka: A Review of the Judicial Approaches with Specific Reference to the Law of Delict**

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## **Abstract**

The Roman Dutch law is the common law of Sri Lanka. The law of delict is a part of the common law. Delict involves general principles of Roman Dutch law as introduced to Sri Lanka during the Dutch period and thereafter, developed in the hands of English judges, during their rule. The intervention of the Legislature in the area of delict has been minimal up to now. Although delict cases do not consistently find their way to the courts for interpretation, a few significant cases have come up for review recently. Some argue that the law of delict is a dead law, which has no relevance to modern life. Litigants are moving away from delictual remedies and seeking more popular and instant alternative ones. Contrastingly, others argue that delictual actions are not utilized to the maximum in this country. In this backdrop, this research examines to what extent the judicial approach to delictual liability has evolved in the common law in Sri Lanka in the colonial and post-colonial era. It will further explore how the development of common law can be assessed and whether there is any criterion to determine such development. This study is significant as it sheds light on the past and reviews the progress of the judge-made law in delict for future reforms. This is a qualitative study which adopts a case law analysis. Further, a comparative method is used to determine the evolution of the common law in South Africa and English law in the area of delict and tort. The review encloses primary and secondary data to showcase the diverse phases of the common law, in the colonial and post-colonial periods in Sri Lanka. The findings of the study will inform public policy and law reform.

***Keywords:*** *Common law; Roman Dutch Law; Delict*

# **Land-for-Land and Cash-for-Land Compensation in Land Acquisition from a Sri Lankan Perspective: A Comparative Analysis with India**

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## **Abstract**

The only justice available to owners who have been deprived of their land ownership through compulsory land acquisition is the right to fair compensation. This compensation can be monetary or land equivalent to the value of the land deprived. It is a well-established principle that the deprivation of this land ownership can be justified on the eminent domain of the State for a public purpose. However, relinquishing one's rights for a public purpose through no fault of one's own but for the benefit of the general public is a fair approach that the deprived rights should be restored by providing a better position than the existing condition. This is especially the case when people who are already well-settled have been forced to resettle due to being relocated. The research problem sought to be addressed is that although the Land Acquisition Act No. 09 of 1950, Sri Lanka National Involuntary Resettlement Policy in May 2001, and National Policy on Payment of Compensation in November 2008 clearly state how compensation should be given for the acquired land based on the culmination of the market value of land acquired, severance and injurious Affected to land retained, disturbance and other losses, there is a gap in the fact that the socio-economic factors are not considered while calculating the compensation and it would be more crucial due to the ongoing higher economic inflation in the country where land value remains unchanged compared to all other goods and services. Therefore, the objective of this research is to inquire about the possibility of considering socio-economic factors in calculating adequate compensation in the acquisition of land for public purposes based on having a proper balance between private and public interests, and this reasoning can be adequately substantiated by social engineering theory. While adopting the doctrinal approach, this research examines the necessity of establishing a comprehensive framework for Land-for-Land and Cash-for-Land compensation or a combination of them for the acquired land in the Sri Lankan context. The results show that countries like India have successfully implemented compensation mechanisms considering socio-economic factors in computing compensation for acquired land. Such an approach could also be adopted by Sri Lanka to confirm the effective implementation of justice.

**Keywords:** *Compensation, Economic Inflation, Justice, Land Acquisition, Public Purpose*

# **The Impact of the Buddhist Temporalities Ordinance No. 19 of 1931 on Sri Lankan Society: Shaping Religious Practices and Social Dynamics through Legal Frameworks.**

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## **Abstract**

Since ancient times, Sri Lanka has been adorned with a plethora of Buddhist temples and monuments, all enshrined and protected by the country's supreme law, ensuring the preservation of Buddhism. The laws governing temple properties in Sri Lanka have been shaped by a blend of Buddhist traditions, legal precedents, and statutory laws. One notable influence on Sri Lankan society has been the Buddhist Temporalities Ordinance No. 19 of 1931, which has played a significant role in shaping various aspects relating to the temple properties, aims to preserve Buddhist traditions, ensure efficient management of temple assets, and promote social harmony in a religiously diverse society. The study delves into the impact of the Ordinance on the authority and functions of the Buddhist clergy in managing both communal and private properties, resource allocation within temples, and the dynamics between temples and their neighbouring communities. Furthermore, the paper explores the effects of the legislation on religious practices and social cohesion in Sri Lanka. Through qualitative legal analysis, this study unveils the wider implications of the Buddhist Temporalities Ordinance No. 19 of 1931 in shaping social dynamics and cultural norms, especially concerning property. In conclusion, this study highlights the substantial influence of the Buddhist Temporalities Ordinance No. 19 of 1931 on Sri Lankan society, providing valuable insights into how legal frameworks shape religious practices and societal interactions, with a specific focus on temple properties and the role of Buddhist monks in this context. The research underlines the importance of comprehending the relationship between law, religion, and society, and its impact on cultural heritage preservation. The research contributes to the ongoing discourse on the influence of law in diverse cultural and religious contexts, paving the way for further interdisciplinary exploration in this field.

**Keywords:** *Buddhist Temporalities Ordinance, Sri Lanka, Religious practices, Social dynamics, Law*

**The Conceptual Divergence of Domicile, Nationality, and Residence in Private  
International Law: A Memo to the Sri Lankan Civil Procedure**

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**Abstract**

Domicile, Nationality, and Residence are three different concepts in the application of Private International law rules. Nationality is a political and legal bond that eliminates the problem of statelessness, and it ensures the protection and enjoyment of fundamental rights and diplomatic protection from the state. Further, nationality is a universal concept mostly found in Public International law, which is distinct from Domicile and Residence which are the fundamental principles under Private International law. Nonetheless, no exclusive statutory provisions or definitions are provided in the Civil Procedure Code No. 2 of 1889 (as amended) of Sri Lanka for these three divergent concepts. The more challenging situations in the interpretation of civil procedure laws would arise due to increasing the number of cross-border transactions because of the developing figures of nonresidents in Sri Lanka as the country opens the gateways for investments and the rapid growth of the migration rate of the country due to the economic [in]stability. Moreover, the application of personal laws in Sri Lanka would provide more complicated circumstances in conflict of law matters with the change of nationality, domicile, and residence of the parties. This research aims to provide a conceptual understanding of the fundamental principles of Private International law on domicile, nationality, residence, and their application in a plural legal system and to suggest possible reforms to amend the Civil Procedure Code of Sri Lanka. The black letter research method will be used to conduct this research with a comprehensive analysis of primary data sources.

**Keywords:** *Civil Procedure Code, Conflict of laws, Domicile, Nationality, Residence, Sri Lanka*

## **Destructive adaptability of divorce laws in Sri Lanka: Irretrievable marriage breakdown as a ground for divorce**

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### **Abstract**

The evolution of divorce laws worldwide has shifted from ‘fault-based’ approaches to ‘non-fault-based’ ones, aiming to reflect the complexities of contemporary societies. While countries like the UK, South Africa, and India have successfully implemented these reforms, Sri Lanka’s divorce legislation remains anchored in ‘fault-based’ principles. Therefore, this study explores the imperative of modernizing divorce laws in Sri Lanka, advocating for the incorporation of the ground of irretrievable marriage breakdown. Through a comparative analysis, this article examines legal reforms in the UK, South Africa, and India, highlighting their transition from ‘fault-based’ to ‘non-fault-based’ systems. In contrast, Sri Lanka’s current divorce law, as defined in Section 19 of the Marriage Registration Ordinance No. 19 of 1907, exclusively adheres to ‘fault-based’ criteria. To address this disparity, this study underscores the urgent need to recognize the ground of irretrievable marriage breakdown as a legitimate basis for divorce. Accordingly, the paper delves into the well-reasoned judgment of *Guneshi Mallika Gomes v Jammagalage Ravindra Ratnasiri Gomes*, where the Sri Lankan Supreme Court considered “irretrievable marriage breakdown” as a *potential ground* for divorce. Drawing from contemporary societal realities, this study advocates for a broader consideration of grounds including, but not limited to, “cheating” as a basis for divorce. Thus, this study explores real-life incidents involving novel cases where transgender individuals, relatively new to society, entered marriages through deception, illustrating the challenges these cases pose to the existing legal framework and emphasizing the need for reform. Finally, it is highlighted that the existing grounds for divorce in Sri Lanka are incongruent with modern social needs, signaling the urgency for a ‘non-fault-based’ approach. By recognizing the law as a catalyst for social change, this study contends that embracing the ground of irretrievable marriage breakdown aligns divorce legislation with contemporary realities.

**Keywords:** *Divorce law, Irretrievable marriage breakdown, Comparative analysis, Legal reform, Social change*

## **‘Surgical Malpractice’ in Hospitals and Law: Matters to Ponder**

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### **Abstract**

The discussion on medical law and ethics has now become the central focus of the community and hospitals. The reason behind this is the claims which have been directed to the Courts of Law on surgical errors and negligence. During the past decade, Sri Lanka confronted the dilemma on surgical errors which ultimately manifest the negligence on the part of the surgeons and the related medical staff in government / private hospitals. The victims of surgical negligence face death and become permanently disabled. The frequent arise of claims signified the fact that, the patient - surgeon relationship is of a special kind attracting the professional competency of the latter in a great deal. It depends on the ‘techne’ (technical capabilities) and ‘phronesis’ (capacity of forming a judgment). However, the medical staff involves in a surgical venture may perform wrong site surgeries, perform a surgery on a wrong patient or adhering with the procedure which does not warrant the consent of the patient, causing damage to the organs and tissues, incorrect incisions, incorrect administration of anaesthesia, use of unsanitary tools and medical devices. It is evident that, the issues on surgical negligence have not been sufficiently solved in the jurisdiction of Sri Lanka due to the lacking of consolidated legal framework. The objectives of this work is to analyze the legal implications of surgeries performed by surgeons/ medical staff including robotic surgeons with Artificial Intelligence (AI) and to discuss the surgical ethics which can be incorporated to revamp the law. Even though, the court decides such cases with the application of common law and the principles of delict law, the rate of complaints against the medical staff necessitates the existence of a separate legislation due to the societal and technological advancements. Author’s discussion is supplemented by the library research methodology and content analysis of the sources of law which are secondary in nature.

**Keywords:** *Surgery, Malpractice, Legislation, Negligence, Artificial Intelligence*

## **Covid 19 and its impact on contracts: Lessons for Sri Lanka from the United Kingdom**

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### **Abstract**

Covid 19 pandemic caused untold hardships to the world community during the period from 2020 to 2022. This health hazard affected every aspect of human life and the ascertainment of its legal effect on contractual arrangements was the aim of this research. The main focus was on the performance of contracts that had been entered into prior to the occurrence of this pandemic but had not been completely performed. In such instances, the promisor would have been prevented from performing his or her obligations despite his or her willingness to perform them. Since there were no precedents the legal practitioners and the judges were without any binding authority as to whether the doctrine of frustration applied to discharge the parties of their contractual liabilities. It was against this backdrop that the Supreme Court of the United Kingdom in *Arch Insurance (UK) Ltd (Appellant) v Financial Conduct Authority and others (Respondents)* [2021] UKSC 1 approached this issue using the leapfrog procedure to bypass the Court of Appeal and entertain an appeal directly from the High Court of Justice of England and Wales. The importance of this issue is evident from the decision of the Supreme Court to permit the expeditious leapfrog procedure that is utilised only in exceptional circumstances as indicated by the Supreme Court in paragraph 42 of the judgment. This decision addressed the uncertainty as to whether this pandemic could be used as a ground of frustration using the concept of force majeure. Since frustration occurs due to no fault on either party to a contract it provides relief to both parties. This praiseworthy approach of the Supreme Court of the United Kingdom provides lessons for the judiciary of other jurisdictions such as Sri Lanka whose economies had been adversely affected due to the diminished trade and commercial transactions. The decisions of the Supreme Court of the United Kingdom have a persuasive effect on Sri Lankan courts. Furthermore, the legal system of Sri Lanka is a mix of Roman-Dutch Law and English Law with the latter body of law applicable to commercial transactions according to section 3 of the Civil Law Ordinance of 1852. This research adopted a doctrinal and comparative methodology that evaluated the findings of case studies and reports from the United Kingdom and drew from the experience of that country to improve the position of Sri Lanka with evidence-based recommendations.

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**Keywords:** *Covid 19, the doctrine of frustration, discharge of contracts, leapfrog procedure, force majeure*



# Securing cyberspace for children in Sri Lanka: A Comparative Legal Analysis

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## Abstract

One of the most significant problems Sri Lanka is dealing with as a developing country in the twenty-first century is Online Child Sexual Abuse (OCSA). Rapid technical advancement, high-speed internet, mobile devices, and an increase in the number of virtual learning platforms all contribute significantly to the situation's deterioration. The primary objective of the study is to find out the lacunas of laws governing cybercrimes and child rights in comparison with the international legal standard. The main focus of the study revolves around the significant provisions of the Constitution of Sri Lanka, the Penal Code of Sri Lanka, the Computer Crimes Act, the Obscene Publications Ordinance (as amended), and the Children's Charter. The research was carried out on the black letter approach and International and Comparative research methodology. The research data were gathered from primary, secondary, and internet sources. It observed that the current legislation Computer Crimes Act No. 26 of 2007, has not made a solemn effort to provide extensive coverage of matters related to securing cyberspace for children. Also, the aforementioned legislation does not directly address this issue. As a member country of CRC, Sri Lanka is obliged to protect the 'Best interest' of the child. Therefore, this study was based on identifying the gaps in aforesaid enactments and intending to propose recommendations.

**Keywords:** *Cyber-crimes, Child Rights, Child sexual abuse, Computer Crimes Law, Sri Lanka, International standards*

# **An Assessment of Fishers' Employment Rights in Sri Lanka in the light of International Labour Standards**

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## **Abstract**

In 2007, the International Labour Organization (ILO) adopted the Work in Fishing Convention (C188) to provide terms and conditions of employment, health and safety and social security to the fishers. Although Sri Lanka has not ratified the Convention, it has the obligation to protect fisher's employment rights as it is a state party to many other relevant international instruments, and the fishers are about seven percent of the workforce. The problem in the research is although Sri Lanka has enacted a plethora of labour statutes why the employment rights of the fishers are not adequately protected. The objectives of the research are to assess the extent to which the labour statutes protect the employment rights of the fishers, and to analyse how the labour statutes could be used to protect fishers' employment rights. The research is a qualitative research based on the analysis of legal materials including international instruments, labour statutes, regulations and cases. The main findings of the research are that there are many labour statutes to provide for the terms and conditions of employment of the fishers, but the fishers are not protected by the statutes because of lack of awareness of the statutory provisions among the stakeholders, and a gap exists in the legal regime with regard to health and safety, and social security of the fishers. It is suggested to apply the existing labour statutes to protect fishers' employment rights, and to include their employment within the 'covered employment' in the Employees' Provident Fund Act to provide social security to the fishers. A legislation should be enacted to provide for health and safety of the workers including fishers. Sri Lanka should also ratify the Work in Fishing Convention.

**Keywords:** *Convention, Employment, Fishers, Labour Statutes*

# **A Lamb in a wolf's world: a call for legal reforms to protect children from online cyber violence and harassment in Sri Lanka**

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## **Abstract**

Cyber violence and harassment are a constantly shifting form of technology crime, requiring any legal system to foresee different types of crime that could arise in the digital domain rather than seeking to hold culprits liable in retrospect. Violence is ideally defined as the use of physical force to cause harm, damage, or injury to another person or living creature. However, cyber violence takes the form of psychological or emotional violence which involves manipulating, controlling, or intimidating someone through non-physical means, such as emotional abuse, humiliation, or threats. On the other hand, harassment is defined as a pattern of unwanted, unwelcome, and persistent behaviour or actions that are intended to annoy, alarm, intimidate, or cause distress to another person. Given the prevalence of cyber violence and harassment against children, it is critical that any country's legal system be sufficiently prepared. Sri Lanka ratified the Budapest Convention in 2015. In Sri Lanka, the Computer Crimes Act No. 24, of 2007 was drafted based on the principles of the Budapest Convention. This Act serves as a primary legislation for prosecuting cyber crimes in Sri Lanka. The purpose of the Act is to ensure the effective implementation of the National Cyber Security Strategy in Sri Lanka, as well as to effectively and efficiently prevent, mitigate, and respond to cyber security risks and incidents. This Act criminalizes various cyber offences, such as unauthorized access to computer systems, unauthorized interception of computer data, and the unauthorized disclosure of passwords. However, the drawback of the Computer Crimes Act is that it does not adequately address cyber violence and harassment of children in Sri Lanka. Furthermore, the Parliament of Sri Lanka enacted the Personal Data Protection Act, No.09 of 2022. The primary aim of this Act is to provide for a legal framework to provide for mechanisms for the protection of personal data of data subjects ensuring consumer trust and safeguarding privacy whilst respecting domestic written laws and applicable international legal instruments. Nevertheless, this Act also fails to sufficiently address cyber violence and harassment of children. As a result, the main objective of this research is to make recommendations on how to fill the legal gap in existing law relating to cyber violence and cyber harassment on children

in Sri Lanka. Adopting a legal doctrinal research method, this research will critically analyse primary and secondary sources relating to cyber violence and cyber harassment on children both at international and national levels, and real-life experiences of children based on documented data. This research argues that both substantive and procedural laws relating to prevention of cyber violence and cyber harassment on children need to be revised. At the same time, training law enforcement authorities, raising awareness among potential victims to ensure safety both online and offline, allocating adequate funds and expertise for the training of cybercrime investigators, professionals, and forensic specialists, obtaining the support from global stakeholders, global support, and establishing user-friendly safety training for the general public, including children, through educational institutes are necessary steps to be taken. Further, the state has a pivotal role to play in rectifying these legal and social phenomena.

***Keywords:*** *Cyber violence and harassment, Cyber crime, Children, Technology*

# **Enhancing Protection for Migrant Domestic Workers of Sri Lanka: A Comparative Analysis of International and National Legal Standards**

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## **Abstract**

Migrant domestic workers, an integral part of the global workforce, often face unique challenges that necessitate comprehensive legal protection. Migrant workers are defined as individuals who leave their home countries in pursuit of employment opportunities abroad by the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families of 1990 (ICRMW). They play a pivotal role in the labour markets of both host and home countries. The recent distressing incidents involving Sri Lankan migrants underscore the inadequacy of the current national legal safeguards for migrant domestic workers. The main objective of this research is to evaluate the adequacy of Sri Lanka's current legal framework for migrant domestic workers, including SLBFE and related policies, by assessing its compatibility with international standards such as the ICRMW and relevant ILO Conventions. For this purpose, the following aspects are addressed in this paper: (i) International Legal framework on migrant domestic workers' rights; (ii) Compatibility of existing Sri Lankan legal framework with international standards for protecting migrant domestic workers; and, (iii) evidence-based recommendations for enhancing the protection of migrant domestic workers in Sri Lanka. This research paper adopts a qualitative research approach to gain insight into existing laws related to the protection of migrant domestic workers. It also employs a comparative study of existing statutes and international documents for a nuanced understanding of the compatibility of the national legal framework with international standards. In terms of research implications, this study not only analyzes the current state of migrant worker protection in Sri Lanka but also advocates for law reform, emphasizing the need for an enabling statute to recognize the ICRMW, 1990. These recommendations aim to address compelling issues faced by Sri Lankan migrant domestic workers, stressing the necessity of aligning the legal framework with international standards and contributing to the global discourse on labour migration and human rights.

**Keywords:** *Migrant Workers, International Labour Standards, Worker Welfare, Protection of Rights*

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International Law**

# **Nurturing empathetic legal professionals: An experimental study on the transformative potential of interdisciplinary pedagogy in legal education**

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## **Abstract**

The article investigates the transformative potential of interdisciplinary pedagogy in legal education to nurture empathetic legal professionals capable of driving social change as envisioned by Roscoe Pound. The study focuses on developing a comprehensive understanding of societal issues within the legal field by integrating Weberian principles of *Verstehen*, Husserl's concept of intersubjectivity, and incorporating fine arts as advocated by Nietzsche. The objective is to explore how interdisciplinary pedagogy could be used to cultivate empathy and equip future legal professionals with the necessary skills and perspectives to address pressing social challenges. The significance of this research lies in its focus on cultivating empathetic legal professionals who possess a deep understanding of societal challenges. Incorporating *Verstehen*, which emphasizes empathetic observation and interpretation of social interactions, fosters a nuanced comprehension of the complexities of social issues within legal education. Further, integrating intersubjectivity enables students to engage in meaningful human interactions, enhancing their understanding of societal dynamics. The inclusion of fine arts provides immersive experiences that allow students to connect with the human aspect of social problems. The methodology involved a group of Law students who embarked on a field visit to a slum area in Kandy to explore the impact of the deprivation of property rights on human rights. They heightened their comprehension and compassion towards human rights issues through reflective sessions and engaging in artistic demonstrations of the social problems. The study concludes that integrating *Verstehen*, intersubjectivity, and fine arts into legal education can foster a comprehensive understanding of societal issues, equipping future legal professionals with the necessary tools to address complex social challenges and drive positive social change effectively.

**Keywords:** *Legal pedagogy, social engineering, interdisciplinary legal education, empathy, Verstehen*

# **The right to a healthy marine environment and emerging marine pollution threats: A law of the sea perspective**

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## **Abstract**

This study centers its attention on the significance of the right to a healthy marine environment (RHME) as a crucial component of Sustainable Development Goal 14 (*Life Below Water*), while also exploring the consequences of escalating marine pollution under the provisions of the United Nations Convention Law of the Sea (UNCLOS). In October 2021, the United Nations Human Rights Council acknowledged the inherent status of a clean, healthy, and sustainable environment as a basic human right. Thus, the objective of this research is to identify the challenges arising from pollution-induced deterioration of the marine environment and to examine the connection between the concept of RHME and the establishment of a legal framework within UNCLOS. To achieve this, an extensive analysis is conducted, evaluating the effectiveness of UNCLOS provisions, regulatory frameworks, enforcement mechanisms, and monitoring practices utilized to uphold environmental standards and safeguard the marine environment. The primary goals are to ascertain the responsibility of States in preserving RHME, establish liability frameworks for addressing pollution incidents, and outline dispute resolution procedures that hold polluters accountable while pursuing compensatory measures for environmental harm. The findings underscore the fact that RHME encompasses the basic human right of individuals to inhabit a clean, sustainable, and ecologically balanced marine environment, which benefits from the presence of a healthy and resilient marine ecosystem. In conclusion, this study stresses the significance of a clean and healthy ocean in fulfilling commitments to human rights pertaining to a clean, healthy, and sustainable environment. Consequently, the study recommends States shall take all measures required to prevent, mitigate, and control pollution of the marine environment from any source, in accordance with UNCLOS obligations, using the best practical methods at their disposal in order to preserve the health and integrity of marine ecosystems for present and future generations.

**Keywords:** *Right to a healthy marine environment, emerging marine pollution threats, Law of the Sea, environmental protection, sustainable development*



## **Colonial Cultural Property as War Booty – Postcolonial Reflections on the Restitution Debate with special reference to Sri Lanka and the Netherlands**

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### **Abstract**

When faced with requests for restitution of cultural property taken from former colonies, the possessors of such objects maintain that much of it was taken as war booty, attempting to justify their continued possession of it. However, when examining these objects in light of the definition of war booty, it is found that many of these objects do not fall within the interpretation of the term. Another problem is that the former definition of war booty itself was determined at a time when the home States of colonial cultural property were rendered defenceless, and it is likely that the interpretation would better serve the interests of the colonial powers. Since restitution of colonial cultural objects has been requested (most specifically, six objects housed at the Rijksmuseum Amsterdam were requested by Sri Lanka from the Netherlands in December 2022) it is pertinent to examine the validity of the argument that cultural property was war booty at the time of its taking. Accordingly, the paper defines war booty, with reference both to the laws in force during colonial domination, as well as in modern times. It then attempts to prove that colonial cultural property does not qualify as war booty, under either of these regimes. Consequently, the paper argues that the taking of the cultural property was illegal and that the ownership in such property continues to vest in the home State of the property. The methodology used in the study were mixed, with both doctrinal and socio legal approaches being taken. Both qualitative and quantitative methods were used, with desk-based research being supplemented by empirical modes of inquiry including interviews with experts.

**Keywords:** *Cultural Property, Restitution, Postcolonialism, Sri Lanka, Netherlands*

## **A critical analysis of the legal framework on the protection of the right to physical access to public property to persons with disabilities.**

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### **Abstract**

The main objective of this paper is to critically analyse the Sri Lankan legal framework in relation to the protection of the right to physical access to public property for persons with disabilities, along with international standards. Persons with Disabilities are a minority group of people who have been given less concern within the Sri Lankan legal framework. According to the Department of Census and Statistics of the Government of Sri Lanka, there were more than 1.6 million persons living with disabilities in the country in 2015. However, due to the lack of updated governmental records, the accurate number of persons with disabilities living in Sri Lanka and their disabilities have not been identified. This has led to the hindering of the ability of persons with disabilities to gain the minimum advantage of the government services that would have otherwise been enjoyed by them had it not been for their disabilities. It is evident that the laws already enacted for the protection of Persons with disabilities, such as the Protection of the Rights of Persons with Disabilities Act No. 28 of 1996, are insufficient to ensure the right to physical access to be identified. Due to this reason, the State had taken steps to bring into force another instrument, The Disabled Persons (Accessibility) Regulations, No. 01 of 2006. However, the question arises as to whether this instrument has successfully achieved the intended protection of upholding the right to physical access of persons with disabilities. To assess the same, the researcher intends to conduct doctrinal research on the prevailing laws of Sri Lanka, concentrating mainly on the aspect of the right of physical access to public property and examine the case laws decided by the Sri Lankan courts as well as the International Instruments such as the Convention on the Rights of Persons with Disabilities that Sri Lanka is a signatory to. Thus, the main research question lies in whether the right of persons with physical disabilities to physical access to public property has been adequately protected in Sri Lanka. The researcher, however, argues that lawmakers have not efficiently upheld this right in question. This has, therefore, impacted the protection of several other collateral rights that persons with disabilities should have equally enjoyed as much as others in society.

**Keywords:** *Persons with Disabilities, right to physical access, United Nations Convention on the Rights of Persons with Disabilities, rights of persons with disabilities, access to Public Property*

# **Developing a Comprehensive Legal Structure for the Preservation of Dugongs (Sea Cows) and Seagrass Ecosystems along the Northwestern Coast of Sri Lanka**

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## **Abstract:**

Dugongs, often referred to as the 'mermaids of the ocean', are unique marine mammalian herbivores found exclusively along the northwestern coast of Sri Lanka. Despite their ecological significance, they have received far less attention than their cetacean counterparts in Sri Lanka. In the past, seagrass was abundant in Sri Lanka's territorial waters, but now it is confined to the northwestern coast. This severe reduction in seagrass distribution directly correlates with the limited spread of dugongs. The research problem of this study is to elucidate the protection and preservation of the marine seagrass ecosystem and the dugongs. The primary focus of this research is to investigate strategies and measures for safeguarding and conserving both the marine seagrass ecosystem and the dugongs, developing a comprehensive legal structure for the preservation of Dugongs (Sea Cows) and seagrass ecosystems along the Northwestern Coast of Sri Lanka. The objectives of the study are to assess the importance of safeguarding dugongs within the marine ecosystem, pinpoint imminent threats, and evaluate the sufficiency of legal framework of Sri Lanka in light of International legal standards. This includes addressing the looming extinction risk posed by climate change and the loss of their primary habitat, seagrass. To achieve these objectives, this research employs a library-based qualitative analysis methodology. Despite the existing laws and regulations such as the Fauna and Flora Protection Ordinance (FFPO) and the National Wetland Policy, the research findings underscore that certain seawater wetlands, not covered by the FFPO, remain at a high risk of vulnerability. Highlighting the crucial need to bridge this legal gap, this study endeavors to recommend reforms for a unified legal and institutional framework in Sri Lanka to conserve marine biodiversity. It also calls for increased involvement from grassroots institutions and the public to preserve identified maritime zones.

**Keywords:** Dugongs and Seagrass Ecosystems, Marine Biodiversity Conservation, Legal Framework, Sri Lanka's Northwestern Coast, Climate Change

# Legal Challenges in Coastal States' Approval for Marine Scientific Research: A Perspective from Sri Lanka

Madhurya Premachandra

## Abstract

There is a famous saying that “Mankind knows more about the surface of the moon than the bottom of the ocean may soon need to be reconsidered.” So many people try to disclose the ocean surface. This is related to the Law of the Sea, and it was controlled through customary international law until quite recently. However, after executing UNCLOS III in 1982, there is some formal direction to the Marine Scientific Research (hereinafter MSR). It shows several parts about how to do MSR. Here, the main requirement is the consent of the coastal state to do the MSR. According to UNCLOS III, “international organizations and component companies can engage in MSR with the consent of the coastal state.” Coastal states’ consent depends on several mandates. MSR doesn’t mean the exploration and exploitation of the relevant coastal state’s marine resources. However the developed countries try to exploit the marine resources and steal the genetic resources of the developing coastal state. This research is based on the coastal states’ consent and other relevant rules for it. (Especially in the Sri Lankan context) The methodology of this research is qualitative research methodology. As a coastal state, Sri Lanka has a big value in the world’s marine tasks. And also Sri Lanka has a big geographical and living and non-living resources. But Sri Lanka doesn’t have enough legal systems to address the law of the sea. Though MSR is not familiar to us, it may still be a significant field in Sri Lanka in the future. So Sri Lanka tries to draft and implement the UNCLOS rules for the MSR at least.

**Keywords:** *Marine Scientific Research, UNCLOS III (1982), Coastal states’ consent, Other relevant rules for coastal states’ consent, Implementation*

## **The challenges in the legal process of changing the gender identity in official documents of transgender individuals in the Sri Lankan legal framework.**

Achini Thiwanka Ranasinghe

### **Abstract**

The process of changing gender identity in official documents is a critical situation in the present domestic society in Sri Lanka. The domestic legal System does not provide a clear process for changing legal gender recognition. The previous name and sexuality are reflected in the current documents when the documents are amended. This whole process impacts individuals' social status, interactions with society, and access to rights and services. This study aims to identify the procedure of legally changing their gender identity in official documents such as National Identity cards and birth certificates after their gender reassignment and to explore the existing challenges and problems in the Sri Lankan legal framework. The research utilizes a qualitative research method, it is mainly based on scholarly articles, legal documents, and case laws. Through analysis of the collected data, aim to identify the existing barriers and challenges in the legal framework for changing gender identity in documents and their implications for transgender rights. In conclusion, the research intends to address the identified challenges within the current legal framework and propose recommendations for legal reforms to create a more inclusive and equitable process of changing gender identity for transgender individuals in Sri Lankan civil society. This study aims to contribute to the ongoing discourse on transgender rights and foster positive change in the legal landscape, promoting greater recognition, acceptance, and protection of transgender individuals' rights in Sri Lanka.

***Keywords:*** *Transgender, Gender identity, Legal framework, Human rights, Legal recognition.*

# Enhancing academic integrity in higher education in Sri Lanka: Contract cheating and beyond

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## Abstract

Academic integrity, a fundamental aspect of higher education, encompasses essential values like fairness, honesty, trust, respect, and responsibility. Currently, academic integrity is challenged by the emergence of take-home assessments and the rapid advancement of information and communication technologies. While offences such as plagiarism, copying, and impersonating have been identified by Sri Lankan universities by their examination by-laws, they have struggled to effectively address newer phenomena such as contract cheating and *Algiarism* (a new term used for describing plagiarism through submitting assessments written by AI). That is because contract cheating and *Algiarism* have not been recognised as illegal yet, and it is hard to trace whether a paper is ghost-written or AI-written due to potential false positive results. Interestingly with the emergence of AI, contract cheating services became cheaper. It is observed that in Sri Lanka, a considerable number of online advertisements on websites and social media platforms offer contract cheating services, essentially selling essays, theses, or assignments to students. Given this context, based on desk research and doctrinal methods, the paper strongly argues in favour of prohibiting contract cheating services to send a clear message to the illegal industry corrupting the future professions of Sri Lanka. Currently, a limited number of countries, primarily located in the global north, have embraced this approach, with notable examples including the UK, Australia, and New Zealand. For instance, in Australia, the Tertiary Education Quality and Standards Agency (TEQSA) Amendment (Prohibiting Cheating Services) Act, No. 78 of 2020 imposes both civil and criminal liabilities on academic cheating services. The Act also empowers TEQSA as the regulatory authority for higher education to actively gather information, conduct research, and take action to prevent access to online sources of contract cheating. Aligning with this framework, the paper proposes enacting a similar Act in which contract cheating is deemed an offence. It suggests assigning powers akin to TEQSA to the University Grant Commission (UGC), enabling UGC to address the issue effectively in order to safeguard the future integrity and reputation of Sri Lankan higher education. Additionally, this paper emphasizes the importance of formally addressing

the relevance and applicability of large language AI models such as ChatGPT in the context of higher education for which there is no global solution yet.

**Keywords:** *Academic integrity, Contract cheating, Algiarism*



# **The Inconveniences Related to Flag of Convenience: A Critical Reflection of the Law**

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## **Abstract**

As the high seas are not under the authority of any single state, the principle of exclusive jurisdiction of the flag State governs the activities there and the responsibility of compliance with rules and regulations therein is the responsibility of such States. While the Article 91 of the United Nations Convention on Law of the Sea of 1981 envisages a genuine link between the ship and the country of its registration, this requirement is not always followed since the term ‘genuine link’ is not properly defined. Most of the time, registration is done upon convenience rather than with the existence of a genuine link. A State who suffers a loss due to non-compliance of a ship registered in a country without a genuine link suffers many inconveniences in enforcing the obligations of the flag State. Using a doctrinal approach, this research endeavors to find out as to what inconveniences are caused by the notion of a ‘flag State of convenience’ and how such inconveniences may be overcome. Results reveal that the global community has not yet adopted a legally binding document to determine the existence of a genuine link. International courts and tribunals have tried to strike a fair balance between the sovereignty of a country which makes it possible to grant its nationality a ship according to its laws, and to make compliance with such an undertaking through various mechanisms. These have included reporting back on incidents that are complained of by other countries against non-compliance. However, such mechanisms have become futile in certain instances. Therefore, it is suggested that a proper legal definition be developed concerning “genuine link” to address the issues identified above to alleviate the inconveniences caused by the concept of a ‘flag state of convenience’.

**Keywords:** *Flag of Convenience, Genuine Link, Ocean Governance*

## **A Nation of Animal Lovers: Demanding for Better Animal Welfare Law in Sri Lanka to Secure Lives: A Critical Analysis**

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### **Abstract**

Sri Lanka's animal cruelty is skyrocketing day by day. Though Sri Lanka had an animal-friendly environment in its history, many appalling stories are heard in present-day society. Though some stories of animal cruelty are reported, many hidden cruelty incidents prevail as usual and are increasing, too. The lack of an adequate regime of law to protect animals from cruelty can be identified as the fundamental cause of the violent and shocking incidents we see in our society today. Sri Lanka depends on the Prevention of Cruelty to Animals Ordinance No. 13 of 1907, whose last amendment was taken into consideration in 1955. The Overall legislation seems to be inadequate and antiquated; it contained archaic law provisions that have no applicability to modern-day needs to prevent animal cruelty. As a result, animals in Sri Lanka with no proper protection from the law have become victims of cruelties done by humans. Internationally, communities have taken steps to strengthen their domestic laws, establishing the concept of animal welfare and addressing timely legal concerns. In such a situation, Sri Lanka is in dire need of reforming animal welfare laws to uphold the living conditions of animals in the country. Relying on the qualitative method, the researcher has used the black letter approach to analyse prevailing legal literature. A critical evaluation and comparative analysis of the primary and secondary sources would help in achieving the objectives of the research. Based on the lessons grasped by international jurisdictions, recommendations would be proposed to reform animal law in Sri Lanka as the final stage of the research to improve the welfare of animal society.

**Keywords:** *animal welfare, legislation, legal regime, animal cruelty*