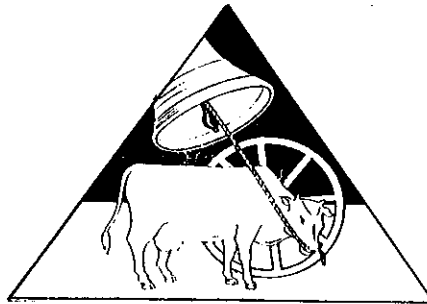


LAW & SOCIETY TRUST

ANNUAL REPORT

1993



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LAW & SOCIETY TRUST

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THE LAW & SOCIETY TRUST

The Law & Society Trust is a non-profit making body committed to improving public awareness on civil & political rights, and cultural & socio-economic rights, and equal access to justice. The Trust is also concerned with consideration of, and the improvement of professional skills within the legal community. The Trust has taken a leading role in promoting co-operation between government & society within South Asia on questions relating to human rights, democracy & minority protection, and has participated in initiatives to develop a global intellectual & policy agenda for the nineties.

The Law & Society Trust was set up in June 1982 to initiate studies and activities on law and social change. It was created to fill a vacuum in our study of the law, its processes and institutions. In 1990 the Trust was incorporated as a non profit making body under the provisions of the Companies Act of 1982.

The Trust has designed activities and programmes, and commissioned studies and publications which have attempted to make the law play a more meaningful role within society. The Trust has attempted to use law as a resource in the battle against underdevelopment and poverty. The Trust has also conducted a series of programmes aimed at members of the legal community, including publications, workshops, seminars and symposia; and is developing its documentation centre with the objective of establishing, in the future, a regional centre for advanced legal studies and socio legal research. The Trust is responsible for the production of the first casebook on an aspect of law in this country; the *Casebook on Fundamental Rights* released in 1989.

The Trust has an ongoing programme designed to disseminate information and upgrade local legal skills on matters relating to commercial law. With the Sri Lankan Government's increased emphasis on economic restructuring, privatisation of state enterprises and liberalisation of the economy, there is a growing need within Sri Lanka for legal skills and expertise in drafting appropriate legislation and negotiating contracts. The Trust has also arranged dialogues between the public & private sectors, and labour on critical issues relating to economic law & policy.

1993

Political violence, which has become endemic to contemporary Sri Lankan life, continued unabated in 1993. The year was marked by two major political assassinations in April & May; DUNF leader Lalith Athulathmudali and President Ranasinghe Premadasa. Athulathmudali was primarily responsible for the motion of impeachment against the late President in 1991. Despite the trauma caused by these assassinations there was an orderly political transition, and the appointment of President D B Wijetunge as the Executive President was confirmed in accordance with Constitutional procedures.

The country continued to be governed under Emergency Regulations, in force for the most part of the last 20 years. The Regulations were revised in June 1993 but the changes were modest despite the assurance given by the state in February at the U N Human Rights Commission meeting. In December the regulation on sedition and incitement, which had been revoked in June was re-enacted, with the addition of two new offences.

At the Provincial Council elections the opposition was able to gain control over the Western, Southern & North-western Provincial Councils. This development provided a new impetus to the scheme of devolution.

The year was also marked by the continuance of hostilities between the government and the LTTE. While the level of hostilities remained at a fairly low level for most of the year, the intensity increased towards the end of the year with two major battles at Kilali and Pooneryn resulting in hundreds of casualties. The chances of a negotiated political settlement remained bleak at the end of the year. With Presidential and Parliamentary elections scheduled for late 1994 the outlook for peace is not optimistic.

In February the Supreme Court issued a fresh interpretation of the mandate of the Human Rights Task Force. Consequent to this directive the HRTF began to investigate the legality of detentions, and advise releases.

1993 also saw the state accelerate its resettlement activities, despite continuing conflict and conditions which clearly did not favour resettlement. Several of the camps housing the internally displaced in Colombo were shut and the residents relocated in the East. The official number of internally displaced persons dropped according to state figures.

Francis Deng, the Special Representative to the UN Secretary General on Internally Displaced Persons visited Sri Lanka in November and met with NGOs, international relief agencies and state officials. The repatriation process recommenced after almost a year, and almost 7000 refugees were repatriated during the months of August and September. Asia Watch, in a statement released before the repatriation had called upon the governments of India and Sri Lanka to halt the repatriation on the ground that the refugees were not returning voluntarily.

Attempts by the ICRC and the UNHCR to negotiate some sort of safe passage for civilians between Jaffna and the south did not succeed.

The year also saw the holding of the second World Conference on Human Rights in Vienna. The Trust participated in the Conference and also in the preparatory meeting held in Bangkok in April. At the World Conference in Vienna a Symposium on Human Rights in South Asia was organised by the Trust as part of the NGO fringe activities.

The Supreme Court delivered several judgements in 1993 upholding allegations of torture, especially against the Police. At least five of the petitioners were awarded damages with the Court passing severe strictures on the conduct of Police officials.

The NGO Commission which had been investigating the activities of NGOs, completed its report & made comprehensive recommendations for the regulation of non-governmental organisations. In December the state enacted regulations under the Emergency Laws requiring NGOs to register with the Director of Social Services and also submit information on their activities and funding, although the report of the Commission has yet to be formally released.

There were also two landmark judgements from the Supreme Court and the Court of Appeal in a matter which emerged as a consequence of the Provincial Council elections held in May. The SLFP led People's Alliance, together with the DUNF captured power in three of the seven provinces for which elections were held. However in two of these provinces the combined PA-DUNF alliance majority was a slim one. The Provincial Governors thus appointed Chief Ministers from the UNP. However in two courageous decisions the Court of Appeal and the Supreme Court held that the appointments were invalid, and ordered that Chief Ministers be appointed by the Governors "according to law".

As in previous years the Trust continued its work in the areas of human rights, constitutional and legal reform. The state established a new Ministry for Constitutional Reform (and appointed an eminent lawyer as Minister) and also one for Legal Reform. As in previous years, despite public pronouncements by the state at international fora, domestic & international human rights organisations have continued to raise concerns about the state's human rights record. A significant proportion of the Trust's activity for the year focused on the Law & Economy programme aimed at upgrading local legal practitioners' skills on matters relating to commercial law.

The third *Law and Society Trust Week* was held from 20 to 26 July 1993. The purpose of the week is to focus attention on the work of the Trust. During the week the Trust held the National Conference on Law & the Economy, a seminar and symposium in the Constitutional & Institutional Reform project, a lecture and a street play; *Hopper Divided into Two*, staged at the Law College.

As one of its major projects for 1994 the Trust has embarked on a programme to produce a comprehensive 'Status of Human Rights Report' for Sri Lanka for 1993. The report, the first of its kind, will look at several aspects of human rights activity in the country during 1993. The report will use the international covenants against which to evaluate governmental and non-governmental activity in relation to civil, political, economic, social and cultural, and group rights in 1993.

PROGRAMMES

CONSTITUTIONAL AND INSTITUTIONAL REFORM PROJECT

Outline

The Trust initiated an exercise to address major questions relating to institutional reform, democratic governance and accountability. The programme envisaged the holding of a series of ten seminars on critical questions relating to constitutional reform from late 1992 to 1994. The seminars bring together a group of academics, policy makers, media personnel, politicians, NGO representatives, business people and decision makers. Funding was provided by The Asia Foundation.

Two seminars in the series were held in 1992: *Is Constitutional Reform relevant to Sri Lanka's Crisis?*, was held on 10 July 1992, and *Parliamentary Democracy vs. the Presidential System* on 1 August 1992.

Goals

- To strengthen the performance and accountability of democratic systems & institutions in Sri Lanka by facilitating greater public awareness of public issues
- To increase citizen participation in constitutional dialogue and reform

Activities

Seven seminars were held during 1993, covering a wide range of issues relating to constitutional reform.

The Indian Model of Devolution & the Sri Lankan Crisis

6 April 1993

Speakers: Radhika Coomaraswamy
Jayadeva Uyangoda
Desmond Fernando

The concept of Federalism as it exists in India and Sri Lanka was discussed, with the argument that the Indian model could be described as an extreme form of devolution rather than federalism. There are three different constitutional forms which may be relevant for Sri Lanka: unitarist, with no devolution, the PSC model which recognises devolution, and the federalist approach which advocates that a system of shared sovereignty should be created with radical constitutional reforms. The reluctance of the Sri Lankan political leadership to take bold and imaginative steps towards reforming the present state was discussed, and it was stated that the problem is not public antipathy towards federalism, but the fear of its own advocates to educate the people and to work towards preparing the society for desirable democratic reforms for federalism and beyond.

Free and Fair Elections: Do International Monitors make a Difference?

27 May 1993

Panel: Neelan Tiruchelvam
Pakiasothy Saravanamuthu
Frank Jayasinghe

The seminar discussed how the methodology of election monitoring in Sri Lanka has been refined since being undertaken at the 1988 Presidential Election. It was pointed out that a major problem faced by international monitors was unfamiliarity with local languages, resulting in the necessity of reliance on interpreters; and the need for the neutrality and integrity of the mission to be protected. A general discussion followed, which included Mr. Chandrananda de Silva, the Commissioner of Elections, and Mr. Camillus Fernando, Co-ordinator of the election monitoring mission at the last election

The Reform of the System of Proportional Representation

22 July 1993

Panel: Vijaya Perera
Mario Gomez

This seminar highlighted the lack of voter-elected number relationship in the system, and raised the fact that an elected Member is subject to party dictates. Serious shortcomings of the system were pointed out, as it had commercialised elections, and the problem of a high percentage of spoiled votes was raised. The participants seemed to agree that the PR system had several redeeming features such as better representation of minorities, and the provision of an evenly balanced opposition.

The Writ of Habeas Corpus in Sri Lanka

26 July 1993

Panel: Justice Sarath Silva
R K W Goonesekere
Mohan Peiris

A background paper was prepared for this discussion by two interns of the Law & Society Trust. The writ was introduced as being a historic remedy used traditionally for the protection of the liberty of those detained, and it was illustrated with regard to its applicability in the present context of Sri Lanka. The topic was also approached from its historical perspective, dealing in detail with old and interesting cases and the manner in which the writ operated in that context. The problems faced by the Attorney General were also addressed, it being noted that although several criticisms aimed at the procedure were justified, procedural difficulties were involved.

Parliamentary Privilege and the Freedom of Expression

27 August 1993

Speakers: Justice Siva Selliah
Suriya Wickramasinghe

The seminar addressed two major aspects which arise in the context of this topic. Firstly, the fact that anything Members of Parliament say in parliament was privileged and no action could be taken against them, thus they are seemingly vested with the freedom to commit defamation and, by extension, in reporting such a statement a newspaper will also be protected. However, it was stated that in relation to contempt of court, although an MP will still be immune from an action in respect of statements made in Parliament, the newspaper that chose to report this incident will not be so protected. Recently the Parliamentary Privilege Act has amended this position. Thus, an MP may now not only, for example, attack the Judiciary in Parliament, but may do so to the whole nation with the assistance of the media, even if there has been no inquiry against the Judge in question and no action has been taken, and the media will also be immune.

The second aspect involves defamatory statements made against an MP or the Parliament itself. In such instances the special offence of breach of privilege is involved and this in turn has two aspects, namely, who should have the authority to try and punish such offences, and if it be parliament, should the complainant and the judge wear the same robes? Parliamentary Privilege per se was introduced into Sri Lankan law in 1953. However in 1978 the law was amended, giving Parliament the concurrent power to deal with all breach of privilege offences.

Reform of the Parliamentary Select Committee

22 October 1993

Speakers: Bernard Soysa
Sam Wijesinha

It was pointed out that the Select Committee system had a history of its own and that all governments had used such committees at various stages and times. A comparative description with the Select Committee system in Britain was made. It was stated that there are many ways in which the Select Committee system can be reformed and it was suggested that it must not be used as a means for shielding questions or public criticism, and that sittings of the committee should be held in public. Furthermore, it was submitted that its report should be made available to the public, which would prevent it from being used as a narrow political instrument.

The lack of any rules observed in obtaining evidence was also commented upon. Although the Evidence Ordinance would normally safeguard a citizen, citizens rights or privileges before a Parliamentary Committee have not been considered. It was further observed that the number of committees seemed to have multiplied following the introduction of payment for attendance.

Contempt of Court and Freedom of Expression

29 October 1993 at Bandarawela

Speakers: Shelton Ranaraja
V N Perera

The discussion began with a brief overview of the historical development of the law of contempt of court. The procedure for contempt was observed as being highly individual, with Judges having wide powers of investigation and punishment. Thus for contempt committed in the face of the court, the Judge is prosecutor, chief witness, jury and Judge.

It was argued as to whether this state of affairs was satisfactory, and whether reform should not be contemplated. On the other hand it was argued that the object is to protect the administration of justice and preserve confidence in the judiciary; thus it was concluded that there must be a balance, and frivolous accusations of contempt should not be encouraged. Furthermore scandalising a Judge in Court should also cease to be part of the law of contempt; instead, defaming a Judge in such a way as to bring the administration of Justice into disrepute should be made into an indictable offence.

The seminar was held at Bandarawela following a request from the Bandarawela Bar Association, and was in line with the Trust's desire to hold activities in regional centres.

LAW AND SOCIETY TRUST WEEK

The third *Law and Society Trust Week* was held from 20 to 26 July 1993. The purpose of the week is to focus attention on the work of the Trust and on the law. Six activities were held during the week. The major activity of the Law & the Economy programme, the two day National Conference on Law & the Economy was held, along with a seminar and symposium in the Constitutional & Institutional Reform Programme, and a lecture by the National Director of the Lawyers for Human Rights in South Africa. A street play, *Hopper Divided into Two*, was held at the Law College and at Colombo University. A major event of the week was the ceremonial presentation by Dr J A L Cooray of his Human Rights Collection to the Trust. The Hon. S Sharvananda, Governor of the Western Province, accepted on behalf of the Trust.

SAARC WORKING GROUP ON HUMAN RIGHTS, DEMOCRACY & CIVIL SOCIETY

Outline

In 1992 the Trust established a Regional Working Group on democratic governance and human rights protection for the SAARC region. The group allows human rights organisations to share experiences in upholding human rights standards, and to reflect on how to respond to new problems and challenges in the field. One aim of the group is to encourage the SAARC countries to become signatories to international covenants, and to encourage them to monitor the conformity of domestic laws and policies with international standards. The Working Group also examines problems of institution building and the strengthening of the electoral processes in the SAARC countries.

Working Group Meeting

18 February 1993, Colombo

The major discussion revolved around the forthcoming World Conference on Human Rights to be held in Vienna in June 1993. Strategies were discussed and all agreed that the first point of reference lies with influencing the positions taken up by the governments in the region. Various suggestions regarding lobbying initiatives, and the setting up of a group assigned specifically to this task were discussed.

The decision was taken to appoint two representatives from each country in South Asia. These representatives would undertake lobbying efforts in respect of their governments, certain identified key members of Parliament and Ministers. A second decision was taken to encourage propaganda, develop public awareness and encourage people to participate, and take an interest in the Conference. Addresses of possible sources of funding in relation to the attendance of both the Regional Meeting and the Conference in Vienna were distributed, along with sources of further information. The meeting was attended by 13 delegates from India, Bangladesh, Nepal, Pakistan and Sri Lanka.

World Conference on Human Rights: Regional Meeting for Asia

29 March/ 2 April 1993, Bangkok

The Trust convened a small group of South Asian human rights NGOs at the Bangkok meeting, with the aim of providing an informal exchange of ideas on the agenda of the World Conference between NGO representatives and their government counterparts. A position paper was prepared by LST staff & consultants and circulated prior to the meeting. Following preliminary meetings in Bangkok the Trust made an oral presentation to the Regional Meeting on 1 May 1993, calling for the incorporation of international human rights standards in domestic law. The Trust endorsed the ideas contained in the NGO Bangkok Declaration, and called upon the meeting to recommend to the World Conference steps to strengthen mechanisms for the protection and promotion of human rights. It also called upon the meeting to recommend that all states make an unambiguous public commitment to all human rights, and that this be followed up by the ratification of all major international human rights instruments.

Human Rights in South Asia, Symposium

15 June 1993 at The Vienna International Centre

The symposium was organised by the Trust with the objective of developing a human rights agenda for South Asia, having regard to the priorities and strategies that need to be adopted by civil society institutions. It was argued that it was civil society institutions which could play a creative role in reconceptualising South Asia as a region which was held together by a common commitment to values such as pluralism, democracy, human rights and respect for diversity.

Participants were asked to review the Ahungalle Report of the Trust, which developed a human rights agenda in relation to civil political rights, socio-economic rights, group rights & gender issues, and to ask whether the ideological challenges to pluralistic and democratic values called for new strategies to empower civil society institutions. The symposium was presided over by Asma Jahangir, Secretary-General of the Human Rights Commission of Pakistan.

Working Group Meeting
12 December 1993, Dhaka

The participants decided to hold a consultation running parallel to the SAARC Heads of State summit scheduled for late 1994 in New Delhi. Decisions were taken to draft a common NGO position on the functioning of the voluntary sector in the region, and to call upon South Asian governments to examine the feasibility of devoting at least 1% of GDP to the promotion of democratic institutions. The Group agreed that all countries in the region should produce a well documented annual report on the status of human rights, and called for all SAARC countries to ratify all the international instruments and their optional protocols. The meeting was attended by 9 delegates from Sri Lanka, Bangladesh & India.

RELIGION AND THE LAW

Outline

In 1991 a series of symposia on Religion and the Law was initiated by the Trust. The 1991 topic was Buddhist Ecclesiastical Law, and in 1992 Christianity, Law and Society.

Goal

- The promotion of inter-religious understanding

Activity

Islamic Law symposium

28 August 1993

Speakers: M H Mohamed, The Hon. Speaker
Saleem Marsoof, Deputy Solicitor General
Jezima Ismail
Izeth Hussain

A feature addressed was that as Muslims believe that Sharia Law is Divine Law, they should be uncompromising in their strict adherence to the injunctions of the Holy Quran and the Sunna of the Holy Prophet, as the only path to salvation of the Umma, the Muslim community; and that no Muslim can act outside this framework. Comments were made on the place of women in Islam, the Islamic laws of adultery, and human rights. It was further noted that Islam was the first social system which recognised the human status of women and conferred on them the highest dignity and honour. However, it was noted that although the rights of women are guaranteed by the Holy Quran, history after the Quran and the Holy Prophet seems to have taken away the spirit of equality and left in its place misinterpretations that have affected the status of women negatively. In relation to the legal status of women, the areas focused on were marriage, polygamy and divorce.

The historical background of Muslim charitable trusts and religious institutions was discussed and an evaluation was made of the existing law and institutions.

It was argued that the resistance to change in the field of Islamic law is the result of an exceptionally strong hierarchical drive in Islamic societies, which itself is the consequence of the strongly egalitarian character of Islam. Observations were made on hierarchy and equality, and the operation of the two conflicting drives were examined under democracy and communism, setting Islamic law in its historical context.

NGOs: THEIR FREEDOM AND ACCOUNTABILITY

Outline

The project involves a study of the existing and emerging relationships between the state and NGOs, and between different NGOs. The legal and constitutional framework within which NGOs function in the South and South-East Asian region will be studied. It will consider the legal impediments that state governments have attempted to use to prevent the effective functioning of NGOs in the region.

Goals

- To prepare the NGO community for possible action which may be taken against it by government.
- To explore methods through which NGOs could prevent or mitigate the effects of future controls & regulations.
- To develop a legal & regulatory model which will enable NGOs to protect their freedom of association.
- To seek ways to ensure NGO accountability.

Project Co-ordinating Group

Godfrey Gunatilleke, Director, MARGA

Charles Abeysekera, Chairman, MIRJE

Neelan Tiruchelvam, Director, Law & Society Trust

Activities

The Trust commissioned papers from India, Pakistan, Bangladesh, Nepal and Sri Lanka on the constitutional framework within which NGOs function. The study also examined whether such control is reasonable, and does or does not hamper the independence and effective functioning of the NGOs, whilst providing information which the state legitimately requires. The original project was completed in late 1993, and if further funding is granted (in 1994) the following activities will be undertaken:

- Preparation of a considered response to the NGO Commission Report and the emergency regulations.
- Organisation of a national consultancy with a view to evolving a consensus on the response, and to take other steps to influence government decision making.
- Collaboration with concerned professional organisations, NGOs and donor agencies to develop an effective response to the Regulations and to consider alternative acceptable solutions, including a voluntary Code of Conduct.

LEGAL PERSONALITIES OF SRILANKA

For several years the Trust has been conducting a series of lectures on legal personalities of Sri Lanka. In 1993 one activity was held.

Lecture on James Peiris

9 February 1993

Speaker: Mark Cooray, Professor of Law, Macquarie University

LAW AND THE ECONOMY

Outline

The Core Group on Business Law & Economy was established in 1991, having regard to the policy of economic liberalisation and private sector developments, and its impact on the law and on legal institutions. It aimed to upgrade indigenous legal skills on matters relating to commercial law, negotiation of international business and financial transactions, regulation of investment and multi-national corporations. Funding for the Core Group activities was completed during 1993, and the Trust initiated a number of activities in the field of law & the economy

Goals

- To develop and strengthen the capacity of the Sri Lankan professional to assist in the restructuring of the economy and the developmental process in general.
- To develop a core of legal experience and expertise to which state corporations, regulatory bodies and private enterprises could have access.
- To contribute to the more effective structuring of contractual arrangements between Sri Lankan and foreign enterprises, and to minimise the need for costly litigation and arbitration arising out of disputes which were not effectively anticipated.
- To develop teaching materials, manuals and case books which would be of benefit to legal and professional education in Sri Lanka, and to continuing education.

Activities

A number of seminars, workshops and lectures were held during the year, including a two day national conference. The lectures, seminars, two workshops and internships and training programmes were funded by the Asia Foundation as part of a two year programme, whilst the National Conference and two day Workshop on International Finance were funded by the Trust.

National Conference: Law and the Economy 23/24 July 1993 at BMICH

The conference was a major aspect of the programme to upgrade skills relating to commercial law, and focused on seven key areas of the economy, and regulatory change within those areas. Seven panel discussions were held over the two days of the conference. 90 participants attended, including young professionals from various government departments, the private sector and private bar.

- *The Stock Exchange & Capital Market Development*
Papers: Arittha R Wikramanayake, Dir Gen, Securities & Exchange Comm
K Kanag-Isvaran, President's Counsel
Moderator: Gishan Dissanayake, Lecturer, University of Durham
Panel: V H Pandya, Senior Exec Dir., Securities & Exchange Board, India
Arittha R Wikramanayake, Dir Gen, Securities & Exchange Comm
K Kanag-Isvaran, President's Counsel

The panel focused on Sri Lanka's developing Stock Exchange and the procedures of the Securities & Exchange Commission. The constraints which inhibit the growth of the Stock Exchange, including the small scale local economy, the lack of information, liquidity, low threshold levels for companies to list and other issues were discussed, including the slowness of the legal process.

TRUST STAFF
1993



LAW & SOCIETY TRUST WEEK
JULY 1993

*Seminar on
"The Writ of
Habeas Corpus"*



*Presentation of
Books by the Librarian*



Street Play



"LAW & THE ECONOMY"

*National Conference on
"Law & the Economy" at
the BMICH - July 1993*

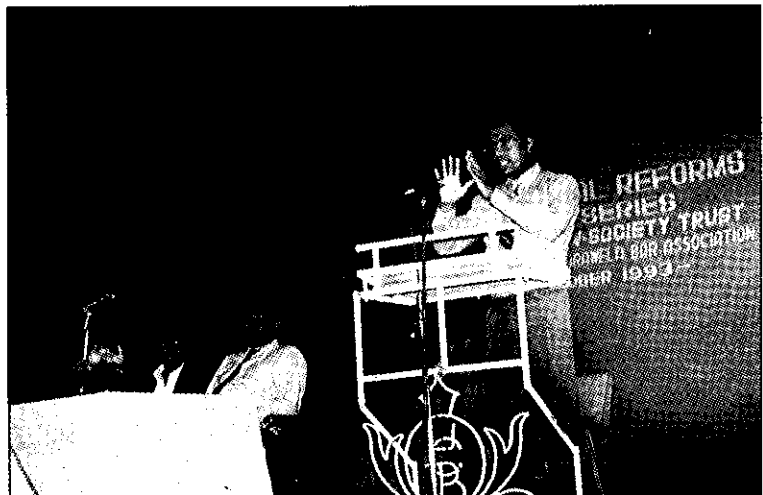


*Workshop on "International
Finance" at the Ceylon
Chamber of Commerce -
December 1993*



OUTSTATION PROGRAMME

*Outstation Programme at
Bandarawela - October 1993*



PROGRAMMES AT THE TRUST

*Public lecture:
"New Incentives for Foreign
Investment in Sri Lanka"*



OTHER PROGRAMMES

*Presentation of report on
"Consumer Protection and
Fair Trading in Sri Lanka" to
Hon. A.R. Munsoor
Minister of
Trade & Commerce.*



1993 INTERNS WITH STAFF



- ***Industrial Policy and The Industrialisation Commission***
Papers: Austin I Pulle, International Corporate Lawyer
Malathi Knight, Research Assistant, Law & Society Trust
Moderator: Sharmini Mahendran, Consultant, Law & Society Trust
Panel: Arjuna Mahendran, Director of Policy, Industrialisation Comm
Austin I Pulle, International Corporate Lawyer
Saman Kelegama, Fellow, Institute of Policy Studies

The panel addressed the Government's Industrial Policy and the work of the Industrialisation Commission. It examined the need for transparency in government procedures and decision making, and the need to discourage favouritism in the allocation of bids & tenders in the privatisation process. The need for foreign investment specialists was noted, along with the need to pay special attention to labour problems.

- ***The Fair Trading Commission (FTC)***
Paper: Yohesan Casie Chetty, Attorney-at-Law
Moderator: F D C Wijesinghe, Former Member & Chief Economist, FTC
Panel: David Goddard, Partner, Chapman Tripp Sheffield Young, NZ
Saman Kelegama, Fellow, Institute of Policy Studies
Yohesan Casie Chetty, Attorney-at-Law

The panel dealt with the growing number of consumer problems arising from the deregulated and growing economy, and made a number of recommendations relating to the structure of the FTC. These included the separation of the investigative and judicial functions, the need for Presidential appointments to the FTC and for the Commission to be a truly independent body.

- ***Company Law Reform***
Paper: David Goddard, Partner, Chapman Tripp Sheffield Young, NZ
Moderator: Neelan Tiruchelvam, Director, Law & Society Trust
Panel: David Goddard, Partner, Chapman Tripp Sheffield Young, NZ
Allan Wijeyekoon, Former Registrar of Companies

The panel addressed the nature of the corporate entity in Sri Lanka, along with the changes to corporate law aimed at dealing with the new problems which inevitably arise in a rapidly developing economy. Issues covered included local constraints inhibiting the growth of public companies, the effect of strict tax & disclosure laws, and the problems of protection of minority shareholders and the liability of directors.

- ***Intellectual Property Law***
Papers: J M Swaminathan, Partner, Julius & Creasy
D M Karunaratna, Registrar, Patents & Trademarks
Moderator: Beverly Miranda, Legal Officer, Nestle Lanka Ltd.
Panel: J M Swaminathan, Partner, Julius & Creasy
D M Karunaratna, Registrar, Patents & Trademarks
K Kanag-Isvaran, President's Counsel

The panel addressed the current state of intellectual property law in Sri Lanka, and found that although reform of the law is needed, there is a danger that by putting in place stringent laws protecting intellectual property, the cost of technology will be raised to levels inaccessible to the average Sri Lankan user. A number of amendments to the Code of Intellectual Property were proposed.

- **Foreign Investment Laws & Policies**

Paper: R Senathi Rajah, Partner, Julius & Creasy
Moderator: Jayantha Dhanapala, D-G, Economic Affairs, Min. Foreign Affairs
Panel: Austin I Pulle, International Corporate Lawyer
R Senathi Rajah, Partner, Julius & Creasy
T Jeyarajasingham, Labour & Industrial Relations Consultant

The panel examined the extended powers of the Board of Investment and their impact on foreign investment. The issues of foreign currency regulations, labour laws, the trade union movement and its impact on the FTZ and the investment environment were examined.

- **Commercial Arbitration**

Papers: Professor Sornarajah, Faculty of Law, University of Singapore
M Shibly Aziz, Solicitor General
Moderator: Lucien G Weeramantry, Attorney-at-Law
Panel: M Shibly Aziz, Solicitor General
Mark Fernando, Justice of the Supreme Court
A R B Amerasinghe, Justice of the Supreme Court

The panel outlined the problems inherent in the commercial arbitration process, and the dangers to Sri Lanka in allowing the process to be handled in foreign countries as an extension of the trend to make investment in Sri Lanka attractive to foreign companies. It was seen to be of overriding importance that an adequate system of commercial arbitration be set up, possibly governed by international rules of procedure.

Public Lectures

Promotion of Private Infrastructure Projects (PPI Project)

24 March 1993

Speaker: Paul A Lynch, Chief of Party, PPI Project, Secretariat for Infrastructure, Investment & Development

The government is pursuing a policy of encouraging private enterprise to encourage the development of infrastructure facilities to cope with the economic liberalisation process. Mr Lynch discussed the PPI Project, and described the "Build-own-operate" and "Build-own-operate-transfer" (BOO/BOT) approaches successful in several developing countries.

New Incentives for Foreign Investment in Sri Lanka

21 June 1993

Speaker: Lakshman R Watawala, Former Director General, BOI

Economic liberalisation measures undertaken by the Government to encourage the inflow of foreign capital have concentrated on the Colombo Stock Exchange, Greater Colombo Economic Commission (GCEC) and the Department of Exchange Control. The speaker detailed the incentives offered by the BOI to attract potential investors, including tax holidays & concessions, duty free import of plant & equipment, repatriation of dividends, free transferability of shares and the right to 100% foreign ownership.

Labour laws & Privatisation

29 June 1993

Speaker: T Jeyarajasingham, Labour & Industrial Relations Consultant

A liberalised policy over the last fifteen years has created the environment for vast foreign investment in Sri Lanka, but labour laws have not been modified to match new structures. The speaker covered the areas of labour laws & foreign investment, the multiplicity of labour laws, the Industrial Disputes Act, termination of employment, payment of gratuity, leave, hours of work, apprenticeship, business acquisition and trade unions.

Seminars

Registration of Trademarks

27 February 1993

Chairman: D M Karunaratna, Registrar, Registry of Patents & Trademarks
Speaker: J M Swaminathan, Partner, Julius & Creasy
Moderator: Beverly Mirando, Company Sec/Legal Officer, Nestle Lanka Ltd.

The speaker detailed the general principles of Trademark law, and its overlap with copyright, invented words, laudatory works, slogans and the infringement of trademarks. The discussion focused on the problems experienced with regard to the application for Trademarks and at the Registry of Patents & Trademarks. Mr Karunaratna responded to questions, and agreed that changes to procedures were necessary to enhance efficiency.

Labour & Privatisation of Plantation Management - Emerging Policy Issues

20 March 1993

Speaker: Sunil Bastian, Research Co-ordinator, ICES
Chairman: T Jeyarajasingham, Labour & Industrial Relations Consultant

The speaker outlined the period of state intervention in the plantation sector, the post liberalisation period, labour in the process of privatisation, plantation profitability and possible strategies to deal directly with the labour unions. The presentation was followed by a Working Group Meeting, chaired by Mr Jeyarajasingham on the policies necessary to manage capital labour relations in the plantation sector.

Workshops

The Fair Trading Commission (FTC): an Evaluation

22 May 1993

Speakers: Saman Kelegama, Research Fellow, Institute of Policy Studies
Yohesan Casie Chetty, Attorney-at-Law

The speakers presented the outcome of the study they had conducted for the Trust on the FTC for comment prior to presenting the final report. Dr Kelegama made the distinction between the adjudicative and investigative function, and suggested the setting up of a Competition Tribunal, as well as the necessity for an economist and lawyer on the Commission. Mr Casie Chetty focused on amendments necessary to the Fair Trading Commission Act, and stressed that the concept of politicisation was prevalent throughout the Act. It was suggested that Ministerial control be removed and a Presidentially appointed FTC be established.

On 14 October 1993, the *Fair Trading Commission Study* was formally presented to the Hon A R Mansoor, Minister of Trade & Commerce.

New Principles of Liability in Maritime Transport

26 June 1993

Chairman: Anton Alfred, State Sec. to the Minister of Ports & Shipping
Speaker: Geetha Karandawala, Lecturer, Australian Maritime College

There is a need to create a new legal regime to regulate the relationship between parties in the maritime transport chain. The speaker examined the role of the key players in the carriage of goods by sea, the changing nature of risks involved, and the apportioning of those risks.

International Finance
17 & 18 December, 1993

A two day workshop with three sessions designed to raise and discuss issues affecting the raising of finance in the external private sector, to provoke discussion and suggest possible reforms.

- **Foreign Direct Investment**
Speaker: Arjuna Mahendran, Deputy Director, Fiscal Policy and Secretary,
Financial Sector Reform Committee
Session Leader: K Kanag-Isvaran, President's Counsel

The paper covered the forms in which there may be foreign direct investment, and assessed Sri Lankan legislation and its effect on foreign direct investment. The procedural and formal aspects of intercompany loans and the drafting of documentation were examined during the session.

- **Project Lending**
Speaker: Derrick Juriansz, General Manager, Public Bank Berhad
Session Leader: Prasanna Jayawardena, Attorney-at-Law
Commentator: A L Somaratne, Assistant G M, National Development Bank

The paper examined project lending and its problems, both legal and logistic, and its applicability to Sri Lanka in the light of the work of the Secretariat for Infrastructure Development & Investment (SIDI). The participation session examined the documentation required for a project lending transaction and techniques for the enhancement of the lender's security position.

- **Joint Ventures**
Speaker: James Low, Partner, Khattar Wong & Partners, Singapore
Session Leader: Kanaga Dharmananda, Visiting Fellow, Law & Society Trust
Commentator: L J Isaac, Director- Promotion, Board of Investment of Sri Lanka

The key paper examined the major legal issues that must be addressed in joint venture documentation, whilst the participation session addressed issues concerning negotiation and cultural differences, and an approach to negotiation. A mock negotiation session was conducted.

Training Programmes / Internships under the Core Group

Ms Chandra Joseph, a member of the Trust's Core Group on Business Law & the Economy & Attorney-at-Law went to Singapore on a training programme from 17-25 September 1993. Ms Joseph studied company law reform including procedures relating to the winding up of companies, and reform of the laws relating to commercial arbitration. In 1994 a workshop and seminar on these topics is planned.

Ms Chulanthi Ranasinghe was granted a three month internship relating to the textile industry, from 15 November 1993 to 15 February 1994. The area of the study comprises:

- the Multi Fibre Agreement quota system in the United States & Europe.
- legal & policy framework relating to the allocation of textile quotas in Sri Lanka.
- problems faced by textile manufacturers.
- proposals for reform.

Ms Samantha Subasinghe began an internship at the Securities & Exchange Commission in November 1993, to be completed in April 1994. The area of the study comprises:

- the historical development of the SEC.
- the various functions performed by the SEC.
- classification of the various areas regulated by the SEC into broad categories, and the identification of the relevant Statutory provisions governing each category.
- analysis of the respective Statutory Provisions.

Mr A R M Faiz undertook an internship at the Securities & Exchange Commission, the first phase of which took place from October to December 1993. The internship will continue for several months of 1994. The project is a study of securities law in Sri Lanka with the aim of producing a single document containing the law relating to Securities.

INTERNSHIP PROGRAMME

In 1990 the Trust commenced an Internship programme which aims at forging links with institutions in other parts of the world. The Trust provides the visiting intern with institutional & other support, and the intern in turn makes a contribution to the activities & programmes of the Trust. In 1993 five interns took part in Trust activities: Orlantha Ambrose, Anurag Das, Josh Moore, Natasha Balendra & Nilmini Gooneratne.

OTHER ACTIVITIES

Common law - Keeping People out of Sin (Lecture)

7 February 1993

Speaker: Mark Cooray, Professor of Law, Macquarie University

Human Rights & Democratic Transition in South Africa (Lecture)

20 July 1993

Speaker: Brian Curran, National Director, Lawyers for Human Rights in South Africa

Rights of the Child, and Child Abuse, a symposium by Members of Plan International

10 September 1993

Human Rights & Civil Society (Symposium)

13 September 1993

Speakers: Justice Krishna Iyer
Kamal Hossain

Equality, Affirmative Action & Quotas (Lecture)

28 September 1993

Speakers: Gayle Binion, Professor of Political Science, University of Southern California, Santa Barbara
R K W Goonesekere, Attorney-at-Law

DOCUMENTATION, LIBRARY & PUBLICATIONS

LIBRARY

The library collection at the end of 1993 numbers 4733 monographs, along with substantial collections of periodicals, workshop, seminar and conference papers, and the Trust's own publications. There are approximately 25 periodical titles on display, most of which are received in exchange for the Fortnightly Review of the Trust.

The library is organised under the Universal Decimal Classification Scheme, with an author and subject catalogue. A major aim of the Trust is to update the library to one of the premier research law libraries in Sri Lanka.

Special collections include *The Sam Kadirgamar Collection*, first opened in 1991, consisting of a substantial number of legal texts, and Indian, English, South African & Sri Lankan law reports. *The Canada Section*, set up with the assistance of the Canadian International Development Agency, is a collection of the Dominion Law Reports & a complete collection of the Osgoode Hall Law Journal. The library also holds US Law Reports (such as *Corpus Juris Secundum* and *US Supreme Court Reporter*), and the Indian Supreme Court cases. Sri Lankan publications, including Legislative Enactments, Law Reports, and Acts of Parliament are collected.

The Scholarly Writings of Professor G L Peiris, a bibliography by the Trust Librarian, Ms Tilaka Fernando, was presented at a Trust function, presided over by the Chief Justice, Hon. G P S de Silva, on 22 March 1993.

PUBLICATIONS

The Law & Society Trust Review

The Law & Society Trust Fortnightly Review was launched in 1990, and has been published on a fortnightly basis since. The Fortnightly Review, edited by Angela Hussain, is a unique newsletter devoted to contemporary socio-legal problems, economic trends in Sri Lanka, the region and further afield. In the forefront of Sri Lankan alternative media, it comments on current issues and surveys legal developments of growing importance. Initially, many of the articles were written by Trust staff members, but with time the review was able to feature pieces by both local and international experts.

In 1993, the Fortnightly Review has focused on issues of human rights, the political crisis & peace process, constitutional change, the federal system and NGOs. Additionally, the Review featured a number of papers presented at Trust seminars & workshops, including an issue devoted to the Symposium on Islamic Law. The Review regularly features reviews of new socio-legal publications and appraisals of current amendments to the law.

The Fortnightly Review is distributed to private subscribers and public institutions in thirty countries, and issues are available for a nominal fee. An annually compiled, bound and indexed copy of the Review is also available from the Trust.

Trust Monographs

GOMEZ, Mario.

Legal education for social change.
Colombo, Law & Society Trust, 1993.

The book looks at legal education against the backdrop of the large scale disillusionment with the law in Sri Lanka. It examines the manner in which the Sri Lankan legal system trains its lawyers and also explores some avenues of reform. It also looks at legal education in the framework of an imposed legal system and the failure of legal professionals to respond to the inequalities and injustices created by colonialism.

EVERDING, Ulrich, *editor*

Problems of democracy, constitutionalism & political violence: German - Sri Lankan consultations.

Colombo, The Goethe-Institut & The Law & Society Trust, 1993.

The papers in the book are the result of a meeting of German & Sri Lankan specialists organised by the Goethe-Institut, The Law & Society Trust and the University of Colombo, which was an exchange of views on areas including democracy, constitutionalism and political violence.

Occasional Paper Series

KELEGAMA, Dr Saman & Yohesan Casie Chetty.

Consumer protection & fair trading in Sri Lanka.
LST Occasional Paper no.2, August 1993.

STAFF ACTIVITIES, PUBLICATIONS ETC.

Mr Mario Gomez

Mr Gomez is a consultant researcher to the Trust, and teaches Law at the University of Colombo. He was also the Director of the University Legal Aid Centre. During 1993 he attended the SAARCLAW Conference in Karachi (February), the UN Conference on Human Rights in Vienna (June) and the Pre-conference meeting in Bangkok (April), and the Partnership in Action (PARINAC) a UNHCR sponsored meeting on refugees and displaced persons in Kathmandu (November). Publications include:

- Legal education for social change.
Colombo, Law & Society Trust, 1993.
- In the public interest: essays on public interest litigation & participatory justice.
Colombo, Legal Aid Centre, University of Colombo, 1993.
- In the democratic interest; paper presented to the SAARCLAW Conference,
Karachi, February 1993.
- Socio-economic rights and the Human Rights Commission; paper presented at
LawAsia 1993, September 1993.

Ms Sabina Fernando

During 1993 Ms Fernando attended the UN Conference on Human Rights in Vienna (June), the Pre-conference meeting in Bangkok (April), the SAARC Working Group meeting in Dhaka (December) and the AMIC Conference on *A Legal Framework for Satellite Broadcasting*. She was also involved in the organisation of LST programmes, including NGOs; Their Freedom & Accountability, the SAARC Working Group, and Constitutional & Institutional Reform. Ms Fernando was also involved in the preparation of LST comments on the Vienna World Conference on Human Rights, and the Bangkok preliminary meeting. Publications include:

- Status of NGOs in Sri Lanka; Research paper.
- Divorce & the customary laws of Sri Lanka; Research paper.
- Review of the National Communications Policies and legal framework affecting broadcasting.

Ms Nandini Samarasinghe

Ms Samarasinghe is a legal consultant to the Trust, and during 1993 was involved in the training of law enforcement officers for the Police Training Unit; was a member of the Drafting Committee of the Women's Charter; and took part in the deliberations on the Report of the Implementation of the Convention on the Rights of the Child, as a member of the special NGO Committee on Rights of the Child. During 1993 she attended the South Asia Conference of Lawyers & Judges (Colombo, February), the UN Conference on Human Rights in Vienna (June), and the Commonwealth Workshop on Legal Literacy (Colombo, August); and as a panelist & resource person Women's Rights as Human Rights (VIKASHA, Colombo, March), and LAWASIA 1993 (Colombo, September). Publications include:

- Status of women in South Asia; feature article for the Women's Day supplement issued by the Ministry of Women's Affairs.
- Violence against women. (monograph to be published in 1994)
- Discourse on rights and gender equality; paper presented at LawAsia 1993, September 1993.
- Violation of women's rights by contemporary socio-political developments; paper presented at VIKASHA Workshop, March 1993.

Ms Sonali de Silva

Ms de Silva co-ordinated the activities of the Business Law & the Economy Core Group, including performing the administrative functions for the National Conference on Law & the Economy and the two day Workshop on International Finance, and organised the placements of interns at various institutions.

Mr Kanaga Dharmananda

Mr Dharmananda was a Visiting Fellow to the Trust from October 1993 to January 1994. His activities whilst at the Trust included the co-ordination of the Workshop on International Finance, the initiation of planning for the 1994 Conference on Law & the Economy, and the development of the proposed Legal Publications Project. Mr Dharmananda was a member of the SAARC NGO observer mission to monitor the Pakistan general elections in October, edited the final report of the mission; and presented a paper at the Constitutionalism & Politics conference organised by the Czecho-Slovak Committee in Bratislava (November). His publications include:

- Constitutional transition in Kazakhstan; paper presented at Constitutionalism & Politics conference, Bratislava, November 1993.
- A discussion of international joint venture negotiation: perceptions from studies & suggestions for practice; paper presented at LST Workshop on International Finance, December 1993.
- Corporate law reform; discussion paper
- Legal and policy framework relating to non-governmental organisations in South Asia; paper

Ms Rangita de Silva

Ms de Silva was a staff member during 1993, and attended the SAARC Working Group meeting in Colombo (February) and the UN Conference on Human Rights Pre-conference meeting in Bangkok (April). Publications include a number of contributions to Law & Society Trust Review and:

- Women & violence; study published by Colombo Legal Aid.
- J A L Cooray - an assessment of his judicial philosophy. (monograph)
- Freedom of expression. (Monograph, not yet published)
- In the interest of women, in Sri Lanka Journal of International Law.

Ms Sharmini Mahendran

Ms Mahendran was a special consultant to the Trust for two months, with the task of organising the National Conference on Law & the Economy. She was also the moderator for the session on *Industrial policy and the Industrialisation Commission* at the Conference.

LAW & SOCIETY TRUST

Statement of grants received and expenditure for the year ended 31 March 93 *

	<u>Rs.</u>	<u>Rs.</u>	<u>Rs.</u>
GRANTS RECEIVED			
Unutilized grants brought forward			5,693,799
from previous year for continuing projects			
Grants received during 1992/93 (note 1)	4,193,858		
Other receipts	<u>64,744</u>	4,258,602	
 LESS EXPENDITURE			
Project Expenses (note 2)	3,103,585		
General Institutional Expenses (note 3)	<u>2,290,529</u>	5,394,114	<u>(1,135,512)</u>
 Unutilised grants carried forward			 <u>4,558,287</u>

Notes:

1. Grants Received during the year 1992/93			
- Working Group on Human Rights & Democracy in the SAARC region - CIDA		1,695,615	
- South Asian Task Force on the Judiciary - ICLD		288,795	
- Institutional support grant (Part) - NOVIB		1,358,948	
- Law & Economy Project - The Asia Foundation		138,000	
- Constitutional & Institutional Reform Project - The Asia Foundation		<u>712,500</u>	
		<u>4,193,858</u>	
 2. Project Expenses during the year 1992/93			
- Law & Economy Project - Workshops & Public Lectures		382,193	
- Constitutional & Institutional Reform Project		120,350	
- Paralegal Training Workshops		380,692	
- NGOs: Their Freedom & Accountability		843,344	
- Working Group on Human Rights, Democracy & Civil Society for the SAARC Region		442,656	
- South Asian Task Force on the Judiciary		282,819	
- Institutional expenses relating to projects		<u>651,531</u>	
		<u>3,103,585</u>	
 3. General Institutional Expenses			
- Staff Overheads		584,495	
- Other Institutional Overheads		<u>1,706,034</u>	
		<u>2,290,529</u>	

* Latest available audited accounts

Note: During 1993 substantial grants for institutional support were received from the Ford Foundation & NOVIB. The Ford Foundation grant was received after this audit.

BOARD OF DIRECTORS

Dr. Nissanka Wijeyeratne
Sri Lankan Ambassador to the Russian Republic
former Minister of Justice

Mr. Walter Laduwahetty
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Mr. Mohamed Hussein
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Dr. Neelan Tiruchelvam
Director, International Centre for Ethnic Studies

Ms. Damaris Wickremesekera
Secretary, Law and Society Trust

STAFF

Accountant

Ms. S. Premarajah

Administration

Ms. Dharshini Mahadeva, B.A. (from July 1993)

Ms. Hema Ekanayake

Publications

Ms. Angela Hussain, B.A.

Librarian

Ms. Tilaka Fernando, ASLLA

Programme Staff

Ms. Rangita de Silva, LL.B. (Colombo), Attorney-at Law (to August 1993)

Ms. Sonali de Silva

Ms. Sabina Fernando, LL.B.(Lon), LL.M.(Sydney)

Mr. Shantha Pieris, B.A.(Uni of Western Aust), LL.B.(Colombo) (Internship to ICJ Geneva)

Mr. Kanaga Dharmananda, LL.B.(Uni of Western Aust), B.C.L (Oxford), LL.M(Harvard)
(Visiting Fellow)

Consultants

Mr. Mario Gomez, LL.B. (Colombo), LL.M. (Monash)

Ms. Nandini Samarasinghe, PhD. Diploma, M.A. (International Relations) (Webster)

Dr. Deepika Udagama, LL.B. (Ceylon), LL.M. (Berkley), J.S.D. (Berkeley)

Ms. Sharmini Mahendran, A.B., J.D.(Harvard) (Consultant to Law & Economy Conference)

Internships

Ms. Orlantha Ambrose University of California, Santa Barbara
late June - September 1993

Mr. Anurag Das Christ College, Oxford
September 1993

Mr. Josh Moore Human Rights Programme, Harvard Law School
20 June - 27 August 1993

Ms. Nilmini Gooneratne Development Studies, University of California, Berkeley
June-August 1993

Ms. Natasha Balendra Kings College, London University
July - August 1993

The Law & Society Trust Logo

The concept of the logo is taken from a folktale widespread in Asia. There was a wise & just ruler who put up a bell in the palace grounds, and said that anyone not satisfied that they had received proper justice could appeal directly to the king by ringing the bell. One day a cow came into the grounds and pulled the bell, its calf had been killed by a careless charioteer driving very fast. The king looked into the matter and found that the driver who had caused the cow's grief was his own son. The king had him executed. In Sri Lanka the king is identified as Elara. The concept is that even an animal is entitled to justice.

Two