THE LEGAL HERITAGE OF SRI LANKA

A.R.B. AMERASINGHE

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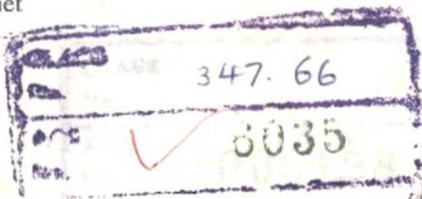
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For

My grandsons

Max, Mohan and Manuwai

The Vēväḷkäṭiya Slab Inscription of Udaya IV (946-954 A.D.)

"The life of the law has not been logic: it has been experience. The felt necessities of the time, the prevalent moral and political theories, institutions of public policy, avowed or unconscious, even the prejudices which judges share with their fellow men, have had a good deal more to do than the syllogism in determining the rules by which men should be governed. The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics. In order to know what it is, we must know what it has been, and what it tends to become. We must alternately consult history and existing theories of legislation. But the most difficult labor will be to understand the combination of the two into new products at every stage. The substance of the law at any given time pretty nearly corresponds, so far as it goes, with what is then understood to be convenient; but its form and machinery, and the degree to which it is able to work out desired results depend very much upon its past."

- Oliver Wendell Holmes Jr., quoted in Max Lerner, *The Mind and Faith of Justice Holmes* "Selections from *The Common Law,*" The Modern Library, New York, 1943, pp. 51-52.

PREFACE

When I delivered a paper at a conference in Sydney in August 1997, on *Judicial Independence - Some Core Issues,* I casually mentioned in my opening remarks that the related concepts of judicial independence and impartiality were very old ideas in the Asian region. I had numerous requests for information on that matter. The number of persons who supposed that judicial impartiality and independence were Anglo-American concepts based on Biblical texts and Rabbinic literature was surprisingly large. Since this work is meant not only for Sri Lankans but also for others, it is necessary to provide some background information and explanations; some Sri Lankan readers would, I expect, save themselves the bother of going through them. On the other hand, placing certain matters in the context of even well-known facts might help to keep them from the dangers of being ill-judged in a vacuum so to speak. Perhaps, some facts might be unknown to even some Sri Lankans. Others may have to have their memories jogged. And, of course, the way in which the evidence should be read might be different. One recalls the incident in which the great Indian advocate, Tyabji, was appearing before a judge who was fond of short arguments. When the judge said: "Mr. Tyabji, we have read the evidence", learned counsel said, "Indeed, Your Lordships, but not in the way I have read the evidence"; and after several days of argument, won his case.

Expectations of 'equitable decisions' and 'justice', in the sense of an accurate decision after a fair trial and impartial and independent adjudication, have indigenous roots that are ancient. An appreciation of the past would, I hope, affirm the commitment of the judiciary to standards of excellence.

In preparing this book my indebtedness has been great.

I am obliged to Professor M.B. Ariyapala and Professor Sirimal Ranawella who read an early draft of this book and offered helpful suggestions.

Professor Ranawella, an exemplar of scholarlike conduct, sent me his unpublished editions of the Badulla Pillar Inscription, the Vannaḍi-pālama Slab Inscription and an extremely useful excerpt of five pages on the Administration of Justice from an article written by him on the Political and Administrative Organization of the Anurādhapura Kingdom which he expected to be published in 1998 by the Ministry of Cultural Affairs in a collection of papers on the History and Archaeology of Sri Laṅkā. I refer to that excerpt as 'History', in the absence of bibliographical data. Professor Ranawella also drew my attention to his article on the system of the administration of justice in Sri Laṅkā from the beginning till 1255 A.D. in *Nīti-vimaṁsā*, pp. 30-38, published by the Law Students' Union in 1977. I am obliged to Dr. Joe Silva, the Principal of the Law College, for furnishing me with a copy of that paper.

My friend of well over four decades, Mr. Sumanasekera Banda, despite problems affecting his eyes, read and re-read the manuscripts, drew my attention to additional information, advised me on several matters, and saved me from some errors. I cannot thank him enough for his extraordinary generosity.

Mr. G.P.S.H. De Silva, an equally old friend, was responsible for urging me to expand what I was doing, and then assisting me in several ways, too numerous to mention. This book would never have seen the light of day but for his enthusiastic collaboration.

I must gratefully acknowledge the loyal support and generous understanding of my wife, Yvonne, during my work on this project, as indeed always, during almost four decades.

I am obliged to Dr. Malani Dias for providing me with an ink estampage of the Vēvälkäṭiya inscription, a photograph of which was made under the supervision of Ms. Sharmalica Fonseka of Plāté Ltd. and is reproduced at p. viii above.

I am grateful to Mr. Harsha Fernando for helping in the proof-reading of the notes, and to Mr. M. Deva Raju for technical

assistance cheerfully given. Thanks are also due to Mr. Susiri de Silva for his encouragement and support.

I need hardly add that I am solely responsible for any errors that remain. The views expressed are my own and do not necessarily represent the views of the co-sponsors and publishers - the Royal Asiatic Society and the Law and Society Trust, and Sarvodaya Book Publishing Services - or of any person who assisted me in the preparation of this work.

No leave of absence from my duties was obtained for the writing of this book. I received no financial assistance during the preparation of this work and I shall not receive any financial benefits after publication. The work was researched, written and typed by me personally. I am grateful to my Secretary, Mrs. S.B. Nanayakkara, for obtaining hard copies of several drafts.

R. Amerasinghe.

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CHAPTER I

INTRODUCTION

One of Sri Laṅkā's great jurists, the late Mr. Justice James Cecil Walter Pereira, K.C., in *Re Vanny Aiyar*[1] said: "A Ceylon court of justice is a British court of justice."

Admittedly, today the administration of justice in Sri Laṅkā is essentially based on the English model. It has been so for over 184 years. Commenting on the famous compliment paid to the judges of England - "If justice had a voice, she would speak like an English Judge" - Lord Denning[2] said: "... the only quality which the judges have to merit this tribute is that they, each and every one of them seek to be fair. Every judge in England will see to it that every man coming before him has a fair trial. To this end there are many principles." The first and most important principle is that judges should be independent. It is also essential that they should be impartial and administer the law fairly. When we reflect on the past, it helps us to understand that these indispensable elements in the proper administration of justice in a modern state have roots that go back over two millennia, in Sri Laṅkā and some other Asian countries; that is an additional reason why they deserve to be safeguarded. Changes and alterations in condition or fortunes have not affected these values which deserve therefore to be regarded as an essential part of our way of life.

I have attempted to present an outline of the way in which the administration of justice took place in the "early days" in the light of the available evidence, including information gathered from the ancient inscriptions on stone tablets, slabs and pillars and copper plates, old chronicles and writings, and the works of modern scholars.

A Professor of Legal History in the University of London, S.F.C. Milsom,[3] two decades ago observed: "Legal history is not

unlike that children's game in which you draw lines between numbered dots, and from the jumble a picture emerges: but our dots are not numbered ..." Connecting unnumbered dots was one of my problems; additionally, owing to the paucity of material and the fact that available information was scattered here and there, finding the dots was a difficult matter; to arrange them so that they might be linked eventually to present a picture, was an equally formidable task. I feel certain that many other dots have yet to be found, and so the picture is far from complete: There are things unattempted yet for want of information.

I hope others will be stimulated (or provoked) into advancing our knowledge. The picture I now present, no doubt, must be altered when forthcoming evidence and scholarly arguments require it: I make no dogmatic pronouncements. What I say is provisional. One of the exciting realizations during modern times is the fact that there are no absolutes: there are no infallible conclusions; all conclusions are tentative: there is always more information to be found, and earlier conclusions must be altered in the light of new evidence and fresh argument. It is hoped that through a collaborative process of consultation between anthropologists, archaeologists, epigraphists, historians, lawyers, philologists, and sociologists, what I have said will be corrected and supplemented. There is, however, this statement by Milsom, with which I find myself in agreement: "... no major proposition in legal history is ever likely to be final, and ... any single picture must be a personal one."

In every community, ancient or modern, economic, social, philosophical, technological and political changes make it necessary for concepts, laws, rules, procedures, institutions and terminology in its legal system to be adjusted and altered. My limited purpose is to get at a conspectus of the system, to reach a tentative understanding of the general current of affairs relating to the administration of justice, rather than to describe minutely any specific feature of that system at a particular period.

The transfer of property, donations, mortgages, debts, contracts, inheritance, marriage, divorce, adoption, guardianship, and so on, were regulated by indigenous law at the time the British annexed the Kandyan Kingdom. However it is of little or no purpose for the present exercise to examine the pristine laws governing those matters. Aspects of crime and punishment, however, have been examined in some detail because they had a bearing on more general aspects of the administration of justice and on the replacement of legal institutions and the common law of Sri Laṅkā.

F.A. Hayley[4] observed that "At the time of the Kandyan Convention, Sinhalese law was the common law in the strictest sense". It was the law of the land applicable to all persons. In 1820 the Kandyan Chiefs advised the Board of Commissioners that disputes between Hindus had always been decided according to 'Kandyan' (Sinhalese) law.[5] It was held that the 'Kandyan' (Sinhalese) law applied to Muslims.[6] In *Kershaw* v *Nicholl*[7] it was held that a European wife of a European man domiciled in the Kandyan provinces was governed by 'Kandyan' (Sinhalese) law. However, in *Williams* v *Robertson*[8] the Supreme Court overruled the decision in *Kershaw* and declared the 'Kandyan' (Sinhalese) law, which had once been the law applicable in the highlands and in the low country to all Sri Lankans, to be merely a personal law.[9] Although the reasoning in the case is flawed, it came to be accepted in subsequent decisions. Even as a personal law, with restricted application, so many statutory changes were made that what is left has been described as 'Anglo-Kandyan law'. However what I am concerned with in this book is what Hayley described as "the common law in the strictest sense" and the legal institutions for the administration of justice according to that law.

CHAPTER II

THE PERIOD UNDER CONSIDERATION

I have endeavoured to present an outline of the Sri Lankan system of the administration of justice - call it indigenous, local, or vernacular if you will - in pre-colonial days. By that I mean the period before the British annexation of the last Kingdom of Sri Laṅka in 1815. The Dutch (1640-1796) in the maritime areas, and the British (1796-1948), throughout the country, introduced changes of great and lasting importance in the legal system and administration of justice. I do not deal with those changes, except in passing. They are comprehensively dealt with by Professor T. Nadaraja.[1] I do, however, deal with the destruction of the traditional techniques of dispute resolution at some length because it is necessary to understand why the adversarial system introduced by the British has progressively brought the administration of justice to near collapse. The indigenous system of the administration of justice, as it were, flickered awhile under Dutch and British rule before it was to some extent doused by the Proclamation of Governor Brownrigg on 21 November 1818, and virtually snuffed out by the Charter of Justice of 1833 and subsequent legislation. But then, as we shall see, some principles of the local laws and customs survived in what came to be known as the "Kandyan Law".

If the more proximate limit of "early days" is blurred, the limit of the remoter past, is even less clear.

Fa Hsein, a Chinese traveller who had visited Sri Laṅkā in 411 AD and lived there for two years[2] concluded that the country "originally had no human inhabitants, but was occupied only by spirits [*yakṣas*][3] and *nāgas*[4] with which merchants of various countries carried on a trade." Commenting on that statement, K.M. De Silva[5] observed: "Fourteen hundred years later, our knowledge of the pre-Aryan inhabitants of the island is

almost as hazy as this even if we no longer believe in 'spirits and *nāgas*'."

Much work has been done in recent times on the pre-history of Sri Laṅkā, and prehistoric archaeology proves beyond doubt that man had arrived and lived in the Island long before the Indian migrations that are represented by the coming of King Vijaya and his followers some time in the fifth century before Christ.[6]

S.G.M. Weerasinghe[7] stated that the people who resided in Sri Laṅkā before the arrival of Vijaya had their own laws derived from custom.[8] No doubt, they would also have had procedures and machinery for the enforcement of those laws. However, we know nothing about the administration of justice of the indigenous people who inhabited the Island in pre-Vijayan times.

On the other hand, we do have some idea of the administration of justice during the days of the Sri Laṅkan monarchs, beginning with King Vijaya. The *Mahāvaṁsa*[9] stated that Vijaya and his companions, came to Sri Laṅkā after having been banished for misconduct from the Kingdom of Sinhapura in India.[10] It has been suggested that the regnal years of Vijaya were 483-445 B.C., but this is purely traditional.[11]

The Mahāvaṁsa stated that Kuvaṇṇā,[12] a *yakkhinī* (a spirit) - more probably the daughter of a local chief[13] - said to Vijaya: "Spare my life, Sir. I will give thee a kingdom and do thee a woman's service and other services as thou wilt."[14] Kuvanna, "assuming the lovely form of a sixteen-year-old maiden", was taken "blissfully" by the king's son. [15]

K.M. De Silva[16] stated:

> "Beneath this charming exercise in myth-making lies a kernel of historical truth - the colonization of the island by Indo-Aryan tribes from Northern India. The original home of the first Indo-Aryan immigrants to Sri Lanka was probably north-west India and the

Indus region. There was, very likely, a later immigration from the East around Bengal and Orissa ..."

Ralph Pieris[17] observed that "The 'historical kernel' of the Vijaya legend has been worked out by way of philological comparisons between the Sinhalese language and certain Indian dialects."[18]

In this book, I am dealing with a period from King Vijaya, or if the episode relating to his arrival in Sri Laṅkā is, as K.M. De Silva stated,[19] no more than a "charming episode in myth-making", then from the time of the colonization of the island by tribes from India sometime in the fifth century before Christ, to the days of the last king of Sri Laṅkā, Sri Vikrama Rājasiṁha (1798-1815 AD) - a period of about 2500 years.

CHAPTER III

THE EARLY SETTLERS AND SRI LANKAN LAWS

The *Lak Raja Lō Sirita* (the Custom of the Kings and People of Sri Laṅkā)[1] records the following question and answer:

> *Is there any customary law handed down from ancient times before the existence of a King at Kanda Uda Nuvara? By whom and under what circumstances was such law instituted? Has such law been committed to writing?*
>
> If it is asked in what circumstances did a King first appear in this Sri Lanka Dvipa, two thousand three hundred and twelve years ago on Tuesday the Full moon day of the month of Vesak, Vijaya Kumaraya, the eldest of the sons of Sinhabahu, who reigned in the city Sinha Pura in the country of Lala in Dambadiva, came by ship with 700 Yodeyo and landed in Lanka and became King."[2]

The answer is far from satisfactory. The law of the country was essentially the customs *(cārittaṃ)* handed down through generations *(pāramparyakramāgata)*[3] and implemented within the framework of the established courts and tribunals. "The existence of a king at Kanda Uḍa Nuvara" first took place about 1469 A.D. However, the laws and legal system had gathered material over a very long period before that time from various quarters.

M.L.S. Jayasekera[4] stated as follows:

> "In the course of its growth for almost twenty-three centuries the Sinhalese legal system gathered material from various quarters. It appears to us that the following sources furnished material in the beginning and subsequently, to the development of the Sinhalese customary laws up to the end of the Sinhalese Kingdom: (1) Hindu laws and customs; (2) Canonical writings, practices and rites of Buddhism; (3) Sakyan and Mauryan customs; (4) *Pera Sirit* (former

> or immemorial customs); (5) *Kula Sirit* (customs of clans and castes); (6) *Gam Sirit* (customs mainly connected with land holding in villages; (7) South Indian customs."

When the settlers from India arrived in the fifth century B.C., there were others already inhabiting the country. It is likely that at first the laws of such people were allowed to prevail, although they might have been abrogated or adapted or absorbed into the body of indigenous laws that developed later; for the venerated law givers of those early settlers had laid it down that when a country is conquered by a king, he should maintain the laws as they were.[5]

> *Yasmin dése ya āchāra vyavahāra kulasthiti*
> *Sathaiva pratipālyosau yadā vaśamupāgatah*

The early settlers from India, did not leave their past behind them. As Geiger stated they "brought along with them as an inheritance from their ancestors the remembrances of Indian customs and institutions."[6] It is probable that the early settlers brought with them recollections of the laws and institutions for the administration of justice with which they were familiar. Ranawella,[7] pointed out that *'vōhāramanusāsanto'* occurring in the *Aṭadāsanyaya*[8] refers to admonition in the course of administering justice from the bench; and that when connotations given in the *Aṭadāsanyaya*[9] with regard to the term *anusāsana* (admonition) are considered, the *Mahāvaṁsa* suggests that Vijaya, the chieftain who ruled justly, brought with him the system of justice prevailing in his country of origin.

Sir John Budd Phear, who was appointed the Chief Justice of Ceylon in 1877, after he had served with distinction in the High Court of Calcutta, made a study of villages in Bengal and the North Central Province of Sri Laṅkā. He came to the conclusion that "The ways of life, customs and laws of the two populations are almost identical."[10] Mr. Justice Joseph Grenier, K.C., writing in 1923,[11] said that Sir John Budd Phear was "the ablest and most learned Chief Justice we ever had".

Another distinguished Chief Justice of Ceylon, and a scholar of repute, Sir Alexander Johnston,[12] while forwarding a copy of D'Oyly's *Sketch of the Constitution of the Kandyan Kingdom*[13] to the Secretary of the Royal Asiatic Society, of which Sir Alexander was a founder-member, stated that the first ruler introduced into Sri Lankā "the same form of government, the same laws and the same forms of institutions as prevailed at that time in his native country."[14]

Ralph Pieris[15] accused Sir Alexander of 'wandering into the realm of conjectural history'. It was, as Jayasekera[16] pointed out, an unwarranted criticism. Surely, there is a distinction between opinions and suppositions based on no grounds or manifestly insufficient grounds, on the one hand, and inferences from evidence or premises that have a show of truth, reasonableness or worth on the other? Johnston's view on this matter has not been shown to be false surmise.

The early settlers were not doing something uncharacteristic: Indian emigrants to other South Asian countries planted their own culture and institutions in their new homelands. Majumdar said: "The Sanskirt inscriptions discovered at Borneo, Java and Malay Peninsula lead to the conclusion that the language, literature, religion and political and social institutions of India made a thorough conquest of these far off lands and to a great extent eliminated or absorbed the native elements in these respects."[17] And speaking of the Far East, he said: "The Indian colonists in the Far East transplanted to their land of adoption the cultural ideas with which they were imbued at home."[18]

There is nothing unusual in this: the Dutch settlers who went to South Africa took the Roman-Dutch law with them, while British settlers carried with them the English law to Australia, Canada, New Zealand and the United States.

The fifth century and latter settlers probably brought with them at least recollections of the principles embodied in the codes

known as *Dharmaśāstras*. The *Dharmaśastras/ Dharma-śūtras/Sūtras/* purported to deal with "the science of righteousness." Although some works like the *Dharmaśastra* of Manu, purport to be divine revelations, George Bühler[19] observed that the *Dharmaśāstras* were not "anything more than the compositions of ordinary mortals, based on the teaching of the *Vēdas,* on the decisions of those who are acquainted with the law, and on the customs of virtuous Āryas." The ultimate, traditional source of Hindu law is said to be the *Vēdas;* yet none of them are works on law, but are rather, among other things, collections of hymns addressed to different gods, and give information on rituals and traditions and insights into the way in which people lived and behaved; they did however contain the seeds from which grew the law set out by the Sanskrit writers of the *Dharmaśāstras.* Much of the law of the Sanskrit texts, J.D. Mayne suggested,[20] was based upon immemorial customs which existed prior to, and independent of Brāhmaṇism, but later modified, where necessary, to further the special objects of religion or policy favoured by Brāhmaṇism.

Later, we find compilations of rules which ordain the forms of ritual for everyday life of Āryans but which are in no sense lawyers' law. At a still later stage, detailed rules of conduct for Āryans governing every stage of life *(āsrama)* came to be prescribed in codes. These codes also dealt with the duties of the monarch, including his duties relating to the administration of justice in the settlement of disputes *(vyavahāra),* the laws which a king must observe, and his duty to impose punishment *(daṇḍa)* on offenders.

Even more elaborate and comprehensive codes, such as those attributed to Manu, came to be compiled eventually. Although at an intermediate stage, there were works which were essentially manuals of Vedic schools prepared by teachers for the guidance of their pupils and governing only the followers of those respective schools, the *Dharmaśāstras* of Manu, Yājñavalkya, Nārada and others came to be applied universally.

These latest codes were not new in age or content. Although they were supposed by Max Müller to have been produced between 600 - 200 B.C., and by Nadaraja,[21] between 500 B.C. and AD 200, Bühler [22] said: "It seems no longer advisable to limit the production of Sūtras to so short and so late a period as 600 - 200 B.C." "Hindu Law has one of the oldest pedigrees of any of the known systems of jurisprudence":[23] They were based on the *Vēdas,* of about 1500 B.C. or earlier, the recollections of sages who knew the *Vēdas,* earlier *Dharmaśāstras* like those of Gautama, Baudhāyana, Vaśiṣtha, Āpastamba and Hiranyakesi, the opinions of learned men, and the customs, usages and practices of various classes of peoples of numerous races and cultures of the sub-continent gathered over several millenia. Although they are attributed to individuals like Manu, they are really compilations and statements of the law like the Zend Avesta compiled by Tansar, the high priest of King Ardeshir, and the Corpus Juris of Justinian. Although the authors of earlier *śāstras* like Gautama, Āpastamba, Vaśiṣtha and Baudhāyana may not have contemplated the application of their laws to any but Aryans, the later codes of Manu, Yājñavalkya and others it seems were meant to be of universal application.[24] Derrett[25] observes "It is a fact that the *śāstras* catered for Aryans and non-Aryans, though with differing efficiency in different parts of India at different epochs."

As far as Sri Laṅkā is concerned, it seems clear that the principles embodied in the *Dharmaśāstras* did cater to the needs of society in certain ways and that the principles set out in the laws of Manu (*Manusaṁhitā - Mānava Dharmaśāstra)* were held in high regard by the people of Sri Laṅkā throughout their long history.[26]

The *Cūḷavaṁsa* [27] noted that the people rejoiced because King Vijayabāhū II (1236-1270 AD) ruled in accordance with the laws of Manu - *manunītikkamam avokkamma*: "the Ruler departed not from any precept of the political teaching of Manu".[28] The learned authors of the *Cūḷavaṁsa* found it worthy of record that

King Parākramabāhu II (1236-1270 AD) was completely versed in the laws of Manu - *Manunītivisārado* - and recalls how he restored villages, fields, houses and so forth unlawfully seized to their rightful owners in accordance with the law.[29] Indeed, Parākramabāhu II was such a just and humane judge that the *Cūḷavaṁsa*[30] paid him the great compliment of stating that he was a "Ruler who might be likened to Manu". The *Girāsandeśaya*[31] stated that Parākramabāhu VI strictly followed the laws of Manu.

Me apa nara pavara,
Manunaya sirit sapura ...

Pānabokke in his Preface to the *Nīti Nighaṇḍuva*[32] stated:

"The Laws of Manu was a book written down from very ancient times. It is clear that this book was frequently used in this country. The *Kusa Jātaka*[32A] states:

" This king, in speech as pleasant as nectar,
With virtue as flawless as gems,
And boundless generosity as the ocean's waves
Ruled righteously and gloriously
Never overstepping the shores of the Law of Manu."

The last king of Kandy,[33] Sri Vikrama Rājasiṁha (1798-1815), as we shall see, was said to have been a wicked man since he imposed harsh punishments: However, the king explained to Henry Marshall, M.D., Surgeon to the 1st and 2nd Ceylon Regiments, who served in Sri Laṅkā from 1809 to 1821, that he was merely following the duties of a monarch as laid down in the *Dharmaśāstra.* Marshall recorded his conversation with the king in his book, *A General Description of the Island and Its Inhabitants*[34]. Marshall said:[35]

"He did not generally show any reluctance to discuss Kandyan matters. The writer of this Sketch, who had been requested to visit him professionally [after the King had been taken into captivity by the British], found him frank and affable, and willing to converse upon any subject which was started ... In the course of conversation

> he entered upon a discussion in regard to the cause of thunder and lightning. Some allusion having been made to the severity of the King's punishments, he rather testily observed, 'I governed my kingdom according to the Shasters' - Hindoo or Brahminical law books, of which the Institutes of Manu profess to have great confidence in the utility of punishments. 'Punishments,' says he, 'governs all mankind; punishment alone preserves them; punishment wakes, while their guards are sleepy. The wise consider punishment as the perfection of justice ... The whole race of men is kept in order, by punishment, for a guiltless man is hard to be found.' Laws of Manu."

The king was citing, almost verbatim, paragraphs 18 and 22 from Manu, Chapter VII.[36]

In a Pali poem composed by Rev. Akeemana Siridhamma, a pupil of the famous Rev. Karatota Dhammārāma, extolling Ähäḷēpoḷa Adikārama's contribution to the cause of Buddhism, reference is made to Sri Vikrama Rājasiṁha, stating that the king followed the laws of Manu: *Rājātirāja Sirivikkama Rājasīho Rāja viraji Manunītipathānuvattī.* The king, it was said, having heard of this, was pleased and presented the village called Ranabāhugama in Kandavelpattu in Aṭakalan Kōralē to the *bhikkhu*, making it tax-free.[37]

As we shall see,[38] great attention was paid to the education of future monarchs. Treatises on politics, like Kauṭilya's *Arthaśāstra*, - *Koṭṭallādisu nītisu (Culavaṁsa, 64-1-3),* and law were read by those who might be elevated to the throne. The Laws of Manu - the *Mānava Dharmaśāstra* - in particular were held in high regard.[39]

In the light of the expressly stated esteem in which Manu was held, references to the Laws of Manu to supplement an account of the system of administration in the early days should, I suppose, need no explanation?

However, John Davy,[40] stated: "... some writers ... supposed that the Singalese, like the Burmas (*sic.*) and the Hindoos, possess

the laws of Menu. The Menu of the Burmas is, by the Singalese, called Manu. They have, indeed, some of these laws, scattered here and there in their works on religion; but they are little known, rarely referred to, and never followed."

The principles embodied in the laws of the Manu were probably received and applied in a modified form. However, I do not think that they could, with justification, be regarded as "little known, rarely referred to, and never followed." In fact, as we have seen, the old chronicles in several places refer to Manu; and there are also several references to Manu in the famous old *Sandeśa*-poems.[41] Indeed the last King of Sri Laṅkā expressly said he governed in accordance with the Laws of Manu.

However, although in considering the impact of Hindu law in Burma and the universality of the application of the *Dharmasutras,* Sen-Gupta said[42] "Even the Buddhists apparently purported to follow the law of Manu," one ought to approach that proposition with circumspection: For neither in Burma nor in Sri Laṅkā were the Laws of Manu totally received or applied. In both countries, the Laws of Manu were modified to some extent to take account of local beliefs, traditions, practices and customs, including those that were based on Buddhism.

As far as India was concerned, the mixture of races and cultures in the Indian sub-continent and the influence this had on Aryan culture and laws, and perhaps the *Vēdas* themselves,[43] is a complex matter. Notwithstanding Aryanisation, the South Indian kingdoms such as those of the Andhras, Cōḷas, Chēras and Pāṇdyas, did not, it seems, adopt the whole of the Hindu law as set out in the works of the Sanskrit writers of the *Dharmaśāstras* but retained many of their old customs and usages, the strength and tenacity of native laws which survived depending on a number of circumstances.[44] This is a matter that should not be lost sight of in considering the laws of Sri Laṇkā and the impact of Hindu Law embodied in the *Dharmaśāstras* .

The principles which the early settlers brought with them, it

would seem, continued to exert an influence on society, despite the fact that after the conversion of King Devānaṁpiyatissa (250-210 BC) by Mahinda, an emissary of Emperor Aśōka, to Buddhism, Buddhism became the religion of the majority of the people, and the religion of the State.[44A]

Ariyapala[45] has pointed out that "The selection of a Buddhist king to the throne was of paramount importance, for one of the foremost duties incumbent on Sinhalese kings was the promotion of the welfare and the protection of the *Buddhasasana*.[46] He referred to the Slab-Inscription of the Vēḷaīkkāras which stated that the king "at the request of the Buddhist priesthood, put on the sacred crown in order to look after the Buddhist religion."[47]

As a Buddhist, a monarch had certain duties, such as the performance of the ten meritorious acts. The Galpota Slab Inscription stated the king performed those acts day after day at his residence at Pulastipura.[48] Except for *bana kīma* (preaching the doctrine) and *bana äsīma* (listening to the doctrine) - which, of course, the *Dharmaśāstra* do not refer to - none of the eight other meritorious duties conflict with the views in the *Dharmaśāstra*. The other duties were *dāna* (alms-giving), *sīla* (morality), *bhāvanā* (meditation), *pindīma* (sharing one's merit with others), *pin anumodanā* (sharing other's merit), *vatā vat kirīma* (attending to one's duties), *pidiya yuttan pidīma* (honouring those worthy of honour).[49]

Although from time to time, there were Dravidians who sat on the throne, they were it seems, at least during certain periods of Sri Laṅkan history, regarded as disqualified *if they were not Buddhists*. Niśśaṅkamalla in his Slab Inscription at the North-Gate of the Citadel in Poḷonnaruva stated:" Over the Island of [Sri Laṇkā], which belongs to the religion of the Buddha, non-buddhistic princes from Coḷa, Kēraḷa or other countries should not be chosen. Those who join them and cause disturbances shall be called traitors."[50] However, some Tamil rulers fulfilled public expectations. For instance there is an epigraph recording

donations made to a Buddhist monastery by the queen of the Tamil ruler, Pārinda, who is described as '*Budadāsa*' (the servant of the Buddha).[51] Paranavitana stated that the six Tamil kings who ruled at Anurādhapura for twenty-seven years towards the end of the fifth century "were Buddhist by faith."[52] However, not all Tamil monarchs were Buddhist by faith, but where the facts so required, they were duly acknowledged to be just rulers, whatever their origins or beliefs might have been. For instance, there was the highest praise for Eḷāra, "a Damila ... from the Cōḷa-country ... though he had not put aside false beliefs..." [53]

In the Gupta era, it seems there were no difficulties, for "Ceylon at that time was practically a part of Aryan India. Its dynasty was of Indo-Aryan, not Dravidian, descent and Hinayana Buddhism which flourished there was representative of the older Aryan culture of Asoka's time. There was therefore no feeling of racial or religious antagonism between Ceylon and the Aryans of Northern India."[54]

But even at other times, there was, in general, no antagonism between Hinduism and Buddhism. On the contrary, in practice, there seems to have been a process of accommodation and assimilation. Geiger[55] said:

> "The Aryan adventurers who first settled in the Island, brought to Ceylon from their home in NW. India a popular form of Hinduism, as it was represented in ancient times by the Atharvaveda in contrast with the more aristocratic Rigveda. In their new home they may have adopted ideas and rites from the yet more primitive religion of the aboriginal tribes and perhaps also from the Dravidians in S. India. Then Brāhmaṇas, coming from Kaliṅga and Bengāl, imported Visṇuism and Sivaism, and in the third century B.C. Buddhism was preached in the Island and soon became predominant, since it was embraced by the ruling monarch as the official religion of the state."

Geiger stated[56] that not only a form of "lower Hinduism", but also "the higher Brāhmaṇism also existed in Ceylon from early times side by side with the Buddhism." Ellawala [57] has pointed out that there were Buddhists in Sri Laṅkā even before

the reign of Devānampiya Tissa (250-210 B.C.). Indeed, there were people who held various religious beliefs before that time.[58] Geiger referred to the restoration and construction by several Sri Laṅkan monarchs of Hindu temples of the gods (*dēvālaya*), and stated: "In the Mahāvaṁsa ... frequently controversies are reported between different Buddhist sects, but hardly any serious conflict between Brāhmaṇism and Buddhism up to the beginning on the modern era..." "A study of the Mahāvaṃsa even which is compiled by Buddhist priests", he states, "shows how fallacious it is entirely to separate Buddhism from Brāhmaṇism." Geiger also pointed out that "during the whole mediaeval period the Brāhmaṇas, foremost the Purōhita, had influence at court in Ceylon,[59] and that the rights prescribed in the Gṛhya-sūtras were strictly observed by the king and the royal family. We know moreover that Brāhmaṇas and Samaṇas, i.e., Brāhmaṇical and Buddhist priests, were equally supported by the Ruler, and it is a Buddhist priest by whom this is acknowledged and praised as a pious and meritorious act ..." Geiger gives examples of literary sources frequently comparing "things and qualities proper to a king or prince" as being proper to a god. He concluded that "the Hinduistic mythology was by no means a foreign body within Buddhism, but firmly fitted into the Buddhist world-system and the mentality of the adherents of the Buddhist doctrine."

K.M. De Silva stated:[60]

> "Brāhmaṇism was the religion of the ruling elite groups before the conversion of Devānampiyatissa to Buddhism changed the situation.[61] Despite the rapidity with which the new religion spread in the island in the next few centuries, and despite its status as the official religion, the tolerant atmosphere of a Buddhist society ensured the survival of Hinduism with only a marginal loss of influence. Brahmans retained much of their traditional importance in society both on account of their learning and their near monopoly over domestic religious practices."

Their learning in the field of law gave the Brāhmaṇas - the

priestly caste of the Hindus who were the traditional interpreters of Hindu law - a place of special eminence. Paranavitana[62] stated:

> "Even after their conversion to Buddhism, the kings of Ceylon are known from references in the chronicles to have maintained Brāhmanas as domestic chaplains (*purōhitas*) to carry out such public functions as the *abhiṣēka*,[63] and domestic rituals which tradition demanded to be performed. The contemporary inscriptions contain no reference to the office of *purōhita*, but Brāhmaṇas figure as donors in many of them. From Indian evidence, we learn that the *purōhita* very often functioned in a judicial capacity. In the case of disputes which arose in the Samgha, a Brāhmaṇa has been appointed to adjudicate at least in one instance, and it is very likely that the reputation which the Brāhmaṇas had in ancient days to be repositories of social and legal tradition resulted in their being entrusted with judicial functions."

The *purohita* (the Royal Chaplain) was a very influential person: He was an adviser on matters of ritual and affairs of state, and was sometimes the person who had been the teacher of the heir (*rājaguru* - the Royal Preceptor) and elevated to the rank of *purohita* when the heir ascended the throne.[64] The chronicles record the fact that they were in the courts of monarchs from the time of Paṇḍukābhaya[65] till the last days of the Sri Laṅkan monarchs.[66] The continuation of the ancient post-Vijaya laws, including the principles set out in the *Dharmaśāstras*, and legal institutions was partly attributable to the fact that the *purohita* was usually a brāhamịn - a member of the priestly caste of the Hindus. However, in the last phase of indigenous rule, Sinhalese came to be appointed to the post. Pandit Puññaratana Thēra said that Delgoda Vijetunga Atapattu Mudiyanse held this post under Rājasiṁha II. [67]

The role of brāhamiṇs must not be blown out of proportion: It must not be overlooked that the *bhikkhus*[68] too were very influential: They were teachers of the royal princes; they were the king's advisers not only in spiritual affairs, but also on

political problems; and they acted as mediators when any conflict arose within the royal family or at court.[69] Aggabodhi I (575-608 AD), it is said, followed the instructions of the *bhikkhu* Dāṭhāsiva, and lived according to the law.[70] Geiger[71] said: "Apparently Dāṭhāsiva took a post at court corresponding to that of the *purōhita* of the Indian courts. This is the beginning of the political influence of the *bhikkhus*." The services of a grandson of King Dāṭhopatissa, who had been ordained a priest, was sought by the king[72] as his counsellor; and the king 'ruled the people in justice, walking in the way marked by his advice'.[73] It was stated that since that time a *bhikkhu* occupied the role of a *mulatthana*, that is, the position of a premier and highest counsellor, provided his appointment was confirmed by an oracle after the *bhikkhu* had spent the night in a *dēvapalli* (a hut of the deities)[74]. A famous *bhikkhu*, Moratota Dhammakkhanda Thera, the teacher of King Rājādirājasiṁha, was evidently one such person favoured by the deities:[75]

> "*metun lakaṭa oba väni viyatek näta tevaḷābaṇa peḷarut dänenā*
> *mevan mahimaval visituru kara kara yedilā nimi näti guṇa varuṇā*
> *etän paṭan avavādē pihiṭā delovin väḍa sādā kiyanā*
> *utum rājaguru tanaturu moratoṭa teriñduṭa deviyangen läbunā*"

Sometimes, the importance of the *bhikkhus* was lost sight of, with unfortunate consequences. The last king of Kandy, Sri Vikrama Rājasiṁha (1798-1815), as we shall see, ill-educated, and unwilling to take advice, failed to understand the vital role of the clergy and alienated them. Colvin R. de Silva[76] said:

> "... he antagonized the *Sangha*.[77] A Tamil by birth, he seems to have been Hindu in sympathy, and he was charged with inadequately supporting Buddhism, the official and prevalent religion of the Kandyan kingdom... Apart from their spiritual influence, the *bhikshus* were a considerable power in the land. As the traditional repositories of learning and knowledge and as the owners of vast acres, they wielded an important influence in the political councils of Kandy. The Mahanayaka Thēras[78] and great

officials of the Buddhist hierarchy were scions of great Kandyan families..."

The advent of Buddhism did not result in the pre-Buddhist-era laws and legal system being superseded, because of the tolerance of Buddhism,[78A] the influence of brāhaṃins - particularly the *purohita* - in court, and also, possibly, because secular matters and religion were, usually, kept apart. T.W. Rhys Davids[79] observed that, in general, Buddhism was not concerned with

> "secular matters which were regarded as the province of the State to be settled according to the customs of each locality. Thus, customs as to marriage and divorce, the inheritance and division of real or personal estate, the law of contract or criminal law, were all purely secular matters to be determined by the sense of the lay community. This continued to be the attitude of mind of the Buddhists throughout their long and varied history."

It has been said that "Buddhist law" sometimes mentioned in colonial times referred to the customary law among the majority of the population who were Buddhist rather than to a body of secular rules derived from Buddhism.[80] T.W. Rhys Davids stated:[81]

> "In the strict sense of the word there is no Buddhist law; there is only an influence on changes that have taken place in customs. No Buddhist authority, whether local or central, whether lay or clerical, has ever enacted or promulgated any law. Such law as has been administered in countries ruled over by monarchs nominally Buddhist has been custom rather than law; and the custom has been in the main pre-Buddhistic, fixed and established before the people became Buddhist. There have been changes in custom. But the changes have not been any enactment from above. They have been brought about by change of opinion among the people themselves."

It has been said that the *Vinaya Piṭaka* (Basket of Discipline) were rules for the community of *bhikkhus* and nuns. R. Lingat stated:[82]

> "[The] Buddha's teachings do not contain specific legal rules for the

> lay devotees. Of course it is possible to infer from them principles and rules of conduct susceptible of being embodied in the form of legal precepts. But these are to be found scattered in the whole mass of canonical books and commentaries: they are nowhere written in a methodical manner. They cover but a small part of the sphere of the law."

In *Tan Ma Shwe Zin* v *Tan Ma Ngwe Zin*[83] it was held that "In Buddhism no rules of law concerning secular matters are laid down."

Weerasinghe,[84] stated:

> "The Pali *Tipiṭaka* introduced to this country by *Arahant* Mahinda was ... [a] source of our ancient law. The *Tipiṭaka*, a store-house of knowledge, contains a great deal of material falling within the field of law and legal institutions. Law-suit (*aṭṭha-kathā*) (*Vinaya*, IV; 224; *Jātaka*, II. 22.75), trying a case (*aṭṭha-kāraṇa*) (*Dīghanikāya*, II. 20); (*Saṃyuttanikāya* I. 74), bribe (*āmisa*) (*Petavatthu Aṭṭhakathā*, 36, 46), offence (*aparādha*) (*Jātaka*, I. 264); III. 394; IV. 495), witness (*sakkhi*) (*Dīghanikāya* II. 237; *Saṃyuttanikāya*, II. 255; *Jātaka*, VI. 280, compellable witness (*sakkhi puṭṭho*) (*Papañcasūdanī, Sāleyyaka-sutta*), judgment (*vinicchaya* (*Dīghanikāya*, II. 58; *Jātaka*, I. 176, III. 105), punishment (*daṇḍa*) (*Jātaka*, VI. 576), natural law (*dhamma-niyāmatā*) (*Dīghanikāya* II. 8; *MN* I. 136; *Saṃyuttanikāya* II. 143 ff) are but a few examples from the rich legal terminology enshrined in the Pali *Tipiṭaka*."

However, there appears to be no evidence to sustain a view that the rules of conduct intended for the members of the clergy were converted into a secular code of conduct, although, some customs and laws prevailing before the arrival of *Arahant* Mahinda, including those laid down in the *Dharmaśāstras*, would almost certainly have been modified to accommodate Buddhist values and principles.

M.L.S. Jayasekera,[85] said:

> "There are no dogmas, injunctions, rituals or a code of laws in Buddhism binding on the laity as the Buddha did not claim to be God (or a God), son of God or a prophet of God. He was a Teacher

> ... and taught a way of life, the middle path as lying between extreme asceticism and a life of luxury and prescribed the means, the eightfold path, to escape from a series of rebirths and to ultimately attain *Nibbana* (Pali form of Sanskrit *Nirvana*). The rules nearest to law which a lay Buddhist had to follow apart from the Five Precepts (*Pancha Sīla*) of daily life would be those contained in the *Sigalovada Suttanta* which is popularly referred to as the *Gihivinaya* (*Vinaya*[86] for the layman) in Dialogues of the Buddha Part III Book IV XXX. In this discourse the Buddha discusses the duties of a householder towards various persons he has relations with ... parents ... teachers ... wife and children ... friends and companions ... servants and workpeople ... religious teachers and Brahamins ... As Buddhism did not provide rules on mundane matters like marriage,[87] inheritance, etc. the Sinhalese Buddhists had to fall back on Hindu law in respect of them."

Jayasekera[88] drew attention to the fact that "Both Jardine and Dr. Forchhammer have pointed out the dependence of the Burmese Buddhists on *Dhammathat* based on Manu for their personal law." [89]

My attention was drawn by Mr. G.P.S.H. de Silva to two interesting papers read by Rev. Dr. A. Fuehrer in 1882. They deal with what Fuehrer described as "the only one existing Buddhist Law Book" - the *Manusāradhammasṭṭham.*[90] This is a work in Pali. It was supposed to be a code of laws carved on rocks discovered and presented by a mythical character, Manusāra, to the king who commanded the code to be observed by all his subjects. Subsequently, the code was revised and called '*Ramaññadeśa*' and kept in Sri Lankā but taken back to Burma and revised by Buddhaghosa in the time of the Toungu monarch, Tsheng-bhyu-mya-sheng, who commenced to reign about 1550 A.D. The dates are debatable. [90A] Fuehrer stated:

> "The Buddhist law, properly so called, is contained in the Tripitaka ... Of these, the Vinayapitaka contains many passages that are law with regard to the religious usages of the people, but the rules that govern inheritance, partition, marriage, divorce & c-, among the laity, are contained in totally distinct works known generally as "the Dhammasttham, or "the Dhammasttham of Manu," which form no portion of the Buddhist law. These works in fact, as stated before,

> are more Brahminical than Buddhist, and the term "Buddhist law" when applied to them is a misnomer. Of these Burman dhammasats there are various versions with various titles. They profess generally to be based on the Pali text of the Manu-saradhammasttham, the only one existing Buddhist law book, but contain also passages which have evidently been interpolated in later days to suit the changing forms of society. One of their prominent characteristics is a total want of systematic arrangement. Various and often inconsistent provisions on cognate subjects are scattered here and there throughout these pages, and topics the most incongruous are jumbled up together, forming a strange *indigesta moles* of law and custom, ancient and modern, Hindu and Buddhist, Indian and Burman."

Fuehrer was of the view that Manusāra's Digest used not only the Code of Manu but borrowed also from the Codes of Yājñavalkya and Nārada. Moreover, he found that although "It is plain that the largest portion of Burman law is of Hindu origin", yet Pali ordinances for the regulation of moral conduct and for the due performance of religious duties and rites, and the genius, habits and propensities of the people and local circumstances must have influenced the compilation. Believing that "As the Burmans received their religious literature originally through the Talaings from Ceylon about the fifth Century AD", and that secular literature might therefore have reached them from the same source, Fuehrer it seems, inquired from Waskaḍuve Subhūti whether there was a corresponding account of Manusāra's works in Sri Laṅkā, but failed to elicit information on the subject. This is hardly surprising, considering what we have seen on the question of Buddhism and secular matters.

When one reads the later *Dharmaśāstra*, there is created in one's mind an impression that the intention of those texts was to provide comprehensive guidance covering all aspects of life, spiritual and temporal. Traces of those rules are found in the Vedic literature of about 1500 BC.[91]

At first, it seems, the Vedic schools were concerned primarily with

> "pointing out the road to the acquisition of spiritual merit and to guard their pupils against committing sin. Though some of their members might be called upon, and no doubt actually destined in later life, to become practical lawyers, as *Dharmādhikārins*, i.e. legal advisers of kings and chiefs, or as judges, and to settle the law between man and man, the few general principles which they had learnt during their course of instruction would have sufficed for their wants. For the details were settled according to the law of custom, which, as the *Dharma-sūtras* themselves indicate, was in ancient times even a greater power in India than it is in our days. When the sacred law became a separate science to which men devoted all or the best part of their energy, the case became different."[92]

In time, the *Dharmaśāstras* of authors like Manu and Yājñavalkya became encyclopaedic works. For instance, Manu[93] stated that the King should have a list of cases put before him each day for adjudication, "according to principles drawn from local usages and from the Institutes of the sacred laws", which he had to take up in the following prescribed order: (1) the non-payment of debts; (2) deposit and pledge; (3) sale without ownership; (4) concerns among partners; (5) resumption of gifts; (6) non-payment of wages; (7) non-performance of agreements; (8) rescission of sale and purchase; (9) disputes between the owner of cattle and his servants; (10) disputes regarding boundaries; (11) assault; (12) defamation; (13) theft; (14) robbery and violence; (15) adultery; (16) duties of man and wife; (17) partition of inheritance; (18) gambling and betting.

There are elaborate rules prescribed for deciding matters under each of those heads, as well as other matters, such as liability for professional negligence on the part of medical practitioners and veterinary surgeons,[94] the liability of defendants for negligent damage to property,[95] liability to compensate victims of road accidents,[96] the liability of carriers

on water-ways,[97] capacity to contract,[98] the invalidity of contracts in contravention of law or public policy,[99] and rules of evidence[100] and procedure;[101] the declaration and definition of offences, sentencing policy, punishments for offences and the manner of carrying them out are also, as we shall see, described in great detail. Additionally, there is information on the creation of the world, sources of law, sacraments, initiation, studentship, the duties of a householder, marriage, daily rites, *srāddhas*, mode of subsistence, rules for a *snātaka*, *Vēda*-study, lawful and forbidden food, impurity, purification, duties of women, hermits in the forest, ascetics, the king, mixed castes, occupations and livelihood, gifts, sacrifices, necessity of penances, classification of crimes, penances, transmigration, supreme bliss, doubtful points of law and knowledge of the *ātman*.

The *Dharmaśāstra*, in describing the duties of rulers and judges, appear at first sight to refer to moral aspects; this is scarcely surprising, for the exclusive, original concern, as we have seen, was with matters spiritual. When the *Dharmādhikārins* (lawyers) came to be concerned not only with the law pertaining to spiritual matters aimed at avoiding sin, but also with laws concerned with temporal matters, including the maintenance of law and order and the peaceful settlement of disputes, there emerged a secular body of rules, side by side, complementing those rules. Nevertheless, law and morals were closely knit together.

A Buddhist monarch of Sri Laṅkā ought to have had little or no difficulty in selecting from the principles embodied in the *Dharmaśāstra* what was relevant and acceptable to him and his subjects for the purpose of governing his kingdom in consonance with local custom. Principles that did not accord with local custom, including local custom influenced by Buddhism, could have been rejected or modified. The flexible approach in the application of laws which even permitted the disregard of laws in appropriate circumstances would have made such a course of conduct constitutionally and legally proper. As we shall see, this

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was sometimes done. On the other hand, while some monarchs favoured a compassionate approach, following the humane tenets of Buddhism in applying the law, others preferred to adhere closely to the principles set out in the *Dharmaśāstra* and by Kauṭilya in matters of state, including the administration of justice, and the harsh penalties for wrongdoing prescribed therein, sometimes with unhappy consequences.

Some kings who strictly administered the law so as to protect their subjects and therefore fulfilled public expectations were held in high esteem. Others were condemned for being cruel, and therefore violating expectations that a king (particularly a Buddhist monarch) should be compassionate and cause no harm or suffering to another sentient being, whether human or animal. It was not easy to reconcile conflicting expectations, and so sometimes, it seems, praise and blame were attributed at the same time. The following passage from the *Cūḷavaṁsa*[102] about Moggallāna I (495-512 AD), who was said to have discharged his duties to his religion and people, illustrates the conflict of public expectations: " ... he protected the world in justice. But at the thought: high dignitaries have attached themselves to my father's murderer, he gnashed his teeth with rage - therefore he received the name *Rakkhasa*[103] - and had more than a thousand of these dignitaries put to death. He cut off their ears and their noses and sent many into banishment."

Buddhist monarchs were not always comfortable when they were called upon to apply some of the laws relating to punishment and some other matters found in the *Dharmaśāstras* and in the *Arthaśastra* of Kauṭilya. And so, local values influenced by Buddhism certainly played a part in adapting them to suit local conditions.

For instance, in the *Lak Raja Lo Sirita*, according to P.E Pieris[104] the laws "established from old for the Government of the Kingdom", included the following: (1) "That no religion is to be accepted save that of the Buddha"; (2) "good priests" must not be

put to death; (3) Veheras, Vihāras and Bō-trees associated with the relics or images of Buddha must not be destroyed: or, according to Bertolacci,[105] (1) "He shall not forsake the religion of Boodho and embrace a different religion"; (2) "he shall not put to death any member of the priesthood"; (3) "he shall not injure such boa *(sic)*-trees as may be planted near any temple, containing the image or relics of Boodho, nor deface any part of the temple".

Another illustration of adaptation relates to the case of the five most heinous offences - *pas-mahā- sāvadda*[106] - or evil deeds *pasmahā-akusal* [107] The third inscription at Kaḷudiya Pokuṇa[108] made in the reign of Sena III (938-946 AD) stated that persons who had been implicated in the five great offences (*pas-mahā-sāvadda*) were prohibited from performing their duties *in the procession of relics.* (The emphasis is mine).[109] Buddhist concepts were used in defining the five most heinous crimes. Paranavitana stated[110] as follows:

> "The five most heinous crimes, according to Buddhist doctrine, are (i) patricide, (ii) matricide, (iii) killing a saint, (? An *Arahant?*) (iv) causing bodily hurt to the Buddha, (v) causing schism in the *sangha.* According to Hindu law books, the five great crimes are (i) killing a Brāhmaṇa, (ii) drinking intoxicating liquors, (iii) theft, (iv) committing adultery with the wife of a spiritual teacher and (v) associating with any one guilty of these crimes.[111] In Nepal where the ancient Indian institutions are still in practice, the five great crimes (*pañcaparādha*) are (i) killing a Brāhmaṇa, (ii) killing a cow, (iii) killing a woman, (iv) killing a child and (v) acts resulting in loss of caste (see Sylvain Levi, *Le Nepal*, vol. i, pp. 295 ff.). It is impossible to determine how the five great crimes were enumerated in mediaeval Ceylon."

What is of immediate interest is this: although the most heinous acts are five in number, both under the *Dharmaśāstra* and in Sri Laṅkā, and in Nepal, the five acts differ: The shell remains, while the substance is altered in accordance with religious beliefs *and* local customs. Most significant, perhaps, is the fact that killing a *brāhmaṇa* or stealing from such a person are taken off the

list of the five most heinous acts in Sri Lañka, and causing bodily hurt to the Buddha and causing schism in the *sangha* (community of *bhikkhus*) substituted.

Manu said VIII: "Tonsure [of the head] is ordained for a Brāhmaṇa [instead of] capital punishment; but [men] of other castes shall suffer capital punishment" (379); "Let him never slay a Brāhmaṇa, though he have committed all [possible] crimes; let him banish such an [offender] leaving all his property [to him] and [his body] unhurt"; (380) "No greater crime is known on earth than slaying a Brāhmaṇa; a king, therefore must not even conceive in his mind the thought of killing a Brāhmaṇa" (381). According to the *Lak Raja Lo Sirita*, the Kandyan Priests told Governor Falck that one of the laws to be observed was that the king shall not put to death any member of the priesthood:[112] That was an adaptation of the principles set out in the *Dharmaśāstra* in accordance with local custom. In his defence of Sooriyagoda Thero, the Mahānāyaka of Malwatta said:[113]

> "Maharaja, never in the kingdom of Sinhalay, never since the days of the wicked monarch Rajasingha of Sitawaka who began his career as a patricide, has a *Budda-putra* in the yellow robes sanctified by the Thathagatha been sentenced to execution. It is not becoming for a prince whose rule is guided by the *Dasa Rāja Dharma*[114] even to threaten such an outrage. The great *devas*[115] that protect this land and the *sasana* [116] will resent it. Kelanitissa, king of prosperous Kalyani, once ordered a thero to be cruelly treated. He was a pious ruler. He had, as was his custom, invited a number of priests for a *dana*.[117] Amongst the *sangha*[118] an impostor clad in yellow robes had entered the palace that day. The man's object was to deliver a secret letter to the queen from the king's brother, her paramour. The letter fell into the king's hands. Its contents filled the king with rage. He ordered the impostor as well as the chief thero to be put to a cruel death.[119] The *dēvas*[120] resented that act of injustice. As retribution they made the sea devour half his pleasant kingdom. Had the king inquired into the impostor's act with patience, he would have known the thero innocent.
>
> It is the duty of the *Sangha*[121] in this instance to advise the *Maha*

> *Wasala*[122] to make an exhaustive inquiry into the complaint. *Maharaja,*[123] by the customs of *Sinhalay*[124] no *bhikkhu*[125] in the yellow robe may be subjected to torture of any kind."

The King, Sri Vikrama Rājasiṃha, who had little or no respect either for tradition or justice, refused to inquire further into the case. Advised by a *bhikkhu* from Warakawa temple, he got over what seemed to him was a mere technicality: Although the Mahānāyaka Thēros were not prepared to expel the *bhikkhu* without following the customary procedure of a fair trial by the *Sangha Sabhā* (Ecclesiastical Court), the King accepted the assistance of Warakawa *sthavira* and marched Sooriyagoda Thēro off to the *wel-bōdhi*[126], where his robes were taken off. He was then brought back to the King who ordered that he be beheaded.[127]

The *Lak Raja Lō Sirita* mentioned the fact that, in complying with one of the ten laws to which kings must conform, namely the law relating to charity, the monarch had to give food and clothing to *bhikkhus* and brahamins, and others who live on alms.[128] The theft of what belongs to the Buddha as well as the theft of what belongs to the *Devas*, or "gods" were regarded as offences punishable with death.[129]

Adaptation also happened elsewhere: For instance in Burma, although customary law was based on the *Dhammathats* (*Dharmaśāstra*), prescriptions appertaining to Brahamic religious observances and influences were omitted. Indeed, it has been observed that although "the earlier *Dhammathats* put the rules of law into the mouth of Manu,[130] ... in the later *Dhammathats* the commands, precepts and principles are represented as truly being emanations from the spirit of the Buddha himself."[131] In other words, the Brāhmaṇical laws were "secularized and "de-Brāhminized" to accord with local custom."[132] In Sri Laṅkā, Brahmaṇical laws were not attributed to the Buddha, although some of them in content and application were adapted to accord with local custom influenced by Buddhism. On the other hand, some of the other laws were allowed to operate because, as we

have seen, of the tolerance of Buddhism, the lack of concern of Buddhism with secular laws, and the influence of brāhmins in Court.

In addition to the people who came from the North West and North East of ancient India, there were also people from other parts of India, who from time to time, came to live in Sri Lankā as traders, spouses of rulers,[132A] members of the kings' harems, tutors or physicians of the monarch, settlers, invaders, captives, workers, or under some other intermediate classification. The archaeological excavations at Pomparippu, it has been said, suggest the existence of a culture which bears some resemblance to the South Indian Megalithic culture. Possibly the settlers who brought that culture arrived in Sri Lanka around 300 BC.[133] There were also rulers from South India. Two South Indians, Sena and Guttika, seized power and ruled from 177-155 BC at Anurādhapura.[134] Eḷāra, (Sin. Elāla according to Nicholas and Paranavitana, p. 341) another South Indian, Coḷa-Tamil, ruled from 145-101 BC.[135] From 433-459 AD, six Tamil Kings - Paṇḍu, Pārinda, his son, Khudda Pārinda, the younger brother of Pārinda, and Tirītara, Dāṭhiya II, and Pīṭhiya, - held sway.[136] There were five South Indians - Pañca - Dravida - Pulahattha, Bāhiya, Panayamāra, Piḷayamāra, and Dāṭhika, who ousted Vaṭṭagāmanī Abhaya and ruled from about 102-89 B.C., after which Vaṭṭagāmanī expelled the intruders and was restored to his kingdom. And then, the last monarchs of Sri Lankā were South Indians, a fact the British, regarded as affecting the legitimacy of such monarchs to rule.[137] It is said that the Coḷas made several incursions into Sri Lankā, and that in the reign of Rajaraja the Great (983-1014 AD), they 'annexed the heartland of the Sinhalese Kingdom,' Rajaraṭa, to the Coḷa Empire.[138] When and which Tamil king held sway, and where, appear at times to be uncertain matters. However, for the purposes of the present study, it seems there is sufficient evidence that, from time to time, there were Tamils who held sway over important regions of the country, although there may, perhaps, have been

Sinhalese rulers holding sway at the same time, elsewhere in the Island.

At the time of the Dutch occupation of maritime Sri Laṅkā, it was found that for several centuries there had been a system of customary law, known as the *Tēsavalamai,* applicable to the Tamils. That system of law was originally based on Dravidian usages of the inhabitants of South India and was not traceable to the Sanskrit writers. However, as H.W. Tambiah[139] pointed out, although the roots of the *Tesavalamai* are not to be found in Hindu Law, Hindu Law imposed itself on Dravidian usages, and hence one finds traces of Hindu Law in the *Tesavalamai.* Ganapathy Iyer,[140] who compared the Laws of Manu and the Burmese law, came to the conclusion that "The Burmese Law must have the same common source as the Hindu Law of the Aryans in India though the developments (owing to the influence of Buddhism) must have been on different lines. So also, the rules in the *Tēsavalamai* ... closely resemble the customary laws prevailing in the Punjab and traces of a common origin of the rules in the *Tesavalamai* and the Hindu Code are easily discernible."

As we have seen, Dravidians may have influenced Hindu law; while the inhabitants of South India retained some of their laws and customs despite Aryanization. H.W. Tambiah[141] observed:

> "The first wave of emigration brought the Tamils from the Malabar district of India and they brought with them the customary usages peculiar to a society based on matriarchy. Later emigration brought an influx of Tamils from South India where customs and manners were influenced by the Aryan system of society and Hindu law. While they brought certain customary laws specially suited to a patriarchal system of society, at some point of time a compromise appears to have been affected and therefore we find in *Thesawalamai* rules peculiar to a matriarchal system of society blended with rules based on a patriarchal pattern."

Dravidian kings may, perhaps, to some limited extent have influenced certain aspects of the laws and customs of the Sri Laṅkā by a subtle and gradual process. Nevertheless, the basic

identity of the laws and customs and institutions for the administration of justice in Sri Laṅkā were not significantly disturbed by the Dravidians although some infusion of South Indian customs and practices is to be expected. For their part the monarchs from South India it seems observed their constitutional duties and did not attempt to impose their systems of law. Sena and Guttika, for instance, were said to have reigned twenty-two years, "justly" - *rajjan dhammena karayuṁ*. The *Mahāvaṁsa Tīkā* (Glossary) explains that these two kings governed without neglecting conventions in the competent administration of justice.[142]

What prevailed during the era of the Sri Lankan monarchs, it seems, was a system for the administration of justice derived from a recollection of laws brought by the early settlers from India, represented by the arrival of Vijaya, and modified by the laws, customs, beliefs and traditions of the people of Sri Laṅkā who inhabited the country before and after the arrival of the early settlers. In this connection, the observations of Sir Carleton Kemp Allen, Q.C., are worth recalling: "Law is seldom of pure-blooded stock, and 'national' is a dangerous word to use, without qualification, of almost any legal institution."[143]

CHAPTER IV

PUNISHMENT AND ITS PURPORTED JUSTIFICATION

According to the *Dharmaśāstra*, a king was obliged to maintain law and order and protect his subjects. "He shall zealously and carefully protect his subjects".[1] " ... he shall use his utmost exertions to remove [those men who are nocuous like] thorns".[2] "... [B]y removing the thorns, kings solely intent on guarding their subjects, reach heaven".[3] Niśśaṅkamalla is said to have "freed the whole Island of Laṅka from the thorns of lawlessness".[4] "The king has been created [to be] the protector of the castes and orders, who, all according to their rank, discharge their several duties". [5]

In Vedic times, although it was the king's duty to keep order and compel people to do their duties, it is doubtful whether the king had at all the authority to interfere when a dispute did not involve a question of public importance such as a great violation of the *dharma* (the fundamental, essentially religious laws) to maintain which was the duty of the king. The resolution of disputes was essentially a matter for guilds or *kula* (social group) to which the parties belonged. However, by the time of the early Indian settlers, represented by the arrival of Vijaya, the king in India had become a judge, and administering the law in disputes generally *(vyavahāra)* had become one of his constitutional duties, great prominence being given in the *Dharmaśāstras* to his duty as a monarch to award punishment *(daṇḍa)* in order to maintain social order by enforcing the law *(dharma)* in a wide sense.

As we shall see,[6] the judicial authority of the king was based on his role as the leader and protector of his people and the upholder of moral and social order. For the purpose of carrying out his duties, he was vested with the power of *daṇḍa* (punishment). Without him, vested with and exercising the

power of punishment, there would be chaos. The people were happy that a monarch inflicted punishment on delinquents, provided it was in accordance with the law. That, it seems, was one way of wrestling with the universal and persistent question Why punish?, to which no satisfactory answer has ever been provided despite numerous justifications offered and explanations made down the ages.

D.R. Bhandakar[7] pointed out that when Hindu writers on political science had to explain the necessity of placing a king at the head of government, they constantly repeated the parable of the fish - *matsyanyāya*.

> *N-arajake janapade svakam bhavati kasyachit*
> *Matsya iva jana nityam bhakshayanti parasparam*[8].

In a country where there is no king nobody possesses anything which is his own. Like the fish the people are always devouring one another.

No. 3942 of vön Bohtlingk's *Indische Sprüche*: states:

> *Parasparāmiṣatayā jagatī bhinna vartmanaḥ*
> *Daṇḍābhāve paridhvaṁsī matsyo nyāyah pravarttate.*

In the inscriptions of the Pāla kings of India, it is said that the first of their dynasty was made king by the people in order to 'put an end to the practice of fishes' - *matsya nyāyam apohituṁ.*[8A]

The Inscription of King Niśśaṅkamalla near the Vān-Äla, (spill) of the Tōpāväva in Poḷonnaruva, Paranavitana observed, mutilated as it is, makes reading difficult; but he stated that it appears the king "prefaced the real edict with three quatrains containing maxims on political works. Among them is an interesting reference to the *matsya nyāya,* the metaphor of the fishes who prey one upon another." [8B]

For the purpose of protecting his subjects, a monarch was obliged to impose the punishments prescribed by law. In

describing how a king should conduct himself, Manu refers to punishment as "the protector of all creatures",[9] and stated that, through fear of it, observance of duties[10] and obedience to the law[11] are ensured. Manu stated: "Punishment alone governs all created beings, punishment alone protects them, punishment watches over them while they sleep; the wise declare punishment [to be identical with] the law.[12] If the king did not, without tiring, inflict punishment on those worthy to be punished, the stronger would roast the weaker, like fish on a spit.

Yadi na pranayed rājā daṇḍaṁ daṇḍyeṣ - vatandritaḥ
Śule matsyān ivāpakṣyān durbbalān balavattaraḥ.[13]

Manu went on to say that in the absence of a king who imposed punishment "the crow would eat the sacrificial cake and the dog would lick the sacrificial viands, and ownership would not remain with any one, the lower ones would [usurp the place of] the higher ones.[14] The whole world is kept in order by punishment, for a guiltless man is hard to find; through fear of punishment the whole world yields the enjoyments [which it owes]."[15] Punishment was welcomed by the public, provided, of course, it was appropriate in the circumstances. "If punishment is inflicted after [due] consideration, it makes all people happy; but inflicted without due consideration, it destroys everything."[16]

The punishment of offenders was said to be necessary for the welfare of the people. The twelfth-century work, the *Amavatura*,[17] and the *Majjhima Nikāya* Glossary, of the early Anurādhapura era[18] stated that the king was entitled to inflict punishment 'for the sake of the continuing prosperity of the kingdom'.[19] Obviously, if there was no law and order, economic activity would be impeded and consequently there would be no prosperity. Punishment, as a deterrent, and as a reformative measure was, therefore, necessary and permissible.

The punishments prescribed by law at that time, as indeed all punishments imposed at any time, had the effect of causing pain.

In such a situation, it would seem that a monarch of Sri Lanka was faced with a dilemma: His religious principles, as a Buddhist, required him to eschew violence and to show compassion; One of the cardinal obligations among the *pancha sila* (the five precepts) every person was expected to observe was *ahimsā* - kindness toward and respect for all forms of life. Indeed, as we shall see, the ten virtues of a good king (*dasarājadharma*) included *maddava* (gentleness), *akkodha* (freedom from wrath), *aihimsā* (mercy), *khanti* (patience) and *pariccāga* (liberality).[20] At his installation, a monarch was required to rule 'with justice and peace persisting in the law', while being a person 'with a compassionate heart'.[21] How were these ideals to be reconciled with the expectation that criminals must be punished in accordance with prescribed penalties? The embarrassing difficulties were evidently perceived and various explanations to overcome them seem to have been resorted to.

One approach was that the monarch and his judges had, as it were, to sing for their supper. As far as guilty offenders were concerned, a monarch's duties, as a person who had been paid for discharging his duties, required him to apply the law, imposing the prescribed sanctions. The king shared in the spiritual merit of his subjects if he protected them by punishing offenders according to law.[22] A king was entitled to levy taxes, and in return he was obliged to protect his subjects. But a king who did not protect his subjects, yet took "his share in kind, his taxes, tolls and duties, daily presents and fines, will [after death] soon sink into hell".[23] "The realm of that king who takes his share in kind, though he does not punish thieves, [will be] disturbed and he [will] lose heaven".[24] If he took a part of the produce, but afforded no protection, the king took upon himself "all the foulness of his whole people".[25] "Know that a king who heeds not the rules [of the law], who is an atheist, and rapacious, who does not protect [his subjects, but] devours them will sink low [after death]".[26] Likewise, those who acted on his behalf were expected to do the duties they had been paid to discharge.

When he exercised judicial functions, a *brāhmaṇa* was obliged to follow the law. *Brāhmaṇas* of old, who subsisted by obtaining alms on the strength of their piety, were punished for failing to observe their duty of acting according to the law.

Another way of looking at the matter appeared to be this: one of the 'ten laws' a king was expected to observe required him not to oppress *the innocent*",[27] or not to punish, torment, or molest, *innocent* persons."[28] I have emphasized the word "innocent": the punishment of *guilty* persons, was, it seems, not inconsistent with the duties of a virtuous and righteous monarch: "Moreover if [a man], who subsists by [the fulfillment of] the law, departs from the established rule of the law, the [king] shall severely punish him by a fine, [because he] violated his duty".[29]

Punishment, in appropriate cases, was also intended to rehabilitate an offender. It was said that Parākramabāhu II, "with all sorts of words of rebuke", made "honest men of delinquents."[30] Evidently, those who were beyond redemption were treated differently. It was stated that Parākramabāhu I, acting impartiality, "cured like a clever, expert physician who distinguishes between curable and incurable disease, those which were curable and set aside those which were incurable by the method prescribed by the rules of the Order, free in his decisions from error." [31]

Punishment caused suffering, but a monarch did not have to entertain feelings of guilt about inflicting misery any more than a physician who prescribed some unpalatable concoction, like 'mixtures' and *kasāyas*. It may have been nasty, but it was something that was necessary to improve the condition of the offender. The Poḷonnaruva Galpota Slab Inscription stated: "When kings inflict punishment commensurate with the offence [committed],[32] they do so with good intentions, just as a physician applies a remedy for a bodily ailment. They restrain [their subjects] from evil and thus save them from falling into

hell. They lead them to do good, thereby securing for them the [bliss of] heaven and release from rebirths (*mokṣa*). If the wishes of kings were not observed, the human world would be like hell; but if the wishes were respected, it would be like heaven."[33]

Looked at in this way, the infliction of punishment was not an act of cruelty, but rather an act of compassion. The Mahāyana philosopher, Nāgarjuna,[34] in a discourse, advised a king to punish offenders out of compassion and from a desire to make them worthy persons.

Ralph Pieris[35] stated:

> "Mutilation appears to have been founded on the principle of "an eye for an eye". Thus an arm was amputated for robbing the Treasury, the tongue pulled out for slander, and so on. Such penalties were rare in late Kandyan times, although the last king imposed such penalties on some alleged spies of the British."

Whatever justification may have been put before the public for acceptance, or professed elsewhere, in the criminal justice system of Sri Lankā, mutilation was not explained by reference to the principle of "an eye for an eye". Sometimes mutilation had no connection with a specific offence: Thus, according to the Vēvälkätiya Slab Inscription, a person who had aided and abetted a criminal was subject to a fine of fifty *kalañdas* of gold. If he was unable to pay it, his house was confiscated. If he had no house, it was only then that his hands or hands and feet were cut off. In any event, what had that to do with paying back like with like? Where mutilation was the primary, as distinguished from the default, penalty, the apparent reason for that form of punishment was deterrence: terrifying others from committing similar offences, and also restraining the criminal himself from repeating the offence by taking away the part of the body that was used in the commission of the crime. Manu[36] said: "With whatever limb a thief in any way commits [an offence] against men, even of that [the king] shall deprive him in order to prevent [a repetition of the crime]."

A judicial proceeding concerned with a delinquent act was, it seems, meant to accomplish certain basic purposes: (1) deterrence; (2) rehabilitation, where that was appropriate; and (3) expiation. Expiation could be achieved in various ways: by making reparation for the harm or damage caused, or by making atonement in other ways, including some suffering or even suffering to the full, by death. When there was expiation, the matter was "settled". For instance, where a person had caused physical injury to another, he may have been required to pay a fine to the state and to compensate the victim; in a case of robbery, the offender was usually required to give back the goods to the owner and he might have been imprisoned or punished in some other way. A court's decision might, in some cases, have been meant to achieve the purpose of deterrence; in others, compensation, or both compensation and deterrence.

Reparation was one of the objects achieved by punishment. Additionally other penalties were sometimes imposed for the purpose of deterrence. However, a simple return of evil for evil, had no place in the jurisprudence of India and Sri Laṅkā. Prescribing the duties of a king, Manu[37] said: "Him who breaks [the dam of] a tank he shall slay [by drowning him] in water or by [some other] simple [mode of] capital punishment;[38] or the offender may repair the [damage], but shall be made to pay the highest amercement."

In Sri Laṅkā, punishment was also expiatory. An offender had to be freed from his guilt. This might have been partly or wholly achieved in certain cases by reparation. The Panākaḍuva Copper Plate of Vijayabāhu I (1055-1110 AD) speaks of persons who have committed offences which cannot be expiated - *no musnā* - from which one is not freed, otherwise than by giving up life.[39] Paranavitana explained:[40] "Punishment is meant to absolve a person from the effects of the offence he has committed; not a case of 'an eye for an eye and a tooth for a tooth'. According to this theory [of punishment which prevailed in ancient Ceylon],

no stigma should be attached to a person who has suffered due punishment for any offence committed by him." (The words within the square brackets were stated by Paranavitana earlier).

According to Manu,[41] a culpable failure to punish an offender, transferred a part of the blame for the offence to others: "One quarter of [the guilt of] an unjust [decision] falls on him who committed [the crime], one quarter on the [false] witness, one quarter on all the judges, one quarter on the king. But where he who is worthy of condemnation is condemned, the king is free from guilt, and the judges are saved [from sin]; the guilt falls on the perpetrator [of the crime alone]."

As far as the offender was concerned, punishment absolved him from the effects of an offence committed; originally, this may have been derived from the notion of the expiation of sin found in the *Dharmaśāstra*. In Sri Laṅkā, expiation essentially served a secular purpose. Offences were "settled" (*paṭavā, paṭavanu, paṭvanu*) by the imposition of a commensurate punishment,[42] and the matter could not be raised again. No stigma attached to a person who had been punished.[43] Once an offence was "settled", e.g. by reprimand, the matter was at an end and the offender could not be punished again, e.g. by fine, for the same offence, notwithstanding the fact that the prescribed maximum penalty for the offence had, for any reason, not been imposed. The matter was 'settled' when a punishment was imposed after due consideration of the nature of the offence and the circumstances in which it was committed. When it was settled, it was at an end. Expiation, was the basis of the exclusion of a second prosecution. Paranavitana said: "In judicial contexts, *paṭavanu* appears to mean the decision given after an inquiry into an offence, so that the matter may be finally disposed of with no possibility of being opened up again."[44]

The concept of expiation, (*bahā*) i.e., wiping out, or removing guilt or blameworthiness, occurs over and over again in the

inscriptions and elsewhere. The Aturupolayāgama Pillar Inscription stated, among other things, that "if any of the five great offences are committed outside this village [the offenders shall not re-enter the village] except after they have made expiation for their sins (*dos bahā*)."[45]

Reference should be made to the case of a female who had a sexual relationship with a man of low caste. D'Oyly[46] stated as follows:

> "It is said that according to ancient Usage the disgraced Family had only one Resource *(sic.)* left for wiping away the Stain, viz. by putting to Death the offending Family {Female ?} which was sometimes carried into Effect and the Homicide was deemed Justifiable.[47]
>
> But this barbarous Custom was forbidden by Subsequent Kings who directed that upon such an Occurrence the Parties should seek Redress from the Crown, since which time, the Practice has diminished, and in several Cases brought to the King's Notice when the fact was notorious and undeniable, the Female was consigned as a Slave of the Crown, to the Royal Village, Gampola, and the Family was ordered to deliver some Provisions to the Royal Store, and by this act became purified."

And so, later monarchs substituted a more humane procedure of 'purification' by 'wiping away the stain' caused by the offence, which in times gone by had to be expiated by death. Unfortunately, in the case of some other forms of wrongdoing, expiation was left to be accomplished by what might originally have been penances for sinful conduct prescribed by "seers", or later, legal advisers in ancient India who were called upon to advise, inter alia, on questions of appropriate penalties, and embodied in the *Dharmaśāstras.* Yet, as we shall see, monarchs like Parākramabāhu II and Vohārika-tissa did not feel constrained by the prescriptions of the *śāstra* in deciding how the stain of wrong-doing could be wiped away. They were not undiscriminating and inconsiderate and did not permit the light

of compassion which Buddhism gave them to be cut off. They were unlike some other Buddhist monarchs who had eyes, but lacking in intellectual, moral and spiritual courage refused to admit the light and were therefore blind. Swift[48] once said: "There's none so blind as they that won't see."

In relation to proceedings in a *raṭa sabhā* (district court/council), we shall see[48] that at the end of the proceedings of that court, an offender who paid his fine (or provided security for payment) was not only freed from temporary ostracism pending trial, but there was an express prohibition ordered in each case against even so much as a reference to the offence and the decision of the tribunal "when quarreling or in jest, or at any time whatsoever." Indeed, it was a punishable offence even to accuse a person of an offence which had been adjudicated upon and settled in a *raṭa sabhāva*.[49]

After the Portuguese conquest of the maritime areas, the local laws and customs were permitted to remain in force. As we shall see, the assizes called *Marallas*,[50] which were presided over by Portuguese officers, were assisted by local assessors who advised on questions of law. The principle of the common law that once a matter was decided, it was final, was observed at the *Marallas*. João Ribeiro[51] stated:

> "Murderers who were in sanctuary also came to free themselves from their crime for if they were arrested within sixty days the General or Dissava would condemn them to death as he thought fit; but after that he had no power to punish them, so at the Marallas they would come and confess their crime, paying a fixed sum equal to one hundred and twenty reals of our money to the Royal Treasury. *They would then be given an Ola*[52] *of discharge and become free forever on payment of costs; nor was any mention made again of their crime.* But if a man of low caste killed one of a high caste he would not be discharged, but was always sentenced to death."

The emphasis is mine.

The *purohita* and other Brāhmaṇas in court who guided him on legal matters would no doubt have advised the monarch to do his duty and follow the law. And, had they been asked why he should do so, his advisers should have had little or no difficulty in advising the monarch that according to the *Dharmaśāstra*, a judge must apply the law for many reasons. For good measure, he might have also been prodded by attention being drawn to the threat that failure to punish an offender transferred a part of the offender's guilt to the monarch.[53]

The failure to recognize the true nature of punishment, and the role of expiation and the concept of "settlement" in Sri Laṅka have lead to misrepresentations.

Ralph Pieris[54] said:

> "The arbitrariness of penal sanctions in the case of public delicts indicates that the monarch was allowed greater latitude in the disposition of public justice than was an individual wreaking vengeance upon one guilty of a private wrong. Thus the king avenged those guilty of treason at will, exonerating them or punishing the entire family, "it may be kills them altogether, or gives them all away for Slaves". (Knox (1681), 64). When corporal punishment was awarded, "the King, Chief or Headman (as the case may be) being present, directs the punishment to cease, when he judges it to be sufficient." (D'Oyly (1835), 57.). But virtuous kings were enjoined to mete out punishment to the guilty *in proportion* to their offence, (cf. *Kavyashekara* ed. Abeysekera, 1935) and the mental climate of myth idealized this notion of even justice. Eḷāra who ruled 'with even justice toward friend and foe', applied the age-old maxim of retributive justice of "an eye for an eye" when his son's chariot killed a calf: he caused the prince's head to be severed by that same wheel (*Mhv.* 21-16-18). The variety of possible punishments for murder, ranging from death to whipping and imprisonment, was probably due to the fact that there were various extenuating circumstances. Thus murder committed under circumstances of grave provocation and aggression on the part of the murdered person, was not capitally punished and the offender only sentenced to severe punishment short of death, (RCD 29-3-1822, Lawrie MSS) while the murder of a robber or an adulterer detected in the act, was condoned as justifiable."

Arbitrariness was not a feature of the criminal justice system: On the other hand, there were various safeguards to reduce the harshness of the law caused either by its rigorous or arbitrary application.

An accuser and defendant had to be treated alike.[55] The country had to be ruled according to pious aims, without oppressing the people - *dähämen, semen*,[56] justly.[57] Niśśaṅkamalla in the Galpota Slab Inscription stated that "The appearance of an impartial king should be welcomed like the appearance of the Buddha".[58] The country had to be ruled in accordance with the customs and laws.[59] Vijayabāhu I it is said observed the ethics and norms laid down for monarchs.[60] The *Samantapasadika*,[61] refers to courts of law as *dharmma sabhā* and to the presiding judge as *dharmma vinicchakara*. During the Poḷonnaruva era, courts of law were known as *dharmādhikaraṇa*[62] This manner of describing courts and judges underlines the fact that the administration of justice was exercised in a righteous manner. Punishments had to be imposed in accordance with the law, and the law ensured that a punishment fitted the offence.

Punishment had to be condign and commensurate:[63] It had to be merited by the crime, and adequate, but not excessive, having regard to the circumstances. Crime and punishment were related: An offender was punished according to the gravity of his offence; the gravity of an offence depended on the intrinsic quality of the offence and the circumstances in which it was committed. The fixing of maximum penalties was a matter of policy, which, of course, varied from time to time, depending on the way in which particular offences were regarded by the monarch and society at a particular time; but it was by no means an arbitrary matter.

In the days of the Sri Laṅkan monarchs, as indeed it is the case today, defined, maximum punishments were prescribed for

specific offences: punishments could not be arbitrarily imposed. That principle was, for instance, recognized in the Badulla Pillar Inscription.[64] Moreover punishments had to be imposed having regard to the specific circumstances of a case. "Having fully considered the time and the place [of the offence], the strength and knowledge [of the offender], let him justly inflict that [punishment] on men who act unjustly."[65] "Let the [king], having fully ascertained the motive, the time and place [of the offence], and having considered the ability [of the criminal to suffer] and the [nature of the crime], cause punishment to fall on those who deserve it".[66]

Kauṭilya[67] said: "It is power and power (*daṇḍa* - the power of punishment) alone which, only when exercised by the king with impartiality and in proportion to guilt, either over his son or his enemy, maintains both this world and the next."

Punishments had to be justly imposed: they had to be imposed without fear or favour, and they had to take account of the circumstances of the case. The Galpota Slab Inscription stated that "When kings inflict punishment commensurate with the offence [committed], they do so with good intentions, just as a physician applies a remedy for a bodily ailment."[68] The *Amāvatura* too refers to the right and duty of a king to impose commensurate penalties.[69] Manu had already said so: "Unjust punishment destroys reputation among men, and fame [after death], and causes even in the next world the loss of heaven; let him, therefore, beware of [inflicting] it".[70] "When a king punishes an innocent [man], his guilt is considered as great as when he sets free a guilty man; but [he acquires] merit when he punishes [justly]".[71]

Less than the maximum prescribed penalty might have been imposed by a judge or a penalty may have been reduced in appeal; but the exercise of discretion would have depended on whether there were aggravating or mitigating circumstances, in terms of the prevailing sentencing policy. For example, a first

offender might be treated leniently; but a person who habitually relapsed into crime, more sternly. House breaking accompanied by robbery at night might have been punished with death by impalement[72]; however, "On the first conviction, let him cause two fingers of a cut-purse to be amputated; on the second, one hand and one foot; on the third, he shall suffer death".[73] "Let him punish first by [gentle] admonition, afterwards by [harsh] reproof, thirdly by a fine, after that by corporal chastisement".[74] But when he cannot restrain such [offenders] even by corporal punishment, then let him apply to them even all the four [modes conjointly]"[75]

With regard to punishments, for offences that were not punishable with death, the Kandyan *bhikkhus* stated as follows in the *Lak Raja Lo Sirita*:[76]

> *What are the lesser punishments inflicted on those committing other offences?*
>
> "According to the nature of each crime ... cutting off the hands, feet or nose; fine; detention; putting in chains; corporal punishment; he may be paraded through the four Vitiyas with the beating of the vada bera, calling out aloud the crime he had committed, with red flowers and cattle bones strung round his body and his hands tied behind his back, being beaten the while by the Gan Rekavallo till the skin comes off on to the bamboo; banishment to places where fever and other sicknesses prevail such as Bintenna, Badulla and Telipahe. Such are the punishments."[77]

What constituted a particular offence, depended on the circumstances proved. For instance, a person who, while deprived of the power of self-control by grave and sudden provocation, caused the death of a person who gave the provocation, was not guilty of the offence of murder, for which the punishment was death, but of culpable homicide, for which the punishment was imprisonment and, additionally, perhaps fine. This was not very different to what the law is today.[78]

The existence of "extenuating circumstances" was another matter. A prescribed penalty might not be exacted, but the 'damage' had to be repaired. For instance, Manu said: "But he who, except in a case of extreme necessity, drops filth on the king's high-road, shall pay two kārshāpaṇas and immediately remove [that] filth."[79] "But a person in urgent necessity, an aged man, a pregnant woman, or a child, shall be reprimanded and clean the [place]; that is a settled rule."[80]

The king could not, in deciding a case where a person's life was at stake, act in an unrestrained manner according to his will and pleasure: his power was not absolute, for he was required to be guided by the law, which he ascertained by reference to what was stated in the ancient books where the precedents were recorded.[81] That had been the procedure followed in the Vajjian republics of North India in the Buddha's day[82] which was introduced into Sri Laṅkā.[83] We are told that if a person was found guilty, "the Rāja referred to the Päräni Putthaka, that is the Pustaka or book recording the law and precedents. This book prescribed the punishment for each particular offence. The Rāja having measured the culprit's offence by means of that standard used to inflict a proper sentence." [84]

Eḷāra was not, as Ralph Pieris said, applying the "age old maxim of retributive justice". Indeed, 'an eye for an eye' was an "age old maxim" in some communities, but, as we have seen, it was not an explanation for punishment *in Sri Laṅkā*. When Eḷāra ordered that his son should be executed, he was requiring expiation; in doing so he was maintaining the rule of law, laying emphasis on the fact that the law did not discriminate between the great and the small. In addition to the episode cited by Ralph Pieris, there is another example relating to King Eḷāra that underlines the fact that (1) equality before the law was an important feature of the system; (2) that expiation (rather than retribution - a return of evil) was, the primary object of the law; and (3) that punishment had to fit the wrong. The *Mahāvaṁsa*[85]

stated that when the King was going to the

> "Cetiya-mountain to invite the brotherhood of *bhikkhus*, he caused, as he arrived upon a car, with the point of the yoke on the wagon an injury to the *thūpa* [86] ... The ministers said to him: 'King, the *thūpa* has been injured by thee.' Though this had come to pass without his intending it, yet the king leaped from his car and flung himself down upon the road with the words: 'Sever my head also [from the trunk] with the wheel.' They answered him: 'Injury to another does our Master in no wise allow; make thy peace [with the *bhikkhus*] by restoring the *thūpa* '; and in order to place [anew] the fifteen stones that had been broken off he spent just fifteen thousand *kahāpaṇas*."

Even a king was not above the law, and being one who was, as Walpola Rahula (p.72) observed, "famous for his equal and impartial justice to all", Eḷāra submitted himself to punishment by death, for he had, by damaging a place of worship, committed the offence of sacrilege. However, the compassionate *bhikkhus* settled the matter by a simple way of expiation by reparation.

The requirement of compensating victims of personal violence or negligence, compensating persons whose property was willfully or negligently damaged, restoring stolen goods to their owners, in addition to paying fines, shows that the system was concerned not only with the maintenance of law and order, but also with ensuring reparation for the those who might have suffered harm or loss as a result of the wrongful act of some person: there was concern for the victims of wrongdoing: the objective was reparation, not vengeance.[87]

Whatever the practice may have been from time to time, in theory, in exercising judicial power, a proper balance was required. The *Saddharmālaṃkaraya*[88] said that King Kāvaṇtissa was advised by his ministers as to how a monarch should rule. Among other things, he was told that "All beings despise a ruler who is ... unduly gentle, or fierce like a demon, [or] who is harsh ..." Manu[89] said: "Let the king, having carefully considered

[each] affair, be both sharp and gentle; for a king who is both sharp and gentle is highly respected."

In a note on "Rules for Administering Justice" at the time of the Kandyan Kingdom, D'Oyly[90] quoted the following from a source he did not identify:

> "Severity and Lenity should be evinced on befitting occasions - In the course of Investigation, he should be gracious and disposed to do good and not be influenced with a desire of inflicting evil - he should conduct the trial in serenity and mildness, but not in Anger and intemperate impatience ..."

Although, as we have seen, it was considered lawful, necessary and appropriate to impose prescribed punishments on convicted offenders, King Sirisaṅgabodhi (247-249 AD) was embarrassed: There was a duty to be compassionate and avoid causing pain; as well as a duty to fulfill public expectations relating to the maintenance of law and order. The king was as ingenious as he was pious. He resorted to subterfuge: He freed certain persons who were guilty of treason, instead of executing them; but he secretly sent for the bodies of dead men and burnt them, "causing terror to the people by the burning of these he did away with the fear from rebels."[91] Geiger[92] stated: "He had the corpses burnt in place of the rebels and thus inspired the belief that he had condemned them to death by fire." His compassion was as great as his respect for the rule of law.

Parākramabāhu II was likened to Manu. However, he seems to have discarded some of Manu's Laws. In general, according to Manu, a king was expected to allow the rule of law to prevail: "Whenever any [legal transaction] has been completed or [a punishment] been inflicted according to the law, he shall sanction it and not annul it."[93] "Let the [king], having fully ascertained the motive, the time and place [of the offence], and having considered the ability [of the criminal to suffer] and the [nature of the] crime, cause punishment to fall on those who

deserve it".[94] "A king who punishes those who do not deserve it, and punishes not those who deserve it, brings great infamy on himself and [after death] sinks into hell".[95]

Parākramabāhu II (1236-1270 AD) *routinely*, as a matter of sentencing policy, implemented by a general amnesty - and not because the circumstances of a case warranted it - imposed punishments that were less than an offender had deserved according to the principles of law laid down in the *Dharmaśāstras*. "People whose heads were to be cut off he punished only in stern fashion with dungeon and fetters and then set them free again. But for such people as deserved prison the Ruler to whom pity was the highest, ordained some lighter punishment or other, and reprimanded them. But on people who should have been banished from the country the Ruler who might be likened to Manu, laid but a fine of a thousand [*kahāpaṇas*].[97] But on all those who deserved a fine, he looked with indignation and with all sorts of words of rebuke he made of them honest men." [98]

Others too may have followed the example set by Sirisaṅgabodhi and Parākramabāhu II. John Davy[96] stated that "some Singalese monarchs, conscientiously acting up to the principles of their religion, refused to pass sentence of death."

Vohārika-tissa (214-236 AD), did not transgress the law. Nor did he resort to some form of action to avoid public condemnation or censure, or to justify his conduct. He took the unusual, but constitutionally permissible, and highly commendable, measure of abolishing punishment that entailed bodily injury (*vohāraṃ hiṃsāmuttaṃ*, i.e. capital punishment, mutilation, and probably also torture).[99] Indeed, it was said that Tissa, "Because he first in this country made a law that set aside [bodily] injury [as penalty] he received the name Vohārika-tissa". *Vohārika* means 'lawgiver'.

Usually, attempts are made to justify punishments, especially

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the more barbarous forms, on the basis of deterrence. Whether Vohārika-tissa's legislation had an adverse effect on the law and order situation is not known; however, forms of punishment entailing physical suffering, it seems, came back into vogue under the reign of other monarchs who succeeded him. Thus, we are told that during the reign of king Silāmēghavaṇṇa (623-632 AD) a pious priest, Bōdhi, came to the king and requested him to issue a regulative Act (*dhammakammena*) so that the *bhikkhus* in the Abhayuttara-vihāra would be required to comply with the rules of the *Vinaya* and that those who were guilty of transgressions should be expelled from the Order of monks.[101] The monks who were expelled as a result of this, murdered Bōdhi and annulled the Act. According to the *Cūḷavaṁsa*[102]: "When the King heard that, he was wroth, seized them all together and made them, their hands cut off and in fetters, guardians of the bathing tanks; another hundred *bhikkhus* there he expelled to Jambudīpa." The sentence of death was on the menu of punishments when the famous Vēväḷkäṭiya Slab Inscription of Udaya IV (946-954 AD) was set up. Geiger[103] said that "Capital punishment seems to have been in use during the whole of the mediaeval period, and even afterwards."

Of course, it did not follow that legally permitted sentences, if passed, were carried out in every case: There is nothing unusual in that: For instance, capital punishment, which was for a short time removed from the list of permissible punishments, was restored and remains on the statute book of Sri Laṅkā. Judges pass sentences of death; but no one has been executed in Sri Laṅkā since 1977, for executive sanction, which is by law required for carrying out a sentence of death pronounced by a court of law, has been withheld. Legislative policy and the duty of a judge to act in accordance with the law is one thing; executive discretion is another matter.

As we have seen, even compassionate Sirisaṅgabodhi, after releasing rebels, had corpses burnt to inspire belief that he had fulfilled public expectations.[104] Vijayabāhu I, it was said,

"thoroughly pacified the country" by slaying traitors, and by impaling them, he freed "Laṅkā from the briers [of the rebels]" and "returned to Pulatthinagara which was now devoid of all fear".[105] Manu said:[106] "But where Punishment with a black hue and red eyes stalks about, destroying sinners, there the subjects are not disturbed, provided that he who inflicts it discerns well."

A king was expected to maintain law and order by punishing offenders according to law and custom, and at the same time he was expected to be compassionate and cause no harm or pain. Complying with competing public expectations, let alone personal beliefs, could not have been an easy matter, especially when the security of the state was threatened by rebels or invaders. The records suggest that, in general, monarchs were humane - some, like Eḷāra (204 - 161 BC), Bhātika Abhaya (19 BC - 9 AD), Mahācuḷi Mahaṭissa (77-63 BC), Sirināga (195 -214 AD), Vohārika Tissa (214 -236 AD), Sirisaṅgabodhi (247-249 AD), Buddhadāsa (337-365 AD), Vijayabahu II (1186 - 1187 AD), and Parākramabāhu II (1236 - 1270 AD), more so than others. However, the chronicles also record the fact that there were monarchs who disappointed public expectations with regard to the requirement that rulers should be compassionate. For instance, there were Kaṇirajānu Tissa (31-34 AD), Jeṭṭhatissa I (266-276 AD) who was called *kakkhala* 'the Cruel', and Moggallāna I (495-512 AD) who was described as *rakkhasa*- 'devil'. The works of some nineteenth century British authors refer to the extraordinary barbarity of Rājasiṁha II (1635-1687) and of Sri Vikrama Rājasiṁha (1798-1815).

Punishment may be imposed by societies for the alleged purpose of expiation, retaliation, retribution, return of an injury, requital, recompense, a caution against other or further transgression, rehabilitation or for the achievement of several of such purposes. It is believed by some persons that no legal system can last long unless there is built into it the power to apply sanctions against those who violate the law: As far as I know, there is no society in which punishment for crime is absent, notwithstanding the repeated demonstration of the shortcomings and deficiencies of penological

systems. All forms of punishment inflict deprivation, pain, and suffering. The desire for punishment of crime, at decisive moments, it seems, outrides humanitarian feelings; the call for vengeance appears to be invariably louder than the appeal to mercy. By a careful excitation of the community to the danger they stand in at the hands of certain classes of criminals, real or fictitious, monarchs and states secure support, and even perhaps a demand, for punishment. Punishments have been justified by stating that the monarch or state is acting at the request, and with the full authorization, of the public. Society, it is said, expects its governors to maintain law and order, if necessary by the infliction of punishments on offenders. And so, the infliction of punishment, albeit in accordance with law, was and is, it seems, not only to be expected but also regarded as socially acceptable.

It seems to me, if I might borrow the famous words of Alphonse Karr in *Les Guêpes,* published in January 1849, *Plus ça change, plus c'est la même chose* - The more things change, the more they remain the same.

One impaled on a stake.
See pp. 61-62 below.

CHAPTER V

FORMS OF PUNISHMENT

EARLY CRIMINAL LAWS AND PROCEDURES

Especially in criminal matters, where the liberty of a subject was at stake, the system of justice ensured that a defendant had every opportunity of establishing his innocence. James D' Alwis[1] pointed out that the procedures adopted in the Vajjian republics of North India in the Buddha's day[2] ensured that a person accused of an offence, had the benefit of being tried at several levels. He quoted the following passage from George Turnour, stating that "Tradition says that in ancient times in Ceylon a criminal underwent the same ordeal".[3]

> "The Atthakata or commentary of Buddha Ghosa on the Mahaparinibbana Suttanta gives an account of the judicial procedure. When a person was presented before the Vajjian rajas as having committed an offence they without taking him to be a malefactor surrendered him to the Viniccaya Mahamattas or Viniscaya Mahamatras, i.e. officers whose business it was to make inquiries and examine the accused with a view to ascertain whether he was guilty or innocent. If they found that the man was not a culprit they released him but if on the other hand they considered him guilty then instead of proceeding to inflict punishment upon him they made him over to the Voharikas or Vyavaharikas, that is, persons learned in the law and custom. They could discharge him if they found him innocent, if they held him guilty they then transferred him to certain officers called Suttadharas, i.e. officials who kept up the Sutra or the thread of law and custom existing from ancient times. They in their turn made further investigation and if satisfied that the accused was innocent they discharged him. If however he was considered guilty by them, then he was made over to the Attha Kulaka (lit. "Eight castes or tribes") which was evidently a judicial institution composed of judges representing eight kulas or tribes. The Atthakulakas, if satisfied of the guilt of the offender, made him over to the Senapathi or commander of the army who, made him over to the Uparaja or sub-king, and the latter in his turn handed him over to the Raja. The Raja released the accused if he was innocent, if he was found guilty the Raja referred to the

> Pareni Putthaka, that is the Pustaka or book recording the law and precedents. This book prescribed the punishment for each particular offence. The Raja having measured the culprit's offence by means of that standard used to inflict a proper sentence."

James D' Alwis said:

> "Ancient Buddhist governments were so fully convinced of the necessity for the affairs of society being settled by those who were intimately acquainted with the litigants, their character and habits of life that they appointed several bodies of men to review the law proceedings of the criminal magistrate. And here it is important to bear in mind that the liberty of the subject was so greatly esteemed by Buddhists that they considered it unjust to allow an appeal to the disappointed prosecutor whilst to convicted culprits they gave nearly six appeals."

The procedure described by Turnour seems to relate to a system of committal rather than to appeals, although, as we shall see, appeals did also lie from one tribunal to another up to the king himself all throughout history.

THE INTRODUCTION AND PREVALENCE OF HARSH PUNISHMENTS

M.L.S. Jayasekera[4] stated that the procedure described by Turnour

> "... obtained in Sri Lanka during the whole of the Anuradhapura period. The presence of a Vicinaya Mahamacca in Mahasena's reign is attested in the Mahāvaṁsa (37.39). The title Voharika existed as a King had it too. In the Badulla Pillar Inscription (EZ III p. 8) there is reference to "Eight of the village, Eight of the forest and the Eight who ... and the pirivahana should sit in session and make investigation." This inscription is a 10th century one. In the Polonnaruva period due to the introduction of parts of written Hindu law or Niti literature it is quite probable that this Vajjian procedure ceased to be observed. We find thereafter severe punishments and the criminal law based on the Matsya Nyaya and Danda as described by Manu and other jurists operating in Sri Lanka."

Jayasekera observed:[5] "The Sinhalese Kings from Vijaya to Devanampiyatissa and the majority of the people were of the Hindu faith they brought over from India." Jayasekera,[6] stated that the existence of *Raṭa Sabhā* and *Gam Sabhā* provided evidence that supported his view that the Sinhalese were descendants of the early Indian settlers.[7] These 'political institutions', he said, 'came to Sri Laṅka with the early settlers.'[8] They may have had other functions, but the two *Sabhā* were also judicial tribunals. Jayasekera[9] stated that the "concepts of local administration of justice in village assemblies and by clan guilds and corporations were brought by the Sinhalese from their homelands along with the Aryan caste structure of the four Vannas." He stated:[10] "The Gam Sabhā has existed from ancient times as a Court administering justice ... There was also the Raṭa Sabhā or District Council, hearing disputes." Did the early settlers who brought with them the religion and institutions (including village and district tribunals) they were acquainted with leave behind recollections of their laws embodied in the *Dharmaśāstras?* We have seen that they probably did not do so.

In fact, as we have seen in Chapter III, Sir Alexander Johnston unambiguously and with certainty stated that the first recorded ruler, Vijaya, introduced into Sri Laṅka "the same form of government, the same laws and the same form of institutions as prevailed at that time in his native country." Jayasekera defended Johnston's view against the assertion of Ralph Pieris that Sir Alexander was "wandering into the realm of conjectural history."

There is no inventory of the things the early settlers, represented by the arrival of Vijaya, brought with them. We do not know whether they had with them copies of books on state-craft or religion. It is more than likely that at some time, throughout hundreds of years of contact with India, copies of some of those works may have been brought to Sri Laṅka. The written codes were essentially meant to serve as memoranda-

books for those who were called upon to advise the king and others on what the law or appropriate ritual was on a particular matter rather than being works intended for general reading. It was the remembrance of the laws that had governed them and their ancestors for hundreds of years and which had come to be embodied in the ancient written works that the early settlers probably brought with them. Some of the 'severe' punishments that were complained about and attributed to the introduction of "written Hindu law" during the Poḷonnaruwa period[11] had a long history except during the reigns of some enlightened monarchs from time to time. Thus Kaṇirajānu Tissa (31-34 AD) may have either imprisoned rebellious monks in caves, or, according to Geiger[12], had them thrown down a rocky precipice. Iḷanāga (33-43 AD) cut off the noses and toes of the Lambakannas who 'opposed his progress'. Goṭhābhaya (253-266 AD, branded some heretical monks before he expelled them. Jeṭṭhatissa (266-276 AD) caused rebellious ministers to be impaled and burnt. Moggallāna I (495-512 AD) put over a thousand people to death and banished others after cutting off their ears and noses. Silāmēghavaṇṇa (623-632 AD) cut off the hands of delinquent monks. Udaya IV (946-954 AD) ordered the branding of cattle thieves. Vijayabāhu I (1055-1110 AD) burnt those who killed some of his Generals.

Tennent has but one brief paragraph on 'Civil Justice' in his great work, 'Ceylon' (p. 423). He stated as follows:

> "Torture was originally recognized as a stage in the administration of the law, and in the original organization of the capital in the fourth century before Christ, a place for its infliction was established adjoining the place of execution and the cemetery. *Mahāvaṁsa,* Ch. X. It was abolished in the third century by king Wairatissa; but the frightful punishments or impalling and crushing by elephants continued to the latest period of the Ceylon monarchy."

Chapter X of the *Mahāvaṁsa* is principally concerned with the accession of King Paṇḍukābhaya to the throne. At lines 88-90, it is stated that "He laid out also four suburbs as well as the

Abhaya-tank, the common cemetry, the place of execution, and the chapels of the Queens of the West ..."

What is of significance is that execution was a recognized part of the system even in the days of Paṇḍukābhaya, who according to Wickremasinghe's Chronology (*Epigraphia Zeylanica*, Vol. III p. 20) ruled between 377-307 B.C. The exact regnal dates are debatable; yet, it is evident that cruel punishments of the sort prescribed by the *Dharmaśāstras*, of which execution, in whatever way it is carried out is the most barbarous form of punishment, were in existence many centuries before the Poḷonnaruwa period and were probably brought by the early settlers from India, represented by the arrival of Vijaya.

I find myself in complete agreement with the views of the British writers and officials of the Nineteenth Century that barbarous forms of punishment were imposed by the monarchs of Sri Laṅka. However, the retention of execution and flogging by the British cannot be satisfactorily explained if, as a matter of policy, barbarous forms of punishment were to be abolished. Moreover, the punishments imposed ought to be placed in the context of time and circumstance and the prevailing laws, not as an excuse, much less as a justification, but as an aid to understanding why they were imposed; they ought also to be considered in the light of punishments imposed by other societies, although comparisons may be odious, so that it might be realized that there was nothing *uniquely* harsh and cruelly savage about the punishments of Sri Laṅka.

As far as the British officials were concerned, they based their conclusions on the system of law in operation during the days of "Malabar dominion which during three generations ha[d] tyrannized over the country",[13] and, in particular, during the reign of King Sri Vikrama Rājasiṁha (1798-1815 AD). Moreover, according to the officials, the penalties in the book were not always rigidly enforced, except with regard to treason. In any event, the information the British officials depended upon

for their actions, was unreliable. Henry Marshall[14] confessed: "Whatever information we possess in regard to the king of Kandy, has been obtained chiefly from adverse parties ..."

Let us examine the 'barbarous' punishments that could, according to law, have been imposed by the monarchs of Sri Laṅkā,[15] in the context of the laws and customs of the country, the principles and rules prescribed in the *Dharmaśāstra*, and the practices in other communities.

There was a wide range of punishments, which the *Dhampiyā-aṭuvā-gäṭapadaya* of Kassapa V (914-923 AD), broadly classified as corporal (*kāya-daṇḍa*), verbal (*vacī-daṇḍa*), financial (*dhana-daṇḍa*), and mental (*mano-daṇḍa*).[16]

DEATH AND MODES OF EXECUTION

Death was a recognized form of punishment. A sentence of death could only be passed by, or with the acquiescence of, the king:[17] not even "the whole united assembly of judges" could pass a sentence of death;[18] "all the Radalavaru who form the High Court of Justice combined cannot hear and give a final decision in a charge involving the punishment of death."[19] There was "a special mode of trial":[20] There was "an equitable mode of administering justice in cases of this nature".[21] Capital offences were tried by a tribunal composed of the king and "judicial chiefs"[22] or the king and "officials who ... deal with matters affecting the Government."[23] The Vēväḷkäṭiya Slab Inscription and its copies, however, suggest that during the reign of Udaya IV (946-954 AD), the judicial committees of *dasagam*, comprising the elders of such villages, assembled and charged, tried, convicted and hanged murderers and highway robbers.[24]

Davy[25] observed that the only capital crimes during the time of the Kandyan Kingdom were murder and treason.[26] In response to one of Governor Falck's questions in 1769, the learned Kandyan *bhikkhus* mentioned several serious offences

that were punishable with death. According to the *Lak Raja Lō Sirita*: "Murder, grievous injury to parents, teachers and priests; treason against the King; the destruction of Dagobas and Mahā Bō-trees; the theft of what belongs to the Buddha, the Dēvas and the King; pillage of villages and highway robbery. Those who are convicted of grave offences such as these are sentenced to death."[27] The phrase, "as these", suggests that the list was not exhaustive.

Sentence of death was usually carried out by hanging,[28] or beheading (*sīsaccheda*),[29] on a block known as the *damgeḍiya*[30] D'Oyly said[31] that Principal Chiefs and persons of noble families were entitled to claim the right to be executed by beheading.[32]

D'Oyly[33] stated that the bodies of headmen, and other persons of middling or low rank who were executed were not buried: They were killed by having a *hulla* (stake) thrust through the back and then hung up by the neck on a tree or impaled. He reported[34] that "The Kattadiya, the four Malays, Udupihilla, the two Halangodas, Aliyar, Koragoda Aratchy, were all killed by stabbing before their bodies were hanged."

Marshall[35] observed that, in the Kandyan Kingdom, the execution of women was by drowning. D'Oyly,[36] confirmed that the execution of women was by drowning, but noted that "The instances of capital punishment inflicted on women are rare." D'Oyly stated that although drowning was the usual way in which women were executed, there was an exceptional case: That of a "Caffree (*sic.*)[37] woman, who for murder (and it is said also for eating human flesh), was whipped and dragged through the streets at Hanguranketa and died under the punishment." In a note, he stated as follows:

> "The infliction of capital punishment upon women by drowning, in the Kandyan provinces, was abolished in 1826. At one time in Scotland the ordinary punishment of females for crimes of lesser magnitude was drowning. In cases of murder, treason, witchcraft,

> &c. they were beheaded or burnt at the stake. It was common for regality and barony courts to execute women by drowning. The North Loch of Edinburgh was the scene of execution in all such cases where sentence was pronounced by the bailies of Edinburgh, or by the bailie of regality of Broughton. The mode of execution by drowning was different in Ceylon and in Scotland. In Kandy, the female who was to be put to death was enclosed in a sack and thrown into a tank. But in Scotland, courts having the feudal rights of 'pit and gallows', sentenced women convicted of theft to be drowned in a pit or fowsie. There are instances recorded where females in Scotland were drowned by tying them to stakes within the sea water-mark, at low water, a contrivance which rendered their death lingering and dreadful."

George Ryley Scott said[38]

> "In Rome, drowning was the mode of execution for the bigamist and the patricide ... Drowning seems to have been a favourite mode of disposing of sorcerers and witches during the persecutions of the Middle Ages. And in France, under Charles VI, sedition was punished by drowning."

Impaling was also resorted to.[39] D'Oyly[40] observed that impaling was 'rather more disgraceful than hanging'. During the reign of Kirti Sri Rājasiṁha (1747-1782), one Nennewattepolage Horatala was impaled at Hadum Mereya between Kahalla and Gahalgamboda for stealing and slaughtering cattle.[41] The public purpose was deterrence, for the impaled bodies were displayed in public places;[42] as far as the delinquent was concerned, the purpose was to make him suffer great pain before he died: *ekviṭa nomarā duk gena miyana lesaṭa divas hulaṭa nämgūya* - without killing him at once, he was impaled so that he may suffer and die.[43] That was seen as the way in which expiation was brought about. Sometimes the corpses of executed traitors were impaled, presumably sparing the offender agony, but making his impaled body a warning to others. King Jeṭṭhatissa I (263-273 AD), "commanded that the treasonous ministers be slain and [their bodies] impaled round about his father's pyre."[44] Knox (p.74.) stated: "At the place of Execution, there are alwayes (*sic.*) some

sticking upon Poles, others hanging up in quarters upon Trees." Knox provided a sketch to illustrate his observations: its effect is shocking. However, is it less 'barbarous' to execute people by other means? Possibly public execution may have been at least theoretically defended on the ground that its effect on the public was visible. However, what is the shock-effect of putting away someone privately with a lethal injection or by such other methods?

In describing "Impaling Methods", George Ryley Scott[45] observed that "One of the oldest methods of torture was crucifixion. Its antiquity is indicated in its wide use by the Phoenicians. It was also employed by the Scythians, the Greeks, the Romans, the Persians and the Carthagenians. The use of the cross, was probably, in most races, antedated by impalement upon a tree-trunk."

Knox, stated that elephants were sometimes used for executing offenders, and provides us with a sketch of an execution by an elephant which however, does not illustrate his description. "The king makes use of them for executioners; they will run their teeth (*sic.*) through the body, and then tear it in pieces and throw it limb from limb. They have a sharp iron with a socket with three edges which they put on their teeth (*sic.*) at such times; for the elephants that are kept have all ends of their teeth cut to make them grow the better, and they do grow out again." By "teeth", he probably meant "tusks".

The use of elephants for execution was not unknown in Asia. Thus Manu[46] said: "Property lost and afterwards found [by the king's servants] shall remain in the keeping of [special] officials; those whom the king may convict of stealing it, he shall cause to be slain by an elephant." D'Oyly[47] noted that the use of elephants for purposes of execution had not been in use since the days of King Kirti Sri Rājasiṁha (1747-1782 AD), and that the last occasion was "about 70 years ago".

Other methods of execution also existed. Kelanitissa, put a

monk into a cauldron of boiling oil.[48] The monk, it was alleged, had been guilty of adultery with the queen. As we shall see[49] adultery with a monarch's wife was an act of treason. Treason was punishable with death. Kauṭilya said:[50] "Whoever commits adultery with the queen of the land shall be burnt alive in a vessel (*kumbhipākah*)."

Boiling to death was a very old form of execution in Europe. An instance of boiling to death in England was the execution at Smithfield, in 1530, of a cook named John Roose, for poisoning seventeen persons of the Bishop of Rochester's household, two of whom died.[51]

In Sri Laṅka, death by burning was, it seems, a method of execution reserved for traitors.[52] Kauṭilya[53] said: "Any person who aims at the Kingdom, who forces entry into the king's harem, who instigates wild tribes or enemies [against the king], or who creates disaffection in forts, country parts, or in the army, shall be burnt alive from head to foot."

Death by burning was commonly practiced in Europe as a form of punishment.[54] There was the burning in 1415 of Dr. John Russ, Rector of the University of Prague, and his disciple, Jerome, the burning of Dr. John Hooper, Lord Bishop of Gloucester in 1555, and in the same year, the burning of Rev. George Marsh. And can we forget the description, put into the mouth of an imaginary witness by Mark Twain in the *Girl in White Walks through Rouen*, of the distress of Joan of Arc (1412-1431) as she walked into the fire? George Ryley Scott[55] stated:

> "There is evidence of the antiquity of this form of execution for the finding in the Bible. 'If a man abide not in me, he is cast forth as a branch, and is withered; and men gather them, and cast them into the fire, and they are burned.' The Babylonians, as well as the Hebrews, used it as a mode of execution for certain crimes. It is also referred to by Eusebius in his account of the death of Apphianus, a victim of Maximinus's terrible cruelty ... There would appear to be few, if any, countries where in the early days of civilization, as well

> as in savagery, burning at the stake was not practised in some form. ... Generally speaking, it was looked upon as a suitable method of execution for enemies, those belonging to inferior classes, or those guilty of infamous or repulsive crimes ... It was a favourite sentence in the case of those found guilty of heresy. The Inquisition condemned thousands to the flames. It was no less a favourite method throughout all countries of Europe, Protestant as well as Catholic, for dealing with sorcerers and witches ... In Britain, for centuries, burning was recognized as a mode of execution for certain crimes, notably, as in continental Europe, for heresy ..."

BRANDING

Branding was also a form of punishment. Reference is made in the Vēväḷkäṭiya Slab Inscription of Udaya IV (946-954 AD) to the branding of those who had stolen cattle but not slaughtered them.[56]

Manu[57] stated: "For violating the Guru's bed, [the mark of] a female part shall be [impressed on the forehead with a hot iron]; for drinking [the spirituous liquor called] *Surā*, the sign of a tavern (i.e. wine-cup); for stealing [the gold of a Brāhmaṇa], a dog's foot; for murdering a Brāhmaṇa, a headless corpse." However, Manu[58] stated: "But [men of] all castes who perform the prescribed penances, must not be branded on the forehead by the king, but shall be made to pay the highest amercement." Bühler,[59] stated: "It follows from the rule given in verse 240, that the forehead is the place where they shall be branded." But Manu[60] stated: "A low caste man who tries to place on the same seat with a man of a high caste, shall be *branded on his hip* and be banished, or [the king] shall cause his buttock to be gashed." (The emphasis is mine).

As far as I can ascertain, under the laws of Manu, stealing cattle did not attract branding. For stealing large animals, the king was to fix a punishment, "after considering the time and purpose for which they were destined".[61] For [stealing] cows

belonging to Brāhmaṇas ... and for stealing [other] cattle [belonging to Brāhmaṇas, the offender] shall forthwith lose half his feet".[62]

Branding was widely practiced in England. Rogues and vagabonds were marked with the letter R; thieves with the letter T; and those guilty of manslaughter with the letter M. The branding was usually on the inside of the left hand; but for shoplifting, the mark was on the cheek under the eye; for blasphemy, the tongue was bored through with a red-hot skewer; in the case of perjury, part of the penalty was branding on the forehead with the letter P. In France, for all kinds of minor offences, the punishment was branding with the *fleur-de-lis*. In Russia this form of punishment was widely practiced in the fifteenth, sixteenth, seventeenth and eighteenth centuries. In England and Europe, the objects of branding were twofold. There was the punishment effected by the red-hot metal being impinged, none too gently on the skin; and the marking of the criminal so that if he again be apprehended for some offence or other, the court would be aware of his previous misdemeanor.[63]

In Great Britain, some offenders had been burnt on the cheek. On December 10, 1549, for setting fire to a house, Isobella McFerlane was sentenced "to be branded on the cheek". On March 8, 1615, James Boyle, Johnne Hammiltoun and Adame Moffet, were scourged through the town of Edinburgh and burned with a hot iron upon the cheek.[64] On July 30, 1618, for stealing a purse, Johnne Broune was burnt on the cheek; and on November 10, 1636, some Egyptians, described as 'vagabonds and thieves', were sentenced and convicted as follows: "the men to be hangit, and the weomen to be drowned: and that suche of the weomen as hes children to be scourged throw the burgh of Hadinton and brunt of the cheeke". [65]

MUTILATION

Mutilation was also a recognized form of punishment during certain times. For instance, as we have seen, Silameghavaṇṇa (623-632 AD) ordered the hands of undisciplined monks to be cut off.[66] Mutilation (*aṅgahāni*) usually took the form of cutting off the hands and feet of the delinquent.[67] King Iḷanāga (33-43 AD) ordered cutting off the noses and toes of the Lambakaṇṇas "who had opposed his progress" as a substituted sentence for his earlier order that their heads should be struck off. His change of heart had been brought about because he had been admonished by his mother.[68] The Kandyan *bhikkhus* told Governor Falck that persons were punished by "cutting off their hands, feet, ears or noses".[69] The *Cūḷavaṃsa*[70] said that "Many thieves who had committed thefts even in the royal palace, turned to [King Parākramabāhu II] when punishment overtook them. They gave up their anguish and their fear and unharmed, without suffering the loss of a limb (*aṅgahāni*), their lives were spared."

Marshall,[71] stated:

> "Mutilation or dismemberment appears to have been a very common punishment in most countries during a state of semi-civilization, but it has always been more extensively used in the East, than in perhaps any other part of the world. Brawling or quarreling in the precincts of the court, at one time rendered a delinquent in this country [England] liable to have his right hand chopped off. According to Blackstone, dismemberment is still a legitimate punishment for crime in Great Britain. But it is in the East that these barbarous punishments, taking away the nose and ears, have been most in use (Ezek. XXIII, 25). In Egypt the noses of adulterous persons were cut off, and in Chaldea both their ears and noses."

So Ezekiel was from the 'East'? And if so, Moses, the principles in Deuteronomy on which western judicial standards have been founded, the 'higher law' of equity of the western legal systems, the religion and culture of the Jews and Christians, are

based on 'Eastern', rather than 'Western' teachings? I make no assertions: I only suggest conclusions to which Marshall's statement might take us.

When Great Britain may have ceased to be in " a state of semi-civilization" is not clear; but we do know that in 1556, Andrew Drummond, convicted of forgery, was sentenced "to be publickly led with his hands tied behind his back to the burgh of Edinburgh, and there to have his right hand struck off and fastened on a pole: and thereafter to be banished from the kingdom for life."[72] For a similar offence, on May 5, 1558, at Edinburgh, David Fethye had his right hand amputated.[73]

What is "semi-civilization" ? Were the Romans in the age of Justinian "semi-civilized"? George Ryley Scott stated:[74]

> "Offences against the Church in particular were punished with utmost severity. By the express order of Justininan anyone guilty of insulting a priest or a bishop in a church could be tortured. In some cases mutilation was the prescribed punishment. In the early days, the feet and hands were amputated *in toto*, but Justinian tempered the severity of this law, restricting it to the amputation of one hand only."

Mutilation was a rare form of punishment during the days of the Kandyan Kingdom, but it did take place. During the reign of Kirti Sri Rājasiṁha (1747-1782), Mudunegedera Rāla had a hand cut off at the wrist for violating a customary law.

D'Oyly stated :[75]

> "There are five or six instances in which Amputation was inflicted for offences, viz., of the hand or lower part of the arm, for robbing the Treasury, for Killing Cattle, for removing a Sequestration - and of finger, for striking a *Chief*, and for striking a Priest, and it seems to have been the object of it, to punish the limb which committed the deed.[76]
>
> No instances have occurred within the last 40 years except the amputation of the Ears and Noses of some followers of Mooddoo Sawmy in the war of 1803 and the infliction of the well known

> barbarity upon the traders of the Maratime (*sic.*) Provinces in October, 1814."

Both in the case of Muttusvamy and the case of the traders, mutilation was imposed for treason.[77] Treason, then as now, is an extraordinarily heinous offence warranting, according to the prevailing laws, harsh consequences.

There are some punishments that have been referred to in the sources that might, perhaps, be regarded as even more unusual. In fact, they were sometimes acknowledged by the authorities themselves to be extraordinary. For instance, authority was given for criminals fleeing from justice, to be subject to "such unusual punishments as beating with clubs and punishments by torture..."[78]. Other unusual punishments were (i) standing on heated iron sandals if brand-marks on cattle were effaced;[79] and (ii) the tearing of the jaws of persons who transgressed royal orders.[80]

WHIPPING AND BEATING

As in other countries, whipping, and beating were well established forms of punishment. "Use every man after his desert, and who should scape whipping?", said Shakespeare.[81] In Rome slaves were continually punished by flagellation. George Ryley Scott [82] stated:

> "According to Horace, the sadistic cruelty and vindictiveness of some judges led them to order floggings which were so excessive, and continued so long, that the executioner often enough, through sheer exhaustion, was obliged to desist before the sentence was completed."

In Sri Laṅka, whipping, it seems, was imposed only in cases of 'ignominious offences', and chiefs were not subjected to it.[83]

The infliction of corporal punishment was written into the statute book of modern Sri Laṅkā by the British, and they

insisted by law that their standards in the infliction of flogging were followed. The British were experts in that area: they were, after all, the inventors of the "Cat o' nine tails".

George Ryley Scott stated:[84]

> " Since flogging was authorized by the Mutiny Act of 1689, as a mode of punishment in the British Army, it was for two hundred years considered to be the best means of keeping discipline.
>
> The cat-o'-nine-tails was the chosen flagellating instrument. It consisted of nine separate thongs of whipcord. In those early days, each thong was knotted in three places. These thongs, brought down upon the naked flesh of the culprit, cut through the skin as it were paper, the knots tearing out great lumps of flesh. The sensation which the culprit experienced, says Shipp, was 'as though the talons of a hawk were tearing the flesh off the bones'. At the finish of the operation, the ground around the whipped individual was splashed with blood; the executioner looked for all the world as if he had just come out of a slaughter-house.
>
> At the close of the eighteenth century a court martial had the power to order anything up to 1000 lashes. Sentences of 500, 600 and 800 strokes were common, and were given for offences which were far from serious..."

The Penal Code, even to this day, recognizes whipping as a form of punishment to which offenders are liable.[85]

The observations of a distinguished early British administrator, J.W. Bennett, deserves repetition (i) to illustrate the fact that flogging, which some people would regard as 'barbarous' was not considered to be so by the British, underlining the fact that the qualitative character of punishment is really, as far as individuals are concerned, a subjective matter, and as far as societies are concerned, a matter of government policy; and (ii) to afford some evidence of the misunderstanding, obviously based on mis-information, provided by certain persons, with regard to the people who were to be governed. Bennett said:[86]

And now a parting word for the native population of the place:-I had heard so much to the prejudice of the inhabitants, before an opportunity offered of judging how far reports were, or were not correct, that the first thing I did, upon taking charge of the district, was to erect a flogging post in the bazaar. This, naturally gave rise to the supposition, that they had *a terrible Tartar* come amongst them; but, after an experience of twelve months, as the only magistrate in the district, during which period, I had neither occasion to commit one native for trial, or to resort to summary punishment within my own jurisdiction, (extending over seventy six miles in length), either by the lash or imprisonment, except in one instance of the latter, in order to give refuge to a Malabar vagrant, I had the supreme pleasure of ordering the removal of the *maiden* flogging post, as the last act of my authority there: and, when the extent of the district be considered, this tribute is nothing more than is, in justice, due to the native inhabitants of Mahagampattoo, whom I left, *malgre* all that I had suffered there, with heartful regret."

Whipping through the streets was a punishment imposed for certain offences.[87] D'Oyly stated[88] that headmen and other persons of middling or lower rank who had been condemned to death were sometimes for the sake of public notoriety first whipped through the streets of Kandy preceded by a drummer, with a chaplet of flowers on their heads, and their bodies whitened with lime.[89] Sometimes the person died before reaching the place of execution, as in the case of the "Caffree" woman who had been condemned to be executed after whipping on the streets at Hanguranketa.[90]

Petigammana Mohundirama was found guilty of stealing the banner of Sabaragamuva. He was working at the Lake when Sri Vikrama Rājasiṁha was standing near. He was flogged at the spot and died under the punishment; a rope was put round the neck of the dead body which was dragged to Gannoruva and there hung up.[91] During the reign of Sri Vikrama Rājasiṁha (1798-1815), "Gunnepana Nekatgedera Appu stole a *sembu* (brass pot) from some Malabar dancers who were performing at the palace gate; he was flogged with whips through the streets, under which he died, his body was also dragged by a rope fastened round the neck and hung up at Gannoruva." [92]

If persons who were whipped survived, they might have been executed. For instance, during the reign of Kirti Sri Rājasiṁha (1747-1782), Nennewattepolage Horatala of Gahalagamboda in Dumbara was convicted of stealing and killing cattle and was flogged through the streets and impaled at Hadum Mereya between Kahalla and Gahalagamboda.[93] Two brothers of the Hittaragedera family of Hulangomuva in Matale had a quarrel during which the younger killed the elder. He was tried by the chiefs in Kandy, flogged through the streets and taken to Mandandavela in Matale, bound and hung on a tree.[94] During the reign of Sri Vikrama Rājasiṁha (1798-1815), "Ehelemalpe Maduma Mohundiram and Kanamiwewe Widi Arachchi were found guilty of stealing some confiscated property of a Mohoṭṭāla of the Sat Kōralē, while taking an account of the same. They were flogged through the streets and impaled at Hunukotuva in Gannoruva."[95]

In some instances, the sentence of whipping through the streets was followed by deportation to distant villages "in some of which, death often ensues from the insalubrity of the climate.[96] It has usually been inflicted for crimes against the state, homicides and atrocious robberies."[97] During the reign of Kirti Sri Rāja Siṁha (1747-1782), Pihana Rāla of Mavatapola who stole cardamom from the king's betel box was flogged and transported to Badulla.[98] Pepoleyete Kankota Unga of Gahalagamboda in Dumbara who habitually stole and slaughtered cattle, was flogged through the streets and transported to Bintenna.[99] Aganā Kumburē Sattamby who stole a gold waist chain and some other articles from the king's bathing room was hung up, flogged with whips, his property was confiscated and he was banished to Badulla.[100] During the reign of Sri Vikrama Rājasiṁha (1798-1815), where one of the king's washermen killed another with an axe during the course of a quarrel, he was tried, imprisoned, flogged through the streets and banished to Etanawala.[101] Mullegama Appu of Hāris Pattu during the course of a quarrel struck Polgashinne Ārachchi with a cudgel and killed him. After trial, he was imprisoned, flogged

through the streets and sent to Wanduragala.[102] Sometimes mutilation was imposed after flogging through the streets. Mudunegedera Rāla was flogged through the streets and had his hand cut off at the wrist for contempt of custom relating to *Bōla*.[103]

Whipping through the streets was not unknown in England. For example, Titus Oates was in 1685 sentenced to be pilloried and whipped from Aldgate to Newgate, and two days later from Newgate to Tyburn.[104] It was also a mode of punishment in Scotland. [105]

In the days of the Kandyan Kingdom (1469-1815), blows with an open hand or with or rods, or a rattan cane were recognized forms of punishment. [106]

Reference is made in the Mäḍirigiri Slab-Inscription of Mahinda VI (c. 1187 AD)[107] to the punishment of offenders who failed to carry out the punishment of working on tanks by striking "with a slender creeper".[108] Punishment with the cane could be inflicted only by order of the King or of the *Adigārs*. The criminal was laid with his face on the ground, and his arms and legs were confined by men treading upon them. The punishment was inflicted on the shoulders and back by one or two "Kaṭubulla" people.[109] *Ipal* rods were used for serious offences. People of low caste and slaves were beaten after being bound to a post or a tree, which was considered a more disgraceful situation. The number of strokes was not fixed by sentence: The person who ordered the punishment had to be present when it was carried out and direct it to cease when he judged it to be sufficient.[110]

IMPRISONMENT

Imprisonment was a recognized form of 'punishment.'[111] Robert Percival,[112] however, stated: [113]

> "Imprisonment is a species of punishment never to be inflicted on a Candian, and only suited to the barbarity of Europeans. This may be alledged (*sic.*) as the principal cause of their summary trials and

> punishments, as they never confine a culprit. Not only a prison, but any species of confinement, seems to convey ideas peculiarly horrible to their imaginations. The Candian ambassadors could not even be prevailed upon to allow the doors of the carriage, sent to convey them to an audience with our governor, to be shut upon them, as they said it looked like making them prisoners; and the doors were actually obliged to be fastened back in order to remove their objections"

Was Percival confused?: His idea of imprisonment it seems assumed incarceration subject to strict surveillance behind prison walls. He overlooked the fact that the essence of imprisonment was, then as it is now, the loss of freedom of movement.[114] A person confined to his own house or prohibited from leaving a village was 'imprisoned'. Commenting on the phrase *tirä kot genä* in the Vēväḷkäṭiya Slab-Inscription, Ranawella[115] pointed out that the *Amāvatura*[116] had used it in the sense of 'having taken into custody or having detained' "several times with reference to a person who had been detained or whose movements had been restricted as *ohu ätäniyen tirä kota ganneyi, ohu asäniyen tirä kota ganneyi.* The Badulla Pillar Inscription of Udaya IV has used this word with reference to a person being confined to a house as *'getirä genä'*. (*E. Z.*, Vol. III, pp. 75-79.)"

There were ordinary prisons as we know them today (*bandhanāgāra*), and confinement as a form of punishment in such places did exist. King Vijayabāhu II (1186-1187)[117] was said to have released persons imprisoned by his uncle, Parākramabāhu I (1153-1186). Prisons were generally known as *kārā* conveying the sense of 'binding', 'pain' or 'affliction'. A prison was also called a *kara-geya*, meaning 'house of captivity', *kārāgāra*, a house of confinement. The terms *danga-ge* and *sira-ge* were also used. "They seem to have meant 'a house in which one was not allowed to walk about' (<*jaṅghā*) and a 'house of confinement' respectively." [118]

During the time of the Kandyan Kingdom (1469-1815), there was the *Mahā-sirage* - the Great Prison - in Kandy. It was

controlled by the *Adigārs* and the "*Hiragey Kankānas* and guarded by the people of low caste called Räkawallo," although, it is said, it was in itself a place of no great security.[119] We know of a *palāta vidāna*, during the reign of Kirti Sri Rājasiṁha (1747-1782), and a washerman and one Mullegama Appu of Haris Pattu, during the reign of Sri Vikrama Rājasiṁha (1798-1815), who were held in detention in that prison for a month.[120] Evidently, there were other prisons in the kingdom: There is reference to a person being imprisoned in the *Hiragē* at Badulla during the reign of Kirti Sri Rājasiṁha (1747-82); and to the imprisonment of a person at Laggala during the reign of Rājādhirājasiṁha (1782-1798).[121]

Not all persons who were given a sentence of imprisonment were actually incarcerated in a state prison. When a person was given a sentence of imprisonment, he was thereby condemned as a person who had been convicted of an offence for which the prescribed maximum penalty was imprisonment. In the same way that offenders today are given suspended sentences of imprisonment, offenders during the time of the Kandyan Kingdom, and possibly earlier, were not incarcerated if their transgressions were of a trivial nature. However, they were visibly marked (unlike persons who are given suspended sentences today), by being deprived of their headgear; they could not resume it till they were set at liberty.[122]

Sometimes people were confined in the houses of the chiefs who sentenced them, or in the *kaḍawat* of the administrative districts of the *dissāvas* and *raṭemahatmayo*. They were either detained in chains or in stocks,[123] or without physical restraint, depending on the nature of the offence.[124]

That was preferable to being confined in the *Mahā-hiragē* because it was "a general and indiscriminate prison", whose inmates were "subject to daily labour in the streets, and to various exactions from the guards to escape this and other severities." Except for persons who came from the royal and

temple villages or from the king's household, prisoners were required to pay a fee of 1 *ridī* and 14 *pice* on admission and 2 *ridī* and 12 *pice* upon discharge. Prisoners received no subsistence from the government. They had to be supplied with provisions by their relations. If, as it sometimes happened, they were left destitute, they were permitted to go in custody along the streets and obtain food by begging. No term was fixed and imprisonment continued for as long as it pleased the sentencing judge. Sometimes the person would be released upon payment of a suitable fee or fine.[125] A person confined for a minor offence, it is said, was rarely released without payment of a fine.[126]

D'Oyly's description of conditions in the *Mahā-hirage*, show that the customary methods for the treatment of prisoners were probably overlooked during the days of the last monarch. They were also, it seems, overlooked by Rājasiṁha II.[127] The *Ratnavali*, which was a 'discourse to a king' by the Mahāyāna philosopher, Nāgārjuna[128] said: "Up to the time of their discharge, let them enjoy a pleasant imprisonment and the comfort of barbers, baths, drinks, food, medicines and garments." Geiger stated[129] that sometimes prisoners did not even receive food regularly. Geiger's inference is based on the statement in the *Cūḷavaṁsa*[130] that King Mahinda IV 'had food given regularly to criminals in prison'.[131]

Imprisonment, as we have seen, as a form of punishment, was meant to bring about some suffering; but was that principally to be on account of the restriction of movement? Manu,[132] however, said: "Let [the king] place all prisons near a high-road, where the suffering and disfigured offenders can be seen."[133]

Superior chiefs and persons of high rank were never confined in the *Mahā-hirage*.[134] If their misconduct incurred severe displeasure, they would be expelled from Court and directed to perform ordinary public service in the country. Custom was important in these matters: but that was not readily appreciated by the British. Percival, for instance, said:[135] "As respect is paid

not only to the merits of the cause, but to the rank of the offender, it is evident that the administration of justice must be very defective."[136] For mere neglect of duty and misdemeanours, they might be temporarily excluded from Court and confined to their houses in Kandy or sent to their villages, or confined in the *Kaṭubulla* villages near Kandy. Sometimes they were divested of their caps and jackets when they were so confined. During the period of such confinement, they were required to wear dark blue or black clothes, and to sleep on the floor. [137]

Women awaiting trial were held in custody at the *Mahā Gabaḍāva* (royal storehouse) but not at the *Mahā-hirage* nor in the houses of chiefs. Upon conviction, if they were sentenced to imprisonment, they were confined in the royal village, Gampoḷa.[138]

D'Oyly[139] stated that persons of all descriptions for offences against the state, and common criminals, sometimes after whipping through the streets,[140] were confined in one of the following villages:[141]

> "In the 7 Korles - Kirinde, Kadawetta, and Wanduragala Kadawata.
> In Uwa - Badulla and Buttela.
> In Matele - Polkiriyawe, Laggala and Etangwala.
> In Walapaney - Madulla, Telipehe and Danagomuwa.
> In Bintenne - Karooppe, Handaganawa.
> In Dumbera - Hanwelle, Kehelelle.
> In Hewaheta - Hangaranketa."

D'Oyly added:[142]

> "They are delivered to the custody of certain Inhabitants of these villages, who are obliged to supply them gratuitously with provisions, but often do it scantly - and they are treated with more or less severity according to the orders received, and according to their behaviour.
>
> Telipehe, Danagomuwa, Kehelelle, Bintenne, Laggala, Etangwela, Boottela, are noted for the insalubrity of their Climate, and often prove fatal to the natives of the hill country if confined there long. They are selected as places of imprisonment both on account of the

remoteness of their situation, and frequently with the view of consigning the culprit to a lingering death."

FINES

Some offenders were required to pay fines - *daḍa,*[143] or *daḍa muḍu.*[144] Fines were a recognized form of punishment in the Kandyan Kingdom.[145] It was said[146] that during the reign of King Sri Vikrama Rājasiṁha (1798-1815), "The Superior Chiefs usually recovered their fines by imprisonment. The Principal Headmen by placing in welekma, which in some cases amounts to an absolute punishment, or rather a torture to compel payment."[147]

CUTTING OFF HAIR

Cutting off the hair was another form of punishment. It was a mode of punishment that the king alone could impose on free persons. Persons of low caste were not entitled to wear their hair long. An adulterer, caught in the house, might have been placed in a disgraceful condition by having his hair cut off, in addition to having his ears cut off and being soundly beaten in private and flogged in public.[148] Women who committed atrocious crimes, not deserving of death were whipped with rods at the *Mahā Gabaḍāva*,[149] or through the streets of Kandy, carrying a basket of sand upon the head or by cutting of their hair, which was a signal disgrace. They were then discharged or sent to the granary of the royal village of Gampoḷa and compelled to work in confinement until their release.[150]

SOCIAL DEGRADATION

D'Oyly referred to "Consignment to Rhodiyas" as a form of punishment. He said:[151]

> "There is still one species of punishment said to be sanctioned by ancient customs which can be inflicted only by the King's orders viz. - the consignment of persons of superior caste to the caste of Rhodias, who are in general estimation the vilest and most despised of the human race. The infamy of such a punishment cannot be

equalled, and of course never be retrieved. It was awarded only for the most atrocious offences, and no more than two instances have occurred in modern times."

Social degradation, *nigraha*, was a long established punishment. The word sometimes meant bodily chastisement, but it also meant degradation into those groups which, in ancient days, were subjected to severe social disabilities. Acts of treason were normally punished with one or more of the following punishments: death, torture, confiscation of land, imprisonment, social degradation or banishment. The Panākaḍuva Copper Plate of Vijayabāhu I recorded that the descendants of Lord Budal were not to be punished, even in the case of treason, with degradation.[152] The *Lak Raja Lo Sirita* dealt with the subject of reduction in status in the following way:

> *Can the King reduce men of noble wansa to a low jati or raise the low to Wansas?*
> Where men of noble wansa commit treason or other similar grave offence, it is open to have them arrested and tried by the highest Tribunal of Justice and to condemn them to death and reduce them to a low jatiya. As for men of low origin, they can be appointed headmen in their own Nagaran but there is no possibility of raising them to a wansa.[153]

BEING CURSED

Being cursed was another form of punishment: - *mano-daṇḍa*.[154] This may, at first, appear to be rather quaint; just another "barbaric" thing; but then, it seems, some very eminent practitioners concerned with the realm of mental phenomena affecting the normal functions of human beings appear to acknowledge the probable adverse mental and physical effects on some persons that accompany the fear of evil consequences brought about by cursing and its various manifestations.

REPRIMAND

Then there was reprimand (*dähävillen*) - a show of angry disapproval.[155] It was the mildest form of punishment. Parākramabāhu II, it is said, "looked with indignation" upon certain

offenders "and, with all sorts of words of rebuke, he made of them honest men."[156] Verbal punishment was classified as *vacī-daṇḍa*.[157] As we have seen,[158] in his chapter 'Civil and Criminal Procedure', Manu set out a sentencing policy describing how the range of punishments available to a judge might be used to achieve the objectives of the law.

UNPAID COMMUNITY SERVICE

Some people believe that the performance of some public service as a form of punishment is a recent invention.[159] However, there was such a sentencing option even in earlier times.

In the days of the Kandyan Kingdom (1469-1815), superior chiefs and persons of high rank were not sentenced to be incarcerated in an ordinary prison. Where their misconduct incurred "severe displeasure", they were "degraded by permanent expulsion from Court, and without imprisonment directed to perform ordinary public service in the country".[160]

King Bhātiya Tissa (19 BC-9 AD) ordered the cleaning of the royal courtyard as an alternative punishment where the offenders, who had been found guilty of the offence of eating beef, were unable to pay their fines.[161] The Tablets of Mahinda IV (956-972 AD) at Mihintale also provide evidence of the use of community service as a punishment. Slab A recorded the following decree: "If any fault be committed by tenants, a fine shall be assessed[162] according to village custom, and in lieu of the assessed fine, they shall be made to perform tank-work by undertaking portions [of work] 16 cubits in circumference and one cubit in depth at the side of Mina [tank]. If this be not done, the assessed fine shall be levied."[163]

The Mädirigiri Slab-Inscription of Mahinda VI (c. 1187)[164] gave us another example of community service as an alternative form of punishment. The record sets out laws intended to prevent the misappropriation of the income of a hospital by its employees

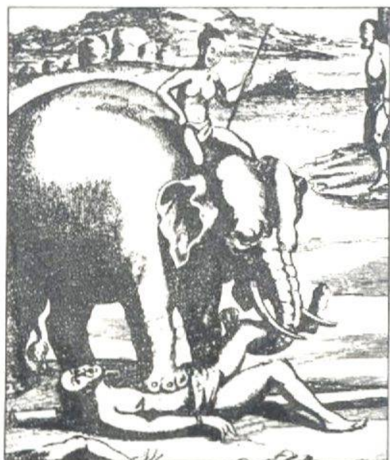
and other functionaries, so that it would benefit those for whom it was intended, namely, the patients. It stated, among other things, as follows: "When those who have caught fish at a place where creatures living in the water are protected, have been arrested, the Superintendent shall go to the place with their lordships the physicians and make [the culprits] do work on tanks. The fish shall be confiscated for the hospital. Those who do not come for service [on tanks] are to be struck with a slender creeper."[165]

This alternative method of settlement was also recognized by Manu. He decreed: "But a *Kṣhatriya,* a *Vaiśya*, and a *Śūdra* who are unable to pay a fine, shall discharge the debt by labour; a *Brāhmaṇa* shall pay it by installments."[166]

Whereas those who were unable to pay fines were sometimes required to perform some community service in lieu, in other cases where an offender was unable to pay the fine imposed on him, a judge may have passed a severe default sentence. For instance, the Vēvälkäṭiya Slab Inscription stated that if a person who had aided and abetted a criminal was unable to pay the stipulated fine of fifty *kalaṅdas* of gold, his house should be confiscated; but if he had no house, the offender should be punished by cutting off his hands, or, according to some copies of the inscription, cutting off his hands and feet (*atpā kapā*).[167]

BANISHMENT AND FORFEITURE

As we shall see when specific offences are considered, banishment (*raṭṭhā pabbājana; désatyāga*),[168] and forfeiture of property[169] were sometimes imposed as punishments.



An execution by an elephant
See p.62 above.

CHAPTER VI

TREASON

TRADITIONAL RESPONSES

The 'five most heinous crimes'[1] were reprehensible; but treason was, and is, regarded as even more odious, deserving the most severe punishment.

Sometimes even traitors were forgiven or treated leniently, underlining the essential character of the system, that laws must be applied, not rigorously according to the letter, but having regard to the circumstances. However, in general, rebels *(corā, dāmarikā)* who opposed the monarch were persons guilty of *rājāparādha* (high treason), and whether they were ministers,[2] or monks,[3] or ordinary citizens, they were usually punished with severity. At the performance of his father's funeral rites, King Jeṭṭhatissa I (266-276 AD) caused the ministers who had been hostile to the deceased ruler because of his attachment to a heretical monk, to be slain and their bodies impaled on stakes round the pyre of his father.[4] The *Cūḷavaṁsa,*[5] refers to the case of a rebellion led by three brothers who were important officials, one of whom was the President of the Court of Justice, and how King Vijayabāhu I (1055-1110 AD) "thoroughly pacified the country" by slaying "here and there many enemies". He captured his foes and had them impaled. By an order of the same king the leaders of the rebellious Veḷāikkāṟa mercenaries, who had slain their two generals, were burnt alive, chained to stakes around the pyre on which the remains of the murdered generals were laid. Because of this he came by the appellation 'the Cruel' *(kakkhala).*[6] Geiger[7] stated:

> "In the time of Parākkamabāhu (1153-1186 AD) the treatment of the Rohaṇa people was terribly cruel, if we can rely on the report of the chronicler. And the Rohaṇa people were by no means rebels in the true sense of the word, but rather loyal adherents of their former dynasty represented at that time by the aged queen Sugalā. The

> Damiḷâdikārin Rakkha after having conquered Dvādasasahassaka had many hundreds of his enemies who were taken alive, impaled in villages and market towns, and also round about the village of Mahānāgahula he had numbers of the foes impaled or hanged on the gallows and burnt to ashes.[8] Likewise General Mañju had many stakes set up in the Rohaṇa country on which he impaled hundreds of the enemy, and he had numbers hanged on gallows and burnt.[9] Thus he displayed the terrible majesty of King Parākkamabāhu."

D'Oyly,[10] stated that although death was the usual punishment for treason,[11] yet, in the case of "persons of inferior note ... the punishment has in many instances been mitigated or wholly remitted." King Bhuvanaikabāhu desisted from punishing traitors; his desire not to show undue severity toward the inhabitants of the Four Koralas "was probably dictated by the necessity of securing the co-operation of these people in his plans for subduing the mountainous districts." There was no suggestion that he did so because of the inferior status of the rebels.[12]

Rebellious and seditious conduct were acts of treason. But other acts too may have been regarded as treason. D'Oyly[13] stated that adultery with the king's wives was a species of treason and that there were two instances when the offenders were executed. However, those who were guilty of adultery with the king's concubines were not punished with death: they were "sentenced to suffer severe corporal punishment and sometimes the additional penalty of cutting off the hair or imprisonment." Practicing sorcery against the king was also an act of treason. Five persons who practiced sorcery against the monarch were executed by King Kirti Sri Rājasiṁha (1747-1782 AD).[14]

The misappropriation or theft of royal property was akin to treason:[15] the offender was liable to be punished with death and his kinsmen were also liable to be punished.[16] The confiscation of property and the punishment of generations of families of offenders may have also been ordered where royal treasures were stolen.[17]

However, as always, the letter of the law gave way to the circumstances of a case. A man who stole the king's belongings to clothe himself, was not punished severely.[18]

On the other hand, as we shall see in relation to the execution of the headmen of Sat Kōraḷē,[19] Sri Vikrama Rājasiṁha, disregarding custom, arbitrarily invented retroactive laws of treason.

Punishment for treason could have taken the form of execution, mutilation, banishment or imprisonment, or a combination of such punishments.[20] Severe social degradation *(nigraha)* was sometimes imposed on the members of a traitor's family.[21] Conviction for treason was almost universally followed by confiscation of the property of the offender,[22] and sometimes that of the relations of the offender.[23] Sometimes, it seems, other forms of punishment were preferred to confiscation of property. The *Saddharmaratnāvaliya*[24] stated: *mē rājadrōhiyā vēda at pā hō käpuva mänava hula* hō *nääguva mänava ... sampat häragatot maṭa ayinādan siddhaveyi ... mu sāparādha tänättahu raṭin neriyayi varada näta.* (This is a traitor. His hands and feet should be cut off or he must be put to death ... If I were to confiscate his wealth I should be guilty of stealing ... but if I banish him it is not wrong).

Mutilation may also have been ordered in the case of treason.[25] D'Oyly [26] observed that there had been no cases of mutilation for four decades, but he mentioned two exceptional cases: that of the followers of Muttusvamy and that of the traders. They were both cases of treason.

THE CASE OF MUTTUSVAMY

Muttusvamy was the brother of three of King Rājadhi Rājasiṁha's queens. When Rājādhi Rājasiṁha died childless, Piḷima Taḷauvē placed Konnasāmi, the son of a sister of one of the queens-dowager, on the throne. He ruled as Sri Vikrama Rājasiṁha. Muttusvamy, the brother-in-law of King Sri Vikrama

Rājasiṁha, was disappointed that he had not been placed on the throne and he went over to the British. The British Governor, North, came to an arrangement to invade the Kandyan Kingdom and to place Muttusvamy on the throne. This was done in 1803: [27] But that invasion went the way of earlier attempts by the Portuguese and the Dutch to conquer the Kandyan Kingdom.[28] Sri Vikrama Rājasiṁha's forces fought back and drove out the British invaders, inflicting heavy losses: 'jungle fever' did the rest. Major Davie, who lead the British troops after General Macdowal had returned to Colombo, surrendered Muttusvamy. Muttusvamy was handed over by the British to Sri Vikrama Rājasiṁha. Lead before the king, he was asked, "Was it proper for you, being of the royal family to join the English?" "I am at the king's mercy" was his humble reply. William Knighton[29] stated:[30] "A few more questions were asked and answered, after which this unfortunate victim of British cowardice suffered the most dreadful and barbarous of all deaths - impalement."

The king passed sentence after consulting his advisers. It is said that "There is no hint that his conduct on the occasion was other than strictly what was proper in a judge on whom lay the responsibility of the country's safety. There was no display of passion or triumphing over a fallen foe; strict justice was correctly admitted; the convicts too had rights of their own and they were scrupulously observed." [31]

Major Davie and Captains Rumley and Humphries escaped to Colombo.[32] The troops left behind were 'basely massacred'.[33] And, as D' Oyly observed, some of the followers of Mutusvamy were mutilated.

THE CASE OF THE TRADERS

According to Colvin R. de Silva,[34] the case of the traders was as follows:

> Ten Sinhalese traders of Mahara, a village in the Siyane Korale of the Colombo District, trading in Kandyan territory, had been plundered of

their goods at the village of Imbulgama in the Three Korales by some washermen. While the traders were preparing to complain to the local headmen, the washermen, afraid of the consequences, forestalled their victims by denouncing them to the very headmen as spies of the British Government. The traders were arrested, taken up to Kandy and charged and convicted as spies, on the evidence of the plunderers. In punishment, they were severely maltreated. an ear and a hand of each was cut off, and they were sent back by different routes to the Maritime Provinces with their dismembered limbs suspended from their necks. Seven died, but three managed to struggle home, there to complain to the Government. That the King believed them to be spies, there is no doubt 'Ähäḷepola Adigar is residing at Colombo, are you come' he had inquired at the trial, 'with secret ōlas and to learn intelligence'? The suspicion becomes the more natural when it is remembered that many a spy was employed in trader's disguise. Moreover, the frontiers to the south-west had been closed during the disturbances on 1814 and, as such, commercial intercourse prohibited; and the traders appear to have taken an unusual and unfrequented route. With Ähäḷepoḷa residing at Colombo and refugees being granted favourable asylum in British territory, it is not surprising that the King should have been suspicious and easily susceptible to believe in an accusation of the nature that was made."

MODES OF EXECUTION

Capital punishment for treason was carried out by beheading,[35] or by hanging on the gallows followed by burning to ashes,[36] or by drowning, in the case of women.[37] Traitors were also burnt alive. Vijayabāhu I (1055-1110 AD) "had the recreant leaders of the troops, their hands bound fast to their backs, chained to a stake and burnt in the midst of the flames blazing around them." [38]

Sometimes, traitors, as in Muttusvamy's case, were executed by impaling: Parākramabāhu I (1153-1186 AD) is said to have impaled "many hundreds of the enemy" in villages and market-towns.[39]

THE EXECUTION OF THE MEN OF SAT KŌRAḶĒ

Sri Vikrama Rājasiṁha impaled over a hundred men on *kitul*[40] stakes placed in rows on the bed of the lake he had started making,

although executions were usually carried out outside the city. The inhabitants of Sat Kōralē had been ordered to work on the new lake. The people stated that they were customarily not obliged to render *rājakāriya* (service to the king), except for war service, beyond the limits of their *dissāvani* (province). Moreover, it was the sowing season and they had to make their fields ready for the seed. The headmen were summoned to the capital; and they argued the case for their people. The king said that other districts had obeyed dutifully; the headmen were inciting the subjects of Sat Kōralē to rebel against the king. He sentenced the headmen to death, and despite *bhikkhus* and councillors advising the monarch to temper justice with mercy, the sentence was carried out. The people of Sat Kōraḷē rebelled, turned out the *Dissāve* - the provincial governor - and compelled the king to appoint a chieftain from the family named by them.[41]

THE PUNISHMENT OF TRAITORS' FAMILIES

In general, when an offence was committed, only the offender, and not members of his family, were penalized. Thus, where a fine had been imposed on the master of a house, he could have been arrested and detained and kept in restraint for default in payment, but not his wife or children.[42] However, as King Niśśaṅkamalla (1187-1196 AD) obviously realized, unjust officials had failed to observe this salutary principle, and, as we shall see, he took remedial measures.

However, even he treated treason differently and threatened the families of traitors with punishment. Thus in the Poḷonnaruva slab-inscription at the North-gate of the Citadel,[43] Niśśaṅkamalla stated:

> "Over the Island which belongs to the religion of the Buddha, non-buddhistic princes from Cola, Kerala or other countries should not be chosen. Those who join them and cause disturbances shall be called traitors. People of the Govi caste should never aspire to the dignity of kingship ... Those who pay obeisance to persons of the same class as themselves and render them honours due to kings, and those too, who

> accept from them offices and titles shall indeed be called traitors. Such people with their families and worldly possessions will be rooted out as soon as a royal prince appears [on the throne]. Therefore, if it so happen that a prince has been found, who has a right to the Island of Lanka, being descended from the lineage of King Vijaya, ... be loyal to such a lord and join [with him] in protecting the inhabitants of the country, even as you care for your own eyes. In this way protect your own families and fortunes."

Manu[44] said: "The [man], who in his exceeding folly hates him, will doubtless perish; for the king quickly makes up his mind to destroy such [a man]": Manu[45] cautioned: "Fire burns one man only, if he carelessly approaches it, the fire of a king's [anger] consumes the [whole] family, together with its cattle and hoard of property".

HARSH PUNISHMENTS WERE TRADITIONAL

King Dhāṭusena it is said was "wroth with those belonging to the noble clans or to kingship villages who had attached themselves to the Damilas and protected neither himself nor the sacred doctrine", and therefore "he deprived them of their villages and left their villages defenceless".[46] Moggallāna I (495-512 AD), "protected the world in justice. But at the thought: high dignitaries have attached themselves to my father's murderer, he gnashed his teeth with rage - therefore he received the name Rakkhasa (the devil) - and had more than a thousand of these dignitaries put to death. He cut off their ears and their noses and sent many into banishment."[47] King Jeṭṭhatissa (266-276 AD) ordered that "treasonous ministers be slain and [their bodies] impaled on stakes round about his father's pyre." [48]

Marshall,[49] observed that in England too, traitors were dealt with in a harsh manner. He stated:

> "The crime of treason is in most countries punished with greater severity than other crimes, and a degree of the punishment generally extends to the wives and children of traitors. Until lately, the punishment for treason was in this country a barbarous exhibition,

perhaps more revolting than in any civilized country in the world. Before the 30th George III, women were sentenced to be burned alive even for petty treason. The law against treason is still of a very barbarous character. As it now stands, a person convicted of treason forfeits to the crown his whole property, real and personal, as well as his honours and dignities; and the consequent corruption of blood deprives him of all right of succession, and prevents his descendants from taking succession through him."

Of King Rajasiṁha II (1635-87 AD), Robert Knox[50] said:[51]

"Nor is his wrath appeased by the execution of the malefactor. but oftentimes he punisheth all his generation; it may be kills them altogether, or gives them all away for slaves."

Earlier,[52] Knox referred to the fact that the king inflicted "tortures and painful deaths ... upon whole families for the miscarriage of one of them." Whether punishment of the other members of the family was prescribed for offences other than treason, and the theft or misappropriation of royal property,[53] is not clear. In discussing the duties of a king, Manu stressed the need for the monarch to rid his kingdom of "evil-minded thieves",[54] and suggested various methods of controlling them, including methods of baiting them by employing reformed thieves for that purpose. Where thieves did not fall into that trap, Manu made order that "the king shall attack by force and slay together with their friends, blood relations, and connections." [55] There is no evidence that the monarchs of Sri Laṅkā followed Manu with regard to this matter.

Rājasiṁha II (1635-1687) was said to have been a very cruel monarch. Robert Knox was particularly critical of him. He stated:[56]

"He seems to be naturally disposed to cruelty: For he sheds a great deal of blood, and gives no reason for it. His cruelty appears both in the tortures and painful deaths he inflicts, and the extent of his punishments, viz. upon whole families for the miscarriage of one in them. For when the king is displeased with any, he does not alwayes command to kill them outright, but first to torment them, which is done by cutting and pulling away their flesh by pincers, burning them

> with hot irons clapped to them to make them confess of their confederates; and this they do, to rid themselves of their torments, confessing far more than ever they saw or knew. After their confession, sometimes he commands to hang their two hands about their necks, and to make them eat their own flesh, and their mothers to eat their own children;[57] and so to lead them thro the City in public view to terrifie all, unto the place of execution, the dogs following to eat them. For they are so accustomed to it, that they seeing a prisoner led away follow thereafter.[58] At the place of execution, there are alwayes some sticking upon poles,[59] others hanging upon trees; besides, what lyes killed by elephants on the ground, or by other ways. This place is alwayes in the greatest high-way, that all may see and stand in awe. For which end this is his constant practice."

PUBLICITY AND DETERRENCE

Publicity was deemed essential for serving the purpose of deterrence. In his chapter, "Duties of a King", Manu[60] stated: "Let him place all prisons near a high-road, where the suffering and disfigured offenders can be seen." The executed bodies of traitors, or alleged traitors were usually displayed in public.[61]

THE BRITISH RESPONSE TO TREASON

Marshall stated:[62]

> "The popular feeling in England appears not to have been disgusted with the barbarous mode of disemboweling traitors, and impaling heads, during the last century. At the time in question, the authorities were most punctilious in executing the treason sentences with all their heart-roasting atrocities; and about eighty ghastly heads were kept and impaled in different parts of the country. The mode of executing traitors by the king of Kandy was not more revolting to the feelings than the plan long adopted in England. In Kandy, the chiefs were beheaded and buried; individuals of the lower ranks were hanged, and the whole body attached to a stake, and exposed commonly at Gonarooa, which is about three miles from the capital, 'at the greatest highway', says Knox, 'that all may see and stand in awe'. In England the heads were stuck up in the towns. As late as the seventeenth century, not 200 years ago, convicted traitors were quartered in Scotland, and the quarters dispersed over the country. Even so

> recently as the Rebellion of 1745, the general feeling of the people in England seems to have been very unfavourable to the exercise of clemency. Few publications advocated the propriety of showing mercy to any of the rebels, either noblemen or common people. Even the pulpit was made the vehicle of promulgating inhuman sentiments. On the 21st August, the chaplain of the high-sheriff of York profaned the Christian faith, by preaching before the judges who were to try a number of alleged rebels, a sermon, the spirit of which is sufficiently indicated by the text Numbers XXV. 5, "And Moses said unto the judges of Israel, Slay ye every one his men that were joined unto Baal-peor." Cruelty is regarded with abhorrence even when it is practised by savage or uncivilized nations; and it is, if possible still more revolting when it is inflicted by professors of Christianity, - persons who admit the obligation of the humane precepts of the gospel."

In dealing with traitors, the British, it seems, followed the injunctions of Moses; Sri Vikrama Rājasiṁha followed the commands of Manu.[63]

When the people of Sri Laṅka rose up against their new rulers, the most barbarous methods were used by the British to crush the uprising. Colvin R. de Silva[64] said:

> "British policy ... developed rapidly into plain terrorism ... Wherever they went, they carried away or destroyed all cattle and stores of grain or provisions that they found; villages were wiped out, houses were burnt down, crops devastated, fields permanently ruined by damaging the irrigation system, fruit trees cut down and live-stock killed, so as to starve and terrorize the inhabitants to submission. ... At the same time, the wives, families and property of rebel chiefs were sequestered to enforce their submission - a policy reminiscent of Sri Vikrama Rajasinha. When an influential rebel was captured, he was sentenced to death; but the execution was postponed for a period with a published promise of reprieve on condition his relatives submitted before it lapsed ... No attempt was made adequately to distinguish the property and persons of the innocent from those of the guilty. Even mere suspects received short shrift from the troops."

In the words of Henry Marshall,[65] the British carried on a war "characterized by devastation and extermination." He later added:[66] "We being the aggressors, the Kandyans, who were

struggling to expel us from the country to preserve their independence, could not be expected to allow us much claim to either good faith or humane treatment."

Knighton[67] said:

> "No conduct on the part of the Ceylonese, however, could justify the cruelty of the English. A district was declared rebellious. Detachments were sent to scour the country, to butcher all whom they found with arms in their hands, to destroy and lay waste everything that came in their way. Dwellings were burned; fruit tree plantations were cut down, and martial law proclaimed throughout the district. Such proceedings as those may have been politic and successful, but they are not those on which a humane mind can dwell with pleasure, and we may reasonably question, whether it would not have been more just and wise altogether to evacuate the interior than to allow such a state of things to continue for nearly two years. NOTE: Dr. Davy asserts that these 'evils' or 'irregularities' were not by any means sanctioned by Government; but if not directly sanctioned they certainly must have been winked at, or they had never occurred."

Trials were held by the British after the rebellion against them. 47 persons were sentenced to death, of whom 28 were executed. Ten were banished, and eight were pardoned. Of the others arrested, one died, six were banished, eight sentenced to minor punishment, and two acquitted. [68]

THE REIGN OF TERROR IN KANDY

John Davy[69] related the story of the execution of Ähäḷēpoḷa's wife and children [70] and referred to the reign of Sri Vikrama Rājasiṁha (1798-1815 AD) as a "period of terror, which even now, no Kandyan thinks of without dread, and few describe without weeping." He observed that

> Executions at this time were almost unceasing; the numbers put to death cannot be calculated; no one was perfectly secure, - not even a priest, - not even a chief priest; for Paranataley Anoonaika-Ounnansi, a man, in the estimation of the natives, of great learning and goodness, fell a victim to the tyrant's rage. To corporal punishments,

imprisonments, &c. - those minor causes of distress, - it is unnecessary to allude; in the gloomy picture they are as lights to shades.

Disgusted and terrified by the conduct of the King, the chiefs and the people were ripe to revolt; and only waited the approach of a British force to throw off their allegiance."

Henry Marshall, however, stated as follows:[71]

"The king devoted much of his time to business and to hearing causes in litigation, his leisure being spent in listening to music and in superintending his artists and workmen, a large number of whom he employed in beautifying his grounds, and in decorating his palace and city.

He was unpopular among the chiefs, but not among the middle and lower classes of his subjects, whose rights and privileges he frequently defended against the injustice and oppression of the aristocracy or nobles. There was popular support for the monarch.[72] By protecting the poorer classes against their tyranny and extortion, he created formidable opponents - enemies whose ambition, resentment, and influence, he could not effectually restrain, and whose vengeance led to his deposition.

> 'It has been frequently stated, that the king had, by his tyranny, forfeited the loyalty and attachment of the great body of people, but this imputation is not well founded. His quarrels were with the chiefs, and the chiefs alone; and perhaps, the circumstance which particularly rendered him obnoxious to the hatred of the chiefs, was the disposition he evinced, a determination to protect the people from the oppression of the aristocracy, the real tyrants of the country.' - (Simon Sawers' MS. Notes on the Conquest of Kandy).

Whatever information we possess in regard to the king of Kandy, has been obtained chiefly from adverse parties, who may have magnified his vices, without considering the condition of Kandyan society, or giving him due credit for the difficulties of his situation, and the praiseworthy disposition he displayed towards the subordinate classes of his subjects. It is said that he administered justice with great impartiality, except in cases of treason, when all the severities of Oriental despotism were put in force."

The information was indeed from 'adverse parties'.

Ähäḷepoḷa, the First *Adigār* (First Minister), had been constantly engaged in attempts to overthrow the king. In February 1814, he represented to the British that the Kandyan Kingdom was suffering from many hardships and that its people were disaffected. He urged the British to occupy Kandy.

For his part, the king had taken various measures to pacify the people, and at a certain time, it was 'doubtful whether the common people were so disaffected as to welcome the British intervention that Ähäḷēpoḷa proposed' to the British.[73]

It would be a mistake to suppose that Sri Vikrama Rājasiṁha was *always* despised by ordinary people: he was certainly detested by some of the chiefs, but there was no strong resentment among ordinary people, at any rate, in the earlier part of his reign: In fact his checking of chiefly oppression, encouragement of local tribunals, personal attention to popular litigation, and economic measures designed to counteract profiteering and extortion, may have redounded to his popularity with his people.[74] Governor North 'underestimated the personal influence and power of the king, and the degree of support which he could generate among his people' when he confidently attempted to invade Kandy and place a puppet on the throne.[75]

On the other hand, his disregard of custom could not have failed to arouse general disaffection. For instance, in making new roads, beautifying the capital with new buildings and a lake and improving fortifications, he impressed people to work on such projects despite the fact that the services they were called upon to render were contrary to custom. As we have seen in the case of the headmen of Sat Kōralē,[76] he interpreted any refusal to work on his projects as an act of treason and executed those who were perceived by him as encouraging disobedience to his commands as traitors. Others were also harshly treated. D'Oyly in the entry in his Diary on December 30th 1811[77] said:

> "... The Disawe of 4 K. residing at Manikkawa, is collecting People at the rate of 2 & 3 from each Family, sending them forcibly to the Work of the Dam, & tears down and breaks the Roofs of the Houses of some Men ..."

His disregard of the customary duty of acting on the advice of the clergy, as evidenced by his rejection of the advice of the Mahānayaka in the cases of Sooriyagoda Thēro and Paranatala Anunāyaka Thero, and chiefs, lead him to make erroneous decisions of a most serious nature. A monarch had a customary duty to act on the advice of his chiefs. Sometimes, Sri Vikrama Rājasiṁha followed the advice of the chiefs. For instance, although after the rebellion instigated by Piḷima Taḷauvē, Piḷima Taḷauvē, Ratvatte and six petty chiefs were executed in 1812, Piḷima Taḷauvē's son, who had also been condemned, was reprieved on the intercession of the chiefs.[78] But Chiefs who gave good advice that was unpalatable to King Sri Vikrama Rājasiṁha, were sometimes at risk. For instance, the king's uncle, Gampoḷa Nayakkar, was imprisoned with the intention of execution: his sole crime being 'giving good advice'.[79] His dependence, instead, on his Tamil relations as advisers[80] could hardly have endeared him either to his chiefs or his people. Moreover, the king's rigorous application of the laws of Manu in certain cases, contrary to the traditional norms of judicial conduct that required a flexible approach, also helped to convert discontent into disloyalty. [81] With repeated unconventional and unconstitutional acts, Sri Vikrama Rājasiṁha heaped upon himself damnation by his subjects.

However, the suggestion was that the British were moved by philanthropy. They were not: their concern was self-advancement. Governor Brownrigg's cherished ambition was to annex the Kandyan Kingdom to the British Empire, and being, as he confessed, 'naturally ambitious' he wished to accomplish that during his tenure of office.[82]

At first the British may not have had 'any real anxiety to round off total control over the Island' by the annexation of Kandy,[83] yet that policy changed. K.M. De Silva stated as follows:[84]

> "Like their predecessors in control of the island's littoral,[85] the British regarded the long and indistinctly defined frontier as an irritating and expensive item of military expenditure, while being at the same time an irksome and formidable obstacle to trade. Besides, it was impossible to develop plans for the economic regeneration of the British colony in isolation from the larger island-wide framework; and the independence and aloofness of the Kandyan kingdom would eliminate a cumbrous internal frontier, leaving only the sea as a line of defence."

THE KING'S ABUSE OF POWER AND THE ANNEXATION OF THE KANDYAN KINGDOM

The alleged oppressive cruelty of Sri Vikrama Rājasiṁha (1798-1815 AD), and his alleged "implacable animosity" to the British government, were used by the British to justify their invasion of Kandy and the annexation of the last Kingdom. In his Proclamation dated 10 January 1815,[86] Robert Brownrigg, Governor and Commander-in-Chief of the British settlements in the Island, stated that he "could not hear with indifference the prayers of the inhabitants of ... the Kandyan Kingdom, who, with one unanimous voice" had protested "against the tyranny and oppression of their ruler ..." Brownrigg tried to make it out that the British were merely engaged in a benevolent rescue operation: a mission, according to Davy,[87] eagerly awaited by the people of the Kandyan Kingdom. The Proclamation, described by Colvin R. de Silva,[88] as a "self-righteous and magniloquent piece of propaganda", stated:

> "But it is not against the Kandyan nation that the arms of his Majesty are directed; his Excellency proclaims hostility against that tyrannical power alone, which has provoked, by aggravated outrages and indignities, the just resentment of the British nation, which has cut off the most ancient and noble families in his kingdom, deluged the land with the blood of subjects, and by the violation of every religious and moral law, become an object of abhorrence to mankind.
>
> For securing the permanent tranquility of these settlements, and in vindication of the honour of the British name; for the deliverance of the Kandyan people from their oppressions; in fine, for the subversion of that Malabar dominion, which during three generations, has

> tyrannized over the country, his Excellency has resolved to employ the powerful resources placed at his disposal.
>
> His Excellency hereby proffers to every individual of the Kandyan nation the benign protection of the British government; exhorts them to remain without fear in their dwellings, to regard the armed forces who pass through their villages as protectors and friends, and to cooperate with them for the accomplishment of these beneficial objects..."

The "Official Declaration of the Settlement of the Kandyan Provinces"[89] recalled the destruction in 1803 of the British garrison commanded by Major Davie, and refers to the inability to obtain pardon or safety for the chiefs of Kandy who had sought the intervention of the British to obtain protection for themselves. The Declaration stated:

> "How far their complaints have been groundless, and their opposition licentious, or on the contrary, their grievances bitterly and intolerably real, may now be judged by facts of unquestionable authenticity.
>
> The wanton destruction of human life comprises or implies the existence of general oppression. In conjunction with that, no other proofs of the exercise of tyranny required to be specified; and one single instance, of no distant date, will be acknowledged to include every thing which is barbarous and unprincipled in the public rule, and to portray the last stage of individual depravity and wickedness, the obliteration of every trace of conscience, and the complete extinction of human feeling.
>
> In the deplorable fate of the wife and children of Eheylapola Adikar, these assertions are fully substantiated; in which was exhibited the savage scene of four infant children, the youngest torn from the mother's breast, cruelly butchered, and their heads bruised in a mortar by the hands of their parent, succeeded by the execution of the woman herself and three females more, whose limbs being bound, and a heavy stone tied round the neck of each, they were thrown into a lake and drowned.
>
> It is not, however, that under an absolute government unproved suspicion must usurp the place of fair trial, and the fiat of the ruler stand instead of the decision of justice, it is not that a rash, violent or unjust decree, or a revolting mode of execution, is here brought to

view, nor the innocent suffering under the groundless imputation of guilt; but a bold contempt of every principle of justice, setting at nought all known grounds of punishment, dispensing with the necessity of accusation, and choosing for its victims helpless females uncharged with any offence, and infants incapable of crime.

Contemplating these atrocities, the impossibility of establishing with such a man any civilized relations, either, of peace or war, ceases to be a subject of regret; since his Majesty's arms, hitherto employed in the generous purpose of relieving the oppressed, would be tarnished and disgraced in being instrumental to the restoration of a dominion, exercised in a perpetual outrage to everything which is sacred in the constitution or functions of a legitimate government."

The Proclamation stated:

"Led by the invitation of the chiefs, and welcomed by the acclamations of the people, the forces of his Britannic Majesty have entered the Kandyan territory, and penetrated to the capital. Divine Providence has blessed their efforts with uniform and complete success. The ruler of the interior provinces has fallen into their hands, and the government remains at the disposal of His Majesty's representatives."

Colvin R. de Silva [90] said:

"The text itself shows that the 'violation' of British territory was merely a convenient pretext for an invasion which had previously been decided on for reasons amounting, in sum, to no more than expediency and advantageous circumstances. Of the wider causes of the war, it was inherent in the position that the British should seek the complete control, if not actual possession of the entire Island - geographical position indicated it, political and economic considerations seemed to necessitate it, and military superiority suggested, though it did not justify the attempt. Of the immediate causes, Brownrigg's complaints were not wholly unfounded; but they come with ill grace from one who had not only intrigued but even aided Kandyan rebels. On the other hand, Sri Vikrama Rajasinha was, from the Kandyan point of view and in the face of previous history, not devoid of adequate basis for his attitude, and, according to the standards prevalent in Kandy, not altogether without justification for his acts. It is fruitless to attempt any apportionment of blame. The King was not as guilty as represented, nor was Brownrigg as

> disinterestedly innocent as professed. Whether the self-interested accounts of rebel chiefs were a sufficient basis for Brownrigg's decision, or the representations of rebellious provinces an adequate ground for his action, it is for the moralist to determine; even as the question whether Britain and Kandy were at war or peace is a point for the international lawyer. All that seems clear is that Brownrigg saw an unprecedented opportunity which might never recur again - and he took it. *Inter armes leges silent.*"[91]

At a Convention held on 2nd March 1815, it was agreed between Governor Brownrigg and the chiefs of the Kingdom of Kandy:

> "1st. That the cruelties and oppressions of the Malabar ruler, in the arbitrary and unjust infliction of bodily tortures, and the pains of death, without trial and sometimes without an accusation or the possibility of a crime, and in the general contempt and contravention of all civil rights, have become flagrant, enormous, and intolerable; the acts and maxims of his Government being equally and entirely devoid of that justice which should secure the safety of his subjects, and of that good faith which might obtain a beneficial intercourse with the neighbouring settlements.
>
> 2d. That the Rajah Sri Wickreme Raja Sinha, by the habitual violation of the chief and most sacred duties of a sovereign, has forfeited all claims to that title, or the powers annexed to the same, and is declared fallen and deposed from the office of king; his family and relatives, whether in the ascending, descending, or collateral line, and whether by affinity or blood, are also for ever excluded from the throne; and all claim and title of the Malabar race to the dominion of the Kandyan provinces is abolished and extinguished.
>
> 3d. That all male persons being, or pretending to be, relations of the late Rajah Sri Wickreme Raja Sinha, either by affinity or blood, and whether in that ascending, descending or collateral line, are hereby declared enemies to the government of the Kandyan provinces, on any pretence whatever, without a written permission for the purpose, by the authority of the British government, under the pains and penalties of martial law, which is hereby declared to be in force for that purpose; and all male persons of the Malabar caste, now expelled from the said provinces, are, under the same penalties, prohibited from returning, except with the permission before mentioned.
>
> 4th. The dominion of the Kandyan provinces is vested in the sovereign of the British empire, and to be exercised through the

Governors or Lieutenant-Governors of Ceylon for the time being, and their accredited agents, saving to the Adikars, Dissaves, Mohottales, Coraals, Vidaans, and all other chief and subordinate native headmen, lawfully appointed by authority of the British government, the rights, privileges, and powers of their respective offices, and to all classes of the people the safety of their persons and property, with their civil rights and immunities, according to the laws, institutions, and customs established and in force among them.

5th. The religion of Boodhoo, professed by the chiefs and inhabitants of these provinces, is declared inviolable; and its rights, ministers, and places of worship, are to be maintained and protected.

6th. Every species of bodily torture, and all mutilation of limb, member, or organ, are prohibited and abolished.

7. No sentence of death can be carried into execution against any inhabitant, except by the written warrant of the British Governor or Lieutenant-Governor for the time being, founded on a report of the case made to him through the accredited agent or agents of the government resident in the interior, in whose presence all trials for capital offences are to take place.

8. Subject to these conditions, the administration of civil and criminal justice and police, over the Kandyan inhabitants of the said provinces, is to be exercised according to established forms, and by the ordinary authorities, saving always the inherent right of government to redress grievances and reform abuses, in all instances whatever, particular or general, where such interposition shall become necessary.

9. ...
10. ...
11. ...
12. ..."

The Kandyan Convention on March 2 1815 formalized the transfer of power, but Sri Vikrama Rājasiṁha had been captured on the 18th of February 1815, "the day", William Knighton said,[92] "from which we may date the extinction of Ceylonese independence, an independence which had continued, without any material interruption for 2357 years. - *Sic transit gloria mundi.*"

Until the 4th of February 1948, when Independence was regained, Sri Laṅkā was a colony of Great Britain.

Two reasons were officially given for the annexation of the Kandyan Kingdom: One was the allegation that the king had an "implacable animosity" towards the British. This matter need not detain us, for it does not directly concern the subject under consideration, namely, our legal heritage, except to assist an understanding of the punishments the king imposed on those who allied themselves with the British in attempting to overthrow the monarch.[93] The massacre of the invading troops in 1803 rankled in the mind of the British; on the other hand, what was a monarch to do, except to wipe out those who had invaded his kingdom and placed a pretender on the throne?

The second reason given by Governor Brownrigg for the invasion and annexation of the Kandyan Kingdom was that it was a response to the appeals of the people to be freed from the extraordinary cruelty and unjust treatment to which the people were subjected to by a barbarous monarch. Indeed, the king on certain occasions had acted harshly because he did not observe the customs of the country. Conventionally, the people were entitled to rid themselves of such a monarch: Yet there is no evidence that there was a popular demand to get rid of the king; it seems to have been essentially the propaganda of Piḷima Taḷauvē, and later Ähäḷepoḷa, for personal reasons; "it is doubtful whether the common people were so disaffected as to welcome the British intervention that Ähäḷepoḷa proposed."[94] In any event, there was no leave or permission under the law for some alien monarch, not chosen according to the laws of the land, to usurp supreme power.

THE REBELLIOUS CHIEFS

When Rājādhi Rājasiṁha (1782-1798 AD) died childless, the most powerful man at court, Piḷima Taḷauvē, the First *Adigār* (the chief officer of state), installed a Sri Laṅkā-born Nayakkar aged eighteen years, named Konnasami, the son of the sister of one of the queens-dowager, on the throne. "Since 1739, the Kandyan throne had been occupied by Tamils of the Nayakkar dynasty of Madura".[95] He was, according to custom, proposed to the chiefs

and people and elected. He ascended the throne as Sri Vikrama Rājasiṁha. The new monarch was to be the puppet whose strings Piḷima Taḷauvē would, for a time, manipulate behind the scenes, and upon whom the odium of murders committed by his direction would fall. His aim was eventually to have the crown placed on his own brow, either with the assistance of the British government or by assassinating the king.[96] When 'the puppet by intention became the ruler in fact',[97] Piḷima Taḷauvē entered into suspicious contacts with the British, and eventually paid the supreme penalty. Colvin R. de Silva[98] summed up the matter as follows:

> "That he, a Sinhalese of royal descent, should long to depose a foreign dynasty[99] is as understandable as his intention to implement that consummation to forward his personal ambitions was natural. At the same time, there can be little doubt that though he offered to become in some fashion a British tributary, he had no real intention to surrender Kandy. His policy was simply in line with a fateful Kandyan tradition - calling in the foreigner to settle domestic disputes but discarding him on attaining that object. The pitcher, however, went too often to the well, grew leaky by stages, and finally broke in its user's hands."

When Piḷima Taḷauvē proposed elevating Konnasami to the throne, the Mahānāyaka Thera warned: "Rest assured, if the keeper do not take care of his elephant, not only the lives of others, but his own will be endangered." The Mahānāyaka's prophetic words were fulfilled. Piḷima Taḷauvē was executed.[100]

When Mīgastänne, Second *Adigār* and *Disāva* of the Seven Kōralēs, died in 1808, his ministerial office was given to Piḷima Taḷauvē's nephew, Ähäḷepoḷa, while his *disāvanē* (administrative province) was granted jointly to Ähäḷepoḷa and Molligoḍa. When we consider what Colvin R. de Silva[101] described as 'the miserable arcana of Kandyan politics', we find Ähäḷēpoḷa too intriguing with the British to remove the king.[102]

During the time of Governor North, Piḷima Taḷauvē, *Mahā Adigār* - the principal officer of state, had sedulously spread

stories about the unpopularity of the king and the widespread disaffection in the Kingdom.[103]

In the Official Declaration of the Settlement of the Kandyan Provinces, Governor Brownrigg gave two examples to illustrate the cruelty of the monarch. The first related to the massacre of the British garrison commanded by Major Davie. I have already dealt with that.[104]

ÄHÄḶEPOḶA AND THE EXECUTION OF HIS FAMILY

The other related to the assertion that the king was "barbarous and unprincipled in the public rule". In support of that assertion, Brownrigg cited the case of the execution of the wife and children of Ähäḷepoḷa .

K.M. De Silva stated:[105]

> "[Ähäḷepoḷa] left his wife and children in the king's power to suffer the penalty meted out by Kandyan law to the relatives of traitors. The precise mode of the execution of Ähäḷepoḷa's wife and children has been transformed by legend into a story of incredible horror."

That case, having been specially cited by Governor Brownrigg in support of his assertion that the king was 'barbaric and unprincipled in the public rule', deserves some attention, since 'barbarous and unprincipled' rule was one of the alleged reasons for depriving Sri Laṅkā of its independence, and consequently the laws and legal system of the nation. Otherwise it might have been regarded as just another case of treason dealt with according to law.

Ähäḷepoḷa, refused to present himself at court at the king's command. The reason why he was required to present himself is not clear. It has been said that he was required to attend an investigation of allegations of extortion and injustice made against the First *Adigār*.[106] Colvin R. de Silva said: [107]

> "A village in Sabaragamuva, which belonged to one of the queens, refused to pay its dues and maltreated one of her agents; the revenue from arecanut was not duly paid into the treasury; and a charge was brought against Ähäḷepoḷa by a Tamil who complained that the Adigār had unjustly deprived him of a large sum of money. Ähäḷepoḷa was ordered to disprove the charge or refund the money. Matters came to a head when he protested against the levying of *marala,* and when further charges of oppression were brought against him. In March, 1814, he was ordered to return to Kandy, bringing with him those people of Sabaragamuva who had failed to pay their dues, particularly on the occasion of the King's marriage."

For whatever reason, Ähäḷepoḷa was, on account of disobedience, deprived of his *Disāvane* (the territory administered by him) and stripped of his honours. Ähäḷepoḷa tried to raise a rebellion in Sabaragamuva, and when this failed, he crossed into British territory.[108]

Henry Marshall[109] stated as follows:

> "On the arrival of Eheylapola at Colombo, he was provided with a residence in the suburbs by government, and, after a brief period, he was admitted to an interview with the governor at Mount Lavinia, his Excellency's country-house. 'At this interview he was', says Mr. Tolfrey, 'received with the most distinguished kindness and respect, and was so affected with the novelty of his situation, and the unwonted kindness of a superior, that, regardless of the forms of introduction, he burst into tears. As soon as he was composed, the governor soothes him with promises of favour and protection. The adikar observed, that he looked to his Excellency as his father; that he had been deprived of all the natural ties of relationship, and trusted that the favour he solicited, of being allowed to call the governor and Mrs. Brownrigg his parents, would not be denied him.' At this interview, it is probable that the incense of flattery was liberally dispensed by both parties; but, in that species of pleasing, Europeans must yield the palm of excellence to a courtly Kandyan. The governor and Eheylapola had, no doubt, one object in view, namely the deposition of the king; but in all other respects, their interests were very discordant. How little did Eheylapola anticipate, at this time, that, in a comparatively brief period, he should without the form of a trial, be incarcerated in a state-prison, thereto remaining until it was deemed expedient to banish him for life to a foreign land."[110]

John Davy's account of the execution of Ähälepoḷa's wife and children is as follows:[111]

> "Hurried along by the flood of revenge,[112] the tyrant, lost to every tender feeling, resolved to punish Eheylapola who had escaped, through his family, which remained in his power;[113] he sentenced the chief's wife and children, and his brother and his wife to death, - the brother and children to be beheaded, and the females to be drowned. In front of the queen's palace, and between the Nata and Maha Visnu Dewale, as if to shock and insult the gods as well as the sex, the wife of Eheylapola and his children were brought from prison, where they had been in charge of female jailors, and delivered over to the executioners. The lady with great resolution maintained her's and her children's innocence, and her lord's; at the same time submitting to the king's pleasure, and offering up her own and her offspring's lives, with the fervent hope that her husband would be benefited by the sacrifice. Having uttered these sentiments aloud, she desired her eldest boy to submit to his fate; the poor boy, who was eleven years old,[114] clung to his mother, terrified and crying; her second son, nine years old, heroically stepped forward; he bid his brother not to be afraid, - he would show him the way to die![115] By one blow of a sword, the head of this noble child was severed from his body; streaming with blood and hardly inanimate, it was thrown into a rice mortar; the pestle was put into the mother's hands, and she was ordered to pound it, or be disgracefully tortured. To avoid the disgrace, the wretched woman did lift up the pestle and let it fall.[116] One by one, the heads of all her children were cut off; and one by one, the poor mother - the circumstance is too dreadful to be dwelt on. One of the children was a girl;[117] and to wound a female is considered by the Singalese a most monstrous crime: another was an infant at the breast, and it was plucked from its mother's breast to be beheaded; when the head was severed from the body, the milk it had just drawn in ran out mingled with its blood.[118] During this tragical scene, the crowd who had assembled to witness it wept and sobbed aloud, unable to suppress their feelings of grief and horror. Palihapane Dissave was so affected that he fainted, and was expelled his office for showing such tender sensibility. During two days the whole of Kandy, with the exception of the tyrant's court, was as of one house of mourning and lamentation; and so deep was the grief, that not a fire (it is said) was kindled, no food was dressed, and a general fast was held. After the execution of her children, the sufferings of the mother were speedily relieved. She, and her sister-in-law,[119] and the wife

> and sister of Pusilla Dissave,[120] were led to the little tank in the immediate neighbourhood of Kandy, called Bogambarawave[121] and drowned."

One of the difficulties about cases of this sort is that opinions may be sharply divided, even many years afterwards, as to whether a man was a traitor or a hero. Those who saw Ähäḷēpoḷa as someone trying to rid the country of a ruthless, unprincipled, despot who was not acting according to custom and public expectations; a man who disrespected the clergy and did not take the advice of his chiefs, but instead, relied on his relatives who were not Sinhalese; a man who depended and trusted alien Malabars and Malays, rather than the Sinhalese, for his personal safety; a man who mechanically applied the harsh laws of Manu, without bringing them within the bounds of moderation required by the compassionate norms of custom influenced by Buddhism, would see no harm in his seeking the intervention of, and assisting someone, even an alien nation, to achieve that end. There are some people who seem to take that view. For instance, Mirando Obeyesekera, writing in 1998, was of the view that Ähäḷēpoḷa was a 'hero and a martyr'.[122] In 1990, M.A.D. Appuhamy[123] stated that there is a monument in Mauritius erected in memory of Ähäḷepoḷa: "From the many stubs of burnt out candles on the spot, it is apparent that even today someone lights a candle there in memory of a man whose life was only so full of promise but devoid of any achievement and futile to the point that he lost his kith and kin and died in exile an untried and unconvicted state prisoner, ennobled unto eternity in this monument in a foreign land."

Ähäḷēpoḷa in his petition to the British seeking release after he had been taken into custody on the 2nd of March 1818 for alleged complicity in the rebellion of 1818, stated:[124]

> "... The late King who reigned in our country totally departing from the Rules of Sovereigns, joined himself with several evil disposed men of the country by which the destruction of that and its Religion began to ensue when this was effected, plans were devised to destroy

> me also, I have then considered, what would be the means by which I can save my life and protect the country and its Religion; but could find none to effect it. And thinking that the Country and its Religion could be protected by the power of the British Government, which preserves the custom of the Country, as one would his own eye, and which is equitable, good and virtuous, acknowledging services, I left my Relations and property and took shelter under the British Government ... While I was thus under the shelter of the British Government, the English army was prepared to enter our Country and I was directed to accompany it. I went accordingly and have performed such services as was done by nobody else towards Government. What I have done is not a base act. Among all nations, if the person elected for the protection of the subject, arbitrarily follows his own wishes, disregarding all demonstration and example set by former Sovereigns in the protection of the Country and its Religion, the people would rise up to displace him by any means, and to elect another of virtue to supply his place and to protect the Country, this being the Law of the world, I followed it, I have not committed an act of the evil disposed (*sic.*)..."

Whether Ähäḷepoḷa was a villain or a hero is a debatable, sensitive, matter on which I express no opinion. He seems to have been an able man. Sir Archibald Campbell Lawrie was District Judge of Kandy from 1873 till his appointment as a Puisne Justice of the Supreme Court. He later served from time to time between 1893 and 1897 as Acting Chief Justice. Lawrie made a detailed study of the Kandyan provinces. In his *Gazetteer* of the Kandyan Provinces, p. 203, Lawrie said:

> "It has been assumed by many writers that Ehelapola's ambition was to be raised to the Kandyan throne by the help of the English troops. It is said that was his main object in persuading General Brownrigg to invade the country. I do not know that there is foundation for this, but if such was his policy, it may be that he was a more able statesman than the Englishmen with whom he had to deal. If Ehelepola had been raised to the throne as a king dependent on England, with a resident English garrison at once to support and to control him, the Kandyans might possibly have been spared the horrors of the insurrection of 1817 and the cruelty of its suppression by the English. The country might have flourished under a native ruler of no mean capacity, whose worst tendencies might have been corrected and his best fostered by English aid. The story of English rule in the Kandyan

country during 1817 and 1818 cannot be related without shame. In 1819 hardly a member of the leading families, the heads of the people, remained alive; those whom the sword and the gun had spared, cholera and smallpox and privations had slain by hundreds. The subsequent efforts of Government to rule and assist its Kandyan subjects were, for very many years, only attempts begun and abandoned. Irrigation and education did not receive due attention. The descendants of the higher classes of the Kandyan times rapidly died out, the lower classes became ignorant and apathetic. If Ehelapola had reigned, much that must now be regretted might have been avoided, but fate decided otherwise, and Ehelapola died an exile in Mauritius".

As far as I have been able to ascertain, the pounding of heads of executed persons is not mentioned in the Sinhalese records as a mode of punishment, although Percival[125] said that executed persons were sometimes pounded in 'a large mortar'. According to one version of the executions,[126] there were no decapitated heads to pound: The children, it was said, were drowned. P.E. Pieris[127] stated as follows:

"I have recently (June 1949) traced this letter dated 12th October, 1939 from Rasanayagam Mudaliyar, for many years my colleague and a careful student. His record of Haliyala Kumarihami's narrative gives strong support to the conclusion regarding "The Tragedy of Ähäḷepoḷa's Family" reached in Appendix H, Tri Sinhala, The Last Phase, and is printed here for the guidance of research workers: -

I am very sorry that I delayed to write to you, as promised, regarding the conversation I had 30 or 35 years ago, with Haliyala Kumarihamy, about the punishment meted out to the wife and children of Ehelepola Adigār by the last King of Kandy. In fact I forgot all about it till now.

When I knew that she was the daughter of the Chief Maid in Waiting of the last Queen of Kandy, I enquired from her whether she was aware of the true manner in which the wife and children of Ehelepola Adigār were executed by the King, as I did not then believe the version presented by the stage in those days. She told me that her mother was an eye witness and that she learnt the truth from her mother.

As soon as it was known that Ehelepola had turned a traitor, the King held a durbar and the ministers present advised him that according to

> law, the offender ought to be impaled, and as he had escaped, his wife and children should be executed. As the King was not willing to have the heads of small children cut off, he decided that all should be drowned in the lake, and it was accordingly done by tying stones to their bodies. She was horrified when she heard the story presented by the stage from me and told me she never heard about it."

Which is the more credible version? I refrain from expressing any opinion on this controversial matter.

FRANTIC JUSTICE AND BARBAROUS PUNISHMENTS

The execution of the relatives of persons guilty of treason was, as we have seen, permitted in law. However, the executions of the wife and children of Ähälepoḷa, and the sister of Ähälēpoḷa, were contrary to law, for Ähälepoḷa was never tried and convicted: The law required that a person accused of a serious offence should be tried in a specified manner.[128] Moreover, even if there had been a trial at which he had been convicted, (which, perhaps, there may have been with regard to Pusvälle) the executions of Ähälēpoḷa's wife and children, and Pussvälle's wife and sister, were contrary to convention. D'Oyly observed[129] that the execution of an innocent wife and children for the crime of a traitor was without precedent in Kandyan history. Indeed, Davy[130] said: "To wound a female is considered by the Sinhalese a most monstrous crime." D'Oyly[131] noted that, in general, "females were for the most part treated with the indulgence due to their sex", and that "the instances of capital punishment inflicted on women are rare." The execution of children was unprecedented.

It was a turbulent time, when the king was faced with the prospect of an invasion of his Kingdom aided by rebellious chiefs. There was panic: The women and children were victims of "frantic justice", which, it has been noted by Judge Carrol T. Bond[132] is "a possibility in all times of great popular emotion, in defiance of the best forms and conventions". "Frantic justice" has no place in the due administration of justice. Indeed, it is in turbulent times that the judiciary should be particularly vigilant

and active in ensuring that the life and liberty of citizens are protected. Cicero's proposition that 'laws are inoperative in war', in my view, cannot be justified.[133]

Cruel, inhuman, degrading punishment or torture is revolting and deserves condemnation. All forms of punishment are intended to, and do, inflict pain and suffering; execution is cruel, inhuman and degrading. Whether one method of execution is more "humane" or "inhumane" than another is always debatable, and it is really besides the point.

In terms of the sixth clause of the Kandyan Convention of 1815 "Every species of bodily torture, and all mutilation of limb, member or organ [were] prohibited and abolished." Nevertheless, execution was retained as a form of punishment. There was no disagreement between the British invaders and the chiefs who signed the Convention that death was a legitimate form of punishment. No sentence of death could be carried into execution except by the written warrant of the British Governor or Lieutenant-Governor for the time being. But that is a different matter. The circumstance that even-vice-regal officers approved an execution did not make the killing of a human being less barbarous.

Earlier, before British Governors and Lieutenant-Governors took their place, in general, the monarchs of Sri Laṅkā not only provided executive approval for the execution of convicted criminals, but, as we shall see, they also presided at the trial of the offender.

There was no disagreement between the British and the people of Sri Laṅkā that death was an acceptable form of punishment for treason. Even to this day we have laws enacted during British times [134] that prescribe death for treason: Section 114 of the Penal Code states as follows:

> "Whoever wages war against the Republic, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or

imprisonment of either description, which may be extended to twenty years, and shall forfeit all his property.

Illustration

A joins an insurrection against the Republic. A has committed the offence defined in this section.

A large number of rebels were executed in the reign of Sri Vikrama Rājasiṁha. The First *Adigār,* Piḷima Taḷauvē was found guilty of attempting to raise a revolt against the king and plotting his assassination. He, his nephew and six petty chiefs were tried for treason and, being convicted, were sentenced to death.[135] Piḷima Taḷauve and his nephew were beheaded; and the petty chiefs were hanged and impaled, the dead bodies being exposed near a public road.[136] The forty-seven rebellious supporters of Ähäḷepoḷa who were taken captive by Ähäḷepoḷa's successor, First *Adigar* Molligoḍa, were also executed. "At the same time, the old offence of the Seven Kōralēs was re-investigated; the headmen concerned were summoned to Kandy, tried by a commission of three - one of whom was Molligoḍa - and some seventy of them flogged[137] and executed. Their relatives fled in terror to the British territory, for it was usual to include the families of traitors in the traditional punishments for treason."[138] Marshall[139] stated that "Molligoḍa appears to have acted the part of Judge Jefferies (*sic.*) to the king with great alacrity."[140]

The abuse of the judicial process to assassinate enemies, was, as we have seen, used by the English monarch with the assistance of Jeffreys. And that was not without precedent.[141]

As we have seen, the offence of treason was always viewed with seriousness. It always was, and indeed is, an offence punishable with death in Sri Laṅkā and in many other countries. Sometimes, large numbers of persons who were convicted of the offence were executed. For instance, we saw that Parākramabāhu I (1153-1186) executed "many hundreds of the enemy".[142] That does not necessarily mean that they were not tried and condemned according to procedures established by law, namely, after being

tried after a "full inquiry" and a trial, by a court comprising the king and the chiefs.[143] Sri Vikrama Rājasiṁha was faced with a situation where his most important officials were conspiring with the powerful British occupying the littoral areas of the country to evict him. Yet, in general no one, it seems, was put to death without trial. Marshall stated[144] that *Adigār* Piḷima Taḷauvē, together with his son and nephew

> "were ordered to be brought to Kandy *to be tried for high treason.* The adikar and his nephew arrived together, and, *in the presence of the king and chiefs,* were confronted with some of the other conspirators; *and being convicted,* were sentenced to suffer death. It is stated that *the prisoners confessed they were guilty of the alleged treason.* Piḷimi Taḷawa and his nephew were immediately beheaded; and six petty chiefs were at the same time hanged and impaled ... The son, who was imprisoned at a considerable distance, *was capitally convicted;* but as he did not arrive till after the execution of his relations, and as it happened on a holiday, his life was spared, but his lands were confiscated." [145]

The emphasis is mine.

At least from the reign of Kirti Sri Rājasiṁha (1747-1782), the era of the *Lak Raja Lō Sirita,* a trial relating to an offence punishable with death had to be heard by a court comprising the king and the chiefs. Marshall acknowledged the fact that the trial of Piḷima Taḷauvē and his nephew and his son, tried in his absence, and, presumably of the six petty chiefs, was according to procedure established by law, namely a trial before the king and the chiefs. The trial of Muttusvamy was also conducted by the king and chiefs, and, as we have seen, it was said to have been fair. As we have seen, the British themselves executed a large number of persons, after trial, for their part in the rebellion against them. Whether Sri Vikrama Rājasiṁha's trials and the British trials were 'proper' trials or 'sham' trials, ought, perhaps, to depend on whether such trials conformed with the law at the time such trials were held, rather than upon norms of the contemporary world?

Were the prosecutions 'warfare'? Were the trials unfair? Did Molligoḍa play the role of Jeffreys, as alleged by Marshall? Was

Marshall assuming that, since, from time to time in English history, the reaction which followed rebellion was judicial assassination, there was a similar response during the reign of Sri Vikrama Rājasiṁha? The King sometimes took advice; for instance, he reprieved Piḷima Taḷauvē's son who had been condemned to death for treason on the intercession of the chiefs. On the other hand, as we have seen from the trials of Paranatala Unnansē and Sooriyagoda Thēro, the king disregarded the advice of even the Mahānāyaka and acted precipitately without sufficient evidence, and, moreover, having prejudged the matters.

Although the punishments inflicted in certain instances in the days of the monarchs of Sri Laṅkā appear today to be cruel and barbaric, studies have shown that such detestable and revolting practices were both common and universal in ancient, mediaeval times and comparatively recent times. "Primitive" people, the Jews, Greeks and Romans, the Christian Church, the British, the Irish, the Chinese, the Japanese, the Russians, the Americans, the Indians, and others have all been guilty of such practices. [146]

Knighton found some features of the criminal law to be unacceptable, but he said:[147]

> "On the whole, however, taking into consideration the influences continually at work, we regard the laws of Ceylon as a triumphant proof of its early civilization, and flourishing prosperity; and, after an impartial scrutiny we shall find that the indications of barbarism, wherever met, are the introductions of late and contemporary periods."

Knighton[148] was of the view that certain measures had to be introduced to improve the local system, yet he did not condemn the existing system as 'barbarous'. He said:[149]

> "Various customs, which shock the feelings of Europeans, may be found amongst them; but if we are inclined, on this account, to set them down as barbarous, we must, if we act consistently, conceive the Romans, and indeed, every nation of antiquity, to have been also barbarous."

Indeed, even some so-called civilized societies of our own time impose certain punishments, such as execution, mutilation and corporal punishment, which many members of humankind consider cruel, inhuman and degrading. Moreover governments, in both the affluent, industrialized countries and in the less fortunate countries of the third world, continue to be accused of violating the fundamental human right of freedom from cruel, inhuman and degrading treatment or punishment that was recognized and declared in Article 5 of the Universal Declaration of Human Rights of the United Nations General Assembly in 1948 and in Article 7 of the International Covenant on Civil and Political Rights adopted by the U.N. General Assembly in 1966.[150]

In my view, no country can be supercilious: no country can look upon the problem of cruel, inhuman, degrading treatment or punishment with an air of contemptuous or haughty superiority or disdain. Before it makes any criticism of others, it ought, as a simple matter of credibility, to be itself free of fault. In deciding whether criticism is warranted in any situation, regard should be had to the local laws and customs of a nation. We should all work towards achieving a set of norms universally accepted by humankind. I personally strongly support such an objective. But the realization of universal principles lies in the future; and not, as it is sometimes claimed, in the past. A declaration of universally acceptable fundamental rights even at this point in time remains aspirational.

BARBAROUS PUNISHMENTS AND THE LOSS OF INDEPENDENCE

Was the invasion and annexation of the Kandyan Kingdom for the proclaimed purpose of "the subversion of the Malabar dominion which, during three generations, has tyrannized over the country" and "the deliverance of the Kandyan people from their oppressions" justified? Ähäḷepoḷa, as we have seen, said so. Whether his real intention was to become the king of Kandy, might be a debatable issue.

However, since Sri Laṅkā lost its freedom and its legal system, among other things, on account of the alleged purpose of the British, sponsored by Ähälēpoḷa, according to his own evidence, to liberate its people from oppression, - a complex legal matter requiring the most careful consideration and one on which more than one view might be expected - it might be useful to refer to the views of an eminent British official of Sri Vickrama Rājasiṁha's time - Henry Marshall, M.D.

Marshall stated:[151]

> "Even among the despotic governments of civilized Europe, some sovereigns have committed atrocious acts of oppression and cruelty, without being considered unworthy to retain their crown. Frederick II, of Prussia, in some respects, evinced as much inhumanity, perhaps I may say as much barbarity, in punishing alleged delinquents, as has been recorded of Oriental despots. Without any previous examination by legal authority, a secular clergyman was hanged, and the Governor of Spandau was beheaded on the authority of a mere order by him. These and many other acts of similar atrocity were ordered by a European despot, whom the world dignifies with the title of 'Great', 'a title', says Lord Brougham, 'which is the less honourable, that mankind have generally agreed to bestow it upon those to whom their gratitude was least of all due'. ".

Commenting on the proclaimed intention of subverting the Malabar dynasty and 'the deliverance of the people from their oppressions', Marshall said:[152]

> "To subvert a dominion, or to extirpate a dynasty, is rarely, I believe, assigned as an object for making war: in the present case, it was punishing Kannesamy for the imputed sins of his predecessors. Authors are not agreed in regard to the policy which should guide us in respect to the monarchs of India. Mr. Mill seems to think that the British Government has no right to assert, in its negotiations, a superiority over the native powers, but that we are bound to deal with the sovereigns of India on the same terms of equality as we should be with the established monarchs of Europe. Other authors maintain, that in the counsels of Divine Providence, England stands in India as an ascendant power invested with supremacy in virtue of European civilization, which is destined to supersede and supplant Oriental systems. Those who adopt the latter opinion, seem to assume that we

may try the conduct of a community by a different code of morality from that which regulate individuals."

Whether one country is morally or legally entitled to invade another country to deliver people from the oppressions of a 'barbarous' ruler or a ruler who administers 'barbarous' laws, might, as Marshall suggested, be regarded as a matter given to contention. However, as Marshall pointed out, motives may sometimes be far from altruistic:

"It appears not to have been at this time deemed expedient to promulgate the real object of the war, which was obviously to destroy the national existence of the Kandyan government altogether, and to annex the country to the British crown. The doctrine of our right to seize a territory which suited us, provided we could only find an excuse for quarreling with those who ruled over it, has been seldom publicly avowed, however frequently it may have been acted upon. But there seems to be a great propensity in the Saxon race to seize or acquire possessions of contiguous estates, without much reference to consistency, justice or good faith.

An improvement of the condition of the inhabitants of a state, by delivering them from alleged oppression is sometimes assigned as a pretext for subjugating and taking possession of a country, but perhaps the principle of kindness and humanity towards a people is very rarely indeed the real cause of war, professions of this kind being frequently used as a cloak to cover visions of glory, renown, and grasping ambition.

Much is said in this proclamation of the barbarous or uncivilized character of the king, as if we were to constitute ourselves avengers or guardians of the globe, and make the infliction of punishment different from our own a pretext for war and conquest. The desire to possess the country opened our eyes to the delinquencies of its ruler; and, to justify aggression, it was deemed expedient to assail not only his character, but also the character of the Malabar dynasty, consisting of four sovereigns, each of whom had been freely elected by the chiefs and people. The Malabar kings were, it is believed neither worse nor better than the general run of Asiatic princes, including the Kandyan or Singalese dynasty. Mankind are liable to be somewhat suspicious of the sincerity of the allegations of rulers who, after having made up their minds not only to conquer but to seize a country, profess to be impressed with a strong feeling of sympathy for the subjects of those termed by them oppressors, whose place they are anxious to occupy." [153]

> "This is probably a singular instance of a regular treaty between a sovereign of one country and the unauthorized chiefs of another, to deprive a king of his throne, and forever to exterminate his dynasty, on account of the imputed severities of his government. The treaty itself is a virtual acknowledgment on the part of the British Government, that 'a habitual violation of the chief and most sacred duties of s sovereign' constitutes a forfeiture of sovereignty ...
>
> By this memorable proclamation or convention, it appears that the English government recognizes and adopts the principle of making sovereigns accountable for their abuse of the power entrusted to them, the king of Kandy, being, according to the Edinburgh Review, dethroned for misgovernment, cashiered for offences committed against his subjects, called to account for his actions, and punished for abuse of power. - Edinburgh Review, Vol. XXVI, page 439. ...
>
> As to the reason assigned for seizing the country, namely, to relieve the inhabitants from oppression, it may be observed, that civilized nations assume a sort of inherent right to regulate the policy of the more barbarous communities, humanity being frequently assigned as the pretext for subjugating a country, while conquest is the real and ultimate object of commencing hostilities. There seems to be room to suspect some lurking fallacy in an argument which gives a spacious colour of humanity and beneficence to the gratification of a passion so strong and so general as the love of conquest..."[154]

Admittedly, cruel and inhuman forms of punishment were practiced in Sri Laṅka, and the British were right in abolishing them, although the retention of capital punishment and flogging left their humanitarian programme incomplete. King Tissa, as we have seen "made a law by which bodily injury, that is capital punishment and mutilation, probably also torture, was set aside *(vohāraṃ hiṃsāmuttaṃ,* [*Mahāvamsa*] 36.28). Owing to his clemency he received the name Vohārikatissa".[155] Was it not preferable, and sufficient, to follow the example of that king if the simple motive of the British was to save the people from the imposition of barbaric forms of punishment?

CHAPTER VII

OTHER OFFENCES

SACRILEGE

Sacrilege (*dāgäb-mahābō-nasā*) was a serious offence. According to the *Lak Raja Lō Sirita*, the laws ordained from ancient times forbade the destruction of *vihāra* and *Bō*-trees associated with the relics or images of the Buddha.[1] Those who violated such laws or stole things that belonged to the Buddha, were punishable with death.[2]

D'Oyly[3] stated 'that instances of the commission of the offence of sacrilege were few, and that, although as in the case of all offences punishable with death, they were reported to the monarch, for the king alone could impose a sentence of death, those who were convicted of sacrilege were, in the early part of the nineteenth century, 'punished by whipping through the streets of Kandy and imprisonment. One instance of striking a priest was punished by amp[u]tation of [a] finger'.

As we have seen,[4] causing a schism in the *Saṅgha* was one of the five most heinous crimes. "Purifying the doctrine by suppression of heresy, [King Goṭhabhaya (249-262 AD)] seized *bhikkhus* dwelling in the Abhayagiri (*vihara*), sixty in number, who had turned to the Vetulya doctrine and were like a thorn in the doctrine of the Buddha, and when he had excommunicated them, he banished them to the further coast."[5] It is said that, before banishment (*déśatyāga, raṭṭhā pabbājana*), the monks had been branded.[6]

MURDER AND CULPABLE HOMICIDE

In certain circumstances, murderers were exiled. The Slab Inscription of Kassapa V (914-923 AD) decreed that "If there be any who after committing murder, have taken refuge in the

premises occupied by the *Saṅgha*, those [murderers] and their abettors shall be tried and exiled to Dambadiv (India)".[7]

Capital punishment may have been imposed in certain cases of *ghātana*. Weerasinghe,[8] said that *ghātana* was "murder". Additionally, as we have seen, the royal officers may have confiscated the house of a person who committed murder.

D'Oyly[9] stated that "[t]he distinctions which exist in the law of civilized nations between the several species of homicide, of course finds no place [here]". The *Lak Raja Lō Sirita*[10] stated that in deciding whether an act was a crime and whether it was one punishable with death, 'the books' were consulted. Obviously, a court was guided by the applicable law on the subject, including the law laid down in precedents. Indeed D'Oyly, despite his observation that there were no distinctions in Sri Laṅkā "which exist in the law of civilized nations", proceeded to set out the "principles" that existed, showing that distinctions did exist, culpability varying with the circumstances in ways that are not altogether unfamiliar to modern lawyers.

According to D'Oyly,[11] "willful and deliberate homicide" was punished with death. Homicide, he said, was committed "deliberately and intentionally" when a person was slain without "sudden pervation" - probably meaning "sudden provocation" -, "and not in defence of self or property against a violent and unlawful act."[12] Davy[13] stated that murder was not common and that

> "an intelligent native, not a young man, who had lived constantly about court, informed [him] that in the course of his life he recollected to have heard of did not exceed five and that whole reigns had been known to pass without a single capital punishment."

However Davy stated in a footnote that the fact that capital punishment had not been inflicted was not "decisive proof; as some Singalese monarchs, conscientiously acting up to the principles of their religion, refused to pass sentence of death."[14]

There was a distinction between *murder*, for which the penalty was death, and *culpable homicide*, for which some other punishment was ordered. D'Oyly[15] said: "If 2 or more persons quarrel, and one be killed in the affray, it is held to be culpable homicide, and punished by whipping through the streets of Kandy and imprisonment in a distant village." He stated that "in the majority of instances which are numerous, the offender was punished in the manner above stated but in no instance which I can learn with death." "But", he said, "if after the termination of a quarrel and separation of the parties [a quarrel] arose between [them] after the lapse of some time and [the one] attack and kill the other, it is concidered (*sic.*) willful and deliberate homicide and liable to capital punishment."

D'Oyly[16] went on to state as follows:

> " If 2 or more persons join in the commission of a robbery and one of them commits homicide, the slayer is held guilty of willful and deliberate homicide, the rest only guilty of robbery.
>
> If a man kill another, who is come to rob his house by night the homicide is generally held to be not altogether free from blame and liable to slight punishment. But 2 instances of such homicides were brought under the King's cognizance passed without any animadversion whatever.
>
> If a man kill on the spot another found in the same room with his wife under such circumstances that adultery is presumable, the homicide is held to be justifiable and the perpetrator entirely innocent.
>
> If a man kill another by misadventure the homicide is held to be in a slight degree culpable. Such accidents occur not unfrequently amongst the natives in hunting and shooting, and the offender is usually sentenced to a slight corporal punishment as imprisonment or fine as a warning to others against negligence."

During a certain period of time, a high caste woman who had sexual intercourse with a low caste man, brought such degradation to her family that she was slain.[17] It was regarded as justifiable homicide. Later, however, such killings were forbidden by the

monarchs, and a guilty woman was consigned as a slave of the Crown to the royal village of Gampoḷa, and the family was ordered to deliver some provisions to the royal store, and by that act, purification was brought about.[18]

INFANTICIDE

Infanticide[19] was strictly prohibited, but it was occasionally practiced by persons, chiefly on account of indigence, or the belief that the child was born under an evil star and would bring misfortune,[20] or because the child was the result of an illicit connection, or simply because the child was a female.[21] In one instance, the offender was sentenced to severe corporal punishment and imprisonment, and then released.[22]

DEFAMATION

Where a person committed suicide, but before dying accused another person of having driven him to take his own life (e.g. by slandering him) the person accused would be examined and subjected "to such penalty as would be awarded if no suicide had taken place."[23] The person was punished for the slander only: So, defamation seems to have been an offence in Sri Laṅkā. However, it was not treated with as much seriousness as it was under the Laws of Manu. Manu[24] prescribed penalties ranging from fines to cutting off the offender's tongue, pouring hot oil into his mouth and ears, and driving red-hot iron nails into his mouth. The penalty in Sri Laṅkā was generally fixed at fifty *ridī*; but D'Oyly[25] stated that the exaction of even such a penalty was prohibited by King Kirti Sri Rājasiṁha (1747-1782), although it continued in practice till the British took over the administration of justice in 1815.[26]

GRIEVOUS HURT

The infliction of grievous personal harm by maiming or depriving a victim of an organ or member, was rare;[27] but when it

did take place, it was regarded as a grave offence that was fit for trial by the monarch himself.[28]

It was recognized that the victims of violence must be compensated. The Vēvälkätiya Slab Inscription[29] stated that if the offence is grievous hurt (but not homicide), fifty *kalañdas* shall be paid as compensation (*divimila*) to the victim. Manu required that the medical expenses of the victim should be paid by the offender. He said:[30] "If a limb is injured, a wound [is caused], or blood [flows, the assailant] shall be made to pay [to the sufferer] the expenses of the cure, or the whole [both the usual amercement and the expenses of the cure as a] fine [to the king]."

DAMAGE TO PROPERTY

A person who damaged the property or goods of another was required to compensate the owner.[31] Thus, when King Eḷāra's vehicle damaged the *thūpa*, he repaired the edifice.[32] Additionally, the person who caused the damage was liable to pay a fine to the king, unless there was no negligence on his part.[33]

PROFESSIONAL NEGLIGENCE

Manu[34] stated that "All physicians who treat [their patients] wrongly [shall pay] a fine; in the case of animals, the first [or lowest]; in the case of human beings, the middlemost [amercement]." Liability for professional negligence in our part of the world seems to have existed a very long time ago, on an uncomplicated, and simple basis: a person who caused damage or harm had to make reparation, for social and moral reasons.

ROBBERY AND THEFT

Robbery and theft were offences.[35] Sentences of impaling and other forms of capital punishment and torture were sometimes imposed in serious cases of robbery. The Vēvälkätiya Slab Inscription required the elders of a *dasagama* to hang highway

robbers. However, capital punishment was, it seems, seldom imposed, in ordinary cases of robbery.[36]

When robbers were sentenced to death, they were made to bear spikes, and with red tile-dust applied to their backs and a garland of *ratmal* (red flowers) round their necks, they were marched to the beat of the execution drum, to the place of execution. They had to expiate the heinous offence of which they had been found guilty; they had to extinguish their guilt by suffering to the full, and eventually dying. They marched to the place of execution with their hands tied behind their backs, and at every road intersection, they were beaten with whips made of thorns.[37] The members of the public who gathered to witness the march gave the criminals rice-cakes and betel and incense and flowers.[38]

Was this a manifestation of the benign attitude of the local population? Marshall[39] stated as follows:

> "The Singalese are not naturally a cruel race. Although the punishments of the Kandyans were often disproportionately severe, they were also of a very trifling character. None of their punishments seem to have been of that lingering kind which used to be practiced in our own country, such as the 'rack', or the 'scavenger's daughter'; nor were the disemboweling atrocities enacted in the cases of persons sentenced to die for high treason. The general feeling of the people seems to be unfavourable to acts of cruelty. When executions took place in the vicinity of Kandy, whether of indigenous or Malay delinquents, scarcely an inhabitant repaired to the spot to witness the scene, while, perhaps, not a European wife of a soldier in the garrison was absent.
>
> We are informed by Dr. Davy, that during the tragical scene when Eheylapola's children and wife were executed[40] the crowd who had assembled to witness it wept aloud, unable to suppress their grief and horror. During two days, he adds the whole of Kandy, with the exception of the tyrant's court, was as one house of mourning and lamentation; and so deep was the grief, that not a fire, it is said, was kindled, no food was dressed, and a general fast was held. How creditable is this remarkable statement to the feelings and the humanity of the Kandyan population! Contrast their conduct, on this

> occasion, with the behaviour of a crowd in this country at the execution of persons condemned for high treason, for example, the execution of nine gentlemen, for treason, on Kennington Common, on the 30th July, 1746. When, after they had been suspended the soldiers went under the bodies, drew off their shoes, white stockings, and breeches, while the executioner pulled off the rest of their clothes. A London mob, who had hooted these ill-fated gentlemen to and from their trials, permitted these atrocities to be committed without disapprobation."

The most atrocious robberies were held to be those committed upon the treasures or other property of the king, of temples, or of *bhikkhus*, theft accompanied by housebreaking or personal violence and highway robberies, and they were reported to the monarch.[41] The "Kandyan Priests" are reported to have told Governor Falck that "those who have stolen things belonging to the Boodho, to the gods, and to the King; those who plunder villages; thieves who rob on the road" were liable to capital punishment.[42] D'Oyly[43] observed that the instances in which robberies had been punished with death were few. If capital punishment was not imposed in such a case, the robber was whipped through the streets and imprisoned in a distant village. As we have seen, theft of royal treasures was also punished with confiscation of the properties of the thief's family, sometimes for generations.

Less serious complaints of stealing were heard by the Great Court. Thieves sometimes had their hands cut off.[44] Minor cases were tried by the headmen. The sentences varied with the power of punishment conferred on the court.

Thieves may have been whipped or flogged with rattans or given blows, "having previously been led through the city or village, preceded by a tom-tom, with insignia indicating the nature of his offence and the chastisement that awaited him."[45]

A thief was expected to restore the stolen goods; recovery was made by the chief himself by imprisoning the thief in the stocks till the goods were handed over. Recovery and restoration of the

stolen goods was an important part of the way in which robberies and thefts were dealt with. The Vēvälkäṭiya Slab Inscription stated: "out of the articles robbed by the highway robbers the recovered items that have been duly identified shall be restored to the respective owners."[46] Manu[47] said: "Property stolen by thieves must be restored by the king to [men of] all castes; a king who uses such [property] for himself incurs the guilt of the thief."

It was said that in the days of the last king of Kandy (1798-1815), a fee or present was usually promised beforehand and given by the owner of the goods to the authority recovering the goods. If the person whose goods were stolen was a man of some rank, the thief might be handed over to him so that he could hold the man in stocks and beat him in moderation till the goods were restored. But inflicting corporal punishment to extract a confession from the thief's alleged accomplices could result in the person inflicting the punishment being severely punished for 'ill-treating a respectable and innocent person.' In addition to restoring the stolen goods, the thief (except in the case of the theft of fruits, vegetables, betel leaves etc.) had also to pay 'fixed damages of 30 *ridī* called [*v*]*andiya* and 10 *ridī*, being double the sum which the owner is supposed to have paid to an informer', although in fact there may have been no informer. Davy,[48] stated that if a fine was imposed, the money was divided between the judge and the complainant. In cases of cattle stealing, in addition to the fixed damages of 40 *ridī* referred to earlier, the owner invariably recovered from the thief one head of cattle for each animal stolen in addition to his own, being compensation for the loss of the services of the stolen cattle. In the event of a dispute about a theft, the matter might be resolved by taking an oath at the temple.[49]

ARSON

Arson was an offence, but there were few transgressions of the law in that regard. An offender found guilty of arson would be sentenced to suffer severe corporal punishment and imprisonment and to make satisfaction for the property destroyed.[50]

FORGERY

Forgery was an offence. Certain persons who had forged *sannas* (royal grants) and a *dissāve's sīṭṭu* (chief's title deeds relating to land) had been punished with severe corporal punishment and imprisonment.[51]

Forging and counterfeiting currency were offences. Offenders were liable to be sentenced to severe corporal punishment and imprisonment. An offender who was an inhabitant of Colombo was handed over to the Dutch Ambassador by the authorities at Kandy. [52]

ADULTERY

Adultery was an offence. Adultery with a king's wives or concubines, as we have seen, were serious crimes. Adultery with a queen was an act of treason and punishable with death.[53] However, according to Davy,[54] it seems the chiefs rarely punished other adulterers, leaving it to the spouse to beat, wound, cut off his ears and hair, or even kill the delinquent. As we have seen,[55] it was 'justifiable homicide'. Knox (p. 173) said cuckolds were common, but a man, it seems, was reluctant to be mocked or laughed at in contempt or made sport of. A husband, it is said, was reluctant to complain officially, because he was "ashamed to publish his disgrace to the world." However, if a complaint was made that a man was suspected of "illicit intercourse or frequents his house with that design, no proof of the fact is called for, but the accused is dismissed with reproof and threats, and perhaps, if evidence be adduced, with a slight corporal punishment, imprisonment and fine."[55] Sometimes the husband had the adulterer "flogged in public and his wife flogged in the royal store-house, the place of punishment of women; after which, by his own *ipse dixit*, he might divorce her, and in disgrace send her home to her own family."[57]

Professor Ariyapala stated:[58]

> "We learn from the [*Saddharmālaṁkāraya*] that a fine was imposed on adulterers. The Nandiya story makes this clear when it states that those guilty of adultery suffer great ignominy and will also have to stand punishments such as fines, etc. The story of the Sōmadatta Brāhmana shows that they were mercilessly handled by the king's officers: '*matu paradārayehi santoṣayaṭa risi yana paridden atin* payin *taḷā marā duruvala koṭa piṭitala hayā bäňda ...*' 'his hands were tied at the back, he was beaten, kicked and weakened, thus making him give up any further desires of misconduct'."

Davy, and to some extent D'Oyly, suggested that adultery was not seriously regarded.[59] However, Professor Ariyapala's view that an adulterer may have been punished officially for the commission of an offence, rather than being left to be privately dealt with by an irate husband, is more in accordance with the way in which the matter was treated by Rājasiṁha II,[60] and in the *Dharmaśāstra*.[61]

A king was expected to rid his kingdom of crime, and especially of certain offences. Adultery was one of them. "The king in whose town lives no thief, no adulterer, no defamer, no man guilty of violence, and no committer of assaults, attains the world of *Sakra* [Indra]. The suppression of those five in his dominions secures to a king paramount sovereignty among his peers and fame in the world."[62] "Men who commit adultery with the wives of others, the king shall cause to be marked by punishments which cause terror, and afterwards banish."[63] Manu made several laws dealing with the subject of adultery. One of his concerns, it seems, was to ensure the purity of castes.[64] But the sanctity of family life was equally a matter of concern, both from the point of view of conjugal happiness and from the point of view of bringing up children: "In that family, where the husband is pleased with his wife and the wife with her husband, happiness will assuredly be lasting":[65] " 'Let mutual fidelity continue until death', this may be considered as the summary of the highest law for husband and wife. Let man and woman, united in marriage,

constantly exert themselves, that [they may not be] disunited [and] may not violate their mutual fidelity. Thus has been declared to you the law for a husband and wife, which is intimately connected with conjugal happiness, and the manner of raising offspring in times of calamity ..."[66]

According to Manu, *saṁgrahana* (adulterous acts) included touching a woman or her ornaments, sitting with her on a bed and, even talking to a woman, in certain circumstances.[67] A man who was not a brāhmaṇa was condemned to death and executed by being placed on a red-hot iron bed and roasted to death.[68] A person who violated his guru's bed, was required, after confessing his crime, to extend himself on a heated iron bed, or embrace the red-hot image of a woman: by dying, he became pure.[69]

RAPE

Rape was a crime. If the parties concerned were ordinary citizens, the chiefs imposed sentences of slight corporal punishments or imprisonment or fines or a combination of such punishments. In certain cases where the woman had been attendant at the royal palace and the offender was a person of some rank, King Sri Vikrama Rājasiṁha had ordered severe corporal punishment with imprisonment or "temporary removal".[70]

ASSAULT

According to D'Oyly,[71] assaults and quarrels were numerous and were settled by headmen or chiefs. But Davy,[72] stated that "acts of assault and violence are rarely heard of amongst the Singalese." Slight corporal punishment was sometimes inflicted, but more usually the offenders were fined. Sometimes, if it had been so ordered, e.g. by the law recorded in the Vēvälkäṭiya Slab Inscription, the fines for assault (*sipu daḍa*) were divided among the holders of villages and of *pamuṇu* lands according to

custom.[73] If blood was spilt in an affray, a fixed fine of seven and a half *ridī* was imposed - (*lē daḍē*). In the case of quarrels where blows were struck or there was mere abuse, but no blood was drawn, the customary fine was three or five *ridī*. If both parties were found to be at fault, fines might be levied on the complainant and the accused.[74]

CONSUMPTION OF ALCOHOL

Although it would seem from the Mäḍirigiri Slab-Inscription of Mahinda VI[75] that the consumption of alcohol was permitted, unless it was prohibited in a particular area, yet, in general, the manufacture, sale and consumption of arrack and toddy, it seems, were prohibited, since the consumption of alcohol was contrary to Buddhist precepts and because it was "productive of profligacy, quarrels and other crimes."[76] Tennent, citing certain authorities, said:[77]

> "Intoxicating liquors are of sufficient antiquity to be denounced in the moral system of Buddhism. The use of toddy and drinks obtained from the fermentation of "bread and flour" is condemned in the laity, and strictly prohibited to the priesthood; but the Arabian geographers mention that in the twelfth century, wine, in defiance of the prohibition, was imported from Persia, and drank by the Singhalese after being flavoured with cardamoms."

Geiger[78] said:

> "Intoxicating drinks (*surā*), chiefly toddy, the fermented sap of the sprouts of certain palm-trees, were not unknown. Toddydrinking (*surāpāna*) was a word indicating pleasure and amusement in leisure hours ([*MV.*] 25.32). But it seems that generally people of the better classes abstained from drinking *surā*. King Aggabodhi VIII, 9th cent., forbade the bringing in of fish, meat and intoxicating drinks into the town on the Uposatha days ([*CV.*] 49.48.). He knew that on such days people were easily drawn to pleasure and often committed excesses. Seduced by his low class favourites king Sena V indulged in drinking *surā*. After taking it he was like a wild beast gone mad, and as he could no longer digest food he died young. ([*CV.*] 54.70-72). To

priests the taking of such drinks was entirely forbidden; when thirsty they were refreshed by pious laymen with sugar-water (*sakkharapāna* [*MV.*] 30.39.)."

Johann Wolffgang Heydt[79] made an interesting comment about the people of Sri Laṅkā. He said:[80] "The most excellent thing about them is, that they have a great loathing of drunkenness, and that one sees among them very few who give themselves to it, except the most degraded of them. And in general they are very temperate, and it is not hard to consort with them; and when one has been taught as little of their customs, one can get on well with them."

If it was brought to the king's notice, the offender would be punished by whipping through the streets and imprisonment. In other cases, the chiefs or headmen would impose sentences of slight corporal chastisement, imprisonment or fine.[81] The *Lak Raja Lō Sirita*, listed the use of intoxicating drinks as one of the things prohibited by the ancient laws.[82] According to Manu,[83] drinking the spirituous liquor called *Surā* was one of the five mortal sins - *mahāpataka*.[84] *Surā* was of three kinds: that distilled from molasses (*gaudī*), that distilled from ground rice, and that distilled from *madhūka* flowers (*mādhvi*).[85] Drinking the spirituous liquor called *Vāruñī* was less serious.[86]

GAMBLING

Gambling was strictly prohibited. Offenders were punished by whipping and imprisonment.[87] Manu said: "Gambling and betting let the king exclude from his realm; those two vices cause the destruction of the kingdoms of princes. Gambling and betting amount to open theft; the king shall always exert himself in suppressing both of them".[88] Manu required gamblers to be banished from the town.[89] He said: On those who were addicted to gambling, "the king may inflict punishment according to his discretion".[90]

KILLING ELEPHANTS

Although in times of war, the members of the royal family sometimes rode on horseback,[91] elephants were usually the animals used for riding by kings during the early mediaeval period.[92] Kings rode them not only in processions and for travelling about, but also in war.[93] The most precious domestic animal was the elephant (*hatthin, gaja*). They were either imported from India or Burma, or caught in the forests of the Island itself with the assistance of tame elephants (*gaja-bandhana-mataṅgaja*,)[94] and trained by *hatthācariyō* (special trainers).[95] Geiger[96] said that "elephants were the property of rich people only, chiefly of the kings." However, D'Oyly said[97] that " All Elephants are considered the Property of the Crown and are employed in the King's Service for his Recreation at Public Festivals. Hence the slaughter of them especially of tusked and large Elephants is reckoned amongst the most heinous offences." He said the killing of tusked or large elephants was usually punished by whipping through the streets and imprisonment in a distant province. However, killing other elephants, was punished with slight corporal punishment and imprisonment in Kandy. Additionally, in the districts surrounding Kandy, the Kuruwa people of Kingalle had a right to plunder the house and premises of the offender and seize his grain and other movable property.[98] It seems that in Sri Laṅka, in keeping with the principle that the law must not be rigorously applied, a distinction was drawn between the killing of various types of elephants, whereas according to Kauṭilya there was an absolute rule: "Whoever kills an elephant shall be put to death."[99]

KILLING ANIMALS AND CONSUMING MEAT

Causing harm to anything that was capable of feeling or having the capacity of sensation, was frowned upon as being contrary to Buddhist precepts. King Āmanḍa-gāmaṇi Abhaya (22-31 AD) decreed that no animals should be killed.[100] Silākāla (522-535

AD) decreed the "preservation of life for all creatures" throughout the Island.[101] It was said that "To all creatures on land and water [Kassappa IV (898-914 AD)] granted safety and observed in all respects the conduct of the ancient kings".[102] It was said that Niśśaṅkamalla (1187-1196), "being endowed with the virtuous qualities of an extraordinary sympathetic nature, he granted security to all living creatures in various tanks, including the large tanks as well."[103] In order to provide food for animals, pious kings gave to cattle 'young corn full of milky juice', and rice to the crows and other birds.[104] Mahinda IV had rice cakes distributed to apes, wild boar, gazelle and dogs.[105] Parākramabāhu I is said in every month on the four *upōsatha* days to have 'commanded safety of life to all creatures without exception living on dry land and in the water'.[106]

There were cattle-breeders.[107] However, Geiger[108] observed as follows:

> "The breeding was confined to a rather poor sort of cattle (*go*) and to buffaloes (*mahisa*). The chief task was to supply the agriculturists with the animals they wanted as helpers in their work. The cows (*dhenu* ; cf. *vacchako sahadhenuko* the calf with the mother cow 21.17) afforded the milk so necessary for preparing the rice dishes which were generally eaten.[109] The oxen were used as draught animals (*goṇā rathe yuttā* oxen yoked to a cart 35. 42), the buffaloes had to trample down the soil of the rice-fields to make them ready for sowing. For this purpose a dozen or more of these stout animals, each bound abreast the other, are driven over the swampy surface of the fields. Buffaloes had also to tread the corn on the threshing floor at harvest-time."

On the matter of killing and eating animals, there was, it seems, some ambivalence.

Percival[110] said: "They never eat meat, or anything that has had life."

Tennent[111] said:

> "Although the taking of life is sternly forbidden in the ethical code of Buddha, and the most prominent of the obligations undertaken by the

> priesthood is directed to its preservation even in the instances of insects and animalculae, casuistry succeeded so far as to fix the crime on the slayer, and to exonerate the individual who merely partook of the flesh. Even the inmates of the wiharas and monasteries discovered devices for the saving of conscience, and curried rice[112] was not rejected in consequence of the animal ingredients incorporated with it. The mass of the population were nevertheless vegetarians, and so little value did they place on animal food, that according to the accounts furnished to EDRISI by Arabian seamen returning from Ceylon, 'a sheep sufficient to regale an assembly was to be bought for half a drachm' ".

According to the chronicles, 'hunting was a sport to which kings and noblemen were devoted'.[113] Geiger[114] said that, ordinarily, dried fish (*maccha*) were eaten with rice,[115] rarely meat. Fish and meat were always considered a luxury. But the flesh of birds, such as chicken (*mamsa sakuṇa)*, was, besides beansoup, a favoured dish of Dhātusena.[116] The Mädirigiriya Pillar-Inscription ordered that 'dead goats and fowls' - probably those killed by accident - were to be given to the hospital attached to the Vihāra, showing that animal food was allowed, perhaps under certain restrictions. [117]

Manu encouraged compassionate behaviour toward other living creatures. In his 'Rules for a *Snātaka'*, Manu[118] stated: "Giving no pain to any creature, let him slowly accumulate spiritual merit, for the sake [of acquiring] a companion to the next world, just as the white ant [gradually raises its hill]." Yet, his laws on the subject are not always clear. In the chapter, *Lawful and Forbidden Food: Impurity*, Manu[119] stated that "The Lord of creatures (*Pragāpati*) created this whole [world to be] the sustenance of the vital spirit; both immovable and the movable [creation is] the food of the vital spirit." However, Manu[120] goes on to describe the circumstances when one may eat meat in conformity with the law. Manu[121] stated: "He who does not seek to cause the sufferings of bonds and death to living creatures, [but] desires the good of all [beings], obtains endless bliss. He who does not injure any [creature], attains without an effort what he thinks of, what he undertakes, and what he fixes his mind on. Meat can never be obtained without injury to

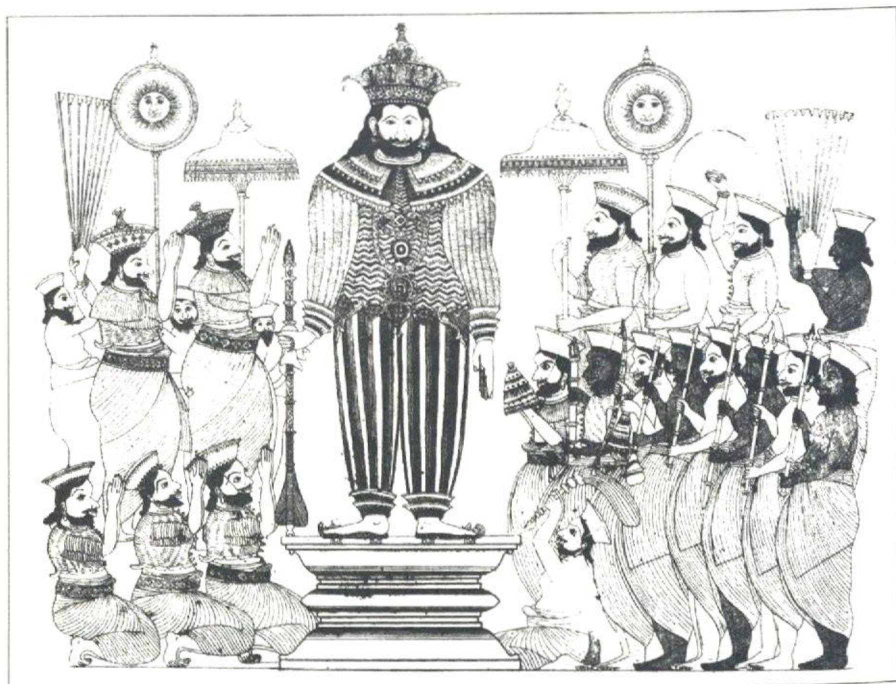
living creatures, and injury to sentient beings is detrimental to [the attainment] of heavenly bliss; let him therefore shun [the use of] meat." In his Chapter, *Assault and Hurt,* Manu[122] stated: "If a blow is struck against men or animals in order to [give them] pain, [the judge] shall inflict a fine in proportion to the amount of the pain [caused]": However, Manu[123] stated: "There is no sin in eating meat, in [drinking] spirituous liquor, and in carnal intercourse, for that is the natural way of created beings, but abstention brings great rewards." Meat could be consumed "in conformity with the law".[124]

For eating beef, in some instances, offenders were punished by whipping through the streets and imprisonment in a distant village. In other cases, the chiefs might have imposed a sentence of slight corporal punishment, imprisonment or fine.[125] The *Sammohavinodanī* [126] stated that King Bhātiya Tissa (19 BC-9 AD)[127] fined certain persons who had committed the offence of eating beef (*gomaṃsakhādake*), and since they were unable to pay their fines, the offenders were required to clean the royal court-yard. Eating beef may not have been a serious offence, but it would seem that those who ate beef were not socially well regarded. Henry Marshall,[128] observed that during the progress of Mr. Wilson, the Assistant-Resident at Badulla, and his party of soldiers, during the rebellion of the Sri Laṅkans against the British in 1817, "small parties of the natives occasionally appeared on the adjoining hills, using highly insulting language." He stated in a note: "The opprobrious and insulting language used by the Kandyans to Europeans are commonly, *Geemoi goulammah*, Beefeating slaves, begone!"

SORCERY

Sorcery (*hūniyam*) was held in general abhorrence. Manu,[129] in setting out the duties of a king, prescribed the following penalties: "For all incantations intended to destroy life, for magic rites with roots [practiced by persons] not related [to him against

whom they are directed], and for various kinds of sorcery, a fine of two hundred [*pañas*] shall be inflicted." It was believed that certain persons, by performing certain ceremonies, could cause death, sickness or misfortune. During the reign of Narendra Siṁha (1707-39) offenders were executed and their lands were confiscated or delivered to the complainant. During the reign of Kirti Sri Rājasiṁha (1747-82), five persons were executed for treason on account of practicing sorcery against the king. By the end of the eighteenth century and the beginning of the next century, however, complaints in respect of sorcery declined and were usually dealt with by a chief forbidding the offender to repeat his practices.[130]



Sri Vikrama Rājasiṁha

CHAPTER VIII

THE MONARCH

THE IMPORTANCE OF HAVING A MONARCH

A monarch was assisted by officials, but eventually, he or she was personally accountable for the affairs of the kingdom, including, the maintenance of law and order and the dispensation of justice. It was believed that without a monarch, a kingdom was doomed. The Slab-Inscription of Sāhasamalla (1200-1202 AD) said: "A kingdom without a king, like a ship without a steersman, would not endure; like a day without the sun, it would be lustreless ... and devoid of support."[1] Indeed, it was said in the Poḷonnaruva Galpota Slab-Inscription:[2] "If there are no princes they should maintain [the kingdom] by submitting themselves to the sway of the queens. If there are no queens also, they should place in the position of king even a slipper worn on the foot of a great king and protect the kingdom."[3]

A MONARCH WAS NOT NECESSARILY A DESPOT

Percival[4] stated: "The government of Candy is an absolute despotism, and any resistance to the will of the king, without power to maintain it, is sure to be attended with immediate destruction." According to Percival,[5] there was a code of written laws; but it was in the hands of the monarch who acted arbitrarily: "Where the government is a pure despotism, and everything depends on the immediate will of the sovereign, there can be no fixed and established laws. The Candians, indeed, boast of an ancient code of written laws, but these remain in the hands of the monarch who is their sole interpreter. Certain ancient customs and rules, however, are supposed to have the authority of fundamental laws; but when we hear of the king himself being amenable to them, it means nothing more than that the breach of them excites such general indignation, as more than once to have given rise to a

successful rebellion. His authority supersedes every other decision, and every sentence of death is subject to his revisal."

D'Oyly[6] stated: "The Power of the King is Supreme and absolute. The Ministers advice, but cannot control his Will. The King makes Peace and War, enacts Ordinances and has the sole Power of Life and Death. He sometimes exercises Judicial Authority in civil and criminal cases, either in original jurisdiction or in appeal. The Acts of his Government are presumed to be guided by the Institutions and Customs of his despotism... " Although Percival stated that there was a written Code of Laws, D'Oyly stated a contrary opinion: D'Oyly[7] said: "The Kandyans have no written Laws and no Record of Judicial Proceedings was preserved in Civil or Criminal cases ... There was therefore nothing to restrain the arbitrary Will of the King and nothing to guide the Opinions of the Sovereign Judge, and the Chiefs, but Tradition and living Testimonies..."

D'Oyly stated:[8]

> "This system of judicial administration evidently marks a barbarous state of society but if it were purely administered, is apparently as well calculated to afford the means of justice as any which could exist under a despotic government in which the executive, a[nd] judicial powers are united ..."

Percival and D'Oyly probably supposed, and the British officials alleged, that Sri Vikrama Rājasiṁha was an ideal or even a typical, average Sri Lankan monarch. He was not. He was almost certainly influenced by his personal background and the turbulent circumstances of his time that made the administration of justice during his reign extraordinary.

A basic assumption of Western thought is that power tends to corrupt and leads to oppression; therefore, power must be distributed. For example, Madison said that "the very definition of tyranny" consisted in[9] "the accumulation of all powers, legislative, executive, and judiciary in the same hands, whether of one, a few,

or many."[10] However, a strict separation of powers is not feasible if a government is to be workable. The safety of the citizen from tyrannical rule essentially depends on a system of checks and balances ensured by laws, conventions, customs and traditions. Where executive and judicial powers are vested in the same authority, the independent administration of justice might be in jeopardy. However, it does not follow that some separation of the executive and judicial functions necessarily ensures an absence of arbitrariness and the abuse of executive authority. Nor does it invariably follow that where executive and judicial power are vested in one authority, decisions must be arbitrary or tyrannical. D'Oyly's conclusion[11] that because executive and judicial powers were eventually vested in the monarch, the government was "despotic", needs to be treated with caution. Whatever the position in Europe might have been, in India, and in Sri Lańka it was a basic principle that the king's authority was not absolute: it was not untrammeled, unqualified, and unconditional. The possibility of rebellion was important, but it was not the sole controlling factor. Percival's explanation was simplistic. It was not sufficient. There were other restraints - those connected with constitutional legitimacy - that require consideration.

Paranavitana[12] observed that, in addition to taking account of the views of the clergy, his ministers, and public opinion, a king was "expected to uphold the ancient laws and institutions and to protect the weak." Paranavitana[13] said:

> "His descent traced back to mythical personages of the past, the traditional rituals undergone by him at the consecration and the magical potency believed to reside in the regalia in his possession made the person of the King sacred and the commands emanating from him demanded implicit obedience as the expression of the will of the gods. The King therefore wielded absolute authority and had power of life and death over the most exalted of his subjects. This absolute power which the King possessed in theory was, however, limited to a great extent in practice by public opinion which demanded of the ruler to follow fundamentally principles of justice and equity (*dharma*) and custom and precedent (*vyavahāra* or *caritta*,

> S. *sirit*) as established by the policies followed by earlier rulers who served as models of kingly behaviour. The idea implanted in the mind of every member of the royal family by his early training as well as by the social milieu in which he had his being that the ruler should hearken to the counsel of the elders of the Samgha also limited his freedom of action. A King who disregarded former custom or offended the Samgha alienated the sympathy of his subjects and there was always a rival aspirant to the throne who would take advantage of such discontent and supplant the ruler who had transgressed the norm of kingly conduct."

Sir Ivor Jennings, Q.C., one of the great constitutional lawyers of the Commonwealth, observed:[14]

> "Phrases like 'supreme and absolute' as used by D'Oyly are dangerous because they confuse legal authority with actual power. They result in Hayley's calling the King 'An absolute monarch whose power is legally unlimited but to some extent controlled by a council of ministers.' It is clear from the authorities that the King's power was not legally unlimited. As in all feudal systems, his powers were determined by custom or law. The whole social system from the monarchy to the slaves was regulated by customs which the British authorities tried to collect and express after 1815."

A MONARCH WAS SUBJECT TO THE LAW

Geiger said: "In order to be able to fulfill his duty in the most perfect manner the king must never disregard old custom and tradition".[15] The king did not add anything to the authority of the law to which he himself was subject: When a king came to the throne, he was to be subject to the law and entitled to continue only so long as he observed the law: At the ceremony for the installation of a monarch (*abhiṣēka*),[16] which was introduced in the second half of the third century B.C., a maiden of nobility (*khattiyakaññā*) took with both hands a marine shell, the spiral of which wound to the right, which was filled with water from the Ganges river, poured the water on the king's head and said: 'Oh Majesty, all the clans of the nobility make thee for their own

protection and security by this consecration a consecrated king; rule thou with justice and peace persisting in the law, ...' Then the domestic chaplain (*purōhita*) of the royal court, poured water from a silver shell with the same words, only substituting 'brāhmaṇa clans' for noble clans. The foreman of the guilds (*seṭṭhi*) performed the same ceremony for the householder clans (*gahapati-gaṇa*), using a golden shell (*ratana-saṅkha*). Paranavitana[17] stated that "These details are reminiscent of a time when the king was elected by the three main divisions of the Āryan social order, a conclusion which is also supported by the titles like *gamaṇi* and *maparumaka*, borne by the early kings." There was an address by three persons who said: 'If thou will rule in the manner as we said, well; but if thou does not do so, thy head will split into seven pieces.'[18] This was a warning that was meant to be taken seriously. When Udaya III (935-938 AD) violated the customary laws relating to sanctuary, the people rebelled against him, and it is said that "From that time onwards the king observed the conduct of former kings."[19] Davy[20] observed: "Should a king act directly contrary to [the] rules [prescribed for kings], contrary to the example of good princes, and in opposition to the customs of the country, he would be reckoned a tyrant, and the people would consider themselves justified in opposing him, and in rising in mass and dethroning him; nor are there wanting instances in extreme cases of oppression, of their acting on this principle, and successfully redressing their wrongs." [21]

The *Lak Raja Lō Sirita* records the following questions and answers:[22]

> *Is there any system of laws established from of old for the Government of the Kingdom?*
>
> "Laws ordained from ancient times exist. Of these the first lays down that no religion is to be accepted save that of Buddha.
> The second, that the Queen Mother must not be put to death.
> The third makes like provision regarding the Royal father.
> The fourth provides similarly regarding good priests.

> The fifth forbids the destruction of Veheras, Viharas and Bo-trees associated with the relics or images of Buddha.
> The sixth forbids the taking of life.
> The seventh, theft.
> The eighth, adultery.
> The ninth, untruthfulness.
> The tenth, the use of intoxicating drinks.
> These ten have been established from of old as fundamental for the government of the country."
>
> *If the King in contempt of these laws indulge in any unjust cruelty, is it competent for the Ministers responsible for justice to forbid the same and put a stop to it?*
>
> If a King violate these ten laws and indulge in acts of cruelty and unrighteousness, the Council of Ministers is empowered to put a stop to that. For instance once upon a time in a certain city of Dambadiva a King named Porisada was in the habit of having people killed secretly in order to eat their flesh; learning of this the Ministers and inhabitants earnestly besought him not to eat human flesh but were unable to restrain him from the act. Thereupon they expelled him from the Nuvara and appointed another royal Prince to the Kingship. This is so related in the book Sutasoma Jatakaya."

Having observed that "The government of Candy is an absolute despotism", Percival stated:[23]

> "In spite of these circumstances, however, the natives look upon certain fundamental laws and regulations, existing among them from time immemorial, as the real depositaries of supreme power ... [T]he Candians maintain that if the king ventures to encroach upon the fundamental laws of the state, he is amenable to the justice of his country as well as the meanest subject. Some instances of kings who have been deposed and put to death are cited in support of this idea; although it is evident that as long as the whole force of the state is vested in the king, and as long as there is no counterbalancing power opposed to him, it is a successful rebellion alone that can bring him to justice. The whole doctrine, in fact, serves only to give a handle to any minister or officer who finds himself sufficiently powerful and ambitious to depose his master..."

There are numerous instances when the people rose against unjust monarchs, but not necessarily lead by a person seeking to replace the king. For instance, during the oppressive reign of Parākramabāhu I (1153-1186) "all the rebels, each in his division, roused the whole population of the country down to the very boys in open revolt."[24] In 1664, "... having been long sore oppressed by this king's unreasonable and cruel government", the people stormed into the palace of Rājasiṁha II and attempted to terminate his evil reign.[25] Bhuvanekabāhu VI (1412-1467) also had to put down a rebellion.[26] Sri Vikrama Rājasiṁha (1798-1815), we have seen, faced several uprisings, some instigated by ambitious chiefs, but not always. Although he said he is said to have followed Manu, that king seems to have been unmindful of the fact that Manu said: [27]

> " That king who through folly rashly oppresses his kingdom, [will], together with his relatives, ere long be deprived of his life and of his kingdom. As the lives of living creatures are destroyed by tormenting their bodies, even so the lives of kings are destroyed by their oppressing their kingdoms."

N.C. Sen-Gupta observed:[28]

> The ancient Āryan did not look upon the king as either the source or even the repository of law. The law was what had come down from past ages which was in the special knowledge of the sages who had specialized in its study. The duty of the king to maintain and uphold that law was itself imposed upon him by that law.[29]

It hardly needs to be stated that not only the monarch, but also his subjects, were bound by customary law. P.E. Pieris,[30] stated as follows:

> "Mudunegedera Rāla and Kivuldeniya Rāla in Hāris Pattu, had a dispute regarding Mahā Kumbura, whereupon the latter tied a *Bōla* - a bundle of branches and leaves fastened together - according to the custom of the country, for this is a token forbidding any molestation in the field. The former however pulled it down and for this contempt

> of Custom he was flogged through the streets, and taken to Hienne in Waliyakgoda in Yatinuwara of Häris Pattu where his hand was cut off at the wrist."

A king was expected to be just: As we have seen, on the occasion of his installation, he was repeatedly told: "Rule thou with justice and peace, persisting in the law"; and there are numerous instances in the chronicles recording the fact that good kings fulfilled public expectations. For instance, it was said that Tissa reigned 'with a knowledge of law and tradition'.[31] Kings, like Kassapa III, were regarded as qualified to rule because they knew the customary laws; [32] and kings, like Sena I (833-853 AD), who observed them, were praised for doing so.[33] Aggabodhi III (632 AD) was described as a "king who did no discredit to the conduct of former kings", and thereby "protected the kingdom in justice". [34] Vijayabāhu I (1055-1110 AD), "well versed in custom," is said to have enjoyed the high festival of the installation of the king, and "keeping not to evil but pious action" was secure.[35] Mahācuḷi Mahātissa reigned "with piety and justice".[36] Eḷāra ruled "with even justice toward friend and foe".[37] Buddhadāsa "practicing justice" won over his subjects. Moggallāna I "protected the world in justice."[38] Aggabodhi VII "judging according to justice, rooted out unjust judges".[39] Kassapa V "held sway in justice".[40]

When it was stated in the chronicles that a king ruled 'justly' or 'with justice', it was a recognition of the fact that he observed the laws and conventions of the land. Vijaya, 'when he had forsaken his former evil way of life', ruled 'justly and benevolently'.[41] The *Vaṃsatthappakāsinī* [42] explained that when Vijaya was said to have reigned *dhammena samena*, it meant that he ruled justly according to the royal norms of justice and meted out justice to the public. Sena and Guttika were said to have ruled 'twenty-two years justly' (*rajjan dammena karayuṁ*).[43] The *Mahāvaṁsa Ṭikā* (Glossary), explained that 'conventions and competence in judgments have not been neglected in governing the land'.[44]

Monarchs consciously imitated their predecessors who had ruled justly by learning the laws and customs. King Kirti Sri Rājasiṁha "when he heard of the doings of former kings, of Parākramabāhu and others, he recognized it as right and imitated their doings."[45]

MONARCHS WERE OBLIGED TO FOLLOW THE NORMS LAID DOWN FOR THEM

There were written rules handed down for the direction of kings which had to be observed as a matter of duty: If they were not observed, his rule lacked legitimacy and the monarch ran the risk of being dethroned. Davy stated[46] as follows:

> "The rights and functions of the king were of the highest and most extensive nature: he was the acknowledged lord of the soil; he alone taxed the people, and determined the services they were to perform; all offices of government were at his disposal, and all honours, as well as power, emanated from him, and were enjoyed only during his pleasure. Notwithstanding this sway, he was not perfectly absolute and without check. On ascending the throne, he had to consider himself under certain restrictions: he was expected to follow the example of good princes; observe the customs of the country, and attend to the written rules handed down for the direction of kings."

In his Preface to Abhaya Aryasinghe's book, *Royal Institutions and Popular Rights in Sri Laṅkā,* N.D.M. Samarakoon, Q.C., Chief Justice of Sri Laṅkā, said:

> "The popular belief that the ancient Kings were despots and a law unto themselves is not true. At the very beginning laws existed for the King to obey, they are ten in number - ten commandments for personal conduct. Laws and Rules existed for laymen and Sangha too. These were administered in Tribunals with the High Court of Justice at the apex."

A MONARCH HAD TO BE VIRTUOUS

As the paramount guardian of the *Buddhasāsana* (Buddhist religion/church), a monarch was expected to lead a virtuous life in

accordance with the tenets of Buddhism, and norms prescribed for persons of noble birth. As the leader of his people, a monarch was expected to lead a life that was fit to serve as an example. As the supreme judge, his life had to be faultless so that he might have the moral authority to punish persons guilty of doing wrong.

Geiger[47] stated:

> "Ten virtues (*dasa rājadhammā*)[48] are essential for a good ruler. They are not enumerated in the chronicle.[49] It is supposed that they are well known to everybody. But they are specified in a Jātaka verse: giving of alms (*dāna*), leading a moral life (*sīla*), liberality (*pariccāga*), fair dealing (*ajjava*), gentleness (*maddava*), self-discipline (*tapa*), freedom from wrath (*akkodha*), mercy (*avihiṃsā*), patience (*khanti*), 'peaceableness' (*avirodhana*).[50] The ten meritorious works (*dasa puññakriya*)[51] are a similar list of royal virtues, or they are identical with the *dasa rājadhamma*." [52]

Ariyapala stated,[53] that the tenfold royal virtues (*dasa-rāja-dharma*), "are also rules of morality that every good Buddhist is expected to practice, though they are not qualities essentially confined to the Buddhist code of morals, for they are ideals set before all of noble birth *(abhijāta)* by the Bhagavadgītā XVI, Ib, 2, 3a, which enumerates these ten amidst many more."

Some records, expressly recall the fact that certain monarchs observed the ten rules. The *Kav-silumina*[54] stated that the king, having married a queen, lived without transgressing the ten-fold royal virtues : *visī tamā kara kalak kalak dasarajadamnen*. The Kalinga Forest Gal-Āsana Inscription recorded the fact that King Niśśaṅkamalla (1187-1196 AD) ruled "in accordance with the ten principles of regal duty (*dasa-rāja-dharma*).[55] The Slab-Inscription of Queen Līlavatī (1197-1200 AD) recorded the fact that Her Majesty reigned in a similar manner.[56] So also had King Vijayabāhu I (1055-1110 AD) before Līlāvatī and Niśśaṅkamalla. Sundara Mahādevi, the chief queen of King Vikramabāhu I (1111-1132 AD) said that her father-in-law, Vijayabāhu I (1055-1110

AD), united the kingdom and reigned without violating the ten royal precepts - "*dasa rajādharma nokopā mulu lakdiva eksat kara rajakaḷa siri saṅgabō vijayabāhu*".[57] The Slab-Inscription of the Vēḷäikkāṟas recorded the fact that the king "was graciously pleased to rule the kingdom for fifty-five years by practicing the ten regal virtues." [58]

Geiger said:[59]

> A model king in the chronicler's eyes was Kassapa V whose character and virtues are described in the passage 52.38-41 [*Cūlavaṁsa*]: 'He was pious as one who has reached the path of salvation (read with Buddhadatta *āgatamaggo va*, instead of *ca*), wise as one who possesses supernatural powers, eloquent as the teacher of the gods (Bṛhaspati), generous as the dispenser of treasures (Kubera), deeply learned, a preacher of the true doctrine, practiced in all arts, adroit in proving what is right and not right, versed in statecraft, immovable as the pillar of a gate, standing firmly in the teaching of the Leader on the path of deliverance, not to be shaken by storms of other opinions, keeping himself free from all evil such as guile, hypocrisy, pride, a mine of virtues as the ocean is one of jewels.'

Geiger observed:[60]

> "As a king is always menaced with ambuscades of foes and rebels (*corā, ḍāmarikā*), he must try to gain the goodwill of his subjects by liberality (*dāna*), friendly speech (*peyyavajja*), beneficence (*atthacariya*) and sociability (*samānattatā*). These are the four heart-winning qualities (*cattāri saṅgahavatthūni*)[61] by which good rulers are distinguished."

Good monarchs, avoided evil conduct caused by the four kinds of error (*satara agati*) and practiced the four heart-winning qualities (*satara sangraha-vastu*).[62] King Buddhadāsa, (340-368 AD) "a mine of virtues ... gifted with wisdom and virtue, a refuge of pure pity and endowed with the ten qualities of kings, while avoiding the four wrong paths, practicing justice, he won over his subjects by the four heart-winning qualities."[63] It was stated that Parākramabāhu II, in hearing appeals, acted with equanimity, free

of the *satara agati*.[64] It was stated in the *Buthsarana*, which is believed to have been written in the Poḷonnaruva era, that there were courts of law in which justice was dispensed towards all beings by judges who were free of the *satara agati* and acting like parents.[65] It was said that when King Kirti Sri Rājasiṁha (1747-1782) "heard of the doings of former kings, of Parākramabāhu and others, he recognized it as right and imitated their doings. He learned the duties of a king, was filled with reverence for kingly duties, shunned the [four] false paths, schooled himself in the four heart-winning qualities, showed his brothers and others all favour by befitting action, made them contented and won their hearts by caring for them in the right way."[66]

MORAL AUTHORITY

A king was expected to be virtuous so that as the supreme judge he was qualified in every way to dispense justice. "They declare that king to be a just inflicter of punishment, who is truthful, who is wise, and who knows [the respective value of] virtue, pleasure, and wealth."[67] "A king who properly inflicts [punishment], prospers with respect to [those] three [means of happiness]; but he who is voluptuous, partial, and deceitful will be destroyed, even through the [unjust] punishment [which he inflicts].[68]

"[Punishment] cannot be inflicted justly by one who has no assistant, [nor] by a fool, [nor] by a covetous man, [nor] by one whose mind is unimproved, [nor] by one addicted to sensual pleasures."[69] "By him who is pure [and] faithful to his promise, who acts according to the Institutes [of the sacred law], who has good assistants and is wise, punishment can be [justly] inflicted."[70]

Obviously, if he was "partial" or "deceitful", an accurate decision could not be expected. Nor could such a decision be expected from a "fool" or one whose mind is "unimproved", i.e. one who has not learnt the laws, for he can only act correctly

according to law: He can impose the right sentence only if he knows what the law says it is.

But why should he be neither "voluptuous", nor "addicted to sensual pleasures"? Why should he be "pure"? The point that was being made is that a monarch and his judges, had to provide moral leadership, and had to have the moral authority to impose punishments. Where a monarch was unable to comply with the *dasa-rāja-dhamma* (the tenfold royal virtues), he had no moral authority to administer justice and he should, as one monarch did in such circumstances, hand over the administration of justice to his ministers.[71] How could a monarch, sinful and wandering from the proper course, demand that another person should do any better? Manu said:[72] "Day and night he must strenuously exert himself to conquer his senses; for he [alone] who has conquered his own senses, can keep his subjects in obedience."

This would of course apply to his judges. A fair trial could be expected only from a judge who in his own character was beyond reproach: if he has to rebuke the evil and support the good, he cannot without hypocrisy do it, unless he was personally free from guilt: People should not be able to point a finger of scorn and say: "Who made thee a ruler and a judge over us?" As far as Judges are concerned, this is as valid a requirement today as it then was.[73]

The *Lak Raja Lō Sirita* dealt with the matter in the following way:

> *Among the rules for the Government of the Kingdom, are there any by which the King should regulate his own conduct?*
>
> " The foundation of kingly power is the conquest of the senses", say the opening words of the Niti Sastra. The five senses are the eyes, ear, nose, tongue and body. Their conquest consists in the absence of covetousness at the sight of the wife or other possession of another, the ignoring of lying or malicious tales that are heard, indifference to the attractions of what smell or taste sweet, and to the allurements of bodily pleasures.

> The conquest over the senses arises from reverence towards one's parents, teachers and elders, which reverence is begotten of association with men of wisdom; this again is the fruit of learning, for learning makes one complete, and devotion to learning leads to the control of desire; all that is desired can be achieved by him who has learned to control the mind. Such are the rules that should regulate the conduct of Kings; evidence on the subject will be found in the book Telpatra Jatakaya." [74]

These are not curious 'oriental' expectations. In a letter to George Wythe written in July 1776, Thomas Jefferson said: "Judges ... should always be men of learning and experience in the laws, of *exemplary morals*, great patience, calmness and attention; their minds should not be distracted with jarring interests: they should not be dependent upon any man or body." The emphasis is mine.

A MONARCH HAD TO TAKE COUNSEL

Kauṭilya[75] said : "Sovereignty (*rajatva*) is possible only with assistance. A single wheel can never move. Hence he shall employ ministers and hear their opinion." The monarchs usually consulted their *amaccā* or *sacivā* (ministers/dignitaries) before entering on any important enterprise and acted on advice:[76] King Gajabāhu, for instance, 'took counsel with his ministers'[77] when he heard of the first defeats sustained by his generals, and saw that a dangerous war was impending. It was recorded that when certain gifts and goods and a princess sent by Parākramabāhu I to Kamboja were seized, the king summoned his ministers and took counsel as to how he should deal with "these many insults".[78] There was a process of consultation in the administration of the affairs of state: It was recorded that when King Vijayabāhu I died, Mittā, the younger sister of the king, her three sons, the highest dignitaries (*mahāmaccā*) and the prominent *bhikkhus* (*yatayo*) dwelling in the district "met together ... they took counsel together and when they had become of one mind they installed as King of Laṅkā the Yuvarāja" (Jayabāhu I). [79]

An able monarch, well-versed in the laws, and customs of the realm may have personally decided certain matters; but usually he was bound to seek the advice of his ministers and ascertain the views of the people. The *Lak Raja Lō Sirita* stated as follows;

> *Is it competent for this King to do what he thinks fit according to his sole judgment?*
>
> The King has knowledge of State Craft, that is, of Custom as to what is Just and what is unjust, as handed down from ancient times, as well as of the Rules of the Dharma - what accords with Religion and what does not; there are matters of administration which one of such great wisdom and learning can decide according to his sole judgment, and there are very many matters which have to be done after careful inquiry from the Council of Ministers and the inhabitants. If the question is in doubt, what the Maharaja Parakrama Bahu who reigned at Polonnaruva in this Lanka did according to his sole judgment, and what after consultation with the Council of Ministers, is narrated in the Maha Vansa. [80]

D'Oyly[81] conceded that even King Sri Vikrama Rājasiṁha sometimes consulted others. He said: "Before innovations of Importance are carried into Effect it is customary to consult the principal Chiefs, and frequently the principal Priests, and when other matters of Public moment are in agitation the same Persons are usually called to his Councils." However, he had observed earlier: "The Power of the King is Supreme and absolute. The Ministers advise, but cannot control his Will." As we, have seen, good kings did not disregard the advice of their Ministers. However, Sri Vikrama Rājasiṁha, although as in the matter of the reprieve of Piḷima Taḷauvē's son sometimes followed the advice of his chiefs,[82] did not usually do so. King Sri Vikrama Rājasiṁha, as we have seen, was the target of intrigue by his chiefs. He appreciated the value of advice; but he lamented the fact that he did not have the benefit of advice, and attributed precipitate action on his part to his inability to take counsel with others. Like other monarchs, Sri Vikrama Rājasiṁha had the benefit of access to his chiefs. What was wanting, it seems, was dependable advice. For that, he was partly responsible: He often rejected their advice, and,

as in the case of his uncle, whom he imprisoned,[83] or as in the case of the headmen of Sat Kōralē whom he impaled on the bed of the lake,[84] he might have harshly dealt with those who gave him good advice. When the people rebelled against the joint-appointment of Ähäḷēpoḷa and Molligoḍa as *Disāvas* of the Seven Kōrales because it was contrary to custom and it would subject them to double taxes and duties, Piḷima Taḷauvē came up with a solution that did not find favour with the King. When Piḷima Taḷauvē complained that insufficient respect was paid to him and his advice, the king retorted that he was not "to be directed by the chiefs, but the chiefs were to take their orders from him."[85] As we have seen, according to P. E. Pieris, the wife and children of Ähäḷēpoḷa were executed on the advice of the ministers. Who were these "ministers'? As they grew estranged, the king abandoned his chiefs and "came to place increasing reliance on his Tamil relations, the Nayakkars."[86] They were people who probably told him what he wanted to hear; and not what the laws, customs and traditional judicial procedures required.

It was alleged that, in desperation, Sri Vikrama Rājasiṁha resorted excessively to Hoffman's Cherry Brandy; if so, it was a step that might have taken him further down the road of erroneous judgment.

Marshall[87] said:

> "Not having a minister in whom he could place any confidence, he lived under the constant fear of conspiracies. Until he was made a prisoner, he said, he had never retired to rest without the dread of assassination. Fear produces oppression, and oppression excites fear. He trusted none of his courtiers; and it is doubtful if any one of the chiefs deserved his confidence. He punished traitors as traitors are generally punished namely, with merciless severity; and being a passionate man, it is alleged he was liable to condemn the accused without adequate investigation. "The English governors," said he to Major Hook, "have an advantage over us in Kandy, they have counsellors about them, who never allow them to do anything in a passion, and that is the reason you have so few punishments; but,

> unfortunately for us, the offender is dead before our resentment has subsided ... Some of the king's most severe measures, it is alleged, were ordered to be carried into effect while he was in a state of inebriety he having become liable to paroxysms of intemperance; and, from the great quantity of Hoffman's cherry brandy bottles in the palace, it may be inferred that he was fond of that liqueur. "

H.W. Codrington[88] shared Marshall's view. He said that the king was surrounded by

> "intriguing chiefs, subject to constant fear and suspicion, never sleeping two watches of the night in the same room. Further, perhaps as a result of his situation, he became addicted to drink, and developed into a bloodthirsty despot. His punishments went beyond custom, and he even executed Buddhist priests."

A MONARCH HAD TO CONSULT THE CLERGY

The *bhikkhus* were the advisers of a monarch in spiritual affairs. Aggabodhi I was said to have followed the advice of a monk named Dāṭhāsiva.[89] Geiger[90] pointed out that they were also advisers on political problems:

> " Vijayabāhu I granted the position of an Uparāja after Virabāhu's death to Jayabāhu in conformity with the counsel of the Bhikkhus ([*CV.*] 60.87). After Vijayabāhu's demise his younger sister met the ministers in order to deliberate as to how the succession to the throne could be secured to her own family. To this meeting the Buddhist priests of the district were also invited. ([*CV.*] 61.1). Parākkamabāhu II, 13th cent., summoned the priests and asked them which of his sons might be worthy of the throne. The priests designated his eldest son Vijayabāhu as the most worthy of them all and the King made over the burden of government into his hands. ([*CV.*] 87.39 sq.). Already in the last century B.C. after the death of Saddhātissa the counsellors summoned together the whole brotherhood in the Thūpārāma and with their consent consecrated the prince Thulathana as king. ([*MV.*] 33. 17-18.)."

In fact, a *bhikkhu* may at certain times have acted as the premier and highest counselor, (*mūlaṭṭhāna*), provided, it seems,

he had spent a night in a sacred hut (*dēvapalli*) and found favour with the deity. [91]

There is acknowledgment in the *Lak Raja Lō Sirita*[92] that a monarch was obliged to consult the *bhikkhus* with regard to matters concerning the administration of the country:

> *Are there matters regarding the administration of the country in which the Sangha may participate ?*
>
> The two Bhikkhus who are appointed as Nayaka of the Sangha not only of the two Maha Vihara which have existed at Maha Nuvara from ancient times, but of the entire body residing in this Lankadvipa, and the Sangha Raja who is the Chief of all of them, and others skilled in its exposition, can give counsel and say, "O King, mayest thou be pleased to govern the Kingdom without varying from the Dasa Raja Dharma."

Sri Vikrama Rājasiṁha failed to take the advice of the *bhikkhus*, as he was required to by custom, and, as we have seen, fell into serious error, as in the cases of Paranatala Unnansē, Sooriyagoda Thēro, and the headmen of Sat Kōraḷē. As we have seen, he alienated the *bhikkhus* - an influential segment of society.[93]

A MONARCH HAD TO KEEP THE PEOPLE INFORMED

Not only were high officials consulted, it seems that the representatives of the people were also kept informed of important decisions. Geiger stated: [94]

> "The resolutions taken by the king in the meetings with his councillors were, if it seemed necessary or advisable, publicly made known to the representatives of the people, and in this way to the whole kingdom, in a solemn act. A building which was erected in Pulatthinagara by Nissaṅkamalla at the end of the 12th century served this purpose. Its ruins are at present known under the name 'Council Chamber'. I would prefer some such name as 'Assembly Hall'. On the pillars of the building the places of the delegates are indicated by inscriptions.[95] The king's throne occupied the centre of the Southern side of the hall, facing North. On his right side was the seat of the

Heir-Apparent (*yuvarāja*) who alone was seated in the assembly. Next came the Royal Princes (*ādipāda*), then the Senāpati and finally superior officers (*padhānā*) as representatives of the military profession. On the king's left side stood the Chiefs of the cantons (*maṇḍalikā*) and then came a group who were according to Codrington, what we call the Headmen of the districts or their delegates, and in the lowest place the representatives of the merchants and the working classes.

Near the Council Chamber there are the ruins of a similar building, the so-called Audience-Hall. Here the stone figure of a lion has been found on which the king's seat was erected. In an inscription on this figure the same group of officials are enumerated as on the pillars of the Council Chamber. [96]

No place is reserved in the Council Hall for the councillors (*amaccā*) of the king. Apparently they stood gathered round the throne. This is the reason why I should avoid the name given to the building. No counsel, I think was sought in the hall, but, when important affairs concerning the whole people were in question, the representatives were summoned to hear an address of the king or the report of one of the ministers."

IN MATTERS CONCERNING JUSTICE THE CHIEFS WERE EXPECTED TO BE CONSULTED

There was little, if at all, to complain about the machinery for the administration of justice in the Kandyan Kingdom. In theory, the executive and judicial functions of government were vested in the monarch; but in the exercise of his judicial functions, a monarch was required to act in accordance with the advise of his Chiefs, and possibly others appointed to the High Court of Justice on account of their competence. By the time of the arrival of the early Indian settlers about the fifth century B.C., it had been well established in their home country, India, that the king administered justice with *sabhāsadas* (councillors). Their function was advisory, like that of assessors, but as a rule, the king would follow their advice because the *sabhā* (the court of councillors) had become an authoritative body. The *sabhā* "thus placed an important

constitutional limitation on possible whims and caprices of kings in doing justice, though of course it was not always effective in practice." [96A]

John Davy was of the view that it was the way in which the system was administered that was responsible for the alleged unsatisfactory state of affairs during the reign of Sri Vikrama Rājasiṁha. He said:[97]

> "The common law of the Singalese ... was far from being ill-adapted to the social state of the people; and, had it been administered with tolerable purity and impartiality, though there would have been ample room for improvement, there would have been little ground for complaint."

But was there ground for complaint that the system was not administered with "tolerable purity and impartiality"? We have elsewhere dealt with the unfounded allegation of endemic, widespread corruption. Did King Sri Vikrama Rājasiṁha (1798-1815 AD) depart from the principle of impartiality that had, as we shall see, been a feature of the administration of justice at least from the time of King Eḷāra (c. 204-161 BC)?

According to Marshall,[98] Sri Vikrama Rājasiṁha had a reputation for impartiality. "It is said", he recorded, "that [Sri Vikrama Rājasiṁha] administered justice with great impartiality, except in cases of treason or suspected treason, when all the severities of Oriental despotism were put in force."

In his Diary, on April 5th 1812, D'Oyly referred to the king in the following terms: "He does not oppress the People, levies few Fines, & receives small Peyhidun." [99]

"Oriental despotism", as we have seen, was misunderstood by the early British officials who erroneously assumed that, because in theory executive and judicial functions were both vested in the monarch, a monarch of Sri Laṅkā had untrammeled, absolute power.

As for "severities", in the case of treason, the penalty was death for a convicted offender, both under the traditional law of Sri Laṅka and under the laws set out in the Penal Code introduced by the British.[100] Execution, may be regarded by some people as barbarous; but as a matter of policy, neither Sri Vikrama Rājasiṁha, nor many monarchs before him, nor the British rulers after him, nor Sri Lankan Governments after independence, except for a short while when capital punishment was abolished, have regarded it as barbarous. In the circumstances, was it proper for Governor Brownrigg to condemn Sri Vikrama Rājasiṁha as a 'barbarous and unprincipled' ruler? 'Unprincipled' he was, in so far as he disregarded the procedure established by custom by failing to act on the advice of his chiefs and the Mahānāyaka who participated in the hearing of the cases of the two monks. Moreover, in the case of Ähäḷēpoḷa's wife and children, since the chief had not been convicted of treason after trial, the executions were not justified in law. The execution of Sooriyagoda Thēro, on the alleged ground of being in unlawful possession of royal property was also irregular; for he was not given an opportunity of explaining the circumstances in which he had come by those items. There was also a miscarriage of justice in the case of Paranatala Anunāyaka Thēro, for he was charged with the commission of an act that was not a secular offence at all nor one that was punishable by death; moreover, there was no fair trial, for the only witness in the case was the king - the President of the Court - himself. Nor could the execution of the headmen of Sat Kōralē be justified by reference to a recognized capital offence.

Marshall[101] stated as follows:

> "It may be observed, that, horrible as his punishments were, they were as much in the ordinary course of things under Oriental despotism, where subjects are beheaded, impaled or mutilated, at their rulers' caprice, as easily as the subjects of one European country are transported to another, imprisoned, or flogged. However revolting the barbarous punishments of some countries in the East may be, they are as much established by custom and immemorial usage, and they are

> as constitutional and as much authorized by the royal prerogative, as the milder forms of misgovernment are in the West. The king when he was deposed, was not judged according to the principles of his own country and state of society; he was judged by the humane and enlightened principles of a more civilized region of the world for misbehaving, in fact, beyond the limits of European toleration - Edinburgh Review Vol. XXVI.

> To enable the reader to judge fairly and impartially of the character of the king of Kandy, he should be tried by the standard of his own country, by the spirit of the Kandyan government, and the usages of Oriental despotisms, together with the circumstances in which he was placed. These conditions must be properly understood, before a correct estimate can be made of the real merits of his case. Like Peter the Great of Russia, he was "a despot by condition and necessity."

In my view, judged by the 'principles of his own country', the king was not merely misbehaving, he was also guilty of grossly abusing his powers by punishing alleged offenders without a fair trial according to procedures established by law, by punishing persons under laws that he arbitrarily invented, and by acting capriciously and arbitrarily without advice he was constitutionally bound to seek and usually follow.

Marshall generously attempted to defend Sri Vikrama Rājasiṁha on the ground that he was, after all, acting in accordance with the principles of his own country. Others, like the early British administrators, shared the view that the king *was* acting in accordance with the principles of his own country and *therefore* proceeded to remove the monarch, annex his kingdom and deprive the people of their laws and legal system. Both Marshall (genuinely) and the officials (purportedly) were primarily concerned with the question of harsh punishments. Harsh punishments, since the king was following the *Dharmaśāstra* of Manu, had a semblance of legitimacy. Yet, in determining the questions of culpability and penalties there were established criteria and procedures which the king failed to follow. It was not the system, but rather its maladministration that was to be blamed for the sorry state of things.

A MONARCH WAS THE PROTECTOR OF THE PEOPLE AND HAD TO ACT IN THEIR BEST INTEREST

At the *abhiṣëka* (installation) of a monarch, he was told, three times: 'rule thou with justice and peace persisting in the law, be thou one who has a compassionate heart'. In that ceremony, the king 'was regarded less in the light of a ruling despot than in that of the chief representative and leader of the people ... To him was committed the care of the priestly Brāhamins, and to him was entrusted the welfare of the rest of his subjects'.[102]

Claims to rule, it seems, were made from time to time on the basis of divine authority.[103] Nevertheless, a monarch's authority, including his judicial authority, was based, as Sen-Gupta said, on pragmatic grounds:[104]

> "The judicial authority of the King as we find it in the earliest laws is not founded on any fiction of his divine personality but upon positive law, and had its ultimate historical basis in his function as the military chief. As such he would naturally concentrate in himself in a growing measure the power to coerce people into obedience. The law accordingly looks on him as a person whose duty it was to compel each person to the law of the Varṇa to which he belongs. He is looked upon as the upholder of social and moral order, though characteristically for India in conjunction with the learned Brāhmaṇa. For the purpose of maintaining Dharma he is endowed with the power of Daṇḍa or awarding punishment."

A ruler's duty was far-reaching in scope. The Prīti-Dānaka-Maṇḍapa Rock Inscription made that very clear. It stated that the monarch proclaimed that he would show himself " ... with benevolent regard for and attachment to the virtuous quality of a Bōdhi-satta king who, like a parent protects the world and the religion ...".[105] Indeed, the ministers advised Kāvaṇ Tissa, - ruler of Rōhaṇa (circa 200-100 B.C.) and father of Duṭṭhagāmani - that, among other things, "royal virtue lies in protecting *all beings*."[106]

Geiger observed:[107]

> "The greatest virtue of a king was considered to be charitableness. Very often rulers are praised for having supported all their subjects

> who suffered want or were helpless owing to old age or sickness or to any disaster.[108] We know that they erected hospitals and dispensaries and halls for distributing alms to all who were in need.[109] Poor people of the higher classes who were ashamed to beg were secretly supported by Mahinda II, 8th cent., and there were none in the Island who were not supported by him according to their deserts.[110] Mahinda IV, 10th cent., did not only distribute medicine and beds in all the hospitals, but had also given food regularly to criminals in prison.[111]
>
> Pious kings even took care of animals. In order to provide food for them, they gave to the cattle 'young corn full of milky juice', and rice to the crows and other birds.[112] Mahinda IV had rice and cakes distributed to apes, the wild boar, the gazelle and to dogs.[113] Parākramabāhu I in every month on the four Upōsatha days 'commanded safety of life to all creatures without exception living on dry land and in water'."[114]

A monarch was the protector of his people. It was believed by people in ancient times that a monarch who failed to ensure that justice was properly administered, e.g. by keeping bad judges in service, or by failing to lead a virtuous life, would attract evil consequences for which the monarch would be held responsible as *parens patriae*. Niśśaṅkamalla had it recorded that he was, "like a parent", protecting the world and the religion.[115]

The ministers advised King Kāvaṇ Tissa (Kākavaṇṇa-Tissa) that the monarchs of ages gone by, "attained the bliss of heaven by guarding their subjects rightly", among other things.[116] Regardless of one's personal means or condition a citizen had to be protected by the monarch, for he belonged to the king,[117] he was the king's responsibility. It was believed that it was a righteous and just king who could create an appropriate environment for existence. The virtuous Sirisaṅgabo, was such a king, and so he was able to bring down rain to end a drought and avert a famine in the land;[118] and when the "red-eyes-epidemic" broke out, he was able to eradicate it.[119]

Paranavitana said:[120]

> "The king ... was expected to uphold the ancient laws and institutions and to protect the weak. In fact, in common with many another people

> of antiquity, the ancient Sinhalese believed that the prosperity of the country depended on just government by the king, not in the same way that we today believe that good government is conducive to the happiness of the people, but in the sense that, as a sort of magical consequence of the king's maintenance of the moral order, rain would fall in due season, crops would be abundant and the earth would yield fruits to the husbandman. This prosperity, the king had to ensure by the performance of certain rituals as they fell due at the proper time of the year; of these, however, we have very little details in the writings of the Buddhist monks, who naturally treated them as superstitious practices beneath their notice. The water-festival which was celebrated in the month of Poson (May or June) was one of such public rituals in which the king had to take part."

The evidence seems to point to the fact that more than the performance of rituals was expected of a monarch if the kingdom was to prosper: he had to rule righteously and virtuously in accordance with law.

Ariyapala[121] pointed out that the idea that the monarch was held accountable if things went awry, was an old one that was firmly entrenched in society. He stated:

> The Thulla-Tissa-thera-vatthu bears evidence of this in the story of the ascetics Narada and Devala, when it says: '*nāgarā arunē anuggacchantē rājadvāraṃ gantvā dēva tayi rajjaṃ karentē arunō na uṭṭhati. aruṇam nō uṭṭhāpēhīti kandiṃsu. rājā attanō kāyakammādini ōlōkentō kiñci ayuttaṃ adisvā kinnukhō kāraṇanti cintetvā* ...' When the sun did not rise, the people of the city marched to the palace gate and shouted 'O King! when ruled by you the sun does not rise. Cause the sun to rise'. The king reflected on his actions and saw no injustice done by him. Then thinking what the reason could be ... ([*Dhammapadaṭṭhakathā*], p. 21.)
>
> This, no doubt is a Jataka idea that came down from the pre-Buddhistic times, as observed by Mehta when he says: 'Everything is right only when the kings are just. Even if there is no rainfall, it is the king's fault. All the people gather before his palace and ask him to atone for his sins'. (*Pre-Buddhist India,* p. 84). That this idea did not leave the minds of the people is attested by the author of the *Saddharma-ratnāvaliya* in his translation of the above story. Here he

adds a little flavour, and also a certain amount of force, to the Sinhalese rendering when he says: '*numba vahansē raja kamaṭa paṭangena metek davas nängena hira ada metek vēlā venatek nonängeyi. raṭatoṭavalin havurudu noyikmavā badda naṃvannā sēma adat davasa ikut nokara hira nänguva mänaväyi kivūya*' (SdhRv. 85). The translator here adds the statement '*havurudu noyikmavā badda naṃvannā sēma*' for this idea is not expressed in the Pali version ... This statement ... shows that the Jataka concept was yet in the minds of the people even at this time."

Professor Ranawella drew my attention to certain passages in a work of the third century A.D., the *Sīhalavatthuppakaraṇan*,[122] according to which: A ruler of this world, is like a mother or father, and when he rules righteously, the people live happily.[123] A miserable and cruel king acts unrighteously; and due to his fault, the world is destroyed.[124] When a king is unrighteous, rain falls not in due season, there will be no rain in the rainy season; and when it does fall, it will vary in sufficiency and distribution.[125] Because of unrighteous kings, their subjects, and indeed all mankind, follow the bad example of their evil monarchs and desist ('fall away') from adhering to the ten virtuous qualities and practices that were (in 'sympathy with') in accordance, harmony and consonance with the law. [126]

The *Mahāvaṁsa*[127] related the following story about King Eḷāra who, 'though he had not put aside false beliefs', nevertheless obtained rain in due season.

"An old woman had spread out some rice to dry it in the sun. The heavens, pouring down rain at an unwonted season, made her rice damp. She took the rice and went and dragged at the bell.[128] When he heard about the rain at an unwonted season he dismissed the woman, and in order to decide her cause he underwent a fast, thinking: 'A king who observes justice surely obtains rain in due season.' The guardian genie who received offerings from him, overpowered by the fiery heat of [the penances of] the king, went and told the four great kings[129] of this [matter]. They took him with them and told Sakka. Sakka summoned Pajjunna[130] and charged him [to send] rain in due season. The guardian genie who received his

> offerings told the king. From thenceforth the heavens rained no more during the day throughout his realm; only by night did the heavens give rain once every week, in the middle watch of the night; and even the little cisterns everywhere were full [of water].
>
> Only because he freed himself from the guilt of walking in the path of evil did this [monarch], though he had not put aside false beliefs, gain such miraculous power; how should then an understanding man, established in pure belief, renounce here the guilt of walking in the path of evil ?"

Attention should also be drawn to the following passage in the *Cūḷavaṁsa*:[131] "The King [Sena IV (954-956)] was wise, an excellent poet, learned, impartial towards friend and foe, ever full of pity and goodwill. Without letting the right season pass, the gods at that time sent showers of rain streaming in the right way, the people who dwelt in the land were ever happy and without fear."

The great South Indian sage, Tiruvalluvar (c. 800 - 1000 A.D.), in his famous work, *Tirukkural*, said: [131A]

> "A king with none to censure him bereft of safeguards all,
> Though none his ruin work, shall surely ruined fall. (448)
>
> *Where a king from right deflecting, makes unrighteous gain,*
> *The seasons change, the clouds pour down no rain.* (559)
>
> Harsh words and punishments severe beyond the right,
> Are files that wear away a monarch's conquering might." (567)

Keeping bad judges in service was, according to the traditional beliefs of ancient people, a specific way in which evil consequences could have been attracted.

"The rule is this, that when in a country they trust a false judge, and keep him among their superiors, owing to the sin and breach of faith which the judge commits, the clouds and rain in that country are deficient, a portion (*bavan*) of the deliciousness, fatness, wholesomeness and milk of the cattle and goats diminishes, and many children become destroyed in the mother's womb." [132]

It hardly comes as a surprise that kings like Aggabodhi VII 'rooted out' bad judges.[133] In the circumstances, a monarch, reputedly unjust, in the exercise of his judicial functions, or a monarch who failed to ensure justice and was believed to have thereby brought about suffering, may have placed himself in jeopardy: "... that evil-minded king who in his folly decides causes unjustly, his enemies soon subjugate."[134] Monarchs were not unmindful of sedition.[135] And, as we have seen, people did legitimately, in accordance with custom, rise up against monarchs who were not righteous and virtuous.

A KING HAD A MORAL DUTY TO JUDGE FAIRLY

A monarch had a moral duty to ensure an accurate decision - a duty that affected him in his own spiritual life. "When a king punished an innocent man his guilt is considered as great as when he sets free a guilty man; but he acquires merit when he punishes justly."[136] "Whether he be punished or pardoned, the thief is freed from the [guilt of] theft; but the king if he punishes not, takes upon himself the guilt of the thief."[137] If he did wrong, then he had to make atonement: "If a criminal worthy of punishment is allowed to go free the king shall fast one day and one night ... If an innocent man is punished the king shall fast three days and three nights." [138] Judges were warned against allowing injustice to prevail: "But where justice, wounded by injustice, approaches and the judges do not extract the dart, there [they also] are wounded [by that dart of injustice]."[139] "Where justice is destroyed by injustice, or truth by falsehood, while the judges look on, there they shall also be destroyed."[140]

A monarch as such was accountable for injustice perpetrated in his realm by unjust decisions. "One quarter of [the guilt of] an unjust [decision] falls on him who committed [the crime], one quarter on the [false] witness, one quarter on all the judges, one quarter on the king."[141] "But where he who is worthy of condemnation is condemned, the king is free from guilt, and the judges are saved [from sin]; the guilt falls on the perpetrator [of

the crime alone]."[142] The notion that a judge who fails to do his duty stands condemned, seems to be an idea that was recognized in other societies too. E.g. Publilius Syrus, in *Moral Sayings*, observed in the 1st Century B.C. : *Iudex damnatur ubi nocens absolvitur* - The judge is condemned when the criminal is acquitted.

Justice, it was said is "the only friend who follows men even after death ...; for everything else is lost at the same time when the body [perishes]".[143] Assessors admonishing a judge who was acting against the law said: "Justice, being violated, destroys; justice, being preserved, preserves: therefore justice must not be violated, lest violated justice destroy you."[144]

The monarch was the fountainhead of justice - *dharmapravartaka*;[145] he was expected to rule righteously by a conscientious, rightful and impartial discharge of his judicial duties. At his installation, a monarch was directed to "rule with justice and peace, persisting in the law."[146] The *Saddharma-ratnāvaliya*[147] said: *voṭunu paḷan rajadaruvan adhikaraṇayehi hunamanā bävin.*[148] Those who exercised judicial functions on his behalf obviously had to follow the standards required of the monarch; for they were regarded as kings when they exercised judicial power.[149]

A KING WAS OBLIGED TO BE IMPARTIAL

Good kings reigned righteously and impartially - *dähämin semen.*[150] Ariyapala[151] stated: "[The monarchs were] often advised to rule righteously, by which is meant a conscientious, rightful and impartial discharge of judicial duties." Earlier,[152] Ariyapala said: "The Chronicles always refer to a noble king as having reigned righteously and impartially practicing these regal virtues", namely the *dasa-rāja-dharma* - the tenfold royal virtues.

The *Mahāvaṁsa*[153] recorded the fact that Eḷāra (204-161 BC) was a monarch who ruled "with even justice toward friend and foe, on occasions of disputes at law." Sena and Guttika (177-155

BC) "ruled justly".[154] The *Mahāvaṁsa*[155] stated that Mahācūḷi Mahāṭissa (76-62 BC) reigned "with piety and justice". King Buddhadāsa (340-368 AD) was said to have been "a refuge of pity and endowed with the ten qualities of kings; while avoiding the four wrong paths (*satara agati*) and practicing justice, he won over his subjects ..."[156] Sena IV (954-956 AD) was said to be a king "wise, an excellent poet, learned, impartial towards friend and foe, ever full of pity and goodwill".[157] Vijayabāhu II (1186-1187 AD) "rejoiced the people through the four heart-winning qualities... Shunning the four wrongful paths he in his great insight, practiced in the exercise of justice, towards good and evil favour and severity." [158]

In the advice of ministers to King Kāvaṇtissa, he was required to rule "rightly and impartially".[159] In the Galpota Slab-Inscription, King Niśśaṅkamalla stated: "The appearance of an impartial king should be welcomed as the appearance of the Buddha."[160] There could be no better way of stating the paramount importance attached to judicial impartiality.

Equality before the law was of great importance: It was stated that Parākramabāhu I, "being in virtue of his impartiality free from liking and disliking ...", made decisions "free from error." [161] Kauṭilya said:[162] "It is power and power alone which, only when exercised by the king with impartiality and in proportion to guilt, either over his son or his enemy, maintains both this world and the next." The *Mahāvaṁsa*[163] stated that King Eḷāra (204-161 BC), a Tamil, ruled forty-four years,

> "with even justice toward friend and foe on occasions of disputes at law. At the head of his bed he had a bell hung up with a long rope so that those who desired a judgment at law might ring it. The king had only one son and one daughter. When once the son of the ruler was going in a car to the Tissa-tank, he killed unintentionally a young calf lying on the road with the mother cow, by driving the wheel over its neck. The cow came and dragged at the bell in bitterness of heart; and the king caused his son's head to be severed [from his body] with the same wheel."

The *Vaṃsatthappakāsinī*[164] explained that what the *Mahāvaṃsa* meant was that King Eḷāra dispensed justice with equanimity and impartially between accuser and accused.[165]

In Sri Laṅkā, the Eḷāra story is well known and cited often. The Logo of the Law and Society Trust is designed on the basis of that episode.

I am obliged to Ms. Kalpana S. Murari, an Advocate in Chennai, who sent me the following information on Karikala Coḷa:

> " There is a literary work entitled *Silapadhikaaram* that deals with the subject. See especially verses 53 - 55.[166] Among other things, it describes the travails of Kannagi, the chaste wife of Kovalan, a trader. Kannagi, upon reaching the town of Madurai, in order to raise some money for maintenance, sends her husband to sell her anklet. Soldiers, mistakenly believing that the anklet belonged to the Queen of Neduchenzihian Pandian and that it had been stolen, arrested Kovalan and, without examining the facts, executed Kovalan. Kannagi then confronts the king and proves her husband's innocence and denounces the king for the injustice caused to her. She introduces herself to the king as a proud citizen of Pugar Nagaram, once governed by Karikala Chola, who was described as *Manu needhi Cholan*. She recalled the attributes of Karikala Chola for his just and fair rule as described by historians.
>
> It was said that the Chola king who believed in seeing his subjects happy and in ensuring public welfare, placed a bell at the entrance of his fort to help those who needed justice to reach him. A cow rang the bell seeking justice against the prince who, while riding the chariot through the market-place, ran over her calf. The king decided to undo the injustice by allowing the chariot to run over his son. Kannagi thus describes the Chola dynasty as one which has had noble and just kings like Manu Needhi Cholan and Sibi Chakravarthy. Neduchanezian Pandian, having been belittled by Kannagi for the unjust execution of an innocent man, died in the Court hall and his Queen followed him in his death. Kannagi's curse resulted in the town being devastated by fire."

The *Cilappatikaram* [167] stated: "For the Cōḷas, justice has been the supreme principle; to save a dove one Coḷa king gave his own

flesh; Another Coḷa sacrificed the flesh of his flesh for the sake of satisfying a cow in trouble."

Is it appropriate to conclude, as Ralph Pieris did,[168] that the 'notion of even justice' illustrated by the Eḷara episode was attributable to "the mental climate of myth"? In my view, the episode was not, as Pieris supposed, merely an illustration of 'retributive justice of an eye for an eye'. We have seen that retributive justice had no place in the Sri Laṅkan system.[169] Paranavitana correctly, in my view, rejected the erroneous assumption that the crude notion of retributive justice was a part of the law of Sri Laṅkā. Cows do not usually ring bells, and to that extent the *Mahāvaṁsa* account was a legend. However it was, in my view, an incidental narrative invented for the purpose of conveying to readers the importance that was attached to certain fundamental principles of the legal system.

Some people allege that the authors of the *Mahāvaṁsa* were, in general, engaged in Sinhalese-Buddhist propaganda. The monarch whose conduct was being idealized was, according to the *Mahāvaṁsa*,[170] "A Damila of noble descent, named Eḷāra, who came hither from the Coḷa-country to seize on the kingdom ..." Moreover, as the authors of the *Mahāvaṁsa* noted,[171] Eḷāra was a man who "had not put aside false beliefs". Why did the authors of *Mahavaṁsa* depart from their alleged mandate or policy to state that Eḷāra ruled "forty-four years, with even justice toward friend and foe, on occasions of disputes at law?" What was the need to praise Eḷāra's justice with false tales and figments? In my view, the purpose of the story was, in a memorable and interesting kind of way, to underscore the importance attached by the legal system to equality before the law, impartiality in the administration of justice, and access to justice for all, even at the highest level.

The *Mahāvaṁsa*[172] also stated that when King Eḷāra was going to the Cetiya-mountain to invite the brotherhood of Buddhist monks,

> "he caused, as he arrived upon a car, with the point of the yoke on the wagon, an injury to the *thūpa*[173] of the Conqueror at a [certain] spot. The ministers said to him: 'King, the *thūpa* has been injured by thee.' Though this had come to pass without his intending it, yet the king leaped from his car and flung himself down upon the road with the words: 'Sever my head also [from the trunk] with the wheel.' They answered him: 'Injury to another does our Master in no wise allow; make thy peace with the [monks] by restoring the *thūpa*'; and in order to place [anew] the fifteen stones that had been broken off he spent just fifteen thousand *kahāpaṇas.*"[174]

The fact that equality before the law and the even-handed administration of justice were of paramount concern during the early years is brought out by another instance recorded in the *Sammohavinodani*:[175] "... One day some people accused of the offence of eating beef (*gomaṃsakhādake*) were brought before king Bhātika Abhaya (or Bhātiya Tissa) (19 BC - 9 AD). They were convicted. On finding that they were unable to pay their fines, the king ordered them to clean the compound of the royal palace. One of the offenders, a beautiful, unmarried female, after due inquiry, was granted a place in the king's harem. *On realizing that his act was unfair by the other offenders* [*who were engaged in less agreeable work*] *the king immediately released them too from the punishment and sent them away suitably rewarded.*"[176] "This clearly implies that the king was well aware of the concept of justice and fairplay for everybody without discrimination."[177]

In ancient India, a king was, among other things, seen as the "Lord of Justice" - *Yama*.[178] What this meant was that the monarch was expected to ensure impartiality in the administration of justice. The rule of law required that all persons were equal before the law. "As Yama at the appointed time subjects to his rule both friends and foes, even so all subjects must be controlled by the king; that is the office in which he resembles Yama."[179] "Let the prince, therefore, like Yama, not heeding his own likings and disliking, behave exactly like Yama, suppressing his anger and controlling himself".[180] "If, subduing love and hatred, he decides the causes according to the law, [the hearts of] his subjects turn

towards him as the rivers [run] towards the ocean".[181] "Neither a father, nor a teacher, nor a friend, nor a mother, nor a wife, nor a son, nor a domestic priest must be left unpunished by a king, if they do not keep within their duty."[182] No one was above the law: indeed, if the king himself transgressed the law, the offence might have been regarded as more serious than if it had been committed by a subject. "Where another common man would be fined one *kārshāpaṇa*, the king shall be fined one thousand; that is the settled rule." [183]

Impartiality was essential: "Let the king or his ministers transact the business on the bench. When two parties have a dispute, let him not be partial to one of them."[184] "The king shall examine judicial quarrels between two litigant parties in a proper way, acting on principles of equity and discarding both love and hatred."[185] In applying the law, a judge was expected to act without fear or favour, affection or ill-will.[186]

One of the basic principles of fairness, and one that was recognized in Sri Laṅka even in the early days is that both parties to a dispute should be heard.[187] The king and other judges were required to respect, and comply with, the law and act in a manner that promoted public confidence in the integrity and impartiality of the judiciary. Obviously, a just decision could only come from a neutral judge who had no interest in the outcome of the litigation; therefore the king could not be both litigant and judge. The prohibitions extended to members of his household: "Neither the king nor any servant of his shall themselves cause a lawsuit to be begun, or hush up one that has been brought before them by [some] other [man]".[188] Nor could a king allow himself to be placed in a position which might cause a conflict with his duties as the supreme judge. Therefore, the king could not be a witness.[189]

However, as in many other matters, Sri Vikrama Rājasiṁha acted in contravention of the law. Paranatala Annunāyaka Thēro was a pious and learned senior *bhikkhu*. As a supporter of Piḷima

Taḷauvē, he had been strongly critical of the King after he had executed that Chief Minister. Early one morning, a man dressed like a brāhaṃin in a saffron robe, a large saffron turban and *rudraksha* beads - probably the corrugated seeds of *Elaecorpus* - hanging from his neck, had visited the *bhikkhu*. When the *bhikkhu's* servant inquired what brought him there, the man had said: "I have a *pena* (philosophical problem) to be solved." The *bhikkhu* left his bed, and taking his *sembuva* (brass pot), hastened to the well. The servant bade the 'brāhaṃin' tarry awhile, and walked out. Sometime later, a woman, dressed in modest, but clean, clothes came in. Her hair was in disorder, and her cloth, it appeared, had been worn in haste. She fumbled with a mat and put it away hastily under the *bhikkhu's* bed. She stared at the 'brāhaṃin' a moment; then walked away as if his presence had alarmed her. The *bhikkhu* came in presently and put on his formal robes. He asked: "Good brāhaṃin, say your *pena* that I might attempt to solve the problem that you have come to place before me". The visitor looked straight at the *bhikkhu*. The latter thought he had seen that face before but could not remember where. The 'brāhaṃin' said in a tone that sounded discourteous: "My *pena* has been answered already. I go." He disappeared into the mist that rose thick on the lake bund. Brāhaṃins came often to have knotty problems of philosophy solved. But they tarried to talk the argument over, and as a rule partook of some food when invited. Invariably they were thankful for what they learnt. So, what was this about? Not long afterwards, officers arrived and took the *bhikkhu* to the palace. In Court, to which the two Mahānāyaka Thēros (Chief *bhikkhus* of the Chapters of *bhikkhus*) had been summoned, he was accused of having had a mistress in the Malvatta monastery the previous night and by that disgraceful act blemishing the purity of the *Sāsana* (Budddhist religion/church). Turning to the monarch, the *bhikkhu* said: "It is a base lie. The *Mahā Wasala* (the King) should order the men responsible for such calumny to prove the truth of the vile statement by the boiling oil ordeal."[190] Ordered by the King the *Lēkam* (Secretary) said that the prosecution depended on an only witness. That witness was the Monarch who in the garb of a brāhaṃin had stood

that morning before the *bhikkhu's* door and seen his evil companion step out and walk away. The indignant *bhikkhu* shouted: "It is a lie were it the thousand eyed Sakra that says he saw. I challenge whoever makes such a statement to swear to it before the Nātha Dēva, the Maithree Bodhisatva." The *bhikkhu* swore he had never even in thought violated his vow of celibacy and called on the *dēvas* (deities) by their names to punish whoever invented the malicious calumny undoubtedly to pay off some other score. The King appeared to tremble in a rage. Turning towards the *Mahānāyaka Thēros*, he said: "No evidence can controvert facts seen by the *Maha Wasala* (the King). The punishment the accused has deserved is death. He shall be beheaded." The *Mahanayaka* of Malwatta had the highest regard for his *anunāyaka* (deputy chief *bhikkhu*). He said: "Mahārāja, if the *Mahā Wasala* saw a woman walk out of the accused *bhikkhu's* cell the evidence against him is strong indeed. Still it is necessary to ascertain why the woman was there - there possibly is some explanation." He went on to add that, in any event, a violation of the rules of conduct for *bhikkhus* was a disciplinary matter for the clergy, and further that in Laṅkā no *bhikkhu* had ever had his head cut off for not keeping to the path of purity he was bound to follow by his own choice. The King turned to the speaker and said: "In that case the sentence may be altered. He might be shot." The *bhikkhu* was executed.[191]

There was a gross miscarriage of justice: The violation of the vow of celibacy was not a secular matter at all, and therefore outside the jurisdiction of the King; it was a matter for the ecclesiastical court - the *sangha sabhāva*. In any event, it was not a capital offence. Moreover, the King was both judge and prosecutor - a situation that violated the basic principle of impartiality that was recognized as a fundamental law; and the King was judge and witness, indeed the sole witness, which again was in conflict with the laws of Manu which, as we have seen, Sri Vikrama Rājasiṁha said he followed.

NO ARBITRARY DECISIONS WERE PERMITTED

Decisions could not be made arbitrarily: A king was required to decide disputes between his subjects "equitably", i.e., delivering an accurate judgment according to law, after a fair trial, after hearing both parties, and weighing the evidence and matters of which judicial notice could be taken, considering the circumstances, acting independently, free of pressure, bias or prejudice. Manu,[192] said: "... let the king equitably decide between men, who dispute with each other the matters, which are proved by witnesses and [other] evidence." "As a hunter traces the lair of a [wounded] deer by the drops of blood, even so the king shall discover on which side the right lies, by inferences [from the facts]".[193] "When engaged in judicial proceedings he must pay full attention to the truth, to the object [of the dispute], [and] to himself, next to the witnesses, to the place, to the time and to the aspect."[194]

In my book *The Supreme Court of Sri Lanka - The First 185 Years*,[195] I said: "The concept of the evenly balanced scales of justice is by no means an idea imported into South East Asia. The *Weaver of Mayilapur*, Tiruvalluvar, the venerated sage and Law-giver, in his ancient work *Kural*, says of Justice: "It is the glory of the just to stand like the adjusted balance, duly poised nor swerve to either side."

Ariyapala[196] stated:

> "Justice seems to have been symbolized by a pair of scales as in modern times. This is shown by the *Saddharmaratnāvaliya* when it renders the Pali *'athēkadivasaṃ vinicchayē kuṭṭaparājitamanussā bandhulaṃ āgacchantaṃ disvā mahāviravaṃ viravantā vinicchayamaccānam kūṭaṭṭakaraṇaṃ tassa ārōcēsuṃ, so vinicchayaṃ gantvā taṃ aṭṭaṃ tīretvā sāmikamēva sāmikamakāsi, mahājanō mahāsaddēna sādhukāraṃ pavattēsi ... sō tatō paṭṭhāya sammā vinicchi'*, as *'yuktiyak bäṇa pärädi ekek bandhula mallayan hunnavun däka adhikaraṇanāyakan atlas kālā karana ayuktiya kiva. u ē asā adhikaraṇayaṭa gosin yuktiya tarādiyak sē mädahat va vicārā.'*

> One who had lost a trial, having seen Bandhulamalla, reported to him the injustice done by the ministers of justice who had taken bribes. He, hearing this, conducted the trial and decided the case justly like a pair of scales. (306). The SdhRv writer thus renders the Pali version very forcefully, no doubt because he was keenly aware of the injustices and corruption prevalent during his day."

The *Kukkura Jātaka,* dealing with the case of the king's thorough-bred dogs against the rest, said that the king should be impartial in deciding cases - he should be like a *tarādiya* - a pair of scales: *Rajjuruvan nam kāraṇaa karaṇa parīksha koṭa tarādiyak men maddhyastavanṭa vaṭanēya.*[197]

JUDICIAL DECISIONS HAD TO BE INDEPENDENT

Impartiality presupposes that a judge is independent: he must be free from bias and prejudice; and must treat all persons alike. Judicial independence requires that judges must be free from interference from the executive or any quarter, for any reason. The episodes of the trial held by Kapila and the case of the monk Tissa, which we shall presently refer to, amply illustrate the fact that even in the earliest times, judges were expected to act independently, without fear or favour; they illustrate the fact that the executive authority who may have appointed the judge, howsoever highly placed, and regardless of his or her private view, would abide by the decision of a judge, so that the rule of law might prevail. There were independent judges whose decisions were accepted without demur, much to the credit of the judge and the monarch. King Vohārika Tissa (214-236 AD) is said to have appointed a learned minister by the name of Kapila to hear an ecclesiastical dispute. The King abided by Kapila's decision.[198]

We often say today, quoting the famous words of a Lord Chief Justice of England, Lord Hewart,[199] that "Justice should not only be done, but should manifestly and undoubtedly be seen to be done". "In this sensitive area, the appearance of justice is a part of the substance of justice."[200] The appearance of justice, was an important consideration even in pre-colonial Sri Laṅka. And so,

when a King's neutrality may have been doubted in any matter, he would decline to hear it. Thus it is recorded that King Mahāsena (276-303 AD) appointed the High Minister (*mahā-maccā*) to hear a complaint touching an offence of the gravest kind (*antimavatthu* - a matter involving expulsion from the order) against the *bhikkhu* Tissa, who happened to be his friend. The case is not only an illustration of the principle of judicial impartiality, but it is also an example of judicial independence, for the *Mahāvaṁsa*[201] stated: "The high minister, who decided (the matter) and had a reputation for being just, according to equity and law, expelled Tissa from the order, albeit against the king's wishes - *taṃ anicchāya rājino*.[202]

Prejudgment disqualifies a judge from hearing a matter, for he cannot be seen to be impartial. Weerasinghe,[203] recalled an incident that took place during the time of *Tipiṭaka* Cūlābbhaya *thēra*, a celebrated specialist in jurisprudence, who was a contemporary of Kuñcanāga (194-195 A.D):

> "One day he was taking a class in the 'Brazen Palace' (*lohapāsāda*) in Anurādhapura. When the class was over all but two monks left the place. The two monks were arguing about something. The venerable *thēra* was overhearing the dispute. Later the two monks requested him to hear the case. The learned *thēra* declined it. He told them that he was unable to comply with their request as he was already prejudiced against the defendant on overhearing the dispute in question. The principle of impartiality of the judge is clearly seen in this anecdote."

Monarchs were reluctant to interfere with judicial decisions, except in the exercise of their appellate powers: This, in my view, was not because there was, as Weerasinghe suggested,[204] a "separation of powers" based on philosophical grounds, but for other reasons: A monarch was the fountainhead of justice and was anxious to see that justice was fairly administered by impartial, independent judges. A judge was sometimes referred to as *viniscaya-svāmi* - the lord of decision/judgment.[205] This implied, not only that he was a person who handed down a decision in a

law suit, but also that he was an independent adjudicator, free from pressure from any quarter, including the monarch.[206] There are several examples showing that the king allowed judges to act independently. Vohārika Tissa (214-236 A.D.) appointed Kapila, a learned minister, to hear a matter relating to a religious dispute. The judge's decision was carried out by the monarch.[207] Then there was the case of the appointment of the high minister (*mahāmacca*) by King Mahāsena (276-303 A.D.) to hear a complaint against his friend, *bhikkhu* Tissa.[208] The *Mahāvaṁsa*[209] stated that the judge, who was "known to be just, who decided [the matter] excluded him, according to right and law, from the order, *albeit against the king's wishes.*" The emphasis is mine. The king was the final appellate authority, but there was no arbitrary interference with the decisions of tribunals; if the decision, after a fair hearing, was correct according to law and custom, it was affirmed. Thus the *Paṭisambhidāmagga* glossary speaks of instances where an impartial king affirmed decisions, made according to law, by eight judge-ministers. [210]

THE MONARCH AS JUDGE OF FIRST INSTANCE

In India, in early Vedic times, a king was hardly called upon to intervene in disputes, except in matters of great public importance concerning law and order which it was his duty to maintain. Other disputes were within the exclusive jurisdiction of the tribunals of the people. By the time of the early settlers represented by the arrival of Vijaya, however, in India, the king's role as the supreme judge in all matters and his duties in connection with judicial administration *(vyavahara)* had been firmly established.

A monarch had original jurisdiction[211] and at times sat in judgment[212] hearing even simple cases,[213] as the case relating to the beef-eaters heard by King Bhātiya,[214] and perhaps the story of the complaint by the cow heard by King Eḷara[215] show. According to the Vessagiriya Inscription (No. 2) King Mahinda IV personally adjudicated upon a dispute involving water rights. [215A]

King Kaṇirajānu Tissa, it was said, 'decided the lawsuit concerning the uposatha house in the *vihāra* named after the *cetiya*'.[216] As the ruler (*maha raja*), it has been said the monarch functioned as the Chief Justice of the Supreme Court (*mahā-vicini*.)[217] However, although D'Oyly[218] said that King Sri Vikrama Rājasiṁha, did not usually hear matters concerning ordinary citizens, Marshall[219] said: "The king devoted much of his time to business and to hearing causes in litigation..." Colvin R. de Silva[220] said that the king "...appears to have paid personal attention to popular litigation and been indefatigable in the hearing of complaints."

Sometimes, however, another person may have been appointed Chief Justice. Weerasinghe,[221] stated that King Bhātiya (19 BC-AD 9)[222] "appointed an erudite monk, Ābhidhammika Gōdatta *thēra*, as the Chief Justice of the Island to hear the cases of all monks (*bhikkhu*) and laymen (*gihi*)."[222A] He seems to have been a person of great eminence. M.H. Sirisoma[223] referred to the possibility that the cleric Goda or Gōdatta mentioned in the Duvegala inscription was Goda *alias* Gōdatta mentioned in the commentaries on the *vinaya* - the *Samantapāsādikā* and the *Manorathapūrani* - who was said to have been versed in the *abhidhamma*, although the matter is not free from doubt. It was recorded, however, that the monk mentioned in the *Samantapāsādikā* and the *Manorathapūrani*, living during the time of Bhātiya Tissa, was an expert on the *vinaya* (ecclesiastical law) and secular law and that the king had decreed that the final judgment on any matter had to be obtained from that monk.

Broadly, Sri Laṅkā may have followed the Indian model. N.C. Sen-Gupta said:[224]

> "As the judicial functions of the king grew we find a two fold development. In the first place the obligation of the king to know the law from competent authorities was crystallized into a definite constitutional authority to advise the king in the shape of the king's sabhā and secondly the judicial authority of the king came to be delegated to permanent judges."

The *Anguttara Nikāya* and *Majjhima Nikāya* refer to the Court of the King. It was said to have been called the *Maha-vinischaya*.[225] The Court consisted of the King, assisted by persons well versed in the law including Ministers, officials and brāhamiṇs.[226] The *Aṭadā Sanyaya*[227] spoke of Minister Vijaya, Minister Sunāma, and Alātha, the Commander of the Forces, being asked by King Angāti to sit with other ministers in judgment since they were most familiar with custom and law.[228]

The *Lak Raja Lō Sirita*[229] provides some information of the manner in which the King's Court functioned during the days of the Kandyan Kingdom:

> *What Ministers assemble for inquiring into high Judicial matters connected with the King's administration? How are such judicial inquiries conducted?*
>
> The two Adikars, the four Maha Disavas, the Maha Mohottala, and the Dugganna Mahatten, belonging to the Bandara Valiya meet at the Adikarana Salava and inquire into ordinary cases; where a matter cannot be thus disposed of, the same assemble at the Magul Maduva in the presence of the King who is seated on his throne, and deal with cases affecting the State. (The text is obscure).[230]
>
> *Is there any impartial mode of trial in the case of capital charges? What Ministers meet for such a trial?*
>
> There is a special mode of trial. Those who assemble for it are first of all the King, and the officials who as stated above deal with matters affecting the Government. [231]

Although the monarch delegated the power of dispute resolution to officials and judges for pragmatic reasons,[232] disputes involving members of the royal family or high dignitaries of the state were generally heard by the monarch himself.[233] The monarch usually exercised original jurisdiction in respect of disputes between principal chiefs, principal officers or servants of his court or household, especially if the dispute related to *dukgänavili* lands, i.e., lands of the *duggannā* people - people from

among whom the personal attendants of the monarch were selected.[234] The monarch also heard suits between monks concerning important temples or benefices; and conducted trials concerning offences affecting the monarch's person or family and serious crimes such as treason and homicide.[235] Maiming or depriving of an organ or member, robbery of royal treasure or property, important forgeries, false coining, giving currency to forged coin as legal tender, sacrilege (e.g. by destroying a sacred image, cutting down a sacred tree, striking a monk), elephant slaughter[236] and other offences of an aggravated nature which, though of a class that might be adjudicated by chiefs, yet, because of their importance, may have been reported to the monarch for his decision.[237]

If a king did not hear a matter submitted to him, the monarch referred it to the Supreme or Great Court (*Mahā Naḍuwa*) for investigation and delivered a decision after receiving its report,[238] or after further enquiry and report ordered by the monarch.[239] During the reign of Sri Vikrama Rājasiṁha (1798-1815 AD), it seems that some cases may not have been dealt with according to procedure established by law: Davy observed[240] that "excepting in very atrocious and notorious instances, the *dissāva*, with an eye to his own profit, preferred inflicting on the criminal a heavy fine."

D'Oyly [241] said that when a case was placed before the King, he either heard the matter or referred it to the Great Court (*Mahā Naḍuva*). In the former situation, the matter was heard in the presence of the Chiefs, and the King's decision was made "taking their opinion." When the King heard a matter in that way, the Chiefs it is said, "were seldom known to judge unjustly between individuals."

A king was the fountain-head of justice (*dharma-pravartaka*).[242] He alone could impose a sentence of death.[243] He alone could adjudicate upon certain matters.[244] He was the final

appellate authority. Yet, he could not legally exercise his judicial functions in an arbitrary manner.

The *Lak Raja Lō Sirita*[245] provides evidence of the fact that no person could be deprived of his life, liberty or property unless he was charged with the commission of an offence known to the law, and convicted by a court of law after a fair trial. Moreover, the punishment imposed had to be in proportion to the crime.

> *Can this King without making full inquiry from another and without charging him with a definite offence, of his sole opinion condemn him to death or confiscate his property?*
>
> If in the present, past, or future, in any territory, country or city the Ministers and inhabitants have appointed or will appoint a King, it is for the purpose of ensuring inquiry and decision between the just and the unjust, the right and the wrong; of seeing that injustice is suppressed and justice upheld, of protecting the innocent and punishing the guilty by suitable punishment. Nevertheless when a person accused of grave crime is condemned to death, the matter should be discussed with the inhabitants and the Principal Radalavaru who constitute the High Court of Justice, the books where the ancient precedents of such cases are recorded should be consulted, and if the crime is punishable with death, order should be made accordingly. Such is the recognized custom. But where a man has not been found guilty the power to confiscate his property whether of his sole judgment or in consultation with his Ministers is not contemplated anywhere in the Raja Dharma.

THE APPELLATE JURISDICTION OF A MONARCH

The monarch was the ultimate appellate authority.[246] An appeal to the monarch was available to every aggrieved person from the decision of any chief in civil cases without limitation of time or value.[247] Since the monarch was supreme, an erroneous decision could, no doubt in theory, have been reversed by the monarch at any time. However, ordinarily the matter was placed before the monarch after it had passed through the judicial hierarchy, depending on the system of courts at the relevant time. According to Weerasinghe,[248] an appeal against the verdict of a

village magistrate (*gāma-bhōjaka*) lay to the provincial judge (*janapada-bhōjaka*). An appeal against the decision of a provincial judge lay to the Minister of Justice (*vinicchaya-mahāmacca*). An appeal against the Minister of Justice lay to the *senādhipathi* - probably the Commander of the Army / Minister of Defence / Minister of Internal Security. An appeal against the decision of the *senādhipathi* lay to the monarch (*mahārāja*).[249] Ranawella said that the *Yuvarāja* (Prince Regent) also exercised appellate powers, although the King was the final appellate authority; for, he said, the *Pansiya-panas-Jātakaya*[250] narrates the story of a person going down on his knees before the *Yuvarāja* and requesting him to set aside the decision of a judicial officer who had taken a bribe.[251]

Probably, courts would in name, composition and jurisdiction have changed from time to time, but a hierarchical appellate system existed even during the reign of the Sri Vikrama Rājasiṁha (1798-1815). D'Oyly[252] stated that every individual had

> "the liberty of seeking Redress, first by Application to the Principal People of his Village, next to the Headmen or Chiefs of the Province, next to his Superior Chief, to the Adikar, to the Great Court and lastly to the King. Appeal lying from all the Subordinate to any of the intermediate or to the Supreme Authority, in Case either Party be dissatisfied with their decisions." [253]

The exercise of a monarch's appellate power - *madyhasthavä vyvasthā vadārā* (passing impartial judgments on appeals made to the monarch)[254] - was seriously regarded. The reference in the *Mahāvaṁsa* to the *vinicchaya ghanṭā* (justice bell) which was tied at the head of the bed of King Eḷara so that those who desired judgment might ring it, was probably an 'appeal bell'.[255] It symbolized the importance attached to access to justice, and prompt access to justice, even at the highest level. King Parākramabāhu II (1236-1270 AD) is said to have spent an hour and a half each day hearing appeals."[256]

King Bhātika Abhaya (BC 19-9 AD), it is said, was once so absorbed in hearing an appeal made to him regarding a wrongly

decided case (*dubbiniccahayaṃ aṭṭaṃ*), even till dusk, that he failed to observe the cherished routine activity of paying homage to the *Mahācetiya* (great temple) in the evening (*attaṃgamite suriye*).[257]

There is an interesting case from the time of King Kirti Sri Rājasimha (1747-1782) who, the *Cūlavaṁsa*[258] said, 'learned the duties of a king' and was 'filled with reverence for kingly duties'. It gives us an insight both into the exercise of the appellate powers of the monarch, and into the simple and effective procedures for the invocation of appellate jurisdiction at the highest levels.

> "Palāta Vidānē and Dingi Rāla using an iron crow forced open a chest kept in the verandah of the King's bedchamber and stole two cloths with gold borders. Wattegedera Kottal Badde Nilame arrested them and took them before the King who was at Gampola. On being put on their trial they admitted their guilt and the cloths were sent for an[d] examined. They were asked who had actually opened the chest and stated it was Dingi Rala. Being further asked why they had acted as they did they pleaded it was because they had no cloths. They were however found guilty of stealing.[259] The Vidane was kept near the King's Atuva at Gampola with both feet in the stocks, and Dingi Rala was also kept in the stocks secured by an iron chain in the Hirage at Badulla; while thus imprisoned he twisted a rope he obtained from the husks of arecanuts[260] and sent it to Maha Nuvara,[261] where Kondadeniya Dissava of Matale submitted it to the King; who thereupon sent for him, discharged him from his sentence and ordered him to continue in his previous service as a sweeper. As for the Vidane after a month in the Hirage on the occasion of the King proceeding for the Nanumura Mangalaya along the street, he raised cries and made his appeal, whereupon the King inquired into who the appeal came from and ordered his release from detention." [262]

However, not all monarchs were filled with 'reverence for kingly duties'; it would appear that some of them were not conscientious, generous or just. Rājasiṁha II (1635-87 AD) seems to have been a particularly bad monarch. Knox[263] said:

> "Some have adventured to appeal to the king sometimes; falling down on the ground before him at his coming forth, which is the manner of their obeisance to him, to complain of injustice.[264] Sometimes he will give order to the great ones to do them right, and sometimes bid them wait, until he is pleased to hear the cause, which is not suddenly; for he is very slow in business; neither dare they then depart from the court, having been bidden to stay. Where they stay till they are weary, being at expence (*sic.*), so that the remedy is worse than the disease. And sometimes again when they thus fall before him, he commands to beat them and put them in chains for troubling him; and perhaps in that condition they may lay for some years."

It has been suggested that, in the reign of Sri Vikrama Rājasiṁha (1798-1815 AD), there was a reluctance to appeal not only because of the risks mentioned by Knox, but also because many persons were "fearful of hazarding the displeasure of a powerful chief who might find many future opportunities of injuring" them should an appeal be lodged against the decision of the chief.[265] In any event, according to D'Oyly, the king at that time "was not frequently in the habit of personally investigating suits between common individuals"; and if the king referred the appeal to the Great Court, it was alleged that there was a likelihood of the decision being influenced by corrupt practices or pressure from certain influential persons. Perhaps, as we shall see, D'Oyly's view might have been inaccurate, or at least somewhat exaggerated. Moreover, D'Oyly's assertion that Sri Vikrama Rājasiṁha was unconcerned with his judicial duties might be debatable.[267]

The *Lak Raja Lō Sirita*[268] made it clear that, although a monarch was the final appellate authority, yet he was required to exercise his powers within prescribed limits: He could not arbitrarily set aside the decisions of a court,[269] especially those concerned with law or morals touching questions of public importance - matters, that in Vedic times related to the *dharma* rather than those less important matters which also later came to be placed within a king's jurisdiction *(vyavahāra)*.

> *Is the King bound to accept a matter finally determined after an inquiry as set out above, or can he avoid doing so?*
>
> The King has the power to avoid matters finally determined after inquiry; nevertheless if all the other Ministers make a representation that the Raja Dharma for the support of religion and the government of the country as stated in the books is different, he must not override but uphold the determination.

Acting in disregard of the established principles relating to good government, including those concerned with the administration of justice, could have attracted public censure.[270] The following excerpt from the *Lak Raja Lo Sirita* [271] deserves consideration:

> *Where in the administration of this Country, Nuvaragama, abuses are found, is it true that the inhabitants of several Rataval are held responsible? Which are those Rataval? To what extent can they exercise authority?*
>
> The inhabitants of several Rataval are held responsible for abuses in the administration of the Government. Those Rataval are Udu Nuvara, Yati Nuvara, Dumbara, Pansiya Pattuva, Matale, Harasiya Pattuva, Tun panaha, Hevaheta, and Uva. The authority which they possess is this, they are authorized to destroy those who create abuses in the administration (text obscure).

The *Lak Raja Lo Sirita* was recorded in 1769. In earlier times too, especially in matters of a serious nature, the monarch exercised judicial power with the assistance of members of his council. K.N. Jayatillake,[272] stated: "... though the monarch had ever so great a regard for justice, he was never permitted singly to dispense it but in all matters of life and death was assisted by a council of 40, and there was finally a court of appeal presided over by 70 judges."

There were no institutional changes in the system even during the reign of Sri Vikrama Rājasiṁha. If at all, the court seems to have been enlarged. D'Oyly[273] stated:

> "The Great Court called Mahā Naḍuwa, formerly and properly consisted of the Adikārs, Disāves, Lēkams and Mohandirams (on low benche (*sic.*)) but of late Years all the Chiefs have been called to assist at it, and especially any distinguished for their Ability and Judgment."

When there was an appeal to the monarch from the decision of a court, D'Oyly [274] said:

> "... it is either heard in the King's Presense (*sic.*), or referred for Hearing and Report to the Great Court of Kandy, called Maha Naduwa, composed of the principal Kandyan Chiefs.
>
> If the former the King is seated at the Window of an apartment in the Palace the Kandyan Chiefs Kneeling in the Hall or Veranda below question according to the King's directions the Parties and Witnesses, and the King after taking their opinion passes his Decision.
>
> If the latter the Case is heard in the Great Court of the Chiefs who report the circumstances with their opinion to the King, are sometimes referred for further Enquiry, and Report, till he is satisfied, and then receive his Decision or sometimes are ordered to Decide by oath."

The procedures strongly resemble those in ancient India where the king presided over the court but questions to witnesses were put by the members of the *sabhā* (court) assisting the king, in particular the *Prāḍvivaka* - a sort of foreman.

Although jurisdiction to try serious offences was vested in the monarch, the monarch could, and did at times, transfer that power to others, even with regard to offences against the state. Thus, the monarch may have delegated his power, by special commission, to a court of chosen chiefs. For instance, Sri Vikrama Rājasiṁha [1798-1815 AD] committed the trial of the headmen of the Sat Kōralē who were accused of treason, to a special tribunal consisting of Molligoḍa, the Second *Adigar*, and two other chiefs.[275] According to Ranawella, the Vēväḷkäṭiya Slab Inscription of King Udaya IV had conferred on the elders of a

dasagama - an administrative unit of ten villages - [276] in a region called Kibiñdu-bima, in Amgamkuḷiya, a district in the Northern Quarter of Rajarata, the power to arrest, try, and sentence to death persons who had committed the offences of highway robbery or murder within the area attached to the district.[277] In general, however, the power of passing a sentence of death was reserved for the monarch,[278] and therefore, during the days of the Kandyan Kingdom, a person accused of an offence for which the penalty was death, had to be sent to Kandy, or wherever the King was at the time[279] to stand his trial before him.[280]

PARDON AND AMNESTY

A king had the power of pardon. Often, its exercise had little or nothing to do with guilt or innocence: 'executive policy' was the underlying consideration. Mahādāṭhika Mahānāga (9-21 A.D.), during the *Giribhaṇda* festival following his construction of the Ambatthala-thūpa, remitted prison penalties (*bandhamokkha*): *Mahāvaṁsa,* XXXIV. 84. Walpola Rahula, p. 276.

Sometimes, it seems, a monarch was moved to vary a sentence in appeal out of compassion rather than on account of the merits of a case. Thus the *Pujāvaliya*[281] referred to the possibility of a traitor who deserved to be impaled, escaping with a small fine "if he wins the king's heart". Parākramabāhu II routinely reduced the sentences imposed by his judges.[282] It was said: "Many thieves who had committed thefts even in the royal palace, turned to [King Parākramabāhu II] when punishment overtook them. They gave up their anguish and their fear and unharmed, without suffering the loss of a limb, their lives were spared."

Prisoners were released when a general amnesty was declared by the monarch. Sirimēghavaṇṇa (303-331 AD) is said to have freed the people in prison on the occasion of a festival held in honour of the Grand Thēra Mahinda.[283] It was said that Mānābharaṇa, "when he ... heard the news of the birth of his son, ... was filled with joy at the fulfillment of his wish, as if anointed with ambrosia. He set many free who lay bound in fetters in prison and gave a splendid alms to the samaṇas and the brāhmaṇas."[284]

Vijayabāhu II, (1186-1187 AD), the nephew and successor of Parākramabāhu I, when he had been installed as king, released from their misery those whom his uncle had thrown into prison and tortured with stripes or fetters.[285] Parākramabāhu II (1236-1270 AD) granted a general amnesty by reducing all penalties inflicted on criminals: People who were to be beheaded were punished only by imprisonment and later set free. For such people as deserved prison he ordered some lighter punishment. On people who should have been banished from the country he laid only a fine, and those who deserved a fine he dismissed with a rebuke.[286]

Pardons may also have been granted to specific groups of convicted offenders. It is stated in the Dädigama slab-inscription of Bhuvanaikabāhu VI (1412-1467 AD): "To anyone who is [now] behaving in submission, neither loss of property, nor loss of limb, nor loss of life shall be inflicted on account of the crimes that he has committed against me in the *Siṁhala saṅgē* [Sinhala rebellion]."[287] Paranavitana observed that after the rebellion against the king and his family, who were of South Indian origin, the king adopted a conciliatory attitude to the leaders of the *Siṁhala-peraliya* and contented himself with punishing them with imprisonment and shortly afterwards released them. Paranavitana stated: "We do not know whether this attitude of the king was due to his natural generosity or whether he was forced to act in this manner by political necessity." [288]

Amnesty was granted even in the days of the so-called 'barbarous' era of the Kandyan Kingdom. D'Oyly[289] stated as follows, under the caption, 'Acts of Grace':

> " Dehigama D.N.[290] states that on the 7th day after demise of King Rājādhi Rāja Singha [1782-1798] (which was 5 days after the deposed King's accession to the throne) the Mataka Daanaya Mangalla or Festival of Commemoration in honour of the deceased was celebrated in Kandy, and as was invariably the practice on such occasions, all the prisoners in the various places of confinement or banishment within the Kandyan Kingdom were liberated without exception - The Diwen Nilame states of his own knowledge that

amongst those so liberated, that were some who had been convicted of murder, and some of Robbery, and condemned to imprisonment until they made compensation to the Prosecutors - but this act of Grace did not entail on the King the obligation of satisfying the claims of those who had a right to restitution of property from the Convicts.

A similar 'act of Grace' was conceded in the Reign of Rājādhi. R.S[291]. on the occasion of Budoo Ress (Meteors seen occasionally to glide through the air, and fancied by the Buddhists to emanate from the sacred Maligawa). -

In the reign of the deposed King, [Sri Vikrama Rājasiṁha (1798-1815)] Prisoners were so liberated on two occasions - once at the birth of a Prince and again when the King celebrated a grand Pinkam.-"

THE STRANGE CASE OF THE DESCENDANTS OF BUDAL

Loyal subjects were singled out for special favours such as honours, grants and remission of dues. King Sāhasamalla (1200-1202 AD) in a Slab-Inscription proclaimed that "the protection of strongly loyal adherents is in the highest degree a duty incumbent on kings".[292] It is said that there were "evil ministers who were causing obstruction with the object of gaining personal power for themselves and were not desiring to have kings that would be powerful enough both for [granting] rewards and [for inflicting] punishments, and that would protect the people and the religion." Various titles were conferred on persons to show them gratitude or to acquire ready and obedient followers.[293]

There is one instance, however, where a king went well beyond granting lands and honours or the remission of dues: The Panākaḍuva Copper Plate of Vijayabāhu I (1055-1110 AD)[294] was not concerned with such matters: it was concerned with the granting of immunities from punishment on the descendants of Lord Budal of Sitnaru-bim. Budal, it seems, was the *daṇḍanāyaka* - a high official exercising military and civil functions - of

Ruhuṇa. He was supposed to have protected Vijayabāhu's father and the entire royal family, while concealing them in the forest, until the king's enemies were suppressed by Budal and the king duly installed in his kingdom. The record stated: "With regard to the sons and grandsons of this [Lord Budal], in the manner as it has come down from his lineage, even if [they] were to commit an offence for which fines or imposts should be levied, beyond a reprimand administered by word [of mouth] after having settled [the offence], no fines or imposts should be levied; an offence committed by them should not be settled after having put [them] in prison; should there even be an offence committed [by them] which cannot be expiated, otherwise than by giving up life, [they] should be pardoned up to three times; [their] shares [of land holdings] and estates should not be confiscated; even if treason, of whatever degree, be committed by [them], apart from banishing [them] after having granted amnesty [after the king himself had seen the offender], no degradation should be inflicted."

Paranavitana[295] stated as follows:

> "It is said that such privileges were hereditary in Lord Budal's family. If so, it may be asked whether the recipient of the grant really gained any extra benefit by it. It may be that the statement in question is a legal fiction. If the king instituted such privileges for Budal's family for the first time, it would have amounted to raising one of his subjects above the law. To whatever extent the recipient of such favours had a claim on the king's gratitude, such an action might have been interpreted as setting the law aside for the benefit of individuals. But when represented as a renewal of an ancient privilege, it would have amounted to the maintenance, by the king, of former customs and usages. And that was precisely what a good king was expected to do."

The king was rewarding the descendants of Budal for favours received by his father and the members of the royal family, including the king, when he was a young man. The grant, therefore, could not have been 'the renewal of an ancient privilege' and the recognition of 'former customs and usages'. It was an exception to the general rule that no one was above the law and that all persons had to be treated alike.

THE EDUCATION OF A MONARCH

A king had the advice and assistance of his officials, but he was himself so educated as to be able to discharge his duties. He had to have 'an improved mind'. "Punishment [possesses] a very bright lustre, and is hard to be administered by men with unimproved minds; it strikes down the king who swerves from his duty, together with his relatives.[296] Next it will affect his castles, his territories, the whole world together with the movable and immovable [creation]... "[297] Kauṭilya said[298] "The king who is well educated and disciplined in sciences devoted to good government of his subjects, and bent on doing good to all people will enjoy the earth unopposed." Geiger[299] said:

> "Royal princes (*rājaputtā*), particularly the heir to the throne, were carefully educated. The education included training in sports and practice of arms as well as mental development. We are told (Mhvs. 64.2 sq.) that the young Prince [later] Parākkamabāhu [I (1153-1186)] was instructed not only in the art of driving the elephant and in the lore of manipulation of the bow, the sword and other weapons, but also in dance and song. Moreover he studied the sacred books of the Buddhist faith, and the works on politics (*nīti*) as that of *Koṭala* (i.e Kautalya's Arthasāstra)[300] Grammar (*saddattha*), poetry (*kāveyya*), knowledge of the vocabularies (*nighaṇḍu*) and of the ritual (*keṭubha*) were also objects of his education..."

The king, as we have seen, was endowed with the power of punishment (*daṇḍa*) so that he might maintain *dharma* - social and moral order according to law and custom. Sen-Gupta[301] said: "Daṇḍanīti or the laws about punishment, is from very early times conceived as a most essential part of the education of a king. But Daṇḍa is to be applied according to established canons of *dharma*."

As we have seen, monarchs were expected to rule justly, in accordance with law and tradition. Kirti Sri Rājasiṁha, it was said, heard of the doings of former kings, imitated their doings and

learned the duties of a king.[302] Vijayabāhu I was said to have been well versed in custom.[303] Having regard to the fact that numerous kings were said to have ruled in an acceptable manner, it is probable that they were well informed of the laws and customs of their kingdom. In Bertolacci's version of the *Lak Raja Lō Sirita*,[304] reference is made to monarchs who were "well skilled in antient (*sic.*) laws and usages, acquainted with the practice of former Kings, and properly versed in religious knowledge."

It was said[305] that Parākramabāhu I, when he was a student, "with the help of his lightning-like intelligence" quickly learnt from his teachers the knowledge and skills required of a future monarch.[306]

An heir to the throne (*yuva rāja*) was sometimes so eminently well qualified, that that fact has been noted in the ancient records. For instance, the *Cūḷavaṁsa*[307] stated: " The name Vijayabāhu[308] of the Prince wise in statecraft - *nīti* (*nayaññu*), who now found himself in the position of *yuvarāja*, was known everywhere. Gifted with abundant knowledge, he had the drums beaten for his entering on the government ...".[309] Vijayabāhu II (1286-1287 AD) is said to have not departed from the precepts of Manu.[310] Parākramabāhu II (1236-1270 AD), a humane ruler, was likened to Manu - the great lawgiver;[311] and Sri Vikrama Rājasiṁha, as we have seen[312] said that he was following Manu. It is probable that the *Dharmaśāstra*, especially the Laws of Manu, was essential reading, especially when the royal teacher was a brāhmin.

However, a monarch also had to be educated in the customs and traditions of the country.[313] Sri Vikrama Rājasiṁha's education seems to have been incomplete or lop-sided, for he sometimes displayed gross ignorance in dealing with certain matters. Moreover, since he was not usually prepared to act on the advice of the chiefs and the clergy, which itself was a basic principle of good government, including the administration of justice, especially in later years when he was called upon to decide complex and sensitive matters, he discharged his duties in an

extraordinarily unsatisfactory way. The man was only eighteen years of age when he was placed on the throne, for no other reason than the fact that Piḷima Taḷauvē, the *Mahā Adigar* (Chief Minister), an ambitious courtier of royal descent, supposed he could manipulate the new king, and perhaps eventually replace him. Unlike other monarchs, however, Konnasami, who ascended the throne as Sri Vikrama Rājasiṁha, was said to have been "uneducated, and having nothing to recommend him but a good figure."[314] The fact that he arrogantly rejected the advise of the chiefs and clergy, combined to make the results of his ignorance not only serious, but also disastrous for himself, his people and even his country. Some of the early British writers and officials it seems identified him as a typical Sri Laṅkan monarch. He was certainly not a 'good' monarch, judged by prescribed standards.

The teacher of the heir to the throne - *rājaguru* - was a very important person, for he instructed the monarch in what he should do.[315] While some of them, like the pious and virtuous Mugalan Mahā Thēra of Uturumula, rendered worthy service,[316] others did not do so. The lawless Coḷan monk, Samghamitta, who instructed and later influenced Mahāsena, was responsible for his evil conduct.[317] Parākramabāhu IV appointed as *rājaguru* a Grand Thēra from the Cōḷa country who was said to have been a self-controlled man, versed in many languages and intimate with philosophic works.[318]

The influence of the teacher was not only attributable to the fact that what the king did was in some measure driven by what he was taught as a young man, but also by the fact that his teacher might have continued to be at his side after he ascended the throne. Often, but not invariably, the new monarch appointed his teacher as *purōhita* - the royal chaplain[319] who, as we have seen, was an adviser not only on matters of ritual but also on affairs of State.

Enlightened monarchs like Niśśaṅkamalla (1187-96 AC), who was himself learned in the law, attached importance to legal literacy. He encouraged others to learn the law (*dharma*) by

providing those versed in the law with "suitable means of subsistence."[320]

Promoting legal literacy was commendable, for taken in the context of Niśśaṅkamalla's other pursuits, he was probably doing much more than promoting a mere knowledge of the law, albeit for less than altruistic reasons: By popularizing the law, demystifying it, and making it more accessible to people, it was probably intended to be a tool for the empowerment of the people, so they might, through a better understanding of the law, critique the law and assert their rights. It was, possibly, a part of his strategy to secure the throne for himself and his dynasty by winning popular support. Be that as it may, suggesting, as Nicholas and Paranavitana did, that the king was seeking to create a legal "profession" was another matter. 'Profession', has a technical meaning. [321] There was nothing that showed why Niśśaṅkamalla might have found it necessary, or indeed useful, to encourage, the creation of a legal 'profession', having regard to the nature of legal proceedings, especially the absence of elaborate rules of procedure and evidence, and the absence of pleaders.

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CHAPTER IX

TRADITIONAL CANONS OF JUDICIAL CONDUCT

D'Oyly[1] did not mention the source of his information but quoted certain "Rules for Administering Justice" that were in force during the days of the last Sri Laṅkan monarch. Obviously he was quoting some book or evidence he had recorded during his work in Sri Laṅkā, in various capacities, from 1802 until his death in 1824. There are very few countries that have Codes of Judicial Conduct. Indeed, whether such codes serve any useful purpose is a matter of controversy. The first, and for a very long time, the only, modern code was the United States Code of 1924. D'Oyly's account shows that the principles followed in Sri Laṅkā bore a striking resemblance to those that are followed today in modern jurisdictions. I have, especially in this Chapter, but also sometimes elsewhere, referred to modern applications to draw attention to the continuing relevance of old values and expectations. As we have seen in the preceding Chapter, a monarch was expected to discharge his judicial functions in accordance with certain norms. For instance, he had to act impartially, without fear or favour or bias and prejudice, ensuring a fair trial. Judges appointed by the king were expected to observe the standards prescribed for the king. However, in order to avoid duplication, the duties of a monarch are not repeated here. The principal object of this chapter is to compare the canons of judicial conduct set out in D'Oyly's statement with modern expectations.

I have quoted the whole of D'Oyly's statement of rules. Admittedly, the meaning of that brief statement has to be supplemented by comment. Inevitably, therefore, the notes to this Chapter take up more space than the text. But then, what helpful guidance does one gather from the first (1924) and subsequent Codes of Judicial Conduct of the United States as amended (1982, 1984, 1990) without the commentaries, illustrations, decisions of the courts, and advisory opinions? Very little, I think.

Commenting on the legal system of Sri Laṅkā, Sir Alexander Johnston said,[2] "the laws and institutions [introduced by the first ruler] had never been altered by any foreign conqueror but had continued to prevail in the original state from the time they were first introduced into the interior of Ceylon till the year 1815". What Sir Alexander meant by the phrase "first introduced into the interior of Ceylon" is not clear. However, this much is certain: The canons of judicial conduct set out in D'Oyly were a part of an ancient system that went into the past, well beyond the days of the Kings of the Udarata - the Kandyan Kingdom, that commenced with the reign of Sēnāsammata Vikramabāhu (1469-1511). As we have seen, according to the evidence in the chronicles, the principles of judicial impartiality and independence go back to times before Christ.

In my notes, I have tried to position the traditional principles of Sri Laṅkā relatively to modern principles, briefly described, that are, more or less, accepted by Commonwealth countries, including Sri Laṅkā, and by the United States.

> "The prosperity of him that perverteth Justice through Love, Hatred, Fear or Ignorance, shall diminish gradually as the moon in its wane - but he that shall not deviate from Justice through Affection[3] or Malice,[4] through fear[5] or from ignorance,[6] will advance in prosperity as the moon in its Increase. Should Justice be disregarded and its Rules deviated from, and Judgment given in favour of the false claiment (*sic.*), to the prejudice of the rightful owner or Heir, through affection or love induced by Relationship,[7] Friendship,[8] or Gratitude for benefits conferred[9] - or through motives of personal animosity[10] or from Fear induced by the daring and wicked character of one of the parties[11] or from his being a powerful personage in the State[12] - or if Justice be perverted through ignorance,[13] that is not being properly acquainted with the Science of Jurisprudence as taught in the Sermons (of Buddha)[14] - the wealth, Ritenue (*sic.*), Celibrity (*sic.*) of such unjust Judge will gradually pass away as waneth the Moon - thus is declared the destruction of the Prosperity, wealth and Power of him that Judgeth unrighteously,[14A] be he a Layman or a Priest - and the gradual advancement to Dignities consequent to the celibrity (*sic.*) and renown of the just Judge who escapes from the *Agati* or Perversion, is compared to the progressive

expansion of the refulgence of the moon in its increase - it therefore behoveth the wise Judge to act constantly according to the following Rules of Adjudication. -

He that takes the Seat of Judgment, should not be proud and haughty,[15] and should not be disdainful and disrespectful to the Priesthood and the King[16] - he should not appear either pleased with the good, nor displeased with the bad, but maintain Equanimity[17] - he should not be talkative[18] or pronounce words of insignificance,[19] but must utter only what is appropriate[20] and necessary[21] - he should imagine no evil, but be intent on doing good[22] where a Priest is a Suitor, he should not inquire who was his Preceptor, who was the Upaadhya, who ordained him to the order of Upasampada - who his Pupils are - he should not make inquiries touching. - (*sic.*)[23]

Severity and Lenity should be evinced on befitting occasions[24] - the course of Investigation, he should be gracious and disposed to do good[25] and not be influenced with a desire of inflicting evil[26] - he should conduct the trial in serenity and mildness, but not in Anger and intemperate impatience[27] - whispering should not be tolerated in the Council nor sidelong looks - nor must the Judge wink or nod significantly at the Suitors[28] - nor should he by the shaking of his head or knitting of his brows allow his thoughts to be guessed[29] - he should circumscribe his view to about the extent of a fathom, and not extend his gaze to objects beyond that distance in any direction[30] - He should be pertinaciously careful in examining the statements of interested persons[31] and of those who are noted for cunning and falsehood,[32] but it is proper that he should be affable and mild in interrogating those who are veracious and void of guile, and those are agitated and timid because of their simplicity and ignorance must be encouraged by kind words[33] - Moreover, the righteous Judge should be enduced {endowed} with many other good qualities, and he must strictly adhere to the Dictates conveyed in the Sacred Sermons, their context, and the commentaries thereon - for thus it is enjoined. "The diligent Judge shall administer Justice in strict conformity to the Rules of the Soottree,[34] and the Wineye,[35] and their exposition and commentaries.",[36] -

> "That which is recorded is of greater importance than oral tradition, therefore the written Rules must be enforced."

Owing to the ignorance and misconduct of Individuals the observances of their Preceptors in former generations may happen

> from time to time to be infringed, but the Pali Sermons recorded in books are not liable to perversion, but will remain pure, therefore it is here enjoined that the Pali Text must be made the invariable rule of Judicial Investigation."

From what has been stated above, it seems that traditionally, a judge of Sri Lañkā was required to adjudicate in accordance with the law; he had to act without fear or favour, affection or illwill, impartially and independently, without bias or prejudice or the appearance of bias or prejudice; he had to hold a fair trial, showing patience and attentiveness and endeavouring to ascertain the truth; and in exercising his discretion with regard to the punishment of offenders, he had to impose a sentence that was within the limits permitted by law, and in accordance with the prescribed or customary sentencing policy, applicable to the circumstances of the case.

In my view, Sri Lañkan judges have a greater duty to uphold and adhere to these principles than if they were required to follow canons of judicial conduct 'imported' with the legal system that was imposed on this country.

Manu required judicial proceedings to be undertaken in an atmosphere of simplicity. Proceedings in a *gamsabhā* were very informal; those in other tribunals, like the *raṭa sabhā* (district courts) and the *Mahānaḍuva* (Great Court) were somewhat more formal. Indeed, those who are accustomed to proceedings in modern courts, may be inclined to suppose that the traditional courts were social gatherings rather than tribunals. Yet, a trial was a solemn occasion, where judges had to observe certain rituals to remind them of the way in which they should approach their tasks, including, of course a clean mind, unaffected by prejudices and irrelevant considerations. "A king, desirous of investigating law cases, must enter his court of justice, preserving a dignified demeanour, together with *Brāhmaṇas* and experienced councillors.[37] There, either seated or standing, raising his right arm, without ostentation in dress and ornaments, let him examine

the business of suitors ... But if the king does not personally investigate the suits, then let him appoint a learned *Brāhmaṇa* to try them.[38] That [man] shall enter that most excellent court, accompanied by three assessors,[39] and fully consider [all] causes [brought] before the [king], either sitting down or standing."[40] "Having occupied the seat of justice, having covered his body, and having worshiped the guardian deities of the world, let him with a collected mind, begin the trial of causes."[41] "The [judge] being purified, shall ask in the forenoon the twice-born [witnesses] who [also have been] purified, [and stand] facing the north or the east, to give true evidence in the presence of [images of] the gods and of *Brāhmaṇas*."[42]

The judicial function was held in high esteem by the people of ancient Asia. It was said that when the monarch and the Chief Judge and judges "examined causes attentively", their function was "comparable to an act of religion";[43] and that "an officiating priest and one entrusted with the trial of causes are declared to be equal.[44]" Even today, people often refer to the courts as "temples of justice".

The failure of judges to maintain the high standards expected of them in the discharge of their virtually sacerdotal duties was, and is, therefore, a serious matter of public concern.

NATIONAL MUSEUM

Sir John D'Oyly in conference with three chieftains - a mohottala keeps a record.

CHAPTER X

THE ALLEGATION OF CORRUPTION

TRADITIONAL CONDEMNATION

The fairness of the administration of justice depends on judges being impartial: There can be no impartiality if a judge's decision is influenced by extraneous circumstances, including bribery or favours. There was no uncertainty in the way in which a monarch, and by necessary implication, those appointed by him to discharge judicial functions, should conduct themselves. "Neither for friendship's sake, nor for the sake of great lucre, must a king let go perpetrators of violence, who cause terror to all creatures."[1] "But those appointed [to administer public] affairs, who, baked by the fire of wealth, mar the business of suitors, the king shall deprive of their property."[2] "Let the king confiscate the whole property of those [officials] who, evil-minded, may take money from suitors, and banish them".[3]

Corrupt judges did turn up from time to time; but corrupt judges were not tolerated. As we have seen, keeping bad judges on the bench was one specific failure on the part of a monarch to discharge his duties and a way of bringing misfortune to the kingdom.[4] Monarchs were anxious to ensure purity in the administration of justice. In King Niśśaṅkamalla's inscription found near the Vān-Äla, Poḷonnaruwa, it appears that the Accountants of the Treasury caused suspicion in the King's mind as to their integrity. The King, therefore exhorts them, in case they are in need of anything, to take it after informing the authorities. Those who act otherwise are threatened with royal disfavour and a hint is given of its dire consequences. A person who misappropriated gold, silver, money, iron, lands, or cattle or slaves, the King warned, would "be tormented by the fire of anguish called remorse".[4A] Officials were prohibited from accepting gifts or, except in accordance with custom, taking anything for their subsistence.[5] The Badulla Pillar Inscription[6]

records the fact that the receipt of gifts by judges was "contrary to custom".[7] The *Dhammaddhaja-Jātaka*, the *Bhaddha-Sāla-Jātaka*, the *Mahābodhi-Jātaka* and the *Khaṇdhāla-Jātaka* refer to the replacement of corrupt judges and the reversal of their decisions.[8] Aggabodhi VII (772-777 AD) dismissed dishonest judges (euphemistically described at the time as discharging their duties with 'cunningness' - *kūṭ'aṭṭakārake*). "... and judging according to justice, he rooted out unjust judges".[9]

When Knox and D'Oyly wrote, they purported to describe the unsatisfactory manner in which justice was administered in the days of Rājasiṁha II (1635-1687 AD) and Sri Vikrama Rājasiṁha (1798-1815 AD). There was room for improvement, as it is the case with any system; however, the system prevailing even at the time they wrote was not intrinsically, inherently or irremediably flawed.

Ariyapala[10] observed that, although the highest standards were set, instances were not wanting when the

> "guardians of law and order fell below the expected ideals. Instances of miscarriage of justice due to bribery and corruption, attachments and personal grievances are also noted, e.g. '*yam kenek kerehi musuppu ättevī nam boru yukti kiyālā ... sāsanika vuvot pakṣabala ladin ... nävata atlas kāpiyā ... tavada yam kenek pohusattu vū nam nohimi vuvan himikaravā nulūvot gähaṭak vädahetī yana bhayin ayuktiyakma yuktikoṭa kiyat da'*, if displeased with any one he would regard falsehood as truth ... if dealing with government having party power ... again having taken bribes ... fearing that some harm be done to him if anything unjust by one who is rich is not upheld. (*Saddharma-ratnāvaliya* 780). This reference shows that the wealthy, as often happens, influenced judicial activity, as did partisan feeling. If the judges could thus have been influenced, there is little doubt that witnesses were still more influenced unduly by offers of bribes. The *Saddharmā-ratnāvaliya* refers to bribes to witnesses: '*des kīvavunṭa dena atlasak sē* (55). The inscriptions also refer to such illegal practices. Thus the Badulla pillar-inscription of the tenth century says: "In the days gone by, the subordinate officials of the magistrate in charge of the market transgressed the regulations ... exacted fines illegally and received presents contrary to custom." [11]

Ariyapala[12] stated:

> "The title *gam-lad* seems to be identical with that of *gam-mudali* in the [*Saddharma-ratnāvaliya*], which also mentions that people were in the habit of taking presents to these officers (497), and that very often these officials were insulted by the people, perhaps when dissatisfied with any of their decisions ([*Pūjāvaliya*] 510). These gifts may have been some sort of court-fee given to the mudaliyars who were vested with judicial powers and it is very likely that the biggest fee had the best deal. The manner in which the [*Cūḷavaṁsa*] refers to the *gāmabhōjakās* whilst describing the conduct of the royal officers and princes during the time of Jayabāhu I [1110-1111] when there was strife and unrest in the country, makes us confirm our view regarding these officers: 'Like the *gāmakabhōjakā* wholly and ever void of all dignity, their mind bent on destruction without end, wholly lacking in royal pride, false to their own or to others' welfare, without any restraint in their efforts: thus lived all these rulers forsaking the path of (good and ancient) custom' ([*Cūḷavaṁsa*] 61. 73." [13]

Both, in the Badulla inscription, and in the reference in the *Cūḷavaṁsa* cited by Ariyapala, the reprehensible conduct of the officials concerned was said to be contrary to custom. Corruption was not a part of the system; it was unusual and condemned.

THE BRITISH PERCEPTION

Knox[14] referred to the right of appeal from the village tribunal, to the headman, and then to the *adigārs*, enjoyed by dissatisfied litigants, but explained that "fees" had to be paid to those who heard the appeals and that one who gave the "greatest bribe", succeeded. He said " it is a common saying in this land, that he that has money to see the Judge, needs not fear nor care, whether his cause be right or not. The greatest punishment that these Judges can inflict upon the greatest malefactor, is but imprisonment, from which money will release them."[15] Earlier,[16] he referred to the powers of chiefs to commit offenders to prison, "into which when they are once fallen, no means without money can get them out again."

"The Adigārs", Percival said,[17] "are the supreme judges of the realm." Davy[18] said:

> "As the office of Adikar was not for life, - only at the king's pleasure, and as there was no emolument (*sic.*) attached to it of any consequence, but the perquisites of the court, it may be easily imagined that the Adigars were not very pure judges; they are described, indeed as completely corrupt, in the constant practice of taking bribes, and, excepting in the most flagrant cases, much more biased by gold than by argument, - insuring always to the richest man the better cause."

Based especially on the observations of Knox and Davy, and, perhaps a not too careful reading of the observations of some other British writers of the early part of the nineteenth century like D'Oyly, there seemed to have been a belief that corruption was endemic and that it was habitually prevalent in Ceylon (as Sri Laṅka was then known) due to permanent, local, characteristics of the "native" system.

CORRUPTION ELSEWHERE

Corruption has reared its head from time to time everywhere. It was once a serious problem in England. As Justice Thomas[19] observed: "[In England] [t]he acceptance of money from parties was quite prevalent until after the Tudor period. With few exceptions, all officials (including judges) were by our standards unblushingly corrupt." Judge Carrol T. Bond[20] said: "The acceptance of money from interested people, bribes indeed, was not yet out of fashion during the reigns of the Tudors. The judges and all other classes of officials in the great Elizabethan age were notoriously, and rather unblushingly, corrupt." He observed[21] that "The practice of New Year's gifts from suitors to judges, and the sale of offices by judges, was destined to have a vigorous life for a hundred years and more."

It is generally believed that corruption in the judiciary is no longer a problem either in the United Kingdom or in Sri Laṅkā.

And because it is an uncommon thing, we spend very little time considering it; nevertheless it is retained on the agenda of judicial discussions, because it has happened and "the possibility of its recurrence must be viewed as an ever-present danger".[22] Corruption goes beyond taking money or property; it can manifest itself in many other, less obvious, subtle ways, e.g. where favours are conferred on a judge or the members of his family that oblige a judge or make his conduct suspect. Moreover, it has been alleged that there are communities in the world in which corruption in the judiciary is said to be rife.

THE BADULLA INSCRIPTION

The Badulla pillar-inscription did refer to the exaction of illegal fines and the receipt of gifts by the *daṇḍanāyaka* (a judge and high military official) contrary to custom. However, the inscription also records the fact that when the problem was reported to King Udaya IV (946-954 AD), he took steps to rectify the matter by ordering that "a decree should be passed and promulgated prohibiting the unlawful acts committed in violation of the institutions established in the time of " King Kassapa IV (898-914 AD); and the officials visiting the place were required to ensure that the rules were observed. [23]

ALLEGED CORRUPTION IN THE KANDYAN KINGDOM

D'Oyly[24] noted that "verbal orders have [o]n different occasions been given by the kings forbidding the chiefs to receive bribes ... and do injustice." Admittedly D'Oyly, in parenthesis, said, "tho' it is denied by some to the Extent stated". D'Oyly makes no reference to any authority or evidence in support of his qualification. As we shall see, Sri Vikrama Rājasiṁha punished corrupt officials with great severity: It seems to confirm the view that he meant his prohibition against bribery and corruption to be taken seriously. Moreover, D'Oyly [25] said that

> "although under the system which prevailed, the way was open to the [perversion] of justice, it would be hard to deny that substantial justice was not infrequently obtained as in the following instances.

> 1st. When cases were heard in the presence of the king who except in terms of [minority] or inexperience when they were under the influence of powerful chiefs were seldom known to judge unjustly between individuals.
>
> 2dly. When cases were investigated in the Great Court, when the publicity of the enquiry and the number of the chiefs who were judges were in general securities against a palpable injustice, tho' fees were sometimes presented to the chiefs or principal Weight (*sic.*) in that court and sometimes probably influenced its decisions, especially when assessors were few.[26]
>
> 3dly. When trifling cases are heard and settled by the village court in which the principal inhabitants of the village in fact constituted a jury.
>
> 4thly. When litigations arose amongst the most indigent part of the community who having nothing to allure the avarice of their judge, will usually obtain justice from a single chief tho' it be more difficult to obtain a hearing - and there have been some few Kandyan Chiefs reputed no less for their ability in the investigation of suits [than] their [integrity] in the decision of them.
>
> Lastly. The abuses above mentioned are much more frequent in the *disavonies*[27] which are distant from the Capital th[a]n in the districts surrounding it. Because the inhabitants of the latter are more immediately under the royal eye and superintendence."

Abuses at a provincial level, it was alleged, had existed in the days of Rājasiṁha II (1635-1687). Knox[28] observed that the administrators of those areas were expected to maintain good order. "They have the power also to decide controversies between the people of their jurisdiction, and to punish contentious and disorderly persons, which they do chiefly by amercing a fine from them, which is for their profit, for it is their own; and also by committing them to prison. Into which when they are once fallen, no means without mony (*sic.*) can get them out again."

As far as I have been able to ascertain, no allegation of corruption has ever been made against any monarch of Sri Lankā.[29] And there was, as D'Oyly said, no problem with the *gam sabhā*: So, there was no corruption at the top or bottom of the judicial hierarchy. Corrupt practices may have prevailed, if at all, in areas outside the capital city of Kandy, and that too in connection with the administration of justice by *some* chiefs.

If that unfortunate situation did exist in the days of Sri Vikrama Rājasiṁha (1798-1815), it has been said, it was because the monarch "exercised an imperfect controul" *(sic.)*[30] over the chiefs and others who administered justice. No evidence is adduced in support of D'Oyly's statement. On the other hand, the Copper-Plate Charter of Sri Vikrama Rājasiṁha very clearly showed that the monarch was very much in control of his chiefs even in far away Hurulu Palāta.[31] Moreover, we shall see that traditionally, the way in which justice was administered throughout the kingdom was very elaborately monitored by itinerant officials,[32] and by the monarch himself, during visits to various parts of the kingdom.[33]

Assuming that an inaccurate decision was given because the judge had been bribed, surely, the matter could have been rectified in appeal? D'Oyly[34] stated that the liberty of appeal did not afford an effectual remedy against wrongs, for two reasons:

> "1st. Because many persons are fearful of hazarding the displeasure of a powerful chief who might find many future opportunities of injuring him.
>
> 2d. Because the king was not frequently in the habit of personally investigating suits between common individuals, and if referred to the Great Court for inquiry, the influence of the Chief who had passed the first decision or if his relation or friend, a new Bulatsurulla might still give a preponderance contrary to equity."

On the other hand Marshall[35] said "The king devoted much of his time to business and to hearing causes in litigation ..." And as for people being afraid of offending chiefs, lest they should take revenge, D'Oyly himself said that because officials who came to the capital city had opportunities of making representations to the king, the chiefs were on their guard.[36]

In any event, what importance should we attach to the suggestion that corruption and undue influence prevented justice being done in the Great Court? D'Oyly observed that the publicity of the proceedings and the presence of several arbiters[37] in proceedings of the Great Court ensured that "substantial justice"

was usually obtained from that court. Moreover, it was a court that reported directly to the king, and it was a court that was located in the capital city and "immediately under the royal eye and superintendence," factors that D'Oyly said inhibited corruption.

Not all the chiefs were corrupt. D'Oyly himself records the fact that there were some, (albeit) "few", " Kandyan chiefs reputed no less for their Ability in the investigation of suits, th[a]n their Int[e]grity in the Decision of them."[38] No doubt, as he says, when a matter came up before such a chief sitting as a single judge, justice would have been done. Would not the honesty of such chiefs also have acted as a brake on corruption when the chiefs sat together in the Great Court, especially given the fact that the proceedings were in public?

Even the chiefs outside the capital city may have been on their guard: D'Oyly[39] stated that, since officials who frequently came to the capital city on public business had the opportunity of placing their grievances before the king or the *adikārs*, their own chiefs were "fearful of doing injustice either by partial judgment, or by severe punishment or by exorbitant and unusual fines."

Ralph Pieris, who had said[40] that chiefs were bribed by wealthy litigants, later stated:[41]

> "But justice could not always be baulked by a rich litigant. A man driven to desperation would appeal to the king ... The king would then order a trial before the Great Court (*mahā naḍuva*). Appeal to the king was the last resort of a desperate suitor, for he feared to incur the wrath of an influential chief. On the other hand, the possibility of appeal to the king, who would sometimes punish corrupt officials with extreme severity, deterred officials from making patently unjust decisions."

D'Oyly[42] observed that the successful litigant was required to make a fixed payment and that "according to the lawful custom of the kingdom no other fee [was] payable ... and that verbal orders have [on] different occasions been given by the kings forbidding

the chiefs to receive bribes ... and do injustice." Moreover, as Ralph Pieris observed, "the king sometimes punished corrupt officials with extreme severity." Sri Vikrama Rājasiṁha ordered death by impalement of a *muhandirama*, an *āracci* and a *kankāṇama* of the *gabaḍāva*[43] for releasing people who came on *rājakāriya*,[44] taking bribes from them for the favour.[45]

THE BULATHSURULLA

It was alleged that every litigant appearing before his chief was expected to present him with a *bulathsurulla* - a sheaf of 40 betel leaves, [46] "and unless he be exceedingly poor, a pingo of dressed rice or cakes, jaggery, fruits or vegetables the value of which is trifling and being established universally by custom, it is a token of respect and not a bribe."[47]

However, in order to expedite the hearing, it was alleged, the plaintiff gave a subordinate officer a *bulathsurulla,* which was - not another sheaf of betel leaves, as the word might suggest, but some money, which was passed on to the chief. When '*bulathsurulla*' took on this meaning, is not clear. However, in one of the reports sent to London by Governor Brownrigg,[48] the Governor, who had complained earlier[49] of the burden imposed by the *disāva* on the inhabitants by requiring them to supply him and his retinue, said: "Moreover, the habit of giving presents with every complaint added to the burden, and the *bulatsurulla* endangered justice." It was said that after the plaintiff had offered a *bulathsurulla*, the defendant then responded in like manner. In the words of D'Oyly:[50] "The advantage of the rich over the poor suitor and other consequences of this practice, are too obvious to pursue farther."[51]

RALPH PIERIS ON CORRUPTION

Ralph Pieris[52] stated:

> "Since a litigant could always appeal to a higher official if dissatisfied with the decree of a subordinate one, a wealthy man with

> a weak case would go to a higher official and bribe him to grant a decree in his favour without even hearing the other party. Originally a token of respect, the *bulat surulla* came to be an euphemism for a fee. It was said to have at one time been limited to five or ten *ridī* payable by the successful litigant upon receiving the *sīttuva* or written decree in his favour. The *bulat surulla*, which was returned to the litigant who did not gain his suit, was hardly more than a bribe in the hands of unscrupulous officials. But there were a few chiefs "reputed no less for their Ability in the Investigation of suits, than their Integrity in the Decision of them", in which case the unsuccessful litigant would bide his time and re-open the case when the official of integrity was replaced by a less scrupulous successor. In *Dinnewekke Meddē Ganagoda Lēkam* v *Welegedere Kariyakorana Rāla*,[53] an ordinary dispute about land which, as Davy says, was the commonest subject of litigation, it transpired that the case was heard by Mīgastänne Adhikarama in Saka 1709, and after full inquiry judgment was given in favour of the defendant. In Saka 1712 Piḷima Taḷavvē Senior confirmed that decision, but in Saka 1730 Piḷima Taḷavvē junior decided in favour of Plaintiff. This decision was set aside by Ähäḷēpoḷa in Saka 1733. Finally, Molligoḍa Adhikarama made a full inquiry in Saka 1737 - a record of twenty-five years of litigation."

Surely, the principle of *res judicata* would not have made such a situation possible?

In India, *praṇgnyāya - res judicata* - was one of the four available defences to an action in court.[53A] Once a decision was given it could not be reopened. As Nārada [53B] picturesquely puts it:

> *Yathā pakvesu dhānyeṣu niṣphalāh pravṛiṣo gunāh*
> *Nirṇītevyavahārānam pramānam aphalaṃ tathā*

Primarily this applied to the king's court since it was the final court. Yājñavalkya[53C] however provides that the king may review and set aside a decision which has been wrongly given, in which case the party who had won before as well as the *Sabhāsadas* or *Sabhyas* (councillors) who had advised him or decided the case were punishable with a fine equal to double the value of the suit.

The king, in keeping with the flexible approach required by him in the administration of justice so as to ensure that an accurate decision was given, did not preclude himself by procedural restraints from acting in revision or review in appropriate circumstances. However, unless and until a matter was set aside, a decision precluded other litigation between the same parties based on the same cause of action. In the case of other tribunals, there was no finality, in the sense that the matter could have been canvassed in appeal in a higher tribunal. But that is not the same thing as saying that a matter could be reopened in that very tribunal when its composition changed. As far as *that* tribunal was concerned the matter was at an end, unless and until it was set aside in appeal.

What was the position in Sri Laṅkā?

L.J.M. Cooray[54] stated as follows:

> "**Res judicata**. In Sinhalese procedure there appears to have been no law to prevent the retrial of a case previously heard and decided. The appointment of a new chief or headman offered an opportunity of obtaining a decision different to that given by his predecessor in office. The ancient Sinhalese law did not know of *res judicata*."

Cooray cites no authority in support of his proposition. Cooray reproduces, verbatim, what Hayley stated [55] under the title "Res Adjudicata", only adding the last sentence.

On the other hand, there is abundant evidence that in Sri Laṅkā, once a person had been punished for an offence, he or she could not be punished again for the same offence: It was a fundamental legal principle. The Koṇḍavaṭṭavan Pillar Inscription of Dappula IV (924-935 AD) stated: "Fines shall not be levied once again for offences which have been settled by levying fines previously." - *pere daḍ genä päṭävū varadaṭ vaṭālā daḍ nogannā koṭ.* [56] The Slab inscription of Kasappa V (914-923 AD) from the Abhayagiri Vihāra, stated:[57] "If fines have already been levied by former officials, in the manner known to the village, no fines shall be levied again for the offences [with which the villagers were]

charged." The Jētavanārāma Sanskrit Inscription, stated: [58] "If in any village they [i.e. the authorities] cause those [householders] who have undergone lawful punishment [for crimes] to return [to their homes] ... neither the *vārikās*[59] nor those engaged in work shall take possession from [these] householders of their fields , &c., except on account of a fresh offence of theirs."

Although the matter of punishing a person again for a second time is not expressly mentioned in that record, it may be reasonably inferred from the Badulla Pillar Inscription[60] that it was the intention of the monarchs to protect their subjects from harassment by officials, among other things, in the process of levying and collecting fines.[61] It is reasonable to assume that the general prohibition against illegal practices would have included the matter of vexation by levying punishments for offences that had been already dealt with according to law, for that is in consonance with the law laid down in the inscriptions I have referred to earlier. Vexation could not only be caused by unjustifiable demands for fines, it could also have been caused by renewed litigation instituted without sufficient grounds causing trouble or annoyance to a defendant. It is to be expected therefore that it would have been a requirement that the discretion, if any, vested in a new chief or headman to "reopen" a case, as Pieris and D'Oyly suggest, or as Cooray suggests, to order a "retrial", was not to be exercised arbitrarily; and that a litigant who had obtained a judgment was not to be deprived of it without very solid grounds. The cases, D'Oyly said, were very few in number and he, significantly referred to such practices as 'abuses'. [61A] Recorded 'Sinhalese procedure' on this matter is not to be found. It can therefore be neither admitted not denied with absolute certainty that the law permitted the reopening, or a retrial, of a matter that had been adjudicated upon when a new chief or headman was appointed. However, the weight of evidence provided by the inscriptions does support the view that once a matter had been disposed of, it was settled. The fact that a person may have, as suggested by Pieris, awaited the arrival of a corrupt appellate authority is another matter. It is not clear as to which of the Chiefs

mentioned - Mīgastänne, the Piḷima Taḷauvēs, Ähäḷēpoḷa or Molligoḍa - were corrupt. However, they were all *Adikāramvaru*, exercising merely parallel authority, and *not acting in appeal*. In reversing decisions of their predecessors in office, they were therefore, in my view, acting without jurisdiction.

In systems where civil and criminal jurisdictions are separated, in a civil action after a matter had once been put in issue and tried, and there had been a finding upon that issue, and thereupon a judgment, such finding and judgment are conclusive between the same parties on that issue. A matter may be regarded as "finally determined" either where, if an appeal to a higher tribunal was available, the unsuccessful party had either failed to avail himself of his right of appeal or where his appeal had failed. That is essentially what *res judicata* is about. For this rule, two reasons are usually assigned: the one, hardship on the individual that he should be twice vexed for the same cause - *nemo debet bis vexari pro una et eadem causa* (it is a rule of law that a man shall not be twice vexed for one and the same cause); the other, public policy, for it is in the interest of the state to have an end of litigation - *interest rei publicae ut sit finis litium.*

The maxim *nemo debet bis vexari pro una et eadem causa*, also expresses a fundamental rule of our modern criminal law, which forbids that a man should be put in jeopardy twice for one and the same offence. It is the foundation of the special pleas of *autrefois acquit* and *autrefois convict*, in terms of which, when a criminal charge has been once adjudicated upon by a court of competent jurisdiction, the adjudication is final, whether it takes the form of an acquittal or conviction. As we have seen, it was also a fundamental rule of the law of Sri Laṅkā that a person could not be punished twice for the same offence.

A system that recognized the justice of protecting an offender from vexation might reasonably be expected to adhere, as a matter of consistency, to that principle in a civil matter, *a fortiori*, where no sharp distinctions were drawn between civil and criminal

matters. Ralph Pieris observed[62] "the Sinhalese did not make a formal division of their laws (*nīti*) into crimes and civil wrongs."

THE CONCEPT OF 'SETTLEMENT' OVERLOOKED

In ancient India, quite apart from the defence of *praṇgnyāya*, one was prohibited from taunting another by referring to an old offence. Nārada (xv) said: "One must not tax with his offence a man who has done penance according to law, or who has received due punishment from the king. By transgressing this rule, one becomes liable to punishment." Likewise, in Sri Laṅkā, as we shall see, accusing a person of an offence which had been adjudicated upon and settled in a *raṭa sabhāva* or by the chief was a punishable offence. The presiding officer, in his final address, told the parties: "it is prohibited from this day that the accusation should be made publicly by any man, woman or a boy or girl in a quarrel over firewood, water, other quarrel or in a playing field. .... The prohibition is thrice valid." (Kapuruhami, p. 54).

The usual reasons given to explain the rule that no person must be tried or punished for the same offence, or wrongdoing over and over again, namely, to prevent vexation in the interests of the parties, and to prevent a waste of resources and assist in the maintenance of social order by the pacific settlement of disputes were, perhaps, as relevant in times past as they are today. Additionally, in Sri Laṅkā, there was the fundamental concept that when a matter had been decided it was 'settled'. If we were to hark back and return along the course taken till the roots of our legal system are found, we would end up in the pre-juridical state of the society of the early settlers, represented by the arrival of Vijaya, when penance, as prescribed by the sages, was the only sanction against socially unacceptable conduct. Once there was expiation in the prescribed manner - whether by way of punishment, restitution, compensation or otherwise, - the matter was at an end.

As we have seen,[63] a court may have pronounced a verdict or declared a finding, having one or more objects, e.g. compensation

or deterrence, in view; but at the heart of a matter involving a charge or a claim lay 'settlement' by expiation: a release from either the burden of moral guilt or social obligation, or both.

The supposition that when chiefs changed, a matter could be canvassed again is as erroneous as an assumption that when a new judge is appointed to a court today, those who were unsuccessful earlier could have a new trial. The case of *Dinnewekke Meddē Ganagoda Lēkam*, cited by Ralph Pieris, is contrary to the general principles of law even under the traditional system. Pieris' suggestion that a chief could vary a decision of an inferior tribunal "without even hearing the other side" is equally untenable, for it was a basic principle of Sinhalese law that a decision could be given only after both sides were heard: *ubhaya pakṣayen ma ädyanta asa ganna daḍek da.*[64]

ALLEGED MOTIVES FOR CORRUPTION

We turn now to the supposed motives for corruption.

Davy [65] said :

> " As the office of Adikār was not for life, - only at the king's pleasure, and as there was no emolument (*sic.*) attached to it of any consequence, but the perquisites of the court, it may be easily imagined that the Adikārs were not very pure judges; they are described, indeed, as completely corrupt, in the constant practice of taking bribes, and, excepting in the most flagrant cases, much more biassed in their opinions by gold than by argument, - insuring always to the richest man the better cause."

It was said that, in cases of theft, the chief who was to recover the property for the complainant had frequently to be promised in advance, and later given, a present or a fee;[66] and if a fine was imposed, that was shared between the complainant and the chief who judged the matter[67] or simply regarded as a perquisite of the chief who imposed it.[68] A chief was not paid a salary, and had no security of tenure.[69] On the other hand, he was "sometimes required by the king to make extraordinary contributions and to pay fines".[70] Therefore, it was said, the chiefs set about

enriching themselves as quickly as possible at the expense of litigants. [71]

As far as Rājasimha II (1635-1687) was concerned, the monarch did not seem anxious to enrich himself. Knox,[72] observed:

> "At the time of New-year, all his Subjects, high and low, do bring him certain Presents or rather Taxes, each one a certain rate; which formerly he used constantly to take, but of late years, He so abounds with all things, continually putting into his Treasury, and but seldom taking out, and that but little, that he thinks scorn to receive these his due revenues, lest his people should think it were out of necessity. Nevertheless the Great Men still at the New-year, bring their Presents day after day before the King at his coming forth, hoping it will please him to accept them, but now many years he receives them not..."

Did Sri Vikrama Rājasimha's efforts to make the lake of Kandy and to erect public buildings drive him, not only to illegally demand labour from his people, but also finances? Possibly not. As we have seen Sri Vikrama Rājasimha did not oppress the people and levied few fines and received "small peyhidun".[73]

The suggestion that the chiefs exacted as much money from litigants, as quickly as they could, to meet the demands of the king for contributions and to pay the fines imposed on them, does not appear to be correct; the chiefs were not required to make payments that were arbitrarily and unlawfully levied, and when payments were due, the debtors were not placed under pressure. D'Oyly[74] stated as follows:

> "The Kandyan Chiefs are sometimes fined by the King in sums varying from 20 to 100 Ridi, principally for neglect of duty, and attendances (*sic.*) or offences against form and decorum. In such cases, the Chief is delivered into the custody of the Adikar or in his absence, to the officer nearest in Rank, and forbidden to leave the palace till the fine is paid and here a singular courtesy is observed. The Adikar immediately sends for the money from his own house - and paying the Fine into the Treasury reports it, and obtains the

> discharge of the Chief who repays the amount afterwards to the Adikar at his convenience and leasure (*sic.*)."

A chief was not paid a salary; but that did not mean there was a "strong inducement" to misappropriate fines and indulge in bribery. Officials were allotted lands and villages, the produce of which they were entitled to enjoy.[75] Paranavitana[76] stated that "*bojhaka, bojaka, bojhika* or *bojika* (Skt. *bhojaka)*, literally meaning 'one who eats', denoted a personage, from the king downwards, who depended for his maintenance on a share of the produce of a particular land (usually that of a village or villages), to which he was entitled as the overlord."[77] The Koṇḍavaṭṭavan Pillar Inscription recorded an edict in respect of a village enjoyed by or attached to a *daṇḍanāyaka* (a high official vested with civil functions and military powers). Paranavitana said that "It, perhaps among others, was probably assigned in order to enable him to maintain the dignity of his office with the revenue that it brought him."[78]

Ranawella[79] stated as follows:

> "As to the payments of wages to state officials of various capacities who were employed by the king, instead of a salary, they seem to have received allotments of some lands and villages, the income of which they were privileged to enjoy. The *Jātaka-aṭṭhakathā* has referred to these lands as *bhoga-gāma* or *bhatta-gāma*, and its commentary has interpreted it as 'the villages of revenue' or 'Divel-gam'. The document that had been maintained a record of such grants was called *Divel-pot* (*Jīvita-potthaka*) and its keeper the *Divel-potun* (*Jīvita-potthakin*)..."

Ariyapala [80] stated that officers of state were

> "bestowed land, serfs, cattle, heritable lands, gold, gems, clothes and ornaments in accordance with their positions (EZ 2.2.90). To the *yuvarāja*, for instance, the Southern Country was given, and he enjoyed the revenue derived from this part of the land. The Sdhlk relates the story of a man named Tissa who lived in a certain village in Ceylon. His father instructed in the science of weapons and showed

> him to the king; and from this time onwards he served the king loyally and became a trusted servant. The king, being pleased with him, appointed him a minister and made over Māgama to him (672). There is no doubt that people who went out of office, or were divested of such dignities, laid aside their claims to such grants, except perhaps under special circumstances, when the king assigned to them whatever remuneration he pleased for the services they may have rendered him."

We turn to the question of fines alleged to have been appropriated by officials: In general, fines were paid into the Royal Treasury. This was always so, and even during the sixteenth and seventeenth centuries: Ribeiro[81] observed that a fine imposed on a murderer was paid to the Royal Treasury. However, exceptionally, the king sometimes decreed that, fines should be used for other purposes. Thus the Timbiriväva Pillar-Inscription of Kassapa IV (963-980 AD) stated that the fines exacted after making due inquiry in the village Mabili-gama "shall not be appropriated by the State", showing what the usual practice was, "but shall be handed over to the Madbiyan *pirivena* (monastic college)."[82] The Slab Inscription of Kassapa V recorded that it was decreed that "All the fines levied on the *gam-bim* (lands and villages) appertaining to Ätvehera shall be expended on repairs to works in Ätvehera.[83] The Tablets of Mahinda IV at Mihintalē seem to state that the share due out of the fines levied from certain villages shall be appropriated by the *vihāra*.[84] The Vēvälkäṭiya Slab Inscription of Udaya IV (946-954 AD) provided that *sipu daḍ* and *sihin daḍ* - fines imposed on persons found guilty of assault [85] - "shall be divided amongst themselves by the holders of villages and *pamuṇu* lands in accordance with the former custom."[86]

The Rock-Inscription at Situlpavuva of Gajabāhu I, as it seems do all other records of that monarch, registers a donation to the *saṅgha* (clergy); but it is not a donation of the usual type: The Situlpavuva inscription provides a source of revenue for the limited, and specific, purpose of providing medicine to the monks of the Situlpavuva monastery. Medicine was one of the four requisites of a

monk; yet, it has been said to be the only known document which has recorded an endowment solely for the supply of medicine to the monks.[87] Usually, but there are exceptions, the provisions of such grants are concerned with maintenance in general. But the most unusual feature of the Situlpavuva donation, and, as far as I can ascertain, there are no other instances, is this: whereas the normal type of donation to the *saṅgha* was from lands and water resources, the donation made by Gajabāhu I relates to the diversion of revenue due to the monarch, namely a sum of two *kahāpaṇas* a day, from the *mahā-vinica* - the High Court. It was possible that two courts of justice in two separate places were meant.[88] Paranavitana said[89] that the revenue (*labanaka*) of two *kahāpaṇas* a day, was the "average" payment based on amounts received by the court, or, each court at the two places.

But what was the character of the two *kahāpaṇas*? Were they revenues from fines or court fees levied at the institution of proceedings? Paranavitana[90] stated as follows:

> "As the court of justice at the place is called *mahā-vinica*, it was obviously a place of importance, but if the sum of two *kahāpaṇas* a day was the total of receipts due to the king from the Court, it does not seem that many cases were heard daily there. We do not, however, possess certain knowledge of the revenue due to the king as dues from courts of justice, and it is a pity that the present document [The Situlpavuva Inscription] contains no further details of the fees which the litigants of the second century *had to pay to the state*."

But this we do know: That in general, money collected from litigants, as fines or fees, were meant to go to the Treasury unless otherwise directed by the king. We also know that judges, were prohibited from receiving gifts: it was contrary to custom and unlawful.[91] It was also unlawful for arbitrary fines to be imposed. Officials were required to "levy such fines as are in keeping with former custom, and according to the regulations ... [and] should not do anything contrary to law."[92] The amount payable was fixed, and only that amount could be lawfully taken.[93] Slab A of the Tablets of Mahinda IV at Mihintalē prohibited officials from taking means of subsistence except contributions in

accordance with former custom: It was further decreed that accounts of receipts and disbursements had to be prepared on a monthly basis and maintained under lock and key and published annually.[94] Where the amount of a fine had not been assessed in accordance with custom and regulations, an offender could not be imprisoned for default.[95]

The Koṇḍavaṭṭavan Pillar Inscription[96] prescribed in exact terms the penalties that could be imposed for specified offences. With regard to the levying of dues on trees and vines, it stated that it should be on the basis of the law and that no sums in excess should be levied. If objection was taken to the imposition of a fine on the ground that it was excessive, the matter was to be decided by the other residents of the village, after due consideration, and nothing in excess thereof was to be levied. It was stated that the laws promulgated earlier should be observed and that no illegal acts should be committed.

D'Oyly[97] refers to fixed fees and the fact that kings prohibited chiefs from receiving bribes. Perhaps certain chiefs ignored the laws, customs and rules, and the expressly stated orders of the king, and did resort to corrupt practices during the days of Sri Vikrama Rājasiṁha, if D' Oyly was right, on account of his 'lack of control' ; whereas, more vigilant monarchs, like Aggabodhi VII (772-777 AD), "rooted out" such judges.[98]

The British officials regarded the system prevailing in the Kandyan Kingdom as prejudicial to the impartial administration of justice as they conceived it and therefore replaced it, despite assurances in the fourth clause of the Convention of 1815 of "saving ... to all classes of the people the safety of their persons and property, with their civil rights and immunities, according to the laws, institutions and customs established and in force amongst them."

One of the unsatisfactory things they were said to have found was that the system opened the way to corruption; they came to

that conclusion because they erroneously assumed that the practice of judges receiving gifts in private was customary;[99] they mistakenly supposed that fines were the perquisites of the judge who levied them; they misunderstood the way in which officials were remunerated and supposed that, because they received no salaries, and there was no security of tenure - every person holding office during the king's pleasure, (the "pleasure" principle continues to operate in the public service, but not as far as judges are concerned) there was a strong inducement to make as much money from litigants as possible in the shortest available time; they failed to appreciate the procedures for paying fines, and erroneously assumed that the chiefs were under pressure, and were, therefore, driven to extort money from litigants.

There was perhaps room for improvement: the giving of a *bulathsurulla* to accelerate a hearing, if the allegation was true, was certainly an objectionable procedure that required review and change. Yet, on the whole, there was nothing irremediably wrong with the system. It may have been flawed in certain respects. In practice there may have been some lapses. They were matters that could have been easily rectified without jettisoning the whole system.

In Sri Laṅkā, in the pre-colonial era, there may have been sporadic manifestations of corruption at certain levels of the judiciary. However, corruption was certainly not endemic: It was neither habitually prevalent in Sri Laṅkā nor was it due to permanent causes inherent in the system. Following the example of Udaya IV, judges should have been directed, to do their duty.[100] Indeed Sri Vikrama Rājasiṁha forbade chiefs to receive bribes and do injustice.[101] If some judges, nevertheless, continued to be corrupt, and, therefore, "unjust", the appropriate remedy, perhaps, was to follow the example of King Aggabodhi VII and root *them* out, rather than rooting out the *system*.

CHAPTER XI

A SOCIETY WITHOUT LAWS ?

EUROPEAN MISCONCEPTIONS

While there seems to have been agreement among early European writers and officials of the last century that the king had untrammeled power, which, as we have seen was an erroneous view, yet there was uncertainty as to whether there were any written laws or codes of law or what the sources of law were and whether customary laws were laws 'properly so called' and whether, assuming the king to be, in theory, supreme, the laws, customary or otherwise, were of little or no value because they could, it was supposed, be lightly disregarded or interpretted at will.

In 1744, Heydt said:[1] "They have no other laws but the will of the King, who, when he orders anything must be obeyed by everyone without any demur. Yet they often appeal to their old customs, and plead these as laws; and in truth, if they are well masters of them, this may at times help them; yet the orders of the King must be carried out."

Robert Knox[2] said "... here are no Laws, but the Will of the King, and whatsoever proceeds out of his mouth is an immutable Law. Nevertheless they have certain antient usages and Customes that do prevail and are observed as Laws; and Pleading them in their Courts and before their Governors will go a great way."

As we have seen,[3] Percival stated that although "The government of Candy is an absolute despotism, and any resistance to the will of the king, without power to maintain it, is sure to be attended with immediate destruction", he nevertheless noted the claim by the people that there were "fundamental laws and regulations" that bound the king and the "meanest subject" alike, although he believed that all that this meant was that a powerful and ambitious rival might have used a king's violation of laws to

replace him.[4] He said that "Where the government is a pure despotism, and every thing depends on the immediate will of the sovereign, there can be no fixed and established laws". However, he also said: "The Candians, indeed, boast of an ancient code of written laws, but these remain in the hands of the monarch who is their sole interpreter." [5]

When the Kandyan Convention of 1815 was sent to London, the document annexed to it stated that the Convention

> "resumes very briefly the outlines of a constitution carefully adapted to the desires of the chiefs and of the people ... The first point was the protection of the religion of Boodhoo, the other ... was the recognition and maintenance of their local institutions. I know nothing of their laws, finding it very difficult to discover what they are. However, they have plenty of customs, and also a well-established gradation of authority, and even their own forms of justice."

Hayley[6] stated:

> "At the time of the Kandyan Convention, Sinhalese law was common law in the strictest sense.[7] It was contained in no book; it was almost untouched by legislation; it acknowledged no judicial decisions.[8] It was essentially the custom of the realm, known to the people, administered by the judges, free from all interference by the courts of the King, and marred by no sophistries of interpretation."

Later,[9] Hayley stated as follows:

> "The Sinhalese kings do not appear to have made laws. As absolute monarchs, they had supreme power over all classes in the realm,[10] but their orders were in the nature of particular commands, issued to individuals or the inhabitants of districts, or during the inclination of Their Majesties, and were concerned chiefly with the control of the army, the royal revenue, the departments of the Palace and discipline in the Church. Occasional references are found in the histories to decrees of the Sovereign. Thus Tissa "abolished the practice of inflicting torture which prevailed up to that period in this land." Mahāvaṁsa , XXXVI. 28; Turnour's translation of the Mahāvaṁsa 151; Geiger's translation of the Mahāvaṁsa 258.[11] But such

ordinances seem to have been forgotten in course of time, or were disregarded by subsequent kings, and there is no written and permanent legislation."

John Davy[12] did not deny that the monarchs of Sri Lanka made laws. He stated that there was "no written code of law" and that the rulers were "directed in judicial matters by ancient custom and precedent, and the common principles of equity acknowledged by all mankind."

D'Oyly,[13] recording the principles relating to the administration of justice in the Kandyan Kingdom, noted the following:

"The diligent Judge shall administer Justice in strict conformity to the Rules of the Soottree, and the Wineye, and their exposition and commentaries". "That which is recorded is of greater importance than oral tradition, therefore the written Rules must be duly enforced."

After the annexation of the Kandyan Kingdom, the administration of justice was carried on by British officials assisted by local chiefs, acting as assessors. It became evident in time that the territories that had been annexed were governed by a system, although, in the opinion of the British, that system had been abused. Sir Robert Brownrigg, it seems, was agreeably surprised to find that there were laws, or something akin. In his 'Address to the Kandyan Adikars and Chiefs' on the 20th of May, 1816, the Governor said:

"Many curious and valuable facts concerning the institutions, customs, and if not the laws, at least the principles of Justice acknowledged in the Kandyan Country, have in the course of these proceedings been disclosed and recorded on respectable evidence.

It is to me a most pleasing discovery, that the principles of that nature, and of a leading and comprehensive character, are thus demonstrated to subsist in force, as they will happily afford the grounds of uniform decision as to Civil rights, and secure the stability of private property.

The existence of a body of acknowledged usages, regulating the succession of Estates, and other principal branches of Civil Judicature,

serves also to prove, that the misfortunes under which these Provinces have laboured for many years past, are not been supposed, imputable to the absence of Legal rule, but to the total disregard of common Justice, to the wanton abuse of absolute power, the merciless and precipitate infliction of capital punishment, the rapacious assumption of private property, and the ruin of entire and numerous Families for the real or supposed transgression of a single individual." [14]

SOME EXAMPLES OF GENERAL LAWS

There was ecclesiastical law that governed the life of the members of the clergy and there were traditions, general and local customs and customary laws, precedents, and legislation, which governed society, and the distinctions between them were recognized and understood. Thus, it is said that Vohārika Tissa (214-236 AD) "reigned twenty-two years, with knowledge of the law and tradition. Because he first in this country made a law that set aside [bodily] injury [as penalty] he received the name Vohārika-tissa."[15] When it was brought to his attention that "the dwellers in the Mahāvihāra do not teach the [true] *vinaya*, Mahāsena (276-303 AD) made a law to deal with that mischief: "Whosoever gives food to a *bhikkhu* dwelling in the Mahāvihāra is liable to a fine of a hundred [pieces of money]".[16] Laws of general applicability prohibiting the killing of animals were made by Āmaṇḍagāmaṇī Abhaya (22-31 AD),[17] Silākāla (522-535 AD),[18] and by Kassapa IV (898-914 AD).[19] According to the *Nikāya-saṅgrahava*,[20] after King Parākramabāhu had reorganized the system of administration, he enacted laws and made regulations (*vyavasthā*) to ensure the continuance of the system.

General laws were also made with regard to taxation by several kings. For example, Sirināga I (195-214 AD), "great in compassion", "remitted the tribute of families throughout the Island."[21] Presumably, the abolition of "the tax appointed for himself" by Bhātika Abhaya (19 BC-9 AD), was of a similar nature.[22] King Niśśaṅkamalla made important laws relating to taxation which are mentioned in several records.[23]

The *Nīti Nighaṇḍuva* in its prefatory observations (*Paṭuna*) distinguishes between *Rāja-nītiya* (the King's law), *dharma-nītiya* (ecclesiastical law), and *lōka-nītiya*. M.W. Padmaraji[24] stated: "...*lōka-nītiya* (lit. world-law or mundane law) is the customary law."

Attention might also be drawn to the following matters in order to understand the system prevailing in Sri Laṅkā during the period under consideration :

LAWS WERE LARGELY CUSTOMARY

Although it may come as a surprise to some people, 'What is law'? is a question that cannot be easily answered: As every final-year law student knows, there are several schools of thought on that matter, and numerous treatises and hundreds of papers have been written on that subject. However, if one were to regard 'law' as a command of the sovereign backed by a sanction, because that was the accepted explanation of 'law'[25] at the time Hayley published his treatise (1923) "*The Laws and Customs of the Sinhalese or Kandyan Law*" then, on the basis of the evidence, the position appears to be as follows: There were declared laws, e.g. in the decrees issued by the monarch or the king in council or perhaps, exceptionally, by other authorized persons; but such law, constituted only a very small part of the whole body of law, filling interstices. Laws were largely customary in nature.

LAWS DID NOT DEPEND ON SOVEREIGNS

As we have seen, laws were derived from a variety of sources. Both with regard to the pre-Vijayan period, in the development of the *Dharmaśāstra* themselves, and in later times, custom was the pre-eminent factor in developing and determining the law. Like the early settlers, represented by the arrival of Vijaya, the people of Sri Laṅkā did not look upon the king as either the source or even the repository of the law. Law did not depend for its existence on the command of a sovereign. The law was what had come down from

past ages which was in the special knowledge of the sages and wise men from whom he had a constitutional duty to ascertain the law. Sen-Gupta (p. 328) said:

> "It is remarkable that there is no text of law which gives the king any authority to legislate, or to make new laws except in a belated reference in Manusamhita where Rājakṛitadharma is referred to as binding upon the people. But, it appears that this law-making power of the king was never absolute or unrestricted. It was generally confined to making orders in respect of matters which were not covered by the books of law ... [A king] did not arrogate to himself real legislative functions but purported only to lay down the rules which were to be deemed to have been in force in his time and to administrative arrangements. The laws were more or less in the nature of declaratory laws like the Twelve Tables, and not legislation proper. At no time, therefore, covered by the Smṛitis does the king appear to have had any real authority and in the Middle Ages it is perfectly clear that the king never had or purported to exercise any sovereign legislative functions in respect of matters which were already covered by the law, - though in the sphere of matters of conduct of the people which were not covered by such laws he might make the necessary orders not inconsistant with the sacred law or customary law ..."

Admittedly, the king had a residual power to legislate and it was obligatory for his subjects to observe such *rājkṛita*, *rājanīti* (royal decrees). Yet the occasions on which a monarch would legislate were limited, and when he did legislate constitutionally, those laws could not be contrary to custom or religious precepts; and although judges were required to decide matters 'according to principles drawn from local usages and from the Institutes of the sacred law', 'local usages' had to be in conformity with the *śāstras:* Bühler, Manu, p. 253 note 3. Neither on the sub-continent nor in Sri Laṅkā were sharp distinctions ever drawn between law and morals. Law as "a command of the sovereign" and enforced by his might, irrespective of whether it was morally right or wrong, was never recognized either in ancient or medieval India or in Sri Laṅkā. Every law had its root and justification in right conduct according to current ideas of right. (Cf. Sen-Gupta, p. 336). If we want to understand the legal system of Sri Laṅkā we should look at it

through the window of India rather than through the peep-hole made by Hayley and other disciples of Austin.

In keeping with British constitutional practice and International Law, that the laws of a conquered country continue in force until they are altered by the conqueror,[26] the British, in Governor North's Proclamation of 23 September 1799, in respect of the maritime provinces, and in the Kandyan Convention of 2 March 1815, and in the Proclamation of 31 May 1816 in respect of the Kandyan provinces, preserved the status quo. The Sinhalese laws had been virtually obliterated in the maritime areas during Dutch rule. And gradually the laws in the Kandyan provinces too largely disappeared. [27]

HOW LEGALLY ENFORCEABLE CUSTOM WAS DETERMINED

In England, there were conditions evolved by the judiciary that had to be fulfilled before a court would recognize and enforce a custom: the custom had to possess a sufficient measure of antiquity; it must have been enjoyed continuously; it must have been enjoyed as of right; it must be certain and precise; and it had to be consistent with other customs in the same area. There were no such criteria laid down in Sri Laṅka although later, in British times, the Supreme Court imported the criteria of the English courts. [28] The monarch, the princes, the chiefs, the village elders, learned monks,[29] and advisers of the monarch knew or were expected to know what the customary laws were. An appreciative British Governor once recognized the knowledge of the chiefs who assisted the courts as assessors and gratefully acknowledged their contribution.[30]

THE DEVELOPMENT OF JUDICIAL INSTITUTIONS

Hayley said:[31] "The development of the courts seems to have followed much the same lines in Ceylon as in England." This does not appear to be the case: The customary laws and institutions of Sri Laṅka, as we have seen, were based on the customary laws of the indigenous people, the laws brought by the early Indian settlers

represented by the arrival of Vijaya, (c. 483 B.C.) and subsequently modified by local usages, traditions, beliefs and needs. In England, on the other hand, when the Normans arrived (1066 A.D.), they forbore to impose an alien code on a half-conquered realm; the Conqueror confirmed the laws of his predecessors. The laws, however, were by no means the same all over England, and itinerant justices touring different circuits found out and applied local customs, partly for the purpose of gaining support for the new dispensation by being seen to fulfill popular expectations, which in time lead to the centralization of the courts and the development of the common law. In Sri Laṅkā, neither the development of the law nor the system of courts followed the English pattern.

By the time of the arrival of the early Indian settlers, represented by the arrival of Vijaya, in India, their king, who in Vedic times had not been a judge, had become a judge; and although in earlier times the king had had no jurisdiction except over questions of public importance, the adjudication of disputes involving a wide range of subjects and the adminstration of justice in general (*vyavahāra*) had become a very significant part of a king's duties. A king had his court in which he was assisted by councillors (*sabhāsadas*). As the demand for the king's justice increased, the *prāḍvivāka*, the leader of the councillors who assisted the king in court by asking questions of parties and witnesses and giving opinions, came to be appointed an independent judge who permanantly deputized for the king. Other courts, described by Yājñavalkya as *adhikṛita* or *adhiṣṭhita* courts, came to be set up by the king until the whole cadre of courts in cities and villages (*pratiṣṭhita*) was established. However, in addition to the king's courts there were the primary tribunals of *kulas*, *śreṇis*, *pūgas*, *vrātas* and *gaṇas* (which were modified survivals of an ancient order of things when they were tribunals with final authority) from which appeals lay to higher courts up to the king's judge and to the king himself in the court over which he presided (*śāsista*). Additionally there were travelling courts (*apratiṣṭhita*) providing physical access to justice to forest dwellers, soldiers and merchants

by sitting in the forest, or where soldiers served or at markets. Not surprisingly, as we shall see, there was in Sri Laṅkā from early times a hierarchy of courts from village level (*gamsabhā*), through district levels (*raṭa sabhā*), through courts of officials, to the king. There were itinerant tribunals. However, they had functions to perform that were not exactly the same as those of the circuit tribunals in Norman times in England: There appears to be some misunderstanding.[32]

PRECEDENT

As in England, there was no written code. As in England, there was a hierarchy of courts. However, although those factors contributed to the development in England of the common law doctrine called *stare decisis*, derived from *stare decisis et quieta non movere*, in terms of which decided cases in certain circumstances were not merely illustrations of the law, but possessed law-quality, the decisions of pre-colonial Sri Laṅkan courts did not have that quality.[33] Although judicial precedent was not a criterion of validity in Sri Laṅkā, yet precedents were important because regularity in the way in which matters were decided was a feature of the system. However, it was required that "just", *i.e.*, accurate, decisions should be recorded, and not others, much in the same way that astute law reporters in more recent times prefer to, or should, file away bad judgments.[34] Punishments were imposed after consulting books on precedents [35]; and in tribunals, such as the *Raṭa Sabhā*, precedents were said to have been cited, and decisions of former *sabhā* pointed out. [36]

THE AIM OF THE DISPUTE RESOLUTION PROCESS

There were, as we shall see, mechanisms for dealing with cases of conflict and breach; however, the emphasis was not on sanctions but on compliance; on reconciliation and 'settlement' rather than vengeance. 'An eye for an eye' formed no part of the law of Sri Laṅkā.[37]

THE FLEXIBLE APPROACH

Another matter that should be mentioned is that the people and judges of Sri Laṅkā were not blindly subservient to custom: their norms of behaviour were adapted to the achievement of certain ends, and in the application of these norms, there was, in pre-colonial Sri Laṅkā, a flexibility that ensured a result that was consonant with what Oliver Wendell Holmes[38] referred to as 'the felt necessities of the time' corresponding with what at such time was "then understood to be convenient," and right conduct. Holmes observed: "The life of the law has not been logic: it has been experience ... The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics." That, in my view, was an accurate description of the law and its application in pre-colonial Sri Laṅkā.

BAILEY'S REPORT ON TRADITIONAL IRRIGATION LAWS

Farming was the principal occupation of the people. And that they regulated well. The way in which customary laws regulated cultivation and irrigation illustrates the pragmatic way in which laws were formulated and applied.[39] At the request of Governor Sir Henry Ward, the Assistant Government Agent of Badulla, J. Bailey, made a study of the customs and formulated rules which he called "General Customs or Sirita in respect of Irrigation."[40] In introducing the rules, he said they gave "a correct idea of legislation of irrigation so to speak among the Kandyans. I need not say that the agricultural customs were never reduced to writing under the native government, the common law of the land - the *lex non scripta* of the Kandyans - was founded like our own on customs which have been used so long that the memory of man runneth not to the contrary."[41] The relevant customary laws, he pointed out, were as follows:

"1. It was incumbent on all the proprietors of any tract of paddy land irrigated by any common canal or water course to keep that canal or water course at all times in proper repair.

2. The dam was erected and kept in repair by the joint labour of all the proprietors who were bound to assemble at the proper season or seasons for that purpose.

3. The whole length of the channel from the dam to the *moolata* fields (nearest to the source of the canal) was apportioned out among the proprietors in proportions varying according to the extent of land possessed by each.

4. In the event of any damage occurring to the dam or channel in consequence of a sudden flood or any unforeseen accident, it was incumbent on all to assemble and at once repair it.

5. No person was allowed the use of water if he had failed to take his share in the annual and necessary repair of the dam and channel.

6. No one could asweddumize new land with the water of the common channel to the detriment of existing fields. It was necessary that those interested in the supply of water should be consulted before new land could be cultivated.

7. It was the duty of one or more persons interested in the supply of water to inspect the channel daily or once in two or three days to remove obstructions, to provide for the prompt repair of any sudden accident, to detect theft of water, or injury to the banks. (During the Kandyan government almost all the large channels irrigated some Royal lands and in such case there was an officer appointed for this purpose. With regard to the smaller channels, it is customary because it is the interest of some one always to look after the *ella*. The duty generally falls on the *gammahe*.)

8. It was sufficient evidence of theft against any proprietor of his water if his field was found to be irrigated out of its proper rotation.

9. The *agata* fields (at end of channel furthest from dam) were ploughed first in order to ensure their supply of water while there was an abundance of it in the supplying stream and the rest upwards in regular order; so that the *moolata* fields, whose supply of water was the most certain, were ploughed last, but the *agata* fields must be ploughed at the proper season, otherwise they lose their right to priority of water.

> 10. During the dry season when the supply of water began to fail, the fields were irrigated by rotation commencing the *moolata* fields. The rotatory period was regulated by the volume of water in the supplying stream. This is called *diya moore* or *watura moore* (water turn).
>
> 11. When the volume of any supplying stream was insufficient for the irrigation during the same season of all lands depending on it, it was customary to divide the tracts of fields into portions of such extent as would admit of each being properly irrigated and these portions received the whole volume of the water during succeeding seasons in rotation. This rotation would come round to each portion biennially, triennially etc., according to the number of portions into which the whole tract was divided. (This is called *diya ware*, water season.)
>
> 12. Anyone offending against any of these customs was promptly punished by whipping or fine and if any royal prison was at hand by imprisonment also.
>
> These are general customs for any tolerably large irrigation channel and for smaller ones customs are in the same spirit and for tanks the same.
>
> Under native government they are strictly enforced; though still to a certain extent in force and invariably recognized; *they are disregarded whenever it suits the purpose of cultivators.*

The emphasis is mine.

Bailey should not be misunderstood. Laws were not disregarded willy-nilly. They were disregarded only in extraordinary circumstances to serve the interests of the people, by whom and for whom the laws were made, much in the same way that in times of calamity or crisis the executive may today suspend the operation of laws in the exercise of powers conferred by the laws relating to public security.

The modification, or even disregard, of laws to meet extraordinary situations is also illustrated by the *betma* system. R.W. Ievers[42] said:

> "When the storage of water in the tank is not sufficient to irrigate all the paddy fields or at least one *vela* under it, a part of the field proportionate to the supply of water available is selected and divided among all the *pangukarayo* (shareholders) of the village in proportion

> to the extent each owns. Each takes the produce of the bit he cultivates. This is called *betma* meaning division."

It is interesting that there was recognition in the Irrigation Ordinance No. 32 of 1946 of the wisdom of people of times past. It provided in section 11 that proprietors of lands within an area capable of being irrigated had power to make rules, among other things, for the enforcement of established customs affecting such cultivation. The rules, it was stated, "may if the majority of the proprietors so require include rules making provision for the form of cultivation known as *betma* cultivation."

To revert to Bailey's report: He said:

> "The successful cultivation of every tract of fields depends upon the combined exertions of all concerned. Almost every act of every cultivator is associated with the interests of the rest and on a close examination of the ancient customs in all their bearings *it is impossible not to be struck with their perfect sufficiency for the purpose required, viz., to ensure that all should act in concert and it is difficult to conceive a more just code of laws. They are laws which have been sanctioned by the experience of centuries and are therefore surely worth our attention* and it is only by studying the effect of them that we shall be able to form a just estimation of the consequences of permitting them to be infringed."

The emphasis is mine.

As a result of these observations, Ordinance No. 9 of 1856 was enacted "to facilitate the renewal and enforcement of the ancient customs regarding the irrigation and cultivation of paddy lands." The preamble to that Ordinance made it clear that the ancient customary laws had, for pragmatic reasons, to be enforced. It said:

> "Whereas the non-observance of many ancient and highly beneficial customs connected with the irrigation and cultivation of paddy lands as the difficulties, delays and expense attending the settlement of differences, and disputes among the cultivators relating to water rights and in obtaining redress for the violation of such rights in the ordinary course of law, are found to be productive of great injury to the general body of such proprietors of such lands and it is expedient

to provide a remedy for these ends it is enacted by the Governor of Ceylon ...".

EQUITY AND THE ATTEMPT TO REDISCOVER FLEXIBILITY

Davy[43] said that a "striking feature of the Singalese government" was that "having no written code of law, [it was] directed, in judicial matters, by ancient custom and precedent, and the common principles of equity acknowledged by all mankind". "Equity" is a word with many meanings. Did *lōka-nītiya* mean "customs and the principles of natural justice"? : For instance, the principle that the other side must also be heard - before a correct decision may be given - is, in modern administrative law, described as a principle of 'natural justice'.

Interpretative flexibility was a law of Sri Laṅkā, and not a rule of some other body of norms, designed to ensure an accurate decision.[44] It had nothing to do with 'natural justice', or 'equity' in the sense of some 'higher' or 'universal' law. A judge had a wide, discretionary power to do what was morally or ethically correct and practically necessary to reach an accurate decision; but although the reservoir of his powers was great, it was not unlimited. He was not released from a certain process; he was precluded from apprehending the truth without the intervention of a reasoning process based upon the established principles of the law, however wise or experienced a sage he may have been. The limits of his discretion were prescribed; for instance, in deciding an appropriate punishment, the time, place, gravity of an offence, the mental state of the offender, the status of the offender and victim, whether it was a first offence or one that was committed by a person who habitually relapsed into crime, had to be taken into account. These criteria were prescribed by the law. However, a judge was not free to wander off on a voyage of his own seeking to discover other norms that should guide him because he privately felt uncomfortable about a result which he had reached by the application of the law, including the criteria laid down by the law for the achievement of a correct decision.[44A]

The principles of natural justice are sometimes referred to as laws *naturalis aequitas*. That which is good and equitable is the law of laws - *aequum et bonum est lex legum*. It is what Edmund Burke in his famous speech in the British House of Commons on the 28th of May 1794 referred to in the debate on the impeachment of Warren Hastings: "There is but one law for all, namely, that law which governs all law, the law of our Creator, the law of humanity, justice, equity - the law of nature, and of nations." Manu[45] said: "According to these rules let the king equitably decide between men, who dispute with each other ...". However, was Manu's reference to equitable decision-making, a reference to *naturalis aequitas*? I do not think so.

The reference in Manu in my view was (a) to a fair trial and (b) the delivery of an accurate verdict in regard to the achievement of which, including the exercise of judicial discretion, rules were prescribed in the *Dharmaśāstras* themselves: There are many references to 'justice' and 'equity' in the *śāstras* and Sri Laṅkan chronicles and records; but what was 'just' and 'equitable' was to be achieved by following the law; Judges had a discretion given by the law itself to prevent inaccurate decisions by the mechanical application of the law, and they were expected to act imaginatively, and humanely but not without reasons based on the law: their decisions, in the exercise of the discretion they were given by the law were limited by the law and were not expected to be capricious. They were not to be the product of an unguided, unlimited discretion.[45A] 'Justice' so achieved may not have meant 'Justice' at another time and place in the eyes of other people. Megarry V.C. in *McInness* v. *Onslow-Fane*[46] observed: " 'Justice' and with it 'natural justice' is in truth an elaborate and artificial product which varies with different civilizations.".

In England, and in some other countries, "equity" represented a body of rules existing side by side with the common law evolved to mitigate the severity of the rules of the common law. The thinking was that any general rule must work injustice in particular cases, and therefore the application of positive law must be subject to some dispensing power in the interest of a higher justice. [47]

D'Oyly[48] in setting out the "Rules for the Administration of Justice" referred to the duty of a "righteous", "diligent", judge to "strictly adhere to" and "administer justice in strict conformity to the rules". Manu made it clear that matters had to be decided *according to the rules, and the evidence in a case.*

Yet there was no rigidity and no need for a special body of rules or some vague notions outside the law itself to enable a court to arrive at an accurate decision. Sen-Gupta, said:[49]

> "It is sometimes said that extreme formality is characteristic of the early law of procedure, and that it is only gradually that the law shakes off its forms and becomes rationalised. The histories of the law of procedure in Rome and in England bear out this proposition. But the examination of the history of procedure in ancient India .... clearly proves the contrary to have been the case here. Here administration of justice evidently began with hardly any rules of procedure. The latter grew up in time with practice gradually hardened into more rigid rules such as we find in the later law of procedure. It will be seen however that procedure never hardened in India into inflexible rules such as those of ancient Rome or English Common Law whose crust could only be broken by the independent agency of Equity. *In Indian Law there appears always to have been an undercurrent of sound common sense and justice wearing down the rigidity of rules without any outside interference."*

The emphasis is mine.

And so perhaps it was in Sri Laṅkā. Indeed, the available evidence does not show that the elaborate procedures under the name *Vyavahāra Mātrikā* governing litigation in India, were adopted in Sri Laṅkā. The rules of procedure for litigation (*Vyavahārapada*) laid down by Yājñavalkya, Nārada, Kātyāyana and others do not seem to have found a place in Sri Laṅkā. Manu, who was usually followed in Sri Laṅkā, did lay down a few rules of procedure in Chapter VIII, but he said precious little. The rules prescribed by Gautama, Āpastamba, Vaśiṣtha and Viṣṇu were laconic. The available rules, however were sufficient to reach an equitable decision.

What was meant by deciding a matter "equitably" under the law of Sri Laṅkā was that the parties to a dispute were treated equally and fairly and that there was impartiality and even-handed dealing on the part of the judge in arriving at an accurate decision based on the law applicable in the place, humanely interpretted, and having regard to the circumstances of the case.

Admittedly, a king at his installation was enjoined to rule with 'justice', and the chronicles praise monarchs for ruling with justice. However, as we have seen, ruling "with justice" meant ruling in accordance with the law, observing customs and traditions, and that was a constitutional requirement touching the very legitimacy of a monarch's right to rule.

Forbes, the Agent for Matale observed that the essential characteristics of the law were "the demigeneral principles of equity, made to suit the intricate system of society and applied according to the circumstances of each case.".[50]

The meaning of the phrase "demigeneral principles of equity" is obscure but it is clear that the law and its application responded to the 'felt necessities' of the community. That was the measure when coming to a decision, and not the private view of a judge on what was "just" or "unjust" in a particular case.

Traditionally, as far as Sri Laṅkan judges were concerned, it would seem that the need for resorting to 'a higher justice' or 'judicial activism' to achieve an accurate result did not exist, because laws were not applied rigidly and mechanically. In fact, as we have seen, in extraordinary circumstances, in order to achieve the purpose of the law, laws might have been disregarded. Judges were permitted to go beyond the mere letter of the law to achieve what was 'then understood to be convenient' from the community's, rather than from a party's or the judge's point of view, even in effect suspending for the time being the operation of a particular law. Whereas in certain communities the requirement of going beyond the mere letter of the law was to ensure that a higher purpose of

giving effect to the will of God [51] or what Burke referred to as 'the law which governs all laws', there was no such purpose that motivated judges in Sri Laṅkā. Deviations were permitted on purely pragmatic grounds. This was a part of the law itself.

As far as the *Dharmaśāstras* were concerned, those to whom fell the task of interpreting and applying the law, would not and ought not to have searched elsewhere, for the *Dharmaśāstras* themselves set out the manner in which justice, in the sense of an accurate, and therefore legally warranted, result, was to be achieved. The *Dharmaśāstras* were comprehensive. They were also supreme in authority: no higher justice could be found elsewhere. The law was not to be mechanically applied, the law itself providing that due attention should be paid to time, place and circumstance. Manu (viii-45) said: "When engaged in judicial proceedings a [Judge] King must pay full attention to the truth, to the object [of dispute], [and] to himself, next to the witnesses, to the place, to the time, and to the aspect." In viii.126 he said: "Let the [King] having fully ascertained the motive, the time and place [of the offence], and having considered the ability [of the criminal to suffer] and the [nature of the] crime, cause punishment to fall on those who deserve it." Bṛihaspati[52] set out a list of punishments but said: "This gradation of fines has been declared by me subject to modification by sages in conformity with the [particular qualities] of a man so as either to remain as declared or to be reduced or raised." In dealing with the subject of theft, Yājñavalkya (ii) 277-282) said: "In the case of a theft of inferior, middling and superior articles, the fine shall be according to the value [of the article stolen]. In passing sentence, the place, the time and the age and ability [of the offender] shall be considered.".

In Sri Laṅkā, after Buddhism became the religion of the state, the *Dharmaśāstras* ceased to be the sacred books of the majority of the people; yet, for the reasons stated, their place as a source of law remained substantially unimpaired. The wide discretionary powers given to judges in applying the law to achieve an accurate

result, provided of course that such discretionary powers were not exercised arbitrarily but within the framework of the rules and guidelines within which judges were required to administer justice, continued to be a feature of the system.[52A]

However, that was to change when the British took over. Gananath Obeyesekere[53] pointed out that writers like Hayley and Modder "tried to fit Sinhalese law into a systematic framework of rules, and to invest it with the systemic rigour it lacked...". They attempted to give the body of norms they set out

> "the character of legal rules which are inflexible in application. Thus in judicial decisions, as well as in expositions of Kandyan law (as, for example Hayley in 1923 and Modder 1914), deductions are made from first principles quite rigorously, which is quite contrary to the spirit of Sinhalese law. For example, the contemporary legal position in Kandyan law, as a result of judicial decisions made through deductions from first principles, is that widows have no life interest over *pravëni* (Hayley 1923: 353-4), something which is logically consistent with the principle that land should not leave the agnatic source, is inconsistent with the notion of family solidarity, and that members of the family are always entitled to support. The British system of judicial administration required the law to have a systemic rigour which Sinhalese law lacked. Several British administrators were puzzled by the lack of agreement among chiefs over matters of detail; for example, the suggestion was made that the difference in the laws of Sabaragamuva from the rest of the country[54] was due to the fact that some chiefs had wilfully tried to introduce concepts prevalent in the Maritime Provinces. The fact of the matter is that traditional Sinhalese courts, like other traditional ones, did not give judgment on interpretations of the rules *per se*, but rather on a combination of legal principles with the situational aspects of any particular case..."

Once the traditional manner of administering justice was altered, there emerged the problem of overcoming erroneous decisions in particular cases on account of the rigorous application of the law. The early British administrators it seems sought to overcome the problem by importing the concept of 'equity'in the wide sense of that which is fair and just, moral and ethical. However, "equity" was not available to all judges: concerned as it

was with 'a higher justice', "equity" was placed within the exclusive jurisdiction of no less a person than the Governor himself, a jurisdiction the Governor jealously guarded. Governor Barnes, for instance, in his minute on *Nilegodagedere Kalu Ettana* v. *Kapoogedere Kiri Menika*, stated[55] that the Judicial Commissioner who was empowered to exercise judicial functions, "... should be told that he is bound to decide in all cases strictly according to the law, the equity of the case, I conceive, solely resting with me."[56]

In practice, the Governor's exercise of equitable jurisdiction proved to be unsatisfactory. As an appellate authority, he mechanically referred matters to his Deputy Secretary, on whose report he gave "without discussion, and generally without assignment of reasons ... his directions for affirming, reversing or altering the decree of the court below."[57] The excuse Governor Barnes gave for the failure to exercise his equitable jurisdiction with acceptance was that, without some person to prepare the cases submitted to him, it was not possible for him to find the time to go over the voluminous proceedings.[58]

The problem lay, at least in part, elsewhere: the absence of criteria to decide a matter according to a "higher justice".[59] Curiously, it seems at first sight, the critics of the new system lamented the absence of 'positive rules of equity'. Cameron's Report[60] condemns the privacy of the Governor's tribunal, especially because he had an exclusive equitable jurisdiction, for 'where there are no positive rules of equity, means an unlimited discretionary power over law.'

Once the traditional 'situational' laws, and the discretion vested in judges in interpretting and applying the laws, humanely, having regard to the circumstances and flexible procedures, were replaced by the British system of uniform laws strictly applied within the framework of formal, rigid laws governing the giving of evidence and elaborate, formal, procedures, it soon became apparent that accurate decisions could not always be achieved. Resort was therefore had to 'equity'. Was the process of experimentation with 'equity' flawed because of the failure to recognise the fact that it

was an ambiguous word? Did the resort to 'equity' serve the purpose of trying to ensure that, notwithstanding the law, a correct decision ought to be handed down by a judge?

The rejection of the traditional, flexible approach to the law and its application had serious consequences, and therefore I feel the need to reflect on that matter at some length. Did the attempted infusion of notions of 'equity' solve the problems caused by the formalism that came with the new system?

Some systems of law have been assisted by the introduction of a discretionary power to arrive at a satisfactory decision where the strict rules of law prevent it. The Praetor performed such a function in Roman Law.[61] But, as we shall see, as Lord Scarman observed in *Duport Steels Ltd.*, "limits are invariably set beyond which the judges may not go." In England, the residual discretionary power of the king to do justice among his subjects in circumstances in which, for one reason or another, an accurate decision could not be obtained in a common law court, was exercised by the Chancellor. From the Chancellorship of Lord Nottingham in 1673 much was done to weld together, consolidate and stiffen the whole system and by the end of Lord Eldon's Chancellorship in 1827, equity was transformed from a jurisdiction based upon personal interference of the Chancellor into a system of established rules and principles. As Lord Justice Harman observed, although equitable principles are "often bandied about" in courts "as though the Chancellor still had only the length of his own foot when coming to a conclusion", since the time of Lord Eldon "the system of equity, for good or evil, has been a very precise one, and equitable jurisdiction is exercised only on well-known principles."[62] Lord Radcliffe, speaking of common lawyers, said that equity lawyers were "both surprised and discomfitted by the plenitude of jurisdiction and the imprecision of rules that are attributed to "equity" by their more enthusiastic colleagues."[63] Indeed, at one stage, the rules became so fixed that "a *rigor aequitatis* as austere as the *rigor iuris,"* developed; equity itself displayed the very defect which it was designed to remedy.[54]

Although in time the situation improved, yet, it has been pointed out[65] that 'equity' is not synonymous with 'justice' in a broad sense. A plaintiff asserting some equitable right or remedy must show that his claim has "an ancestry founded in history and in the practices and precedents of the court administering equity jurisdiction. It is not sufficient that because we may think that the 'justice' of the present case requires it, we should invent such a jurisdiction for the first time."[56] Jessel M.R. in *Re National Funds Assurance Co.,*[67] said: "This court is not, as I have often said, a Court of Conscience, but a Court of Law".

An attempt was made to import into Sri Lańka 'equity', in the narrow sense of the branch of law which, before the English Judicature Act of 1873 came into force, was applied and administered by the Court of Chancery in England, possibly assuming mistakenly, that 'equity' administered by the Chancellor's Court was synonymous with 'justice' in the sense of that which is fair, moral and ethical. Section 39, clause 6 of the Charter of Justice of 1801 required Courts to "administer justice in a summary manner according to the law now established in the said settlement of the Island of Ceylon and in point of form as nearly as may be according to the rules of proceedings of the High Court of Chancery in Great Britain. Principles of 'justice' and 'equity' in the wide sense were the basis of equity jurisdiction in England, but it is important not to lose sight of how that jurisdiction came to be exercised and what 'equity' came to mean in its narrow, legal sense.

In *Mathes Pulle* v. *Rodrigo,*[68] the view was taken that clause 39 created a novel and beneficial jurisdiction unknown to the forms of 'equity' established by the Dutch in Sri Lańka; but the Judges of the Supreme Court were faced with difficulties in deciding cases according to existing law but "in point of form ... according to the Rules and Proceedings" of the English Chancery Court. Chief Justice Ottley, it seems, confused 'equity' in the wide sense of that which is fair and just, moral and ethical with the narrower, quite separate, legal meaning of 'equity' in the sense of the body of law

administered by the Courts of Chancery. He said to the Colebrooke-Cameron Commission as follows:

> "Here therefore I must take my stand, and lay it down as a principle of equitable jurisdiction of this Court, that we afford relief and provide a remedy, by enforcing the principles upon which the ordinary courts also decide, when the powers of those Courts or their modes of proceeding are insufficient for the purpose; secondly, by preventing those principles when enforced by the Ordinary Courts, from becoming instruments of injustice; thirdly, by deciding on principles of universal justice, when the inference of a Court of judicature is necessary and positive law is silent; and in practice we must apply those remedies as extensively as the Courts of Equity in England whenever the modes of proceeding of the Ordinary Courts are insufficient, and I consider that when the Charter says in the 39th clause that this Court shall administer justice in a summary manner according to the law now established in these settlements, and in point of form as nearly as may be, according to the rules and proceedings of this High Court of Chancery in Great Britain; we must apply the rules and proceedings of that Court to the law now established in Ceylon in the same manner and under the same modifications and upon the same principles as those upon which the Chancellor would administer the rules and proceedings of the Court of Chancery in Great Britain according to the laws now established in England; and this interpretation of the Charter is warranted by the Madras Charter where the words, though different, appear to embrace the same objects..."

The Charter of 1833 contained no reference to 'equity', but Sir Charles Marshall, its chief architect, stated that it was "considered by the framers of that instrument that all cases brought before the District Courts should be decided.... according to the rules of equity blended with the strict law."[69] Under the Roman-Dutch Law introduced into Sri Lańka by the Dutch which prevailed at the time of British occupation, the courts in Colombo were vested with 'equitable jurisdiction.'[70].

Having abandoned the traditional flexible, elastic approach, which took into account the law of a place, humanely and imaginatively interpretted, according to the circumstance of a case, the British tried to introduce the ambiguous concept of 'equity' to achieve an accurate result despite the rigorous laws and procedures

they introduced. Discovering that at home 'equity' was not the same as some 'higher form of justice' that would enable judges to do the right thing, strangely, they fell back on the Roman equity introduced by their predecessors in Sri Lanka - the Dutch. Sir Ivor Jennings, Q.C., and H.W. Tambiah (later a Judge of the Supreme Court of Ceylon) explained the matter in the following way:[71]

> "It must be emphasised that Ceylon knows two sorts of equity, the Roman and the English. English equity is, of course, a system of law formerly administered by the Court of Chancery and imported into Ceylon law."

As they point out[72], the Charter of Justice of 1801[73] gave the newly established Supreme Court,

> "a procedure which was fundamentally English and had expressly conferred upon it an equitable jurisdiction to administer justice in a summary manner, according to the Law now established in the said Settlements in the Island of Ceylon, and in point of form, as nearly as may be, 'according to the rules and proceedings of our High Court of Chancery in Great Britain'. Equity, clearly, was to be Dutch equity, but administered in an English manner: the hands were the hands of Esau, but the voice was the voice of Jacob."

Having said that Ceylon knew two kinds of 'equity' - Roman and English -, Jennings and Tambiah[74] pointed out that 'English Equity' imported into Sri Laṅkā was "not a separate source of law but a separate branch of law, the source being the decisions of the Court of Chancery and the corresponding decisions of the Supreme Court of Ceylon, and modified by local legislation." Jennings and Tambiah went on to state[75] as follows:

> "Roman equity, on the other hand, gives the court the right to modify the law in order to do justice between the parties. The Roman-Dutch jurists felt themselves at liberty to modify the law laid down in the Institutes and the Pandects in order to make it conform with natural justice. Similarly the Ceylon courts have felt themselves to be at liberty to modify the Roman-Dutch law laid down by the jurists in the interests of natural justice. *Fernando* v. *Soysa* (1896) 2 N.L.R. 40, at p. 44, *per* Bonser C.J.; *Ibrahim Saibo* v. *Oriental Banking Corporation* (1874) 3 N.L.R 148 at p. 155 per Berwick D.J. As Lord Haldane said in *Dodwell* Co. v. *John*, (1918) 29 N.L.R 206, at p. 211, law and

> equity have been administered by the same courts 'as aspects of a single system'. But equity in this sense applies only where the courts are applying Dutch law. Once there is legislation or case law applying the English rule applies, and the function of the courts is then not to do justice but to administer law.
>
> The distinction between equity according to Roman law and equity according to English law has not always been observed. The Charter of Justice of 1801 gave the Supreme Court, subject to certain limitations, the equitable jurisdiction of the Court of Chancery. The Charter of Justice of 1833 repealed these provisions and did not replace them. Sir Charles Marshall, who was partly responsible for the Charter of 1833, explained the absence of special equitable jurisdiction as due to the existence of the Roman-Dutch rule. (1833-1836) Marshall's *Judgments,* p. 261. This evident confusion has not, however, led to confusion, for English judges familiar with English equity have applied its rules as principles of natural justice. Thereupon, of course, it ceased to be a separate source of law and became case law. As we shall see, large portions of English equity have thus been incorporated into the Ceylon law, though such a statement is equally true of the common law of England."

At seminars and public discussions as well as in courts of law we hear passionate pleas for 'justice' and the strident condemnation of 'black letter' judges. Some lawyers, like Lord Denning, have been of the view that a judge's duty is to achieve 'justice,' whatever the law may be.[76]

The problem is that "'justice' means different things to different men."[77] As far as litigants go, as Ralph Waldo Emerson observed in his *Essays,* "One man's justice is another man's injustice."

Geoffrey Robertson, Q.C., in his book, *The Justice Game,*[78] regarded the invitation of the late Lord Denning, whom he described as "a most charismatic and controversial judge", "to tear up the rule book in order to reach popular results", as "dangerously simplistic".

Lord Scarman in *Duport Steels Ltd.* v. *Sirs*[79] said:

> "........the judge's duty is to interpret and apply the law, not to change it to meet the judge's idea of what justice requires. When one is

> considering the law in the hands of the judges, law means the body of rules and guidelines within which society requires its judges to administer justice. Legal systems differ in the width of discretionary power granted to judges; but in developed societies limits are invariably set beyond which judges may not go. Justice in such societies is not left to the unguided, even if experienced, sage sitting under the spreading oak tree."

Lord Justice Scrutton in an address to the University Law Society at Cambridge in November 1920[80] said:

> "Now I take it that a good legal system should have four - at least four - attributes. Its judges should be incorruptible and impartial: that is one. The law they administer should be accurate, and founded on recognized principles: that is two. Justice or judgments should be given quickly: that is three. And justice should be accessible to citizens cheaply: that is four. And if you find a system which combines these four attributes, I think you have a good legal system."

Speaking on the second attribute, Scrutton, LJ said:

> "Now the second thing you want in a judicial system is what I may call accuracy in results of fact, settled principles of law upon which you proceed. You will observe I have said nothing about the results being just, because justice is not what we strive after in the courts, paradoxical as it may seem. A Judge once told a London cabman to drive to the courts of Justice. 'Where's that, yer honour?' 'Why, the Law Courts', the Judge replied. 'Ah! now you're talkin, but it's not the same place.' We are not trying to do justice, if you mean by justice some moral standard which is not the law of England. The oath which every judge takes is: "I will do right to all manner of people without fear or favour or prejudice, according to the laws and customs of this realm." And it is the laws and customs of the realm that the Judges have to administer. Sometimes hard cases make bad law. If once you allow the laws and customs which you have to administer to be diverted by the particular view of the particular case, another Judge may think otherwise on the same facts and there ceases to be any certainty in the law. If the laws and customs you have to administer are wrong, it is for Parliament to put them right - not for the Judges. It is important that Judges should interpret the settled laws without altering them according to their view of right or wrong in particular cases..."

Admittedly there is no room for slot-machine justice: A judge should act imaginatively. Henry Cecil[81] observed:

> "Lack of imagination can be found in high places, even in the Court of Appeal. The object of every court must be to do justice within the law. Admittedly the law sometimes forces an unjust decision. If there is no way around it, it is for Parliament to alter the law if the injustice merits an alteration. In case someone says that every injustice merits an alteration, I must point out that this is not the case. We have to have a set of rules for governing our relationship with the state and with each other. These rules are the law, but it has been found beyond the wit of man to devise rules which can be applied to every occasion. The permutations and combinations in human affairs are infinite and even computers will be unable to secure perfection. In consequence cases must arise in every country which the law has not contemplated and every now and then an instance of injustice will occur. This is quite inevitable, but sometimes to alter the law to prevent that one injustice occurring again might cause even more injustice in other cases. In consequence, Parliament cannot always remedy every injustice. Where there are men there will always be examples of human injustice."

The freedom judges enjoyed under the traditional system ceased to exist with the new system.

VARIOUS DESCRIPTIONS OF "LAW"

With regard to the ways in which laws were described, Weerasinghe[82] stated that *nīti (nayaññu)* in the early days probably meant statecraft. He said that various terms were used to denote "three different aspects" of the concept of law - "religious, moral and practical (legal)": *dharma,*[83] *vinsicaya-dharma, vyavahāra, bävahara, bävahara basa,*[84] *nyāya,*[85] *vohāra, rajja-vohāra,*[86] *cāritta, pubba-cāritta, nīti, manu-nīti,*[87] and *sirit.*[88] Weerasinghe stated:

> "The commonest of the above synonyms of law seem to have been the Pali *cāritta* or the Sinhala *sirit* semantically related to the concept of *vōhāra* in Pali and *vyavahāra* in Sanskrit. The concept of *pubba-cāritta* (in Pali) or *pera-sirit* (in Sinhala) ... was in vogue in ancient Sri Lańkā. It conveyed the sense of law (*cāritta/ sirit*) applied in the past (*pubba/ pera*) meaning the idea of case law. The normal Indo-Āryan term for 'law' was the Sanskrit *vyavahāra* (Pali *vohāra*) which is in

> Prakrit form *viyohala* had already been used by Asōka (B.C. 268-32) in his well known Pillar Edict No. 4. Here the great Emperor speaks of *viyohāla samatā* or equity[89] in the administration of justice. The term *vyavahāra* and its Pali form *vōhāra* are found in the texts of the ancient period."[90]

In India, *vyavahāra* meant the adminstration of justice in the king's courts as distinguished from the settlement of certain types of disputes which were earlier within the exclusive purview of the community, *kula* or guild to which the parties belonged. And, as we shall see, Paranavitana said that in Sri Laṅkā *vyavahāra* had a similar meaning, including in its scope both customary laws and laws made by the king, but he makes no reference to 'equity'. This hardly comes as a surprise, for the achievement of justice, in the sense of an accurate, correct decision, was a requirement of the law which also set out the manner in which it was to be achieved.

WRITTEN STATUTORY LAWS

The phrase *sirit lī tän* occurs in the Iňginimiṭiya Pillar Inscription of Kassapa IV (898-914 AD).[91] Godakumbura[92] stated that the Sinhala word *sirit* was the same as the Pali word *cāritta* and the Sanskrit word *cāritra* and meant custom, practice, law. *Li* is said to be derived from the Pali-Sanskrit word *likhita* meaning "written down". Godakumbura rendered *tän* - this is the place or occasion - as "these are the laws".

The Koṇḍavaṭṭavan Pillar Inscription of Dappula IV (924-935 AD) stated that "Apart from levying dues on trees and creepers in accordance with *sirit* prevailing in the district, no dues in excess shall be levied. Paranavitana[93] explained: "The word *sirit* signified "written law", rather than "custom", in the language of the tenth century. Compare the expression *me sirit tubuva vaṭī nisiyan hā sasändä ... me sirit tabana ladi* in the Mihintalē tablets, A 11. 7-9, and the title *sirit-lē-nā*, 'legal secretary' of one of the principal officers of state in the twelfth century." In his edition of the Badulla Pillar Inscription, Paranavitana stated that the record was

of "statute law." With regard to the phrase *vävasthā siriti*, he said: "*Sirit* is the general term for law in old Sinhalese. A *vyavasthā* probably had the same significance as *rāja-śāsana* which, according to Hindu law books, is one of the four sources or legs of law."[94] In editing a Slab Inscription of Niśśaṅkamalla, Paranavitana,[95] rendered lines B 15-17 as follows: "When fines are to be imposed on those who do not continue the services, by not rendering [to the lord] what has been fixed, they should be in conformity with the law of the community that has been promulgated." Commenting on the phrase *lū lo-vahara*, he said: "The word *lū* qualifying *lo-vahara* indicates that *vahāra* (Skt. *vyavahāra*) denoted not only customary law, but also laws that were promulgated and were therefore written (statutory laws)." Accepting that to be the case, the decrees recorded in the inscriptions, including those recording immunities, since they were almost invariably formally promulgated after the established process of legislating had been gone through, were 'laws' even in the Austinian sense.

Sometimes an edict was intended to be supplementary, in much the same way as an amending act of the legislature would operate today, adding to or clarifying an earlier law. The edict recorded in the Koṇḍavaṭṭavan Pillar Inscription is an example, for it did not deal with all matters regarding the administration of the village called Ärāgam situated in Digämaṇḍullạ, but its purpose was to confirm and supplement an earlier, possibly more comprehensive, piece of legislation enacted when *daṇḍanāyaka* Saṅgvā Rakus was the Commander-in-Chief. Regulation XIV stated: "The laws [regarding this village] which have been promulgated in the time of Rakus, the Commander-in-Chief, shall be observed, and no illegal acts should be committed."[96]

The Badulla Pillar Inscription too seems to have been of a similar nature. A complaint was made to the King by the tenants of the merchants of the Hopitigama bazaar in Horabora, when he went there on his way to the Great Monastery of Miyuguna, that the servants of the Army General, the recipient of the bazaar, had,

acted in contravention of a statute of an earlier monarch, and had extorted fines illegally, collected tributes contrary to custom, and ejected them from the village. The King decreed that a statute be enacted that there should be compliance with the earlier laws and customs, and, additionally, provided for the regulation of a variety of other matters.[97]

PROCEDURE FOR THE ENACTMENT OF LAWS

In enacting a law or making a decree, regulation or order, a king, theoretically, had untrammeled authority, although, of course, he might have consulted anyone he was pleased to consult, and, probably, usually sought the views of at least persons we might today call 'stake-holders'. For instance King Mahinda IV (956-972 AD) convened the great community of monks at the Abhayagiri temple and, after conferring with "competent persons", made the laws inscribed in the Mihintalē Tablets, regulating matters concerning the monks, the employees of the temple, the serfs, and their respective dues, receipts and disbursements.[98] The king usually consulted his council of ministers.[99] James D' Alwis said: [100]

> "Although the government of Ceylon was in the abstract a Despotic Monarchy where the will of the Sovereign passed into law, yet it is remarkable that in ancient times when pious and talented princes ruled over the destinies of this Island nothing of any importance was done or decreed without the advice of the Amatya Mandala or Council of State. Indeed the Institutes of Manu which formed the basis of the polity of all Indian governments including that of Ceylon, required that the sovereign should be assisted by his Ministers ... Collectively their duty was to assist the King in the executive and legislative functions of government which were vested in the King."

Sometimes for strategic reasons a monarch deliberately set out to consult others. For instance, Niśśaṅkamalla acted with the design of doing his best to popularize his rule: He felt insecure; and he felt that his dynasty was insecure. He had to choose between a policy of repression or of conciliation: He set out to adopt a plan of action based on conciliation to safeguard his interests and that of his

dynasty, which included the consultation of his subjects through the medium of a representative council.[101]

The decrees of Sena I (833-853 AD) and Udaya II (887-898 AD) granting immunities were made by those two Kings alone. The decree recorded in the Halbe Pillar Inscription of Kassapa IV (898-914 AD)[102] was made jointly by that King and his *mahapā* (heir apparent). The records make no mention of any other person or body of persons involved in the legislative process, supporting the view advanced by some scholars that in the exercise of the monarch's legislative powers, consultation with, or approval by, others was not an integral part of the legislative process[103] although it was usual to act on advice. It seems to me, having regard to the duty of a monarch to consult various persons on matters of importance, laws would usually be enacted after due consultation. However, as in all matters concerning the law, there was no rigidity even with regard to the exercise of the king's constitutional rights and duties. The decrees of Sena I, Udaya II and the Halbe Pillar inscription in my view, in the context of the prevailing fundamental principles of the system of government and the role of the monarch in particular, illustrate not so much the fact that the king had unfettered legislative powers, but rather the principle that, where it was deemed necessary, a monarch could legitimately deviate from what was regarded as the usual procedure.

There is a frequently used phrase *ektän-samiya* or, more rarely, *ektän-samuya*, that is found in many inscriptions of the ninth and tenth centuries containing immunity grants. Paranavitana, while discussing the phrase *Ektän samiya* in the Mannar Kacceri Pillar Inscription, stated[104] that it meant "a decree passed with the unanimous assent of the Council". Ranawella,[105] however, said that Paranavitana was mistaken: Ranawella[106] stated that *ektän-samiyen* should be read as "by order of the Supreme Council", "by order of the Supreme Assembly", or "by order of the king in council", and *ektän-samiyen Sabhāyen ā* as " [who] came from the court of justice (*sabhā*) by order of the Supreme Council." Paranavitana modified his earlier view that *ektän-samiyen* meant "decree of unanimous assent". In editing the Malagaṇē Pillar-

Inscription, he stated:[107] "*Ek-tän-samiya* doubtless signifies the assembling together of the dignitaries on the occasion of the delivering of an order by the king or heir-apparent." He translated the phrase *ek-tän-samiya* in that inscription as "in accordance with the decree delivered in assembly." In editing the Viyaulpata Pillar Inscription, Paranavitana stated: " ... we may conjecture that when decrees granting immunities were delivered by the king, it was done in an assembly consisting of the various officials and chiefs. We learn from the expression *kāriyaṭa niyukta äma-denā mānda vadāḷa mehevarin* 'by command delivered in the midst of all engaged in state affairs' occurring in the Udugampoḷa Copper-Plate Inscription,[108] that it was so in the fifteenth century. *Ek-tän-samiya* may therefore be taken as equivalent to [Sanskrit] *eka-sthāna-samuha* or *-samiti*, meaning 'assembled in one place'. It also seems that decrees delivered in such assemblies were themselves referred to as *ek-tän-samiya.*" [109]

The Badulla Pillar Inscription records an Act (*katikā-vata)*[110] which emanated from the Council of State (*sabhā-vävasthāvak*) at the request of Udaya IV (946-954 AD). Paranavitana stated[111] that such a statute "was probably of greater importance than an order of the king." Ranawella's view was that that statute was drafted by the officials of the judicial secretariat (*sabhāye lēkamge*) on the instructions of the King,[112] and that the draft was approved or ratified by the King's Council, and that the pillar on which the edict was indited was then set up by the royal officers whose names are mentioned in the inscription.[113]

The edicts usually named the officials who came to set up the record. For instance, lines 41-45 of the Vēväḷkäṭiya inscription state that the measures for the administration of criminal justice in *dasa-gama*, enacted by the King-in-Council, were promulgated by the following four members of the Council - Raksa of Heluggama, Meykappar Lokehi of Kumburugama, Agbo of Katira, and Kudasala Ravisen.[114] Wickremasinghe refers to them as members of the "*Curia Regis*".[115]

According to Paranavitana, before an enactment became law, it had to be proclaimed to the relevant authorities (*tan*) - the army (*daṇḍa*), treasury (*kosa*), city (*pura*) and territory (*rāṣṭra*). The Badulla Pillar Inscription records the fact that due notice of the law had been given, and it names the members of the Council who came to set up the pillar.[116] Significantly, perhaps, two of them - the Military Commander and the Chief Secretary on behalf of the Treasury - represented two of the four authorities that had to be notified.[117]

Did legislation have to be sealed? Ariyapala stated: [118]

> "Decrees, enactments, etc., came into effect only after such documents had been stamped with the royal seal. This is shown by the [*Saddharma-ratnāvaliya*], which says: '*liyannan liyālū patkaḍeyi rajjuruvan lū oppuva nisā ē temē sanhas vīda*'. (55) The inscriptions bear evidence that this was the practice even in the preceding centuries, e.g. the Nāgama pillar-inscription states '*hasin pamuṇu koṭ vadāla taṇa bimhi*'. In the '*taṇa bima*' (grassland) which has been assigned with (His Highness's) seal as a *pamaṇu* (heritable grant) land. (*Epigraphia Zeylanica,* 2.1.16.)."

The use of procedures of proclamation, sealing, and the formal setting up of records were possibly ways of making the laws psychologically effective.[119]

Copies of some laws which had general application might have been indited on stone pillars and slabs that were set up in various parts of the country, depending on the extent of authority exercised by the monarch over a region. Thus Ranawella, dealing with the copies of the Vēvāḷkāṭiya slab inscription, stated:[120]

> "Nearly all of them have been discovered at places situated within the boundaries of ancient Rajaraṭa and Dakkhiṇadesa, or Māyārata. Up to date only a single copy has been discovered from Ruhuṇa. This geographical distribution of the copies of the Vēvāḷkāṭiya slab inscription clearly indicates that the authority of King Udaya IV had been well established in Rajaraṭa and Dakkhiṇadesa, but perhaps not so well in Ruhuṇa. The fact that no copies of this record, except the one discovered at Vannadipālama, close to the southern bank of the Mahaweli [river], the northern boundary of ancient Ruhuṇa, have so

> far been found in any other place in that province, could lead one to argue that Udaya IV had little control over that region. We have another pillar inscription of his in Ruhuṇa, the well known Badulla pillar inscription, but that too was found at Sorabora, a place situated very close to the southern bank of the Mahaväligañga."

Hayley's observation[121] that "The Sinhalese kings do not appear to have made laws", and Knox's view[122] "here are no laws", even if we take 'law' to mean the 'command of the sovereign', require reconsideration. Robert Knox, as did Hayley, recognized the existence of customary laws; but, it seems, Knox did not suspect that some laws were made by decrees and embodied in inscriptions. Knox observed as follows:[123]

> "Here are some antient writings engraven upon Rocks which poseth all that see them. There are divers great Rocks in divers parts in Conde Uda, and in the Northern Parts. These Rocks are cut deep with great Letters for the space of some yards, so deep that they may last to the worlds end. No body can read them or make anything of them. I have asked Malabars, Gentuses, as well as Chingulays and Moors, but none of them understood them. You walk over some of them. There is an antient Temple in Goddiladenni in Yattanour stands by one place where there are of these Letters. They are probably in memorial of something, but of what we must leave to learned men to spend their conjectures."

A few of the laws were written on stone slabs, tablets or pillars or, perhaps, on metal plates.[124] If for some reason, such as a complaint from a particular area, or the granting of immunities, laws were made with special reference to a place, they were placed in that area. The Badulla Pillar Inscription is one example. The Koṇḍavaṭṭavan Pillar Inscription is another.

In general, laws and grants were meant to last as long as the sun and the moon - *hira-sañd pavatnā tāk.*[125] However, while laws were stable and not subject to rapid change, they were not static. If amendments did have to be made and recorded in stone, that was done by a new inscription. Thus the Mäḍirigiri Slab Inscription of Mahinda VI[126] lines 12-13, stated as follows: " The regulations promulgated by Bud-Mala enacted when the year One Thousand

and six hundred had been completed, and the fifth year shall not be applied (*nonanganu* - lit. should not be raised). The regulations which Vara Vadur established when the year One Thousand five hundred and sixty nine had been completed shall not be applied."[127] Attempts to write in other material on the document recording the original enactment or grant would have made reading very difficult indeed.[128]

However, even with regard to the few laws inscribed on durable materials, their significance was not always readily appreciated, as we have seen from the observations of Knox. In 1870, the now famous "Badulla Inscription" was removed from a forest that had once been a range of paddy (rice) fields, to Badulla and set up near the junction of the Kandy and Bandarawela Roads. But even in 1893, it had not been deciphered, and the belief was[129] that it commemorated the construction of the irrigation scheme at 'Horaboraveva'. It was only after it had stood till 1920[130] at its new site that H.W. Codrington, the Government Agent of Badulla, made an eye copy of it and drew the attention of the Archaeological Commissioner to its historical value. Its importance as a record of legislation was discovered subsequently. The exact meaning of some of its provisions took further time to clarify.[131]

Decrees donating villages and lands or granting immunities, and sometimes regulating matters pertaining to asylum and so on, were usually indited on stone pillars and slabs and placed in the village or lands to which they related. Sometimes, the records were moved from their original locations. Thus the "Badulla" Pillar which was concerned with the administration of a market place[132] named Hopitigamu was moved from Horaboraväva to the junction of the Kandy and Bandarawela roads in Badulla. This caused no difficulty when it came to be read in later years, for the record gave particulars of the place to which the decree applied. When Wickremasinghe found the Buddhannehäla Pillar Inscription, it was standing upside down, serving as a door-jamb of a Saiva shrine. Since the information on the record was in tact, there was no difficulty in identifying the place to which it related.[133] However, when the place to which a decree relates is not named, or

the name had been obliterated, the transfer of a record from its original site has created difficulties. [134]

Having examined the enormous available body of literature on the inscriptions, my view is that most of the published and edited inscriptions seem to record information that is of little or no use to a person concerned with the subject of the administration of justice.[135] Others do provide valuable information; and of course there are inscriptions that have yet to be published and edited, and others that may be discovered. To the scholars who have edited the available inscriptions, the debt we all owe is considerable.

THE APPLICABILITY OF LAWS

Notwithstanding certain exceptions, such as the Vēväḷkäṭiya Slab Inscription, the decrees recorded in many of the inscriptions found so far, it seems, had limited territorial application. Nevertheless, some inscriptions give us valuable insights into the way in which justice was administered. In so far as they laid down or affirmed laws applicable to specified areas, they were as binding and had as much force as any law of general application. Attention has been drawn to the 'situational character' of certain laws. For instance, Gananath Obeyesekere[137] pointed out that although the traditional laws of inheritance were basically the same, yet the Sabaragamuva law of inheritance gave widows greater rights than widows in other Kandyan areas, for a variety of interesting reasons he adduced.

The fact that laws are limited in application does not divest them of the character of law even by contemporary standards. Sometimes an Act of Parliament provides for it to be brought into effect territorially. There is no requirement that legislation must be applicable throughout a nation in order to be regarded as law. In federal systems of government, every state has its own laws. In Sri Lanka, the Provincial Councils may legislate on certain matters for the area governed by it. Emergency regulations, which are 'laws,' are often made applicable to certain proclaimed areas only.

THE RECORDING OF LAWS

Nor is the absence of a code, evidence that there are no laws: In most countries, only some parts of the law are codified. Nor are all laws found in statutes. All laws of general application could not, for pragmatic reasons, have been inscribed on such durable materials as stone or metal for the use of the numerous judicial bodies and officials in the country. For instance, even the Vēvälkäṭiya slab inscription, of which copies were made and erected in several places, was inscribed on a stone measuring 6 1/2 feet by 1 foot 8 inches. Given the fact that there was an elaborate, far-flung, nationwide system of official and other courts for the administration of justice, it is likely that the laws of general application, were from time to time written on portable, but less durable, materials than stone or copper, for the use of the king's advisers and officials. Laws and precedents might have been committed to memory and applied; but in a country where there was a tradition of writing down things of importance, is it unlikely that laws and precedents were recorded?

Words, as Lord Denning observed[138] are "the lawyer's tools of trade." The way in which laws, legislation, grants, court orders and so on were recorded might be reasonably supposed to be of interest to members of the literati and to lawyers in particular. The way in which the people of Sri Laṅka recorded information was on palm-leaves. Knox said:[139]

> "They write not on Paper, for of that they have little or none; but on a Talli-pot leaf with an Iron Bodkin, which makes an impression.
>
> This leaf thus written on, is not folded, but rolled up like Ribbond and somewhat resembles Parchment.
>
> If they are to write a Book, they do it after this manner. They take the Tallipot leaf and cut it into divers pieces of and equal shape and size, some a foot, some eight inches, some a foot and an half long, and about three fingers broad. Then having thus prepared the leaves, they write in them long ways from the left hand to the right, as we do. When the Book is finished they take two pieces of board, which are to serve for the cover of the Book. To these boards are fastened two strings, which do pass thro every leaf of the Book, and these tye it up

fast together. As the Reader hath read each leaf, he lifts it up, and lays it by still hanging upon the strings, and so goes to the next leaf, something resembling Bills filed upon Wyre ...

The King when he sends any Warrants or Orders to his Officers, hath his Writings wrapped up in a way proper to himself, and none else do or may fold up their leaves in that manner but He.

They write upon the Tallipat leaves Records or matters of great moment, or that are to be kept and preserved: but for any ordinary business as Letters, &c. they commonly use another leaf, called Taulcole. The leaves of which will bear a better impression than the Tallipat, but they are more stubborn and harder than the other, and will not fold."

In general, Sri Lankan records on leaves are referred to as *ōla* documents. 'Ō*la*' refers to immature leaves of Talipot (*Corypha umbraculifera* - Sinhala - *Tal-gaha*) and Palmyra (*Borassus flabellifer* - Sinhala - *Tal-gaha*) palms, bleached and used for writing on with a metal stylus.

Earlier, however, information might have been recorded on boards. Paranavitana,[140] stated as follows:

"The commentator of the *Mahāvaṁsa*, in his remarks on Ch. XI, v. 13, of that chronicle, mentions bamboo[141] boards of books, suggesting that they were used as writing material.[142] The word meaning 'a missive' in classical Sinhalese is *kata-pat*, which, being a compound of two words derived from Skt. *kastha* and *patra*, would etymologically mean 'wooden board'. The use of such a word points to a time when documents were written on wooden tablets with a paint brush as was the custom among the Indianized people of Central Asia. Hundreds of examples of such documents written on wooden tablets have been found by Sir Aurel Stein in his excavations in the sand-buried cities of Central Asia." [143]

Monarchs sometimes made their records on perishable material. For instance Vaṭṭagāmaṇi Abhaya, 'glad at heart', allotted lands to a temple, recording the grant on a *ketaka-patta* (*Pandnus odoratissimus-* Sinhala, *Vätakeya* - leaf).[144] However, other monarchs, like King Niśśaṅkamalla (1187-1196 AD) realized

the fact that records could be destroyed if they were made on *ōla* leaves. Where a matter was of importance, he deemed it fit that it should be recorded on durable materials. In his Dambulla Rock-Inscription[145] Niśśaṅkamalla made it a rule that "when perpetual grants (*hira-sañda-pamuṇu* - grants which are in force so long as the sun and moon exist)[146] of land were made to those who had done loyal services, such benefecations should not be made evanescent, like lines drawn upon water, by being written on *tal-pat* (palm leaves) which were liable to be destroyed by mice, white ants and the like; but that they should be engraved on plates of copper, so as to endure long unto their respective posterity."[147]

Less durable materials, like *ōla* leaves, on which laws were written, probably do not exist any longer: they might have been destroyed by enemies in times of war. The *Cūḷavaṁsa*[148] records the destructive acts of the warriors of King Māgha (1215-1236 AD) who invaded Sri Laṅkā. It stated: "Many books known and famous they tore from their cord and strewed them hither and thither."

Others perhaps, were "destroyed by mice, white ants and the like", to use the words of King Niśśaṅkamalla.[149] Possibly they might also have been lost in other ways. Sir Alexander Johnston had collected "Between five and six hundred books in the Cingalese, Pali, Tamul and Sanscrit languages relating to history, religion, manners and literature of the Cingalese, Hindu and Mohamedan inhabitants of Ceylon ... at considerable expense." They were lost in 1809 when the *Lady Dundas,* on which he had taken passage for England, was shipwrecked.[150]

MONARCHS WERE UNDER THE LAW

Admittedly, some laws were expressly repealed or amended, as statutes are repealed and amended today: but neither the fact that a code of written laws was not available, nor the fact that the laws were amended from time to time, in my view, warrants the suggested inference that laws did not exist or that they were forgotten or routinely disregarded by subsequent monarchs or that

they automatically fell into disuse upon the accession of a new ruler. Hayley,[151] and some British writers, mislead themselves by erroneously assuming that a monarch was 'absolute' and could ignore the laws of the realm, including laws made by earlier kings.

Indeed, the contrary appears to have been the case. As far as customary laws were concerned, the accession of a new monarch would have had little or no impact, for the king was required to obey them and enforce them. As far as decrees were concerned, they were expected to last as long as the sun and the moon endured - *hira-saňd pavatnā tāk*. Sometimes, this was expressly stated in the decree itself.[152] Occasionally, the symbols of the sun and moon were engraved on the record. Sometimes a period of five thousand years was mentioned. No doubt what was meant was that the decree was to endure. Subjects were warned that they would become, or be regarded as, crows and dogs, or go to hell, if they did not observe the provisions laid down in the edicts.[153] Not only subjects, but ministers and others in royal favour,[154] and subsequent monarchs and princes were also required to observe the decrees. The Mäḍirigiri Slab-Inscription of Mahinda VI said in lines 33-34: "Any kings, sub-kings or princes who transgress this determination of rights (*samvata*) would have taken upon themselves the sins of those who have killed fish on the sea-coast areas in an entire district; they would be as if they have broken the oath which is taken by members of our royal family on the occasion of the wearing of the diadem to assume the royal dignity; they would be as if they have killed goats at Mahavutu." [155]

A Pillar Inscription from Dorabāvila records a decree of *mahapā* Dapul which ends with the following words: "If there be any king, *mahayā* or *āpā*, who will not observe this [decree] [he] shall become a crow or a dog." [156] Mihindu, 'the learned *āpā*' (heir apparent) is recorded in the Mayilagastoṭa Pillar Inscription as having decreed "that princes of the royal family shall not break these regulations, but shall perpetuate this edict."[157] King Niśśaṅkamalla concluded his edict recorded in the Galpota Slab Inscription with the following words: "Thus are future kings

exhorted by Kalingu Lakindu Nisaka", i.e Kalinga Lankendra Niśśaṅka-[malla].[158] The same king's decree recorded in the Prīti-Dānaka Maṇḍapa Rock Inscription stated: "May future princes read it and continue the virtuous practice of almsgiving which has thus been established, and so attain the realization of heaven and release from rebirth." [159] It was customary, and therefore constitutionally necessary, subject always to the flexible approach to the interpretation and application of law, for edicts to be followed, and so, even without the usual imprecations, monarchs simply appealed to their successors, as in the Nelubāva Pillar Inscription of Gajabāhu II, to observe the law.[160] Niśśaṅkamalla stated: "Should there be any persons who have committed any contravention of this order, they have turned their backs on the principles of royal conduct; hence they are equal in name to vile men like the *mātaṅgas*,[161] and to crows and dogs."[162] Udaya III, as we shall see, almost lost his throne by failing to observe customary practices. [163]

The Act recorded in the Badulla Pillar Inscription arose from complaints made by the tenants of the merchants (*vaparayan kudin*) of the Hopiṭigama bazaar in Horabora that the servants (*gättan*) of the Army General, the recipient of the bazaar, in days gone by, had transgressed the statute enacted by King Kassapa IV (898-914 AD) and extorted fines illegally. King Udaya IV (946-954 AD) had a statute put into legal form by officials of the judicial secretariat - *sabhāye lēkamge* - prohibiting practices contrary to the law enacted in the days of King Kassapa IV. Accordingly, a statute had been formulated by those officials, meeting in session for that purpose,[164] to the effect that when the servants of the recipient of the bazaar come to the village, they, together with the counsellors (*mandraḍi*), the members of the mercantile guild (*vaṇigrāman*) and the elders of the village should not do anything illegal. The elders of the village (*mahāgrāmayan*) were required to "sit in session and levy fines in accordance with the statute of the days of the Lord who passed away in the seventeenth (year)" - Kassapa IV - and "in accordance with former custom; but they shall not do anything illegal."[165]

The monarch seized upon the opportunity to regulate matters relating to other subjects, e.g. trade and fugitive offenders. One of the ancillary subjects regulated by the Badulla Pillar inscription was *Välkäme dämīma* which prevailed even at the time of the Kandyan Kingdom.[166] The Badulla Pillar Inscription stated that "No person shall be kept in restraint in respect of fines that have not been determined (*nopirikapu*); for fines that have been imposed, the husband shall be kept in restraint, but [his] wife and children shall not be subjected to this restraining."[167]

THE MAKERS OF DECREES

Ranawella has pointed out[168] that certain decrees had been issued not only by the king, but also by the heir apparent (*mahapā*) as well as by the heir presumptive (*āpā* or *ādipāda*). Did certain officials have delegated authority to issue some form of legislation or to make regulations? Ariyapala[169] stated that, according to the *Kaňdavuru-sirita*, [170]

> "King Parākramabāhu II was wont to listen to certain officers who informed him of any new enactments, etc., which were perhaps promulgated by them in their respective territories or spheres of duty, and that the king would either reprimand the officers or ratify the regulations according to whether he was annoyed or pleased with them."

In one instance, a decree was issued neither by the king, nor by the heir apparent but by some dignitary, whose personal name, but not his title, is given.[171] Paranavitana has expressed the view that "Laws and regulations apparently were made not only by the king and the Assembly, but also by dignitaries, probably territorial magnates."[172]

CHAPTER XII

WRITTEN COURT RECORDS, CODES AND TEXTS

RECORDS OF PRECEDENTS

As we have observed, regularity in the way in which disputes were decided was a feature of the system of the administration of justice which aimed at minimizing arbitrariness and caprice and promoting equality, impartiality and consistency. Therefore, precedent was important. Nicholas and Paranavitana,[1] in discussing the Administration of Justice during the Poḷonnaruva, period said:

> "The procedure in these courts of law was akin to trial by jury. After listening to the witnesses and the parties, and deliberating on customary law and precedent, the assessors expressed their opinion and the president gave his judgment."

The use of precedents usually assumes the existence of records of decisions. Weerasinghe[2] stated:

> "The *Rājappaveṇi-potthaka* referred to in the [*Papañcasūdani*] is important. The name conveys the sense of the *Book of Royal Traditions*. The [*Papañcasūdani*] implies this to have been a treatise on law and judicial precedents. (1. 26)."

Records were probably kept of judicial decisions (*pubba cāritta*). Geiger[3] said:

> "There is in the chronicle (49.20) the interesting passage that king Udaya I - this is probably the correct name of the ruler hitherto called Dappula II - caused judgments which were just to be entered in books and kept in the royal palace in order to avoid future violations of justice. Such a collection of judicial decisions, acknowledged in olden times as correct and just, could serve as sure guides for future kings."

Udaya I (Dappula II) (797-801 AD),[4] caused "Judgments which were just [to be] entered in books and (these) kept in the royal palace because of the danger of violation of justice". "They

were kept in the royal palace lest these case decisions should be upset (*ukkoṭanabhayena*) due to some reason or other".[5] Decisions could most easily be "upset" on account of the ignorance of their existence, which, of course, was likely to happen unless decisions were recorded, and made known, perhaps through collections of decisions or in treatises on law.

However, D'Oyly said[6] that "no record whatsoever of judicial proceedings was preserved in civil or criminal cases" during the reign of Sri Vikrama Rājasiṁha (1798-1815 AD). Hayley[7] confirmed this.

One of the circumstances the British officials regarded as prejudicial to the impartial administration of justice as they conceived it was the absence of records of judicial proceedings: this, they said, lead to arbitrary decisions. And that was one of the reasons why the system was changed. [8]

If records of judicial proceedings were not maintained during the reign of Sri Vikrama Rājasiṁha, then the principles of the system were not being observed by his officials. As we have seen, the Vēväḷkäṭiya slab-inscription required the judicial committee of the *dasagama* inquiring into the commission of offences to keep a record of the proceedings of an inquiry "so that it can be produced later" - *dasä gämä ättan hindä vicarā upan däyaṭ pä häkise liyā tabā.*[9]

Producing the record of the proceedings would serve several purposes: (1) it would be evidence of a precedent; (2) it would be of assistance in the hearing of an appeal; and (3) it would be useful to the visiting officers of the monarch who were entrusted with the task of exercising supervisory control: the records would show them whether the decisions were fair or arbitrary, and raise questions relating to impartiality.[10]

We have seen that the *Dharmaśāstras* were an important source of law. Other works too may have been consulted.

ĀYASMANTA'S COMPILATION

Geiger[11] said: "In the thirteenth century Āyasmanta, the Senapathi of queen Kalyaṇavatī [1202-1208 AD] and actual ruler of the kingdom, is said to have compiled a text-book which had law as its subject (*dhammâdhikaraṇaṃ satthaṃ*, [*Cūḷavaṁsa*] 80. 41. This was certainly a code of laws." Ariyapala (p.124) observed: "This book is not extant today and we have no further information regarding it; therefore we are not in a position to know exactly what its nature was. One may conjecture that, what was popularised in the island may have been a Code of Laws of the country, or even a law-book based on the *Dharmaśāstras*."

WRITTEN SOURCES OF LAW

Percival[12] said the "Candians, indeed, boast of an ancient code of written laws, but these remain in the hands of the monarch..." This accords with the *Paṭuna* (Introduction) to the *Nīti Nighaṇḍuva* that the *Nīti Nighaṇḍuva* was based on legal writings preserved in the court in Kandy (*Senkaḍagala-pura naḍusālāvehi*).[13]

The *Lak Raja Lō Sirita* made several references to written sources of laws: For instance, in response to the question, *Are there any written laws laying down what are the cases a Dissāva is competent to deal with?*, the response was: "There are books containing such regulations".

At a time when books were rare, educated people committed important things to memory. Kings, their advisers and chiefs were educated in the laws, and may usually have been able to recall them. It did not therefore necessarily follow that laws were not written down. Compilations of laws, as the one made during the reign of Queen Kalyāṇavatī, were possibly made from time to time for the guidance of the king and his judges. The *Lak Raja Lō Sirita* makes several references to authoritative books that were consulted: In answering the question whether a king could pass over his eldest son in selecting his successor, reference is made to "the book named

Raja Ratnakare; after describing the protocol to be observed on the accession of a monarch, it is stated that "These details appear in the book named *Maha Vansa*"; the *Mahāvaṁsa* is also cited in support of the view that the monarch was not absolute and was ordinarily required to act in consultation with his Council of Ministers and his subjects; in describing the manner in which the monarch should regulate his conduct, reference is made to "the book *Telepatra Jātakaya*"; in discussing the subject of procedures for trials in the case of serious offences, it is stated that "the books where the ancient precedents of such cases are recorded should be consulted"; after describing the ten laws a king must obey, "the book named *Dik Sangiya*" is cited as the source; as to the rights of the people in dealing with an unrighteous judge, the principles are stated and illustration is given from "the book *Sutasoma Jātakaya*"; in reply to the question "Are there any written laws laying down what are the cases which a Dissāva is competent to deal with?, it was stated that "There are books containing such regulations". The *Mahāvaṁsa* and other works referred to are not legal texts; but they were referred to as providing evidence of precedents and customs.

In applying the criminal law, the established procedure, adopted by Sri Laṅkan monarchs from practices followed since the Vajjian republics of North India in Buddha's day, was for committal by a series of tribunals, until the matter reached the king, who did not act arbitrarily. It is said: "The Raja released the accused if he was innocent, if he was found guilty the Raja referred to the *Pareni Putthaka*, that is the *Pustaka* or book recording the law and precedents. This book prescribed the punishment for each particular offence. The Raja having measured the culprit's offence by means of that standard, used to inflict a proper sentence." [14]

UDAYA I'S COMPILATION

William Knighton[15] stated:

> "Mahanama, the king of the island, and a voluminous writer in the beginning of the fifth century, it is probable compiled a code of laws, as

> well as added commentaries to those of Buddhu. We have a certain and distinct intimation, however, in the history of Dapulo the Third (A.D. 797) of his having compiled a distinct code of laws, which he transmitted to posterity with the greatest care. But although these are the only cases in which the composition of codes of laws seem to be explicitly referred to, yet the frequent commendation of the various sovereigns in the native histories, for their just administration *of the laws*[16] on the one hand, and the frequent condemnation of those who administered them unjustly on the other, leave no manner of doubt but that they were kept constantly in view and generally promulgated."

Knighton's inference that the commendations and condemnations frequently found in the literature of Sri Laṅkā leave no manner of doubt that laws were recorded and kept constantly in view is reasonable and acceptable. However, his reference to a code compiled by "Dapulo the Third (A.D. 797)" does not appear to be correct. The work is probably that of Udaya I (Dappula II) (797-801 A.D.) who, as we have seen, according to the *Cūḷavaṁsa*,[17] caused " judgments" to be recorded.

ALLEGED ABSENCE OF WRITTEN LAWS IN THE KANDYAN KINGDOM

It has been said that there was a collection of legal materials in the royal court of Kandy, (*Senkaḍagala-pura naḍusālāvehi*) upon which, among other sources, the compilation known as the *Nīti Nighaṇḍuva* (Collection of Laws)[18] was partly based. The rest of it was based on the opinions of experts in ancient law - *purāna nītī dannā dänamiti tänättange gurukam*. So it is stated in the introduction to the compilation.

The *Nīti Nighaṇḍuva*, possibly written by a *bhikkhu*,[19] or by an expert in the law, with the assistance of *bhikkhus*,[20] is a compilation of ancient Sinhala customary laws written during the days of the Kings of Udarata - the Kandyan Kingdom (1469 -1815), possibly during the earlier part of that period.[21] It seems that a copy was in the possession of the *Disāva* of Wägodapola. From him Welagedera, then Kōrala of Pallepana, afterwards Ratēmahatmayā of Udapalatha, secured another. Welagedera was the paternal uncle

(*suḷu-piya*) of T.B. Pānabokke, Chairman of the *Gamsabhāva* of Dumbara Depaläta. Pānabokke transcribed his uncle's copy and had it published in 1879. An English version was published in 1880 by C.J.R. Le Mesurier and T.B. Pānabokke.

In 1842, John Armour, Judicial Commissioner and subsequently District Judge from time to time in several stations, wrote a series of articles entitled *Nīti Nighaṇḍuva or the Grammar of (Kandyan) Law* which were published in a periodical called *The Ceylon Miscellany*. When Le Mesurier and Pānabokke's English version of the *Nīti Nighaṇḍuva* appeared in 1880, there was a controversy as to its relationship to Armour's work: it was even suggested that the 1879 (Sinhala) and 1880 (English) versions of the *Nīti Nighaṇḍuwa* were the work of plagiarists.[22]

Hayley was aware of the existence of records of the laws and sources of law, or at least some of them. Thus, at pp. 12-13 of his monumental work, he states that information on customs set out in the minutes of the Board of Commissioners and Agents of Government contained "valuable information on the subject, and indeed constitute, with the manuals subsequently published, almost our sole source of knowledge, *other than what can be gathered from sannasas* (royal grants, usually written on copper), *talipots* (deeds written on palm leaves,) *and siṭṭus* (decrees) of which fortunately a number, some dating back to the fifteenth and sixteenth centuries, is still to be found." At p. 20, he stated that the views expressed in the *Nīti Nighaṇḍuva* "coincide with the evidence furnished by *ōlas, sannasas,* and the historical books." At p. 264 he referred to the Vēväḷkäṭiya inscription.

One of the supposed characteristics of the existing system which the British officials and writers regarded as being prejudicial to the impartial administration of justice as they conceived it, was the absence of 'written laws'. What they meant by that phrase is far from clear.[23] Nevertheless, it was a ground that was urged by the British for the replacement of the indigenous system.[24] Sir Alexander Johnston, Chief Justice of Ceylon from 1810 to 1817, did not

complain of the absence of laws or of written sources of law; for he was well acquainted with them. He identified the problem: the ignorance of British judges of the laws of the country. In a letter dated the 13th of November, 1826, he informed the Chairman and Deputy Chairman of the Court of Directors[25] that what was required was a codification of the laws, which would, no doubt, have assisted English judges in the discharge of their duties. He said:

> "After a very long residence in Ceylon as Chief Justice and first member for His Majesty's Council in that island and after a constant intercourse, both literally and officially, for many years with the natives of every caste and of every religious persuasion in the country, I felt it my duty to submit it as my official opinion to His Majesty's government that it was absolutely necessary in order to secure for the natives of Ceylon a popular and a really efficient administration of justice to compile for their separate use a special code of laws which at the same time that it was founded on the universally admitted, and therefore universally applicable, abstract principles of justice should be scrupulously adapted to the local circumstances of the country, and to the peculiar religion, manners, usages and feelings of the people. His Majesty's government fully approved of my opinion and officially authorized me to take the necessary steps for framing such a code."

Certain steps were taken to have some of the ancient historical texts and accounts of government, legal institutions and law, including the Dutch Dessave de Coste's *Memoir* of 1770,[26] translated into English and given to the English authorities.[27] However, Johnston's efforts did not bear fruit.

Notwithstanding the assurances in the Convention of 1815, the old system of the administration of justice came to an end with the introduction of a new courts structure by a Royal Charter of Justice dated the 18th of February, 1833. The laws and customs too were abrogated or modified by legislation, and as a result of a series of decisions of the Supreme Court from 1886 onwards.[28] The last remnants of what had once been the "common law in the strictest sense", [29] the law of general application, namely, "the common law of the Singalese",[30] was reduced to a personal law applicable only to the "Kandyan Sinhalese". Moreover, much of what is today

described as "Kandyan Law" is regulated by legislation, e.g. in relation to marriage and divorce, adoption, gifts, succession on intestacy and the tenures of land held subject to the performance of services.[31] Indeed, Nadaraja[32] stated that what remains "may not inappropriately be called the Anglo-Kandyan Law".

THE NĪTI-NIGHAṆḌUVA

Local leaders saw the writing on the wall. In his Preface to the 1879 edition of the *Nīti-nighaṇḍuva*, Pānabokke said:[33]

> It is possible that from time to time the laws stated in this book will completely cease to exist in this country. All the statements in this book on the subject of slavery and associated marriages have been already modified by the legislative enactments of the British government. There are likely to be innumerable changes in the future. Despite this, the work will be very useful in the future too in acquiring some knowledge of the ancient laws and customs of our country.

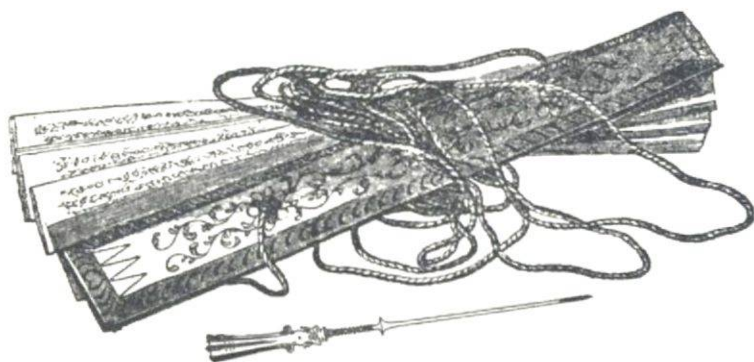
Hayley[34] said:

> The merits of the *Nīti Nighaṇḍuva* do not appear to have been sufficiently appreciated hitherto. Obscure as its origin, and vexatious as its examples occasionally are, the statements nevertheless generally coincide with the evidence furnished by *ōlas* (manuscripts written on palm leaves), *sannasas* (royal grants usually inscribed on copper plates), and the historical books.

Indeed, it has even been said that "The *Nīti Nighaṇḍuva* ... is the only available legal text on the ancient law of the Sinhala people."[35] However, in my view, other sources need to be consulted in order to understand the laws and legal institutions of the Sinhalese.[36]

Although we should not regard the *Nīti Nighaṇḍuva* as the only source of information on Sri Lankan laws, customs and legal institutions, it is nevertheless a useful source of information on some aspects of civil law. Its 126 pages are divided into five chapters. Chapter I is divided into four parts: the first deals with the nature of laws - *Rāja-nītiya* - the general law made by the King; *dharma-nītiya* - ecclesiastical laws, and *lōka-nītiya* - customary law.

The second discusses the law of persons (*aya*) and things (*deya*). The third and fourth parts deal with slaves (*dahasun*) and freedmen (*nidahasun*). Chapter II consists of three parts. It deals with the law of property (*vastu*), birth-right (*dā-himiya*) and inheritance (*vada-himiya*). Chapter III is divided into fourteen parts and deals with (I) marriage (*vivāha - binna* and *dīga*); (II) unlawful (*no-sirit*) marriages; (III) prohibited degrees of relationship; (IV) permanent (*sthira)* and invalid (*anisthira*) marriages; (V) polygamous marriages (*anek bhārya vivāha*), and polyandrous marriages (*anek puruṣa vivāha*; (VI) divorce (*vivāhayen mīdima*); (VII) the legal position of children in the event of divorce; (VIII) rights of inheritance flowing from marriage (*vivāha urumaya*); (IX) when legitimate children may not inherit the property of the father; (X) adoption (*ätikaragat daruvan*) and the rights (*urumaya*) of adopted children (XI) (*bhāraya*) guardianship and curatorship (*pālanaya*); and (XII-XIV) various aspects of the law of inheritance.



JOHN DAVY (BOOK) AND ANANDA COOMARASWAMY (STYLE)

Palm-leaf book and writing style. See pp. 255 ff. above.

CHAPTER XIII

THE COURTS OF LAW IN GENERAL

THE ESTABLISHMENT OF COURTS

According to Ranawella, the chronicles do not mention the existence of courts, although King Vijaya was said to have ruled *dhämmena-samena* - justly and righteously in peace.[1] Ranawella stated that neither Vijaya, nor Paṇḍukābhaya, nor Devānaṁpiyatissa established courts of law,[2] although he admits that the early settlers brought with them their system for the administration of justice.[3] As we shall see,[4] it is probable that from the earliest times there were *gam sabhā* (village community courts) to settle small disputes. We might reasonably assume that in the earliest days the kingdom had no more than a few thousand people, and that therefore there was no need for an elaborate judicial system; for most matters, being of a simple nature and of minor significance, might have been dealt with by the *gam sabhā*, while other matters might have been decided by the king and his council. It is said that Paṇḍukābhaya (c.377-307 B.C.) ten years after his installation established 'the village boundaries over the whole of the island of Laṅka'.[5] Is it unreasonable to assume that each village community, whose territorial boundaries had been demarcated, would have had its own tribunal, given the fact that each *gama* (village community), as we shall see, prized its independence?

No doubt, as the population increased,[6] and society grew somewhat more complex, it became necessary for courts of law dealing with serious matters of more than local importance, to be established, as a part of the system of administration. Such courts were probably in existence by the time of King Duṭṭhagāmaṇī (161-137 BC).[7] Ariyapala[8] stated that the " actual working of the administration was carried on by a Council of State, which consisted of a certain number of ministers who held different portfolios ... [T]he administration was divided under different heads, as for example, Finance, Law, etc., and ... each department was placed

under a ministry, at the head of which was a minister." Ariyapala[9] observed that "The administration of justice was one of the primary functions of the state," and for discharging his duties in that regard, the monarch appointed a Minister of Justice and other officials.

"Though the king was the highest court of appeal and supreme dispenser of justice, in every day life justice was administered by judges appointed by the king."[10] Obviously, if a monarch took it upon himself to personally adjudicate every dispute, no more than a few cases could have been heard. Moreover, there would have been geographical impediments to obtaining justice if every aggrieved subject had to travel all the way to the palace from wherever he or she resided. The Eḷāra episode relating to the bell of justice was, among other things, illustrative of the recognized principle that aggrieved persons should have adequate access to justice even at the highest levels.[11] Courts were situated all over the country to ensure adequate physical access to justice. We are told that when he became king, Duṭṭhagāmanī (161-137 B.C.) established courts of law all over the country and appointed judges to hear cases.[12] Possibly, the system of courts was later disrupted by invaders, and it is said that Vijayabāhu I (1055-1110 AD) revived them.[13] The *Cūḷavaṁsa*[14] said: "The administration of justice which had long lain low, the Sovereign, a fount of pity, carried out himself, keeping to the law and justice." The Galpota Slab-Inscription stated that "with the aid of administrators of justice, [King Niśśaṅkamalla (1187-1196)] put an end to injustice in various provinces."[15] The Prīti-Dānaka Maṇḍapa Rock Inscription stated that "Through courts of justice (*dharmādhikaraṇa*) [Niśśaṅkamalla] suppressed injustices in many places."[16] The Mäḍirigiri Slab-Inscription of Mahinda VI speaks of the *sabhā-hala* (court-house) situated in the lands covered by the decree.[17]

VARIOUS DESCRIPTIONS OF COURTS

Courts of justice, were described in various ways, from time to time. In the earliest days there was the *rāja-sabhā* (royal hall or

king's court) which was an assembly in the palace of the king's council presided over by the monarch. It was not unlike the *Mahā Naḍuva* (the Great Court) of the Kandyan Kingdom.[18] The commentaries on the *Añguttara-Nikāya* and the *Majjhima-Nikāya* describe the supreme court as a "great hall of judgment in the king's palace" (*raja-kulaya meda maha viniscaya*). This was a council of princes and ministers presided over by the sovereign.[19] It was not unlike the king's court in ancient India - *śāsita* -, I have referred to.

Paṇḍukābhaya is said to have constructed *sivika-sālā* and *sotthi-sālā* here and there (*tahim tahim*) in Anurādhapura.[20]

Weerasinghe[21] said: "*Sotthi-sālā* (Skt. *svasti* + *sala*) here conveys the sense of halls (*sālā*) of well-being (*svasti*). The halls of well-being (*sotthi-sālā*) in question appear to be nothing but halls of material or legal well-being and hence courts of justice. They might have ceremonially sat daily to the accompaniment of the chanting of the benedictory *Vedic mantras* by the Brāhamin priests in the service of the state."

If, as Weerasinghe maintained, law courts were sometimes described as *sotthi-sālā*, it should come as no surprise. They were places of healing, curing criminals, by giving them the 'medicine' of punishment and, in the case of civil disputes between private persons, places of reconciliation. However, whether '*sotthi-sālā*' were courts of law, is a debatable matter. [22]

In the early Anurādhapura period, it seems, the courts were called *vinic-chaya-sālā*,[23] or *viniścaya-sālā* (halls of law/judgment), *viniśchaya-sthāna*,[24] (places of law/judgment), *viniśchaya maṇḍala*,[25] *vinisa-maṇḍala* (boards of law/ pavilions of law),[26] *rāja gaṇa* (royal courts or king's council),[27] The Rock-inscription at Situlpavuva records the existence of a High Court (*mahā vinica*) at Dubala-yahaṭa-gama and at Akuju-Mahagama, during the reign of Gajabāhu I (174-196 A.D.).[28]

During the late Anuradhapura period, a court of justice was generally known as *dharma/dhamma sabhā* [29] or *adhikarṇasālā* (place/s of judgment). During the Poḷonnaruva period, courts of justice were usually described as *dharmādhikaraṇa*.[30] The Galpota Slab-inscription stated that King Niśśaṅkamalla established *dharmādhikaraṇa* for the purpose of putting an end to lawlessness (*anyaya nivarana*) in the country.

DRAMATIS PERSONAE IN COURT

There are important differences when details are considered, but in general, the rudimentary features of the traditional system were not very different to what we find today in our courts: Weerasinghe stated[31] that there was "the President (*Sabhāpatinā*), the complainant (*codaka*), the defendant (*cudita*), witnesses (*sakkhi*), the jury and the assessors (*sabhyas*), appointed (apparently) by the Principal Secretary of Legal Affairs (*sirit-lenā*)." We shall have more to say about *sabhyas* later on. [32]

Paranavitana[33] referred to certain officials named in the early *Brāhmī* inscriptions of Sri Laṅka[34] bearing the designation '*mahāmata*', one of whom performed judicial functions. He stated:

> "This word is obviously the equivalent, in Old Sinhalese, of the Pali *mahāmatta* Skt. (*mahāmātra*) which occurs in the *Vinayapiṭaka*[35] as the designation of a high office in the kingdom of Magadha in the time of the Buddha. The office of *mahāmātra* continued as a feature of the administration of Magadha in the Mauryan system, for *mahāmātras* of various types are referred to in Aśoka's inscriptions. It has been stated that there were three categories of *mahāmātras*. The first, called *sabbatthika*, appears to have corresponded to the Civil (or Administrative) Service in modern times, for its members were expected to be proficient in any type of administrative work entrusted to them. The second and third categories had more specialized functions. The *vohārikas* had judicial functions and the *senānayakas*, as the name implies, were military officers."

THE PROBABLE ABSENCE OF PLEADERS

There were persons, including, as we have seen, some kings, who were learned in the law. But were there professional pleaders? Paranavitana[36] stated that an ancient *Brāhmī* inscription in a cave refers to a person named Naka (Naga), the proprietor of the Kaḍahalaka Tank,[37] who donated a cave in partnership with a person named Anulaya, and a lapidary whose name is not preserved: *Sidam Kaḍahalaka -vavi-hamika vohara. Nakaha Anuḷayaha. maṇikara ... tiṇi-jhanana leṇe*: Hail! The cave of the three personages [namely] the lawyer (*vohara*) Naga, the lord of Kaḍahalaka-vavi, Anulaya and the lapidary ...."[38] Naga is said to have been a *vohāra*. Paranavitana explained that this word, "which is the equivalent of Sanskrit *vyavahāra*, Pali *vohāra*, means 'law', or when treated as a derivative in Old Sinhalese, 'lawyer' ... We have seen above that one of the categories of *mahāmattas* was the *vohārika*, who had judicial functions to perform. It is not possible to ascertain whether the *vohāra* of our inscription was a dignitary of that status or whether he practised law in some other capacity." .

In 1974 an inscribed slab of stone was found at a place called Vannaḍi - pālama on the Allai - Kantale Road in the Trincomalee District. Professor Ranawella has kindly furnished me with his (as yet unpublished) edition of that inscription. The inscription is essentially in the same terms as the Vēväḷkäṭiya Slab Inscription. However, none of the officials who established the statute mentioned in the Vannaḍi-pālama inscription figure in the list of officials who established the Vēväḷkäṭiya inscription. Among the officials mentioned in the Vannaḍi-pālama inscription is 'Vatpuluvusana Sena'. Ranawella, (in his unpublished edition of the inscription) says:

> "The term *Vat-puḷuvusnā* prefixed to the name Sena, who is said to have come from 'the royal court of justice' (*rad-sabhā*) appears to be his official designation; the first part of this designation *'Vat'* has the meaning of 'matters', things or (narrating of) 'incidents', and the second part that of 'the inquirer'; or 'the person who interrogates'. Thus this

designation can be interpreted as 'the inquirer (of cases)' or as 'the prosecutor', who was attached to the royal court of justice. "

There is no evidence of the existence of pleaders whether as prosecutors or defenders, either in ancient and medieval India or Sri Laṅka. However, one wonders whether Sena was like the Indian *Prāḍvivaka* who at one time, as a sort of foreman of the King's Court (*śāsita*), asked questions of witnesses and stated his opinion, the decision being given by the King who presided over the proceedings?

On the other hand, the *Prāḍvivaka*, when he was in the court as a *sabhāsada* - a member of the judicial council before he was elevated to the rank of an independent judge whose advisory opinions the King was directed to accept - was expected to be non-partisan and absolutely impartial - '*Ripau Mitre cha ye samhā* ', (Cf. Sen-Gupta, p 79) although, like continental judges today, he may have acted in an inquisitorial manner.[36A]

Attention should also be drawn to the fact that Ranawella at one stage seems to have supposed '*Vatpuhusanä'* to have been *a place* from which Sena came. In *Ektäna* (p. 61) he said:

"The Vēvälkäṭiya Slab-inscription of Mahinda IV (956-972) has made reference to some officials 'who are sitting in the *raj-sabha* (*raj-sabhāye hindnā ... samdaruvan*), *E.Z.*, Vol. 1 p.247. A copy of the inscription found at a place named Vannaḍi-pālama on the Kantalai-Allai Road, has reference to an official named Sen of Vatpuhusana, who is said to have 'come from the *rad-sabhā' (rad-sabhāyen ā Vatpuhusanä Sen).* ASCIR No. 2947. This very official is mentioned in another copy of the Vēvälkäṭiya Slab-Inscription found at Hingurakgoḍa. There it is stated that he had come 'from the *Sabhā* (*Sabhāyen ā Vatpuhusanä Sen*. ASCIR No. 1005. It is evident from these references that the words 'sabhā' as well as 'rad-sabhā' or 'raj-sabhā' had been used to denote one and the same institution, namely, a court of justice."

Sena did come from a court of law; but it is unlikely, for reasons already explained, that he was a 'prosecutor' in the sense in which that term is used in modern courts of Sri Lanka, India or England.

Nicholas and Paranavitana[39] stated that "Niśśaṅkamalla appears to have initiated measures to make the study of the law a specialised profession and to have introduced the Brahmanical legal system into Ceylon."

The Brahmanical legal system as we have seen was probably brought by the early settlers from India.

In India, from the earliest times there were colleges of learned men (*parisads*) belonging to each clan or settlement which made it their business to specialize in all kinds of learning, including not only the law concerning secular matters (*vyavahāra*) but also the sacred law (*āchāra*) as well. People sought advice from them, among other things, on points of law. In course of time, the *parisads* ceased to exist, but there were persons who had specialised in the study of law who gave advice in return for honoraria. Although counsel who took up cases on behalf of clients in the manner of professional lawyers in Sri Laṅka today or even in classical Rome were unknown, yet, as members of the King's Court, in their role as councillors (*sabhāsada*) such lawyers often espoused the cause of a party, interrogated witnesses and expressed their independent opinions, and in that way significantly contributed to the administration of justice and the development of the law.[40]

As far as I have been able to ascertain, although there were persons learned in the law, there were no *professional pleaders* in Sri Lanka in the period under review. Parties were heard in person, except, perhaps that a woman appearing in a *raṭa sabhā*, was heard through her husband or a member of her family.[41] What happened in a court, it seems, did not call for specialization or much expertise: the parties stated their cases, and the judges settled the dispute, according to the law and precedents, in the light of the evidence.[42] The evidence need not have been subject to a lawyer's cross-

examination to elicit the truth, for the information was given by neighbours living as they did in small communities who knew the facts, and with whom the parties had lived and had to live with. Moreover, being persons from the same locality, the judges and assessors, who were allowed to use their personal knowledge, were likely to have known the facts. The chances of perjury were, therefore, small.[43] If a matter was to be decided by the taking of an oath, the relevant documents (*divi sīṭṭu*) were drawn up by the chief. Lawyers might have existed in early British times; there were two Dutch gentlemen who acted as advocates and proctors in the Supreme Court in 1807.[44] Pleaders were officially recognized in the proviso to clause 45 of the Proclamation of Governor Brownrigg dated the 21st of November 1818, which stated " that in civil cases the plaintiff may appoint an attorney to prosecute in his behalf; as may the defendant to defend his case."

VARIOUS DESCRIPTIONS OF JUDGES

A judge was sometimes referred to as *viniścaya-kāra*[45] - one who decides (a case), one who gives a judgment - *viniccayika* or *viniccaya-mahamacca*. Ranawella[46] stated: "The *Dhampiyā-aṭuvā-gäṭapadaya* (pp. 109-110) interprets the term '*viniccayika*' as '*vinisa-karuvo*', meaning, the judges." A judge may have been referred to as *vohārika* - decider in a law suit.[47] Sometimes a judge was called *adhikaraṇa-ämati* - a minister-judge.[48] Reference was made to *viniścaya mahā ämati*[49] - the chief minister-judge, meaning probably the Chief Justice.[50] According to the *Kaṅdavuru-sirita*, one of the officials who sat with Parākramabāhu II was called *adhikaraṇanāyaka* (the Chief Justice); another was *dahamgeyinā*, who Ariyapala[51] said was probably a Minister of Justice. However, the reference in the *Cūḷavaṁsa*[52] to one of the three rebellious officials being the *dhammagehanāyaka*, was stated by Geiger[53] to be a reference to the President of the Court of Justice.

What does the title '*sabhāpatina*' that occurs in the records mean? Weerasinghe[54] stated that the term *sabhāpatinā* in the *Nikāyasaṅgrahaya* implies the President (*patinā*) of the court

(*sabha*). This was probably the case.[55] But does *patinā* necessarily mean that the tribunal was composed of several judges? In modern times, a person who presides over a proceeding for the resolution of a dispute by a single person may be called a 'President'. For example, the "adjudicator" today, in the case of Labour Tribunals, is, and earlier in the old Rural Courts established under the Rural Courts Ordinance No. 12 of 1945, was, referred to as the 'President'.

Sometimes, there were benches of several judges. Weerasinghe[56] suggested that the number of judges on an appellate bench depended on the gravity of the matter. He stated that a bench of three judges is mentioned in the *Aṭadāsannaya*;[57] and that a bench of eight judges (*aṭṭha-vohārika-mahāmatta*) is referred to in the *Saddhammappakāsinī*,[58] - *yathā hi dhammiko rājā vinicchayaṭṭhāne nisinno aṭṭhannaṃ vohārika-mahāmattānaṃ vinicchayaṃ sutvā* ... Where a matter was heard by a bench of several judges, *sabhāpatinā*, perhaps, referred to the presiding officer of that bench?.

There are several references to *sabhāpati* in the records: E.g. in the Colombo Museum Pillar Inscription of Kassappa IV (898-914 AD); and in two unpublished fragmentary inscriptions of the tenth century, one from a place named Dombavalagama in the Vilacciya Kōralē of the North Central Province (*sabhāpati pritivudeva udanan davasa sabhāyen ā* ...), and the other, belonging to the reign of Kassapa IV, from a village called Kuncikulama in the Kuncutta Kōralē of the same province (*vadāla ektän-samiyen sabhāpati Dāpula Pirittirad* ...). A *sabhāpāti* or *sabhānāyaka* of the Kuṭhārasabhā is mentioned in the *Cūḷavaṃsa*, LXVII, 61, 64, 67 and 70.[59] Ranawella[60] stated that *Sabhā* was a court of justice, and probably a court attached to the king's council whose members may have been selected from the king's council. The Poḷonnaruva Council Chamber Inscription of Kasappa V (914-923 AD) or Dappula IV (924-935 AD) stated: "Should there be any dispute over [these] two plots of land and [this] share of the field in this village, it

shall be settled by arbitration by the royal officers sitting in the *sabhā*".[61] *Sabhāpathi*, Ranawella said, was the President of the *Sabhā* (Court of Justice).

There may have been more than one person who presided over the court attached to the king's council who functioned in turn.[62] Reference has been made in the Bilbāva inscription and in the Pillar Inscription of Kassapa IV to members of the *Sabhā* who had gone to set up those two *attāṇi* pillars on days when one Sand Pirittirad was presiding, indicating that several *Sabhāpati* were allocated days for presiding in the court.[63]

Sabhāpatināyaka mentioned in the Doratiyava *sannasa* of Niśśaṅkamalla (1187-1196 AD) was the designation of the Chief Judicial Officer.[64]

ASSESSORS AND JURORS

Judges were assisted by assessors *(sabhyas)* appointed, it seems, by the Principal Secretary of Legal Affairs (*siritlēnā*).[65] Manu[66] decreed that when the king delegated a matter to be heard by a judge, "That [man] shall enter that most excellent court, accompanied by three assessors, and fully consider [all] causes [brought] before the [king]..." Earlier,[67] Manu had stated that punishment "cannot be inflicted by one who has no assistant."

According to Fernão de Queyroz,[68] in the sixteenth century, "only in cases of greater importance was [the ruler] assisted by the *Mudeliares* with only a consulative vote and two *Mutiares*[69] or secretaries for ordinary business ..." In other matters, the ruler, it seems, informally dispensed justice. In describing "The annual assizes called *Marallas*", João Ribeiro[70] said:

> "Since we have preserved to these people the laws and customs of their ancestors as I have stated above every year there were selected four Portuguese who were designated Maralleiros, officers corresponding to Coregedores amongst us; they were nominated by the Bandigaralla who answered to our Chief Justice subject to the approval of the Captain-General. These were allotted among the districts of the four Dissawas each holding his own assizes and deciding complaints

> according to the laws of the people. Each Maralleiro was accompanied by two interpreters skilled in their laws as well as a Meirinho and a clerk, all of whom were natives."

These circuit courts were primarily concerned with the collection of death duties. However, they also heard complaints, including those relating to murder. Ribeiro said that people "came with various other judicial matters which the maralleiro decided according to his discretion in conformity with the opinions of the two Assessors on points of law..."

In the early days of British rule, there were assessors who sat with the Judicial Commissioner and the Agents of Government in their courts. This was provided for in the Proclamation of Governor Brownrigg of the 21st of November, 1818.[71] Failing to find a written code or textbook to guide them, the early British administrators were compelled to depend on assessors to guide them. The members of the Board of Commissioners decided that each member should prepare memoranda on 'the institutions, customs, feelings and prejudices of the Kandyan people'. D'Oyly's incomplete compilation, subsequently published as *A Sketch of the Constitution of the Kandyan Kingdom*, and Sawer's 'Memoranda and Notes', usually described as 'Sawer's Digest of Kandyan Law', came to be accepted by officials and the courts as authoritative statements.[72]

Although the recommendation of C.H. Cameron in his report in 1832 upon the 'Judicial Establishments and Procedure in Ceylon' that assessors should assist judges in all courts throughout the island was adopted in the Charter of Justice of 1833, a Committee of the Executive Council of Ceylon in 1849 expressed the view that they served no purpose. Consequently, in 1852 legislation made the use of assessors optional.[73] And in time assessors went out of the judicial process.

Trial by jury at the criminal sessions of the Supreme Court of Ceylon was introduced by the Charter of the 6th of August 1810.[74] This was hailed as a great event: The famous picture of "The Supreme Court of the Judicature of the Island Of Ceylon" by J.

Stephanoff (a recent version of which hangs in the Judges' lounge of the Supreme Court of Sri Laṅkā) had an inscription below it stating that the picture was meant, among other things, to commemorate "the grant made by his present Majesty, while Prince Regent to the natives of Ceylon of the right of sitting upon juries, the only instance of such grant being made by any Government to the natives of Asia." [75]

However, as we have seen, judges, since ancient times, sat together with persons who assisted them, e.g. by providing the judge with advice on laws, customs, local conditions etc. In certain instances, the role of *sabhyas* (assessors) went beyond that of rendering assistance in understanding the law or technical matters.[76] They were, in my view, more like jurors, actively involved in the decision making process, than advisors on technical matters.

In discussing the 'Administration of Justice' during the Poḷonnaruva period, Nicholas and Paranavitana[77] said: "The procedure in these courts of law were akin to trial by jury. After listening to the witnesses and the parties, and deliberating on customary law and precedent, the assessors expressed their opinion and the president gave his judgment."

Weerasinghe[78] too stated that the president of a court delivered his judgment in accordance with the views expressed by the *sabhyas*. D'Oyly[79] said that the decisions of *gamsabhā* were made by "the principal and experienced men of a village;" and that "When Trifling Cases are heard and settled by the Village Court ... the Principal Inhabitants of the Village in fact constitute a Jury."[80] Similarly, in the *Sākki Balanḍa*,[81] the principal men of the district acted together. In a *dasagama*, the decision was made by the village elders.[82] When the king appointed chiefs to investigate a matter in the *Mahā Naḍuva*, they acted collectively.[83] It may have been a mistake to suppose that there were juries 'of the English type' used in the Dutch courts,[84] but in my view, having regard to the way in which justice had been administered in Sri Laṅkā, there was very little or no reason for regarding jury trials as a novelty.

CHAPTER XIV

OFFICIALS AND THEIR JUDICIAL FUNCTIONS

ALL OFFICIALS HAD JUDICIAL FUNCTIONS

Although there may have been officials with specialized functions, every official, it seems, exercised certain judicial functions, varying in importance with the nature of his office. In each case there was a right of appeal to his superior and ultimately to the monarch.[1] Moreover, a case which could not be decided by an official could be referred to a higher authority.[2]

Government, including the administration of justice, for pragmatic reasons, was conducted in a de-centralized, organized manner. A brief reference to the monarch, his heirs, ministers and principal officials may not be out of place to set the administration of justice in the context of the administration of government in general.[3] Although sometimes[4] attempts have been made to classify the officers of state under three groups - (i) the royal family; (ii) ministers; and (iii) officials -, it is not always possible to do so satisfactorily: for example, although in modern times the commander of the army is a mere official, yet in ancient times, a *senevirat* was usually both a military authority exercising judicial power and a member of the royal family, and should not have been relegated into the third category. As we have seen[5] a king's judicial authority historically was probably based on his role as the military leader of the people. Indeed the *Kaňdavurusirita* includes the *senevirat* (the commander) as one of the five most important officials - *panca pradhāna maha senaga*: the others were *rāja* - the king, and his heirs.[6]

PRINCIPAL OFFICIALS IN MEDIAEVAL TIMES

At the helm was the *mahārajā* (the king), followed by the *āpā* or *ādipāda* or *yuvarāja* or *uparāja* (Heir Apparent ...),[7] and the *māpā* or *mahapā* or *mahayā* or *mahādipada* (Heir Presumptive...).[8]

The *Nikāya-saṅgrahava*[9] refers to the following as the principal officers during the reign of Parākramabāhu I (1153-1186 AD): the *adhikāra* (Justiciar);[10] *senevirat* (Commander-in-Chief ...);[11] *mahaläna* (Secretary of State);[12] *maharätinā* (Minister of the Interior);[13] *anunāyaka* (Fernando said this person was the Second Minister of the Interior. However, Ariyapala,[14] stated that *anunāyaka* just means 'Deputy Chief' and that it was not possible to be certain as to whose deputy he was. Weerasinghe,[15] stated that *anunā* was the Deputy Commander-in-Chief); *sabhāpatinā* (President of the Council) Ariyapala, p. 94 stated that this official's function was to preside over the meetings of the Council of State. Ranawella, (*Ektäna*, 59-61) however, stated that *Sabhā* meant a court of justice and that *sabhāpati* meant "President of the court of justice". Weerasinghe, p. 40, translated the term to mean "Chief Judicial Officer"; *situnā* (Director of Commerce)[16] *siritlēnā* (Chief Legal Adviser);[17] *dulēnā* (Under Secretary and Keeper of the Rolls)[18] *viyatnā* (Chief of Intelligence);[19] *mahavedanā* (Chief Medical Officer);[20] *mahanäkatinā* (Chief Officer of the Calendar);[21] *dahampasaknā* (Minister of Education).[22]

Weerasinghe stated: [23]

"The *Kaňdavuru-sirita*, a text belonging to the Dambadeniya period, dealing with the daily routine of Parākramabāhu II (1236-1270 AD) furnishes us with the designations of a few more ministers and officers of state. They are *Sēnānayaka*, the Commander of the Army,[24] *Bhanḍāranāyaka*, Minister of Treasury,[25] *Disānāyaka* Minister of Regional Affairs or Local Government,[26] "*Adhikaraṇanāyaka*, Chief Justice,[27] *Sāmantanāyaka* Prime Minister (?),[28] *Arthanāyaka*, Minister of Justice,[29] *Gajanāyaka*, Head of the Battalion of Elephants,[30] *Mudalnāyaka*, Head of the Royal Mint ,[31] *Badunāyaka*, Minister of Inland Revenue,[32] *Siňganā*, Head of the Battalion of Sword-bearers,[33] *Dahamgeyinā*, Director of the Library of Religious Texts,[34] *Mahaveleňdnā*, Minister of Trade and Commerce,[35]

Mulañginā, Chancellor of the Exchequer,[36] and *Arakmēnā*, Chief Security Officer of the *Sri Mahā Bōdhi*." [37]

There were important executive functionaries, perhaps variously described from time to time, who, in addition to other duties, were responsible for the administration of justice. There are references in the records to a Chief Minister of Justice (*adhikaraṇanāyaka*);[38] a Minister of Justice (*vinicchaya-mahāmaccā*)[39] and a Principal Secretary for legal affairs (*siritlenā*).[40]

THE DAṆḌANĀYAKAS

The *daṇḍanāyakas* were very high military officers - *senevirad* (generals) - who also performed judicial functions. Weerasinghe[41] suggested that "The office of *daṇḍanāyaka* seems to have been similar to the status of a provincial praetor in the Roman Empire." Indrapala[42] stated as follows:

> "We find that in the tenth century records [the term *daṇḍanāyaka*] was applied to some officers who were in charge of certain areas. In South India during that time and later the *daṇḍanāyaka* had both civil and military functions. Several *daṇḍanāyakas* of the Cōḷa emperors are known to have been entrusted with the government of various territories. This practice continued even in the Vijayanāgara period. Usually members of the royal house were appointed as governors of provinces. 'But when it was not possible to find suitable members in the royal family to occupy such positions of responsibility and trust, or when it was considered desirable that some capable officer of the government with considerable experience in administration could fill the place with credit and to the advantage of the central government such a person was appointed to the provincial governorship. He was usually known as a *Daṇḍanāyaka*.'."

Daṇḍanāyakas have been referred to in several records.[43] Some of them have been identified by name: The Koṇḍavaṭṭavan Pillar Inscription refers to *Daṇḍanāyaka* Sangvä Rakus to whom, it seems, the village of Ärāgama in Digämaṇḍulla was given to enable him to maintain the dignity of his office.[44] In Chapter 70.

5-19 of the *Cūḷavaṁsa* we hear of *daṇḍanāyaka* Rakkha's great leadership, and the conferment on him of "the dignity of a Kesadhātu and great distinction." Then there was Nagaragiri Gokaṇṇa, a man "gifted with high heroic virtues, skilled in war, a loyal and devoted adviser of his Lord", who, however, it seems, was forced to flee into the forest.[45] Kitti and Saṅkadhātu were two brothers; they were Generals held in great esteem. The monarch, it is said conferred on the elder the rank of a chief of the Order of Kesadhātus, and on the younger that of a *nagaragalla*.[46] Weerasinghe[47] drew attention to the reference in the Slab Inscription of Kasappa V (914-923 AD) to the relationship between the office of *daṇḍanāyaka* and the administration of justice.[48] Paranavitana, in his edition of the Badulla Pillar Inscription explained that "*Daṇḍa-nāyaka* means literally 'one who applies the rod' and signifies a magistrate. It is also the title of a military commander."[49] In his edition of the Koṇḍavaṭṭavan Pillar Inscription, Paranavitana stated that "In South India, the title *daṇḍa-nāyaka* signified an army commander. It was so in Ceylon in the twelfth century."[50] Ranawella said that the inscriptions and chronicles pointed to the fact that *daṇḍanāyakas* performed judicial functions in addition to their functions relating to the maintenance of security in strategic areas, although there was some uncertainty about their territorial jurisdiction in relation to judicial matters.[51]

The exercise of executive and judicial functions by military officials seems to have been a feature that was found even in the days of the Kandyan Kingdom (1469-1815). Knox[52] referred to the fact that important officials at provincial and district levels exercising administrative and judicial functions were "Generals or Chief Commanders who have a certain number of Soldiers under them." We have seen that a monarch's judicial powers were closely linked to his military position,[53] and so, it is not difficult to understand why very high-ranking military officials were vested with high judicial office.

VIDĀNAS, LIYANARĀLAS, UNḌIRĀLAS, KŌRĀLAS AND ĀRACCIS

In the days of the Kandyan Kingdom (1469-1815), at the lowest level of government officials' courts of justice,[54] were the courts of the *vidānas,*[55] *liyanarālas,*[56] *unḍirālas,*[57] *kōrālas,*[58] and *āraccis.*[59]

The *vidānas*, were appointed over particular villages. They had civil and criminal jurisdiction in cases of trifling importance within the limits of their villages. They could punish persons of low caste by a few blows with the open hand, inflicted standing. In general, they could not imprison without the higher authority of their chief. Nor could they levy fines exceeding two and a half *ridī,*[60] of which half a *ridī* belonged to the *duraya.*[61] Larger fines had to be accounted for and reported to their chief. *Vidānes* of royal villages could imprison for four or five days at the royal granary; and levy small fines for many offences such as neglect in cultivating royal land, and trespass of cattle. *Vidānes* acted as police officers in their villages and also helped to recover fines by placing debtors in detention - *väḷäkme dämīma.* [62]

Liyanarālas, unḍirālas, kōrālas, and *āraccis*, of the *uḍa raṭa* (upper districts), which were districts adjacent to the capital city of Kandy, had very limited powers, for matters could have been easily referred to the chiefs. They settled trifling civil cases submitted to them by the parties, acting as mediators or conciliators [63] rather than as judges. They could not dispossess persons of their lands, but could sequester land, dwellings and crops upon complaint, for default of revenue or failure of attendance when summoned. When submitted to them, they could hear complaints of petty robberies, assaults, and accusations relating to the use of intoxicating liquor such as Toddy and Arrack. They could punish persons of low degree by inflicting ten or fifteen blows with the open hand. Robbers "whose guilt was clear and confessed" could be imprisoned until "satisfaction was made", but if the charge was denied or the accused person protested, such officials were bound to send both parties to a

superior chief. In other cases, they could not deprive a person of his personal liberty, either by taking away his head-gear (*ispili galavanavā*), thereby making him a prisoner at large,[64] or by confinement in prison, for more than one or two days. They could levy a fine not exceeding three *ridī*. However, in a "case which clearly merits it", they could levy a fine of eight and a half *ridī*, but, in the name of their chief. The matter would be reported to the chief and seven and a half *ridī* was delivered to him. One *ridī* was retained by the official who imposed the fine. As we have seen, in earlier times, fines were required to be remitted to the Treasury, unless otherwise decreed. It is not clear when, and on what basis, and whether indeed, officials were permitted to appropriate money paid as a penalty as a perquisite.

MOHOṬṬĀLAS, KŌRĀLAS AND ĀRACCIS OF THE DISSĀVANES

The *mohoṭṭālas, kōrālas,* and *āraccis* of the *disāvanes* had limited jurisdiction in respect of civil and criminal matters over all persons subject to their authority, but they exercised it chiefly when the *disāva*[65] was away from his administrative district. They had limited powers. For instance, they could entertain suits respecting boundaries of gardens or fields, or the ownership of small *chenas*[66] of a few *kuruni*[67] in extent, and disputes concerning a few fruit trees, a few *ridī* or a small quantity of grain. They could give written decrees (*vaṭṭōru*), provided they were unsigned, deliver possession of land, and sequester land and crops.

In criminal matters, they could deal with certain thefts, e.g., of cattle, paddy, fruit and betel; they could also deal with cases of assault, Toddy and Arrack drinking, neglect of services, and failure in paying revenue. They were bound to reserve charges of serious crimes for the consideration of the *disāva*, but sometimes they would deal with cases of housebreaking or serious robberies, if the complainant was satisfied after restitution of his property and upon the payment of the usual damages. They could cause slight corporal punishment with the open hand to be inflicted in a

standing position on common persons subject to their orders. However, persons of low caste could be beaten with rods. They could imprison in their houses, *kadavat*, or stocks, robbers whose guilt was "undoubted", until the stolen property was restored, with damages. They could, for a few days, confine other offenders or make them prisoners at large by taking off their head-gear. [68]

THE APPREHENSION OF CRIMINALS

These officers had police powers "throughout the country", [69] and it was their "duty to arrest and send before the proper authority offenders of every description". [70] It was stated that during the reign of Sri Vikrama Rājasiṁha (1798-1815), some cattle belonging to Mullēgama Appu of Hāris Pattu having damaged the paddy crop of Polgashinne *Āracci* of Bamunupola, the latter went to his house and complained. A quarrel followed and the former struck the *Āracci* on the cheek with a cudgel, whereat he fell down and died. The *Kōrālas* arrested and produced him at Kandy where, after trial, he was imprisoned at the *Mahā Hiragē*, and was later flogged through the streets and banished to Wandurāgala. [71]

Higher officials too may have arrested criminals. Thus, during the reign of Kirti Sri Rājasiṁha (1747-1782), two brothers of the family Hittaragedera of Hulangomuva in Mātalē had a quarrel in the course of which the younger struck the elder dead with an axe. Kotuwegedera *Adikārama* arrested the offender and sent him bound to Kandy where he was tried by the chiefs. He was then flogged through the streets and taken to Mandada Vela in Mātalē, bound, and hung on a tree. The land which he owned was given to the family of the elder brother. [72]

Sometimes, arrests were made by ordinary citizens. During the reign of Sri Vikrama Rājasiṁha (1798-1815), in the course of a quarrel between two of the King's washermen at Medellehena in Hāris Pattu, over a paddy field, one of them with an axe cut the other who died in consequence. The neighbours arrested the

offender and brought him bound to the King. He was tried and committed to the *Mahā Hiragē*; later he was flogged through the streets and banished to Etanawala.[73]

The responsibility for apprehending criminals in pre-Kandyan times, i.e. before the middle of the fifteenth century, is unclear. Perhaps, in the cities it was the duty of the *nagaraguttika*, and in the provinces, that of the *ulpaḍu* or *ulvaḍu*?[74] In the villages, the duty, it seems, rested on the elders: The *Aṭadā-sannaya* of the Poḷonnaruva period[75] referred to an assembly of elders of the village, charging an accused with slaying a man and thereby committing an offence, and informing him that he was liable [upon conviction] to a prescribed penalty - *gāme mānavā sangaccha kammānimamisārayanti*. The Vēvälkäṭiya Inscription stated that should the chiefs or tenants of certain areas commit murder or highway robbery, the elders shall take them into custody and deal with them. "If [the culprits] have not been [already] taken into custody, the elders of *dasagama*[76] shall find [them] within forty-five days and have them punished. If they fail to find [the culprits] within the [stipulated] period, one hundred and twenty-five *kalañda* of gold shall be paid from *dasagama* to the royal family."[77]

PRINCIPAL MOHOṬṬĀLAS

The three principal *mohoṭṭālas* could impose a fine not exceeding ten *ridī*: *kōrālas* and *āraccis* were limited to five *ridī*.

According to D'Oyly,[78] the *mohoṭṭālas* of Seven Kōralas, Uva and Sabaragamuva, owing to their distance from the capital, and consequent difficulty of control, illegally arrogated to themselves powers almost equal to those of a *disāva*, by entertaining important land suits, granting written decrees called *sīṭṭu*, and sometimes issuing even signed decrees, and *divi sīṭṭu*.

In India, after judgment (*siddhi*) the party who won was given a written decree (*jayapatra*) which set out the cases of the parties,

the points at issue, particulars of evidence, the decision of the court and the names of the councillors (*sabhasadas*) who were present. However, a *sīṭṭu,* as we shall see in Chapter XV, was less comprehensive than a *jayapatra.*

D'Oyly,[79] described *divi sīṭṭu* as "written oaths for swearing by oil". He explained[80] that *divi sīṭṭu* were documents prepared in duplicate, one in the name of each party. One asserted the truth of the point upon which his right depended; the other denied it. It contained a declaration that no sorcery or medicines had been used and called upon the four gods to witness the truth of his words. D' Oyly[81] described various forms of oaths which he said were meant to obtain the assistance of deities "in cases doubtful to human understanding." When the ceremonies prescribed for the taking of the oath had taken place, it was believed the deity concerned would manifest the truth by various signs.[82] Unlike trials by ordeal in Europe,[83] the ceremonial of the *diviya*, including the "ordeal" of hot oil, did not involve the risk of death or grave injury. After various rituals,[84] the plaintiff and defendant in turn, among other things, touched burning oil "with the tip of his fore or middle finger. The fingers of the parties were "minutely examined" by the official "who sent them". D'Oyly said: "If both persons or if neither of them be burnt, the land is equally divided between them. If one only be burnt, he loses the land and both *divi sīṭṭu* are delivered to the other and if required a *sīṭṭu* of decision."

Ralph Pieris said:[85]

> "The so-called ordeal of hot oil could only give rise to the trifling physical injury of a blister on the finger, while in the ordinary oath at a *dēvāla*[86] which 'is considered as most binding on the conscience of persons professing the Buddhist religion' (Board of Commissioners for the Kandyan Provinces - Judicial: 27. 10. 1818; Government Archives 21/111), the parties having performed certain preliminary rites of purification, passively awaited divine judgment. The guilt of a litigant was established if some injury befell him, e.g., the death of a kinsman, the loss of a buffalo, or damage to his crops or house."

It must not be supposed that law suits were usually decided by oath. Indeed, trials of that nature were not encouraged.[87] Such rituals were forbidden in the town of Kandy but they were performed at places that were only a short distance away - at the '*diwurum bōgaha*' - the oath *bō*-tree[88] - at Ampitiya and at the sacred *bō* - tree shrines at Gannoruwa and Gonagodapitiya.

According to D'Oyly,[89] the *vanniyars*[90] of Nuvarakalāviya, had, it seems, from "an[c]ient time" been recognized as having the power

(a) to make written orders (*sīṭṭu*);
(b) to issue *divi sīṭṭu*; and
(c) to impose punishments, "not inferior to those inflicted by the principal *Mohoṭṭāles* of the 7 Kōraḷēs".

With regard to *divi sīṭṭu*, Ralph Pieris stated:[91]

> "The oath was administered by authority of the *adhikāramas* in the districts around Kandy, by the *disāvas* in their respective provinces, by the *vanniyārs* of Nuvarakalāviya, and by the principal *mohoṭṭālas* of Sabaragamuva, Seven Korales, and Vellassa."

There was no doubt about the jurisdiction of the *adhikāramas*, the *disāvas* and, perhaps, the *vanniyars* of Nuvarakalāviya. However, D'Oyly [92] said that, although the *mohoṭṭālas*, of Sabaragamuva, Seven Kōraḷēs and Vellassa had no jurisdiction to issue *divi sīṭṭu*, they may have *unlawfully* done so.

As far as punishments were concerned, D'Oyly stated[93] that the penalties *vanniyars* could impose were not inferior to those inflicted by the principal *mohoṭṭālas* of the Seven Kōraḷēs. In short, they were held to possess within their respective *pattu*,[94] power nearly equal to that of a *disāva*, but were restrained in the exercise of it when the *disāva* was in the province.

LĒKAMVARU AND RATĒMAHATMAYŌ

At the next level of the courts of government officials in the days of the Kandyan Kingdom,[95] were the courts of the *lēkamvaru*,[96] *ratēmahatmayō*,[97] principals of temples, and chiefs of the departments attached to the king's court and household. They had civil and criminal jurisdiction over all persons subject to their orders, and over no others. They could dispossess people of their lands and give *vaṭṭoru* [98] addressed to the headmen reciting their decision and ordering possession of lands to another. However, they could not grant signed *sīṭṭu*[99] or *vaṭṭōru* , nor *divi sīṭṭu* in the *uḍa raṭa*.[100] Principals of temples could, nevertheless give *sīṭṭu* and *divi sīṭṭu* in cases arising in villages belonging to their temples situated in the *disāvane*.[101] They could hear all criminal cases, except those concerned with "high crimes". It seems, however, even in other cases of "some atrocity" and notoriety, occurring in the vicinity of the capital city, they preferred to refer the matter for decision by a *disāva*, out of diffidence, fearing that the superior authorities may frown on an erroneous decision. They could order corporal punishment (except with the cane), imprison and fine without fixed limit, paying regard, however, to "the rank and conditions" of the delinquent. This, Percival thought,[102] made the administration of justice "very defective". He failed to understand the importance of the fact that in the local system laws were not mechanically applied, and that the circumstances, including the social or official status of a party, had to be considered .[103]

DISSĀVAS

The *disāvas* came next. These officials had jurisdiction over all persons and land within their provinces (*disāvane*), except those attached to the monarch's court or household, or to the department of another chief appointed by the king. They could hear all civil matters without limitation of value. Their powers were unlimited in civil matters, except that, in the case of a claim for *dukgannā* land,[104] if the defendant so required, the suit had to be referred to

the monarch. They could issue signed decrees. They had the power to grant signed *sīṭṭu* or decrees for land, and *divi sīṭṭu*, but only in their respective provinces. For examples of awards made by Dissāvas, see Lawrie's notes at pp. 197-198.

Disavas could hear all criminal cases within their respective provinces, except those relating to "high crimes" which were within the exclusive jurisdiction of the king. However, even in other cases, if they were of an "atrocious" nature, they were submitted to the king. *Disavas* could order corporal punishment (except with the cane), and imprison or fine persons subject to their jurisdiction without limit, but having regard to the rank and condition of the delinquent according to the rules established by usage. Thus corporal punishment was not inflicted upon persons of noble families and officials of high rank such as *atapattu,*[105] and *koḍituvakku-lēkam*,[106] *kōrāḷas* of high families, and *vanniyars*; but *kōrāḷas* of low family and other inferior officials such as *āraccis* and *vidānas*, as well as common *goyigama* people could be punished with the open hand. *Goyigama*[107] people of low condition for flagrant offences, and low caste persons were punished with twigs called *ipal*. Those exempt from corporal punishment were not imprisoned in the *mahā hiragē*;[108] instead, the *disāva* usually fixed a fine and the person concerned was detained in the *atapattu maḍuva*[109] until it was paid. If the offence merited greater punishment by representation to the king, such offenders were imprisoned in a *kaṭubulla* village.[110] Others were imprisoned according to the *disāva*'s pleasure in the *atapattu maduva*,[111] or in the *koḍituvakku maḍuwa*,[112] the more atrocious in the latter, and sometimes in the *mahā hirage* or in a *kaḍavata*[113] of his province for such term as he deemed commensurate with the offence or till the payment of such fine as may have been demanded.

The decision of a *disāva* was communicated to the parties, either by the *disāva* himself or by a headman. A *sīṭṭuva* was granted to the successful party on payment of a fee varying from five to fifty *ridī*.

A *disāva* usually heard cases himself, seated in the court of his residence, surrounded by the headmen of his province standing in his presence. D'Oyly[114] said that in cases of doubt, the *disāva* "frequently takes the opinion of the principal headmen of his [province]".

CHIEFS WERE ADVISED

There was a classification in which officials were ranked in grades, orders or classes, one above another; but, traditionally, in Sinhalese society, regardless of his position in the bureaucracy, every official had a voice. And so, even the highest official consulted his headmen and was told by his subordinate what he should do, if he was ignorant or unmindful. Knox[115] stated that if the two principal officers of state - the *Adigārs*, were ignorant, they would be instructed by their subordinate officers.

As we have seen, the practice of being assisted in the hearing of a matter was very ancient. [116]

As we have seen, even in matters tried by a king, he was assisted by his chiefs. Learned in the law as a judge may have been, it was recommended by the sages, and recognized by Sri Laṅka's monarchs and its people, that it was nevertheless useful to have the assistance of others. In fact, it was a characteristic and salutary feature of the system of the administration of justice in Sri Laṅkā throughout the ages that judicial decisions were based, not on the opinion of one, but several persons, be they elders, in the case of village tribunals or of *dasagam*, or of chiefs, in the case of decisions by the king. It is, in my view something inherited from Indian experience and probably brought by the early settlers, represented by the arrival of Vijaya. However, in interpreting the fact that persons of inferior rank, having limited judicial powers, assisted tribunals of superior officials, a slant appears to have been given to what might be regarded as a perfectly harmless and acceptable, and perhaps commendable, practice. Ralph Pieris[117] stated as follows:

> "According to Knox the *adhikāramas, disāvas* and other elevated officers were not always well versed in the law, in which case their inferior officers 'do teach and direct them how to Act.'[118] D'Oyly too remarks that "the chief officers being principally chosen from noble families, it frequently happened that they were persons of inactivity and inability, and being inexperienced in the affairs of the province or department committed to their charge, were frequently guided in judicial as well as other matters by the provincial headmen, or by those of their household." Most of these lesser officials had judicial powers of a very restricted nature."

Is there something objectionable or unusual in being instructed or guided in judicial or other matters?. Today, in judicial matters, judges are guided by lawyers (unless a party appears in person) and, in some matters, also by juries. In other matters, the Head of State and Ministers, Secretaries of Ministries, and Heads of public corporations and boards, are guided, or are expected to be guided, by professionally competent officials, who are inferior in rank and who possess relatively limited powers. It was said that "The chief officers being principally chosen from noble families, it frequently happened that they were persons of inactivity and inability". There is no evidence in support of that startling proposition. It is an obvious non sequitur: Surely, the inference that the chiefs were 'persons of inactivity and inability' does not follow from the premise that they were chosen from noble families? The alleged inactivity and inability on the part of the chiefs, could hardly be regarded as congenital problems.

Ralph Pieris [119] observed that

> "C.H. Cameron in his *Report on the Judicial Establishments*, 31-1-1832, (Colebrooke Papers, ed. G.C. Mendis, Oxford University Press) says that the chiefs he conversed with put forward [their] ignorance of the law as a matter of boast, the drudgery of mastering the law being considered as unworthy of their condition." [120]

Usually the heir to the throne was educated,[121] and kings were praised for their knowledge of the law.[122] In the circumstances, it comes as a surprise to be told that the chiefs who spoke to

Cameron regarded learning the law as undignified or unbecoming their position. The study of the law may have involved wearisome toil; but was it something 'unworthy of their condition'? Is it likely that a chief with even a modicum of self-respect would have confessed his ignorance of the law, let alone brag about it? Chiefs were generally educated people and the persons Cameron spoke to were unlikely to have been ignorant of verse 44 of the famous fifteenth century work, the *Girā sandesaya* (Message transmitted through a parrot):[123]

> *Igena adikarana däna rada niya noyeka*
> *Nitina pemin mulu satvaga rakina Laka*
> *Edina pämini kaṭayutu danvā nisäka*
> *Siṭina depasa häma maha mäti varan däka*

Look at the High Ministers who having learnt the art of deciding cases after obtaining a knowledge of the various laws of Kings[124] and who lovingly look after the entire people of Laṅkā when they have come that day and informed His Majesty of the execution of their tasks and as they stood on either side [of the throne in the *Sabhā*].

Mr. S.J. Sumanasekera Banda (pers. com.) has pointed out that the *Rājasiṁha Haṭana,* a literary work of the Kandyan period containing 249 verses, gives a description of the wars conducted by King Sri Vikrama Rājasiṁha. Verses 85-86 deal with his discussion with Ministers about the feasibility of attacking the English. The Ministers were evidently well versed in the laws and the rules pertaining to administration. Verse 85 says:

> *Lowa räkumehi mahat*
> *Rajanīti piḷivela dat*
> *Mätivaru näṇaga pat*
> *Dakkavāgena mehimi sirimat*
> ....

The blessed Lord, having summoned the Ministers who were most intelligent and conversant with *rājanīti* (royal decrees, royal policy) for the protection of the people asked them ...

Cameron was commenting on the *Adigārs*, *Disavas* and *Mohoṭṭālas*, and other officials from the higher echelons of the administration who were later called upon to act as assessors in assisting the Resident and Board of Commissioners in the discharge of their judicial duties. Attention ought to be drawn to the fact that Forbes 'preferred having the opinion and reasons of intelligent assessors to the irresponsible view of a jury'.[125] The chiefs who acted as advisers, were acknowledged by the highest authorities in the land to be well-informed and competent. In his 'Address to the Kandyan Adikārs and Chiefs' on the 20th of May, 1816, Governor Brownrigg referred to various cases that had been heard and said:[126]

"In all these cases, and throughout the Sittings, I have to acknowledge the aid of candid and independent opinions, in which natural known motives of attachment and good-will were obviously sacrificed to justice and public duty. By such assistance, a number of cases ... have been disposed of..."

The Governor was impressed by the information that had been elicited in the course of the proceedings, showing that the people did have 'customs, and if not the laws, at least the principles of Justice'. The Governor stated that in 'the multiplicity and variety of cases' heard he had 'benefited' by the presence of the chiefs as assessors. The Governor went on to thank the chiefs for their assistance in furnishing information relating to the 'Civil and Political Branch' and requested that future inquiries would also be 'answered with equal promptitude, and with the same zealous desire to aid my views for the benefit of the country, by the lights of your local knowledge and experience.'

Although "most frequently and properly", the *disāva* personally heard cases, sometimes the inquiry was delegated to

two or three *mohoṭṭālas* or *kōrāḷas*. They heard the matter in public, sitting outside the *disāva*'s *valavva*[127] in the *atapattu maḍuva*,[128] and reported back to the *disāva*. However, such delegations, introduced perhaps in the twilight years of the Kandyan Kingdom, were not customary and were therefore improper.

ADHIKĀRAMVARU

We shall now consider the judicial powers of the most important officials during the reign of the Kandyan Kings - the *adhikāramvaru*. The abbreviated descriptions *'adigār'/ 'adikār'* (plural *adigārs* or *adikārs*) were usually used by early British and later authors to refer to any one of such officials - an *adhikārama*.

The number of *adhikāramvaru*[129] varied from time to time. According to Davy,[130] in "remote times", there were four: "one to attend the king, one to take care of the city, one to administer justice, and one as minister of war." But for "very many years" prior to Rajasiṁha II, there was only one; Rājasiṁha II (1635-1687) added another, and Sri Vikrama Rājasiṁha (1798-1815) added a third.

Knox,[131] writing during the reign of Rājasiṁha II (1635-1687), said:

> "There are two, who are the greatest and highest Officers in the Land. They are called Adigars, I may term them Chief Judges; under whom is the Government of the Cities, and the Countries also in the Vacancy of other Governours. All people have in default of Justice to appeal to these Adigars, or if their causes and differences be not decided by their Governours according to their minds"

Percival[132] said: "The Adigārs are the supreme judges of the realm; all causes may be brought before them, and it is they who give final judgment. An appeal indeed lies from their sentence to the king ..."

The Adigārs were very important judges; but they were not supreme judges. The King was not only an appellate authority, but also the highest judicial authority in respect of matters of original jurisdiction, although he usually confined himself, obviously for pragmatic reasons, including constraints of time, to hearing only certain matters.

Davy[133] said:

> "The office of the Adikārs was very comprehensive; they had not only the duties of prime-minister to perform, but likewise of chief justices and commanders of the king's forces. The administration of justice was their principal occupation: according to a rule not rigorously followed, the first Adikār should attend to cases from one half of the country, and the second Adikār to cases from the other half; whilst the third had a more general jurisdiction, it being his duty to receive all cases that might offer, and report on them to the king."

The first minister, *pallēgampahē adhikāram mahatmayā*, as his title implied, was in charge of the *gam paha* (five provinces) situated at a lower altitude (*pallē*) than the other provinces. The five provinces subject to his authority were Sat Kōraḷē, Uva, Mātalē, Valapanē, Vellaššа, Bintenna, Nuvarakalāviya, Tamaṅkaduva, Hārispattu, Dumbara and Hevāhäta. The second minister, *udagampahē adikāram mahatmayā*, as his title implied, was in charge of the *gampaha* (five provinces) situated at the upper (*uda*) altitudes of the kingdom. The five provinces subject to his authority were Satara Kōraḷē, Tun Kōraḷē, Sabaragamuva, Uḍapalāta Uḍunuvara, Yaṭinuvara, Tumpanē, Koṭmalē and Bulaṭgama.

In Kandyan times (1469-1815), the capital city [134] - an area of a few square miles in the immediate vicinity of the royal palace - was, more or less, bisected for the purpose of exercising police functions; the area lying north of the street called *Svarna Kalyāna Vīdiya* was under the orders of the *pallegampahē adhikārama*. The area south of that street, was under orders of the *udagampahē adhikārama*.[135] Two superintendents of prison - *hiragē kankāṇam* - served under them as law enforcement officials.

Adhikāramvaru had exclusive jurisdiction, in civil and criminal matters, subject only to the King, in matters concerning all persons subject to their peculiar authority, such as the *kaṭubulla*[136] or *kasakāra*[137] people. They also had concurrent jurisdiction over all persons within the provinces allocated to them, but these powers were exercised in consultation with the appropriate chiefs and never without their concurrence. If one of the parties protested against the decision, the *adhikārama* was obliged to refer the matter to the Great Court or to the King, especially if one of the parties happened to be of considerable rank, or was attached to the King's Court or his household. An *adhikārama* could not take cognizance of disputes between the principal chiefs, or of the King's household[137A] or in which such a person was a defendant, unless both parties had sought his intervention to sit as a mediator or conciliator;[138] provided, however, the proceeding was undertaken with the concurrence of the proper chief under whose authority a party belonged. They were empowered to adjudicate in all criminal cases including robbery, theft and assault, but not in matters involving "high crimes" such as homicide and treason, since a King alone could impose the death sentence. They could hear all civil suits between individuals without limitation of value, but not cases affecting royal or *dugganna* lands,[139] unless on the complaint of a common person the *duggannarāḷa* be satisfied and the decision be in his favour. In the *uda raṭa*,[140] *adhikāramvaru* alone could give *sīṭṭu*[141] and *divi-sīṭṭu*.[142]

In criminal matters, they could hear and decide all matters relating to burglary, robbery, theft, assault and minor offences. However, if a matter was of an atrocious nature, it was required that it should be referred to the King.[143] Cognizance could not be taken of "high crimes", which were triable only by the King. *Adhikāramvaru* had the exclusive privilege of awarding punishments with the cane borne by their *kaṭubulle* officers.[144]

They had the power to inflict corporal punishment, to imprison or fine without fixed limit, but the mode of punishment in a

particular case had to be determined by reference to the rank of the offender. Their powers of punishment over certain classes of persons were restricted: They could not impose corporal punishment upon the following: the principal chiefs and *duggannarālas*;[145] *talapat-vaḍanakārayō*[146] and *pandam-kārayō*;[147] *saṭṭambis*;[148] *mulācariyō*,[149] and headmen of the *koṭṭalbadda*,[150] *lēkam*,[151] *kankānaṃ*[152] and *gēbalanarāḷas*[153] of the royal storehouses, treasuries, and armouries; *maḍuve muhandirama* ;[154] physicians of the *bētgē*;[155] the *kunam maḍuva*[156] and *mahā lēkam*[157] people; the royal washerman; certain temple officers, viz., *kāriyakarana-rālas*[158] and *vattiru-rālas* [159] of the *Daḷadā Māligāva*,[160] and *kapurāḷas*[161] of the *dēvala*.[162]

Of the foregoing classes, *adhikāramvaru* could imprison and fine only the *mahā-lēkam*[163] and *kunam-maḍuva* people, the royal washermen, and the temple officers. Persons imprisoned by order of an *adhikārama* could not be released without his permission. The fines levied were said to have been "the perquisite of the proper chief and not of the *adhikārama*".[164] In every case an appeal lay to the king from the decision of an *adhikārama*.

CONCURRENT JURISDICTION OF HIGHER TRIBUNALS

Although jurisdiction to entertain any matter depended on the powers vested in an official or his tribunal, yet, from ancient times, a higher court had concurrent jurisdiction with the court immediately below, so that a matter an inferior tribunal did not wish to try, or ought not to try, having regard to the circumstances, even though technically it had jurisdiction to hear and determine similar matters, could be referred to the higher judicial tribunal. Thus, we have seen,[165] that *lēkamvaru, ratēmahatmayō*, principals of temples, and heads of departments attached to the king's court and household, notwithstanding their authority to hear matters relating to persons subject to their orders, preferred to transfer a case to the *adhikārama* for his hearing and determination in a cause célèbre, especially if it arose in the vicinity of the capital city, when the critical eyes of their superiors

might be focussed upon their decision, and they felt diffident and unequal to their task. Likewise, as we have seen,[166] a *dissāva* or an *adhikārama*, if a criminal act was atrocious, submitted it to the king for his decision, although such an official had jurisdiction to hear and determine the matter. This was an ancient procedure. Thus, in pre-Kandyan times, if a *Gam-ladda* or *Gāma-bhōjaka* (Headman)[167] was unable to decide a matter that had been submitted to him, he was required to send it to the *Janapada-bhōjaka* (Provincial Governor) for adjudication, and if he too was unable to decide the matter, he was required to submit the case to the *Viniccaya-mahāmacca* or *Viniscaya maha ämatī*, (Minister-Judge), and should he be unable to decide, he was required to refer the matter to the *Senāpati* (Commander-in-Chief of the army), and if he was unable to decide, the case was to be referred to the *Uparāja* (the Heir Apparent), and if he too was unable to decide the matter, he had to submit it to the King for a decision.[168]

The procedure of referring difficult matters to a higher tribunal was not unusual. For instance, it was also the basis of the court system of Judaism. When from the objective point of view of Jethro, the father-in-law of Moses, it was apparent that the single-handed administration of judgment as practiced by Moses was not very efficient, he advised him to choose suitable men and place them over the people as rulers of "thousands, of hundreds, of fifties and tens". These rulers were charged as follows: "Hear the cases between your bretheren, and judge righteously between a man and his brother or the alien that is with him. You shall not be partial in judgment; you shall hear the small and the great alike; you shall not be afraid of the face of man, for the judgment is God's; *and the case that is too hard for you, you shall bring it to me and I will hear it.*"[169] The emphasis is mine.[170]

THE VANNI UNNÄHĒS

We have seen[171] that the alleged maladministration during the days of King Sri Vikrama Rājasiṁha (1798-1815) was attributed to the fact that the monarch "exercised an imperfect controul" (*sic.*).[172] Whether D'Oyly meant to suggest that Sri Vikrama

Rājasiṁha had lost control over all his chiefs, or whether he did not ensure sufficient supervision is not clear.

Ralph Pieris[173] stated that the

> "effective governors of Nuvarakalāviya were the *vanni unnähēs* (alt. *vanniyars, vanni varu, vanni baṇḍāras*) who occupied the frontier country between the Tamil kingdom of Jaffna in the extreme North, and the Sinhalese *uḍa raṭa*, more specifically the district which comprises the present North-Central Province, excluding Tamankaduva. We first hear of the *Vanniyars* in the thirteenth century, and since then these local chieftains held sway over the region, often making the king's representative, the *disāva* of Nuvarakalāviya, a mere nominal overlord." [174]

Why did *vanni unnähēs* enjoy great authority? Was it because, as the *Adankappattu* - the rebellious province - it had been independent of Anurādhapura and Jaffna?[175]; or was it because they were people from whom, for some reason, e.g. because they were people of a different caste, there were special expectations? Among other things King Bhuvanaikabāhu V (1372-1408 AD), concerned with the preservation of a system, enjoined *vanni unnähēs,* as people apart, to uphold the social structure in general, and to safeguard their nobility by not mingling with or marrying persons of other castes. He said: "Hold *sabhās* to try [persons of other castes] and punish them according to their crimes. Inquire into questions raised by the subjects. Maintain you the laws of the land, the laws of the king, and the laws of morality. Collect the taxes justly and without oppression." [176]

D. G. B. De Silva [176A] said:

> "From the earliest times the relationship between the king and the Vanni chieftains had been based on land grants. Lands were alienated to the Vanni chieftains through formal land grants and in return they were expected to take over certain responsibilities with regard to the administration impinging on irrigation, agriculture and maintenance of places of religious worship. Police duties and the administration of justice also appear to have been included among these responsibilities. The last of these included specially the settlement of caste matters (*Kula-vitti*) in which task these foreign dignitaries were assisted by a hierarchy of local officials."

For several reasons, of which physical isolation was but one circumstance, the *vanni* people and their chiefs, the *vanni unnähēs*, had enjoyed a considerable measure of independence.[176B] Admittedly, the degree of independence from the central authority enjoyed by the chieftains varied according to the strength of the ruler. However, although Ralph Pieris[177] seems to suggest that the parts of the kingdom which the *vanniyars* governed had become so "isolated", that the king had no control over his officials in those areas, one should, perhaps, be cautious in accepting such a suggestion. The Copper-Plate Charter of Sri Vikrama Rājasiṁha (1798-1815 AD), as Jayanta Uduwara observed, "affords convincing evidence that Hurulu palāta, though situated about 160 km from Kandy, was directly administered by the Kandyan king. At that time, Hurulu palāta was known as Hurulu pattuva."[178]

The charter, which was made in 1805, records a complaint made to the king of Kandy by the chieftain, Ilaṁgasiṃha Kalukumāra Rājakarunā of Hurullu-pattuva against Sūriyakumāra Vannisiṁha of Nuvaraväva, alleging interference with the boundaries of Hurulu-pattuva, which was a vast expanse of territory bounded on the east by Tiruvānā-hīnna and Kōduruvā-hīnna; on the south by Kaḍiyan-hīnna and Riṭigala; on the north by Nayinaṁgala, and on the west by Iccankulama, Vaṭarakväva, Kumbukgollâva and Śebannīrāviya. The king had promptly dispatched officials to look into the matter, the boundaries were identified, and a grant bestowed Hurulu-pattuva on the complainant, to be possessed without dispute, by him, his children, and grandchildren, so long as their progeny survives. [179]

MONITORING OFFICIAL ACTIVITIES

Traditionally, the activities of officials, including those performing judicial functions, were monitored and remedial steps were taken when they were necessary. The Badulla Pillar Inscription stated that, should the officers of the royal household transgress that statute and cause injustice to the village, they shall be reported to the Lords of the Judicial Secretariat and that such irregularities shall be rectified.[180]

The Vēvāḷkāṭiya slab inscription[181] and other tenth and eleventh century inscriptions[182] refer to royal officials who went annually on circuit for investigations. Codrington[183] stated:

> "The village communities doubtless enjoyed very great independence, as was the case in South India. Royal control was exercised by officials, who went on circuit annually, somewhat in the manner of the English assizes, to administer justice and collect the king's dues, and this was still done as late as the early seventeenth century."

Wickremasinghe,[184] drew attention to the fact that in England "itinerant justices or members of the *Curia Regis* of the Norman Kings, went on yearly circuits in the country not only to settle important disputes, but also to promulgate new laws and to see that the Government dues were properly collected."[185] The officials of Sri Laṅkā, no doubt, would have visited the courts and inspected their records or called for the record of the proceedings of a particular case during investigations into complaints; and this might, to some extent, have acted as a check on inaccurate decisions resulting from corruption, partiality or arbitrariness. Exceptionally, perhaps, the visiting officials constituted themselves as a court and investigated crimes.[186] In Sri Laṅka, ordinarily, kings visited places or sent officials in a supervisory capacity to ensure that officials, including those who exercised judicial functions in various places, discharged their duties. There was no itinerant government in Sri Laṅka, as we have seen there once was in England. When officials of Sri Laṅka went on circuit, they performed duties more like the *apratiṣthita* of India rather than the itinerant courts of Norman kings: The functions they were sent to perform were at least partly different. In England the essential task it seems was the unification and centralization of the system of government, the discovery and application of local customary laws being important but incidental to the basic purpose. In ancient India and Sri Laṅka, itinerant officials were primarily sent to provide access to justice, and in Sri Laṅka, sometimes, perhaps, also to supervise the administration of justice at local levels, to apprehend fugitive criminals and to collect taxes. Wickremasinghe yielded to the temptation of equating the visiting

officials of Sri Laṅkā with the members of the *Curia Regis* of the Norman Kings. That was unlucky.

Indeed, a king himself might casually visit a place and discover, as the monarch did when he visited Horobora on his way to the Great Monastery of Miyuguna, that officials were not administering justice according to law.[187]

In addition to sending officials on a systematic basis to inspect various places, monarchs, it seems, personally visited all parts of the kingdom and exercised supervision. It was said that "His Illustrious Majesty ... Niśśaṅkamalla ... was pleased to tour round and throughout Laṅkā, inspecting it completely, as if the kingdom lay in his hand like a ripe *nelli* fruit[188] or an *āmalaka* gem.[189] The king visited villages, market towns, seaport towns, cities and many other localities of note in the three kingdoms [of Laṅkā] including Devu-nuvara, Kälaṇi, Dambulu, and Anurādhapura, as well as those places difficult of access either on account of water, mountains, forests, or marshes."[190] King Niśśaṅkamalla (1187-1196 AD) began his tours in the second year of his reign.[191] Personal surveillance by monarchs, no doubt, brought about good results: By inspecting the country, Kassapa V (914-923 AD) was said to have removed 'the fear of enemies',[192] meaning probably criminals, the enemies of law and order. Niśśaṅkamalla made three circuits of Laṅkā,[193] thereby correcting various administrative irregularities,[194] promoting the welfare of the State and the Church,[195] and freeing "the whole Island of Laṅkā from the thorns of lawlessness" and disorder so thoroughly, that "even a woman might carry a precious jewel or priceless gem, or a casket filled with the nine kinds of gems, and not be asked 'What is it?'. Thus did he keep this Island of Laṅkā in a peaceful state."[196]

Sometimes, monarchs toured the country in disguise or rode about the streets on elephants.[197] The public appearance of the monarch afforded aggrieved persons an opportunity of entreating the supreme judge to grant them justice. D'Oyly[198] referred to the practice of persons, who thinking themselves aggrieved,"... prostrating in the Road, when the King goes abroad ..."[199]

CHAPTER XV

OTHER COURTS AND TRIBUNALS

Hayley[1] stated: "One of the most striking features of Sinhalese institutions is the elaborate judicial system which existed throughout the island." There was indeed, an elaborate judicial system. We have seen that from ancient times there were courts of justice in Sri Laṅka.

In the days of the Kandyan Kingdom (1469-1815), in addition to the courts of officials referred to above, there were also other tribunals that had existed from time to time.

SĀKKI BALANḌA

John Davy[2] referred to a sort of coroner's court which he called "*sāke ballanḍa*."[3] He stated:

> "When a dead body was found, no one should touch it till it had been examined by the *sāke-ballanda*, not even if the body were hanging, though by cutting it down suspended animation might possibly be restored. It was the business of these officers to endeavour to ascertain the cause of death, and all the circumstances connected with it. In a case of suicide occurring in a village, the suicide having been of sound mind, or subject to temporary fits only of insanity, the *sāke-ballanḍa* inflicted a fine on the inhabitants of fifty *ridīes* (about twenty-nine shillings), which were to be divided between these officers and the *dissāve* - ten to the former, five to a *lĕkam* if present, and the remainder to the *dissāve*; and the body could not be burnt or buried till the fine was paid, a prohibition that insured its payment; for a heavier fine of one hundred or even two hundred *ridīes* was imposed on those who allowed a corpse to decay unburied or unburnt. If the suicide were a confirmed idiot or lunatic, no fine was inflicted. In the first instance, the inhabitants were punished for want of attention to an individual who required it, and whose life might have been preserved had such attention been paid; whilst in the latter, they were excused because they were not supposed to have time to spare to watch individuals who required incessant vigilance."

Säkki Balanḍa were courts of inquiry consisting of the principal men of a district, including minor officials such as *lēkams, kōrāḷas*, and *vidānas*.[4]

THE MAHĀ NAḌUVA

The king was theoretically the ultimate judicial authority. However in the exercise of the judicial powers of king, as in respect of other matters of importance, he acted on advice.[5] In exercising his judicial powers, a monarch consulted the chiefs and obtained their assistance in the examination of witnesses. In time, it may be that the king left it to the chiefs, presided over by an *adhikārama,* to deal with matters which he did not consider to be of sufficient importance to require his personal attention. The *Mahā Naḍuva*[6], like the ancient Indian courts of the king, or like the British Privy Council, advised the monarch as to what the decision should be.

Subject to the judicial authority of the king, the most prestigious court in the country in the days of the Kandyan Kingdom (1469-1815) was the *Mahā Naḍuwa* - the Great Court. The court "consisted of the *adhikāramas, disāvas, lēkams* and *muhandirams* (on a low bench)," but in the last days of the Kandyan Kingdom, all the chiefs were called to assist it, especially those "distinguished for their ability and judgment".[7]

Earlier, it had sat in a court-house near the Pattini Dēvale, which had fallen into decay. It had been partly rebuilt during the time of Rājādhirājasiṁha (1782-1798) but the renovations were never completed. Hence, the venue of the court was fixed as occasion suited, in the verandah of the Audience Hall, or in buildings outside the palace. L.J.B. Turner[8] said "the king conducted judicial inquiries at the *Dēva-sanhiňda* between the Nātha and Mahā-dēwalēs in Kandy and could do no injustice because the gods were on either side of him." He stated that there was a *yukthiya ishtakirimē ghanṭāva* - a bell of justice,[9] at the

northern corner of the Nātha-dēvalē opposite the Palace. Litigants who wished to appeal against the decisions of Adigārs or Dissāves were allowed to ring the bell, if they had good grounds to appeal and upon payment of a fee. "The appeal was heard in the Audience Hall before the king and the chiefs and was called a *maha naḍuva*. If the appellant was still dissatisfied, he could appeal to a court of the King, the Chiefs and the Priests, who gave a final decision. The last king is believed to have held only one *mahā naḍuwa* - concerning the estate of Ẹllēpola. The idea of the Chiefs and Priests forming the full Appeal Court survives with present practice in the hearing of cases against priests by the Head Priests, the appeal going to the Diyawadana Nilamē and the Chiefs."

The chiefs took their seats according to rank from right to left, and the inquiry was conducted by the *adhikārama* or any other chief of ability and experience. (In India, in the king's court, the *Prāḍvivāka*, in the early days before he became an independent judge, questioned witnesses and gave his opinion.) The proceedings followed 'the natural and most obvious course of procedure': the plaintiff or prosecutor first stated his case, the defendant answered, and the evidence of the plaintiff, the defendant, and their witnesses were heard. All the witnesses on both sides, as far as practicable, were heard on the same day. If a witness, on account of ill-health, was unlikely to be able to attend court at an early date, messengers were sent to bring his statement in writing confirmed, if possible, by oath at a neighbouring *dēvalē*. In ordinary cases, witnesses were not required to testify under oath. However, in cases of importance, they were sent to the neighbouring *dēvalē* and in the presence of two or three headmen, acting as commissioners, and required to take an oath as to the truth of their depositions.[8A] The headmen reported back to the court. The proceedings were oral, and, it seems, no record of proceedings was kept. However, a written record was made of movable property which formed the subject matter of the dispute. Sometimes a statement of his case, written on a palm-leaf (*vitti-vaṭṭoruwa*), was filed by a party . In land cases, which were by far

the most numerous, the devolution of title to the disputants was traced from an original proprietor who had lived three or four generations earlier.

The *Mahā Naḍuva* could not exceed the powers vested in the *adhikāramvaru*. Both criminal and civil matters came under the cognizance of the *Mahā Naḍuva*. They were of two kinds: those which were referred for hearing by the king, and those which were originally instituted before it, usually by the chief under whose jurisdiction was the complainant. Differences of opinion among the chiefs were seldom persisted in after full discussion. Decisions were made by the majority. In case of doubt, the matter would be decided on oath. But if either party "be obstinate against the determination of the court", the case was sometimes submitted to the king, especially if it concerned property of value or persons of consequence. In land cases, decrees known as *sīṭṭu* were written on palm leaves and signed by the senior *adhikārama* present, or sometimes by the second *adhikārama*, in respect of lands situated within his local jurisdiction. A *sīṭṭuva* contained the names of the parties, the land in dispute, the decision of the court, and the date. If the decision was confirmed by the king, the *sīṭṭuva* recorded his authority; in other cases the authority of the *Mahā Naḍuva* was recorded. The *sīṭṭuva* was given to the successful party, and no record or copy was preserved by the court.[10] This, it would seem, was a departure from traditional practice, according to which records of proceedings were probably required to be kept.[11]

GAM SABHĀ

In order to be able to appreciate the nature of *gam sabhā* (village court or council), some understanding of the administrative unit known as a *gama* (village community) is helpful. Geiger said:[12]

> "The smallest unit and the germcell of the administration was the village community (*gāma*). The idea and the institution were brought

> to Ceylon by the first Aryan immigrants from their home in NW India. They came as agriculturists, and the Sinhalese were chiefly agricultural even to the present day. They were always closely bound to the soil. Their whole life was regulated and determined by cultivation, and what they wanted was above all peace and order. They were conservative, and old institutions could endure unaltered through many centuries. The village community had its own privileges and always a good deal of self-administration, enjoying much independence of the central government, even ... in jurisdiction. The kings very seldom interfered in village affairs, except perhaps when the royal officials annually visited the village to collect the taxes due to the king."

The village, the smallest unit in the territorial administration, was under the control of an officer called *gamika.* He appears to have been of the same status as the *gāma-bhojaka* mentioned in Pali literature, and the office very often seems to have been hereditary. Persons holding this office seem to have had, in the early days, a status far superior to what one would assume in the case of a village-headman. Some of them were of such consequence, and were possessed of such material resources, as to employ a treasurer *(baḍakarika)* under them. Their social status seems also to have been considerably high, for there was a *gamika* who was the maternal grandfather of a prince. A *gamika* was a minister of Vaṭṭagāmani Abhaya, and another of this class held the position of treasurer.[13]

Gam sabhā (village tribunals) were the lowest and probably the earliest courts. They were approximately the counterpart of the Indian *Panchayat.*[14] Weerasinghe stated that they were established in the days of King Paṇḍukābhaya.[15] The *Mahāvaṁsa*[16] said that "Ten years after his installation did Paṇḍukābhaya the ruler of Laṅkā establish the village boundaries of the whole of the island of Laṅkā." Hayley,[17] refers to that observation in the *Mahāvaṁsa* and added that "there can be little doubt that the village courts existed from the earliest times." Hayley gives 425 B.C. as the date when Paṇḍukābhaya established village boundaries. That date

may be incorrect: According to Wickremasinghe's 'Ceylonese Chronology'[18] the regnal years of Paṇḍukābhaya were 377-307 BC. Weerasinghe,[19] gives the regnal years as 394-307 BC. Ranawella[20] stated that there is no evidence in the chronicles of courts of law having been established by Vijaya, Paṇḍukābhaya or Devānampiya Tissa.

Although, courts of law were not mentioned in the chronicles in the days of the earliest monarchs, yet if the concept of the institution of *gama* was brought by the early settlers; and if as agriculturists, 'what they wanted above all was peace and order', is it not probable that the resolution of disputes through *gam sabhā* would also have been in operation from the earliest times? It is not only in relation to the earliest times, but even with regard to later times that we hear very little about judges or courts of justice or legal proceedings in the chronicles. This may have been due to the fact that the village communities enjoyed a great deal of independence in settling their disputes and that such disputes, being usually of a trivial nature, did not require the intervention of other tribunals. Geiger said:[21]

> "As to the administration of justice the information we can gather from the Mahāvaṁsa is not very copious. The reason may be that for a good deal of jurisdiction, concerning minor offences, the village community and its headman were competent, so that the general public was not much affected by these legal affairs. In an inscription of the tenth century (Epigr. Zeyl. I, p. 53) it is explicitly prescribed that the royal officials when visiting a village every two years on their regular circuit, may demand the surrender of the perpetrators of the five great crimes, but not of other offenders."[22]

Hayley[23] stated: "Side by side with the royal and official courts, we find the affairs of every village, district and *nindagama*[24] under the control of its own tribunal."

Commenting on the Badulla Pillar Inscription, Paranavitana stated:

> "Particular attention may be drawn to the fact that the local and other mercantile corporations were empowered to levy fines, arrest murderers and in other ways assist the royal officers in the administration of justice."[25] "The entrusting of the administration of justice to the local corporations is in keeping with the injunctions of the Hindu law-givers. In enumerating the different kinds of law courts, Nārada says: 'Family meetings *kula*, corporations (*sreṇi*), village assemblies (*gana*), one appointed by the king, and the king himself, are invested with the power to decide law-suits; and of these, each succeeding one, is superior to the one preceding it in order.'"[26]

Codrington,[27] quoting D'Oyly as his authority, made the following observations on the village council system of the Kandyan Kingdom:

> "In Kandyan times the *gam sabhā* or village council assembled to deal with disputes debts and petty offences. It was composed of the principal and experienced men of the place." "The analogy of the *raṭa sabhāva* 'council of a district or division', suggests that the village court, like that of the *raṭa*, was once composed of the heads of families."

Whatever the exact date of their establishment may be, village community tribunals were certainly established in very ancient times, and they continued with little or no change till the early years of the nineteenth century. The fact that they continued with little or no change hardly comes as a surprise, for as Geiger observed,[28] the people were 'conservative, and old institutions could endure unaltered through many centuries'.[29] Moreover, being pragmatic people, wanting, as Geiger said, 'above all peace and order', why would they want to alter a system that had worked well to achieve their objectives? Of the *gamsabhā* (village tribunals) Knox [30] stated:

> "For the hearing of complaints and doing justice among neighbours, here are countrey-courts of judicature consisting of those officers (the lower officials) together with the headmen of the places and towns where the courts are kept; and these are called Gom Sabbi, as much as to say Town-Consultations."

Hayley[31] stated:

> "The gamsabhawa courts existed all over the country, and were composed of the principal men of each village ... They had both civil and criminal jurisdiction in questions of boundaries, petty debts and petty offences. The limits of their powers are nowhere defined, but D' Oyly says their endeavours were directed to compromise rather than punishment, unless a headman was one of the assembly, in which case a fine might be levied. We know nothing definite about the procedure in early times, but may conjecture that it was similar to that of the rata sabhawas. An appeal lay from these courts to the rata sabhawas, or to the koralas and ultimately, through the various courts, to the King."

Hayley, it was said, was mistaken both with regard to his belief that an appeal lay to the *raṭa sabha* from decisions of *gam sabhā*, and with regard to his assumption that the procedures in the two tribunals were similar. Ralph Pieris stated:[32]

> Codrington's attempt (p. 3) to find an analogue for the constitution of the *gamsabhāva* in that of the *raṭa sabhās* has no justification at all. Hayley (p. 60) makes a like comparison. The lengthy sessions of Dry Zone *raṭa sabhās* were marked by etiquette, decorum, and punctilio, the *gamarāla*, being responsible for providing meals for all those who assembled for these prolonged deliberations, while the meetings of the *uda raṭa* village councils were brief and informal."

I find myself in agreement with Pieris' view that the procedures in the *gam sabhā* and the *raṭa sabhā* were different.

However, Hayley was quite right in endorsing D'Oyly's view about the primary function of *gam sabhā* as conciliators and mediators, although sometimes, where they proposed a solution, rather than leaving it to the parties to decide a matter, then they might have been more like arbitrators, or judges. D'Oyly[33] stated that *gam sabhā* were expected "after Enquiring into the Case, if possible settle it amicably, declaring the Party which is in Fault adjudge (*sic.*) Restotution (*sic.*) or Compensation and dismissing with Reproof and Admonition, their Endeavours being directed to Compromise and not to Punishment."

The jurisdiction of the *gam sabhā* was expressly preserved by section 4 of the Charter of Justice of 1833. However, it has been said[34] "that provision of the Charter had largely remained a 'dead letter' because there were doubts about the enforceability and the binding effect of the awards of the *gamsabhāvas* and because the new courts which the Charter had set up throughout the country enjoyed a superior prestige."

Did they enjoy a 'superior prestige'? What is the evidence? Certainly, as far as the public was concerned, as Colebrooke said, the people were 'attached' to the old system - a system that had served them well for over a thousand years, and despite the introduction of new tribunals, they preferred to go to the *gam sabhā*. As we shall see, Major Skinner said that people had "a wholesome dread" of the new courts, and clamoured for the old system.[35] When in the early British period a *kōrāḷa* was taken to task for not having brought a case of cattle stealing before the courts as a criminal action, it was held that the Kandyan Law did not regard it at all improper for a *kōrāḷa* and the parties to have the case adjudged by a village council which had authority to impose a fine if a headman was present.[36]

It was said that Sri Vikrama Rājasiṁha encouraged the work of *gam sabhā* to break the power of the chiefs.[37]

The settlement of disputes by *gam sabhā* was a method of dispute resolution accepted and resorted to by the people even during the early years of British rule, "although no legal machinery had been provided for enforcing the award of a *gamsabhāva*,[38] and despite the absence of official patronage".[39] Even as late as 1871 it was observed: "in rural districts the verdict of the village still influences the decisions of arbitrators appointed by our Courts ... and disputes between members of a family or between neighbours are sometimes referred to it by mutual consent." [40]

Some British administrators may not have understood the way in which *gam sabhā* worked; but I find it difficult to accept the claim that the people of Sri Lankā had any concern at all about the "binding effect of the awards of the *gam sabhāvas*."[41] As we have seen, in early British times, people continued to resort to *gam sabhā*, despite the absence of machinery for enforcement. In fact, the notion of 'enforcement' is inconsistent with the technique of dispute resolution adopted by *gam sabhā*, namely amicable settlement by mediation or conciliation. Even today, some people, it seems, do not understand the basic difference between the technique of dispute resolution known as 'mediation'(where the parties, with the assistance of a facilitator, decide matters for themselves), and the techniques of dispute resolution known as 'arbitration' (where one or more decision-makers chosen by the parties or through a mutually accepted process of identification, decide a matter), and 'adjudication' (where matters are decided by a tribunal appointed by the state).

The *gam sabhā* were village councils consisting of an assembly of the principal and experienced men of the village, who met informally at an *ambalama*,[42] under a shady tree,[43] or other convenient place, for the purpose of bringing about an amicable settlement of a dispute, according to accepted canons of law, without that delay and expense which arbitration or adjudication entailed. The task of the tribunal was to resolve disputes by mediation; it was essentially concerned with bringing about a settlement, not imposed on them, but agreed to by the parties as a mutually acceptable way of resolving their dispute. Such agreements stuck because the parties had themselves agreed to the solution, albeit sometimes with some persuasion, and not because they were enforced by executive action.

Exceptionally, perhaps, a *gam sabhāva* failed to bring about an amicable settlement and then acted like arbitrators or judges. In such instances, an appeal would lie to a higher tribunal. Davy[44] stated: "In an ordinary dispute about land, which was the most

common subject of litigation, the disputants usually commenced with referring it to be settled by arbitration of their neighbours; if dissatisfied with the decision given, they may apply to the Korawl, and from the Korawl to the Mohoṭṭāla, and from him to the Dissawe; if still dissatisfied, they might apply to the Adikār, or even to the King ..."

Ralph Pieris[45] said:

> "In most districts, appeal from decisions of the *gam sabhāvas* could be made to state officials, e.g., *korāḷa, mohoṭṭāla, disāva, adhikārama,* and finally to the king. There was no definite order of appeal to these officials: a man might go direct to the *disava* or even the king."

The usual course seems to have been, as Davy suggested, to seek redress at the lowest levels and then proceed up the hierarchical system of appellate courts and, assuming that the normal procedures were followed, it would, in my view, be reasonable to assume that Eḷāra's intervention was sought by way of appeal rather than by the invocation of his original jurisdiction. The use of the *yukthiya ishtakirimē ghanṭāva* during Kandyan times, it would appear, provides a clue to the identity of the king's jurisdiction that was being invoked. It appears to support the validity of an assumption that the bell-ringer in the court of Eḷāra was also seeking redress by way of appeal, as generations of Sri Laṅkans did thereafter. In my view, having regard to the way in which the system appears to have operated, it was not open to a party to by-pass the hierarchical order at will, as some persons would seem to suggest. An official who was empowered to hear a matter, as we have seen, could always refer a matter to a higher tribunal, for higher tribunals had concurrent jurisdiction with the courts below. But the choice of forum in such a case was probably with the judge rather than the litigant.

Although C.H. Cameron,[46] one of the Royal Commissioners of Eastern Inquiry, in his Report upon the Judicial Establishments and Procedure in Ceylon, dated the 31st of January 1832, had

recommended the abolition of the existing courts because there was uncertainty in the administration of justice as a result of the differences in their constitution, procedures and jurisdictions, and the introduction of a new system of courts in their place, the new system soon manifested its defects - defects that remain to this day: From time to time, remedial measures have been introduced: but the essential features introduced by the Charter of Justice of 1833, based on Cameron's recommendations, remain. If considerations of uniformity were paramount, so that there should be no separate system of courts and procedures to deal with small and simple causes on the one hand, and large and complex matters on the other, then the Government ought to have provided sufficient courts and judges to deal with the disputes referred to the courts on that basis. Otherwise, the courts could not have been expected to cope with the load of work, and inordinate delays in making decisions should not have come as a surprise. In 1842, the Governor said that the rules of practice were "far more calculated to benefit proctors[47] than to ensure a speedy decision. The same forms of procedure are applicable to a cause where five shillings is in dispute or ten thousand pounds is at stake ... and the forms laid down preclude ... the District Judge giving a more speedy or summary decision in trifling cases." [48]

In my view, the perilous, current situation of the administration of justice in Sri Laṅkā is a direct result of the devaluation of the traditional system of dispute resolution which had a menu of dispute resolution techniques - mediation, conciliation, negotiation, arbitration, adjudication or a combination of such techniques - a system, interestingly enough, adopted in recent times by the most economically advanced communities, which, among other things, require a speedy resolution of disputes as a part of their efficient infrastructure. In Sri Laṅkā, commendable attempts have been made to remedy the situation through the introduction of mediation boards and a new law relating to arbitration: but the legal culture introduced by the British stands in the way of reverting to the traditional method of conflict resolution - the use of an appropriate method selected from a menu of techniques for dispute resolution.

The adversary system has its merits: Indeed, it is, in my view the best dispute resolution technique in certain situations. However, it is not the appropriate technique in many other circumstances. The current crisis caused by the 'Law's Delay' will, in my view, abate only when it is acknowledged that it is necessary for the efficient administration of justice, and that it is in the litigant's interest, to match disputes to appropriate dispute resolution processes. That, it must be accepted, is as much a part of 'good lawyering' as are litigation skills.[49]

Lt. Col. W.M.G. Colebrooke who, with Cameron, constituted the Commission of Eastern Inquiry, had a much better understanding of the realities than his colleague. Colebrooke did not want to impinge on his colleague's sphere and, in any event, wanted it fairly tested by experience, although he did suspect that grave consequences would flow from the role of *gam sabhā* being superseded de facto. He said: "The Courts proposed by Mr. Cameron possess many advantages ... I would recommend however that the proceedings of the District Court should be conducted in a summary manner and that the Institutions to which the people are attached should not be superseded." [50]

Village tribunals did receive legislative recognition by Ordinance No. 26 of 1871; and their powers and procedure later came to be regulated by the Village Communities Ordinance No. 24 of 1889 as amended by later Ordinances. The Rural Courts[51] were supposed to be "people's courts of small causes".[52] Yet, in my view, by that time if not earlier, the traditional *gam sabhā*, which were essentially concerned with mediation and conciliation, had ceased to exist: the tribunals that were supposed to take their place were never really the same - they were essentially courts concerned with adjudication.

It was inevitable that without the informal machinery for dealing with small causes, the limited number of modern courts would become overburdened, particularly if, as Davy[53] observed, "the Singalese ... are a very litigious people."[54] His explanation

for this was "the former corrupt administration of the laws, the frequent changes of officers, the liberty of renewing trials almost indefinitely, and the privilege of appeal from one court to another." Athough the frequent change of officers, may, in some extraordinary instances, have resulted in reversals of decisions, this was not a feature of the system. In fact, it was unlawful since the principle of "settlement" was ignored.[55] We have also seen that the allegation of corruption was, perhaps, exaggerated.[56] In any event, as D'Oyly[57] pointed out, although due to certain reasons, corruption was possible and may have existed at certain points in the hierarchical scheme of the administration of justice, yet one of those points does not appear to be the apex court. Referring to the Great Court, D'Oyly referred to the fact that the large number of judges and the publicity attending the proceedings were guarantees against corruption. Similar considerations applied to the *gam sabhā*, where matters were heard by a large number of persons sitting together. Indeed D'Oyly himself said that there was no injustice "when trifling cases are heard and settled by the village court in which the principal inhabitants of the village in fact constituted a jury."

As for appeals, we have, from time immemorial, and through a long priod of recorded history, had a hierarchical system of courts and a system of appeals from one court to the other until the supreme authority was reached. The fact that an unsuccessful litigant avails himself of an opportunity to canvass the correctness of a decision made against him does not warrant him being described as 'litigious', in the sense of being a person who is fond of going to law: An appellant merely tries to obtain an accurate decision within the framework of the law, availing himself of a right of appeal given by law.

Davy[58] stated: "Though acts of assault and violence are rarely heard of amongst the Singalese, they are a very litigious people; which perhaps arises rather from external circumstances than innate disposition." Perhaps, if acts of assault and violence were rarely heard of, it was because people had become so used to the idea of referring their disputes to tribunals?

On the other hand, Sir John D'Oyly,[59] observed that cases of assault and quarrels "were very numerous."

Traditionally, people had resolved their disputes peacefully, by referring them to the village tribunals, rather than by taking the law into their own hands; it had become an essential, natural, way of having their disputes resolved. As Geiger [60] observed, what the people wanted 'was above all peace and order'. However, that changed, and changed radically: The simple aim of a traditional court was to settle a dispute in which the parties presented their cases, in the light of evidence that was probably truthful because in small communities the facts are usually known to the judges and members of its court - the *sabhā* - and witnesses if any. Sen-Gupta (p. 63) observed that in India, "in an early stage of society where communities were small and matters of litigation comparatively simple, facts of such disputes would be generally known, so that, when the community itself is the judge no question of fact would normally arise. When after this stage, the king becomes judge he might ascertain facts by simply calling one of the leading members of the community ..." In Sri Laṅkā, communities remained small, and, in my view, the elaborate rules of evidence set out, for instance, in the laws of Gautama, Vasiṣṭha, Viṣṇu, Nārada, Bṛihaspati, Kātyāyana, Manu and Yājnāvalkya do not seem to have found their way into the legal system of Sri Laṅka. The aim of a British-type court was, with the assistance lawyers, not only to resolve disputes but also to establish principles. The most elaborate rules had to be complied with under the new system, which, among other things precluded judges who were acquainted with the facts from taking account of them.

James Cordiner [61] noted [62] that the courts were

> "daily crowded with complainants against debtors and petty offenders. The natives are particularly prone to litigation and fond of having their most trifling disputes determined by the superior power the application to which a moderate use of common sense on their part would render unnecessary. Nothing gratifies them so much as an

alternative enquiry into the nature of their grievances. The subject of dispute does not often exceed the value of ten shillings and they frequently retire satisfied even when the cause is dismissed as frivolous."

R. Morris, the Government Agent of Kurunegala, in his Administration Report [63] said:

"A suit in court seems to be looked on as an answer to a want met elsewhere by the theatre, opera, music halls etc."

Aelian King, the District Judge of Badulla, in his Administration Report [64] observed:

"The court-house is the arena chosen by popular consent in which the greater part of the superfluous excitement and passion of the native is worked out."

I am reluctant to suppose that a court, now or then, was a place of amusement or a kind of mental gymnasium for a 'work out'. The fact is that the old system was killed off. And when that happened people who were unaccustomed to taking the law into their hands but had sought the intervention of their traditional courts, especially the *gam sabhā*, to help them to settle their disputes quickly and amicably, found themselves on the horns of a dilemma: either they had to take the law into their own hands, which they disliked, but nevertheless did with increasing frequency to obtain a quick, cheap and effective remedy ; or they had to resort to the new courts for the resolution of their disputes. The second course of action was far from satisfactory, for the new courts put in place a cumbersome, slow-moving process for dispute resolution. The new system required complex rules to be observed, making the services of lawyers necessary; since lawyers had to be paid for their services, the new system was also expensive. Moreover, the new courts did not bring about a peaceful resolution of the dispute: the adversarial system, unlike the traditional conciliatory system, encouraged bitterness, not only between the parties, but sometimes between families for several

generations, leading to the commission of crimes against each other. Governor Robinson, in his address to the Legislative Council on the 4th of October 1871[65], lamented the fact that the old system of dispute resolution by village tribunals and by the various officials and chiefs had been replaced by the new courts. He said: "Our rule has destroyed every vestige of the system of village government and has given the people in its place about forty Minor Courts ... presided over by European Magistrates and conducted according to European forms of civil and criminal procedure. ... What is wanted is some inexpensive, prompt and popular means of settling disputes on the spot. This would tend ... to arrest in the very germ the growth of those contentions which at present develop into such a prolific crop of both real and false petty charges."

The new courts established by the British were not only inappropriate for settling small disputes, and brought about harmful social consequences by creating antagonism between the parties, they were also incapable of coping with the volume of litigation because of the drastic reduction in the number of tribunals where small disputes could be expeditiously and amicably settled, and because of the formal, elaborate procedures that were applied willy-nilly to every kind of dispute; the new system also resulted in the waste of resources.

Thomas Skinner[66] in a memorandum published in his book, and referred to in his evidence before a Select Committee of the House of Commons in July 1849, dealt with a number of matters. Despite inaccuracies on some incidental matters, his very important observations on *gam sabhā* and the new courts system are reproduced below:[67]

> "Probably in no people in the world does there exist so great a love of litigation as in the Singhalese. It is much encouraged by, if it does not altogether owe its existence to, the state of their law of inheritance, by the result of which property has become so subdivided that the 120th share of a field, or the 99th share of a small garden (containing perhaps not half-a-dozen trees), becomes the fruitful source of legal contention. With their own government, the result of an appeal to law

depended less upon the merits of the case in dispute than upon the relative means and inclinations of the parties to pay for a favourable decision; hence a law-suit was too frequently the corrupt instrument of revenge in the hands of the rich and powerful, where no better means of indulging a vindictive spirit of animosity or tyranny presented itself. Witnesses can, even in these days, be obtained for evidence of any character. Perjury is made so complete a business, that cases are regularly rehearsed in all their various scenes by the professional perjurer as a dramatic piece is at a theatre. So long as the courts of the colony were more those of equity than law, and were unclogged by quibbles and delays, this litigious spirit appeared to be on the decline; the presiding judge sifted his own evidence, and if he possessed a knowledge of the character of the people, a fictitious case was less easily 'got up' than it can be now.

The prevailing system of our little district courts admits of the proctors feeding upon their clients for years. I have repeatedly, at uncertain intervals, been summoned to attend a district court as a witness in a case which had been before the court ten or eleven years. On my appearing in obedience to my summons to give evidence, I have been told that the case was again postponed; and so I conclude it will continue to be deferred, until by the death or departure from the country of the most important of the defendant's witnesses it may be found expedient to press for a decision of the case.

I have seen instances wherein the judicial stamps have far exceeded the value of the case under adjudication, and which by numberless vexatious postponements have been protracted over a period of many years, to the ruin of both plaintiff and defendant; the proctors by their fees, and the Government by the sale of judicial stamps being the only gainers.

If private individuals have suffered from the nature and system of our law courts, Government has been no less victimised; their cases are postponed for years, and the unsuccessful issue of their suits is proverbial.

A tabular abstract of the business of the several district courts of Ceylon under the following heads, for the last five years, would exhibit curious results:-

Case, when instituted.
Case, when decided.
Value of case under litigation.

> Cost of stamps.
> Number of postponements.
> Number of cases on the books of the court.
>
> These evils may, I hope, be in some degree mitigated; I shall hereafter refer to the means by which I think it may be accomplished."

Litigiousness, perjury, animosity between the parties, expense and delay were some of the consequences of the new 'superior' system. There were other problems too, such as lack of physical access to justice and the waste of resources. It is hardly surprising that some people preferred to resort to informal methods of dispute resolution, although it has been suggested that the new 'superior' system was preferred.[68] Skinner advocated the revival of *gam sabhā*; but his words fell on deaf ears. Skinner said: [69]

> " I have adverted to the possibility of checking the ruinous and demoralizing tendency of the indulgence of the natives in their love of litigation. There is no local magistracy in Ceylon corresponding with the county magistrates in England; there are justices of the peace, but they have only the power of committal, and have no collective judicial power; the District Courts, Police Courts, and Courts of Requests (all expensive appendages of Government) are situated, in some instances, 40 or 50 miles and upwards from portions of the population.[70] One individual for a trifling suit may, in instances, if he chooses, withdraw from their village and necessary occupations one-half of its population as witnesses. The journey to and fro, and attendance at court, occupy perhaps not less than a week or ten days; and it is uncertain how often this expense and annoyance may be repeated, while the prevailing system of postponements and procrastination in our courts is permitted.[71]
>
> In the native government existed a primitive and very simple institution termed 'Gangsaib' or 'Gamsaib' whether Indian or Ceylon origin I am uncertain; the first syllable of the word being the Sinhalese for 'village'; the second, the Hindoostanee for 'lord or master'. [72]
>
> The institution appears to have long existed in the north of India, as we hear of its having formed a highly-prized portion of the system of the ancient government of the Punjaub.
>
> These gangsaibs were composed of three or five elders, of one large, or of a convenient number of small contiguous villages; they were elected

by the people and held their meetings, transacting their business, under the wide-spreading, branches of the venerable village tree, under which the villagers are wont to congregate for public discussions &c., &c.

I do not know the exact powers these gangsaibs may formerly have been invested with, but am convinced that their re-establishment in the rural districts, if merely for adjustment of petty disputes by arbitration and advice, under the mutual agreement and application of parties requiring such intervention, and for their own little municipal arrangements, would be productive of an infinity of good to the people. Quarrels and disputes would be inquired into on the spot, where the circumstances would be generally so well known to the community as to prevent an attempt at gross, premeditated perjury being resorted to; and in nine cases out of ten, I should anticipate that parties would be contented with the opinion and advice of the gangsaib. It should, however, in all cases, be eligible for the parties to appeal to higher tribunals; but when such an alternative is resorted to, the fact of the evidence having been previously rehearsed before the elders of the village would, in most cases, deter parties from bringing forward false witnesses.

The want of this (I may almost term it indigenous institution) has been very frequently represented to me by natives. I have known many headmen [73] who, at the request of the inhabitants, individually perform the functions of the gangsaib, while one (a most respected friend, who is justly esteemed for his high integrity and uncompromising honour, is obliged to devote nearly the whole of his time to this benevolent purpose. His 'wallawa' (palace) is usually thronged with people from the surrounding districts, who, having a wholesome dread of the consequences of being drawn within the vortex of our law courts, agree to submit their cases to this good man; he hears all that is to be urged on either side, and with a short summary of the evidence, from which he draws his conclusions, gives his opinion or judgment.

I once asked him if he had the satisfaction of knowing that his pains were rewarded by their being preventive of ulterior litigation, or if it frequently occurred that the defeated parties took their cases to courts after his hearing. He said, when he first commenced his system of arbitration, there were two or three instances of parties who, dissatisfied with his opinion, resorted to court; but the evidence having been rehearsed, as it were in public before him and audience whose local information prevented any attempt at gross perjury, it could not afterwards be much adulterated before the District Court; consequently, after repeated attendances, protracted, vexatious, and expensive law

proceedings, the same decisions were legally pronounced, with this difference, that both parties were nearly ruined, and in some cases the defeated ones quite so. Of late, he said, parties rarely appealed from his decisions or advice.

The quarrels and disputes which lead to, and are both aggravated and perpetuated by these protracted law proceedings, might, in nine cases out of ten, be amicably settled had the parties ready means of seeking the intervention of any recognized referee. It becomes a point of honour with an Asiatic, that his supposed grievance should be investigated. Give but a patient hearing to the most exasperated parties, listen to what they have to say, and you may depend on their adherence to your award, and most generally the adjustment of the most irreconcilable animosities.

Now while the gansaibs would accomplish this object with peculiar efficiency, they might be made to supply the want of anything like municipal institutions, of which, in fact they would form the basis. Arrangements regarding qualifications, elections, and functions might be easily made.

Simultaneously with the foregoing, let the number, duties and powers of the headmen of each province, district, and village, after careful consideration, be revised and legally recognized. Give to the agents of Government and their assistants, as justices of the peace (which they are), a limited criminal jurisdiction while making their progress through their districts (something of the kind they formerly possessed), in conjunction with the gangsaibs or elders of villages, as assessors; this jurisdiction might even extend to punishment for cattle-stealing which is carried on as a business by a set of lawless migratory thieves, and we should soon find crime and drunkenness yield to order and good government, to both of which nothing can be more prejudicial than too suddenly engrafting on society, in its most primitive state, institutions adapted to the highest existing state of civilization."

RAṬA SABHĀ

Apart from *gam sabhā* (village councils), there were courts known as *raṭa sabhā* (district court and/or council) or *raṭa sammutī* (district committee). When it was specifically convened to hear a caste dispute, it was referred to as a *variga*[74] *sabhā* or *variga sammutiya*.

Major Forbes[75] stated: [76]

> "In the constitution of Kandian society, the Gamsabae and Ratta-sabae (the village and district councils) afford specimens of free institutions, which one could not expect to find surviving so long a period of arbitrary rule. The village council was composed of the head of every family residing within its limits, however low his rank, or small his property: from this tribunal, there was an appeal to the district council, which consisted of intelligent delegates from each village in the Pattoo or subdivision of a district. Village councils were indispensable, in a country where landed property is so minutely divided, and consanguinity so entangled as in Ceylon; but in 1828, district councils only lingered in the remote province of Nuwarakalawiya, and even there, were seldom used."

According to Hayley, although by implication they were abolished by section 4 of the Charter of 1833 and had no legal status, *raṭa sabhā* continued for some time to be recognized by villagers as having jurisdiction in questions affecting caste, marriage, and social status - matters, as we shall see, with which they were principally concerned.

However, although Forbes[77] and Hayley[78] stated that an appeal lay from decisions of the *gam sabhā* to the *raṭa sabhā*, Ralph Pieris said:[79]

> "... there is no evidence that *raṭa sabhāvas* functioned at all in the *uda raṭa*. It was only in the Sinhalese Dry Zone (including Mātale) that *raṭa sabhās* fulfilled the function of appeal courts, usually convened at the request of a village headman. Hayley's authorities, Pridham (p. 219) and Forbes (p. 71) both refer to Nuvarakalāviya and Mātale only, and not to the *uda raṭa* proper. For in Nuvarakalāviya and Mātale, distance from the capital and insulation from central government officialdom militated against appeals being made to the various state officials invested with judicial powers, and ultimately to the Great Gate (*mahā vasala*). "

On the other hand, it is stated in the 'Historical Introduction' to D'Oyly's *Diary*[80] that King Sri Vikrama Rājasiṁha (1798-1815),

attempted to break the power of the Kandyan chiefs by, among other things, "encouraging the local councils, known as Rata sabe and Gamsabe".

Ralph Pieris stated that the *raṭa sabhā* did not function in what he called[81] "the *uda raṭa* proper", but he accepted the fact that *raṭa sabhā* did exist "in the Sinhalese Dry Zone" including Mātalē and the Nuvarakalāviya district, which Ralph Pieris stated[82] were two of the "Kandyan provinces" placed in charge of the first *adhikārama*[83]. We have seen that the Copper Plate Charter of Sri Vikrama Rājasiṁha showed that complaints to the king, even from far-away places like Hurullu Pattuva, were effective. [84]

Having regard to the fact that there was a hierarchical system, was it improbable that in Mātalē and the Nuvarakalāviya district, an appeal lay from *gam sabhā* to the *raṭa sabhā*? Pieris stated:[85]

> "Whether there was a recognized *gamsabhāva* in this area is doubtful, but there is evidence that in agricultural disputes the leading men of the village the *kōrāḷa*[86] of the division (*tulāna*)[87] and the leading *gamarāla*,[88] would decide the case and were empowered to impose a fine. Serious criminal offences and disputes relating to caste were brought before a tribunal known as a *raṭa sabhā*, an institution peculiar to this region and quite unlike the *gamsabhāva* of the village tribunal of the *uda raṭa* in that it was regulated by elaborate rules of procedure and etiquette."

We have seen how *gam sabhā* ceased to exist: They lingered on for a time even after the new system was introduced. *Raṭa sabhā* too, it seems, did not make a sudden exit but gradually fell into disuse in the Kandyan areas, its last stages being in Nuvarakalāviya. Possibly this may be because, as we have seen[89] questions affecting marriage, caste and social status were of special concern in those areas having regard, among other things, to the special directions of King Bhuvanaikabāhu V referred to in Chapter XIV, text at note 176 above. Describing the *raṭa sabhā* system in 1909-1910, K.A. Kapuruhami[90] stated[91] that even at that

time it existed "in some form or other" in "the remote corners of Nuwarakalāwiya," although it had "lost its lustre and power; the healthy signs have disappeared; it now stands on its last legs and the downfall is in sight ... It ought to be admitted that the Rata Sabhawa system is not what it was, and that it is not administered with impartiality; still it is popular among the people of a large portion of Nuwaragam and Hurulu Palatas. They pay much regard to it and abide by its decisions."

When they did exist, they had an important role to play in the system of the administration of justice with regard to actions in contempt of the *raṭa sabhā*,[91A] allegations relating to the offence of sorcery, (*hūniyam.*)[92] matters concerning illicit social and sexual relations between members of different castes or classes, complaints relating to false and malicious accusations of disgraceful conduct, and "offences as are calculated from a social point of view to be disgraceful acts." Kapuruhami[93] gave the following as a "short summary" of such offences, and[94] indicated the sort of penalties that might be imposed: [95]

> (1) A woman eloping with a low caste man or a low-country Sinhalese whose status is not known: Cast out (*varigen pita damanawā/ahak karanavā/thoran karanavā*). There could be a temporary ban (*thovil thahanam karanavā*); or a person could be permanently cast out of the *variga* without hope of reunion, on account of a serious offence, the act symbolic of his expulsion being the chopping of a tree and a rock with an axe or other instrument (*gahē galē koṭala ahak karanavā*)".[96] Her blood relations were fined 550 *ridī*.
>
> (2) A man or woman living with another of a low caste as husband and wife: Cast out. Blood relations were fined 550 *ridī*.
>
> (3) A woman having illicit connection with a low caste man openly: Cast out. Blood relations were fined 550 *ridī*.
>
> (4) A woman suspected of having illicit connection with a low caste man: The woman was fined 550 *ridī*. Blood relations were fined 7 1/2 *ridī* each.

(5) A woman conceiving, having no legal or known husband: The woman was fined 550 *ridī.* Blood relations were fined 7 1/2 *ridī* each.

(6) Intermarrying with people of another *varige*: The person thus marrying is not admitted to any social function of the *varige* 'given up' - probably meaning the implied abandonment of the right to participate in the social activities of the *varige* by marrying an outsider. Blood relations were fined 100 to 120 *ridī* , in default, they are set apart. The person marrying is re-admissible to the *varige* if the marriage is dissolved and a fine of 550 *ridī* was paid. The *varigakkārayō* of the second *varige*, if of an equal standing, imposed a fine of 100-250 *ridī* on the party thus contracting the marriage and its blood relations for admitting the stranger. If the second *varige* be of a lower standing, no fine was recovered.

(7) Contracting a marriage within the prohibited degrees of relationship: The offender was fined 50-100 *ridī* and those who were instrumental in arranging the marriage, 7 1/2 *ridī* each.

(8) Making a proposal by giving rise to a marriage within the prohibited degrees of relationship: The parents or guardians of the girl were required to give rice, and those who partook of it were fined 7 1/2 *ridī* each.

(9) Having illegal connection with one who comes within the prohibited degrees of relationship: The offender was fined 25-100 *ridī* .

(10) Eating in the house of a low caste man food prepared by a low caste man or woman and in their cooking vessels: The offenders were fined 25-100 *ridī* each.

(11) Drinking water from a vessel used by a low caste man: The offenders were fined *ridī* 25-100 each.

(12) Doing menial service to or in the house of a low caste man: The offenders were fined 50-100 *ridī* each.

(13) Getting beaten by a low caste man: The offenders were fined 50-250 *ridī* each.

(14) Accusing a person of an offence which has been adjudicated upon and settled in a Raṭa Sabhāva or by the Chief: The offenders were fined 25-100 *ridī* each.

(15) Associating with persons who have been banned temporarily or permanently in funeral and marriage ceremonies: The offenders were fined 7 1/2 *ridī* each.

(16) Doing services or acts which fall to the lot of low caste persons: The offenders were fined 50-100 *ridī* each.

(17) Practicing *huniyam* (sorcery) in its several branches: The offenders were fined 25-250 *ridī* each.

(18) Accusing a person in the course of an altercation of offences calculated to be disgraceful which are clearly false and malicious and uttered at the impulse of the moment: The offenders were fined 2 1/2 - 7 1/2 *ridī* each.

(19) Disregarding to do, at the bidding of a Raṭa Sabhava, such *rājakāri* (services) as one is bound to do: The offender was fined 7 1/2 - 25 *ridī* .

(20) Failure to provide meals or provisions to the Raṭa Sabhāva when it is one's turn to supply them and due notice has been given beforehand: The offender was fined 7 1/2 - 25 *ridī* .

(21) Irregularities occurring in the course of supplying meals or provisions: The offender was fined 7 1/2 - 25 *ridī* .

(22) Irregularities in preparing meals: The offender was fined 7 1/2 - 25 *ridī* .

(23) Improper movements and acts done in the Raṭa Sabhāva, or using improper words and terms while talking: The offender was fined 7 1/2 - 25 *ridī* .

(24) Any act considered to be slighting the Raṭa Sabhāva officers (in their official capacity) in receiving, accommodating or feeding them: The offender was fined 7 1/2 - 25 *ridī* .

(25) Minor offences, *i.e.*, *at-väradi* (offences by acts), offences by words (*kaṭaväradi*), offences of eating *(bath-väradi)*, "all committed through sheer ignorance and not willfully, and similar other offences:" The offender was fined 2 1/2 - 7 1/2 *ridī*.

Raṭa sabhā [97] were composed of delegates from each village in the district. The delegates were the principal citizens and officials including the *mohoṭṭāla*, (secretary or scribe), *liyanarāḷa*, (clerk or scribe), *badderāḷa* (officer who collected taxes and fines), and *unḍirāḷa* (collector of royal revenues). The chiefs and heads of the *raṭa sabhā* hailed from the leading families and they appointed the officials.

A person who wished to be appointed, had to take a *dekuma*, i.e., the present or perquisite given to a person in authority to initiate some action; in this case, it was usually a sheaf of forty betel leaves with a few *ridī*, and request his chief to make the appointment, promising a *bulath surulla*,[98] (a gift) which in earlier times was a female buffalo or cow with its calf or a male buffalo or bull. Later, a sum of money, varying with the post applied for, was promised. If the applicant was successful, the chief gave him the forty betel leaves and after being saluted by the applicant, he was called by his title, *mohoṭṭāla, badderāḷa, lēkama,* as the case may be. This was called *nama mārukaranavā* (changing the name)[99]. The recipient of the office then returned to his village where he was received by the villagers, and his friends and well-wishers with marks of respect. The officer invited them to his house and entertained them. The officer, accompanied by his friends and relations then went to the chief's *valavva* (manor-house) with a number of *kat* (pingos laden with gifts), and the promised *bulat surulla*, and the appointment was confirmed. In former times, the chief gave him a *sīṭṭuva*, i.e a written appointment, and some emblems of office; a *mohoṭṭāla* received a *tuppoṭiya*, (a skirt or body cloth) *toppiya* (hat - possibly a four cornered hat), *vēväla*, (ceremonial staff) *maha paiya* (bag) and a *danvel-bendi sembuva*;[100] a *badderāḷa* received a *tuppoṭiya*,

toppiya and a *vēväla; a lēkama* received a *vēväla*. The officer then returned to his village where he was given gifts and entertained at a feast by the villagers and members of adjoining villages.

Proceedings commenced with the making of a complaint. If the complaint was made to an official, he reported the matter to the chief who ordered him to hold an inquiry and to take the necessary steps. The officer proceeded to the village of the alleged offender and after making inquiries from the elders, if he found sufficient cause to support the complaint, he summoned the dhobi (washerman),[101] the accused and his relations and others of the village, and issued *tahanam* (prohibitions): There was a ban against association: the *varigakkārayō* were prohibited from associating with the accused, his spouse and his blood relations, *lē-nāyō*, i.e. his children, grandchildren, parents, brothers and sisters and their children, at *magul*, i.e., weddings and ceremonies observed when a girl attained age:[102] and *ilav*, i.e. funerals. Members of the *varige* were prohibited from eating with a person under a ban or letting him eat in their plates. However, they were not prohibited from going to the house of a person placed under a ban, nor of talking or giving necessary assistance to such a person. The second kind of prohibition related to the washerman: The dhobi was prohibited from rendering his usual services to the accused, his spouse and his blood relations. Earlier, a carrier (*kandaya* - says Kapuruhami, p.46) was prohibited from taking a *kada* (pingo) for him, the tom-tom beater from playing his drum at his ceremonies, the smith from supplying him with tools, and the potter from making him pots.[103] If the officer found that the allegation was without foundation, a similar ban was imposed on the accuser. Both the ban on association, and the ban on the washerman, were imposed in the case of serious offences, e.g. offences (1) - (7) listed above. In the case of other offences, only the ban on association was imposed. In the case of offences (18) - (25), the ban on association was imposed only if the offender refused, or neglected, to pay the fine.

The accused and the members of his family then took steps to convene the *raṭa sabhāva*. One or more of them would go with a *dekuma* - a sheaf of 40 betel leaves and a token amount of money - to the chief and request him to fix a date and order the *mohoṭṭāla* to convene and conduct the *sabhāva*. A date was fixed and an order was issued to a *mohoṭṭāla*, usually, perhaps, the one who lived closest to the accused person's village, to conduct the *sabhāva* with other officers whom he might find convenient to take with him. The *mohoṭṭāla* informed the *badderāla* and *lēkama* and the *gamarāla* - a respected village elder, who, although he was not an official, wielded considerable authority in the village -, and the elders of the accused person's village, and the elders of neighbouring villages, of the date of the inquiry. The *gamarāla* informed all the villagers of the accused person's village who, together with the banned persons, were required to provide rice, vegetables, ripe plantains, (*musa* spp. including bananas) cakes, betel, areca nuts and so on that were required for the meals to be served at the meeting of the *sabhāva*.[104]

The *gamarāla*[105] was responsible for the preparations. He sent for the people of the craftsmen and artisan (*koṭṭalbadda*) castes who served the village to prepare the venue of the assembly (*sabhā maṇḍapē*) which might have been at some village meeting place (*maḍuva*), or some other suitable room, e.g. at the house of a chief, or in a temporary structure erected specially for the occasion. The washermen were responsible for hanging white cloth to serve as a ceiling (*uḍuviyan bandinavā*), and for laying *pāvaḍa*;[106] the carpenter erected *toranas*;[107] the potter supplied cooking pots, the blacksmith, knives. The *gamarāla* supplied rice and was responsible for the preparation of the meals served at the sessions of the court, a duty which gave him a claim for a double share of the village field. The villagers contributed provisions for the preparation of food.[108]

On the day appointed the presiding official arrived with the other officials, a little while after sunset.[109]

According to Kapuruhami: [110]

> The Raṭa Sabhāwa is in some cases held in the Walawwa of the Chief, the Mohoṭṭāla and other officers also being present. The Chief watches the proceedings which are conducted by the officers.
>
> If it is convenient and suits the Chief, he attends the Sabhāwa held in villages also. A separate house or maḍuwa is prepared for his accommodation by the villagers and his meals are prepared separately. If he chooses to preside himself at the Sabhāwa he is accommodated on a bed in the Raṭa Sabhāwa maḍuwa. He deputes the Mohoṭṭāla and other officers to hold the inquiry and watches the proceedings. He acts the part of a leading Mohoṭṭāla at ordinary Sabhāwas. He puts a question or two now and then and generally gives directions to the officers. Disputed points are referred to him for decision. After consultation with the Mohoṭṭāla and some other officers he gives the final decision and imposes the fine.
>
> Very often the Chief does not preside and the Sabhāwa is held in a separate maduwa. Disputed points are always referred to him for settlement. After the inquiry, the Mohoṭṭāla conveys to him the finding of the Sabhāwa which he usually confirms and sometimes varies and imposes the fine. Certain of the minor offences can be decided by the Chief himself without the aid of a Raṭa Sabhāwa.[111]

When the approach of the officers was made known, a few of the elders went out to greet them and lead them into the meeting place. Those who did not actually participate in the deliberations, sat outside the meeting place. The seating within the *sabhā manḍapē* (the place where a *sabhāva* was convened), was arranged in the following groups: (a) presiding official, *mohoṭṭāla, korāḷas, āraccis*; (b) minor headmen, *gamarālas*, elders; (c) ordinary villagers; (d) *vidāna henaya* (headman of a dhobi village). Seats for those in group (a) were on two mats covered with an *ẹtirilla* (a white cloth spread on a mat for distinguished persons to sit on). Seats for those in groups (b) and (c) were on a single mat covered with an *ẹtirilla*. Those in group (d) sat on a single mat.

As soon as the assembly was seated, some young men of the village, neatly dressed and wearing a head cloth, entered the *sabhā*

maṇḍapē, and walking slowly up to the officers, offered water in brass pots (*sembu*) covered with white cloth, first to the presiding official, and then the others.[112] When the people had washed their faces, hands and feet and resumed their seats, a young man entered with a brass tray, full of betel leaves and areca nuts, covered with a white cloth, and offered it to the presiding official who passed it to someone close by to be distributed among those present. The members of the assembly chewed betel and talked, inquiring after the health of each other and news of the different villages. In the meantime, having ascertained the number in attendance, the women, under the supervision of a fit person, made preparations for cooking.

After relaxing awhile, the principal *mohoṭṭāla*,[113] standing up, called for silence in the name of the king, and other important persons,[114] and, with the approval of the chief, if he was present, proclaimed:

> We hold this *sabhā* in the presence of the four great gods of the four quarters of the world who govern this earth, and other titular deities of the village. These greater and lesser gods will bear witness to the fact that we decide true to the facts, and will submit our decisions to the assembly of the gods. We too will report our decisions to the king's council. [115]

He then recited the rules to be observed during the sessions of the *sabhāva* under pain of being punished. The rules were as follows:

(1) No one should enter the *sabhāva* without first obtaining its permission.
(2) No one should leave it without obtaining like permission.
(3) No one should partake of any food in the house of his friends or relations without permission. (This permission was very seldom granted).
(4) No one while sitting in the *sabhāva* should speak without obtaining first the permission of the presiding officer and out of his turn.

(5) No one should sleep in the *maḍuva* while the proceedings are going on.
(6) No one should utter unbecoming or rude words while talking.
(7) No one should make signs or gestures with the hands while talking.
(8) No one should misbehave in the *sabhāva*.
(9) One should abide by the decision of the majority.

Those who were guilty of violating these rules were liable to be fined 2 1/2 - 7 1/2 *ridī*. If the offence was deemed to be of a trifling nature, the offender was ordered to give a *bulat nambuva* and beg pardon of the *raṭa sabhāva*. He would then be warned and discharged.

The parties were then summoned before the assembly. A female party would be represented by her husband or a member of her family: her presence before the *sabhāva* was not required, but if it was necessary to put a question or two to her, she would be called in and, "standing at the further end of the *maḍuva*, she will answer the questions bashfully, timidly, and in a low voice and then withdraw".[116] The parties to the inquiry stood in front of, and a little distance from, the officers, with their hands folded over their breasts. They or their witnesses were not made to take any oath before making their statements. The inquiry was purely oral and the proceedings were not recorded in writing. The witnesses were not sent away during the inquiry, unless such a step was found to be very necessary.

The *mohoṭṭāla* warned the complainant of the consequences of his accusation being found to be false, and then called upon him to state his case. The complainant was then questioned in detail, and consequently, at great length. All the officers questioned him, one after the other. When objections were taken by the officers and other leading members of the assembly to certain questions, long discussions ensued. Every person of any consequence freely joined in these discussions, keeping, however, to the rule that each

person should speak with the permission of the presiding official, and one after the other. In the course of such discussions, which became heated at times, several side issues arose. Precedents were quoted, decisions of former *sabhā* were pointed out, and the status, lineage, respectability or otherwise of different families were described, disputed, criticized or commended. Eventually, disputed points were decided by the presiding official. Each party had his or her supporters among the officers who insisted on having their say. Moreover, discussions strayed from the matters in issue and often the proceedings were protracted and became tedious. In the shortest matters, the tribunal sat through the night, and in more important matters for two or three days and nights, except for short intervals for meals. Usually the first adjournment came at about midnight, when someone whispered into the ears of the presiding official that the meals were ready. If the leading members of the *sabhāva* were so disposed, they would adjourn. However, if the discussion was of a spirited nature, they would continue to "sit up till late next morning with empty stomachs".[117]

After hearing the complainant and examining him, the accused was called upon for his defence. He stated his case. Where the accused person was a woman, her defence would be presented by her husband or a member of her family. The defendant's case would usually be concluded by calling upon the Gods and the Buddha to witness the truth and stating that if the accused person had done anything like the alleged act, which such a person never even dreamt of, then let his children and cattle be destroyed in seven days and let the accused person suffer *isata hena gahanavā* (death by a thunderbolt striking the head). It was said by or on behalf of the accused person that if found guilty, the offender and his or her family were prepared to pay 550 *ridī* by selling their lands and cattle, and to go out begging in the most degrading way, taking in their hands coconut shells and obtaining rice on to the trough-like portion of a branch of an areca nut palm (*kolapataṭa hingā kanavā; kolapatak äragena hingā kanavā*). It was a way of saying that it was virtually impossible that anyone would do such

a thing as that with which the defendant had been charged.[118] Questions were then put to the accused person, and spirited discussions would take place again. [119]

The witnesses were then heard. Since only necessary witnesses were heard, "one or two for each side and sometimes none",[120] the list of witnesses for each party was not long.

More discussions followed, sometimes two or three leaving the *sabhā maṇḍapē* to hold private consultations. Finally, the *sabhāva* made its decision upon the knowledge and information the members of the assembly had, in addition to the evidence adduced.

In some cases, one party or the other applied to take an oath at a *vihāra* or *dēvalē*. If the other party consented, and if it was convenient to the officers to have the oath administered immediately in the presence of one of them, the application was allowed.

Whether the matter was decided by oath or after deliberation at the *sabhāva*, the verdict and sentence were announced by the presiding officer. If the accused was found guilty, he would be liable to pay the prescribed fine. Additionally, his *lē-näyō* (blood relations) would, as we have seen, in certain cases, each be liable to pay 7 1/2 *ridī* as a *vattan daḍē* : When a person was convicted by a *raṭa sabhāva* of committing a disgraceful offence of a serious nature, it was supposed to reflect on his *lē-näyō* also and so they had to pay fines to clear their name and reputation. If a person was acquitted, the complainant would be liable to be fined an amount equal to that which the accused would have had to pay had he been convicted. However, no fines were levied on the complainant's *lē-nāyō* , since no act disgraceful to the family had been committed by the complainant. An appeal was usually made against the sentence, such grounds as poverty and ignorance being urged by the person who was fined. After much discussion, the

amount was fixed, and the dhobi was asked whether he was satisfied with the decision of the *sabhava* and whether the fine was sufficient. He always answered in the affirmative. All those who had been fined, if males, were made to take off their head-gear (*isipili galavanavā*) until the payment of the fine.

Ralph Pieris[121] stated that after the washerman had said he was satisfied with the decision, "The convicted person's headgear was removed (*isipili galavanavā*) until he received his punishment, the act of baring his head symbolizing his degradation to the *rodiya* caste. If corporal punishment was ordered, it was administered by the *mohoṭṭāla*."

Kapuruhami did not state that the removal of the headgear symbolized such a drastic thing as reduction to the *Roḍī* caste. Further, according to Kapuruhami,[122] corporal punishment was not one of the forms of punishment for any of the twenty-five offences triable by a *raṭa sabhā*.

If the fines were paid immediately in cash or pledges, permission was granted to those who had been banned to prepare the meals. Till then, nothing would be accepted from them. When the fines had been paid in full, those who were made to take off their head-gear jointly paid 2 1/2 *ridī* for permission to put on the head-gear again (*ispili bandinavā*). Each of the parties, whatever the outcome of the case might have been, then prepared a *tahanam vattiya* (prohibition tray) - a tray made of plaited *pan* grass[123] on which were placed forty betel leaves and five *ridī*. This was covered with a white cloth and handed over to the *mohoṭṭāla*. Alternatively, the betel leaves were distributed among members of the *variga*, the acceptance of a betel leaf signifying forgiveness.[124] The *mohoṭṭāla* called for silence, and taking the *tahanam vaṭṭiya* given by the accused in one hand, and his staff in the other, stood up. The whole assembly too rose. Solemnly, and in a loud and clear voice, the *mohoṭṭāla* then pronounced the *tahanam arina vākkiya* (the order removing the prohibitions). Assuming that the

accused was acquitted, according to Kapuruhami[125] the pronouncement was more or less in the following form:

> "This day the officials, presided by the *mohoṭṭāla* inquired into the [disgraceful][126] conduct of which (name of complainant) had accused (name of alleged offender) publicly, and after taking all fines and levies they found that it was a false accusation. Therefore the prohibition made on (name of alleged offender) and his kinsfolk are removed. Until the golden pinnacled *Pattirippuva* of Senkadagalapura lasts, this prohibition is removed. It is prohibited from this day that this accusation should be made publicly by any man, woman, boy or girl, in a quarrel over fire-wood, water, any other quarrel, or in a playing field. This prohibition is made in the name of the golden sword and golden crown of the King [and named officials]. This rule should be obeyed because of the order of the *disāva*. The prohibition is thrice valid."

Then, taking the other *tahanam vaṭṭiya*, the *mohoṭṭāla* said:

> "(Name of complainant) had falsely accused (name of alleged offender) through suspicion of a [disgraceful] act. In this assembly the proper fines and levies were made, and as the accusation was found to be false, all the prohibitions made in respect of the accused are removed and there is no objection to associating with him as before."

Ralph Pieris[127] gave the following version of the *tahanam arina vākkiya* :

> "The charge brought against this person by such an official having been decided by us and a suitable punishment having been awarded, and the fine ordered by us in lieu of the punishment having been paid by him in full, it must be understood that all of us who share that fine do also share the offence. Further, we have associated with him, as we partook of the meal prepared by him, seated with him. Just as we share the fine imposed upon him for the offence committed, so do we share the stigma. Therefore anyone who brings up this question of the stigma would besmear the whole community. The punishment accorded to such men, according to the Sinhalese law, is that the tongue should be pulled out. But this is not possible in these times, so he will be fin[e]d 550 silver pieces and until the fine be paid no one

> may eat or drink with him. And by the authority of the five kings, Mahasammata, etc., of the gods of the four quarters and other gods, of Sinhalese kings and their crowns and thrones, of the *vanni bandāra* of this district and of their letters of authority, hats, cornered hats, canes, etc., we hereby enjoin that no one should mention our decision when quarreling, or in jest, at any time whatsoever."

Ralph Pieris,[128] has the following footnote at the point reference was supposed to have been made to the penalties liable to be incurred by speaking of the matter disposed of by the *raṭa sabhava* :

> "Reference is made to the thirty-two tortures of ancient times, some of which were grim indeed and surpassed the eighteen tortures of Kauṭiliya's *Arthaśāstra*, e.g., rolling inside barrels lined with spikes, pulling out finger-nails, pricking with red-hot irons, tying with rattle-snakes round the body, drowning, trampling to death by elephants, and impaling. The punishment was often made to fit the crime, e.g., pulling out the tongue for lying and oral offences, cutting off the limbs for theft, burning the tongue or pouring boiling liquid into the mouth for drunkenness. But the standard fine of 550 *ridī* was evidently favoured by the chiefs in later times, since it was lucrative, besides being humane. Besides, the 550 *ridī* paid by the offender, his blood-relations placed under the ban might be required to pay seven and a half *ridī* each."

There is reference in the *Dharmaśāstras* to the offence of using violent or improper language - *Vākpāruṣya*. Viṣṇu (v. 19-39) dealt with cases of abuse, insult and imputing the commission of offences. The penalties prescribed were fines. Yājñavalkya (II. 204-211) also deals with abuse and menacing words. The penalties prescribed were fines. Nārada (XV) prescribed fines for certain insults but provided for corporal punishment if the offender was a *śudra* (a person of low caste). If he insulted a man of high caste a red hot iron was to be put into his mouth and "if he is insolent enough to give lessons regarding their duty to *Brāhamaṇas*, the king shall order hot oil to be poured into his mouth and ears." Manu (VIII) prescribed fines for certain forms of defamation but

provided for cutting off the tongue where a *śudra* happened to be the offender. For mentioning the names and castes of high-born persons with contumely, an iron nail, ten fingers long, was to be thrust, red-hot, into his mouth; and if he arrogantly taught *Brahmaṇas* their duty, hot oil was to be poured into his mouth and ears.

I have been unable to find where "Sinhalese law" mentions the pulling out the tongue for 'lying or oral offences'. As we have seen in Chapter VII, the penalty for defamation was a fine, generally fixed at fifty *ridī*, and even that had at one time been prohibited. The wrongful act of referring to an offence tried and disposed of by a *raṭa sabhāva*, was offence No. 14 in Kapuruhami's list. The prescribed penalty for such an offence was 25-100 *ridī*. A fine of 550 *ridī* and ostracism was the penalty in the case of the most serious offences within the jurisdiction of a *raṭa sabhāva* namely, offences Nos. 1-6.[129]

The version of the *tahanam arina vākkiya* quoted by Ralph Pieris referred to "the fine ordered by us in lieu of the punishment". What was the punishment in lieu of which a fine was imposed?

According to Kapuruhami,[130] one of the matters triable by a *raṭa sabhā* was the practice of *hūniyam* (sorcery) "in its several branches."[131] It was an offence coming within the jurisdiction of a *raṭa sabhāva*. It was offence No. 17 in Kapuruhami's list of offences that came within the jurisdiction of a *raṭa sabhāva*. The prescribed penalty at the time of the *raṭa sabhā* described by Kapuruhami (1909-1910) was a fine that ranged between 25-250 *ridī*.[132] Even earlier, *hūniyam*, it seems, had ceased to be regarded as a serious offence. D' Oyly,[133]who died in 1824, before he had completed his valuable treatise, noted that

> "within the last 50 or 60 years no one has suffered execution for [committing *hūniyam*], the convictions have been very few and in no

> more than 1 or 2 instances have the lands been assigned to the adversary. Of late years, complaints of *hūniyam* are not frequently made [and] still more rarely brought to trial. The accuser can seldom furnish proof of the fact, and the case is usually settled by the Chief forbidding him to repeat the imputation."

The jurisdiction of the *raṭa sabhā* in other cases related to accusations of disgraceful conduct, actions in contempt of the *raṭa sabhā*, and illicit social and sexual relations,[134] the penalties for which were, in four cases (Nos. 1, 2, 3, and 5), ostracism of the delinquent, and, additionally, fines payable by blood-relations amounting to 550 *ridī*. There was no question of a fine *in lieu of punishment*. Nor was there a fine *in lieu of punishment* in the case of a person marrying some person belonging to a different *varige* (offence No. 6). The offender was not admitted to any social function of the *varige* to which such person had belonged. Blood-relations paid a fine of 100-250 *ridī*, if they did not want to be ostracized. The delinquent was re-admissible to the *varige* if the marriage was dissolved, and additionally, a fine of 550 *ridī* was paid. The payment of 550 *ridī* was not *in lieu of punishment.*

Ralph Pieris said[135] that after the version of the *tahanam arina vākkiya* he reproduced: "The offender now put on the headgear which had previously been removed. In token of the proceedings being brought to a close, the *badderāḷa* put down the prohibition tray."

How was it possible to correctly say in the *tahanam arina vākkiya* that " we have associated with him, as we partook of the meal prepared by him, seated with him", before the pronouncement of the lifting of the ban? It would have been an offence to eat with an alleged offender before the ban was lifted. One of the features of the meal was that it was eaten with the previously banned persons as a sign of forgiveness. How could that have happened unless the head-gear had been restored before the meal, for to be without a head-dress at public assemblies or while eating was considered disrespectful?: in fact, it was an

offence for which the offender was often fined 2 1/2 *ridī*.[136] And what was the *badderāla*, an officer whose duty was to collect taxes and fines, doing with the *tahanam-vaṭṭiya*? As Ralph Pieris[137] observed, the offender "saluted the *mohoṭṭāla* and handed him this prohibition-tray (*tahanam-vaṭṭiya*). The *mohoṭṭāla* then made a speech releasing the offender from the ban (*tahanam arina vākkiya*) ..."

For the reasons stated above, in my view, Kapuruhami's version of the *tahanam ärime vākkiya* and the sequence of events he sets out are to be preferred to the version in Ralph Pieris' work at p. 257.

Although a *sabhāva* was convened to try a specific serious offence alleged to have been committed by an accused person, a *sabhāva* might have used the opportunity to dispose of charges of minor offences, such associating with banned persons,[138] *at väradi*,[139] *kaṭa väradi*,[140] or *bath väradi*[141] committed by others. When such offenders were pointed out, the *sabhāva* tried them summarily, imposed a fine, and recovered the fine immediately. Unless the fine was paid, the person was ordered out and not permitted to join the others in partaking of meals.

The people assembled then sat to the meals prepared with the support of the banned persons. The latter must have necessarily joined them in partaking of the food. That was the event indicating that the banned persons had been released from the ban and admitted into the *varige*. The food was prepared, served and eaten in a prescribed manner, minute attention being paid to etiquette and decorum. [142]

The total fines collected were divided into four equal parts. One part was set apart as the share of the chief (*baṇḍāra muḍippuva* lit. 'chief's knot'); another was divided among all the *mohoṭṭālas* present; the third went to the other officers; while the

fourth part was divided among the *varigakkārayō*[143] of the different villages represented at the *sabhāva* and the *vidāna-hēnayā*.[144] The chief's share was tied into a knot in a cloth and entrusted to the leading *mohoṭṭālas* who had been deputed by the chief to convene the *sabhāva*. A few days after the *sabhāva*, one of the accused person's family went to that *mohoṭṭāḷa* and with him proceeded to the residence of the chief, where the chief's share was handed to him. The chief caused a document written on a palm leaf (*sīṭṭuva*) setting out the facts to be given to the party concerned. In later years, however, the *mohoṭṭāla* alone went to deliver the chief's share and no *sīṭṭuva* was issued. [145]

DASA-GAM TRIBUNALS

In addition to the tribunal in each village (*gam sabhāva*), and district tribunal (*raṭa sabhā*), at a certain time, it seems that the *dasa-gama* had a tribunal for the administration of justice.

Wickremasinghe, commenting on the Vēväḷkäṭiya Slab Inscription,[146] stated:

> "At the outset we are confronted with the technical term *dasa-gama*, of which the meaning is ambiguous. We know that *gama* is Skt. *grāma*, 'village'. But whether *dasa* should in the present instance be connected with P. *dasa*, 'ten', or with *dāsa*, 'a slave', it is difficult to decide. The fact, however, that *dasa-gämä ättan*, 'inhabitants of *dasa-gama*', seem from the context to belong to a class higher in the social scale than that of ordinary serfs with hardly any proprietary rights, as well as the expression *dasa-gamaṭ ekeka nāyakayan, 'each chief of the* dasa-gama', suggests the possibility of dividing the country for administrative purposes into groups of ten villages as prescribed in the Hindu Law Books of Manu, Viṣṇu and others. Compare also the term *dāsa-grāmika* in the Khālimpūr Plate of the Buddhist king Dharmapāla-dēva. According to the late Professor Kielhorn, it probably means 'an officer in charge of a group of ten villages'. On the other hand, the absence of any reference to such a system in Sinhalese literature so far as we know, and the occurrence

> of terms such as *sivur-gam* (Skt. *cīvara-grāma*), 'villages that supply robes to the priesthood', *gabaḍāgam*, 'royal villages', and *ninda-gam*, 'villages assigned for the exclusive use of the grantee', lead us to think that *dasa-gama* may after all be nothing more than a village occupied by the serfs attached to a temple. Whatever the actual significance of this term may be, we learn from the inscription that within the *dasa-gama* justice was administered by means of a Communal Court composed of headmen and responsible householders subject to the authority of the King in Council, the 'Curia Regis'. In its democratical character, this tribunal differs from the Courts prescribed in the Hindu Law Books unless the judicial assemblies mentioned by Nārada include such an institution."

According to Ranawella, the Vēvälkäṭiya Slab Inscription, dating from the reign of King Udaya IV (946-954 AD),[147] deals with the administration of criminal justice in a *dasa-gama* - an administrative unit of ten villages, more recently described as *gam-dahaya* or *pattuva*, - in a region called Kibiñdu-bima in Amgamkuliya, a district in the Northern Quarter of Rajarata.[148] Each *dasagama* was subdivided into smaller villages or hamlets - *kibi gam*. Every village in a *dasagama* had its own head - *nāyaka*; and the *kibi gam* - had their heads - *kibigam äpa dun nāyakayan*, i.e. the chieftains who have provided security to *kibi* villages." Ranawella stated:[149]

> "This system of chieftains providing security to some areas of the village was known in contemporary South India. The functions of these South Indian chieftains were very similar to those of the *kibigam äpa dun nāyakayan* of our record.[150] K.A. Nilakanta Sastri,[151] referring to the village council system which existed in South India during Chola rule says: "Beside the staff of village officials engaged in routine affairs of village administration, there were special arrangements by which a local chieftain or a powerful official undertook to protect life and property in a particular area in return for a separate police tax paid to him. It is very likely that such a system prevailed here too during the tenth century, and that *kibigam äpa dun nāyakayan* were a group of local chieftains who lived in various parts of the *dasagama*."

The practice of de-centralization, and administration through units and clusters of administrative areas, appears to have been

shared by various communities. Manu[152] directed kings to organize their systems of administration in units of single, ten, twenty, a hundred and a thousand villages with a lord over each. Their work was to be inspected by a minister of the king. Jethro's advice to Moses was to do away with the practice of hearing all cases personally, and instead, "choose able men from all the people, such as fear God, men who are trustworthy and who hate a bribe; and place such men over the people as rulers of thousands, of hundreds, of fifties and of tens. And let them judge the people at all times; every great matter they shall bring to you, but any small matter they shall decide themselves; so it will be easier for you, and they will bear the burden with you." Moses took his advice. "So I took the heads of your tribes, wise and experienced men, and set them as heads over you, commanders of thousands, commanders of hundreds, commanders of fifties, commanders of tens, and officers throughout your tribes".[153]

Ranawella stated:[154]

> "We also learn from [the Vēväḷkäṭiya slab inscription] that within a *dasagama* justice was administered by means of a judicial committee consisting of a group of elders of the village, known as *dasagama ättan*. The relevant passage reads as *mehi ätulat tāk tänä kuhivaku marā keṭuva kaḍapalā sorakam kaḷa dasgama ättan hinda vicāra... märuvahu marā paṭvanu koṭ isā kaḍapalā sorun* ... (Note: highway robbers. The *Dharmappradipika* of the 12th century rendered the Pali words "*paripanthaka corā* " and "*panthadubhi* " as "*mañg paharana sorun*," meaning "highway robbers": H. Vimalakitti and N. Sominda edition, p. 170.) *elvanu koṭ isa* ("Should ... kill or commit highway robbery within this (district) the elders of the *dasagama* shall sit in session, investigate (the crime) and shall punish the murderers with death, and have the highway robbers hanged".) Wickremasinghe's rendering of the above quoted passage (lines 6-14), however, gives a different interpretation to it, especially about the composition of the judicial committee. According to him, "each headman [of these villages], as well as those headmen and householders (*kuḍin*) who have given security for *kibigam*, shall ascertain [the fact], when in any spot within this [district] murder or robbery with violence has been committed. Thereafter they shall sit in

session and inquire of the inhabitants of *dasagama* (*dasagama ättan*) [in regard to these crimes] ... they shall have the murderer punished with death ... and have [the thieves] hanged." (E. Z. Vol. I p. 249.) This translation makes the headmen of all the main villages, and of *kibi* villages,[155] and all the tenants and householders of *dasagama* the members of the judicial committee of *dasagama*, without the elders of *dasagama* (*dasagama ättan*) from that committee. He has misinterpreted the phrase *dasagama ättan hinda vicāra* meaning 'the elders of *dasagam* shall sit [in session] and inquire into' as 'inquire of the inhabitants of the *dasagama* (*dasagama ättan*) [in regard to these crimes].'

During the tenth century in contemporary South India the administration of justice had been carried out by the village councils called *Mahā Sabhā* through a judicial committee formed of its several members known as *perumakkal*, meaning "elders" or senior citizens. Thus it appears that the *dasgäma ättan* mentioned in [the Veválkäṭiya slab inscription] were the elders of *dasagäma*, and they were members of the village assembly of the *dasagama*. The prevalence of the system of senior citizens of the villages taking part in the judicial matters of their villages during the periods which followed the Anurādhapura period will also support this view. The *Aṭadā Sanyaya* of the Poḷonnaruwa period, commenting on a phrase, *gāme mānāvasañagaccha kammāni mamsārayanti*, explains it as 'in villages and market villages the elders of those villages, after having assembled at a place, addressed the offender and charged him thus: 'You, the murderer of men; you have committed such and such a crime, therefore you are liable for such and such a punishment.' The comment clearly shows that the elders of the villages at that time were members of the judicial committees of their villages, and were probably the members of the village councils."

See p. 332 above.

CHAPTER XVI

REMOVING THE UNDERLYING CAUSES OF DISCONTENT

DISPUTE RESOLUTION PROCEEDINGS

It seems that, apart from settling a matter, particularly at the lowest levels, and therefore at the usual and most frequent levels of dispute resolution, a court was expected to remove the underlying cause of the conflict and remove the stress caused by the dispute. *Gam sabha* undoubtedly the most numerous of tribunals, dealt with the most number of disputes,[1] and were specially concerned with mediation as a process of dispute resolution, and, therefore, with removing the underlying causes of discontent.

Referring to the role of certain courts of officials - "*liyenerāles, unḍiyarāles, kōrāles* and *aratchies* of the Upper Districts" - D'Oyly[2] stated that "They settle trifling civil cases rather as arbitrators than judges when parties submit to their cognizance." 'Mediators', or 'conciliators', rather than 'arbitrators' were, in general, the more appropriate terms, for although sometimes the elders may have decided a matter, their more usual task was to bring about a mutually acceptable, if not an amicable settlement. *Gam sabhā* dealt with civil and criminal matters.

Some of the early British administrators, like Skinner[3] probably understood the value of the way in which a dispute was traditionally settled, namely, allowing the parties themselves to settle a matter and removing the underlying cause of the dispute; it was a decision that was likely to stick, because it was made by the parties themselves, and at the same time, the cause of future acrimony was removed because the underlying causes of the dispute were considered. Significantly, officers presiding over the successors to the *gam sabhā*, namely the Village Tribunals created by the Village Communities Ordinance of 1871, and the Rural Courts established by the Rural Courts Ordinance No. 12 of 1945,

were required not merely to adjudicate, if that was necessary, but in the first place they were directed "by all lawful means" to endeavour "to bring the parties to an amicable settlement and to remove with their consent, the real cause of the grievance between them." The Mediation Boards Act No. 72 of 1988 reflects similar ideas. Unfortunately, as we have seen, the adversary atmosphere in the courts introduced by the British was not designed to bring about amicable settlements: the identification and removal of the real cause of grievance by delving below the superficial cause of complaint is not the aim of adjudication.

SOCIAL UNREST

At a more general level, a very long time before modern social scientists pointed it out, some monarchs of Sri Laṅka, like Niśśaṅkamalla (1187-1196 AD), understood the importance of removing the causes of social discontent if law and order was to be maintained in society: while it was recognized that using the services of law enforcement officers,[4] and having judges to administer the law in the provinces,[5] and personally touring the country,[6] were necessary means of maintaining law and order, enlightened monarchs realized that those measures were not enough.

Lines 1-20 of the Slab Inscription of Kirti-Niśśaṅkamalla at Ruvanväli Dāgaba, Anuradhapura,[7] refer to Niśśaṅkamalla's efforts to cool the fires below by removing causes of discontent, including poverty: It was said that he provided robbers with wealth "and also cattle, villages and lands; and granting them security, he made them desist from stealing. He relieved a great number of other people also, each from his own misfortunes".

The Poḷonnaruva Galpota Slab-Inscription[8] referred to the fact that the king "quenched the fire of indigence".

He established several alms houses for the poor and maintained the giving of abundant alms. "Thus he dispelled all fear of poverty, fear of robbery, and fear of sedition, and brought happiness to all the inhabitants of the Island." [9]

Lines 8-14 of the Prīti-Dānaka Mandapa Rock Inscription[10] confirm Niśśaṅkamalla's good deeds referred to in the other inscriptions and states that, as a part of his poverty alleviation programme, every year he gave away wealth equal to his weight.[11] He was, like a good monarch, following the example of other monarchs:[12] For example, Vijayabahu I (1055-1110 AD) was said to have 'thrice dispensed alms to the poor of a weight equal to that of his body'.[13] In other records, it is stated that not only the king, but 'the five noble ones including the queens ascended the scale-pans.'[14] "Thus did he dispel the fear of poverty."

"Desiring that what he had given should not only be maintained but also be increased, he graciously remitted taxes for several years".[15]

The king " enacted a law that in collecting revenue from lands and fields, the excessive taxes imposed by former kings should not be taken", and prescribed the limits of taxation for various types of cultivation.[16]

Other enlightened monarchs too wished to ensure that people were not harassed by taxation. For instance, Parakramabahu II is said to have given his own money to free persons in distress caused by taxation.[17]

Because *chena* cultivation was an occupation "carried on with difficulty",[18] "a painful mode of livelihood",[19] Niśśaṅkamalla abolished taxes on *chena* cultivation for all time.[20]

Niśśaṅkamalla is said to have abolished the *visamburu-vata* or *pisamburu-vata*, apparently a tax on barren or fallow land.[21]

He "dispelled the fear of famine by the construction of many [irrigation] canals, embankments, and tanks";[22] and repaired the great tanks, irrigation canals and embankments that had long been in disuse in the three kingdoms, and thus brought prosperity to every province and security to the inhabitants thereof. [23]

King Niśśaṅkamalla was of the view that many persons were oppressed by the "excessive and illegal punishments" inflicted by

King Parākramabāhu the Great, "in violation of the customs of former sovereigns, and being [thereby] impoverished ...", and had taken to robbery.[24] Possibly the "punishments" he had in mind were the unjust deprivation of the privileges and wealth of certain families by "the unjust acts of some kings", including his uncle, Parākramabāhu I?[25] The Poḷonnaruva Galpota slab-inscription stated that that king restored to persons the wealth and privileges unjustly taken away from them.[26] Although, as we have seen, Niśśaṅkamalla was firm on the question of treason, yet he seems to have been a considerate and generous monarch. He established sanctuaries for animals, ordering that they should not be killed, and "From punishments and the like he exempted the inhabitants who were reduced to straitened circumstances through various kinds of oppression, imprisonment and chastisement, as well as through the seizure of entire personal property, such as cattle, buffaloes &c., in the days of former kings. And he bestowed on them gifts of pearls, precious stones, corals and other jewellery in abundance. He gave them also cattle, buffaloes, money and grain, male and female serfs, *divel* villages, and permanent grants [of land], together with various sorts of clothes, ornaments, and gold and silver vessels. Placing [in this manner] all the inhabitants in comfortable circumstances, he freed the land of Laṅkā from the thorns of lawlessness and kept it in a peaceful state." [27]

By various measures - the establishment of courts, the appointment of persons to police the country, regularly touring the country, poverty alleviation, increasing economic activity and the abolition of oppressive taxes, and the restoration of privileges and properties that had been unjustly taken away - he thoroughly removed the "thorns of lawlessness" so that even a woman carrying jewels could go unmolested.[28]

Despite the boastful way in which Niśśaṅkamalla extolled his activities, it seems that traditionally, prudent and perceptive rulers of Sri Laṅkā, identified a link between oppression, unjust treatment by the state, and poverty, and lawlessness, and set out to eradicate the underlying causes of criminal conduct. Obviously, all crime cannot

be eliminated by taking such measures: for instance, criminal activity is not always driven by poverty; some criminals have been very rich people. Yet, cooling the fires below by removing the causes of social discontent, whether they be economic or otherwise, was seen as a matter of importance in the discharge of a monarch's duty to maintain law and order. And that was recognized and effectively dealt with by monarchs like Niśšaṅkamalla. Other monarchs too paid attention to the need for minimizing economic and social dispartities and disadvantages.[29]

The ideas were wholly or partly based on Buddhist philosophy. Under the caption 'Poverty can become the cause of crimes' K. Sri Dhammananda, [30] said: "The economic condition of the people should be improved; Gain and other facilities for agriculture should be provided for farmers and cultivators; Capital should be provided for those traders engaged in business; Adequate wages should be paid to those who are employed [31]; When people are thus provided for with opportunities for earning a sufficient income, they will be contented, and will have no fear or anxiety; And consequently the country will be peaceful and free from crime."

Reference was made in the *Dīgha Nikāya* to just wages, inter alia, as a condition for peace in the matter of what we might today call 'labour law'/ 'industrial relations'. Employers, in relation to employees, were enjoined to: "Assign them work according to their abilities; Supply them with food and wages; Attend to them in sickness; Share with them unusual delicacies; and Grant leave at correct times."[32] The meaning of "Sharing unusual delicacies" is obscure, but none of the other obligations leave one in doubt. However, as in every well-balanced system duties were as important as rights. An employee for his part was expected to show his diligence and loyalty by observing the following: "Attend to work early; Leave late after the master; Be content with the wages given; Perform duties well, and; Speak in praise of the master and spread his good name." [33]

CHAPTER XVII

SANCTUARY

INTRODUCTION

In Sri Lanka decrees were made from time to time conferring immunities on certain villages and lands.[1] Such decrees were described, in the documents recording them, as *attāṇi, pärahär, attāṇi-pärahär, abhaya* or *samvatā*.[2]

The decrees were usually inscribed on stone pillars, but sometimes they were recorded on slabs of stone.

Such decrees were often, but not always,[3] made by the King-in-Council. It is of little relevance to the subject-matter under consideration to consider the legal form of the decrees.

As far as the contents of records of this kind are concerned, sometimes, they covered many matters: For instance, the Koṇḍavaṭṭavan Pillar Inscription is a record of a complex piece of legislation that confers certain immunities on a village, regulates the levying of dues and fines, provides for the review of fines imposed, creates offences relating to cultivation and stipulates penalties for their commission, and provides for the surrender of those who had committed murder.[4] The Pillar Inscription from Mihintalē, is another example. As Godakumbura observed, it was "a multi-purpose record. In the first place it lays down certain rules in respect of the monastic establishments of Mihintalē. Secondly, it gives some immunities, as in the *attāṇi* grants, to the *vihāra* and its lands. Thirdly, it gives instructions as to how certain taxes and deposits should be handled; and lastly, it states that certain revenues which formerly were appropriated by members of the royal family are given over to the *vihāra*. Thus the edict differs from the usual *attāṇi* pillar immunity decrees."[5]

Because of the numerous variations one meets with, one should perhaps be cautious in suggesting that there was anything like an

"usual *attāṇi*" immunity decree. Godakumbura once observed as follows:[6]

> "A full study of all the immunity grants, extending from the ninth to the twelfth century is desirable, and in such an evaluation no record however brief, or however fragmentary, can be set aside or ignored. At first examination the information contained in the record may appear to be common with other documents, but a detailed and careful study will bring out special points from every angle, paleographical, linguistic, literary and historical and perhaps more. Further what does not appear to be of some special interest today may prove to be of use to some future worker in some field of research."

The decrees, as we have seen, albeit exceptionally, dealt with such matters as were covered by the Mihintalē record. In general, however, it seems, the records dealt with the one or the other of three matters, or some or all of such matters, namely, (1) the exclusion of certain classes of persons from specified lands or villages, and (2) prohibitions against the appropriation of certain goods and/or services from such villages and lands, and (3) the felling of certain trees and shrubs. Additionally, some of them dealt with a fourth matter: the treatment of offenders. It is the fourth matter that we are principally concerned with in this chapter.

There were variations in the specification of classes prohibited from entry and the goods and services that could not be appropriated, and trees and shrubs that could not be felled. Such variations are of little or no significance for the present study. However, reference should be made to the fact that some decrees prohibited the entry of *piyo-vadāranuvan / piyo-vajāranuvan/ piyo-vadāran/ piyo-vadārannan.*[7] Wickremasinghe tentatively translated the term as 'enforcers of customary laws/ rules/ practices' in preference to Mudaliyar Gunasekera's rendering: 'those of crafty speech'.[8] Paranavitana, following Codrington's suggestion, stated that the term signified a class of irrigation officers.[9] However, in editing the Pañḍuvasnuvara Pillar Inscription, Paranavitana stated that *piyo-vadārannan* meant "dignitaries who were in charge of organizations that planned the

administration in those days."[10] Ranawella, quoting the *Dhampiyā aṭuvā gäṭapadaya*, suggested that they were "executive officers overseeing projects".[11] Uduwara, in editing the Kallampattuva Pillar Edict, noted the various ways in which the term has been rendered, and adopted the view that the term meant 'enforcers of customary laws'.[12] If the term does mean 'enforcers of customary laws', were there also enforcers of other laws? Who were the enforcers of customary laws? Judges? Police officers? Why were they excluded? For the same reasons as others who were prohibited? or for some other reason?

THE PROHIBITION OF TRAMPS AND VAGRANTS

Often, but not invariably, tramps and vagrants were prohibited from entering villages and lands to which immunities had been granted by decree. The exclusion of tramps and vagrants might be explained on the ground that they would be burdensome and annoying. Exclusion might also have been a measure of 'preventive justice' - a precautionary measure: people in indigent circumstances, with no fixed abode, were assumed to be likely to commit offences such as theft and robbery, and were, therefore, prohibited from entering the privileged land or village.[13] It is not clear why tramps and vagrants were prohibited entry into some villages and lands,[14] but not others that were similar in nature, and despite being covered by decrees excluding certain classes of persons. [15]

INTERPRETATION OF THE ELLEVEWA INSCRIPTION

In the case of certain villages and lands to which immunities were granted, it was decreed that traitors, murderers, highway robbers, robbers, thieves, and persons guilty of assault, could not enter, and/or should not be admitted into, and/ or be harboured or protected, and/or that they should be expelled. [16]

In editing the Ellevewa [Älleväva] Pillar Inscription of Dappula IV, Godakumbura rendered lines C 21-23 as: "[They]

shall not enter this district and arrest murderers who have come here [for sanctuary]."[17] However, Bell[18] rendered lines C 21-23 as " that those who [desire to] come in after having committed murder may not be allowed to enter the district." Godakumbura's justification for his version was as follows: "We have kept to the spirit of the document of immunity where the land is held as a sanctuary." As Godakumbura himself, quite correctly, said,[19] each document must be carefully scrutinized; generalizations based on the assumption that all the immunity grants were the same, either in point of form or content, are fraught with danger. It is, in my view, unsafe to fall back on the "spirit" of a document of immunity; because certain immunities were granted, it did not, as we shall see, by necessary implication follow that sanctuary privileges were also granted. Moreover, there are, as we have just seen, several decrees that quite clearly state that specified, suspected offenders should not be admitted. Where asylum was granted, there was express provision in that regard.

THE PROTECTION OF SACRED PLACES

The concept of asylum was well known. In the story of *The War of the Two Brothers*,[20] it was said that King Duṭṭhagāmani pursuing Tissa found him under a bed in a *vihāra*.[21] When an attempt was made to smuggle him out as a dead monk, the King said: 'Tissa, upon the guardian genii of our house art thou carried forth; to tear away anything with violence from the guardian genii of our house is not my custom. Mayst thou evermore remember the virtue of the guardian genii of our house.'

Great sanctity was attached to temples, shrines, monasteries, monastic colleges (*pirivena*), meditation halls and nunneries. Such places were reserved for special religious functions, and a state of purity was required of participants. They were places that ought not to be desecrated. In many communities around the world, special taboos and rules prevented the profanation of sanctuaries. It is because of this sacred quality and the protection that it afforded that the sanctuary became a place of asylum for

criminals. No arrests were permitted, lest perhaps the use of force might result in desecration by violence or the shedding of blood in a holy place or upset the spirits, like the 'guardian genii' referred to by Duṭṭhagāmani.[22]

THE EXTENSION OF SANCTUARY

However, sanctuary privileges were decreed not only in respect of holy places, but they were also granted to certain villages and lands of temples, monasteries, monastic colleges, and nunneries or held by grantees in return for supplying the needs of specified temples, monasteries, monastic colleges, nunneries, and so on.[23] In the Iňginimiṭiya Pillar Inscription,[24] not only were royal officers prohibited from coming into the village to arrest those who had sought refuge after committing murder, but those in the service of the *pirivena* were not to be apprehended even outside the village. Godakumbura, suggested[25] that the immunities were granted with a view to ensuring that the services of the *pirivena* may not be disrupted even if one of its employees committed a serious crime outside the village.[26]

H.W. Codrington[27] stated that temple villages

> "enjoyed considerable immunities; by these no royal officer could ... remove criminals who had taken sanctuary. Varying provisions applied to murderers; in some cases they were driven out and arrested outside the village limits, in others they were to be tried and punished with exile. In one instance provision was made that public officers might enter and demand their surrender only, and that on the expiry of every two years the royal officials on circuit might require the persons of the perpetrators of 'the five great crimes' but not others. Offenders who had committed lesser offences seem to have had safe sanctuary...
>
> On the other hand, strict regulations existed for the control of crime in the temple villages. The headmen and householders had to give security. In the case of murder they were bound to enquire, record evidence, and have the murderer killed; in one of housebreaking they had to restore the goods to the owner and have the thieves hanged. If the criminals were not detected, the village on failure to have them

> punished within forty-five days was liable to a fine of 125 kalandas of gold, about 1 1/2 lb. troy, a large sum for those days. In cases of violent assault not involving loss of life the fine or "life-price" was 50 kalandas, which the village also had to pay on failure to punish the crime. The penalty for killing oxen was death; cattle thieves were branded under the arm-pits. Cattle could only be brought into the village after identification and the taking of security, while the effacer of brandmarks was compelled to stand upon red-hot sandals. Identification and security were also insisted on in the case of villagers coming from outside. Failure of the village in these matters was dealt with by the royal officers on their annual circuit."

While the first paragraph quoted above is, a broadly accurate, general, account with regard to such temple and monastery lands and villages that had been granted sanctuary privileges, Codrington's second paragraph, which purports to describe the manner of controlling crime in temple villages, is debatable. It is based on Wickremasinghe's interpretation of *dasa-gama* occurring in the Vēväḷkäṭiya Slab Inscription.[28] As we have seen,[29] according to Ranawella, that record does not relate to temple villages; it contains an edict concerning the administration of justice in an administrative unit of ten villages.

Sanctuary privileges were sometimes decreed in respect of certain places dedicated to the cause of medical treatment and lands and villages appurtenant to them. The edictal pillar at Kiribat-vehera records the immunities and sanctuary privileges granted to those within the defined precincts of the garden of a dispensary (*behet-ge*) at Bamun-kumbara.[30] The Kukurumahan-Damana Pillar Inscription recorded immunities and sanctuary privileges granted to the village of Kerelä-gama which was attached to a *ved-hala* (hospital).[31]

When there was a grant of certain immunities to a village or land, it did not necessarily follow that sanctuary privileges were also decreed, whether it was a village or land dedicated to a religious purpose,[32] or medical purpose,[33] or other purpose.[34]

CONSIDERATIONS OF POLICY FOR GRANTS OF IMMUNITIES ARE UNCLEAR

I am unable to say with any degree of certainty, from the evidence available, what considerations of policy guided those who decreed privileges and immunities for some lands and villages, but not for others of an essentially similar character. Moreover, when the subject of sanctuary was dealt with, there were, it seems, no uniform procedures. It is difficult to explain why there were so many variations, permutations and combinations, except perhaps to suggest that "felt necessities" rather than logical consistency were probably at work; and since there were no general laws in regard to this matter, the need to specifically provide for and proclaim the grants might, perhaps, account for the existence of so many records relating to immunity grants, whereas records of laws of general application are few, and far between.

Sometimes, no offence was specified, and there was a blanket protection. Thus, it was stated in the Kukurumahan-Damana Pillar Inscription of Kassapa IV,[35] that "those who have come for refuge shall not be arrested." The Slab-Inscription of the Vēḷäikkāras[36] recorded an undertaking to protect the Tooth-relic temple, and the villages, the retainers and the property belonging to the shrine "as well as those who enter it for refuge, even though [thereby] we may suffer loss or ruin..."

With regard to some other villages and lands, it was decreed that no person seeking refuge in them, after committing murder, should be arrested in such villages or lands.[37]

According to Paranavitana, the Giritaḷē Pillar Inscription of Udaya III (935-938 AD) stated that "[Royal officers] shall not enter this village and arrest those who have come in after committing assault" (*koṭā vannan gam vädä no gannā ...*).[38]

A distinction was sometimes drawn between those who deserved protection, and who were, therefore, to be given

sanctuary, and undeserving persons who sought refuge, who should be ejected from the village and then arrested. For instance, in the Noccipotāna Pillar Inscription, it was decreed that "those who have come for asylum, shall not be arrested; should there be any undeserving of protection, they shall be taken after they have been made to quit the village, but shall not be arrested by [officers] entering the village."[39]

Who decided whether a person deserved asylum? Issues of this nature may have been decided by the elders of the village. Alternatively, they may have been dealt with by a representative body. The Aturupolayagama Pillar Inscription,[40] which was a record of immunities granted to villages connected with lands donated to the monastic college (*pirivena*) of Tembutala, stated as follows: " ... those who commit murder, in this village and murderers who come from outside shall be arrested; if any of the five great offences[41] are committed outside this village [the offenders shall not re-enter the village] except after they have made expiation for their sins. Should they commit [an offence] outside the village, [the offenders] shall be subjected to the disabilities imposed by the five [representatives] of this village, the officers of the vihāra and the Perenaṭṭu lords ..."

What were the criteria for deciding that an offender deserved asylum? The inscriptions do not assist us in answering that question; and there was no consistency in granting asylum.

Another kind of decree does not refer to a consideration of whether a fugitive deserved protection: He was not to be arrested within the land or village, but he was liable to be arrested after expulsion. The Kiribat-Vehēra Pillar Inscription,[42] which records a benefaction to a dispensary, stated: "Should any person enter after committing an offence, he shall be arrested only outside the precincts after the officials of the dispensary have been informed and [the offender] has been made to turn back, but no arrest shall be made by trespassing within the precincts."

The Am̆bagamuva Rock Inscription, which confers similar sanctuary privileges, does not, however, like the Kiribat-Vehēra Inscription, cover all offences: It covers only 'the five great crimes'.[43] It stated: "... should persons after committing a crime that comes within the [purview of] the 'five great crimes' enter these villages [for refuge], they can be delivered over [to the authorities] only after they have been made to get outside the boundary line of the [respective] village, but no arrest can be made by entering the village."[44]

The perpetrators of the 'five great offences' were dealt with somewhat differently in another record: Having prohibited employees of the royal family from entering the villages and lands of Ätvehera and taking away from them farm labourers, carts, oxen and buffaloes and cutting down trees and shrubs therein, and having prohibited *melātsī* from entering the lands, the Slab Inscription of Kassapa V[45] stated as follows:

> If there be any murderers [in a village, the king's employees or officials] may enter [that] village and demand them only, but no wrong shall be done to other villagers who have not abetted [the murderers] (*mini keṭu kenekun äta gamat vädä ovun mä illat mut sesu ehi no pahaḷ sesu kuḍīnat aniyā no karanu ...*). At the expiration of every two years, princes of the royal family may, in claiming the country, [46] demand [the surrender of] perpetrators of the five great offences,[47] but they shall not demand other offenders. ... If there be any who, after committing murder, have taken refuge in the premises occupied by the Sangha, these [murderers] and their abettors shall be tried and sentenced to be exiled to Dambadiv. [India.]. If, however, there be any who have taken refuge [in temple premises] from other [causes of] fear, no fines on account of lodging (*ge-dand*)[48] shall be exacted from them nor shall they be exiled.[49]

However, the Sīgiriya Pillar Inscription of Mahapā Kassapa recorded that it was decreed that should offenders who had committed the five great crimes (*pasmahāsāvadda* - the five great crimes that deserve severe punishment, such as the death penalty) enter the grounds of the Mahanāpavu Monastery, they shall not be arrested there.[50]

The Aturupolayägama Pillar Inscription provided that if any of the five great offences (*pasmahadōsa*) were committed outside the villages connected with the lands donated to the Tembutalā *Pirivena* (monastic college), the offenders shall not re-enter the village except after they had made expiation for their sins.[51] There is no reference to outsiders who committed offences and sought refuge in the lands of the *pirivena*: the reference is to the re-entry of its usual inhabitants. The paramount consideration was that the lands had to be made to yield the necessary produce for the benefit of the institution whose support was the purpose of the grant. If the people responsible for cultivating the land were arrested, the purpose of the grant might be frustrated. And so, sometimes, there was a prohibition against the apprehension of the inhabitants of villages and lands granted to or for the support of temples etc.[52] Here, the return is made conditional, whereas in the Iňginimiṭiya Pillar Inscription an absolute immunity was granted to the inhabitants of the village in respect of offences committed by them outside the village.[53]

The Aṁbagamuva Rock Inscription stated that should persons after committing a crime that came within the [purview of] the five great crimes (*pas-mā-dosin ätuḷat*) enter for refuge the villages at Gilīmalaya, which were set apart for supplying food for pilgrims on their way to Adam's Peak, they could be delivered over [to the authorities] only after they had been made to get outside the boundary line of the village, but no arrest could be made by [officers] entering the village.[54]

The Pillar Inscription from Paňḍuvasnuvara provided that in the event of any one arriving in the villages of Nāgala and Nāranviṭa after having committed murder, "he shall be caused to get out of the village and arrested, but no investigation shall be made otherwise - *mini koṭā vana gämin piṭat karavā gannā misa no illanu ...* ".[55]

In the instances where the fugitive could be arrested only after expulsion, the emphasis appears to be on the privilege of the

village being free from disturbance, rather than on the social purpose of ensuring justice to an alleged offender.

Perhaps there was one thing in return for another: The village would be spared the intrusion of officials pursuing persons they supposed were running away from justice, provided the villagers did not act irresponsibly: Where a fugitive did not deserve protection, the villagers, while enjoying the privilege of being free from official intrusion, ought to expel the alleged offender so that he might be arrested elsewhere and dealt with according to law.

It is not difficult to understand why it was desirable to rid certain places that required tranquility from the disturbance that might be caused by undesirable intruders, whether they were tramps with criminal propensities, armed persons, or officials pursuing criminals or performing other functions. Temples, monasteries, nunneries, houses of meditation, hospitals, dispensaries, and lying-in homes obviously deserved special consideration, and their occupants were ensured peace by not having to engage in conflict or strife with officials, whether by interceding on behalf of suspected offenders or otherwise.

The assumption that peace and tranquility might have been a relevant consideration in conferring immunities is indirectly supported by the fact that, in certain instances, musical instruments were prohibited or that their use was regulated.[56] For instance, in the Mayilagastoṭa Pillar Inscription the beating of drums for amusement was prohibited; music was permitted only on the occasion of the relic-procession.[57] The Allai Pillar Inscription prohibited the beating of *tuňḍi* drums when entering the village.[58] The Aturupolyāgama Pillar Inscription prohibited the beating of *soli* and *tuňḍi* drums in the village.[59] So did the Iňginimiṭiya Pillar Inscription,[60] and the Ellevewa [Älleväva] Pillar Inscription.[61] The Giritaḷē Pillar Inscription prohibited the entry of *tuňḍi* and *solī* (drummers).

Commenting on the Giritaḷē Pillar Inscription, Paranavitana said: "In ancient Ceylon when a king wanted to show a special honour to a place, one of the ways by which this was effected was by the prohibition of sounding drums &c., within its limits. Duṭṭhagāmanī's order regarding the tomb of Eḷāla will occur to the reader.[62] Similarly, in connection with those temple lands to which immunities were granted in the middle ages, a like privilege seems to have been allowed."[63] Silence on certain occasions or in certain places might have been a mark of respect; but then why was music permitted during the relic procession? [64]

According to Godakumbura's reading of the Kapuruväḍuoya Pillar Inscription,[65] the cracking of whips by *Tun̆ḍi* and Soḷī chieftains was prohibited on the lands gifted to a man called Hinābi. The inscription on a pillar fragment at Gonnäva Dēvālē prohibited the entry of persons entering the land sounding *tun̆ḍi* and *soḷī* drums, and decreed that "royal messengers shall not enter cracking whips (*rähäṇä gasā*)."[66]

Paranavitana stated: "We know that in Kandyan times, when the kings and *adigārs* travelled, the retinue included a band of whip-crackers called *kasakārayās*. 'Whip-cracking' may still be witnessed in religious processions in Ceylon. What is called a whip is actually a rope, one end of which is thicker than the other; and there is hardly any doubt that the *rähän* and *balat rähän* of the inscriptions refer to the *kasas* of later times."[67]

The "disturbance" theory, which I tentatively advance for the time being, but which, in my view, is not a complete explanation of all cases, but only of some of them, might also be indirectly supported by the Viyaulpata Pillar Inscription, which does not refer to asylum, but which stated that certain military officials (*dunumaṇdullan* - generals) and governors of districts (*Raṭ-ladu*) "shall not enter ... shall not create disturbance to the lands belonging to the *sān̆guṇā-panhala* (the leaf huts of monks) in the Sihigiri District.[68] The Viran̆dagoḍa Pillar Inscription stated:

"... officers shall not enter the lands of this estate and create any disturbance." [69]

Wickremasinghe[70] said: "As a rule, *attāṇi* pillars of this kind were set up in lands belonging to temples or other public institutions. But in the present instance, [the Nāgama Pillar Inscription set up in the reign of Kassapa IV (963-980 AD)] as well as in the two cases at Kirigallāva[71] and Noccipotāna,[72] the immunities were granted apparently to private lands, unless, of course, these were so well known as temple lands, that special reference to this fact in the inscriptions was considered unnecessary."

The Vihāregama Pillar Inscription recorded the gift of a certain land, the name of which is not preserved, to a person named Niligalu Bud and the immunities granted thereto. The record was found at Vihāregama, where there was an ancient monastery. However, it had been removed to that site from a location that is uncertain.[73] No mention is made in the record of criminals, potential criminals, or of sanctuary privileges. But, if it was a private land, why were certain immunities granted?

No sanctuary rights were granted, nevertheless why were immunities granted to two villages assigned to the consort of the *Yuvarājā*?[74]

Although no sanctuary privileges were granted, nevertheless why were certain immunities granted to a land situated in a village called Panavali which, apparently, was set apart for the benefit of the servitors at the Council Hall (*attāṇi-hala*)?[75]

Why were certain immunities and sanctuary privileges granted to the area included in the village of Ärāgama which was enjoyed by or attached to the *daṇḍanāyakas* in the time of the high military official called Rakus and probably, at least in part, given out to tenants ? [76]

Why were immunities granted to lands of Puṇalnā, the 'Chief of Physicians' (*mahāvedanā*)?[76A]

It is also difficult to explain why certain immunities and sanctuary privileges were granted to the villages called Kolayunu-gama,[77] and Munguneluva-gama;[78] and why certain immunities, but no sanctuary privileges, were granted to Itnaru-gama,[79] unless Wickremasinghe's explanation is accepted, despite the fact that he offered no suggestion as to what his notion is based upon. There is also a difficulty with regard to the Halbe Pillar Inscription of Mahapa Kassapa,[80] where certain immunities, without sanctuary privileges, were granted in respect of Habugoluva village, but the purpose for which the lands were set apart was not stated in the record. Godakumbura said: "We may assume that the lands were set apart for a religious institution like a *pirivena*, or for some public purpose like a hospital, or made over to some dignitary."[81] It is unsafe, in my view, to make conjectural inferences of that kind, unless there are at least slight grounds of proof. There are numerous instances when lands and villages, and in respect of which immunities were declared, were not given to, or set apart for the purposes of supporting religious institutions or public purposes. They were not even given to dignitaries.

The Kapuruväḍuoya Pillar Inscription records that lands with certain immunities (but no sanctuary rights) were granted to a man named Hinābi, for making the necessary images and requisites for a festive offering to Skanda, the god of war.[82] The man held no high rank or office, and the grant of immunities cannot be explained on the basis that Hinābi was a "dignitary".

Nor could a man named Kaṇḍan Pilantavan Vaḷḷan be accurately described as a "dignitary": He was possibly a mercenary who served in Vikramabāhu's army. Yet, a land he had personally brought under cultivation was granted certain immunities by the king.[83]

We should at this stage take a second look at the theory I had tentatively advanced about the grant of immunities. If, as I have suggested above, the grant of immunities and privileges to temples, monasteries, nunneries, places of meditation and places concerned with medical attention is possibly explained by the need to ensure peace and tranquility, why should such privileges and immunities apply to lands and villages that merely served ancillary purposes such as supplying the wants of monks or nuns or patients? As to why the lands of the consort of the *Yuvarāja*, servitors at the Council Hall, or a *daṇḍanāyaka* (or his rentiers and their tenants), or the Chief of Physicians or private persons, were granted immunities calls for some other explanation.

No single logical explanation seems to be sufficient to cover all cases. Many and various needs it seems were served by granting immunities. The criteria for the selection of lands and villages for special treatment are not uniform; the person granting immunities might have been moved or induced by one consideration: in other cases the motives might have been several.

The conferment of immunities was it seems in certain instances, a device for insulating the members of the community from bureaucratic harassment. In using it for such a purpose, the character of the land would be irrelevant. Paranavitana, commenting on the Koṇḍavaṭṭavan Pillar Inscription,[84] observed that the village with which the edict was concerned had been "enjoyed by, or attached to the *daṇḍanāyakas* in the time of Generalissimo Rakus, who held that office." The successors of Rakus may have given out parts of the village to rentiers under the *patta* tenure, who, in turn, leased them to tenant farmers. Since the king had assigned his dues from the village to the General, the peasant farmers, except in rare instances, such as when a murder was committed by them, seldom came in contact with royal officers. "The peasants, perhaps, congratulated themselves on this circumstance, *for they were spared the attentions of the host of petty bureaucrats with which, as we can infer from the immunity*

grants of the ninth and tenth centuries, the over-organized administration of the later Anurādhapura kingdom had burdened itself. The place of the royal officers was taken by the myrmidons of the Generalissimo; but we have no way of judging whom the peasants considered as the lesser evil." (The emphasis is mine).

The exclusion of officials to free villages from the attentions of bureaucrats explains some cases but not others. Why did Kassapa IV prohibit the entry of 'elephants in must'?[85] No doubt because they, being in a state of dangerous frenzy at such a time, were likely to cause disturbance. We need explanations other than bureaucratic interference for excluding tramps, vagrants, criminals, musicians, drummers, whip-crackers, and elephants in must. There were more reasons than one for granting immunity privileges.

THE SOCIAL FUNCTION OF SANCTUARY

Apart from granting immunities to free places from disturbance and official harassment, we need to consider the purpose of sanctuary privileges conferred on criminals from the point of view of the criminal. The institution of sanctuary, perhaps, sometimes performed a social function: It was said that, in England, "Although often abused, it prevented excessive use of capital punishment and safeguarded against uncontrolled blood vengeance and execution without trial."[86]

D'Oyly[87] referred to the fact that taking refuge in "any Instance of supposed Injustice, in the Mahā Gabaḍāwa, or in the Temple Daḷadā Māligāwa or other Royal or Religious Sanctuary", was a way of attracting the attention of the monarch to alleged injustice and prompting him to direct an inquiry into the matter. Taking refuge in a sanctuary, so as to prevent a person in such a shelter from being dealt with inconsiderate haste,[88] and seeking an opportunity to be tried according to law, was a possible, additional, explanation for the recognition of the institution of

sanctuary in some instances. Geiger recognized the social function of asylum. He stated:[89]

> "Of great interest is the right of sanctuary claimed by the Buddhist monasteries in accordance with an old custom. By taking refuge in such an asylum a culprit could escape a too hasty and perhaps unjust punishment."

The Nāgama Pillar Inscription seems to support the view that sanctuaries were sometimes deliberately created to serve a social purpose. It records a decree given in the reign of Kassapa IV (963-980 AD), granting immunities to the village of Koḷayunugama, which prohibited (1) the entry of the various persons, including servants of the royal family; (2) the appropriation of carts, oxen and buffaloes; and (3) the arrest of those who had entered the village after committing murder. It was additionally stated in lines 13 -16: " ... we have granted the immunities [contained] in the pillar of Council Warranty to this village so that it might be a sanctuary (*abhaya*) ".[90]

It is of interest that the *Mahāvaṁsa* X.52 in discussing the installation of Paṇḍukābhaya said "This safety-giving Abhaya had reigned as king in Upatissagāma twenty years." The *Mahāvaṁsa* in Chapter IX, which deals with the installation of Abhaya, states: (29) "When the ruler was dead, the king's sons all assembled together and held the great festival of consecration of their brother, the safety-giving Abhaya." Geiger [90A] said this was "a play on the word *abhaya*, 'the fearless' and *abhayada* 'bestowing fearlessness, freedom from danger, or security'."

In other ancient societies, even those, such as Jewish society, which *formally* recognized a right of blood-revenge, but which showed a compassionate concern for human life, provision was made for sanctuary to prevent a blood-avenger from acting rashly and prematurely by shedding innocent blood and ensuring that a person who, perhaps accidentally killed another, was given a fair trial. There were six cities of refuge in ancient Israel[91] and seven in England during the reign of Henry VIII.[91A]

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The use of the institution of sanctuary to avoid the harshness of the law and minimize the use of capital punishment is illustrated by the decree recorded in the Slab Inscription of Kassapa V. The decree did not recognize a blanket immunity for criminals seeking refuge in the villages and lands appertaining to Abhaya-giri and Cĕtiya-giri *vihāra* (Buddhist temples). It stated that the king's employees or officials could enter those villages and lands and demand the surrender of murderers, and that once in two years they could demand the surrender of those who were alleged to have committed one or more of the five heinous crimes. However, the surrender of other offenders could not be demanded. There was also a duty, presumably on the elders of the villagers, to try murderers and their abettors and to exile guilty offenders to Dambdiv (India); but, others seeking shelter were not to be punished.[92] Ordinarily, convicted murderers would have been executed. For instance, as we have seen, according to the Vĕvälkäṭiya Slab Inscription, in a *dasagama* the elders were required to take murderers into custody, try them, and if they were guilty, to hang them. Yet, we see in the Slab Inscription of Kassapa V that the penalty was expulsion, which was not altogether unlike the process of "abjuration of the realm" in England undertaken by guilty persons who had sought refuge in a sanctuary.[93]

The Koṇḍavaṭṭavan Pillar Inscription,[94] was concerned with a land given to a *daṇḍanāyaka* - a very high military official who also had considerable civil, including judicial, authority. It was decreed that no fine should be exacted for the offence of murder, but the offender should be surrendered (*dakvā denu*) to an *ulpāḍu* who is in the district. Here too, perhaps, the purpose seems to have been that the alleged offender would have a fair trial?

THE OBSERVANCE OF DECREES RELATING TO SANCTUARY

What were the consequences of disobeying such decrees? The Kirigallāva Pillar Inscription, set up in the second year of the reign

of King Udaya I (952-963 AD), records a decree issued by the King-in-Council prohibiting tramps, vagrants, and servants of the royal family and certain officials entering the village of Itnaru-gama in the district of Amgam-kuḷiya. It was stated that carts, oxen and labourers could not be appropriated. It was said that "Should any person enter this [village] and transgress the enactments, let him be banished from the country (*desattana*) [and] let him be a dog or crow [in his future] birth."[95] Sometimes decrees of this sort ended with the imprecatory statement about transgressors being born again as a dog or crow, or already having become a dog or crow by the transgression, or with a warning that "guilt" would accrue to transgressors, or that they would "incur such sin as that accrued by the slaughterer of goats at Matota;"[96] or no sanction, imprecation or warning whatever was mentioned. In some instances, there were merely symbolic representations at the end: the sun and the moon, signifying that the decree was to last for all time; and a crow and a dog, signifying the sanction. In the Iňginimiṭiya Pillar Inscription, there is no threat expressed at the end of the decree; there is a benediction (*siddhi*). The usual imprecation, however, is implied by the figures of a dog and a crow.[97] In the Kapuruväḍuoya Pillar Inscription the imprecation that is often met relating to crows and dogs is neither expressly stated nor implied by the figures of a dog and crow. Instead, the document states that the authority of the decree extends even to the Brahma world.[98]

For whatever reason, political, social or moral, there can be no doubt that decrees were seriously regarded, and obeyed, both by the people and their monarch, since it was customary to do so. Hence, in the Nelubāva Pillar Inscription of Gajabāhu II, which however does not deal with immunities, it was deemed quite sufficient for the king to appeal to his successors to perpetuate the grant of a land to the Ruvanmäli *mahā-cetiya*.[99] The failure of a monarch to adhere to his constitutional duty of observing customs brought about serious consequences. The violation of the sanctity of a sanctuary almost cost a king his throne. The *Cūḷavaṁsa*,[100]

stated that when the officials of the court fled to the Grove of the Penitents (*tapovana*), which was a sanctuary, King Udaya III and his Uparāja went there and had the heads of the officials cut off.

> "Being indignant at this deed, the ascetics dwelling there left the King's land and betook themselves to Rohaṇa. Thereupon the people in the town and country and the troops became rebellious like the ocean stirred by a wild storm. They climbed the Ratnapasada in the Abhayuttara[-vihara], terrified the King by threats, struck off the heads of the officials who had helped the strife in the Penitent's Grove and flung them out of the window. When the Yuvarāja and his friend, the Adipada, saw that, they sprang over the wall and fled in haste to Rohaṇa. A division of troops followed them to the banks of the Kanhanadi, but as they could get no boats and the two were already across, they returned. The princes who in the Penitent's Grove had broken [the precept of] inviolability betook themselves to the ascetics, threw themselves to the ground at their feet, with their damp garments and hair, wailed much, lamented and whined and sought to conciliate the penitents ... When the army had calmed down, the inmates of the three fraternities went to pacify the troops of the Yuvarāja. The two princes who were cultured and well-instructed people turned imploringly to the Pamsukulin [-bhikkhus], and returned with them to their town. At the head of the bhikkhus the King advanced towards them, obtained their pardon, took them with him, brought them back to their grove and betook himself to the royal palace. From that time onwards the King observed the conduct of former kings ..."

Vaṭāpata, dog, sickle, sun, moon and crow symbols in the Aytigeväva - pillar inscription.

CHAPTER XVIII

PUBLIC COOPERATION

Ranawella[1] said that the apprehension of criminals in the cities was the responsibility of the *Nagaraguttika*[1A]; but that, perhaps, in the provinces, it was the duty of officials called *ulpāḍu* or *ulvāḍu*. However, he stated, citing the *Aṭadā-sanyaya*[2] and the Vēväḷkäṭiya Slab Inscription,[3] that in the villages, the responsibility lay on the elders of villages. Were there officers performing police functions stationed throughout the country?[4]

The apprehension of criminals seems to have been a shared, community responsibility.The administration of justice, especially in the area relating to the criminal law, depended on public cooperation.[5] We have seen that a criminal was apprehended by "neighbours" and brought from Medellehena in Hāris Pattuva to King Sri Vickrama Rājasiṁha for trial and punishment. According to the Vēväḷkäṭiya Slab Inscription of King Udaya IV (946-954 AD),[6] the elders of a *dasagama*[7] were required to find murderers and highway robbers within forty five days and have them punished. If they failed to find the culprits within the stipulated period, one hundred and twenty five *kalañdas* of gold[8] had to be paid by the *dasagama* to the royal family.

"If the offence was grievous hurt (but not homicide), a levy of fifty *kalañdas* of gold was imposed as wergeld or wergild.[9] Should this not be feasible [his house] shall be confiscated [as a fine]. If [however] the alleged offender could not be taken into custody, fifty *kalañdas* of gold shall be paid from *dasagama* to the royal family."

Davy,[10] stated:

> "When a murder was committed in a house or village and the murderer could not be detected, the inhabitants were fined ... the

> amount varying a little according to the circumstances. But if the jungle were the scene of murder ... no fine was levied, no one at a distance being considered in the least responsible for the prevention of acts of violence in a desert place."

The elders were responsible for the conduct of the members of their villages and for the administration of justice in their villages. Ranawella said:[11]

> "The author of the *Aṭadā-sanyaya* [12] of the Polonnaruva period, in commenting on a phrase '*gāme mānavā sañgaccha kammāni mamisārayanti*' has explained it as "in villages and market villages the elders of the village, after having assembled at a place, addressed the offender and charged him thus: 'You, the man-slayer; you have committed such and such a crime, therefore, you are liable for such and such a punishment'. " [13]

The Vēvāḷkäṭiya Slab Inscription stated[14]

> " If there be a tenant who arrives after the time of enactment of this statute in this *dasagama*, he shall be duly identified and after having obtained surety from him, he shall be allowed to stay here. If there be any person who has come after having committed an improper act, although the surety is taken, he shall be sent back to the elders of the village in which he originally lived to be dealt with by them."

A criminal could not be assisted in the commission of an offence nor could he be harboured.[15] The Vēvāḷkäṭiya Slab Inscription stated that a "fine of fifty *kalañdas* of gold shall be levied from persons who have aided and abetted [a criminal]. If [he is] unable to pay it, [his] house shall be confiscated. If he has no house, he shall be punished by cutting off his hands." Ranawella[16] observed that some copies of this inscription have it as *atpā kapā* - cut off both hands and feet.

The third Kaḷudiya Pokuṇa Slab Inscription of Sena III (938-946 AD) stated that "[Those who come] after committing homicide outside are not to be given admission. Should [tenants] commit homicide in the district, the employees should take their

gedaḍ [houses] and send them away."[17] The Moragoda Pillar Inscription stated that " Those who live by highway robbery or by vagrant habits shall not be admitted ... If there be any one in this village who has committed a murder, he shall be expelled from the village. Those who have entered [the village] after committing a murder shall not be harboured."[18] The Kapruväḍuoya pillar inscription of Gajabāhu II (1132-1152 AD)[19] stated: "should any [person] commit murder and enter the village, the residents shall meet and expel the [murderer from the village]."

As we have seen, expulsion from the country[20] or to "the further coast",[21] or otherwise,[22] was a method of punishment.

If Paranavitana's version of the Badulla Pillar Inscription is accepted, then, in certain circumstances, there was a duty also cast on persons outside the village, for when a villager was expelled from his village, he was, it seems, to be sent out without giving him the sealed staff of identity *-lahasu-hoḷa-daḍu*. When a person left his village, he took with him a staff bearing the seal or stamp of the village authorities, as a token that he is entitled to the rights of the community because he was not a fugitive. In the case of a person banished by the village authorities, this staff was denied to him, so that he would not have a favourable reception in any other place to which he might have gone. It thus resembled a modern passport. [23]

Ranawella, however, stated that *līdaḍu* and *hoḷdaḍu* 'appear to be some measure and weights used by the mercantile community'. He rendered the relevant lines as follows: "Should there be an [offending] tenant who has not been detected by the royal officers he shall be sent out of the village without giving him *līdaḍu* and *hoḷdaḍu*; after preventing it if [he] stays behind on the road, food should not be given to him." [24]

The Mäḍirigiri Slab-Inscription of Mahinda VI records various punishments for violating the regulations made by the king. Inhabitants of the village or revenue officers or other

functionaries who violated the regulations were to be banished from the village, but no reference is made to the staff of identity. On the other hand, if certain officers concerned with expenditure, the watchman and accountants of the village violated the regulations, they were to be dismissed from service 'after having taken away their house-staves'. There is no reference to expulsion. Did it mean that the offenders could remain in the village, but without enjoying certain privileges they might otherwise have enjoyed?

In rendering *ge-daṇḍu* as 'house-staves', in his edition of the Mäḍirigiri Slab Inscription of Mahinda VI, Paranavitana, stated as follows:[25]

> "*Ge-dandu*: This is the same as *ge-daṇḍ* or *ge-daḍ*, which has been met with in a number of inscriptions of the ninth and tenth centuries, see *Ep. Zey.*, Vol. I, pp. 47, 93, 103, 247 and 250. The occurrence of the form *ge-dandu* instead of *-daṇḍ* or *daḍ*, enables us to compare this term with *lahasu-hol-dandu* in the Badulla pillar-inscription (*Ep. Zey.*, Vol. V, p. 104, n. 8). By this term was perhaps meant a staff which a householder carried with him as a token of being a member of the village community. When this was taken away from him, he could not claim the privileges to which he was entitled to as the occupant of a house in the village."

The matter is not free from difficulty: A tenth century inscription found at Kaḷudiya Pokuṇa stated: *raṭa hindä miṇi keṭuva kämiyan unge gedaḍ genä piṭat karanu.*[26] Paranavitana stated[27] that the exact significance of *gedaḍ* was not clear. However, Ranawella,[28] stated that *gedaḍ* meant "house", and that the words in the Kaludiya Pokuṇa inscription quoted above should be rendered as "the *gedaḍ* [houses] of those who commit murder while staying in the district shall be taken over by the royal officers and the offenders should be sent away."

In his edition of the Slab Inscription of Kasappa V, Wickremasinghe stated that *ge-daṇḍ* was probably equivalent to

the Sanskrit *gṛha-daṇḍa*, and rendered the text to read "fines on account of lodging": "If, however, there be any who have taken refuge [in temple premises] from other causes of fear, no fines on account of lodging shall be exacted from them nor shall they be exiled."[29] Wickremasinghe said that '*gedanḍ*' in the Tablets of Mahinda IV at Mihintalē meant a kind of fine.[30] In his edition of the Vēvälkäṭiya Slab Inscription, Wickremasinghe rendered '*gedaḍ*' as a fine imposed on each household.[31] However, Ranawella, in editing the Vēvälkäṭiya Slab Inscription and its copies[31] stated that the word means "the house".

The four sides of the Badulla Pillar Inscription - c. 942 A.D.

About 101 inches x 9 inches x 10 1/2 inches

CHAPTER XIX

CONCLUSION

In 1815, the Kandyan Kingdom was a land without laws, with no records of judicial proceedings, or precedents, where unique and strange barbarous punishments were inflicted by a cruel and despotic monarch whose mental faculties were impaired by drinking too much cherry-brandy. There were officials who were supposed to assist the monarch; but they were ignorant of the laws they were expected to administer, and indeed advertised that fact. Those officials were congenitally incompetent. In addition, they were corrupt. The system was not only abused, it was irremediably flawed. That was how some writers and officials of the early part of the nineteenth century as well as some scholars of more recent times saw it.

On the other hand, it seems from the foregoing account that there was in Sri Laṅka an adequate system for the administration of justice in the pre-colonial era that had existed for over two thousand years. There was, as early British observers, like D'Oyly,[1] Davy,[2] and Knighton[3] said, nothing radically wrong with the *system* of the administration of justice. Indeed, Governor Brownrigg admitted the possibility of using the system satisfactorily.[4] Skinner therefore,[5] strongly, but in vain, pleaded before the House of Commons to reconsider the restoration of important features the traditional system of dispute resolution.

It was by no means a perfect system: it was not something to be regarded with 'uncritical wonderment'. But where or what is the 'perfect system'? Changes had taken place from time to time, but further improvements were required. Unfortunately, at the time when the British came into the picture, that somewhat imperfect system happened to be in the hands of a monarch who was ill-educated, immature, incompetent and intemperate and acting in disregard of the constitutional duties imposed on him by the laws and customs of the realm.

Nostalgia, I suppose is normal. Yet, alterations in social organization, economic endeavour, methods of government, political climate and legal culture, make a complete or even a substantial resurrection of the past quite impossible. Especially, perhaps, we cannot revert to the days when, in Skinner's words, courts of justice in Sri Lanka were "more those of equity than law ... unclogged by quibbles and delays." Yet there is value in looking at the past, to satisfy the curiosity every person I assume has about the past; to attempt to clarify misconceptions; to identify basic concepts that have survived many and serious changes, political, social, economic or other, and are still relevant; and above all, to avoid the errors of the past.

NOTES

NOTES TO CHAPTER I

1 (1915) 18 New Law Reports, p. 181.

2 *The Road to Justice, London, Stevens & Sons Ltd.*, (1955) p. 10.

3 *Historical Foundations of the Common Law*, (1969), Butterworths, London, p. xiv.

4 *A Treatise on the Laws and Customs of the Sinhalese including the portions still surviving under the name Kandyan Law*, H.W. Cave & Co. Colombo, 1923, p. 12.

5 *Mongee v Siyar Paye*, Board Minutes, July 7, 1820.

6 (1833-1859) Austin's Reports 192; but see (1833-1859) Austin's Reports 150.

7 (1860-1862) Ramanathan 157.

8 (1886) 8 S.C.C. 36.

9. See H.W. Tambiah, *Priniples of Ceylon Law*, pp. 153-154.

NOTES TO CHAPTER II

1 *The Legal System of Ceylon in its Historical Setting*, E.S. Brill, Leiden, (1972) pp. 1-95. For an excellent account of the unsuccessful attempt to administer a hybrid Sinhalese-British system during the early days of British rule, see Vijaya Samaraweera, "The Judicial Administration of the Kandyan Provinces of Ceylon, 1815-1833," *The Ceylon Journal of Historical and Social Studies, New Series*, No. 2, July-December 1971, pp. 123-150.

2 K.M. De Silva, *A History of Sri Lanka*, Oxford University Press, New Delhi, (1981), p. 52. See *Travels of Fa-Hian and Sung-Yun, Buddhist Pilgrims from China to India (400 A.D. and 518 A.D.)* translated from the Chinese by Samuel Beal, London, 1869, Asian Educational Sevices, New Delhi and Madras, 1996, p. 149.

3 On *yaksas*, see Geiger, *Culture of Ceylon in Mediaeval Times*, ed. Heinz Bechert, 1960, Otto Harrassowicz, Wiesbaden, pp. 166-167.

4 On *nagas*, see Geiger, op. cit., pp. 167-169.

5 P.6.

6 The later stone cultures of Sri Laṅkā have their beginnings about 12,000 years ago: K.M. De Silva p. 6; C.R. de Silva, *Sri Laṅkā - A History*, Vikas Publishing House Pvt Ltd., New Delhi, (1987) p. 18. On the pre-history of Sri Laṅka, see S. Deraniyagala, *Prehistoric Ceylon - a Summary in 1968*, in *Ancient Ceylon*, Vol. I (1971) pp. 3-46; S.P.F. Senaratne, *Prehistoric Archaeology in Ceylon*, (1969); S.U. Deraniyagala, *The Prehistory of Sri Laṅkā - An Ecological Perspective*, 2 Vols., Department of Archaeological Survey, 1992. We have today a very small group of people - the Väddās - who are descendants of the proto-austroloid peoples who were in Sri Laṅkā before the arrival of the Sinhalese and Tamils : C.R. de Silva, p. 5. On the Väddās, see C.G. Seligmann and Brenda Z. Seligmann, *The Veddas*, (1911), reprinted in Cambridge Archaeological and Ethnological Series, Anthropological Publications, Oosterhout N.B., Netherlands, (1969); R.L. Spittel, *Vanished Trails*, Oxford Univ. Press, (1950); Knox, 116-120; Sir James Emerson Tennent, *Ceylon - An account of the Island Physical, Historical and Topographical with Notices of its Natural History, Antiquities and Productions*, 1859, sixth edition in two vols. published in 1977 by Tisara Prakasakayo Ltd., Vol. II, pp. 905-916. (In the Introduction to the sixth edition, it was said: "Of all the books ever written on Sri Lanka none can compare with Sir James Emerson Tennent's *Ceylon* ... in sheer comprehensiveness and in the encyclopaedic nature of its contents. Nothing like it has been written on

Sri Lanka in any language by any other writer either before or since..."); Wilhelm Geiger, "The Language of the Veddas," *Indian Historical Quarterly,* Vol. II, 1935, pp. 504-516. There has been speculation that Sri Laṅkā might have been colonized by the people of the Hoabinhian culture of South East Asia about 4000 BC: C.R. de Silva, p. 18; but, it has been said, there is no evidence to support that belief: K.M. De Silva, p. 5.

7 *Law and Legal Philosophy in Ancient Sri Lanka,* published in instalments in 1991 in the *Daily News* of January 16 p. 15; January 21 p. 13; January 23 p. 15; January 28 p. 13; January 30 p. 17; and February 4 p. 15. Weerasinghe's essay had been published earlier at pp. 31-46 of the Silver Jubilee Commemoration Volume of the University of Kelaniya, Sri Lanka, in 1986. I refer to both versions: References to the newspaper version give the date of publication and page; references to earlier version are referred to as "Weerasinghe, p...".

8 Weerasinghe, p. 32; January 16, 1991, p. 15. This is not unlikely, for it appears that there is "some evidence of more or less civilized people in Ceylon previous to the arrival of Vijaya and his companions". The details of the account of Vijaya's reception and settlement", it has been said, "afford later and further indications of the existence of an earlier civilization in Ceylon; reference is found to cities, spinning, sumptuous beds, etc ...": Ananda K. Coomaraswamy, *Mediaeval Sinhalese Art,* 2nd ed., 1956, Pantheon Books, p.1. On the existence of musical instruments, see the observations of Kurt Pahlen quoted in Ch. XVII note 56 below.

9 *Mahāvaṁsa* - "The Great Chronicle" - written in Pali and translated into English by Wilhelm Geiger, Government Information Department, 1960, VI. 39-47. Geiger's translation was first published in 1912 and reprinted in 1934, and 1950. G. Turnour's translation had been published in 1837 and reprinted in L.C. Wijesinha's *Mahāvaṁsa* published in 1889. The chronicle was composed possibly in the sixth century AD, and recounts the Island's history from the Indian colonization of the fifth century BC. Dr. Raja de Silva, a former Archaeological Commissioner of Sri Laṅkā, *(D.T. Devendra Memorial Lecture 1998),* pointed out there was an earlier version written in Sinhala known as the *Sinhala-aṭṭhakathā-Mahāvaṁsa.* He said there were compilations *(aṭṭhakathā)* made by Buddhist monks "almost contemporaneously with the events they relate and handed down orally in the *Mahāvihāra* (The Great Monastery in Anurādhapura) till the 1st century BC, when they were first placed on record together with the Pali Buddhist canonical works at Aluvihāra." On the *Mahāvaṁsa,* see Walpola Rahula, *History of Buddhism in Ceylon,* pp. xxii-xxiv. See also Ch. III n. 27 below.

10 *Mahāvaṁsa,* VI. 39-47.

11 See Wickremasinghe, *A Chronological Table of Ceylon Kings, Epigraphia Zeylanica,* Vol. III, at p. 4.

12 Weerasinghe, p. 46. note 3, said that the name 'Kuvanna' used by Geiger was of later origin. The earlier form was 'Kuveni'.

13 C.R. de Silva, p. 20.

14 *Mahāvaṁsa,* VII. 22.

15 *Mahāvaṁsa,* VII. 25-29.

16 P. 3.

17 P. 5, note 9.

18 On the early settlers, see M. Shahidullah, "First Aryan Colonization of Ceylon", *Indian Historical Quarterly* IX, 1933; Siddharta Thero of Rambukwella, "The Indian Languages and their Relations with the Sinhalese Language", *Journal of the Royal Asiatic Society (Ceylon Branch),* XXXIII/88, pp. 123-152; Wilhelm Geiger, *A Grammar of the Sinhalese Language,* Colombo, Royal Asiatic Society (Ceylon Branch), 1938; see also A.L. Basham, "Prince Vijaya and the Aryanization of Ceylon", *The Ceylon Historical Journal* 1/3, pp. 163-171; C.W. Nicholas and S. Paranavitana, *A Concise History of Ceylon,* Colombo, Ceylon University Press, 1961, Ch. II, "Aryan Settlements and the Early Kings of Ceylon", esp. pp. 25-26; Geiger, pp. 18-19; For those who would prefer a simple, general, statement on the matter, see Colin McEvedy and Richard Jones, Atlas of World Population History, *Facts on File,* 1979, New York, Penguin Books Ltd., pp. 186-7: "The island of Ceylon (Sri Lanka) has a peculiar history. The original inhabitants, a few thousand mesolithic Vedda, were overwhelmed by iron-using, rice growing immigrants from India in the course of the last five centuries B.C. But these immigrants were not as might be expected Tamils or any other of the Dravidian speaking people who inhabit South India, they were the Aryans from somewhere in the North of the subcontinent. Moreover these Aryans, the ancestors of the modern Sinhalese, first of all created an irrigating agriculture of impressive size and elaboration, then, after a thousand years of development, suddenly abandoned it." See also The New Standard Encyclopedia, 1981, Standard Educational Corporation, Chicago, Vol. III, p. 207 which stated: "There are many racial and linguistic groups in Ceylon. The majority are Sinhalese, an Aryan (Indo European) people. The Tamils of Dravidian (ancient Indian) stock are the next largest group. The Veddas, primitive aborigines, live in Eastern Ceylon." The general reader may also be referred to The World Almanac and Book of Facts, 1993, Pharos Books, New York, p. 800, which stated: "Colonists from

Northern India subdued the indigenous Veddahs about 543 B.C; their descendants, the Buddhist Sinhalese, still form most of the population. Hindu descendants of Tamil immigrants from Southern India account for one-fifth of the population." But see J.D.M. Derrett, *Religion, Law and the State in India,* (1968), 148-9; see also J.D.M. Derrett, "Origins of the Laws of the Kandyans", *University of Ceylon Review*, Vol. XIV, 1956, pp. 105-150, who was of the view that the "Aryan strain in the Sinhalese" was "sub-Aryan". Cf. T. Nadaraja, (see note 1 above) pp. 222, 224, 226-227. M.L.S. Jayasekera, (1984) in Chapter II of his book, discussed the subject of "The Origins of the Sinhalese", and, among other things, examined Derrett's view, and, with some warmth, rejected it (p. 75) "as it militates against overwhelming evidence to the contrary."

Ananda Coomaraswamy, (see note 8 above) p.1, said: "... it is clear that, according to the legends, the Sinhalese cannot be of pure Aryan blood, as the first settlers married either the aborigines, or women from Southern India, [See Ch. III note 132A, below.] and there has been a very large amount of Tamil blood introduced at many subsequent periods. Their contribution and art are nevertheless distinctly Aryan and distinguished from, though closely resembling that of South India."

Ralph Pieris, (see Select Bibliography), pp. 4-5, pointed to the difficulties of "the reconstruction of the pre-Aryan, Aryan and Dravidian 'layers' of Sinhalese civilization" and stated that "it must remain a vain hope." He said: "Every civilization is an integral of many and diverse elements, for *homo sapiens* being more mobile and more widely diffused over the earth's surface than any other animal, no human community has contrived to live in prolonged and absolute isolation. What is important from the point of view of this study [Sinhalese Social Organization] is that the fusion of elements from pre-Aryan and Dravidian cultures gave rise to an identifiable 'Sinhalese' civilization distinct from that of any part of India."

K.M. de Silva, (see note 2 above) p. 13, said: "... Sri Lanka has been from very early in its recorded history a multi-ethnic society in which a recognizable Dravidian component was present but was not sufficiently powerful to alter the basic Aryan or North Indian character of its population."

19 *A History of Sri Lanka,* 1981, Oxford University Press, Delhi, p. 3. On the Vijaya legend, see A.L. Basham, "Prince Vijaya and the Aryanization of Ceylon", *Ceylon Historical Journal,* I (3), 1952, pp. 163-171.

NOTES TO CHAPTER III

1 This is a record of "Answers given by some of the best-informed Candian Priests, to Questions put to them by Governor Falck, in the year 1769, respecting the antient (*sic.*) Laws and Customs of their Country". Iman Willem Falck, a Doctor of Laws, described by the traveller and writer C.P. Thunberg, as "a very learned and sensible man", was the Dutch Governor of Ceylon from 1765-1785. A version of the Sinhalese text of the *Lak Raja Lō Sirita* from a manuscript in the Hugh Nevill Collection in the Library of the British Museum appears in *Prabhashodaya,* i, Nos. 1-3, April, May and June 1930, Colombo. Anthony Bertolacci (*A View of the Agricultural, Commercial and Financial Interests of Ceylon with an Appendix containing some of the Principal Laws and Usages of the Candians,* 1817, reprinted in The Ceylon Historical Journal Monograph Series Vol. 8 by Tisara Prakasakayo Ltd. in 1983. My references are to the 1983 edition.) reproduced an account of the *Lak Raja Lō Sirita* in Appendix (A) to his work. P.E. Pieris in his book *Sinhalē and the Patriots, 1815-1818,* 1950, The Colombo Apothecaries Co. Ltd., Colombo, p. 577, noted that the translator's name does not appear in the Bertolacci version, and that "the work is unsatisfactory." He provided his own translation, "made with Dr. Paranavitana's assistance" which he said was "from a paper copy prepared for me in 1903 from a *puskola* dated 1830 which had belonged to A.F. Obeyesekere Mudaliyar." Pieris's version appears at pp. 577-590 of his book as Appendix A. There are differences between the Bertolacci and Pieris versions. Because of the importance of the observations in the *Lak Raja Lō Sirita,* I have given references to both versions. Prof. Abaya Aryasinghe in *Lankavē Rājasirit ha Lōkacharitra* - Some Royal Institutions and Popular Rights, 1985, reproduces the Pieris version, but Aryasinghe's work had a very limited circulation. I am indebted to Prof. M.B. Ariyapala for making available his copy to me.

The "Canadian priests" referred by Falck were the *bhikkhus* of the Malvatta Chapter, headed by Saraṇaṅkara Sangharaja. Walpola Rahula, *History of Buddhism in Ceylon*, 1956, 3rd ed. 1993, The Buddhist Cultural Centre, Dehiwela, p. 71. Monks were learned not only in matters pertaining to Buddhist philosophy and the rules of conduct for *bhikkhus* (*Vinaya*), but also in other matters, including the laws of the land. The Chinese monk, Hiuen Tsiang, it is said, met Boddhimegheswara and Abhayadamstra, two eminent *bhikkhus* from Sri Laṅka in India. He inquired as to why they were in India and whether the high reputation of the chief *bhikkhus* of Sri Laṅka in explaining the Tripiṭaka according to the Sthavira school and also the

Yoga-śāstra was justified. The *bhikkhus* replied that they were in India because there was a famine in Sri Lañkā; and because India was the place of the Buddha's birth. They added: "Among the members of our school who know the law there are none who excel ourselves as to age and position. If you have any doubts therefore, let us according to your will, speak together about these things." Walpola Rahula, p. 302. Even if "law" in Hiuen Tsiang's account meant ecclesiastical law, there can be little doubt that the *bhikkhus* who answered Falck's questions were well versed in secular laws. The seats of learning were the monasteries and instruction was given in them not only in religion, but also in grammar, prosody, rhetoric, literature, history, logic, arithmetic, medicine, astrology, painting, sculpture and customary law. See Walpola Rahula, P. 292. See also Chapter VIII, note 221 A, and. Ch. XII, text at note 20 below.

2 P.E. Pieris, p. 577; cf. Bertolacci, p. 273.

3 Walpola Rahula, *History of Buddhism in Ceylon,* 1956, pp. 64, 65 and 292; Jayasekera, 1970, p. 93.

4 "The Sources of Sinhalese Customary Laws", *The Journal of Ceylon Law, (*1970), Vol. No. I, p. 81.

5 N.C. Sen-Gupta, *Evolution of Ancient Indian Law,* Tagore Law Lectures, University of Calcutta, 1950, London, Arthur Probsthain, Calcutta, Eastern Law House, (1953), pp. 35-36.

6 *Culture of Ceylon in Mediaeval Times,* p. 23.

7 *The System of the Administration of Justice in Ancient Lanka from the Beginning to 1255 A.D.* in *Nīti-vimaṅasā,* Law Students' Union Publication, 1977, pp. 30 and 31; see also M.L.S. Jayasekera, The Sources of Sinhalese Customary Laws, *Journal of Ceylon Law*, (1970) Vol. I, No. I, pp. 81-86.

8 Vimalakitti Thero, Medauyangoda and Nähinne Sominda Theros, Aṭadā Sanyaya, (1954), p. 15.

9 P. 214.

10 *The Aryan Village in India and Ceylon,* London, Macmillan & Co, 1880, p. 206. Reprinted in 1995 by Asian Educational Services, New Delhi, p. 208.

11 *Leaves from My Life,* The Times of Ceylon Co. Ltd., Colombo and London, p. 110.

12 Sir Alexander was Advocate Fiscal in 1802, Provisional Chief Justice in 1806, Puisne Justice in 1807 and Chief Justice from 1810 to 1819. For a biographical sketch of Johnston, see A.R.B. Amerasinghe, *The Supreme Court of Sri Lanka - The First 185 Years,* 1986, Sarvodaya Book Publishing Services, Ratmalana, Sri Lanka, pp. 120 - 124.

13 Sir John D'Oyly was a product of Cambridge University where he had won several prizes and scholarships. He arrived in Ceylon in 1801 and served as a civil servant in various parts of the country. As Chief Translator to the government he was entrusted with all the negotiations with the court and the chiefs of Kandy and set the stage, inter alia, as the organizer of a system of spying to end the rule of local monarchs. As one of the first band of Civil Servants to be sent out to Ceylon after the country was declared a Crown Colony, he had the opportunity to give us his extraordinarily valuable account, among other things, of the system of the administration of justice at about the time the British took over the rule of the country. However, his untimely death prevented his work being completed. Simon Sawers, the Judicial Commissioner, wrote some memoranda and notes that were appended to D'Oyly's work. Parts of that work were published in 1835 in the *Transactions of the Royal Asiatic Society of Great Britain and Ireland,* iii, (1831), pp. 193-252. Other portions were published in 1892 with amendments by H.C.P. Bell in his *Report on the Kegalle District.* The work was commonly referred to as 'Sawer's Digest'. George Turnour, the Government Agent of Sabaragamuwa, added further notes, memoranda and comments, and that compilation was printed by the Ceylon Mission Press and published with an introduction and an index provided by Earle Modder in 1921. In 1929 the government published the complete work 'edited by L.J.B. Turner'. It was reprinted in 1975 in *The Ceylon Historical Journal,* Vol. 24, and published by Tisara Prakasakayo Ltd. My references are to the 1975 edition. Sir Alexander Johnston said: "Although I possess a great many different accounts of the Kandyan government, laws and institutions ... I have none which gives so accurate and so detailed a view of that government, and of those laws and institutions, as the one drawn up ... by Sir John D'Oyly." *Transactions of the Royal Asiatic Society of Great Britain and Ireland,* iii (1831) p. 192. On D'Oyly, see Brendon and Yasmine Gooneratne, *This Inscrutable Englishman: Sir John D'Oyly, Baronet (1774-1824),* Cassell & Co., 1999.

14 *Royal Asiatic Society Transactions* (1833) London, Vol. III, part II, page 191. See also Ch. XV note 29 below. Despite Government and judicial intervention, the ancient Aryan village system survived in the North Central Province. R.W. Ievers, *Manual of the North Central Province, Ceylon,* (1880), p. 42, quoting Sir John F. Dickson, said: "The point in which the political condition of this Province especially differs from that of the rest of Ceylon is that here the original Oriental village still remains of a pure and simple type while in the rest of Ceylon it has generally disappeared under the influence of Foreign Government and the jurisdiction of English Courts. If these districts

have been neglected and the villages have been left buried in their virgin forests and so have failed to share in the general progress which has been going forward around them they have at least this compensation that they have retained almost in its pristine purity the ancient village system of the Aryan races."

15 *Sinhalese Social Organization,* 1956, Ceylon University Press Board, p. 5, note 9.

16 1970: p. 82.

17 R.C. Majumdar, *Hindu Colonies in the Far East,* p. 23.

18 P. 26

19 G. Bühler, *The Laws of Manu,* Vol. XXV, The Sacred Books of the East, Ed. by F. Max Müller, published by the Oxford University Press, 1886, reprinted in 1967 and 1970 by Motilal Banarsidass, New Delhi, Introduction, p. xi.

20 *Treatise on Hindu Law and Usage,* 10th Ed. by S. Srinivasa Iyengar, 1938, p. 4.

21 P. 213, note 137.

22 P. xxii.

23 Nadaraja, p. 213 note 137; J.D. Mayne, *A Treatise on Hindu Law and Usage,* 1878, 11th ed., 1950, p. iii; J.D.M. Derrett, *Hindu Law, An Introduction to Legal System,* ed. Derrett, 1968, p. 81.

24 Sen-Gupta, pp. 14 - 15.

25 J.D.M. Derrett, *Religion, Law and the State in India,* (1968), p. 404.

26 However, in the Tamil-speaking districts of South India, it seems, the *Vijnaneshvariyam,* sometimes referred to as the *Mitakshara,* the twelfth century commentary by Vijnaneshvara on the text of Yājñavalkya, is said to have been held as of "superior authority to any other lawbook whatever, not excepting even the text of Manu" : Nadaraja, p. 210 note 125, citing F.W. Ellis, "Sources of Hindu Law", *Law Magazine,* ix, (1833), p. 222.

27 The continuation of the *Mahāvaṁsa* translated by Wilhelm Geiger into German and from German into English by C. Mabel Rickmers (née Duff), and published by the Government Information Department in 1953 in two volumes. According to some scholars, the *Dipavaṁsa* and *Mahāwaṁsa* Chronicles end with the reign of Mahāsena (276-303 AD). On the *Mahāwaṁsa* and *Culavaṁsa,* see Walpola Rahula, pp. xxii-xxiv. He points out at n. 1 p. xxii, that the division by some scholars of the Great Chronicle into the *Mahāwaṁsa* and *Culavaṁsa* is unjustified.

28 80.6. 9-10.

29 84.1; see also Ariyapala, p. 51.

30 83.6

31 V. 127.

32 *Nīti Nighanduva*, Preface, pp. iii-iv. Pānabokke said:

මනුනීතිය ඉතා පුරාණකාලයක පටන්ලියවී තිබුන පොතක්ය. එය මේ රටේ බොහෝසේ භාවිතා කළ බවද පෙනේ - කුසජාතකයෙහි,

"වදන් අම රසි නා
ගුණමිණි තිලින රලි නා
මෙ නරවර දිය නා
වැජඹි මනුනය වෙරල නොපැ නා"

32A The *Kusa-Jātaka* rendered from the Sinhalese into English verse by Thomas Steele (*The Jātaka*, Vol. V, Book XX, No. 531, ed. E.B. Cowell, pp. 141-162), does not contain the stanza quoted by Pānabokke. He may have been quoting from the *Kusa-Jātaka Kāvya* of Alagiyavanna? Cf. D. M. Samarasinghe ed., 1964, Sri Lanka Publishers, Colombo, P. 3, v. 37. The king of Kōsala was the monarch referred to.

33 Kandy: *Kanda uḍa raṭa* (the country on the mountains) or *Kanda Uḍa pas raṭa* (the five provinces on the mountains) corrupted by the Portuguese to "Candea" and by the British to Kandy - hence "Kandyan Kingdom', 'Kandyan Period' and 'Kandyan times' meaning the era of the Kings of Uḍaraṭa 1469-1815. See also Ch. XIV, n. 134 below. See Vesak Nannayakkara, *A Return to Kandy*, 1977, 2nd ed. 1-20.

34 It was first published in London in 1846 and reprinted in *The Ceylon Historical Journal,* Vol. 15, by Tisara Prakasakayo Ltd. in 1969 and in 1982. My references are to the 1982 reprint.

35 Pp. 127-128.

36 Quoted below in Ch. IV text at notes 12 - 15.

37 See Rev. Kirielle Gnanawimala, '*The Ancient Documents of Sabaragamuva,* Colombo, 1946, p. 80. I am grateful to S.J. Sumanasekera Banda for drawing my attention to this information.

38 Ch. XVII text at notes 296-320.

39 But cf. note 26 above.

40 John Davy, M.D., F.R.S., *An Account of the Interior of Ceylon and of its Inhabitants with Travels in that Island,* (1821) republished in 1969 by Tisara Prakasakayo in *The Ceylon Historical Journal* Vol. 16. My references are to the 1969 edition, p. 134.

41 On these poems, see C.E. Godakumbura, *Sinhalese Literature,* p. 183-208; Punchibandara Sannasgala, ed. *Simhala sandesa sahityaya,* Colombo, 1955; Geiger, *Culture,* p. 74.

42 P. 19.

43 E.g. see S.K. Chatterji in XVI, *Journal of the Royal Asiatic Society Bombay* p.146 sq.

44 Sen-Gupta, pp. 32-36.

44A On the establishment of Buddhism in Sri Lanka, see Walpola Rahula, Chs. 4 and 5.

45 M.B. Ariyapala, *Society in Mediaeval Ceylon - The State of Society in Ceylon as depicted in the Saddharma-ratnāvaliya and other Literature of the Thirteenth Century,* (1956), Department of Cultural Affairs, Colombo, p. 46.

46 The Buddhist church.

47 *Epigraphia Zeylanica,* Vol. II, p. 253.

48 *Epigraphia Zeylanica,* Vol. II p. 119.

49 Ariyapala, pp. 48-49.

50 *Epigraphia Zeylanica,* Vol. II pp. 163-164.

51 Anurādhapura Slab Inscription, *Epigraphia Zeylanica,* Vol. IV, p. 113.

52 *Epigraphia Zeylanica,* Vol. IV, p. 114.

53 *Mahāvaṁsa,* XXI. 13 and 34. See also Walpola Rahula, p. xxiii. However, at p. 65, he stated that when Sena and Guttika and Eḷara were said to have ruled "righteously" (*dhammena*), it was meant that they "governed the country as Buddhists, or, at least according to Buddhist customs. How else could one rule *dhammena*? Could a *micchadiṭṭhi* 'wrong believer who was considered a mere animal *(pasu sama)* rule 'righteously' ?".

54 E.B. Havell, *History of Aryan Rule in India,* p. 158.

55 *Culture of Ceylon in Mediaeval Times,* p. 164. K. Sri Dhammananda, *Treasure of the Dhamma,* 1994, Buddhist Missionary Society, Kuala Lumpur, pp. 69 and 70, quotes the following stanzas which support the view that the Buddha had a tolerant attitude to other religious institutions, faiths, and religions.: "If you find truth,/ (in any religion, philosophy or science)/ then accept that truth/ (without any prejudice)": *Anguttara Nikaya,* I, 189; "To be attached to one thing (to a certain view)/ And to look down upon other things (views) as inferior, / This the wise man calls a mental hindrance." : *Suttanipāta*, 889, 891. But the *Majjhima Nikaya*, 515-521, refers to "False religions" and to "Unsatisfactory religions". The Buddha, it seems, accepted conversions from one religion to another, even to Buddhism, provided, as in the case of Upāli, a follower of the Niganthās, the converted person had made a thorough investigation: *Majjhima Nikāya*, 379, Dhammananda, *op.cit.*, pp. 42-42. To proselyte some person from one belief or creed or opinion to another for reasons of conviction was acceptable, whereas other reasons for change seemed unacceptable.

56 *Culture,* pp. 176-179.

57 H. Ellawala, *Social History of Early Ceylon,* (1969), Department of Cultural Affairs, Colombo, pp. 165-166.

58 On religion in pre-Buddhist Sri Lanka, see Walpola Rahula, 1993, pp. 34-47.

59 *Culture*, p.177. King Bhātiya is said to have appointed one of his ministers, a Brāhamin named Dighakārāyana 'wise and versed in various languages' to settle a dispute that arose between the Abhayagiri and Mahāvihāra schools in which he succeeded: O.H.D.A. Wijesekera, "Skt. Civilization among the Ancient Sinhalese", *The Ceylon Historical Journal*, Vol. I, July 1951, ed. Sapramadu, p. 25. On the role of the *purohita* and the position of brahamins in society, see Walpola Rahula, pp. 28 - 30.

60 P. 41.

61 Geiger, *Culture of Ceylon in Mediaeval Times,* p. 164, stated that the original religion of the Sinhalese was "a popular form of Hinduism."

62 *History of Ceylon,* (1959), Vol. I, Pt. I, Ch. VIII, p. 232.

63 The installation of the king.

64 *Culavamsa,* 90,80; Ariyapala, 102-104. See also below Ch. VIII, text at nn. 315-319. Sen-Gupta, p. 39, said: "The power and prestige of the king no doubt appear to have grown with time but the essence of Arya law from the earliest Vedic times was that he should place himself under the guidance of sages. The Rigveda shows that it was his duty to choose his Purohita and be guided by him. The choice of the Purohita made all the difference to the fortunes of Tristu in the battle of the Ten Kings. The early text of Visṇu places the king's duty to choose a Purohita and be guided by him in the forefront of his obligations."

65 *Mahāvamsa,* 10. 79.

66 Ariyapala, 97-98.

67 *Lankave-puratattvaya,* p. 77. See also Jayasekera, 1984, pp. 169-170.

68 The Pali *bhikkhu*, derived from the Sanskrit *bhiksu*, is often "but erroneously translated 'priest', ignoring a fundamental difference between Buddhism and other religions ... By 'priest' one understands a mediator between God and Man, a vehicle of divine grace, a person with delegated authority from God to administer the sacraments of religion, to admit into the faith or eject from it, to absolve from sin. etc. Such an institution can have no place in Buddhism. *Bkikkhu* (literally a 'beggar' and etymologically the same word) is one of a brotherhood of men trying to live as Buddha lived ..., earnest pilgrims on the road reaching to deliverance ... The layman demands from the *bhikkhu* no assistance in heavenly, no interference in worldly, affairs but only that he should live

as becomes a follower of the great Teacher. The nearest English equivalent of *bhikkhu* is 'mendicant friar' ". Sir P. Arunachalam, Foreword to F.L. Woodward, *The Buddha's Path of Virtue: A Translation of the Dhammapada,* 1921, p. ix, cited by Nadaraja, p. 216, n. 155. 'Monk' and 'priest' are used in common parlance. Cf. also next note.

The Shorter O.E.D. *s.v.* 'mendicant' states " b. A begging friar 1630. (c) Applied to Brahamin, Buddhist, etc. priests who beg for food 1613." The emphasis on begging is apt to be misleading. The *Dhammapada*, stresses purity and holiness by following the whole code of morality and the leading of a virtuous life, rather than begging, as the characteristic mark of a *bhikkhu*:

Na tena bhikkhu hoti
yavata bhikkhate pare
Vissaṁ dhammaṁ samadaya
bhikkhu hoti na tavata

Yo' dha puññnañ ca papañ ca
bahetva brahmacariyava
Saṅkhaya loke carati
sa ve bhikkhu'ti vuccati

"Once there was a brahamin who was in the habit of going round for alms. One day, he thought, 'It is common belief that one lives by going round for alms is a *bhikkhu*. That being so, I should also be called a *bhikkhu.'* So thinking, he told the Buddha that he should also he called a *bhikkhu*. The Buddha replied, 'Brahamin, I don't call one a *bhikkhu* simply because he goes round for almsfood. One who professes false views and acts unwholesomely is not a *bhikkhu*. Only he who lives meditating on the impermanance, unsatisfactoriness and insubstantiality of the aggregates is to be called a *bhikkhu." The Dhammapada,* XIX: 7 *Dhamaṭṭha Vagga*, K. Sri Dhammananda, 1988, Sasana Abhiwurdhi Wardhana Society, Kuala Lumpur, p. 477.

69 Geiger, *Culture*, pp. 129-130; see also D' Oyly, p. I. With regard to the place of *bhikkhus* in society, Walpola Rahula, p. 259 said: "The most obvious and outstanding feature of the religion of the laity was their tremendous devotion to the Sangha. This was due to two reasons: first, the monk was the most trusted teacher and guide and friend of the people. He intervened at all critical moments and settled their disputes - even in State affairs. In all matters, great and small, people went to him for advice, guidance and consolation with the greatest trustfulness. Secondly, the monk was even more helpful to them in the next world. Generally, men and women were anxious about the security and welfare of their next world than this one. It was the monk, and no one else, who

could help them there ..." Explaining the anxiety of the king and the people to preserve the unblemished purity of the Sangha, Walpola Rahula said that one reason was that "the monks were the teachers and guides of the nation, and if they were corrupt, the whole nation would go astray. If the monks were bad, it would be harmful not only to the monks themselves personally, but also to the whole nation - not only in this world, but in the world to come as well." The *bhikkhus* also helped to maintain law and order through their sermons. For instance, by basing their sermons on such a text as the *Devaduta-sutta* (*Rasavāhini,* II, pp. 113, 135), they vividly described the pain and suffering and torture evil-doers had to undergo in hell, thereby "frightening away ignorant and wicked people from evil deeds like killing, stealing, and drinking, when they could not appreciate any other moral or social obligations to abstain from evil and to be good." Walpola Rahula, p. 252.

70 *Culavaṁsa,* 42. 22.

71 *Culavaṁsa,* p. 67 note 8.

72 Which King is not clear. Geiger, p. 196, note 2 suggests Mānavamma.

73 *Culavaṁsa,* 57. 31-35.

74 *Cūlavaṁsa,* 57. 38-39; Geiger, p. 196, note 4; Ariyapala, p. 103.

75 *Moratota-vata,* ed. Albert Silva, v. 61 cited by Ariyapala, p. 104.

76 *Ceylon under the British Occupation,* 1941, Colombo Apothecaries' Co. Ltd., Colombo, pp. 141-142.

77 The Buddhist clergy / community of monks.

78 The heads of the Chapters of Buddhist monks.

78A On the tolerant attitude of Buddhism to other religions based on the teachings of the Buddha himself and Emperor Aśoka, see Walpola Rahula, pp. 7 - 8. See also Ch. III note 55.

79 "Law (Buddhist)", *Encyclopaedia of Religion and Ethics,* ed. J. Hastings, vii, 1914, p. 828.

80 Nadaraja, pp. 212-213.

81 P. 827.

82 "The Buddhist Manu or the Propagation of Hindu Law in Hinayanist Indo-China", *Annals of the Bhandarkar Oriental Research Institute,* xxx (1949) p. 285. Rules pertaining to *bhikkhus* and the administration of monastaries were made by the king with the advice and consent of the *bhikkhus.* See Walpola Rahula, Ch. 9.

83 (1932) A.I.R. 1932 Rangoon at p. 61.

84 Pp. 31-32; 31; January 16, 1991, p. 15.

85 "The Sources of Sinhalese Customary Law", *The Journal of Ceylon Law,* Vol. I, No. I, 1970, pp. 88-89.

86 Disciplinary regulations.

87 The memorial of the Kandyan Chiefs sent to Governor Sir Henry Ward in 1859 said, *inter alia,* "That the religion of Buddha which is the national faith of the memorialists prescribes no rules regarding marriage" : Jayasekera, p. 89 note 17 a.

88 P. 89 note 18 citing *Notes on Buddhist Law* by John Jardine with *Introductory Remarks* by E. Forchhammer, (1882).

89 See also E. Forchhammer, *An Essay on the Sources and Development of Burmese Law from the Era of the First Introduction of the Indian Law to the time of British Occupation of Pegu,* (The Jardine Prize Essay), Rangoon, 1885. On the first annexation in 1826 to the British Empire of the provinces inhabited by a Burman population, the Courts of Justice established in such provinces, took as their guide, in cases where parties were Buddhists, and if the matter in dispute related to inheritance, partition, marriages or religious usages, 'the law of country'. Later, in legislative enactments, 'law of the country' was inaccurately described as 'Buddhist Law'. By section IV of the Burma Courts Act. 1875, it was enacted, that "where in any suit or proceeding, it is necessary for any court under the Act to decide any question regarding succession, inheritance, marriage, or caste or any religious usage, or institution, the Buddhist law in cases where the parties are Buddhists shall form the rule of decision, except in so far as such law has been altered or abolished, or is opposed to any custom having the force of law in British Burma." 'Buddhist law', when applied to matters such as marriage, divorce, inheritance and so on, Fuehrer said (pp. 330-331) was a 'misnomer'.

The Buddha revealed only what is useful to gain *nibbana/nirvāna* - broadly, freedom from the path of rebirth and liberation from the 'stench', of distressing *kamma* (i.e., human actions generally and their consequences - the law of cause and effect). Other sources had to be consulted on less important matters. "One day, the Buddha took a few leaves into his hand and asked his disciples: 'What do you think, O *bhikkhus*? Which is more? These few leaves in my hand or the leaves in the Simsapa forest over there?' 'Very few are the leaves in the hand of the Blessed One, but indeed the leaves in the Simsapa forest over there are very much more abundant.' 'Even so, *bhikkhus*, of what I have known I have told you only a little, but what I have not told you is very much more. And why have I not told you [those things]? Because they are not useful, not leading to *Nibbāna*. That is why I have not told you those things." Sutta-nipāta, v. 437, in K. Sri Dhammananda, *Treasure of the Dhamma*, 1994, Buddhist Missionary Society, p. 36; see also p. 152 on definitions of *Nibbana*.

Nevertheless, most persons, following the "Five Principles", so admirably summarized by Sir Edwin Arnold in *The Light of Asia: Being the Life and Teaching of Gautama, Prince of India and Founder of Buddhism,* Avon, Con: Limited Editions Club, 1976, would have gone a long way towards establishing a just and orderly society:

"More is the treasure of the law than gems:
Sweeter than comb its sweetness: its delights
Delightful past compare. Thereby to live
Hear the *Five Rules* aright:-
Kill not - for pity's sake - and lest ye slay,
The meanest thing upon its upward way.
Give freely and receive, but take from none
By greed, or force or fraud, what is his own.
Bear not false witness, slander not nor lie:
Truth is the speech of inward purity.
Shun drugs and drinks which work the wit abuse,
Clear minds, clean bodies, need no *soma* juice.
Touch not thy neighbour's wife, neither commit
Sins of the flesh unlawful and unjust.
These words the Master spoke of duties due
To father, mother, children, fellows, friends."

90 A. Fuehrer, *Manusāradhammasṭṭham,* the only one existing Buddhist Law Book compared with the Braminical *Mānavadharmaśāstram*, read on 27 June 1882, *Journal of the Bombay Branch of the Royal Asiatic Society,* Vol. XV. 1881 - 1882 and 1883, London, Trubner & Co. Ludgate Hill, pp. 329 - 338; and *Manusāradhammasaṭṭham,* the only one existing Buddhist Law Book, compared with the Brahminical *Mānavadharmaśastram*, read on 14 November 1882, *op.cit.*, pp. 371-382.

90A On Buddhagosha, see James Gray, Professor of Pali, Rangoon College, *Buddhaghosuppatti: - or the Historical Romance of the Rise and Career of Buddhaghosa,* 1892, reprinted in 1998, Asian Educational Services, New Delhi and Madras; he lived in the 5th century A.D.: Bimal Charan Law, *The* Life and Work of *Buddhaghosa*, 1923, Thacker, Spink & Co., reprinted in 1997, Asian Educational Services, New Delhi.

91 See J.D.M. Derrett, "Hindu Law", in *Introduction to Legal Systems* (ed. Derrett) (1968), p. 81.

92 Georg Bühler, *The Laws of Manu,* pp. liii - liv.

93 VIII. 1-7.

94 Manu IX. 284.

95 Manu VIII. 288 & 289.

96 Manu VIII. 290-295.

97 Manu VIII. 408 & 409.

98 Manu VIII. 163.

99 Manu VIII. 164.

100 Manu VIII. 61-123; VIII. 25 & 26.

101 Manu VIII. 1-10, 23 and 24. According to the *Anguttara Nikāya* (III), one who commits matricide, patricide, or who kills an *arahant* (a perfect Holy One), wounds a Buddha (no one can cause the death of a Buddha), or creates dissension amongst members of the *Sangha*, will face grave consequences for a long period of time, immediately after his death, regardless of any previous good *kammas* he might have. Moreover, any one who commits any of these evil deeds is incapable of attaining *Arahanthood* (Sainthood) within that lifetime even after leading a pure and religious life. The counteracting influence of good *kamma* is ineffectual until the force of the evil *kamma* is spent : K. Sri Dhammananda, *Treasure of the Dhamma*, 1994, Buddhist Missionary Society, Kuala Lumpur, p. 135.

102 39. 34-35.

103 *Rakkhasa* means 'devil'. "Characteristic of all representations of Rakkhasas (Skr. *rākṣasa)* are the poweful eye-teeth protruding from the mouth like the tusks of a boar." Geiger, *Cūlavaṁsa*, Part I, p. 47, note 3.

104 P. 581.

105 P. 277.

106 Slab Inscription of Kassapa V: *Epigraphia Zeylanica*, Vol. I, pp. 45 and 47.

107 Aturupolyāgama Pillar Inscription of Dappula IV: *Epigraphia Zeylanica*, V, 387, 389. *Akusal* carries the same meaning as *sāvajja:* The *Dighanikaya-ṭika* ed. R. Candavimala, 1967, p. 438; cf. *savaj-dham nam paniva äyi* in the *Dhampiyā-aṭuvā-gäṭapadaya.*

108 On a slab of rock, partly worn, but fairly well preserved with regard to the part buried in the debris.

109 One needs to be specific about the five heinous offences, because, belonging as they do to a broad class, by reason of that fact, they attracted specific penalties and consequences, including branding: cf. Manu IX. 237 and XI. 55. Since heresy was one of the five most heinous acts in Sri Laṅka, persons guilty of it were branded, as in the case of the sixty monks branded by King Goṭhābhaya. Moreover, as we shall see when the subject of sanctuary is considered in Ch. XVII below, whether an offence belonged to the five heinous offences sometimes determined the nature of the asylum given to offenders.

110 *Epigraphia Zeylanica*, Vol. III p. 267, note 7.

111 Manu XI. 55 described *Mahāpātaka* - the five mortal sins - as (i) slaying a Brāhmaṇa; (ii) drinking *Surā;* (iii) stealing the gold of a Brāhmaṇa; (iv) violating a Guru's bed; and (v) associating with such offenders. The offenders were branded on the forehead: Manu IX. 237.

112 Bertolacci, p. 277. Is Bertolacci's version that the king shall not put to death "good priests" preferable to that of P.E. Pieris, p. 581?

113 Dolapihilla, *In the Days of Sri Wickramarajasingha Last King of Kandy*, 1959, Saman Press, Maharagama, Ceylon, p. 77.

114 See Ch. VIII text at note 47 sq.

115 Deities.

116 Buddhist Church/religion.

117 The giving of food to *bhikkhus*.

118 Clergy.

119 He was burnt in a cauldron of boiling oil: *Saddharmālaṃkaraya*, 439; *Rasavahini* of Vedeha Maha Thera, ed. K. Gnanavimala, 1961, pp. 161-2; *Rājāvaliya*, ed. A.V. Suraweera, 1976, p. 170.

120 Deities.

121 The members of the Buddhist clergy.

122 The King.

123 King.

124 Of the Sinhalese people.

125 See Ch. III notes 68 and 69.

126 Sacred 'Bō' tree opposite the Nātha Dēvālē - the shrine dedicated to the deity, Natha.

127 Dolaphilla, pp. 77 - 78. Hayley, p. 130, said: "Priests could not be tried while in their robes. The following is the record of *The King* v. *Dannegirriegalle Unnanse* (Board Minutes, June 12, 1819), in which the prisoner was tried for theft of a piece of cloth: "The case is summed up by the Judicial Commissioner and the assessors are asked their opinion. The assessors state that, until they have communication with the Nayke (i.e. Nayaka) Unnanse and chief Priests, they cannot, consistently with their religion, declare their opinion, as they cannot state a Priest is guilty, and it is necessary that the prisoner should be divested of his robes." Permission to do this was granted, and the record continues: 'The chiefs return and state that having had a communication with the Nayake Unnanse and chief priests, and as the guilt of the prisoner is very clear, they have signified their wish that the prisoner should be sent to them to be deprived of his Priesthood, when a suitable sentence short of death

can be passed.' On the next day the prisoner was brought in dressed as a common man, having been deprived of his priesthood, and sentenced to banishment from the Kandyan Provinces for two years and to be imprisoned."

128 P.E. Pieris, 580; Bertolacci, p. 276.

129 *Lak Raja Lo Sirita,* Pieris, 583; Bertolacci, 279.

130 For a description of the influence of Hindu culture, civilization and religion in the area around Borneo, Java and the Malay peninsula, see R.C. Majumdar, *Hindu Colonies in the Far East,* p. 23. For the importance of the Laws of Manu in the formulation of the law of Burma, see J.D. Mayne, *Hindu Law and Usage,* p. 25.

131 Nadaraja, 225, note 35 citing *Ma Nhin Bwin* v *U Shwe Gone,* (1914) A.I.R. 1914 P.C. 97, at p. 100.

132 Nadaraja, pp. 227-228 note 33, citing Lingat, 293-5.

132A "Vijaya and his men obtained as their wives maidens from Madhura in the Pandya country in South India." Walpola Rahula, p. 31, citing the *Mahāvaṁsa*, VII, 48-58; 69-72.

133 K.M. De Silva, pp 12-13. On the Pomparippu excavations, see S.P.F. Senaratne, *Prehistoric Archaeology in Ceylon,* pp. 29-31.

134 K.M. De Silva, p. 12; Paranavitana, *Epigraphia Zeylanica,* Vol. III, p. 5.

135 Wickremasinghe, *Epigraphia Zeylanica* Vol. III, p. 5, gave the regnal years as 145-101 BC, but at p. 4, he cautions that these dates are traditional and not reliable.

136 See Wickremasinghe, *Epigraphia Zeylanica,* Vol. III, pp. 12 and 13; Paranavitana, *Epigraphia Zeylanica,* Vol. IV, p. 113; Saddhamangala Karunaratne, *Epigraphia Zeylanica,* Vol. VII, p. xiv; and K.M. De Silva, p. 567, give the regnal years as 429-455 AD; Nicholas and Paranavitana, p. 343, give 433-459 AD.

137 See Clauses 2 and 3 of the Convention of 2 March 1815.

138 Cf. K.M. De Silva, p. 25 and p. 568.

139 *The Laws and Customs of the Tamils of Jaffna,* (1951), The Times of Ceylon, pp. 5-7.

140 *Hindu Law,* Vol. I pp. 36-37.

141 *Principles of Ceylon Law,* (1972), H.W. Cave & Co., Colombo, p.199.

142 See Ch. III note 53.

143 *Law in the Making,* 1958, 6th Ed., Oxford Univ. Press, p. 90.

NOTES TO CHAPTER IV

1 Manu VII. 142.

2 Manu IX. 252.

3 Manu IX. 253.

4 Häṭa-Dā-Ge Portico Slab Inscription, *Epigraphia Zeylanica,* Vol. II, p. 89. Cf. Kirti-Niśśaṅkamalla Slab Inscription, *Epigraphia Zeylanica,* Vol. II, p. 81, where it is recorded that the king, among other things, dispelled fear of sedition. Wickremasinghe stated, (*E.Z.*, II, p. 81, note 8): *Kanṭaka,* any troublesome, seditious person who is, as it were, a thorn to the state and an enemy of order and good government.

5 Manu, VII. 35.

6 Chapter VIII text note 104; see also Sen-Gupta. pp. 6 and 10.

7 Carmichael Lectures, 1918, Calcutta University Press, 1919, Lecture I; Jayasekera, p. 106.

8 *Ayodhya Kāṇḍa,* Ch. 67 v. 31.

8A *Epigraphia Indica.*, vol. IV., p. 251.

8B *Epigraphia-Zeylanica*, vol. III, p. 150.

9 VII. 14.

10 VII. 15.

11 VII. 17.

12 VII. 18.

13 VII. 20.

14 VII. 21.

15 VII. 22.

16 VII. 19.

17 Buddhadatta Thēro, Polwatte, 1958, p. 140.

18 A.P. de Zoysa ed., 3, p. 287.

19 Ranawella, *Niti-vimaṅsa,* p. 30.

20 *Lak Raja Lō Sirita,* P.E. Pieris, p. 580; Bertolacci, p. 276.

21 Geiger, *Culture,* p. 116.

22 Manu VIII. 303-306.

23 Manu VIII. 307.

24 Manu IX. 254.

25 Manu VIII. 308.

26 Manu VIII. 309.

27 P.E. Pieris, p. 580.

28 Bertolacci, p. 276.

29 Manu IX. 273. Cf. D'Oyly, p. 142: "The diligent judge shall administer Justice in strict conformity to the Rules of the Soottree, and Wineye, and their expositions and commentaries."

30 *Culavaṁsa,* 83. 7.

31 *Culavaṁsa,* 73. 15-18.

32 The need for punishment to be adequate, proportionate and corresponding in extent and degree to the offence and the circumstances in which it was committed, loomed large in the Sri Lankan criminal justice system: E.g in the Fragmentary Inscription from Käləṇi it is stated that "if there be any infringement of the law that has taken place in the village, the gentlemen employed as officers in the village shall hold session, inquire into it and having considered the matter, shall impose punishments commensurate with the degree of guilt." *Epigraphia Zeylanica,* Vol. VI, p. 7.

33 *Epigraphia Zeylanica,* Vol. II, p. 121.

34 See G. Tucci, "The Ratnāvali of Nāgarajuna", v. 35, *Journal of the Royal Asiatic Society,* 1934 p. 307. I am obliged to S.J. Sumanasekera Banda for drawing my attention to this.

35 P. 145, note 16.

36 VIII. 334.

37 IX. 279. Cf. *v.* 281 and Bühler's note 279 at p. 392.

38 I.e., by cutting off his head.

39 *Epigraphia Zeylanica,* Vol. V. pp. 25-26.

40 *Epigraphia Zeylanica,* Vol. V. p. 26, note 1.

41 VIII. 18-19.

42 See note 32 above.

43 Panakaḍuva copper-plate inscription of Vijayabāhu I (1055-1110 AD), *Epigraphia Zeylanica,* Vol. V, p. 25 and p. 26 note 1.

44 *Epigraphia Zeylanica,* Vol. V, p. 25, note 13. See also Paranavitana's comment on *paṭvanu* occurring in the Fragmentary Inscription from Käləṇi, *Epigraphia Zeylanica,* Vol. VI, p. 5 and p. 7, note 2. Cf. Uduwara, editing the pillar inscription from Periyasenavatta, renders *paṭavuva* as 'imposing a punishment' : *Epigraphia Zeylanica,* Vol. VI, p. 197.

45 *Epigraphia Zeylanica,* Vol. V, p. 390.

46 Pp. 54-55.

47 Knox, p. 125 said: "... if any of the Females should be so deluded, as to commit folly with one beneath herself, if ever she would appear to the sight of her Friends, they would certainly kill her, there being no other way to wipe off the dishonour she hath done the Family, but by her own blood." The "inhuman practice" was declared illegal by the Proclamation of 3 January 1821 and such killing was made punishable as for murder.

48 *Polite Conversations, Dialogues.*

49 See K.A. Kapuruhami, "Raṭa Sabhāwa", *Journal of the Royal Asiatic Society (Ceylon),* Vol. XXXVIII at p. 45. See Ch. XV text at note 125 below.

50 *Marāḷa* was really a death-duty exacted from early times: See Paranavitana, *Epigraphia Zeylanica,* Vol. III, p. 285; Knox, p. 90; Codrington, *Epigraphia Zeylanica,* Vol. IV, p. 12; and op. cit. p. 34; P.E. Pieris, *Ceylon: The Portuguese Era,* 1914, Colombo, Colombo Apothecaries Co., Vol. II, pp. 80-82. See also Ariyapala, pp. 135-137.

51 *The Historic Tragedy of the Island of Ceilao,* Lisbon, 1685, translated by P.E. Pieris, Colombo, Ceylon Daily News Press, 1948, p. 59.

52 Document written on a palm leaf. See below. Ch. XI text at n. 108 sq.

53 See above text at n.15.

54 Pp. 144 - 145.

55 *Vaṃsatthappakāsinī,* Ed. G.P. Malalasekera, p. 425, 25-27; Ranawella, *Nīti-vimaṅasā,* p. 34.

56 As did Suratissa, *Mahāvaṁsa,* 21. 8.

57 As did Sena and Guttika, *Mahāvaṁsa,* 8. 11; and Moggallāna, who 'protected the world in justice' : *Cūlavaṁsa* 39. 33; see also Kirielle Gnanawimala Thero, *Pūjāvaliya,* pp. 770, 771, 774, 776-779.

58 *Epigraphia Zeylanica,* Vol. II, p. 121.

59 *Vaṃsatthappakāsinī,* p. 425, 1-3; Ranawella, *Niti-vimaṅsā,* pp. 34-35.

60 *Pujāvaliya,* p. 782.

61 P. 222.

62 Pritīdānaka-Maṇḍapa Rock Inscription, *Epigraphia Zeylanica,* Vol. II, p. 169.

63 See the Poḷonnaruva Galpota Slab Inscription, *Epigraphia Zeylanica,* Vol. VI, p. 7, quoted above in text n. 32 and below text n.68. See also note 32.

64 See Ch. XI, text n. 68. Arbitrariness was not permitted in the traditional judicial process, both according to Buddhist philosophy and the Laws of Manu. According to *The Dhammapada*, Ch XIX (*Dhammaṭṭha Vagga*), (K. Sri Dhammananda, 1988, Sasana Abhiwurdhi Wardhana Society, Kuala Lumpur, p. 471):

Na tena hoti Dhammaṭṭho
yen'atthaṁ sahasā naye
Yo ca atthaṁ anatthañ ca
ubho niccheyya paṇḍito

He is not just if he decides a case arbitrarily; the wise man should decide after considering both what is right and wrong. The circumstances, of course, had to be placed in the context of the law. See also Ch XI note 44 A.

65 Manu, VII. 16.

66 Manu, VIII. 126.

67 *Arthaśāstra,* III, 150, Tr. R. Shamasastry, 5th Ed., Mysore, 1956.

68 *Epigraphia Zeylanica,* Vol. II, p. 121. Cf. Shakespeare, *Hamlet*, III, iv, 178: "I must be cruel, only to be kind."

69 *Amāvatura,* ed. A.P. Buddhadatta, 1958, p. 140.

70 Manu, VIII, 127.

71 Manu IX. 249.

72 Manu IX. 276.

73 Manu IX. 277.

74 Manu VIII. 129.

75 Manu VIII. 130.

76 On forms of punishment, see Ch. V below.

77 P.E. Pieris, pp. 583-584; cf. Bertolacci, p. 279.

78 Cf. sections 294, 296 and 297 of the Penal Code. The Dharmaśastras required that account should be taken of the circumstances in determining culpability. In his compilation of laws relating to crimes committed with violence (*sāhasa*), Kātyāyana stated as follows with regard to *Ātatāyi* (self-defence): "One should certainly kill without waiting for consideration a man coming with the intention of destroying [a life or dam]. No blame attaches to him who kills wicked men that are ready [to kill another], but when they have desisted from their attempt [to kill], they should be captured and not killed."

79 IX. 282.

80 IX. 283.

81 See the *Lak Raja Lo Sirita,* P.E. Pieris, 579; Bertolacci, 275.

82 According to some, (e.g. see J.F. Fleet, *Journal of the Royal Asiatic Society,* 1909, p. 22 and Fleet *Inscriptions (Indian)* in *Encyclopaedia Brittannica*, Vol. XIV, p. 624 Col. 1; M. Winternitz, *Geshichte der Indischen Litteratur*, Bibliography p. 2 note 1 cited in E.W. Burlingame, *Buddhist Legends*, 1921, reprinted in 1999 by Munshiram Manoharlal Publishers Pvt. Ltd., Vol 1, p.1) the Buddha died in 483 B.C., but according to others (see Pradhan's *Chronology of Ancient India,* Calcutta, 1927 Ch. XXII) in 487 B.C. See also Geiger, *Mahāvaṁsa*, Introduction, pp. xxii-xxviii. Cf. K.M. De Silva, pp. 3 - 4.

83 James D' Alwis, *Journal of the Royal Asiatic Society (Ceylon Branch),* 1856, Vol. III, p. 211.

84 George Turnour in the Pali Buddhistic Annals, *Journal of the Asiatic Society of Bengal,* 1838, p. 993; Jayasekera, *Customary Laws of Sri Lanka,* (1984), pp. 150-151.

85 XXI. 21-26.

86 An edifice, generally dome-shaped, built over a sacred relic.

87 Manu, VIII, 287, required the payment of the costs of treatment to be paid either to a victim who had been wounded, or in addition to and along with the fine payable to the king. Yajñavalkya dealing with personal injuries (II. 212-229) said: "He who [in assault] inflicts a bodily injury, shall pay the expenses of cure, as well as the fine that is laid down for the assault [committed]."

Today, the victim of a criminal act who wishes to be compensated, generally proceeds to institute proceedings in a civil court; however, section 17 of the Code of Criminal Procedure provides as follows:

(4) "Whenever any person is convicted of any offence or where the court holds the charge to be proved but proceeds to deal with the offender without convicting him, the court may order the person convicted or against whom the court holds the charge to be proved to pay within such time or in such installments as the court may direct, such sum by way of compensation to any person affected by the offence as to the court shall seem fit.

(5) If the offender referred to in subsection (4) is under the age of sixteen years the court may, if it deems fit, order the payment to be made by his parent or guardian.

(6) Any sum awarded under this section whether by way of costs or compensation shall be recoverable as if it were a fine imposed by the court.

(7) When the compensation ordered is by a Magistrate's Court such

compensation shall not exceed five hundred rupees to each aggrieved party.

(8) Whenever a court imposes a fine or sentence of which a fine forms a part, the court may order the whole or any part of the fine recovered to be applied.

(a) in defraying the expenses properly incurred in the prosecution; or

(b) in compensating for the injury caused by the offence committed.

(9) At the time of awarding compensation in any subsequent civil suit relating to the same matter, the court shall take into account any sum paid or recovered as compensation under this section."

88 Ed. B. Saddhatissa, p. 452.

89 VII. 140.

90 P. 142.

91 *Mahawaṁsa,* XXXVI, 80-81. Shakespeare might have approved. Cf. "Thersites' body is as good as Ajax' . When neither are alive": *Cymbeline*, iv. ii. 252.

92 *Mahawaṁsa,* p. 262, note 1.

93 Manu IX. 233.

94 Manu VIII. 126.

95 Manu VIII. 128. Nārada (XIV) said: "When thieves are not caught, the king must make good [the loss] from his own treasury. By showing himself remiss towards criminals, he would incur sin and would offend both against justice and his own interest."

96 P. 136. Killing (*panatipāta*) was one of the ten kinds of evil action (*akusala kamma*) recognized by Buddhism: *Majjhima Nikaya*, 12 . *The Dhammapada,* 129, cited by K. Sri Dhammananda, *Treasure of the Dhamma*, 1994, Buddhist Missionary Society, Kuala Lumpur, p. 85, said:

"All tremble at the rod,
All fear death;
Feeling for others as for oneself,
One should neither kill nor cause to kill."

Moreover, one who kills is warned that he "also faces threats to his life": *Dhammapada*, 67, cited by K. Sri Dhammananda, *op.cit.* p. 85.

97 *Kahāpaṇas* : *Kahavaṇu,* were coins in circulation perhaps from about 275 B.C. to the end of the third century A.D. See Osmund Boperarachchi, "Studies on Sri Lankan Numismatics: Past and

Present," *Journal of the Royal Asiatic Society of Sri Lanka, New Series*, Vol. XLI, 1998, 39 at pp. 46-47. Cf. K.M. De Silva, p. 574, who said that the coins varied greatly in weight and the metal used; and H.W. Codrington, *Ceylon Coins and Currency*, 1924, republished in 1994, Asian Educational Services , p.13 sq. See also Ch. VIII note. 174 below.

98 *Culavamsa*, 83. 4-7.

99 Geiger, *Culture*, 147.

100 *Mahāvamsa*, XXXVI, 27-28.

101 *Culavamsa*, 44. 75-76 read with *Culavamsa* 39.57 ed. Geiger, pp. 49-50, note 5.

102 44. 75-79.

103 *Culture*, p. 147.

104 *Mahāvamsa* , XXXVI. 80-81.

105 *Culavamsa*, 59. 19-22.

106 VII. 25.

NOTES TO CHAPTER V

1 Translation of the *Attanagalu Vaṃsa,* Colombo, 1866, Preface, lxxxi.

2 See Ch. IV, note 82.

3 "An Examination of Pali Buddhistical Annals," *Journal of the Asiatic Society of Bengal,* 1838, p. 993. Turnour is also quoted by B.C. Law in *Kshattrya Clans of Ancient India,* (1922) Calcutta and Simla, Thacker Spink & Co., pp. 95 and 96; and by M.L.S. Jayasekera, *Customary Laws of Sri Lanka,* (1984) Ministry of Cultural Affairs, Colombo, pp. 150-151.

4 P. 152.

5 P. 127.

6 P. 30.

7 P. 64.

8 P. 69.

9 P. 147.

10 P. 148.

11 Jayasekera, p. 152 (cf. Nicholas and Paranavitana, p. 260) stated that Nissaṅkamalla (1187-1196) "appears... to have introduced the Brahmanical legal system". What is the evidence?

12 *Culture,* p. 148, para. 141. However, in his translation of Ch. XXXV. 11 of the *Mahavaṁsa*, Geiger stated that the king "commanded these evil-doers to be flung into the caves called Kanira." Walpola Rahula, p. 86, stated that the king "ordered about sixty bad monks to be thrown down the precipice of a rock in Cetiya-pabba (Mihintale). They had not accepted his decision in a case regarding some monastic dispute, and plotted to kill the king within the *uposatha* house itself." In note 5 he adds: "Punishment was meted out to them for the plot to kill the king (*rajaparādha-kamma*)", i.e., treason.

13 Proclamation of General Brownrigg, 1815, for which see Marshall, p. 192.

14 P. 126.

15 D'Oyly, p. 43, said: "This System of Judicial Administration marks a barbarous state of Society ..."

16 D.E. Hettiaratchi, ed. *Dhampiyā Aṭuvā Gāṭapadaya,* Sri Lanka University Press, 1974, pp. 66 and 184; Ranawella, *History,* at note 135.

17 Knox, p. 94; D' Oyly, p. 86; Davy, 135; *Lak Raja Lo Sirita,* P.E. Pieris, p. 583; cf. Bertolacci, p. 279.

18 *Lak Raja Lō Sirita,* Bertolacci, p. 279.

19 *Lak Raja Lō Sirita,* P.E. Pieris, p. 583.

20 P.E. Pieris, p. 583.

21 Bertolacci, p. 279.

22 Bertolacci, p. 279.

23 P.E. Pieris, p. 583.

24 Ranawella, *Vevälkäṭiya Slab Inscription and its Copies,* 1996, Sri Lanka Historical Association, Colombo, pp. 4 and 8; cf. Wickremasinghe's version in *Epigraphia Zeylanica,* Vol. I, pp. 243-244.

25 P. 136.

26 The Board of Commissioners appointed by the Governor found that 'Law has not fixed any specific Punishment for the crime of murder [and] that it has always been punished according to the pleasure of the King' : Proceedings 25 October 1816, Government Archives, 21/109. The punishment for murder was death. The fact that the king may in certain cases have imposed a lesser punishment in the circumstances of a case, was not a mere question of pleasure, but the exercise of judicial discretion in the light of precedents. As we have seen, a monarch had to consult the books of precedents; he could not act arbitrarily. The British made treason, murder and homicide capital offences after taking over the administration of the Kandyan Kingdom: Evidence of Downing, Judicial Commissioner, 12 September 1828, Colonial Office, Section of Papers in the Public Record Office, London, 416/19 - G4.

27 P.E. Pieris, p. 583; cf. Bertolacci, p. 279.

28 *Cūlavaṁsa* 75. 163; Davy, 136 stated that sentence of death for murder was carried out by hanging. According to the Vēvälkäṭiya Slab Inscription, highway robbers were hanged. The British adopted hanging as the method of execution: For an account of some executions under British rule on 2 August 1819, see Appendix Y in P.E. Pieris, pp. 687-688. On execution by hanging according to Biblical law, see e.g. Deuteronomy, 21:22-23; Esther, 2:23.

29 *Mahāvaṁsa* XXXV. 39-44; Davy, 136.

30 *Saddharmaratnāvaliya,* 648.

31 P. 84.

32 But what happened to their mortal remains? Maha Nilame Ęllēpoḷa, described by Governor Brownrigg, as "one of the most shrewed among the Kandyan Nobles," and a man who had "always been a determined

enemy to the British Government" (Letter of Brownrigg to Bathurst, 9 October 1818, Colonial Office 54/71) had been sentenced by a Court Martial to death by hanging. He successfully claimed his right to be executed by the sword: P.E. Pieris, *Sinhale and the Patriots,* 1815-1818, Colombo Apothecaries Co., Colombo, 1950, pp. 386-387. However, his injunction that his body should be abandoned to wild beasts and dogs was ignored by the British. His body was buried: M.A. Durand Appuhamy, *The Rebel Outlaws and Enemies to the British,* Gunasena, 1990, p. 73. P.E. Pieris (p. 387) stated that according to the laws of the Sinhalese, "the criminal's body was abandoned to the wild beasts and dogs, and since Allepola had given strict injunctions that the law must be observed, his family declined to take charge of it and left the British to deal with it as they liked..." According to Marshall (p. 103), beheading followed by burial seems to have been the way in which things were traditionally done, as far as Chiefs were concerned. Public exposure was deemed disgraceful to people of rank: D'Oyly, p. 85.

33 P. 85.

34 P. 85, note.

35 P. 30.

36 P. 91. Knox (p. 66) stated that King Rājasiṁha II executed women who had incurred his displeasure by casting them into the river. Drowning seems to have been the usual mode of executing women even in later times, although, exceptionally other modes of execution may have been employed. Lawrie (Notes, pp. 212-213) said: "The Chiefs stated that according to their religion and the custom of the country a woman cannot be punished with death if found guilty of a crime for which a man would be so punished, but some other suitable punishment, i.e. by whipping through the streets and by imprisonment in a royal village and also by tying to a tree and whipping. One of the chiefs, Ellepola, said that in the reign of King Narendra Sinha a woman was put to death by torture for murder and eating human flesh. It appeared that she had murdered more than one person who had lodged in her house. In the same reign (he and the Second Adigar have heard) that a woman (Dukganna Unnanse) who lived in the palace was drowned in the river at Hanguranketa, for murder. The deposed King (Sri Vikrama Rājasiṁha) put several women to death unjustly. There was no instance of a woman put to death, found guilty of Treason. - 22nd January, 1817." In another note, Lawrie (ibid.) said: "Mampitiya Dissava of Seven Korales, Mulugama Dissava of Wallapane, Mudugala Basnayake Nilame, Pamunuwe Basnayake Nilame, unanimously find a woman guilty of murder, liable to the punishment of death, but they state that

according to the Kandyan custom the only mode of capital punishment inflicted on women is drowning. They knew but one exception to this and it was in the reign of King Kundasale, when a Berawa woman, a slave of the Gabadawe, named Galkadie, was convicted of canibalism and of having murdered about eighty persons; that number of skeletons were found in the well. This criminal had not only eaten of the flesh of her victims but had sold part of as dried venison. This woman was put to death by being dragged over flinty stones until the flesh was torn off her body, but in all other instances of being executed for capital crimes of this nature they were drowned in a pool called Kaunamelia (?) Walle in the River Palle Naba Oya on Hewaheta Oya, being bound hands and feet and weighed with a stone and then thrown into the pool. - January, 1826." A Proclamation of March 23, 1826 enacted that women condemned to death should be hanged. The preamble reads: "Whereas it appears to have been the custom in the Kandyan Provinces with respect to women capitally convicted and condemned to suffer death, that such sentence of condemnation should be carried into effect by drowning ..." Hayley, p. 124.

37 Knox, p. 65, said that King Rajasimha II had a "Guard of Cofferies or Negros in whom he imposeth more confidence than his own people. These are to watch at his Chamber door and next his Person."

38 *A History of Torture,* (1940), T. Werner Laurie, London , reprinted in 1995, Studio Editions Ltd., p. 222.

39 *Saddhrarmaratnāvaliya,* p. 852.

40 P. 85, note.

41 P.E. Pieris, p. 632.

42 On publicity, see also Ch. V text at n. 133.

43 *Saddharmaratnāvaliya,* p. 852.

44 *Mahāvaṃsa,* XXXVI. 121 - 122.

45 P. 153.

46 VIII. 34.

47 P. 85.

48 *Saddhamālaṃkāraya,* 439; *Rasavāhini* of Vedeha Maha Thera, ed. K. Gnanavimala, 1961, pp. 161-162; *Rājāvaliya,* ed. A.V. Suraweera, 1976, p. 170; ed. V. Pemananda Thēra, Granthaprakāsa Press, Colombo, 1926.

49 Ch. VI, text at n. 13.

50 *Arthaśāstra,* Ch. XIII, Bk. IV, sec. 236.

51 George Ryley Scott, pp. 164 and 166.

52 *Cūlavaṁsa,* 60. 43-44; *Mahāwaṁsa,* XXXVI. 80-81.

53 *Arthaśāstra,* Ch. XI, Bk. IV, sec 229.

54 See George Ryley Scott, Chapter XVIII. Burning to death was a recognized form of punishment for two crimes under the Old Testament: taking a wife and her mother also; and the daughter of a priest playing the harlot: Leviticus, 20: 14, 21:9. In an attempt to respect the principle of leaving the body unchanged by execution, rabbinical law required a person condemned to be executed by burning to be buried in dung up to his armpits, and a burning wick was then forced down the throat so that it descended into the body and burnt his bowels: M. Sanhedrin, VII, 2. But the Saducees were very rigorous and carried out the penalty of death by fire in a literal manner: I. Epstein, ed. *The Babylonian Talmud,* Vol. 3, p. 353, n.2.

55 Pp. 157-158.

56 Ranawella p. 2. Ranawella, p. 9 note 39, said that Wickremasinghe (*Epigraphia Zeylanica,* Vol. I, p. 250) had read *kasilä sanlakuṇ oba* for *kasiliyen lakun oba,* and erroneously concluded that offenders were branded under the armpit, whereas *kasilä* is not 'armpit' but the *instrument* with which the brand marks were stamped. On the other hand, S.J. Sumanasekera Banda (pers. comm.) stated: "There is no word *kasilyen* in ancient Sinhala; *kasilä* , is a correct reading as evident from the phrase in *E.Z.* Vol. I. Both *Nikāyasaṅgrahaya,* p. 67 and *Rājaratnākaraya,* p. 21 merely say *"vera lakunu obbavā (obā)."* Aelian de Silva (pers. comm.) also is of the opinion that the contention that '*kasili* ' does not refer to the armpit is incorrect. For instance, he pointed out that the *Sidat Sangara* in the chapter on inflexions refers to 'kasin' as meaning armpit. The basic term is '*kasa*'.

57 IX. 237.

58 IX. 240.

59 *The Laws of Manu,* p. 383, note 237.

60 VIII. 281.

61 Manu VIII, 324.

62 Manu VIII. 325.

63 George Ryley Scott, pp. 163-164.

64 Robert Pitcairn, *Ancient Criminal Trials in Scotland,* 1833, Vol. III, p. 358; George Ryley Scott, p. 91.

65 Robert Pitcairn, *Ancient Criminal Trials in Scotland,* 1833, Vol. III, p. 595 cited by George Ryley Scott, pp. 91-92.

66 See text Ch. V. between nn. 12-13.

67 *Saddharmaratnāvaliya,* 239; *Visuddhimārgasannaya,* 392. Some copies of the Vevälkäṭiya Slab-inscription refer to - *atpā kapā:* Ranawella, p. 9, note 36.

68 *Mahāvaṁsa,* XXXV. 39-44.

69 Bertolacci, p. 279.

70 87. 48-49.

71 P. 106, note.

72 Robert Pitcairn, *Ancient Criminal Trials in Scotland,* 1833, Vol. I p. 388, cited by George Ryley Scott, p. 91.

73 Pitcairn, p. 403, cited by George Riley Scott, p. 91.

74 P. 45.

75 P. 85.

76 This was not the case. The physical location of the punishment on the body of an offender was relevant, but the purpose was not to 'punish *the limb* which committed the deed'. The purpose was to punish the delinquent and deter him and others from committing similar offences, and also to expiate the offender's sin. Manu said: "With whatever limb a thief in any way commits [an offence] against men, even of that [the king] shall deprive him in order to prevent [a repetition of the crime]": (VIII. 334). "He who raises his hand or a stick, shall have his hand cut off; he who in anger kicks with his foot, shall have his foot cut off: (VIII. 280). A low-caste man who tries to place himself on the same seat with a man of high caste, shall be branded on his hip and be banished, or [the king] shall cause his buttock to be gashed: (VIII. 281). If out of arrogance he spits on [a superior], the king shall cause both his lips to be cut off; if he urines [on him], the penis; if he breaks wind [against him], the anus": (VIII. 282). Some of the prescribed *penances* for expiating an offender's sin may, as it was supposed, have "purified" the offender, but did much more than punish a particular part of an offender's body. Manu said: "He who has violated his Guru's bed, shall, after confessing his crime, extend himself on a heated iron bed, or embrace the red-hot image [of a woman]; by dying he becomes pure: (XI. 104); Or, having himself cut off his organ and his testicles and having taken them in his joined hands, he may walk straight towards the region of Nirriti [the south-west], until he falls down [dead]."

77 See below Ch. VI -, text at n. 25 sq.

78 Badulla Pillar-Inscription, *Epigraphia Zeylanica,* Vol. III pp. 80-81.

79 Vēvälkäṭiya Slab Inscription, *Epigraphia Zeylanica,* Vol. I, p. 251.

80 Ariyapala, p. 131 citing *Saddharmālaṃkāraya* 221, but adding that it was not "a punishment common at this time, as no other references are made to it." Prof. Ranawella (pers. comm.) says that "this information is not found in the *Rasavāhini* of the 13th Century from which *Saddharmālaṃkāraya* has adopted that story. Hence, it can be taken as a practice which was in vogue during the 14th century to which period *Saddha.* has been assigned to."

81 *Hamlet,* II.ii, [561].

82 P. 48.

83 Evidence of Bone, 8 October 1829, Colonial Office, London, 416/19 G-6; evidence of Crippo, Colonial Office, 416/19- G-7. According to Knox (p. 178) flogging was only by the king's command.

84 P. 197.

85 See section 52 of the Penal Code Ordinance No. 2 of 1883 as amended. Rule 254 made under the Prisons Ordinance enacted by the British, recognized British expertise in this matter. The Rule provided that lashes

"shall be inflicted with a cat o'nine tails of the regulation pattern in use in English prisons and stripes with a rattan cane conforming to the following particulars:

Weight not exceeding 2 ounces;
Length not exceeding 3 1/2 feet;
Diameter not exceeding half an inch.

It shall be the duty of the Medical Officer to see that the instruments to be used for corporal punishment have been properly disinfected and that they have not in any way been tampered with prior to use. It shall be the duty of the Superintendent [of the prison] to ensure that such punishment is inflicted only by an experienced officer, and that the protective pads of a type approved by the Commissioner are utilized to prevent injury to the neck or small of the back, as the case may be, by any accidental misdirected stroke. The form of stroke known as the 'drawing stroke' shall not be permitted."

The government wanted to make sure that a prisoner who was sentenced to be whipped should not escape the punishment and provided in Prison Rule 257 that "special care shall be taken against escape."

Rule 255 provided that no corporal punishment ordered by a court "shall be inflicted until it has been intimated to the Superintendent [of the prison in which the offender is detained] that the Minister of Justice has confirmed this portion of the sentence." When I was the Secretary

of the Ministry of Justice, I recommended to the Minister that, as a matter of policy, no confirmation of a sentence should be issued. That recommendation was accepted by the Minister, and has not been deviated from by successive Ministers during the last fifteen years. However, the law does not require confirmation by the Minister of Justice in the case of "juvenile delinquents who have been sentenced to receive cuts with a rattan": Rule 255.

86 *Ceylon and Its Capabilities,* 1843, p. 304.

87 D'Oyly, pp. 49, 51, 52, 53; Davy, p. 136; *Lak Raja Lō Sirita,* Bertolacci, p. 279; Pieris, pp. 583-584; *Saddharmaratnāvaliya,* 393; *Saddharmālamkāraya,* 242. Lawrie, (Notes, p. 211) stated: "Four men being found guilty of robbery, the Judicial Commissioner sentenced them to be confined in goal for twelve calendar months, and during that term be employed at hard labour in chains on the public works, and that at the expiration of that term they be flogged with twigs through the four streets of Kandy. - 8th July, 1817."

88 P. 85.

89 But cf. the account relating to robbery Ch. VII text n. 38 below. See also Ch. IV text at n. 76 above.

90 D'Oyly, p. 91.

91 P.E. Pieris, p. 633.

92 P.E. Pieris, p. 633.

93 P.E. Pieris, p, 632.

94 P.E. Pieris, p. 632.

95 P.E. Pieris, p. 633.

96 See text Ch. V n. 140.

97 D'Oyly, p. 86.

98 P.E. Pieris, p. 632.

99 P.E. Pieris, p. 632.

100 P.E. Pieris, pp. 632-633.

101 P.E. Pieris, p. 633.

102 P.E. Pieris, p. 633.

103 See text Ch. V between notes 74 - 75.

104 See George Ryley Scott, p. 201, who quotes in extenso from Macaulay's account of the event.

105 Pitcairn, Vol. III, p. 595, cited by George Ryley Scott, p. 92.

106 Davy, 136; D'Oyly, 40, 41. Manu, dealing with the subject of 'Assault and Hurt' stated: "A wife, a son, a slave, a pupil, and a [younger]

brother of the full blood who have committed faults, may be beaten with a rope or a split bamboo. But on the back part of the body [only], never on a noble part; he who strikes them otherwise will incur the same guilt as a thief *(sic.)*": V. 299-300. In dealing with 'Theft', he stated: "Let him carefully restrain the wicked by three methods - by imprisonment, by putting them in fetters, and by various [kinds of] corporal punishment": Manu VIII. 310.

107 Paranavitana, in editing the inscription, attributed the record to Mahinda VI: *Epigraphia Zeylanica*, Vol. VI, p. 46. However, according to Wickremasinghe, Mahinda VI ruled for five days c.1187 AD and was slain by Kitti Nissaṅkamalla who succeeded him: *Epigraphia Zeylanica*, Vol. III, p. 22. Nicholas and Paranavitana do not include Mahinda VI in their Chronological List of Ceylon Kings: They explained that "Princes who held the scepter for less than a week have not been included in this list." *History of Ceylon*, p. 340.

108 *Epigraphia Zeylanica*, Vol. VI, p. 55.

109 Messengers and police oficers of *adhikāramas*.

110 D'Oyly, pp. 86-87. Although this would appear to be arbitrary, it may not have been so, for it was a recognized principle that punishment had to be commensurate. See Ch. IV text n. 63.

111 *Mahāvaṁsa*, XXXV. 10-11; *Saddharmaratnāvaliya*, p. 239; D'Oyly, pp. 50, 51.

112 *An Account of the Island of Ceylon*. There were several editions of Captain Percival's book: 1803 (English); 1803 (French); 1804 (German); 1805 (English 2nd ed.). The second edition was reprinted in 1975 by Tisara Prakasakayo Ltd., Dehiwela, in *The Ceylon Historical Journal*, Vol. Twenty Two. My references are to the 1975 reprint. Captain Percival spent three years in Sri Laṅkā and accompanied General Hay Macdowal on his embassy to the court of Kandy in 1800.

113 P. 184.

114 See A.R.B. Amerasinghe, *Our Fundamental Rights of Personal Security and Physical Liberty*, 1995, Sarvodaya Book Publishing Services, Ratmalana, Sri Lanka, pp. 75-81.

115 P. 8, note 33.

116 P. Buddhadatta ed. p. 118.

117 *Cūlavaṁsa*, 80. 3.

118 Weerasinghe, p. 41. "*Danga*" appears in the 15 century work *Ruvanmala* ed. Batuwantudawa, 1892, 498, and in the 14th century work *Piyummala*, 85. The *Jātakaaṭuvāgetapadaya*, ed. Jayatilaka,

1943, p. 132, a work of the 12th century, refers to "dangagē". An earlier reference to the term is to be found in the *Sikhavalanda*, a work of the 10th century - *"dunamanā baddaṭa kalamanākamaṭa dangageyi hōna kalä häkili ādiya bindä ho värä eyin midī palā ā karabhedakayōda"*: Heranasikhavinisa, in *Sikhavalanda*, ed. Medauyangoda Vimalakitti, 1955, p. 122. I am obliged to Mr. S.J. Sumanasekera Banda for this information.

119 D'Oyly, p. 88.

120 P.E. Pieris, p. 633.

121 P.E. Pieris, p. 633.

122 D'Oyly, p. 88.

123 E.g., Dingi Rāla who stole a cloth from the King's bedchamber was kept in stocks: See P.E. Pieris, p. 633.

124 D'Oyly, p. 88.

125 D'Oyly, p. 88.

126 D'Oyly, p. 87.

127 See Knox, p. 75.

128 See G. Tucci, "The Ratnāvali of Nāgārajuna", v. 35, *Journal of the Royal Asiatic Society*, 1934, p. 307.

129 *Culture*, p. 147.

130 54. 31.

131 See Geiger, *Culture*, p. 147. Notwithstanding enlightend reformers, in practice prisons everywhere have been nasty places, causing inhumane suffering to their occupants, as well as their families, and, moreover, breeding serious crime through contamination, in the way that dirt breeds disease, although, perhaps, some persons may benefit by that system. There are reams of paper by researchers recording these matters; but one recalls the following words of Shakespeare, encapsulating some of the things that have been said:

"But that I am forbid
To tell the secrets of my prison-house,
I could a tale unfold whose lightest word
Would harrow up thy soul, freeze thy young blood."
Hamlet, I,v.

"I would we were all of one mind, and one mind good:
O, there were desolation of galoers and gallowses!
I speak against my present profit, but my wish hath a
preferment in 't."
Cymbeline, V. iv.

132 IX. 288.

133 Cf. Ch. V text at note 42 on the purpose of publicity.

134 D'Oyly, p. 89. Caste and rank were important considerations in the application of laws. Jennings (Lawrie's Notes, p. 220) pointed out that "caste came into the law by three routes:- (1) As a restiction on marriage; (2) In relation to rajakariya or the obligation of service tenure; (3) Through the Criminal Law; because (i) Defamation of caste was a criminal offence; (ii) Punishments might vary according to caste; and (iii) Deprivation of caste was a lawful punishment ...". Even if the punishment was death, persons of rank were entitled to a special method of execution. Corporal punishment, if at all, could only be inflicted on the King's special order, and in his presence, and the principal members of the court or household, when sentenced to corporal punishment, were entitled to undergo it at their *murapalas* (places of duty), at the hands of their own department and similar rank. (Hayley, p. 129). Hayley, discussing the subject of 'Privilege of Rank and Assessment of Penalty', said (pp. 129-130): "Chiefs and members of high families were never imprisoned in the *mahā hirage*. In 1819, the Judicial Commissioner wrote to the Accredited Agent of Government at Matale stating that a complaint had been preferred that, in a case heard before him, wherein two persons of the Kaluwalgoda family had a quarrel, Kaluwalgoda Banda, the culprit, had been tied to a tree, and corporal chastisement inflicted on him by his (the Agent's) order; that this person, being of a *nilame's* family (related to Pilima Talawuwe Dissawa), by the customs and usages of Kandy, to which the Commissioners of the Residency and Agency of Government were bound to attend, was not subject to suffer so disgraceful a punishment, for that "the punishment which may be slight in the case of a person of low rank would be grievous to another of different rank. (Board Minutes, August 10, 1819). The same Agent of Government received instructions from the Board shortly afterwards in the following terms: "It is only customary to inflict an ignominious punishment in this country when, from the lowness of the parties, fines and imprisonment would not operate as a punishment. Board Minutes, October 1, 1819."

135 P. 184.

136 The Panākaḍuva Copper Plate of Vijayabāhu I records the fact that the descendants of Lord Budal were not liable to imprisonment. See *Epigraphia Zeylanica,* Vol. V, p. 19 and 25. This is a case we shall discuss later: See Ch. IX text at n. 292. In ancient India, punishment sometimes varied with the caste of the offender. In Sri Laṅkā, consideration was given to a person's rank. Such distinctions were in

conformity with prevailing customary standards and were rational because good government was based on the organization of society in certain ways. Such distinctions were not regarded as being in violation of the principles of equal justice: Indeed, according to prevailing public expectations it would have been unjust to treat persons who were not regarded by the community as equal, equally.

It has been pointed out that the early British rulers "had shown a more faithful adherence to traditional practices than the Kandyan rulers themselves"; and that "... although differentiations in inflicting punishment were not accepted in theory, in practice they continued to prevail even in the judicial courts established by the British." Hanging was "the general mode of capital punishment ... but *radala* nobles were decapitated. A Buddhist monk or a superior headman was not flogged. A fine was imposed on a high caste person while corporal punishment was inflicted on a low caste person for the same offence. Cases in which *radala* nobles were the defendants were heard only before the Resident and Judicial Commissioner." K.M.P. Kulasekera, "The Caste system and British administration in Sri Lanka, 1815 - 1832", *Kalyanī, Journal of Humanities & Social Sciences of the University of Kelaniya,* 1984-85, Vols. III & IV, 205 at pp. 219, 227-228. See also Ch. XIV note 103 below.

137 D'Oyly, p. 89.

138 D'Oyly, p. 91.

139 P. 89.

140 See text Ch. V at nn. 87 sq.

141 See also Ch. IV text at note 76.

142 P. 89.

143 Badulla Pillar Inscription, *Epigraphia Zeylanica,* Vol. V. p. 190, note 9, where Paranavitana pointed out that *daḍa* (Skt. *daṇḍa*) in old Sinhalese denoted not only an imposition as a penalty, but also any other due: Sorata's Dictionary, *s.v.., daḍa*. Lawrie (Notes, p.210) noted that in the last King's reign, "a man found guilty of theft was made to pay a Wandiya or fine of 400 *ridīs*. - 28th May, 1817."

144 Panākaḍuva Copper Plate of Vijayabāhu I, *Epigraphia Zeylanica* Vol. V, p. 25. At p. 25 note 11, Paranavitana pointed out that the words *daḍa muḍu* usually form a pair and together means 'fine', although at an earlier time *muḍa* was a shaving of the head, which was also a form of punishment.

145 D'Oyly, Pp. 39, 87-88.

146 D'Oyly, p. 87.

147 *Väḷäkme dämīma,* i.e. the restraining of the debtor, is referred to in the Badulla Pillar Inscription: *Epigraphia Zeylanica,* Vol. V, p. 191. On this matter see Ch. XI note 166. Percival, p. 184, said: "Debt is looked upon as a heinous offence in Candy, as well as in all other poor countries where there is little accumulation of wealth in the hands of individuals. In the large fines imposed on debtors and those guilty of personal injuries, the king never fails to come in for his share." Percival's views are not supported by evidence. On the imposition of fines for the non payment of debts and the duties of debtors, see Manu VIII. 176 sq. On the alleged corruption of chiefs, and the alleged abuse of the powers of Chiefs relating to fines, see Ch. X text at n. 81 sq.

148 Davy, p. 136; D'Oyly, p. 90. Long hair was esteemed, and having it cut was a misfortune. Knox (p. 169) said: "The great ones also generally, and spruce young men, do wear their hair long hanging down behind: but when they do work or travail hard, it annoying them, they tie it up behind." With regard to women, Knox (pp. 170-171) said: "Their hair they oyl (*sic.*), with coker-nut (*sic.*) oyl to make it smooth, and comb it all behind. Their hair grows not longer than their wasts (*sic.*) but because it is a great ornament to have a great bunch of hair, they have a lock of other hair fastened in a plate of engraved silver and guilded (*sic.*), to tie up with their own, in a knot hanging down half their backs." Lawrie (Notes) gives four examples of degradation by cutting off the hair. At p. 210 he stated: (1) "A woman having admitted theft, the Judicial Commissioner sentenced her to have her haircut off. - 7th April, 1819. At p. 213 he stated: (2) "A woman found guilty of selling arrack was sentenced to have the *konde*" (knot of hair tied at the back of the head) "of her hair cut off. - 20th October, 1817." (3) "A woman being found guilty of riot, the Judicial Commissioner ordered her *konde* to be cut off, as the only mode of punishing her, there being no proper place to confine a woman in, and flogging a woman being justly reprobated as an improper mode of punishment. - 18th October, 1817." (4) "A Malay woman being found guilty of purchasing from a soldier twenty rounds of ball cartridge, was sentenced by the Judicial Commissioner that her hair be cut off and that she be led through the streets of Kandy by beat of tom tom proclaiming her offence. - Judicial Commissioner's Diary, 16th January, 1818." Hayley, p. 128, said: "It was considered a disgrace to have the hair cut short. The punishment was chiefly adopted in the case of women, or by masters in respect of their slaves, but was also imposed on free men. Incontinence, delinquences connected with the court, and assumption of honours and apparel above what was due to a person's rank, were punished in this

manner. It was the customary legal and appropriate penalty inflicted by the husband on an adulterer detected in his house. In theory, the King alone could sentence a free person to undergo this disgrace, but the principal *mohoṭṭālas* and *kōrālas* in the *disāwanes* made use of it also. The Judicial Commissioner" (in the early days of British rule) "employed it as an appropriate punishment for women. By regulation No. 4 of 1820, however, this mode of punishment was made illegal."

149 Royal Storehouse.

150 D'Oyly, p. 91.

151 P. 90. On castes, including the Roḍī caste, see Bryce Ryan, *Caste in Modern Ceylon*, 1953, Rutgers Univ. Press, New Brunswick, New Jersey. See also Knox, pp. 132-135. Knox said: "Many times when the King cuts off great and noble men, against whom he is highly incensed, he will deliver their daughters and wives unto this sort of people, reckoning it, as they also account it, to be far worse punishment than any kind of death. This kind of punishment being accounted such horrible cruelty, the King doth usually of his clemency shew them some kind of mercy, and pittying their distress, commands to carry them to a river side, and there to deliver them into the hands of those, who are far worse than the executioners of death: from whom, if these ladies please to free themselves, they are permitted to leap into the river and be drowned; the which sometimes will choose to do, rather than to consort with them." Hayley. (pp. 128-129) said: "One of the severest punishments which could be inflicted was the consignment of persons of high caste to the *rodiyas*. The offender was thereby for ever degraded. The King alone could impose the penalty, and instances of its imposition appear to have been rare. It has however been suggested that the fine physique of many of these outcasts is due to the admixture of the blood of the best families, derived from courtiers, who from time to time suffered this form of banishment."

152 *Epigraphia Zeylanica*, Vol. V, p. 26, including notes 4 and 5.

153 P.E. Pieris, p. 580; cf. Bertolacci, p. 276. According to Walpola Rahula, p. 231, the king could degrade persons to a lower caste as a punishment: He said the beef-eaters were made scavengers in the palace by king Bhātīya in the well-known case, although, perhaps, they were not reduced to the position of "real sudras". "For, a little later, we see the same king raising a beautiful daughter of one of those 'sudras' into the position of a member of his harem. We do not know for certain if all those 'sudras' were reinstated into the status quo ante. But we are told that the relatives of the beautiful girl enjoyed as a result of this marriage a comfortable life ever after." He cites *Vibhangaṭṭhakatha*

(Sammohavinodani) the Commentary on the *Vibhanga*, p. 310. See also Ch. V note 153 and Ch. VII note 127 below.

154 *Dhampiyā-aṭuva -gäṭapadaya,* p. 184.

155 Panākaḍuva copper plate inscription of Vijayabāhu I : *Epigraphia Zeylanica,* Vol. V, p. 25.

156 *Culavaṁsa,* 83.7.

157 *Dhampiyā-aṭuvä -gäṭapadaya,* p. 184.

158 Ch. IV, text at n. 72.

159 Community based corrections were first introduced into modern Sri Lanka by section 247 of the Administration of Justice Law No. 44 of 1973. See also section 18 of the Code of Criminal Procedure No. 15 of 1979 as amended by the Code of Criminal Procedure (Amendment) Act No. 49 of 1985.

160 D'Oyly, p. 89.

161 Weerasinghe, p. 45; 04 February, 1991, p. 15; Ranawella, *History,* at note 144, citing *Sammohavinodani,* ed. P. Pannananda, 1932, p. 310. See Ch. V. note 153.

162 *Kirā,* ger. of *Kiranavā,* 'to weigh'.

163 *Epigraphia Zeylanica,* Vol. I, p. 106.

164 On the question of the king and the regnal date, see Ch. V note 107.

165 *Epigraphia Zeylanica,* Vol. VI, p. 55.

166 Manu IX. 229.

167 Ranawella, *Vēväḷkäṭiya,* : p. 9.

168 Geiger, *Culture,* p. 147; see also *Saddharmaratnāvaliya,* 239, 395;*Mahāvaṁsa,* XXXVI. 111-112; *Cūlavaṁsa,* 44. 79; Slab-inscription of Kassapa V, *Epigraphia Zeylanica,* Vol. I, p. 54; Badulla Pillar Inscription, *Epigraphia Zeylanica,* Vol. V, p. 194, note 8; Kaludiyapokuṇa Inscription, *Epigraphia Zeylanica,* Vol. III, p. 267; Panākaḍuva Copper Plate of Vijayabāhu I, *Epigraphia Zeylanica,* Vol. V, p. 26; Mäḍirigiri Slab Inscription, *Epigraphia Zeylanica,* Vol. VI, p. 57; *Mahāvaṁsa,* XXXVI. 111-112; *Cūlavaṁsa,* 44.79.

169 *Mahāvaṁsa,* XXXV. II; Slab Inscription at the North Gate of the Citadel, *Epigraphia Zeylanica,* Vol. II, p. 164; *Saddharmālaṃkāraya,* pp.425, 426; D'Oyly, p. 47.

NOTES TO CHAPTER VI

1 See above Ch. III text at nn. 96 sq.

2 *Saddharmaratnāvaliya,* 393; *Mahāvaṁsa,* 36.121.

3 As we have seen, a monk who committed adultery with the queen, an act of treason, was put to death. See Ch.V. text at nn. 48 and 49. Sixty rebellious monks were thrown down a precipice by Kaṇirājanu Tissa (31-34 AD): *Mahāvaṁsa* XXXV. 10-11. See Ch. V, note 12. Rebellious Monks were executed by Rājasiṁha II (1635-1687): Knox, p. 141 and pp. 159-160. Was "Paranataley Anoonaika-Ounnansi", a "chief priest" who was executed during the reign of Sri Vikrama Rājasiṁha (1798-1815): Davy, p. 241 - also guilty of treason? The King, no doubt wished to get rid of Paranatala Anunayaka Thēro, or Moratota Kuda Unnansē, because he believed him to be hostile and to have some connection with the intrigues of Ähäḷēpoḷa. See Colvin R. de Silva, p. 142. However, the charge against him was not treason but *magam soliya,* i.e. intimacy with a woman while being a *bhikkhu.* He was a person "noted for his learning and piety": Colvin R. de Silva, p. 142. Davy, p 241, said the *bhikkhu* was "a man, in the estimation of the natives, of great learning and goodness." As we have seen, the law prevented a king from putting to death "good priests" : *Lak Raja Lō Sirita,* Pieris; 581. But cf. Bertolacci, p. 277 "he shall not put to death any member of the priesthood." Bertolacci's version is preferable: Cf. Manu, IV. 165 *et seq.* and XII. 55; and VIII. 379-381, quoted above Ch. III text immediately preceeding note 102, who stated that a Brāhmaṇa should never be executed: At the trial of Paranatala Anunāyaka Thero, it was pointed out to the King by the Mahā Nāyaka Thēro of Malwatta that cases where *bhikkhus* had violated the vows of celibacy were not unknown; but an issue involving a violation of the rules for *bhikkhus (vinaya)* was a matter to be dealt with by the *bhikkhus* themselves; "it has never happened that a *bhikkhu* for violating a precept has been deprived of his life. Such punishment would be altogether against the principles of the Buddha's doctrine. In Laṅkā no *bhikkhu* has ever had his head cut off for not keeping to the path of purity he was bound to follow by his own choice." Sri Wickrama Rājasiṁha turned towards the speaker and said: "In that case the sentence may be altered. He might be shot." Moreover, the only evidence in the case was that of the King himself. See below Ch. IX text from n. 189 sq. See "The Trial of Paranatala Anunayaka Thero", in P. Dolapihila, *In the Days of Sri Wickramarajasingha Last King of Kandy,* Saman Press, Maharagama, 1959, pp. 229-244. That was not the only instance in which Sri Vikrama Rājasiṁha executed a pious *bhikkhu.* He had also executed Sooriyagoda Thēro who he suspected had some connection with his brother-in-law,

Mutusvamy. See p. 83 above. For an account of that case, see "The Execution of Sooriyagoda Thero" in Dolapihilla, at pp. 68-79. See above Ch. III text at n. 103, for the defence presented by the Mahānāyaka of Malwatta.

4 *Cūlavaṁsa,* 36. 118-122.

5 59. 16-22.

6 *Culavaṁsa,,* 60. 35-43.

7 *Culture,* pp. 148-149.

8 *Cūlavaṁsa,* 75. 160-163.

9 *Cūlavaṁsa,* 75. 190-192.

10 P. 47.

11 Manu IX. 232 said: "... those who serve his enemies the King shall put to death."

12 Paranavitana, *Epigraphia Zeylanica,* Vol. III, p.284.

13 Pp., 47-48.

14 D'Oyly, p. 54.

15 "On those who rob the King's treasury and those who persevere in opposing [his commands], he shall inflict various kinds of capital punishment, likewise on those who conspire with his enemies." Manu IX. 275.

16 *Rasavāhini,* ed. K. Nanavimala, p. 127.

17 *Saddharmālaṃkāraya,* 425, 426. Were there other acts of treason? Walpola Rahula, p. 71, said: "The constitutional position of Buddhism was so strong that to act against the *Sasana* was regarded as high treason. Thus, one of the charges framed against the war criminals who were against Dhātusena (460-478 A.C.) during the preceding Tamil rule was that "these men protected neither the king nor the *Sāsana*; *Mahāvaṁsa*, XXXVIII, 38 - *te maṃ vā sāsanaṃ vā no rakkhiṃsu.*"

18 See Ch. VIII text after n. 258 sq.

19 See Ch. VI text n. 40 sq.

20 *Saddharmaratnāvaliya,* pp. 239, 395.

21 See Ch. V text at n. 151 sq.

22 Cf. the Slab Inscription of Bhuvanaikabāhu VI, *Epigraphia Zeylanica,* Vol. III, p. 285. The descendants of Lord Budal, however, were exempted from confiscation: Panākaḍuva Copper Plate of Vijayabāhu I, *Epigraphia Zeylanica,* Vol. V, p. 26. Section 114 of the Penal Code provides for the forfeiture of an offender's property where he is

convicted of waging, or attempting to wage war, against the Republic, or abetting such an act.

23 D'Oyly, p. 47. See also Ch. VI text at note 49 sq. King Niśśaṅkamalla warned against the forfeiture of property in the event of conviction for treason: *Epigraphia Zeylanica,* Vol. II pp. 157 and 163 (Slab Inscription at the North Gate of the Citadel). See Ch. VI text at note 43.

24 P. 239; see also p. 395 where ministers guilty of conspiring against the king were banished or imprisoned.

25 *Mahāvaṁsa,* XXXV. 39-44; *Culavaṁsa,* XXXIX, 34-36.

26 P. 85.

27 For an account of the war of 1803, see Percival, pp. 281-305.

28 On the Kandyan Wars of the nineteenth century, see G. Powell, *The Kandyan Wars: the British Army in Ceylon, 1803-1818,* London, 1973.

29 *The History of Ceylon from the Earliest Period to the Present Time with an Appendix Containing an Account of Its Present Condition,* London, 1845, republished in 1971 by Gregg International Publishers Ltd, Westmead, Farnborough, Hants., England. My references are to the 1971 edition.

30 P. 316.

31 P.E. Pieris, p. 674. On the evidence recorded before Henry Augustus Marshall, Sitting Magistrate, relating to the abortive invasion given by Muttusvamy's servant, see P.E. Pieris, pp 674-683, Appendix W.

32 Knighton, p. 317 note.

33 See Colvin R. De Silva, pp. 93-106. According to Percival, Sri Vikrama Rājasiṁha employed 'Malabars' and 'Malays' as his body guards. "These Malays and Malabars were the people who in 1803 so ferociously attacked our garrison at Candy, and being all intoxicated with opium led on the Candians who without them would never have been able to reduce Major Davie to the necessity of surrendering the palace." Percival, p. 181.

34 Pp. 144-145.

35 *Mahāvaṁsa,* XXXV. 42.

36 *Culavaṁsa,* 75. 163.

37 See Ch. V, text at n. 35 sq.

38 *Culavaṁsa,* 60. 43-44. Cf. *Mahāvamsa* XXXVI. 80-81 where the king burnt corpses to inspire the belief that the rebels had been condemned by him to death by fire.

39 *Culavaṁsa,* 75. 161-162. Manu, IX. 276 required the king to cause persons who broke into houses and committed theft at night "to be impaled on a pointed stake". We have seen that traitors were impaled. See Ch. V. text at n. 79 sq.

40 *Caryota urens.*

41 Dolapihilla, pp. 232-233.

42 Badulla pillar inscription of Udaya IV (946-954), *Epigraphia Zeylanica,* Vol. V Part II, p. 91.

43 *Epigraphia Zeylanica,* Vol. II, p. 164.

44 VII. 12.

45 VII. 9.

46 *Culavaṁsa,* 38. 38.

47 *Cūlavaṁsa,* 39. 34-36.

48 *Mahavaṁsa,* XXXVI. 121.

49 P. 104, note, paragraph 2.

50 Knox's work, *An Historical Relation of the Island Ceylon in the East-Indies,* (1681) was reprinted in 1958 as Volume V of *The Ceylon Historical Journal* by Tisara Prakasakayo and again by the same publisher in 1966. My references are to the 1966 edition. In 1989 the "Revised, Enlarged & Brought to the verge of Publication as The Second Edition by Robert Knox Together with his Autobiography and All the New Chapters, Paragraphs, Marginal Notes added by the Author in the two Interleaved Copies of the Original Text of 1681, Edited with Introduction & Notes by J.H.O. Paulusz", was published in two volumes by Tisara Prakasakayo in *The Ceylon Historical Journal Monograph Series* Vol. 13. Vol. I contains Paulusz's Introduction, while the second volume contains the text of the second edition. Knox, a sailor in the service of the English East India Company, was captured by the King of Kandy and held captive in Sri Laṅkā for almost two decades. He mixed freely with the people and made a detailed record of his observations. It inspired Daniel Defoe's *Robinson Crusoe.?* On that matter see E.F.C. Ludowyk, "Robert Knox and Robinson Crusoe", *University of Ceylon Review*, Colombo, Vol. X, pp. 243-252.

51 P. 75.

52 P. 74.

53 See text at note 15 above.

54 Manu IX. 263.

55 Manu IX. 269. Perhaps the King, having come out second best, was so angered that he deemed it justifiable to punish persons other than the delinquent? Manu VII. 9.

56 P. 74.

57 As far as I have been able to ascertain, there is no support for this practice in any literature.

58 There appears to be no instance in Sri Laṅkā of execution by beasts except by elephants. See Ch. V. text between notes 45 - 48 above. However, Manu VIII. 371 stated: "If a wife, proud of the greatness of her relatives or [her own] excellence, violates the duty which she owes to her lord, the King shall cause her to be devoured by dogs in a place frequented by many."

59 Manu IX. 276 prescribed impalement for robbers who broke into houses at night. Some countries later replaced impalement with crucifixion: George Ryley Scott, p. 153.

60 IX. 288.

61 *Mahāvaṁsa,* XXXVI. 121; *Culavaṁsa,* 75. 161-162.

62 Note at pp. 103-104

63 See above Ch. III text at n. 125.

64 P. 177-178.

65 P. 149.

66 P. 153.

67 Pp. 330-331.

68 Report of Geo. Lusigan, Secretary for the Kandyan Province, 8th February, 1819, Colonial Office, London, 54/73.

69 Pp. 240-241.

70 See text Ch. VI at n. 111.

71 P. 126.

72 Cf. K.M. De Silva, p. 226.

73 See Colvin R. de Silva, p. 133.

74 Cf. Colvin R. de Silva, p. 132.

75 See K.M. De Silva, pp. 224-225.

76 See Ch. VI text at n. 40.

77 D'Oyly, *Diary,* p. 75.

78 Colvin R. de Silva, p. 124.

79 Colvin R. de Silva, p. 64.

80 Colvin R. de Silva, p. 122 and p. 148.

81 Cf. Colvin R. de Silva, pp. 132-134.

82 Colvin R. de Silva, pp. 52, 128, 145-146.

83 See K.M. De Silva, p. 220.

84 P. 223.

85 Namely, the Portuguese and the Dutch.

86 Reproduced in Henry Marshall, pp. 191-192.

87 P. 241. Davy, was the physician and surgeon to Governor Brownrigg. His book was dedicated to Brownrigg by Davy "with great respect, by his obliged and humble Servant The Author". In his dedication, Davy said that Brownrigg "rescued" the Kandyan Provinces "from oppression and with the consent of the People made [them] an integral part of the British dominions."

88 P. 149.

89 Reproduced in Marshall, pp. 193-195.

90 P. 149.

91 Cf. *Silent enim leges inter arma:* Cicero, *Pro Milone,* iv.xi. (Laws are inoperative in war). I do not agree with this view. See text immediately preceding Ch. VI note 133.

92 P. 325.

93 For an account of the events of that period, see Colvin R. de Silva, pp. 62-188; K.M. De Silva, pp. 220-235; C.R. de Silva, 146-150; Davy, 233-249; Marshall, 54-169; Knighton, pp. 308-325. See also M.A. Durand Appuhamy, *The Rebel Outlaws and Enemies to the British,* Gunasena, 1990.

94 Colvin R. de Silva, p. 133.

95 Colvin R. de Silva, p. 62.

96 Colvin R. de Silva, pp. 62-64.

97 Colvin R. de Silva, p. 122.

98 P. 77. On Pilima Taḷauve's intrigues and designs on the Kandyan Throne, see Colvin R. de Silva, p. 65 ff.

99 See Ch. VI text at n. 95 above.

100 See Colvin R. de Silva, pp. 123-124. See also Ch. VI text at note 135 and note 144 below.

101 P. 122.

102 For letters addressed to the Home Government from 1811-1815 by Major General John Wilson and Governor Brownrigg, see Tennakoon Vimalanada, *Sri Wickrema, Brownrigg and Ehelepola,* 1984, Gunasena.

103 K.M. De Silva, p. 224-225.

104 See Ch. VI text above between notes 26 - 31.

105 P. 227.

106 Marshall, p. 101.

107 P. 131; see also Davy, p. 239.

108 As we have seen, Ch. VI text before n. 73 above, Ähäḷēpoḷa had had a long association with the British.

109 Pp. 104-105.

110 After his arrest in 1818, Ähäḷēpoḷa was held in custody, without trial, despite his appeal for a trial and execution if found guilty, or release. He was banished to Mauritius in 1825 where he died on 4 April 1829.

111 Pp. 240-241. Henry Marshall, pp. 102-103, gave a slightly different version, although he cities Davy as his source. See also Knighton, pp. 322-333; Dolapihilla, pp. 259-263; Colvin R. de Silva, p. 141.

112 "The night of the 15th or 16th May witnessed a veritable holocaust. Pusvälle, Disāva of Mātalē, who had long been intriguing with the British and was in league with the rebels, was inveigled to Kandy by promises of great honours, falsely charged with insulting the King, tortured and executed. Ähäḷēpoḷa's brother-in-law, son of the Disāva of Uva, met the same fate." Colvin R. de Silva, pp. 140-141.

113 Marshall, p. 101, stated that when Ähäḷēpoḷa's designs became known, "he was deprived of all his public offices, and his wife and children who were considered pledges of his loyalty, were imprisoned."

114 Tolfrey had said the boy was eighteen: Marshall, 103.

115 The story of the younger brother stepping forward etc. is not found in Marshall's version.

116 Marshall's version was that the 'noble lady' was ordered to pound the decapitated head. But there is no reference to 'torture', unless Davy, as he was entitled to, included extreme mental distress as 'torture'. What Marshall said was this: "The threat of giving her and her relations to be defiled by the Rhodias, [people of a very low caste] had the effect of supporting her fortitude to suffer any infliction. In this resolution it is said she was encouraged by the chief who superintended the execution, and who being a relation of her husband, at the risk of his life reminded her of the disgrace that would be brought on her family by seeming to

accept such terms. But this noble lady did not require any encouragement, having displayed the most astonishing fortitude throughout this fearful trial. The wretched woman lifted the pestle and let it fall." On consignment to Roḍī, see p.423, n. 151 above.

117 There is no reference to this in Marshall's account.

118 This part of the episode is not related by Marshall, but Governor Brownrigg in his Official Declaration of the Settlement of the Kandyan provinces makes express reference to the youngest being 'torn from the mother's breast'.

119 Ähälēpoḷa's sister.

120 The wife and sister of Pusvälle, Disāva of Mātalē, who had also been executed.

121 Bogambara lake.

122 Mirando Obeysekera, "Ehelapola the Great - A hero and a martyr," *The Island*, September, 1998, p. 9.

123 *The Rebel Outlaws and Enemies to the British*, p. 149.

124 Colonial Office, London, 54/84.

125 P. 184. Knox (p. 334) refers to a Portuguese General, Simon Caree, who "When he had got any victory over the Chingulays, he did exercise great cruelty. He would make the women beat their own children in their mortars, wherein they used to best their corn." This form of punishment may not have been unknown in ancient India. It was said that Emperor Aśoka, when he was a young man, established a prison, following the example of Jemma, the God of the infernal regions and judge of the dead, to punish those on earth. He carefully chose a most wicked man to be in charge of his prison. That man, it is said, put a man in a stone mortar and pounded his body "to atoms, till a red froth formed on the surface of the mass." A pious *bhikkhu* who witnessed this was himself seized and thrust into a cauldron of boiling water, but miraculously escaped, and later preached to the Emperor. Aśoka was converted and ordered the prison to be destroyed: *Travels of Fa-Hian and Sung-Yun*, tr. by Charles Beal, 1996, Asian Educational Services, pp. 129-130.

126 Colvin R. De Silva, p. 141, seems to accept the version that the heads were pounded, but in note 1 at that page he refers to P.E. Pieris (see next note) as providing 'an interesting discussion of the evidence on this point'.

127 *Sinhale and the Patriots, 1815-1818*, 1950, p. 634.

128 See Ch. IV text at n.81; Ch. V. text at n. 1 sq.; Ch. VIII text at nn. 229-231.

129 P. 85.

130 P. 241.

131 Pp. 90-91.

132 "The Growth of Judicial Ethics", *Massachusetts Law Quarterly*, (1925), Vol. X (3), p. 12.

133 But see note 90 above.

134 I am not referring to Emergency Regulations.

135 On the trial and execution of Piḷima Taḷauvē, see Dolapihilla, pp. 177-189. See also Ch. VI note 99.

136 Marshall, p. 100.

137 Marshall, p. 102, note, said: "Except in Russia, criminals are rarely flogged before capital punishment. The party who conspired to assassinate Peter the Great were all seized and punished with great severity by the knout, or the battoques, a kind of bastinado, (stick-beating), and then beheaded." In Sri Laṅkā, robbers who were sentenced to death were flogged through the streets as they were marched to the place of execution: See Ch. V text at n. 87 sq.

138 Colvin R. de Silva, p. 140; Marshall, p. 102.

139 P. 102, note.

140 Sir George Jeffreys (1644 (8?)- 19.1. 1689) was known as "Hanging Judge". Charles II appointed him Chief Justice of King's Bench and a Privy Councillor, although the king admitted that Jeffreys had 'no learning, no sense, no manners, and more impudence than ten carted street walkers.' Although in civil matters he was perceptive, able and impartial, when it came to matters involving the state, he openly supported the state. Two days after the defeat of Monmouth at the battle of Sedgemoor, a commission of five judges under Jeffreys was sent into the western counties to try those who were involved in the rebellion. With the support of a military escort, the commission sat at Winchester, Salisbury, Dorchester, Exeter, Taunton, Wells and Bristol. The estimated number of executions for high treason is in excess of 320 (but it was probably less). Some 800 rebels were given to courtiers to be sold into slavery. Countless others were whipped and imprisoned. Jeffreys himself apparently combined business with personal advantage and amassed a considerable fortune from the rebels and their families. Nonetheless, for these services, Jeffreys was promoted to the office of Lord Chancellor on 23 October 1685. As in the office of Chief Justice, Jeffreys as Lord Chancellor seems to have been able and impartial when he confined himself to civil matters, but showed the same

arrogance and lack of judgment when involved in affairs of state. For example, on 8 June 1688 he advised the imprisonment of seven bishops who protested against the King's declaration of liberty of conscience. Dependent as he was on the King, when the King fled, Jeffreys too attempted to get away, disguised as a common sailor. He was recognized and attacked by an angry mob, but rescued by the militia. At his own request Jeffreys was taken to the Tower where he remained suffering from injuries and illness till he died in 1689. See A.W.B. Simpson, *Biographical Dictionary of the Common Law,* Butterworths, London, 1984, pp. 274-277.

141 For example, in the reaction which followed upon the suppression of the Peasants' Rising of 1381 ('Wat Tyler's Rebellion'), Chief Justice Tresilian wreaked vengeance from the Bench, much as Jeffreys did after the suppression of the Monmouth Rebellion three hundred years later, although on a smaller scale: Bond, p.5. Bond (p.11), referring to the sham trials and judicial assassinations of Seventeenth Century England, stated: "Modern lawyers simply cannot conceive of such proceedings as trials. It may help a little to recall that this was a century of civil war and revolution, that partisan spirit, and indeed, partisan fear, were most intense, and that the prosecutions were warfare."

142 *Culavaṁsa,* 75. 161-162.

143 *Lak Raja Lo Sirita,* Pieris p. 579; Bertolacci, 279.

144 Pp. 100-101

145 The reprieve was brought about by the intercession of the chiefs: Colvin R. de Silva, p. 124

146 See George Ryley Scott. Scott wrote in 1940 - before the savage deeds of Hitler and the Japanese during the Second World War and the those of Stalin and other Communist leaders during the Cold War and more recent examples became known.

147 P. 203.

148 P. 189.

149 Ibid.

150 Article 6 of the Proclamation of 1815 which recorded the terms agreed upon at a Convention between Governor Brownrigg, on behalf of the British who were then taking over the last territory ruled by a Sri Laṅkan monarch, and the principal Kandyan Chiefs on 2 March 1815, abolished torture of every kind. By Ordinance No. 5 of 1852, the whole of the Kandyan Criminal law was abolished and the law of the Maritime Provinces substituted. Sri Laṅkā is now governed by the Penal Code, Ordinance No. 2 of 1883, adapted from the Indian Penal

Code of 1860, as amended. Sri Lankā acceded to the International Covenant on Civil and Political Rights on 11 June 1980. The Covenant converted the mere *declaration* of 1948 into *treaty* provisions. On December 10 1984 the U.N. General Assembly adopted the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. That Convention entered into force on June 26 1987: GA res 39/46, 39 UN GAOR Supp. (No. 51) at 197, UN Doc A/39/51 (1984). By an instrument of accession dated 14 December 1993 and deposited with the Secretary-General of the United Nations on January 3, 1994, Sri Lankā acceded to the U.N. Convention. The Convention entered into force in Sri Lankā on February 2 1994. In terms of Article 2 (1) of the Convention, each State Party is required, inter alia, to "take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction". The Parliament of Sri Lankā enacted the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment Act No. 22 of 1994. It was certified by the Speaker on 20 December 1994. Sri Lankā ratified the Optional Protocol of the Covenant on Civil and Political Rights in 1997. The first Republican Constitution of 1972 had a Chapter on Fundamental Rights and Freedoms, but it made no specific prohibition against cruel, inhuman, degrading treatment or punishment. All that it did say was that "no citizen shall be arrested, held in custody, imprisoned or detained except in accordance with the law." The Constitution of 1977, however, specifically states in Article 11: "No person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Numerous cases have been filed against law enforcement personnel and in many cases the Supreme Court has called upon the administrative authorities to take appropriate disciplinary action against offending officers. There are many decisions of the Supreme Court of Sri Lankā declaring violations of Article 11 of the Constitution and condemning such transgressions.

151 P. 125.

152 P. 192, note.

153 Pp. 110-111.

154 Marshall, pp. 121-122.

155 Geiger, *Culture*, p. 147.

NOTES TO CHAPTER VII

1 P.E. Pieris, p. 581; cf. Bertolacci, p. 277. The Eḷāra episode relating to the damaging of the *thupa* which I have referred to at p. 48 above, as Walpola Rahula, p. 72, observed, shows that "death was probably the penalty for the crime of causing damage to places of Buddhist worship in ancient Ceylon." With regard to Bō trees, Walpola Rahula, p. 120, having observed that Buddhists treated them with "affection and veneration", stated as follows: "In a monastery, the Bōdhi occupies place second only to that of the relics of the Buddha. A branch of a Bō-tree could be cut off only if it interfered with a *cetiya* or *paṭima* (image) or an *asanaghara* in which Buddha-relics are enshrined, or if the removal of a rotting or an oozing branch facilitates the healthy growth of the tree, like a surgical operation on a human body. A branch could also be removed if birds perching upon it soiled the *cetiya*. But no branch of a Bō-tree could be cut off for any other purpose."

2 *Lak Raja Lō Sirita,* P.E., Pieris, p. 583; Bertoclacci, 279. Weerasinghe, p. 41; 30 January 1991, p. 17, citing *Lak Raja Lō Sirita,* VIII, stated that the offence was punishable "with death or rigorous imprisonment". Imprisonment was not an *alternative* form of punishment for such an offence. The Pieris and Bertolacci versions of *The Lak Raja Lō Sirita* refer to one punishment, namely, death. Of course, a lesser punishment may have been imposed, having regard to the circumstances of a case, or as a matter of executive policy; but that is another matter.

As we have seen, e.g., at p. 48, the "flexible approach", which was a requirement of the law with regard to its interpretation and application, did not make death an inevitable punishment. Laws had to be interpreted and applied imaginatively and humanely having regard to the circumstances of each case, including in a matter involving punishment, the capacity of the defendant to undergo punishment, as well as laid down sentencing policy. If there was dissatisfaction with a sentence, the matter could have been canvassed in a higher tribunal; but there were no mandatory sentences that interfered with judicial discretion.

3 P. 51.

4 See Ch. III text at n. 100 above.

5 *Mahāvaṁsa* XXXVI. 111-112. On the *Vaitulyavāda* schism, see Walpola Rahula, pp. 87-91, 92-93.

6 *Nikāyasangrahaya,* ed. D.P.R. Samaranayaka, 1966, M.D. Gunasena & Co., p. 67; also tr. by C.M. Fernando, ed. by W.F. Gunawardhana Government Printer, 1908; see also *Rājaratnākaraya,* ed. D. Gnanissara

and S.J. Sumanasekera Banda, 1990, Government Press, p. 21, and Rājaratnākaraya, ed. Simon de Silva, Government Printer, 1907.

7 *Epigraphia Zeylanica,* Vol. I, p. 54.

8 P. 41; January 30, 1991, p. 17.

9 P. 48.

10 P.E. Pieris, p. 579; Bertolacci, p. 275.

11 Ibid. Lawrie (Notes, pp. 207-208) stated that in the Kandyan Kingdom, persons convicted of murder were liable to suffer death or to be flogged through the streets and banished. The lands and property of the offender were given over to the victim's widow and children. Sometimes, according to the king's pleasure, no punishment at all was inflicted.

12 "In their own defence, in a strife for the fees of officiating priests, and in order to protect women and *Brāhmaṇas*; he who [under such circumstances] kills in the cause of right, commits no sin. One may slay without hesitation an assassin who approaches [with murderous intent], whether [he be one's] teacher, a child or an aged man, or a *Brāhmaṇa* deeply versed in the Vedas. By killing an assassin the slayer incurs no guilt, whether [he does it] publicly or secretly; in that case fury recoils upon fury" : Manu VIII. 349-351.

13 P. 136.

14 A year after the British occupied the Kandyan territories, they found that few serious crimes had been committed in those areas. The Governor in his 'Address to the Kandyan Adikars and Chiefs' on the 20th of May, 1816, said: "The business of the Sittings in Criminal matters has, I am happy to say, been extremely light. No Cases of that kind deserving of particular notice have appeared, excepting two; one a charge of murder against Kerulageddere Mohottale of the village of Vialna, in the province of Walapane, who having at first disobeyed the summons of Mr. Wright, the Agent of Government at Badulla, has since absconded, and cannot at present be discovered. The other is the complaint of a man of Ouva, who being suspected of theft by a relation of his own, was cruelly scorched on various parts of the body, and lamed of one hand. The Complainant was ordered to accompany me from Badulla to this place, for the purpose of having the Case tried during my stay here, but it has not been possible to assemble all the witnesses." J.W. Bennett, *Ceylon and its Capabilities,* 1843, reprinted in 1984 by Trumpet Publishers (Pvt) Ltd., Rajagiriya, Appendix, p. lxxix.

15 Ibid. In *The King* v *Signio Appoo* (Board Minutes, November 2, 1819), the chiefs stated that where the death of a person was not deliberate, the offender would be imprisoned for a short time, called before the palace and dismissed with an admonition. The Board of Commissioners, adopting the spirit of Kandyan law, recommended that the offender should be sentenced to three months hard labour "to teach him to be careful with firearms", but the Governor ordered his immediate discharge. (Hayley, p. 110).

Lawrie (Notes, p. 208) records three instances of culpable homicide in which the offenders were flogged through the streets and transported to far off places.

16 Pp. 48-49.

17 No degradation resulted from sexual intercourse between a high caste man and a low caste woman. See Knox, p. 125; cf. pp. 173-175 on the alleged immoral behaviour of people in general. Lawrie (Notes, p. 209) said: "The Assessors say there is no defamation of plaintiff's character to be told that she has had criminal connections with a man of higher caste than her own, which is of the Paduwa caste. - No. 2936, 12th January, 1839." On the other hand, a high caste woman who slept with a low caste man committed a heinous injury to her caste. Ribeiro (p. 153) said that "The crime which they consider the most serious was where a woman of high caste had carnal intercourse with a man of low caste; she would be denounced not only by her husband if she were married, but also her own father and brothers are among the bitterest accusers; for this is a matter of the greatest concern as affecting the honour of their family ... If it were established by witnesses they themselves are entitled to kill her without committing any crime." Lawrie (Notes, p. 209) stated: "A Paduwa caste man committed rape on a higher caste woman; her relations advised her to hang herself and thus wipe out the disgrace, but she said she could not do it: whereupon her uncle with the consent of all her relations stabbed her to the heart and killed her. On being charged with murder the uncle said that according to the custom of the country there was no other way of wiping away the disgrace which had befallen the family than by killing the woman who had brought disgrace to it. - Judicial and Revenue Commissioner's Diary, 28th November, 1817." Lawrie (Notes, p. 209) stated that "in ancient times, in the upper provinces with the sanction of the King and in the Dissavonies with that of the Dissawas, women cohabiting with low caste men were delivered to parents, who put them to death to remove the disgrace, although there was no positive law permitting such acts of violence, the King's permission was necessary.

Where no such sanction was given, parties were punished and fined for committing such acts. - 17th November and 12th December, 1820."

Hayley (pp. 111-112) said: "In 1820, the chiefs consulted by the Board of Commissioners on this subject stated that the permission of the King or a *disawa* was required, and that if not obtained, the homicide was unjustifiable and punishable with fine and imprisonment. (Board Minutes, December 12, 1880). A person was convicted of putting a woman to death on these grounds, but the Board of Commissioners recommended mitigation of the punishment on account of the prejudices of the natives. Board Minutes, December 12 and 17, 1820. That acts of this kind were considered by the inhabitants justifiable and were not uncommon, is shown by the fact that it was considered necessary in 1821, by a Proclamation of January 3, specifically to prohibit them, and to declare that the causing of death on the pretence of violation of caste would be punished as murder."

18 D'Oyly, pp. 54-55.

19 Manu IX. 232 decreed that "... those who slay women, infants or *Brahmaṇas* ... the king shall put to death."

20 Knox (pp. 178-179) said : "As soon as the child is born, the father or some friend apply themselves to an Astrologer to enquire, whether the child be born in a prosperous planet, and a good hour or in an evil. If it be found to be in an evil they presently destroy it, either by starving it, letting it lye and die or by drowning it, putting its head into a vessel of water, or by burying it alive, or else by giving it to some body of the same degree with themselves; who often will take such children, and bring them up with rice and milk; for they say; the child will be unhappy to the parents, but to none else. We have asked them why they will deal so with their poor infants, that come out of their bowels. They will indeed have a kind of regret and trouble at it. But they will say withal, Why should I bring up a devil in my house? For they believe a child born in an ill hour, will prove a plague and vexation to his parents by his disobedience and untowardliness. But it is very rare that a first-born is served so. Him they love and make much of. But when they come to have many, then usual it is, by the pretence of the child being born under an unlucky planet, to kill him. And this is reputed no fault, and no law of the land takes cognizance of it." In *The King* v *Puncherala* (Board Minutes, July 17, 1821), it was stated by the witnesses for the prosecution that it was common practice to bury children, male and female, and that there was no order against it in the King's time. However, the Judicial Commissioner found the accused guilty of murder, as Hayley (p. 109) observed, "under a somewhat

strained application of section 7 of the Convention of 1815, which provides that no person shall be put to death except by warrant of the Governor." Infanticide was made a capital offence by a Proclamation of September, 1821. Lawrie (Notes, p. 208) stated: "A woman found guilty of burying her female child was sentenced by the Judicial Commissioner to three years' imprisonment at hard labour in the Gabadawa and to stand in the pillory three times in the public bazaar of Kandy. - Revenue Commissioner's Diary, 27th November, 1827."

21 Knox, pp. 178-179; D'Oyly's *Diary,* 13 January, 1813, pp. 80-81.

22 D'Oyly, p. 57. Infanticide was made punishable with death by the Proclamation of 25 September 1821.

23 D'Oyly, p. 56. Hayley (p. 112) said: "Abetment and attempts not being recognized as criminal by Kandyan law, suicide could have no practical status in the list of offences. (In *The King* v *Setta*, 1829, the Board was of opinion that an attempt to commit suicide was not an offence.) But if one party to a quarrel committed suicide as a result, the other party was held guilty of causing his death, and was liable to a fine; and a similar penalty was imposed on a debtor whose creditor committed suicide owing to non-payment of the debt, or on one who had driven another to suicide by insult". Lawrie (Notes, p. 208) stated: "One Dingirala and his brother Kawrala ... had a quarrel when Dingirala hanged himself, and as was customary at that time the chiefs imposed a fine on Kawrala. - 30th April, 1824."

Lawrie (Notes, p. 208) stated: "A man committed suicide as he was implicated in the rebellion of Pilima Taḷawē. The king confiscated all the property belonging to the man as well as to his brother. - 1st September, 1823. " This was probably not a penalty for suicide, but for treason.

24 VIII. 267-277.

25 P. 121.

26 D'Oyly, p. 121.

27 People were not generally violent: Knox, p. 121.

28 D'Oyly, p. 49. Acts of violence were abhorred: "A king who desires to gain the throne of Indra and imperishable eternal fame, shall not, even for a moment, neglect [to punish] the man who commits violence. He who commits violence must be considered as the worst offender, [more wicked] than a defamer, than a thief, and than who injures [another] with a staff. But the king who pardons the perpetrator of violence quickly perishes and incurs hatred" : Manu VIII. 344-346.

29 *Epigraphia Zeylanica,* Vol. I, p. 250; Ranawella, p. 8.

30 Manu VIII. 287.

31 Manu VIII. 288. Damage to public property and that of temples and palaces had to be repaired, and, in addition, a fine had to be paid: Manu IX. 285.

32 *Mahāvaṁsa,* XXXI. 21-26.

33 Manu VIII. 288-295.

34 IX. 284.

35 Knox (pp. 121-122) observed: "Of all vices they are least addicted to stealing, the which they do exceedingly hate and abhor; so that there are but few robberies committed among them." It is said that, in the war in Alisara, Parākramabāhu employed three hundred persons skilled in the art of house-breaking, (*saṃdhi-bhedassa kusalā corā*), in the middle of the night to visit the fortified camps erected by the enemy and undermine them with *miga-siṅga* (antelope horn), (*Culavaṁsa,* 70. 169) which was probably an iron instrument comparable to a miner's pick. It is not clear whether '*corā*' meant professional thieves or whether it referred to a troop of pioneers who had experience in works such as were performed by burglars: Geiger, *Culture,* pp. 154-155. However *corās* were also engaged in the siege and capture of Pulatthinagara: *Culavaṁsa,* 70. 286; Geiger, *Culture,* p. 155.

36 D'Oyly, 49. However, according to the Laws of Manu, thieves and those who aided or harboured them were required to be dealt with severely: See note 41 below, and Manu, IX, 263-281; the King was expected to restrain thieves both in his domain and in those of others: IX, 312.

37 *Saddharmaratnāvaliya*, 393; *Saddharmālaṃkāraya*, 242 which says: '*rājapuruṣayō ohu piṭitala hayā bäňda siyalu sarīrayehi uḷu suṇu galvā ratmal vaḍam kara palaňdavā hisa pas konḍayak koṭa bäňda ē nuvara kōvē mahavē ādivū ē ē vīthi sandhiyehi siṭuvā gena kaṭusämiṭi ādiyen piṭa paḷā pahara dahasgaṇan gasvamin mesē noyek vicitra vadha keremin, vadha bera gasvā gena hulak tabā ...*' in describing the procession of robbers being marched with red tile dust and so on. The *Viśuddhimārgasannaya* (III.64) referred to the giving of rice-cakes and so on: '*Ohaṭa minissu kävumudu välaňdiyayutu dä du malgaňdavilavunu du bulatu du dennāha.*'

38 *Viśuddhimārgasannaya,* III. 64.

39 P. 16.

40 See Ch. VI text at n.111.

41 D'Oyly, p. 49. The theft of Royal property was a capital offence. Lawrie (Notes, p. 210) stated: "Two persons found guilty of stealing the confiscated property of a Mohoṭṭāla were flogged through the streets

and impaled near Gannoruwa in the last King's time. - Resident's Diary, 1815." Lawrie (Notes, p. 212) said: "Udupehille rāla was put to death for having robbed the King's Treasury (Gazeteer, p. 653). However, in accordance with the flexible approach to the interpretation and application of the law, a King, moved by humane considerations, and having regard to the circumstances of the case, might have imposed a lesser punishment. Lawrie (Notes, p. 210) gives two instances: (1) "A Kandyan and a Malay stole two sacks from the royal village of Wellata. The King enquired into the matter and found both parties guilty; they were flogged through the streets of Kandy and one transported to Laggala and the other to Etanvala." (2) The last King confiscated a man's property for having stolen his goats.

42 *Lak Raja Lo Sirita* : Bertolacci p. 279; P.E. Pieris, 583.

43 P. 49.

44 *Viśuddhimārgasannaya*, 392. Manu VIII. 334 stated: "With whatever limb a thief in any way commits [an offence] against men, even of that [the king] shall deprive him in order to prevent [a repetition of the crime]." Manu VIII. 322 stated: "For [stealing] more than fifty [*palas*] it is enacted that the hands [of the offender] shall be cut off; but in other cases, let him inflict a fine of eleven times the value." Manu prescribed various penalties for different kinds of theft such as death, corporal punishment, amputation, and fines: Manu VIII. 319-342. "Let the king exert himself to the utmost to punish thieves; for if he punishes thieves, his fame grows and his kingdom prospers" : Manu VIII. 302.

45 Davy, p. 136; cf. *Lak Raja Lo Sirita*, P.E. Pieris, p. 583-584; Bertolacci, p. 279.

46 Ranawella, p. 8. Restitution was of paramount importance in the "settlement" process underlying the administration of justice. This concept persisted till the last days of the Kandyan Kingdom. Lawrie (Notes, p. 210) said: "The chiefs are of opinion that the prisoner should be confined to goal until he makes restitution to the complainant of the value of the clothes stolen ..." He also stated (pp. 210-211) in connection with another case: "The Assessors observed that persons who were guilty of robbery were liable to make free restitution, and however small the value of the article stolen might be; if they could not pay the value, they were liable to be taken as slaves by the proprietor of the stolen property. They give an instance of a woman in the reign of Kirti Sri having stolen a cake of jaggery, and she being so poor as not to be able to pay the value. The King decreed that she should be given over to the person to whom the cake of jaggery belonged, as a slave. She afterwards bore children who are now slaves through their mother's

petty delinquency. - 5th September, 1824." Lawrie (Notes, p. 211) refers to the fact that "In the last King's reign, a man convicted of robbery was confined in the great prison; his mother borrowed money to procure his release.- 11th March, 1828", perhaps by paying off his dues.

Sometimes restitution by way of self-help took place. Lawrie (Notes, p. 210) said: "1789, Kiri Naide broke into and stole from the granary of Panikki Mudiyanse, upon which the Mudiyanse seized the thief's lands in satisfaction of the loss. - 17th January, 1825."

47 VIII. 40.

48 P. 136.

49 The above account is based on D'Oyly pp. 49-50. On the resolution of disputes by the taking of oaths, see Ch. XIV text at n. 79 and Ch XIV note 84. On the settlement of disputes by oath under the Laws of Manu, see Manu, VIII. 110-111 and 190.

50 D'Oyly, p. 50. See also Hayley, p. 119.

51 D'Oyly, p. 51. See also Hayley, p. 119. Although Lawrie (Notes, p. 212) suggested that Udupihille rāla was put to death for forging a deed, which was not in accordance with the law, he was put to death for robbing the King's Treasury. See n. 41 above.

Lawrie (Notes, p. 211) stated: "Gangoda Duggannarala, being a man of some rank who had produced a forged ōla, was sentenced to one month's imprisonment in the Katupulle village of Amipitiya; and deprived of the honours due to his rank during that time, and to pay a fine of ten dollars; and to be imprisoned until the fine is paid. - 5th July, 1820."

52 D'Oyly, p. 51. Manu IX. 232 decreed that forgers of royal edicts shall be put to death.

53 See Ch. VI text at n. 13; Ch. V text at nn. 48 & 49.

54 P. 136.

55 Ch. VII text at n. 16. Knox (p. 174) said: "It is a law here, that if a man catch another in bed with his wife, he may, be it whomsoever, kill him and her if he please." However, husband's did not always have their way. Knox said: "It hath so happened that the man hath come to the door, when another hath been with his wife, there being no way to escape, the woman has took (*sic.*) a pan of hot ashes, and as she opened the door, her husband being entring (*sic.*), cast them in his eyes, and so she and her bedfellow made an escape."

56 D'Oyly, p. 51.

57 Davy, p. 136.

58 P. 132.

59 See notes 53 and 54 above.

60 Knox, p. 70, said that the King "allowes not in his Court whoredom or adultery; and many times when he hears of the misdemeanours of some of his nobles in regard to women, he not only executes them, but severely punisheth the women, if known: and he hath so many spyes, that there is but little done, which he knows not of." While noting that there were no "publick whores", Knox (pp. 173-174) stated that the women were "all whores" although they they abhor the name "uesou", and goes on to describe their activities. He later (p. 175) states: "In some cases the men will permit their wives and daughters to lye with other men. And that is, when intimate friends or great men chance to lodge at their houses, they commonly will send their wives or daughters to bear them company in their chamber. Neither do they reckon their wives to be whores for lying with them that are as good or better than themselves.".

61 Manu, V.164; XII.7.

62 Manu VIII. 386, 387.

63 Manu VIII. 352.

64 See VIII. 352-385.

65 Manu III. 60.

66 Manu IX. 101-103.

67 See Manu, VIII, 354-357. The world's attention was recently focussed by the Clinton-Monica Lewinsky affair on the definition of an improper sexual relationship. If one might adopt the words of Cicero in *In Catilinam,* O' tempora, O mores! - O what times, O what habits. Robert Louis Stevenson observed that "The true Babel is a divergence upon morals." Manu's view (VIII .358) was unambiguous: "If one touches a woman in a place [which ought] not [to be touched] or allows [oneself to be touched in such a spot], all [such acts done] with mutual consent are declared [to be] adulterous (*saṁgrahaṇa*)."

68 Manu VIII. 359, 372.

69 Manu, XI. 104.

70 D'Oyly, pp. 51-52. "He who violates an unwilling maiden shall instantly suffer corporal punishment; but a man who enjoys a willing maiden shall not suffer corporal punishment, if [his caste be] the same [as hers]" : Manu VIII. 304. "... if any man through insolence forcibly contaminates a maiden, two of his fingers shall be instantly cut off, and

he shall pay a fine of six hundred [*pañas*]": Manu VIII. 367. For Manu, it seems, the gravity of illicit sexual misbehavior depended largely on the caste of the parties and whether the woman was guarded. E.g. "A *Sûdra* who has intercourse with a woman of a twice-born caste [*varṇa*], ... [shall be punished in the following manner]: if she was unguarded he loses the part [offending] and all his property; if she was guarded, everything [even his life]. [For intercourse with a guarded *Brāhmaṇi*] a *Vaiśya* shall forfeit all his property after imprisonment for a year; a *Kshatriya* shall be fined one thousand [*pañas*] and be shaved with the urine [of an ass]. If a *Vaiśya* or a *Kshatriya* has connection with an unguarded *Brahmaṇī*, let him fine the *Vaiśya* five hundred [*pañas*] and the *Kshatriya* one thousand. But even these two, if they offend with a *Brāhmaṇi* [not only] guarded [but the wife of an eminent man], shall be punished like a *Sûdra* or be burnt in a fire of dry grass. A *Brāhmaṇa* who carnally knows a guarded *Brahmaṇī* against her will, shall be fined one thousand [*pañas*]; but he shall be made to pay five hundred, if he had connection with a willing one:" Manu VIII. 374-381.

71 P. 52.

72 P. 136. Knox (p. 121) said of Sri Lankan people: "They are not very malitious (sic.) one towards another; and their anger doth not last long; seldom or never any blood shed among them in their quarrels. It is not customary to strike; and it is very rare that they give a blow so much as to their slaves."

73 *Epigraphia Zeylanica*, Vol. I p. 250, Ranawella, p. 9, note 37, said that according to the *Atadā Sanyaya* (Ed. M. Vimalakirti and N. Sominda, p. 102), "*sipū daḍ* " was a fine levied from persons found guilty of the offence of assault. It is equivalent to *pahārā kahāpaṇa* in Pali." Although assault and causing hurt were usually punished with a fine, sometimes the aggresor was bound and handed over to the victim to be beaten or even imprisoned. However, in serious cases, if the offender was a man of low caste, he might be subject to corporal punishment for "from the lowness of the parties, fine and imprisonment would not operate as a punishment." Instructions of the Board of Commissioners to the Accredited Agent of Government at Matale, Board Minutes, October, 1819; Hayley, p. 113.

74 D'Oyly, p. 52. Manu VIII. 279-287 prescribed various forms of punishment for assault and hurt, including the amputation of the offending part of a body, branding, banishment, or fine and the reimbursement of medical expenses.

75 *Epigraphia Zeylanica,* Vol. VI, p. 55.

76 D'Oyly, p. 52. The dangers of the abuse of any substance, e.g. alcoholic

liquor or some other drug, causing intoxication that rendered a consumer unconscious, or delilrious, or caused him to be mad or stupefied or excited or elated in his mind beyond the bounds of sobriety, were recognized. The *Digha Nikāya*, III, 182, for instance, said that the use of intoxicants caused the loss of wealth, increase in quarrels, ill-health, loss of reputation, indecent exposure, and impaired intelligence. See K. Sri Dhammananda, *Treasure of the Dhamma*, 1994, Buddhist Missionary Society, Kuala Lumpur, p. 175.

77 Vol. I, p. 373.

78 *Culture*, pp. 42-43.

79 Described as *Hochgraeffl; Hohenlohe-Schillingsfuerst: Bau-Direktor und Geometer,* was a German who spent about two and a half years in Sri Lańka in the early part of the eighteenth century. He wrote a book that was described as *Heydt's Ceylon, being the relevant sections of the Allerneuester Geographisch-und Topographischer schau-platz von Africa und Ost-Indien etc. etc..* It was published in Wilhermsdorff in 1744, and translated with notes by R. Raven-Hart, and published by the Ceylon Government Information Department in 1952.

80 P. 128.

81 D'Oyly, p. 52.

82 P.E. Pieris, p. 581; Bertoclacci, p. 277. See Hayley p. 120-121, who said: "Indulgence in spirituous liquors, being contrary to the precepts of Buddhism, in late times any drawing, or distilling, or selling of arrack was prohibited by the Kings. Persons convicted of such acts before the King were liable to whipping through the streets and imprisonment. When dealt with by the chiefs and headmen, offenders were punished with slight corporal punishment or fine. In 1817, a woman found guilty of selling arrack was sentenced by the Judicial Commissioners to have her *konde* [knot of hair] cut off. Lawrie (Notes, p. 212) gives the reference for the 1817 case mentioned by Hayley, namely, Judicial Commissioner's Diary, 20th October, 1817. Lawrie (Notes, p. 211) said: "The Chiefs declared that the drawing of fermented toddy and the fermentation of it were prohibited under the King's Government." - Revenue Commissioners Diary, 7th March, 1817."

Walpola Rahula, p. 248, said: "Liquor seems to have been popular among some people though it was against the last of the five precepts meant for the laity. Ability to drink a great quantity of liquor was considered a sign of physical strength. The *Rasavāhinī* says that Duṭṭha-Gāmaṇī got Suranimala to drink 16 nāḷīs of toddy (liquor) in order to test his strength. Goṭha-imbara, another general of Duṭṭha-Gāmaṇī, is also reported to have taken liquor.

Government officers are known to have accepted liquor when they visited villages on official business, and they drank in the company of villagers. From the Badulla Pillar Inscription we learn that sometimes officers demanded liquor from villagers and even took by force the liquor that was being brought to the village."

83 XI. 55. Eating anything kept close to spirituous liquor was an offence: Manu, XI. 71.

84 See Ch. III n. 97 sq.

85 Manu XI. 95.

86 Manu XI. 147.

87 D'Oyly, p. 52.

88 Manu IX. 221-222.

89 Manu IX. 225.

90 Manu IX. 228.

91 *Cūlavaṁsa* 50. 25, 28. Rājasiṁha II was said to have been a great equestrian: see *Cūlavaṁsa*, 96. 7ff. Horses were rare and were generally imported from North-West India. The king had a state-horse. That of Eḷāra was taken away by Velusamana: *Mahāvaṁsa*, 22.52 ff., who is also said to have broken-in a horse that would let no man mount it: *Mahāvaṁsa* 23.71 ff. The car of state of King Duṭṭhagāmani was drawn by four white horses: *Mahāvaṁsa* , 31.38.

92 Geiger, *Culture*, p. 62.

93 *Mahāvaṁsa*, 25. 69 sq.; *Cūlavaṁsa* 41.11, 47 sq; 51. 37.

94 *Cūlavaṁsa*, 72. 105.

95 They were never bred in capitivity. Elephants were kept in stables called *hatthisala* (*Mahāvaṁsa*, 14.62; 15.1), chained to a post (*alhaka, Mahāvaṁsa*, 35. 24) and attended to by *hatthi-gopaka* (the elephant-keeper): *Cūlavaṁsa* , 88.34. Geiger, *Culture*, p. 91 and p.127.

96 *Culture*, p. 91.

97 P. 53.

98 D'Oyly, p. 53.

99 *Arthaśāstra* , Ch. II. 50; Tr. R. Shamasastry, 5th ed., Mysore, 1956, p. 59.

100 *Mahāvaṁsa* XXXV. 6. See also Ch. VIII tet at nn. 106, 107. Many kings made decrees of *Māghāta*, i.e., laws which prohibited the killing of animals. They were based on the Buddhist principle of *ahimsa* - compassion. Although in pre-Buddhist Sri Laṅkā hunting was an

important means of livelihood, some people, after they embraced Buddhism, might have turned to other means of support. Cf. Walpola Rahula, pp. 22-24, 73. However, even in Buddhist Sri Laṅkā, some people continued to be hunters and fishermen: Walpola Rahula, p. 243. Walpola Rahula (pp. 247-248) pointed out that there was "nothing to suggest that there was anything like popular vegetarianism in ancient [Sri Laṅkā]". He stated as follows: "Various kinds of meat such as peacock flesh (*mayuramaṃsa*), venison and pork (*miga-sukara-maddava*), hare (*sasa maṃsa*) and chicken (*kukkuṭa maṃsa*), seem to have been considered favourite and delicious dishes. Monks were often served with these dishes. There was also a preparation called honied-meat (*madhu-maṃsa*) ... But beefeating ... was a punishable offence."

101 *Cūlavaṁsa*, 41. 30.

102 *Cūlavaṁsa*, 52. 15.

103 Slab Inscription of Niśśaṅkamalla, *Epigraphia Zeylanica*, Vol. II, p. 156.

104 *Cūlavaṁsa*, 48.147; 49.36; cf. 50.3. Cf. Manu, IX. 333: "... let him zealously give food to all created beings."

105 *Cūlavaṁsa*, 54.32; cf. 60.74. The dog - *sunakha; soni* - was a symbol of fidelity, following its master wherever he goes: *Mahavaṁsa*, XXXVI. 44. It accompanied its master in huting: *Mahavaṁsa*, 28. 9, 41. But many ownerless dogs roamed half-starved, and pious kings sometimes provided such pitiable creatures with food: *Cūlavaṁsa* 54.32; 60.67; Geiger, *Culture*, p. 92.

106 *Cūlavaṁsa*, 74. 20-21. Geiger, *Culture*, p. 133. Lawrie (Notes, p. 212) said: "About a year before the accession Galanna Hettiya was flogged out of the country for shooting a wild hog in the Town of Kandy. - 4th November, 1826."

107 Gopa: *Mahavaṁsa*, 10.17; *Gopaka, Mahavaṁsa*, 9.22; 19.2: *gopālaka, Mahavaṁsa*, 10.13. "Sheep-breeding and goat-breeding was restricted or perhaps unknown. We do not hear of it in the chronicle....": Geiger, *Culture*, p. 91. "There is no doubt that cattle-breeding was one of the most popular occupations in the villages in the early days, as it is even today." Walpola Rahula, p. 22.

108 *Culture*, p. 91.

109 On the use of milk, see Geiger, *Culture*, pp. 41-42.

110 P. 143.

111 P. 372.

112 Tennent, p. 372, said: "Rice in various forms is always spoken of as the food, alike of the sovereign, the priests, and the people; rice prepared plainly, conjee (the water in which rice is boiled), 'rice mixed with sugar and honey, and rice dressed with clarified butter' : *Mahavamso* ch. xxxii. p. 196. Chillies are now and then mentioned as an additional condiment: *ibid.* ch. xxv. p. 158; ch xxvi. p. 160. The *Rajavali* speaks of curry in the second century before Christ: *Rajavali,* pp. 196, 200, 202; and the *Mahawamso* in the fifth century after: *Mahawamso*, Turnour's MS. translation, ch. xxxix. Knox says that 'curry' is a Portuguese word, *Carre* (*Relation* & c., part i. ch. iv p. 12), but this is a misapprehension. Professor H.H. Wilson, in a private letter to me, says, "In Hindustan we are accustomed to consider 'curry' to be derived from *tarkari*, a general term for esculent vegetables, but it is probably the English version of the Kanara and Malayalam *Kadi*; pronounced with a hard *r*, 'kari'or 'kuri', which means sour milk with rice boiled, which was originally used for such compounds as curry at the present day. The Karnata *majkke-kari* is a dish of rice, sour milk, spices, red pepper, & c. & c.".

113 Geiger, *Culture,* p. 62, citing *Mahāvaṁsa* 5.154; 10.2; 14.1,4; *Cūlavaṁsa,* 70. 33 ff., 72. 163. See also Walpola Rahula, pp. 23-24.

114 *Culture*, p. 42.

115 *Cūlavaṁsa*, 89.52.

116 *Cūlavaṁsa*, 38.99; Geiger, *Culture*, p. 42.

117 *Epigraphia Zeylanica*, Vol. II, pp. 27 and 33.

118 IV. 238. The killing of animals, birds and insects was an offence: Manu, XI, 69 and 71.

119 V. 28.

120 V. 27-45.

121 V. 46-48.

122 VIII. 286.

123 V. 56.

124 Manu V. 33. The relevant laws are set out in Chapter V. 11-56.

125 D'Oyly, p. 53.

126 Ed. Y. Pannananda, 1932, p. 310.

127 This king is at various times referred to as Bhatika Abhaya, Bhātika Tissa and Bhātiya Tissa. See Ch. VIII n. 222. Walpola Rahula stated, p. 231, that the offenders were subjected to degrading punishment as scavangers. He pointed out that even about the 12th century, beef-eaters were regarded as *sûdras* and that the

Jātaka-Aṭuvā-Gäṭapadaya, p. 74, includės beef-eaters in the class of drummers (*beravā caste*).

128 P. 135. Knox (p. 126) observed that Europeans were treated in the same way as the elite local inhabitants ("the Hondrews") and as "generally honourable, only it is an abatement of their honour that they eat beef, and wash not after they have been at stool (sic.); which things are reckoned with this people an abomination ..." He also said (p. 164): "Beef here may not be eaten; it is abominable."

129 IX. 290.

130 D'Oyly, p. 54. See also Hayley, p. 116. Lawrie (Notes, p. 209) stated that in the reign of King Rajādi Rāja Siṁha, "one Maide made certain devil ceremonies called Diwel against one Narayerera, the latter having been informed of it, represented it to the King, who inquired into the matter; and on being found guilty Naide was flogged through the streets and imprisoned at Laggala - Resident's Diary, 1825."

NOTES TO CHAPTER VIII

1 *Epigraphia Zeylanica*, Vol. II, p. 227.

2 *Epigraphia Zeylanica*, Vol. II, p. 122.

3 In one instance, a prince exercised regal powers, renouncing its dignities and the paraphernalia of royalty. He was prince Mahinda (Mahinda I, 730-733 AD). The Prince was said to have been mourning the loss of a dear friend when he became entitled to the throne after the death of his elder brother Kassapa III. He therefore refrained from maintaining the pomp and splendour of kingship, though he assumed its responsibilities and exercised its functions. *Cūlavaṁsa,* 48. 26-31; Paranavitana, The Viraňdagoḍa Pillar Inscription, *Epigraphia Zeylanica,* Vol. V, pp. 121-122.

4 P. 173.

5 Pp. 183-184. See also pp. 173-174.

6 P. 1. Rājasiṁha II appears to have been a tyrant: Knox, pp. 61, 74, 80, 190. Knox (p. 80) said: "As to the manner of his Government, it is tyrannical and arbitrary in the highest degree: For he ruleth absolute, and after his own will and pleasure: his own head being his only counsellor." Knox's account of the king's alleged misrule influenced John Locke: See *Two Treatises on Civil Government,* London, 1690, Dent edition, 1924, p. 162.

7 P. 47.

8 Pp. 43-44.

9 The division of governmental authority was one of the principal bases of the American Constitution. "To the founders, history testified that concentration of power was necessarily corrosive of the people's liberty. It was an axiom of the convention that authority had to be divided if its abuses had to be contained." Philip B. Kurland, "Structuring the Separation of Powers", *The American University Journal of International Law and Policy,* Vol. 8, Nos. 2 & 3,1992/1993, at pp. 489-490.

10 *The Federalist*, No. 47 at 301 (James Madison) (Clinton Rossiter ed., 1961).

11 P. 44.

12 *University of Ceylon, History of Ceylon,* Vol. I, Part I p. 230.

Jennings went on to state as follows:

"It is clear from the authorities that the King's power was not legally unlimited. As in all feudal systems, his powers were determined by

custom or law. The whole social system, from the monarchy to the slaves was regulated by customs which the British authorities tried to collect and express after 1815. There was, however, one great difference between Sinhalese feudalism and European feudalism which gave the Sinhalese King a greater potential authority. In Europe jurisdiction depended primarily on the ownership of land, so that the Duke of Normandy, for instance, through a vassal of the French king, governed Normandy in his own right and not by authority of the king. In Ceylon, the Adigars, Disavas, Ratemahatmayas and even lesser chiefs governed by reason of appointment by the king, and their offices never became hereditary. Nor had the chiefs any effective means of compelling the king to obey the customary law unless they could stage a rebellion. On the other hand, the king never became as absolute as the French king before the Revolution, because he had no effective power unless he had the support of some at least of the more powerful chiefs. He had no standing army which could be used against a recalcitrant chief but he had to rely on rajakariya. A strong king could therefore become 'despotic', but a weak king was weak indeed."

13 *Op. cit.*, p. 39.

14 "Notes on Kandyan Law Collected by Sir Archibald C. Lawrie, LL.D.," *University of Ceylon Review*, Vol. V. 1952, p. 197.

15 *Culture of Ceylon in Mediaeval Times*, p. 132.

16 For an account of the ceremony of *abhiṣēka* (the installation of a monarch), see C.M. Fernando, "The Inauguration of the King in Ancient Ceylon," *Journal of the Royal Asiatic Society (Ceylon Branch)*, Vol. XIV, No. 47, p. 126; *Mahāvaṃsa-Tikā*, ed. G.P. Malalasekera, I, 305-306; J.M. Senaviratne, *Journal of the Royal Asiatic Society (Ceylon Branch)*, XXVI, No. 71, 1918; Ariyapala, pp. 56-62, and 368-372; Geiger, *Culture*, pp. 115-117; Jayasekera, 1984, pp. 117-123; *Lak Raja Lo Sirita*, P.E. Pieris, pp. 578-579; Walpola Rahula, p. 71; cf. Bertolacci, p. 274.

17 Paranavitana, *University of Ceylon History of Ceylon*, Vol. I, 1959, Ch. VIII, p. 230. Percival, p. 173, observed: "The Candians hold that their crown was anciently elective; that an advanced age, unblemished character, and benevolent disposition entitled a man to the throne ... But these institutions have been long since done away, this island having like all other countries met with tyrants and usurpers who broke through the ancient laws of the people." This is incorrect, for as we shall see, even the last king of Kandy whose reign Percival was describing, was placed on the throne after he was duly elected according to the customary procedures. On Kingship, see Geiger, *Culture*, pp. 111-117; Ariyapala, pp. 43-56. See also Ch. VIII note 103.

18 Geiger, pp. 116-117; P.E. Pieris, pp. 116-117.

19 *Cūlavaṁsa*, 53.27. See Ch. XVII text at n. 100. See also Walpola Rahula, pp. 142-143 and Ch. XVII below.

20 Pp. 106-107.

21 See also the observations of Paranavitana quoted at Ch. VIII text at n.12 above and at Ch. VIII n. 24 sq.

22 P.E. Pieris, p. 581; cf. Bertolacci, p. 277.

23 P. 173.

24 *Cūlavaṁsa,* 74. 133-134.

25 Knox, Part II, Ch. VII, pp. 108-114. For Ambanvala Rāla's account of this uprising, see *Journal of the Royal Asiatic Society (Ceylon Branch),* IV, 1955, ed. Paulusz.

26 Slab Inscription of Bhuvanaikabāhu VI, *Epigraphia Zeylanica,* Vol. III, p. 278 sq.

27 VII. III-112.

28 *Evolution of Ancient Indian Law*, University of Calcutta, Tagore Law Lectures, 1950, London, Arthur Probsthain, Calcutta, Eastern Law House, p. 39.

29 This was not very different to the relationship between the law and the king in some other societies: E.g. see Roland de Yaux, *Ancient Israel: Its life and Institutions,* translated by John McHugh, New York, McGraw Hill, 1961, p. 151.

30 *Sinhalē and the Patriots,* 1815-1818, (1950), The Colombo Apothecaries' Company Limited, Colombo, at p. 632.

31 *Mahāvaṁsa*, 36.27.

32 E.g. see *Cūlavaṁsa*, 48. 20.

33 *Cūlavaṁsa* , 50.2.

34 *Cūlavaṁsa* , 44.85.

35 *Cūlavaṁsa*, 59.8.

36 *Mahāvaṁsa*, XXXIV. 1.

37 *Mahāvaṁsa* , 21.14.

38 *Cūlavaṁsa* , 39. 33.

39 *Cūlavaṁsa,* 48. 71.

40 *Cūlavaṁsa*, 52. 97.

41 *Mahāvaṁsa*, VII, 74.

42 P. 267. 9-13.

43 *Mahāvaṁsa*, XXI. 11. See also Ch. III note 53.

44 *Vaṃsatthappakāsinī*, 425, 1-3.

45 *Cūlavaṁsa*, 99. 72-74.

46 Pp. 106-107.

47 *Culture* p. 133.

48 *Cūlavaṁsa,* 37.107; 52.43. They are given in the following mnemonic verse in Pali: *Dānam sīlaṁ pariccāgaṁ ajjavaṁ maddavaṁ tapaṁ akkodho avihiṁsā ca khantī ca avirodhatā*: Jātaka Aṭṭhakathā, 6.220. An ideal king possessed ten moral virtues: charity, piety, liberality, rectitude, gentleness, religious austerity, freedom from wrath, humanity, forbearance, and absence of malice. Cf. the Rājadhamma - The norms of good governance - *Rājadhammo pajārakkhā vuddhapaññūpasevanaṃ/Lokavohāraviññatti attano paripālanaṁ / Dhammena pālanaṁ raṭṭhaṁ suhadesu ajimhatāṃ / khamāca samaṇe sādhu rañño ētē vibhūsaṇā:* The protection of mankind, in the light of the counsel of sages and elders and custom and tradition and due regard for one's own safety, is the guiding principle of kingship. / The just administration of the country, not alienating friends, being forgiving toward persons of piety, these are the adornments of a monarch; cf. *Rasavāhini*, p. 162; *Saddharmālaṃkāraya*, pp. 511-512.

49 The *Mahāvaṁsa* and its continuation, the *Cūlavaṁsa.* See Ch. II note 9 and Ch. III note 27.

50 *Jātaka*, ed. Fausbol, III, 274.

51 *Cūlavaṁsa,* 37. 180.

52 See also Davy, pp. 106-107; *Lak Raja Lo Sirita*, P.E. Pieris, 580-581; Bertolacci, 276-277, where the virtues are explained more fully.

53 Pp. 47-48. The King had to set an example by living a virtuous life. If he did so, his subjects would follow him and there would be a peaceful, orderly, just and, therefore, contented society; "When kine (cattle) are crossing, if the bull goes straight, / They all go straight because his course is straight. / So among men, if he who's reckoned best / Lives righteously, the others do so too./ The whole realm dwells in happiness / If the ruler lives aright. / : *Anguttara Nikāya*, II, 75; *Gradual Sayings,* II, 85, in K. Sri Dhammananda, *Treasure of the Dhamma,* 1994, Buddhist Missionary Society, Kuala Lumpur, p. 187.

54 V. 5, cited by Ariyapala, p. 48.

55 *Epigraphia Zeylanica,* Vol. II, p. 127. See also the Giritale Stone-seat Inscription of Niśśaṅkamalla, *Epigraphia Zeylanica*, Vol. V, p. 473 : The king "continued to rule according to the ten royal precepts."

56 *Epigraphia Zeylanica*, Vol. I, p. 181. On the reign of Līlāvatī in turbulent times, see Wickremasinghe, "The Slab Inscription Marked D/8 of Queen Līlāvatī", *Epigraphia Zeylanica,* Vol. I at pp. 177-178.

57 Poḷonnaruva Fragmentary Slab Inscription, *Epigraphia Zeylanica,* Vol. IV, pp. 71 and 72.

58 Who was the king? Wickremasinghe stated that, although that record has been taken to be one of Vijayabāhu I, it was an inscription of the Vēḷaikkāṟa community made between 1137 and 1153 AD: Poḷonnaruva Slab Inscription of the Vēḷaikkāṟas, *Epigraphia Zeylanica*, Vol. II, p. 242 at p. 250.

59 *Culture*, p. 133.

60 *Culture*, p. 133.

61 *Cūlavaṁsa*, 37. 108; 52. 43; 92.8.

62 See Davy, pp. 106-107.

63 *Cūlavaṁsa*, 37. 107-108.

64 *Kaṅdavuru Sirita*, in D.B. Jayatilleka's *Sinhala Sāhitya Lipi*, p. 68; Ranawella, *Nīti-vimaṅasā*, p. 35 at note 58.

65 *Butsarana*, Welivitiye Soratha Nayaka Thero, (1953), p. 157; Ranawella, *Nitivimaṅsā*, p. 32.

66 *Cūlavaṁsa*, 99. 72-74.

67 Manu VII. 26.

68 Manu VII. 27.

69 Manu VII. 30. "Let him carefully shun the ten vices, springing from love of pleasure, and the eight proceeding from wrath, which [all] end in misery. For a king who is attached to the vices springing from love of pleasure, loses his wealth and his virtue but [he who is given] to those arising from anger, [loses] even his life. Hunting, gambling, sleeping by day, censoriousness, [excess with] women, drunkenness [an inordinate love for] dancing, singing, and music, and useless travel are the tenfold set [of vices] springing from love of pleasure. Tale-bearing, violence, treachery, envy, slandering, [unjust] seizure of property, reviling, and assault are the eightfold set [of vices] produced by wrath. That greediness which all wise men declare to be the root even of both these [sets], let him carefully conquer; both sets [of vices] are produced by that. Drinking, dice, women, and hunting, these four [which have been enumerated] in succession, he must know to be the most pernicious in the set that springs from the love of pleasure. Doing bodily injury, reviling, and the seizure of property, these three he must know to be the most pernicious in the set produced by wrath. A self-controlled [king]should know that this set of seven, which prevails everywhere, each earlier vice is more abominable [than those named later]: Manu, VII, 45-52. Manu, VII. 221 said: "When he has dined, he

may divert himself with his wives in the harem; but when he has diverted himself, he must in due time, again think of the affairs of state." He permitted the king to join his harem later in the day for a second meal and to listen to music, after which he was 'to rest and rise at the proper time free from fatigue': Manu, VII, 224-225. See also Manu, XII. 38 and 73.

70 Manu VII. 31.

71 *Pūjāvaliya,* 227; Ariyapala, 48. It is interesting to see how these ancient expectations continue to be relevant even today: cf. the recent crisis concerning the alleged misconduct of President Bill Clinton of the United States.

72 VII. 44.

73 See Sir Alfred Denning, *The Road to Justice*, 1955, pp. 30-31; Shimon Shetreet, *Judges on Trial,* (1976) p. 282. The requirement that judges must have a moral right to judge is echoed in Romans 2.1: "Therefore thou art inexcusable, O man, whosoever thou art that judgest; for wherein thou judgest another, thou condemnest thyself; for thou that judgest does the same thing."

74 P.E. Pieris, p. 579; cf. Bertolacci, p. 275.

75 *Arthaśāstra*, translated by R. Shamasastry, Mysore, 1956, VII. 13. Manu, VII. 55, said: "Even an undertaking easy [in itself] is [sometimes] hard to be accomplished by a single man; how much [harder is it for a king], especially [if he has] no assistant, [to govern] a kingdom which yields great revenues." He deals at length with the appointment of ministers and consultation with them and the appointment of ambassadors and officials: Manu, VII, 56-68.

76 It has been pointed out that the decision to install Jayabāhu I, Vikramabāhu's brother, as king was in accordance with the law of succession, but the 'State Council' itself was hardly complete, and certainly not loyal, as the deceased king's son Vikramabāhu was not present, though he was now the hereditary prince. The appointment of Mānābharaṇa, Mittā's eldest son to the dignity of *uparāja* was therefore decidedly illegal: Geiger, *Culture*, p. 138.

77 *Cūlavaṁsa*, 70. 77 and 80.

78 *Cūlavaṁsa*, 76. 33-38.

79 *Cūlavaṁsa*, 61. 1-3.

80 P.E. Pieris, p. 579; Bertolacci, p. 275.

81 P. 1.

82 See Ch. VI, text at n. 78.

83 See Ch. VI, text at n. 79.

84 See Ch. VI, text at n. 40.

85 Colvin R. de Silva, p. 123.

86 See Colvin R. de Silva, p. 122 and p. 148.

87 P. 124.

88 *A Short History of Ceylon,* 1929, MacMillan & Co Ltd., reprinted by Asian Educational Services in 1994, pp. 173-174.

89 *Cūlavaṁsa*, 42. 22.

90 *Culture,* p. 130.

91 *Cūlavaṁsa*, 57. 38-39; Geiger, *Culture*, p. 129.

92 P.E. Pieris, p. 582; cf. Bertolacci, p. 278.

93 See Ch. III, text at n. 76. See also Ch. III notes 69 and 76.

94 *Culture,* p. 139.

95 H.C.P. Bell, *Archaeological survey of Ceylon,* 1904, pp. 8-9; H.W. Codrington, "The Council Chamber Inscription", *Journal of the Royal Asiatic Society (Ceylon Branch),* No. 77, 1924, p. 304.

96 E. Müller, *Ancient Inscriptions of Ceylon,* No. 146, pp. 65, 93, 127.

96A Sen-Gupta, pp. 41-42.

97 P. 134.

98 P. 126.

99 *Diary of Mr. John D'Oyly,* with an In Introduction and Notes by H.W. Codrington, *Journal of the Royal Asiatic Society (Ceylon Branch),* Vol. XXV, No. 69, 1917, reprinted by Navrang and Lake House Bookshop, 1995, p. 105.

100 Ordinance No. 2 of 1883 as amended.

101 Pp. 124-125.

102 C.M. Fernando, *Journal of the Royal Asiatic Society, Ceylon Branch,* XIV, No. 47, 1896, I. I. A monarch was like a father: Manu, VII. 80.

103 See Ariyapala, pp. 44-45. On claims to the throne based on belonging to royal clans, see Geiger, *Culture,* pp. 111-114. On kingship in general, see Ralph Pieris, pp. 9-13. See also Ch. VIII note 17. Manu, VII. 1-8, claimed that a king was of divine origin - 'a great deity in human form'. Cf. Paranavitana, p. 137 above.

104 *Evolution of Ancient Indian Law,* p. 38.

105 *Epigraphia Zeylanica,* Vol. II, p. 176. According to Manu, VII. 3, when the creatures of the world "through fear dispersed in all directions, the Lord created a king for the protection of this whole [creation]."

"Rulers are expected to have a disposition of genuine love and care for the people at large. The king should occupy the position of a parent to his subjects. The four hospitalities explain the way the king should care for this subjects and express his goodwill: *Dāna* (generosity); *Priya vācana* (kind words); *Atthacariyā* (commitment to the welfare of the people); *Samanattata* (a sense of equality with the people)." *Jātaka* I: 260, 399, in K. Sri Dhammananda, *Treasure of the Dhamma*, 1994 Buddhist Missionary Society, Kuala Lumpur, pp. 178-179.

106 *Saddharmalamkāraya*, ed. Bentara Sraddhatissa Sthavira, B.E. 2494, p. 452. The emphasis is mine. Cf. Ch. VII note 100.

107 *Culture*, p. 133.

108 *Cūlavaṁsa*, 37. 76; 41. 66; 44. 67; 49. 35; 51. 85; 60. 78.

109 See Geiger, *Culture,* pp. 56-57 for examples.

110 *Cūlavaṁsa*, 48. 146.

111 *Cūlavaṁsa*, 54. 31. However, in the days of Sri Vikrama Rājasiṁha (1798-1815), prisoners were not supported by the state. See Ch. V, text at n. 125.

112 *Cūlavaṁsa*, 48. 147; 49. 36; cf. 50. 3.

113 *Cūlavaṁsa*, 54. 32; cf. 60. 74.

114 *Cūlavaṁsa*, 74. 20-21.

115 Prīti-Dānaka-Maṇḍapa Rock Inscription, *Epigraphia Zeylanica,* Vol. II, p. 176.

116 *Saddharmālaṃkāraya*, ed. Bentara Sraddhatissa Sthavira, B.E. 2494, p. 452. *Re* this ruler, see Table at p. 142 *Epigraphia Zeylanica*, Vol. I

117 See Ariyapala, p. 47.

118 See *Mahāvaṁsa*, XXXVI. 75-79.

119 *Mahāvaṁsa*, XXXVI. 82-90.

120 *University of Ceylon History of Ceylon,* Vol. I, Pt. I, p. 230.

121 Pp. 46-47. The consequences suffered by subjects on account of the actions of unrighteous kings, whose bad example the people themselves followed, are referred to in the *Mahāsupina Jātaka. (The Jātaka or Stories of the Buddha's Former Births*, ed. E.B. Cowell, 1895, Cambridge Univ. Press, reprinted in 1994 by Motilal Banarsidas Publishers Private Ltd., Delhi, *Jātaka* No. 77, Vol. I, pp. 187-193.) This *Jātaka* story relates how the Buddha interpretted sixteen dreams of the King of Kosala. The King said: "Methought, four black bulls, like collyrium in hue, came from the four cardinal directions to the royal

courtyard with avowed intent to fight; and people flocked together to see the bull-fight, till a great crowd had gathered. But the bulls only made a show of fighting, roared and bellowed, and finally went off without fighting at all. This was my first dream. What will come of it?" The Buddha replied: "Sire, that dream shall have no issue in your days or mine. But hereafter, when kings shall be niggardly and unrighteous, and when folk shall be unrighteous, in days when the world is perverted, when good is waning and evil waxing apace, - in those days of the world's backsliding there shall fall no rain from the heavens, the feet of the storm shall be lamed, the crops shall wither, and famine shall be on the land. Then shall the clouds gather as if for rain from the four quarters of the heavens; there shall be haste first to carry indoors the rice and crops that the women have spread in the sun to dry, for fear the harvest should get wet; and then with spade and basket in hand the men shall go forth to bank up the dykes. As though in sign of coming rain, the thunder shall bellow, the lightning shall flash from the clouds, - but even as the bulls in your dream, that fought not, so the clouds shall flee away without raining. This is what shall come of this dream. But no harm shall come therefrom to you; for it is with regard to the future that you dreamed this dream..."

122 සීහළවත්ථුප්පකරණං edited by P. Buddhadatta Thera, (1959) pp. 132 and 133, verses 23-25 and verse 33. I am obliged to Dr. Somapala Jayawardhana and Mr. S.J. Sumanasekera Banda, for assisting me in the difficult task of translating these verses. However, I accept personal responsibility for the version that follows: It is hoped that I have been able to convey the sense of what was intended. It is not meant to be a mere translation of words but rather a rendering of ideas that were encapsulated in poetic form.

Mr. S.J. Sumanasekera Banda (pers. com.) said: *dasahisaṃgahehica* (lit. 'ten gifts') should be rendered as 'ten elements of popularity, including liberality (*dāna*), kindly speech (*priya vacana*), a life of usefulness (*arthacaryā*) and impartiality or equality (*samānatmatā*).' Dr. Jayawardhana (pers. com.) suggested "the ten objects of sympathy."

According to the *Mahasupina-Jataka*, (*The Jataka or Stories of the Buddha's Former Births*, ed. E. B. Cowell, 1895, Cambridge Univ. Press, reprinted in 1994 by Motilal Banarsidass, New Delhi, Vol. I, pp. 190-191), after having other dreams interpretted, the King said: "Methought Sir, I saw rice boiling in a pot without getting done. By not getting done, I mean that it looked as though it was sharply marked off and kept apart, so that the cooking went on in three distinct stages. For part was sodden, part hard and raw, and part just cooked to a nicety.

This was my tenth dream. What shall come of it.?" The Buddha replied: "This dream too shall not have its fulfilment till the future. For in days to come kings shall grow unrighteous; the people surrounding kings shall grow unrighteous too, as also shall brahamins and householders, townsmen, and countryfolk; yes, all people alike shall grow unrighteous, not excepting even sages and brahamins.Next, their very tutelary deities - the spirits to whom they offer sacrifice, the spirits of the trees, and the spirits of the air - shall become unrighteous also. The very winds that blow over the realms of these unrighteous kings shall grow cruel and lawless; they shall shake the mansions of the skies and thereby kindle the anger of the spirits that dwell there, so that they will not suffer rain to fall - or, if it does rain, it shall not fall on all the kingdom at once, nor shall the kindly shower fall on all tilled or sown lands alike to help them in their need. And, as in the kingdom at large, so in each several district and village and over each separate pool or lake, the rain shall not fall at one and the same time on its whole expanse; if it rain on the upper part, it shall not rain upon the lower; here the crops shall be spoiled by a heavy downpour, there wither for very drought, and here again thrive apace with kindly showers to water them. So the crops sown within the confines of a single kingdom - like the rice in the pot - shall have no uniform character, Howbeit, you have nothing to fear therefrom..."

123 Verse 23.

ලොකස්ස පාලකො එසො යථා මාතා යථා පිතා;
යදි සො ධම්මෙන පාලෙති සුඛං ජීවන්ති ජන්තුනො.

124 Verse 24.

රාජා අධම්මෙ වත්තන්තො නිග්ගතො දාරුණො ඉති
තෙන කුටරාජදොසෙන ඛිප්පං ලොකො විනස්සති.

125 Verse 25.

අකාලෙ වස්සති වස්සං කාලෙ වස්සං න වස්සති;
විවිත්තං විසමං වස්සං යදා රාජා අධම්මිකො.

126 Verse 33.

අධම්මිකම්පි රාජානං නිස්සාය පරිසා පජා
එවං තෙ පරිහායන්ති දසහි සංගහෙහි ච.

127 XXI. 27-34.

128 The bell of justice, see Ch. VIII text for n. 163. The 'bell of justice' existed right down to Kandyan times: see Ch. XV text for n.9.

129 "These are the four guardians of the world, the lokapālā who usually appear near Indra in the brāhmanic pantheon: Dhataraṭṭha, Virūḷhaka,

Virūpakkha, and Vessavaṇa, rulers, in the above order, of the east, south, west, and north." Geiger, *Mahāvaṃsa,* p. 144, note 3.

130 "Skt. Parjanya, the god of rain: Geiger, op. cit., note 4.

131 54. 2-4

131A *Tirukkural,* tr. Rev. Dr. G.U. Pope, Rev. W.H. Drew, Rev. John Lazarus, and Mr. F.W. Ellis, Tinnevelly, Madras, 1973.

132 *Shâyast Lâ-shâyast,* X. 18, Sacred Books of the East, Vol. V, Pahlavi Texts, Part I. tr. E.W. West, p.322, Motilal Banarsidass, Delhi, 1970.

133 *Culavaṁsa,* 48. 71. See also Ch. X note 8.

134 Manu VIII. 174.

135 Cf. Niśśaṅkamalla slab-inscription, *Epigraphia Zeylanica,* Vol. II p. 81. It was recognized that the people in certain districts were entitled to publicly remonstrate when acts of injustice were committed by the governors of their districts: see *Lak Raja Lo Sirita,* Bertolacci, p. 277.

136 The Laws of Manu, IX. 249.

137 Manu VIII. 316.

138 *Vaiśishṭa*, XIX, 40 & 43.

139 Manu VIII. 12.

140 Manu VIII. 14.

141 Manu VIII. 18.

142 Manu VIII. 19.

143 Manu VIII. 17.

144 Manu VIII. 15 read with Bühler, p. 255 note 15.

145 *Arthaśāstra* Bk. III, 150.

146 Geiger, *Culture,* p. 116.

147 Ed. D.B. Jayatilake, Laṅkābhinava-viśruta Press, Colombo, 1936, p. 238; Amaramoli Nayaka Sthavira, Panditha Veragoda, (1954), p. 257.

148 Ariyapala, p. 123; Ranawella, *Nīti-vimaṁsa*, p. 30.

149 *Samanthapāsādikā,* ed. Simon Hevavitharana, p. 222; Ranawella, *Nīti-vimaṁsā,* p. 31.

150 *Saddharmaratnāvaliya*, 239.

151 P. 123.

152 At p. 48.

153 XXI. 13-14. See also Ch. III note 53.

154 *Mahāvaṁsa* XXI, 11.

155 XXIV. 1.

156 *Cūlavaṁsa*, 37. 108.

157 *Cūlavaṁsa*, 54.2.

158 *Cūlavaṁsa*, 80. 9-13.

159 *Saddharmālaṅkāraya*, ed. B. Saddhatissa, p. 452.

160 *Epigraphia Zeylanica*, Vol. II, p. 121.

161 *Cūlavaṁsa*, 73.23.

162 *Arthaśāstra*, Book III, 150.

163 XXI, 13-18.

164 P. 425, 1-3.

165 See Ranawella, *Nīti-vimaṁsā*, p. 34. As we have seen, King Sena IV (954-956) too was said to have been "impartial towards friend and foe": *Cūlavaṁsa*, 54.2.

166 Mr. G. Masilamani, Senior Advocate, Deputy Solicitor-General of India, who first aroused my interest in the matter when I presented a paper in Chennai, later sent me copies of the relevant literature, for which I am obliged.

167 *Cilappatikaram*, tr., Tamil University, Thanjavur, 1989, p.86, canto 23, lines 46-49. I am obliged to S.J. Sumanasekera Banda for drawing my attention to this reference.

168 P. 145.

169 See above Ch. IV. text from n. 36 sq. See especially Ch. IV text at note 40 sq.

170 XXI. 16-18.

171 XXI. 34. Walpola Rahula, p. xxiii, stated: "The impartiality of the author of the first part of the *Mahāvaṁsa* is remarkable. He refers to foreign Tamil rulers as just and good if they were really so, even if he disliked them as foreigners. He says Sena and Guttika, the two Tamil usurpers, ruled righteously (*dhammena*). Eḷāra, the Chola prince who captured the Sinhalese throne by force of arms, could not have been popular. But Mahānāma admits that he was just and impartial in administration, and gives a number of examples in illustration." But cf. Ch. III note 53.

172 XXI, 21-26. See Ch. IV text at n. 85 sq.

173 An edifice built over a relic/dome-shaped monument.

174 Wilhelm Geiger, in his translation of the *Mahāvaṁsa*, in note 3 p. 20, states that a *Kahápaṇa* was a square copper coin weighing 146.4 grains = 9.48 grams. H.W. Codrington, *Coins and Currency*, (1924), republished in 1994 by Asian Educational Services, New Delhi, pp. 13

sq. states that "in mediaeval Ceylon the *Kahápaṇa* was a coin of gold, in weight one-half of Manu's piece of 80 *raktikas*", but adds that "it may be assumed that the *Kahápaṇa* for a long period had been of silver." See also Ch. IV note 97 above.

175 Ed. by Y. Pannananda, (1932), p. 310.

176 The emphasis is mine. Cf. Ch. V note 153 and Ch. VII note 127.

177 Weerasinghe, 44-45, and 04 February, p. 15. Sending the others 'away suitably rewarded' was, perhaps, saying, as judges might say today, that their complaints relating to unequal treatment, were upheld with costs? Cf. Ch. V, n. 153 and Ch. VII note 127.

178 Manu VII.7.

179 Manu IX. 307.

180 Manu VIII. 173.

181 Manu VIII. 175.

182 Manu VIII. 335.

183 Manu VIII. 336. Perhaps, legislators and judges today, might draw some useful lessons?

184 Vaśiṣṭha, XVI. 2 & 3.

185 Nārada, *Judicial Procedure*, 1.4.

186 See the *Rules for Administering Justice,* quoted by D' Oyly, pp. 141-142. See Ch. IX text at nn. 3, 4, 5, 7, 8, 9, 10, 11, 12.

187 Cf. *ubhaya pakṣayen ma ādyanta asā gannā daḍeka da: Saddharmaratnāvaḷiya,* 365. See Ch. X text at n. 64 below.

188 Manu VIII. 46.

189 Manu VIII. 65. "Those must not be made [witnesses] who have an interest in the suit, nor familar friends...and enemies of parties." Manu VIII. 64. Cf. Canon 3 E (1) (b) of the American Model Code of Judicial Conduct (1990) which requires a judge to disquality himself or herself from hearing a matter where the judge has been a material witness concerning it.

190 On such procedures, see D'Oyly, pp. 57-58; Ch. XIV text at nn. 84 and 85.

191 The above account is based on Dolapihilla, pp. 228-244.

192 VIII. 178.

193 Manu VIII. 44.

194 Manu VIII. 45.

195 (1986) p. 509. Mankudimaruthanar, the chief poet in the court of king

Nedunjelyan II of Madura, in the last years of the first century and in the early years of the second, wrote a poem addressed to the monarch (*Maduraikanchi*), so that the great conqueror who repelled an Aryan invasion and was therefore given the designation '*Aryapadi Kandana*' would not be carried away by his success and would rule his subjects wisely. He said (lines 533-546):

"There are just judges who expound the law
And from the suitor's minds remove all fear,
Distress and too much greed. They do their work
Avoiding all passion and all levity.
With fair impartial minds they ponder things
As though they weighed them in a pair of scales."

J.V. Chelliah; *Pattupattu, Ten Tamil Idylls*, Tamil University, Thanjavur, 1985, p.259.

Scales in the administration of justice may have been more than symbolic when matters were decided by ordeal (*Divya*). Sen-Gupta (pp. 63-64) said: "*Tula* is the name given to the ordeal by balance. It is also called '*ghata*' by Viṣṇu. A full description of this particular mode of proof is given in Viṣṇu and also in a text of Kātyāyana. In substance it consists of weighing the accused in the balance. A large balance is set up on which the accused is weighed against weights placed in the other pan. The height to which the pan in which the defendant is set rises is marked on a post set up beside it. After he is weighed, he gets down and *mantras* are uttered. Then he is placed on the balance once again. If on this occasion his pan goes up beyond the original mark, he is found innocent. If it goes below the mark, he is guilty. It is not clear what happens when the pan stands even with the first mark. The basis of the faith in this result lies in the magic of the *mantras* uttered between the two weighments.
From this description one is reminded at once of the famous writing on the wall in Belshazzar's dream, "You have been weighed in the balance and found wanting". That expression probably indicates a custom of Babylon of weighing accused persons not dissimilar to the ordeal by the balance as described by Kātyāyana. It may be that this practice was borrowed by one community from another, or it may be that it was an institution common to all races inhabiting the area from India to Palestine. No one knows."

196 Pp. 124-5.

197 *Pansiya-panas Jātaka Pot-vahanse,* edited by Pandita Navulle Dharmananda and Devinuwara Ratnajoti, 1955, Jinalankara Press, p. 63; Batuvatte Pemananda ed., Ratnakara, Colombo 1958, p. 177; see

also Ranawella, *Nīti-vimaṅsā*, p.34. The king had ordered all dogs, except those within his palace, to be slain, for some dogs had gnawed the leather work and straps of his carriage. The Bodhisatta, reasoning that it was the king's own dogs that were responsible, told the king that he was not impartial and was "following the four evil courses of partiality, dislike, ignorance and fear." He added: "Such courses are wrong, and not king-like. For the kings in trying cases should be as unbiased as the beam of a balance." Tr. by Robert Chalmers in *The Jātaka or Stories of the Buddha's former Births*, ed. E.B. Cowell, Cambridge Univ. Press, 1895, Vol. I, Book 1, at pp. 59-60.

198 Weerasinghe, p. 36 and January 21, p. 13, citing the *Nikāyasaṅgrahaya*, (1415 AD), p. 12.

199 *R* v *Sussex Justices, ex parte McCarthy*, [1924] 1 K.B. 256, 256.

200 Per Lord Scarman in *R* v *Atkinson*, [1978] I W.L.R. 425, 428.

201 XXXVII. 39.

202 Weerasinghe, p. 36, and January 16, p. 15. Another, perhaps supplementary, explanation for the king's action has been suggested. It has been said that the Minister concerned was probably Meghavaṇṇa-Abhaya, once a close friend of the monarch, who had raised an army and declared war on the king in protest against the king's misconduct with regard to a certain matter. Later, they were reconciled. Walpola Rahula, (p. 95, note 4) stated: "Evidently there was no other person powerful enough to do such a thing against the wish of the king." He also suggested (p. 96) that the king's "power as the secular head of the religion was weakened by his rash acts", and that it was possible for a Minister to "Ignore the king's wishes" and disrobe "a monk the king had highly honoured ... only because the Mahavihara and public opinion was against the king."

203 P. 44.

204 P. 35.

205 Weerasinghe, p. 35, citing the *Jātaka Gāthā Sannaya*.

206 Cf. Weerasinghe, p. 35.

207 *Nikāyasaṅgrahaya*, p. 12.

208 See also Ch. VIII note 202.

209 XXXVII. 39.

210 *Saddhamappakāsini*, ed. Simon Hewavitharana, (1927), p. 18; Ranawella, *Niti-vimaṅsa*, p. 33. In India, when the Prāḍivivāka graduated from being the foreman of the tribunal presided over by the King to the position of an independent judge deputising for the King,

the King was directed to decide according to the opinion of the Prāḍvivāka "as much as the King of England decides according to the opinion of the Judicial Committee of the Privy Council". Sen-Gupta p. 47.

211 D'Oyly, p. 31. Lawrie (Notes, p. 199) gives an instance of a decision made personally by the King in 1810 in the 'Mudra Maduwa'. - Judicial Commissioner, 12th July, 1819. He stated that "The last King did not hear cases personally until Puswelle was appointed Maha Gabada Nimale - this was there or four years after he had ascended the throne. The first case that he tried was that of Moratota Unnanse - Judicial Commissioner's Diary, 8th March, 1824." Lawrie noted that 'The King appointed a special officer Hantiya Nilame to report on all cases regarding land belonging to Asgiriya Vihare' - Judicial Commissioner, 28th August, 1817.

212 Ariyapala, p. 123.

213 Ranawella, *Niti-vimaṁsā*, p. 33. It was one of the duties of a monarch to adjudicate: Manu, VII.153 and note.

214 See above text at n. 177.

215 See above text at n. 163. Perhaps the case illustrates the right of an appeal?

215A *Epigraphia Zeylanica*, Vol. I, pp. 35-37.

216 *Mahāvaṁsa*, XXXV. 10.

217 Weerasinghe, p. 34, and January 16, p. 15.

218 P. 45.

219 P. 126.

220 P. 132.

221 P. 36, and January 21, 1991, p. 13 citing the *Samantapāsādikā*, Vol. I p. 221.

221A Walpola Rahula, pp. 163, 291, stated that Abhidhammika Godatta was raised to a position "virtually" equal to the office of Chief Justice, and that this was mainly on account of his great knowledge of Buddhist philosophy and the *Vinaya*. "The king who was greatly pleased with the judgment given by the thera in an ecclesiastical case, issued an edict by the beating of drum declaring: 'As long as I live, judgments given by Abidhammika Godatta Thera, in cases either of monks, nuns or laymen are final. I will punish him who does not abide by his judgments'.*Mayi santebhikkhunampi bhikkuunīnampi gihīnampi adhikaraṇam Ābidhammika Godattattherena vinicchitaṃ suvinicchitaṃ. Tassa vinicchaye atiṭṭhamānaṃ rajāṇāya ṭhapemi.*" *Samantapāsādikā*, Simon Hevavitarane Bequest Series, Colombo, p. 221. However,

Walpola Rahula at note 4, p. 163 said: "It is not certain whether Godatta ever acted as a judge in secular matters. The king's declaration may be regarded as an expression of his recognition of the thera's wisdom and knowledge of the law and his high qualities. This is also an indication of the high esteem in which the *thera* was held by the public. Even if the *thera* had presided over any secular cases, there is no doubt that he would not have passed any judgment involving capital punishment or physical torture."

222 Also known as Bhātika Abhaya/Bhātika Tissa/Bhātiya Tissa : see K.M. De Silva, p. 566, who gives the regnal years 22 B.C. - 7 A.D.

223 *Brāhmī Inscriptions of Sri Lanka from 3rd Century B.C. to 65 A.D.* in "Inscriptions", Ed. Nandadeva Wijesekera, Archaeological Department Centenary (1890-1990) Commemorative Series, Vol. 2, 1990, pp. 26-27.

224 *Evolution of Ancient Indian Law,* pp. 40-41. See Ch. XIII below.

225 Ranawella, *Niti-vimansā,* p. 33. See also Ch. XIII n. 19.

226 Manu, VIII, 1-2 said that a King desirous of investigating law suits must do so with "Brāhmaṇas and experienced counsellors".

227 P. 215.

228 Not, it seems, as Ranawella, *Nīti-vimansā,* p. 33, suggests as 'ancillary ministers'. S. J. Sumanasekera Banda (pers. comm.) points out that the *Aṭadā* Sanyaya p. 215 refers to the three Ministers who were invited by King Angāti to sit in judgment with the remaining (*avaśeṣa*) Ministers. *The Jātakapāli* (*Mahānipāto* 7 p. 200, Vol. III, Buddha Jayanthi Tripitaka Series, Vol. 32 ed. Rev Karahampitigoda Sumanasara, 1986; see also Jātakaṭṭhakathā, ed. Rev. Vidurupola Piyatissa, Simon Hewavitarane Bequest Series, Colombo, 1939, Vol. VII, p. 205; cf. Mahā Nārada Kāśyapa Jātakaya, ed. Rev. Vatuvatte Pemananda, Jātaka No. 535, pp. 2205-2247) stated:

Vijayōca Sunāmōca senāpati Alātako
Ete atthe nisīdantu vōharakusalatayo

Let Vijaya, Sunama and Alata, the three Ministers who are well versed in administering justice, sit in judgment.

The *Mahasupina-Jataka,* (*The Jataka or Stories of the Buddha's Former Births,* ed. E.B. Cowell, 1895, Cambridge Univ. Press, reprinted in 1994 by Motilal Banarsidass Publishers Private Ltd., Delhi, No. 77, Vol. I, pp. 187-193), deals with sixteen dreams of the King of Kosala interpretted by the Buddha. The importance of appointing competent persons as judges, and the dangers of passing over experienced persons, are brought out in the following conversations

between the King and the Buddha: "Methought, Sir, I saw men unyoking a team of draught-oxen, sturdy and strong, and setting young steers to draw the load; and the steers, proving unequal to their task laid on them, refused and stood stock-still, so that wains moved not on their way. This was my fourth dream. What shall come of it?" The Buddha replied: "Here again, the dream shall not have its fulfilment until the future, in the days of unrighteous kings. For in days to come, unrighteous and niggardly kings shall shew no honour to wise lords skilled in precedent, fertile in expedient, and able to get through business ; nor shall appoint to the courts of law and justice aged councillors of wisdom and learning in the law. Nay, they shall honour the very young and foolish, and appoint such to preside in the courts. And these latter, ignorant alike of state-craft and of practical knowledge, shall not be able to bear the burthen of their honours or to govern, but because of their incompetence shall throw off the yoke of office. Whereon the aged and wise lords, albeit right able to cope with all difficulties, shall keep in mind how they were passed over, and shall decline to aid, saying:- 'It is no business of ours; we are outsiders; let the boys of the inner circle see to it.' Hence they shall stand aloof, and ruin shall assail those kings on every hand. It shall be given as when the yoke was laid on the young steers, who were not strong enough for the burthen, and not upon the team of sturdy and strong draught-oxen, who alone were able to do the work. Howbeit, you have nothing to fear therefrom ..." (P. 189).

The king said: "Methought Sir, I saw huge blocks of solid rock, as big as houses, floating like ships upon the waters. What shall come of it?" The Buddha replied: "This dream also shall not have its fulfilment before such times as those of which I have spoken. For in those days unrighteous kings shall shew honour to the lowborn, who shall become great lords, whilst the nobles sink into poverty. Not to the nobles, but to the upstarts alone shall respect be paid. In the royal presence, in the council chamber, or in the courts of justice, the words of the nobles learned in the law (and it is they whom the solid rocks typify) shall drift idly by, and not sink deep into the hearts of men; when they speak, the upstarts shall merely laugh them to scorn, saying, 'What is this these fellows are saying?' So too in the assemblies of the Brethren as afore said, men shall not deem worthy of respect the excellent among the Brethren; the words of such shall not sink deep, but drift idly by, - even as when the rocks floated upon the waters. Howbeit, you have nothing to fear therefrom ..." (P. 191).

229 I shall consider the work of the king's court again in discussing the system of courts in Ch. XV - Mahānaḍuva.

230 P.E. Pieris, p. 581 ; cf. Bertolacci, pp. 276-277.

231 Pieris, p. 583; cf. Bertolacci, p. 279.

232 See Ch. XIII text at n.10.

233 *Samantapāsādikā* of Buddhagosa, ed. W. Sorata, p. 222; Ranawella, *Nīti-vimaṅsā*, p. 34.

234 Hayley, p. 69 note (a).

235 Hayley, p. 71.

236 D'Oyly, p. 53 explained that the slaughter of "tusked and large elephants is reckoned amongst the most heinous offences." See also Ch. VII text at n. 91 sq.

237 D'Oyly, p. 31. See also Ch. XIV text n. 164 sq.

238 Hayley, p. 71.

239 D'Oyly, p. 32.

240 P. 135.

241 P. 32.

242 Kauṭilya, *Arthaśāstra*, III. 150.

243 See Ch. V text n. 17 sq.

244 See Ch. XIV text n. 136 sq. and 144 sq.

245 P.E. Pieris, pp. 579-580 ; cf. Bertolacci, p. 275.

246 "Whatever matter his ministers or the judge may settle improperly, that the King himself shall [re] settle and fine [them] one thousand [pañas]." Manu IX. 234. At a certain time, due to the erosion of the King's authority, his powers as an appellate judge may have been rendered ineffective. Lawrie (Notes, p. 200) stated: "Attaragama Nilame prostrated himself before the last King and complained of an injustice done to him by the Adigars. The King ordered an enquiry in the great Court by Migastenne Adigar, Dehigama Udugabada Nilame, Mullegama Dissawa and others. They decided in favour of Attaragama and the King confirmed their decision. Afterwards one of the defendant's family climbed a coconut tree in the Nata Dewale grounds opposite to the Palace and cried for redress. The King ordered a new trial, but none was held: - Judicial Commissioner, 3rd July, 1822."

247 D'Oyly, ibid.

248 Pp. 37-38, and January 23, p. 15, citing the *Papañcasudani*, II, p. 253, 728.

249 See also Ranawella, *Nīti-vimaṅsā*, p. 32. See also Ch. XIV text at 164 sq.

250 Ranawella refers to pp. 1412-1413, but the edition is not mentioned. Ranawella may have been referring to the *Dhammaddhaja Jātaka*. According to the *Jātaka*, ed. by E. B. Cowell, Vol. II, Book II, No. 220, p. 131, the dissatisfied litigant fell at the feet of the *Bodhisatta*, the wise *Dhammaddhaja*. See Ch. X note 8 below.

251 Ranawella. *Nīti-vimaṅsā*, p. 35. See the previous note.

252 P. 44. See also Davy, pp. 134-135.

253 The hierarchical system was a feature of the ancient Hindu system. For example, it was said: "Family meetings (*kula*), corporations (*sreni*), village assemblies (*gana*), one appointed by the king himself, are invested with the power to decide lawsuits; and of these, each succeeding one, is superior to the one preceding it in order." Nārada, cited by Paranavitana in *Epigraphia Zeylanica,* Vol III, p. 91.

254 Weerasinghe, p. 37, and January 23, p. 15.

255 Weerasinghe, p. 37, and January 23 p. 15. There was a similar bell in the Kandyan Kingdom. See Ch. XIV text n.9.

256 *Kaňdavurusirita*, in Sir D.B. Jayatilaka, *Sinhala Sāhitya Lipi, Kaňdavurusirita,* Saman Press Maharagama, 1956, p. 65; Weerasinghe, p. 37, and January 23, p. 15; Ranawella, *Nīti-vimaṅsā,* p. 34.

257 The *Vaṃsatthappakāsinī,* Pali Texts Society, p. 553, 14-16; Weerasinghe, p. 37, and January 23, p. 15; Ranawella, *Nīti-vimaṅsā,* p. 33.

258 99. 73.

259 Theft of royal property was ordinarily treated as one of the five most heinous crimes. This case, perhaps, illustrates the fact that in the Sri Lankan system of law, the circumstances were important, and that the application of the law was not mechanical and rigorous. See Ch.XI text at n. 43 sq.

260 The nuts of the tree *Areca catechu,* Betel-nut tree, Sinhalese *Puvak.*

261 Kandy, see Ch. 111 note 33.

262 P.E. Pieris, p. 633.

263 P. 99.

264 Apart from prostrating oneself before the monarch when the monarch is proceeding on the road, or "prostrating at any other time towards the palace", the appellate procedure may also have been set in motion by the representation of a chief or courtier or officer of the palace. Sometimes, an aggrieved party would invite the monarch's attention by climbing a tree near the palace and proclaiming aloud his grievance or by taking refuge in the *Mahā Gabaḍāwa* (chief royal store) or in the

Daḷadā Māligāva (Temple of the Sacred Tooth Relic), or other royal or religious sanctuary: D'Oyly, pp. 31-32. Places of sanctuary have been referred to elsewhere. See Ch. XVII text at n. 87 sq. It seems, therefore, that they were used not only for purposes of avoiding apprehension, but also for drawing attention to injustices.

265 D'Oyly, 45. Percival, p. 178, said: "The Adigars are the supreme judges of the realm; all causes may be brought before them, and it is they who give final judgment. An appeal indeed lies from their sentence to the king himself; but as they alone possess the royal ear, it is both difficult and dangerous to assert this privilege, and every one is more willing to acquiesce in their decision than to hazard an appeal which is likely to be attended with worse consequences than the grievance he complains of."

266 D'Oyly, p. 45.

267 See Ch. VI text at n. 71, n. 74.

268 P.E. Pieris, p. 582 : cf. Bertolacci, p. 277.

269 Cf. Sen-Gupta, pp. 41-42, who pointed out that in India the King as a rule followed the advice of his Sabhā (Court) "which placed all important constitutional limitations on possible whims and caprices of kings doing justice though of course it was not always effective in practice."

270 See Ch. VIII text at n. 18 sq. - n. 30.

271 P.E. Pieris, p. 582 ; cf. Bertolacci, p. 277.

272 "The Principles of Law in Buddhist Doctrine", in "*Recueil des Cours*", 1967, Vol. II, p. 543. Cf. C. Pridham, *An Historical, Political and Statistical Account of Ceylon and its Dependencies,* 2 Vols., London, 1849, I, p. 8. Paranavitana "Two Royal Titles of the Early Sinhalese", *Journal of the Royal Asiatic Society of Great Britain and Ireland,* 1936, p. 458.

273 P. 32.

274 P. 32.

275 Hayley, p. 71.

276 Cf. Manu, VII. 115. But see Wickremasinghe, *Epigraphia Zeylanica,* Vol. I, pp. 243-244, who considered the possibility of an administrative division for administrative purposes into groups of ten villages as prescribed in the Hindu Law Books of Manu, Viṣṇu and others, but concluded that *dasa-gama* "may after all be nothing more than a village occupied by serfs attached to a temple."

277 Ranawella, Vēvāḷkāṭiya: 1996, p. 8; *Nīti-vīmaṅsā,* p. 32.

278 Or passed with his acquiescence: *Lak Raja Lo Sirita,* P.E. Pieris, p. 583; Bertolacci, p. 279.

279 E.g. in the case of the Vidāna and Dingi Rāla, the accused persons were taken to Gampoḷa where the king was at that time: P.E. Pieris, p. 633.

280 Davy, p. 135. E.g., see the cases relating to the Hittaragedera family of Hulangomuva; Palāta Vidāna; Dingi Rāla; the case of the two washermen of Medellahena in Hāris Pattu; and the case of Mullegama Appu of Hāris Pattu: P.E. Pieris, pp. 632-633.

281 P. 630.

282 *Cūlavaṁsa* 83. 4-7; see above Ch. IV text n. 97.

283 *Cūlavaṁsa,* 37. 71. The declaration of amnesty was an ancient practice. The *Kusa-Jātaka* (No. 531, ed. E.B. Cowell, Vol. V, Book XX, at p. 471) relates that when King Okkāka was escorting the daughter of the king of Madda to be his son's wife, on reaching Kusāvati, "he gave orders for the city to be decorated, all prisoners to be released, and after sprinkling his son and creating Pabhāvati his chief consort, he proclaimed by beat of drum the rule of king Kusa."

In every civilised society, judges and persons who hold positions of authority, especially those who hold the sceptre of supreme authority, were and are, as a mark of decent behaviour, expected to act with compassion, restraint and clemency. Shakespeare, in *The Merchant of Venice*, IV.i, expressed those sentiments in the following words:

"The quality of mercy is not strain'd;
It droppeth as the gentle rain from heaven
Upon the plain beneath; it is twice bless'd;
It blesseth him that gives and him that takes
'Tis mightiest in the mightiest: it becomes
The throned monarch better than his crown;
His sceptre shows the force of temporal power,
The attribute to awe and majesty,
Wherein doth sit in dread and fear of kings;
But mercy is above the sceptered sway;
It is enthroned in the hearts of kings,
It is an attribute to God himself;
And earthly power then show likest God's
When mercy seasons justice."

284 *Cūlavaṁsa*, 62. 41-42.

285 *Cūlavaṁsa*, 80. 2-3.

286 *Cūlavaṁsa*, 83. 4-7.

287 *Epigraphia Zeylanica*, Vol. III, p. 281.

288 *Epigraphia Zeylanica*, Vol. III, pp. 284-285.

289 P. 109.

290 D.N. - *Diyavadana Nilame*, a high state official.

291 Rājadhirājasiṁha (1782-1798 AD).

292 *Epigraphia Zeylanica*, Vol. II, p. 229.

293 See Geiger, *Culture*, pp. 133-134.

294 *Epigraphia Zeylanica*, Vol. V, pp. 23-27.

295 *Epigraphia Zeylanica*, Vol. V, p. 19.

296 Manu VII. 28.

297 Manu VII. 29.

298 *Arthaśāstra*, Ch. V-11, tr. R. Shamasastry, Mysore, 1956.

299 *Culture*, p. 119.

300 Kauṭilya, also known as Cāṇakya or Viṣṇugupta, was a counsellor and adviser to King Chadragupta (c. 321-297 B.C.) of the Mauryan Empire of northern India and was instrumental in helping the king to overthrow the powerful Nanda dynasty at Pāṭaliputra, Magadha. He had a knowledge of medicine, astrology and elements of Greek and Persian learning introduced into India by Zoroastrians. Compared by many to Machiavelli and by others to Aristotle and Plato, Kauṭilya is alternately condemned for his ruthlessness and trickery and praised for his sound political wisdom and knowledge of human nature. All authorities agree, however, that it was mainly because of Kauṭilya that the Mauryan Empire under Chandragupta and later Aśoka (c. 265-238) became a model of efficient government. His classic treatise on polity, *Arthaśāstra*, was Chandragupta's guide, as well as the guide of monarchs of Sri Laṅkā: E.g. the *Cūlavaṁsa* 64.1-3- refers to *Koṭṭallādisu nītisu*, i.e., Kauṭilya's *Arthaśāstra*, in which Parākramabāhu I was said to have been instructed : Geiger's *Culture*, p, 119. It was a compilation of almost everything that had been written in India up to his time on *artha*, (property, economics or material success). Each of its 15 sections deals with a phase of government which Kauṭilya sums up as 'the science of punishment'. He openly advises the development of an elaborate spy system reaching into all levels of society and encourages political and secret assassinations. Lost for centuries, the book was discovered in 1905 and translated into English: Cf. *Encyclopaedia Britannica*, 15th Ed., 1988, Vol. 6, Micropaedia, p. 768.

301 Pp. 38-39

302 *Cūlavaṁsa*, 99.72.6

303 *Cūlavaṁsa*, 59.8.

304 P. 275. Cf. P.E. Pieris, p. 579.

305 *Cūlavaṁsa*, 64. 1-4.

306 See also Weerasinghe, p. 33; January 16, p. 15 who drew attention to the fact that Parākramabāhu I was well versed in *nīti* and *koṭṭallādisu nitisū*. See note 300 above.

307 58. 1-3.

308 Vijayabāhu I (1055-1110 AD).

309 *Culavamsa* 64. 1-4. Weerasinghe, Ibid.

310 *Manunītikkamaṁ avokkamma*: *Cūlavaṁsa*, 80.9.

311 *Cūlavaṁsa*, 83. 4-7.

312 See Ch. III text n. 123 sq.

313 See text at 302 sq. above.

314 Colvin R. de Silva, p. 63.

315 On the 'Royal Preceptor', see Ariyapala, pp. 102-104.

316 *Epigraphia Zeylanica*, Vol. II, p. 254: Ariyapala, p. 102.

317 *Mahāvaṁsa*, XXXVI. 112; XXXVII. 13; *Nikāyasaṅgrahaya*, p. 13; Ariyapala, p. 102.

318 *Cūlavaṁsa*, 90.80; Ariyapala, 103.

319 Manu VII. 78 required a king to appoint a *purōhita*. On the *purōhita*., see Ariyapala, pp. 97-98.

320 Galpota slab-inscription, *Epigraphia Zeylanica*, vol. II p. 118.

321 See A.R.B. Amerasinghe, *Professional Ethics and Responsibilities of Lawyers*., 1993, Lake House Investments Ltd., Colombo, pp. 23-25.

Traditional symbolic balance.

NOTES TO CHAPTER IX

1 Pp. 141-142.

2 Ch. III text n. 12 sq.

3 See Ch. VIII text at n. 178, 184, - 186, and 201. A judge must disqualify himself in a proceeding in which the judge's impartiality might reasonably be questioned, including, but not limited to, instances where the judge knows that he individually, or the judge's spouse, parent or child, wherever residing, or any other member of the judge's household has an economic interest in the subject matter in controversy or in a party to a proceeding or has any other more than *de minimis* interest that could be substantially affected by the proceeding: American Model Code of Judicial Ethics, 1990, Canon 3 E (1) (c). Impartiality is affected because the judge might have a tendency to favour such persons: the objection is 'a challenge to the favour': *R* v *Rand,* [1866] LR 1 QB 230 at 232.

4 See Ch. VIII text at n. 131 n. 153, n. 185, n. 186. A judge is disqualified if he had strong personal animosity (*Mclean* v *Workers' Union,* (1929) 1 Ch. 625), or there are circumstances that might give rise to a reasonable suspicion of animosity, (*R (Donoughue)* v *Cork County Justices* [1910] 2 I.R. 271; *Rothermere* v *Times Ltd.* [1973] 1 All ER 1013).

5 One of the written rules given to a Sri Lankan monarch - the highest judge - was: "Let not fear prevent you doing justice" : Davy, p. 107. In modern times, "[Judges] will not be diverted from their duty by any extraneous influences; not by hope of reward nor by fear of penalties; not by flattering praise nor by indignant reproach. It is the sure knowledge of this that gives the people the confidence in the judges": Lord Denning, *What Next in the Law,* Butterworths, London, (1982), p. 310. In 1770, the Lord Chief Justice of England, Lord Mansfield, said: "I will not do that which my conscience tells me is wrong, upon occasion to gain the huzzas of the thousands or the daily praise of all the papers which come from the press; I will not avoid doing what is right, though it should draw on me the whole artillery of libels; all the falsehood and malice can invent, or the credulity of a deluded populace can swallow ... Once for all, let it be understood, that no endeavour of this kind will influence any man who sits here." *R* v *Wilkes,* (1770) 4 Burr. 2527 at 2562. "Exposed as we are to the winds of criticism, nothing which is said by this person or that, nothing which is written by this pen or that, will deter us from doing what is right": Lord Denning in *Ex parte Blackburn,* [1968] 2 QB 150 at 155.

6 See Ch. VIII text at n. 46 and n. 69 and n. 228. "We will not make any justiciaries, constables, sheriffs or bailiffs, but from those who understand the law of the realm and are well disposed to observe it": *Magna Carta.*

7 See Ch. IV text following n. 84; Ch. VIII text at n. 150 sq. Sir Thomas More gave the assurance that "If the parties will at my hand call for justice, then were it my father stood on the one side, and the devil on the other, his cause being good, the devil should have the right." William Roper, *Life of Sir Thomas More* (1962). What is required today is not only that justice should be done, but that it should manifestly be seen to be done: Kinship disqualifies a judge where it is close enough to cause a real danger of bias: E.g. in Malaysia, a defendant charged before a magistrate, his brother, pleaded guilty. He was admonished and discharged. The order was set aside because "justice should appear manifestly to be done"; the magistrate's action affected public confidence in the judiciary: *Public Prosecutor* v *Mohd Ghazali b. Ibrahim,* [1995] 2 AMR 1446.

8 See Ch. IX, notes 3 and 4. Close personal friendship or emotional association is a disqualification and the proceedings are liable to be set aside: Shetreet, *Judges on Trial,* North-Holland Publishing Company, Amsterdam, New York, Oxford. 1976, pp. 306-307; De Smith, Woolf and Jowell, *Judicial Review of Administrative Action* p. 535. Lord Evershed MR once disqualified himself from sitting in an appeal because he knew the appellant, who was his anaesthetist. Lord Evershed commented: "I have slid into unconsciousness under his care": *The Times,* 13 March, 1958. *Re Inquiry Concerning a Judge,* 309 N.C. 635, 309 S.E. 2d 442 (1983) - dismissing traffic tickets of family and friends; *Coleman* v *The State,* 378 So. 2d 640 (Miss. 1979) - friend; *Bowerman* v *Ferster,* (1986) 46 Sask. R. 236 - as one of the parties appeared, the judge said, "Oh, here's my old friend, Ted; haven't seen you in a long time"; in *Cottle* v *Cottle,* [1939] 2 All ER 535, a rehearing of a matrimonial case was ordered where the magistrate was a friend of the wife's family and the wife's mother had given the husband to understand that the magistrate would hold in her favour ; In *ex parte Blume, re Osborn,* (1958) 50 SR (NSW) 334 the decision of a tribunal was set aside because a member of the tribunal was a friend of the applicant's husband; In *Powers* v *Commonwealth,* (1902) 114 Ky. 237, 70 SW 644, the defendant was indicted, along with the Assistant Governor, for being accessory before the fact to the murder of a Senator, a candidate for the Governorship. The defendant filed an affidavit objecting that the judge was a member of the same political party as the Senator and a personal friend. The Court of

Appeals held that the trial judge should have stepped aside. See also Ch. VIII text at 202 and note 202.

9 In Sri Lanka, the receipt of gifts by judges was prohibited as being contrary to custom: Badulla Pillar Inscription, *Epigraphia Zeylanica*, Vol. III, p. 78. In general see Ch. X below. It was, and is, the case in other systems: "Neither take a gift; for a gift doth blind the eyes of the wise and pervert the words of the righteous": Deuteronomy, XVI, 19; "The good and upright magistrate has preferred the honourable to the profitable": Horace, *Odes*, IV. IX. "Judges, like Caesar's wife, should be above suspicion" : per Bowen, LJ in *Leeson* v *General Council of Medical Education & Registration*, (1890) 43 Ch. D. 366 at 385. "A Judge should not receive from any person, corporation or organization, gifts, favours or benefits the acceptance of which would cast the least doubt on his impartiality. This ban extends not just to gifts from litigants or their counsel; it includes the larger area of gifts or favours from persons or corporations who or which may in the future be expected to be involved in litigation or materially interested in the results of litigation by others. Any gift to a judge from an unexpected or unfamiliar source must at once be suspect.": Hon. J.O. Wilson, a former Chief Justice of the Supreme Court of British Columbia in his book *A Book for Judges* quoted in Canadian Judicial Council, *Commentaries*, p. 29.

10 See note 9 above

11 On "Fear" see note 5 above.

12 "And I charged your Judges at that time, saying hear the causes between your brethren and judge righteously between every man and his brother, and the stranger that is with him. Ye shall not respect persons in judgment; but ye shall hear the small as well as the great; ye shall not be afraid of the face of man; for the judgment is God's...": Deuteronomy, 1: 16-17. "The judiciary shall decide matters before them impartially, on the basis of facts and in accordance with the law without any restrictions, improper influences, inducements, pressures, threats or interferences, direct or indirect, from any quarter or for any reason": United Nations Declaration on *Basic Principles on the Independence of the Judiciary*, Principle 2, (1985). Although earlier, discussions on judicial impartiality and independence were almost exclusively focussed on independence from the Executive, it is now acknowledged that interference could come from any quarter, including private parties and corporate giants, and must be resisted. "Any mention of judicial independence must eventually prompt the question independent of what? The most obvious answer is, of course,

independent of government. I find it impossible to think of any way in which judges, in their decision making role, should not be independent of government. But they should also be independent of the legislature, save in its law-making capacity. Judges should not defer to expressions of parliamentary opinion, or decide cases with a view either to earning parliamentary approbation or avoiding parliamentary censure. They must also plainly ensure that their impartiality is not undermined by any association, whether professional, commercial personal or whatever.": Lord Bingham, Lord Chief Justice of England, *Judicial Independence,* Judicial Studies Board Annual Lecture, 1996.

13 See Ch. VIII text at n. 298 sq. See also Ch. XIV text at n. 117 sq. Cf. Ch. VIII text n. 69 and n. 70.

14 "The science of jurisprudence", as we have seen, was derived from many sources. See Chapter III in general and text for n. 134.

14A Cf. Ch. VIII text n. 68, n. 140, n. 144.

15 "One of the troubles is that, whether through fear or admiration or for other reason, most members of the public regard a judge as a very special person. He is treated in court with a subservience and flattery which probably obtains nowhere else and, as he probably gets a similar kind of treatment outside court, it isn't good for some of us.": Henry Cecil, "The English Judge", *Hamlyn Lecture*, 1970, p. 58. "No one should be appointed as a judge ... if he is likely to 'throw his weight about' ... he will do immense harm ... You cannot expect the average judge to be modest at heart. Success at the Bar normally requires at least a modicum of conceit and he cannot drop it on appointment. But he should be able to control the look of the thing. Those who cannot should not be appointed. Good manners among judges ... are as important as a good legal brain ... Indeed, good manners are very important in life. They make good motorists as well as good judges." Henry Cecil, p. 76.

16 A judge should be courteous. "Every sane person abuses his power from time to time, but a judge has many more opportunities of doing this than most other people. One unfair remark by one judge can bring the judiciary as a whole into disrepute ....The judge is in a unique position. Not merely is everything said by him during a case absolutely privileged, but he cannot be shouted down as in Parliament, or even answered back if he refuses to allow it. He can cause great misery and frustration to parties, witnesses and advocates. The harm that a judge can do is not merely in actual injustices, that is wrong decisions, but in sending litigants (and advocates) away with a feeling that their cases have not been properly tried." Henry Cecil, p. 56.

17 In *Bunting* v *Thorne Rural District Council, The Times*, 26 March, 1957, the plaintiff who was about to be sworn announced that he was an atheist. Justice Hallett remarked "And no morals either". The Court of Appeal ordered a retrial stating that, although Britain was a Christian Country and that the denial of God was no commendation in a witness, yet it was not to be taken against him. The Court said: "Believer and unbeliever are each alike entitled to justice in the courts. If the thought flashed through the judge's mind, 'and no morals either' he ought to have put it aside as unworthy and not have given voice to it. Once it had been sopken, no one could regard the trial as fair, at any rate after what had taken place before it."

18 Bacon, in his famous essay, *Of Judicature - Essays of Counsel, Civil and Moral,* 1625, LVI, pp. 221-222, said: "Patience and gravity of hearing is an essential part of justice, and an overspeaking judge is no well tuned cymbal": A talkative judge would prolong a case and delay justice. Moreover, a judge must be restrained, lest he be supposed to be taking sides. Lord Justice Denning said: "[The judge] must keep his vision unclouded ... Let the advocates one after the other put the weights into the scales - the 'nicely calculated less or more' - but the judge at the end decides which way the balance tilts, be it ever so slightly. The judge's part in all this ... is to hearken to the evidence, only himself asking questions of witnesses when it is necessary to clear up any point that has been overlooked or left obscure, to see that the advocates behave seemly and keep to the rules laid down by law to exclude irrelevancies and discourage repetition; to make sure by wise intervention that he follows the points that the advocates are making and can assess their worth; and at the end to make up his mind where the truth lies. If he goes beyond this, he drops the mantle of a judge and assumes the role of an advocate; and the change does not become him well. Such are our standards." *Jones* v *National Coal Board,* [1957] 2 QB 55 at 64.

19 From a litigant's point of view, no case is more important than his own. For him or her, the whole thing is serious; and today, since the ligigant is paying for the time spent in court, he or she would be anxious to see that it is not frittered away: R.E. Megarry, *Lawyer and Litigant in England,* (1962), 140; Canadian Judicial Council, *Commentaries on Judicial Conduct,* 76. For instance, a judge should be careful about jests. A sense of humour may help to relieve the tension in court; indeed a jest may even have a proper object: E.g. see the example in Henry Cecil's *The English Judge,* p. 61. Yet care must be taken to ensure that public respect for the fairness of the judicial process is not impaired: Canadian Judicial Council, *Commentaries on Judicial Conduct,* p. 76; Shetreet, *Judges on Trial,* 299.

20 "In accordance with the Universal Declaration of Human Rights, members of the judiciary are like other citizens entitled to freedom of expression, belief, association and assembly; provided, however, that in exercising such rights, judges shall always conduct themselves in such a manner as to preserve the dignity of their office and the impartiality and independence of the judiciary": United Nations *Basic Principles on the Independence of the Judiciary*, 1985, Principle 8. It is not appropriate for a judge to venture into the area of legislative policy: Lord Parker, *The Judicial Function and Penal Reform*, (1967) 9 Criminal Law Quarterly, 400 at pp. 405-414. It is not for a court to evaluate the social justification for legislation: per Oliver, LJ in *Wicks v Firth*, [1982] 2 All ER 9. "Criticism of the policy of Parliament is a matter for politicians, for the public and the Press, but for those who accept the responsibility of discharging judicial functions, to use the bench as a platform for criticism of that kind would very quickly destroy the reputation for impartiality which the bench in this country enjoys and might very easily lead them into departing from their duty of administering justice according to law.": Sir Hartley (later Lord) Shawcross, Attorney-General, House of Commons Debates 227 16 May 1949. "Justices must administer the law as they found it and they must bear in mind the rights of the whole community in administering the law", whatever their private feelings may be about a piece of legislation. Nobody is forced to become a judge. "[I]t is inherent in the holding of any judicial office that to some extent it inhibits the complete feedom of action of those who hold that office" : Lord Chancellor Gardiner, "The Reputation of the Magistracy", 26 *The Magistrate* (1970), 52.

It is also not appropriate for judges to comment on matters of public controversy. A judge must not step down into the lower sphere and make partisan speeches or ventilate personal criticism of government policy unnecessary for the determination of a case: Sir Henry Campbell-Bannerman, Prime Minister, speaking on *Grantham's Case*, 160 Parliamentary Debates, 4th Series at 410; see also Lord Bingham, "Judicial Independence", *Judicial Studies Board Annual Lecture*, 1996, p. 8. It is not appropriate for a judge to comment in critical terms on a fellow judge: It would be unseemly: See David Pannick, *Judges*, Oxford Univ. Press, Oxford, New York, 1987, p. 22 on the Scrutton-McCardie episode. It is also not appropriate for judges to reprimand, without hearing their explanations, lawyers appearing before them or persons not before them: Henry Cecil, *The English Judge*, The Hamlyn Lectures, Stevens & Sons, London, 1970, p. 55 and pp. 85-86.

21 From the point of view of precedent, a judicial pronouncement should be a proposition or propositions of law which decided the case, in the light or in the context of the material facts: Michael Zander, *The Law-Making Process*, Butterworths, London, Dublin, Edinburgh, 4th ed., 1994, p. 263. Judges do make observations that are unnecessary. Sometimes nevertheless they may be useful, e.g. because they provide guidance for future action. At other times, they may be harmful and may amount to an abuse of power. E.g. making scathing attacks on a party, witness or accused, or making undesirable remarks when sentencing an offender: See Henry Cecil, pp. 56-59.

22 Manu, VIII, 46, said: "When engaged in judicial proceedings he must pay full attention to the truth..."

23 A judge should not be concerned with extraneous matters, including the status of a litigant. See notes 4, 5, 7, 12 above.

24 As we have seen, punishments had to be "commensurate". See e.g. Ch. IV text at n. 63 sq.; moreover, although a judge has discretion, it means "sound discretion guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague and fanciful, but legal and regular": per Lord Mansfield in *R* v. *Wilkes,* 4 Burr, 2527 at 2539. Cf. Ch. XI, text at n. 44 sq and note 44A.

25 See e.g. Ch. IV text for note 68.

26 E.g. a judge cannot prejudge a matter and proceed to hold a trial with a view to punishing someone. A judge who took a bribe was regarded by Manu (VII. 124) as "evil-minded". Bribe-taking judges were rejected by society, See Ch.X; perhaps during many millenia. See Ch. X, note 8.

27 A judge had to "behave exactly like Yama, suppressing his anger and controlling himself": Manu, VIII. 173. "Where passion is allowed to prevail, the judgment is dethroned." Sir Matthew Hale said, in setting out the rules he had made for his own guidance : "That in the execution of justice, I shall carefully lay aside my own passions and not give way to them however provoked." Lord Macmillan in his book *Law and Other Things,* 1937, 218, observed that "courtesy and patience must be more difficult virtues to practise on the Bench than might be imagined, seeing how many otherwise admirable judges have failed to exhibit them, yet they are essential if courts are to enjoy public confidence."

28 The appearance of bias or prejudice must be avoided. See notes 3, 4, 8 above.

29 Cf. Ch. VIII text at note 203. A judge must not prejudge a matter, nor by deed or word raise a reasonable suspicion that he has made up his mind: *Ellis* v. *Minister of Defence,* [1985] I.C.R. 257. "There are moments when a court may well feel that an indication of the court's

point of view may be valuable and helpful to the parties. But such an intervention is always fraught with dangers. To a judge's mind it is axiomatic that any view which he may hold before the conclusion of the case is merely provisional, and that if any evidence or argument subsequently appears which makes his present view of the case untenable he will abandon that view. But litigants often do not appreciate this. They may mistake a provisional view for a concluded prejudgment.": *Brassington* v *Brassington*, [1962] P. 276 at 282. Traditionally, Sri Lankan judges were careful in avoiding prejudgment: See the case of Tipitaka Chulābhaya Thēra cited above in Ch. VIII text n. 203.

30 A judge must be attentive. The *Sāratthappakāsiniya*, (Vidurupola Piyatissa Thēro, (1927), II, p. 15), stated that when Prince Siddhartha was brought and kept on the lap of King Suddhodana while he was hearing a case and the King was playing with the child, his ministers pointed out that, since he was preoccupied, the case was wrongly decided. Lord Brougham was criticized for the scant attention he would give to counsel's arguments. "He would write letters, correct proofs, read the newspapers, do anything, in short, but follow the arguments and listen to the affidavits." J.B. Atlay, *The Victorian Chancellors*, (1906), p. 295.

31 Manu VIII. 64 said: "Those must not be made [witnesses] who have an interest in the suit, nor familiar [friends], companions, and enemies [of the parties], nor [men] formerly convicted [of perjury], nor [persons] suffering under [severe] illness, nor [those] tainted [by mortal sin]." We distinguish between disqualification and credibility today. The evidence of a biased witness may be of little or no value. However, it is interesting that section 118 of the Evidence Ordinance recognizes the fact that certain persons, including those suffering from *disease*, would not be regarded as competent to give evidence, if they are thereby prevented from giving rational answers to questions put to them.

32 Again, the question is one of credibility and the value to be attached, for instance, to the evidence of a person who has been convicted of perjury. Matters relating to evidence are governed in Sri Lanka by the Evidence Ordinance No. 14 of 1895, as amended. The question of impeaching the credit of witnesses is governed by section 155. The monarchs had guidance on the subject of the demeanour of witnesses: "By external signs let him discover the internal disposition of men, by their voice, their colour, their motions, their eyes, and their gestures. The internal [working of the] mind is perceived through the aspect, the motions, the gait, the gestures, the speech, and the changes in the eye and of the face": Manu, VIII, 25-26.

33 Henry Cecil, p. 80, said: "I think that a good many judges (and for a time I was certainly one of them) do not appreciate the difficulties of giving evidence. Because few witnesses ask for a glass of water and fewer still faint, that does not mean that many of them are not extremely frightened. Most of them put an extraordinarily good face on it and this is one of the reasons why their difficulties are not fully appreciated. Lawyers are so used to seeing witnesses go in and out of the witness-box, taking the oath on the way ..., that we do not realize that their hearts may be beating twice as fast as usual and their heads going round in a whirl. It is difficult enough for some people to tell a story accurately to their friends in the most congenial circumstances. How can they be expected to do it when they go into court for the first time, with the judge and counsel wigged and robed and the fear of being sent to prison if they so much as cough out of turn?".

34 *Sutra* - the sacred law. Bhüler, *The Laws of Manu*, p. lii, said: "... a *Dharma-sūtra* too may be called a *Dharmaśāstra*, because it teaches the sacred law". Gautama. *Dharmasūtra*, XI. 19-21., laid it down that in administering justice the king has to get his law from three sources: (1) The scriptures, including the Veda, the *Dharmasūtras*, *Vedangas* and *Purāṇa;* (2) Customs and usages of countries, communities and kulas unopposed to secred texts; and (3) Customs and laws prevailing among cultivators, traders, herdsmen, moneylenders and artisans determined by each community in matters relating to themselves. Reference is made by D'Oyly to the "Sootree" and "Wineye" and their expositions and commentaries. The *Vinaya*, the Buddha's rules for *bhikkhus*, was not one of the sources indicated by Gautama; but in the context of Sinhalese law it was, according to D'Oyly along with Buddhist philosophy, a source of law.

35 See Ch. III text at n. 70 sq.

36 In general, see Ch. III.

37 See Ch. VIII text at n. 96A.

38 See Chs. XIII, XIX, XV

39 See Ch. VIII text 272 sq; Ch. XIII text at n. 65 sq.

40 Manu VIII. 1, 2, 9, 10.

41 Manu VIII. 23.

42 Manu VIII. 87.

43 *Bṛihaspati*, I.5.

44 *Bṛihaspati*, II. 41.

NOTES TO CHAPTER X

1 Manu VIII. 347.

2 Manu IX. 231.

3 Manu VII. 124. Traditionally, over several millenia, monarchs who appointed corrupt judges were regarded as unrighteous as well as stupid. The *Mahasupina-Jataka (The Jātaka or Stories of the Buddha's Former Births*, ed. E.B. Cowell, 1895, Cambridge Univ. Press, reprinted in 1994 by Motilal Banarsidass Publishers Private Ltd., Delhi, Jataka No. 77, Vol. I, p.189), which recorded the sixteen dreams of the King of Kosala as interpreted by the Buddha, said: "King: Methought, Sir, I saw a horse with a mouth on either side, to which fodder was given on both sides, and it ate with both its mouths. This was my fifth dream. What shall come of it?" The Buddha said: "This dream too shall have its fulfilment only in the future, in the days of unrighteous and foolish kings, who shall appoint unrighteous and covetous men to be judges. These base ones, fools, despising the good, shall be filled with this two-fold corruption, even as the horse that ate fodder with two mouths at once. Howbeit, you have nothing to fear therefrom ..." See also note 8 below.

4 See Ch. VIII text at n. 132.

4A *Epigraphia Zeylanica*, Vol. III. pp. 150-152.

5 Tablets of Mahinda IV at Mihintalē, *Epigraphia Zeylanica*, Vol. I. p. 105.

6 *Epigraphia Zeylanica*, Vol. V, p. 191.

7 *Epigraphia Zeylanica*, Vol. III, p. 78.

8 See also Ch. VIII text at notes 132, 133. The *Dhammaddhaja-Jātaka* (*Jātaka*, No. 220, ed. E. B. Cowell, Vol. II, Book II, pp. 131-138, at p. 131) said: "The king was a good king. But his chief captain swallowed bribes in the judging of causes; he was a backbiter; he took bribes, and defrauded the rightful owners. One who had lost his suit was departing from the court, weeping and stretching out his arms, when he fell in with the Bodhisatta as he was going to pay his service to the king. Falling at his feet, the man cried out, telling how he had been worsted in his cause: "Although such as you, my lord, instruct the king in the things of this world and the next, the Commander-in-Chief takes bribes, and defrauds rightful owners!" The Bodhisatta pitied him. "Come, my good fellow," says he. "I will judge your cause for you!" and he proceeded to the court-house. A great company gathered together. The Bodhisatta reversed the sentence, and gave judgment for him that had the right. The spectators applauded. The sound was great. The king

heard it, and asked - "What sound is this I hear?" "My lord king," they answered, "it is a cause wrongly judged that has been judged aright by the wise Dhammaddhaja; that is why there is this shout of applause." The king was pleased and sent for the Bodhisatta. "They tell me." he began, "that you have judged a cause?". "Yes, great king, I have judged that which Kāḷaka did not judge aright." "Be you judge from this day," said the king; "it will be a joy for my ears, and prosperity for the world!" He was unwilling, but the king begged him - "In mercy to all creatures, sit you in judgment!" - and so the king won his consent.

From that time Kāḷaka received no presents; and losing his gains he spoke calumny of the Bodhisatta", and had him harrassed.

The *Bhadda-Sāla-Jātaka* (No. 465, *Jātaka*, Cowell ed., Vol. IV, Book XII, pp. 91-98, at p. 95, stated as follows: "One day some men who had been defeated in court on a false charge, seeing Bandhula approach, raised a great outcry, and informed him that the judges of the court had supported a false charge. So Bandhula went into the court and judged the case, and gave each man his own. The crowd uttered loud shouts of applause. The king asked what it meant, and on hearing was much pleased; all those officers he sent away, and gave Bandhula charge of the judgment court, and thenceforward he judged aright. Then the former judges became poor, because they no longer received bribes, and they slandered Bandhula in the king's ear, accusing him of aiming at the kingdom himself ..." Bandhula thereafter had a difficult time.

The *Mahābodhi-Jātaka* (No. 528, Book XVIII, *Jātaka,* Cowell, ed., Vol. V. pp. 116-126, at pp. 117-118) stated as follows: "These men were appointed to sit in judgment in the king's court, and being greedy of bribes they dispossessed the rightful owner of property. Now one day a certain man, being worsted in a false action at law, saw the Great Being go into the palace for alms, and he saluted him and poured his grievance into his ears, saying, "Holy Sir, why do you, who take your meals in the king's palace, regard with indifference (*ajjhupekkhati*) the action of his lord justices who by taking bribes ruin all men? Just now these five councillors, taking a bribe at the hands of a man who brought a false action, have wrongfully dispossessed me of my property." So the Great Being moved by pity for him went to the court, and giving a righteous judgment reinstated him in his property. The people with one consent loudly applauded his action. The king hearing the noise asked what it meant, and on being told what it was, when the Great Being had finished his meal, he took a seat beside him and asked, "Is it true, Reverend Sir, as they say, that you have decided a lawsuit?" "It is true, Sire." The king said, "It will be to the advantage of the people, if you

decide cases: henceforth you are to sit in judgment." "Sire", he replied, "we are ascetics; this is not our business." "Sir, you ought to do it in pity to the people. You need not judge the whole day, but when you come here from the park, go at early dawn to the place of judgment and decide four cases; then return to the park and after partaking of food decide four more cases, and in this way the people will derive benefit." And being repeatedly importuned, he agreed to it and henceforth he acted accordingly." However, the bribe-takers gave the new judge a hard time.

The *Khaṇḍahāla-Jātaka* (No. 542, Book XXII, *Jātaka* Cowell ed. Vol. VI, pp. 68-80 at p. 69) stated that a brahamin named Khaṇḍahāla, the family priest, who gave the king counsel in temporal and spiritual matters, and in whose wisdom the king had a high opinion, was made a judge. "But he, being fond of bribes, used to take bribes and dispossess the real owners and put the wrong owners in possession. One day a man who had lost his suit went out of the judgment hall loudly complaining, and, as he saw Candakumāra passing by to visit the king, he threw himself at his feet. The prince asked him what was the matter. "My lord, Khaṇḍahāla robs the suitors when he judges: I have lost my cause, although I gave him a bribe. The prince told him to cease his fears, and, having taken him to court, made him the owner of the property. The people loudly shouted their applause. When the king heard it and asked the reason, they replied, "Candakumāra has rightly decided a suit which was determined wrongly by Khaṇḍahāla; this is why there was such shouting." When the prince came and paid his homage, the king said to him, "My son, they say you have just judged a case." "Yes, Sire." He gave the office of judge to the prince and told him thenceforth to determine all suits. Khaṇḍhala's income began to fall off, and from that time he conceived a hatred against the prince", who thereafter faced great difficulties.

References to officials taking bribes are also found elsewhere. E.g. the *Maha-Ummaga-Jātaka* (No. 546, *Jātaka* Cowell ed. Vol. VI, Book XXII at p. 222) refers to a bribe being given to an official engaged in acquisition proceedings so that he would not pull down the owner's house to build a dwelling for King Vedeha. There is a request in the Thesakuna Jātaka, ed. M.A. Alhapperuma, 1942, Jinalankara Press, Hunupitiya, 1129, to the monarch to inquire into the rights and wrongs of his subjects in order that his officers may not ruin his wealth and the country by taking bribes, depriving people of rightful ownership and causing injustice. Ranawella's version is not exactly the same. See *Niti Vimansā*, p. 33, citing *Pansiya Panas Jātaka Potha*, II, Dhammananda Thero, Naulle and Rathnajothi Thera, Devinuwara, (1929) p. 1129.

Walpola Rahula, p. 238, referred to the case of King Saddha-Tissa, generally regarded as a "good king", who at the behest of a corrupt official, unjustly appropriated a cow belonging to a poor man named Mundagutta. He commented as follows: "If books do not hestitate to attribute such an incident to a king known to be pious like Saddha-Tissa, it is not difficult to imagine what the plight of the poor villager might have been at the hands of merciless government officers."

The Dhammapada, (*Dhamaṭṭha Vagga*) Ch. XIX: I (K. Sri Dhammananda, 1988, Sasana Abhiwurdhi Wardhana Society, Kuala Lumpur, p. 471) says: "One day, some *bhikkhus* were returning to the monastery after their almsround in Savatthi. While they took shelter in a hall of justice during a heavy shower of rain they saw some judges who were deciding cases arbitrarily after having taken bribes. They reported the matter to the Buddha who said, "Bhikkhus! If one is influenced by monetary considerations in deciding cases, he cannot be called a just judge who abides by the law. If one weighs the evidence intelligently, and decides a case impartially, then he is to be called a just judge who abides by the law." See also note 3 above.

9 *Cūlavaṁsa*, 48. 71-72.

10 At pp. 123-124.

11 *Epigraphia Zeylanica*, Vol. III p.78.

12 Pp. 120-121.

13 On *gāmabhōjakas* see note 77 below.

14 P. 99. See also pp. 96, 202-203.

15 Knox, p. 99.

16 Pp. 93-94. Knox refers to the question of corruption and mentions two "proverbs": "First look in the hand, afterwards open the mouth. Spoken of a judge who first must have a bribe before he will pronounce on their side" (p. 202). "He that hath money to give to his judge, needs not fear, be his cause right or wrong. Because of the corruption of the great men, and their greediness of bribes" (p.203).

17 P. 178.

18 P. 109. Hayley (pp. 101-103) said: "The absence of any fixed fee to the treasury was the chief flaw in the Kandyan judicial system. All fines and charges for litigation were the perquisites of the judge who levied them, and the fees exacted by the chiefs, or offered by the parties, amounted in the majority of cases to little more than bribes. Corruption of this nature seems to have been universal, except in the case of suits heard by the King, and the whole administration of the law, admirable as it was in the abstract, in practice degenerated into an instrument of

oppression and extortion ... By the Proclamation of November 21, 1818, section 27, all fees to disawas or others, on the hearing of cases, were forbidden, but, by section 46, the Judicial Commissioner and Agents of Government were empowered, in their discretion, "to order the losing party, in a civil suit, to pay Government one-twentieth of the value of the matter in dispute, not exceeding fifty rix dollars ..."

When the "admirable" system fell into decay, if indeed it did, is not clear. Hayley was mechanically echoing the opinions expressed by early British writers like Knox, Davy and D'Oyly. Traditionally, from very ancient times, as the *Jātaka* stories and the inscription of Nissaṅkamalla near the Vān - Äla, Slab-inscription A of the Tablets of Mahinda at Mihintale, and the Badulla inscription show, and even in the days of the last King of Kandy, officials were prohibited from taking what was not their due. Court fees were paid to the Treasury, unless, as we shall see later in this Chapter (see text at note 81 sq.), the King had decreed that it should be paid to some religious institution, as for instance in the Timbiriväva inscription, the Slab-inscription of Kassapa V. the Tablet inscription of Mahinda IV, and Situlpavuva inscription, or as in the case of the Vēvälkäṭiya inscription, that fines should be divided among the holders of certain villages and lands in accordance with former custom. I have been unable to find any evidence that judges were generally permitted to regard court fees or fines as "perquisites of the judge who levied them." In fact, the evidence clearly points in the opposite direction.

19 *Judicial Ethics in Australia,* 1988, p. 74.

20 "The Growth of Judicial Ethics", *Massachusetts Law Quarterly* (1925) Vol. X (3) p. 8.

21 P. 10.

22 John T. Noonan and Kenneth I. Winston, ed. *The Responsible Judge, Readings in Judicial Ethics,* 1993, Praeger, Westport, Connecticut, London, p. xiv.

23 *Epigraphia Zeylanica*, Vol. III pp. 78-79 and p. 81.

24 P. 44. Having stated that the king had prohibited the taking of bribes, D'Oyly (p.44) maintained that "as the Presents are conveyed in private. such occasional Orders were unavailing to prevent it, and it is certain that the Practice prevailed to such an extent, as to corrupt the System."

25 P. 46.

26 D'Oyly had earlier, at p. 45, explained that one of the reasons why dissatisfied litigants were reluctant to appeal from the decision of a chief to the king was that, in matters concerning private individuals, the

king referred it to the Great Court which might be influenced by the chief against whose decision the appeal was lodged, or by a relation or friend of that chief or by the offer of a bribe" - a new *bulathsurulla* (see below at note 46) which might make the appeal useless.

27 Provinces.

28 Pp. 93-94. See also Percival, p. 178.

29 "No king, however indigent, shall take anything that ought not to be taken ...": Manu VIII. 170. However, Percival, p. 184, alleged that large fines were imposed by Disāvas and Adigars on debtors and those guilty of personal injuries, and that 'the king never fails to come in for his share'. On the other hand, D'Oyly in his *Diary*, p. 105, observed that the king "does not oppress the People, levies few fines & receives small Peyhidun-".

30 D'Oyly, pp. 46-47. But cf. Ch. XIV text at n. 171 sq. below.

31 *Epigraphia Zeylanica*, Vol. VI, at p. 106.

32 See Ch. XIV text after n. 186.

33 See Ch. XIV text for n. 187 sq.

34 P. 45.

35 P. 126.

36 See D'Oyly, p. 46.

37 D'Oyly, p. 32, stated that the Great Court had been enlarged during the reign of the Kandyan monarchs, a fact that would have considerably reduced the possibility of corruption.

38 P. 46.

39 P. 46.

40 Pp. 155-156.

41 P. 156.

42 P. 44.

43 A royal store-house.

44 *Rājakāriya* was the performance of services to the king or a temple. Title to land was contingent on the performance of certain duties. "The chain of duties and services which was there established, binding every class, and every individual, from the highest to the lowest rank, was the great moving machine, applied to enforce the civil and judicial administration of government, to regulate the pursuits of agriculture and to carry on offensive or defensive war." Bertolacci, p. 168.

45 Ralph Pieris, (1956), p. 156, note 51 citing D'Oyly's *Diary*, April 5th, 1812. See *Diary of Mr. John D'Oyly*, reprinted by Navrang and Lake House Bookshop, (1995), p. 104.

46 *Surulla* was a sheaf. *Bulath* were the leaves of the betel vine *Piper betle.* Betel-leaves are heart-shaped, and come off perennial creepers indigenous to Sri Laṅkā, India and Malaysia, and cultivated throughout Asia. It was and is a masticatory, having a pungent taste and sustaining properties, widely used in the Eastern tropics for chewing in a green state with arecanut (*Areca catechu*) and other accompaniments. Betel-leaf is called 'bulath' in Sinhala. Geiger (*Culture,* p. 43) said: "Chewing a leaf of betel *(tāmbūla)* with pieces of dried areca nut and with a little powdered lime (*cuṇṇa*) is an ancient and widespread custom in India, mentioned in the oldest part of the Mahāvaṁsa (35.62). It is common also now-a-days, at least, in the lower classes of the Sinhalese people as a stimulant which seems to make the constant rice-meals more digestible. Even priests used to chew betel and king Mahinda IV, 10th cent., is said to have offered to the bhikkhus betel-leaves as mouth-perfume (*tāmbula-mukhavāsa* 54.22) with many other things." Tennent, pp. 372-373, said: "*Betel.* - In connection with a diet so largely composed of vegetable food, arose the custom, which to the present day is universal in Ceylon, - of chewing the leaves of the betel vine accompanied with lime and the sliced nut of the areca palm. The betel (*piper betel*) (sic.), which is now universally cultivated for this purpose, is presumed to have been introduced from some tropical island, as it has nowhere been found indigenous in continental India." [But see above]. "In Ceylon, its use is mentioned as early as the fifth century before Christ, when 'betel leaves' formed the present sent by a princess to her lover in. B.C. 504. *Mahavanso*, ch. ix. p. 57. Dutugaimunu, when building the Ruvanwelle dagoba, provided for the labourers amongst other articles 'the five condiments used in mastication'. This probably refers to the chewing of betel and its accompaniments: *Mahavanso*, ch. xxx. p. 175. A story is told of the wife of a Singhalese minister, about A.D. 56. who to warn him of a conspiracy, sent him his 'betel, & c., for mastication, omitting the chunam', hoping that coming in search of it, he might escape his 'impending fate'. *Mahavanso*, ch. xxxv. p. 219." On the use of betel, see Knox, pp. 188-189. See also Walpola Rahula, pp. 248-249.Later, *Bulath surulla*, it seems, was sometimes a sheaf of betel with a small amount of money, and perhaps still later acquired the transferred meaning of a gift or bribe.

Lawrie (Notes, p. 206) made the following observations on the Bulat Surulla: (1) "The Judicial Commissioner ordered Uda Gabada Nilame to pay back a Bulat Surulla he had received from a Mohandiram as he had been removed from office immediately afterwards. - 8th July, 1817." (2) "According to the custom of the country Bulat Surulla was

returned when the giver did not gain his suit. - 21st December, 1818." (3) "Mattamagoda Disawa stated that about 1810 he received a Bulat Surulla of two pagodas from the plaintiff Bopitiya Arachchi, and having heard his case, decided it in his favour, delivering the lands in dispute to him. The plaintiff had no right to get back the Bulat Surulla. 5th November, 1826." (4) "When the plaintiff made a present of a pagoda and cakes, the Adigar heard the case. - 7th December, 1818."

47 D'Oyly, p. 44.

48 Brownrigg to Bathurst, Colonial Office, London, September 25th, 1817, 54.66.

49 Colonial Office, London, February 9th, 1816, 54. 59.

50 P. 44.

51 Did the new system introduced by the British remove 'the advantage of the rich over the poor suitor'? The new system introduced by the British was adversarial in nature. The new system also introduced professional pleaders, who, of course, charged fees for their services: a new form of *bulathsurulla* was introduced. A judge, in the new scheme of things, was required to hear both sides and decide a matter. Naturally, the side that produces the more convincing case succeeds. This causes no problems where the lawyers on both sides are equally competent. However, this is not always the case. Given the fact that there has never been a satisfactory legal aid programme in Sri Lanka, 'the advantage of the rich over the poor suitor' was perpetuated by the new system introduced by the British.

52 Pp. 155-156.

53 Board of Commissioners for the Kandyan Provinces (Judicial), 29-3-1819, Government Archives 23/2.

53A Nārada, II, 5-6.

53B Introduction, I. 62; see also Sen-Gupta, pp. 58-60.

53C II.305. Cf. Nārada, I. 50.7

54 *An Introduction to the Legal System of Ceylon*, Colombo, 1972, p. 108.

55 P. 99. D'Oyly (p. 43) stated as follows: "Any Chief in Office can rehear cases decided by his Predecessors and reverse their written Decrees. In the 7k., 2 or 3 adverse Decrees will sometimes be found in the possession of both Litigant Parties for the same Land but such abuses are not frequent in other Provinces."

56 *Epigraphia Zeylanica*, Vol. V. p. 124 at 138, 140.

57 *Epigraphia Zeylanica*, Vol. I, p. 53.

58 *Epigraphia Zeylanica*, Vol. I, p. 8. Wickremasinghe assigned the

inscription to the first half of the ninth century A.D. "purely on paleographic grounds." However, he drew attention to the possibility that it may have been attributable to Agghabodhi VII "who reigned *circa* A.D. 781-87", since, according to the *Culavaṁsa*, 48. 71-72, he issued decrees, like the one in the record, enforcing discipline among the priesthood, and 'stopped the way of those who set up false cases by deciding them according to the law.' *Epigraphia Zeylanica*, Vol. I, p. 4.

59 Probably persons who rendered service or held temple lands by turn: Wickremasinghe, *Epigraphia Zeylanica*, Vol. I, p. 3.

60 *Epigraphia Zeylanica*, Vol. V, pp. 189-195.

61 Freedom for subjects from bureaucratic harassment, as we shall see, was a concern of kings: see Ch. XVII, text at n. 84.

61A See Ch. X note 55.

62 P. 143.

62A Kapuruhami, p. 54.

63 See Ch. IV text at nn.39 and 40.

64 *Saddharmaratnāvaliya*, p. 365.

65 P. 109.

66 D'Oyly, p. 50.

67 Davy, p. 136.

68 D'Oyly, pp. 44 and 87; Knox, p. 94. See also Percival, p. 184.

69 Davy, p. 109.

70 D'Oyly, p. 45.

71 D'Oyly, p. 45.; cf. Nadaraja, p. 92 note 179.

72 P. 72.

73 *Diary* of D'Oyly, p. 105.

74 Pp. 87-88.

75 Cf. Knox, pp. 80-81, 104.

76 *Inscriptions of Ceylon*, Vol. I, p. ci.

77 There were, it seems, headmen of villages called *gāmabhōjaka*. In India, during post-vedic times, the *gāmabhōjaka* was a prominent magistrate of the village who received some remuneration from the state: S.V. Venkateswara, *Indian Culture through the Ages*, Longman, Green & Co. Ltd., London, 1926, pp. 61-62. Ariyapala, 121, stated: "The position in Ceylon seems to have been much the same". "*Gāmabhōjaka* during the reign of Jayabāhu I, on account of their improper behaviour, do not appear to have been held in esteem": See Ch. X text at n. 13 above.

78 *Epigraphia Zeylanica*, Vol. V, p. 132.

79 History, text at notes 104-105.

80 P. 102.

81 P. 59.

82 *Epigraphia Zeylanica*, Vol. 2, pp. 13-14.

83 *Epigraphia Zeylanica*, Vol. I, p. 53.

84 See *Epigraphia Zeylanica*, Vol. I, pp. 103-104. Wickremasinghe stated that the meaning of the relevant passage (lines 37-41) is obscure and offers a tentative translation.

85 Ranawella, p. 9, note 37.

86 Ranawella, p. 9; *Epigraphia Zeylanica*, Vol. I, p. 250.

87 Paranavitana, *Inscriptions of Ceylon, Vol. II Part I, Late Brāhmī Inscriptions,* Archaeological Survey of Ceylon, Department of Archaeology, Sri Lanka, 1983, pp. 95 and 96.

88 Paranavitana, *Inscriptions,* p. 95.

89 *Inscriptions,* p. 95.

90 *Inscriptions*, p. 96.

91 See Ch. X note 5. See also Ch. X text at n. 42.

92 Badulla pillar-inscription, *Epigraphia Zeylanica*, Vol. III, pp. 78-79.

93 Op. cit. p. 80.

94 *Epigraphia Zeylanica*, Vol. I, pp. 105-107.

95 Badulla Pillar Inscription, op. cit., p. 79.

96 *Epigraphia Zeylanica*, Vol. V, pp. 140-141.

97 P. 44.

98 *Culavaṁsa*, 48.71. See Ch. X note 2.

99 Governor Brownrigg to Secretary of State Bathurst, 5 June 1816 and January 8 1819, National Archives 5/8 p. 295 and 5/10 p. 5.

100 See Ch. X note 9.

101 D'Oyly, p. 44.

NOTES TO CHAPTER XI

1 P. 128.

2 P. 190.

3 Ch. VII text at n.4.

4 Percival, p. 173.

5 Percival, pp. 183-184.

6 P. 12.

7 Davy, p. 134, too refers to "the common law of the Singhalese": At the time of the Kandyan Convention (1815), there was no separate body of law applicable to persons inhabiting the Kandyan territories. See also above Ch. I text at n. 4 sq.

8 Hayley at p. 12 note (q) stated: "The *Mahāvaṁsa* (XLIX. 20; Wij. 47) records of Dappula III (A.D. 827-843) that 'judgments which had been righteously pronounced in cases be caused to be recorded in books'. No such collection of decrees is extant, and in the courts which existed at the time of the [Kandyan] Convention no record of the proceedings was made, other than the written decree handed to the parties." On that matter see Ch. XII below.

9 P. 56.

10 See the comments of Sir Ivor Jennings on Hayley's erroneous view at text n. 14 Ch. VIII above.

11 That was not what the *Mahāvaṁsa* said. As to what the *Mahāvaṁsa* did state, see Ch. XI text at n. 15.

12 P. 134.

13 P. 142.

14 J.W. Bennett, *Ceylon and Its Capabilities,* 1843, Facsimile edition, 1984, by Trumpet Publishers (Pvt) Ltd., Rajagiriya, Appendix, p. lxxxviii. My references are to the 1984 edition.

15 *Mahāvaṁsa*, XXXVI.28.

16 *Mahāvaṁsa*, XXXVII. 4-5; *Nikāyasaṅgrahva*, (1415) p.69.

17 *Mahāvaṁsa*, XXX. 6.

18 *Cūlavaṁsa*,41.30.

19 *Cūlavaṁsa*, 52. 15.

20 Ed. Kumaranatunga, pp. 20-21; Ariyapala, p. 87.

21 *Mahāvaṁsa*, XXXVI. 26.

22 *Mahāvaṁsa*, XXXIV. 40.

23 E.g. see the following inscriptions: Inscription of Kirti Sri Niśśaṅkamalla, *Epigraphia Zeylanica*, Vol. I, p. 133; Häṭa-Dā-Gē Vestibule Wall Inscription, *Epigraphia Zeylanica*, Vol,. II, p. 96; Galpota Slab Inscription, *Epigraphia Zeylanica*,Vol. II, p. 117; Kāliṅga Forest Gal-Āsana Inscription, *Epigraphia Zeylanica*, Vol. II, p. 127; Rankot-Dāgaba Gal-Āsana Inscription, *Epigraphia Zeylanica*, Vol. II, p. 136; Rankot-Dāgäba Pillar Inscription, *Epigraphia Zeylanica*, Vol. II, p. 142; Slab Inscription at Vāňduruppe, *Epigraphia Zeylanica*, Vol. V, p. 427; Slab Inscription at Raṁbāvihāra, *Epigraphia Zeylanica*, Vol. V, p. 434; Giritaḷē Stone Seat Inscription, *Epigraphia Zeylanica*, Vol. V, p. 437; Paňḍuvasnuvara Stone-Seat Inscription, *Epigraphia Zeylanica*, Vol. V, p. 446.

24 "Legal Texts in Ancient Sri Lanka, A Note on the Nīti Nighaṇḍuva", in the *Silver Jubilee Commemoration Volume of the University of Kelaniya, Sri Laṅkā*, 1986, p. 428.

25 Following John Austin, *Lectures in Jurisprudence*, 5th ed. by Campbell.

26 *Campbell* v. *Hall*, (1774), Cowper, Rep., i, 204; Chief Justice Ottley to Commissioners of Eastern Inquiry, Colonial Office, 416/16 F 41, p. 417. Manu, VII. 203 said that a victorious monarch shall "make authoritative the lawful [customs] of the [inhabitants] just as they are stated [to be]..." The same principle was laid down in the *Dharmaśāstras*. See Ch. III text at n. 5 above.

There were several propositions laid down by Lord Mansfield in *Campbell* v. *Hall* relating to conquered or ceded colonies. Cf. *Abeysekera* v. *Jayatilaka*, (1932) A. C. 260; 33 N.L.R. 291 (P.C.). The maritime settlement of the Dutch in Sri Laṅkā formed both a conquered and ceded colony; for "on February 15th 1796, John Gerard Van Angelbeek, Counsellor of India, Governor and Director of the Dutch Possessions in the Island of Ceylon, and Major Patrick Agnew, Adjutant-General of the British Troops in the Island of Ceylon, signed Articles of Capitulation under which the fortress of Colombo, the town of Galle, the fort of Calture (Kalutara), with all their dependencies, lands, dominions, etc., were surrendered to the British troops." : Jennings and Tambiah, p. 48, citing the Legislative Acts of the Ceylon Government 1796-1833, I, pp. 1-4. "The remaining possessions of the Dutch in the Island, the coastal belt from Batticaloa and Trincomalee to Jaffna, and from Jaffna to Negombo, were already in the hands of the troops. The Dutch settlements would thus be regarded as a conquered colony, surrendered under articles of capitulation; but the settlements were later ceded by the Treaty of Amiens, 1802.": Jennings and Tambiah, *ibid*.

The rule was that the law of a conquered or ceded colony applied to all persons and property within a conquered or ceded territory. However, that rule was subject to the limitation that where the law of a place was of a special character, as through association with religion, which, it was assumed, could not apply to certain persons, such as European settlers, the general rule that such persons, such as Englishmen, had no privilege distinct from the 'native', had no application. (*Freeman* v. *Fairlie*, (1828) I Moo. Ind App., 305 at 343; *Yeap Chea Neo* v. *Ong Cheng Neo*, (1875) LR, 6 PC 381; cf. Jennings and Tambiah, p. 49.

The rule that "the laws of a conquered country continue in force until they are altered by a conqueror" was subject to the qualification laid down in *Fabrigas* v. *Mostyn*, (1775) 20 St. Tr. 162, that if they are barbarous or contrary to the rules of "natural justice", described in *Blankard* v. *Galdy*, (1693) 2 Salk. 411, as "the laws of God", they became void on the assumption of sovereignty by the Crown. See Jennings and Tambiah, p. 49. Admittedly many forms of punishment permitted by the traditional laws were barbarous. Were execution and flogging approved by the British because they were in accordance with the laws of God or "natural justice"?

27 See Nadaraja Ch. 5.

28 E.G. see *Kitnan Kangany* v. Young, (1911) 14 NLR 435; *Ernest* v. *Ahamadu Lebbe*, (1919) 21 NLR 248; *Aiyappen Kangany* v. *Anglo-American Tea Trading Co*. (1912) 15 NLR 19; *Fernando et al.* v. *Fernando* et al., (1920) 22 NLR 260; *Vallipuram* v. *Santhanam*, (1915) 1 CWR 96; *Fernando* v. *Fernando et al.*, (1940) 42 NLR 279; *Chinappa et al.* v. *Kanakar et al*, (1910) 13 NLR 157; see also *Marikar* v. *De Mel Ltd.*, (1943), 24 CLW 103.

29 As the evidence given to Governor Falck by the learned Bhikkhus showed. See Ch. III n.1 above.

30 See the Address of His Excellency the Governor of Ceylon to the Kandyan Adikars and Chiefs on the 20th of May 1816: Ch XIV text at n. 126 sq.

31 P. 58

32 See Sen-Gupta, pp. 1-60. See Ch. XIII below for the development of the court system in ancient and mediaeval Sri Laṅkā. With regard to itinerant officials in Sri Lanka, see Ch. XIV text at n. 184 sq.

33 *Stare decisis*, however, was introduced by British judges and since 1890 has been a part of the modern Sri Lankan legal system: See Nadaraja, pp. 128-129;175-179. But was the introduction fortunate? See E. F. N. Gratiaen, QC, sometime Judge of the Supreme Court and

Attorney-General, "The Tangle of Precedent", *University of Ceylon Review*, Vol. X, July 1952, pp. 265-279.

34 See Ch. XII next at note 4.Shakespeare understood the problem. He said (*Merchant of Venice*, IV.i):

"There is no power in Venice
Can alter a decree established;
'Twill be recorded for a precedent,
And many an error, by the same example,
Will rush into the state: it cannot be."

35 See Ch. XII below text at n. 14.

36 See Ch. XV text immediately preceding n. 117.

37. See Ch. IV, text at nn. 39 and 40.

38 *The common law*, 1881, Lecture 1, see above at p. IX.

39 See S. Paranavitana, "Some Regulations Concerning Village Irrigation Works in Ceylon", *Journal of Historical and Social Studies*, (1958), pp. 1-7; Jayasekera, *Sources*, pp. 98-101.

40 See *The Speeches and Minutes of Sir H.G. Ward, 1855-60,* 1864, Colombo, Government Press, pp. 89-110.

41 Op. cit., p. 101. As we have seen the English criteria for determining the existence of an enforceable custom did not exist in pre-British Sri Lanka. See Ch. XI text at n. 28 above.

42 *Manual of the North Central Province, Ceylon,* (1880) p. 42.

43 P. 134.

44 *Saddharmaratnāvaliya*, 365. The existence of such laws ensured a fair trial and a correct decision. In a case in which "a judge of acute perception, acknowledged learning and actuated by the best of motives" failed to give a party a fair hearing on account of his excessive interventions, Lord Denning, the great 'activist', said: "In the very pursuit of justice our keenness may outrun our sureness, and we may trip and fall. That is what happened here." *Jones* v. *National Coal Board*, 1957 2 QB 55 at p. 67.

44A According to the *Dhammapada*, Ch. XIX (Dhamaṭṭha Vagga), (K. Sri Dhammananda, Sasana Abhiwurdhi Wardhana Society, 1988, Kuala Lumpur, p. 471) judges who decided matters, not arbitrarily but according to law were regarded as 'impartial and true justices'.

Asahasena dhammena
samena nayatī pare
Dhamassa gutto medhāvī
dhammaṭṭho' ti pavuccati

The wise man [or woman] who decides not arbitrarily, but in accordance with the law is one who safeguards the law; he [or she] is called 'one who abides by the law' (*dhammaṭṭha*)". See also Ch. IV note 64.

45 VIII. 178.

45A See Ch. XI note 44A.

46 [1978] 1 WLR p. 1520 at p.1530.

47 For the development of equity in England, see Spence, *The Equitable Jurisdiction of the Court of Chancery* (1846-1849); Kerly, *An Historical Sketch of the Equitable Jurisdiction of the Court of Chancery* (1890); Maitland, Lectures I-IV; Holdsworth, *History of English Law* i Chap. 5; iv, pp. 407-480; v. pp. 215-338; vi, pp 518-551, pp. 640-671; ix, pp. 335-408; xii, pp. 178-330; xiii, pp. 574-668; xvi, pp. 5-135; Plucknett, *Concise History of the Common Law* (5th ed.), Part V; S..C. Milsom, *Historical Foundations of the Common Law* (2nd ed.), Chaps. 4, 9; C.K. Allen, *Law in the Making*, (6th ed. 1958), pp. 366-408; Jones, *The Elizabethan Court of Chancery,* (1965) 81 L.Q.R. 562; (1966) 82 L.Q.R. 215 (J. L. Barton); Keeton and Sheridan's *Equity* (3rd ed.), Chap. 2; Hanbury & Martin, *Modern Equity,* (14th ed.), 1993, Part I Ch. I.

48 P. 142.

49 Pp. 52-53.

50 Colonial Office, London, C.D. 416/19-G6.

51 E.g. see Charles Foster Kent, *Israel's Laws and Legal Precedents*, New York, Charles Scribner's Sons, 1907, p. 11; James E. Priest, *Governmental and Judicial Ethics in the Bible and Rabbinic Literature*, KTAV Publishing House Inc., New York, 1980, pp. 105-107.

52 *Sacred Books of the East*, xxxiii, pp. 355-357.

52A See Ch. XI, note 44A.

53 *Land Tenure in Village Ceylon,* Cambridge University Press, 1967, pp. 48-49. See also Vijaya Samaraweera, 'The Judicial Administration of the Kandyan Provinces', *The Ceylon Journal of Historical and Social Studies, New Series,* Vol. I, No. 2, July-December 1971, at pp. 141-142.

54 On some aspects of the law of inheritance relating to the rights of widows, see the Report on the District of Sabaragamuva, 18 June 1824, Colonial Office, London, 416/20-G-16.

55 August 1829, Colonial Office, London, 416/1919-G4.

56 The Military Governor, de Meuron, had in 1797 set up a provisional Court of Equity in Colombo for hearing small cases. Section 5 of the Administration of Justice Ordinance No. 10 of 1843 provided that

Courts of Requests shall hear and determine matters in a summary way, "and according to equity and good conscience."

Section 2 of the Trusts Ordinance No. 9 of 1917 provides as follows: "All matters with reference to any trust or with reference to any obligation in *the nature of a trust* arising or resulting by the implication or construction of law, for which no specific provision is made in this or any other enactment, shall be determined by the principles of equity for the time being in force in the High Court of Justice in England." The emphasis is mine.We shall presently consider attempts to infuse 'equity' into the whole legal system.

57 C.H. Cameron, *Report upon the Judicial Establishments and Procedure in Ceylon,* 31 January, 1832, in *Parliamentary Papers,* 1831/32, XXXII (274), 73.

58 Barnes to Bathhurst, 4 January, 1827, Colonial Office, London, 54/97.

59 This continues to be a troublesome problem as we shall presently see.

60 *Parliamentary Papers,* 1831-1832, XXXII (274) 73.

61 Buckland and McNair, *Roman Law and Common Law*, 2nd Ed. pp. 1-6.

62 *Campbell Discount Co. Ltd.* v. *Bridge,* [1961] 1QB 445 at p. 459.

63 *Bridge* v. *Campbell Discount Co. Ltd.*, [1962] AC 600 at p. 626.

64 C. K. Allen, *Law in the Making,* 6th ed. p. 400; Hanbury and Martin, p. 4.

65 Hanbury and Martin, p. 3.

66 *Re Diplock,* [1948] Ch. 465 at pp. 481, 482.

67 (1878) 10 Ch. D. 118 at p. 128. C.K. Allen, "*Law in the Making*", 6th ed. at pp. 403-404, said that Jessel, M. R., was able to say this "not in a spirit of cynicism, but of cold truth", despite improvements that had taken place.

68 (1827), (1820-1833) Ramanathan's Reports, 119 at p. 120.

69 Marshall's *Judgements*, 183 - 36, p. 261. See also Nadaraja, pp. 76-77, notes 63 and p. 106, note 20.

70 See *Fernando* v. *Soysa,* (1896) 2 NLR 40, at p. 44; *Ibrahim Saibo* v. *Oriental Banking Corporation* (1874) 3 NLR 148 at p. 155; *Dodwell & Co.* v. *John*, (1918) 20 NLR 206, at 211, per Viscount Haldane.

71 Pp. 192-193.

72 Pp. 179-180.

73 Legislative Acts, 1796-1833, I, p.33.

74 P. 192.

75 Pp. 192-193.

76 See *Nothman* v. *Barnet London Borough Council*, [1978] 1 WLR 220 at p. 228; *Re Vandervell's Trusts (No, 2)*, [1974] 3 All ER 205 at p. 213; Denning, *The Changing Law*, 1953, p. 106; Denning, *The Family Story*, 1981, p. 174. See also Michael Kirby, "Lord Denning and Judicial Activism" in *The Denning Law Journal*, (1999), ed. N. McMurtrie and John G. Halladay, University of Buckingham Press, pp. 127-146.

77 *Eastmanco (Kilner House) Ltd.* v. *Greater London Council*, [1982] 1 All ER 437 at p. 444.

78 Vintage, 1998, p.x.

79 [1980] I.C.R. 161.

80 "The Work of the Commercial Courts", (1921-1923) *Cambridge Law Journal*, 6.

81 "The English Judge," *Hamlyn Lectures*, London, Stevens & Sons., (1970), p.125.

82 Pp. 32 - 33; January 16, p. 15.

83 Galpota Slab-Inscription: *Epigraphia Zeylanica*, Vol. II pp. III and 118.

84 *Jātaka Gāthā Sannaya* c. 13th century, 1927 ed. Rev. Dhammaratna Nayaka Thera.

85 Galpota Slab-Inscription: op. cit. p. 117.

86 *Mahāvaṁsa*, 21. 14.

87 *Mahāvaṁsa*, 80.9.

88 *Nikāyasamgrahaya* c. 1415, ed. D. P. R. Samaranayaka, 1966, p. 77 (*sirit le na*). A. P. De Soysa in his Sinhala Dictionary, 1967, p. 2690, interprets this term as 1. chief secretary in charge of customary rites; 2. *nīti nayaka* - chief justice. The Slab-Inscription of Kassapa V (*Epigraphia Zeylanica*, Vol. 1 p. 43) refers to fact that the King "enacted these regulations" - *me sirit täbuvuhu*. The Tablets of Mahinda IV at Mihintale (*Epigraphia Zeylanica*, Vol. 1 p. 85 refer to "*seygiri veherhi pere tubū sirit* - monastic rules that were in force in the Cetiyagiri vehera - out of which the King , after conferring with competent persons, selected rules as he pleased, and enacted other regulations also for the uniform regulation of the community of monks resident in the temple, and its employees, serfs and their respective duties, receipts, and disbursements. The *Nikāyasangrahaya* refers to *vyavastha karava* (p. 885) and to *vyavasthā* (p. 92) - "law".

89 In what sense?

90 *Mahāvaṁsa*, I 14; XXI. 14; XXXVI. 27-28; *Aṭadāsannaya*, p. 15.

91 *Epigraphia Zeylanica*, Vol. V, p. 363, B 19 and B 19-20.

92 *Ibid.*

93 *Epigraphia Zeylanica*, Vol. V, p. 140 note 15.

94 *Epigraphia Zeylanica*, Vol. V, p. 190 note 3 and text.

95 *Epigraphia Zeylanica*, Vol. V p. 208.

96 Paranavitana, *Epigraphia Zeylanica*, Vol. V, p. 133 and 141.

97 Ranawella, in his as yet unpublished edition; Paranavitana, Budulla Pillar Inscription, *Epigraphia Zeylanica*, Vol. III, pp. 71-100; Paranavitana, A Revised Edition of the Badulla (Horabora) Pillar Inscription *Epigraphia Zeylanica*, Vol. V, pp. 177-195.

98 *Epigraphia Zeylanica*, Vol. I, pp. 91, 98-99.

99 On consultation with ministers and others, see Ch. VIII above.

100 *Journal of the Royal Asiatic Society (Ceylon Branch)*, 1856-58, Vol. III, p. 208.

101 Wickremasinghe, Poḷonnaruva 'Galpota' Slab Inscription, *Epigraphia Zeylanica*, Vol. II, p. 101; Poḷonnaruwa: Slab Inscription at the North-Gate of the Citadel, *Epigraphia Zeylanica*, Vol. II, p. 157.

102 *Epigraphia Zeylanica*, Vol. V, p. 370.

103 See Ranawella, "Ektäna, - The Supreme Council in the Early Mediaeval Sinhalese Administration", *Kalyāṇī - Journal of Humanities & Social Sciences of the University of Kelaniya*, Vols. III & IV, (1984-1985), pp. 57-58.

104 *Epigraphia Zeylanica*, Vol. III, pp. 107-108.

105 *Ektäna*, pp. 57-65.

106 *Ektäna*, p. 65. Cf. Ariyapala, p. 88.

107 *Epigraphia Zeylanica*, Vol. IV, p. 185, note 9.

108 Müller, *Ancient Inscriptions of Ceylon*, p. 108.

109 *Epigraphia Zeylanica*, Vol. IV, p. 178.

110 Paranavitana, *Epigraphia Zeylanica*, Vol. V, Part 2 p. 195 note 4.

111 *Epigraphia Zeylanica*, Vol. V, p. 189, note 11.

112 Cf. Vessagiri Inscriptions (No. 2) - the king having personally inquired into a dispute concerning the waters of the Tissa tank, gave orders to his council to set up a slab-inscription embodying his decree regulating the use of water and the granting of certain immunities: *Epigraphia Zeylanica*, Vol. I, pp. 35-37.

113 Ranawella, *Ektäna*, at p. 61; and notes 5 and 15 of Ranawella's (as yet unpublished) edition of the Badulla Pillar Inscription.

114 Cf. Ranawella, p. 8.

115 *Epigraphia Zeylanica*, Vol. I, pp. 244-245. Unless one is cautious, the importation of such terms is likely to lead to misleading conclusions.

116 It would appear that it was not a *sine qua non* that someone from the Supreme Council should have come to set up a pillar: they might, for instance, have been set up by officials from the *Sabhā* - the Court of Justice attached to the King's Council - albeit persons who also happened to be members of the King's Council: see Ranawella, *Ektäna*, esp. pp. 59-61.

117 Paranavitana, *Epigraphia Zeylanica*, Vol. V, p. 195, note 5. But Professor Ranawella, Badulla Pillar Inscription, note 15, stated that *tan* was a shortened form of the usual term *ektän* meaning "the supreme council".

118 P. 87.

119 Cf. K. Olivecrona, *Law as a Fact*, (1939), p. 54 and 60; (1971) p. 93 sq.

120 Sirimal Ranawella, *Vevälkaṭiya Slab Inscription and its Copies*, Sri Lanka Historical Association, Colombo, 1996, p. 5.

121 P. 56.

122 P. 190.

123 Pp. 212-213. Knox may have been referring to the Gaḍalādeṇiya slab - pillar inscriptions (See *Epigraphia Zeylanica*, Vol. IV, p. 16) and to the Gaḍalādeniya Rock Inscription (see *EZ.*, IV, p. 90)?

124 Where metal plates were used, copper may have been used. But, in extraordinary instances, more precious metals may have been used for making records: Cf. Paranavitana, "Vallipuram Gold Sheet Inscription" in *Inscriptions of Ceylon*, Vol. II, Part I, 1983, Department of Archaeology, pp. 79-81. That inscription, however, does not record any law: It merely records the fact that a certain *vihāra* was to be built. The Dighavapi Inscription of King Kaṇiṭṭha Tissa was made on gold-leaf: the inscription merely records the fact that the gold reliquary in which the gold-leaf was found was a donation of a King named Malutisa, the son of the great King Naka: *Epigraphia Zeylanica*, Vol. VI, 221.

125 E.g. see Aturupolyāgama Pillar-Inscription, *Epigraphia Zeylanica*, Vol. V, p. 390. Cf. a *pamuna* grant for all time in the Vēragama Sannasa - *irasanda him pamuṇu-koṭa: Epigraphia Zeylanica*, Vol. V, p. 461.

126 *Epigraphia Zeylanica*, Vol. VI, p. 54.

127 This year refers to the Buddhist era. The Buddhist era of Sri Laṅkā in the inscription of Sāhasamalla had its starting point in 544 B.C. A date given in an inscription of the twenty-eighth year of Upatissa I (368-410), has been shown to be in a Buddhist era of which the initial point

is 545 B.C.: the year was 1057 A.C. see Paranavitana, Mädirigiri Slab Inscription, *Epigraphia Zeylanica*, Vol. VI, p. 41.

128 E.g. see the observations of Godakumbura on the Ellevewa (Älleväva) Pillar Inscription of Dappula IV: "The weather-worn condition of the stone, makes the task of deciphering the inscription difficult, and the interference of the later writing adds to this difficulty. It appears that this factor misled Bell in some of his readings, and further made him count two extra lines on face C." *Epigraphia Zeylanica*, Vol. V, p. 372. See also the observations of Paranavitana in reading the Mädirigiri Slab Inscription of Mahinda VI, *Epigraphia Zeylanica*, Vol. VI, p. 40.

129 So Herbert White said in his *Manual of Uva*, p. 53.

130 Hayley's treatise on Kandyan Law was published in 1923.

131 See *Epigraphia Zeylanica*, Vol. III (1928-1933) pp. 71-100 for Paranavitana's first edition; see also Paranavitana, "A Revised Edition of the Badulla (Horabora) Pillar Inscription", *Epigraphia Zeylanica*, Vol. V (1963), pp. 177-195. There is also Ranawella's, as yet unpublished, revised version of the Badulla Pillar Inscription.

132 S.J. Sumanasekera Banda (pers. comm.) said: "Padiyatalāwa, not very far from Horaboraväva, bears proof to the existence of this market, for the word *'padiya'* used in this inscription refers to the market. Hence 'Padiyatalāwa' means market-place or fair ground."

133 *Epigraphia Zeylanica*, Vol. I, p. 191.

134 E.g. the Anurādhapura Slab Inscription, *Epigraphia Zeylanica*, Vol. IV, p. 113; the Malagaṇē Pillar Inscription, *Epigraphia Zeylanica*, Vo,. IV, p. 180.

135 Many of them are concerned with grants of caves to monks, and grants of villages and lands and water rights to or for the support of, or purposes connected with, temples, monasteries, monastic colleges, nunneries, hospitals and dispensaries. There are also several inscriptions recording the grant of immunities and privileges to such villages and lands, some of them additionally dealing with the manner in which criminals were to be dealt with. Some inscriptions record the good deeds and achievements of monarchs. A few of them deal with other matters, such as disciplinary injunctions issued to monks (*Epigraphia Zeylanica*, Vol. II, p 256-283); the grant of land to a smith, (*Epigraphia Zeylanica*, Vol. III, p. 240); a person who helped in conducting ceremonies, *Epigraphia Zeylanica*, Vol. V, p. 399); a scribe; (*Epigraphia Zeylanica*, Vol. V, p. 447) : The settlement of a caste dispute (*Epigraphia Zeylanica*, Vol. III, p. 307) : a peace treaty *Epigraphia Zeylanica*, Vol. IV, p. 7); the manumission of a monk, (*Epigraphia Zeylanica*, Vol. V, p. 115); the manumission of a man's

daughters, (*Epigraphia Zeylanica*, Vol. IV, p. 144); the purchase of soldiers' lands by a monastery, (*Epigraphia Zeylanica*, Vol. V, p. 115); the donation of gifts in honour of the Buddha by an Emperor of the Great Ming Dynasty of China, (*Epigraphia Zeylanica*, Vol. III, p. 336) and so on. For a general overview of the inscriptions of Sri Lanka, see *Inscriptions*, Archaeological Department Centenary (1890-1990) Commemorative Series, Vol. Two, 1990. 3339 inscriptions were copied by the Department of Archaeology between its inception in 1890 and 1989. Some of them have been translated into English and commented upon from time to time in the Journal of the Royal Asiatic Society (Ceylon Branch), the Ceylon Antiquary and Literary Register, the University of Ceylon Review and other journals. E. Müller's *Ancient Inscriptions of Ceylon (1883)*, and *Epigraphical Notes* published by the Department of Archaeology also deal with some inscriptions. The best known compilation is *Epigraphia Zeylanica, being Lithic and other inscriptions of Ceylon* which runs into seven volumes. Vol. I was edited and translated by Don Martino De Zilva Wickremasinghe, and published in 1912 for the Government of Ceylon by Oxford University Press. Volume II was also edited and translated by Don Martino De Zilva Wickremasinghe and published in 1928 for the Government of Ceylon by Oxford University Press. Volume III was edited and translated by Don Martino De Zilva Wickremasinghe and H.W. Codrington and published in 1933 for the Government of Ceylon by Oxford University Press. Volume IV was edited and translated by H.W. Codrington and S. Paranavitana and published in 1934 for the Government of Ceylon by Oxford University Press. Volume V was printed at the Government Press, Ceylon, for the Archaeological Department of Ceylon: Part 1 was edited by S. Paranavitana and published in 1955; Part 2 was edited by S. Paranavitana and C.E. Godakumbura and published in 1963; Part 3 was edited by S. Paranavitana and C.E. Godakumbura and published in 1965. Volume VI Part I was edited by S. Paranavitana, Saddhamangala Karunaratne, and A. Velupillai and published by the Department of Archaeology in 1973. Volume VI Part II was edited by Jayanta Uduwara, and published in 1991 by the Department of Archaeology. Volume VII was edited by Saddhamangala Karunaratne and was published by the Department of Archaeology in 1984. Volumes I-IV were reprinted by Asian Educational Services, New Delhi and Madras, in 1994 . Reference should also be made to S. Paranavitana, *Inscriptions of Ceylon*, which deals with cave inscriptions from the third century BC to the first century after Christ and other inscriptions in the early Brahmi script. It was published by the Department of Archaeology, Ceylon, in 1970.

Inscriptions of Ceylon, Volume II Part I by S. Paranavitana deals with late *Brahmī* Inscriptions containing Rock and other inscriptions from the reign of Kuṭakanna Abhaya (41 BC-19 BC) to Bhatiya II (140-164 AD). It was published in 1983 by the Department of Archaeology.

137 *Land Tenure in Village Ceylon*, Cambridge University Press, 1967, pp. 52-55.

138 *The Discipline of Law*, Butterworths, 1995, p.5

139 Pp. 207-208. For a fuller account of ancient books and writing, see Sirancee Gunawardane, *Palm Leaf Manuscripts of Sri Lanka*, (1997); Ananda K. Coomaraswamy, *Mediaeval Sinhalese Art*, 2nd. ed. 1956, pp. 51-53. Tennent, pp. 434-435; Walpola Rahula, (also on the use of memory) pp. 288-290, 298. Contracts and business agreements were usually made in writing, the document being destroyed upon fulfilment: *Rasavāhinī* II, pp. 18, 167; Walpola Rahula, p. 242.

140 *Epigraphia Zeylanica*, Vol. IV, p. 118.

141 *Bambusa vulgaris* - Sinhalese *Una.*

142 *Mahāvaṁsa-tika*, Colombo edition of 1894, p. 210: *Potthakavam-saphalake vannadi-kammani viya.*

143 Sir Aurel Stein, *On Central Asian Tracks*, London, 1933 pp. 75 ff.

144 *Mahāvaṁsa*, XXXIII.50. Vaṭṭagamanī Abhaya (103-102 B.C.) it seems lost his throne to five successive South Indian invaders (Pañcha Drāvida), but was restored, and ruled from 89-79 B.C. He had no gold or silver in his impoverished land, and so the donation was to become valid in the future, Cf. Ch. III, text at n. 127A, read with Geiger, *Culture*, p. 65. In note 1 p. 233 of his version of the *Mahavaṁsa*. Geiger stated that "As a rule royal donations were recorded on copper plates or might be on silver and gold plates: Geiger, *Literatur und Sprache der Singhalesen*, pp. 24-25.". Geiger, *Culture*, p. 65, observed that "the word *paṇṇa* 'leaf' for letter (*Culavaṁsa* 66.37) seems to prove that the material on which the letters were written was made of the leaves of the palmyra palm ... But important and ceremonial letters sent from a monarch to a monarch, were also written on golden slips (*Culavaṁsa* 76.21, 26). Royal donations also used to be written on copper plates or might be also on slips of silver and gold. Such documents [were] called *sannasa* in Sinhalese."

145 Lines 10-11, *Epigraphia Zeylanica*, Vol. I, pp. 131 and 133.

146 Wickremasinghe, *Epigraphia Zeylanica*, Vol. II, p. 133, note 5. W.M.A. Warnasuriya, "Inscriptional Evidence Bearing on the Nature of Religious Endowment in Ancient Ceylon", *University of Ceylon Review*, I, 69-74; 74-82 and II, 92-96.

147 The Kāliṅga Park Gal-Āsana Inscription records that Niśśaṅkamalla ordered the names of the kings who made the donations and those of

the donees be inscribed on copper-plates so that the record would remain for 'five-thousand' years. It is recorded that "His Majesty introduced copper-plate grants into Laṅka." *Epigraphia Zeylanica*, Vol. II, p. 133. See also the Poḷonnaruva Slab Inscription, *Epigraphia Zeylanica*, Vol. II, p. 156. Cf. the Inscription of Nissaṅkamalla at Dambulla, *Epigraphia Zeylanica*, Vol. I, p. 133, which, however, does not record a claim that copper-plate grants were introduced by him. Indeed, Paranavitana has pointed out that the earliest in date of the copper-plate charters so far discovered in Sri Laṅka, is the Panākaḍuva Copper Plate of Vijayabāhu I (*circa* 1055-1110 AD) embodying an order of the King-in-Council granting certain privileges to Sitnaru-bim Budalnavan, *daṇḍanāyaka* of Ruhuna, who protected Vijayabāhu in his tender years, his father and other members of the royal family, when they had to seek refuge in the forest as a consequence of disorders brought about by the Coḷa invasion, and established him in the principality of Rōhaṇa: *Epigraphia Zeylanica*, Vol. V, p. 3. In order to ensure that a covenant to protect the Tooth-relic Temple 'may last as the sun and the moon endure', it was engraved on both copper plates and on stone: Slab-Inscription of the Vēläikkāras, *Epigraphia Zeylanica*, Vol. II, p. 255.

148 80. 60-73.

149 Probably the oldest ōla manuscript in existence is the *Culla Vagga*, which was one of thirty-nine ōla manuscripts once owned by H. C. P. Bell. The *Culla Vagga*, which was placed in the National Museum, was said by Paranavitana to be a work of the thirteenth century.

150 *Transactions of the Royal Asiatic Society of Great Britain and Ireland*, (1824), pp. 547-548; Nadaraja, p. 52. Sir Alexander, however, boarded another vessel at Galle on his way from Colombo to London and was saved, although his precious cargo on the other ship which he was originally scheduled to take was lost.

151 P. 56.

152 E.g. see the Aturupolayagama Pillar Inscription, *Epigraphia Zeylanica*, Vol. V, p. 390.

153 Sometimes the imprecation is not mentioned. In the Iṅginimiṭiya Pillar Inscription, there is a benediction (*siddhi*) at the end. The usual imprecation, however, is implied by the figures of the dog and the crow: *Epigraphia Zeylanica*, Vol. V. p. 359.

154 E.g. see the Slab Inscription of Sāhasamalla, *Epigraphia Zeylanica*, Vol. II, p. 235.

155 *Epigraphia Zeylanica*, Vol. VI, p. 57.

156 Two Pillar Inscriptions from Dorabawila, *Epigraphia Zeylanica*, Vol. V, p. 296.

157 *Epigraphia Zeylanica*, Vol. II, pp. 62-63.

158 *Epigraphia Zeylanica*, Vol. II, p. 122.

159 *Epigraphia Zeylanica*, Vol. II, p. 178.

160 *Epigraphia Zeylanica*, Vol. VI, p. 97.

161 *Candalas* - people of a low caste.

162 A Slab Inscription of Nissaṅkamalla, *Epigraphia Zeylanica*, Vol. V, p. 208.

163 *Cūlavaṁsa*, 53. 14 ff.

164 See Ranawella, *Ektäna*, at p. 61.

165 Cf. *Epigraphia Zeylanica*, Vol. V. Part 2, pp. 189-190; and Ranawella's (as yet unpublished) translation.

166 Creditors had various methods of recovering their debts, including extra-judicial methods, e.g. by the debtor being delivered by the Chief to the lender to be used as his servant, or being permitted by the Chief to plough the debtor's fields and so on: D'Oyly, pp. 97-98. *Väḷäkme dämīma* was one of the extra-judicial methods of debt recovery. D'Oyly, *Ibid.*, described the procedure as follows:

"Whenever he meets his debtor in the street or road, he stops him abruptly, and drawing a circular line around him on the ground with a stick, or sometimes without this ceremony sits down beside him and forbids him by the King's command, to move from the spot without paying his money. The debtor is obliged to sit himself also, and in respect for the King's name, neither can stir, till some other person approaching and interfering, engage to be answerable for the debt, or for the person, in the presence of witnesses, to call both before the proper chief, to have the case investigated and settled. This is called *Welekme Damanawa*, or placing under inhibition (*Dherna*)." The rest of the account is based on Paranavitana, *Epigraphia Zeylanica*, Vol. III pp. 91-92, who quoted D'Oyly's account in the Archaeological Survey Copy, p. 59. That account is also found in the Tisara Prakasakayo edition at p. 87.

"The superior chiefs usually recover their fines by imprisonment - the provincial headmen by placing in the *Welakma*, which in some cases, amounts to absolute punishment, or rather a torture to compel payment. The culprit is delivered to the charge of one or more persons and seated on the ground with head uncovered, exposed to the sun, and thus

detained till he makes satisfaction. Sometimes to increase the inconvenience of the situation, a heavy stone is laid on his shoulder which he is obliged to hold with both his hands; and is allowed only to shift from one side to the other but does not throw off for fear of immediate corporal chastisement. The fatigue and pain of this situation soon compel him to submit and send for the money, or a pledge, if he has it; or induce a relation or friend or inferior headman to become security and obtain his release. The latter mode of extorting payment (by loading with a stone) is adopted only towards refractory persons who refuse to comply with the sentence, show contempt of authority, or have before deceived, or for whom, on account of their character, no one will readily undertake to answer. It is scarcely acknowledged by the superior Kandyan chiefs to be strictly legal, though it is certainly a custom of some antiquity and was practised and tolerated in the country till the dissolution of the Kandyan Government. It has also, I understand, been employed, but in rare instances, to enforce payment of revenue."

167 Ranawella's (as yet unpublished) edition, p. 10; cf. *Epigraphia Zeylanica*, Vol. III p. 79.

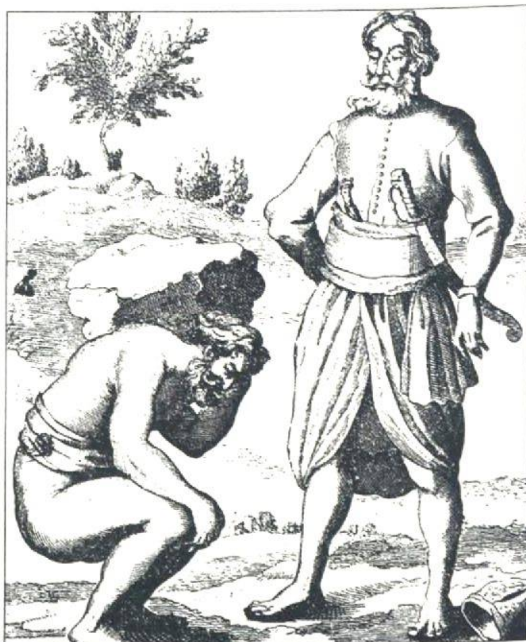
168 *Ektäna*, pp. 63-65.

169 P. 86.

170 Ed. D.B. Jayatilaka, p. iv.

171 See the Poḷonnaruva Council Chamber Inscription, *Epigraphia Zeylanica*, Vol. IV, p. 37.

172 *Epigraphia Zeylanica*, Vol. VI, p. 48.



Debt recovery

NOTES TO CHAPTER XII

1 P. 260.

2 P. 39; 28 January, 1991, p. 13.

3 *Culture*, p. 146.

4 *Cūlavaṁsa*, 49. 21.

5 Weerasinghe P. 39; 28 January, 1991, p. 13.

6 P. 47.

7 P. 12.

8 See Nadaraja, p. 92, note 179.

9 *Epigraphia Zeylanica*, Vol. I, p. 249.

10 See Ch. XIV text n. 180 sq.

11 *Culture*, p. 146. Ariyapala, p. 124, however, said that it was not clear whether that was a code of the laws of the country or a law book based on the *Dharmaśāstras*.

12 P. 183.

13 See Ch. XII text at n. 18 sq. below on the discussion of the *Nīti Nighaṇḍuva*.

14 B.C. Law, *Kshattrya Clans of Ancient India*, pp. 95-96, quoting George Turnour's Pali Buddhistical Annals, *Journal of the Asiatic Society of Bengal*, 1838. See also James d' Alwis, *Journal of the Royal Asiatic Society (Ceylon Branch)*, 1856, Vol. III, p. 211; M.L.S. Jayasekera, p. 151.

15 *The History of Ceylon from the earliest period to the present time; with an appendix containing an account of its present condition*, 1845, London, Longman, Brown, Green and Longmans; Smith, Elder & Co; and Madden & Malcolm, Edinburgh: - Bell & Bradfute, republished in 1971 by Gregg International Publishers Ltd., Westmead, Farnborough, Hants., England, p. 191.

16 The emphasis is his.

17 49. 20.

18 Harischandra Wijetunga, "Medical Lexicons in Ancient Sri Lanka - A Note on the Vanavāsa Nighaṇḍuva and the Siri Mal Nighaṇḍuva", *Silver Jubilee Commemoration Volume of the University of Kelaniya, Sri Laṅka*, (1986) p. 511, has stated that *Nighaṇḍuva* is a Pali word derived from the Sanskrit term *nighanṭu* conveying the sense of collection, and points out that there are several *Nighaṇḍuvas* in Sinhala literature. The most recent version of the *Nīti Nighaṇḍuva* is that of Dr.

Harischandra Wijetunga. It was published in 1998 by S. Godage & Bros., Colombo.

19 M.W. Padmaraji, "Legal Texts in Ancient Sri Lanka - A note on the Nīti Nighaṇḍuva", in the *Silver Jubilee Commemoration Volume of the University of Kelaniya, Sri Laṅkā,* (1986), p. 428.

20 Some monks were learned not only in matters ecclesiastical, but also in the secular law. E.g. the *Lak Raja Lō Sirita* sets out the answers given by "the best-informed Candian Priests to Questions put to them by Governor Falck, in the year 1769, respecting the antient Laws and Customs of their Country", Reproduced in Appendix A of Bertolacci, pp. 273-283; and Pieris, Appendix A, pp 577-587. See Ch. III, note 1.

21 Padmaraji, 427.

22 On that matter, see the explanation of C.J.R. Le Mesurier and T.B. Pānabokke in the *Nīti Nighaṇḍuva*, 1880; Hayley, pp. 16-19; Modder, pp. liv-lviii; L.J.M. Cooray, *An Introduction to the Legal System of Ceylon,* 1972, Lake House Investments, Ceylon, pp. 118-119; Savithri Goonesekere, "Tikiri Banda Pānabokke (1846-1902)", in the *Law & Society Trust Lecture Series "Legal Personalities of Sri Lanka", Lecture V, (1985),* at pp. 31-40. I am obliged to R. K. W. Goonesekere for making available a precious heritage copy of Pānabokke's *Nīti Nighaṇḍuva*

23 D'Oyly, p. 47; Davy, p. 134; Sir Charles Marshall, *Judgments and other Decisions and Directions of the Supreme Court of the Island of Ceylon from the Promulgation of the New Charter 1st October 1833 to March 1836,* Paris, 1839, p. 295; C. Pridham, *An Historical, Political and Statistical Account of Ceylon and its Dependencies,* 2 Vols., London, 1849, Vol. I, p. 215.

24 See Nadaraja, p. 92, note 179.

25 Public Record Office, London, Colonial Office Series, 54/123, 124.

26 Colonial Office, London 54/124 pp. 14 ff. The *Memoir* was a collection of native laws.

27 Among the accounts of government, laws and institutions found among the Alexander Johnston papers in the Library of the Royal Commonwealth Society in London, is a manuscript dated 14 August 1800 containing "Information concerning the form of government, laws and customs of the Kings of Kandy" gathered during the early British period: M.D. Wainright and N. Matthews, *A Guide to Western Manuscripts and Documents in the British Isles relating to South and South-East Asia,* 1965, p. 225.

28 For an account of the steady erosion of the old system, see Nadaraja, Ch. Two.

29 Hayley p. 12.

30 Davy, p. 134.

31 See Nadaraja, Ch. Five.

32 P. 184.

33 Translated by Savithri Goonesekere and Damayanthi Ratwatte in an appendix to Goonesekere's lecture on Pānabokke: see note 22 above.

34 P. 20.

35 Padmaraji, 432.

36 Including the inscriptions on stone and metal, the ancient chronicles, especially the *Mahāvamsa* and the *Cūlavamsa*, the *Dharmaśāstra*, especially the Laws of Manu, and the works of other lawgivers and sages of Asia, including Kauṭilya's *Arthaśāstra*, classical literary works; the *Lak Raja Lo Sirita;* the minutes of the proceedings of the Board of Commissioners and Agents of Government of the Kandyan Provinces (1816-1833); and the works of Ariyapala; Armour; J. Bailey; (*General Customs or Sirita in respect of Irrigation),* in The Speeches and Minutes of Sir H.G. Ward, 1855-1860; Bell's Report on the Kegalle District; Bertolacci, Cooray; Davy; Disava De Coste's *Memoir of 1770,* Colonial Office London, 54/123 and 124; D'Oyly; A.B.C. de Soysa (*Digest of Kandyan Law,* 1945, Peramuna Ltd., Colombo); T.B. Dissanayake and A.B. Colin de Soysa, (*Kandyan Law and Buddhist Ecclesiastical Law,* 1963, Dharmasamaya Press); Hayley, M.L.S. Jayasekera; W.I. Jennings and H.W. Tambiah (*Dominion of Ceylon: Development of its Laws and Constitution,* British Commonwealth Series, Vol. 7, 1952); H.W. Tambiah (*Principles of Ceylon, Law,*) 1972; Sir Alexander Johnston, *Native Laws and Customs,* Colonial Office, London , 54/123 and 124; Kapuruhami; David Karunaratna, *Puratana Lamkave Niti Kramaya*, Lihini Pot 97, Kolamba, 1955; Knighton; A.C. Lawrie; Knox; Sir Charles Marshall (see n. 23 above); Henry Marshall; Frank Modder (*The Principles of Kandyan Law,* (1902) 2nd ed. in collaboration with Earle Modder, 1914, Stevens & Haynes and Stevens & Sons, London); Nadaraja; Gananath Obeyesekere; Percival; P.E. Pieris; Ralph Pieris; J.M. Perera, (*Armour's Grammar of Kandyan Law,* 1880, Ceylon Times Co.); Ranawella; Sawers; A.F.C Solomons (*A Manual of Kandyan Law,* 1898, Times of Ceylon), Skinner; H.W. Tambiah (*Sinhala Laws and Customs,* (1968), Lake House Investments Ltd., Colombo); H.B. Thompson, (*Institutes of the Laws of Ceylon,* 1866, Trubner & Co.,

London, Vol. 2 pp. 597-693); Weerasinghe; Harischandra Wijetunga; and the decisions of the Supreme Court after 1833 (when the Kandyan Provinces were brought under its jurisdiction). There may also be other sources: In the closing years of his life, Earle Modder gave my father his notebooks of cases relating to criminal and civil matters decided in the transitional years relating to Kandyan Law, There were also letters exchanged between Earle Modder and N.E. Weerasooria QC on various matters that were, probably accidentally, placed in the books. I deposited these documents at the National Archives. One more volume was later found by my brother, Mr. Franklyn Amerasinghe, among the books of my late father. That too has been given to the Department of National Archives: Sri Lanka National Archives reference Nos. 25. 98/1, 25.98/10, 25.98/14, 25.98/31.

Moreover, as Holmes observed, "the life of the law has not been logic: it has been experience." In order to understand the machinery for the administration of justice in any community, including the Sinhalese legal system, we need to place it in the system's historical and social setting: We should comprehend "the felt necessities of the time, the prevalent moral and political theories, institutions of public policy ... even the prejudices ..." to know why certain laws, procedures and institutions were regarded as "convenient". Therefore, not only the *Niti Nighaṇḍuva* and other works dealing directly with "law" but also other sources of information that shed light on the law and legal institutions of Sri Lanka need to be consulted.

NOTES TO CHAPTER XIII

1 *Mahāvaṁsa*, VII, 74.

2 *Nīti-vimaṇsā*, p. 31. But see Ch. XIII text at n. 20 and Ch. XV text at n. 14 sq.

3 *Nīti-vimaṇsā*, p. 30.

4 See Ch. XV text at n. 14 sq.

5 *Mahāvaṁsa*, X. 103.

6 The population of Sri Lanka in 1835, according to a census taken by order of Governor Sir Robert Wilmot Horton, was 1,241,825: J.W. Bennett, *Ceylon and Its Capabilities*, (1843), p. 16.

7 See Ch. XIII text at n. 12.

8 P. 99.

9 P. 122.

10 Ariyapala, p. 123. See also Hayley, pp. 58-59. The delegation of judicial functions was an accepted practice in ancient times: "When he is tired with the inspection of the business of men, let him place on the seat [of justice] his chief minister, [who must be] acquainted with the law, wise, self-controlled, and descended from a [noble] family". Manu VII.141. "But if the king does not personally investigate the suits, then let him appoint a learned *Brāhmaṇa* to try them". Manu VIII. 9. See also Ch. VIII.

11 See Ch. VIII text at n. 163 sq.

12 *Sinhala Thupavaṁsaya*, ed. K. Pannasara, p. 238 *Saddharmālaṃkāraya*, ed. B. Sraddhatisya Thera, pp. 487-488.

13 Ranawella, *Nīti-vimaṇsā*, p. 32.

14 59. 14.

15 *Epigraphia Zeylanica*, Vol. II p. 117.

16 *Epigraphia Zeylanica*, Vol. II, p. 175.

17 *Epigraphia Zeylanica*, Vol. VI, p. 54.

18 See Ch. XV text n. 6 sq.

19 Cf. Sri Dhammakitti Sri Dhammananda Nayaka Thera, *Manorathapuranī*, p. 358; *Majjhima* Nikāya *Glossary* p. 813; Weerasinghe, p. 34; Ranawella, *Niti-vimaṇsa*, p. 33. See also Ch. VIII text at n. 225.

20 *Mahāvaṁsa*, X. 102.

21 P. 34.

22 The *Vaṃsatthappakāsinī*, a commentary on the *Mahāvaṁsa*, was composed between 1000-1250 AD or earlier. It is also called the *Mahāvaṁsa- Ṭīkā* . It was Edited by G.P. Malalasekera, and published in 2 volumes by the Pali Text Society, Oxford, Clarendon Press, 1935. According to the *Vaṃsatthappakāsinī*, p. 296, *sivikasālā* were 'places where the phallic symbol of the deity Siva *siva-linga* were kept' or the 'lying-in -hospitals' (*Sivikasālā namā sivalinga-patthapitasala vijayangharam vā*). Geiger, *Mahāvaṁsa* p. 75, stated that "the king built a lying-in shelter and a hall for those recovering from sickness." Paranavitana said that it was a hall meant for the phallic symbol of Siva: *Journal of the Royal Asiatic Society (Ceylon Branch)*, Vol. 31, p. 326. H. Ellawala (*Social History of Early Ceylon*, Department of Cultural Affairs, Colombo, 1968, pp. 156-157,) stated that *Sivikasālā* meant a hall in the shape of a palanquin; and that *sotthisālā* was more likely to have been a religious place than a hospital.

23 *Dhammapada-Aṭṭhakathā*, 111. 380. *Vinici* literally meant a place of deliberation in the form of a legal decision: and so, a place of judgment.

24 Weerasinghe, p. 34, citing *Viśuddhi Mārga Sannaya.*

25 Weerasinghe, p. 34, citing *Cūlavaṁsa*, 78. 13; and the *Pansiyapanas Jātakapota.*

26 *Amāvatura.* p. 66 (Sorata), K. Gnanaloka, Buddhist Cultural Centre, Dehiwala 1998, p. 116.

27 *Epigraphia Zeylanica*, Vol., V, pp. 21 and 24.

28 Paranavitana, *Inscriptions of Ceylon,* Vol. 11, Part I, pp. 95-96.

29 The *Samantapāsādikā*, ed. W. Soratota, p. 222.

30 K. Paññasara Nayaka Thero, *Sinhala Thupavaṁsaya*, p. 238: *adhikarana* a court + *dharma* law: Weerasinghe, p. 34.

31 P. 35; cf. January 16 1991, p. 15; and January 21 p. 13.

32 See Ch. XIII text at n. 65 sq.

33 *Inscriptions of Ceylon*, pp. xcii-xciii.

34 These have been placed between the third century B.C. to 65 A.D. See *Inscriptions,* Archaeological Department Centenary Commemorative Series, Vol. Two, 1990.

35 Ed. Oldenberg, Vol. III, p. 45.

36 *Inscriptions of Ceylon*, Vol. I p. xcvi and p. 88.

36A For differences between 'inquisitorial' and 'accusitorial' systems, see Holdsworth, *History of English Law*, iii, 5th ed., 1942, pp. 620-622.

37 Cf. Paranavitana, op. cit., p.c.

38 Op. cit. p. 88.

39 P. 260. See text Ch. VIII at n. 320.

40 See Sen-Gupta, pp. 77-79, 80-81.

41 Kapuruhami, p. 51.

42 See Maha Naḍuva proceedings and Raṭa Sabhāva proccedings in Ch.XV. In India, however, the *Dharmaśāstras* go into some detail as to the time at which and the ways in which witnesses are to be sworn, examined and tested. E.g. see Gautama, Ch. XIII; *Vaśiṣṭha*, Ch. XVI; Viṣṇu, Ch. viii; Nārada, Ch. I; Manu, Ch. viii; Yājñavalkya, Ch. II.

43 See the observations of Skinner quoted below in Ch. XV text n. 69 sq. Percival, p. 184, misunderstood the matter. He said that "Presumptive proof is allowed to have great weight, and it is therefore probable that prejudice has still more." Although in India, at a later stage of development, witnesses were called and somewhat eleborate rules on the subject of evidence were laid down, yet, at an early stage of society when communities were small and matters of litigation were comparatively simple, the facts of a dispute would have been generally well known so that when the community itself was the judge, as in the case of the *Gam-sabhā* of Sri Lankā, no question of fact would normally arise. Even later, when the king became a judge, he might have ascertained the facts from one of the leading members of the community. Cf. Sen-Gupta, p. 62.

44 Nadaraja, p. 79.

45 Weerasinghe, p. 35, citing *Jātaka Gāthā Sannaya*.

46 History, text for note 112.

47 Weerasinghe, p. 35.

48 Weerasinghe, p. 35, citing *Saddarmaratnāvaliya*.

49 Weerasinghe, p. 35, citing *Dhampiyā Aṭuvā Gäṭapadaya* (929-939 A.D.)

50 Weerasinghe, p. 35.

51 P. 91.

52 59. 16.

53 *Cūlavaṁsa*, p. 210.

54 P. 35; January 21, 1991, p. 13.

55 See text at n. 60 sq. below.

56 P. 38; January 23, 1991 p. 15.

57 Medauyangoda Vimalakitti Thera and Nehinne Sominda Thera, *Aṭadāsannyaya*, 1954, p. 15.

58 P. 18

59 Paranavitana, *Epigraphia Zeylanica*, Vol. III, p. 271. Reference should also be made to the Pillar-Inscription of Kasappa IV from Mahamanakadavala (which is in the Anurādhapura Archaeological Museum).

60 *Ektäna*, p. 61.

61 Ranawella, *Ektäna*, p. 60; cf. *Epigraphia Zeylanica*, Vol. IV p. 45.

62 Paranavitana, *Epigraphia Zeylanica*, p. 272.

63 See *Epigraphia Zeylanica*, Vol. II, p. 42 and Vol. III, pp. 272 and 274; Ranawella, *Ektäna*, pp. 60-61.

64 Paranavitana, *University of Ceylon - History of Ceylon,* Colombo, 1960, Vol. I, Pt. II. p. 541; Ranawella, *Ektäna*, p. 60.

65 See Nicholas and Paranavitana, p. 260; Weerasinghe, 35; Jan. 21, 1991, p. 13, Cf. the role of the *sabhāsadas* in the *sabhā* of India.

66 VIII. 10.

67 VII. 30.

68 *Historia de Vida do veneravel Iramao Pedro de Basto*, Lisbon, 1689 - *The Temporal and Spiritual Conquest of Ceylon,* 1688, translated by S.G. Perera, Government Printer, 1930, Vol. 1, p. 120.

69 Cf. *Mohoṭṭāla* - scribe, clerk, secretary.

70 *Ribeiro's History of Ceilão, with a summary of De Barros, Couto etc.* Tr. P.E. Pieris, Colombo, 1909. Pp. 58-59.

71 E.g., see clauses 37, 38, 40, 43, 44.

72 Samaraweera, p. 142; Hayley, p. 13. For an account of the way in which the system of assessors worked, see Samaraweera, p. 145-147.

73 Nadaraja, pp. 66, 94, 100, 106, 113.

74 Nadaraja, p. 62.

75 On the Stephanoff picture, see A.R.B. Amerasinghe, *The Supreme Court of Sri Lanka The First 185 Years,* pp. 510-518.

76 Nadaraja, p. 94, said: "The word 'assessor' is derived from the Latin *assidere,* 'to sit together' ... and means 'literally a person who sits by the side of another [and thus] a person called into assist a court in trying a question requiring technical or scientific knowledge' (Earl Jowitt, *The Dictionary of English Law,* 1959, p. 162). This last description of an assessor would correctly describe the assessors whose aid may be

invoked in special circumstances in terms of modern statutes ... But (unless the word 'technical' is used in its most general sense of 'having special, usually, practical, knowledge', though not necessarily 'of a mechanical or scientific subject') the above description would not cover the functions of the assessors who sat with the Judicial Commissioner or with the Agents of the Government in the Kandyan Provinces after the Proclamation of 21 November 1818 ... or those who sat in the District Courts after the Charter of Justice of 1833 ..."

77 P. 260.

78 P. 35.

79 P. 42.

80 D'Oyly, p. 46.

81 See Ch. XV text n.2. See also Davy, p. 135.

82 See Ch. XV text n. 5.

83 Davy, 135.

84 Nadaraja, p. 22, note 36.

NOTES TO CHAPTER XIV

1 Davy, p. 134; D'Oyly, pp. 31-43; Hayley, p. 66.

2 See Ch. XIV text n. 167 sq.

3 For a comprehensive account of the King and Council of Ministers and state officials in mediaeval Sri Lanka, see Ariyapala, pp. 87-122. For an account of officials in the Kandyan Kingdom and their jurisdictions, see D'Oyly, pp. 31-47, 63; Ralph Pieris, pp. 152-156; see also the list of Kandyan Headmen compiled by John D'Oyly and James Gay (1817) in Ralph Pieris, pp. 30-32; and Herbert Wright's list of inferior officials in the province of Sabaragamuva in Ralph Pieris, pp. 33-36. With regard to officers of state in ancient times, see Paranavitana, *Inscriptions of Ceylon*, Vol. I, pp. xcii-xcv; Weerasinghe, p. 40; January 28 1991, p. 13 and January 30 1991, p. 17; Codrington, p. 68; the *Nikāyasangrahaya* (Ed. D.M. de Z. Wickramasinghe, Colombo, 1890, p. 20) which referred to the fifteen principal functionaries in the reign of Parakramabāhu I ; and the *Kan̆davuru-sirita* which described the officers who attended on Parākramabāhu II on the occasions on which he sat on the throne. See also Geiger, *Cūlavaṁsa*, Part I, pp. XXV-XXX.

4 E.g. Weerasinghe, (1986), p. 40.

5 Ch. VIII, text n. 103 sq.

6 Ariyapala, pp. 98-99.

7 See Ranawella, *Ektäna*, p. 64; Ariyapala pp. 94, 95, 96.

8 The different titles used to describe the royal princes are far from clear: see Ariyapala, pp. 88, 96-97.

9 The English versions I have given are those in C.M. Fernando's translation of the *Nikāya-saṅgrahaya* p. 20, which Ariyapala, pp. 93-94, quotes with approval. "..." indicates the omission of words from Fernando's translation.

10 We need to be cautious in concluding that *adhikāra* was the counterpart of the English 'Justiciar'. In England a Justiciar or a "Justicer" or "Justiciary", or more fully, Chief Justiciar, Chief Justicer or Chief Justiciary, was the chief political and judicial officer under the Norman and early Plantagenet Kings, acting as regent in the king's absence. In Sri Lan̆kā, *adhikāra* was the principal official of the state - the Prime Minister. Cf. Weerasinghe, p. 40. Paranavitana said that *adhikāra* may correspond to the modern Prime Minister, just as the *adikārama* of the Kandyan times did: S. Paranavitana, "Civilization of the Poḷonnaruva Period: Political Economic and Social Conditions", *University of Ceylon History of Ceylon*, Vol. I, Pt. II, Colombo, 1960, p. 540. K.

Indrapala (*Epigraphia Zeylanica*, Vol. V, p. 157), however stated that *adhikāra* in the records of the tenth, eleventh and twelfth centuries was usually associated with two distinct functions, namely (a) military organization and (b) territorial administration.

11 *Senevirad* (Commander-in-Chief): Weerasinghe, p. 40.

12 *Mahalāna* (Chief Secretary): Weerasinghe, p. 40.

13 Weerasinghe, p. 40, said this was the Minister of Territorial Affairs.

14 P. 94.

15 P. 40.

16 Minister of Commerce: Weerasinghe, p. 40. Ariyapala, p. 91 stated that *siṭunā* was the Chief *seṭṭhi.* A *seṭṭhi* was a wealthy citizen on whom the title was conferred by the king in recognition of his social eminence. For a fuller account, see Ariyapala, pp. 104-107. Commenting on the later inclusion of merchants in the *sabhā* (courts) in India, Sen-Gupta, p. 42, said:

> "The older texts like Manu and Yājñavalkya provide for only Brāhmaṇa advisers. Though the still older text of Gautama already indicated that cultivators, merchants, herdsmen, usurers and artisans had authority in matters pertaining to them, neither they, no[r] Viṣṇu, Manu and Yājñavalkya contemplated that they should find a place in the *sabhā*. A text of Kātyāyana, however, quoted in various commentaries says that the *sabhā* should include a few merchants of good birth and conduct, aged, wealthy and free from greed. This development must have occurred at a social stage when merchants had risen to a place of great importance in society. When Gautama classed *vaṇiks* with cultivators and herdsmen they were apparently a community of little importance and held in low esteem. But in later times Sresṭhis became wealthy and important citizens as we find in numerous Jātaka stories as well as in literary works like the *Mṛichchhakaṭikā*. Besides, as will appear later on, trade disputes which are not to be found in earlier law books came, in course of time, to fill an increasingly important place in the King's *vyavahāra* and necessitated the advice of reliable and respectable merchants for their decision."

It appears that in Sri Laṅkā such importance was attached to commerce that upon the chief of the merchants - *seṭṭhīs* - was bestowed the title of *asiggāhaka* (*kaḍugannā tanaturu*) and he was enjoined to keep watch day and night at the sacred *Bōdhi* tree. Further, the importance of business people is afforded by the fact that the title of *mōriya siṭu* (P. *mōriya seṭṭhānaṃ)* was conferred on Prince Dhamagupta enjoining him

to blow the conch at the festival of the Bōdhi tree (*Siṃhala-bhōdi-vaṃsaya,* p. 220): Moreover the Chief Merchants (*Mahavelendanā*) had to perform other important public functions: Ariyapala, Pp. 90-91.

17 Principal Secretary for Legal Affairs: Weerasinghe, p. 40.

18 But Ariyapala, p. 94, stated that *dulenā* was probably a secretary in charge of foreign affairs. Weerasinghe, p. 40, stated this was the Minister of Foreign Affairs.

19 Chief spy or head of the bureau of intelligence or investigation.

20 See also Ariyapala, p. 90. Chief Physician: Weerasinghe, p. 40.

21 Ariyapala, p. 90 (cf. Weerasinghe, p. 40) stated that this was the Chief Astrologer and Astronomer Royal.

22 Ariyapala, p. 90, however, stated that this was the Ecclesiastical Commissioner. Weerasinghe p. 40, stated this was the Minister of Charities.

23 P. 40.

24 See also Ariyapala, p. 89. On *sēnāpati* - the Commander-in-Chief of the army, see Ariyapala, pp. 98-99.

25 The Chief of the Treasury: See Ariyapala, p. 89.

26 District Chief; governors of districts, *Disāpati* in later records: Ariyapala, p. 89.

27 See also Ariyapala, p. 89.

28 Was the Prime Minister designated as Ēkanāyaka: *ēka* (the numeral one) *nāyaka* (chief), hence the Supreme Chief.? See Ariyapala, p. 89.

29 This, it seems, is a mistake. *Arthanāyaka* was the Chief Economic Adviser: Ariyapala, p. 89.

30 Superintendent of Elephants: Ariyapala, p. 89.

31 ? Chief Accountant : Ariyapala, p. 90.

32 Chief Revenue Officer: Ariyapala, p. 90.

33 See Ariyapala, pp. 90-91 *s.v.* "*Siñgānā*". Ariyapala stated that "Amongst the officials in personal contact with the king are the umbrella-bearer (*chattaggāhaka)* and the sword-bearer (*asiggāhaka*). The title *asiggāha*, was, like that of the umbrella-bearer, without doubt one of high rank..."

34 This, it seems, is a mistake. Ariyapala, p. 91 stated that "*dahamgeyinā* was probably a Minister of Justice; the *Cūlavamsa* records a rebellion caused by three officials one of whom was the *dhammagehakanayaka* (59.16); Geiger has rendered this term as the President of the Court of Justice (ibid.)."

35 Chief Merchant, Trade Commissioner? "cp. modern Secretary to the Board of Trade": Ariyapala, p. 91 There does not appear to be such an official today.

36 According to Ariyapala pp. 91-92, this official was probably the superintendent in charge of the royal kitchen.

37 Aśoka, the great emperor of India, sent Sri Laṅkā a sapling of the bo-tree - *ficus religiosa* - through Mahinda (his son or brother) under which the Buddha had attained enlightenment. Aśoka's tree- the *Sri Mahā Bodhi* - was planted in Anurādhapura and still survives - possibly the oldest tree in the world with a recorded history -, "while its parent was cut down in later centuries by an anti-Buddhist fanatic." K.M. De Silva, pp. 11-12 Ariyapala, p. 92 states that *arakmēnā* was the Chief Conservator.

38 Ariyapala, 123.

39 Weerasinghe, p. 38; 23 January p. 15.

40 See Paranavitana, *Epigraphia Zeylanica*, Vol. V, p, 140 note 5; and Weerasinghe, p. 35; 30 January, 1991, p. 17.

41 P. 37.

42 *Epigraphia Zeylanica*, Vol. V, p. 158.

43 E.g., the Slab Inscription of Mahinda IV: *Epigraphia Zeylanica*, Vol. I, 120; the Badulla Pillar Inscription: *Epigraphia Zeylanica*, Voi. III, p. 86; the Jetavanārāma Slab-Inscription of Kassapa V: *Epigraphia Zeylanica*, Vol. I, p. 47.

44 *Epigraphia Zeylanica*, Vol. V, pp. 132, 135, 137 and 139.

45 *Cūlavaṁsa*, 70. 68-86.

46 *Cūlavaṁsa*, 70. 279-280 read with 72. 162. See also Geiger, *Culture*, p. 134.

47 P. 37; January 23, p. 15.

47 P. 37; January 23, p. 15.

48 See *Epigraphia Zeylanica*, Vol. I, pp. 44, 47, 53-54.

49 *Epigraphia Zeylanica*, Vol. III, p. 86. The 'rod of chastisement' is referred to in Proverbs: "In the lips of him that hath understanding wisdom is found: but a rod is for the back of him that is void of understanding " (10.13). "He that spareth his rod hateth his son; but he that loveth him chasteneth him betimes" (13.24). The *Daṇḍa Vagga* (K. Sri Dhammananda, The *Dhammapada*, p. 283, says: *Sabbe tasanti daṇḍassa* - all tremble at the rod (punishment). Punishment was an essential function of a monarch: see Ch. IV pp. 34-35 above. However,

although the sceptre showed the force of power, such power was to be exercised with restraint, (see Ch. VIII note 283) and without arbitrariness. (See Ch. IV note 64 and Ch. XI note 44A).

50 *Epigraphia Zeylanica*, Vol. V, p. 139, note 8.

51 *Nīti-vimansā*, p. 36.

52 Pp. 93-94.

53 See Ch. VIII text at n. 104.

54 The following account is based on D'Oyly, pp. 34-42; Hayley, pp. 66-68; and Ralph Pieris, pp. 152-157.

55 Village official with police duties.

56 Clerks or scribes.

57 Collectors of royal revenues.

58 Chief of a territorial administrative unit known as a *Kōraḷē*.

59 Officer appointed over a village or group of villages, in rank below a *Kōraḷa*.

60 A *ridī* was worth 8 English pence c. 1821.

61 Headman of low caste.

62 See Ch.XI note 135.

63 D'Oyly, p. 41 said they acted as "arbitrators": this was unlikely; for arbitrators are appointed by the parties to litigation or by reference to a procedure accepted by the parties.

64 See Ch. V, text n.122.

65 Governor of a province.

66 High ground, covered with scrub, cultivated intermittingly for fine grains, and generally appurtenant to low-lying rice fields: Hayley, p. 228.

67 *Kuruniya* - an (imprecise) measure of capacity and extent. (e.g. one eighth of a bushel). The surface estimate was reckoned by reference to the quantity of seed that would usually be used to cultivate a land.

68 See Ch. V, text n. 122.

69 Unlike *vidānas* who had police powers only within the villages assigned to them. See Ch. XIV text at n. 62 above.

70 D'Oyly, p. 41.

71 P.E. Pieris, p. 633.

72 P.E. Pieris, p. 632.

73 P.E. Pieris, p. 633.

74 Paranavitana, *Epigraphia Zeylanica*, Vol. V, p. 191, note 9; and in *Epigraphia Zeylanica*, Vol. III, pp. 144-145; cf. Godakumbura, *Epigraphia Zeylanica*, Vol. V. p. 393; Ranawella, History, text for note 146. See also Ch. XVIII note 1A below.

75 Ed. by M. Vimalakitti and N. Sominda, p. 72.

76 Administrative unit of a cluster of ten villages. See Ch. XV text at 145 sq.

77 Ranawella, Vēvälkäṭiya, pp. 8-9; cf. Wickremasinghe's edition in *Epigraphia Zeylanica*, Vol. I, p. 250.

78 Pp. 40-41.

79 P. 41.

80 At p. 57.

81 Pp. 57-62.

82 The settlement of disputes by oath or ordeal was sanctioned by Manu: VIII. 109-116. However, as documentary and oral evidence rose in importance, trial by ordeal (*divya*) receded in importance, and in any event the original drastic forms, such as trial by fire (*agni*), water, and poison yielded place to milder, more humane tests. See Sen-Gupta, pp. 63-66. On the use of oaths and beliefs as a supernatural foundation for the administration of justice in Sri Lanka, see Ralph Pieris, pp. 159-163.

Lawrie (Notes, p. 200) reports a decision being set aside on account of corruption; but which was eventually decided after trial by oath. He stated: "A complaint had first been made to Ellepola Nilame but Bulat Surulla having been given by one party, he adjudged in his favour. Afterwards Unguwa complaining of the injustice, went before Migastenne Maha Nilame who said he could not settle the case, it must be represented to the King and desired Unguwa to prostrate himself. Unguwa did so and the case was heard and the whole land was adjudged to Unguwa. The other party (Pihiligedera Naide) said if he was beheaded, he could not give the land unless they should swear at Alutnuwara Devale. They went and swore in hot oil and stayed three days at the Walawwa of Migastenne Maha Nilame to see if their hands burned. The Maha Nilame after seeing their hands divided the land. - Judicial Commissioner, 8th July, 1829.". Although, trial by oath was supposed to have been discouraged, Lawrie (Notes, pp. 202-203) gives several examples when disputes were settled in that way. In fact, he stated that "By orders of the King oaths were taken even after a decision in the Maha Naduwa." Persons who were not Buddhists may have been required to take the oath in a place sacred to them. Thus

Lawrie (p. 201) noted as follows: "Defendant (a Moorman) ordered by the Judicial Commissioner to give oath at the mosque of Warakamure (in Matale) that accounts filled by him are true and correct. - 22nd April, 1828.". Whether trial by oath or ordeal would be ordered would depend on the circumstances of a case. Lawrie (p. 200) gave three instances that illustrate this. (1) "The Ratemahatmaya said that as both parties were descendants of chieftains, he would not give the order for the oath to be taken, but they might go before the First Adigar for that purpose. - 20th October, 1816." (2) "A blacksmith challenged Dehigama Gabada Nilame to swear by ordeal. It was not allowed, as there was no such custom for noblemen to swear with low caste men. - 25th November, 1819." (3) "In 1813 a Dissawa refused to let a very young woman take an oath. - Judicial Commissioner, 16th April, 1817.".

In addition to trial by oath at a Devāle, there were also other forms, e.g. oath by paddy, by earthern vessels, striking the earth, by kitul trees and upon paddy. The matter was decided in the light of the misfortune that struck the false claimant. In one reported case, he was bitten by a snake and two or three days afterwards one of his own and one of his brother's buffaloes died and the crops of the brother were completely destroyed by elephants. "In 1817 parties swore to the truth of their respective claims in the Pattini Dewale. A little paddy from the field in dispute was taken to the temple and the ornaments of the Goddess being brought out with a white cloth suspended over them they pounded the paddy into rice before the ornaments, and boiling ate it and recited their affirmations. The period for ascertaining the truth of their relative allegations was three months or three years. Boratali is now lying ill with her body swollen so much that she cannot move. The defendant's wife is dead and his house was burned down accidentally all of which the plaintiff attributes to the vengeance of the Goddess of small-pox for the oath taken in the presence of her ornaments. - Judicial Commissioner's Diary, 4th March, 1820 (Lawrie, pp. 202-203)". If neither party suffered harm, the land in dispute would be equally divided. (Lawrie, pp. 201-203).

83 For which see George Ryley Scott, 227-233.

84 These are described by D'Oyly in detail, at pp. 57-58; see also Davy, p. 137; see also Knox, 194-196; Ralph Pieris, pp. 160-163. Lawrie (Notes 203-204) gave several instances of trial by ordeal of hot oil. However, divine manifestation may not always have settled a matter, for he gives instances when persons who had burnt their fingers, nevertheless succeeded by bribing the judge.

85 P. 160.

86 Shrines dedicated usually to the deities Vishnu, Pattini, Kataragam and Nātha, as distinguished from Buddhist temples.

87 Davy, p. 137. Sen-Gupta (pp. 63-66) pointed out, that in India, *divya* (oaths) and the use of divine testimony by resorting to the original ordeals by *agni* (fire), water, poison and so on, receded into the background "and probably practically went out of vogue except in exceptional cases" as documentary and oral evidence rose in importance for testing evidence. There is a stage when, according to Bṛihaspati, *divya* could have been resorted to as an option to proving a matter through witnesses. But then we find Kātyāyana absolutely forbidding *divya* in litigation pertaining to *Vākpārusya* (offences by words) and disputes about land; and Pitāmaha in a text cited in Mayukha similarly forbids oaths in disputes concerning immovable property.

88 *Ficus religiosa.* A tree sacred to Buddhists. See Ch. XIV, note 37.

89 P. 41.

90 Governors.

91 Pp. 160-161.

92 Pp. 40-41 and p. 57.

93 *Ibid.*

94 Division of a *Kōralē.*

95 1469-1815 A.D.

96 Scribes, clerks, recorders.

97 Chiefs of districts.

98 Written judicial orders.

99 Written instruments. For an instance of the decision of a Ratemahatmaya in a land dispute, see Lawrie's Notes, p. 197. Lawrie stated that, according to the chiefs, 'except in time of war, Ratemahatmayas were not authorized to grant *sīṭṭus*'.

100 The Kandyan Kingdom.

101 Province or territory controlled by a *disāva.*

102 P. 184.

103 This was an aspect of the 'flexible approach' referred to in Ch. XI. From a modern point of view, the imposition of penalties varying with social or official position would be constitutionally unacceptable as being in conflict with the right to equal treatment. Yet, in times gone

by - and the test of validity depends not on the norms of posterity but upon the notions and mores of the time at which the principles were applied - classifications and differentiations in the application of laws based upon caste (in India) or rank (in Sri Lanka) were permissible because they were regarded as rational, having regard to a social structure of society that had been so organized as to ensure good order and efficient government. Manu (VII.35) said: "The King has been created [to be] the protector of the castes (*varṇa*) and orders, who, all according to their rank discharge their several functions." See also Ch. V. n. 136 above.

104 Land occupied by people from whose ranks the personal attendants of the monarch (*dugganārāḷa*) were selected. The personal attendants were selected from the class of chiefs known as *duggannā peruva*. *Duk ganna* - "bearing the sorrows of the King": A *duggannārāḷa* was a loyal officer who was expected to sacrifice his life for the king. And so, for instance, it was his duty to taste any food served to the monarch to make sure it had not been poisoned. The standards of loyalty were uncompromising. Thus when a *duggannārāḷa* of the Aluvihare Vanisekera Mudiyanse family decided to occupy the bed of Rājasiṁha II, he was hacked to death: Ralph Pieris, p. 15 note 25.

105 The messenger staff of the *disāva*.

106 *Koḍituvakku* was a Kandyan gun - a heavy musket - mounted on and fired from a tripod; It was a gingall-musket fired from a rest, sometimes a swivel-gun. It was also used in India and China. *Koḍituvakku-lekam* were high officials serving as scribes in the army.

107 Caste of farmers.

108 Great Jail.

109 A shed (*maḍuva*) or room at the residence of a *disāva* for the use of his messenger staff (*atapattu*). See Ch. XIV note 128.

110 *Kaṭubulla, Kaṭupulla, kaṭupurulla* refers to the thorn-staff or silver-headed cane, curved at the top, of certain officials; it was a symbol of office carried by the messengers and police officers of *adhikārama* and such officials were called *kaṭubulla*. Knox, p. 93, said that the sight of the stave signified as much as the *adhikārama's* 'hand and seal' when a *kaṭubulla* carried his message. *Kaṭubulla* villages were those occupied by people belonging to the families of such officials.

111 See Ch. XIV note 109.

112 The shed for storing the *Koḍituvakku*, i.e. the ginjalls (see Ch. XIV note 106), of the *disāva*.

113 *Kaḍavata* (pl. *kaḍavat*) was an ambiguous word: it meant stocks to restrain the movement of persons; it also meant the thorn gates that barred and secured the approaches to the capital city, or toll gates. Probably, in this context, it meant a place where there were stocks.

114 P. 38.

115 P. 93.

116 E.g. See above Ch. IX text at n. 96A 272; Ch. XIII text at n. 65 sq.

117 P. 154.

118 Knox, p. 93 said that the 'greatest and highest officers in the land' were the "Adigars, I may term them Chief Judges." He went on to say that there were many officers attached to the Adigars, and added: "If the Adigar be ignorant in what belongs to his place and office, these men do instruct him in what and how to do. The like is in other places which the king bestows: if they know not what belongs to their places, there are Inferiour (*sic.*) Officers under them, that do teach and direct them how to Act."

119 P. 154, note 45.

120 Cameron's Report, P.P. 1831/32 XXXII (274), 70.

121 See Ch. VIII text n. 296 sq.

122 See Ch. VIII, text n. 31 sq.; Ch. XII, text n. 15.

123 There were a number of 'messenger poems', a literature which flourished in the first half of the 15th century. The messenger was always a bird. There were seven such *sandeśa*. The *Girā Sandeśaya* is the message of the parrot written shortly after about 1420. The author is unknown: Geiger, *Culture,* p. 74. See also Ch. III note 41.

124 *Rada niya* being taken to be *rāja nīti :* See Jaysekera, p. 168.

125 Colonial Office, London, 416/19-G4.

126 Bennett, at p. lxxvii and p. lxxix.

127 Manor-house.

128 The *atapattu* people came from high families and constituted a *disāva's* bodyguard. They attended the *disāva valavva* in three shifts, each having a month of service, and two of rest, or four months of service and eight of rest each year. Their principal duty was to convey the *disāva's* orders throughout his province, summoning people whose attendance was required for judicial inquiries, for service, and for payment of dues." The *atapattu maḍuva* was a room, at the residence of a *disāva*. It was a place where the banner, the *lēkam-mitiya* (land records), and arms for defence (*mura āyudha*) were kept, and where

certain prisoners were held in custody: Ralph Pieris, p. 102. There was also a room called the *atapattu maḍuva*, near the King's palace occupied by an official, the *atapattu maḍuve muhandhiram nilamē*, who conveyed the King's messages and carried his Golden Arms in public: Ralph Pieris, p. 15.

129 Plural of *adhikārama.*

130 P. 108. See also Ralph Pieris, p. 19.

131 P. 93.

132 P. 178.

133 P. 108.

134 Senkaḍagalapura (city of the rock of Senkadaha, the hermit who once occupied a cave in the rock), Siriwardhanapura (city of increasing prosperity) or Maha Nuvara (the Great City), or Kandy, as the British called it. On 'Kandy' see Ch. III, note 33.

135 D'Oyly p. 5.

136 *Kaṭubulla* was a person who served at the king's palace and at the *adhikārama valavva* - the manor-house of the *adhikārama*. as a messenger to convey the orders of the king or the *adhikārama* and to summon persons whose attendance was required. Villages occupied by such persons - *Kaṭubulle* villages - were used as places of imprisonment. See also note 110 above. Lawrie (Notes, p. 199) said: 'Menikrala (charged with theft) being a Kandyan under the jurisdiction of the first Adigar, was sent to him by the Magistrate to be dealt with according to the custom of the country'. 9th April, 1816.

137 A *Kasakāra* was a whip-cracker who cracked lashes before the king and *adhikārama* when they travelled on the streets. They were of the same class and performed duties in the same manner as the *kaṭubulla,* in rotation.

137A Lawrie (Notes, p. 198) said: "The chiefs said that during the King's Government none of his servants could be punished, or even ordered to take off their hats, by any Chief even the Adigars, except the meanest, those who bring food and water - Judicial Commissioner's Diary, 7th April, 1817." See also note 155 below.

138 D'Oyly, p. 35 refers, to 'arbitrator'. As pointed out below, technically, that is inappropriate. See Ch. XIV text at n. 41 sq. See also Ch. XIV n. 61.

139 See above at n. 104.

140 Kandyan Kingdom.

141 Written orders and decrees of a tribunal.

142 Orders for swearing.

143 Cf. Ch. XIV text at n. 169.

144 On *Kaṭubulle* officers, see Ch. XIV notes 110 and 136.

145 See Ch. XIV note 104.

146 Bearers of the king's palm-leaf sunshade.

147 Torch-bearers at formal processions etc.

148 The *mahā diyavaḍana nilamē*, - lit. the great chief who bore the water - was the officer in charge of the Royal Bath, and additionally, the holder of the prestigious office of principal lay officer of the temple of the sacred tooth. (See Ch. XIV at note 160 on the temple of the sacred tooth). It was his duty to wash, comb and dress the king's hair after the bath. He appointed, with the king's approval, ten *saṭṭambis* to assist him, e.g. by pouring the bath water. *Saṭṭambis* acted as petty chiefs of the people, numbering about 500 families, attached to the Royal Bath (*ulpängē*).

149 Master-craftsmen concerned with ornaments, and jewellery, painters, workers in ivory and gold, who were in attendance at the royal palace wearing special uniforms.

150 An artificers' department attached to the king.

151 Keepers of records and accounts.

152 Overseers/guards.

153 "Watchers of the house" whose duty was to take care of things within the premises in relation to their packing, unpacking, storage and preservation.

154 A chief in the military department.

155 The royal dispensary. Ralph Pieris, p. 153, n. 153 stated: "Shortly after the British occupation Ähāḷepoḷa struck one of the king's physicians (*vedarāḷa*) and at the inquiry held at the Audience Hall, the Chiefs declared that, with the exception of the meanest, viz., those who bring wood and water, the king's servants could not be punished in that way by any chiefs, even the *adhikāramas*, and Molligoda Adhikārama who was present recalled that when the *kūnam maḍuva lēkam* - a scribe of the *kūnam maḍuva* (See Ch. XIV note156), travelling with the last king struck a palanquin-bearer, the *lēkam* was sent to his village in disgrace. A king's attendant could not be struck even by the officer appointed in charge of them. Board of Judicial Commissioners 7-4-1817, ([Sri Lanka] Government Archives 23/2)." See also note 137 above.

156 Royal palanquin establishment.

157 Chief scribe.

158 Minor officer of the temple.

159 Minor officer of the temple.

160 Temple of the sacred tooth relic: *Daḷadā* = sacred tooth relic of the Buddha - *māligāva* = palace: Temple of the sacred tooth relic. See Vesak Nanayakkara, *A Return to Kandy*, 1977, pp. 21-36.

161 Officiating priests of *devāla*: see note 86.

162 See Ch. XIV note 86.

163 See Ch. XIV note 157.

164 D'Oyly, p. 36. On this matter, however, see Ch. X, text at n. 81 sq.

165 Ch. XIV text at n. 101 sq.

166 Ch. XIV text at n. 101 sq.

167 On *gāmabhojakas*, see Ch. X. n.77.

168 *Papañcasūdani*, Pali Text Society ed., 1926, p. 252; *Majjhima Nikāya*, 2, p. 728; cf. *Dīgha Nikāya* Glossary, ed. A.P. de Soysa, 2, p. 660 referring to a hierarchy of courts presided over by the *viniccaya mahā matya, vōharika mahā matya, sūthradhara, senāpathi*, the prince regent, and the king in the apex tribunal. See also Ranawella, *Nīti-vimaṁsā*, p. 32 and p. 34.

169 Deuteronomy 1: 16-17.

170 See James E. Priest, *Governmental and Judicial Ethics in the Bible and Rabbinic Literature*, 1980, pp. 80-85.

171 See Ch. X text at n. 30 sq.

172 D'Oyly, pp. 46-47.

173 Pp. 249-250.

174 On the *vanni* and *vanni* people, see Geiger, *Culture*, pp. 51-53. See also J.P. Lewis, *A Manual of the Vanni Districts, Ceylon*, 1895, Government Printer, Colombo, reprinted in 1993 by Navrang, New Delhi, esp. Ch. I & II. Lewis, Ch. XXV, in which he deals with "Crime and Litigation", describes the *vanni* people as "remarkably peaceful".

175 See Lewis, Ch. II.

176 R.K. Tilakaratna Mohotti of Kahatagasdigiliya and confirmed by other writers in *Simhala Sirit Sangrahaya* (1932), Royal Asiatic Society Mss. See Ralph Pieris, p. 251.

176A See D.G.B. de Silva, "New Light on Vanniyas and their Chieftaincies based on Folk Historical Tradition as found in Palm-leaf MSS. in the

Hugh Neville Collection", *Journal of the Royal Asiatic Society of Sri Lanka,* New Series, Vol. XLI, 1996, pp. 153 - 204.

176B D.G.B. de Silva, op. cit. On useful insights into the problems of administering the area administered by Vanni chiefs, see U. B. Karunananda, "The Headman System in the Nuverakalawiya District of Sri Lanka 1815-1873", *Kalyāni,, Journal of Humanities and Social Sciences of the University of Kelaniya*, Vol. III & IV, 1984/85, pp. 185-204.

177 Ch. VI.

178 *Epigraphia Zeylanica*, Vol. VI, p. 106.

179 After the rebellion of 1818, the chiefs and other officials were directed to "perform duty to Government under the orders of the Board of Commissioners and British Agents and not otherwise" (clause 9) and the administration of justice in Nuvara Kalāviya was vested exclusively in the Board of Commissioners (clause 53); the northern part of Nuvara Kalāviya was brought under the jurisdiction of the Government Agent of the Sat Kōralē (clause 55): Proclamation of Governor Brownrigg, 21 November 1818 (reproduced in Davy, Appendix II.)

180 Ranawella, in his as yet unpublished edition of the Badulla Pillar Inscription, p. 12; cf. *Epigraphia Zeylanica*, Vol. III, p. 81.

181 *Epigraphia Zeylanica*, Vol. I p. 251; Ranawella, op. cit., p. 9.

182 E.g. the Slab Inscription of Kassapa V (914-923 AD) lines 22-23: *pere nāṭṭiyam no vadnā isā raṭ paṭavannaṭ giya raj-kol - // sam-daruvan gat dańda giňgiriyak äta sam-daruvan dańḍa-nāyakayan hindä vicāra-koṭ häriyä yutuvak. Epigraphia Zeylanica,* Vol. I, p. 47.

183 *A Short History of Ceylon,* p. 43.

184 *Epigraphia Zeylanica*, Vol. I, p. 244.

185 Manu (VII. 120-122; cf. VII. 81) required a king to appoint visting officials to exercise disciplinary control over persons appointed to be lords of villages and groups of villages. The superintendent was to be "elevated in rank, formidable, [resembling] a planet among the stars", keeping an eye on the districts by personal visits and spies. However, as we have seen, the circuit courts of ancient India were meant to provide access the justice for certain persons like forest dwellers, soldiers in service in distant outposts and merchants rather than to effect a centralization of the administration, which was the primary function of itinerant English justices.

186 See the Mäḍirigiri Slab Inscription of Mahinda VI, *Epigraphia Zeylanica*, Vol. VI, p. 54.

187 Badulla Pillar Inscription, *Epigraphia Zeylanica*, Vol. III, p. 78.

188 *Nelli* (*Phyllanthus embilica*) fruit in his hand. Wickremasinghe, *Epigraphia Zeylanica*, Vol. I. p. 134 note 1, explained: that "*At-ambul* =skt. *hastāmalaka*, 'the fruit of the Myrobalan in the hand', [was] a simile used by Sanskrit writers for someting quite clear or palpable." The reference to the realm as a nelli fruit in his hand is found in several records: E.g. see the Dambulla Rock Inscription of Kirti Sri Niśśaṅkamalla, *Epigraphia Zeylanica*, Vol. I, p. 134; Rankot Dāgäba Pillar Inscription, *Epigraphia Zeylanica*, Vol. II, p. 141.

189 E.g., see the Slab Inscription at Rambāvihāra, *Epigraphia Zeylanica*, Vol. V, p. 434; the Slab-Inscription at Wāñduruppe, *Epigraphia Zeylanica*, Vol. V., p. 427; the Pañḍuvasnuvara Stone-seat Inscription, *Epigraphia Zeylanica*, Vol. V, p. 446.

190 Rankot Dāgäba Pillar Inscription, *Epigraphia Zeylanica*, Vol. II, p. 141; the Häṭa-Dā-gē Vestibule Wall Inscription, *Epigraphia Zeylanica*, Vol. II, pp. 91 and 95; Slab Inscription at Wāñduruppe, *Epigraphia Zeylanica*, Vol. V, p. 427; Pañḍuvasnuvara Stone-seat Inscription, *Epigraphia Zeylanica*, Vol. V, p. 446; Slab Inscription at Rambāvihāra, *Epigraphia Zeylanica*, Vol. V, p. 434; Katugaha-Galgē Pillar Inscription, *Epigraphia Zeylanica*, Vol. III, p. 331.

191 Slab-Inscription at Wāñduruppe, *Epigraphia Zeylanica*, Vol. V, p. 427; Häṭa-Dā-Gē Vestibule Wall Inscription, *Epigraphia Zeylanica*, Vol. II, p. 95.

192 Slab Inscription of Kasappa V, *Epigraphia Zeylanica*, Vol. I, p. 51.

193 Dambulla Rock Inscription of Kirti Niśśaṅkamalla, *Epigraphia Zeylanica*, Vol I, p. 133; Pañḍuvasnuvara Stone-seat Inscription, *Epigraphia Zeylanica*, Vol. V, p. 446.

194 Häṭa-Dā-Gē-Vestibule Wall-Inscription, *Epigraphia Zeylanica*, Vol. II, pp. 91 and 95.

195 Kāliṅga Forest Gal-Āsana Inscription *Epigraphia Zeylanica*, Vol. II, p. 127; Häṭa-Dā-Gē Portico Slab Inscription, *Epigraphia Zeylanica*, Vol. II, p. 89. Cf. Giritalē Stone-Seat Inscription of Niśśaṅkamalla, *Epigraphia Zeylanica*, Vol. V, p. 437: "brought benefit to the world and religion".

196 Dambulla Rock Inscription of Kirti Niśśaṅkamalla, *Epigraphia Zeylanica*, Vol. I, pp. 133-134. Häṭa-Dā-Gē Vestibule Wall Inscription, *Epigraphia Zeylanica*, Vol. II, p. 95; ; Pañḍuvasnuvara Stone-seat Inscription, *Epigraphia Zeylanica*, Vol. V, p. 446.

197 Ariyapala, p. 86.

198 P. 31.

199 E.g., see the case of Palāta Vidānē, referred to above in Ch. VIII, text n. 262.

NOTES TO CHAPTER XV

1 P. 58; Ariyapala, p. 122, quotes Hayley.

2 P. 135. Ralph Pieris, p. 151, correctly stated that there is little information about *säkki balanḍa* save for the authority of Davy.

3 Hayley, p. 66, calls it *'sakki balanta'* Literally *säke* or *säkki* means evidence, and *balanḍa* or *balanta* means investigate or examine or consider.

4 Ralph Pieris, p. 151.

5 See above Ch. VIII text n. 75 sq.

6 See Hayley, pp. 70-71. Lawrie (Notes, p. 199) mentions three matters heard by the Maha Naduva. He said: 'The Velassa Disawa stated that when the principal chiefs were absent from Kandy for a considerable length of time, the complaints in the Audience Hall were heard by the inferior chiefs who made their report to and received the direction of the King, in like manner as was the custom of the superior chiefs when in Kandy. Inferior chiefs were not entitled to sit on chairs. Revenue Commissioner's Diary, 7th March, 1817." In India, the King presided over his Court and was assisted by members of his *sabhā*, including the *Prāḍvivāka,* who as foreman, questioned witnesses and gave his opinion. Later the *Prāḍvivāka* became an independent judge who permanently deputized for the King, and the King was directed by law to follow the opinions of the *Prāḍvivāka* in much the same way as an English monarch follows the advice of the Privy Council. See Sen-Gupta, p. 43. See also Ch. VIII text for n. 96A, and p. 307 above.

7 D'Oyly, p. 32. In India, besides the appointed permanent members of the king's court (*niyukt*a members), learned *brāhmaṇas* who came in would be invited to take their place in the *sabhā* (court) and it would be their moral duty and right to give their opinions. Sen-Gupta, p. 41.

8 The Town of Kandy about the year 1815 A.D, *Ceylon Antiquary*, Vol. IV, Part II, (1918), pp. 81-82.

8A Lawrie (Notes, p. 205) observed that "under the King's Government, it was the general practice not to swear chiefs to the evidence they give, either in civil or criminal matters. - Revenue Commissioner's Diary, 27th October, 1818." Although it has been suggested that witnesses gave unsworn testimony, Lawrie (Notes, p. 205) observed that "In 1819 Tamil witnesses were sent to the Kataragam Dewale to be sworn after giving evidence in Court. - 1st November, 1819.". Lawrie (p. 205) "Noticed that witnesses were sworn before a chief by lifting up their hands to the Temple". - 16th March, 1824." Witnesses may have been

usually sworn at a Dēvalē after the court had adjourned for the day, but they may have been taken to the Dēvalē at any time during the day. (Lawrie, 206). Gross subornation and perjury were punished with a fine (Lawrie, p. 205). It was believed that people who gave false evidence were also punished in other ways. Lawrie (p. 205) said: "The witnesses who deposed before the chiefs appointed by the king to try the case were visited by misfortunes in consequence of the false evidence they gave. The wall of a house fell on one and killed him; another was sick and died; and a large quantity of paddy belonging to a third witness became rotten. - Judicial Commissioner's Diary, 1st March, 1820." Lawrie (p. 206) gave another example: "After the accession Ranawana Lekam ordered two people to swear for the land; but it is stated that one suffered vengeance, first by being bitten by a snake, second by the foot wounded by a pointed stick when going to the temple. 20th December, 1821."

The people were strongly opposed to perjury. Lawrie (Notes, p. 205) said: "The Assessors are unanimously of opinion that such gross subornation and perjury should not go unpunished and concur with the Judicial Commissioner that plaintiff and first witness should be fined 25 rix-dollars and that the other three witnesses should be punished forthwith with 25 lashes. - 19th February, 1823." "The Assessor referred to the constant practice of giving false evidence evinced in every case from Dumbara that has of late been brought before the Court, and observed that an example should be made of the witnesses. - 23rd December, 1823."

The system was not devoid of rules of procedure and evidence. For instance, Lawrie (Notes, p. 205) observed as follows: "The chiefs said there was no particular age according to custom below which a witness was rejected without hearing. - Revenue Commissioner's Diary, 21st December, 1816." "Evidence of brothers inadmissible by Kandyan Law". - 20th November, 1919." "The Assessors said that the evidence of a person deeply interested in a case is not admissible, but he may be interrogated. - 2nd November, 1819."

9 Cf. Eḷāra's bell referred to in Ch. VIII, text n. 163 sq.

10 The above account is based on D'Oyly, pp. 32-34.

11 See Ch. XII above.

12 *Culture*, p. 142.

13 Paranavitana, *University of Ceylon, History of Ceylon*, p. 235.

14 Jayasekera: 1984, p. 148.

15 Weerasinghe, pp. 35-36; January 21 1991, p. 13.

16 X. 103.

17 P. 59.

18 *Epigraphia Zeylanica*, Vol. III, p. 4.

19 P. 34.

20 *Nīti-vīmaṇsā*, p. 31.

21 *Culture*, p. 146. As we have seen, in India the king's courts did not altogether extinguish the work of other tribunals.

22 On that matter, see Ch. XVII, text at n. 27 sq.

23 P. 59.

24 Village or holdings in a village in exclusive control of the proprietor: K.M. de Silva, p. 575.

25 *Epigraphia Zeylanica*, Vol. III, p. 74.

26 *Epigraphia Zeylanica*, Vol. III, pp. 90-91.

27 *Ancient Land Tenure and Revenue in Ceylon*. pp, 2-3.

28 *Culture*, p. 142.

29 While forwarding a copy of D'Oyly's *Sketch of the Constitution of the Kandyan Kingdom* to the Secretary of the Royal Asiatic Society, Sir Alexander Johnston said that the first ruler introduced into Sri Laṅkā "the same form of government, the same institutions as prevailed at that time in his native country." Sir Alexander who had some ancient works translated into English, went on to state: "It further appears by the same ancient authorities and by many modern histories in my possession that this form of government and institutions had never been altered or modified by any foreign conqueror but had continued to prevail in their original state from the time they were first introduced into the interior of Ceylon till the year 1815 when the kingdom of Kandy was conquered by the British arms and when this account of its ancient government was drawn up by the late Sir John D'Oyly then Chief Civil Officer of the British Government in the town of Kandy from the information of the principal officers of the former Kandian Government." *Royal Asiatic Society Transactions*, London, 1833, Vol. III, Part II, p. 191. I am obliged to Ms. Cyrene Siriwardhana for checking this reference. See also Ch. III note 14.

30 P. 52; see also D'Oyly, pp. 42-43; Charles Pridham, *An Historical Political and Statistical Account of Ceylon and its Dependencies*, 1849, T. & W. Boone, London, Vol. I, p. 219.

31 Pp. 59-60.

32 P. 150.

33 Pp. 42-43.

34 Nadaraja, p. 100.

35 See Ch. XV text at n. 69 sq. below. See also Ch. XV text, n. 40 below.

36 Ralph Pieris, p. 149, citing the decision of Simon Sawers, Judicial Commissioner, in *Pallemeralavas* v *Kabelle Aracchilla,* Board of Commissioners For the Kandyan Provinces (Judicial), 26-9-1819 (Government Archives 23/20).

37 See the 'Historical Introduction' to D'Oyly's *Diary,* at pp. x - xi.

38 Marshall, *Judgments,* p.37. Lawrie's Notes (pp. 196-197) furnish evidence of three instances of gamsabhā functioning even after the fall of the Kandyan Kingdom. (1) 'A Gansabhawa assembled at Molagoda to divide a field between two brothers. It had difficulty in determining the line of division, when a cobra crossed the field, and the Gansabhawa unanimously adopted the line of its path'. *Gazeteer,* p. 603. (2) 'The Jud. Com. ordered Kōralē of Madarspattu and Hārispattuwa to convene a Gamsabhāwa on the spot to ascertain the position of the trees'. Judicial Commissioner, 16th November, 1821. (3) 'A Gansabhawa assembled to hear the complaint of a family that a member of it was going to give away his land to a stranger. Advice was given and seemingly acquiesced in but not followed. Judicial Commissioner, 11th September, 1827."

39 Nadaraja, p. 115. W. Empson suggested that resort to *gamsabhā* should be encouraged, e.g. by their proceedings being exempted from stamp or other official expenses: Memorandum to the Secretary of State, 20 February 1842, p. 37 in Colonial Office 54/191.

40 H.S.O. Russell, Government Agent, Central Province, in the Legislative Council, Council Hansard, 1871, p. 53.

41 These were problems raised by British judges who did not seem to understand the difference between arbitration and adjudication on the one hand and mediation and conciliation on the other: E.g. it was held that the award of a *gamsabhā* was not binding unless the parties had agreed to refer it to "arbitration": *Anon,* Judicial Commissioner's Court, Kandy No. 5173 (1833), Morgan's Digest, p. 10; and that an award of a *gamsabhā* could not be pleaded as *res judicata* in a subsequent District Court action: *Kiria* v *Poola,* (1859), Lorenz Reports, iii, 143.

42 A public resting place.

43 Cf. Skinner, quoted in Ch. XV text at n. 69 sq.

44 P. 137.

45 P. 152.

46 Barrister of Lincoln's Inn, latter a member of the Indian Law Commission established by the Government of India Acts of 1833, and a disciple of Jeremy Bentham: Nadaraja, p. 102.

47 Members of the legal profession acting like solicitors. The distinction between the two branches of the legal profession, viz., Proctors and Advocates, was formally abolished by the Administration of Justice Law No. 44 of 1973.

48 See the communication of Governor Campbell to Secretary of State Stanley dated 18 April 1842, Colonial Office Section of Papers in the Public Record Office, London, 54/196.

49 See A.R.B. Amerasinghe, "Some thoughts on dispute resolution", 1991, in *Life is Simply a Duty,* Ed. S.J. Sumanasekera Banda, (1994), Sarvodaya Book Publication Services, pp. 263-274.

50 See the memorandum of Colebrooke to Secretary of State Russell and his memorandum of 31 December 1840: Colonial Office Section of Papers in the Public Records Office, London, 54/185, p. 257.

51 See the Rural Courts Ordinance No. 12 of 1945.

52 Civil Courts Commission, Sessional Paper XXXIII of 1955.

53 P. 136.

54 See also Bennett, p. 55, who said: "The Singhalese, taken collectively as a nation, may be justly described as litigious", and, for good measure, he added: "and their general disregard for truth is only equalled by their readiness, whenever it suits their purpose, to commit wilful perjury." See also Skinner, quoted in Ch. XV below, text at n. 67 sq.

55 See Ch. X n. 54 sq; Ch.IV text nn. 39 and 40, above.

56 See Ch. X above.

57 P. 46.

58 P. 136.

59 P. 52.

60 *Culture,* p. 142. See Ch. XV text at n.12 above.

61 *Description of Ceylon (Containing an account of the country, inhabitants & natural production),* Longman, Hurst, Rees and Orme, Aberdeen, (1807). It was republished in the Ceylon Historical Journal Monograph Series, Vol. IV, in 1983 by Tisara Prakaśakayo. It was Reprinted in two volumes by K.V.G. De Silva & Sons (Co.) Ltd., Colombo 1983; pp. 42-43.

62 Tisara Prakasakayo ed., pp. 42-43; K.V.G. De Silva ed., Vol. I p. 73.

63 *Administration Reports,* 1869, p. 120.

64 *Administration Reports,* 1869, p. 188.

65 *Governors's Addresses,* II, p. 218 - 219.

66 Major Thomas Skinner arrived in Ceylon as a lieutenant in 1819. He was barely fifteen years old at the time. His first task after his arrival in Trincomalee was to lead a detachment of soldiers from Trincomalee to Colombo, a distance of about two hundred miles, through areas that a few weeks earlier had been in violent rebellion against the British. Governor Barnes selected him to be in charge of road construction. He then functioned as a surveyor of the Central Province. In 1841 he was appointed The Commissioner of Public Works, a post he held till his retirement in 1867, with a short interlude as Auditor General. He returned to England and died ten years later. His autobiography *Fifty Years in Ceylon,* was edited by his daughter and published in 1891 with a Preface by Sir Monier-Williams. It was reprinted in 1974 by Tisara Prakasakayo Ltd., Dehiwela, in *The Ceylon Historical Journal,* Vol. 21. My references are to the 1974 edition.

67 Skinner, pp. 137-139.

68 See Ch. XV text at n. 34 above.

69 Pp. 148-150.

70 Whereas earlier, each large village, or a cluster of small contiguous villages, usually had its own tribunal.

71 With modern transport facilities, the time taken to travel to and from courts is greatly reduced; nevertheless, hundreds of officials and thousands of people called as witness continue to come to court-houses up and down the country, each working day, only to find that they must return again and again, perhaps over several years, as cases get postponed for one reason or the other. The economic waste caused by the disruption of official and private business must surely be enormous?

72 *Gam* = village; *sabhā* = council or court. Skinner was mistaken. He supposed these tribunals were called *'gamsaib'* and had something to do with lords and masters. *'Sahib"* was a respectful title used by Indians in addressing an Englishman or European. It was based on the Urudu use of the Arabic word *'ṣāhīb'* meaning companion, friend, lord or master.

73 See text at n. 27 and n. 31 above.

74 Besides being a member of a caste (*kula*) a person also belonged to a *variga* - a small primary endogamous group whose members were

known as *varigakkārayō* who refrained from associating with people of alien *variga (piṭa variga),* particularly in marriage (*magul*) and funeral (*ilav*) ceremonies: Ralph Pieris, p. 252.

75 *Eleven Years in Ceylon,* 1840, London, Richard Bentley, republished in 1972 by Gregg International Publishers Ltd., Westmead, Farnborough, Hants., England.

76 P. 71.

77 P. 71.

78 P. 60. Cf. Nadaraja, p. 91 note 174, who said appeals lay in the outlying districts like Nuvarakalāviya.

79 P. 150.

80 Pp. x-xi.

81 P. 150 note 37.

82 P. 19.

83 Ralph Pieris, p. 19.

84 See Ch. XIV, text at n. 178 sq.

85 P. 254.

86 Chief of a territorial unit known as a *korāle.*

87 An administrative division in the Nuvarakalāviya District.

88 Leading village headman. Cf. Ch. XV text at n. 13 above.

89 See Ch. XIV, text at n. 176 above.

90 K.A. Kapuruhami, Madukanda Rate Mahatmaya of Vavuniya, in 1921, at the request of H.W. Codrington, prepared an account of the *raṭa sabhā* system as it existed in 1909-1910. Codrington had given a copy to P.E. Pieris, who translated it and published it in Vol. XXXVIII, No. 106, (1948), *Journal of the Royal Asiatic Society (Ceylon),* pp. 42-68. My references are to "Raṭa Sabhāwa" by K.A. Kapuruhami, as published in the *JRAS (C).*

91 Pp. 42-43.

91A In respect of disobedience of the order of a Court, it seems that the offender was banished or imprisoned until compliance. Lawrie (Notes, p. 213) cites two examples: (1) "Wettewe late Ratemahatmaya was ordered by the Judicial Commissioner to be confined in a katupulle village until he obeyed a decree of court. - Judicial Commissioner, 4th September, 1817." (2) "Polwatte Rāla was sentenced to be confined in a katupulle village for fifteen days for having disturbed the possession of

a field after judgment was passed, in favour of the daughter of the late Unambuwe Adigār, and to be further imprisoned until the paddy forcibly taken by him be restored. - 4th October, 1817."

92 R.W. Ievers in his official *Diary* (Government Archives 30/6, 1884, cited by Ralph Pieris, p. 255, note 73.) recorded that petitions from persons alleged to have become insane from *hūniyam* were common. As we have seen (Ch. VII, text at n. 129 sq.) the practice of *hūniyam* was an offence.

93 Pp. 44-45.

94 P. 47.

95 I have re-arranged and edited Kapuruhami's presentation.

96 Kapuruhami, p. 67; Ralph Pieris, p. 253.

97 This account is based on Kapuruhami, pp. 42-48; see also Hayley, pp. 62-66; Ralph Pieris, pp. 254-257; Pridham, Vol. I, p. 219. Hayley, p. 63 note (*u*), acknowledges his indebtedness for information on *Raṭa sabhā* "to Mr. H.W. Codrington of the Ceylon Civil Service". Ralph Pieris, p. 254, note 71, gives his source as Kapuruhami (1909); *Simhala Sirit Sangarāva* (Wickremasinghe Manuscript).

98 See Ch. X, n. 46 above.

99 When a person was appointed to an office, he was addressed by his name and title; e.g. Kannihamige Punchirala upon being appointed a *mohoṭṭāla,* would be addressed as Punchirala Mohoṭṭāla.

100 A brass drinking pot elaborately carved and having a chain attached to a belt round the neck.

101 Earlier, the pingo carrier, tom-tom beater, smith and potter, may also have been summoned: Cf. Kapuruhami, p. 46.

102 Kapuruhami, p. 65.

103 Hayley, pp. 63-64; cf. Kapuruhami, p. 46.

104 According to Ralph Pieris, p. 255, when a case arose which necessitated a convention of a *raṭa sabhā,* the *gamarāḷa* notified the *mohoṭṭāla* that a *sabhāva* should be convened, and the latter referred the matter to the *vanniyar* (the local governor who had great authority especially in Seven Kōrales and Nuvarakalāviya) whose *lēkam* (Secretary) informed the *gamarāḷas* of the date of the impending visit of the chief for a session of the *raṭa sabhāva.*

105 Cf.Ch. XV text at n. 13 above.

106 White cloth spread on the ground for distinguished persons to walk on - the equivalent, perhaps, of the modern 'red carpet'.

107 Ornamental arches. Ralph Pieris, said that carpenters also made seats. This appears to be a mistake, for the participants sat on mats: See paragraph in Ch. XV text after n. 111 below. Chairs were not unknown, but generally, people sat or lay down on mats spread on the ground (*bhummattharaṇa: Mahāvaṁsa*, 14.51; 27. 39; Geiger, *Culture*, p. 46.

108 Ralph Pieris, p. 255.

109 According to Hayley, p. 64, the presiding official was the *mohoṭṭāla*; but Ralph Piieris, p. 255, stated that the presiding official was the *vanni baṇḍāra*: *Vanni bandāra = Vanniyar,* who arrived in "a palanquin with his retinue, which included dancers and whip-crackers. His emblems of authority (canes, swords, daggers & c.) were placed on a ceremonial chair which was covered with a white cloth." According to Ralph Pieris, (p. 257) it was the *mohoṭṭāla* who, at the end of the proceedings, made the important speech releasing the offender from the ban and making him a completely free man. He stated that "In case the *vanniyar* could not preside, he would send the *mohoṭṭāla*, who reported the decision of the [a]ssembly to him and handed him his share of the fine (*baṇḍāra muḍippuva*)." According to Ralph Pieris, (p. 255) the *mohoṭṭālas* were necessary members of a *raṭa sabhā*, and the decisions with regard to guilt and sentence were made by them, subject to confirmation by the *vanniyar*: Ralph Pieris, p. 256.

110 Pp. 55-56.

111 The matters which the Chief could decide without the assistance of a *raṭa sabhāva* were offences (18) - (25) : Kapuruhami, pp. 45-46.

112 This was called *vatura nambuva:* it was the respectful way of offering water. Water was offered to distinguished persons in a clean, brass drinking pot covered with a white cloth.

113 Ralph Pieris, p. 255, stated "or *Bedderāḷa.*"

114 Including, probably, important people at the time, such as the *disāva* or, perhaps in the northern provinces in the days of the Kandyan Kingdom, the *vanniyar*, and by 1909-1910, the Government Agent, the Assistant Government Agent and the Governor of Colombo: See Kapuruhami, pp. 50 and 54.

115 In note 75 at p. 255, Ralph Pieris said that "This is the version given by R.K. Tillakaratna in [*Simhala Sirit Sangarāva,* Wickremasinghe Mss.], but it is doubtful if the decisions were in fact reported to the Kings's

council in Kandyan times." Why was it doubtful? Ralph Pieris offered no explanation. As we have seen, the king was very much in command.

116 Kapuruhami, p. 51.

117 Kapuruhami, p. 52.

118 Cf. Kapuruhami, p. 52 para. 42 read with p. 62.

119 Kapuruhami, p. 52.

120 Kapuruhami, p. 52.

121 P. 256.

122 See pp. 46-47. Degradation was a punishment imposed for very serious offences, by the King: See Ch. V text at 151 sq.

123 China grass - Rhea or Ramie fibre - *Boehmeria nivea.*

124 Ralph Pieris, p. 257, note 77.

125 P. 54.

126 Kapuruhami, as an example, gave the case where a man called Punchirala publicly accused a woman named Ranmenika as having had illicit connection with a low caste man and was therefore guilty of "immoral" conduct.

127 P. 257 citing the *Simhala Sirit Sangarāva* (Wickremasinghe MSS).

128 P. 257.

129 Kapuruhami, pp. 45 and 47.

130 P. 45.

131 But cf. Ralph Pieris, p. 255, note 73: "*Huniyam* are small clay image[s] into which pins are thrust...".

132 Kapuruhami, p. 47.

133 P. 54.

134 Ralph Pieris, p. 255; Kapuruhami, pp. 44-45 and 47.

135 P. 257.

136 Kapuruhami, p. 60.

137 P. 257.

138 Offence No. (15).

139 An act or offence committed inadvertently or through ignorance, punishable with a small fine of 2 1/2 or 5 or 7 1/2 *ridī.* Kapuruhami, p. 59. Ralph Pieris, p. 256, however stated that *at väradi* were "wrongs committed with the hands, e.g., improper gestures, neglect to fold one's arms when addressing a superior which entailed a fine of seven and a half *ridī.*"

140 An offence committed by word of mouth: improper words or terms used in speaking: Kapuruhami, p. 61: Offence No. 25. Ralph Pieris, p. 256 stated that *Kaṭa väradi* were" oral offences e.g., interrupting a speaker, using insulting language, which were punished with seven and a half pieces of silver."

141 Offences committed by or in eating rice. Eating with or in the company of a banned person was an offence and was met with a fine of 7 1/2 *ridī*: cf. offence No. (25). Certain irregularities occurring while eating at public feasts were also considered *bath väradi*, but the fine in such a case was a nominal one and very often the offender was made to eat more rice as a punishment: Kapuruhami, p. 65. Ralph Pieris, p. 256, stated: "*bath väradi* or wrongs connected with the preparation and service of meals, were punishable by a fine of two and a half *ridīs*."

142 For an account of this very interesting event, see Kapuruhami, pp. 56-59.

143 Members of the kin-group.

144 Chief of washermen.

145 Kapuruhami, p. 55.

146 *Epigraphia Zeylanica*, Vol. I, pp. 243-244.

147 Ranawella, *Veväl̈käṭiya Slab Inscription and its Copies*, 1996 p. 2; Wickremasinghe ascribes it to "Mahinda IV *circa* 1026-1042 A.D." : *Epigraphia Zeylanica*, Vol. 1, pp. 241-251.

148 Ranawella, op. cit. 2-3.

149 Op. cit., p. 3.

150 Meaning, no doubt, the Vevälkäṭiya slab inscription.

151 *A History of South India*, (1955), p. 196.

152 VII. 113-122.

153 Exodus, 18: 17b-23.

154 *Vēväḷkäṭiya*, pp. 3-4; and Ch. XV note 147 above.

155 S.J Sumanasekera Banda (pers. comm.) stated that " *'Kibi'* is derived from *'Kibissa'* Skt. *'Kilvisa'* meaning *aparādha* (crime) and therefore '*Kibi* village' means a village in which criminals reside."

NOTES TO CHAPTER XVI

1 Cf. Geiger, *Culture*, 146.

2 P. 41.

3 See Ch. XV, text at n. 69.

4 It was said in the Poḷonnaruva Galpota Slab Inscription that "Everywhere amongst the dwellers in huts he established order and cleansed [the country] of thorns [of disorder]." According to Wickremasinghe, the phrase *val-vässan päl-vässan hämä-täna-ma sādhā kaṇṭaka sodhanaya koṭä* may also be rendered 'having stationed everywhere residents in forests and in huts [as overseers?] : *Epigraphia Zeylanica*, Vol. II, pp. 117-118, note 13, ? spies. See Ch. XVIII, n. 4 below.

5 See Poḷonnaruva Galpota Slab Inscription, *Epigraphia Zeylanica*, Vol. II, p. 117.

6 See Ch. XIV text at a 187.

7 *Epigraphia Zeylanica*, Vol. II, pp. 80-81.

8 *Epigraphia Zeylanica*, Vol. II, p. 117.

9 Kirti Sri Niśśaṅkamalla Slab Inscription, *Epigraphia Zeylanica*, Vol. II p. 81; Rankot Dāgäba Gal-Āsana Inscription, *Epigraphia Zeylanica*, Vol. II, p. 137; Slab Inscription at Wāňduruppe, *Epigraphia Zeylanica*, Vol. V, p. 427; Giritaḷē Stone-Seat Inscription, *Epigraphia Zeylanica*, Vol. V, p. 439; Priti-Dānaka-Maṇḍapa Rock Inscription, *Epigraphia Zeylanica*, Vol. II, p. 178.

10 *Epigraphia Zeylanica*, Vol. II, p. 175.

11 See also Inscription of Kirti Sri Niśśaṅkamalla (1187-1196 AD), *Epigraphia Zeylanica*, Vol. I p. 133; Giritaḷē Stone-Seat Inscription, *Epigraphia Zeylanica*, Vol. V, p. 439.

12 See Ch. VIII text n. 45.

13 *Culavaṁsa*, 60.21.

14 E.g. see the Wāňduruppe Slab Inscription *Epigraphia Zeylanica*, Vol. V, p. 427. See also the Paňḍuvasnuvara Stone-Seat Inscription, *Epigraphia Zeylanica*, Vol. V, p. 446; Kirti-Niśśaṅkamalla Slab Inscription, *Epigraphia Zeylanica*, Vol. II, p. 81; Priti-Dānaka-Maṇḍapa Rock Inscription, *Epigraphia Zeylanica*, Vol. II, p. 175.

15 Slab-Inscription of Kirti-Niśśaṅkamalla at Ruvanveli Dāgäba, *Epigraphia Zeylanica*, Vol. II, pp. 80-81. The Galpota slab inscription says the tax holiday was for five years: *Epigraphia Zeylanica*, Vol. II, p. 116; see also the Inscription of Kirti Sri Niśśaṅkamalla, *Epigraphia Zeylanica*, Vol. I, pp 132-133; Häṭa Dāgē Portico Slab Inscription, *Epigraphia Zeylanica*, Vol. II, p. 89; Kāliṅga Forest Gal-Āsana

Inscription, *Epigraphia Zeylanica*, Vol. II, p. 127; but the Rambāvihāra Slab Inscription of King Niśśaṅkamalla (1187-1196 AD) gives the period as seven years : *Epigraphia Zeylanica*, Vol. 5 Part 3, p. 434.

16 E.g. see the Slab Inscription at Wanduruppe, *Epigraphia Zeylanica*, Vol. V, p. 427; Poḷonnaruva Galpota Slab Inscription, *Epigraphia Zeylanica*, Vol. II, pp. 116-117. Manu, VII. 129. said: "As a leech, the calf, and the bee take their food little by little, even so must the king draw from his realm moderate annual taxes". He added: "Let him not cut up his own root [by levying no taxes], nor the root of other [men] by excessive greed; for by cutting up his own root [or theirs], he makes himself or them wretched". Manu, VII. 139.

17 *Cūlavaṁsa*, 87. 50-51.

18 Galpota Slab-Inscription, *Epigraphia Zeylanica*, Vol. II, p. 117.

19 Slab Inscription of Niśśaṅkamalla at Wanduruppe, *Epigraphia Zeylanica*, Vol. V, p. 427. See also the Panduvasnuvara Stone-seat Inscription, *Epigraphia Zeylanica*, Vol,. V, p. 445.

20 Inscription of Kirti Sri Niśśaṅkamalla, *Epigraphia Zeylanica*, Vol. I, p. 133; Häṭadāgē Portico Slab Inscription, *Epigraphia Zeylanica*, Vol. II, p. 90; Häṭadāgē Vestibule Wall Inscription, *Epigraphia Zeylanica*, Vol. II, p. 96; Kāliṅga Forest Gal-Āsana Inscription *Epigraphia Zeylanica*, Vol. II, p. 127; Kāliṅga Park Gal-Āsana Inscription, *Epigraphia Zeylanica*, Vol II, p. 133; Rankot-Dāgäba Gal-Āsana Inscription, *Epigraphia Zeylanica*, Vol. II p. 136; Rankot Dāgäba Pillar Inscription, *Epigraphia Zeylanica*, Vol. II p. 142; Giritalē Stone-Seat Inscription, *Epigraphia Zeylanica*, Vol. V, p. 439.

21 Poḷonnaruva Galpota Slab Inscription, *Epigraphia Zeylanica*, Vol. II, p. 117 note 11; the Rankot-Dāgäba Pillar-Inscription, *Epigraphia Zeylanica*, Vol. II, p. 142; the Panduvasnuvara Stone-seat Inscription, *Epigraphia Zeylanica*, Vol. V, p. 446.

22 Prīti-Dānaka-Maṇḍapa Rock Inscription, *Epigraphia Zeylanica*, Vol. II. 175.

23 Poḷonnaruva Galpota Slab Inscription, *Epigraphia Zeylanica*, Vol. II, p. 117.

24 Ruvanveli Dāgäba Slab-inscription, *Epigraphia Zeylanica*, Vol. II p. 81.

25 Poḷonnaruva Galpota Slab Inscription, *Epigraphia Zeylanica*, p. 116.

26 *Epigraphia Zeylanica*, Vol. II, pp. 116.

27 Rankot-Dāgäba Pillar Inscription, *Epigraphia Zeylanica*, Vol. II, p. 142.

28 Häṭa-Dā-Gē Portico Slab Inscription, *Epigraphia Zeylanica*, Vol. II, p. 89. See also Ch. XIV text n. 195.

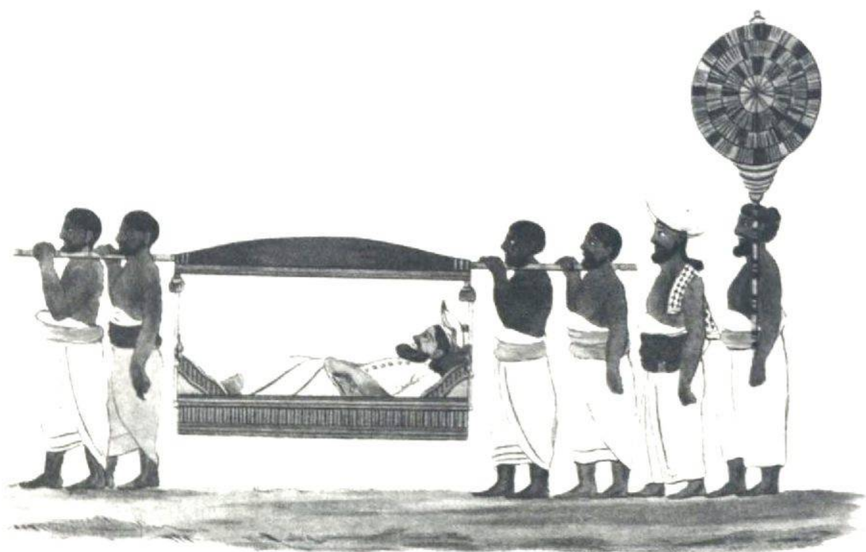
29 E.g. see the Slab Inscription of Kassapa V, *Epigraphia Zeylanica*, Vol. I, p. 51.

30 K. Sri Dhammananda, *Treasure of the Dhamma*, 1994, Buddhist Missionary Society, Kuala Lumpur, p. 199, citing *Digha Nikāya*, 26.

31 "Non-payment of wages" was a subject of judicial inquiry: Manu, VIII, 5. Manu, VIII, said: "A hired (servant or workman) who, without being ill, out of pride fails to perform his work according to the agreement, shall be fined eight *krisnālas* and no wages shall be paid to him: (215). But [if he is really] ill, [and] after recovery performs [his work] according to the original agreement, he shall receive his wages even after [the lapse of] a very long time: (216). But if he, whether sick or well, does not [perform or] cause to be performed [by others] his work according to his agreement, the wages for that work shall not be given to him, even [it be only] slightly incomplete: (217)."

32 *Dīgha Nikāya*, III, 191, in Dhammananda, *op. cit.* above n. 30, p. 178.

33 *Dīgha Nikāya*, *ibid.*, in Dhammananda, *op.cit.* above n. 30, p. 179.



On Tour.

NOTES TO CHAPTER XVII

1 The fact that a land was granted as an endowment for a worthy purpose, did not necessarily mean that it was granted immunities: e.g. see the Pillar Inscription at the Eastern Gate, *Epigraphia Zeylanica*, Vol. V, p. 332, where a land was endowed to a hospital, but no immunities of any kind were granted.

2 Paranavitana, *Epigraphia Zeylanica*, Vol. IV, p. 36. On this matter, see also Jayanta Uduwara, Slab Inscription from Ridīmahāliyaḍḍa, *Epigraphia Zeylanica*, Vol. VI at p. 205; and Sirimal Ranawella, "Ektäna, The Supreme Council in the Early Medieval Sinhalese Administration," in *Kalyāṇī, Journal of Humanities & Social Sciences of the University of Kelaniya*, Vols. III & IV, pp. 57-65.

3 See Ranawella, *Ektäna, ibid.*

4 *Epigraphia Zeylanica*, Vol. V, pp. 140-141.

5 *Epigraphia Zeylanica*, Vol. V, p. 321-322.

6 *Epigraphia Zeylanica*, Vol. V, p. 366.

7 E.g. the Īripinniyāva Pillar Inscription, *Epigraphia Zeylanica*, Vol. I, p. 170; the Moragoda Pillar Inscription of Kassapa IV, *Epigraphia Zeylanica*, Vol. I, p. 207; the Kukurumahan-Damana Pillar Inscription: *Epigraphia Zeylanica*, Vol. II p. 25; ; the Äṭavīragollāva Pillar Inscription of Dappula V, *Epigraphia Zeylanica*, Vol. II p. 49; Aytigeväva Pillar Inscription, *Epigraphia Zeylanica*, Vol. II, p. 38; Kacceri Pillar Inscription, *Epigraphia Zeylanica*, Vol. III p. 105; Pillar Inscription of Kassapa IV, *Epigraphia Zeylanica*, Vol. III, p. 277; Malagaṇē Pillar Inscription, *Epigraphia Zeylanica*, Vol. IV, p. 186; Tāmaraväva Pillar Inscription, *Epigraphia Zeylanica*, Vol. V, p. 286; Paṅḍuvasnuvara Pillar Inscription, *Epigraphia Zeylanica*, Vol. VI, p. 12; Kallampattuva Pillar Edict, *Epigraphia Zeylanica*, Vol. VI, p. 175.

8 *Epigraphia Zeylanica*, Vol. I, p. 207.

9 *Epigraphia Zeylanica*, Vol. III, p. 110. *Kärä-vädäruman* in the Koṇḍavaṭṭavan Pillar Inscription, was rendered by Paranavitana as "inspectors of taxable lands": *Epigraphia Zeylanica*, Vol.V, p. 129 and p. 140.

10 *Epigraphia Zeylanica*, Vol.VI, p. 20, note 6.

11 *Silālipi Saṁgrahava,* published by the Department of Archaeology, Pt. II, p. 28.

12 *Epigraphia Zeylanica*, Vol.VI, at pp. 183, 175 and 179.

13 Excluding such persons from certain, specified areas, is one thing; but making them liable to arrest and depriving them of their personal

freedom under the laws relating to vagrancy, which the British introduced, is another matter. One recalls Anatole France's observation: "The law, in its majestic equality, forbids the rich as well as the poor, to beg in streets and to steal bread." On this matter, see A.R.B. Amerasinghe, "Legal Aid", in *Life is Simply a Duty*, p. 176 at p. 184.

14 E.g. the Raṁbāva Pillar Inscription, *Epigraphia Zeylanica*, Vol.I. p. 175 (*pirivena* land); the Iripinniyāva Pillar Inscription, *Epigraphia Zeylanica*, Vol. I, pp. 170-172 (*pirivena* land); Moragoda Pillar Inscription, *Epigraphia Zeylanica*, Vol. I p. 207 (*pirivena* land); Bilbāva Pillar Inscription, *Epigraphia Zeylanica*, Vol. II, p. 43 (*pirivena* land); Mayilagastoṭa Pillar Inscription, *Epigraphia Zeylanica*, Vol.II, p. 63 (*pirivena* land); Äṭaviragollāva Pillar Inscription, *Epigraphia Zeylanica*, Vol.II, p. 48 (*pirivena* land); a Slab Inscription of Mahinda IV, *Epigraphia Zeylanica*, Vol. I, p. 112 (*vihāra* land); Mädirigiriya Pillar Inscription, *Epigraphia Zeylanica*, Vol. II, p. 33 (monastery land); Ayitgeväva Pillar Inscription, *Epigraphia Zeylanica*, Vol. II, p. 38 (nunnery land); the Kukurumahan-Damana Pillar Inscription, *Epigraphia Zeylanica*, Vol. II, p. 25 (hospital land).

15 E.g. see the Slab Inscription of Kassapa V relating to *vihāra* lands, which makes no reference to tramps and vagrants: *Epigraphia Zeylanica*, Vol. I, pp. 49-57; nor do the Buddhannehäla Pillar Inscription: *Epigraphia Zeylanica*, Vol. I, pp. 198-200 (*vihāra* land); Raja-Māḷigāva Pillar Inscription, *Epigraphia Zeylanica*, Vol. II, p. 56 (monastery land); the Kiribat Vehēra Pillar Inscription, *Epigraphia Zeylanica*, Vol. I. p. 161 (dispensary land); Pillar Inscription of Kasappa IV, *Epigraphia Zeylanica*, Vol. III p. 277 (land of lying-in-home); Poḷonnaruva Council Chamber Inscription, *Epigraphia Zeylanica*, Vol. IV, p. 45 (hospital land).

16 E.g. see the Moragoda Pillar Inscription of Kassapa IV, *Epigraphia Zeylanica*, Vol. I, p. 207 (murderers from the village to be expelled, murderers from outside not to be harboured); the third Kaludiyapokuna Inscription of Sena III or Sena IV, *Epigraphia Zeylanica*, Vol. III, p. 267 (tenants of the village committing homicide to be sent away after confiscating their houses; those committing homicide outside the village to be refused admission); the Iripinniyāva Pillar Inscription of Sena II (917-952 AD), *Epigraphia Zeylanica*, Vol. I, p. 171; and the Raṁbäva Pillar Inscription of Sena II (917-952 AD) *Epigraphia Zeylanica*, Vol. I, p. 175; those who live by highway robbery (*mang-div*), or by vagrant habits (*piya-div*), thieves, or those who come for shelter after committing "assaults" (probably murder) should not be admitted); the Velmilla Slab Inscription, *Epigraphia Zeylanica*, Vol. III,

p. 301 (those who come after committing manslaughter or theft are to be removed outside the district); The Tāmaravāva Pillar Inscription, *Epigraphia Zeylanica*, Vol. V, p. 286 (villains who have committed murder should not be accepted into this village); Decree of Mahapā Dāpuḷa at Dorabāvila, *Epigraphia Zeylanica*, Vol. V, p. 296 (those who have committed murder should not be received, nor should they be kept and protected); Decree of Mahapā Udā at Dorabāvila, *Epigraphia Zeylanica*, Vol. V, p. 306 (those who have committed murder or robbery should not enter the land); the Kapuruvāḍuoya Pillar Inscription, *Epigraphia Zeylanica*, Vol. V, p. 400 *minī koṭā megam vana gamvāssan muḷuva gamin piṭat karanu koṭa isā*, ("should any commit murder and enter this village, the residents of the village shall meet and expel [the murderer from the village]"); the Aturupolyāgama Pillar Inscription, *Epigraphia Zeylanica*, Vol. V, p. 390 (If any of the five great offences are committed outside this village, the offenders shall not re-enter the village except after they have made expiation for their sins; should they commit an offence outside the village, the offenders shall be subjected to the disabilities imposed by the five representatives of the village, the officers of the vihāra and the Perenāṭṭu lords); the Giritaḷē Pillar Inscription, *Epigraphia Zeylanica*, Vol. III, p. 141, (traitors to the royal family should not be admitted to the village and given protection).

17 *Epigraphia Zeylanica*, Vol. V, p. 378.

18 *Seventh Progress Report (October to December, 1891) of the Archaeological Survey of Ceylon* (Sessional Paper XIII, 1896), p. 46.

19 *Epigraphia Zeylanica*, Vol. V, p. 366 quoted above Ch. XVII text at n. 6.

20 *Mahāvaṁsa*, XXIV. 36-47.

21 The monastery of Okkampitiya: Geiger, *Culture*, p. 148.

22 E.g. see the *Encyclopaedia Britannica*, Vol. 8. p. 405, *s.v.* "sanctuary". Additionally, in some communities, "a dominant motive in protecting the fugitive was the fear of the evil magic force that would emanate from his curse, believed dangerous to gods as well as men" : *ibid.* It is said that in England, according to the ecclesiastical law of the Middle Ages, a fugitive had only to touch the sanctuary knocker on the door of a church in order to be immune from arrest: *ibid.*

23 E.g. see the Raja-Māḷigāva Pillar Inscription of Mahinda IV, *Epigraphia Zeylanica*, Vol. II, p. 50; the Iṅginimiṭiya Pillar Inscription of Kassapa IV (898-914 AD), *Epigraphia Zeylanica*, Vol. V, p. 362; Slab Inscription of Kassapa V, *Epigraphia Zeylanica*, Vol. I, pp. 52-53;

Allai Pillar Inscription, *Epigraphia Zeylanica*, Vol. VI, p. 116; the Sīgiriya Pillar Inscription of Mahapā Kassapa, *Epigraphia Zeylanica*, Vol. V, p. 253; Ellevewa (Älleväva) Pillar Inscription, *Epigraphia Zeylanica*, Vol. V p. 378; the Gonnäva Dēvālē Pillar Inscription, *Epigraphia Zeylanica*, Vol. IV, pp. 190-191; the Aturupolayāgama Pillar inscription, *Epigraphia Zeylanica*, Vol. V, p. 390 (relating to land donated to the Tembutalā *pirivena,* which stated that "those who commit murder in this village, and those who come from outside, shall not be arrested."); the Ayitigeväva Pillar inscription of Kasappa V where the immunities and sanctuary privileges are in respect of a land donated to a nunnery: *Epigraphia Zeylanica*, Vol. II, p. 34.

24 *Epigraphia Zeylanica*, Vol. V, p. 362.

25 *Epigraphia Zeylanica*, Vol. V, p. 359.

26 In Europe, sanctuary privileges that attached to churches toward the end of the 4th century, "were gradually extended to wider areas of and around churches": *Encyclopaedia Britannica,* Vol. 8, p. 405. In England, "Besides the general sanctuary that belonged to every church and that afforded temporary protection, there developed, on obscure grounds, a number of sanctuaries based upon royal charters. In at least 22 places throughout England, the king's process did not run, the coroner could not enter and the fugitive could remain for life. The local Lords regulated the activities of the fugitives and exacted oaths of fealty from them. Henry VIII abolished many sanctuaries and substituted seven "cities of refuge." An Act of James I, in 1623, abolished sanctuary in cases of crime, but the privilege lingered on for civil processes in certain districts that had formerly been sanctuaries and became haunts of those resisting arrest. Sanctuary was not completely eliminated until the 18th century. In continental Europe the right of sanctuary (called asylum), though much restricted in the 16th century, survived until the French Revolution." *Ibid.* The sanctuary was said to be the source of parliamentary immunities and the custom of diplomatic asylum in embassies. *Ibid.*.

27 *A Short History of Ceylon,* 1929, reprinted by Asian Educational Services in 1994, pp. 43-44.

28 *Epigraphia Zeylanica*, Vol. I, p. 250.

29 Ch. XVI, text n. 147 sq.

30 *Epigraphia Zeylanica*, Vol. 1, p. 161.

31 *Epigraphia Zeylanica*, Vol. II, p. 25.

32 E.g. immunities are recorded, but sanctuary privileges are not mentioned in the following records: the Virañdagoḍa Pillar Inscription,

Epigraphia Zeylanica, Vol. V, p. 124 (the village of Nadunnaru and other lands belonging to the Salvāṇā-*vehera*); the Pillar Inscription from Mihintalē, *Epigraphia Zeylanica*, Vol. V, p. 323 (vihāra and its lands); the Mannar Kacceri Pillar Inscription, *Epigraphia Zeylanica*, Vol. III, p. 105 (lands belonging to the meditation hall (*piyangala*) of the Great Monastery); the Malagaṇē Pillar Inscription, *Epigraphia Zeylanica*, Vol. IV, pp. 185-186 (*pirivena*); the Mayilagastoṭa Pillar Inscription, *Epigraphia Zeylanica*, Vol. II, p. 63 (*pirivena* land); Pillar Inscription of Mahinda V, *Epigraphia Zeylanica*, Vol. IV, pp. 66-67 (*pirivena* land); the Timbiriväva Pillar Inscription, *Epigraphia Zeylanica*, Vol. II, p. 13-14 (*pirivena* land); Viyaulpata Pillar Inscription, *Epigraphia Zeylanica*, Vol. IV, pp. 179-180 (monastic residence); the Pillar Inscription from Mahakalättäva, *Epigraphia Zeylanica*, Vol. V, pp. 340-341 deals with immunities conferred on the village of Gitelgamuva set apart for the maintenance of nuns, (*bhikkhunis*) from the nunnery called Nāl-aram, built by the Chief Scribe Sen-Mahalä in honour of his mother and named after her), tending the Great Bōdhi Tree of the Mahāvihāra by watering it daily; no sanctuary privileges were granted; Raṁbāva Slab Inscription, *Epigraphia Zeylanica*, Vol. II, pp. 68-70 (oil to be supplied by holder of land to illuminate the stone image of the Buddha at the Sacred Bōdhi-tree); immunities were granted but no sanctuary privileges were attached to the village.

33 The Poḷonnaruva Council Chamber Inscription records a grant of land described as *demaḷa-käbälla* (meaning lands set apart for Tamils, probably in the King's service: Paranavitana, *Epigraphia Zeylanica*, Vol. III, p. 143) which was to be rented to yield interest out of which a specified quantity of white ginger, or alternatively a specified quantity of gold, was to be given as rent to the hospital founded by Doti Valaknä: Certain immunities were granted, but no sanctuary privileges were decreed: *Epigraphia Zeylanica*, Vol. IV, pp. 44-45. Similarly, the Decree of Mahapā Dāpulā at Dorabāvila recorded the fixing of boundary stones for certain lands set apart for the benefit of a hospital built in the 'inner city' (of Anurādhapura), and decreed immunities in respect of those lands, but no sanctuary privileges were granted: *Epigraphia Zeylanica*, Vol. V, p. 296; The Colombo Museum Pillar Inscription of Kassapa IV records the grant of immunities to an estate which was an endowment of a lying-in-home founded by the Chief Secretary Senal (Sena). However, no sanctuary privileges were granted. *Epigraphia Zeylanica*, Vol. III, p. 271. The Inscription of Kassapa IV, *Epigraphia Zeylanica*, Vol. III, p. 277, records the grant of immunities in respect of a land given to a lying-in home, but no sanctuary privileges were granted.

34 E.g. see the Kirigallāva Pillar Inscription, *Epigraphia Zeylanica*, Vol. II, p. 5 (private land - immunities, but no sanctuary privileges); the Vihāregama Pillar Inscription, *Epigraphia Zeylanica*, Vol. IV, p. 54 (private land - immunities, but no sanctuary privileges); the Kapuruväḍuoya Pillar Inscription, *Epigraphia Zeylanica*, Vol. V, p. 400 (private land - immunities, but no sanctuary privileges); the Pañḍuvasnuvara Pillar Inscription, *Epigraphia Zeylanica*, Vol. VI p. 13 (immunities granted to villages assigned to the consort of the Yuvaraja, but no sanctuary privileges; Kahaṁbiliyāva Slab Inscription, *Epigraphia Zeylanica*, Vol. V, pp. 407-408 (private land - immunities, but no sanctuary privileges); the Slab Inscription from Ridimahāliyaḍḍa, *Epigraphia Zeylanica*, Vol. VI, p. 202 (it is not clear why immunity from visits by certain officials was granted to the village known as Araḷapāl Pasugi; no sanctuary privileges, however, were granted); Halbe Pillar Inscription of Mahāpā Kassapa, *Epigraphia Zeylanica*, Vol. V, p. 370 (the purpose for which the lands were set apart is not stated; immunities were granted but no sanctuary privileges were granted); the Inscription of Sena I: *Epigraphia Zeylanica*, Vol. III, p. 291 (the land benefited by immunities is not mentioned; but no sanctuary privileges were granted.

35 *Epigraphia Zeylanica*, Vol. II, p. 25. See also the Pillar Inscription from Periyasenavatta, *Epigraphia Zeylanica*, Vol. VI, pp. 192 and 195.

36 *Epigraphia Zeylanica*, Vol. II, p. 255.

37 *Mini koṭā vannan megämhi lā nogannā koṭ*- "Those who have come after committing murder should not be arrested in this village": Gonnäva Dēvālē Pillar Inscription, *Epigraphia Zeylanica*, Vol. IV, p. 191. See also Nāgama Pillar Inscription, *Epigraphia Zeylanica*, Vol. II, p. 19; Ayitigeväva Pillar Inscription, *Epigraphia Zeylanica*, Vol. II, p. 38; Bilbāvä Pillar Inscription, *Epigraphia Zeylanica*, Vol. II, p. 43; Kallampattuva Pillar Edict, *Epigraphia Zeylanica*, Vol. VI, p. 179; Iṅginimiṭiya Pillar Inscription, *Epigraphia Zeylanica*, Vol. V, p. 362; Ellevewa (Älleväva) Pillar Inscription of Dappula IV, *Epigraphia Zeylanica*, Vol. V, p. 378; Aturupolyāgama Pillar Inscription, *Epigraphia Zeylanica*, Vol. V, pp. 390, 392; Abhayagiriya Pillar Inscription of Kassapa IV, *Ancient Ceylon,* 1981, Vol. IV, p. 203 (*koṭā vannavun nogannā koṭ*). Ranawella has drawn attention to an unpublished inscription from Pañḍuvasnuvara decreeing that "the royal officials shall not come and arrest those who have come to this village after committing murder" *mini koṭā megam vana radolen ävid nogannā ca (A.S.I.* 2442) : *Ancient Ceylon,* Vol. IV, p. 209.

38 *Epigraphia Zeylanica*, Vol. III, p. 141. Although Paranavitana renders *Koṭā vannan* as "assault", Wickramasinghe rendered that phrase ocurring in the Bilbāva Pillar Inscription of Kassapa V as "those who have come here after committing murder" (*meyat koṭā van vada nogannā* ...), explaining that *koṭā* has the same meaning as *minikotā* (having committed murder): *Epigraphia Zeylanica*, Vol. II, pp. 42, 43. Wickremasinghe rendered *koṭā vana gamin piṭat karavā ganut misa gam vädä nogannā* ... in the Mädirigiriya Inscription as "those who having committed homicide come [into the village for refuge] shall only be arrested after they have been made to quit the village.: *Epigraphia Zeylanica*, Vol. II, p. 33. Godakumbura rendered the phrase *koṭā vanna* in the Dorabāvila Pillar Inscription of Kassapa V as "those who have committed murder": *Epigraphia Zeylanica*, Vol. V, pp. 295, 296. Ranawella, rendered the phrase *koṭā vannavun nogannā koṭ* ...in the Abhayagiriya Pillar Inscription of Kassapa V as "those who have come [here] after having committed homicide shall not be apprehended": *Ancient Ceylon*, Vol. IV, pp. 208-209. Similarly, Ranawella rendered *koṭā megam vana gämin piṭat karavā ganut misä gamaṭ vädä nogannā* ..., occurring in the Allai Pillar Inscription of Dappula IV, as "also if anyone who has committed murder comes into the village he may not be arrested within, but he must be arrested after getting him out of the village". *Epigraphia Zeylanica*, Vol. VI, p. 118.

39 *Epigraphia Zeylanica*, Vol. II, p. 8.

40 *Epigraphia Zeylanica*, Vol. V, p. 390.

41 See Ch. III, text n. 97 sq.

42 *Epigraphia Zeylanica*, Vol. I, p. 161.

43 On the 'five great crimes', see Ch. III n. 97 sq.

44 *Epigraphia Zeylanica*, Vol. II, p. 218.

45 *Epigraphia Zeylanica*, Vol. I, pp. 53-54.

46 Wickremasinghe stated that this probably refers to the collection of the Government share or tax on land: *Epigraphia Zeylanica*, Vol. I, p. 53 note 13.

47 Ch. III, text n. 97 sq.

48 On this term, see Ch. XVIII, text n. 25 sq.

49 *Epigraphia Zeylanica*, Vol. I, p. 54.

50 *Epigraphia Zeylanica*, Vol. V, pp. 353 and 354.

51 *Epigraphia Zeylanica*, Vol. V, p. 390.

52 Cf. Godakumbura's observations in his edition of the Iñginimiṭiya Pillar Inscription, *Epigraphia Zeylanica*, Vol. V, p. 359.

53 *Epigraphia Zeylanica*, Vol. V, p. 359.

54 *Epigraphia Zeylanica*, Vol. II, pp. 210, 214, 218.

55 *Epigraphia Zeylanica*, Vol. VI, pp. 17 and 20. The Mädirigiriya Pillar-Inscription, *Epigraphia Zeylanica*, Vol. II, p. 33, and the Raja-Māḷigāva Pillar Inscription, *Epigraphia Zeylanica*, Vol. II p 56; Allai Pillar Inscription, *Epigraphia Zeylanica*, Vol. VI, p. 116, also stated that murderers seeking refuge should be arrested only after getting the offenders out of the village.

56 Percival, p. 177, found 'native' music disagreeble: "Loud noise, which seems to enter into all the ideas of grandeur among a barbarous people, is never omitted in the train of the monarch. His progress is always attended by a number of performers on various instruments, such as tom-toms, or drums of various sizes, shrill and squaling clarionets, pipes, flagelets, a sort of bagpipes, and pieces of brass and iron jingled by way of triangles. The discordant noise produced by all these, sounded and clashed at once, without the smallest attention to time or harmony, is extremely disagreeable to the ears of an European."

It was a view that another European, Tennent, (p. 399) seems to have shared. But, of course there were other opinions. Geiger, pp. 62-63, said: "Dancing and singing (*nacca-gīta*) were the greatest of pleasures and also part of princely education... Even queens were praised for their skill in dancing and singing, as Rupavati the consort of Parākramabāhu.... There were dancing girls... at court and professional singers or bands... No feast could be celebrated at court without dancing and singing... Before Parākramabāhu commenced his war with Gajabāhu, he lived at leisure in his town passing the time with dance and song..., and even amidst war he was accompanied by skilful musicians... and, when tarrying somewhere for refreshment, listened to the singing of many women.

The Sinhalese were fond of every kind of music (*turiyavādita*). Professional musicians, male and female, are called *gandhabba* and *gandhabbī*... The corresponding Sanskrit word *gandharva* means, as is known, a heavenly musician. Itinerant musicians wandered from village to village, and it seems that there were many Damilas among them... The musical instruments were five in number; *pañcaṅga - turiya*... or *pañca-turiyaṅga*... As the first two of them trumpet (*saṅkha* and cymbal (*tāla*) are mentioned [in the *Cūlavaṁsa*], [t]he other three may be lute (*vīnā*), flute (*veṇu*) and drum... The conches were not only used in battle, but also on festival occasions (maṅgala saṅkha...) ... Parākramabāhu was surrounded by many skilful musicians who made music on the lute and the flute...

Drumming was particularly liked and is still executed with great skill... More than sixty kinds of drums now exist in Ceylon ..."

It is of interest to note that in Kurt Pahlen's classic work, *Music of the World, A History,* (1949) tr. James A. Galston, Crown Publishers Inc. New York, p. 15, it is observed as follows: "The oldest instrument known to us was discovered in Ceylon. A legendary king of the island, called Ravana, invented it about 7000 years ago and called it Ravanastrom. It was the archetype of all our string instruments, had two strings and was played with a round bow."

57 *Epigraphia Zeylanica*, Vol. II, p. 63. Paranavitana, in his edition of that inscription renders the lines as follows: "Being within the main boundaries, one shall not, except on an occasion of relics being taken [in procession], smile and laugh (*si no senu*) or sing with rejoicing." *Epigraphia Zeylanica*, Vol. VI, p. 39. Cf. the Mädirigiri Slab Inscription of Mahinda VI, *Epigraphia Zeylanica*, Vol. VI, p. 55: "Permission shall be given to the tenants of houses to drink liquor, to play musical instruments, to dance and for other [acts of that sort] in places belonging to the hospital outside the boundaries of the village", implying that they were not permitted to indulge in these entertainments in the village itself.

58 *Epigraphia Zeylanica*, Vol. VI, p. 116.

59 *Epigraphia Zeylanica*, Vol. V, p. 390. On the subject of these drums, see *E.Z.*, V, p. 392.

60 *Epigraphia Zeylanica*, Vol. V, p. 262.

61 *Epigraphia Zeylanica*, Vol. V, p. 378.

62 When King Duṭṭhagāmani had slain King Eḷāra in battle, he performed the funeral rites for Eḷāra. "On the spot where his body had fallen he burned it with the catafalque, and there did he build a monument and ordain worship. And even to this day the princes of Laṅkā when they draw near to this place, are wont to silence their music because of this worship." *Mahāvaṁsa*, XXV. 72-74.

63 *Epigraphia Zeylanica*, Vol. III, pp. 147-148.

64 Mayilagastoṭa Pillar Inscription, *Epigraphia Zeylanica*, Vol. II, p. 63.

65 *Epigraphia Zeylanica*, Vol. V, p. 400 at p. 403.

66 *Epigraphia Zeylanica*, Vol. IV, p. 191.

67 *Epigraphia Zeylanica*, Vol. III, p. 148 Percival, p. 177 said: "But the most remarkable attendants of the monarch are a set of people furnished with long whips of a peculiar kind, who keep running before the procession with strange gestures like madmen, to clear the way, and

announce the approach of the King. The whips are made of hemp, coya, grass or hair, and consist of a thong or lash from eight to twelve feet long, without any handle. The loud noise which the forerunners produce with their whips, as well as the dexterity with which they avoid touching those who come in their way, is truly astonishing ... although I was well convinced of the dexterity of those who wielded them, yet I could not help expecting every moment to come in for my share of chastisement."

Heydt (p. 101) was not as fortunate: He related how the Dutch Ambassadors were received by the Adigar, accompanied by whip crackers who "cracked so loudly as they could, crack on crack, as if small pistols were fired off ... [the] horses ... heard the mighty cracking of the whips ... they began to rear up and plunge from fright ... yet the whippers dared not cease, but each must crack as much as he could; and one of them, probably not on purpose, caught me on the calf, so that the next day I had a sausage as big as a finger on it, which smarted greatly."

68 *Epigraphia Zeylanica*, Vol. IV, p. 179.

69 *Epigraphia Zeylanica*, Vol. V, p. 124.

70 *Epigraphia Zeylanica*, Vol. II, p. 15.

71 On the Kirigallāva Pillar Inscription, see *Epigraphia Zeylanica*, Vol. II, p. 5.

72 On the Noccipotāna Pillar Inscription, see *Epigraphia Zeylanica*, Vol. II, p. 8.

73 *Epigraphia Zeylanica*, Vol. IV, p. 50 and p. 54.

74 Pañḍuvasnuvara Pillar Inscription, *Epigraphia Zeylanica*, Vol. VI, pp. 17-20.

75 Mäda-Ulpota Pillar Inscription, *Epigraphia Zeylanica*, Vol. IV, p. 55.

76 Koṇḍavaṭṭavan Pillar Inscription, *Epigraphia Zeylanica*, Vol. V, p. 139.

76A Decree of Mahapā Udā (924 A.D.), *Epigraphia Zeylanica*, Vol. V, p. 302. "Mahāvedanā" may have been the Minister responsible for the subject of Health.

77 By the decree recorded in the Nāgama Pillar Inscription: *Epigraphia Zeylanica*, Vol. II, p. 15.

78 By the decree recorded in the Noccipotāna Pillar Inscription: *Epigraphia Zeylanica*, Vol. II, p. 8.

79 By the decree recorded in the Kirigallāva Pillar Inscription: *Epigraphia Zeylanica*, Vol. II, p. 5.

80 *Epigraphia Zeylanica*, Vol. V, p. 370.

81 *Epigraphia Zeylanica*, p. 368.

82 *Epigraphia Zeylanica*, Vol. V, p. 396.

83 Kahaṁbiliyāva Slab Inscription, *Epigraphia Zeylanica*, Vol. V, p. 405 and p. 408.

84 *Epigraphia Zeylanica*, Vol. V, p. 132.

85 See the Abhayagiriya Pillar Inscription, *Ancient Ceylon*, Vol. IV, pp. 203-204. The Shorter Oxford Dictionary, *s.v.* 'must', states that the term is "Applied to male animals, as elephants and camels, in a state of dangerous frenzy to which they are subject at regular intervals." Cf. op. cit. *s.v.* 'rut': "the annual recurring sexual excitement of male deer; also, *transf.* of other animals." Commenting on the prohibition against the entry of elephants in must in the Abhayagiri Pillar Inscription of Kassapa IV (899-915A.D.) - *mat ätun novadnā koṭ* - Ranawella said: "This immunity of preventing elephants in *must* entering immunized lands is not met with in any other known inscription of this period or in any other period for that matter. An unpublished inscription of Sena II in a pillar now in the Colombo Museum, however, prohibits ordinary elephants, mahouts and horse keepers entering an immunized estate (*ätum ätgohuvan asgohuvan novadnākoṭ*)". *Ancient Ceylon*, Vol. IV, (1981), 193 at p. 208

The *Cūlavaṁsa* (66.150) said that King Gajabahu used such dangerous animals in his efforts to win over people. It was said that he "used under the pretense of sport, to go about the streets with a rutting elephant that had rut discharge, and when he was pursued by it would quickly flee under the pretext that refuge was difficult to find, into the house of people who were to be brought under his influence. He then gave them fitting money reward, costly ornaments and the like and brought them thus imperceptibly under his influence."

86 *Encyclopaedia Britannica*, Vol. 8, p. 405.

87 P. 32.

88 E.g., by irate members of the families of persons who had been killed seeking retribution. Although, in Sri Laṅkā, unlike in some other systems, e.g. in ancient Israel, blood-revenge was not recognized as legitimate, the possibility of the retributive infliction of punishment could not be ruled out.

89 *Culture*, p. 148.

90 *Epigraphia Zeylanica*, Vol. II, pp. 17 and 19.

90A Mahāvaṁsa, p. 67, note 1.

91 See Numbers 35: 12, 15; Deuteronomy 19: 4-6; Gerhard von Rad, *Deuteronomy: A Commentary*, trans. Dorothea Barton, Philadelphia:

Westminster Press, 1966, pp. 127-128; James E. Priest, *Governmental and Judicial Ethics in the Bible and Rabbinic Literature,* 1980, KTAV Publishing House Ins., New York, 1980, pp. 165-167.

91A See Ch. XVII note 26 above.

92 Slab Inscription of Kassapa V, *Epigraphia Zeylanica*, Vol. I pp. 53 and 54. Sanctuary privileges in Europe were first recognized toward the end of the fourth century, and were gradually extended to wider areas of and around churches. "Justinian, however, limited the privilege to those not guilty of serious crimes. In the Germanic Kingdoms, a fugitive was usually surrendered to authorities after an oath had been taken not to put him to death. In English common law a person accused of a felony might take refuge in a sanctuary: once there, he had a choice between submitting to trial or confessing the crime to the coroner and swearing to leave the kingdom (abjuration of the realm) and not to return without the king's permission. If he would neither submit to trial nor abjure the realm after 40 days, he was starved into submission": *Encyclopaedia Britannica,* Vol. 8, p. 405.

93 See preceding note.

94 *Epigraphia Zeylanica*, Vol. V, p. 140.

95 *Epigraphia Zeylanica*, Vol. II p. 5. Ranawella said that Wickremasinghe failed to translate *desattāna*, and supplied the omission in his paper, 'History'.

96 At one time, Paranavitana was of the view that *elamaruva* meant the slaughter of "cows", *Epigraphia Zeylanica*, Vol. III, p. 225, note 9, but he appears to have revised his view: See Jayanta Uduwara, "Pillar Inscription from Periyasenavatta," *Epigraphia Zeylanica*, Vol. VI, at pp. 197-198.

97 Iñginimiṭiya Pillar Inscription, *Epigraphia Zeylanica*, Vol. V, p. 359.

98 Godakumbura, *Epigraphia Zeylanica*, Vol. V, p. 396.

99 *Epigraphia Zeylanica*, Vol. VI, p. 97.

100 53. 14-27.

NOTES TO CHAPTER XVIII

1 History, text for notes 146 and 147, citing Paranavitana, *Epigraphia Zeylanica*, Vol. V, p. 191, note 9, with regard to *ulpaḍu/ ulvaḍu*. Paranavitana, in his edition of the Giritaḷē Pillar Inscription said these were royal officers and not temple officials: *Epigraphia Zeylanica*, Vol. III, p. 144.

1A While recording matters pertaining to King Paṇḍukābhaya, the *Mahāvaṁsa*, X. 80, said: "Because his mother and he himself had been befriended by him, he did not slay the king Abhaya, his eldest uncle, but handed over the government to him for the night-time: he became the 'Nagaraguttika' (Guardian of the City). From that time onward there were nagaraguttikas in the capital," although originally, it was, it seems merely a power-sharing exercise.

2 Ed. M. Vimalakitti and M. Sominda, p. 72.

3 Ranawella, Veväl̈kätiya, p. 3.

4 Cf. *Epigraphia Zeylanica*, Vol. II, pp. 117-118, note 13, where it is suggested that the phrase *val-vässan päl vässan hämä-täna-ma sādhā kanṭaka śodhanaya koṭä* in the Poḷonnaruva Galpota Slab Inscription may mean that there were residents in forests and in huts [as overseers?] who were employed by Niśśaṅkamalla in the task of cleansing the country of 'the thorns of disorder'. Were they spies? Cf. Manu, IX. 258 and 298. See Ch. XVI n. 4 above.

5 In 1984, I pointed out the alarming fact that in contemporary Sri Laṅkā, public cooperation was scarcely forthcoming and endeavoured to identify some reasons for that situation: A.R.B. Amerasinghe, "Law and Law Enforcement in Society," in *Life is Simply a Duty*, ed. S. J. Sumanasekera Banda, 1994, Sarvodaya Book Publishing Services, pp. 65 - 87.

6 Sirimal Ranawella, *Vevälkäṭiya Slab Inscription and its Copies*, 1996, Sri Lanka Historical Association, Colombo, p.8.

7 See Ch. XVI, text n. 146 sq. above.

8 About a pound and a half troy: Codrington, p. 44. Yājñavalkya (II, 266-276) discussed the subject of the detention and punishment of thieves and the liability of those whose duty was to apprehend them. Among other things, he said: " The blame attaches to the village officer in the case of murder or theft; to the owner of pasture ground [for offences in his pasturage]; to the detectives of thieves [in cases of offences] on a highway or in places other than pastures. A village shall pay when [the theft takes place] within its limits or that village to which the trace is carried. If [the theft be committed] beyond one *krosa* (two miles) [from any village], [the communities of] five surrounding villages or even of ten villages [shall pay]."

9 The Shorter Oxford Dictionary, *s.v.* 'wergeld', states as follows: "In ancient Teut. and O.E. law, the price set upon a man according to his rank, paid by way of compensation or fine in cases of homicide and certain other offences to free the offender from further obligation or punishment." Ranawella, op. cit., at note 34. stated as follows: "*Divimila*, 'wergild', compensation paid for killing or injuring a person to the victim's relatives. The term *Divimila* is equivalent to *Vairadeya* mentioned in the Hindu *Dharmaśāstras*. It was paid in kind, in the form of a hundred or fifty cows. (Majumdar, R.C., *Vedic Age*, p. 434.)"

10 Pp. 135-136.

11 History, at note 118 of the text. In ancient India, the king had to ensure law and order, and so, if there was a theft, the king's officers appointed over the village had to make good the loss of the owner if they could not discover the stolen articles. This goes back to Āpastamba (II. 26.8). See Sen-Gupta, p. 319.

12 Ed. M. Vimalakitti and M. Sominda, p. 72.

13 After a charge was framed in that manner, was the duty of assisting the court by marshalling the evidence, although not as a prosecutor in the modern sense, placed on some official? Sri Lanka may have had a system more like the continental system of Europe where the judge has an inquisitorial role. The procedure in the *Raṭa Sabhā* during the time of the Kandyan Kingdom, suggests that judges in pre-colonial times played a more active role in trying to ascertain the truth than might have been expected of a judge in a British type of court: In proceedings before the *Raṭa Sabhā* the members of the court seemed to have asked questions and debated the issues. See Ch. XV, text n. 115 sq. : Kapuruhami, p. 51; Hayley, pp. 64-65.

14 Ranawella, p. 9. Cf. Wickremasinghe, *Epigraphia Zeylanica*, Vol., I p. 251.

15 "All those also who in villages give food to thieves or grant them room for [concealing their implements], he shall cause to be put to death". Manu, IX. 271. "Those who give [to thieves] fire, food, arms, or shelter, and receivers of stolen goods, the ruler shall punish like thieves". Manu, IX. 278. Kātyayāyana (ed. Kane, p. 98 Tr. p. 267) said: "Those who supply food to thieves, those who give them fire and water, those who purchase [stolen] goods from them and receive [stolen] property from them and who hide them - these are all declared to the same punishment [as the thieves themselves]".

It seems that in a case in which a person who harboured a thief in his house, it was ordered that the occupant was expected to make restitution

himself until he had produced the suspect. Lawrie (Notes, p. 210) said: "The chiefs are of opinion that the prisoner should be confined to goal until he makes restitution to the complainant of the value of the clothes stolen, Rix-dollars 135; that after he has done so, that he be allowed thirty days to produce and convict the person he says committed the robbery; that if he fails to produce and convict the thief in time he shall be again taken up and considered as the thief and punished as such the robbery having taken place in his house, the complainant having sworn him as the thief, and he having voluntarily engaged to deliver up the thief. - Judicial Commissioner's Diary, 8th July, 1817."

Hayley (p. 105) said: "One of the principal differences between the Kandyan law of crimes and the English law is to be found in the matter of abetment. The former did not recognize any constructive responsibility for offences not personally committed. In accusations for treason, no doubt every person implicated in a conspiracy was held severally liable, but in other cases of joint crimes, each participant was personally liable for his own acts and no more. If two or more persons join in the commission of a robbery and one of them commits homicide, the slayer is held guilty of wilful and deliberate homicide, the rest only guilty of robbery." (D'Oyly p. 95 cited by Hayley, p. 105). In *The King* v *Mira Lebbe* (Board Minutes, July 23, 1819; Hayley, pp. 105-106), the prisoner was tried for aiding and assisting in the murder of Dēgaldoruē Lēkam. The Board of Commissioners concurred in the Judicial Commissioner's opinion that the prisoner, Mira Lebbe, was proved to have been present, aiding and abetting the Malays in the murder, "and although a person so aiding and abetting is construed by the English law to have actually committed the murder, the Resident is of opinion that there is no rule or custom of the Kandyan Provinces by which he can be deemed guilty of murder equally with the person who perpetrated the deed with his own hands." The Resident, however, in his report added: "But taking into consideration that, according to the evidence adduced, the prisoner Mira Lebbe must be presumed to have been the leader of the party, and that he is clearly guilty of such crime connected with that burglary (although not charged) the Board is of opinion that the sentence of death will be justly awarded against him." Hayley, p. 117. The decision in Meera Lebbe's case was justified; for in Sinhalese law, an abettor was punishable. This is evident from the Vëvälkäṭiya Inscription. See p.80 above. Hayley was aware of the existence of the Vëvälkäṭiya Inscription. See p. 265 above. The Slab-inscription of Kassapa V stated that murderers "and their abettors shall be tried and sentenced to be exiled in Dambadiv." See p. 363 above.

16 P. 9 note 36.

17 *Epigraphia Zeylanica*, Vol. III, p. 267. See the debate on the meaning of '*gedaḍ*', Ch. XVIII text below at n. 25 sq.

18 *Epigraphia Zeylanica*, Vol. I. p. 207.

19 *Epigraphia Zeylanica*, Vol. V, p. 400.

20 Slab Inscription of Kassapa V, *Epigraphia Zeylanica*, Vol. I, p. 54; *Cūlavaṁsa*, 44. 79.

21 *Mahāvaṁsa*, XXXVI. 111.

22 E.g. to a remote village See Ch. V. text at n. 141 sq. As we have seen, the heirs of Lord Budal, if they committed treason, were not liable to be punished except by banishment after amnesty was granted: Panākaduva Copper Plate of Vijayabāhu I, *Epigraphia Zeylanica*, Vol. V, p. 26.

23 Paranavitana, A revised edition of the Badulla (Horabora) Pillar Inscription, *Epigraphia Zeylanica*, Vol. V, p. 194 note 8.

24 As yet unpublished edition of the Badulla Pillar Inscription, p. 12 and note 13.

25 *Epigraphia Zeylanica*, Vol. VI, p. 57, note 7.

26 *Epigraphia Zeylanica*, Vol. III, p. 265.

27 *Epigraphia Zeylanica*, Vol. III, p. 267, note 5.

28 *Vēvälkäṭiya Slab Inscription and its Copies*, p. 9, note 35.

29 *Epigraphia Zeylanica*, Vol. I, p. 54.

30 *Epigraphia Zeylanica*, Vol. I, p. 103, note 12.

31 P. 9 note 35.

NOTES TO CHAPTER XIX

1 Pp. 43-44.

2 P. 134.

3 P. 203.

4 Bennett, lxxviii.

5 Ch. XV., text at n. 69 sq.

GLOSSARY

Abhiṣēka - ceremony of the installation of a monarch.

Adigār/Adikār/Adikārama - First Minister and principal judge after the king: See Ch. XIV, text n. 129 sq.

Āpā - ādipada - yuvarāja - uparāja - heir apparent.

Āsanaghara - Structures containing flower-altars in which Buddha relics were sometimes enshrined.

Attāni - immunity grants.

Atapattu - see Ch. XIV, n. 128

Adhikārama - Adhikāramvaru (pl.) - see Adigar.

Āracci - Āratchie - officer appointed over a village or group of villages, in rank below a kōrāḷa.

Badderāla - an official collector of taxes and fines.

Banḍāra muḍippuva - Lit. 'chief's knot' - Chief's share of fines collected by a raṭa sabhā. See Ch. XV, text at n. 142 sq.

Bhikkhu - Buddhist "priest"or monk. But see Ch. III notes 68 and 69.

Bulath (Bulat) - (h)/(s)urulla - See Ch. X note 46.

Cārittam - customs, customary laws.

Cetiya - see Thūpa.

Chena - forest or scrub land brought into cultivation by the slash and burn method.

Dāgäba - see Thūpa.

Daḷadā Māḷigāva - Temple of the sacred tooth relic of the Buddha. See Ch. XIV note 160.

Danḍanāyaka - high official vested with civil functions and military powers. See Ch. XIV text n. 41 sq.

Dasagama - administrative unit of ten villages. See Ch. XV, text n. 146 sq.

Dasa-rāja-dhamma - tenfold royal virtues. See Ch. IV, text n. 47 sq.

Dēvāla - shrines - see Ch. XIV, n. 86.

Dharmaśāstra - Sanskrit codes of conduct compiled by Indian sages, based on the experience and writings of several millenia. See Ch. III text at n. 19 sq.

Dissāva - provincial governor - Dissāvani - the territory of a provincial governor.

Divel lands/villages - properties given to officials for their maintenance.

Divi siṭṭu - written oaths for swearing. See Ch. XIV text at n. 79 sq.

Dugganā lands/rālas - See Ch. XIV note 104.

Gabaḍāva - Storehouse. See also Mahā Gabaḍāva

Gamarāla - leading village headman. See Ch. XV text at n. 13.

Gamabhojaka - Headmen. See also Gamarāla. See Ch. X, n. 77.

Gam sabhā - Village tribunal. See Ch. XV, n. 12 sq.

Hūniyam - sorcery.

Jātaka, Stories of the Buddha's former Births. See Index, s.v. *Jataka*.

Kaḍavata - see Ch. XIV n. 113.

Kahāpaṇa - Ancient coins. See Ch. IV note 97 and Ch. VIII note 174.

Kalañda - a jeweller's weight equal to 40 grains.

Kandyan - see uḍa raṭa.

Kankānam - overseers, superintendents, guards.

Kaṭubulla - A staff carried by an official, See Ch. XIV note 49 and note 110.

Kōrāḷa - the chief of a teritorial administrative unit known as a *Kōraḷē*.

Lēkam - secretary, scribe, clerk, recorder

Lē-nāyō - blood relations - children, grand-children, parents, brothers and sisters and their children.

Liyanarāla - scribe or clerk.

Mahā-gabaḍāva - Royal storehouse.

Mahā-hiragē - Great Prison.

Mahā Naḍuva - Supreme or Great Court. See Ch. XV, text n. 4 sq.

Mahānāyaka - Chief Priest of a Chapter of bhikkhus.

Māpā - mahapā, mahayā, mahādipāda - Heir presumptive

Mohoṭṭala - an official secretary or scribe.

Nagaraguttika - guardian of the city. See Ch. XVIII, n. 1A; see also Ch. XIV, n. 74.

Ōla - documents written on palm leaves. See Ch. XI text at n. 81 sq.

Pamuṇu - paraveṇi - hereditary property held in perpetuity.

Pasmahā dosa/sāvadda - the five most heinous crimes.

Pirivena - monastic college.

Prāḍvivāka - earlier, the foreman of the councillors of the King's Court in India and later a judge advising the King.

Praveṇi - see Pamuṇu

Purōhita - Royal chaplain. See Ch. III text n. 64 sq.

Rajakariya - service to the king or a temple. See Ch. X note 44.

Raṭa sabhā - District Court/council, depending on the context. See Ch. XV text n.74 sq.

Raṭe Mahatmayō - Chiefs of districts.

Ridī - a silver coin. It was worth about seven English pence, c. 1821.

Sabhā - court or council, depending on the context. See also Mahā Naḍuva, gam sabhā, raṭa sabhā.

Sabhāsada - councillor or assessor in ancient Indian courts of law.

Sabhā manḍapē - meeting place of a raṭa sabhā.

Saṅgha - Buddhist clergy / Order of *bhikkhus*.

Senāpati - Commander-in-chief of the army.

Sīṭṭu - written decrees. See also Divi-sīṭṭu.

Stūpa - see Thūpa.

Thēra/Thērō, *bhikkhu*.

Thupa (cetiya, dagoba, stūpa) - edifice, generally dome-shaped, built over a sacred relic.

Uḍa-raṭa - The Kandyan Kingdom. See Ch. III note 33 and Ch. XIV note 134.

Ulapaḍu (ulavaḍu) - Police officer.

Uṇḍi rāla - collector of royal revenues.

Uparāja - see Āpa.

Vanniyars, (vanni bandāra, vanni unnähēs, vanni varu) - see Ch. XIV text at n. 173 sq.

Vaṭṭōru - written judicial orders.

Vidāne - village official with police duties.

Vihāra - Buddhist temple or, in a wider sense, the whole complex of monastic buildings. For a comprehensive account of a Buddhist monastery and its structures, see Walpola Rahula, Ch. 8, pp. 112-134.

Vinaya - Buddhist ecclesiastical law; canons of conduct for bhikkhus.

Yuvarāja, see Āpa

TABLE OF CASES

The following refer only to decisions reported in Law Reports. Other decisions made by the Kandyan Board of Commissioners or by the King or officials are not included. For such decisions, reference should be made to the Index.

Abeysekere v. *Jayatilaka*, (1932) A.C. 260, 33 NLR 291, (P.C.), 495.

Anon., (1833-1859) Austin's Reports 150, 3.

Anon. Judicial Commissioner's Court, Kandy, No. 5173, (1833) Morgan's Digest, 10, 536.

Re Vanny Aiyar, (1915) 18 NLR, p. 181, 1.

Ex parte Blackburn, [1968] 2 QB, 150, 475.

Blankard v. *Galdy* (1693) 2 Salk. 411, 496.

Ex parte Blume, re Osborn, (1958) 50 SR (NSW) 334, 476.

Bowerman v. *Ferster*, (1986) 46 Sask. R. 236, 476.

Brassington v. *Brassington*, [1962] P. pp. 276, 482.

Bridge v. *Campbell Discount Co. Ltd.*, [1962] A.C. 600, 499.

Bunting v. *Thorne Rural District Council*, The Times, 26 March, 1957, 479.

Campbell v. *Hall*, (1774), Cowper Rep., i, 204, 495.

Campbell Discount Co. Ltd. v. *Bridge*, [1961] 1 QB 445, 499.

Chinnapa et al. v. *Kanakar et al.*, (1910) 13 NLR 157, 496.

Coleman v. *The State*, 378 So. 2d 640, (Miss. 1979), 476.

Cottle v. *Cottle*, [1939] 2 All ER 535, 476.

Re Diplock, [1948] Ch. 465, 499.

Dodwell & Co. Ltd. v. *John*, (1918), 20 NLR 206, 241, 499.

Duport Steels Ltd. v. *Sirs*, [1980] I.C.R. 161, 238, 242.

Eastmanco (Kilner House) Ltd. v. *Greater London Council*, [1982] 1 All ER 437, 500.

Ellis v. *Minister of Defence*, [1985] I.C.R. 257, 481.

Ernest v. *Ahamadu Lebbe*, (1919) 21 NLR 248, 496.

Fabrigas v. *Mostyn*, (1775) 20 St. Tr. 162, 496.

Fernando et al. v. *Fernando et al.*, (1920) 22 NLR 260, 496.

Fernando et al. v. *Fernando et al.*, (1940) 42 NLR 279, 496.

Fernando v. *Soysa*, (1896) 2 NLR 40, 241, 499.

Freeman v. *Fairlie*. (1828) 1 Moo. Ind. App. 305, 496.

Judge Re Inquiry Concerning a , 309 N.C. 635, 309 S.E. 2d 442 (1983), 476.

Jones v. *National Coal Board*, [1957] 2 QB 55, 479, 497.

Aiyappen Kangany v. *Anglo-American Tea Trading Co.*, (1912) 15 NLR 19, 496.

Kershaw v. *Nicholl*, (1860-1862), Ramanathan's Reports, 157, 3.

Kiria v *Poola*, (1859) Lorenz Reports, iii, 143, 536.

Kitnan Kangany v. *Young*, (1911), 14 NLR 435, 496.

Leeson v. *General Council of Medical Education & Registration*, (1890) 43 Ch. D. 366, 477.

Ma Nhin Bwin v *U Shwe Gone*, (1914) A.I.R. P.C. 97, 402.

Marikar v. *De Mel Ltd.*, (1943) 24 CLW 103, 496.

McInnes v. *Onslow Fane*, [1978] 1 WLR 1520, 232.

McLean v. *Workers' Union*, (1929) 1 Ch. 625, 475.

Re National Funds Assurance Co., (1878) 10 Ch. D. 118, 239.

Yeap Chea Neo v. *Ong Cheng Neo*, (1875) LR, 6 PC 381, 496.

Nothman v. *Barnet London Borough Council*, [1978] 1 WLR 220, 500.

Powers v. *Commonwealth*, (1902) 114 Ky. 237, 70 SW 644, 476.

Public Prosecutor v. *Mohd. Ghazali b. Ibrahim*, [1995] 2 AMR 1446, 476.

Mathes Pulle v. *Rodrigo*, (1827), (1820-1833) Ramanathan's Reports, 119, 239.

R. v. *Atkinson*, [1978] 1 W.L.R. 425, 465.

R. (Donoughue) v. *Cork County Justices*, [1910], 2 I.R. 271, 475.

R. v. *Rand*, [1866] LR 1 QB 230, 475.

R. v. *Sussex Justices, ex parte McCarthy*, [1924]1 K.B. 256, 465.

R. v. *Wilkes*, (1770) 4 Burr. 2527, 475, 481.

Rothermere v. *Times Ltd.*, [1973] 1 All ER, 1013, 475.

Ibrahim Saibo v. *Oriental Banking Corporation*, (1874) 3 NLR 148, 241, 499.

Ma Schwe Zin v. *Tan Ma Ngwe Zin*, (1932) A.I.R. Rangoon, 66, 21.

Vallipuram v. *Santhanam*, (1915) 1 C.W.R. 96, 496.

Re Vandervell's Trusts (No. 2), [1974] 3 All ER 205, 500.

Wicks v. *Firth*, [1982] 2 All ER 9, 480.

Williams v. *Robertson*, (1886) 8 S.C.C. 36, 3.

SELECT BIBLIOGRAPHY

See also Ch. XII note 36 above, and the references and the fuller information furnished above in the notes to chapters on the works referred to below.

Attention is also drawn to H.A.I. Goonetileke's, *General Bibliography on Sri Lanka, Bibliography of Ceylon: A Systematic Guide to the Literature on the land, people, history and culture published in Western Languages from the Sixteenth Century to the present day,* 5 Vols., Inter-Documentation Co., AG, Zug, Switzerland, 1970-1983.

A.R.B.Amerasinghe, *The Supreme Court of Sri Lanka - The First 185 Years,* Sarvodaya Book Publishing Services, Ratmalana, Sri Lanka, 1986.

M.A. Durand Appuhamy, *The Rebel Outlaws and Enemies to the British,* Gunasena, 1990.

M.B.Ariyapala, *Society in Mediaeval Ceylon - The State of Society in Ceylon as depicted in the Saddharma-ratnavaliya and other literature of the Thirteenth Century,* Dept. of Cultural Affairs, Colombo, 1956.

J. Bailey, *General Customs or Sirita in respect of Irrigation,* in *The Speeches and Minutes of Sir H.G.Ward, 1855-1860, 1864, pp. 89-110.*

J.W. Bennett, *Ceylon and its Capabilities,* 1843; Trumpet Publishers (Pvt.) Ltd., Rajagiriya, 1984.

Anthony Bertolacci, *A view of the Agricultural, Commercial and Financial Interests of Ceylon with an Appendix containing some of the Principal Laws and Usages of the Candians,* 1817: Tisara Prakasakayo, 1983. See Ch. III n.1 above.

H.W. Codrington, *A Short History of Ceylon,* Macmillan & Co., Ltd., London, 1929; Asian Educational Services, New Delhi & Madras, 1998.

L.J.M. Cooray, *An Introduction to the Legal System of Ceylon,* Lake House Investments, Ceylon, 1972.

James Cordiner, *Description of Ceylon (containing an account of the country, inhabitants & natural production),* Longman, Hurst, Rees and Orme, Aberdeen, 1807; Tisara Prakasakayo, 1983; K.V. G. de Silva & Sons (Col.) Ltd., Colombo, 1983.

The Culavamsa, being the continuation of the Mahāvamsa, tr. Wilhelm Geiger into German and from German into English by C. Mabel Rickmers (née Duff), Government Information Dept., 1953. See *Mahāvamsa.*

John Davy, M.D., F.R.S., *An Account of the Interior of Ceylon and of its Inhabitants with Travels in that Island,* 1821; Tisara Prakasakayo Ltd., 1969. See also Ch. III note 40.

Sir John D'Oyly - *A Sketch of the Constitution of the Kandyan Kingdom,* 1921, ed. Modder; 1929 ed. Turner; 1975, Tisara Prakasakayo. See Ch. III note 13 above. See also Ch. VI note 87 above.

Sir John D'Oyly, *Diary of Mr. John D'Oyly,* with an Introduction and Notes by H.W.Codrington, Journal of the Royal Asiatic Society (Ceylon Branch) Vol. xxv., No. 69, 1917; Navrang and Lake House Bookshop, 1995.

C.R. de Silva, *Sri Lanka A History,* Vikas Publishing House Pvt. Ltd., New Delhi, 1987.

Colvin R. de Silva, *Ceylon Under the British Occupation,* Colombo Apothecaries' Co., Ltd., Colombo, 1941.

K.M. De Silva, *A History of Sri Lanka,* Oxford University Press, New Delhi, 1981.

J.D.M. Derrett, "The Origins of the Laws of the Kandyans," *University of Ceylon Review,* XIV, 1956, pp. 105-150

P. Dolapihilla, *In the Days of Sri Wickramarajasingha Last King of Kandy,* Saman Press, Maharagama, 1959.

Epigraphia Zeylanica - See Ch. XI note 106.

Major Forbes, *Eleven Years in Ceylon,* 2 Vols., Richard Bentley, London, 1840; Gregg International Publishers Ltd.,Westmead, Farnborough, Hants, England, 1972.

Wilhelm Geiger, *Culture of Ceylon in Mediaeval Times,* ed. Heinz Bechert, Otto Harrosowitz, Wiesbaden, 1960.

F.A. Hayley, *A Treatise on the Laws and Customs of the Sinhalese including the portions still surviving under the name Kandyan Law,* H.W. Cave & Co., Colombo, 1923.

M.L.S. Jayasekera, "The Sources of Sinhalese Customary Laws", *Journal of Ceylon Law,* 1970.

M.L.S. Jayasekera, *Customary Laws of Sri Lanka in their Historical and Cultural Background,* Ministry of Cultural Affairs, Sri Lanka, 1984.

Sir W. Ivor Jennings, Q.C., Vice-Chancellor of the University of Ceylon, and later of the University of Cambridge, "Notes on Kandyan Law collected by Sir Archibald C. Lawrie, LL.D.", *University of Ceylon Review,* Vol.X (3) July, 1952, pp. 185-220.

Sir W. Ivor Jennings and H.W. Tambiah, *The Dominion of Ceylon: The Development of its laws and Constitution,* British Commonwealth Series, Vol. VII, ed., George W.Keeton, Stevens & Sons Ltd., London 1952.

K.A. Kapuruhami, "Raṭa Sabhāwa", *Journal of the Royal Asiatic Society (Ceylon),* Vol. XXXVIII, pp. 42-68. See also Ch. XV note 90 above.

Kauṭilya, *Arthaśāstra*, Tr. R. Shamasastry, 5th ed., Mysore, 1956. See Ch. VIII note 300.

William Knighton, *The History of Ceylon from the Earliest Period to the Present Time with an Appendix Containing an Account of its Present Condition,* Longman, Brown, Green and Longmans; Smith Elder & Co., and Madden & Malcolm, Edinburgh; Bell & Bradfute, London, 1845; Gregg International Publishers Ltd., Westmead, Farnborough Hants., England.

Robert Knox, *An Historical Relation of the Island of Ceylon in the East Indies,* 1681; Tisara Prakasakayo Ltd., 1966; 1989. See Ch. VI, note 50 above.

Lak Raja Lo Sirita, being *'Answers given by... Candian Priests to questions put to them by Governor Falck in ... 1769'.* See Ch. III note 1 above.

Sir Archibald C. Lawrie, "Notes on Kandyan Law Collected by Sir Archibald C. Lawrie, LL.D.", ed. W. Ivor Jennings, *University of Ceylon Review*, Vol. X, No. 3, July, 1952, pp. 185-220, cited as "Lawrie, Notes."

The *Mahāvaṃsa*, translated by Wilhelm Geiger, Pali Text Society, London, 1912, Government Information Dept., 1960. See Ch. II note 9 above.

The Laws of Manu, ed. G.Bühler, Vol. XXV, The Sacred Books of the East, ed. Max Müller, Oxford University Press, 1886; Motilal Banarsidass, Delhi, Varnasi, Patna, 1967, 1970.

C.J.R. Le Mesurier and T.B. Pānabokke, *Nīti-Nighaṇḍuva,* 1880. See Ch. VII, text at n. 18 sq. and n. 33 sq.

Sir Charles Marshall, *Judgments and Other Decisions and Directions of the Supreme Court of the Island of Ceylon from the Promulgation of the New Charter 1st October 1833 to March 1836,* Paris, 1839.

Henry Marshall, *A General Description of the Island and its inhabitants,* London, 1846; reprinted by Tisara Prakasakayo Ltd., 1969. My references are to the 1969 edition.

J.D.Mayne, *A Treatise on Hindu Law and Usage,* 1878, 11th Ed., 1950.

Lennox A. Mills, *Ceylon Under British Rule,* 1795-1932, London, 1933.

Frank Modder, *The Principles of Kandyan Law,* (1902); 2nd ed. in collaboration with Earle Modder, Stevens & Haynes and Stevens & Sons, London, 1914.

T. Nadaraja - *The Legal System of Ceylon in its Historical Setting,* E.J. Brill, Leiden, 1972.

C.W. Nicholas and S. Paranavitana, *A Concise History of Ceylon,* Ceylon University Press, Colombo, 1961.

Gananath Obeyesekere, *Land Tenure in Village Ceylon,* Cambridge University Press, 1967.

M.W. Padmaraji, "Legal Texts in Ancient Sri Lanka, A note on the Nīti Nighaṇḍuva", *Silver Jubilee Commemoration Volume of the University of Kelaniya,* 1986.

T. B. Pānabokke, *Nīti Nighaṇḍuva,* 1879. See Ch. VII text at n. 18 sq. and note 33 sq.

S. Paranavitana, *Inscriptions of Ceylon,* 2 vols., 1970 and 1983. See Ch. XI note 106 towards the end.

Robert Percival, *An Account of the Island of Ceylon,* 1803, 1804, 1805; Tisara Prakasakayo, 1975. See Ch. V note 112.

J.M. Perera, *Armour's Grammar of Kandyan Law,* Ceylon Times Co., 1880.

P.E. Pieris, *Sinhalē and the Patriots,* 1815-1818, The Colombo Apothecaries Co., Ltd., Colombo, 1950. See Ch. III Note 1.

Ralph Pieris, *Sinhalese Social Organization - The Kandyan Period,* The Ceylon University Press Board, Colombo 3, 1956.

Charles Pridham, *An Historical Political and Statistical Account of Ceylon and its Dependencies,* T.W. Boone, London, 1849.

Walpola Rahula, *History of Buddhism in Ceylon*, Buddhist Cultural Centre, Dehiwela, 3rd ed., 1993.

S. Ranawella, Badulla Pillar Inscription, (unpublished) proof copy.

S. Ranawella, "Ektäna - The Supreme Council in the Early Mediaeval Sinhalese Administration," *Kalyānī - Journal of Humanities & Social Sciences of the University of Kelaniya,* Vols. III and IV (1984-1985), pp. 56-65.

S. Ranawella, An account of the political and administrative organization of the Anuradhapura Kingdom to be published by the Ministry of Cultural Affairs, Sri Lanka, referred to in this work as 'History', for lack of bibliographical information.

S. Ranawella, "The System of the Adminstration of Justice in Ancient Sri Lanka from the beginning to 1255 A.D.", *Nīti Vimaṅsa, Law Students Union Journal,* Colombo, 1977, pp. 30-38.

S.Ranawella, *Vevälkäṭiya Slab Inscription and its copies,* Sri Lanka Historical Association, Colombo, 1996.

João Ribeiro, *The Historic Tragedy of the Island of Ceilão,* Lisbon, 1685, tr. P.E. Pieris, Colombo, Ceylon Daily News Press, 1948.

Vijaya Samaraweera, "The Judicial Administration of the Kandyan Provinces of Ceylon", 1815-1833, *The Ceylon Journal of Historical and Social Studies, New Series, No. 2, July-December,* 1971, pp. 123-150.

N.C. Sen-Gupta, *Evolution of Ancient Indian Law,* Tagore Law Lectures, University of Calcutta, 1950; Arthur Probsthain, London, and Eastern Law House, Calcutta, 1953.

George Ryley Scott, *A History of Torture,* T. Werner Laurie, London, 1940; Studio Editions Ltd., 1995.

Thomas Skinner, *Fifty Years in Ceylon*, 1891 and 1974. For a fuller account, See Ch. XV, note 66 above.

A.F.C. Solomons, *A Manual of Kandyan Law*, Times of Ceylon, 1898.

H.W.Tambiah, *Sinhala Laws and Customs,* Lake House Investments Ltd., Colombo, 1969.

H.W. Tambiah, *Principles of Ceylon Law*, H.W. Cave & Co., Colombo, 1972.

Sir James Emerson Tennent - *Ceylon - An account of the Island, Physical, Historical and Topographical with Notices of its Natural History Antiquities and Productions,* 1859, Sixth Ed., Tisara Prakasakayo, 1977. See Ch. II note 6 above. See also K. M. De Silva, "Sir James Emerson Tennent: Colonial Administrator and Historian". *Journal of the Royal Asiatic Society of Sri Lanka*, New Series, Vol. XLI, Special Number, 1996, pp. 12-37.

Tennekoon Vimalananda, *Sri Wickrema, Brownrigg and Ehelepola,* Gunasena, 1984.

H.B. Thompson, *Institutes of the Laws of Ceylon*, Trubner & Co., London, 1866, Vol. II pp. 597 - 693.

S.G.M. Weerasinghe, *Law and Legal Philosophy in Ancient Sri Lanka,* 1986 and 1991. See Ch. 1 note 7 above for further information.

Harischandra Wijetunga, *Nīti Nighaṇḍuva*, S. Godage & Bros., Colombo, 1998.

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* Monarchs are listed under "Monarchs".
* There may be more than one reference to a person or subject on the same page.

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