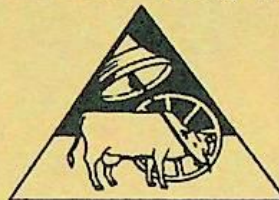


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# LST REVIEW

Volume 9 Issue 139 May 1999



## ACADEMIC FREEDOM AND FREEDOM OF EXPRESSION

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**LAW & SOCIETY TRUST**

# **LST REVIEW**

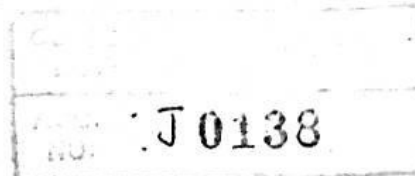
*(This is a continuation of the  
Law & Society Trust Fortnightly Review)*

EDITOR

*Dr Sumudu Atapattu*

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### **Editor's note.....**

This issue of the LST Review is devoted to university education in Sri Lanka, particularly how academic freedom can be threatened by unnecessary political interference. In April the Government tabled a Bill in parliament to amend the Universities Act of 1978. This Bill purported, *inter alia*, to make changes to the procedure in appointing Vice Chancellors, Registrars and Bursars of universities. It also sought to appoint two Members of Parliament to the University Council and provided that every Registrar and Bursar shall cease to hold office with effect from the date of commencement of the amending Act.

This Bill was challenged as being inconsistent with the Constitution by several academics, members of non-academic staff and the Inter-University Students' Union. We publish here the text of Dr Jayadeva Uyangoda's petition to the Supreme Court. He averred that several clauses of the Bill were arbitrary and irrational and, therefore, inconsistent with Article 12(1) of the Constitution. He further contended that given the realities of political culture of the day, the appointment of Members of Parliament to the University Council would adversely affect the freedom of speech and expression, and the freedom of thought and conscience of the academic community, thereby violating Articles 10 and 14(1)(a) of the Constitution.

In its determination, the Supreme Court held that several clauses of the Bill were indeed inconsistent with the Constitution. The Court referred to the definitions of "academic freedom" and "autonomy" in the Lima Declaration on Academic Freedom and Autonomy of Institutions of Higher Education and held that several provisions of the Bill eroded academic freedom and autonomy. It is, however, unfortunate that the judgment of the Court was rather brief. Unlike its determinations on the Anti-ragging Bill, and the Postal Corporation Bill, the Court did not elaborate on an important issue as academic freedom and autonomy and its relationship with freedom of expression.

We also publish an article by Dr Mario Gomez on Legal Education in Sri Lanka in which he looks at the pros and cons of professional versus academic legal education, new ways to teach legal education, English and legal education and women and the legal profession.



**PARLIAMENT OF THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA**

**UNIVERSITIES (AMENDMENT)**

**A**

**BILL**

**to amend the Universities Act, No. 16 of 1978**

---

*Presented by the Minister of Education and Higher Education on  
21st April 1999*

**(Published in the Gazette on April 12, 1999)**

*Ordered by Parliament to be printed*

**[Bill No. 296]**

## **STATEMENT OF LEGAL EFFECT**

Clause 2 : This Clause amends section 20 of the Universities Act, No. 16 of 1978 (hereinafter referred to as "the principal enactment") and the legal effect of the section as amended will be to extend an Order made by the Minister under that section, to remain in force for a period of six months.

Clause 3 : This clause amends section 34 of the principal enactment and the legal effect of the section as amended will be to provide for the recommendations of both the Minister and the University Grants Commission, in the appointment of the Vice-Chancellor of a University.

Clauses 4 and 5 : These clauses amend sections 37 and 38 respectively of the principal enactment and provides for the appointment of the Registrar and the Bursar respectively, of a University, by the University Grants Commission upon the recommendation of a Selection Committee.

Clause 6 : This clause amends section 44 of the principal enactment and the legal effect of the section as amended will be to provide for the appointment by the Minister, to the Council of a University, two members from among Members of Parliament, to represent the Government and the opposition.

Clause 7 : This clause amends section 48 of the principal enactment and the legal effect of the section as amended will be to provide for the appointment of Senior Professors and Professors of the Departments of Study of each faculty of a University to the Faculty Board of such University and for the election of two members to each faculty by the Permanent Lecturers of such faculty.

Clause 8 : This clause amends section 49 of the principal enactment and the legal effect of the section as amended will be to provide for -

- (a) the election of the Dean of a Faculty to be elected from among the Senior Professors, Professors, Associate Professors and Heads of the Departments of Study comprising that Faculty; and
- (b) the resignation and removal of such Deans.



Clause 9 : This clause amends section 51 of the principal enactment and the legal effect of the section as amended will be to provide for a Senior Professor, Professor, Associate Professor or a Senior Lecturer to be appointed as the Head of a Department of Study.

Clause 10 : This clause amends section 72 of the principal enactment and the legal effect of the section as amended will be to reduce the period of probation to one year, of a teacher who has been previously confirmed as a teacher in another Higher Educational Institution.

Clause 11 : This clause amends section 147 of the principal enactment and provides for new definitions of the expressions "Higher Educational Institution" and "teacher."

Clauses 12 and 13 : These clauses provide for the holders of the office of Registrars and Bursars respectively, of a University, to cease to hold such offices with effect from the date of commencement of this Act.

L.D. - O. 56/98.

**AN ACT TO AMEND THE UNIVERSITIES ACT, NO. 16 OF 1978**

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows:-

**Short title**

1. This Act may be cited as the Universities (Amendment) Act, No. of 1999, and shall come into operation on such date as the Minister may appoint by Order published in the Gazette.

**Amendment of section 20 of Act, No. 16 of 1978**

2. Section 20 of the Universities Act, No. 16 of 1978 (hereinafter referred to as the "principal enactment") is hereby amended by the repeal of subsection (5) of that section and the substitution of the following subsections therefor:-

"(5) An order made under subsection (4) shall come into force on such date as may be specified therein and shall, unless earlier revoked, remain in force for a period of six months.

(6) Where, upon the expiration of the period of validity of an Order made under subsection (4), the Minister makes a further Order under that subsection, such further Order shall be tabled forthwith in Parliament and shall cease to be in force, unless it is approved by Parliament within one month of it being tabled in parliament."

**Amendment of section 34 of the principal enactment**

3. Section 34 of the principal enactment is hereby amended as follows:-

(1) by the repeal of subsection (1) of that section and the substitution of the following subsection therefor:-

"(1)(a) The President shall, subject to the provisions of



paragraph (d), appoint the Vice-Chancellor of a University on the recommendations of both the Minister and the Commission.

(b) The Minister and the Commission shall make the recommendation from a panel of three names recommended by the Council of that University.

(c) Where the Minister and the Commission are unable to agree on a recommendation for the post of Vice-Chancellor of a University, it shall be the duty of the Council of that University to recommend a further panel of three names for their consideration.

(d) No person shall be appointed as Vice-Chancellor of the same University for more than two consecutive terms.

(e) The Vice-Chancellor of a University may be removed from office by the President after consultation with the Minister and the Commission."

- (2) by the substitution in subsection (7) of that section, for the words and figures "under subsection (1)(b) of this section," of the words and figures "under subsection (1)(d) of this section."

#### **Amendment of section 37 of the principal enactment**

4. Section 37 of the principal enactment is hereby amended by the repeal of subsection (1) of that section and the substitution of the following subsection therefor:-

(1) The Registrar of a University shall be appointed by the Commission upon the recommendation of a Selection Committee, the composition of which shall be prescribed by rules. The Registrar shall exercise, perform and discharge such powers, duties and functions as may be conferred or imposed on, or assigned to him by this Act or by any appropriate instrument."

#### **Amendment of section 38 of the principal enactment**

5. Section 38 of the principal enactment is hereby amended by the repeal of subsection (1) of that section and the substitution of the following subsection therefor:-

"(1) The Bursar of a University shall be appointed by the Commission upon the recommendation of a Selection Committee, the composition of which shall be prescribed by rules. The Bursar shall exercise, perform and discharge such powers, duties and functions as may be conferred or imposed on, or assigned to him by this Act or by any appropriate instrument."

#### **Amendment of section 44 of the principal enactment**

6. Section 44 of the principal enactment is hereby amended as follows:-

(1) in subsection (1) thereof by the repeal of paragraph (vii) of that subsection and the substitution of the following paragraphs therefor:-

"(vii) such number of members as is equal to the total number of members holding office under paragraphs (i), (ii), (iii), (iv), (v) and (vi), increased by one, appointed by the Commission from among persons who have rendered distinguished service in the educational, professional, commercial, industrial, scientific and administrative spheres;

(viii) two members appointed by the Minister, from among Members of Parliament who have rendered distinguished service in the spheres, referred to in paragraph (vii), to represent respectively, the Government and the Opposition;"

(2) in subsection (4) thereof by the substitution for the words "the Vice-Chancellor of the University as the case may be," of the words "Vice-Chancellor of the University or the Minister as the case may be;"

(3) in subsection (5) thereof by the substitution for the words "the Commission shall appoint," of the words "the Commission or the Minister as the case may be, shall appoint."

(4) in subsection (6) thereof by the substitution, for the words and figures "appointed under subsection (1)(v)" of the words and figures "appointed under paragraphs (vii) or (viii) of subsection (1)."

#### **Amendment of section 48 of the principal enactment**

7. Section 48 of the principal enactment is hereby amended in subsection (1A) thereof, by the repeal of paragraphs (b) and (c) of that subsection and substitution of the following paragraphs therefor:-

"(b) all permanent Senior Professors, Professors, Associate Professors and Senior Lecturers of the Departments of Study comprising that Faculty;

(c) two members elected by the Permanent Lecturers of the Faculty from among their number;"

#### **Amendment of section 49 of the principal enactment**

8. Section 49 of the principal enactment is hereby amended as follows:-

(1) by the repeal of subsection (1) of that section and the substitution of the following subsection therefor:-

"(1)(a) There shall be a Dean of each Faculty who shall be a full-time officer of the University and the academic and administrative head of that Faculty. The Dean shall be elected by the Faculty Board from among the Senior Professors, Professors, Associate Professors and Heads of the Departments of Study comprising that Faculty.

(b) The Dean may resign his office by writing under his hand addressed to the Vice-Chancellor, but shall continue to function until a new Dean is elected by the Faculty Board under paragraph (a).

(c) The Dean of a Faculty may be removed from office by the Vice-Chancellor on a vote of censure passed by not less than two thirds of the total membership of that Faculty Board at a special meeting convened for the purpose. The Vice-Chancellor shall preside at such special meeting."

#### **Amendment of section 51 of the principal enactment**

9. Section 51 of the principal enactment is hereby amended as follows:-

- (1) by the substitution, for the words "a Professor, Associate Professor, Senior Lecturer or Lecturer" wherever those words appear in that section, of the words "a Senior Professor, Professor, Associate Professor or Senior Lecturer."
- (2) by the insertion immediately after subsection (2) of that section of the following subsection:-

"(2A) A Head of a Department may resign his office by writing under his hand addressed to the Vice-Chancellor, but shall continue to function until such time a new Head of Department or a person to act in the post, is appointed under subsection (1)."

#### **Amendment of section 72 of the principal enactment**

10. Section 72 of the principal enactment is hereby amended by the repeal of subsection (1), of that section, and the substitution of the following subsection therefor:-

"(1) Every appointment to a post of teacher shall, in the first instance, be for a probationary period of three years, which period may be extended by the Governing Authority of the Higher Educational Institution to which such teacher is attached, by one year at a time for a further period not exceeding five years;

Provided that where the appointment is to a post of teacher and the appointee has been previously confirmed in a post of teacher in a Higher Educational Institution, such appointment shall, in the first instance be for a probationary period of one year."

#### **Amendment of section 147 of the principal enactment**

11. Section 147 of the principal enactment is hereby amended as follows:-

- (1) in the definition of "governing authority," by the repeal of paragraph (iii) of that definition, and the substitution, of the following paragraphs therefor:-

"(iii) a University College, means the Board of Management of that University College;

(iv) an Institute or a Centre for Higher Learning means the Board of Management of that Institute or Centre, as the case may be;

- (2) by the repeal of the definition of "Higher Educational Institution" and the substitution of the following definition therefor:-

"Higher Educational Institution" means a University, Campus, Open University, University College, Institute or Centre for Higher Learning, established or deemed to be established under this Act;"

- (3) by the repeal of the definition of "teacher" and the substitution of the following definition therefor:-

"teacher" means a Senior Professor, Professor, Associate Professor, Senior Lecturer or Lecturer and includes the holder of any post declared by Ordinance to be a post, the holder of which is a teacher;'

### **Special Provisions relating to Registrars of Universities**

12. (1) Every Registrar of a University, appointed under section 37 of the principal enactment and holding office on the day preceding the date of commencement of this Act, shall cease to hold office with effect from the date of commencement of this Act.

(2) The University Grants Commission may offer every person ceasing to hold office under subsection (1), employment as a Registrar of a University or in an equivalent post in a Higher Educational Institution.

(3) The University Grants Commission shall pay every person who is not offered employment under subsection (2) or who does not accept an offer of employment made under that subsection, reasonable compensation in such amount as may be determined by such Commission.

### **Special Provisions relating to Bursars of Universities**

13. (1) Every Bursar of a University, appointed under section 38 of the principal enactment and holding office on the day preceding the date of commencement of this Act, shall cease to hold office with effect from the date of commencement of this Act.

(2) The University Grants Commission may offer every person ceasing to hold office under subsection (1), employment as a Bursar of a University or in an equivalent post in a Higher Educational Institution.

(3) The University Grants Commission shall pay every person who is not offered employment under subsection (2) or who does not accept an offer of employment made under that subsection, reasonable compensation in such amount as may be determined by such Commission.

### **Sinhala text to prevail in case of inconsistency**

14. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

**IN THE SUPREME COURT OF THE SOCIALIST  
DEMOCRATIC REPUBLIC OF SRI LANKA**

In the matter of an application under  
Article 121 of the Constitution in respect  
of a Bill titled Universities  
(Amendment).

Dr. Jayadeva Uyangoda, 34/15, 3rd  
Lane, Kadawatha Road, Kalubowila,  
Dehiwela

**Petitioner**

**SC Determination No. 7/1999**

**Vs.**

Hon. Attorney General, Attorney  
General's Department, Colombo 12

**Respondent**

To - His Lordship the Chief Justice and other Lordships of the Supreme  
Court of the Democratic Socialist Republic of Sri Lanka.

On this 27th day of April 1999

The Petition of the Petitioner appearing by Ms. Lilanthi de Silva, Attorney-at-  
Law states as follows:-

1. The Petitioner is a citizen of Sri Lanka. He is a senior lecturer  
attached to the Department of Political Science, Faculty of Arts,  
University of Colombo and has been actively concerned in debate both  
within the University and without, on matters of academic freedom and  
university autonomy.

2. A Bill entitled Universities (Amendment) (hereinafter called the Bill) was published in the Gazette Extraordinary on 12th April 1999 and was placed on the Order Paper of Parliament on 21st April 1999. A copy of the said Bill is annexed hereto marked A.
3. The Petitioner states that the Long Title of the Bill introduces this Bill as an Act to amend the Universities Act No. 16 of 1978 (hereinafter referred to as the Principal Enactment). The Bill contains a statement of legal effect in respect of several provisions contained in the Bill.
4. The Petitioner states that a University is an organised community of academics and students in various fields who teach, learn and do research with active assistance from outside sources, the healthy functioning of which is only possible in an atmosphere of academic freedom and autonomy of institutions of higher education. The Petitioner states further that it is essential, in this context, that institutions of higher education have the capacity to make decisions regarding its internal government, finance and administration in a manner wholly independent from political pressure and/or interference.
5. The present Universities and other Higher Educational Institutions in Sri Lanka were established under the Universities Act No. 16 of 1978, as amended by amending Acts i.e. Amendment Acts No. 7 of 1985, No. 27 of 1988, No. 3 of 1989 and No. 1 of 1995.
6. The Petitioner respectfully states that the provisions of the aforesaid Bill are inconsistent with the Constitution for the following reasons:-
  - (a) Having regard to the provisions of the proposed Bill and its effects in relation to the appointment and removal of all three principal officers of a University, namely the Vice Chancellor, the Registrar and the Bursar of a University, the Petitioner states that the academic freedom and autonomy of the Universities would be adversely affected and/or rendered nugatory. Accordingly, the Petitioner states that provisions of the said Bill, as specified below, are inconsistent with the provisions of Articles 4, 10, 12(1), and 14(1)(a) of the Constitution.



- (b) Clause 2 of the Bill amends section 20 of the Principal Enactment which relates to the powers of the Minister to issue directions to the University Grants Commission (hereinafter referred to as the Commission). The Minister is thereby empowered to make all such provision as he may deem necessary regarding the closure of any Higher Educational Institution, the appointment of a Competent Authority for such institution and connected matters, in any situation where its functioning is deemed by him to be seriously dislocated. The said Clause 2 provides further that the Order containing such directions shall be tabled in Parliament and, unless earlier rescinded, remain in force for a period not exceeding six months. The petitioner states that this said period is excessive and arbitrary, has no rational basis to the objectives of the Act and thereby violates Article 12(1) of the Constitution.
- (c) Clause 3 of the Bill amends section 34 of the Principal Enactment and replaces the present provisions relating to the appointment of Vice Chancellors. The present amendment permits the Minister and the Commission to forward a recommendation for the post of the Vice Chancellor to the President from a panel of three names recommended by the Council. Following disagreement between the Commission and the Minister on such recommendation; and/or between the Minister and the Commission with the Council, the amendment further gives the Minister and the Commission the power to consecutively reject the nominations given by the Council of the University, the said Council then being compulsorily required to submit further recommendations.
- (d) I state that the said Clause 3 undermines the autonomy of institutions and academic freedom. These provisions lead to a situation where the University could be deprived of a Vice Chancellor for an indefinite period consequent to disagreement arising between the Commission, the Minister and the Council as specified aforesaid. The Petitioner respectfully states that the said Clause 3 undermines the autonomy of academic institutions and academic freedom. These provisions lead to a situation where the University could be deprived of a Vice

Chancellor for an indefinite period consequent to disagreement arising between the Commission and the Minister as specified aforesaid, thereby adversely affecting the functioning of the University. Accordingly, the Petitioner states that these provisions infringe upon the conscience of the academics of the University and affect the integrity and independence of Vice Chancellors and hence such provisions are inconsistent with Article 10 of the Constitution.

- (e) The provisions contained in Clause 3 further empower the political authority or appointees of the political authority to decide upon the highest position of a University in a manner that is contrary both to the intended objectives of the Act and internationally accepted principles upon which universities are established and function. By giving the Minister the deciding power in recommending the names proposed by the Council, the said provisions are irrational and arbitrary and are inconsistent with Article 12(1) of the Constitution.
- (f) Clause 3(1)(e) enables the President to remove a Vice Chancellor in consultation with the Minister and the Commission without any valid reason, with the Council of University not having any authority on such matters. These provisions would inevitably give rise to unfair and arbitrary action of relevant authorities to remove Vice Chancellors and are hence inconsistent with Article 12(1) of the Constitution.
- (g) Further Clause 3(1)(e) enables the President to remove a Vice Chancellor as aforesaid which provision undermines the freedom of conscience guaranteed to the Vice Chancellors. Thus the said provisions are inconsistent with Article 10 of the Constitution.
- (h) Clause 4 and 5 of the Bill takes away the powers of the Council of the University to appoint the Registrars and Bursars of the University and vests such power in the Commission. By virtue of Clause 12 and 13, all Registrars and Bursars will automatically cease to hold office and no guarantee is given to their employment, while no guidelines have been provided to

re-employ the present Registrars or Bursars. Such provisions are irrational and arbitrary and violate Article 12(1) of the Constitution.

- (i) Clause 6(1) of the Bill empowers the Minister to appoint Members of Parliament mandatarily to the Council of a University. The Petitioner states that there is no rational basis and/or nexus to appoint such persons to the governing boards of academic institutions especially the Universities, the functioning of which should be entrusted to apolitical bodies, thereby making the said provision inconsistent with Article 12(1) of the Constitution.
- (j) Further the Petitioner respectfully states that the said appointments will adversely effect the functioning of the other members of the Council. Given the realities of the political culture of the day, the freedom of speech and expression and the freedom of thought and conscience of the said members regarding crucial aspects of the functioning of the Universities would be adversely affected by the said appointments. Therefore, the said Clause 6(1) is inconsistent with Article 10 and 14(1)(a) of the Constitution.
- (k) The effect of clause 6(2) of the Bill would be to allow the Minister to entertain the resignations of the members of the Council of the University, which provision has no legal basis and hence is arbitrary and contrary to established principles on which universities are established and function. Therefore, the said provision is inconsistent with Article 12(1) of the Constitution.

- 7. The Petitioner respectfully states that the process by which the said Bill was passed violates Article 4 of the Constitution. The sovereignty of the people has been infringed by the passing of the said Bill without any consultation by the people and specially members of the academic community who are fundamentally affected by the provisions of the said Bill as aforesaid.

8. It is respectfully stated further that the aforesaid powers sought to be conferred on the Minister by the proposed Bill have been powers exercised hitherto by the President and that the additional conferring of the said powers on the Minister is a further erosion of established principles of academic freedom and the autonomy of higher educational institutions and are thereby inconsistent with Article 4 read with Article 3 of the Constitution.
9. In view of the aforesaid averments the Petitioner states that the said provisions of the said Bill are inconsistent with the Constitution and cannot be passed without the approval of 2/3 of the entire membership of Parliament and approval by people at a referendum.
10. Notice of this Petition and the document "A" have been served on the Hon. Attorney General and the Hon. Speaker of Parliament. The registered postal receipt is annexed herewith.
11. The Petitioner has not invoked Your Lordships' jurisdiction in respect of the same matter previously.

WHEREFORE THE PETITIONER RESPECTFULLY PRAY THAT YOUR LORDSHIPS COURT BE RELEASED TO:

- (a) entertain this Petition and hear the Petitioner;
- (b) determine that the aforesaid provisions of the Bill requires the approval of the People at a referendum and/or to be passed by special majority of two thirds of the whole number of Members of Parliament before the Bill can become law;
- (c) grant such other and further reliefs as to Your Lordships may seem meet.

.....  
Attorney-at-Law for Petitioner

**IN THE SUPREME COURT OF THE SOCIALIST DEMOCRATIC  
REPUBLIC OF SRI LANKA**

In the matter of an application under  
Article 121 of the Constitution "A Bill to  
amend the Universities Act No. 16 of  
1978."

SC (SD) No. 6/99

Dr. Deepika Udagama,  
No. 49/1, Gothami Road, Colombo 8

**PETITIONER**

Vs.

Hon. The Attorney-General  
Attorney-General's Department,  
Colombo 12.

**RESPONDENT**

\*\*\*\*\*

SC (SD) No. 7/99

Dr. Jayadeva Uyangoda,  
No. 34/15, 3rd Lane, Kadawatha Road,  
Kalubowila.

**PETITIONER**

Vs.

Hon. The Attorney-General,  
Attorney General's Department  
Colombo 12.

**RESPONDENT**

SC (SD) No. 8/99

Madugeta Kumarage Somadasa  
Kumarage,  
C16, North End, University Park,  
University of Peradeniya, Peradeniya.

PETITIONER

Vs.

Hon. The Attorney-General,  
Attorney General's Department  
Colombo 12.

RESPONDENT

\*\*\*\*\*

SC (SD) No. 9/99

Inter-University Students Federation,  
Sri Jayawardenapura University,  
Gangodawila, Nugegoda.

PETITIONER

Vs.

Hon. The Attorney-General,  
Attorney General's Department  
Colombo 12.

RESPONDENT

\*\*\*\*\*

SC (SD) 10/99

Madurapperumage Dammika Perera,  
Bothale, Ihalagama,  
Ambepussa.

PETITIONER

Vs.

Hon. The Attorney-General,  
Attorney General's Department  
Colombo 12.

RESPONDENT

\*\*\*\*\*

SC (SD) No. 11/99

Camena Erica Guneratne,  
17/27. Wijayaba Mawatha, Nawala  
Road,  
Nugegoda.

PETITIONER

Vs.

Hon. The Attorney-General,  
Attorney General's Department  
Colombo 12.

RESPONDENT

\*\*\*\*\*

SC (SD) NO. 12/99

1. The University English Instructors  
Association (UEIA)
2. Nimal Fernando,  
Salmal Mawatha, Nedimala,  
Dehiwela.

PETITIONERS

Vs.

Hon. The Attorney-General,  
Attorney General's Department  
Colombo 12.

RESPONDENT

**BEFORE** : Dheeraratne, J.  
Wijetunga, J.  
Shirani A. Bandaranayake, J.

**COUNSEL** : R. Chula Bandara with D.K. Dhanapala and A.R.  
Mendis for the petitioner in 4/99.

K. Kanag Iswaran PC. with  
J.C. Weliamuna, M.A. Sumanthiran,  
Ms. Kishali Pinto Jayawardena,  
Sundari de Alwis and  
Dilshani Wijewardena for the  
Petitioners in 5/99 and 6/99.

Dr. Jayantha de Almeda Gunaratne with Ms. Kishali  
Pinto Jayawardena for the petitioner in 7/99.

J.C. Weliamuna for the petitioner in 8/99.

Manohara R. de Silva with David Weeraratne for the  
petitioners in 9/99 and 10/99.

A.S.M. Perera, P.C., with J.C. Weliamuna for the  
petitioner in 11/99.

R.K. Abeynayake for the petitioner in 12/11.

L.M. Wijesurendra, SSC, for the Attorney General.

**ARGUED ON:** 03.05.1999

**DETERMINATION**

Nine petitions were filed alleging that clauses 2, 3, 4, 5, 6, 7, 8(i)(b) 9(2A), 11, 12 and 13 of the Bill entitled "A Bill to amend the Universities Act No. 16 of 1978" were inconsistent with Articles 3, 4, 10, 12(1), 12(2), 14(1)(a) and 14(1)(g) of the Constitution. These petitions were preferred to this Bench by His Lordship the Chief Justice and were taken up for consideration together



on 3rd May 1999. In the course of the arguments, it was submitted that clause 10 of the Bill too was inconsistent with the Constitution.

It was submitted that in determining inconsistency with Articles of the Constitution, we must consider the effect of the Bill and its clauses and not its objects. This has been held so in the decision of this Court in SC(SD) 1/97 to 15/97. We are in respectful agreement with this view.

It was submitted that some of the provisions of the Bill erode "academic freedom" and "autonomy". Our attention was drawn to the Lima Declaration on "Academic Freedom and Autonomy" of institutions of Higher Education. In that Declaration academic freedom was defined to mean "the freedom of members of the academic community, individually or collectively, in the pursuit, development and transmission of knowledge, through research, study, discussion, documentation, production, creation, teaching, lecturing and writing. Autonomy was defined in that Declaration to mean "the independence of the institutions of higher education from the State and all other forces of society, to make decisions regarding its internal government, finance, administration and to establish its policies, research, extension work and other related activities.

We agree that academic freedom and autonomy are essential requisites for the attainment of the objectives of any institution of Higher Education.

The UNESCO, at a meeting in Paris from 21 October to 12 November 1997 in respect of higher education, *inter alia*, resolved as follows:

- "17. The proper enjoyment of academic freedom and compliance with the duties and responsibilities listed below requiring the autonomy of institutions of Higher Education. Autonomy is that degree of self-governance necessary for effective decision making by institutions of Higher Education regarding their academic work, standards, management and related activities, consistent with systems of public accountability, especially in respect of funding provided by the State and respect for academic freedom and human rights. However, the nature of institutional autonomy may differ according to the type of establishment involved.

18. Autonomy is the institutional form of academic freedom and a necessary pre-condition to guarantee the proper fulfilment of the functions entrusted to higher-educational teaching personnel and institutions.
19. Member States are under an obligation to protect higher education institutions from threats to their autonomy coming from any source."

We agree with the submissions made that any erosion made on academic freedom and autonomy would infringe on Article 10 and 14(1)g of the Constitution.

### CLAUSE 2

Subsection 20(4) of the principal enactment enables the Minister, in event of the work or administration of any Higher Educational Institution being seriously dislocated, to make certain orders like closure, appointment of a competent authority etc. This clause seeks to repeal subsection (5) of section 20 of the principal enactment and substitute therefor new subsections (5) and (8). The principal effect of this amendment is firstly, to enable an order made by the Minister under subsection (4) of section 20 to be in force, unless revoked earlier, for a period of 6 months (instead of three); secondly, to enable such an order initially made, not to be tabled before Parliament forthwith or otherwise. Any further order made by the Minister is required to be tabled forthwith in Parliament, which order shall cease to be in force unless approved by parliament, within one month of such tabling.

This clause would enable the Minister to close an University for 6 months without informing the Parliament of any such closure. We consider this irrational and arbitrary and has no nexus to the objectives of the Act. This clause, therefore is violative of Article 12(1) of the Constitution.

### CLAUSE 3

This clause seeks to repeal subsection 34(1) of the principal enactment and substitute therefor a new subsection. The effect of the amendment is to enable the President to appoint the Vice-Chancellor of a University on the recommendation of both the Minister and the Commission. (Earlier

recommendation of the Commission only was required.) The recommendation, as earlier shall be made from a panel of three names submitted by the Council of that University. The proposed subsection (c) requires, where the Minister and the Commission are unable to agree on a recommendation, it shall be the duty of the Council of that University to recommend a further panel of three names for consideration. As regards removal of the Vice-Chancellor, the proposed subsection (a) enables the President to remove him, not after consultation only with the Commissioner as before, but after consultation with the Minister as well.

It was submitted that the effect of this clause will be encroachment upon "academic freedom" and "autonomy." The Minister's intervention regarding the appointment of the Vice-Chancellor was submitted as an interference with the University administration. It was also submitted that the Minister's inability to agree with a recommendation submitted by the Council to the Commission could result in a deadlock and bring the University administration to a grinding halt. We find that this clause is inconsistent with Articles 10 and 12(1) of the Constitution.

#### CLAUSES 4 AND 5

Principally, these clauses seek to amend sections 37 and 38 of the principal enactment, so as to remove the power to appoint the Registrar and the Bursar of an University, from the Council of the University and confer that power on the Commission; the Commission shall appoint those officers upon the recommendation of a Select Committee, the composition of which shall be prescribed by rules.

In terms of section 44(1) of the Universities Act, the Council shall be the executive body and the governing authority of the University. These 2 clauses have removed the appointment of the 2 principal officers of the University from the Council and vested that power with the UGC. Learned Counsel submitted that these 2 principal officers will be compelled to serve two masters. We find that these 2 clauses are irrational and arbitrary and have no nexus to the objectives of the Act. These 2 clauses, therefore are violative of Article 12(1) of the Constitution.

## CLAUSE 6

Clause 6(1) seeks to amend section 44 of the principal enactment to enable the Minister to appoint two members to the Council of the University, from Members of Parliament (who have rendered distinguished service in educational, professional, commercial, industrial, scientific or administrative spheres) to represent the Government and the opposition. Clause 6(2) seeks to amend subsection (4) of section 44 by adding the Minister as one who is entitled to receive the written resignation of a member of the Council; the words "as the case may be" in that subsection indicate that Minister is only entitled to receive the resignation of the two MPP appointed by him. Proposed amendment to subsection (6) of section 44 provides for the MPP appointed to the Council to be entitled to remuneration.

Learned Counsel submitted that the two clauses are designed to politicise the University Council. It was submitted that the presence of parliamentarians will inhibit free discussion among members of the Council. The presence of 2 parliamentarians also will make the Council susceptible to interference by the Minister. We are of the view that this clause is in conflict with Articles 10 and 12(1) of the Constitution.

## CLAUSE 7

This clause seeks to amend subsection 48(1A) of the principal enactment (brought in by Act No. 7 of 1985). The purpose of the proposed amendment is to provide for the appointment of Senior Professors and Professors of Departments of study of each Faculty of a University to the Faculty Board of such University; and to provide for the election of two members to a Faculty Board, by the permanent Lecturers of such Faculty from amongst them.

Although some petitioners in these petitions have objected to clause 7, no submissions were made to us in the course of arguments. We find no inconsistency of clause 7 with the Constitution.

## CLAUSE 8 1(b) AND CLAUSE 9 (2A)

Proposed new subsection 49(1)(b) provides that where a Dean resigns his office by writing under his hand addressed to the Vice-Chancellor, he shall continue to function until a new Dean is elected by the Faculty Board.

Likewise proposed new subsection 51(2A) provides where a Head of a Department tenders his written resignation, he shall continue to function until such time a new Head or a person to act in that post is appointed. It was submitted that compelling a person who has resigned to continue to function is violative of Article 14(1)(g), as the freedom to engage oneself in an occupation also contemplates to freedom to disengage himself. We also find that the provision is arbitrary and unreasonable. These 2 clauses are inconsistent with Article 12(1) and 14(1)(g) of the Constitution.

#### CLAUSE 10

This clause seeks to amend subsection 72(1) of the principal enactment which subsection was earlier amended by Acts No. 7 of 1985 and 1 of 1995. The main body of the subsection, which states that every appointment to the post of teacher shall, in the first instance, be for a probationary period of three years, which period may be extended by the governing authority of the Higher Educational Institution (HEI) to which the teacher is attached, by one year at a time, for a further period not exceeding 5 years, remains unamended. The amendment is proposed to the proviso to the section which presently consists of limbs (a), (b) and (c). The proposed proviso states, "Provided that where the appointment is to a post of teacher and the appointee has been previously confirmed in a post of teacher in a Higher Educational Institution, such appointment shall, in the first instance be for a probationary period of one year."

The law as it is, refers to previous confirmation in a post of teacher in another HEI or another Department of the HEI to which the appointee is attached, in order to attract a probationary period of one year.

Subsections (b) and (c) of the proviso are proposed to be removed. These two subsections presently provide that where a teacher and the appointee has been previously confirmed in any post equivalent to the post of teacher in another HEI or has been previously confirmed in any other Department of the HEI to which the appointee is attached, such appointments shall not be subject to any probationary period.

Although submissions were made that removal of subsections (b) and (c) are arbitrary, we are unable to agree with his submission as they are not retrospective. There is no inconsistency between the clause and the provisions of this Constitution.

## CLAUSE 11 - DEFINITION OF TEACHER

The amendment seeks to add the designation "Senior Professor" to be included in the definition of "teacher" in the interpretation section 147 of the principal enactment.

It was submitted on behalf of the University English Instructors that non inclusion of the term "English Instructors" within the definition of a "teacher" causes them discrimination. There is no doubt in certain circumstances, discrimination could be caused by an act of omission. The real grievance of these petitioners is that, by virtue of the fact that they are not included in the definition, various allowances and benefits like the cost of living allowance, retirement benefits etc., which from time to time granted by the State to those who come under the definition of a "teacher," are not extended to them. The English Instructors do not fall within the legislative scheme of the Universities Act. For instance, section 46(2)(j) makes provision for 2 "teachers" to be in the Senate of the University; section 84(1)(g) provides 2 "teachers" to be in the Academic Syndicate. The English Instructors should look elsewhere to get their grievances redressed. We are unable to say that this clause is inconsistent with any Article of the Constitution.

## CLAUSE 12 (REGISTRARS) and 13 (BURSARS)

Clause 12 and 13 are couched in identical terms; 12 refers to Registrars and 13 refers to Bursars; we shall refer to them in common as "officials." Clauses 12(1) and 13(1) provide that those officials who hold office before the commencement of the proposed Act, shall cease to hold office with effect from the date of the Act. Clauses 12(2) and 13(2) provide that the University Grants Commission may offer every such official ceasing to hold office, employment in that same capacity in a University or in an equivalent post in a Higher Educational Institution. Clauses 12(3) and 13(3) provide that the UGC will pay those officials who were not offered employment under subsections (2) of either clause, or those who do not accept an offer of employment under subsections (2) of either clause, reasonable compensation in such amount as may be determined by the Commission.

We observe that clauses 12(2), 13(2) in the Sinhala version of the Bill are different from the English version. Learned Senior State Counsel submitted that the Sinhala version is erroneous and we should ignore those discrepancies.

It was submitted that these clauses are arbitrary. No reasons were adduced by Learned Senior State Counsel as to why all the Registrars and Bursars of the several Universities should cease to hold office. We hold that these 2 clauses are inconsistent with Article 12(1).

### CONCLUSION

We determine that:

Clause 3 of the Bill is inconsistent with Articles 10 and 12(1) of the Constitution;

Clause 6 of the Bill is inconsistent with Articles 10 and 12(1) of the Constitution;

and may only be passed with a special majority prescribed in Article 83 of the Constitution and approved by the People at a Referendum;

Clause 2 of the Bill is inconsistent with Article 12(1) of the Constitution;

Clause 4 and 5 of the Bill are inconsistent with Article 12(1) of the Constitution;

Clause 8(1)(b) and 9(2)(a) of the Bill are inconsistent with Articles 12(1) and 14(1)g of the Constitution;

Clause 12 of the Bill is inconsistent with Article 12(1) of the Constitution; and

Clause 13 of the Bill is inconsistent with Article 12(1) of the Constitution;

and may only be passed with special majority prescribed by Article 84(2) of the Constitution.

R.N.M. DHEERARATNE,  
JUDGE OF THE SUPREME COURT

A.S. WIJETUNGA,  
JUDGE OF THE SUPREME COURT

S.A. BANDARANAYAKE,  
JUDGE OF THE SUPREME COURT

11.05.99

## **CURIOUS MINDS: LEGAL EDUCATION IN SRI LANKA**

*Dr Mario Gomez\**

### **1. 'Professional' versus 'Academic' Legal Education**

To understand legal education in Sri Lanka it is important to understand the different contexts and locations in which law has been taught. Law has been taught for most of this century in two contexts and locations. First, at the Sri Lanka Law College, an institution that was set up at the beginning of this century, with a view to preparing persons for the practice of law, and secondly at the Faculty of Law, University of Colombo, which has tried to provide an 'academic' orientation to the teaching of law.

This distinction, between a professional legal education and an academic legal education, has been a distinction of importance in the debates on legal education in Sri Lanka. It is believed that the Sri Lanka Law College programme prepares students for the 'profession'. At the Law Faculty, on the other hand, the perception is that students get a theoretical and conceptual foundation, and less hard core information or professional skills.

There is now a third institution offering legal teaching: the Open University was set up in 1980 with the objective of democratising educational opportunity and commenced instruction for a Bachelor of Laws programme using distance education techniques.<sup>1</sup>

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\* Lecturer, Faculty of Law, University of Colombo. Text of a presentation made at SAARCLAW held in Male in May 1999. Edited for publication.

<sup>1</sup> See Mario Gomez, *Legal Education for Social Change* (Law & Society Trust, Colombo, 1993), pp 33-34.



Legal training in Sri Lanka has always been under the close supervision of the legal profession.<sup>2</sup> In the nineteenth century prospective lawyers learned the skills of the trade in the chambers of practitioners till a more formalised system of lectures came into place in 1889.<sup>3</sup> Even after that, many of the lecturers were legal practitioners. A former Dean of the Faculty of Law observed that as late as 1943, when he commenced teaching in the Law College "the idea that the study and teaching of law could be a career was a novelty."<sup>4</sup>

The Law College which was established early in the century continued with this tradition. The College was located right next to the courts complex in Colombo and its students have always had very close links with the legal profession and the judiciary. The College has used, and continues to use, legal practitioners to teach many of its courses.

To be able to enter the Bar, students have to pass the final examination conducted by the Law College. It is administered by the Council of Legal Education, of which the Chief Justice is the *ex officio* chair. The College has produced a bevy of eminent legal luminaries, many of whom have made a significant contribution to the development of the law and legal thought in this country.

The College prepares students for the "practice of law." The emphasis is on giving students a 'professional' as distinguished from an 'academic' orientation. There is thus a considerable focus on procedure and on learning the 'nuts and bolts' of the law.

"We are more equipped for the practice of law" is what many of these students say, who contrast their training with those students from the Faculty of Law. According to this view, while the Law Faculty student may know the constitutional provisions of countries in Southern Africa and North America,

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<sup>2</sup> Neelan Tiruchelvam, "The Faculty of Law at Peradeniya 1947-66 and at Colombo from 1966," in K M de Silva (ed.) *The University System in Sri Lanka*, pp 97-109.

<sup>3</sup> Convocation Address by the former Dean of the Faculty of Law, Professor T Nadaraja, Convocation of the University of Colombo 1984. Text on file with the author.

<sup>4</sup> *Ibid* at p 2.

and the principles regulating divorce in England, they know little of the complexities of legal practice and often take time to find their feet at the Bar.

The approach taken at the Law College must be contrasted with the approach at the Faculty of Law in the University of Colombo where the focus has been on the 'academic' teaching of law. The Faculty, which initially began as a Department of Law, is a newer institution and completed 50 years in 1997. The Faculty has tried to take a broader approach to the teaching of law by providing what it believes is an 'analytical and jurisprudential perspective' to its students. In many courses students are exposed to comparative jurisprudence and developments. Law reform and the need to keep the law responsive to social change and needs is also emphasised in many of the courses.

In the 1950s a former Dean articulated what he thought should be the objectives of legal education and an extract from his writing perhaps illustrates what the Faculty believes it does:

*Modern legal education, therefore, concentrates on providing the background and the method of approach rather than on merely imparting information, believing ... it is more important to acquire the habit of mind which can get to the bottom of an unfamiliar subject than to acquire a merely factual knowledge of details .... the law schools ... have to ... remember that, in the limited period during which they have the opportunity of moulding young minds, their object should be not to produce a short term professional competence but to inculcate a scientific legal training which must serve as a basis for a whole lifetime in a profession calling for the most varied skills.<sup>5</sup>*

However, as one of the first students of the Faculty of Law, and a former Principal of the Law College, observed "even practical subjects such as Evidence and Civil Procedure found a place in the curriculum" of the Faculty during the initial stages.

The purpose of this paper is not to contest these different approaches or to take sides, but rather to suggest that there is a different way of looking at

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<sup>5</sup> T Nadaraja, "Objectives in Legal Education" (1956), xiv University of Ceylon Review p 103.

legal education, which can be of value not only for those in Sri Lanka, but also for the other countries of South Asia.

The dichotomy between professional legal education and academic education is a false one and has prevented the country from developing a sound policy in this area. The dichotomy has also fuelled tensions between the products of these institutions and the tensions generated have prevented the development of a coherent system of legal education.

To take the view that the modern lawyer does not need analytical skills is clearly wrong. The modern lawyer, whether it be in practice, in the judiciary, in the private sector, or in an international organisation, needs the ability to think independently, creatively and critically about the issues he or she encounters. Similarly to take the view that a modern lawyer does not need to have an exposure to comparative material is also misplaced, because often comparative exposures can fuel crucial insights and promote critical thinking.

It is, however, also wrong to take the view that the modern lawyer does not need an insight into procedure and the complexities of how the legal system operates on a day to day basis. The 'nuts and bolts' of legal practice is an essential component of any law student's training.

There is a plethora of issues which every law student should be exposed to, which cuts across the professional versus academic dichotomy. Core subject areas and core skills need to be made available to every potential lawyer, irrespective of whether that lawyer will be practising in a court of law, or working in another legal environment. Clearly every law student needs to have a sense of history - how has his or her legal system developed and what historical and social forces have shaped this system. A law student also needs an exposure to some fundamental theoretical issues that is confronting his or her legal system.

At the same time a law student needs a grasp of procedure and an exposure to litigation, negotiation and arbitration skills and techniques. There are core areas of the substantive and procedural law, which every law student would need to be exposed to. In addition, the student should be given the freedom to choose optional areas of interest to him/her.

## **2. The 'Methods' of Legal Education**

However, more important than the teaching of legal history, legal theory or the substantive and procedural areas of the law, is the need to generate in the law student the capacity to think creatively and independently. Legal education needs to produce curious and creative minds.

In this regard legal education needs to look closely at 'how' students learn. Currently do students really 'learn' and does legal education succeed in kindling a turbulent and unbridled curiosity? Or is legal education confined to an unreflective absorption of large amounts of often irrelevant material with the result that students leave law school unmotivated and unexcited about the many potentials of law?

Law schools in Sri Lanka need to move away from the mere dispensing of information and need to look at other ways provoking students to learn. At the moment, at least at the Faculty of Law, there is a tendency to feed the student with large amounts of information which students find difficult to digest.

There are many methods of learning which legal educators should begin to explore. Field trips, research assignments that combine library based research with 'community' based research, the use of audio visual aids, and the development of law clinics at the law school, are potentially very exciting methods. 'Learning by doing' exercises, including simulated exercises such as moots and mock courts, and internships and placements with law firms and other institutions, are some other methods that should be seriously considered.

Three years ago the Law Faculty made a significant change to its law programme by departing from an exclusive focus on examinations. Together with changes to the syllabi, it also made compulsory two assignments for every subject. Now it is mandatory that students do two assignments in each subject they take. The continuous assessment system introduced by the Faculty gives 30% for assignments and 70% for the year-end exam. While the student can fit the year-end exam without doing the two assignments, the student will be forfeiting 30% of marks given to the assignments. The assignments usually take the form of a research paper on a preset topic. They may sometimes include an open book exam. The purpose has been to focus less on 'cramming' and memory power, and more on developing a capacity

for independent thinking. This is a step forward and is certainly the way to go. These changes were foreshadowed some years previously when the Faculty allowed students in the Legal Theory course the option of submitting a 5000 word research paper for 40% of their total marks.

### **3. Language and Legal Education**

Language has been the other problem that legal educators have had to grapple with. Six years ago when I wrote a monograph on legal education, I believed that the teaching of law in Sinhala and Tamil had helped to broaden educational opportunity. I thought at that time, that offering the law degree in these languages was the 'democratic' thing to do since it enabled many more classes of people to participate in the learning of the law. I still believe that it was the most democratic thing to do, but I am beginning to wonder whether it has resulted in real equality of opportunity.

The Law Faculty in the University of Colombo is one of the few institutions in the world (and the only Faculty in Sri Lanka) which teaches law in three languages and this has sometimes acted as an obstacle to change. Every course is offered in Sinhala, Tamil and English, and the student has had the option of choosing the medium of instruction and taking exams in a language of his or her choice subject to a test of competence. Currently about 60% of the students follow lectures in Sinhala and the balance follow lectures in Tamil and English.

The Faculty began teaching law in three languages in 1972 as a result of political pressure.<sup>6</sup> Although law has been taught in three languages for over 25 years, very little legal literature has been published in Sinhala and Tamil. Many of those who write still prefer to publish in English and there have been very few translations of English texts.

For those law students currently studying in Sinhala and Tamil there is very little writing on the subject. Some level of proficiency in English is required since even law reports are published only in English. The result is that for students who are not proficient in English, the classroom becomes the centre

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<sup>6</sup> R K W Goonesekere, "Legal Education," in *Education in Ceylon: A Centenary Volume* (Ministry of Education and Cultural Affairs, Colombo, 1969), p 857 at p 864.

of their learning process. They have to rely, to a large extent, on the information given by the lecturer in the classroom.

For those students who are not proficient in English, there is little incentive to have an interactive discussion with the lecturer in the classroom. They would prefer instead to extract as much information as they possibly can, during the limited time the lecturer spends in the classroom.

For the legal educator, the ideal setting would be one in which the lecturer engages the students in a participatory discussion in the classroom and the student then follow it up with independent study in the library. This ideal, however, is difficult to achieve when almost 90% of the available legal materials are in English and the majority of the students are not proficient in the language.

There has been another trend which has also forced me to re-think my position on the language of legal education. Many of us who teach in English find that a majority of students who follow lectures in English are not entirely proficient in the language. Despite their lack of language proficiency they are eager to study in English because of the wider opportunities that an English medium graduate has. This is different from the situation which existed earlier when only a minority of students (studying in the English medium) lacked the necessary English language skills.

The recent changes the Faculty made to its curriculum has made it even more difficult to sustain a programme of quality in the Sinhala and Tamil media. The recent changes have made it compulsory that students submit two assignments per subject. This has meant that students have to engage in independent library based research and for those students who lack proficiency in English, this is difficult.

#### **4. Women and Legal Education**

For many years there has been a strong female participation in legal education especially in the Faculty of Law.<sup>7</sup> In 1967 only 45% of those studying law in the university were women. By 1989 as many as 61.5% of those studying

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<sup>7</sup> See Mark Cooray, *Changing the Language of the Law: The Sri Lankan Experience* (International Centre for Research in Bilingualism, Quebec, 1985).

law in the Faculty were women.<sup>8</sup>

The statistics with regard to female participation in the Faculty over the past five years,<sup>9</sup> show that after dipping somewhat, female participation has steadily increased over the past five years from 56.5% in 1993/94 to 68.5% in 1997/98.

What is even more interesting is the performance by female students. Most of the honours in the Faculty over the past five years have been grabbed by women. The Faculty of Law has produced 90 honours graduates over the past five years. Of this number, 74 have been women (82.2%) and only 16 men (17.7%). At the top end of the honours division, that is those graduating with an Upper Second Class degree, female performance has been even more startling. Of those graduating with an Upper Second Degree, there has been only one male (8.3%), in contrast to 11 females (91.%) during this five year period.<sup>10</sup>

Despite the high rate of participation of women in legal education and their outstanding academic performance in recent years, the legal profession continues to be a patriarchal profession, dominated very much by men. At the moment Sri Lanka has only one Supreme Court judge and one Court of Appeal judge who are women. There is only one President's Counsel who is a woman, and there has been only one woman who has held the post of Secretary to the Ministry of Justice. There is yet to be a female President of the Bar Association or a female Attorney-General. On the other hand, there are many women legal academics of great repute. The current Dean of the Faculty of Law is a woman and the Professor of Law (and now Vice Chancellor) is also a woman. However, I do not believe that there has been a female Principal of the Law College.

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<sup>8</sup> University Grants Commission of Sri Lanka, Handbook 1989, p 46.

<sup>9</sup> These statistics have been obtained from the Examinations Branch of the University of Colombo.

<sup>10</sup> The Faculty of Law has not produced a 'First Class' Honours student for almost 20 years.

Why then does the legal profession continue to be patriarchal despite the constitutional commitment to sexual equality?<sup>11</sup> Young female lawyers complain that it is much harder for them at the Bar, than it is for their male colleagues. They complain of being patronised, being laughed at and occasionally of being given menial tasks.

This has no doubt a lot to do with the attitudes males exhibit to female colleagues and the sexual stereotypes perpetuated by the media and the education system. I think this is an issue that SAARCLAW needs to give some attention to. Members of the Bench and the Bar need to give special attention to encouraging and facilitating the participation of women in a more substantive and equitable way. While there is a 'formal' commitment to sexual equality at the level of our constitutions, our laws and in the public pronouncements made by members of the Bench and the Bar, this formal commitment has not been translated into a '*de facto*' or 'substantive' equality for men and women. Discrimination in an explicit way occurs only very rarely. However, gender discrimination occurs in a variety of subtle ways, and, therefore, is more difficult to eradicate.

#### Faculty of Law, University of Colombo

#### Male/Female ratio

Year	No. of men	No. of women	Total	% of women
1993/94	87	113	200	56.5
1994/95	79	114	193	57
1995/96	79	121	200	60.5
1996/97	62	138	200	69
1997/98	58	137	195	68.5

*Source: Examinations Branch of the University of Colombo*

<sup>11</sup> Article 12(2) of the Sri Lankan Constitution prohibits discrimination on the basis, *inter alia*, of sex.



Faculty of Law, University of Colombo

Male/Female Ratio with regard to performance

Year	Second Class (Honours) Upper Division		Second Class (Honours) Lower Division	
	Male	Female	Male	Female
1994	-	-	4	9
1995	-	2	-	11
1996	-	1	3	9
1997	1	4	3	10
1998	-	4	5	24
Total	1	11	15	63

*Source: Examinations Branch of the University of Colombo*

### 5. A Professional Training Institute

Some countries have already experimented with a professional training institute.<sup>12</sup> Potential lawyers spend 6 – 12 months in these institutes in an intensive training programme geared mainly towards professional practice.

Sri Lanka needs to have look at this model for training its lawyers. Elements of such a programme are already found in the orientation programme conducted by the Law College for lawyers who are on the verge of entering the Bar. The model that is proposed here is more rigorous. It would involve students in a 8 – 12 month full time intensive training programme where they would have an opportunity to learn and acquire the skills necessary for the professional practice of law. The focus here would be on 'learning by doing', with students participating in interactive group exercises. There would

<sup>12</sup> See Madhava Menon, 'Legal Education in the SAARC Region: Issues and Challenges'. Paper presented at the 7th SAARCLAW Conference, Colombo, October 1998.

be no exams and assessment would be based on participation and involvement. A certificate from the Training Institute should be seen as a mandatory requirement for those seeking entry to the Bar.

## **6. Taught Post graduate Programmes**

There has been an increasing demand for coursework post graduate programmes in Sri Lanka. This year 260 candidates applied for the Master of Laws (LL.M) coursework programme, of which the Law Faculty admitted 70. Two years ago when the course was advertised, 260 candidates applied of which 50 were selected. The Faculty currently offers the LL.M only in International Law and Public Law.

There is a great demand for a LL.M in the areas of Business Law, Investment Law and Trade and Finance Law, and a coursework programme in these areas is a possibility in the near future. Some years ago the Faculty was able to conduct diploma programmes in International Trade and Practice and Industrial and Insurance Law and these programmes drew a good response. However, limited resources within the Faculty in this area have made it difficult for the Faculty to sustain these programmes.

The Faculty has also been involved in conducting diploma programmes in Local Government and Devolution Law, and Human Rights Law. There is a need, no doubt, to give LL.M students the opportunity of specialising in a broader range of subjects and to continue to offer a variety of specialised diploma programmes. Limited facilities and resources within the university, however, have made it difficult to sustain these programmes.

## **7. Popular Education**

The other issue I would like to touch on is the role of the law school in raising the level of legal awareness among members of the public. Because of the impact that the law has on peoples lives, there is a great thirst for legal knowledge on a variety of issues. So far only the Open University has tried to engage in popular education in a sustained way. This has been done primarily through the broadcast of radio and television programmes.

The Centre for the Study of Human Rights at the Faculty of Law has also been engaged in programmes of popular education for specific groups such as

school teachers and the members of the armed forces. The Diploma in Human Rights, conducted jointly by the Faculty of Law and the Centre for the Study of Human Rights, is aimed mainly at those working in non governmental organisations.

If the law schools of the region are concerned about good governance, the observance of human rights, gender equity and social justice, as they should be, then there is a great need for law schools in the region to be engaged in popular education in a more systematic and sustained way. The community has a great thirst for the law and the law school has an obligation to meet this need.

## **8. Conclusion**

Several issues were dealt within this brief presentation: the issue of a professional versus an academic legal education; the question of methods; the issue relating to language; the participation of women in legal education; the need to set up a Professional Training Institute; the aspect of postgraduate programmes and the question of popular education.

Most of these questions have been considered from a Sri Lankan perspective, but I think many of the issues are of relevance to the entire South Asian region.

Legal education is a matter of concern not only for the law teacher and the lawyer, but also for the entire community. Across the region, there is a need for all these actors to come together to design more effective programmes of legal education, both for the law student and the community at large.

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