

# HISTORICAL DEVELOPMENT OF THE ROMAN-DUTCH LEGAL TRADITION IN SRI LANKA

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**Abstract** - This study explores the significant influence of the Roman-Dutch legal heritage on Sri Lanka's legal system from its inception in 1602 A.D. by the Dutch. The Dutch East India Company's creation and subsequent dominance over the Maritime Provinces permitted the assimilation of Roman-Dutch law, which continues to serve as the basis for many present-day legal frameworks in Sri Lanka. The Portuguese discovery of the maritime route to India and the resulting European need for spices sparked the Dutch-Portuguese competition, which ultimately led to the establishment of the V.O.C. in 1602. The V.O.C. had significant authority, creating administrative and judicial systems to maintain law and order among European merchants and native residents. Although the island had divided sovereignty, the Dutch established a legal system that operated on two levels. They applied Dutch laws to both Europeans and indigenous people, while also acknowledging and respecting native customs and traditions. During this era, there was a limited formalisation of traditional laws, including the Theswalamai for Tamils and modified versions for other ethnicities, highlighting the diverse legal legacy of Sri Lanka.

The study examines the intricate cohabitation of Roman-Dutch law with other legal systems, including as English law, Kandyan law, Muslim law, and Theswalamai, which represent the broad socio-cultural makeup of Sri Lanka. The research emphasises the lasting impact of influential legal scholars such as Grotius and Voet, and the continuous development of the legal system in response to current needs and worldwide patterns. The incorporation of traditional rules into the wider legal system exemplifies the inclusiveness and flexibility that define Sri Lanka's legal progress, reflecting its abundant cultural and religious variety. This historical summary highlights the intricate and ever-changing nature of Sri Lanka's legal system, which has been influenced by centuries of colonial and post-colonial legal diversity.

**Keywords:** Roman-Dutch Law; Sri Lankan Legal System; Colonial Legal History; Customary Laws; Legal Pluralism.

## INTRODUCTION

The Dutch arrived in Sri Lanka in the year 1602 A.D. as a trader. The chief contribution of the Dutch, as per Navasivayam, was the introduction of the Roman Dutch Law, which still permeates the legal principles of the Sri Lanka legal order.<sup>1</sup> According to Brohier, the two most important and vital contribution of the introduction of the Dutch to the culture of Ceylon are the Roman-Dutch Law which forms the basis of most of the contemporary legislative enactments of the island and the seven thousand old manuscripts volumes of the record of the administration of the Dutch over the island.<sup>2</sup> This section first briefly traces the legal system of Ceylon during the Dutch period and positions the Roman Dutch law in the legal order of that time. It further considers how the British took over of Roman-Dutch law influenced Ceylon's (old name of Sri Lanka) law. Moreover, its survival among the other laws which form part of the legal system of Ceylon is studied to explore in which area of the law the Roman Dutch law was maintained or superseded. Furthermore, the question is considered whether the independence of Sri Lanka brought any changes in the application of the Roman Dutch law in Sri Lanka. Finally, the present relative role of the Roman-Dutch and common law in the contemporary Sri Lankan legal system is set

<sup>1</sup> S. Namasivayam, "The Legislation of Ceylon 1928-1948," in M. Perham (ed.), *Studies of Colonial Legislation* 8 (London, 1951).

<sup>2</sup> R.L. Brohier, *Links between Sri Lanka and the Netherlands: A Book of Dutch Ceylon* (Colombo, 1978).

out. This introduction of law of Ceylon is based on the work of Goonetilleke.<sup>3</sup> However, as per his self-admission, the bibliography is not comprehensive as to the province of contemporary general or 'common law'. Also, since there is no specific juridical bibliography available, the relevant literature is obtained from the leading libraries such as the Peace Palace library, the Leiden University library and University of Göttingen library and Colombo University library.

As far as the case laws are concerned, it was relatively simply. In many Digests, the case-laws are arranged in according to subject-matter and the references are provided as to where they can be found in different Law Reports.<sup>4</sup> The legislation of Sri Lanka is published in the legislative enactment of Ceylon. Most of the volumes contain an alphabetical index.

The documents available in the Sri Lanka National Archives are found by using the Catalogue compiled by Peace Palace librarian C. Alihussaini which is based on the inventory created of Mottau.<sup>5</sup>

### 1. The Arrival of Dutch in India and Sri Lanka

During the early years of the sixteen century, the Portuguese discovered the sea-route to India. This first advantage made the Portuguese the only nation bringing spices to Europe. The Dutch merchants used to buy these spices for trade within Europe. However, since 1595 some changes occurred regarding the Dutch trade practice. In 1581 Philip II of Spain succeeded in acquiring the throne of Portugal and subsequently he ordered that an embargo be imposed on all the Dutch ships in the Portuguese and Spanish harbours. Meanwhile, the Portuguese also changed the trading-system: the spice trading was now controlled by a syndicate with representatives from all over Europe including the Republic of United Netherlands. This led to deep penetration and massive increase in the demand for spices in European households. However, the supply of spices by the Portuguese did not increased in equal proportion. When the Portuguese were not able to obtain enough spices to provide for Europe sufficiently, the prices of the spices soared.

This was the time when many private expeditions to the East were undertaken. The first expedition to complete its journey successfully by returning from the East with a considerable load of spices gave rise to the formation of many small trading-companies.<sup>6</sup> Although the journey was difficult and considerable loss was suffered by these explorers to discover the sea-route to Asia, there was a fierce competition which undermined the position of the Dutch traders as compared to the trade of other European nations. The two requirements for a long-lasting organisation of these companies and namely the internal cooperation between these companies and the means to keep the Portuguese and the British out of the Indian area was lacking. Although, the government of the Republic of Netherlands was aware of the importance of the overseas trade, however, it did not have the resources to supply for a large fleet to protect the Dutch merchants and to build fortresses overseas. Furthermore, the government had been occupied with the defence of Republic's territorial boundary. Given such a condition, it was decided that all the small trading companies should be amalgamated to single monopolistic company under pressure from Van Oldenbarneveldt. To execute this plan, the State General of Republic of the Netherlands approved the charter of the company on March 20, 1602. This was the creation of the Dutch East India Company (hereafter V.O.C). In exchange of the trading-monopoly granted to the V.O.C. by the State General, the V.O.C. had promised to take care of the defence of the trade and the maintenance of the good law and order among the merchants in the service of the empire. The costs involved had to be borne by the V.O.C. To enable the V.O.C. to comply with its promise, the State General delegated certain powers to the V.O.C. by Charter of March 20<sup>th</sup> 1602, including power to build fortresses, to impose penalties, to appoint and dismiss Governors, soldiers, judicial officers and all such officers as it

<sup>3</sup> D. C. R. A. Goonetilleke, *Images of the Raj: South Asia in the Literature of Empire* (Palgrave Macmillan UK, 1988); D. C. R. A. Goonetilleke, *Modern Sri Lankan Drama: An Anthology* (Sri Satguru Publications, 1991).

<sup>4</sup> *Lawceylon* is a popular and reliable source of online repository of law, statutes, case laws and law reports. For the purpose of this research, the paid subscription version of the online repository of law, statutes, case laws and law reports was used.

<sup>5</sup> C.Ali Hussain, chief librarian compilation of of Catalogue of the Archives of the Dutch Central Government of Coastal Ceylon rule, 1640-1796, Peace Palace library; S.A.W. Mottau, Inventory of the Archives of the Dutch Government in the divisions of Galle (Matara) and Jaffnapatnam, 1640-1796, the Hague, 1975.

<sup>6</sup> Anthonisz, *The Dutch in Ceylon*, p.5.

deemed proper for the maintenance of good order and justice. Although, these far reaching powers gave the V.O.C. the status of a political institution, the Republic remained internationally responsible for all its overseas activities. The State General exercised a supervisory power over the V.O.C. However, the more powerful the V.O.C. became, the more freedom and power it tool for developing Indian overseas trade and the supervisory power of the State General subsequently grew less.

Ceylon was first visited by Admiral Joris van Spilbergen on March 31<sup>st</sup> 1602.<sup>7</sup> Although there remained a perpetual tussle between the Portuguese and the Dutch for a long time. The local ruler of Ceylon, Raja Sinha sought help of the Dutch to overthrow the Portuguese. After a prolonged struggle of more than thirty years, the Dutch had invested a considerable amount of money and energy on Ceylon to become the sole rulers in the Maritime Provinces.<sup>8</sup>

## 2. THE LEGAL SYSTEM OF CEYLON DURING THE DUTCH RULE

Sri Lanka was considered to be the most important outstation for V.O.C. (Dutch East India Company). However, the Island was not completely under the Dutch rule. During the Dutch rule, the Kingdom of Kandy, remained sovereign only losing this status in 1815, when it was acquired by the Great Britain.<sup>9</sup> Therefore while mentioning the Dutch period, it should be understood that the Dutch had sovereignty only over the Maritime Provinces of the Island. In the new Colony the need was felt to set up a good administration, Although the Dutch had been for more than forty years in the Island, they had not setup judicial or administrative organisations. According to the charter of 1602 the V.O.C. had the task of maintaining good order, police and justice in the territory under its rule. However, in the subsequent orders of 1617 and later of 1632, this task was expressively spelled by Lord XVII. Almost immediately after the Dutch officially took possession of Ceylon, the Central Government carried out the provisions of article 7 of the instruction of 1617 and appointed officers and constituted courts and councils for the administration of justice. During the Dutch period in Ceylon the following courts and judicial institutions functioned: *the Civiele Raad* (the Civil Court), *the Landraad* (the Land-Council), *the Fiscall* (the Fiscal) *the Dessave* (administrative court) and some local officials.

The *Civiele Raden* (also known as: Court for matrimonial and small causes) exercised jurisdiction within the cities of Colombo, Jaffnapatnam and Galle and their precincts. They had jurisdiction to try all civil cases, the subject matter of which did not exceed 120 rix-dollars and, according to Tambiah, they also heard matrimonial cases amongst Christians.<sup>10</sup> The *Civiele Raden* exercised jurisdiction over both Europeans and indigenous inhabitants. From the decisions of the *Civiele Raad* a right to appeal was granted to the *Raad van Justitie* (Court of Justice) situated in the same district. The *Raad van Justitie* in Batavia was the highest court for the whole of empire of the V.O.C. and functioned as the court of last resort. From the decision of the *Raad van Justitie* of Colombo, an appeal was granted to the highest court, provided that two requirements were fulfilled. These requirements were: a) that the value of the subject matter of the action was more than 300 rix-dollars, and b) that if the case was first tried by the *Raad van Justitie* of Galle, Jaffanapatnam or Tricomalee, the Judgement so delivered was later overruled by the *Raad van Justitie* of Colombo.

## 3. THE CUSTOMARY LAWS OF SRI LANKA

Apart from the traditional sources of law during the Dutch and the British colonial rule, including legislation, case-laws, ordinances and by-laws, there was one source of law which evidently remained important in civil and family disputes: custom. These customary laws of Sri Lanka can be read under five different groups:

1) the Tamils, also known as Mallabars, so far as they were living in the northern district of Jaffnapatnam.

<sup>7</sup> Henry W. Tambiah, *Principles of Ceylon Law* (Cave, Colombo, 1972).

<sup>8</sup> The control over Ceylon was such a costly affair to the Dutch that the High Government of Batavia (the seat where V.O.C. was registered as a company) the Lord XVII wrote this as instruction in 1650, "...that the involvement of the V.O.C. in the Island of Ceylon had already caused excessive costs to be made that it becomes unthinkable ever to leave the island. On the contrary, it has to be retained to develop a profitable trade, See, Punten en Artikelen in form van Generale Instructie van den 26sten April 1650, as published and translated by Meijer, Verzameling, at 91.

<sup>9</sup> A. Wood Renton, *The Roman Dutch Law in Ceylon under the British Regime*, 49 S.A.L.J., 162.

<sup>10</sup> H.W. Tambiah, *Principles of Ceylon Law*, Colombo, 1972, 11-12. See also, Jurriannse, Catalogue, 311.



- 2) the Mukkuvars (or Mukkuwa's) in the districts of Trincomalee and Batticaloa;
- 3) the Chetties, living in the Pettah area of Colombo, in Chilaw and Puttalam;
- 4) the "low-country Sinhalese", who lived in the Southern and western Maritime Provinces, so called to distinguish them from the "up-country Sinhalese", who lived in the mountainous areas of Kandy, and
- 5) the Muslims, not living in one specific district but spread all over the country.

Each of these groups was governed by its own customary laws, which mostly dealt with matters of family-law and succession and sometimes with the law of property. The Dutch policy was to apply Dutch laws both to the indigenous inhabitants and the Europeans alike. However, in 1642 (with the promulgation of the Statutes of Batavia) the High Government ordered that in the outstations, where the Statutes were meant to be applicable, the local conditions and circumstances had to be followed, "in so far as the laws of these countries, cities or places will permit." It even devoted entire chapter titled, 'New Statutes to the customary laws of the Muslims'.<sup>11</sup> Therefore it was be argued that the customary laws were generally regarded by the Dutch. The Dutch also initiated the codification of the customary laws in Sri Lanka and the task was only partially accomplished.<sup>12</sup> These customary laws were applied by the courts to deal with the dispute between the indigenous inhabitants. In 1874 in *Chinnatamby v. Minny*, the Supreme Court held that: "these customary laws were not interfered with either the Dutch or the British."<sup>13</sup>

In accordance with the different groups of local inhabitants as mentioned above there were different systems of customary laws:

**1) *Thesawalamai*:** Governor Simons ordered Classz Isaaksz, the Dessave of Jaffanapatnam, to codify the *Thesawalamai*, the customary laws of the Tamils of Jaffnapatnam. This Code was promulgated in 1707. First, the *Thesawalamai* was only applicable to the peninsula of Jaffanapatnam, later it was extended to the whole of the Northern Province. In general, it was applicable to only the Tamils in the Northern Province, so that the Tamils living in the Districts of Batticaloa and Trincomalee were excluded from its operation. Furthermore, in certain matters such as pre-emption, which affected sale of undivided shares of land, the *Thesawalamai* applied to all the owners of land, situated in the Northern Province, notwithstanding the fact that these owners were non-Tamils.

**2) Customary laws of the Mukkuvars:** Although the Mukkuvars were Tamils in origin, they had their own customary laws, based on matrimonial family-system.

**3) Customary laws of Chetties:** Chetties also belonged to the Tamil race, but like the Mukkuvars, they followed their own system of customary laws. However, their customary laws has been abolished in the present time since the provision of Ordinance no. 15 of 1876, which set out the law of interstate succession to all persons of Ceylon except those governed by *Thesawalamai*, *Kandyan Law* and Muslim Law. This implied that the rest of the customary laws were replaced by the law set out in the ordinance.

**4) Customary laws of the low-country Sinhalese:** The "up-country Sinhalese" never came under the rule of Dutch and their customary laws remained intact. However, the customary laws of the "low-country Sinhalese" were protected by the Dutch. Despite this fact, there appeared significant difference between the low-country Sinhalese customary laws and the up-country Sinhalese laws after the Dutch rule. This provides an interesting comparative subject of study of how colonial rule influenced and altered the customary practices and laws, despite their claim of preservation and codification of customary laws of the natives.<sup>14</sup>

**5) Customary laws of the Muslims in Ceylon:** In the New Statutes of Batavia the High Government of Batavia devoted a separate chapter on the customary laws of the Muslims. As pointed

<sup>11</sup> Van der Chijs, N.I.P., Vol. IX, 410-431. In Dutch: Special Laws regarding Moors and Mohammedans and Other Inland Nations.

<sup>12</sup> Governor Falck is credited to have order the codification of the customary laws, see,

<sup>13</sup> As quote in Henry W. Tambiah, *Principles of Ceylon Law* (Cave, Colombo, 1972), at p. 205; Tambyah Nadaraja, *The Legal System of Ceylon in Its Historical Setting* (Brill, Leiden, 1972), at p. 14.

<sup>14</sup> Tambyah Nadaraja, *The Legal System of Ceylon in Its Historical Setting* (Brill, Leiden, 1972), at pp. 15–6; Henry W. Tambiah, *Principles of Ceylon Law* (Cave, Colombo, 1972), at pp. 142–3.

earlier, there is evidence that the New Statute were also applied in Ceylon. Nadaraj States the Governor Falck in 1770 also received a smaller Code based on the New Statutes.<sup>15</sup>

Although the Christianity and Islam had very meagre impact on the law and the legal system of the Ceylon in general. Horst is of the opinion that indirect influence of the canon law can be traced in Ceylon through the Roman-Dutch law.<sup>16</sup> Buddhism formed a source of law in so far that the management of the temple, the way of sacerdotal succession of the chief incumbent of the Buddhist Vihare and the character of his rights were all governed by Buddhist custom.<sup>17</sup> Besides rules concerning the management of temples, Hinduism and Islam also prescribed rules for the ordinary life of the Hindu's and Muslims, which for them had the force of law. Such rules were also respected by the Dutch.

When the Mohammedan Code was silent, sometimes during the Dutch regime, the Islamic laws were applied. The same can be said of the rules forming part of the Hindu-religion; when the *Thesawalamai* did not provide, the Hindu-Tamils were sometimes entitled to rely on these rules.<sup>18</sup>

#### 4. THE PRESENT LEGAL SYSTEM OF SRI LANKA

Congue In 1948 Sri Lanka regained the independence from the Britishers after nearly 450 years of the colonial occupation. The British rule lasted some 150 years when the Ceylon Independence Act of 1947 together with the Ceylon (independence) Order in Council of 1948 obtained the force of law on 4<sup>th</sup> February, 1948. Ceylon remained a member of the Commonwealth of Nations of which the Queen of the United Kingdom is the head. In 1972, Ceylon was renamed as Sri Lanka. Since the implementation of the constitution of 1978, it is called the Democratic Socialist Republic of Sri Lanka. The present Sri lankan legal system is the mixed composition of the Roman-Dutch law, the English law, the Kandyan Law, Muslim law, Thesawalamai and of what may be defined as modern Sri Lankan Law. Thus, of the major legal system in the world, as classified by David, three are represented in Sri Lanka: namely, the Romano-Germanic family, the Common Law family and the Philosophical/Religious Law system.<sup>19</sup> Only the family of Socialist law is not represented. It is not amazing that in respect of the legal system of Sri Lanka the following statement has been made, "few countries can have so complicated a system of law as obtained in Ceylon."<sup>20</sup> Or "as a result of its historical development the law of this country is usually complicated".<sup>21</sup> This influence and convergence of major legal systems in Sri Lanka offers enriching legal development in terms of the variety of solutions of the conflicts, means, methods and designs that can be offered.

#### CONCLUSION

The Roman-Dutch tradition is a significant and integral part of Sri Lanka's legal system, playing a crucial role in shaping the nation's history and jurisprudence. The investigation of the historical evolution of the Roman-Dutch legal tradition in Sri Lanka explores the significant influence of colonial encounters on legal frameworks. The Roman-Dutch legal tradition, which was introduced during the colonial period, became firmly established in Sri Lanka's legal system. The historical progression of this region, starting from the initial period of Dutch control and continuing into the subsequent British era, demonstrates an ongoing process of adjustment, assimilation, and development. An important discovery is the mutually beneficial relationship between the influences of Roman-Dutch and Common Law. Although the British colonial administration introduced Common Law principles, the Roman-Dutch tradition remained vibrant in Sri Lanka, resulting in a distinct legal mosaic. The interaction between these legal traditions has not only moulded the judicial system but has also impacted various legal fields, ranging from property law to family law. Furthermore, this historical analysis sheds light on the enduring

<sup>15</sup> Tambyah Nadaraja, *The Legal System of Ceylon in Its Historical Setting* (Brill, Leiden, 1972), at p. 14.

<sup>16</sup> M. H. J. van den Horst, *The Roman Dutch Law in Sri Lanka* (Free University Press, Amsterdam, 1985), at p. 72.

<sup>17</sup> Henry W. Tambiah, *Principles of Ceylon Law* (Cave, Colombo, 1972), at pp. 111–2.

<sup>18</sup> *Ibid.*, at p. 112.

<sup>19</sup> René David and John Elmes Campbell Brierley, *Major Legal Systems in the World Today: An Introduction to the Comparative Study of Law* (Stevens, London, 1968), at pp. 21–9.

<sup>20</sup> Ivor Jennings, *Constitutional Laws of the Commonwealth* (Scientia Verl, Aalen, 19), at p. 62.

<sup>21</sup> Tambyah Nadaraja, *The Legal System of Ceylon in Its Historical Setting* (Brill, Leiden, 1972), at p. xi.





nature of the Roman-Dutch legal tradition. Although Sri Lanka has experienced significant changes and post-colonial transformations, its principles continue to exist in the legal awareness of the country. Nevertheless, as we wrap up this investigation, it is crucial to acknowledge that the narrative is anything but unchanging. The legal framework in Sri Lanka, similar to other countries, is constantly changing and adapting to current demands and worldwide patterns. The coexistence of Roman-Dutch and Common Law presents both difficulties and advantages in the current situation. Although the principles of the Roman-Dutch tradition serve as a strong basis, the legal system constantly struggles with meeting the needs of a society that is constantly evolving. Essentially, the historical progression of the Roman-Dutch legal tradition in Sri Lanka is a continuous story—a story in which the past interacts with the present and, in doing so, influences the direction of the future. As Sri Lanka progresses through its legal process, it relies on the influence of *Grotius*, the influence of *Voet*, and the lessons from legal history to guide its path. These factors ensure that the legal system continues to embody the intricate combination of tradition and adaptation that characterises Sri Lanka's legal identity. The civil and family laws of Sri Lanka have been influenced by the customary laws of religious communities, in addition to the Roman-Dutch and Common Law. The amalgamation of legal traditions, wherein customs intertwine with codified laws, contributes an additional stratum to the intricacy of Sri Lanka's legal heritage. The mosaic is fully formed through the incorporation of various Sri Lankan communities like Mukkuvars, Chetties, *Theswalamai*, Customary laws of the low-country Sinhalese, Muslims of Ceylon and laws of upper Sinhalese traditions, with each leaving its unique imprint on the civil and family legal systems. The acknowledgment and adaptation of these various customary laws demonstrate the inclusiveness and pluralism inherent in Sri Lanka's legal development, reflecting the wider cultural and religious diversity of the island.

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